

**BEFORE THE INDEPENDENT HEARING COMMISSIONERS
APPOINTED BY THE HAMILTON CITY COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for subdivision and land use consent
for the Amberfield development

BETWEEN **WESTON LEA LIMITED**
Applicant

AND **HAMILTON CITY COUNCIL**
Consent authority

**STATEMENT OF EVIDENCE OF ANDREW RICHARD PARSONS ON BEHALF OF
HAMILTON CITY COUNCIL**

Dated **April 2019**

LACHLAN MULDOWNEY
BARRISTER

P +64 7 834 4336 **M** +64 21 471 490
Office Panama House, 15 Grantham Street, Hamilton
Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240
www.lachlanmuldowney.co.nz

INTRODUCTION

1. My full name is Andrew Richard Parsons. In my position as the Strategic Development Manager for Hamilton City Council ('HCC'), I am responsible for planning, managing the development of and delivering the growth-related infrastructure for transportation, and the "Three Waters", comprising water supply, stormwater management and wastewater collection, treatment and disposal.
2. I represent HCC as the Requiring Authority for the Southern Links transport designation within the Peacocke area.
3. Prior to my current role, I was the City Waters Manager and was responsible for all 3-waters and solid waste asset planning and operations. This included operational responsibility for the water and wastewater treatment plants, reservoirs, wastewater pump stations and the associated reticulation.
4. In addition to my role at HCC, I also chair the sub-regional Water Policy Group that forms part of the Future Proof collaboration between Waipa District Council, Waikato District Council, Hamilton City Council, Waikato Regional Council and Tangata Whenua.
5. I have 30 years' experience in Local Government infrastructure planning and delivery. My experience has been gained whilst working for HCC on large growth related projects or new infrastructure projects and, through the provision of 3-waters and transport related engineering input into Structure Plans, subdivision and land use consent applications. Relevant activities I am, or have been, involved in include:
 - a) Representing HCC on a range of groups and issues, including:

- (i) Future Proof Technical Implementation Group - working with the New Zealand Transport Agency ('NZTA'), Waikato Regional Council ('WRC') and neighbouring authorities on the coordination and integration of sub- regional land use and transport planning issues;
 - (ii) Dealing with the city growth, relating to any structure planning and associated infrastructure including and working with NZTA and District Councils;
 - (iii) Preparation of the growth and infrastructure elements for the 10 Year Plan and 30 Year Infrastructure Strategy, including prioritisation, sequencing and funding advice;
 - (iv) Managing the implementation of HCC's capital programme for major water, wastewater, stormwater and transportation projects, including multi-party funding and private developer agreements.
6. Prior to the preparation of this evidence, my involvement in the Peacocke Housing Infrastructure Fund (HIF) application to central government, and the establishment of the HIF implementation team focused on 3-waters and transport infrastructure related matters.
7. I have familiarised myself with key strategic 3-waters and transport infrastructure matters of the proposed Amberfield Development which are the subject of this hearing.

CODE OF CONDUCT

8. I have prepared this evidence in my capacity as an infrastructure manager. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note dated 1 December 2014. I have complied with the code when preparing my written evidence and I agree to comply with it when I give my oral evidence.

STRATEGIC 3-WATERS AND TRANSPORTATION

9. HCC has invested significant effort to develop a comprehensive business case for the necessary strategic infrastructure required to support full development in the Peacocke growth cell. The Business Case has been approved by Council, NZTA and MBIE. A funding agreement is in place between HCC and NZTA and, HCC and MBIE for the strategic infrastructure identified in the Business Case. The funding agreement includes high level expected timing for the strategic infrastructure commencing on 30 June 2018 over about a 5 year period. The design contract for the new bridge across the Waikato river was awarded in early September 2018 and a design contract for the design of the strategic wastewater have also been awarded. Construction activity is expected to commence within the next 18-24 months.
10. HCC now has funding certainty for the strategic transport, wastewater and water infrastructure necessary to urbanise Peacocke. It is critical however that Council's rollout of strategic infrastructure not be compromised by private development, but instead be integrated with that development to ensure maximum efficiency and overall community benefit.
11. It is critical to HCC that it's Southern Links Designation is properly recognised in any private development consent conditions in a manner that is consistent with the designation conditions and, that HCC's ability to give effect to that designation is not compromised or diminished in any way.

12. In addition, HCC has planned the strategic wastewater via a major wastewater interceptor network on the eastern side of the city since the 1960s. This eastern Wastewater Interceptor has planned capacity for the Peacocke area and has been incrementally extended over many years and currently terminates in the Wairere Drive / Gordonton Road / Crosby Road area. HCC's view is, at this time, this wastewater Interceptor is the only viable wastewater reticulation available with appropriate capacity to service the Peacocke area. The extension of the Interceptor to Peacocke is provided for in the HIF agreement.

13. HCC has been working collaboratively with Western Lea and their consultants to resolve key matters relating to the Southern Links designation and strategic wastewater. Although not yet finally agreed, Council's position is reflected in the latest draft Private Developer Agreement (PDA) which is attachment A to my evidence. Council would require a condition precedent be included in the subdivision and land use consents that requires the consent holder to enter into a PDA with HCC, on terms satisfactory to HCC, dealing with these infrastructure issues, and that land use and subdivision not proceed until such time as that agreement is in place.

PRIVATE DEVELOPER AGREEMENT

14. I have reviewed the Western Lea application, HCC's designation, HCC's funded infrastructure programme and the evidence provided by the Western Lea team and offer the following summary in the context of the draft PDA:
 - a) **Wastewater;** HCC requires the Peacocke reticulated wastewater service to be connected via the planned eastern Interceptor Wastewater network extension. Also, HCC requires any proposal for

temporary or interim wastewater reticulation to be consistent with an eastern Wastewater connection. HCC is satisfied that the evidence provided by Mr Raymond O'Callaghan dated 12 April 2019 (paragraphs 79-85) is consistent with HCC expectations and the draft PDA.

- b) **Water;** HCC is seeking a strategic network arrangement that is consistent with strategic planning for the broader catchment in the Peacocke area and, in a manner that provides for a resilient system with consideration for security of supply matters. HCC is satisfied that the evidence provided by Mr Raymond O'Callaghan dated 12 April 2019 (paragraph 70) is consistent with HCC expectations and the draft PDA.
- c) **Transport;** HCC is seeking Western Lea recognition of HCC's Southern Links designation and it 's desire to upgrade the existing rural Peacocke Road formation to an urban minor arterial. This will require as a minimum, Weston Lea to vest land and undertake earthworks within its proposed development to achieve ground levels and intersection arrangements that are compatible with the designation. HCC is satisfied that the evidence provided by Mr Raymond O'Callaghan dated 12 April 2019 (paragraphs 99-100) is consistent with HCC expectations and the draft PDA.
- d) **Stormwater;** Stormwater is not considered to be a significant issue from a strategic servicing perspective.
- e) **Local Weston Lea infrastructure;** HCC also requires that any local infrastructure 3-waters and transport, be sized for the ultimate HCC planned catchment. The draft PDA provides a mechanism for HCC to specify infrastructure upsize requirements and pay the appropriate cost share.

- f) **Requiring Authority Approval;** HCC has prepared the PDA following discussions with Western Lea representatives and technical experts. HCC intends that the PDA is the Requiring Authority Approval for the Weston Lea consent application as set out in section 176 of the Resource Management Act.

15. Accordingly, it appears from the technical evidence submitted on behalf of Western Lea that there is now a high level of agreement between the parties concerning these infrastructure related matters. On that basis I have an expectation that the parties will continue to work together during the period leading up to the hearing in an effort to resolve any remaining issues concerning the drafting of the PDA. If the PDA is signed before the hearing I will update the commissioner of that fact in my presentation at the hearing. As I have previously stated in my evidence, given the strategic significance of the rollout of infrastructure in Peacockes, HCC seeks the condition precedent in the consents to reflect the requirement that these infrastructure related matters be addressed to HCCs satisfaction before land use and subdivision commences.

