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AUDIT AND RISK COMMITTEE

Open Attachments (Under separate cover 1)

Meeting Date:	Thursday 7 August 2025
Time:	9.30am
Venue:	Large Exhibition Hall War Memorial Centre Marine Parade Napier

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INTERNAL POLICY

NAPIER CITY COUNCIL
Te Kaunihera o Ahuriri

Contract Register Policy			
Approved By	Executive Director Corporate Services		
Department	Procurement		
Original Approval Date	08 June 2021	**Review Date**	30 June 2025
Next Review Deadline	30 June 2028	**Document ID**	1324430
Relevant Legislation	N/A		
NCC Docs Referenced	Guide – Contract Register Guide – Contract Management		Te Puna/Our Workspace (OWS)

Purpose

This policy sets out Council's requirements for the establishment and maintenance of a Council wide Contract Register (Register).

The Register has been developed as a simple, cost-effective, centralised repository of contract information that will provide visibility of Council's contracts until a contract management software solution is available.

Maintaining a contract register supports good contract management practice by ensuring that Council has organisation-wide oversight of its contracts. The Council Contracts Register will enable users to record key information about Council's current contracts. This will enable:

- monitoring of contract expiry, renewal, or other key dates to ensure they are not missed;
- handover of contract management responsibilities when there are staff changes;
- provision of basic contract information and access to a copy of the contract document(s)

When users complete all the relevant fields it will trigger workflow actions that will provide an alert to those associated with the contract, that there are activities to be completed. Advance notification of contract expiry dates can be managed via these alerts.

Policy

Scope

For the purposes of this policy, the term "contract" refers to written contracts established through Council procurement activities. The contract register supersedes individual or directorate-based registers.

The following contracts must be recorded:

- All contracts for physical works, minor works, goods, or services at or above $25,000 (excluding GST);
- Any secondary contracts related to established panel contracts.

Out of Scope

The following contracts or agreements do not need to be recorded in the Council Contract Register.

- Employment.
- Grants and sponsorship.
- Land acquisition.
- Payments to government and regulatory bodies.
- Non-binding agreements (e.g. Non-Disclosure Agreements, most Memorandum of Understandings).
- Purchase orders (where there is no other contractual agreement).
- Procurement undertaken by Council Controlled Organisations that is not on behalf of the Council.

The Council Contract Register is not intended to capture information already recorded elsewhere e.g. as Sitewise accreditation.

The Register will provide an overview of the initial financial approvals however it will not track dynamic financial information around contract commitments. The Register is not designed to capture supplier performance information, as this type of data management is more suited to contract management software designed for this purpose.

Location of the Council Contracts Register

The Contract Register is a Power Platform (PowerApps) solution accessed through Te Puna.

Data Integrity

To help collate and maintain good quality data, the rights to edit data will be restricted to a core set of users.

User types and access rights

The Contracts Register is available to all staff however, due to the sensitive nature of the information captured in the tool, full access to the individual contract records will be restricted to those who require visibility e.g. staff assigned direct responsibility for managing a contract or updating the register on behalf of a business unit. There are four types of user as described below:

User type	Access rights
Super user	Super users have full administration rights to the Contract Register.
Contract Co-Ordinator	The person entering the contract details into the Contract Register and/or assisting the Contract Manager. Users can edit and view the contracts which they are associated with.
Contract Manager	The Council employee responsible for managing the contract, i.e. the person named in the contract. Users can edit and view the contracts which they are associated with.
Reviewer	Reviewers will be able to view the contracts in the register but will not have access to all the contract details or be able to edit these.

Policy Review

The review timeframe of this policy will be no longer than every three years.

Document History

Version	Reviewer	Change Detail	Date
2	Procurement Lead	Policy Development	May 2021
3	Gatekeeper	Update policy review date in line with new contract register review March/April 2025	Jan 2025
4	Procurement Manager	Updated Policy to align with new/updated Contract Register tool	June 2025

Napier City Council

Contract Management Guide

Version	1
Date:	16th July 2025
Drafted by:	Sharon O'Toole Procurement Manager
Document owner:	Sharon O'Toole Procurement Manager

Acknowledgment Note

This guidance document is based on the **© Commonwealth of Australia, Australian Government Contract Management Guide (July 2023)**. We acknowledge the valuable insights and Frameworks provided by this guide, which have significantly informed the development of our own contract management practices.

Contact us

Please direct questions or comments about this guide to:
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Introduction

Napier City Council (Council) is accountable to rate payers which means we need to demonstrate that our procurement and contract management processes are fair, transparent, compliant and auditable and that both staff, those acting on behalf of Council and suppliers deliver services in a safe and efficient commercial environment.

This guide is for the management of commercial contracts that result from procurement activities and provides practical guidance to contract managers and practitioners about effective contract management. Each contract must be managed in accordance with its terms and conditions. Should an issue arise in relation to a specific contract:

- seek advice from the NCC Procurement Team, or
- get legal advice.

How to use this guide

The guide is divided into phases, and within each phase, we have listed the activities and considerations that will help you to manage your contract effectively. Along with information about the activity, you may also see:

- Key steps
- Additional information about the activity
- Tips or
- Further reference material.

The guide helps you to identify different levels of complexity for contracts based on characteristics and risk profiles. A table at the start of each phase provides guidance on which activities are required for each level of complexity.

What is a contract?

A contract is a legally enforceable agreement between two or more parties that details each party's rights and obligations in the performance of that contract. Examples of contracts commonly used by Council are detailed in this guide.

At its most basic, a contract requires an offer, acceptance of that offer, and consideration:

- the parties to the contract must have both intended to be legally bound.
- the terms of the contract must be certain and
- each party must have the capacity to enter into the contract.

What is contract management?

Contract management refers to all the activities undertaken by Council, after the contract has been signed or commenced, to manage the performance of the contract (including any corrective action) and to achieve the agreed outcomes.

Each contract is different. The aim of contract management is to ensure that all parties meet their obligations to deliver the objectives of the contract. In a simple procurement, the focus of contract management may be on ensuring the works, services or goods purchased are provided on time, to the agreed standard, at the agreed location and for the agreed price. For a more complex or strategic contract, contract management may also look at other aspects of the contract, such as performance management or continuous improvement regimes, integration with existing systems or assets, and implementation of technological or industry advancements or innovations.

It is important that contracts are managed consistently and actively throughout their life in accordance with their terms. This will ensure that supplier performance is satisfactory, stakeholders are well informed, and all contract requirements are met, thereby ensuring that the contract delivers the anticipated public value.

Contract management consists of the following elements:

- **Contract Governance:** establishing the stakeholder engagement mechanisms, oversight arrangements, systems, processes, decision making and reporting.
- **Performance Management:** the measuring, monitoring, and assessment against agreed performance measures to enable early warning of, and response to, performance issues. The monitoring and assessment of deliverables to enable acceptance and achieve contract outcomes.
- **Supplier Relationship Management:** includes putting in place collaborative engagement mechanisms with the contractor.
- **Contract Administration:** the administrative activities undertaken to support day-to-day contract activities, meet legislative requirements for records management, and establish an audit trail to meet transparency requirements.

Who should use this guide?

The guide has been developed to support Council staff, or those acting on behalf of Council, who are involved in some or all aspects of managing a contract.

This could be invoice payment, technical advice, supplier liaison, performance management, contract administration or approvals for procurement activities or contract variations. If you are involved with Council contracts, you need to understand your obligations and the techniques to effectively manage contracts.

The legislative and policy Framework

When managing contracts, officials operate in an environment of legislation and Council policy. The key features of these Frameworks are set out below; however, if specific contract management issues arise, you will need to seek contextual legal and/or procurement advice.

Procurement Policy

The Napier City Council Procurement Policy provides the Framework for process requirements in relation to procurement and contract management to achieve the best public value is a key component of the Policy.

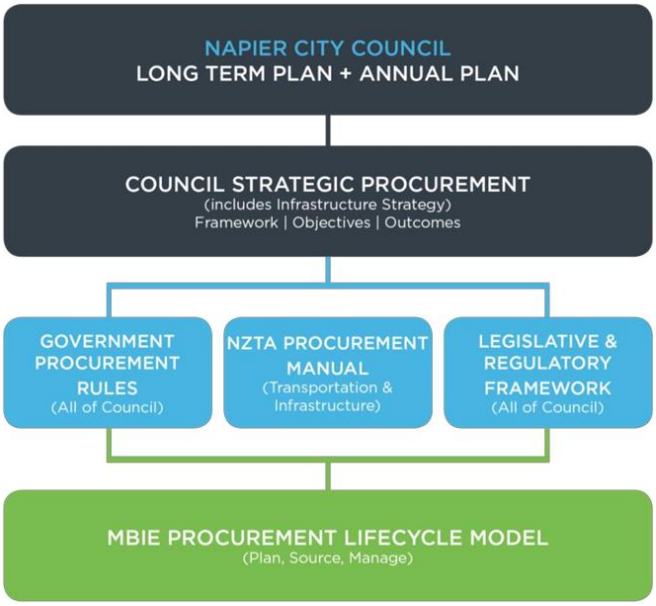
The term ‘procurement’ covers the planning and acquisition of goods, services and works (refurbishment and new construction). It starts with identifying the need and finishes with either the end of a service contract or the end of the useful life and disposal of the asset.

This procurement lifecycle diagram shows the different stages of the process, which include the contract and relationship management of Council suppliers.

Procurement Lifecycle Model - (Recoloured from MBIE)

Strategic alignment

In planning for and managing contracts Council must operate within a policy Framework that includes wider Council strategic objectives and outcomes, and a legislative and regulatory Framework as outlined in the Framework below.



Other legal requirements

A contract is a legally enforceable document, governed by the New Zealand Contract and Commercial Law Act 2017. Once signed by both parties, there are legally binding obligations and rights assigned to both parties. Contract management is the process to ensure that each party upholds their obligations under the contract.

In addition to policy and rules, there are statutes that relate to Local Government, contracting, and the common law of contracts. Employees (and those acting on behalf of Council) must ensure they comply with all applicable legislation. Legislation that may apply to Council procurement activities includes, but is not limited to:

- Commerce Act 1986
- Construction Contracts Act 2002
- Contracts and Commercial Law Act 2017
- Health and Safety at Work Act 2015
- Fair Trading Act 1986
- Land Transport Management Act 2003
- Local Authorities (Members' Interests) Act 1968
- Local Government Act 2002
- Local Government Official Information & Meetings Act 1987
- Official Information Act 1982
- Privacy Act 2020

- Public Audit Act 2001
- Public Bodies Contracts Act 1959
- Public Finance Act 1989
- Public Records Act 2005
- Trade (Anti-dumping and Countervailing Duties) Act 1988

Contractual considerations

Council must comply with all relevant laws on the formation and performance of contracts. Legal risks may exist when procuring through a competitive tender or proposal process. Employees must follow the evaluation process that was set out in the invitation or Request for Tender. Council provides a suite of approved procurement contracts; however, it is accepted that in some instances, a supplier contract may be more suitable.

Where a supplier contract is used, it is recommended that a legal review of the agreement be completed where any one of the following risk factors is identified as part of the Procurement Plan:

- High value (total financial commitment over the duration of the contract),
- Long term (duration of contract and right of renewals), or
- Reputational risk (sensitive expenditure, limited references for suppliers, new/innovative technology).

Types of Contracts

"Types of contracts" refers to the type of arrangement, associated risk and relationship style that will be applied to the delivery of the contract.

Traditional contracts
A traditional contract is a formal agreement where the client designs the project, and contractors bid to execute it, ensuring clear roles, fixed pricing, and detailed specifications.
Performance-based contracts
These contracts focus on achieving specific outcomes and performance indicators, ensuring that the desired results are met through strategic asset management and contract management
Alliance contracts
An Alliance contract is a collaborative project delivery method where all parties work together, sharing risks and rewards, to achieve common goals with transparency, trust, and joint decision-making

Panel Contracts or Framework Agreements

Panel Contracts or Framework Agreements establish pre-approved suppliers for services, works or goods over a set period. They streamline procurement, enhance value for money, and offer flexibility through multiple suppliers, ensuring quick access to required resources.

Refer to About Panels for more information.

Local Government Arrangements

Napier City Council is one of five Local Territorial Authorities (LTAs) within Hawke's Bay. For some procurement-related activities, the five Hawke's Bay Councils (HB5C) may enter into collaborative procurement or contracting arrangements to:

- Access particular expertise within another LTA for the supply of goods or services.
- Realise greater public value through a combined approach to market (for example, attract higher-quality suppliers, or gain cost efficiencies through bundling).

Any such arrangement must:

- Be in accordance with the Local Government Act 2002,
- Comply with the obligations imposed by the funding policies from external agencies, where relevant (e.g. NZTA),
- Not be anti-competitive and provide the best public value.

Government Collaborative Contracts

There are three types of collaborative contracts commonly used by the Government.

- **All-of-Government (AoG) Contracts,** which are developed, negotiated and managed by MBIE or the DIA.
- **Syndicated Contracts,** where agencies work together to collectively go to market, and one agency acts as the contract lead.
- **Common Capability Contracts,** which are like AoG contracts but are not managed by MBIE.

All-of-Government (AoG) contracts are open to the New Zealand public sector, which includes:

- agencies within the state sector
- local authorities, and
- government-funded schools.

About Panels and Framework Agreements

What is a Panel?

A Panel Contract or Framework Agreement is a standing offer arrangement with multiple pre-qualified suppliers for works, services or goods over a set period, using agreed terms and conditions. It is usually established through a competitive procurement process, and benefits include cost savings, streamlined procurement, and quick access to a range of suppliers. Key considerations involve agreed contract terms, performance measures, and compliance, as well as an understanding of how work will be allocated across the Panel members. Management of the Panel should include regular performance monitoring and mechanisms to maintain competitive tension.

Panel Contracts should only be considered where the benefits can be clearly established. They can be of greatest benefit for works, services or goods that are purchased regularly, across different directorates or teams, as they provide economies of scale through aggregation of demand, streamlining and reduced costs of procurement processes.

A Panel Contract may be appropriate when:

- there are several suppliers who can provide the goods or services.
- there is a strong and ongoing demand for the good or service.
- the volume of work may be too large for one supplier to undertake.
- the costs of establishing a Panel are offset by the efficiencies of being able to order from the Panel.
- there is a need to have an advance agreement of the terms and conditions of supply, which includes pricing or the pricing mechanism that will apply.

A Panel of suppliers is normally established with a set number of suppliers for a specific period. The number of suppliers will depend on the:

- the scope of the goods and/or services required.
- market dynamics (the maturity and capacity of the supply market)
- anticipated volume of work or value of goods or services to be supplied.
- offering end-users a choice of suppliers.
- the type and breadth of goods and services, and whether individual suppliers can fulfil all requirements.
- the cost to the suppliers participating in the Panel Contract in relation to the estimated value of work obtained.
- the cost of managing the Panel arrangement.

A Panel may be ‘open’ or ‘closed’. A closed Panel Contract restricts suppliers to a pre-selected group for the duration of the contract. Open Panel Contracts allow multiple suppliers to join anytime provided they meet the Panel criteria.

Open Panel arrangements may be appropriate where:

- the need is broad.
- the period of the arrangement is particularly long.
- prices or rates are indicative and may fluctuate.
- regional or area-based suppliers are needed to ensure responsiveness.

- there is diverse expertise or many suppliers in the marketplace.
- the market is emerging or immature, and there is a likelihood of new entrants and changes over time.
- new products, providers and technologies are constantly emerging.
- there is a strong potential for government purchasing power to influence the market, which would be restricted if the arrangement was closed to new entrants.

Regardless of whether a Panel is open or closed, all Panel Contracts should provide the right to remove Panel members e.g. insolvency, failure to meet performance requirements).

The benefits of establishing a Panel include:

- cost savings through economies of scale, e.g. leveraging bulk purchasing to achieve better pricing.
- efficiency through streamlined procurement processes and reduced administrative overhead.
- quick access to a range of pre-qualified suppliers.
- quality assurance via access to consistent quality and performance standards.

Before establishing a Panel, Council must:

- have a good understanding of the anticipated demand for the goods, services or works and the number or range of Panel suppliers that are required.
- anticipate an ongoing need for the goods, services or works.
- have resources in place for the Panel to be appropriately managed once established.

If a Panel has been established through an open procurement process, individual contract opportunities within the scope of the Panel do not need to be openly advertised. Panel members may be directly engaged from the Panel through a process known as secondary procurement.

Want to know more about Panels?

Further information about how Panels must be established, visit the MBIE procurement.govt.nz website and search Rule 57: Panel of Suppliers or visit the link below:

- Rule 57: Panel of Suppliers.

What is a secondary procurement process?

The secondary procurement process involves selecting suppliers from an established Panel for the delivery of specific works or contracts to ensure value for money. The Panel Contract or Framework Agreement should define the secondary process that will be used and how work will be allocated.

Accepted methods for secondary procurement processes include:

- **Competitive quotes which could be based on the supplier's expertise, proposed solution and/or best public value:** Ask for quotes from some or all Panel suppliers and award the opportunity to the supplier who has the right level of expertise, can offer the best public value and deliver on time.
- **Direct source, based on the best fit for purpose:** Fair evaluation of all Panel Suppliers and selection of the supplier who has the right capacity and capability to fulfil the opportunity and offers the best public value at the time of the purchase. This may include allocating a preferred Panel provider for certain types (categories or portfolios) of goods, work or services.
- **Preferred supplier basis:** Identify a preferred supplier from the Panel. This supplier receives most of the opportunities unless it has a conflict of interest or is unable to supply. If this happens, Council will award the opportunity to the next-ranked supplier from the Panel.
- **Location:** Award opportunities to the supplier who is best able to deliver based on their location and the location of the work.
- **Rotation:** Award opportunities to each supplier in turn, regardless of their expertise, public value or delivery time.
- **Equal division of the work:** Fix an upper limit for work that can be awarded to each supplier and award opportunities on a rotational basis. When a supplier reaches the upper limit, Council chooses the next supplier from the Panel.

What is a Framework Agreement?

A Framework Agreement is generally used in relation to Panel Contracts. It is the umbrella agreement that governs the relationship between the Council and the supplier(s) and sets out the terms and conditions that the parties agree to contract on, this may include pricing.

When the Council wants to buy something under the Framework Agreement, the parties then enter into a separate contract that refers to the terms and conditions contained in the Framework Agreement.

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Managing an official order under a Panel arrangement

Engagement for specific work or activities under the Framework Agreement is through an 'official order' such as a Statement of Work (SoW) or Service Order (SO) from the Council to the supplier. The SoW and/or SO operate within the guidelines and terms of the Framework.

A SoW, or SO, is a contract between you and the supplier and should detail the specific tasks, deliverables, and timelines for individual projects under the Framework.

Payments against an official order need to be supported by a Purchase Order (PO),

To manage an official order under a Panel, you will need to complete the contract management activities identified in this guide. Remember to keep the level of effort proportionate to the size and complexity of your purchase.

Depending on the setup of the Panel, the issuer of the official order will need to manage:
The delivery of the goods or services, including any acceptance requirements.
Any performance management requirements under the Panel, including the reporting of any non-compliance or performance issues to the Panel managers.
The verification and/or payment of invoices.
Supply other reporting obligations, under the Panel, to the Panel managers.

Pre-qualified suppliers list

A pre-qualified list of suppliers is different from a Panel Contract. A pre-qualified list is an inventory of suppliers that meet an established set of criteria (e.g. they have a defined H&S accreditation) and are therefore eligible to participate in procurement processes.

There is no umbrella contract with suppliers on a pre-qualified list, and pre-qualified suppliers are generally required to participate in a procurement process before being awarded a contract.

A pre-qualified suppliers list is appropriate if an organisation wants to:

- verify which suppliers can deliver specific goods, services or works.
- make it easier for suppliers to respond to contract opportunities by only asking for qualifying information once.

A pre-qualified suppliers list does not exempt Council from open advertising where this would be recommended through the procurement process and threshold guidance.

Forms of Contracts

A Form of Contract is a standardised agreement template outlining terms, conditions, and obligations for the parties involved to ensure consistency.

Below are the standard forms of contracts commonly used by Council, such as consultancy, service, supply, construction, and more. These can also be further broken down into fixed-price, cost-reimbursement, and time and materials (measure and value) contracts.

Contract Works standard forms of contracts

In New Zealand, the commercial construction industry relies on several standard forms of contracts to ensure clarity, fairness, and efficiency in project execution. These contracts define the roles, responsibilities, and obligations of all parties involved, thereby minimising disputes and facilitating smooth project delivery.

The most used standard forms of contracts used by Council are:

- **NZS 3910:2013 - Conditions of contract for building and civil engineering construction.** This is the standard form of contract for building and civil engineering construction. It covers traditional 'build only' projects and is widely used due to its comprehensive nature and fair risk allocation.
- **NZS 3916:2013 - Conditions of contract for building and civil engineering - Design and construct.** This contract is tailored for design and build projects, where the contractor is responsible for both the design and construction of the project.
- **NZS 3917:2013 - Conditions of contract for building and civil engineering – Fixed term.** This form is used for fixed-term or maintenance contracts, providing a Framework for ongoing maintenance services over a specified period.
- **NZS 3915:2003 Conditions of contract for building and civil engineering construction (no engineer to the contract).** This form is used for lower-value low-risk projects where the Principal has the necessary project management skills and simplifies contract administration.

Professional Services standard forms of contracts

Standard forms of agreement for professional services are essential tools that define the terms and conditions under which professional services are provided to ensure clarity, fairness, and mutual understanding between consultants and their clients, thereby reducing the potential for disputes and misunderstandings.

The most used standard forms of agreement for professional services by Council include:

- **Conditions of Contract for Consultancy Services (CCCS) 2017 (Napier City Council).** This contract is widely used for procuring and providing professional consultancy services. It offers a balanced approach to risk allocation and includes provisions for scope, fees, and dispute resolution.

- **Government Model Contract (GMC) Contract for Services.** This is a standardised contract template developed by the New Zealand Government Procurement to streamline the procurement process for government agencies. It is designed to simplify high-volume, low-cost transactional contracting, making it easier for both government agencies and suppliers to engage in procurement activities.
- **IPENZ Short Form Agreement (SFA).** This succinct document is suitable for small to medium-sized projects. It provides a straightforward and efficient way to establish contractual terms for less complex engagements.

ICT, Goods and Services standard forms of contracts

The standard forms of agreement utilised for the delivery of ICT and general goods and services are consistent with those employed for Professional Services. Additionally, they can include:

- **Government Model Contract (GMC) Contract for Goods.** Developed by New Zealand Government Procurement to facilitate the procurement of goods by government agencies. It is ideal for the procurement of routine, low-value, and low-risk goods, making the process more efficient and straightforward.

Contract Payment Types

Contract payment types vary depending on the nature of the project and the agreement between parties. These payment types help ensure that contracts are tailored to the specific needs and risks of each project. Below are some common types used by Council:

Fixed Price

A fixed price contract sets a total fixed price to be paid for the work. The contractor agrees to complete the project for the agreed-upon fixed price, regardless of any variations in the actual costs of materials or labour.

This type of contract provides Council with certainty regarding the project's cost but may also incentivise the contractor to cut corners or use lower-quality materials to reduce expenses.

Lump Sum (LS)

Similar to fixed price, however, lump sum contracts may include provisional sums for undefined work, which can be adjusted later.

A lump sum contract is the most commonly used pricing mechanism in a construction contract. Under this arrangement, the contract price is based on a single lump sum price for all of the works being agreed between the client and contractor prior to the award of the contract.

To avoid budget overruns, it is good practice to limit the use of provisional sums as far as possible, e.g. to no more than 5-10% of the total contract sum.

Cost-Reimbursement (cost-plus)
This type of contract is also known as a "cost-plus" contract. Payments are made based on the actual cost of materials and labour, plus an agreed-upon fee or percentage. Cost-reimbursement contracts typically require transparent, open-book management, enabling customers to clearly see and validate all incurred costs. This transparency helps mitigate budget risk but requires robust oversight and careful commercial management from both parties.
Time and Materials (T&M)
The contractor is paid for the time spent on the project and the materials used. The Council and contractor generally agree upon hourly rates and expenses for various aspects of the project. In this type of contract, Council assumes a greater risk, as it may be responsible for paying additional costs due to unforeseen complications, changes in scope, or overtime work. T&M contracts are often used where requirements and outcomes are not accurately defined, and where a task is considered more “open-ended” than a traditional specification-based model.
Target Outturn Cost (TOC)
TOC is a collaborative approach to cost management where Council and contractors agree upon the estimated total cost for completing a project. It includes direct costs, overheads, and profit margins, and serves as a benchmark for cost management and risk/reward sharing. TOC is particularly useful in projects where the scope or design may evolve during the project lifecycle, allowing for flexibility and adaptability while still maintaining cost control. **Note:** This contract payment type is not commonly utilised by NCC at present; however, it is under consideration for future contracts.

Guide to Contract Templates

The NCC Guide to Contract Templates is intended to help you decide which contract may be the “best fit” for what you are trying to do. The guide is available in the Procurement and Contract Management area of Te Puna.

If there is an industry-standard contract document available that is used by a specific market sector, it is recommended that this should be used.

There may be instances where you need to sign an agreement using the supplier’s terms, such as venue hire or online purchases. These purchasing methods are contracts and represent a legally binding agreement between parties; however, given their low value and low risk, they will generally require lower levels of contract management. If you are using a supplier agreement, there is some basic information about contracts at the end of the document, which you should refer to. A legal review may also be required.

Copies of contract templates are available in the templates area of Our Workspace or through the Procurement and Contract Management Te Puna page.

Purchase Order or Contract?

The form and content of a contract should reflect the risk and/or complexity of the transaction. Use a Purchase Order for simple, off-the-shelf, one-off, low-value, low-risk purchases. They should not be used for construction or contract works unless accompanied by a formal contract.

Contracts provide detailed terms and legal protection and should be used where there are specific risks, deliverables, insurances and payment terms that need to be managed.

Purchase Order

For transactional or routine purchases Council may issue a purchase order. A purchase order creates a legally binding contract, but is unlikely to require the level of management required by more complex contracts.

Napier City Council Electronic Purchase Orders reference Purchase Order Terms and Conditions of Supply, through the inclusion of a URL reference that links suppliers to the terms and conditions on the NCC website.

Credit card purchase

Napier City Council Westpac credit cards or access to a Virtual Card via Westpac's 'Go to Pay' service are issued to selected staff to enable travel, entertainment and administration efficiencies. This is subject to the supplier being able to accept payment by credit card.

Purchases must be in line with other Council policies, such as the Sensitive Expenditure Policy and Travel Policy.

Source documentation for each purchase can be in the form of a receipt, invoice or eInvoice. So that it is possible to claim GST from IRD, the source document must meet the requirements of Inland Revenue (see https://www.ird.govt.nz/gst/tax-invoices-for-gst/how-tax-invoices-for-gst-work).

In particular:

- The name and GST number of the supplier
- The date of the invoice
- A description of the goods and/or services supplied.
- The total amount payable for the supply, and
- A statement that GST is included or the GST amount.

For more information and guidance, refer to the Council's Credit Card Policy, which sets out the criteria for the issue of credit cards or access to a Virtual Card, limitations on their use, and operational requirements.

Prepay or bank transfer

If there is a requirement to use a prepayment method or bank transfer, e.g. SaaS subscriptions, consulting engagements, or advisory services, you must first discuss this with the NCC Creditors Team at creditors@napier.govt.nz.

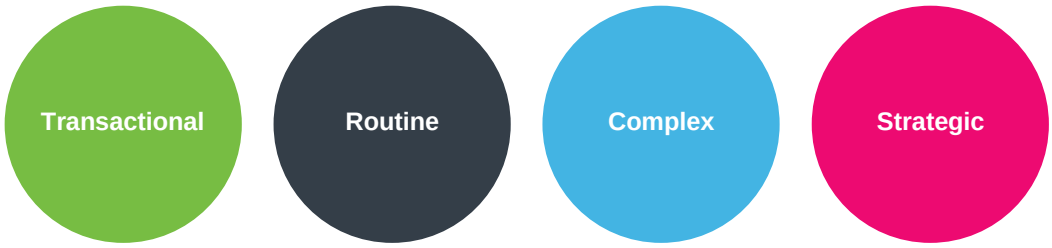
The Creditors Team can verify if the arrangement can proceed and confirm that the supplier and bank account are legitimate.

Supplier terms

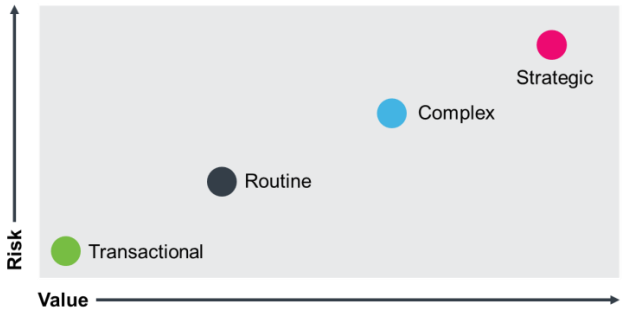
Acceptance of a supplier agreement is a form of contract. These are often found with requirements such as venue hire, software licensing, product warranty, and when you click on the 'I agree' to online terms and conditions. Supplier terms and conditions can pose risks such as ambiguity, unfavourable clauses, increased liabilities, performance issues or compliance risks, and may contain clauses that will require Council to sign up to contingent liabilities. Annex A1.6 Liabilities and indemnities provides more information on potential contract management issues, including contingent liability provisions.

How complex is your contract?

The following terms are used in this guide to describe contracts based on the level of complexity, the risk profile and the value. In this guide, we use the following terms to categorise contracts:



Determining the appropriate level of contract management required for your contract allows you to focus your attention on the key activities within the management of your contract, in a way that is proportional to the risk profile of your contract.



The table below identifies the characteristics or qualities of each type of contract. You should assess which category your contract aligns with. The category qualities are indicative; your contract does not have to meet all the characteristics within a single category and may possess characteristics from more than one category. You will need to exercise judgment about which category is the best fit. When deciding between two categories, select the categorisation with the **higher** risk level.

The tables provided for each contract management phase will assist you in identifying which activities are appropriate based on the contract category.

Qualities	Transactional	Routine	Complex	Strategic
Key Defining Factors	The works, serviuces or goods are: ▪ generally low value ▪ readily commercially available, off-the-shelf ▪ able to be readily sourced from numerous suppliers. ▪ do not require any special handling, modification or adaptation.	The works, serviuces or goods are: ▪ generally low value or may be higher value for large quantities or long-term purchases (whole of life) ▪ readily commercially available ▪ able to be sourced from numerous suppliers. ▪ do not require any special handling, modification or adaptation.	The works, serviuces or goods are: ▪ generally high value. ▪ commercially available ▪ able to be sourced from a number of suppliers. ▪ will most likely have a statement of work or complex specification. ▪ may require some special handling, modification or adaptation.	The works, serviuces or goods are: ▪ generally high value and high complexity but some lower value procurements may be strategic for reasons other than price. ▪ sourced via a complex open tender or staged sourcing approach. ▪ available from a limited number of suppliers in the market ▪ may need to be created or developed specifically for Council or require extensive modification or adaptation if commercially available. ▪ will have an involved statement of work or complex specifications.
Risk Profile	Very low risk. Formal risk assessment is not required.	Generally low risk. May need to identify and analyse risks. Consider current controls and if any additional actions are required. Findings and actions will need to be documented.	May present medium risks. Will need a formalised risk assessment or management plan that will require: ▪ identification ▪ analysis (likelihood /consequence) ▪ evaluation (controls and prioritisation) ▪ treatments ▪ documentation of findings and actions	May present high risks. Will need a formalised risk management plan that will require: ▪ identification ▪ analysis (likelihood /consequence) ▪ evaluation (controls and prioritisation) ▪ treatments ▪ documentation of findings and actions. Risks will need to be actively managed.

Qualities	Transactional	Routine	Complex	Strategic
Delivery	Usually transactional contracts will involve a single delivery to one location.	It may involve a single delivery of higher cost items or deliveries to a number of sites over longer periods.	Delivery will most likely be phased over a number of milestone events over longer periods. Formalised acceptance procedures may be required.	Delivery will most likely be phased over a number of milestone events over longer periods. Acceptance will be based on formalised procedures within the contract.
Payment	Payment will often be made by credit card, or on invoice immediately after the delivery and acceptance of the works, serviuces or goods.	Payment is usually made in arrears on invoice after the delivery and acceptance of the works, services or goods and total costs may be progressively paid overtime as deliveries are received.	Payment arrangements may be more complex, and will generally include partial payments, milestone payments or other staged payment approaches. These contracts may also contain a reduction in payment for underperformance.	Payment arrangements are usually complex and will include staged payment, milestone payment and/or earned value payment approaches. These contracts may also contain incentive payments or reduction in payment for underperformance.
Performance Monitoring	Performance monitoring is based on common sense checking that the works, services or goods were as ordered and correctly received.	Performance monitoring is usually based on common sense checking, supported by processes such as spot audits, acceptance checks and referring to the contract to be sure that the goods and services were as specified and correctly received.	Performance monitoring is usually formalised, and may involve progress reports from the supplier, progress and performance meetings with the supplier and may draw on performance indicators or service level agreements in the contract.	Performance monitoring is formalised, and usually involves progress reports from the supplier, progress and performance meetings with the supplier, and draws on performance indicators or service level agreements in the contract.
Timeframe	Short term.	These contracts usually extend for short periods, typically between a few days up to a couple of months but may also involve larger quantities of off-the-shelf works, services or goods over longer periods.	These contracts typically extend for anywhere from a few months to several years.	These contracts are generally longer term and may run for several years.
Contracting Vehicle	Use purchase order, email or verbal acceptance of quote.	Use purchase order, CCS contract or may be sourced from a Panel.	CCS contract, purpose-built contract or may be sourced from a Panel. For ICT requirements, a service level agreement template may be appropriate. **This is in development**	Purpose-built bespoke contract or Council-specific template. For ICT requirements, a service level agreement template may be appropriate. **This is in development**

Qualities	Transactional	Routine	Complex	Strategic
Organisational Impact	These works, serviuces or goods are not critical to the operation of Council, which could operate reasonably without them.	These works, serviuces or goods are not usually critical to the operation of the organisation, which could operate for a reasonable period without them. There may be some inconvenience if the works, services or goods are delayed.	These works, serviuces or goods are usually important, but not critical, to the operation of Council or may be important in managing risks facing Council. There would be some impact on the way Council operates if the works, serviuces or goods were delayed, and there could be considerable inconvenience, but this would not usually prevent the achievement of major Council goals.	These works, serviuces or goods are vital to the achievement of major Council goals and may be significant for managing risks or seizing opportunities. There would be significant, noticeable and unacceptable impact on the way Council operates if the works, serviuces or goods were delayed.