Dated this 23rd day of April 2019



A R Parsons

APPENDIX A PRIVATE DEVELOPMENT AGREEMENT

between

HAMILTON CITY COUNCIL

and

WESTON LEA LIMITED

TABLE OF CONTENTS

	Page
1. DEFINITIONS AND INTERPRETATION	2
2. COLLABORATION	8
3. DEVELOPMENT OF INFRASTRUCTURE	8
4. STAGING AND TIMING	10
5. PEACOCKES ROAD BOUNDARY WORKS	11
6. INSURANCE	12
7. HEALTH AND SAFETY	12
8. REPORTING REQUIREMENTS FOR INFRASTRUCTURE	13
9. RESOURCES AND PERSONNEL	14
10. VESTING OF INFRASTRUCTURE	14
11. POWERS AND ACCESS	15
12. SECURITY	16
13. WARRANTIES	17
14. CAPACITY ADJUSTMENT	17
15. TERMINATION AND SUSPENSION	18
16. LIMITATION OF LIABILITY	19
17. COSTS	19
18. DISPUTE RESOLUTION	20
19. NOTICES	22
20. NO ANNOUNCEMENTS AND CONFIDENTIALITY	23
21. GENERAL	24
SCHEDULE ONE DEVELOPMENT AREA	26
SCHEDULE TWO WASTEWATER	27
SCHEDULE THREE WATER	30
SCHEDULE FOUR ROADS	32
SCHEDULE FIVE STORMWATER	34
SCHEDULE SIX STRATEGIC INFRASTRUCTURE CONCEPT PLANS	35
SCHEDULE SEVEN SECURITY	36

AGREEMENT dated

2018

PARTIES

- (1) **HAMILTON CITY COUNCIL** ("HCC")
- (2) **WESTON LEA LIMITED** ("Weston Lea")

BACKGROUND

- A. The Adare Company Limited (**Adare**) owns land in the Peacocke Structure Plan Area (**PSPA**) that it intends to develop predominantly into residential housing in various stages.
- B. Weston Lea (appointed by Adare to develop Amberfield) has applied for the Resource Consent Applications that will enable the Amberfield development within the PSPA owned by Adare.
- C. Amberfield requires off-site infrastructure works associated with wastewater disposal, roading, water supply and relatively minor stormwater management elements (**Infrastructure Works**).
- D. HCC is progressing development in the wider PSPA including the provision of infrastructure necessary to support development in the PSPA.
- E. The purpose of this Agreement is to record the understandings reached by the Parties in relation to the provision of the Infrastructure and the undertaking of the Development.

AGREEMENT:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement, unless the context otherwise requires:

"Act" means the Local Government Act 2002;

"Agreement" means this development agreement, including all schedules;

"Amberfield" means the development comprising of subdivision and enabling works pursuant to the Resource Consent Applications shown on the Plan attached as Schedule One;

"Amberfield Pump Station" means the pump station 4 located within Amberfield shown by drawing 141842-WW501 attached to the Resource Consent Applications

“Best Industry Practice” means the exercise of the skill, diligence, prudence, foresight and judgement as would be expected from a skilled and experienced person under the same or similar circumstances to those applicable under the Agreement;

“Boundary Works” means the earthworks and other works to be undertaken by Weston Lea to achieve the agreed boundary levels for the Peacockes Road Minor Arterial;

“Confidential Information” means all information that by its nature is, or would reasonably be expected to be, confidential, including all business information about a party and all Data, and includes the terms of this Agreement;

“Defect” means:

- (a) a failure of the Local Infrastructure to conform with the requirements of this Agreement; or
- (b) any defects in workmanship or materials with respect to the Local Infrastructure;

“Defects Notification Period” means, in relation to an item of Local Infrastructure, the greater of (i) the defects notification period under the relevant construction contract for the construction of that Infrastructure, and (ii) 18 months;

“Development” means Weston Lea’s land development on the Site;

“Developer” means Weston Lea;

“Far Eastern Interceptor” means the strategic wastewater pipe as shown in the Strategic Infrastructure Concept Plans;

“Force Majeure Event” means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with or the performance of, a party’s obligations under this Agreement, including:

- (a) fire, floods, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, act of civil or military authority;
- (c) nuclear, chemical or biological contamination;
- (d) any act of a third party (not being an employee, agent or subcontractor of that party) engaged in subversive or terrorist activity or sabotage;

but does not include an event to the extent that:

- (a) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
 - (i) implementation of any contracted business continuity or disaster recovery service which is consistent with Best Industry Practice, or any contingency plans agreed between the parties or which a party has represented it has in place;

- (ii) exercising a reasonable standard of care; or
- (b) such event was caused by an act or omission of the party affected;
- (c) that event is constituted or caused by any failure of a subcontractor or supplier of the party unless and to the extent that the subcontractor or supplier was itself affected by an event which, if it occurred in relation to either party, would have been a Force Majeure Event; or
- (d) that event is constituted or caused by the insolvency of either party or a Subcontractor or supplier of the party;

“**GST**” means goods and services tax as defined in the Goods and Services Tax Act 1985;

“**HCC Wastewater Pipeline**” means the wastewater pipeline from the Transfer Pumping Station to the Far Eastern Interceptor;

“**Infrastructure**” means the Local Infrastructure and the Strategic Infrastructure;

“**Insolvency Event**” means, in relation to Weston Lea:

- (a) the presentation of an application for its liquidation that is not discharged within 60 days of its filing or which is not demonstrated to HCC’s reasonable satisfaction prior to the expiry of that 60 day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, voluntary administrator, statutory manager, or similar official, to that party;
- (d) the suspension or threatened suspension by that party of the payment of its debts;
- (e) cessation by that party of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets;
or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

“Interim Peacockes Road Upgrade” means the northern-most access road to Amberfield and its intersection on Peacockes Road with a left turn lane and a right turn bay to provide access to stages 1 and 2 of Amberfield as set out in the Resource Consent Applications;

“Internal Water Pipe System” means the 250mm diameter water pipe in the north-south local Amberfield road together with a 150mm diameter supply main laid in Peacockes Road, and identified in the Strategic Infrastructure- Water Concept Plan, Schedule Six;

“Law” means:

- (a) any statute, regulation, by law, ordinance or subordinate legislation in force from time to time to which a party is subject;
- (b) the common law and the law of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code, policy or standard enforceable by law; or
- (e) any applicable direction, policy, permission, consent (including a resource consent), licence rule or order that is binding on a party and that is made or given by any governmental, legal or regulatory body,

in any jurisdiction that is applicable to this Agreement, including all applicable district or regional plans and district council bylaws and NZTA guidelines and standards;

“Local Infrastructure Works” means infrastructure that is identified in this Agreement as being constructed by Weston Lea and, unless otherwise provided for in this Agreement, any infrastructure that a developer would be responsible for funding and delivering as part of any normal consent process under the Resource Management Act 1991 and includes:

- (a) collector roads, local roads, laneways, private roads, private ways and jointly owned access ways;
- (b) water reticulation within a subdivision;
- (c) local pipes, pump stations and associated assets;
- (d) local storm water pipes;
- (e) local parks;
- (f) local roads; and
- (g) any other infrastructure that is required to service the Development that is not Strategic Infrastructure;

and includes any part, sections and/or stages of those works;

“North Section Wastewater Pipeline” means the section of the HCC Wastewater Pipeline from the point north of Cobham Drive identified in Schedule Six and terminating at the Far Eastern Interceptor;

“NZTA” means the NZ Transport Agency;

“Peacockes Road Minor Arterial” means the road section identified as such in the Strategic Infrastructure- Transport Concept Plan;

“PWA” means the Public Works Act 1981;

“Regional Infrastructure Technical Specifications” means, for any part of the Infrastructure at the time that detailed designs are being prepared under this Agreement and for any other purpose, at the time of reference:

- (a) the specifications for infrastructure contained in the manual maintained by Waikato Local Authority Shared Services Limited in respect of property development; and
- (b) if any requirement of the manual is unclear or any element of infrastructure is not contained in the manual, the specifications agreed by HCC (acting reasonably);

“Regulatory Functions” means HCC’s statutory functions and duties;

“Resource Consent Applications” means an application for subdivision and land use consent for the Amberfield development in Peacocke, Hamilton (being resource consent 010.2018.0009853.001 and 011.2018.00006695.001);

“Resource Consent” means, with respect to Weston Lea, any and all resource consents issued to Weston Lea by HCC under the Resource Management Act 1991 with respect to the Development of that Developer;

“PSPA” means the Peacocke Structure Plan Area;

“Section 224(c) Certificate” means a certificate issued under section 224(c) of the Resource Management Act 1991;

“Security Interests” means mortgages, charges, claims, estates or security interests of whatever kind;

“Site” is defined in Schedule One;

“Strategic Infrastructure” means the network infrastructure (as defined in the Act) and identified in the Strategic Infrastructure Concept Plans or as required for HCC to service Amberfield with network infrastructure as part of the development of the PSPA;

“Strategic Infrastructure Concept Plans” means the plans attached as Schedule Six;

“Transfer Pump Station” means a main pumping station for the PSPA identified in the Strategic Infrastructure Concept Plans;

“Upsizing” means the increase of any scale, scope or capacity in any Local Infrastructure as a result of the exercise of HCC’s rights in clause 13.1;

“Utility Operators” has the meaning given that term in the National Code of Practice for Utility Operators’ Access for Transport Corridors promulgated under the Utilities Access Act 2010; and

“Vesting Date” is defined in clause 10.1;

“Water Pipe System” means the 250mm diameter water supply pipe from a connection at the existing reticulation system near the Water Treatment Plant to the Amberfield site together with a 150mm diameter water supply pipe laid on the opposite side of the road to the 250mm main, and identified in the Strategic Infrastructure- Water Concept Plan, Schedule Six; and

“Weston Lea Group” means Weston Lea and any related company (as defined in the Companies Act 1993) of Weston Lea.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to a clause is a reference to a clause of this Agreement;
- (b) a reference to a schedule is a reference to a schedule in this Agreement;
- (c) whenever the words includes or including are used in this Agreement, they are deemed to be followed by the words “without limitation”;
- (d) headings to clauses in this Agreement are included for the purpose of reference only and are not to have any effect on construction and interpretation;
- (e) a reference to currency is a reference to New Zealand currency;
- (f) all notices must be in writing and may be served in accordance with the provisions of the Property Law Act 2007;
- (g) a reference to any legislation, policy, standard or specification includes a modification of that legislation, policy, standard or specification and any legislation, policy, standard or specification enacted in place of that legislation;
- (h) none of the terms of this Agreement are to be construed against a party by reason of the fact that that term was first proposed or was drafted by that party; and
- (i) all sums referred to in this Agreement are exclusive of GST.

1.3 Preservation of rights

- (a) Any approval, acceptance, check, certificate, consent, examination, inspection, notice, proposal, request, test or similar act by HCC or its personnel (including any absence of approval) for any part of the Infrastructure will not:

- (i) limit (whether by waiver, estoppel or otherwise) Weston Lea's responsibility to provide the Development and Infrastructure in accordance with this Agreement; or
 - (ii) prejudice any right or remedy that may be available to HCC under this Agreement or at Law.
- (b) Except as provided for in this Agreement or any other agreement, any reliance by a party on any representation made, advice given or similar act by another party or its personnel regarding any part of the Development or the Infrastructure will be at that party's sole risk and no party will have any liability regarding any such representation, advice or similar act.

2. COLLABORATION

2.1 The Parties agree to conduct their relationship on the basis of:

- (a) openness, promptness, consistency and fairness in all dealings and communications between the Parties, their agents, and Representatives;
- (b) an early warning system in respect of any issue or concern that is developing, including the timely supply of information as and when due, raising such issue or concern at the earliest possible opportunity;
- (c) non-adversarial dealings between the parties and constructive mutual steps to avoid differences and to identify solutions;
- (d) open, prompt and fair notification and resolution between the parties of any differences or disputes which may arise or be apprehended;
- (e) acting at all times in good faith and the requirements of this Agreement;
- (f) performing obligations in a reasonable manner, and with all reasonable diligence and speed; and
- (g) compliance with all relevant laws, regulatory requirements, approvals and consents.

3. DEVELOPMENT OF INFRASTRUCTURE

3.1 Obligations

- (a) Weston Lea will construct the Boundary Works and construct, install and connect the Local Infrastructure including Upsizing (if any):
 - (i) in accordance with the terms of this Agreement, the Strategic Infrastructure Concept Plans and the Regional Infrastructure Technical Specifications (except to the extent that the Resource Consents specify otherwise);
 - (ii) with due care, skill and diligence; and

- (iii) by use of techniques, methodologies, processes and materials that accord with Best Industry Practice.
- (b) Clause 3.1(a) does not impose an obligation to construct, install and connect the Local Infrastructure and only applies to the extent that Weston Lea actually constructs, installs and connects the Local Infrastructure.
- (c) Subject to Weston Lea performing its obligations to construct the Boundary Works and provide Local Infrastructure, HCC will construct and install the Strategic Infrastructure.
- (d) Upon completion and acceptance of the Boundary Works and vesting of land Required for the Peacockes Road Minor Arterial, HCC agrees to uplift its designation from the agreed road boundary to allow Weston Lea use of the land for development purposes.

3.2 Responsibility

Except to the extent expressly provided for in this Agreement:

- (i) Weston Lea is responsible for funding and paying the costs of the design and construction of the Local Infrastructure and the Boundary Works; and
- (ii) HCC is responsible for funding and paying the cost of the design and construction of the Strategic Infrastructure and any Local Infrastructure Upsizing it requires (without prejudice to its ability to recover those costs through other mechanisms, including development contributions).

3.3 Defects

If Weston Lea has constructed Local Infrastructure and HCC identifies or becomes aware of a Defect in that Local Infrastructure and notifies that Defect to Weston Lea no later than the expiry of the relevant Defects Notification Period, then at HCC's option:

- (a) Weston Lea shall remedy at Weston Lea's cost such Defects in the Infrastructure notified to it from HCC; or
- (b) HCC may remedy any such Defect at Weston Lea's cost. HCC will use reasonable endeavours to mitigate such costs.

3.4 General Developer responsibilities

Weston Lea will, without limiting any other provision under this Agreement and any other rights that HCC may have:

- (a) provide HCC with access to its Site and construction facilities on its Site to the extent set out in this Agreement and at Law and as, and to the extent, that HCC may otherwise reasonably request from time to time for the purpose of observing the construction of the relevant Infrastructure or HCC constructing any Strategic Infrastructure, provided that HCC gives reasonable notice before accessing the Site

and facilities and complies with any applicable workplace and security policies of Weston Lea notified in writing to HCC;

- (b) upon request by HCC, support and consent to any applications, processes that are necessary to complete any party's obligations under this Agreement;
- (c) respond promptly, accurately and adequately to any reasonable requests for information made by HCC in relation to the Development and the Infrastructure;
- (d) as soon as is practicable, notify HCC of any problems or issues that arise in relation to the performance of its obligations under this Agreement, including any problems or issues that will or are likely to affect the provision or quality of the Local Infrastructure, or the ability of Weston Lea to perform its obligations under this Agreement;
- (e) unless explicitly provided for otherwise in this Agreement, to the extent that Weston Lea actually builds Local Infrastructure, design, build and provide all Local Infrastructure this Agreement;
- (f) not cause HCC to be in breach of, or in a position likely to be in breach of, any Law in relation to the design and construction of the Infrastructure during the construction of the Infrastructure; and
- (g) not frustrate HCC's ability to give effect to designations granted under the Resource Management Act 1991.