Examples of how contracts may be categorised are below:

- Catering for a meeting or workshop would generally be transactional; however, catering for a large public event may be complex.
- Labour hire would generally be routine; however, if you have complicated security and access requirements, then this may increase the level of categorisation.
- A contract for office furniture would generally be routine; however, if this is part of an office fit-out, then it may be complex.
- The customisation and integration of a software system would generally be a complex contract; however, if the contract is for the development and implementation of large Council-specific software applications, then this may be strategic.

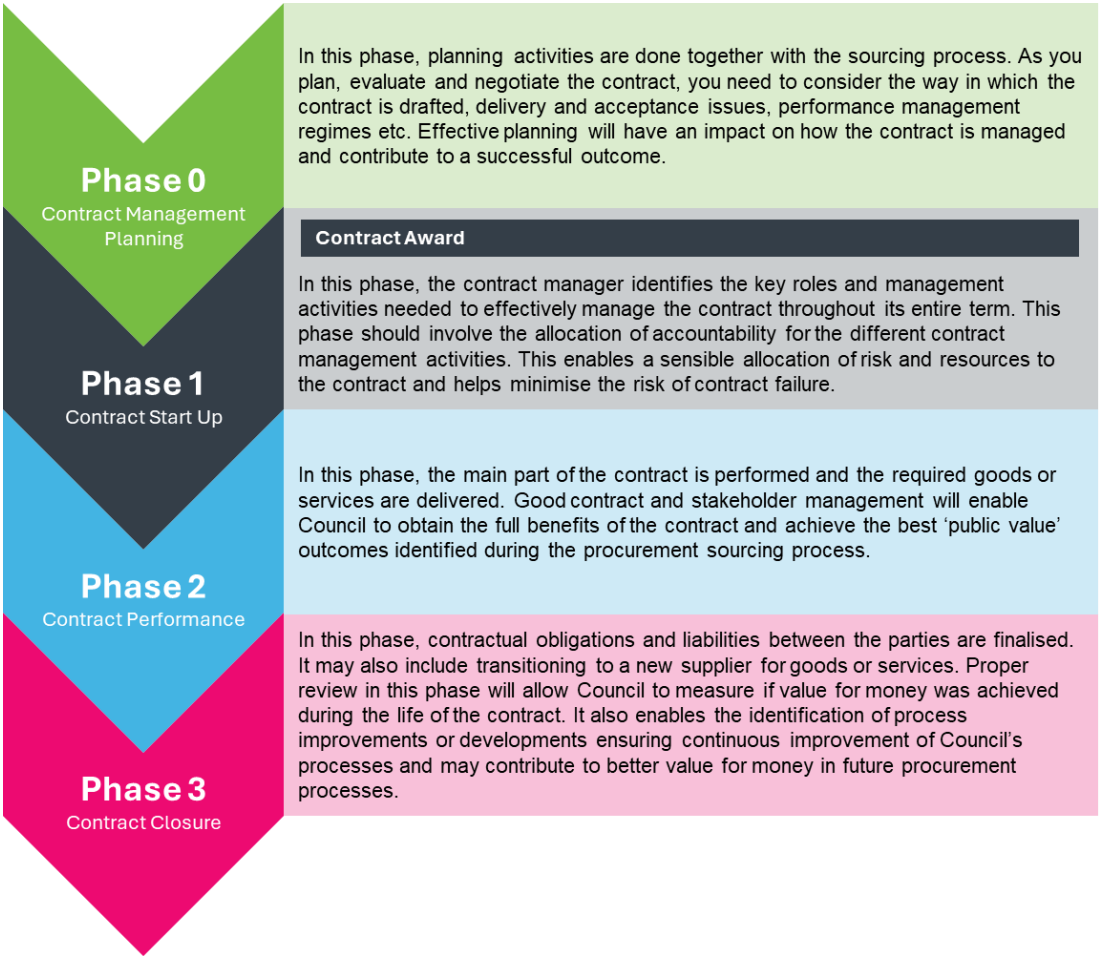
If you are unsure how to categorise your contract, contact the NCC Procurement Team for assistance.

What are the phases of contract management?

Contract management activities take place in three main phases; however, planning for contract management should happen before the contract is signed. Each phase requires distinct activities depending on the type of contract being managed, and the degree of contract management should reflect the complexity and risk profile of the contract being managed. For example, transactional and routine contracts often require simpler processes than a complex or strategic contract.

The contract management activities table at the start of each section will help you to identify which activities are appropriate for your contract. The decision on which activities should be included as part of the contract management arrangements should be made using judgment, based on the complexity and risk profile of the particular contract.

The phases of contract management are:



Phase 0

0. Planning for contract management

The table below lists the activities for the 'Planning for contract management' phase. The categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

Activities during the planning for the contract management phase include:		Transactional Contract	Routine Contract	Complex Contract	Strategic Contract
0.1	**Assess Risk (page 25)**	Required	Required	Required	Required
0.2	**Develop a Contract Management Plan (page 28)**	Not Required	Recommended	Required	Required
0.3	**Develop other plans if required (page 31)**	Not required	Recommended	Recommended	Strongly Recommended
0.4	**Develop a Risk Management Plan (page 32)**	Not required	Recommended	Strongly Recommended	Required
0.5	**Consider and manage any contract transition issues (page 33)**	Not required	Recommended	Recommended	Strongly Recommended
0.6	**Skills Development (page 34)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)

0.1 Assess Risk

Risk is inherent in all procurement and contracting activities. Those managing contracts must proactively identify, evaluate and manage any risks, opportunities and issues in accordance with Council's Risk Management Policy.

Managing risk is an essential part of procurement and contract management. You will need to assess the risks that may affect the performance of your contract and its ability to achieve the desired outcomes. Contract managers should identify the risks associated with delivering the contract and analyse the seriousness of those risks and the likelihood of them occurring. The next step is to consider existing risk controls that are already in place and evaluate whether they are sufficient to manage the risk without taking additional measures. If not, then risk treatments need to be applied.

The risk controls and risk treatments aim to prevent the risk from occurring (if possible), and/or to minimise the consequences if any risk events do eventuate. Obligations placed on the supplier and the allocation of responsibility for particular issues under the contract will often form part of

these controls and treatments, and so effective contract management will assist with managing these risks.

The role of the contract manager is to deal promptly and effectively with risk events that occur during the contract period. Officials with a role in managing the contract also play a part in managing risk and identifying emerging issues.

Risks may specifically relate to the works, services or goods you are receiving (for example, Health & Safety risks in a construction contract or using unqualified trainers to deliver training programs), or they may relate to the contract management process itself (for example loss of key staff, staff having insufficient expertise in contract management or failure to adequately check deliverables or pay invoices on time).

Shared risks should also be considered; a shared risk is where more than one party is exposed to or can significantly influence the risk. Most contracts will involve shared risks, and a key consideration will be the types and levels of risk that will be assumed by each of the parties to the contract. As a general principle, risks should be borne by the party best placed to manage them. This may be either the supplier or the procuring entity (i.e. Council). The allocation of risks may be set out in the contract, including through the indemnities and limitations of liability. Identified risks should be included in your Contract Management Plan or, if the risks are substantial, in a separate Risk Management Plan. Your approach to managing risks for individual contracts should be consistent with Council's Risk Management Policy.

When identifying risks, you should consult with stakeholders, technical staff or users. Some common sources of risk and examples of risks are listed in the table below (this is not a definitive list, and you will need to consider risk in the context of your contract).

Sources of Risk	Examples of Risks
Systems, procedures and guidance	▪ Multiple systems that are not integrated and/or require multiple entries of the same data. ▪ Systems that are not supported by appropriate procedures and/or guidance material. ▪ Different systems containing incomplete and/or conflicting contract data. ▪ Absence of required contract delegations.
Roles and responsibilities	▪ Unclear and/or misunderstood roles and responsibilities for aspects of contract management.
Contract management capability	▪ Lack of understanding of relevant government and/or Council procurement policies and reporting requirements relating to contracts. ▪ Lack of experience in the management of contracts. ▪ Lack of recognition of the importance of contract management. ▪ Insufficiently skilled and experienced resources are available to effectively manage the contract. ▪ Lack of training in contract management. ▪ Failure to act on supplier underperformance. ▪ Fraud and/or unethical conduct by staff.
Supplier performance	▪ Supply chain issues. ▪ Failure to provide contract deliverables on time, to the agreed quality standards. ▪ Failure to adhere to the agreed budget. ▪ Failure to comply with all contract provisions, for example, privacy, security, and recordkeeping. ▪ Fraud and/or unethical conduct by the supplier.

Sources of Risk	Examples of Risks
Changes in circumstances or requirements	▪ Contract changes not dealt with as contract variations. ▪ Supplier not prepared to agree to contract variations to accommodate changes in Council requirements. ▪ Changes in circumstances not managed in a timely manner.
Stakeholder relationships	▪ Stakeholders not consulted and/or kept informed about contract performance. ▪ Changes in stakeholder needs and/or expectations not communicated to the contract manager. ▪ Differing and/or conflicting stakeholder expectations.
Contract materials information and records	▪ Failure to provide required materials or information to the supplier. ▪ Failure of the supplier to return or destroy all materials, information and records in the agreed timeframe and through the agreed processing.
Payment	▪ Failure to pay supplier invoices in a timely manner. ▪ Failure of the supplier to provide correctly rendered invoices. ▪ Submission by the supplier of an invoice for unforeseen or unapproved additional costs.
Transition arrangements	▪ Failure to appropriately manage the transition from the outgoing supplier. ▪ Not commencing arrangements for a new procurement in a timely way. ▪ Service disruption. ▪ Probity issues with the procurement process for replacement works, services or goods after the contract end date, particularly where an existing supplier is re-tendering. ▪ Not addressing performance problems with an outgoing supplier. ▪ Not addressing performance problems with an existing supplier.
Achieving the best Public Value	▪ Not addressing performance problems with a supplier. ▪ Contract variations degrading public value. ▪ Not gathering data to allow determination of whether public value was achieved. ▪ Not reviewing contracts and learning lessons from improvement opportunities. ▪ Not linking public value achieved in a contract with the contract renewal process.
Information and Cybersecurity Risks	▪ Failure to have appropriate security controls and measures in place to protect Council's data, such as the failure of the supplier to meet the requirements of the New Zealand Information Security Manual (NZISM) or similar. ▪ Failure to comply with the Privacy Act 2020 (Privacy Act), Public Records Act 2005, and the Local Government Official Information and Meetings Act 1987 (LGOIMA). ▪ Failure to have supplier personnel appropriately security assessed and trained to ensure the protection of Council data. ▪ Failure to prevent, mitigate and manage cybersecurity incidents, such as attempts by malicious cyber actors to breach ICT systems of service providers, impact the supply chain, and impede service delivery.

Want to know more about risk management?

Further information about risk management is available from:

- Napier City Council Risk Management Policy
  https://www.napier.govt.nz/assets/Document-Library/Policies/Risk-Management-Policy.pdf
- AS/NZS ISO 31000:2009, Risk management – Principles and guidelines
  https://www.standards.govt.nz/shop/asnzs-iso-310002009
- Talk to the Napier City Council Risk Management Lead

0.2 Develop a Contract Management Plan

The table below outlines when a Contract Management Plan (CMP) must be developed, based on the type, value, and complexity of the contract. It provides clear guidance for contract works, professional services, ICT, and general goods and services, helping procurement and contract managers identify which contracts necessitate a formal management plan.

Contract type	Value threshold	Category	CMP required?
Contract Works	Over $1,000,000 NZD	Any	Required
	Under $250,000 NZD	Any	Recommended
Professional Services, ICT, Goods and Services	Over $250,000 NZD	Complex or Strategic	Required
		Transactional/Routine	Recommended
	Under $250,000 NZD	Transactional/Routine	Not required

Use the Council Contract Management Plan template for effective contract management.

A CMP contains key information about how the contract will be managed over its life to ensure that the best public value is achieved. It should be a working document that assists you in managing the contract. Your CMP should reflect the level of complexity and risk associated with your contract. Transactional and routine contracts may not need a written CMP. Complex or higher-risk contracts generally require a detailed CMP.

The plan is a living document that should be updated throughout the contract. The CMP should not replicate contract information but provide references to that information (e.g. relevant contract clauses, location of registers or plans). This is to ensure that, should information change in the contract or other documents, it is not contradicted by the CMP.

Tailor the plan to the individual contract - the content and amount of detail will depend on the nature of the services, the clients and the contract. The plan sets out:

- who will be responsible for managing the delivery of the contract.
- the nature and extent of engagement with the supplier or provider.
- how issues and disputes will be resolved.
- potential risks, how they'll be mitigated and managed, and by whom.
- a methodology and plan for evaluating the quality of delivery and the benefits achieved.
- key stakeholders (internal and external) and how these relationships will be managed.
- an exit strategy to be applied at the end of the contract.

A Contract Management Plan may contain:
Introduction: Includes background of the history of the procurement, works/services/goods to be delivered, and who the supplier is, and lists key documents that relate to the contract.
Contract Basics: Identifies the business needs, objectives the contract relates to, and the intended key outcomes. Summarises the terms and conditions of the contract, such as type, duration, and contract renewal or extension options. Details the agreed whole of life costs over the duration of the contract. Details of pricing, including payment terms, milestone payments, etc.
Contract Delivery: A summary of requirements and key deliverables/activities to be completed (including quality standards and milestones/due dates), initial areas of continuous improvements and innovation, and agreed supplier development initiatives.
Key personnel: A list of the main individuals involved in the contract, their positions, contact details, security clearances, and responsibilities (for both Council and the supplier).
Key Stakeholders: A list of key stakeholders (both internal and external to the Council), roles, and levels of engagement required.
Supplier access and security: Details access requirements for the supplier to Council facilities, assets, information or data, and in some instances, security clearances.
Transition Planning: An action plan summarising the key actions supporting the transition, including previous and new supplier responsibilities, and communications management.
Risk management: Details of risks that have been identified and how and by whom they will be managed (for more complex contracts, this may be a separate Risk Management Plan).
Supplier reporting: The frequency and content of the supplier's reporting and timeframes for acceptance of reports, including details of the reporting from subcontractors. Details of any insurance certificates, bank guarantees, or indemnities provided by the supplier, any expiry or renewal dates and storage location details.
Performance management: Details of how performance will be managed, including the reporting of Key Performance Indicators (KPIs) or Service Level Agreements (SLAs), how data will be gathered, verified and calculated, details of remedies or withholdings, etc.
Contract Management Meetings: A schedule of meetings and any standing agenda items, the process for the production and agreement of minutes and turnaround times.
Delivery and acceptance: Details of the acceptance process or specifics around the delivery of goods or services, including standards to be met and audit requirements around those standards, compliance certificates, etc.
Contract variations: Details of the process as defined in the contract for requesting variations to the contract and details of delegates.
Contract completion: Details notice periods, defects liability period, extension options, contract review timings and processes, etc, and who is responsible for each activity, as well as the lead-time needed for any re-tender or contract renewal.

A Contract Management Plan may contain:
Dispute resolution and termination: Identifies if the dispute resolution process is included in the agreed contract or summarises the agreed process.
Contract management and governance structure: Details of stakeholder engagement, contract oversight, process for the escalation of issues or disputes, internal reporting, including content, frequency, and distribution of any reporting within Council, for example, monthly reporting to the senior management team.

If you decide not to draft a formal plan, you still need to complete and record the details below.

Minimum contract management information to be recorded:
Administering the contract and managing the relationship, including: ▪ identification and contact details for each party's contract/relationship manager. ▪ the contract/relationship managers' key responsibilities. ▪ meeting requirements (chair, location and standard agenda items). ▪ the process for agreeing and controlling variations and changes to the contract. ▪ a contract management risk plan.
Service delivery requirements include: ▪ a timeline of key actions, deliverables, milestones and payment dates. ▪ the process for achieving and checking key deliverables. ▪ the quality and standards expected and their measuring process (such as KPIs). ▪ monitoring and reporting requirements (frequency, type, content and distribution). ▪ guidance on any Council policies or procedures that apply to the supplier (if appropriate).
Financial details include: ▪ payment procedures and frequency. ▪ invoicing requirements (if not in the contract).

0.3 Develop other plans if required

Most contract risks and issues can be documented in your Contract Management Plan or your Risk Management Plan. Where significant risks are identified, consider preparing, on a scaled basis, a plan to formally address these risks. These plans are often contract management tools that are either embedded or referenced in the contract (to make them contractually binding). If required, draft and agree on necessary plans as early as practicable to guide contract management processes.

Other plans that you may consider developing:
Transition Plans: If the contract is replacing an existing contract for similar goods or services, you may require a "transition in" plan at the commencement of the contract. Similarly, you may need a plan to "transition out" at the end of the contract. These plans detail transition tasks, timeframes, resources, communications, risks and management strategies.
Communications or Stakeholder Engagement Plan: This formally defines who should be given what information, when that information should be delivered and what communication channels will be used to deliver the information.
Probity Plan: A probity plan details the mechanisms for assuring probity within the management of the contract. Probity is the evidence of ethical behaviour, defined as demonstrated integrity, uprightness and honesty in the process.
Security Plan: Security risks can arise from the supplier accessing facilities or data, or needing to integrate their products with Council systems, etc. The supplier may have to meet very specific security policies and requirements. A security plan details mandatory security (and information security) standards and procedures to be followed and required risk mitigation measures. It may also cover the protection of personal information, cybersecurity issues or data breaches and incident response plans, if applicable. There may also be consideration of how often these plans will be reviewed during the contract. For more information, contact NCC Information Services: ITsupport@napier.govt.nz
Supply Chain Risks Plan (e.g. disruption of supply or modern slavery): Aspects of your supplier's supply chain could be geographically, ethically or environmentally unsound, particularly in certain industries. This may result in the contracted goods not being delivered or reputational damage to Council. A supply chain Risk Management Plan details procedures for monitoring your supplier's supply chain and addresses any issues.
Disposal Plan: Council must dispose of goods in a manner that is lawful, efficient, economical, ethical and environmentally sustainable. If the goods received under your contract require specialised disposal treatment, you may require a disposal plan. In some cases, the supplier may be contracted for the eventual disposal of the goods, but Council will remain accountable for how the disposal occurs.

0.4 Develop a Risk Management Plan

A Risk Management Plan provides a systematic approach to identifying, assessing, evaluating and treating risks that are associated with your contract. You will have assessed these risks in the first step 0.1 Assess Risk (page 25).

Complete a Risk Management Plan in accordance with Council's Risk Management Policy.

A Risk Management Plan specifies the approach, activities and resources to be applied to managing the risks and will typically include:

- a summary description of the risks
- an assessment of the controls that are already in place to manage each risk.
- an assessment of the likelihood of each risk occurring and the consequences if the risk occurs.
- an evaluation of the overall level of risk, which can then be compared with Council guidelines to determine whether the risk is acceptable and whether the risk needs further treatment.
- a description of any risk treatments that will be applied, including a sequence of activities.
- process for reporting and escalation.
- assignment of responsibilities
- timeframes for activities and reviews.

While transactional and routine contracts may not require a formal written Risk Management Plan, you should still consider and document any risks.

Key steps in this activity include:
Identify risks (see step 0.1 Assess Risk, page 25).
Analyse risks (likelihood and consequence) to determine the severity of each risk (extreme, high, medium, low).
Evaluate risks, including: ▪ identification of current controls and their effectiveness ▪ if any additional controls or treatments are required ▪ assessment of the tolerability of each risk to determine which risks need treatment.
Planning and documenting risk controls, treatments and mitigation strategies and assigning responsibilities.
Documenting the timeframe or circumstances when you will need to do a risk review (e.g. biannually or before issuing any contract variation) and any process for reporting and escalation.

0.5 Consider and manage any contract transition issues

Sometimes your contract will be for similar works, services or goods to those supplied previously. The new contract may be with a different supplier or the same supplier. Even where the supplier is the same, the contract may be different, for example, you may have modified your requirements, or the supplier may have developed a new or innovative way to fulfil your requirements.

Whenever you are managing a new contract for works, services or goods that have previously been supplied, you should identify what is required to transition effectively from one contract to another. If the transition arrangements are complex, consider whether a Transition Plan is required, which will consider the contractual obligations of the old and the new contracts.

Some typical transition considerations are:
Confirm the transition-in and transition-out obligations in the contract, including Council data disengagement procedures and ownership of data at completion.
Obtain a transition-in and transition-out plan from the incoming and outgoing suppliers and ensure each meets the obligations under the relevant contract and the Council's needs.
Prepare a timeline of activities/events, including changeover periods.
Identify resource requirements.
Identify key roles and responsibilities and how these change with the transition.
Note specific differences between the previous contract and the new contract.
Identify who needs to know what details about the new arrangement and what communication channels you will use.
Consider training needs for staff if the requirements are new or significantly different, or if supply arrangements will change.
Identify and manage risks such as: ▪ maintaining a continuous supply of works, services or goods during the transition ▪ managing and minimising the effects associated with the changes on users. ▪ managing the outgoing supplier's performance through to the conclusion of their contract.
Retrieve any Council assets, documents or information provided to the outgoing supplier and provide those, as required, to the new supplier.
Identify any intellectual property rights within the old contract and assess the suitability of any risks for the transition to the new contract.
Arrange access for the new supplier to facilities or systems, including security clearances, and terminate access for the old supplier.
Identify additional transitional arrangements that may need negotiation with the incoming or outgoing supplier.
After the transition and final deliverables are satisfactorily received, approve the final payment to the outgoing supplier.

Tip – transition if there is a new supplier

When the new contract is being provided by a new supplier, the most important thing is to try to facilitate a smooth transition from the old to the new. Do your best to encourage a cooperative approach between the two suppliers, but note that realistically, the two suppliers are likely to be commercial competitors.

You will need to carefully manage the outgoing supplier to make sure they meet their obligations and do not impede the incoming supplier from delivering the specified goods and services. Make sure you are clear on the transition obligations in both contracts so that they can be enforced.

Tip – transition if there is no change in the supplier

Even when the new contract is being provided by the same supplier, there are likely to be differences between the previous contract and the new one. You need to ensure that everyone (you, the users and the supplier) is clear about any differences, including:

- changes in the scope of the goods or services
- changes in the mode of delivery
- changes in the timing of delivery
- changes to the contract terms and conditions

Think about who needs to know about the changes and keep them informed. In the early stages of the new contract, you should monitor contract performance closely to make sure that the supplier is not simply doing what they have always done but is delivering the goods and services under the terms and conditions of the new contract.

Consider, on a cost-benefit basis, whether you need to develop a separate Transition Plan or transition checklist for your contract.

0.6 Skills Development

Contract management requires a broad range of knowledge and skills. Assess if you and the people on the contract management team have the necessary skills and knowledge to manage the contract. If not, training may be needed to address any shortfalls to build appropriate capability.

Phase 1

1. What activities should I do in the contract start-up phase?

If you have come directly to this phase and your contract has already commenced, go to Phase 0 – planning for contract management, scan the recommended activities, and complete as required. The table below lists the activities for the contract start-up phase. The categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

Activities during contract start-up phase include:		Transactional Contract	Routine Contract	Complex Contract	Strategic Contract
1.1	**Review contract (page 36)**	Required	Required	Required	Required
1.2	**Confirm contract management roles and responsibilities (page 36)**	Recommended	Strongly Recommended	Required	Required
1.3	**Set up contract administration (page 37)**	Recommended	Strongly Recommended	Required	Required
1.4	**Set up contract information management (page 38)**	Not required	Recommended	Strongly Recommended	Strongly Recommended
1.5	**Set up contract communication management (page 38)**	Not required	Recommended	Strongly Recommended	Strongly Recommended
1.6	**Review and update plans (page 39)**	Not required	Recommended	Required	Required
1.7	**Provision of security, access, assets and information to supplier (page 40)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)
1.8	**Conduct a contract start-up meeting (page 40)**	Not required	Recommended	Strongly Recommended	Strongly Recommended

1.1 Review contract

Good contract management requires a complete set of contract documentation and a clear understanding of each party's obligations under the contract. If you are managing a contract under a collaborative contract (Panel), you will need to understand the obligations of that supplier. If you were not involved in the sourcing process, talk to the procurement team to understand if there are any significant issues or risks relating to the contract and the procurement process, particularly details of any tender negotiations and rationale for changes. They will help you understand what provisions to monitor during the contract performance phase.

Obtain a copy of the supplier's tender response to understand what they offered and any additional details on the cost breakdown or inclusions factored into the price.

Key steps in this activity include:
Read the contract
Ensure you understand what is to be delivered under the contract and the outcomes to be achieved by the contract.
Identify the drivers to achieve the best public value.
Identify all obligations in the contract for both parties.
Identify the rights available to Council to ensure compliance by the other party such as delivery and acceptance requirements, reporting, performance criteria (e.g. Service Level Agreements (SLAs) or Key Performance Indicators (KPI's), the process for dealing with unsatisfactory performance, the process for issuing breach notices, and process for the escalation of issues.
Include relevant information in your Contract Management Plan (see step 0.2, page 28).

1.2 Confirm contract management roles and responsibilities

It is important that you know who is responsible for key contract management activities and that you allocate appropriate resourcing to the contract.

Key steps in this activity include:
Review the contract to identify who the nominated Council and supplier representatives are under the contract and what responsibilities they have.
Agree roles and responsibilities of the contract management team.
Document appropriate delegates and authorised officers consistent with the contract terms.
Confirm the account manager, operations manager, authorised officer, etc. for the supplier.
Confirm specialist advisors (procurement, legal, technical, operational).
Identify stakeholders and end-users. Who is going to accept/own the goods/services?
Determine whether any training or other capability development is required for key people to be able to perform their contract management roles. (see step 0.6 Skills Development, page 34)
Include relevant information in your Contract Management Plan (see step 0.2, page 28).

1.3 Set up contract administration

Clear contract administrative procedures will help all parties understand roles and responsibilities, and what, when and how activities need to be completed. These procedures should be established at contract commencement so that everyone has a shared understanding.

At a minimum, there should be processes to:

a. verify that:
   i. deliverables itemised in an invoice have been delivered and accepted by Council.
   ii. the supplier has fulfilled the required obligations under the contract prior to making a payment.
   iii. A valid progress payment claim has been received (Construction contracts only)
b. verify invoices are correct and in accordance with the contract.
c. ensure payments of correctly rendered invoices are made to the supplier within the time frame stipulated in the contract and in line with Council's invoicing and payments requirements.
d. track expenditure to ensure it does not exceed the value of the contract.
e. ensure that the appropriate delegate has approved the expenditure, and you have this documented.

In this phase, you may also set up processes and procedures to:
Identify funding source and budget acquittal/accountability/reporting requirements.
Identify the method or process to reconcile and pay invoices, including the level of detail to be provided in invoices (e.g. purchase order numbers, email address for contact officer, description of work, etc.), and the format for electronic invoices.
Set up record-keeping systems (budget, funding, invoicing, performance, contract variations, etc).
Identify and communicate in advance a schedule of meetings for parties to the contract, end-users and stakeholders, giving the time, place and purpose of the meeting. This gives the best opportunity for the right people to attend contract management meetings.
Identify and communicate details of any ordering procedures to be followed by users wishing to obtain works, services or goods under the contract.
Ensure any conflict of interest declarations from relevant personnel (Council and supplier) have been provided (see step 2.1 Behaving Ethically, page 43). Include reminders of these obligations in agendas for contract management meetings if appropriate.
Ensure all insurances, indemnities, and guarantees required from the supplier have been received and recorded. Set reminders to ask for these documents if they need to be renewed.
Ensure you have copies of any standards relevant to your contract.
Include relevant information in your Contract Management Plan (see step 0.2, page 28).

1.4 Set up contract information management

Proper systems for identifying, gathering and recording relevant information will help you manage your contract effectively and provide a clear audit and accountability trail.

Key steps in this activity include:
File a signed copy of the contract in Councils' document management system and record the details in the NCC Contract Register.
Decide how you will register and manage information about key contract activities, for example, meetings with the supplier, correspondence with users and internal clients, complaints or variations.
Create a contract register or other documents to track contract performance and keep records.
Develop templates for relevant activities, for example, reporting templates, meeting agendas, standard communication emails, etc.
Ensure you retain all contract records for reconciliation and audit purposes.
Include relevant information in your Contract Management Plan (see step 0.2, page 28).

1.5 Set up contract communication management

Keep up-to-date details of:

- who to talk to about contract issues.
- preferred channels for communication and when to use them (e.g. phone calls, emails, meetings, reports, formal letters)
- agreed response timeframes.
- how to escalate unresolved issues.

This will help all involved communicate appropriately about contract issues. For more complex or strategic contracts, you may want a separate communications plan.

Key steps in this activity include:
Identify channels for communication between all parties for different types of contract issues that may arise. Share with all concerned, including the supplier, where appropriate.
Establish appropriate response timeframes for contract communications (e.g. emails might be acknowledged the same day and responded to within 24 hours unless the issue is complex).
Ensure there are details of how and when urgent information will be communicated, such as notifying Council about suspected or actual security incidents.
Set up contract meetings and reporting schedules.
Establish a correspondence log to ensure you don't miss key contractual dates and you appropriately action all issues.
Include relevant information in your Contract Management Plan (see step 0.2, page 28).

Tip – different types of contract meetings

Regular progress meetings that involve the supplier, your contract management team and other key staff from Council, if required. These meetings are to discuss performance, contract events or milestones, changes to user requirements, review risks and consider proposed actions or responses to current or potential issues.

Technical meetings, as required, that involve specialist technical representatives from the contract management team, the contract manager and the supplier, to review technical reports and performance data and discuss technical issues.

Longer-term reviews and audits to evaluate the achievement of objectives, results against budget, user satisfaction, the extent to which best public value is being achieved, and requirements are being met, and how to address any emerging issues.

Issue-specific meetings may be required if an issue emerges that, if not addressed promptly, will have a significant impact on the management, performance or delivery of the contract.

1.6 Review and update plans

Ideally, you will have prepared your Contract Management Plan prior to the contract being awarded. It is a good idea to review these plans at the start of the contract and update them if details have changed. If you haven't developed your plans before the contract has commenced, decide which plans you will need and develop them as soon as possible (see steps 0.1 to 0.4).

You should also consider how often these plans will be reviewed and updated during the contract (if applicable) and note these details and timeframes in your Contract Management Plan.

Plans for drafting or updating (as required):
Contract Management Plan
Risk Management Plan
Transition Plan
Communications Plan
Probity Plan
Security Plan (including physical security and information security). Information security may cover cybersecurity, ICT and privacy considerations.

1.7 Provision of security, access, assets and information to supplier

For some contracts, you will need to provide suppliers with access to Council facilities, buildings, information systems, data, physical documents or other assets. Sometimes, specified personnel may require security clearances.

IMPORTANT

Depending on the nature of the contract and the associated risk profile, a supplier IT security and privacy briefing may be required. If a supplier will have access to or be responsible for managing confidential data or information, the Contract Manager **must** ensure a privacy briefing is conducted prior to granting access.

For assistance in preparing or delivering a privacy briefing, contact the NCC Privacy Team.

You may need to organise the following:
Security clearances for supplier personnel. Your contract should identify which party is responsible for obtaining the security clearance; however, in most cases, it will require the Council's sponsorship. Engage with NCC Information Services for instructions: ITsupport@napier.govt.nz
Access to facilities (office buildings, warehouses, etc.).
Access to information systems, networks or data storage facilities.
Access to your information or data in either physical or electronic form.
Access to your assets.
Ensure that you keep a list of all assets, information or data that you provide to the supplier, as these will need to be returned or disposed of at the end of the contract. Record this information in your Contract Management Plan.

1.8 Conduct a contract start-up meeting

A contract start-up meeting allows you to establish a working relationship with your supplier and develop a shared understanding of key aspects of the contract, including commercial, operational, performance and administrative expectations.

Contract management activities should align with the size and complexity of your contract, and don't require suppliers to attend on-site if a virtual meeting will suffice.

A contract start-up meeting typically covers:
Introduction of key people.
Develop a shared understanding of the contract, commercial, operational and performance aspects.
If access to NCC systems, data and information is required, contact NCC Information Services: ITsupport@napier.govt.nz

A contract start-up meeting typically covers:
Agree on roles and responsibilities of key people, including assigning responsibility for risk management.
Confirm contract timelines and milestones. Note that milestones should be detailed in your contract. Other key events may be identified between you and the supplier, or the contract may require a procurement schedule to be produced by the supplier.
Discuss transition issues and how to manage them.
Agree on how to manage the contract relationship, including communication, regular meeting details, issues, disputes, variations and escalation. This may include a discussion of Council's notification expectations, e.g. security incidents, key points of contact and out-of-hours contacts if urgent attention or action is required. Refer to contract documentation for details on any of these processes where applicable.
Clarify invoicing and payment arrangements in line with the contract terms (e.g. email address for delivery of invoices).
Housekeeping tasks that have not been actioned earlier, such as: ▪ ensuring insurance certificates and bank guarantees are delivered ▪ ensuring confidentiality and conflict of interest forms are signed and delivered ▪ clarifying processes for security clearances and discussing information and data security obligations in the contract, and how often these will be reviewed. ▪ detailing requirements for access to facilities, assets, information or data.

Phase 2

2. What activities should I do in the contract performance phase?

The table below lists activities that may be relevant during contract performance. The categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

Activities during the contract performance phase include:		Transactional Contract	Routine Contract	Complex Contract	Strategic Contract
2.1	**Behaving Ethically (page 43)**	Required	Required	Required	Required
2.2	**Using Advisors (page 44)**	Recommended	Strongly Recommended	Strongly Recommended	Strongly Recommended
2.3	**Unintentional variation or waiver through conduct (page 45)**	Strongly Recommended	Strongly Recommended	Strongly Recommended	Strongly Recommended
2.4	**Building and maintaining effective professional working relationships (page 45)**	Recommended	Strongly Recommended	Strongly Recommended	Strongly Recommended
2.5	**Measuring performance (page 46)**	Recommended	Required	Required	Required
2.6	**Managing performance (page 49)**	Recommended	Required	Required	Required
2.7	**Managing delivery and acceptance (page 52)**	Required	Required	Required	Required
2.8	**Subcontractors (page 53)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)
2.9	**Performing contract administration tasks (page 53)**	Required	Required	Required	Required
2.10	**Managing contract risk (page 56)**	Required	Required	Required	Required

Activities during the contract performance phase include:		Transactional Contract	Routine Contract	Complex Contract	Strategic Contract
2.11	**Contract review (page 56)**	Not Required	Recommended	Strongly Recommended	Strongly Recommended
2.12	**Managing complaints, disagreements and disputes (page 57)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)
2.13	**Managing contract variations (page 60)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)
2.14	**Managing contract extensions or renewal (page 62)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)

2.1 Behaving Ethically

If you are employed by Napier City Council (or acting on behalf of Council) you have an obligation under the Local Government Act 2002 to behave ethically. This extends to contract management.

Contracted staff involved in contract management will usually have clauses built into their employment contract ensuring they comply Council's Code of Conduct for Employees, laws and policies, declare conflicts of interest, and not act fraudulently. The contracted staff member may be in breach of their contract if they do not uphold these obligations.

Ethical behaviour:

- ensures transparency and accountability in a procurement process.
- gives suppliers confidence in their dealings with the Council.
- can reduce the cost of managing risks associated with fraud, theft, corruption and other improper behaviour.
- supports confidence in public administration.

Ethical considerations to keep in mind when undertaking contract management might include:

- the need to uphold the Code of Conduct for Employees
- the need to achieve the contract outcomes.
- the need to maintain a positive working relationship with the supplier.
- whether an actual or potential conflict of interest exists
- whether you need to put in place reasonable and cost-effective mitigation arrangements to address actual or potential conflicts of interest.

As part of Councils obligation to act fairly and openly, employees must take care that decision-making cannot be challenged due to actual or potential bias and/or conflicts of interest. Conflicts of Interest may relate to Council Officers (or those acting on behalf of Council) who make decisions relating to procurement and contract management, including governance, management, operational employees and the person approving the procurement.

As a contract manager, you should ensure all individuals materially involved with the management of a contract complete a conflict-of-interest declaration and update it on a regular basis, particularly for longer-term contracts. Ensure you get an update on the conflict-of-interest declaration if their circumstances change. Any conflicts of interest identified should be handled in accordance with the NCC Conflict of Interest Policy.

There may be clauses in your contract that require supplier personnel to identify, disclose and appropriately manage any conflicts of interest.

Want to know more about behaving ethically?

Refer to the Council's guides and policies listed below:

- Napier City Council Code of Conduct for Employees
- Napier City Council Guide - Conflicts of Interest
- Napier City Council Supplier Code of Conduct

2.2 Using Advisors

Specialist advisors can help support contract management activities.

Commonly used advisors for contract management may include:
Procurement advisors can assist you with questions about the procurement process (including contract management). They can provide advice about the processes you need to follow for contract variations, supplier performance management, contract closure or contract renewal. They can also give you advice around any probity issues that may arise.
Technical and operational advisors can help you to better understand issues around the subject matter of your contract. For example, these advisors may be able to help you determine whether works, services or goods provided by the supplier have met the required contractual standard. They can also be helpful in generating possible solutions to complaints and disputes, as well as providing advice in situations relating to the supplier's performance. They may also be able to give you technical advice for issues such as contracting, facilities, information, and cybersecurity.
Legal advisors can help you deal with legal issues associated with your contract. For example, you should seek legal assistance if a situation looks like escalating into a formal dispute, if you are thinking about terminating your contract or if you need help in understanding the meaning of a clause in your contract. They can also give you advice around any probity issues that may arise or give advice about privacy issues.

These advisors may be internal resources or accessed through external providers. It is important to document the advice even if you decide not to act on that advice.

2.3 Unintentional variation or waiver through conduct

Ensure that you perform all contractual obligations, as failing to do so could have negative implications going forward, for example:

- Not following an acceptance process upon delivery of goods could result in goods being deemed to have been accepted.
- Not addressing supplier underperformance when reported may establish new reduced performance levels within the contract.

Some supplier communications can result in a contract variation or a waiver of Council's rights under the contract. To avoid this, ensure comments align with the contract.

When discussing a contract variation with a supplier, do not imply agreement until all aspects of the variation have been finalised, including the internal approvals required from internal relevant delegates. Keep notes of discussions and share these with the supplier to avoid differences in opinion, minimise the risk of dispute and ensure you both have a record.

If Council chooses not to enforce obligations in the contract, ensure this is clearly documented both internally and with the supplier.

If both parties agree to a variation of the terms of the contract, this should be clearly documented in writing, in accordance with the particular requirements of the contract (see step 2.13 Managing contract variations, page 60).

If you need more information about contract variations or waivers, please contact the NCC Procurement Team or legal advisors.

2.4 Building and maintaining effective professional working relationships.

An effective professional working relationship with your supplier is the cornerstone of contract management. If you have a professional and fair relationship with your supplier and maintain open communication:

- you are more likely to achieve the contract outcomes.
- you can identify and resolve problems before they escalate.
- you can discuss and resolve issues of non-compliance or underperformance in a constructive way.

You may need to strengthen your relationship with your supplier if you experience issues such as:

- poor response times to requests.
- lack of a shared understanding about key contract issues
- limited willingness to respond to requests for information or updates on progress.
- general dissatisfaction about the helpfulness of the other party.

Avoid adversarial behaviour, as this is not constructive and could damage the relationship.

Maintain a robust relationship with suppliers and providers by:
Providing positive and constructive feedback.
Listening, identifying and addressing problems promptly, and explaining decisions and actions in an impartial way.
Collaborating and respecting the supplier's expertise.
Adopting a structured approach to managing the relationship.

Relationship management for complex/strategic contracts

For more complex or strategic contracts, particularly long-term contracts, you may wish to:

- establish a charter or relationship management plan to help improve contract outcomes.
- consider using Supplier Relationship Metrics to promote open and effective engagement with the Council.

You can do this formally through the contract (where the contract allows), less formally through the Contract Management Plan or as a standalone document. Obtain advice from the NCC Procurement Team or legal advisor when preparing these documents.

Want to know more about managing relationships and conflict?

A toolkit for managing supplier relationships is available on the New Zealand Government Procurement (MBIE) website, with resources to help manage performance, run meetings, generate case studies and track innovation.

- Introduction to supplier management
- Managing relationships and conflict

2.5 Measuring performance

Performance standards should be specified in your contract, so you will need to check your contract to understand the performance parameters.

Generally, if there are no specific performance requirements in your contract:

- goods should be new and unused, fit for purpose and inclusive of manufacturer warranties.
- works and services should be provided at a standard expected of an experienced professional supplier or contractor of similar services.

Typical performance measures for a contract should include:
Quality: the quality of the works, services or goods delivered compared with the specified quality in the contract. For international or New Zealand standards, this may also require periodic auditing of compliance by an independent assessor.
Quantity: the number of items or volume of services delivered compared with the contracted number or volume.
Cost: the actual costs compared to the cost specified in the contract.
Responsiveness: the time taken by the supplier to respond to requests, compared with the contracted timeframes (e.g. in a service level agreement).
Customer satisfaction: the degree of satisfaction expressed by people receiving works, services or goods under the contract compared with the expected level of satisfaction (e.g. in a service level agreement).

You may collect information about the supplier's performance to identify any gaps between their performance and the performance standards defined in the contract. These measurable indicators may be called key performance indicators (KPIs) or service level agreements (SLAs).

A systematic approach to agreeing and assessing what constitutes 'success' helps Council to understand how well suppliers are meeting their contractual obligations and performance targets.

Any information you use to assess the supplier's performance must be accurate, fair and verifiable, particularly if this is used to justify actions available under the contract (such as withholding contract payments). If the supplier is underperforming, the contract manager should engage with the supplier as soon as possible to correct the underperformance.

Sustainable procurement

The Progressive Procurement Supplier Guide is the pathway to achieving positive, sustainable outcomes, these being economic, social, environmental and cultural. By embedding these outcomes through our procurements, we further enhance the wellbeing of our communities. Compliance may be measured through mechanisms such as meeting specifications, KPIs, and compliance with standards or certifications. Monitoring of achievements may be through activities such as reports, meetings, site inspections or audits.

The contract management process should endeavour to encourage and promote continuous improvement and innovation for sustainability.

Performance Assessment by Coordinated Evaluation (PACE)

The Performance Assessment by Coordinated Evaluation (PACE) system is a structured Framework used in New Zealand for evaluating the performance of suppliers in infrastructure and professional services contracts. It is designed to ensure accountability, encourage continuous improvement, and support future procurement decisions.

Core principles of the PACE system:

- **Systematic Monitoring**
  PACE provides a structured and consistent method for monitoring supplier performance throughout the lifecycle of a contract.
- **Continuous Dialogue**
  It fosters ongoing communication between clients and suppliers, encouraging feedback and collaboration to improve performance.
- **Performance-Based Evaluation**
  Suppliers are assessed against predefined criteria, which may include quality, timeliness, health and safety, innovation, and collaboration.
- **Transparency and Fairness**
  The evaluation process is transparent, with clear expectations and documented outcomes, ensuring fairness in assessments.
- **Historical Performance Tracking**
  Evaluations are recorded to build a performance history, which can be used in future tender evaluations to assess a supplier's track record.
- **Tailored Evaluation Forms**
  Different forms (e.g., PSF/9a to PSF/9e) are used depending on the type of contract (e.g., capital consultant, contractor, non-engineering consultant).
- **Face-to-Face Reviews**
  Evaluations often include in-person meetings to discuss performance, ensuring clarity and mutual understanding.
- **Frequency and Timing**
  Evaluations are conducted at regular intervals (e.g., interim and final), with frequency depending on contract type and size.

Objectives of PACE:

- **Encourage High Performance:** By setting clear expectations and providing feedback, suppliers are motivated to meet or exceed performance standards.
- **Support Procurement Decisions:** Historical performance data helps in evaluating suppliers during future procurement processes.
- **Improve Project Outcomes:** Through regular assessments and feedback, the system aims to enhance the quality and efficiency of project delivery.

Want to know more about PACE?

The New Zealand Transport Agency (NZTA) provides guidance documents outlining structured evaluation Frameworks and recommended performance assessment criteria:

- NZTA - Minimum Standard Z/12 Supplier Performance Evaluation Framework
- NTZA - Minimum Standard Z/11 Performance Evaluation

Supplier Scorecards

A supplier scorecard is a structured evaluation tool that uses a set of metrics, or KPIs (Key Performance Indicators), to assess a supplier's performance over time. It's also known as a vendor scorecard, supplier metric scorecard, or supplier performance scorecard. These scorecards help organisations ensure that suppliers meet contractual obligations and contribute to strategic goals.

A simple supplier scorecard evaluates performance across five key categories:

- Quality
- Delivery
- Cost
- Innovation
- Compliance

Scorecards should be developed collaboratively with the supplier.

Want to know more about Supplier Scorecards?

Supplier Scorecards are supported by guidance from New Zealand Government Procurement and are designed to ensure transparency, accountability, and continuous improvement in supplier performance:

- Principles, charter and rules | New Zealand Government Procurement
- Introduction to supplier relationship management | New Zealand Government Procurement
- Balanced scorecard template | New Zealand Government Procurement

2.6 Managing performance

Performance management is the actions taken to ensure that the works, services or goods are delivered as required under the contract. Good performance management is key to delivering the best public value. Performance management should take place throughout the life of the contract and be based on the performance Framework included in the contract.

For transactional or routine contracts, performance management is generally around determining whether the works, services or goods met specifications and were delivered on time and within the agreed budget. For more complex contracts, formal performance management approaches will be required.

Performance monitoring includes:
Performance measurement: Collecting data related to performance - from monitoring meetings, reporting, and audit or accreditation
Performance assessment: Assessing how well the service is meeting requirements and achieving outcomes
Performance adjustment: Taking action to address any opportunities to enhance outcomes or manage problems.

Most contracts progress smoothly; however, as a contract manager, you need to address supplier performance issues as they arise. Many contract management problems can be avoided by developing an effective working relationship with the supplier.

Both parties should agree:

- what aspects of performance will be measured?
- how will they be measured?
- how frequently will they be measured?
- who will do the measurement?

This information may be included in your contract.

The data that you collect about the supplier's performance can be used to identify gaps between the supplier's performance and the standards expected and defined in the contract. You need to be confident that the information you use to assess the supplier's performance is accurate, fair and complete.

If performance measurement indicates a gap between the supplier's performance and the expected standard, you need to work with the supplier to bridge the gap. This helps ensure that Council achieves what is expected and what it is being paid for.

Supplier underperformance can be minimised by having a performance measurement approach that allows prompt and ongoing feedback to the supplier about their performance, particularly regarding timeframes or deliverables. As a contract manager, you need to be aware of any signs of potential underperformance so that they are addressed promptly. It also lets the supplier know of any potential performance problems early so they can be addressed before they become serious.

Performance management arrangements contained in your contract might involve:

- discussions to hear the supplier's perspective on the performance gap.
- agreeing on corrective actions to get performance back on track.
- establishing a process for checking that the required improvements are taking place.

Corrective actions could include the supplier replacing or using additional personnel, reporting back more frequently on progress, modifying processes or systems or clarifying Council's requirements.

Avoiding and managing problems

When suppliers are delivering well and achieving good outcomes, acknowledge their efforts and results. When managing non-performance or underperformance:

- remember the issue is performance, not the person or the organisation – don't make the discussion personal.
- deal with the matter promptly - if the monthly report shows the supplier is not achieving, don't wait until you have 3 months of reports before raising the issue.

Document any discussion of performance issues, and follow up verbal discussions with an email, letter or a remedy plan so that you have a record in writing. You may need to vary the contract to reflect the resolution of the problem.

Managing more serious underperformance

If the underperformance is repeated or is more serious in nature, you may need to take formal action. Your contract will include provisions dealing with default and remediation, as well as termination. Corrective action for serious underperformance could include:

- withholding payments until performance returns to a satisfactory level
- involving senior management from both parties in formal discussions
- developing strategies to address the problem, formally documenting them and following up.
- implementing other formal mechanisms written into the contract.

You should get legal advice before taking any of these actions.

To protect Council's interests, payment for goods and services should always be linked in the contract with satisfactory performance. You should not accept, and therefore should not pay, for goods and services that do not meet the contractual standard.

Tip – managing supplier underperformance

Sometimes a supplier's apparent underperformance can be caused by Council (e.g. if the supplier does not get required inputs at agreed times, if the supplier's employees cannot access the building, if there are changes to Council requirements, if users are asking for services that are not included in the contract). It is always sensible to approach a performance gap with an open mind – it could be a problem for the supplier to fix, but it may also be a problem for you to fix internally.

2.7 Managing delivery and acceptance

The role of a contract manager is to ensure the supplier is meeting its obligations under the contract, including that the works, services or goods purchased under the contract are received on time, within budget and are fully compliant with contract specifications.

Delivery refers to physically receiving the contracted works, services or goods from the supplier.

Acceptance describes how Council determines whether the works, services or goods meet the contract requirements and formally accepts them.

General process for acceptance:

1. Check that appropriate risk management measures are in place, for example, physical security and storage of goods and whether any insurance arrangements need to be put in place.
2. Ensure the supplier has access to any facilities needed to deliver the goods or services.
3. The supplier should provide the contract deliverables on time, within budget and compliant with contract specifications. This may include providing formal documentation and supporting evidence (e.g. results of internal acceptance testing).
4. Inspect works, services or goods or review against the standards or specifications detailed in the contract (e.g. certification that deliverables meet a certain standard, acceptance testing, spot audits or verification by an independent assessor). For services, you may need to assess against contractual performance measures such as service levels and compliance with reporting requirements. If you are receiving your works, services or goods by staged delivery, ensure the full quantity is ultimately delivered.
5. Decide whether to accept or reject the works, services or goods within contractual timeframes. In some contracts, if you do nothing, then the works, services or goods will be deemed as accepted after a certain period.
6. If works, services or goods do not meet contractual standards, follow the processes set out in your contract. In most cases, this involves notifying the supplier and explaining the reasons for the rejection. The supplier must then remediate the goods or services, generally, at their own expense.

Late, incomplete or unsatisfactory delivery

If the works, services or goods do not meet the standard required in the contract, you should notify the supplier immediately and agree on a way forward to ensure they meet the contract standard. The contract may include provisions around acceptance of deliverables and the process for remediation of non-compliant deliverables, so ensure you understand and follow any contractual obligations and processes. If you fail to address the non-performance with the supplier, it could inadvertently cause a waiver of that conduct/breach (see step 2.3, page 45).

Tip – seeking legal advice

You may need to seek legal advice and a manager, or a senior manager, to understand Council's rights under the contract. Avoid doing or saying anything that might have a negative impact on Council's rights (e.g. do not pay invoices for incomplete, undelivered or unsatisfactory goods or services) until you have sought legal advice.

2.8 Subcontractors

Most contracts require suppliers to impose the contractual requirements agreed between the Council and the supplier on any subcontractors they use to deliver a contract.

If your supplier uses subcontractors, the contractual relationship remains between Council and the supplier. This means the supplier remains responsible for managing the contract, as well as managing the involvement of any subcontractors. However, you should understand what parts of the contract are completed by subcontractors and what impact it could have on the management and delivery of your contract.

The Local Government Official Information and Meetings Act 1987 (LGOIMA) requires that you must be able to make available, on request, the names of any subcontractor(s) who perform part of your contract. Suppliers should inform relevant subcontractors that their participation in a contract may be publicly disclosed. This should be a provision within your contract.

When deciding on whether to approve a subcontractor for use, think about the effect it will have on the contract, including whether it raises any risks and whether the risks identified are acceptable to manage.

2.9 Performing contract administration tasks

This phase involves implementing the contract administration processes you developed in Phase 1: Contract Start-Up. Effective contract administration provides accurate recording of contract information and progress and can help when making decisions around contract performance.

Some of the key actions to consider include:
Keep up-to-date records of who to contact. This is important where there is staff turnover (either in the Council or at the supplier's) or when individuals are in different locations. You should ensure all contact details are in your Contract Management Plan.
Manage and update contract documents, including variations or work orders, etc. This ensures contract documents are easily accessible and accurately reflect any agreed changes at a point in time. This also provides an audit trail (see step 2.13 Managing contract variations, page 60).
Check on the currency of insurances, guarantees, and indemnities (if any) as required by the contract. This is part of contract risk management.
Maintain the Contract Management Plan.
Maintain other contract plans and schedules. For example, this may include a regular assessment of compliance with plans (such as security plans) and regular review and updates of the plans.
Manage relevant correspondence relating to the contract, including contract reports, formal notices or letters to suppliers, etc.
Schedule meetings and performance reviews.

Maintain and circulate meeting minutes, file notes and other records to relevant stakeholders.
Ensure all parties follow the correct delivery and acceptance processes.
Provide financial control for the contract, including tracking expenditures (usually via a budget or spreadsheet), verifying invoices for payment and making timely payments to the supplier, etc.
Maintain processes for identifying and tracking information regarding intellectual property and confidential information.
Maintain processes to ensure supplier reporting is consistent with their contractual obligations. For example, regular reporting of data required as part of KPIs or timely reporting of security or privacy incidents.
Actively manage risks. This may be through a Risk Management Plan. Maintain and update the risk register and Risk Management Plan. Escalate issues if required.
Process and manage contract variations. **Warning:** It is possible to unintentionally vary the contract through conduct (e.g. in an email or through a conversation) so be aware of this risk in all your communications with a supplier (See step 2.3 page 45, and step 2.13 page 60).
Monitor the contract end date and options for extension. Take timely actions to ensure there is a continuous supply of works, services or goods required by Council. Careful management of end dates is important (see step 2.14 Managing contract extensions or renewal, page 62). There may be termination or extension option requirements in your contract that you must follow. **Warning:** You cannot extend an expired contract, as legally, the contract no longer exists. This means that once you have passed the end date of the contract, you cannot extend the existing contract and will need to establish a new one.

Verifying invoices

When verifying an invoice, you should check:

- The description of works, services or goods on the invoice matches the description in the contract, and the quantity matches a delivery receipt or an acceptance certificate and does not exceed the contracted amount.
- The invoice has been correctly calculated (e.g. per unit cost X number of units).
- GST has been correctly included.
- The invoice date is after the works, services or goods were received (unless in a case where payment in advance has been agreed).
- There are no other obvious errors, and the invoice meets any other contract requirements.

In some circumstances, other payment methods may be included in the contract (e.g. milestones, progress or start-up payments). If so, you will need to verify invoices according to these terms, which may include things like evidence of milestone achievement and payment amounts.

To mitigate the risk of fraud, it is good practice to have at least two separate people independently verify parts of the invoice payment process. This could include the user verifying if the correct works, services or goods were received, the contract manager verifying compliance with contract terms, a financial manager approving the payment and another person entering the information into the financial management system. This process should be proportionate to the size and complexity of your contract.

Making payments

You should only make a contract payment according to the contract provisions. Generally, you should only pay an invoice when:

- you have received the goods or services, and they meet the required standards.
- the supplier is compliant with the contract and other contract payment terms.
- you have received an accurate and correct invoice according to the contract.
- you have obtained all necessary authorisations and approvals.

You must ensure prompt payment of invoices. Late payment threatens service delivery and the relationship between Council and the supplier or provider.

Your contract may require a Practical Completion certificate if the contract has a formal acceptance process. Contractors are typically entitled to receive a substantial portion of their payment upon achieving practical completion.

Want to know more about invoicing and payments?

The Council offers detailed guidelines for Suppliers on the necessary components of invoices at https://www.napier.govt.nz/our-council/procurement/invoicing-and-payments/

Additionally, you can contact the NCC Creditors Team for assistance.

Keeping records

Good record-keeping helps you manage risk and provides auditable evidence of events and decisions. Records of communications, meetings, reviews and any resulting actions provide context and can be used for resolving issues.

Relevant documents include documents that record decisions and/or approvals (including documents with signatures, the signed contract and any contract variations). Documents should be stored and files in accordance with Council's Information Management Policy.

A systematic approach to record-keeping at the beginning of a contract will assist the Council to:

- provide evidence of business conducted and decisions made.
- respond to information requests.
- manage legal and other risks.
- meet its accountability obligations.

As such, keeping good records should be seen as an integral part of, rather than an incidental to, contract management activities. Refer to Council's Information Management Policy for more information.

Managing resources

Council needs to adequately resource the management of its contracts. This means providing you with senior management support, necessary expert advice and personnel with relevant skills (or the opportunity to obtain them). These skills include contract management and may include interpersonal, subject matter and project management skills

2.10 Managing contract risk

Managing risk is an essential part of procurement and contract management. As the contract manager, it is your job to deal promptly and effectively with any risk events that may occur during the life of your contract, but all officials with a role in managing the contract also play a part in managing risk and identifying emerging issues.

You need to include identified risks in your Contract Management Plan, or if the risks are substantial, into a separate Risk Management Plan (see steps 0.1 to 0.4). You will need to review and update the plan to reflect the current stage of the contract and continue to update it periodically throughout the contract performance phase.

Your approach to managing risks for individual contracts should be consistent with Council's broader risk management Framework.

2.11 Contract review

To achieve the best public value, you should ensure both the Council and the supplier meet their obligations under the contract.

During the life of the contract, you should review the contract periodically to assess if you are meeting the contract outcomes or if they are on track to be met. You should also assess whether the contract continues to accurately reflect Council's requirements. This may be through regular contract review meetings or through a reporting schedule. The timing and frequency of contract reviews are driven by factors including contract risks and duration. For long-term or high-risk contracts, you might require monthly performance reviews, and for low-risk contracts, an annual review may be more appropriate.

You should also do a formal review when deciding whether to extend a contract (see step 2.14, page 62).

2.12 Managing complaints, disagreements and disputes

You can make a complaint if unhappy with the works, services or goods delivered by the supplier, or if the supplier doesn't provide the works, services or goods to the agreed quality or within agreed timeframes. You may receive these complaints through users, stakeholders or from your own observations.

Supplier complaints often relate to late payments or a perceived failure by the customer to meet its obligations.

If you or a supplier makes a complaint, ensure you:

- follow any processes set out in the contract regarding complaint handling.
- keep records of all conversations with the supplier regarding the complaints
- keep records of all complaints and actions taken to resolve them.

Most complaints can be resolved by talking to everyone involved to understand their perspective and then jointly agreeing on corrective action, if appropriate.

Contractual disagreements can arise when the individuals involved cannot agree on issues such as the interpretation of contract provisions, the definition of deliverables, meeting performance standards and/or the effect of unexpected events.

A complaint or disagreement may become a formal dispute when those involved cannot resolve the issue without a formal resolution process.

Many contracts contain a formal dispute resolution process that **MUST** be followed.

The dispute resolution process may include details such as periods of notice, methods of delivering notices, information about show cause notices or other communication issues. Ensure you read and understand the relevant clauses of your contract before dealing with any issue that arises. You may also want to get legal advice on rights and options before you take any formal action or make recommendations to relevant delegates. This will ensure that your actions protect Council's legal rights.

If you recognise and address a potential or actual dispute early, it can reduce costs to both parties and will help to maintain a good working relationship.

Formal dispute resolution processes (e.g. arbitration, litigation) are a last resort and should only be started after attempts to resolve the dispute by negotiation, escalation and mediation have failed to resolve the issues, subject to the processes required in the contract terms.

NOTE: If either party triggers the dispute resolution clauses, you need to promptly obtain legal advice.

Some of the key actions to consider include:
Engaging the supplier in open, transparent, constructive conversations about complaints or disagreements promptly.
Understanding the supplier's perspective.
Agreeing on corrective actions to bring the works, goods and/or services within the requirements of the contract.
Escalating issues if necessary to achieve resolution.
Use formal dispute processes only if you are unable to resolve issues using fewer formal processes (e.g. negotiation, escalation, mediation).
Ensure you follow the dispute resolution clauses of the contract to protect the Council's rights.
Engaging with legal advisors if you need advice regarding the escalation and management of disputes.

Tip – managing complaints

End users may approach you with complaints about the works, services or goods provided to them under the contract. As the contract manager, it is your job to look into the complaint and consider whether it is something that you need to raise with the supplier.

Be aware that sometimes a complaint, even though genuine, is not covered by the contract. For example, a member of staff may complain that the cleaners are not washing dirty dishes in the sink when this is not included in the cleaning contract.

You need to manage complaints according to the terms and conditions of the contract. If you cannot resolve the complaint or the complaint indicates a serious or systemic issue, you should escalate the matter to a higher authority.

Early attention to complaints that arise in the contract management phase can prevent formal disputes from occurring. If a dispute about your contract does arise, you must carefully follow the dispute resolution process contained in the contract.

What is negotiation?

In contract management, negotiation usually means talking openly, transparently and constructively with the other party about the issues raised to see whether it is possible to reach an understanding about how those issues can be resolved. You should aim for a fair and equitable outcome for all parties.

It is preferable to resolve contractual issues as early as possible. This can save time and help to maintain the delivery of works, services or goods provided under the contract.

You must keep proper records of all negotiations during the life of the contract, whether the negotiation was successful in resolving the issue or not. Proper records will allow you to determine if the same issue keeps arising, if the supplier is performing in accordance with the agreements they made with you, and if Council is honouring commitments made to the supplier.

Any agreement you reach with the supplier must be consistent with the terms and conditions of the contract, with any proposal to change these arrangements identified and managed as a contract variation. You should be careful not to negotiate away important aspects of the works, services or goods that Council is paying to receive under the contract. This would reduce the public value obtained in the procurement.

What is escalation?

If you cannot resolve issues directly with the supplier, you may consider escalating the negotiation through your entity's hierarchy, so more senior people from your entity can negotiate with more senior people from the supplier.

What is mediation?

Mediation involves the use of a neutral third party (the mediator) to assist the parties in resolving their issues. The mediator does not impose a decision on the parties but instead applies a structured process to help the parties resolve the dispute themselves.

Mediation can be faster, less formal and less costly than court proceedings or arbitration. Limitations of mediation may include difficulty enforcing the agreement if one of the parties decides they no longer wish to comply, and the risk that the parties cannot reach an agreement at all.

What is arbitration?

Arbitration is a formal dispute resolution process in which the parties refer their dispute to an independent third person (the arbitrator) for resolution. The aim of arbitration is usually to get a final and enforceable result without the costs, delays and formalities of litigation. Arbitration proceedings can be less complex than litigation, and the arbitrator can be a person who is able to provide independent technical expertise relevant to the contract.

Arbitration can be costly, and it is possible that neither party will be satisfied with the outcome (which is often binding). Other limitations of arbitration can include difficulty agreeing on an arbitrator and finding an arbitrator with the right expertise for the case.

Get legal advice if you are considering arbitration.

What is litigation?

Litigation is the process of seeking compensation through the courts or other tribunals. A judge will hear the evidence presented by both parties and will reach a binding decision based on the facts of the situation and the application of relevant law.

Litigation is generally the most expensive way to resolve a dispute and can be time-consuming. The proceedings are usually public, there are significant risks associated with the process, and the parties may not be fully satisfied with the decision of the court. Litigation is generally only undertaken when other avenues of dispute resolution have not been successful or are not available.

If you are considering litigation, you MUST obtain legal advice.

2.13 Managing contract variations

Making changes to an established contract is called a contract variation. Contract variations can be minor administrative changes, such as a change of address, or they can be substantial changes that affect the length, price or deliverables under the contract.

Council should not seek or allow a contract variation where it would amount to a significant change to the contract or significantly vary the scope of the contract if it could reasonably be determined that:

a. other potential suppliers may have responded differently to the amended contract scope in the tendering process, which may have produced a different public outcome, or
b. the variation may compromise the original procurement's public value assessment.

Council may allow minor contract variations, where these do not negatively affect the achievement of the best public value in the contract.

The need for a contract variation may arise due to:

- unexpected events (including delays in delivery)
- changes in technology
- changes in legislation or policy
- minor changes to Council's requirements
- changes in key personnel
- changes in delivery method or location
- changes to milestone delivery dates
- fluctuation in demand for the goods or services
- other factors that affect contract delivery.

The variation process you should follow is usually covered in the contract.

Before initiating or agreeing to any variation, the Contract Manager should determine:
Whether the variation is needed.
The effect of the proposed variations on delivery.
What effect, if any, will the proposed variations have on the contract price?
The effect of the proposed variations on other terms and conditions of the contract.
Whether the variation will transfer or create risk.
The details of the variation and whether it may amount to unfair treatment of unsuccessful tenderers who are denied an opportunity to tender for the changed requirement.
Whether the variation will affect the original public value assessment.
What consequential changes may be needed to implement the variation?
Whether the variation has any follow-on implications.

The variation process you should follow is usually covered in the contract.

Either Council or the supplier can request a contract variation, but it must be agreed upon by both parties to be legally binding. A variation can be implemented without being formalised in writing. So be aware of what you say during meetings and informal discussions to ensure you do not accidentally vary the contract (see step 2.3 Unintentional variation or waiver through conduct, page 45).

You need to document your decision-making process for a contract variation to ensure your position is defensible and the contract still presents the best public value. You should discuss any proposed variation to a contract with the supplier, document the variation in writing and ensure both parties sign as evidence of agreement to the changes (usually through a Contract Variation).

Before finalising a variation, find out what approvals or authorisations you need to get, as well as the appropriate delegate, particularly if the variation will result in a change to the overall value of the contract.

Even if the delegate only needs to approve the amount of the variation, it is good practice to detail the new amount of the whole contract (the original contract value plus any variations to date plus the current variation). Ensure that any variations that alter the contract price are registered in the contracts register.

Tip – Financial Delegations

In the first instance, refer to the NCC Financial Delegations Policy, and if unsure, consult the NCC Procurement Team to identify the amount that requires approval (the variation amount or the whole new contract amount).

2.14 Managing contract extensions or renewal

You may choose to extend a contract for an additional period if there is a continuing need for the goods or services.

You can only extend a contract if **all the following conditions are met:**

1. the contract contains an (unused) option to extend.
2. it is best public value to extend the contract and
3. the contract has not yet expired.

If you choose to extend a contract, you should follow the process for extension contained in the contract. If you do not meet the conditions for a contract extension, seek legal advice. You may have the option to:

- Put in place a short-term contract to cover the period until you complete a new procurement process and establish a new contract.
- Extend a contract-by-contract variation before the contract end date for a short period of time, where:
    a. the procurement process for a replacement contract is still ongoing, and continuity of the supply of works, services or goods is essential, or
    b. the scope and the value of the contract remain largely the same. This can allow for the finalisation of the contract when experiencing minor delays.

Key steps in this process are:
Determining whether there is an ongoing need for the goods or services.
Determining whether the existing contract has an option to extend. **Warning:** You cannot legally extend an expired contract. This means that once the end date of the contract has passed, you cannot exercise an extension option, even if one exists, or extend through a contract variation.
Considering whether extending the existing contract would represent the best public value, and if so, gaining necessary approvals and following the extension process contained in the contract.
Initiating contract renewal in a timely manner. If the contract does not have an option to extend or all extension options have been used, but the works, services or goods are still required, seek legal advice. You may need to initiate a new procurement process that will need to follow Council's policies and processes for procurement, including procurement thresholds and delegations.
Keeping appropriate records for all decisions made in relation to extending or renewing a contract.

Phase 3

3. What activities should I do in contract closure?

The table below lists activities that may be relevant during contract closure. The categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

Activities during the contract closure phase include:		Transactional Contract	Routine Contract	Complex Contract	Strategic Contract
3.1	**Consider and manage contract transition issues (page 65)**	Not required	Recommended	Strongly Recommended	Strongly Recommended
3.2	**Complete contract closure activities (page 66)**	Required	Required	Required	Required
3.3	**Conduct final contract review (with supplier) (page 67)**	Not required	Recommended	Strongly Recommended	Strongly Recommended
3.4	**Consider lessons learned (page 68)**	Recommended	Recommended	Strongly Recommended	Strongly Recommended

Most contracts close because they have been satisfactorily completed, where both parties have completed all their obligations under the contract and/or the end of the term of the contract has been reached. This is often called ‘expiration’.

Sometimes, you will end a contract before it has been completed. This is called ‘termination of a contract’. Terminating a contract early can carry risks, including reputational, business, financial, and legal risks. If you are thinking of terminating or ending a contract early, you should seek legal advice before discussing the possibility with the supplier or taking any action.

Tip – ending a contract for any reason other than successful completion

You should seek legal advice before considering ending a contract through termination. The contract will likely include specific termination clauses, which will set out the circumstances when each party can terminate the contract, the process to be followed, and the result of the termination.