3.5 **Regulatory Approvals**

Weston Lea shall ensure that it obtains, maintains and complies with any governmental, legal, regulatory or other approvals, permissions, consents, licences and requirements necessary for the construction of the Local Infrastructure.

3.6 **Notifications on Section Titles**

- (a) Unless otherwise specified by HCC, Weston Lea will ensure that each residential section that it creates within the Site contains a memorandum on the title recording the obligation of the person who purchases that title to pay Development Contributions to HCC and the amount of those Development Contributions.
- (b) The form of any such memorandum will be provided to Weston Lea by HCC.

4. **STAGING AND TIMING**

4.1 **General**

- (a) The parties acknowledge that it is critical that to minimise costs and disruption, that co-ordinated construction of the Infrastructure with providers of other infrastructure will be necessary.

- (b) The parties will co-ordinate with each other and any contractors of HCC and developers within the PSPA notified to the Weston Lea by HCC, and their contractors and agents, to ensure that:
- (i) the Infrastructure is constructed to properly connect to other Infrastructure that is on or adjacent to the Site on the basis of the Regional Infrastructure Technical Specifications and the other requirements of this Agreement; and
 - (ii) to the extent practicable, construction of the Infrastructure is timed so that it ties in with other related construction (for example, that pipes and electricity lines are placed prior to roads being constructed).

4.2 Due Dates

- (a) Subject to the other provisions of this Agreement and the timely performance by Weston Lea of any relevant obligation under this Agreement that impacts on that timing, HCC will use reasonable endeavours to Complete the following elements of the Strategic Infrastructure by the Due Dates set out below:

Infrastructure	Due Date
North Section Wastewater Pipeline	30 September 2021
Transfer Pump Station	28 February 2022
Transfer Pump Station connection to North Section Wastewater Pipeline	30 June 2023

- (b) Weston Lea will use reasonable endeavours to Complete the Boundary Works by 31 October 2019.
- (c) Notwithstanding clause 4.2(a), if Weston Lea is not in a position to use or connect to the Infrastructure by the Due Date, including because it has not built sufficient Local Infrastructure in order to be able to use the Strategic Infrastructure, HCC will not be in breach of this Agreement for failure to use reasonable endeavours to meet the Due Date.
- (d) In addition, if Weston Lea waives compliance with the Due Date, then the Infrastructure need only be Completed by such later date as agreed with Weston Lea.

5. PEACOCKES ROAD BOUNDARY WORKS

- 5.1 Weston Lea will at its cost form the land within the HCC Peacockes Road Designation to the levels agreed in Schedule [Four] by [date].
- 5.2 Upon completion and acceptance of the Ground levelling works HCC agrees to uplift its designation from the agreed road boundary to allow Weston Lea use of the land for development purposes

6. INSURANCE

6.1 Weston Lea shall put in place and maintain with a reputable insurance company:

- (a) a policy of public liability insurance for a sum of not less than \$20 million in relation to the Infrastructure works undertaken by Weston Lea, together with such other policies of insurance as are appropriate in respect of its potential liability for loss or damage under this Agreement; and
- (b) appropriate insurance for damage or loss with respect to the Local Infrastructure until risk of loss has passed to HCC pursuant to this Agreement.

6.2 Weston Lea will, at the request of another party, provide satisfactory evidence to the other party that Weston Lea has complied with the provisions of this clause.

7. HEALTH AND SAFETY

7.1 This clause does not limit any Party's obligations and responsibilities under any other part of this Agreement or at law.

7.2 Each party is responsible for all its obligations and duties under the Health and Safety at Work Act 2015 and any health and safety processes and systems put into place by the other party do not a party of its obligations and duties.

7.3 Each party must, when performing its obligations under this Agreement:

- (a) comply with all health and safety legislation, regulations, applicable codes of practice and standards, health and safety policies and procedures, and any standard operating procedures that are applicable;
- (b) ensure that it takes all practicable steps to ensure the health and safety of all personnel, and any other parties associated with the Works, including workers, visitors, subcontractors, service providers, the public, and visitors to any area under the control of that party;
- (c) have, and keep current, all relevant health and safety qualifications required to perform its obligations under this Agreement;
- (d) immediately provide the other party with information about any health and safety matters relating to the Infrastructure works, if requested;
- (e) appoint a health and safety advisor responsible for liaising with the other party in relation to all health and safety matters arising out of, or in connection with, this Agreement and provide the other party with the contact details of the health and safety advisor prior to commencing the Infrastructure works;
- (f) procure any contractor to provide the other party with a copy of its current 'Health and Safety Policy';
- (g) provide the other party with a site-specific health and safety management plan and traffic management plan; and

- (h) procure that any contractor engages with its workers and subcontractors in accordance with the Health and Safety at Work Act 2015 in order to identify hazards and health and safety risks on the Site.

7.4 Weston Lea will provide HCC each month with a Health and Safety report, detailing all Notifiable Events (as defined in the Health and Safety at Work Act 2015) and any other incidents, including near misses and any actions and steps implemented to prevent further Notifiable Events, incidents or near misses reoccurring.

7.5 HCC may carry out an audit of Weston Lea to ensure compliance with all obligations set out under this clause. Weston Lea must:

- (i) actively cooperate and participate in any health and safety audits carried out by HCC;
- (ii) provide all necessary access and information required by HCC in relation to the audit and any other health and safety monitoring; and
- (iii) take all reasonable steps to immediately rectify any issues raised by HCC.

7.6 Each party must immediately notify the other of any, in relation to the construction under this Agreement:

- (a) “notifiable event” (as defined in the Health and Safety at Work Act 2015);
- (b) near miss or exposure that party learns of while undertaking its obligations under this Agreement or in delivering the Infrastructure;
- (c) any Work Safe inspection, investigation or information request with the performance of its obligations under this Agreement or in delivering the Infrastructure; or
- (d) breach of this clause;

and provide the other party with such assistance and information as that party requires in relation to any of these matters.

7.7 The parties’ obligations under this clause 7 will also apply to that party’s subcontractors, including the reporting, notification and compliance obligations. Weston Lea will ensure that its subcontractors know of and comply with these obligations.

8. **REPORTING REQUIREMENTS FOR INFRASTRUCTURE**

8.1 The parties will report to the other as necessary to inform the other party of:

- (a) the progress of the Local Infrastructure, and an estimated completion date for the Infrastructure;
- (b) details of any quality assurance issues that the other party should be aware of;

- (c) details of any environmental, planning or other material issues that the other party should be aware of; and
- (d) any insurance issues, third party claims and/or Disputes that the other party should be aware of.

9. RESOURCES AND PERSONNEL

- 9.1 Each party is solely responsible for procuring its own resources and personnel in connection with its obligations under this Agreement.
- 9.2 Each party is solely responsible for the selection of any subcontractor used in connection with the Infrastructure and must ensure that each subcontractor is suitably qualified, has relevant experience and is able to demonstrate a track record of its ability to perform the required works.
- 9.3 Each party is and remains fully responsible as primary obligor for all work carried out by any of its subcontractors, all materials used by any subcontractor and for any act or omission of any subcontractor, as provided for in this Agreement.

10. VESTING OF INFRASTRUCTURE

10.1 Time of Vesting

Unless otherwise expressly contemplated by this Agreement, any Local Infrastructure will vest in HCC on the later of the date of Completion of the Infrastructure or the issue of the section 224(c) Certificate (or creation of an easement in favour of HCC) (as applicable) with respect to the land on which the Infrastructure is constructed (each, a **Vesting Date**).

10.2 Risk and Title

Risk and title to the Local Infrastructure pass to HCC on the applicable Vesting Date, with the exception of any defects obligations under the resource consents. Prior to the Vesting Date, risk and title to the Local Infrastructure remains with Weston Lea.

10.3 No Purchase Price

Except to the extent expressly provided for in this Agreement:

- (a) Weston Lea acknowledges that there will be no payment or purchase price in relation to the vesting of the Local Infrastructure in HCC and is being vested in consideration of HCC's other obligations and agreements under this Agreement;
- (b) no party will be required to share any cost or expense for the performance of any other party's obligations under this Agreement; and
- (c) the mutual undertakings under this Agreement are consideration for the promises of the other parties of this Agreement and there will be no fee or cost sharing for a party's performance of its obligations under this Agreement.