Where the termination is due to a default by the other party, many contracts require the parties to follow the dispute resolution and other procedures before exercising the right to terminate the contract. Following those procedures is extremely important. If you do not follow them before exercising a right to terminate, it can result in Council being obliged to pay damages to the supplier.

How can contracts end?

Mutual agreement: A contract is the result of an agreement. The parties to a contract can terminate a contract at any time if they all agree on the termination, even if the contract has not been completed. You should keep a detailed record of the exact terms of the agreement to terminate and the rights and obligations of everyone involved. **You will need to get legal advice** in this situation.

Novation: This occurs when a party's rights under a contract are transferred to a third party. This means the original contract is terminated, and a new one is put in place with the third party on the same terms. An example of novation might be when a supplier sells its business to a third party during the life of a contract and requests a novation of the contract to the new business owner. In this case, the original contract is transferred to the new business owner (this ends the original contract and creates a new one with the new business owner). **You will need to get legal advice** before novating a contract.

Termination by breach (default): In some circumstances, you may have the right to terminate the contract due to a breach of the contract by the supplier. You should never consider termination as the first or only option when a problem arises in a contract. Termination has consequences – not all of them favourable to the terminating party. **You will need to get legal advice** in this situation before considering terminating for breach.

Termination for convenience: Some contracts include a right for the Council to terminate the contract for convenience, after providing notice to the supplier. When this occurs, it is often balanced by provisions that provide compensation to the supplier for costs incurred or costs unavoidably incurred at the date of termination. This is a complex area of law, and the outcome depends on the circumstances of the case as well as the contract provisions. **You will need to get legal advice** in this situation before considering terminating a contract for convenience.

3.1 Consider and manage contract transition issues

You may need to manage a contract transition if:

- you still need works, services or goods after the completion of one contract, and
- you are moving to a new contract.

The new contract may be with the existing supplier or a new supplier.

The transition from one contract to another can be a period of risk. Check your contract to see what has been included about transitioning out. If your contract requires a transition-out plan or checklist, ensure it is in place before the transition.

If the contract requires a Transition Plan, ensure it:

- meets the timeframes and requirements under the contract.
- can manage Council's risk associated with the transition.

A transition-out plan needs to be arranged before the end date and should be done before your approach to market for the new contract.

Ensure you understand, record, manage and enforce the obligations of the Transition Plan on the outgoing supplier, as well as Council's obligations to the supplier.

Some typical transition issues are:
Developing a timeline of activities/events, including changeover periods.
Identifying resource requirements.
Identifying key roles and responsibilities and how these change with the transition.
Identifying specific differences between the current and future contracts.
Considering training requirements.
Identifying risks and applying risk management to maintain a continuous supply of works, services or goods and managing the effects on customers.
Considering matters connected with the return of Council's fixed assets and/or information.
Determining and dealing with any transitional arrangements that need to be negotiated with the incoming or outgoing supplier.
Managing the outgoing supplier's performance through to the conclusion of their contract.

3.2 Complete contract closure activities

At the end of a contract, you should formally close the contract according to the terms and conditions in the contract.

Some relevant activities include:
Verifying all work has been completed and all deliverables have been received to an acceptable standard.
Verifying all other contractual obligations have been fulfilled to an acceptable standard.
Obtaining all final reports, documentation, and certifications from the supplier.
Confirming final invoices have been received.
Arranging to cancel access passes, remove system access, etc.
Arranging for the return of any materials or assets provided to the supplier.
Arranging for the return, safe custody or destruction of any information or data, including confidential information that was provided to the supplier or created by the supplier under the contract.

Arranging to transfer any Intellectual Property (IP) to Council.
Checking that all defects have been identified and rectified.
Finalising outstanding claims.
Finalising outstanding disputes.
Documenting information on warranties available under the contract (for users).
Advising users that the contract has finished and providing them with advice about future arrangements (see step 3.1 Consider and manage contract transition issues, page 65)
Advising other stakeholders that the contract has finished and providing them with relevant reports or other information they need to finalise their involvement.
Providing feedback to the manager or the NCC Procurement Team to include in future procurement processes.
Retaining contract management documentation in accordance with the Public Records Act 2005 and Public Audit Act 2001 to enable any future audit or LGOIMA requests, including the signed contract and any variations.
Identifying and documenting contract provisions that may continue to operate after the completion of the contract, such as confidentiality obligations.
Documenting and sharing any lessons learned.
Only after completing all of the above:
Pay final invoices, return or terminate any performance securities, refund retention moneys (if any) in accordance with the contracted timeframes and close purchase orders in the financial management system.

3.3 Conduct final contract review (with supplier)

Conducting a final contract review allows you and the supplier to:

- ensure that all obligations have been fulfilled by both the supplier and Council.
- assess performance, outcomes and whether you have achieved the best public value.
- provide feedback.
- review the effectiveness of the delivery of outputs.
- review contract effectiveness.

You can use this information to develop lessons learnt.

The depth and detail of the contract review will vary depending on the complexity of the contract and whether you will need to procure similar works, services or goods in the future.

The final contract review could include consideration of:
Whether the contract achieved its objectives, considering timeliness, quality and cost.
Analysis of the supplier's performance, including recording any value-added achieved.
Analysis of Council's performance.
Information about the satisfaction of users, including identifying any major complaints.
Analysis of the effectiveness of contract variations and why they were required.
Information about disputes that arose during the contract, and the supplier's willingness to resolve issues.
Review of budgeted versus actual costs and reasons for the difference.
Analysis of whether the best public value was achieved, including a comparison against the original public value assessment.
Identified issues in planning, management, administration and processes, including how each was addressed and the effectiveness of each treatment.
Discussion of other things that went well, or opportunities for improvement in future contracts.

3.4 Consider lessons learnt

Gathering lessons learnt, during a contract and when closing a contract, can help you to:

- apply learnings and improve contract management processes.
- improve future procurement activities.

Appendix 1. Common contract provisions

Every contract must include provisions to protect the interests of Council, and as the person responsible for contract delivery, you need to understand the intent and consequences of all the provisions included in your contract.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to these common contract provisions.

If you have an issue that arises around these provisions, you should rely solely on the terms and conditions within your contract and seek advice from your legal advisors or the NCC Procurement Team.

A1.1 Access to premises, systems and records

A contract may grant a supplier access to the Council premises, records or systems, so the supplier can fulfil its obligations under the contract. The contract details the scope of the access rights and the obligations of the parties in relation to such access. Council will usually retain the right to withdraw the supplier's access to its premises and systems or to require the return of any records or source data.

The contract also usually places obligations on the supplier to ensure that its personnel comply with the relevant policies, health and safety, and security requirements of Council when accessing the facilities. Access to Council's premises may require supplier personnel to hold an access pass or complete security vetting processes.

Local Government contracts generally provide for people authorised by Council to have access to the supplier's premises and records associated with the contract, and to subcontractors (if relevant), premises and records. This is typically required for reasons such as:

- monitoring quality and performance
- as part of the payment, accountability and transparency requirements
- for reviewing subcontractor's conditions of engagement and compliance with policies.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to access to premises, systems and records.

When granting a supplier's personnel access to premises, systems and records, you must ensure that any requirements contained in the contract provisions are strictly adhered to. For example, you may need to seek confirmation from the supplier as to the security clearances held by its personnel or make arrangements for supplier personnel to receive appropriate IT briefings before they are permitted to access any internal system.

IMPORTANT

Depending on the nature of the contract and the associated risk profile, a supplier security briefing may be required.

If a supplier will have access to, or be responsible for, managing confidential information, the Contract Manager **must** ensure a privacy briefing is conducted prior to granting access.

For assistance in preparing or delivering a privacy briefing, please contact the NCC Privacy Team: privacy@napier.govt.nz

When seeking access to a supplier's premises or records, pay careful attention to any requirements for notices to the supplier, permitted use of records, or other conditions that are contained in the contract provisions.

You should also have regard to contractual provisions regarding information security, such as:

- ICT security provisions, cyber security provisions and provisions requiring compliance with government Frameworks, such as the Protective Security Requirements (PSR) and the New Zealand Information Security Manual (NZISM)
- provisions dealing with the protection of personal information under the Privacy Act 2020, including the notifiable privacy breaches under the Act, the Public Records Act 2005, and the Local Government Official Information and Meetings Act 1987. See section A1.11 Protection of personal information and data protection for more information.

ICT security

NCC uses Self-Assessment and Management for Compliance for ALGIM (SAM - Local Government) Framework https://samcompliance.co/compliance-Frameworks, which is based on CIS Critical Security Controls https://www.cisecurity.org/controls.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to information security. These provisions can be complex and can include specific ICT requirements, reporting obligations or performance measures related to data security.

It is advisable to seek technical advice from the NCC Information Services team if any issues arise: ITsupport@napier.govt.nz

Some contracts may contain provisions that require immediate, timely and/or regular reporting on suspected or actual security incidents to Council. These requirements may be incorporated into the performance standards, Service Level Standards or KPIs. You should be aware of these provisions, including any assessment of compliance with the provisions that require regular reviews of supporting documentation (such as Security Plans and the like).

A1.2 Assistance provided to the supplier

Suppliers are often provided assistance with access to Council equipment, information or data to facilitate the delivery of goods or services, and the level of assistance to the supplier can affect the final price of the contract.

Where assistance is provided to a supplier under a contract, the nature of that assistance must be clearly identified in the contract and usually addresses:

1. what is to be provided to the supplier
2. the manner, place and times for providing the assistance
3. allocation of ownership and risk, including responsibility for any maintenance, inspection and testing, as well as any audit or stocktake requirements
4. any limitations on use, storage, transfer of possession, ownership, marks/plates or modification
5. identification of the party responsible for loss, damage, or replacement, including fair wear and tear
6. return, transfer or destruction at the end of the contract.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to the assistance to be provided to the supplier.

Council is obliged to provide the supplier with all assistance that is stipulated in the contract, and you must make suitable arrangements for this to occur. If you fail to provide that assistance in the agreed manner, at the contracted time and place, there may be serious consequences for the delivery of the contract and may place the Council at risk of being in breach of contract. You should also make suitable arrangements to verify that any equipment, information or data provided to the supplier under the contract is properly managed, handled, stored, used, returned or disposed of according to the provisions of the contract.

A1.3 Insurance

For most transactional, routine and complex contracts, the Council expects the supplier to propose and maintain a prudent level and type(s) of insurance appropriate to the risks and complexities of the works, services or goods being procured. For strategic contracts, the Council may require the supplier to obtain and maintain a particular level and/or type of insurance or may allow the supplier to propose and maintain a prudent level and type(s) of insurance appropriate to the risks and complexities of the works, services or goods being procured.

The contract provisions usually provide the Council with the right to seek confirmation of the type and level of insurance held by the supplier and to seek evidence that the insurance is being maintained. The contract provisions may also specify a period for which the insurance is to be maintained by the supplier, which may sometimes extend past the completion of the contract (e.g. professional indemnity insurance, defects insurance).

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to the insurance to be maintained by the supplier. You should establish systems and processes to seek evidence that the agreed level and type(s) of insurance have been obtained by the supplier and that this is maintained over the period specified in the contract.

Council's insurance requirements

Insurance requirements are dependent on contract value and risks.

Insurance is a critical component of Council's risk management strategy, providing financial protection against unforeseen events and minimising potential losses. A comprehensive insurance program is essential for Council to manage risks, protect assets, and ensure business continuity.

The main purposes for requiring a supplier to effect and maintain insurance are:

- to reduce the risk of the supplier not having sufficient financial resources available to meet a liability to the organisation or some other party (i.e. Council); and
- to ensure that the supplier will receive financial support to fund its own insurable losses and liabilities and still be able to perform its obligations under the contract.

Want to know more about Councils insurance requirements?

Refer to the NCC Insurance Reference Guide for guidance on setting insurance levels and requirements for your project. If there is ambiguity or doubt, please contact the appropriate Napier City Council insurance officer.

A1.4 Intellectual property rights

Intellectual property (IP) rights include various classes of rights covered by legislation, including copyright, patents, registered designs and trademarks.

Contracts will include provisions to deal with the ownership and rights to use IP rights in material created under or otherwise relevant to the performance of the contract. These provisions usually consider 'new' material created under the contract (sometimes called foreground IP), as well as material that was previously created outside the contract that is incorporated in the deliverables under, or required for the performance of, the contract (sometimes called background IP). These provisions can be quite complex, as they need to consider material created by the supplier, material created by third parties (such as subcontractors of third-party vendors), material created jointly by the supplier and the Council, as well as material provided by Council.

Intellectual property rights are a complex area of law, and you should consider separate legal advice if the contract will involve significant intellectual property issues.

A1.5 Key personnel (specified personnel)

In contracts dealing with the provision of professional services, the skills, qualifications or experience of particular people may be critical to the public value assessment and the provision of the contract deliverables by the supplier. In such cases, the contract will contain provisions that these specified personnel perform nominated roles in relation to the contract. The contract will also contain arrangements to replace specified personnel if necessary. This often includes arrangements for Council to approve replacement personnel. If certain minimum skills, qualifications or experience are required to be held by specified personnel, these will also be stated in the contract.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to key personnel or specified personnel.

You should establish systems and processes for determining that the work has been performed by an approved person and that the personnel performing the work have the required skills, qualifications or experience as laid down in the contract. You should also confirm with the supplier that qualifications or accreditations held by key personnel are current.

A1.6 Liabilities and indemnities

An indemnity is a contract provision that allocates liability between the parties and is generally expressed in the form of one party indemnifying the other for a particular type of liability.

Granting indemnity to the suppliers

Indemnity provisions that require Council to accept the risk of specified losses or damage the supplier may incur or suffer, can have significant legal, policy and financial implications. In many situations, you must obtain approval from a relevant delegate to provide indemnity to a supplier. An example of this type of indemnity is when booking a venue for a meeting, most venue contracts require the hirer (in this case, the Council) to indemnify the venue owner for any damage to the premises caused by attendees at the function. **You should seek legal and insurance coverage advice before giving an indemnity to the supplier.**

Receiving indemnity from the supplier

Many contracts contain an indemnity from the supplier to Council that makes the supplier liable for loss, damage or expenses incurred by Council because of the actions of the supplier or their subcontractors. An example of this type of indemnity is a requirement for the supplier to cover costs incurred for a training program if the supplier cancels that program (e.g. venue deposits, catering costs, travel costs for participants). A significant issue is whether the supplier's liability should be capped or limited. Any decision to cap or limit a supplier's liability should be based on a formal risk assessment. **This is a complex area of law, and you should seek legal advice if any issues arise in connection with indemnities from the supplier.**

Contingent liabilities and liability caps

Contingent liabilities are commitments that may give rise to a cost because of a future event. Typical liabilities are:

- An indemnity is a legally binding promise whereby the Council undertakes to accept the risk of loss or damage another party may suffer.
- A guarantee is a promise whereby the Council assumes responsibility for the debt or performance obligations of another party on default of its obligations.
- A warranty is a promise whereby the Council provides certain assurances to the other party to an arrangement.

Where an arrangement doesn't explicitly allocate liability, this may be determined by general law. To create certainty, a liability regime may be agreed upon and set out in a contract. This allocation of risk between parties on the occurrence of a future event creates contingent liabilities.

In some instances, your contract may include a liability cap. A liability cap does not necessarily create a contingent liability.

A liability cap should be treated as an indemnity involving a contingent liability if:

- it involves limiting a supplier's contingent liability to a third party, so the Council is liable to the third party for any excess above that cap, or
- limiting a supplier's exposure for damage the supplier has suffered itself, so the Council is liable to the supplier for any excess.

This is a complex area of law, and you should always seek legal advice.

A1.7 Securities and guarantees

In some situations, it may be necessary to obtain some form of guarantee or security for the supplier's performance. These can take a variety of forms. The two most common being:

- **Financial:** these are often provided by a bank or other financial institution and entitle Council to obtain a specified amount of money directly from the provider of the guarantee to cover Council's costs or other amounts due under the contract, should the supplier fail to perform its contractual obligations.
- **Performance:** in which a third party agrees to take responsibility for performing the contract when required to do so by Council, usually in the event of a default by the supplier.

Securities and guarantees are useful where significant amounts of money are involved or where an upfront substantial payment is to be made to the supplier prior to delivery and acceptance of the goods or services. They are also common where the supplier is a subsidiary, with the parent company providing the guarantee.

This is a complex area of law, and you should seek legal advice before seeking to claim on any form of security or guarantee.

A1.8 Subcontracting

In relation to subcontracting, the contract provisions usually require the supplier to:

- provide full details of any subcontractors it proposes to engage
- inform relevant subcontractors that the subcontractor's participation in fulfilling a contract may be publicly disclosed, and obtain the subcontractor's agreement to the public disclosure
- seek approval from Council before engaging subcontractors
- acknowledge that the supplier retains responsibility for ensuring that subcontractors perform all their obligations
- flow down certain obligations to the subcontractor from the supplier's contract
- retain responsibility for ensuring that subcontractors comply with all relevant Council policies.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to subcontracting.

You should establish systems and processes for determining that the supplier has complied with the obligations relating to subcontracting that are contained in the contract.

A1.9 Warranties and fitness for purpose

Warranty provisions cover your rights and obligations and those of the supplier in relation to defects that may be identified in the works, services or goods after delivery.

Warranties may provide contractual rights for you to:

- reject goods and be paid a refund
- have defects repaired
- have the works, services or goods replaced.

Generally, contracts stipulate the time period after the acceptance of works, services or goods in which you can make a claim for warranty action.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to warranties and fitness for purpose.

You should promptly and diligently review the delivery and acceptance of goods to ensure that you have received the correct items in the right quantity, in good repair, at the agreed time and in accordance with any other contractual provisions (e.g. packaging, location for delivery). You may need to use a suitable technical advisor to assist you in determining if the goods meet the contract specification. Some entities may have a formal quality control or quality inspection process, which will provide advice about the acceptance of goods.

If the contract is for the delivery of services, the contract manager should promptly compare the services that have been delivered to the service standards contained in the contract to ensure that the contractual requirements have been met. This may involve seeking feedback from user representatives or gathering direct evidence about the standard of services by methods such as site inspections, spot checks or other forms of service audit.

If works, services or goods need to comply with a New Zealand or international standard, you must make reasonable enquiries to determine compliance with that standard. This includes gathering evidence of relevant certifications and periodic auditing of compliance by an independent assessor.

If the works, services or goods do not meet the expected standard, you must strictly adhere to the contract provisions, particularly provisions on:

- the rejection of goods or services, paying particular attention to the time frame for accepting or rejecting the goods or services
- notices that must be given to the supplier
- any time periods that apply for the supplier to remedy the defects
- any impact that the defects may have on the amounts payable under the contract.

A1.10 Confidentiality

Confidential information is usually a defined term in a contract and will have a definition similar to information that is by its nature confidential, which is designated by a party as confidential and which the parties know, or ought to know, is confidential. Information that is already or becomes public knowledge other than by a breach of the contract is not regarded as confidential information.

Confidentiality provisions in a contract prevent the supplier from divulging any Council confidential information to a third party without the prior written consent of the Council. Contracts also usually contain a reciprocal provision that prevents the Council from divulging any of the supplier's confidential information without prior written consent. The provisions usually require the supplier and its subcontractors to provide a written non-disclosure agreement at the Council's request. Sometimes there are exceptions to the obligation of confidentiality, for example, when the information is otherwise in the public domain, is disclosed to legal advisors for the purpose of complying with obligations or exercising rights under the contract or when required for the Office of the Auditor-General (OAG).

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to confidentiality and exceptions. **These provisions can be complex, and it is advisable to take legal advice if any issues arise.**

You must ensure that any actions taken in relation to confidentiality are consistent with the contract provisions. You must strictly adhere to any form and content requirements contained in the contract for notices, permissions and undertakings in relation to confidentiality.

A1.11 Protection of personal information and data protection

Personal information is defined in the Privacy Act 2020 (Privacy Act) to mean information or an opinion about:

- an identified individual or
- an individual who is reasonably identifiable

Whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not.

Contracts will contain provisions that impose upon the supplier an obligation not to do an act or engage in a practice that would breach the Privacy Act. Contracts must also contain provisions that ensure that the same obligations are imposed on any subcontractor(s). These provisions will usually require the supplier to provide the Council with a copy of the supplier's and any subcontractor's privacy policy, security and data protection policy and any processes implemented by the supplier and the subcontractor(s) to comply with the Privacy Act.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to the protection of personal information and data breaches. **These provisions can be complex, and routinely refer to provisions of the Privacy Act, so it is advisable to seek legal advice if any issues arise.** If unsure, contact the NCC Procurement Team.

You must have proper processes and procedures in place to request, receive and review the supplier's and subcontractor's policies and processes if the provisions of the contract require this. You may need to take specialist advice on whether these policies and procedures are adequate to address privacy and data security risks and decide how to manage any risks that arise in this area.

IMPORTANT

Depending on the nature of the contract and the associated risk profile, a supplier security briefing may be required.

If a supplier will have access to or be responsible for managing confidential information, the Contract Manager **must** ensure a privacy briefing is conducted prior to granting access.

For assistance in preparing or delivering a privacy briefing, please contact the NCC Privacy Team.

Privacy breaches

The Privacy Act Principle 5 requires entities to make sure that there are reasonable security safeguards in place to prevent loss, misuse or disclosure of personal information.

Under the Privacy Act 2020, if Council has a privacy breach that either has caused or is likely to cause anyone serious harm, you must notify the Privacy Commissioner and any affected people as soon as you are practically able.

As a guide, our expectation is that a breach notification should be made to the Privacy Commissioner **no later than 72 hours after** entities are aware of a notifiable privacy breach. (NotifyUs)

A privacy breach occurs when an organisation or individual either intentionally or accidentally:

- Provides unauthorised or accidental access to someone's personal information.
- Discloses, alters, loses or destroys someone's personal information
- A privacy breach also occurs when someone is unable to access their personal information due to, for example, their account being hacked.

As the contract manager, you should be aware of these provisions in your contract, as well as any associated and supporting policies, procedures or documentation.

You should contact Council's internal Privacy Team privacy@napier.govt.nz for guidance on understanding the requirements under the Privacy Act or if issues arise.

Want to know more about the Privacy Act 2020?

For further information regarding compliance with the Privacy Act, visit the Office of the Privacy Commissioner's (OPC) website (https://www.privacy.org.nz/)

The Privacy Act sets out 13 Privacy Principles that govern how you should collect, handle and use personal information. (Privacy Act 2020 and the Privacy Principles)

The Privacy Act requires entities to incorporate compliance with the Principles into contracts to ensure that the contracted service provider is contractually obligated not to engage in action that would breach the Principles.

Appendix 2. Glossary

All-of-Government Contracts (AoG) are usually Panel Contracts established by MBIE or other agencies that are approved centres of expertise for common works, services or goods (e.g. vehicles, laptops, and recruitment services).

Conflict of interest declaration means a form on which a person will disclose any real/apparent/potential conflicts of interest that exist or may arise in the course of their employment and is signed by that person as a declaration.

Delegate means an official who has been given statutory authority, by an instrument of delegation, to make decisions or perform particular functions. A delegate is constrained by any limitations expressed in the delegation instrument.

Goods are items that are capable of being owned. This includes physical goods and personal property as well as intangible property such as Intellectual Property (e.g. a software product).

The **Government Procurement Rules** (GPR, Rules) are issued by the New Zealand Government Procurement. The GPRs are the core of the Central Government procurement policy Framework. Local Government entities (i.e. Local Councils) are encouraged to adopt the GPRs.

Key performance indicators (KPIs) are metrics that are measurable and verifiable that, at a point in time, will provide an indication of the level of performance by the supplier against the outcomes of the contract.

Local Government means non-central Government entities that are subject to the Public Finance Act 1989 and Public Service Act 2020.

The **NCC Procurement Team** is the area within Council that is responsible for issuing internal procurement advice and monitoring procurement activity performed by Council.

Non-disclosure agreement is a commitment to keep certain information, shared from one party to another, confidential and to use that information only as intended within the contract.

Not required means, within the contract activity table used in this guide, that the activity is not necessary for a contract at this level of complexity.

Progressive Procurement is the pathway to achieving positive, sustainable outcomes, these being economic, social, environmental and cultural.

Public Sector includes agencies in the:

- Public service (departments and ministries)
- the wider State Services (e.g. Crown Entities, Crown Research Institutes, entities listed in Schedules 4 and 4A of the Public Finance Act 1989, and School Boards of Trustees) and
- the wider State Sector (e.g. Offices of Parliament, Tertiary Education Institutes and State Owned Enterprises) and
- Regional Councils and Territorial Authorities (as defined in s5 of the Local Government Act 2002).

Public Value means the best available result for New Zealand for the money spent. It includes using resources effectively, economically and responsibly, and taking into account:

- the procurement's contribution to the results you are trying to achieve, including any Progressive Procurement outcomes you are trying to achieve, and
- the total costs and benefits of a procurement (total cost of ownership)

Required means, within the contract activity table used in this guide, that the activity be performed for a contract that has been categorised at this level of complexity.

Recommended means, within the contract activity table used in this guide, that the activity is recommended for a contract that has been categorised at this level of complexity but is not mandatory. You should use judgment to determine if you need to perform the activity for your contract, and if so, the extent to which the activity will be performed.

Service level agreements (SLAs) are documented levels of service that will be provided by the supplier and are usually measured in terms of quality, availability or responsiveness.

Services are acts or work performed for another party, e.g. accounting, legal services, cleaning, consultancy, training, medical treatment, or transportation. Sometimes services are difficult to identify because they are closely associated with a good (e.g. where medicine is administered because of a diagnosis). No transfer of possession or ownership takes place when services are sold, and they:

- cannot be stored or transported
- are instantly perishable
- only exist at the time they are provided.

Strongly Recommended means, within the contract activity table used in this guide, that the activity is recommended for a contract that has been categorised at this level of complexity. The activity, whilst it is not mandatory, is generally good contract management practice and may provide significant benefits to the management of that contract. You should use judgment to determine if you need to perform the activity for your contract, and if so, the extent to which the activity will be performed.

Supplier is a person, business, company or organisation that supplies or can supply works, services or goods or works to Council.

Supplier Code of Conduct provides a minimum set of expectations that Council expects of all its suppliers.

For more information, refer to www.procurement.govt.nz definitions.

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Te Kaunihera o Ahuriri

New Zealand Government Growing world-class procurement

Quick guide to emergency procurement

What is emergency procurement?

An 'emergency' is a sudden unforseen event. It can result in injury, loss of life or critical damage to property or infrastructure. This guide outlines the procurement flexibilities that are available to agencies in an emergency situation.

In deciding if an event constitutes an emergency consider:

- **whether the event falls into one of the categories listed or something similar?**
- **the nature and extent of harm if relief is delayed?**

Emergency situations can include:

- **natural or manmade disasters**: such as earthquakes, cyclones, tsunamis, volcanic eruptions, flooding, fires or contamination
- **failures of critical infrastructure or equipment**: such as failure of a prison security system or critical hospital infrastructure
- **critical health or environmental emergencies**: such as a pandemic or food safety incident
- **political emergencies**: such as a war, coup, or civil insurrection in New Zealand or countries where the New Zealand government offers support
- **critical security emergencies**: such as a terrorist attack, serious crime or major cyber security emergency
- **unanticipated events that make it impossible for an agency to perform a statutory or critical function in the necessary timeframe:** for example the destruction of critical election supplies immediately prior to an election would be an emergency for the Electoral Commission

Urgent situations that are created by an agency through a lack of planning or risk mitigation do not constitute an emergency.

Agencies should consider contingency planning where appropriate to allow for the provision of goods and services if an emergency, supply shortage or other unforeseen event arises. The level of forward planning should reflect the strategic importance of the good or service, the risk of an emergency and the cost of any contingency measures. The approach taken by the agency should be balanced, practical and fiscally responsible and may be part of their wider risk management strategy.

Flexibility to respond

In a genuine emergency, agencies will need to be flexible in how they procure the goods and services that are required for their response. Agencies are permitted to forgo routine procurement procedures. In adopting a more flexible procurement process agencies should consider what is reasonable and justifiable given all of the facts and circumstances they have to hand.

Agencies are permitted to purchase direct from a supplier if the delay involved in conducting a routine procurement (i.e. which involves advertising and competitive tendering) will prevent them delivering the goods or services in time to bring effective relief.

Agencies are to balance the need to act without delay (for example to save or preserve life, or safeguard buildings or repair critical infrastructure) against meeting their overarching public sector obligations (act lawfully, reasonably and with integrity).

Key considerations

The following key considerations may help your agency respond in an emergency:

- clarify that the situation meets the criteria for treatment as an 'emergency' and that a flexible approach to procurement can be fully justified
- identify, specify and prioritise the immediate procurement activities that will bring relief
- consider the operating environment and conditions 'on the ground'
- find out what other government agencies and NGOs are doing and, where possible, collaborate
- consider your duty of care to suppliers and take appropriate measures to ensure their safety.

Maintaining accountability

- once the situation has been stabilised and there is no immediate risk to human life, the environment or critical infrastructure, consider establishing a governance and management structure to coordinate and authorise necessary procurement activities
- in emergencies there is a higher risk inflated prices ,fraud, bribery and corruption may also be a concern. Be aware of these possibilities and take action to guard against them
- be aware of the possibility of conflicts of interest and manage them appropriately
- document your emergency procurements during or as soon as possible after the event
- clearly state in your records that the purchase was an emergency procurement and record the facts and circumstances justifying this approach. Documents must be filed in accordance with the Public Records Act 2005
- whatever procurement process has been adopted it is still subject to audit
- for agencies subject to the Government Rules of Sourcing an exemption for emergencies is available under Rule 15. However, the award of a contract over the appropriate value threshold should be published later (on the Government Electronic Tenders Service), including a clear statement that it was an emergency procurement.

Types of emergencies

Emergency responsiveness can be viewed at three different levels with regard to the immediacy of the threat or danger and the degree of harm if relief is delayed.

- Level 1 – Immediate response: *reactive procurement*
- Level 2 – Disaster relief: *emergency procurement*
- Level 3 – Post-disaster reconstruction: *accelerated procurement*

In some emergencies, agencies will need to respond at different levels over time. In other circumstances only one level of response will be required. In choosing the appropriate level of response agencies should always apply the best procurement practice possible given the circumstances and the immediacy of the need to respond. In doing so they should consider the nature and degree of the harm if relief is delayed and ensure that they can justify their procurement decisions.

Level 1 – Immediate response: *reactive procurement*

When to respond

This is the most reactive level of emergency response; it should be applied where:

- **there is a threat to human life**
- **there is a critical or catastrophic threat to the natural environment or infrastructure (for example an oil spill), or**
- **where delayed response would be likely to deteriorate conditions on the ground or cause grievous harm to individuals, the environment or the wider community.**

It will often be applicable when a state of local or national emergency is declared.

In the event of a major catastrophe, it is critical to react instantly to the conditions on the ground. This may involve getting medical equipment to help the injured and securing water, food and shelter for other victims. It could also involve immediately mobilising staff, equipment or machinery or relocating service centres for major infrastructure provision e.g. power, gas, water and telecommunication, to new safe sites.

In this scenario, a common sense approach to procurement must be adopted. Agency staff will be under significant pressure to respond immediately and must be enabled to do whatever is necessary and within their powers to help. Agencies are not therefore required to follow routine procurement procedure, but simply demonstrate sound reasoning and good judgement when acquiring goods or services. A file note should be made after the situation has stabilised covering the approach taken.

Guidance

- obtain the necessary goods or services direct from suppliers
- no written contract is required
- ask suppliers to invoice after the situation has stabilised
- attempt to keep a note of what has been purchased
- act within existing delegated authority, where possible
- if there is no existing delegated authority, and no time to obtain an approval, then exercise good judgement and be prepared to provide a rationale for the nature and extent of the procurement in the circumstances
- if a procurement involves a major expense it is recommended, at the very least, that verbal approval (followed up in writing) from an officer with sufficient delegated financial authority is obtained before making the commitment.

Level 2 – Disaster relief: *emergency procurement*

When to respond

This level of emergency response may be appropriate where:

- **there is no immediate threat of loss of life**
- **there is no immediate threat of damage to infrastructure**
- **a state of**

At some point the necessity to react immediately will change to an ability to respond urgently. This will usually be when there is no further threat to loss of life, damage to major infrastructure or when a state of emergency is lifted. Agencies are permitted to forgo routine procurement procedures where it is justifiable on the grounds that the usual procedures would prevent the agency delivering the goods or services in time to bring effective relief.

Guidance

- identify, specify and prioritise the immediate procurement required to bring effective relief
- consider the operating environment and conditions ‘on the ground’.
- if possible, find out what other government agencies and Non-Government Organisations are doing and, where practical, collaborate

emergency has been lifted

- **there is still an urgent need to respond**
- **a normal procurement process would not allow for the delivery of effective relief**

- purchase direct from the most convenient suppliers. Whilst price will be a factor in deciding the selection of suppliers, the overriding consideration must be the immediate provision of relief
- always obtain financial approval to proceed prior to the purchase. Where appropriate, agencies could make a blanket approval to cover this stage of the emergency response if required
- consider options for sourcing, including what contracts may already be in place (All-of-Government supplier, panel contractor or syndicated contract). Even consider using another agency's suppliers where they have been appointed through a competitive process if that supports immediate delivery
- where there are no existing contracts, identify what quotes can be achieved quickly and what suppliers are able to deliver immediately. Verbal or e-mail quotes are sufficient. Where verbal make a note of the conversation
- check what assurance suppliers can give to delivering immediately, to the right location, the right quantity and quality at the right price
- advise suppliers that the purchase is being made as an emergency procurement to provide immediate relief and that a more competitive process will be used for any medium to long term solution
- where possible, consider alternative contract solutions, for example, short term lease of equipment rather than purchasing. This may allow you time to source a more permanent solution through a more competitive process
- confirm your agreement with the supplier in writing. If you can, use the simple Government Model Contract available on procurement.govt.nz. If time does not allow, confirmation by email is sufficient. You need include only the basics: what is being delivered, to what specification, when, where, by whom, the price and any other charges, for example freight and insurance.

Level 3 – Post-disaster reconstruction: *accelerated procurement*

When to respond

- **once the situation has stabilised**
- **if the procurement concerned is of a critical nature**
- **if departure from normal procurement processes can be justified by the agency**

Once an emergency situation has stabilised and the response effort is directed towards post-disaster reconstruction and remediation, the purchase of most types of goods and services should return to routine procurement procedures. However, for certain types of procurement, for example, provision of critical infrastructure such as water, sewage treatment facilities and reconstruction of housing or land remediation, agencies may choose to follow an accelerated procurement process.

An accelerated procurement process is where an agency develops a process to fit the specific category of procurement and immediate needs. It will provide more flexibility and greater responsiveness, but sufficient rigour to allow for some level of competition and maintain governance and accountability for the spend. Where an agency develops an accelerated procurement procedure it must be prepared to justify any departure from routine procurement process.

NZS 3910:2013
Traditional Build-Only Contract Template
Horizontal Works

****THE INSTRUCTIONS TABLE AND ALL GREEN AND YELLOW HIGHLIGHTING MUST BE DELETED BEFORE YOU ISSUE THIS DOCUMENT FOR ENDORSEMENT / APPROVAL. ****

Instructions

*(For internal use only - **DELETE THIS TABLE FROM THE FINAL DOCUMENT**)*

Guidance

This template is to be used for build-only contracts (not design and build) as a construction contract based on NZS3910:2013, which is suitable for use for **horizontal** construction projects with a value of up to $15 million. Complex or higher value projects may require bespoke amendments to this template to address particular risks. Contact the NCC Procurement Team for guidance.

NCC has separate templates that can be used for vertical projects and for design and build (NZS3916:2013) projects, as these typically have a different risk profile to horizontal projects. If you are unsure which template to use, talk to the NCC Procurement Team.

Instructions

Green = [Drafting notes]

Yellow = [Content to be inserted]

Ensure all highlighting is removed prior to submitting for approval.

Before this contract is circulated to contractors, ensure that you:

- Ensure all green sections are deleted and yellow highlighting has been removed.
- Update the Contents table:
  - Right click on contents table
  - Select “Update field”
  - Select “Update entire table”
  - Click “OK”
- Delete the Instructions page (this page)

NAPIER CITY COUNCIL
Te Kaunihera o Ahuriri

Enter Contract Title

Enter the Contract Title above. It will automatically populate the remainder of the Contract where applicable.

Enter Contract Number

Enter NCC Contract Number here. It will automatically populate the remainder of the Contract where applicable

Between

Napier City Council ('the Principal')

And

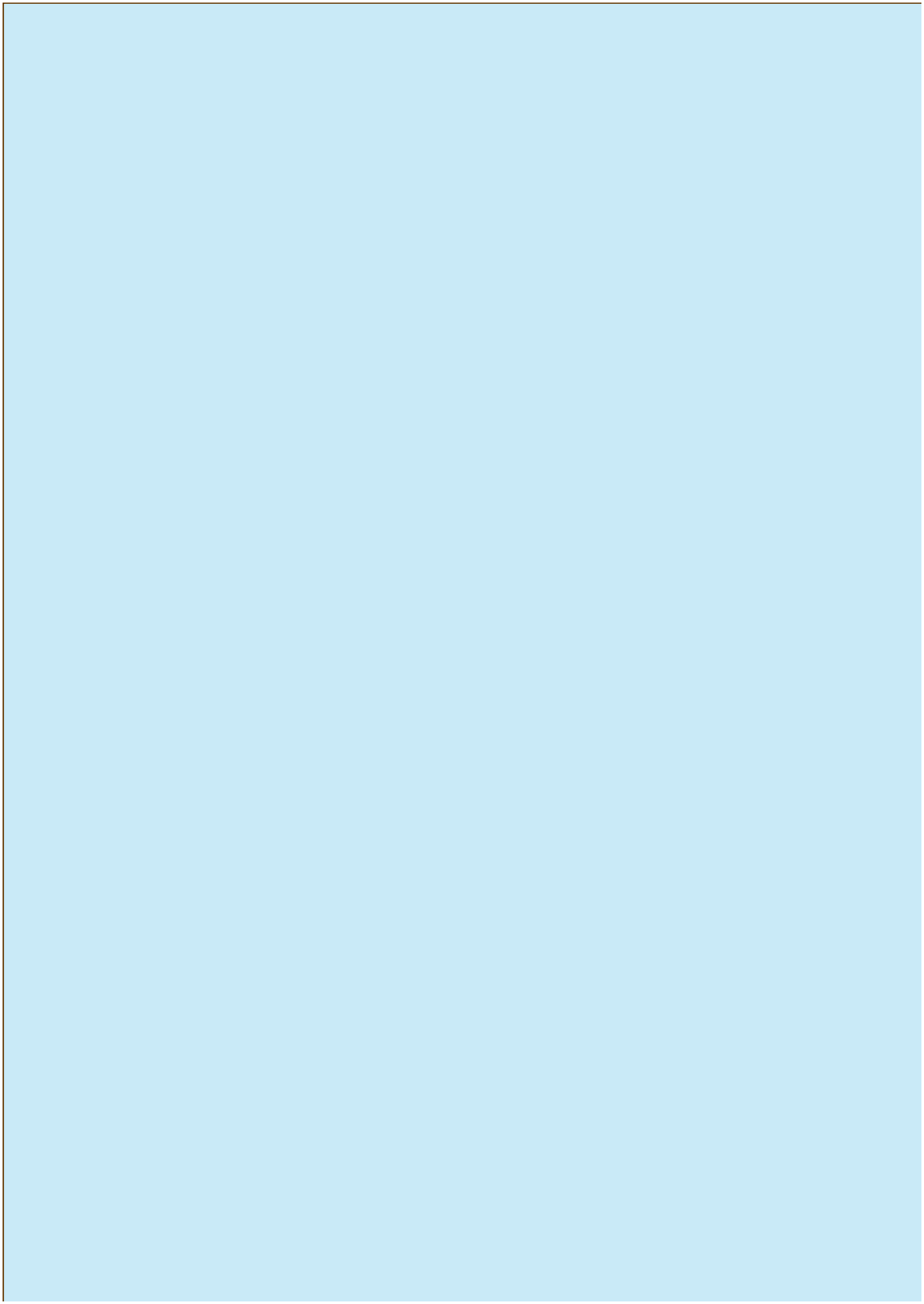
Enter Contractors Name ('the Contractor')

Enter the Contractor's name here. It will automatically populate the remainder of the Contract where applicable

Date *Enter date*

Revision Schedule

Revision No.	Date	Description	Signature or Typed Name (documentation on file)		
			Prepared by	Reviewed by	Approved by



NAPIER CITY COUNCIL
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Key Contract Data

Table 1 summarises the key features of this Contract. The information and detail contained elsewhere within the Request for Tender (RFT) document shall overrule this table if any ambiguity or conflict exists with the information in Table 1.

Table 1: Key Contract Data

Drafting Note: Table to be updated with key contract information

Description	Key Data	Document Reference
Contract Number	Enter Contract Number	
Contract Title	Enter Contract Title	
Contractor Contact Details	Enter Contractors Name *Enter Contact name* *Enter Contact address* *Enter Post Code* *Enter Contact phone number* *Enter Contact email* *Enter NZBN*	*Enter document reference*
Engineer Contact Details	*[Name]* *[Address]* *[Contact details]*	Refer to Section 6 in Schedule 1 - Special Conditions of Contract – Specific Conditions of Contract
Principal Contact Details	Napier City Council [*Contact Person*] Address: 265 Marine Parade Napier 4110 [*Phone*] *[Email]*	
The Contract Works	*[Include brief description of contract works]*	*Enter relevant document reference (if applicable)*
Conditions of Contract	NZS 3910:2013 as amended by NCC's usual requirements	Refer to Section 2. Conditions of Contract

Conditions of Contract General Conditions of Contract

Except where modified by the following specific and other conditions of the Contract, this Contract shall be governed by the Conditions of Contract for Building and Civil Engineering Construction NZS 3910:2013.

Copies of this document may be purchased from the Standards New Zealand website: http://www.standards.co.nz

References in the Contract to the Schedules shall be references to the version of those schedules reproduced in the Contract Documents (if they are enclosed) or, if none are enclosed to those contained within NZS 3910:2013.

Contract Agreement

Contract Number	Enter Contract Number	(Number)
Contract Title	Enter Contract Title	(Contract Name)
This agreement is made on	*Enter Date*	
Between	Enter Contractors Name	('the Contractor')
And	Napier City Council	('the Principal')

BACKGROUND

A The Principal is undertaking the Enter Contract Title Project, including the construction of [brief description of Project], and associated works, as set out in more detail in the Drawings and Specifications (the Project).

B The Contract Works form part of the Project.

C The Contractor has represented to the Principal that it has the required resources, skill, expertise and experience to carry out and complete the Contract Works on the terms and conditions of the Contract.

D Based on the Contractor's representations the Principal has decided to engage the Contractor to carry out and complete the Contract Works in accordance with the Contract.

E The Contractor has agreed to such engagement upon and subject to the terms and conditions of the Contract.

IT IS AGREED as follows:

1. Words and phrases in this Contract Agreement will have the meanings given to them in 1.2 of the General Conditions of Contract (as supplemented and amended by the Special Conditions of Contract in Schedules 1 and 2 respectively), unless the context requires otherwise.

2. The Contractor shall carry out and complete the Contract Works in accordance with the Contract.

3. The Principal shall pay the Contractor the sum of $*Enter figure* or such greater or lesser sum as shall become payable under the Contract together with goods and services tax at the times and in the manner provided in the Contract.

4. Each party shall carry out and fulfil all other obligations imposed on that party by the Contract.

5. The Contract comprises the following documents:
   (a) This Contract Agreement;
   (b) The notification of acceptance of tender or award of Contract;
   (c) The following post-Tender Documents: ☐ *(Select if NOT applicable)*
      i. *Add text here* **Drafting Note:** Identify any agreed post-Tender Documents to be included, for example, correspondence or minutes or pre-award meetings dealing with tender tags, and so on.
   (d) Notices to Tenderers: ☐ *(Select if NOT applicable)*

i. *Add text here* **Drafting Note**: give details with dates

(e) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract;
(f) Schedule 2: Special Conditions of Contract – Other Conditions of Contract;
(g) The General Conditions of Contract NZS 3910:2013 (including other Schedules);
(h) Preliminary and General Specifications issued prior to the Date of Acceptance of Tender contained in Schedule 17;
(i) Technical Drawings and Specifications issued prior to the Date of Acceptance of Tender contained in Schedule 18;
(j) The Schedule of Prices contained in Schedule 19;
(k) The other Schedules referred to in the annexed list of Schedules;
(l) The Contractor's Tender contained in Schedule 22.

Drafting Note: Note that this list functions as an order of priority when interpreting the various documents that form part of the contract. NCC to consider which of these documents should take priority over others and adjust this list as appropriate.

Note that if the Contractor's tender is included in the contract documents, there may be discrepancies between the tender documents and the final negotiated position between NCC and the Contractor. NCC to ensure that all agreed amendments to the tender document are properly documented and included in the contract either as Post-Tender Documents or in other schedules.

6. The Contract constitutes the entire agreement between the Principal and the Contractor with respect to the subject matter of the Contract and replaces and supersedes all prior communications, negotiations and agreements (whether oral or written) with respect to the subject matter of the Contract. The documents comprising the Contract shall be taken as mutually explanatory, but in the case of ambiguity or conflict the priority of documents shall be as listed in clause 5 above, with each document prevailing over a document lower in the list.

Signed by		Authorised Signatory of Contractor	
Name	*Enter the Authorised Signatory name here*	**Date**	*Enter Date*

Signed by		Authorised Signatory of Principal	
Name	*Enter the Authorised Signatory name here*	**Date**	*Enter Date*

Drafting Note: If the Contractor is a company, this Contract should be signed by a person within the company who has authority to bind the company. Preferably, this should be a director of the company.

An appropriate DFA signature is required to sign on behalf of NCC.

Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract

Contract for:	Enter Contract Title Enter Contract Number

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
1.	**Interpretation**	
1.2	**Definitions**	
	The Principal is:	Napier City Council
	of:	265 Marine Parade, Napier 4110.
1.2, 10.2	**Separable Portions**	
	• Are there any Separable Portions in this Contract?	Select yes or no **Drafting Note:** Separable portions divide the Contract Works into separate 'mini contracts' with their own Practical Completion process and Defects Liability Period. Separable Portions can be useful where you need to control the sequencing of works or occupy one area of the works prior to others.
	• If yes, the Separable Portions are as follows and as further defined in the Contract:	[To be confirmed]
2.	**The Contract**	
2.1	**Type of Contract**	
2.1.1	This Contract is a:	*(Select one to apply (a), (b), or (c))*
	(a) Lump sum Contract governed by 2.2;	☑
	(b) Measure and Value Contract governed by 2.3;	☐

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
	(c) Cost reimbursement Contract governed by 2.4.	☐ **Drafting Note**: Cost reimbursement pricing can carry material risk for Principals as the overall Contract Price is not known at the point of entry into the Contract. Talk to the NCC Procurement Team if you are considering a cost reimbursement arrangement.
2.4	**Cost reimbursement Contract**	
2.4.1	Allowance(s) that are to be added to Net Cost in a cost-reimbursement Contract or for parts of the Contract Works that are required to be carried out on a cost reimbursement basis: *(If percentages are shown as zero or nil, allowances for overheads and profit are deemed to be included in Net Cost.)*	
	• Allowance for On-Site Overheads:	Not Applicable
	• Allowance for Off-Site Overheads and Profit:	Not Applicable
2.4.4	Indicative estimates of the Contract Price: Are indicative estimates required?	No **Drafting note:** refer comments above regarding Cost Reimbursement pricing arrangements. If you do enter into a Cost Reimbursement contract, indicative estimates should be required to give NCC oversight of costs incurred by the Contractor.
2.5	**Local authority contracts, contracts in public places, and road contracts**	
2.5.1	Is this Contract a local authority Contract to which 2.5.2 applies?	Yes
2.5.3	Is this Contract a Contract in a public place to which B1 and B2 of Appendix B apply?	*Select yes or no* **Drafting Note**: Consider whether the works are being carried out in a public price or privately owned land to which the public does not have access as of right.
2.5.4	Is this Contract a road Contract to which Appendix B applies? If yes, the allowance under B3 shall be:	*Select yes or no* Nil
2.6	**Evidence of Contract**	
2.6.2	How is the Contract Agreement to be executed?	*(Select one to apply, (a) or (b))*
	(a) As stated in 2.6.2;	☑
	(b) In accordance with the following other requirements:	☐

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
2.7	**Documents prepared by the Engineer or Principal**	
2.7.1	Copies of the Contract shall be supplied without charge to the Contractor in the following electronic form:	PDF file
2.8	**Documents prepared by the Contractor**	
2.8.2	Copies of documents referred to in 2.8.2 shall be supplied without charge to the Engineer:	
	• Number of hard copy sets:	One Set
	• In the following electronic form:	PDF and the native authoring format, as well as in any other electronic form specified in the Contract
3.	**Bonds**	
3.1	**Contractor's Bond**	
3.1.1	Is a Contractor's Bond required?	Yes
3.1.2	If yes, the amount of the Contractor's Bond shall be:	5% of the Contract Price **Drafting Note:** Bond requirements for works contracts: • no bond for contract values less than $1,000,000 • the bond is for 5% of the contract value • the bond value can be set at a fixed amount with the approval of a Director • a bond may be required for contracts less than $1,000,000, subject to project risk factors. The requirement for a bond can be waivered with the approval of the Director. Directors must seek advice from the Project Manager and NCC Procurement Manager.
3.2	**Principal's Bond**	
3.2.1	Is a Principal's Bond required?	No
3.2.2	If yes: The amount of the Principal's Bond shall be: The surety for the Principal's Bond shall be:	Not applicable

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
3.3	**Parent Company Guarantee**	
3.3	Is a Parent Company Guarantee required?	[To be confirmed post tender] **Drafting Note:** We recommend retaining the ability to require a Parent Company Guarantee during the RFT process, subject to you identifying your preferred tenderer. Once your preferred tenderer is identified, consider the history of the company (including when it was established), its previous record of performance on NCC projects, its structure and general financial health and stability when considering whether to require a Parent Company Guarantee.
4.	**Subcontracts**	
4.1	**General**	
4.1.5	Key Subcontractors	[To be confirmed following receipt of Contractor's tender] **Drafting Note:** Key Subcontractors are particular named subcontractors that NCC wants to ensure are kept on the project for the duration of the Contract Works because of their expertise and impact on the project if they were replaced partway through. The Contractor cannot replace these without NCC consent.
5.	**General Obligations**	
5.1	**General Responsibilities**	
5.1.3	Is the Contractor responsible for design?	*Select yes or no* **Drafting Note:** while this is a 3910 build only contract (not a 3916 design and build), the Contractor may still be responsible for some minor elements of the design, e.g. in relation to temporary works or particular systems. If so, specify the scope of the Contractor's design responsibility here or cross-reference to the relevant item of the Specifications where this is set out.
5.2	**Contractor's Representation**	

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
5.2.1	The Contractor's Representative is	[To be confirmed post tender]
5.2A	**Key Personnel**	
	For the purposes of clause 5.2A, the Key Personnel and their roles are:	[To be confirmed post tender] **Drafting Note:** As with Key Subcontractors, Key Personnel as specific named people who NCC wants to ensure are kept on the job throughout the project because of their particular skills and experience. Key Personnel cannot be replaced without NCC's consent.
5.4	**Possession of the Site**	
5.4.1	The Contractor shall be given possession of the Site	*Select one to apply, (a) or (b)*
	(a) 10 Working Days after the Date of Acceptance of Tender subject to prior compliance with the Contractor's and Principal's obligations under 8.2.5 and 8.7.5.	☑
	(b) On the following date:	☐ *Enter a date*
5.4.3	Limits on the Contractor's right of entry to adjoining properties are:	[To be confirmed] [The Contractor is not permitted to access adjoining properties] **Drafting Note:** if the Contractor requires access to adjoining properties to perform the Contract Works, this should be noted here. Also specify whose responsibility it is to arrange for access rights – NCC or Contractor.
5.5	**Separate Contractors**	
5.5.1	Separate Contractors who may be carrying out work on the Site concurrently with the Contract Works are:	[To be confirmed] [Refer to part [XX] of the Specifications] **Drafting Note:** Separate Contractors could include NCC's usual maintenance or cleaning contractors, or any other contractors engaged by NCC under a different contract to carry out works at the site at the same time as the Contract Works.
5.5.2	Are facilities for Separate Contractors required?	*Select yes or no*
	If yes, details of facilities required are:	[To be confirmed]
5.6	**Care of the works and Site**	

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
5.6.6(g)	Further risks specifically excepted are:	Nil
5.9, 5.16	**Principal supplied Materials**	
	Is the Principal responsible for supplying any Materials?	*Select yes or no*
	If Yes:	
	• What Materials is the Principal responsible for supplying?	[To be confirmed.] **Drafting Note:** Specify if there are particular Materials which NCC will supply (e.g. specific equipment). If NCC agrees to supply Materials to the Contractor, these will be at NCC's risk in terms of quality and timeliness of supply. If such Materials are supplied later, the Contractor will be entitled to a Variation. If Principal-supplied Materials are going to be used in your Project, this needs to be highlighted in the Procurement Plan and approved.
	• Do any timeframes apply to this supply?	[If specific timeframes apply to the supply, note these here]
	• Location for delivery of the Materials:	[Site] / [Other – specify location]
5.10	**Programme**	
5.10.4	Is the programme required to be a Comprehensive Programme?	Yes
5.10.4(e)	If yes, other requirements for the Comprehensive Programme are:	• Earliest and latest start/finish dates identified. • All delay allowance (float) must be identified. • Dates for Principal and Engineer approvals identified. • Dates for supply or services by others identified. • Latest order dates for long lead items identified. • Critical path identified.
5.10.5	The Comprehensive Programme shall use the following software:	Pdf File and MS Project
5.10.6	Updates of the Comprehensive Programme shall be provided at the following intervals:	Fortnightly

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
5.11	**Compliance with laws**	
5.11.3	Exceptions to the Principal's obligations to obtain licences under 5.11.3 are:	Not applicable
5.11.4	Exceptions to the Contractor's obligation to give notices and obtain other licences under 5.11.4 are:	Not applicable **Drafting Note**: by stating 'not applicable' to 5.11.3 and 5.11.4 above, NCC is stating that the standard NZS3910:2013 position will apply – i.e. NCC as Principal is responsible for obtaining all consents required to undertake the work, e.g. resource consent / building consent, and to occupy the completed works, e.g. CCC. The Contractor is responsible for obtaining all licences / consents required for Temporary Works and its methods of construction.
5.17	**Safety Plan** Is a Site-Specific Safety Plan (SSSP) required to be prepared by the Contractor? If yes, a Site-specific safety plan is required as set out in [Specification 1.19.2: Site Specific Safety Plan]	Yes
5.18	**Quality Plan** Is a Quality Plan required to be prepared by the Contractor? If yes, a Quality Plan is required as set out in [Specification 1.26.1: Quality Plan]	Yes
5.19	**Traffic Management Plan** Is a Traffic Management Plan required to be prepared by the Contractor? If yes, a Traffic Management Plan is required as set out in [Specification 1.8.2: Traffic Management Plan]	Yes
5.19A	**Other Management Plans**	
	Is the Contractor required to provide other management plans?	Yes – as set out in Schedule 17 including: • Environmental Management Plan [Specification 1.27] • Erosion and Sediment Control Plan [Specification 7.12] **Drafting Note:** Review the Preliminary and General Specifications for your project

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
		and list any additional required plans that the Contractor must prepare here.
5.20	**As-built drawings and operation and maintenance manuals**	
5.20.1(a)	Are as-built drawings required to be prepared by the Contractor? If yes, as-built drawings are required as set out in [Specification 1.17: As Built Documentation]	Yes **Drafting Note:** Confirm position in relation to as-built plans for each project, following discussions with the asset owner regarding who is best placed to prepare these. The default position in this contract is that **Contractors** will be responsible for preparing the as-built plans; however, this may not be appropriate for all contracts.
5.20.1(b)	Are operation and maintenance manuals required to be prepared by the Contractor?	Yes
5.21	**Advance Notification**	
5.21.1	(a) The thresholds for advance notification include:	Where a matter is likely to result in an increase in cost of more than $25,000 Where a matter is likely to result in any delay to the critical path.
5.24	**Communications Plan**	
5.24.1	Is the Contractor required to prepare a Communications Plan?	[No] / [Yes – as set out in clause 5.26 of Schedule 2.] **Drafting Note:** consider whether a Communications Plan is required for your project. this should be required where there are a number of potential third parties who could be affected by the Contract Works e.g. adjoining landowners / businesses.
6	**The Engineer** **Drafting Note:** in general, the Engineer to Contract should be an independent third-party consultant. If you are considering using an internal NCC person to fill this role, discuss with the NCC Procurement Team.	
6.1	**Appointment of Engineer**	
6.1.2	The Engineer is:	[Name]
	whose professional qualification is:	[To be confirmed]
6.3.1	The Engineers Representative is:	[Name]
6.3.5	Persons appointed to assist the Engineers Representative shall be:	[To be confirmed post tender]
7	**Indemnity**	

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
7.2	Subject to 7.2.2 and 7.2.3, the maximum aggregate liability of the Contractor to the Principal under or in connection with this Contract is:	100% of the Contract Price **Drafting Note:** For contracts up to $15m, a liability cap set at 100% is the market standard. This cap **should not** be reduced below 100% without approval from NCC procurement. For higher value, or more complex projects (e.g. high value, multi-stage projects) amendments to this position can be negotiated (e.g. increasing the cap to 150% of Contract Price). Any deviations from this should be discussed with the NCC Procurement Team.
8.	**Insurances**	
8.1	**General**	
8.1.1	The party identified below shall arrange the following insurances referred to in the following clauses:	**Drafting Note:** Consider the insurance requirements below for each project, taking into account project value and risk profile and amend if necessary. Note that NCC has a separate Insurance Reference Guide setting out its insurance requirements. If you have any queries, talk to the NCC insurance team.
	8.3 or 8.8 Construction	Contractor **Drafting Note:** For horizontal projects, the Contractor will usually be required to hold the Construction Insurance policy. However, this requirement should be reviewed and confirmed on a case-by-case basis.
	8.8 Existing structure(s) and contents	[Contractor - to be covered by Contractor's Public Liability policy - refer clause 8.5.1(a).] / [party responsible for construction insurance] **Drafting Note:** NCC's insurance team requires the Contractor's Public Liability Insurance policy to also provide cover for material damage to underground existing structures. Confirm the approach to existing structures' insurance on a case-by-case basis.
	8.4 Plant	Contractor

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
	8.5 or 8.9 Public liability	Contractor
	8.5.2 Motor vehicle liability	Contractor
	8.6 Professional indemnity	Contractor
8.1.6	The following forces of nature shall be specifically insured under 8.3 or 8.8 as applicable:	
	(a) Landslip:	Yes
	(b) Earthquake:	Yes
	(c) Tsunami:	Yes
	(d) Tornado:	Yes
	(e) Cyclone:	Yes
	(f) Storm:	Yes
	(g) Flood:	Yes
	(h) Lightning strike:	Yes
	(i) Volcanic activity:	Yes
	(j) Hydrothermal activity:	Yes
	(k) Geothermal activity:	Yes
8.3, 8.8	**Construction insurance** *These items are required to be completed whether the Contractor or the Principal is the insuring party (see 8.1 .1 above).*	
8.3.2, 8.8	The following shall have their respective interests noted in the construction insurance policy:	Not applicable **Drafting note:** consider whether any third parties have property within or in the vicinity of the site whose interests should be noted on the construction insurance policy
8.3.3, 8.8	Where construction insurance is required *(see 8.1.1 above),* the amount of insurance to be affected for the Contract Works and Materials shall be for not less than the sum of the Contract Price, after the acceptance of the tender or other offer, plus the following allowances:	

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
	(a) An allowance for the Cost of demolition, disposal, and preparation for replacement work, equal to:	*Select one to apply, (i) or (ii)*
	i. The amount in the right-hand column:	☐
	ii. The percentage in the right-hand column of the Contract Price adjusted as above:	☑ 10%
	(b) An allowance for professional fees including the Cost of clerks of works and inspectors, equal to:	*Select one to apply, (i) or (ii)*
	i. The amount in the right-hand column:	☐
	ii. The percentage in the right-hand column of the Contract Price adjusted as above:	☑ 5%
	(c) An allowance for items to be incorporated in the Contract Works, the Cost of which is not included in the Contract Price, equal to:	*Select one to apply, (i) or (ii)*
	i. The amount in the right-hand column	☐ *($) Enter amount*
	ii. The percentage of the Contract Price adjusted as above, stated in the right-hand column:	☐ *Enter % figure [TBC post tender]*
	(d) An allowance for an increase in the Contract Price due to Variations equal to:	*Select one to apply, (i) or (ii)*
	i. The amount in the right-hand column:	☐
	ii. The percentage of the Contract Price adjusted as above, stated in the right-hand column:	☑ 10%
	(e) An allowance for increased construction Costs due to inflation equal to:	*Select one to apply, (i) or (ii)*
	i. The amount in the right-hand column:	☐
	ii. The percentage of the Contract Price adjusted as above, stated in the right-hand column:	☑ 5%
8.4	**Contractor Arranged Plant Insurance**	
	Where Plant is required to be insured (see 8.1.1 above):	*Select one to apply, (i) or (ii)*
	i. The Contractor shall insure the following items of Plant on the Site for the amounts stated:	☐
	ii. The Contractor shall insure each item of Plant on the Site having a current market value of more than:	☑ [$50,000]

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
8.5	**Contractor Arranged Public Liability Insurance**	
8.5.1	Where required (see 8.1.1 above), public liability insurance shall be affected by the Contractor for an amount not less than:	☑ [$10,000,000]
	Such public liability insurance may include sub-limits:	
	• For liability arising out of vibration, weakening or removal of support, of not less than:	$[10,000,000] No sub-limits to apply for liability arising out of loss or damage to underground services.
8.5.2	Where required (see 8.1.1 above), motor vehicle third-party liability insurance shall be affected for an amount not less than:	$[10,000,000]
8.6	**Contractor Arranged Professional Indemnity Insurance**	
8.6.1	Where required (see 8.1.1 above), professional indemnity insurance for design by the Contractor shall be affected for an amount not less than:	**Drafting Note:** refer to NCC guidance in relation to when Professional Indemnity Insurance may be required.
	• For any one claim:	[$1,000,000]
	• And for an amount in the aggregate of:	[$1,000,000]
8.6.2	Sub-limits of liability for design of parts of the Contract Works by Subcontractors shall not be less than: *(list specific part(s) of Contract Works and applicable $ sub-limits for any one claim and for an amount in the aggregate, or state if not required)*	No sub limits shall apply
8.8	**Principal Arranged Construction Insurance**	*(Refer also to 8.3)*
	In accordance with 8.7.2, the insurance policy wording title for 8.8.1 and 8.8.2 (a), (b), and (c) is:	[To be confirmed]
	In accordance with 8.7.2, the extraordinary exclusions, conditions, warranties, or endorsements to the policy for 8.8.1. and 8.8.2 (a), (b), and (c) are:	[To be confirmed]
8.8.1	Where the Principal is required to effect construction insurance *(see 8.1.1 above):*	
	• The lead insurer is:	[To be confirmed]
	• Address of lead insurer:	[To be confirmed]
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works:	[To be confirmed]
	• For other claims:	[To be confirmed]

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
	• For natural perils:	[To be confirmed]
8.8.2(a)	The existing structures are:	**Drafting Note:** Contact the relevant Property Manager for details around Existing Structures and Other Structures in the vicinity
	• The replacement value to be insured is:	[To be confirmed]
	• The lead insurer is:	[To be confirmed]
	• Address of lead insurer:	[To be confirmed]
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works:	[To be confirmed]
	• For other claims:	[To be confirmed]
	• For natural perils:	[To be confirmed]
8.8.2(b)	Other structures in the vicinity are:	
	• The replacement value to be insured is:	[To be confirmed]
	• The lead insurer is:	[To be confirmed]
	• Address of lead insurer:	[To be confirmed]
	The Nominal Deductibles are:	[To be confirmed]
	• For damage arising out of the Contract Works:	[To be confirmed]
	• For other claims:	[To be confirmed]
	• For natural perils:	[To be confirmed]
8.8.2(c)	Contents insurance:	**Drafting Note:** contents insurance is generally unlikely to be relevant for horizontal construction contracts
	• The replacement value to be insured is:	Not applicable
	• The lead insurer is:	Not applicable
	• Address of lead insurer:	Not applicable
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works:	Not applicable
	• For other claims:	Not applicable
	• For natural perils:	Not applicable
8.9	**Principal's option to insure public liability**	
8.9.1	Where required (see 8.1.1 above), the Principal shall affect public liability insurance for an amount not less than:	[To be confirmed]
	• The lead insurer is:	[To be confirmed]

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
	• Address of lead insurer:	[To be confirmed]
	The Nominal Deductible is:	[To be confirmed]
	In accordance with 8.7.2:	
	• the policy wording title is:	[To be confirmed]
	• extraordinary exclusions, conditions, warranties, or endorsements to the policy are:	[To be confirmed]
8.9.2	Such public liability insurance may include sub-limits for: *(specify as applicable or state 'not applicable')*	
	Liability arising out of vibration, weakening or removal of support:	Not applicable – no sub limits of liability shall apply
9.	**Variations**	
9.3	**Valuation of Variations**	
9.3.9	For On-Site Overheads:	*Select one to apply, (a) or (b)*
	(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for On-Site Overheads;	☑ **Drafting Note:** Consider whether Overheads are factored into your Schedule of Prices for the purposes of valuing variations, or whether separate overheads percentages should be agreed with the Contractor – in which case select 9.3.9 (b)(i) below.
	(b) The prices and rates in the Schedule of Prices are exclusive of On-Site Overheads and the allowance for On-Site Overheads to be added in accordance with 9.3.9 is:	*Select one to apply, (i), (ii), (iii) or (iv)*
	i. Agreed percentage:	☐ **Drafting Note:** Refer comment above. If overheads have not been factored into your schedule of prices for the purposes of calculating variations, select this option.
	ii. As nominated in the Schedule of Prices;	☐
	iii. As nominated in the Contractor's tender;	☐
	iv. A reasonable percentage.	☐
9.3.10	For Off-Site Overheads and Profit:	*Select one to apply, (a) or (b)*

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
	(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for Off-Site Overheads and Profit;	☑ **Drafting Note:** Consider whether Overheads are factored into your Schedule of Prices for the purposes of valuing variations, or whether separate overheads percentages should be agreed with the Contractor – in which case select 9.3.10 (b)(i) below.
	(b) The prices and rates in the Schedule of Prices are exclusive of Off-Site Overheads and Profit and the allowance for Off-Site Overheads and Profit to be added in accordance with 9.3.10 is:	*Select one to apply, (i), (ii), (iii) or (iv)*
	i. Agreed percentage:	☐ **Drafting Note:** Refer comment above. If overheads have not been factored into your schedule of prices for the purposes of calculating variations, select this option.
	ii. As nominated in the Schedule of Prices;	☐
	iii. As nominated in the Contractor's tender;	☐
	iv. A reasonable percentage.	☐
9.3.11	For time-related Cost, the Working Day rate in compensation for time-related On-Site Overheads and Off-Site Overheads and Profit in relation to an extension of time to be applied in accordance with 9.3.11 is:	*Select one to apply, (a), (b), (c) or (d))*
	(a) Agreed rate per Working Day:	*($) Enter amount*
	(b) As nominated in the Schedule of Prices;	☐
	(c) As nominated in the Contractor's tender;	☑
	(d) Reasonable compensation.	☐
10.	**Time for Completion**	
10.2	**Due Date for Completion**	
10.2.1	The periods to be used for calculating the Due Date for Completion are:	**Drafting Note:** If the contract period is planned to include the December/January period, the Christmas work site closedown requirements need to be considered.
	(a) For the Contract Works:	[To be confirmed]
	(b) For any Separable Portions:	[Not applicable] / [To be confirmed]
10.4	**Practical Completion Certificate**	