10.4 **Infrastructure**

- (a) Unless this Agreement specifies otherwise, the Party with whom ownership is vested will be responsible for care and maintenance of the relevant Infrastructure.
- (b) Clause 10.4(a) is without prejudice to HCC's rights to recover those costs through any other source available to it, such as rates, or pursuant to other agreements that may precede or follow this Agreement.

11. **POWERS AND ACCESS**

11.1 **Deemed Statutory Powers**

Except to the extent set out in this Agreement, this Agreement does not restrict HCC's statutory and regulatory rights, powers and duties that it has in relation to its existing networks, and the performance of its statutory and regulatory functions. To the extent that the lawful exercise of those Regulatory Functions causes Weston Lea expenses or loss in connection with this Agreement, Weston Lea will not be entitled to any compensation, loss or damages.

11.2 **Requiring Authority Consent**

To the extent provided in this Agreement, and provided that Weston Lea complies with the provisions of this Agreement, HCC consents to the construction of any Local Infrastructure in a designation for the purposes of section 176 of the Resource Management Act 1991.

11.3 **Access Undertakings**

- (a) HCC, if it chooses, will make whatever arrangements are required to obtain resource consents or designate the land identified in the Strategic Infrastructure Concept Plans that allows the construction and operation of the proposed waste water and transport Infrastructure within the PSPA. Weston Lea agrees to not object to an application by HCC for such a designation and will procure that any Related Company or affiliate will not object to an application by HCC for such a designation.
- (b) Weston Lea will ensure that any Infrastructure for which HCC is the Utility Operator that is located on land in the PSPA owned by Weston Lea (or owned by an affiliate of Weston Lea) on the date of this Agreement or acquired after the date of this Agreement will, if required by notice in writing given by HCC, be secured by a services easement in gross in favour of HCC on reasonable terms (which will not include compensation).
- (c) If required by HCC, temporary services easements in gross on terms reasonably acceptable to HCC will be provided or procured by Weston Lea to secure access to land for HCC, its representatives, contractors and agents as well as to any agreed Network Utility Operators other than HCC for the purpose of constructing, maintaining, and operating any infrastructure contemplated by this Agreement.

11.4 **Obligation to ensure access**

- (a) Weston Lea will ensure that the staff, contractors, agents and/or invitees of HCC will have a reasonable right of access to and over property owned by it (or owned by an affiliate of Weston Lea) to the extent necessary or advisable for HCC to carry out its obligations under this Agreement.
- (b) Weston Lea will not, and will procure that any affiliate of Weston Lea will not, block or otherwise prevent access to the material (for example, water and wastewater) being conducted through the Infrastructure.

11.5 **Discharge**

Weston Lea's obligations under clause 11.3 and 11.4 of this Agreement will only be modified or discharged to the extent necessary should HCC elect to vest any of the Infrastructure pursuant to its statutory powers.

11.6 **Property Rights**

Weston Lea must immediately upon request execute, or procure the execution of, registrable instruments and any other documents necessary to achieve registration of any easement required by clauses 11.3(b) and 11.3(c), and obtain all consents or authorities of any nature (other than from HCC) required to achieve registration of such instruments.

12. **SECURITY**

[To discuss what security will be provided]

12.1 Weston Lea will provide HCC with the following security:

- (a) A Performance Bond (clause 12.2 below); and
- (b) A Parent Company Guarantee (clause 12.5 below)

12.2 **Performance Bond:** Weston Lea will within 10 Working Days of the date of this Agreement provide HCC with security in the form of one or more on demand Performance Bonds to ensure performance of Weston Lea's obligations under this Agreement. The Performance Bond(s) will be for \$[] and will be in the form set out in Schedule Seven. The Performance Bond(s) will be provided from a registered trading bank, or reputable insurer of which HCC reasonably approves.

12.3 If Weston Lea fails to observe and perform its obligations under this Agreement, then HCC may, at its discretion, at any time, appropriate or apply as much of the Performance Bond(s) as HCC considers appropriate. Any appropriation by HCC will not waive Weston Lea's breach and will not prejudice any other right of HCC arising from such breach.

12.4 Subject to any calls made against any Performance Bond by HCC, HCC will cancel the Performance Bond within 10 Working Days of the completion of the Defects Liability Period for the Infrastructure to which that bond relates. If HCC has recourse to and receives payment under the Performance Bonds Weston Lea must provide HCC within 5 Working Days of a written request to do with additional security in the form of a further Performance

Bond, in accordance with the requirements at clause 12.2 and for an amount equal to the amount HCC has had recourse to and received payment for.

- 12.5 **Parent Company Guarantee:** Weston Lea will on the date of this Agreement provide to HCC a Parent Company Guarantee in the form set out in Schedule Seven.

13. **WARRANTIES**

Weston Lea represents and warrants that:

- (a) it has, or will have prior to title passing to HCC, good title to all materials, fixtures, structures, and equipment supplied as part of the Local Infrastructure and such title is, or will be prior to title passing to HCC, free of all Security Interests; and
- (b) it will procure the design and construction of the relevant Infrastructure using reasonable skill and care.

14. **CAPACITY ADJUSTMENT**

- 14.1 HCC may, at any time and from time to time, prior to the commencement of construction of an element of the Local Infrastructure, choose to increase the capacity requirements of that element of Local Infrastructure (beyond that required or planned by the Developer) by delivering a notice to the Developer (an **Upsize Notice**). The Upsize Notice must specify the Local Infrastructure to be upsized and the increase in capacity required by HCC. HCC may deliver one or more Upsize Notices with respect to different elements of Local Infrastructure.

- 14.3 Following receipt of an Upsize Notice, Weston Lea must design and construct the Local Infrastructure, in accordance with this Agreement, to meet the increased capacity for the Local Infrastructure specified in the Upsize Notice.

- 14.4 HCC will pay for any Upsizing (**Upsizing Payment**) based on the difference between:

- (a) the cost of that part of the Local Infrastructure that is the subject of the Upsizing, calculated as if the Upsizing was not occurring, which cost is to be borne by Weston Lea; and
- (b) the cost of the Local Infrastructure with the Upsizing.

- 14.5 The Upsizing Payment will be calculated prior to any construction contracts for the Works being entered into or any contract for the acquisition of any part of the Works being executed. The Upsizing Payment will be based, to the extent applicable, on the quotes and estimates and other information available at the time that the Upsizing Payment is calculated, or Weston Lea's or HCC's cost, as applicable. The parties will work in good faith to avoid or reduce any potential cost overruns. Any actual cost overrun shall be shared between the parties in the same proportion as the upsize apportionment up to a maximum cost overrun of 20% for the relevant infrastructure item, with any amount over this to be paid for by the party procuring the relevant infrastructure.

- 14.6 The Council will pay any Upsizing Payment(s) on the following basis

- (a) Weston Lea will deliver invoices for the Fixed Cost Contributions; and
- (b) HCC will pay the invoices by the 20th day of the month following the date of receipt of the invoice.

14.7 If the cost of the Local Infrastructure is less than the amount to which HCC has contributed through Upsizing Payments, HCC will proportionately share in the savings based on the proportion that the Upsizing Payment bears to total cost of the Infrastructure Works. The calculation of any such saving will be made at the completion of the Local Infrastructure.

14.8 Weston Lea must keep full records (including financial records) and documentation in relation to the costs for the Local Infrastructure and will allow the records to be inspected and will provide copies of records to HCC on reasonable request by HCC and its advisers.

14.9 HCC and its appointed advisers may audit any of the records referred to in this clause, including financial records of Weston Lea and its contractors and consultants engaged for the Local Infrastructure works to review and confirm the budgeted and/or actual costs for the Local Infrastructure works.