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
10.4.5(a)	Prior to issue of the Practical Completion Certificate:	*Select one to apply, (a), (b) or (c)*
	(a) Producer Statements in the form of Schedule 6 are required;	☑ [To be confirmed post tender]
	(b) Producer Statements as set out in the following parts of the Contract are required:	☐ *Add reference*
	(c) Producer Statements are not required.	☐
10.4.5(b)	Prior to issue of the practical Completion Certificate, are as-built drawings and operation and maintenance manuals required?	Yes – as set out in clause 5.20.3(a). **Drafting Note:** refer to the drafting note on clause 5.20.3(a) above and Schedule 2 below. The standard position in this template is that **draft** as-built plans are to be provided prior to Practical Completion and **finalised** as-built plans provided prior to expiry of the Defects Notification Period. If final as-built plans are required prior to Practical Completion, amend clause 5.20.3 of Schedule 2 accordingly.
10.4.5(c)	Prior to issue of the Practical Completion Certificate the Contractor shall also be required to:	Comply with the requirements for Practical Completion set out in the Specifications and Schedule 21. **Drafting Note:** All requirements for Practical Completion should be set out in a check list in Schedule 21
10.5	**Damages for Late Completion**	
10.5.1	Liquidated damages shall be applied as follows:	
	• In respect of the Contract Works:	$[To be confirmed] per Working Day **Drafting Note:** the liquidated damages amount should be calculated based on a genuine pre-estimate of NCCs losses in the event that the Contractor does not achieve practical completion by the due date for completion. Refer to NCC's internal guidance on LDs located at [location] for how to calculate this figure. Where liquidated damages are not provided, the Principal can recover and the Contractor will be liable only for such actual loss as the Principal can prove has resulted from the late completion, being loss of a kind reasonably foreseeable to

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
		the parties at the time the Contract was made as being likely to result
	• In respect of any Separable Portion(s):	[Not applicable] / [To be confirmed]
	Failure to specify liquidated damages for late completion in the Contract (including where "nil", "not applicable" or similar wording is used or where the applicable entry is left blank) is without limitation or prejudice to the Principal's rights and remedies in relation to any breach by the Contractor of its obligations under the Contract (including any right to claim general damages for delay in completion).	
10.6	**Bonus for Early Completion**	
10.6.1	Is a bonus to be payable?	No
	• If yes, the bonus for the Contract Works is:	Not applicable
	• If yes, bonuses for any Separable Portions are:	Not applicable
11.	**Defects Liability**	
11.1	**Defects Notification Period**	
	The Defects Notification Period shall be: (12 Months unless otherwise stated)	
	• For the Contract Works:	12 months **Drafting Note:** A 12 month DLP is usually required to see how the works perform in all seasons. Consider whether any works are to be carried out in road reserve. If so, a longer defects liability period may be appropriate (for example, the NZUAG Code requires defects in roads arising within 24 months of construction to be rectified).
	• For any Separable Portions:	[To be confirmed]
11.3	**Final Completion Certificate**	
11.3.2	Prior to issue of the Final Completion Certificate:	*Select one to apply, (a), (b) or (c)*
	(a) Producer Statements in the form of Schedule 6 are required;	☑ [To be confirmed post tender]
	(b) Producer Statements as set out in the following parts of the Contract are required:	☐
	(c) Producer Statements are not required.	☐
11.5	**Warranties**	
11.5.1		*Select one to apply, (a) or (b)*
	(a) No warranties are required;	☐

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
	(b) The Contractor shall provide warranties as set out in the Contract for the following items of work:	☑ The Contractor will provide a Subcontractor warranty and continuity guarantee for each Subcontractor and each subcontract valued at [$100,000] or greater with that Subcontractor in the form set out in Schedule 13A, with each duly signed by both the Contractor and the applicable Subcontractor; **Drafting Note:** to confirm the threshold for requiring a subcontractor to provide a continuity guarantee on a case-by-case basis In addition, in respect of the packages set out in Schedule 13B: • to the extent that the Contractor has subcontracted those packages, the Contractor will provide Subcontractor warranties (for the applicable period set out in Schedule 13B) in the form set out in Schedule 13C, with each duly signed by both the Contractor and the applicable Subcontractor; and • to the extent that the Contractor has not subcontracted those packages, the Contractor will provide the Contractor warranty (for the applicable period set out in Schedule 13B) in the form set out in Schedule 13D, duly signed by the Contractor.
11.6	**Guarantees**	
11.6.1,		*Select one to apply, (a) or (b)*
11.6.2	No guarantees are required;	☐
	The Contractor shall provide guarantees in the following form:	☐ Parent Company Guarantee in accordance with clause 3.3 [To be confirmed post tender] **Drafting note:** in addition to a Parent Company Guarantee, NCC could consider whether to require a Weathertightness Warranty if the works will involve the construction of structures that need to be weathertight. This template assumes that a weathertightness warranty is not required. If a weathertightness warranty is

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
		required, an additional schedule will need to be added.
12.	**Payments** **Drafting Note:** Consider whether your contract requires advance payments for materials or temporary works, or payments of deposits. This template assumes that no advance payments or payments of deposits will be required.	
12.1	**Contractor's Payment Claims**	
12.1.3(b) (iii)	Advances for Materials delivered to the Site	*Select one to apply, (a) or (b)*
	(a) Advances for Materials delivered to the Site, but which have yet to be incorporated in the Contract Works shall not be made;	☑
	(b) Advances for Materials delivered to the Site, but which have yet to be incorporated in the Contract Works shall be made, subject to the following conditions:	☐
12.1.3(b) (iv)	Advances for Temporary Works or Plant	*Select one to apply, (a) or (b)*
	(a) Advances for Temporary Works or Plant shall not be made;	☑
	(b) Advances for Temporary Works or Plant shall be made, subject to the following conditions:	☐
12.1.3(b) (iv)	Advances for Materials not yet on Site	*Select one to apply, (a) or (b)*
	(a) Advances for Materials not on Site shall not be made;	☑
	(b) Advances for Materials not yet on Site shall be made, subject to the following conditions:	☐
12.3	**Retention Monies**	
12.3.1, 12.3.2	The percentage to be retained from each progress payment and the limit of the total sums retained shall be in accordance with the following:	*Select one to apply, (a) or (b)*
	(a) For the Contract Works, a total retention of: • 10% on the first $200,000, and • 5% on the next $800,000, and • 1.75% on amounts in excess of $1,000,000, and • With a maximum total retention when aggregated of $200,000, and	☑ **Drafting Note:** consider whether the overall cap on retentions of $200,000 is sufficient for higher value contracts.

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
	• With a defects liability retention of half the total retention.	
	(b) The retention scale in the right-hand column:	☐
12.3.3	**Bond in lieu of retention**	*Select one to apply, (a) or (b)*
	(a) The Contractor may provide a bond in lieu of retentions;	☐ **Drafting Note:** NCC to confirm whether it will accept a bond in lieu of retentions instead of cash retentions.
	(b) The Contractor may not provide a bond in lieu of retentions.	☐
12.8	**Cost Fluctuations**	*Select one to apply, (a), (b) or (c)*
	(a) Cost fluctuations shall not be paid;	☑ **Drafting Note:** cost fluctuations should only be payable in exceptional circumstances
	(b) Cost fluctuations shall be paid in accordance with Appendix A of NZS 3910:2013;	☐
	(c) Cost fluctuations shall be paid in accordance with the method described in:	☐
12.13	**Goods and Services Tax**	
12.13.2	Payment Schedules provided by the Engineer:	*Select one to apply, (a) or (b)*
	(a) Shall not be in the form of a tax invoice;	☑
	(b) Shall be in the form of a buyer created tax invoice and the parties agree not to issue any other tax invoice for items covered by the Payment Schedule.	☐
13.	**Disputes**	
13.4	**Arbitration**	
13.4.3	If required, the arbitrator shall be nominated by the following Person:	The then President of the New Zealand Law Society or their nominee
	The place (and seat) of arbitration will be:	Napier in New Zealand, unless the Principal requires otherwise
15.	**Service of Notices**	
15.1.2	For the purpose of service of written notice:	
	(a) The address of the Principal is:	

Clause *in General Conditions*	**Title and subject matter**	**Specific condition data** *(Expand cells if required or add a reference to further detail provided in Schedule 2.)*
	• Postal address:	Napier City Council Private Bag 6010 NAPIER, 4142
	• Delivery address:	265 Marine Parade, Napier South Napier 4110
	• Mark for the attention of:	*Enter text*
	• Email address:	*Enter text*
	• Other agreed means of electronic communication and address detail:	*Enter text*
	(b) The address of the Contractor is:	
	• Postal address:	*Enter text*
	• Delivery address:	*Enter text*
	• Mark for the attention of:	*Enter text*
	• Email address:	*Enter text*
	• Other agreed means of electronic communication and address detail:	*Enter text*
	(c) The address of the Engineer is:	
	• Postal address:	*Enter text*
	• Delivery address:	*Enter text*
	• Mark for the attention of:	*Enter text*
	• Email address:	*Enter text*
	• Other agreed means of electronic communication and address detail:	*Enter text*

Schedule 2 – Special Conditions of Contract – Other Conditions of Contract

Contract for:	Enter Contract Title Enter Contract Number

Clause *in General Conditions*	**Specific Conditions** *(Expand cells if required or add a reference to further detail provided)*
1	**Interpretation**
1.2	**Definitions**
	The following definitions where they are for the same word or expression appearing in 1.2 of the General Conditions of Contract replace those definitions, and otherwise are additional definitions or, where applicable, modifications to existing definitions in the General Conditions of Contract. ***Contract Price*** means the Contract Price recorded in clause 3 of the Contract Agreement (as may be adjusted under the express provisions of the Contract). ***Contract Works*** means the carrying out and completion of the works and services set out in or contemplated by the Drawings and Specifications in accordance with the requirements of the Contract; the provision of all Plant, Temporary Works, Materials, services, planning, control, supervision, co-ordination and labour needed to properly carry out and complete the foregoing; and all other works, services and obligations to be carried out by the Contractor under the Contract. ***Date of Acceptance of Tender*** means the date on which the Contractor was awarded this Contract. ***General Conditions*** means clauses 1 - 15 of New Zealand Standard (NZS) 3910:2013 “Conditions of contract for building and civil engineering construction”. ***Good Industry Practice*** means, without limiting or prejudicing any higher standards or higher requirements under the Contract, complying with all applicable Acts, Regulations and licences (as defined in 5.11.2 including as listed in item 5.11.4 of the Special Conditions, Schedule 1) and the exercise of that degree of skill, care, diligence, prudence (including good, safe and prudent practice) and foresight that would reasonably be expected to be observed by a highly skilled and highly experienced contractor engaged in carrying out activities the same as or similar to the Contract Works under the same or similar circumstances. ***Goods and Services Tax*** or ***GST*** means goods and services tax payable under the Goods and Services Tax Act 1985. ***HSAW Act*** has the meaning assigned to it in 5.7A.1. ***Key Personnel*** means the key personnel for their corresponding roles as stated in item 5.2A of the Special Conditions, Schedule 1.

1.3	**General**
1.3.9 – 1.3.14	*New 1.3.9 - 1.3.14 are inserted as follows:* 1.3.9 References to the Contract or any other agreement or document shall be construed as a reference to the Contract or such other agreement or document as amended, novated, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, novates, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms. 1.3.10 No rule of construction (including the contra proferentem rule) applies to the interpretation of the Contract to the advantage or disadvantage of any one party on the basis that a party prepared the Contract or any relevant part of it. 1.3.11 The words “include” or “including” will be deemed to be followed by “without limitation” or “but not limited to”, whether or not they are followed by such phrases or words of like import. 1.3.12 Where a phrase such as 3.1.6 - 3.1.10 is used, this means 3.1.6 - 3.1.10 inclusive of both 3.1.6 and 3.1.10. 1.3.13 Whenever the Contractor is required to deliver a PDF or .pdf to the Principal, it must not be a scanned PDF / .pdf but must instead be a programme converted PDF / .pdf that can be searched etc. 1.3.14 Where compliance with something by the Contractor is stated as being a condition precedent: (a) to having a matter treated as a Variation; or (b) to the grant of an extension of time in respect of a matter, or where similar language is used, failure by the Contractor to strictly so comply will mean that the Contractor is not entitled to a Variation and/or an extension of time (as applicable) in relation to or in connection with the matter, and nor will the Contractor be relieved or discharged from any of its obligations or liabilities under the Contract in dealing with the matter.
2.6	**Evidence of Contract**
	Clause 2.6 is deleted and replaced with the following: Until the Contract is actually signed by the parties, there is no construction contract between the parties, unless the parties otherwise agree in writing (including under any signed and countersigned letter of award).

3	**Bond**
3.1.2	The phrase “2 Months” is deleted and replaced with “10 Working Days”, and the words “the Contractor and by the surety named in the tender or approved by the Principal” are deleted and replaced with “the surety named in the Special Conditions, Schedule 1 or as otherwise approved by the Principal (at its sole and absolute discretion)”. *In addition, the following new paragraph is inserted at the end of 3.1.2:* The surety under the Contractor’s Bond is to be and remain a financial institution with a Standard & Poors long term unsecured credit rating of A- or higher, to be demonstrated to the Principal’s satisfaction. If the credit rating of the surety is at any time lower than this, then the Contractor shall, within 5 Working Days of such event, provide to the Principal a replacement bond which meets the requirements of this 3.1.2.
3.1.3	The words “(in a form and from a surety acceptable to the Principal at its sole and absolute discretion)” are inserted after “replacement bond”.
3.1.4	The words “Contractor and its surety have” are deleted and replaced with “surety has”.
3.3	**Parent Company Guarantee**
	Add new clause as follows:
3.3.1	If the Special Conditions, Schedule 1, specify that this 3.3 applies then this 3.3, together with Schedule 4A, apply. Otherwise, this 3.3 and Schedule 4A do not apply.
3.3.2	The Contractor will provide the Principal with the Parent Company Guarantee, duly executed by the Guarantor, within 10 Working Days of the Date of Acceptance of Tender. At the same time as providing the Principal with the duly executed Parent Company Guarantee the Contractor must also, where the Guarantor is an entity incorporated outside of New Zealand, provide the Principal with a written opinion from the Guarantor’s lawyers for the benefit of the Principal that the Parent Company Guarantee has been duly executed by the Guarantor and that the obligations assumed by the Guarantor under the Parent Company Guarantee are legally binding and enforceable obligations.
3.3.3	No payment otherwise due under the Contract will become payable until the Parent Company Guarantee has been duly executed by the Guarantor and delivered to the Principal.
3.3.4	If the Parent Company Guarantee is not duly executed and delivered to the Principal within the required time then the Principal will be entitled to treat such failure as a default by the Contractor under 14.2.

4	**Subcontractors**
4.1.3	*Add the following to the end of 4.1.3.* The Contractor will be responsible for the acts, omissions and defaults of every Subcontractor (notwithstanding that the Subcontractor may have been approved by the Principal or the Engineer) in relation to or in connection with the Contract Works, including their officers, employees and agents, as if they were the acts, omissions or defaults of the Contractor (all such acts, omissions and defaults will be deemed to be acts, omissions and defaults of the Contractor), and the Contractor will remain primarily liable to discharge all of its obligations and duties under the Contract. The Contractor will provide a Subcontractor warranty and continuity guarantee for each Subcontractor and each subcontract valued at [$100,000] or greater with that Subcontractor in the form set out in Schedule 13A, with each duly signed by both the Contractor and the applicable Subcontractor; **Drafting Note:** refer comments on clause 11 of Schedule 1 – to confirm the appropriate value threshold for requiring subcontractor continuity guarantee.
4.1.4	*Add new clause as follows:* Each subcontract entered into or proposed to be entered into by the Contractor will prohibit any assignment or novation of the subcontract by the Subcontractor and will prohibit any further subcontracting without the prior written approval of the Engineer and will permit the Contractor to assign or novate the subcontract to the Principal on request by the Principal.
4.1.5	*Add new clause as follows:* The Contractor must use those Subcontractors listed in the Special Conditions, Schedule 1, to perform the corresponding packages in the Special Conditions, Schedule 1. The Contractor shall not terminate any such engagement or in any other way replace the named Subcontractor without the prior written consent of the Engineer whose consent shall not be unreasonably withheld. For the avoidance of any doubt, such Subcontractors are not Nominated Subcontractors, but are instead normal Subcontractors of the Contractor.
5.	**General Obligations**
5.2A	**Key Personnel**
	Add new clause as follows: 5.2A.1 The Contractor must ensure that the Key Personnel are dedicated to the Contract Works until each of those Key Personnel has, in the reasonable opinion of the Engineer, completed his/her role in relation to the Contract Works. 5.2A.2 The requirements in 5.2A.1 will continue to apply irrespective of whether the Key Personnel's role, job title or job description is amended during the term of the Contract. 5.2A.3 The Key Personnel may only be released from the Contract Works in the following cases: (a) the Principal approves that release in writing; (b) the person resigns permanently from the employ of the Contractor; or

	(c) the person becomes incapable (for instance the person dies, suffers from serious ill health or goes on long-term maternity or paternity leave) of continuing to act in his or her appointed capacity in relation to the Contract Works, and where the Contractor has complied with 5.2A.4. 5.2A.4 Prior to any release of a Key Personnel member under 5.2A.3, the Contractor must agree upon a replacement Key Personnel member with the Principal (such replacement must be of equivalent ability, experience and qualification except to the extent the Principal agrees otherwise) and then must promptly appoint that agreed person.
5.3	**Control of Employees**
	Deleted and replaced with the following: The Contractor will promptly replace any person carrying out any of the Contract Works whose history, experience, expertise, competency or conduct the Principal for any reason whatsoever and at any time finds unsatisfactory. Any such replacement will be to the reasonable satisfaction of the Principal and will be at the Contractor's risk and cost.
5.6	**Care of the works and the Site**
5.6.7	*Add new clause as follows:* If, during construction of the Contract Works, any part of the Contract Works shows symptoms of distress, excessive deflection, conflict of components, or any other indications of structural design deficiencies, then the Contractor must immediately notify the Engineer who will investigate the condition and issue such instructions as he or she considers necessary.
5.7A	**Further Health and Safety Provisions**
	New clauses are added as follows:
5.7A.1	Without limiting the generality of anything else in the Contract, the Contractor is at all times the primary party responsible for all health and safety matters in relation to the Contract Works and any other works or services carried out by any other "Worker" (for the purposes of this clause is as defined in the Health and Safety at Work Act 2015 (HSAW Act)) on any part of the Site under the care or control of the Contractor for the period from the date the Contractor is first granted possession of the applicable part of the Site until Practical Completion of the entire Contract Works, in accordance with the relevant legislative requirements.
5.7A.2	The Contractor must comply with and must ensure that all Subcontractors and its and their employees and agents, as well as any other Worker and their employees and agents carrying out any works or services on any part of the Site under the care or control of the Contractor, comply with their obligations under the HSAW Act and all regulations, approved codes of practice and with the Principal's occupational health and safety system.

5.7A.3	The Contractor acknowledges to the Principal that as between the Principal and the Contractor, the Contractor is the person managing and in control of the Site and accordingly has the responsibility for the health and safety of all Workers in and about the Site involved in or in any way affected by the execution of the Contract Works or any works or services carried out by any other Worker on any part of the Site under the care or control of the Contractor. The Contractor will cooperate and coordinate with other entities operating on the Site in respect of the health and safety of all Workers, and all other persons, in and around the Site that are involved in, or in any way affected by, the Contract Works at the Site.
5.7A.4	The Contractor will take primary responsibility to ensure that all necessary induction of all persons on the Site in terms of the HSAW Act, its rules, obligations and codes, and of the occupational health and safety systems of the Principal and the Contractor, are carried out and observed by the Contractor. The Contractor will also take primary responsibility to ensure that all necessary supervision of all persons on any part of the Site under the management, care or control of the Contractor in terms of the HSAW Act, its rules, obligations and codes, and of the occupational health and safety systems of the Principal and the Contractor, is carried out by the Contractor.
5.7A.5	The Contractor will implement and carry out an audit and inspection regime as required by the Principal and/or any Act or Regulation to ensure compliance by all persons involved with the Contract Works on the Site or other works or services carried out by any other Worker on any part of the Site under the management, care or control of the Contractor with the HSAW Act, its rules, obligations and codes, and the occupational health and safety systems of the Principal and the Contractor.
5.7A.6	The Contractor has allowed in the Contract Price and in its programme for the requirements of the Contract in relation to health and safety.
5.7A.7	The Contractor warrants to the Principal that the Contractor will take all practicable steps and do everything reasonably practicable, to ensure that no act or omission of it, any Subcontractor, any of its or their employees or agents, as well as of any other Worker and any of their employees or agents carrying out any work on any part of the Site under the care or control of the Contractor, does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSAW Act against the Principal, the Contractor, a Subcontractor and/or any other Worker.
5.7A.8	The Contractor will ensure that it reports to the Principal (in a form suitable to the Principal): (a) regularly regarding ongoing identification and management (processes to eliminate or minimise) of hazards and risks associated with the Contract Works; and (b) immediately following any accidents causing injury or death and any near misses arising on or resulting from the Contract Works at the Site, or other areas, including providing the Principal with: (i) any relevant investigation reports that result; and (ii) any relevant updates to the Contractor's health and safety management systems that result; and (iii) information of the appropriate remedial action taken by the Contractor.

5.7A.9	The Contractor will maintain an accident register in accordance with the requirements of the HSAW Act and will provide a copy to the Principal on request.
5.7A.10	The Principal (or the Engineer) may, at any time during performance of the Contract Works, conduct a compliance audit with respect to the Contractor's compliance with its health and safety obligations under the Contract. The Contractor must immediately comply with all requests and requirements of the Principal (or the Engineer) in relation to or in connection with any such audit. In addition, if the Principal or the Engineer is of the opinion that the Contractor has failed to comply with any part of this 5.7A, the Principal or the Engineer may advise the Contractor and instruct the Contractor to cease or not commence the Contract Works or part of the Contract Works until the Contractor complies. Any such instruction will not constitute a Variation.
5.8	**Setting Out**
5.8.1	*Add the words "and in accordance with the requirements of the Specifications" to the end of the clause.*
5.9	**Materials Labour and Plant**
5.9.4	*Add a new clause as follows:* The Principal will supply those items identified in Schedule 1 as items for which the Principal is responsible to supply, within the timeframe and to the location identified in Schedule 1. Where the location for delivery is a location other than the Site, the Contractor will be responsible for uplifting and transporting all Materials supplied by the Principal between the location listed in the Schedule and the Site, unless the Schedule indicates that delivery to Site will be arranged by the Principal. The Contractor shall inspect Principal supplied Materials on the earlier of delivery to the Site or on collection from the off-Site location specified in Schedule 1, to ensure that they meet the requirements of clause 5.9.2 of this Contract. Any defects in the Materials found by the Contractor upon inspection must be notified to the Engineer prior to the Contractor uplifting or accepting the Materials. Any defects found after such inspection shall be the responsibility of the Contractor. Any Materials supplied by the Principal and unused in the Contract Works shall be properly and securely stored by the Contractor and returned to the Principal (to the location advised by the Principal) as a pre-requisite of Practical Completion.
5.14	**Treasure**
5.14.3	*Add new clause as follows:* In the event that an unidentified archaeological site is uncovered during the works, or if any of the items as described in 5.14.1 are discovered then work shall cease immediately at that location. The Contractor shall immediately inform the Engineer and the Appendix A: Heritage New Zealand Pouhere Taonga Accidental Discovery Protocol shall apply.

5.15	**Clearance of Site**
	Deleted and replaced with the following: 5.15.1 Upon completion of the Contract Works and each Separable Portion the Contractor will remove all applicable surplus Plant, surplus Materials (to the extent required by the Principal), and Temporary Works and leave the applicable part of the Site and Contract Works in a clean and tidy and safe condition, in accordance with the requirements of the Specifications, for lawful use by the Principal and employees, contractors and invitees of the same and any other intended user or occupier. 5.15.2 If in the reasonable opinion of the Principal, the Contractor has not fulfilled its obligations under 5.15.1 the Contractor will, on being requested to do so by the Principal, return immediately to clean, tidy and make safe the Site and/or the Contract Works to the satisfaction of the Principal. If the Contractor fails to do this to the satisfaction of the Principal, the Principal will be entitled to employ a third party to carry out the necessary work, the cost of which will be a debt due and payable from the Contractor to the Principal payable on demand.
5.17	**Safety Plan**
5.17.2	*Add the following to the end of 5.17.2:* For the avoidance of any doubt, the Site-specific safety plan shall address compliance with 5.7A and the health and safety requirements set out in the Specifications.
5.17.4	*Add the following to the end of 5.17.4:* The Contractor must comply with the current, Engineer accepted, Site-specific safety plan.
5.17.6	*A new 5.17.6 is inserted as follows:* The Contractor shall continue to review, revise and update the Site-specific safety plan during the course of the Contract Works to ensure it continues to reflect the means by which the contractor intends to meet its health and safety obligations under the Contract, and must promptly comply with any reasonable request from the Engineer to so review, revise and/or update the Site-specific safety plan. Any revised version of the Site-specific safety plan must be submitted to the Engineer for approval in accordance with 5.17.3.
5.17.7	*A new 5.17.7 is inserted as follows:* The Contractor will ensure that their Site Specific Safety Plan takes into account site and task hazards, risk identification and controls for identified Site and task hazards, relevant Approved Codes of Practice, Guidelines and best practice standards. The Contractor must share information on hazards and risks to health and safety with the Principal and Engineer as soon as practicable, and all Site works that are considered high risk works or notifiable works must be approved by the Principal or Engineer as part of approval of the Contractor's Site Specific Safety Plan. A site-specific induction will be completed before commencement of the project and signed off between all parties. The Principal will advise the Contractor of site-specific hazards & risks and their controls, go and no-go areas, access and authorisation requirements relevant to the project, the Site, and facilities provided to the Contractor for the project. The Contractor must

	ensure that all workers are informed of the above and that no person must be permitted to work on the project without this knowledge.
5.19A	**Other Management Plans**
5.19A	*Add new clause as follows:* In addition to the Site-Specific safety plan, traffic management plan and quality plan, where specified in the Special Conditions, the Contractor shall prepare and submit to the Engineer for approval the plans identified in the Special Conditions in accordance with the timeframes set out in the Specifications. Such plans shall contain the information required by the Specifications and any other information reasonably requested by the Engineer or Principal. Unless otherwise stated in the Specifications, the Contractor shall not commence the Contract Works until all plans have been approved by the Engineer (acting reasonably). The Contractor shall comply with the approved plans.
5.20	**As-Built drawings and operation and maintenance manuals** **Drafting Note:** refer to the drafting note in relation to as-built documentation in Schedule 1: 5.20 and 10.4.5(b), above. The standard NZS3910:2013 position requires the Contractor to provide draft as-built plans prior to Practical Completion and final as-built plans prior to the end of the Defects Notification Period. If NCC agrees to this approach, the standard template position should be retained, and **both** of the following options should be deleted.
5.20.3	**Option 1: Final as-built plans required for Practical Completion to be achieved** Delete clause 5.20.3(a). Amend clause 5.20.3(b) to read as follows: Prior to Practical Completion, the Contractor shall submit to the Engineer for his or her consent the as-built drawings and operation and maintenance manuals prepared in final form sufficient for the Principal to operate, maintain, adjust and reassemble the Contract Works (except for the Temporary Works). The Engineer's consent shall not be unreasonably withheld. **Drafting Note:** The above drafting should be included if NCC is changing the template position to require that finalised as-built and operation and maintenance plans are provided prior to Practical Completion. **Option 2: NCC to prepare as-built plans with input from Contractor** Delete clause 5.20.3(a) and (b) and replace with the following: Prior to Practical Completion, the Contractor shall work together with the Principal and provide the Principal with all reasonable information and assistance requested by the Principal in a timely manner, to enable the Principal to prepare detailed and accurate as-built drawings of the Contract Works. The Contractor's assistance shall include, but not be limited to:

	• Marking any changes from approved plans on the relevant drawings and providing these amendments to the Principal; and • Liaising with the Principal's survey team to ensure all installations are appropriately captured, including to ensure that all below-ground services are appropriately documented prior to backfilling. **Drafting Note:** The above drafting should be included where NCC is changing the template position to provide that NCC will be responsible for preparing the as-built plans, with the Contractor required to provide assistance.
5.22	**Environmental Management Plan**
5.22.1	*Add new clause as follows:* The Contractor shall prepare and submit to the Engineer an Environmental Management Plant (EMP) for the execution of the Contract Works, that reflects the requirements of the Specifications. The EMP must be submitted to the Engineer for review and approval prior to commencement of the Contract Works. Within 5 Working Days of receipt of the Contractor's EMP, the Engineer shall notify the Contractor in writing whether or not they accept the EMP. Such acceptance shall not be unreasonably withheld. The Contractor shall not commence any part of the Contract Works on Site unless the Engineer has accepted the EMP. Compliance with the EMP shall not relieve the Contractor from any of its duties, obligations and liabilities under the Contract.
5.23	**Record keeping and reporting**
	Add new clause as follows: 5.23.1 The Contractor shall comply with the record keeping and reporting requirements set out in the Specifications. The Contractor shall make all site records and reports available to the Principal and the Engineer on demand, and shall, if requested, provide copies of the same to the Principal and the Engineer at no cost.
5.24	**Communications Plan**
	Add new clause as follows: 5.24.1 Within 15 Working Days of the Date of Acceptance of Tender, the Contractor must prepare and submit to the Engineer a comprehensive communications plan. This must address, in addition to such matters as the Principal believes appropriate, at least the following additional requirements: (a) How the Contractor intends to keep adjoining landowners and business owners in the immediate vicinity likely to be directly affected by the Contract Works (*Stakeholders*) (including by noise, dust, vibrations etc generated by the Contract Works), informed of the progress of the Contract Works, any potential delays and activities likely to impact Stakeholders (including street closures); (b) The Contractor's process for elevating complaints received by the Contractors in relation to the Contract Works to the Principal and Engineer to address (noting that all complaints must be elevated to Principal and Engineer within 1 working day of receipt); and

	(c) The Contractor's process for referring general queries or feedback received from Stakeholders or members of the public to the Principal for response. 5.24.2 If the Principal requires changes to the plan, the Contractor must consult with the Principal and will thereafter amend the plan and resubmit for the Engineer's approval. This process may be repeated as many times as is necessary until the Principal has approved of the plan. 5.24.3 The Contractor must observe and comply with the approved plan, and must not commence any works on Site unless the Engineer has approved of the said plan. All communications between the Contractor and Stakeholders must be in accordance with the plan. 5.24.4 The Contractor must obtain approval from the Principal before issuing any formal communications to Stakeholders in accordance with the plan.
5.25	**Broader Outcomes Compliance and Reporting**
	Add new clause as follows: 5.25.1 The Contractor must use all reasonable endeavours to comply with and achieve the Broader Outcomes in Schedule 20. 5.25.2 In order to support the Contractor to deliver the Broader Outcomes (***Broader Outcomes Compliance)***, representatives from both the Principal and the Contractor, along with the Engineer, will meet within two months of execution of the Contract Agreement, and every two months following (or as otherwise agreed between the parties), in order to assess Broader Outcomes Compliance (***Broader Outcomes Meeting***). In each Broader Outcomes Meeting, the parties will: (a) Review and assess the Contractor's Broader Outcomes Compliance against the requirements of Schedule 20; and (b) Agree recommendations for how the Contractor can achieve, improve or ensure the continued achievement of its Broader Outcomes Compliance going forwards. **Drafting Note:** Schedule 20 should be populated to reflect the Contractor's tender response and proposals for delivery of Broader Outcomes.
6.	**Engineer's powers and responsibilities**
6.4	**Inspection, recording, measuring, and testing**
6.4.8	*Add new clause as follows:* Where the Engineer is required to make more than two site inspections to check defects that have not been adequately remedied by the Contractor prior to the expiry of the Defects Notification Period, the costs of such additional inspections may be deducted from payments due to the Contractor.
6.7	**Suspension of work**

6.7.4	*The following new last sentence is inserted:* This 6.7.4 will not apply where the suspension is due to default on the part of the Contractor.
7	**Indemnity**
7.1.3	*The phrase "(a), (b) and (c)" is deleted and replaced with "(a) and (b)".*
7.1.5	*A new clause is added as follows:* Except to the extent that liability cannot be legally limited or excluded but notwithstanding any other provision of the Contract, each party's liability to the other under or in connection with this Contract will exclude any consequential loss incurred or sustained as a result of an act or omission of the other party. For the purposes of this clause, consequential loss includes the following: (a) loss of profits and/or anticipated profits; (b) loss of revenue; (c) loss of goodwill; (d) loss of use (other than use of the Contract Works); (e) loss of opportunity; and (f) loss of business.
7.2	*A new clause is added as follows:* 7.2.1 Where provided in the Specific Conditions, subject to 7.2.2 and to the extent permitted by law, the maximum aggregate liability of the Contractor to the Principal under or in connection with this Contract whether in contract, tort (including negligence) or otherwise is limited to the amount recorded in the Specific Conditions. 7.2.2 The limit in 7.2.1 does not limit the Contractor's liability: (a) to indemnify the Principal under 5.12.2, or 7.1.1(b) in respect of liability incurred by the Principal to a third party; (b) in the case of fraud, wilful or reckless misconduct, wilful default or gross negligence; (c) in the case of it repudiating or abandoning the Contract; (d) in respect of any penalties applicable under any statute, secondary legislation, instrument, bylaw or Consent; (e) to pay any liquidated damages under this Contract; or (f) in respect of any insurance proceeds recovered under an insurance policy, including any proceeds that would have been recovered, but for any failure to claim and/ or breach of the relevant insurance policy, or due to the failure by the party required to do so to maintain an insurance policy.
8.	**Insurances**
8.1	**General**

8.1.2	*Add at the end of the clause:* Any costs associated with a failure of one party to notify the other insured parties of any material policy change are the responsibility of the policy holder.
8.1.3	*Add at the end of the clause:* Provide that a copy of the policy has been provided to all insured parties prior to the works commencing.
8.1.4(a)	*Replace the clause with the following:* 'Where the loss or damage giving rise to the claim is caused or contributed to by the Contractor or those for whom the Contractor is responsible, the Contractor shall bear the full amount of any insurance policy deductible or excess. The Principal shall be responsible for the nominal deductible in all other circumstances. The nominal deductibles shall be in each case be an amount which is equal to or less than the actual insurance policy deductible or excess.
8.2	**Contractor arranged insurance - General**
8.2.3(b)	*The word "joint" is deleted, and the following new paragraphs are inserted at the end:* In addition, the Contractor shall ensure that Napier City Council is noted as an insured party under the insurances required under 8.3 and 8.5 so that such insurances shall also apply to Napier City Council as a separate insured. The Contractor shall also ensure that all insurers' rights of subrogation against the named insureds for losses or claims arising out of performance of the Contract shall be waived under such policies, except in the case of fraud, wilful misconduct or wilful default of the respective insured.
8.2.3(c)	*Add a new clause 8.2.3(c) as follows:* The policies are primary and without contribution from any other policy of insurance effected by the Principal.
8.2.9	*Add new clause as follows:* The Contractor shall exercise reasonable care to ensure that all Subcontractors engaged by the Contractor under the contract (a) Have in place appropriate insurance cover (having regard to their scope of services) for the duration of their engagement in connection with the Contract Works: and (b) Are aware of the conditions and exclusions and excess imposed by the construction insurance under 8.3 or 8.8 (as applicable) Nothing in this 8.2.9 (including the existence, or amount, of insurance cover obtained by Subcontractors) shall decrease or in any way affect the liability of the Contractor to the Principal under the Contract.
8.5	**Contractor arranged public liability insurance**
8.5.1	*Delete the words "and existing property to be insured under 8.3 or 8.8" and amend clause 8.5.1(a) to read as follows:*