15. **TERMINATION AND SUSPENSION**

15.1 **Termination by HCC**

HCC may terminate this Agreement:

- (a) In the event Weston Lea materially breaches any of its material obligations under this Agreement, and where such breach (if capable of remedy) is not remedied within one calendar month of notice served on Weston Lea specifying the nature of the breach;
- (b) upon an Insolvency Event of Weston Lea;
- (c) if all or substantially all of Weston Lea's obligations under this Agreement to design and construct Local Infrastructure have been suspended for a continuous period of more than 180 days as a result of a Force Majeure Event; or
- (d) if the design and construction of the Local Infrastructure under this Agreement has been abandoned by the Weston Lea.

15.2 **Notification**

Weston Lea must immediately notify HCC upon becoming aware that it has materially breached this Agreement.

15.3 **Consequences of Termination**

Termination of all or part of this Agreement will not affect:

- (a) any rights and remedies available to a party under this Agreement that have accrued up to and including the date of termination; or

- (b) the provisions of this Agreement that expressly or by their nature survive termination, including clauses 15 through 18 and clause 21.

15.4 **Suspension**

Any party that is not in breach of this Agreement may suspend its own performance under this Agreement if another party has materially breached this Agreement.

16. **LIMITATION OF LIABILITY**

16.1 **Exclusive Remedy and limitation**

- (a) Weston Lea's sole and exclusive remedy for a breach of this Agreement by HCC or in tort is an order for specific performance or injunction.
- (b) HCC shall not be liable for damages for breach of this Agreement or for any tort.
- (c) If, notwithstanding clauses (a)16.1(a) and 16.1(b) , HCC is adjudged to be liable for damages in contract or in tort under this Agreement, in no event will HCC's liability arising out of or in connection with this Agreement, either in contract, tort or otherwise, including for breach of statutory duty exceed (\$250,000). This limitation does not limit a Developer's remedy in clause 16.1(a).
- (d) Nothing expressed or implied in this Agreement confers any liability on any party in respect of any indirect, consequential or special loss, damage, cost or expense, including loss of profits, suffered or incurred by any other party.

16.2 **No Consequential loss**

No party will be liable for loss of revenues, profits, contracts, business or anticipated savings, loss of goodwill or reputation, or any consequential loss or indirect loss for any of its acts or omissions pursuant to this Agreement.

17. **COSTS**

Without limiting any cost sharing obligation under this Agreement, the parties shall each pay their costs arising out of and in connection to the Infrastructure that it is responsible for procuring, including, without limitation:

- (a) all costs for the design and construction of the Infrastructure including the costs of obtaining any necessary regulatory approvals;
- (b) the costs of all insurances required under this Agreement; and
- (c) all fees and charges of HCC customarily charged by HCC in the performance of its statutory functions.

18. DISPUTE RESOLUTION

18.1 Exclusive process

Any dispute will be discussed and resolved in accordance with this clause 18. Neither party may commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a dispute:

- (a) without first giving a notice of dispute under clause 18.2; and
- (b) complying with, and completing, the dispute resolution process under this clause 18, except where it is seeking urgent interlocutory relief.

18.2 Notice of dispute

If a party considers that a dispute in connection with this Agreement has arisen, it will give a notice to the other party, setting out in reasonable detail the dispute (**Dispute Notice**).

18.3 Discussions between the parties

On receiving a Dispute Notice, each party must promptly commence discussions to attempt in good faith to resolve the dispute. Representatives of each party will meet as soon as possible (but no later than 10 Business Days after the date of the Dispute Notice) and as often as necessary to:

- (a) gather all information with respect to the dispute which is appropriate in connection with its resolution; and
- (b) discuss the dispute and negotiate in an effort to resolve the dispute.

18.4 Escalation to CEOs

If each party's representatives cannot resolve the dispute within 20 Business Days (or other period agreed in writing by the parties) after their first scheduled meeting to resolve the dispute, then the dispute will be referred to the chief executive officers (or equivalent person) of each party to attempt to resolve the dispute.

18.5 Mediation

- (a) If the dispute has not been resolved within 20 Business Days (or other period agreed in writing by the parties), after the matter is referred to the chief executive officers pursuant to clause 18.4, the parties will attempt to resolve the dispute by mediation conducted by a single mediator. The place of mediation will be Hamilton.
- (b) The mediator will be such person as the parties may agree upon in writing or, failing agreement being reached, the mediator will be chosen and the mediator's fee determined by the president for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc. (or his or her nominee). The mediator's fee will be paid by Weston Lea.

18.6 Arbitration

- (a) If the dispute has not been resolved within 20 Business Days (or other period agreed in writing by the parties), after the matter is referred to mediation pursuant to clause 18.5, then the parties agree to refer the dispute to arbitration in accordance with the Arbitration Act 1996 (excluding clause 4 of the Second Schedule). However, where the parties to the dispute fail to agree on the appointment of an arbitrator within 5 Business Days of referral of the dispute to arbitration, the appointment will be made by the president for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc. (or his or her nominee) upon application by any party. The place of arbitration will be Hamilton.
- (b) The parties will equally share the arbitrator's costs unless determined otherwise by the arbitrator.
- (c) The decision of the arbitrator referred to clause 18.6(a) will be final and binding on the parties to the dispute except for manifest error.

18.7 Expert determination

If the dispute is not resolved under clause 18.4 and this Agreement requires that the dispute will be subject to expert determination, either relevant party may, by written notice to the other relevant party, refer the dispute to expert determination under clause 18.8. The relevant parties may also agree in writing to refer any other dispute to expert determination under clause 18.8.

18.8 Process

If a dispute has been referred to expert determination under clause 18.7:

- (a) the expert will be appointed by agreement between the relevant parties or, failing agreement within 10 business days, by the president of the New Zealand Institute of Chartered Accountants (or his or her nominee) for financial disputes or the president of the Arbitrators' and Mediators' Institute of New Zealand Inc (or his or her nominee) for non-financial disputes who will be requested to appoint an expert who is suitably qualified and experienced in relation to the subject matter of the dispute (the **Expert**);
- (b) the Expert will act as an expert and not as an arbitrator, and referral of the dispute to the Expert will not be a submission to arbitration for the purposes of the Arbitration Act 1996 and the provisions of the Arbitration Act 1996 will not govern that referral;
- (c) within 10 business days of the Expert accepting the appointment, the relevant parties will send written submissions on the dispute to the Expert and to each other and, within five business days of receiving the other relevant party's submission, will submit any written replies they wish to make to the Expert and to each other;

- (d) the relevant parties will give the Expert all necessary assistance that the Expert reasonably requires to determine the dispute;
- (e) the Expert will, unless the relevant parties otherwise agree, be directed to deliver a written determination to the relevant parties within 10 business days of having received the relevant parties' written submissions under clause 18.8(c);
- (f) the Expert will have the power to compel either relevant party to produce any information material to the dispute which that party has in its possession and which that party could be required to produce on discovery in a court proceeding to the Expert and to the other party;
- (g) the Expert's decision will be final and binding (except for manifest error) and, to the extent it is lawful to do so, the relevant parties waive any right of appeal or review; and
- (h) the Expert's fees will be paid by the parties as determined by the Expert.

19. **NOTICES**

19.1 Every notice to be given by a party to another party under or in connection with this agreement must be in writing and sent using one of the addresses below:

- (a) Strategic Development Manager
Attention: Andrew Parsons
Hamilton City Council
Garden Place, Private Bag 3010
Hamilton 3240

Email: info@hcc.govt.nz

- (b) Weston Lea Limited
[Physical postal address]

[Email]

19.2 Every notice to be given by a party under or in connection with this agreement will be deemed to be received, as follows:

- (a) personal delivery, at the time of delivery to such person's physical address;
- (b) mailing by post, three Business Days after the date of mailing to such person's address; and
- (c) email transmission, when sent provided the sender does not receive any error message relating to the transmission of the email.

19.3 For the purposes of this agreement, any notice transmitted by email or delivered after 5:00pm on a Business Day, or at any time on a non-Business Day, will be deemed received at 9:00am on the next Business Day.

19.4 If a written notice of change of address or email address is notified to parties by any of the methods specified in clause 19.2 above, then the new address, facsimile number or email address will be deemed to be that party's address, facsimile number or email address for the purposes of this agreement.

20. **NO ANNOUNCEMENTS AND CONFIDENTIALITY**

20.1 **Announcements**

No announcements with respect to this Agreement or its contents will be made unless consented to in writing by both parties.

20.2 **Confidentiality**

(a) **Non-disclosure**

Subject to clause 20.2(b), each party will treat as confidential and not disclose to any third party nor use for its own benefit (other than for the purposes of this Agreement), any Confidential Information that is the Confidential Information of any other party.

(b) **General exceptions**

Clause 20.2(a) does not preclude a party disclosing Confidential Information:

- (i) if that information was known, or becomes known, to the public through no act or default of the recipient;
- (ii) that the recipient is required by law to disclose, so long as the recipient provides written notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by law);
- (iii) that was lawfully known to the recipient prior to the date it was received;
- (iv) that becomes available to the recipient from a source other than a party to this Agreement provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under law from disclosing that information;
- (v) that has been or is independently developed by the recipient;
- (vi) to any professional adviser for the purposes of rendering professional services to a party and in relation to this Agreement;
- (vii) to the extent that that disclosure is authorised by this Agreement; or

if that disclosure is approved for release with the prior written consent of the party from whom the Confidential Information is first received.

21. **GENERAL**

21.1 **Entire Agreement**

This agreement is the entire agreement between the parties in relation to the matters dealt with in this Agreement, and it replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties relating to those matters.

21.2 **Force Majeure**

Parties to this Agreement are not liable for any breach or failure to perform any of its obligations under this Agreement where such breach or failure is caused by a Force Majeure Event. If any party is, or is likely to be, affected by a Force Majeure Event, it will immediately notify the other parties of the occurrence of the relevant event and will use all reasonable endeavours to overcome or mitigate the effects.

21.3 **Exclusion of Partnership and Agency**

Nothing in this Agreement shall create, or constitute or be deemed to create a partnership, or agency arrangement, between the parties.

21.4 **No Waiver**

No failure or delay on the part of any Party in exercising any power or right under this Agreement shall operate as a waiver, nor shall any single or partial exercise of such right or power preclude any other or future exercise of the same, or any other right or power hereunder.

21.5 **Severability**

If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision will be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible then such provision will be severed from this Agreements without affecting the enforceability, legality or validity of any other provisions of this Agreement.

21.6 **Assignment**

- (a) Subject to clause 21.6(b), this Agreement is personal to each party and any assignment without the agreement of the other party, which may be withheld for any reason, will be of no effect.
- (b) HCC may assign or novate all or part of its rights and obligations under this Agreement to a council-controlled organisation established by HCC by providing at least 1 month's prior written notice to Weston Lea.

21.7 Counterparts

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, but all of which together are to constitute a single instrument.

21.8 Governing Law and Jurisdiction

This Agreement shall be governed by and interpreted according to the laws of New Zealand. Each party irrevocably submits itself to the jurisdiction of the Courts of New Zealand over any proceedings arising out of, or relating to this Agreement.

21.9 No Third Party Benefit

Unless expressly set out in this Agreement, this Agreement does not and is not intended to offer any benefit or create any obligation enforceable by any person who is not a party to this Agreement.

EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of)
WESTON LEA LIMITED)
by its authorised signatory)

SIGNED for and on behalf of)
HAMILTON CITY COUNCIL)
by its authorised signatory)

SCHEDULE ONE

DEVELOPMENT AREA

[insert map]

SCHEDULE TWO

WASTEWATER

All references in this Schedule to specific elements of the infrastructure are to the Strategic Infrastructure– Wastewater Concept Plan (Schedule Six), unless specified otherwise

Wastewater Overview

1. HCC will construct the Transfer Pump Station and the HCC Wastewater Pipeline, which includes the North Section Wastewater Pipeline, at its cost.
2. Prior to the completion of the Transfer Pump Station and HCC Wastewater Pipeline, Amberfield have advised that they require waste water servicing and HCC has advised this needs to be to the Far Eastern Interceptor.
3. Accordingly, Weston Lea will construct (at its cost) the Amberfield Pump Station and rising main to the south terminating point of the North Section Wastewater Pipeline ("**Interim Amberfield Wastewater Pipeline**").
4. HCC will exercise commercially reasonable endeavours to prioritise and have the North Section Wastewater Pipeline complete by September 2021 ready for connection of the Interim Amberfield Wastewater Pipeline.
5. The Amberfield Pump Station must be vested in HCC and operational prior to the issue of any Section 224(c) Certificate relating to the first stage of Amberfield.
6. Once the HCC Transfer Pump Station and HCC Wastewater Pipeline is operational, Weston Lea will construct and vest a permanent connection to the Transfer Pump Station and decommission its Interim Amberfield Wastewater Pipeline in accordance with the Strategic Infrastructure Waste water Concept Plan in Schedule Six.

Interim Amberfield Wastewater Pipeline

7. The Interim Amberfield Wastewater Pipeline and the Amberfield Pump Station will be constructed and made operational by Weston Lea at its cost (with the exception of any Upsize requirement by HCC) and will be deemed Local Infrastructure for the purposes of this Agreement.
8. The Interim Amberfield Wastewater Pipeline and the Amberfield Pump Station will need to be constructed and vested in HCC by the date any Section 224(c) Certificate in respect of Amberfield is issued.
9. The Interim Amberfield Wastewater Pipeline will be approximately 1,800m long and constructed with a 280mm dia. OD HDPE pipe (subject to final design) and will be installed to the extent possible in public road, generally as shown in drawings 141842-WW501-505 but outside of the Southern Links designation where possible. The pipe will not pass through any land not owned or controlled by HCC.

10. The section of the Interim Amberfield Wastewater Pipeline beneath the Waikato River will be approximately 200m long (dependent upon final drilling construction details) and is expected to be constructed by directional drilling to a point north of Cobham Drive. It will be constructed on the eastern side of the proposed new bridge, clear of bridge construction elements and clear of the road designation corridor.
11. The Interim Amberfield Wastewater Pipeline shall vest in HCC.
12. If the construction of the Interim Amberfield Wastewater Pipeline increases HCC's costs for any element of the bridge or any other projects, Weston Lea will pay those additional costs including any cost increase for the Waikato River bridge and its foundations or earthworks resulting from construction of the pipe.
13. If the construction of the Interim Amberfield Wastewater Pipeline in HCC owned or controlled land increases HCC's costs for any other projects, or frustrates disposal of surplus HCC land, the Developer will pay those additional costs or loss in value.

Wastewater Infrastructure Upsize

14. The Amberfield Pump Station and associated internal rising main that extends south from the Amberfield Pump Station to the southern boundary of the development areas is required to be Upsized by Hamilton City Council to meet the servicing needs for HCC's planned catchment.
15. Weston Lea will vest in HCC at no cost ownership of the associated internal rising main upon the issue of the Section 224(c) Certificate for each relevant stage of Amberfield or within 5 years from the date of this agreement, whichever is the earlier.

Decommissioning of Interim Amberfield Wastewater Pipeline.

16. Weston Lea must construct and vest a permanent wastewater pipe for wastewater flows from Amberfield, so that it is able to discharge all wastewater flows from Amberfield to the Transfer Pump Station at the time the Transfer Pump Station and HCC Wastewater Pipeline are operational ("**Permanent Amberfield Wastewater Pipeline**").
17. HCC may exercise its rights under this Agreement to Upsize the Permanent Amberfield Wastewater Pipeline at its cost.
18. The Permanent Amberfield Wastewater Pipeline including any Upsize will be deemed to be Local Infrastructure for the purposes of this Agreement.
19. The Interim Amberfield Wastewater Pipeline will be decommissioned at Weston Lea's cost at the time the Permanent Amberfield Wastewater Pipeline is operational.
20. Engineering plan approval for the relevant stage of subdivision will be required to provide for Interim Amberfield Wastewater Pipeline decommissioning and redirection.