	"the Contractor's legal liability arising out of the performance of the Contract Works for damage, loss or injury to the Principal and the Principal's property (including existing structures and other structures in the vicinity), other than to the Contract Works;"
8.6	**Contractor arranged professional indemnity insurance**
8.6.3	*Insert after the words "and thereafter":* "maintain the annual renewable policy or"
8.7	**Principal arranged insurances - General**
8.7.3	*Add at the end of the clause:* Nothing in this 8.7.3 shall limit the liability of the Contractor to the Principal should the Principal fail for any reason whatsoever to pay any insurance premium under this 8.7.3.
8.7.8	*Add the following to the end of this provision:* Nothing in this provision shall limit the liability of the Contractor to the Principal should the Principal fail for any reason whatsoever pay any insurance premium under clauses 8.8 and 8.9
9	**Variations** **Drafting Note**: this clause includes a reasonable time bar for the submission of Variation claims, to ensure that these are submitted in a timely manner and to allow NCC the opportunity to mitigate cost / time impacts of Variations.
9.3	**Valuation of Variations**
9.3.2	The words "1 Month or as soon as practicable thereafter" are deleted and are replaced with "20 Working Days".
9.3.15	*Deleted and replaced with the following:* The Contractor will not be entitled to any cost of processing Variations whether or not they proceed.
9.6	**No Variation**
9.6	*A new clause is inserted as follows:* Notwithstanding anything to the contrary in section 9, no order or instruction given by or on behalf of the Engineer due to or to address any failure, neglect, omission or default of the Contractor or any person or entity for whom the Contractor is responsible will be or be deemed to be a Variation, and any such order or instruction will not result in any additional payment, any extension of time or any other relief.
10.	**Time for Completion** **Drafting Note:** this clause includes a reasonable time bar for the submission of EOT claims, to ensure that these are submitted in a timely manner and to allow NCC the opportunity to mitigate cost / time impacts of EOTs.
10.3	**Extension of Time**

10.3.1	*The following wording is added to the end of the clause:* The Engineer may reduce the grant of any extension of time to reflect the extent to which the Contractor's breach of the Contract contributed to the occurrence of, or the extent of delays arising from, the reason/event giving rise to the Contractor's entitlement to an extension of time. Where, in the opinion of the Engineer, more than one event causes concurrent delays and at least one of those causes, but not all of them, would entitle the Contractor to an extension of time then, to the extent that the delays are concurrent, the Contractor is not entitled to an extension of time.
10.3.1(c)	*Add the following to the end of 10.3.1(c):* which is not limited to or originated by, and is beyond the control of, the Contractor and/or any Subcontractor, and which prevents the Contract Works from proceeding
10.3.1(d):	*Add the following to the end of 10.3.1(d):* which is not due to any breach or negligence of the Contractor or any Person for whom the Contractor is responsible
10.3.1(e):	*Add the following after the word "Flood" in 10.3.1(e):* (which is not due to any breach or negligence of the Contractor or any Person for whom the Contractor is responsible)
10.3.2(b)	*Deleted and replaced with the following:* (b) The notice is given as soon as reasonably practicable and, in any event, within 20 Working Days after the event or circumstance, which is relied on as the ground for the extension, first arises; and
10.3.2	*A new last paragraph is inserted as follows:* Full compliance with the foregoing is a condition precedent to the grant of an extension in respect of the relevant matter.
10.3.4	*The following sentence is inserted at the end:* This 10.3.4 is subject to 10.3.2 and 10.3.8.
10.3.8	*Add a new clause 10.3.8 as follows:* The following rules will be applied to assessing a claim for an extension of time: (a) the Contractor's delay allowance included in any programme will be ignored; (b) the event or circumstance which causes delay must be one which is mentioned in 10.3.1; (c) the event or circumstance in respect of which the extension of time is sought must or will (either in isolation or borne out of other events or circumstances for which the Contractor does not assume responsibility for under the Contract) cause actual delay to the critical path elements of the Contract Works, which the Contractor must show and demonstrate to the reasonable satisfaction of the Engineer;

	(d) for events or circumstances that concurrently cause the delay the Contractor will be entitled to an extension of time for only the net effect of the concurrent delay; (e) if the Contractor is delayed by an event or circumstance that: (i) entitles the Contractor to an adjustment to a Due Date for Completion; and (ii) does not entitle the Contractor to an adjustment to a Due Date for Completion, then the Contractor will be entitled to an adjustment of the relevant Due Date for Completion only to the extent that the event or circumstance which entitles the Contractor to an adjustment exceeds the delay flowing from the event or circumstance which does not entitle the Contractor to an adjustment. Notwithstanding any other provision of the Contract, where the Contractor is entitled to an adjustment to the Due Date for Completion for any event or circumstance under 10.3.1(a) or 10.3.1(g), the Contractor shall be entitled to an adjustment of the relevant Due Date for Completion for the full extent of the delay as determined by the Engineer in accordance with the Contract, but with no consideration made for concurrent delay; and (f) to the extent that the delay could have been avoided or mitigated by exercising Good Industry Practice, the Contractor will not be entitled to an extension of time.
10.4.5(c)	*New clause added as follows:* (c) confirmation that the Contractor has met any other requirements specified in the Special Conditions
10.5	**Damages for late completion**
10.5.3	*Add new sentence:* The notice to the Engineer from the Principal to deduct liquidated damages in accordance with 12.2.4 and 12.5.2 requiring the deduction, shall also apply to any progress payment claims following the notice and the final payment claim.
11	**Defects Liability**
11.5	**Warranties**
11.5.2	*Deleted and replaced with the following:* Each such warranty shall be submitted to the Engineer as soon as practicable after the applicable works or services package has commenced and receipt by the Engineer of the duly executed warranty shall be a condition precedent to the Principal's obligation to make any payment to the Contractor in respect of such works or services package.
11.7	**Other Warranties**
	A new clause is added as follows: 11.7.1 The Contractor must obtain warranties and guarantees for workmanship and materials that are obtainable in the ordinary course of business, in respect of the

	services, fixtures, fittings, appliances and other materials, plant and equipment included in the Contract Works (***Other Warranties***). 11.7.2 The Contractor must, as a pre-condition to Practical Completion of the Contract Works and each Separable Portion and to the satisfaction of the Principal, assign all of its rights and interest under all relevant Other Warranties to the Principal or its nominee. 11.7.3 Where the Contractor fails to assign all of its rights and interest under all Other Warranties to the Principal or its nominee, the Contractor must hold such Other Warranties, and all rights and interest that arise under such Other Warranties, in trust for the benefit of the Principal and will, if called upon to do so by the Principal, exercise all such rights and interest and account to the Principal for all sums received on account thereof.
12.	**Payments**
12.1	**Contractor's payment claims**
12.1.1	*Add new sentence:* The Contractor shall submit the payment claim within five working days after the end of the month, to allow payment to be made by the 20th of the month.
12.1.3(b)	Insert at the end of clause 12.1.3(b): (vii) Supporting evidence to allow the Engineer to ascertain the correctness of the claimed sum.
12.13	**Goods and services tax**
12.13.2	*Delete and replace with:* Any payment claims or final payment claim prepared by the Contractor shall be a GST Invoice. The Engineer shall on behalf of the Principal ensure that the Payment claim is in the form required to constitute a GST Invoice.
13	**Disputes**
13.7	*A new 13.7 is inserted as follows:* Nothing in this section 13 prejudices either party's right to institute court proceedings to seek injunctive or urgent declaratory relief in respect of any dispute or difference.
16	**Local Government Official Information and Meetings Act 1987**
	A new Section 16 is inserted as follows: **16 Local Government Official Information and Meetings Act 1987 (LGOIMA)** The Contractor acknowledges that the Principal is subject to the provisions of the LGOIMA and may be required to release information. Accordingly the Contractor agrees to comply with the LGOIMA in respect of all the information it holds relating to the Principal and its subcontractors.
17	**General**

A new Section 17 is inserted as follows:

17.1 Prior Works

Where any work or services have been performed, prior to the date of the Contract Agreement, by or on behalf of the Contractor for the Principal in relation to or in connection with the Contract Works (the Prior Works), the parties agree that upon the date of the Contract Agreement the Contract will retrospectively apply to all Prior Works (the Prior Works will be deemed to form part of the Contract Works under the Contract).

17.2 Amendment

No amendment or other modification of the Contract will be effective unless it is in writing, is dated and is signed by a duly authorised representative of each party.

17.3 Severability

If any one or more of the provisions contained in the Contract is invalid, illegal or unenforceable in any respect under any applicable Act or Regulation, the validity, legality and enforceability of the remaining provisions contained in the Contract will not in any way be affected or impaired.

17.4 Independent contractor

17.4.1 The Contractor is an independent contractor performing the Contract. Nothing in the Contract will create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, and no party may make, or allow to be made, any representation that any such relationship exists between the parties. No party will have the authority to act for, or incur any obligation on behalf of, the other party.

17.4.2 The Contractor assumes responsibility for the manner in which the Contract Works are performed. All employees and representatives of the Contractor and any Subcontractors will be under the complete control of the Contractor and will not be deemed to be employees of the Principal, and (without limiting 14.2.3(d) nor any guarantees or warranties that the Principal may obtain from any Subcontractors) nothing contained in the Contract or in any subcontract will be construed to create any contractual relationship between the Principal and any such employees, representatives or any Subcontractors.

17.5 Counterparts

The Contract may be executed in counterparts (including facsimile or electronic copies of counterparts) and, provided that each party has duly executed a counterpart, the counterparts together will constitute a binding and enforceable agreement between the parties.

17.6 Further assurances

Each party will do all acts and things including the execution of all relevant documents, as may be reasonable to implement and carry out its obligations and duties under, and contemplated by, the Contract.

	17.7	**Programmes and approvals**
	17.7.1	The observance by the Contractor of any programme, procedure, policy, manual, plan or similar instrument or tool referred to or derived or prepared under the Contract will not relieve the Contractor from any of its obligations, duties or liabilities under the Contract.
	17.7.2	The obligations, duties and liabilities of the Contractor under the Contract will not be released, diminished or in any other way affected by any enquiry, direction, inspection, comment, consent, sanction, acknowledgement, confirmation, approval, disapproval, certification (including any Payment Schedule) or advice made or given by or on behalf of the Principal, the Engineer or any Engineer's Representative or failure by any such person to enquire, direct, inspect, comment, consent, sanction, acknowledge, confirm, approve, disapprove, certify or advise, and nor does any of the foregoing constitute acceptance of any of the Contract Works.

Schedules

The schedules listed below apply to the Contract Documents and, where appended hereto, replace or add to the schedules printed in NZS 3910:2013.

Drafting Note: this table should be reviewed and updated to record the status of each of these schedules on a case-by-case basis

Schedule	Title	Applicable / Not Applicable
Schedule 3	Form of Contractors Performance Bond	Applicable – as set out below
Schedule 4	Form of Principal's Bond	Not Applicable
Schedule 4A	Parent Company Guarantee	[Applicable – as set out below] [to be confirmed post tender]
Schedule 5	Form of Contractors Bond in Lieu of Retentions	Applicable – as set out below
Schedule 6	Form of Producer Statement - Construction	Applicable – as set out below
Schedule 7	Information on Contractor Arranged Construction Insurance	Applicable – as set out below
Schedule 8	Information on Contractor Arranged Plant Insurance	Applicable – as set out below
Schedule 9	Information on Public Liability Insurance	Applicable – as set out below
Schedule 10	Information on Contractor Arranged Motor Vehicle Insurance	Applicable – as set out below
Schedule 11	Information as to the Contractor's Professional Indemnity Insurance	Applicable – as set out below
Schedule 12	Information on Principal Arranged Construction Insurance	Not applicable
Schedule 13A	Form of Subcontractor Warranty and Continuity Guarantee	Applicable – as set out below
Schedule 13B	Packages For Which Specific Warranties Are Required	Applicable – as set out below
Schedule 13C	Form Of Specific Subcontractor Warranty	Applicable – as set out below
Schedule 13D	Form Of Specific Contractor Warranty	Applicable – as set out below
Schedule 14	Agreement for Off-Site Materials	Applicable – as set out below
Schedule 15	Practical Completion Certificate	Applicable – as set out below
Schedule 16	Final Completion Certificate	Applicable – as set out below
Schedule 17	Preliminary and General Specification	Applicable – as set out below
Schedule 18	Technical Drawings and Specifications	Applicable – as set out below

Schedule 19	Schedule of Prices	Applicable – as set out below
Schedule 20	Broader Outcomes	Applicable – as set out below
Schedule 21	Practical Completion Requirements	Applicable – as set out below
Schedule 22	Contractor's Tender	Applicable – as set out below

Schedule 3 – Form of Contractor's Performance Bond

CONTRACT FOR	Enter Contract Title Enter Contract Number	
THIS DEED is made on	*Enter date*	
BY	Enter Contractors Name	
of	*Enter address*	('the Contractor')
AND	*Enter text*	
of	*Enter text*	('the Surety')
	Enter address	(Address of Surety for service)

It is made in the following circumstances:

a. The Contractor has entered into an agreement with Napier City Council **('the Principal')** to carry out and fulfil the obligations imposed on the Contractor ('the Contract').
b. The Contract requires the Contractor to provide the Principal with security in the form of a bond to ensure performance of the Contractor's obligations under the Contract.
c. Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

By this deed:

1. THE Contractor and surety are jointly and severally held and bound to the Principal in the sum of $NZ *Enter amount* and bind themselves, their successors and assigns jointly and severally for the payment of that sum.

2. ANY demand by the Principal pursuant to clause 1 shall be in writing. The amount demanded shall be paid by the Surety into a bank account advised by the Principal without reference to the position between the Contractor and the Principal, without regard to whether there has been a default under the Contract, and (in the case of the Surety) even if the Contractor has given notice not to pay.

3. THE conditions of this bond are that it shall be released if and when:
    a. Practical Completion Certificate has been issued for the Contract Works in accordance with 10.4 of the General Conditions;
    b. The surety receives a notice from the Principal releasing the Contractor and surety from this bond; or
    c. The surety receives a notice from the Principal confirming that a replacement Contractor's Bond has been received and accepted and releasing the Contractor and surety from this bond.

4. EXCEPT as **provided** in clause 2 above this bond shall be and remain in full force and effect.

5. THE surety shall not be released from any liability under this bond:
    a. By any alteration in the terms of the Contract;
    b. By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;
    c. By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract; or
    d. By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor.

6. NOTWITHSTANDING anything stated in this bond, the Surety may at any time (and without being required to do so) pay the Principal the Bond Sum (less any amounts that may already have been paid) or any lesser amount that the Principal may require. This payment will be deemed to have been made at the demand of the Principal and, when paid, will discharge the Surety's liability under this bond.

7. THIS bond shall be governed by New Zealand law.

In witness of which this deed has been executed.

SIGNED on behalf of the Surety by:	SIGNED on behalf of the Contractor by:
(Director)	(Director)
(Director)	(Director)

NOTE: This bond shall be executed by the Contractor and by the surety in the manner required for execution of a deed. Any of these parties which are a company shall execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature shall be witnessed by another Person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. In the case of a party who is an individual, the party shall sign, and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.

Schedule 4A – Parent Company Guarantee

Date	*Enter date*	
PARTIES	Napier City Council	('the Principal')
	[insert Guarantor name]	('the Guarantor')

BACKGROUND

A The Principal and Enter Contractors Name (the ***Contractor***) are the parties to a construction contract dated *Enter date* relating to the Enter Contract Title (the ***Contract***).

B The Contract requires the Contractor to deliver up this deed to the Principal.

C The Guarantor wishes to enter into this deed to enable the Contractor to comply with its obligations under the Contract, and in consideration of the Principal agreeing to enter into the Contract with the Contractor.

IT IS AGREED as follows:

1 **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this deed:

(a) the term ***Guaranteed Obligations*** means all actual or contingent indebtedness or obligations of the Contractor to the Principal arising out of or in relation to the Contract, and ***Guaranteed Obligation*** means any such indebtedness or obligation; and

(b) words and expressions defined in the Contract and not otherwise defined in this deed have the same meanings when used in this deed.

1.2 **Interpretation**

In this deed, unless the context otherwise requires:

(a) paragraph headings are not to be used to construe this deed;

(b) words importing the singular number include the plural number and vice versa;

(c) words of any gender include the other gender and bodies corporate;

(d) a party includes its successors, permitted assigns and permitted novatees;

(e) except where expressly provided to the contrary all references in this deed to "including", "includes" or "include" are to be read as if that reference is followed by the words "without limitation";

(f) references to a clause or clauses will, unless otherwise specified, be a reference to the corresponding clause or clauses in this deed; and

(g) the rule of construction known as contra proferentem will not apply to this deed.

2 **GUARANTEE AND INDEMNITY**

2.1 In consideration of the Principal agreeing to enter into the Contract with the Contractor, the Guarantor:

(a) guarantees to the Principal the payment of all Guaranteed Obligations in the same currency and at the same place and at the same time as each Guaranteed Obligation is payable by the Contractor; and

(b) guarantees to the Principal the performance of all Guaranteed Obligations at the same time and in the same manner as each Guaranteed Obligation is to be performed by the Contractor in accordance with the Contract; and

(c) will indemnify the Principal for any loss suffered or incurred, directly or indirectly, by the Principal due to any failure by the Contractor to perform any Guaranteed Obligation in accordance with the Contract.

2.2 If any Guaranteed Obligation, or any guarantee or indemnity in clause 2.1, is void or unenforceable for any reason, the Guarantor is liable to the Principal as a separate and independent obligation and by way of indemnity for the same amount and in the same currency as the Guarantor would be liable if the Guaranteed Obligation, or the guarantee or indemnity in clause 2.1, were not void or unenforceable.

2.3 The Guarantor will make all payments due under this deed on demand.

3 **PRINCIPAL OBLIGOR**

As between the Principal and the Guarantor, the Guarantor is a principal obligor in respect of each Guaranteed Obligation, with identical but separately enforceable Guaranteed Obligations to those of the Contractor. The Principal may demand payment from the Guarantor of any Guaranteed Obligation or the performance of any Guaranteed Obligation without first taking any steps or proceedings against the Contractor in relation to that Guaranteed Obligation or under any other security the Principal may hold from time to time.

4 **RIGHTS NOT AFFECTED OR DIMINISHED**

4.1 The rights of the Principal, and the liability of the Guarantor, under this deed are not to be affected, impaired or discharged by anything whatsoever which might otherwise affect, impair or discharge such rights or liability, nor is the Principal liable to the Guarantor in respect of any act or thing whether or not any of the Guarantor's rights of subrogation or otherwise are prejudiced.

4.2 Without in any way prejudicing the provisions of clause 4.1, the Principal, without the Guarantor's consent, may:

(a) vary the terms of any Guaranteed Obligations;

(b) compound with or grant time or other indulgences to the Contractor or to or for any other person or entity;

(c) deal with, exchange, release, modify, or not perfect or enforce, any encumbrance, security or right which the Principal now has or may in the future have against the Contractor or any other person or entity; and/ or

(d) novate any contract(s) to the Contractor.

4.3 The rights of the Principal under this deed are in addition to and not in substitution for or reduction of the Principal's rights under the Contract or at law or otherwise and no provision of this deed will be deemed to limit or restrict those rights.

4.4 The Guarantor by this deed authorises the Contractor and the Principal to make any alteration, amendment or variation to the Contract and/or the Contract Works (as defined in the Contract), and agrees that any actual or contingent indebtedness or obligations of the Contractor arising out of or in relation to such matters will form part of the Guaranteed Obligations.

5 **CONTINUING SECURITY**

This deed is a continuing security. It cannot be discharged by payment of the whole or any part of any sums at any time owing by the Contractor to the Principal. It will only be discharged when all obligations, duties, liabilities, warranties and undertakings of the Contractor under the Contract have been satisfied and performed in full.

6 **GUARANTOR NOT TO COMPETE**

The Guarantor will not exercise:

(a) any right to prove in the bankruptcy, insolvency, administration or liquidation of the Contractor in competition with the Principal;

(b) any other right of a surety to discharge any liability; or

(c) any right of subrogation or indemnity which the Guarantor may have against the Contractor;

for so long as any Guaranteed Obligations remain outstanding.

7 **LIABILITY NO GREATER THAN CONTRACTOR'S LIABILITY**

Subject always to clause 2.2 above, the Guarantor's liability under this deed will be no greater that the Contractor's liability under the Contract.

8 **BINDING FINDINGS AND RULINGS**

In the event that the Principal brings proceedings against the Contractor, the Guarantor will be bound by any findings of fact as well as any interim or final award, determination or judgment made by an arbitrator or the court in such proceedings.

9 **DISPUTE RESOLUTION**

9.1 Any dispute or difference (a ***Dispute***) between the Principal and the Guarantor arising out of this deed will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification thereof.

9.2 The Dispute will be referred to a sole arbitrator. If the Principal and the Guarantor fail to agree on the appointment of a sole arbitrator within 15 days after receipt of the notice of Dispute, the arbitrator will be appointed by the then President of the Arbitrators' and Mediators' Institute of New Zealand (or by his or her nominee).

9.3 Notwithstanding clauses 9.1 and 9.2, if any dispute or difference arises under this deed which is related to a dispute or difference under the Contract, the parties agree that, subject to any discretion to the contrary of a court, arbitrator or mediator, as the case may be, or unless otherwise required by the Principal, the dispute or difference is to be dealt with at the same time and in conjunction with the dispute or difference under the Contract.

10 ASSIGNMENT AND NOVATION

10.1 The Guarantor must not assign, charge or novate, whether in part or in whole, any of its rights, benefits or obligations under this deed without the prior written consent of the Principal (which it may or may not give at its discretion).

10.2 The Principal may assign, charge or novate all or any part of its rights and/or obligations under this deed to any assignee, chargee or novatee of the Principal under the Contract or to any other Person without the Guarantor's consent.

10.3 The Guarantor must, if and when requested by the Principal, promptly do all things and execute all such documents reasonably necessary to give effect to any assignment, charge or novation by the Principal, including in the case of a novation, entering into a deed of novation with the Principal and the relevant Person nominated by the Principal in a form required by the Principal.

11 MISCELLANEOUS

11.1 Privity

The Guarantor acknowledges and agrees that, pursuant to section 12 of the Contracts and Commercial Law Act 2017, the rights and benefits under this deed will accrue to and be enforceable by not only the Principal and any assignee, chargee or novatee of the Principal under clause 10.2, and by any transferee of the Principal's interest in the Contract Works.

11.2 Notices

11.2.1 Any notice or document required to be given under this deed must be in writing and may be given by hand, post, facsimile or email to the party's address for service of notices set out in the execution pages of this deed. Subject to the last paragraph of this clause 11.2, a notice or document is taken to have been received:

(a) if the notice or document is delivered by hand to the receiver, at the time of delivery;

(b) if the notice or document is posted in a postage paid registered envelope addressed to the receiver, at the time when it would be received in the ordinary course of registered post then prevailing;

(c) if the notice or document is transmitted by facsimile, and subject to receipt of an error free transmission report by the transmitter, received on the date of transmission; or

(d) if the notice or document is sent by email, when receipt of the email is acknowledged by the receiving party by return email or otherwise in writing, except that return emails generated automatically will not constitute an acknowledgment.

If a notice or document is received after 5.00pm on a day or on a day that is not a Working Day, the notice will be deemed to have been received on the next Working Day.

11.2.2 Notwithstanding anything to the contrary in clause 11.2.1, if the Principal establishes Aconex as a document management system for the Contract Works (or any part of the Contract Works), then the Principal may direct the Guarantor to submit all notices and/or documents required to be given under this deed under the Aconex document management system and the Principal may submit its notices and/or documents required to be given under this deed under the Aconex document management system. The Guarantor must comply with any such direction to the exclusion of the other service methods under clause 11.2.1 unless and until the direction is revoked by the Principal. Notices and/or documents so submitted under the Aconex document management system shall be taken as having been received at the time the notice or document

is uploaded to the Aconex document management system (for the avoidance of any doubt, subject to the last paragraph of clause 11.2.1).

11.3 **Further assurances**

Each party must do or use its reasonable endeavours to cause to be done anything necessary or desirable to give effect to this deed and the arrangements set out in this deed, and will refrain from doing anything which might prevent full effect being given to this deed.

11.4 **No waiver**

A waiver of any provision of this deed will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by either party in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.

11.5 **Severability**

If any one or more of the provisions contained in this deed is invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this deed will not in any way be affected or impaired.

11.6 **Amendment**

No amendment or other modification of this deed will be effective unless it is in writing, is dated and is signed by a duly authorised representative of each party.

11.7 **Counterparts**

This deed may be executed in counterparts (including facsimile or electronic copies of counterparts) and provided that each party has duly executed a counterpart, the counterparts together will constitute a valid and binding deed between the parties.

11.8 **Governing law**

This deed is governed by and will be construed in accordance with the laws of New Zealand, and without limitation or prejudice to clause 9 the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts which have jurisdiction to hear appeals from any of those courts and waive any right to object to any proceedings being brought in those courts.

EXECUTION

Executed as a deed

EXECUTED by [insert name] as Principal by:

(Director)	(Director)
Print name	Print name
Witness to signature	
Print name	
Occupation	
Address	

Address of the Principal:

Physical address:	265 Marine Parade Napier, 4110
Postal address:	
Facsimile:	
Email:	
Telephone:	
Attention:	

Schedule 5 - Form of Contractor's Bond in Lieu of Retentions

CONTRACT FOR	Enter Contract Title Enter Contract Number	
THIS DEED is made on		
BY	Enter Contractors Name	
of	*Enter address*	('the Contractor')
AND	*Enter text*	
of	*Enter text*	('the Surety')
	Enter address	(Address of Surety for service)

It is made in the following circumstances:

a. The Contractor has entered into an agreement with Napier City Council ('the Principal') to carry out and fulfil the obligations imposed on the Contractor ('the Contract').

b. The Contractor has agreed to provide the Principal with security in the form of a bond in lieu of retentions additional to any other bond required under the Contract.

c. Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

By this deed:

1. THE Contractor and surety are jointly and severally held and bound to the Principal in the sum of *$NZ Enter amount* and bind themselves, their successors and assigns jointly and severally for the payment of that sum.

2. THE conditions of this bond are that it shall be released if and when:
   a. The Final Completion Certificate has been issued for the Contract Works in accordance with 11.3 of the General Conditions; or
   b. The surety receives a notice from the Principal releasing the Contractor and the surety from this bond.

3. **EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.

4. THE surety shall not be released from any liability under this bond:
   a. By any alteration in the terms of the Contract;
   b. By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;
   c. By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract; or
   d. By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor.
5. THIS bond shall be governed by New Zealand law.

In witness of which this deed has been executed.

SIGNED on behalf of the Surety by:	SIGNED on behalf of the Contractor by:
(Director)	(Director)
(Director)	(Director)

NOTE: This bond shall be executed by the Contractor and by the surety in the manner required for execution of a deed. Any of these parties which are a company shall execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature shall be witnessed by another Person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. In the case of a party who is an individual, the party shall sign, and the signature shall be witnessed by another Person. The witness shall not only sign but shall also add his or her occupation and address.

Schedule 6 - Form of Producer Statement – Construction

ISSUED BY	Enter Contractors Name	('the Contractor')
to	Napier City Council	('the Principal)
IN RESPECT OF	Enter Contract Title Enter Contract Number	
at	*Enter address*	(Address)

Enter Contractors Name ('the Contractor') has contracted to Napier City Council ('the Principal') to carry out and complete certain building works in accordance with a Contract titled Enter Contract Title('the Contract'), Enter Contract Number

I *Enter name* (Duly Authorised Agent), a duly authorised representative of Enter Contractors Name ('the Contractor'), believe on reasonable grounds that Enter Contractors Name ('the Contractor') has carried out and completed:

☐	All
☐	Part only as specified in the attached particulars of the Contract Works in accordance with the Contract: *Enter details of attached particulars*

(Signature of Authorised Agent on behalf of) Date: *Enter date*

Enter Contractors Name

(Contractor)

Enter Address

(Address)

Schedule 7 - Information on Contractor Arranged Construction Insurance

To whom it may concern:

From	*Enter name*	(Name of insurance company)
	Enter Branch details	(Branch)
	Enter address	(Address)

We confirm having effected construction insurance for:

Enter Contractors Name		('the Contractor')
Napier City Council		('the Principal')
In respect of	Enter Contract Title Enter Contract Number	(Contract title)
Policy wording title is	*Enter policy wording*	

We advise that special terms, copy attached, have been applied to this policy: *Select yes or no*

The following provisions apply:

☐ Project-specific policy	☐ Annual run-off policy	☐ Annual cut-off policy	Policy expiry date	*Enter date*

8.1.6 The following forces of nature are insured		
☐ Landslip	☐ Earthquake	☐ Tsunami
☐ Tornado	☐ Cyclone	☐ Storm
☐ Flood	☐ Lightning strike	☐ Volcanic activity
☐ Hydrothermal activity	☐ Geothermal activity	

8.3.3 The sums insured are (GST exclusive):	
Contract Price:	$ *Enter amount*
(a) Costs of demolition	$ *Enter amount*
(b) Professional fees	$ *Enter amount*
(c) Value of items to be incorporated	$ *Enter amount*
(d) An allowance for an increase in construction costs	$ *Enter amount*
(e) An allowance for increased reconstruction costs	$ *Enter amount*
TOTAL SUM INSURED	**$ *Enter amount***

The policy deductibles are (GST inclusive):	$ *Enter amount*
Non-earthquake	$ *Enter amount*
Natural disaster *Enter %* of *Enter text* minimum of	$ *Enter amount*
Other (name): *Enter text*	$ *Enter amount*

8.2.3(a)		
Construction period	from *Enter date*	to *Enter date*
Insurance maintenance period	*Enter text*	
Policy expiry date	*Enter date*	
Policy cover terms included are	*Enter text*	

Policy cover terms included are:		
8.2.2	Discretionary cancellation clause	*Select yes or no*
8.2.3	Reinstatement provision on building and contents	*Select yes or no*
8.2.3	Severally insured	*Select yes or no*
	No settlement delay due to exercise of subrogation	*Select yes or no*
8.2.4	Void *ab initio* for non-payment of premium without prior notification	*Select yes or no*

Policy extensions included are:			**Sub-limit (if applicable)**	
8.3.1	Transit (in New Zealand)	*Select yes or no*	$	*Enter amount*
8.3.1	Materials in storage (in New Zealand)	*Select yes or no*	$	*Enter amount*
	Testing and commissioning	*Select yes or no*	$	*Enter amount*
	Expediting expenses	*Select yes or no*	$	*Enter amount*
	Overseas airfreight	*Select yes or no*	$	*Enter amount*

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp *(or name of insurance broking company confirming cover)*		**Date**	*Enter date*
Signed By			
Signatory Title	*Enter Signatory title*		

(Clause numbers refer to NZS 3910:2013 and are for information only.)

Schedule 8 – Information on Contractor Arranged Plant Insurance

To whom it may concern:

From	*Enter name*	(Name of insurance company)
	Enter Branch details	(Branch)
	Enter address	(Address)

We confirm having effected Plant insurance for:

Enter Contractors Name		('the Contractor')
Napier City Council		('the Principal')
In respect of	Enter Contract Title Enter Contract Number	(Contract title)
Policy wording title is	*Enter policy wording*	

We advise that special terms, copy attached, have been applied to this policy: Select yes or no

The following provisions apply:

☐	Project specific policy	☐	Annual policy	Policy expiry date	*Enter date*

8.4	**The sums insured are (GST exclusive):**			
☐	All items of Plant	Sum insured	$	*Enter amount*
	OR			
☐	Valued schedule of construction Plant insured (copy attached)			
The policy deductible (GST inclusive) is:			$	*Enter amount*

Policy cover terms included are:		
8.2.2	Discretionary cancellation clause	*Select yes or no*
8.2.3(a)	Reinstatement provision	*Select yes or no*
8.2.4	Void *ab initio* for non-payment of premium without prior notification	*Select yes or no*
	No settlement delay due to exercise of subrogation	*Select yes or no*

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp *(or name of insurance broking company confirming cover)*		**Date**	*Enter date*
Signed By			
Signatory title	*Enter Signatory title*		

(Clause numbers refer to NZS 3910:2013 and are for information only).

Schedule 9 - Information on Public Liability Insurance

To whom it may concern:

From	*Enter name*	(Name of insurance company)
	Enter Branch details	(Branch)
	Enter address	(Address)

We confirm having effected public liability insurance to indemnify the Principal and the Contractor against legal liability to third parties for damage, loss or injury caused by an act or omission of the Contractor arising out of the performance of the Contract Works.

Enter Contractors Name		('the Contractor')
Napier City Council		('the Principal')
In respect of	Enter Contract Title Enter Contract Number	(Contract title)
Policy wording title is	*Enter policy wording*	

We advise that special terms, copy attached, have been specifically applied to this project: *Select yes or no*

The following provisions apply:

☐ Project specific policy ☐ Annual policy

Policy expiry date	Enter date

8.5, 8.9	
The limit of indemnity (GST exclusive)	$ *Enter amount*
Sub-limit insured for (GST exclusive)	$ *Enter amount*
Vibration, removal, or weakening of support	$ *Enter amount*
Underground services	$ *Enter amount*
Deductible (GST inclusive) is	$ *Enter amount*
Deductible for vibration, removal, or weakening of support (GST inclusive)	$ *Enter amount*
Deductible for underground services (GST inclusive)	$ *Enter amount*
The policy also covers liability arising out of:	

The ownership/use of Plant not required to be registered for road use	*Select yes or no*
The use of hired Plant	*Select yes or no*
The ownership/use of watercraft over 8 m	*Select yes or no*
The ownership/use of aircraft	*Select yes or no*
The use of explosives	*Select yes or no*

8.2, 8.7 Policy cover terms included are:	
Reinstatement provisions	*Select yes or no*
Number of reinstatements	*Enter number*
Discretionary cancellation clause	*Select yes or no*
Void *ab initio* for non-payment of premium without prior notification	*Select yes or no*
Severally insured	*Select yes or no*
No settlement delay due to exercise of subrogation	*Select yes or no*

We undertake that this policy will not be cancelled or amended by us without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp *(or name of insurance broking company confirming cover)*		**Date**	*Enter date*
Signed By			
Signatory Title	*Enter Signatory title*		

(Clause numbers refer to NZS 3910:2013 and are for information only.)