HCC Designation/Requiring Authority Approvals

21. Any installation of Local Infrastructure or interim infrastructure within the HCC designations shall be in accordance with the relevant designation conditions and not frustrate or create any additional cost to HCC to give effect to its designations.
22. HCC intends to maximise disposal of land and narrow its designation where possible following construction of HCC assets within the designation footprint. Any Local Infrastructure must not limit HCC's ability to dispose of land. If it does, Weston Lea shall purchase that land from HCC at market value then vest it back in HCC for the appropriate purpose.
23. Weston Lea will work with HCC to ensure that installation of the Interim Amberfield Wastewater Pipeline will not frustrate HCC's ability to give effect to its designations or increase any HCC cost to give effect to its designations.
24. Weston Lea will work with HCC to ensure that installation of its works will not frustrate HCC's ability to give effect to its designations and indemnify HCC against any increase in HCC's cost to give effect to its designations.

SCHEDULE THREE

WATER

All references in this Schedule to specific elements of the infrastructure are to the Strategic Infrastructure – Water Supply Concept Plan (Schedule Six) unless specified otherwise

Water Overview

1. HCC agrees that water supply to the Site will be from HCC's reticulation system.
2. Weston Lea will construct at its cost a new 250mm dia. water main supply pipe from a connection at the existing reticulation system near the water treatment plant to the Site together with a 150mm supply main laid on the opposite side of the road to the 250mm main to provide a second supply main for resilience and firefighting purposes (together, the **Water Pipe System**). The proposed route of the Water Pipe System is shown in the Strategic Infrastructure – Water Supply Concept Plan and runs within road reserve.
3. Weston Lea will vest in HCC ownership of the Water Pipe System upon the issue of any Section 224(c) Certificate in respect of Amberfield.
4. In addition to the Water Pipe System, Weston Lea is required to service Amberfield with an internal water pipe running north-south from the termination point of the Water Pipe.
5. The internal water pipe will consist of a 250mm dia pipe in the North-South local road within Amberfield together with a 150mm supply main laid in Peacocke Road to provide a second supply main for resilience and firefighting purposes (together, the **Internal Water Pipe System**).
6. The Developer will vest in HCC ownership of the Internal Water Pipe System upon the issue of the Section 224(c) Certificate for the relevant stage of Amberfield or within 5 years from the date of this agreement, whichever is the earlier.

HCC Designation/Requiring Authority Approvals

7. Any installation of Local Infrastructure within the HCC designations shall be in accordance with the relevant designation conditions and not frustrate or create any additional cost to HCC to give effect to the designations.
8. HCC intends to maximise disposal of land and narrow the designation where possible following construction of HCC assets within the designation footprint. Any Local Infrastructure must not limit HCC's ability to dispose of land. If it does, Weston Lea shall purchase that land from HCC at market value then vest it back in HCC for the appropriate purpose.
9. Weston Lea will work with HCC to ensure that installation of the Water Pipe System or the Internal Water Pipe System will not frustrate HCC's ability to give effect to its designations or increase any HCC cost to give effect to the designations.

10. Weston Lea will work with HCC to ensure that installation of its works will not frustrate HCC's ability to give effect to its designations and will indemnify HCC against any increase in HCC's cost to give effect to its designations.

SCHEDULE FOUR

ROADS

All references in this Schedule to specific elements of the infrastructure are to the Strategic Infrastructure– Transport Concept Plan (Schedule Six) unless specified otherwise

Road Overview

1. HCC will construct the Peacocke Road Minor Arterial.
2. Weston Lea will perform earthworks (at its cost) to provide to HCC the appropriate boundary levels for the Peacockes Road Minor Arterial (based on a road width of the existing Peacockes Road as set out in the Resource Consent Applications, and to be no less than 12m east from the existing eastern road boundary (the **Roding Land**) as set out in Schedule Six (the **Boundary Works**)).
3. In recognition of Weston Lea undertaking the Boundary Works in advance of HCC's construction of the Peacockes Road Minor arterial, HCC agrees to surrender that part of the Peacockes Road designation over the Resource Consent Application area that is not required for the Peacockes Road Minor Arterial.
4. Weston Lea shall transfer to HCC at no cost to HCC to vest as Road the Roding Land by 1 December 2019 at the latest.
5. HCC as Requiring Authority will apply to formalise the surrender of part of the Southern Links Designation on completion of the vesting as Road of Roding Land on completion of the Boundary Works.
6. Weston Lea will not seek the issue of a section 224(c) certificate for any residential lot that is within the existing designation until after the Requiring Authority has formalised the surrender of part of the Southern Links Designation.
7. Prior to commencing the Peacockes Minor Arterial Road, HCC will provide a high-level programme of works for construction which will include all Amberfield access roads connecting to Peacockes Road as Amberfield is constructed from the north to the south of the Development Site. The Parties agree that the programme of works will be indicative only
8. Weston Lea is responsible for all its access road intersection costs beyond the **normal minor arterial costs**, including provision of land to create road access to Peacockes Road as identified in the current Resource Consent Applications beyond that explicitly shown in the HCC designation.
9. Weston Lea can choose whether to pay HCC for the formation of any access road at the time of construction of the Peacockes Minor Arterial Road.
10. Weston Lea will (at its cost) carry out and complete the Interim Peacockes Road Upgrade and the road access needed to support the construction of Stage 1 and 2 of Amberfield as shown on the Staging Plan.

11. Weston Lea will work with HCC to ensure that all utility services required to service Amberfield that are proposed to be located in Peacockes Road are identified and provision made as part of the construction of the Peacockes Road Minor Arterial, all at Weston Leas cost except as set out in this Agreement.

HCC Designation/Requiring Authority Approvals

12. Any installation of Local Infrastructure within the HCC designations shall be in accordance with the relevant designation conditions and not frustrate or create any additional cost to HCC to give effect to the designations.
13. HCC intends to maximise disposal of land and narrow the designation where possible following construction of HCC assets within the designation footprint. Any Local Infrastructure must not limit HCC's ability to dispose of land. If it does, Weston Lea shall purchase that land from HCC at market value then vest it back in HCC for the appropriate purpose.
14. Weston Lea will work with HCC to ensure that installation of its Boundary Works and its Interim Peacockes Road Upgrade will be consistent with the conditions of HCC's designations and will not frustrate HCC's ability to give effect to its designations or increase any HCC cost to give effect to the designations.
15. Weston Lea will indemnify HCC against any increase in HCC's cost to give effect to its designations.
16. Weston Lea must propose traffic construction management plans per stage of development with provision for a minimum of 6 monthly reviews. The construction management will be subject to the approval of Council and require Weston Lea to fit within the broader construction traffic management context for Peacocke including other traffic management plans in the area.
17. This is required in addition to any consent condition in order to allow the Requiring Authority for the Southern Links Designation to coordinate or manage the combined construction effects.

SCHEDULE FIVE

STORMWATER

Stormwater Overview

1. Weston Lea will provide for the stormwater discharge requirements of Amberfield, including any existing overland flows into Amberfield and the discharge from the Peacocke Road Minor Arterial and any other roads to be built in the PSPA that discharge into Amberfield, all at Weston Leas cost.
2. Weston Lea will vest in HCC ownership of the stormwater infrastructure upon the issue of the Section 224(c) Certificate for the relevant stage of Amberfield or within 5 years from the date of this agreement, whichever is the earlier.

SCHEDULE SIX

STRATEGIC INFRASTRUCTURE CONCEPT PLANS

Strategic Infrastructure- Waste Water Concept Plan
Strategic Infrastructure- Water Supply Concept Plan
Strategic Infrastructure- Transport Concept Plan

SCHEDULE SEVEN

SECURITY