Schedule 10 - Information on Contractor Arranged Motor Vehicle Insurance

To whom it may concern:

From	*Enter name*	(Name of insurance company)
	Enter Branch details	(Branch)
	Enter address	(Address)

We confirm having effected motor fleet insurance for

Enter Contractors Name		('the Contractor')
Napier City Council		('the Principal')
In respect of	Enter Contract Title Enter Contract Number	(Contract title)
Policy wording title is	*Enter policy wording*	

We advise that special terms, copy attached, have been applied to this policy: *Select yes or no*

The following provisions apply:

☐ Project specific policy ☐ Annual policy

Policy expiry date	*Enter date*

8.5.2 The limits of liability are (GST exclusive):	
Section 2 – Liability	$ *Enter amount*
For any one occurrence arising out of the same event	
The policy deductibles are:	
Section 2 – Liability (GST inclusive)	$ *Enter amount*
Plus under age penalties	

8.2 Policy cover terms included are:	
Section 2 Liability automatic reinstatement	*Select yes or no*
Discretionary cancellation clause	*Select yes or no*
Void *ab initio* for non-payment of premium without prior notification	*Select yes or no*
No settlement delay due to exercise of subrogation	*Select yes or no*

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp *(or name of insurance broking company confirming cover)*		**Date**	*Enter date*
Signed By			
Signatory Title	*Enter Signatory title*		

(Clause numbers refer to NZS 3910:2013 and are for information only)

Schedule 11 – Information on Contractor arranged professional indemnity insurance

To whom it may concern:

From	*Enter name*	(Name of insurance company)
	Enter Branch details	(Branch)
	Enter address	(Address)

We confirm having effected professional indemnity for

Enter Contractors Name		('the Contractor')
Napier City Council		('the Principal')
In respect of	Enter Contract Title Enter Contract Number	(Contract title)
Policy wording title is	*Enter policy wording*	

We advise that special terms, copy attached, have been applied to this policy: *Select yes or no*

The following provisions apply:

☐ Project specific policy ☐ Annual policy

Policy expiry date	*Enter date*

8.6.1 The limits of indemnity are (GST exclusive):	
For any one occurrence	$ *Enter amount*
In the aggregate during the period of insurance	$ *Enter amount*
The policy deductibles (GST inclusive) are:	$ *Enter amount*

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp *(or name of insurance broking company confirming cover)*		**Date**	*Enter date*

Signed By	
Signatory Title	*Enter Signatory title*

(Clause numbers refer to NZS 3910:2013 and are for information only)

Schedule 13A: Form Of Subcontractor Warranty And Continuity Guarantee

Date	*Enter date*	
PARTIES	[insert name of Subcontractor]	('the Subcontractor')
	Enter Contractors Name	('the Contractor')

BACKGROUND

A Napier City Council (the ***Principal***) has engaged the Contractor to carry out certain works pursuant to a construction contract dated *Enter date* relating to the Enter Contract Title (the ***Contract***).

B The Contractor has, with the consent of the Principal, subcontracted a portion (or portions) of the Contract Works under the Contract to the Subcontractor (the ***Subcontract Works***), as described in the contract between the Subcontractor and the Contractor dated *Enter date* (the ***Subcontract***), a copy of which is contained in the Schedule to this deed.

C Pursuant to the provisions of the Contract, it is a condition that the Contractor and Subcontractor enter into this deed in favour of the Principal.

IT IS AGREED as follows:

1 **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this deed, unless the context otherwise requires:

(a) ***Contract Works*** has the meaning assigned to it in the Contract.

(b) ***Person*** has the meaning assigned to it in the Contract.

(c) ***Warranted Works*** means all works and services performed by the Subcontractor under the Subcontract.

(d) ***Working Day*** means any day of the week (other than Saturday, Sunday and statutory holidays) on which registered banks are open for general banking business in Napier, New Zealand.

(e) The expression ***defects*** extends to include all defects, faults, omissions, shrinkages, undue deterioration and other faults which are due to any materials or workmanship not being in accordance with the Contract and/or the warranty contained in clause 2.1 of this deed, or otherwise due to any breach of or failure to comply with the warranty under clause 2.1, or otherwise due to any other defective performance of the Subcontractor or the Contractor.

(f) The expression ***repair*** will include and extend to renewal and/or replacement necessary to remedy defects.

(g) Words and expressions defined in the Contract and not otherwise defined in this deed have the same meanings when used in this deed.

1.2 **Interpretation**

In this deed, unless the context otherwise requires:

(a) warranties and covenants given in this deed by more than one person or entity bind each of them jointly and severally;

(b) paragraph headings are not to be used to construe this deed;

(c) words importing the singular number include the plural number and vice versa;

(d) words of any gender include the other gender and bodies corporate;

(e) a party includes its successors, permitted assigns and permitted novatees;

(f) except where expressly provided to the contrary all references in this deed to “including”, “includes” or “include” are to be read as if that reference is followed by the words “without limitation”;

(g) references to a clause, clauses, Schedule or Schedules will, unless otherwise specified, be a reference to the corresponding clause, clauses, Schedule or Schedules in this deed; and

(h) the rule of construction known as contra proferentem will not apply to this deed.

2 **WARRANTY**

2.1 The Subcontractor and Contractor warrant and covenant to the Principal, that:

(a) the Warranted Works will be free from defects;

(b) all materials supplied by the Subcontractor for the Warranted Works will be new, unused and of the quality and in accordance with the provisions of the Contract; and

(c) all Warranted Works will be carried out in a good and workmanlike manner and in accordance with the provisions of the Contract.

2.2 The Subcontractor and/or the Contractor will at its own cost and risk, promptly, in a good and workmanlike manner, and to the satisfaction of the Principal:

(a) repair all defects in the Warranted Works; and

(b) make good any loss or damage to buildings, structures or services (including all fittings, fixtures and other improvements and any utilities) caused by any defect in, or repairs to, the Warranted Works.

If any building consent or other statutory approval or consent is required for any repair or make good work, the Subcontractor and/or the Contractor will obtain such consent or approval at its own cost.

2.3 If the Subcontractor and/or the Contractor do not repair any defect or make good any loss or damage within 14 days (or such other period as may be reasonable but taking into account the impact of the matter on the Principal and/or any occupier and on their assets, operations and enjoyment) after receiving notice of that defect, loss or damage, the Principal may, without being under any obligation to do so (and without prejudice to the Principal’s rights under the Contract or otherwise), carry out the repair work and/or make good the loss or damage and recover all costs incurred in doing so from the Subcontractor and/or the Contractor as a debt due and

payable but without releasing the Subcontractor or the Contractor from any obligation or liability. The Principal may not proceed to carry out such repair or make good work without first giving the Subcontractor and the Contractor written notice.

2.4 The costs referred to in clause 2.3 may include the cost of all labour, material, travelling and other charges incurred by the Principal in repairing such defect or making good any such loss or damage.

2.5 The Subcontractor and the Contractor further indemnify the Principal against all direct costs, damages, fines, penalties, losses, claims, liabilities and expense which the Principal may incur or for which the Principal may become liable arising out of or in any way connected with any failure by the Subcontractor and/or the Contractor to promptly repair all defects in the Warranted Works or make good any loss or damage notified to it under this deed.

2.6 Neither the Subcontractor nor the Contractor will be liable for any defect, loss or damage under this deed solely attributable to:

(a) any negligence or wilful default of the Principal or of any occupant of the Warranted Works;

(b) unintended use of the Warranted Works by the Principal or any occupant of the Warranted Works;

(c) war;

(d) earthquake or any other forces of nature that could not have been reasonably foreseen by the Contractor nor by the Subcontractor (but excluding earthquakes and any other forces of nature, the effect of which was, or should reasonably have been, incorporated or taken into account or otherwise catered for in the Warranted Works);

(e) fire, explosion, subsidence or slips not caused or contributed to by the Contractor or the Subcontractor or their respective employees, representatives, agents or contractors and for which the Contractor is not otherwise responsible for under the Contract; or

(f) any failure by the Principal or any occupier to maintain the Warranted Works in accordance with any proper written instructions provided to the Principal by the Subcontractor or Contractor.

For the purposes of this clause 2.6, ***occupant*** excludes the Contractor, the Subcontractor, all "Subcontractors" (as defined in the Contract), as well as their respective employees, representatives, agents and contractors.

2.7 Neither the Subcontractor nor the Contractor will be liable for any defect, loss or damage under this deed resulting from any neglect or delay on the part of the Principal to give notice of any defects, loss or damage within a reasonable time of the Principal becoming aware of such defects, loss or damage.

2.8 The warranty and covenant in clause 2.1 of this deed will be deemed to be a continuing warranty and covenant so that the Principal will be entitled from time to time to give notice of any defect, loss or damage (or any one or more of the same) to which clause 2.2 of this deed applies, notwithstanding that on any other occasion prior to giving such notice the Principal may have already given notice to the Subcontractor and/or the Contractor in respect of such defects, loss or damage or any other defects, loss or damage to which this deed applies.

2.9 In the event that this deed is executed prior to completion of the Warranted Works, no variation to the Warranted Works subsequent to the execution of this deed will be deemed to vary the

liability of the Subcontractor or the Contractor under this deed, and all references to the Warranted Works will be deemed to include the Warranted Works as originally specified together with such variations, and the issuing of any certificate of completion or any other certificate in respect of the Warranted Works or any part of the Warranted Works (or of the Contract Works or any part of the Contract Works) will not affect the liability of the Subcontractor or the Contractor under this deed.

3 **CONTINUITY**

The Subcontractor warrants and covenants that in the event of the Contract being terminated for any reason whatsoever or the Principal resuming possession of the Site under the Contract, the Subcontractor will, if required by the Principal, complete the Subcontract Works for the Principal under the same terms and conditions and for the same consideration as originally agreed between the Contractor and the Subcontractor, such agreement being annexed in the Schedule to this deed.

4 **RESTRICTIONS ON TERMINATION OF THE SUBCONTRACT**

4.1 If the Contractor or the Subcontractor desires to terminate the Subcontract or assert that the Subcontract is at an end that party must first give notice to the Principal stating:

(a) that the notice is a notice under this clause of this deed;

(b) that the party giving the notice desires to terminate the Subcontract or assert that the Subcontract is at an end;

(c) the grounds upon which that party relies for termination of the Subcontract and details of the events, acts or omissions giving rise to or allegedly substantiating those grounds for termination; and

(d) the relevant provisions of the Subcontract express or implied which that party asserts have been breached (if any).

4.2 Prior to and following the delivery of a notice under clause 4.1, the party giving the notice:

(a) must not terminate the Subcontract either under its express provisions or under any right at law or in equity; and/or

(b) must not assert that the Subcontract has been brought to an end,

unless and until the Principal has consented, acting reasonably, to that party taking the steps or action proposed.

5 **DISPUTE RESOLUTION**

5.1 If any dispute or difference arises between the Subcontractor and the Contractor which is in any way connected with this deed or the Subcontract, the Subcontractor and the Contractor must promptly give notice in writing of that dispute or difference, with details, to the Principal.

5.2 Any dispute or difference (a ***Dispute***) between the Principal, the Subcontractor and/or the Contractor arising out of this deed will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification thereof.

5.3 The Dispute will be referred to a sole arbitrator. If the Principal, the Subcontractor and/or the Contractor (as the case may be) fail to agree upon a sole arbitrator within 15 days after receipt of

the notice of Dispute, the arbitrator will be appointed by the then President of the Arbitrators' and Mediators' Institute of New Zealand (or by his or her nominee).

5.4 Notwithstanding clauses 5.2 and 5.3, if any dispute or difference arises under this deed which is related to a dispute or difference under the Contract, the parties agree that, subject to any discretion to the contrary of a court, arbitrator or mediator, as the case may be, or unless otherwise required by the Principal, the dispute or difference under this deed shall be consolidated with the dispute or difference under the Contract, and if consolidation is not available will be heard by the same arbitral tribunal and at the same time as the dispute or difference under the Contract.

6 ASSIGNMENT AND NOVATION

6.1 Neither the Contractor nor the Subcontractor may assign, charge or novate, whether in part or in whole, any of their rights, benefits or obligations under this deed without the prior written consent of the Principal (which it may or may not give at its discretion). For the purposes of this clause 6.1, where the Subcontractor is a company that is not listed on the main board of a public stock exchange, any change in the legal or beneficial ownership of its shares or those of its holding company, or the issue of new capital, which results in a change in the effective management or control of the Subcontractor will be deemed to be an assignment. Any sale, disposal or transfer of more than 50% of the Contractor's assets or undertakings will also be deemed to be an assignment for the purposes of this clause 6.1.

6.2 The Principal may assign, charge or novate all or any part of its rights and/or obligations under this deed to any assignee, chargee or novatee of the Principal under the Contract or to any other Person, without the Subcontractor and/or the Contractor's consent.

6.3 The Subcontractor and the Contractor must, if and when requested by the Principal, promptly do all things and execute all such documents reasonably necessary to give effect to any assignment, charge or novation by the Principal, including in the case of a novation, entering into a deed of novation with the Principal and the relevant Person nominated by the Principal in a form required by the Principal.

7 MISCELLANEOUS

7.1 Principal's rights

The obligations and liabilities on the part of the Subcontractor and the Contractor contained in this deed:

(a) will not be deemed to be in substitution for or limit in any way the Subcontractor's liability to the Principal or to the Contractor as a Subcontractor under the Contract; and

(b) are in addition to the obligations of the Contractor under the Contract, at law or otherwise and will not be deemed to be in substitution for or limit in any way the Contractor's liability to the Principal under the Contract.

Accordingly the Principal will not be precluded from exercising any rights the Principal may have against the Contractor under the Contract in respect of any defects, loss or damage to which this deed may apply, nor will the exercise of the Principal's rights under this deed be conditional upon the exercise of those rights, and the Subcontractor will not be excused or released in whole or in part in respect of its liability under this deed by reason of any default on the part of the Contractor or any "Subcontractor" (as defined in the Contract), whether or not such default caused or contributed to the defects, loss or damage notified by the Principal under this deed.

7.2 **Contract and Commercial Law Act 2017**

(a) The Subcontractor and the Contractor acknowledge and agree that, pursuant to section 12 of the Contract and Commercial Law Act 2017, the rights and benefits under this deed will accrue to and be enforceable by not only the Principal and any assignee, chargee or novatee of the Principal under clause 6.2 but also by any transferee of the Principal's interest in the Warranted Works.

(b) In addition, the Principal has seen the form of this deed and agrees, in favour of the Subcontractor and the Contractor, that notwithstanding the Principal is not a party to this deed, the Principal will nevertheless be bound by the agreement to arbitrate contained in clauses 5.2 - 5.4.

7.3 **Notices**

Any notice or document required to be given under this deed must be in writing and may be given by hand, post, facsimile or email to the party's address for service of notices set out in the execution pages of this deed or, in the case of the Principal, to its address for service of notices under the Contract. Subject to the last paragraph of this clause 7.3, a notice or document is taken to have been received:

(a) if the notice or document is delivered by hand to the receiver, at the time of delivery;

(b) if the notice or document is posted in a postage paid registered envelope addressed to the receiver, at the time when it would be received in the ordinary course of registered post then prevailing;

(c) if the notice or document is transmitted by facsimile, and subject to receipt of an error free transmission report by the transmitter, on the date of transmission; or

(d) if the notice or document is sent by email, when receipt of the email is acknowledged by the receiving party by return email or otherwise in writing, except that return emails generated automatically will not constitute an acknowledgment.

If a notice or document is received after 5.00pm on a day or on a day that is not a Working Day, the notice will be deemed to be received on the next Working Day.

7.4 **Further assurances**

Each party must do or use its reasonable endeavours to cause to be done anything necessary or desirable to give effect to this deed and the arrangements set out in this deed, and will refrain from doing anything which might prevent full effect being given to this deed.

7.5 **No waiver**

A waiver of any provision of this deed will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by either party or the Principal in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.

7.6 **Severability**

If any one or more of the provisions contained in this deed is invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this deed will not in any way be affected or impaired.

7.7 **Amendment**

No amendment or other modification of this deed will be effective unless it is in writing, is dated and is signed by a duly authorised representative of each party and the Principal.

7.8 **Counterparts**

This deed may be executed in counterparts (including facsimile or electronic copies of counterparts) and provided that each party has duly executed a counterpart, the counterparts together will constitute a valid and binding deed between the parties and the Principal.

7.9 **Governing law**

This deed is governed by and will be construed in accordance with the laws of New Zealand, and without limitation or prejudice to clause 5 the parties and the Principal irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts which have jurisdiction to hear appeals from any of those courts and waive any right to object to any proceedings being brought in those courts.

EXECUTION

Executed as a deed

EXECUTED by [insert name] as Subcontractor by:

(Director)	(Director)
Print name	Print name
Witness to signature	
Print name	
Occupation	
Address	

Address of the Subcontractor:

Physical address:
Postal address:
Facsimile:
Email:
Telephone:
Attention:

EXECUTED by Enter Contractors Name as Contractor by:

(Director)	(Director)
Print name	Print name
Witness to signature	
Print name	
Occupation	
Address	

Address of the Contractor:

Physical address:
Postal address:
Facsimile:
Email:
Telephone:
Attention:

NOTE: This document is to be executed as a deed. Accordingly:

- companies should sign by two directors, unless there is only one director of the company, in which case that director should sign and his/her signature should be witnessed by another person (as well as signing, the witness should record his/her name, occupation and address); and
- where a party to this deed is an individual, that person should sign and his/her signature should be witnessed by another person (as well as signing, the witness should record his/her name, occupation and address).

[Subcontract to be annexed]

Schedule 13B: Packages For Which Specific Warranties Are Required

In addition to Other Warranties, the following specific warranties are required – refer below.

Drafting Note: this schedule should include a list of labour and materials warranties and their durations required for relevant work packages / specific materials. This should be prepared with reference to the design / specifications and should be reviewed by NCC's designer.

Work package	**Warranty period expiry date** (from the date of Practical Completion of the whole of the Contract Works)
TBC	TBC

Schedule 13C: Form Of Specific Subcontractor Warranty

Date	*Enter date*	
PARTIES	[insert name of Subcontractor]	('the Subcontractor')
	Enter Contractors Name	('the Contractor')

BACKGROUND

A Napier City Council (the ***Principal***) has engaged the Contractor to carry out certain works pursuant to a construction contract dated *Enter date* relating to the Enter Contract Title (the ***Contract***).

B The Contractor has, with the consent of the Principal, subcontracted a portion (or portions) of the Contract Works under the Contract to the Subcontractor, as described in the contract between the Subcontractor and the Contractor dated *Enter date* (the ***Subcontract***), a copy of which is contained in the Schedule to this deed.

C Pursuant to the provisions of the Contract, it is a condition that the Contractor and Subcontractor enter into this deed in favour of the Principal.

IT IS AGREED as follows:

1 **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this deed, unless the context otherwise requires:

(a) ***Contract Works*** has the meaning assigned to it in the Contract.

(b) ***Person*** has the meaning assigned to it in the Contract.

(c) ***Warranted Works*** means [*applicable work package from Schedule 13B of the Contract to be inserted*]

(d) ***Working Day*** means any day of the week (other than Saturday, Sunday and statutory holidays) on which registered banks are open for general banking business in Napier, New Zealand.

(e) The expression ***defects*** extends to include all defects, faults, omissions, shrinkages, undue deterioration and other faults which are due to any materials or workmanship not being in accordance with the Contract and/or the warranty contained in clause 2.1 of this deed, or otherwise due to any breach of or failure to comply with the warranty under clause 2.1, or otherwise due to any other defective performance of the Subcontractor or the Contractor.

(f) The expression ***repair*** will include and extend to renewal and/or replacement necessary to remedy defects.

(g) Words and expressions defined in the Contract and not otherwise defined in this deed have the same meanings when used in this deed.

1.2 **Interpretation**

In this deed, unless the context otherwise requires:

(a) warranties and covenants given in this deed by more than one person or entity bind each of them jointly and severally;

(b) paragraph headings are not to be used to construe this deed;

(c) words importing the singular number include the plural number and vice versa;

(d) words of any gender include the other gender and bodies corporate;

(e) a party includes its successors, permitted assigns and permitted novatees;

(f) except where expressly provided to the contrary all references in this deed to "including", "includes" or "include" are to be read as if that reference is followed by the words "without limitation";

(g) references to a clause, clauses, Schedule or Schedules will, unless otherwise specified, be a reference to the corresponding clause, clauses, Schedule or Schedules in this deed; and

(h) the rule of construction known as contra proferentem will not apply to this deed.

2 **WARRANTY**

2.1 The Subcontractor warrant and covenant to the Principal, up to the date that is [applicable period from Schedule 13B of the Contract to be inserted] of the whole of the Contract Works under the Contract, that:

(a) the Warranted Works will be free from defects;

(b) all materials supplied by the Subcontractor for the Warranted Works will be new, unused and of the quality and in accordance with the provisions of the Contract; and

(c) all Warranted Works will be carried out in a good and workmanlike manner and in accordance with the provisions of the Contract.

2.2 The Subcontractor and/or the Contractor will at its own cost and risk, promptly, in a good and workmanlike manner, and to the satisfaction of the Principal:

(a) repair all defects in the Warranted Works; and

(b) make good any loss or damage to buildings, structures or services (including all fittings, fixtures and other improvements and any utilities) caused by any defect in, or repairs to, the Warranted Works,

occurring during the period specified in clause 2.1 above. If any building consent or other statutory approval or consent is required for any repair or make good work, the Subcontractor and/or the Contractor will obtain such consent or approval at its own cost.

2.3 If the Subcontractor and/or the Contractor do not repair any defect or make good any loss or damage within 14 days (or such other period as may be reasonable but taking into account the impact of the matter on the Principal and/or any occupier and on their assets and operations and enjoyment) after receiving notice of that defect, loss or damage, the Principal may, without being under any obligation to do so (and without prejudice to the Principal's rights under the Contract

or otherwise), carry out the repair work and/or make good the loss or damage and recover all costs incurred in doing so from the Subcontractor and/or the Contractor as a debt due and payable but without releasing the Subcontractor or the Contractor from any obligation or liability. The Principal may not proceed to carry out such repair or make good work without first giving the Subcontractor and the Contractor written notice.

2.4 The costs referred to in clause 2.3 may include the cost of all labour, material, travelling and other charges incurred by the Principal in repairing such defect or making good any such loss or damage.

2.5 The Subcontractor and the Contractor further indemnify the Principal against all direct costs, damages, fines, penalties, losses, claims, liabilities and expense which the Principal may incur or for which the Principal may become liable arising out of or in any way connected with any failure by the Subcontractor and/or the Contractor to promptly repair all defects in the Warranted Works or make good any loss or damage notified to it under this deed.

2.6 Neither the Subcontractor nor the Contractor will be liable for any defect, loss or damage under this deed solely attributable to:

(a) any negligence or wilful default of the Principal or of any occupant of the Warranted Works;

(b) unintended use of the Warranted Works by the Principal or any occupant of the Warranted Works;

(c) war;

(d) earthquake or any other forces of nature that could not have been reasonably foreseen by the Contractor nor by the Subcontractor (but excluding earthquakes and any other forces of nature, the effect of which was, or should reasonably have been, incorporated or taken into account or otherwise catered for in the Warranted Works);

(e) fire, explosion, subsidence or slips not caused or contributed to by the Contractor or the Subcontractor or their respective employees, representatives, agents or contractors and for which the Contractor is not otherwise responsible for under the Contract; or

(f) any failure by the Principal or any occupier to maintain the Warranted Works in accordance with any proper written instructions provided to the Principal by the Subcontractor or Contractor.

For the purposes of this clause 2.6, ***occupant*** excludes the Contractor, the Subcontractor, all "Subcontractors" (as defined in the Contract), as well as their respective employees, representatives, agents and contractors.

2.7 Neither the Subcontractor nor the Contractor will be liable for any defect, loss or damage under this deed resulting from any neglect or delay on the part of the Principal to give notice of any defects, loss or damage within a reasonable time of the Principal becoming aware of such defects, loss or damage.

2.8 The warranty and covenant in clause 2.1 of this deed will be deemed to be a continuing warranty and covenant so that the Principal will be entitled from time to time and at all times during the period specified in that clause to give notice of any defect, loss or damage (or any one or more of the same) to which clause 2.2 of this deed applies, notwithstanding that on any other occasion prior to giving such notice the Principal may have already given notice to the Subcontractor and/or the Contractor in respect of such defects, loss or damage or any other defects, loss or damage to which this deed applies.

2.9 In the event that this deed is executed prior to completion of the Warranted Works, no variation to the Warranted Works subsequent to the execution of this deed will be deemed to vary the liability of the Subcontractor or the Contractor under this deed, and all references to the Warranted Works will be deemed to include the Warranted Works as originally specified together with such variations, and the issuing of any certificate of completion or any other certificate in respect of the Warranted Works or any part of the Warranted Works (or of the Contract Works or any part of the Contract Works) will not affect the liability of the Subcontractor or the Contractor under this deed.

3 DISPUTE RESOLUTION

3.1 If any dispute or difference arises between the Subcontractor and the Contractor which is in any way connected with this deed or the Subcontract, the Subcontractor and the Contractor must promptly give notice in writing of that dispute or difference, with details, to the Principal.

3.2 Any dispute or difference (a ***Dispute***) between the Principal, the Subcontractor and/or the Contractor arising out of this deed will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification thereof.

3.3 The Dispute will be referred to a sole arbitrator. If the Principal, the Subcontractor and/or the Contractor (as the case may be) fail to agree upon a sole arbitrator within 15 days after receipt of the notice of Dispute, the arbitrator will be appointed by the then President of the Arbitrators' and Mediators' Institute of New Zealand (or by his or her nominee).

3.4 Notwithstanding clauses 3.2 and 3.3, if any dispute or difference arises under this deed which is related to a dispute or difference under the Contract, the parties agree that, subject to any discretion to the contrary of a court, arbitrator or mediator, as the case may be, or unless otherwise required by the Principal, the dispute or difference under this deed shall be consolidated with the dispute or difference under the Contract, and if consolidation is not available will be heard by the same arbitral tribunal and at the same time as the dispute or difference under the Contract.

4 ASSIGNMENT AND NOVATION

4.1 Neither the Contractor nor the Subcontractor may assign, charge or novate, whether in part or in whole, any of their rights, benefits or obligations under this deed without the prior written consent of the Principal (which it may or may not give at its discretion).

4.2 The Principal may assign, charge or novate all or any part of its rights and/or obligations under this deed to any assignee, chargee or novatee of the Principal under the Contract or to any other Person without the Subcontractor and/or the Contractor's consent.

4.3 The Subcontractor and the Contractor must, if and when requested by the Principal, promptly do all things and execute all such documents reasonably necessary to give effect to any assignment, charge or novation by the Principal, including in the case of a novation, entering into a deed of novation with the Principal and the relevant Person nominated by the Principal in a form required by the Principal.

5 MISCELLANEOUS

5.1 Principal's rights

The obligations and liabilities on the part of the Subcontractor and the Contractor contained in this deed:

(a) will not be deemed to be in substitution for or limit in any way the Subcontractor's liability to the Principal or to the Contractor as a Subcontractor under the Contract; and

(b) are in addition to the obligations of the Contractor under the Contract, at law or otherwise and will not be deemed to be in substitution for or limit in any way the Contractor's liability to the Principal under the Contract.

Accordingly the Principal will not be precluded from exercising any rights the Principal may have against the Contractor under the Contract in respect of any defects, loss or damage to which this deed may apply, nor will the exercise of the Principal's rights under this deed be conditional upon the exercise of those rights, and the Subcontractor will not be excused or released in whole or in part in respect of its liability under this deed by reason of any default on the part of the Contractor or any "Subcontractor" (as defined in the Contract), whether or not such default caused or contributed to the defects, loss or damage notified by the Principal under this deed.

5.2 **Contract and Commercial Law Act 2017**

(a) The Subcontractor and the Contractor acknowledge and agree that, pursuant to section 12 of the Contract and Commercial Law Act 2017, the rights and benefits under this deed will accrue to and be enforceable by not only the Principal and any assignee, chargee or novatee of the Principal under clause 4.2 but also by any transferee of the Principal's interest in the Warranted Works.

(b) In addition, the Principal has seen the form of this deed and agrees, in favour of the Subcontractor and the Contractor, that notwithstanding the Principal is not a party to this deed, it will nevertheless be bound by the agreement to arbitrate contained in clauses 3.2 and 3.3.

5.3 **Notices**

Any notice or document required to be given under this deed must be in writing and may be given by hand, post, facsimile or email to the party's address for service of notices set out in the execution pages of this deed or, in the case of the Principal, to its address for service of notices under the Contract. Subject to the last paragraph of this clause 5.3, a notice or document is taken to have been received:

(a) if the notice or document is delivered by hand to the receiver, at the time of delivery;

(b) if the notice or document is posted in a postage paid registered envelope addressed to the receiver, at the time when it would be received in the ordinary course of registered post then prevailing;

(c) if the notice or document is transmitted by facsimile, and subject to receipt of an error free transmission report by the transmitter, on the date of transmission; or

(d) if the notice or document is sent by email, when receipt of the email is acknowledged by the receiving party by return email or otherwise in writing, except that return emails generated automatically will not constitute an acknowledgment.

If a notice or document is received after 5.00pm on a day or on a day that is not a Working Day, the notice will be deemed to be received on the next Working Day.

5.4 **Further assurances**

Each party must do or use its reasonable endeavours to cause to be done anything necessary or desirable to give effect to this deed and the arrangements set out in this deed, and will refrain from doing anything which might prevent full effect being given to this deed.

5.5 **No waiver**

A waiver of any provision of this deed will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by either party or the Principal in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.

5.6 **Severability**

If any one or more of the provisions contained in this deed is invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this deed will not in any way be affected or impaired.

5.7 **Amendment**

No amendment or other modification of this deed will be effective unless it is in writing, is dated and is signed by a duly authorised representative of each party and the Principal.

5.8 **Counterparts**

This deed may be executed in counterparts (including facsimile or electronic copies of counterparts) and provided that each party has duly executed a counterpart, the counterparts together will constitute a valid and binding deed between the parties and the Principal.

5.9 **Governing law**

This deed is governed by and will be construed in accordance with the laws of New Zealand, and without limitation or prejudice to clause 3 the parties and the Principal irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts which have jurisdiction to hear appeals from any of those courts and waive any right to object to any proceedings being brought in those courts.

EXECUTED by [insert name] as Subcontractor by:

(Director)	(Director)
Print name	Print name
Witness to signature	
Print name	
Occupation	
Address	

Address of the Subcontractor:

Physical address:	
Postal address:	
Facsimile:	
Email:	
Telephone:	
Attention:	

EXECUTED by Enter Contractors Name as Contractor by:

(Director)	(Director)
Print name	Print name
Witness to signature	
Print name	
Occupation	
Address	

Address of the Contractor:

Physical address:
Postal address:
Facsimile:
Email:
Telephone:
Attention:

NOTE: This document is to be executed as a deed. Accordingly:

- companies should sign by two directors, unless there is only one director of the company in which case that director should sign and his/her signature should be witnessed by another person (as well as signing, the witness should record his/her name, occupation and address); and
- where a party to this deed is an individual, that person should sign and his/her signature should be witnessed by another person (as well as signing, the witness should record his/her name, occupation and address).

[Subcontract to be annexed]

Schedule 13D: Form Of Specific Contractor Warranty

Date	*Enter date*	
PARTY	Enter Contractors Name	('the Contractor')

BACKGROUND

A Napier City Council (the ***Principal***) has engaged the Contractor to carry out certain works pursuant to a construction contract dated *Enter date* relating to Enter Contract Title (the ***Contract***).

B Pursuant to the provisions of the Contract, it is a condition that the Contractor enter into this deed in favour of the Principal.

IT IS AGREED as follows:

1 **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this deed, unless the context otherwise requires:

(a) ***Contract Works*** has the meaning assigned to it in the Contract.

(b) ***Person*** has the meaning assigned to it in the Contract.

(c) ***Warranted Works*** means [applicable work package from Schedule 13B of the Contract to be inserted]

(d) ***Working Day*** means any day of the week (other than Saturday, Sunday and statutory holidays) on which registered banks are open for general banking business in Napier, New Zealand.

(e) The expression ***defects*** extends to include all defects, faults, omissions, shrinkages, undue deterioration and other faults which are due to any materials or workmanship not being in accordance with the Contract and/or the warranty contained in clause 2.1 of this deed, or otherwise due to any breach of or failure to comply with the warranty under clause 2.1, or otherwise due to any other defective performance of the Contractor.

(f) The expression ***repair*** will include and extend to renewal and/or replacement necessary to remedy defects.

(g) Words and expressions defined in the Contract and not otherwise defined in this deed have the same meanings when used in this deed.

1.2 **Interpretation**

In this deed, unless the context otherwise requires:

(a) warranties and covenants given in this deed by more than one person or entity bind each of them jointly and severally;

(b) paragraph headings are not to be used to construe this deed;

(c) words importing the singular number include the plural number and vice versa;

(d) words of any gender include the other gender and bodies corporate;

(e) a party includes its successors, permitted assigns and permitted novatees;

(f) except where expressly provided to the contrary all references in this deed to "including", "includes" or "include" are to be read as if that reference is followed by the words "without limitation";

(g) references to a clause, clauses, Schedule or Schedules will, unless otherwise specified, be a reference to the corresponding clause, clauses, Schedule or Schedules in this deed; and

(h) the rule of construction known as contra proferentem will not apply to this deed.

2 **WARRANTY**

2.1 The Contractor warrants and covenants to the Principal, up to the date that is [applicable period from Schedule 13B of the Contract to be inserted] years after the date of Practical Completion of the whole of the Contract Works under the Contract, that:

(a) the Warranted Works will be free from defects;

(b) all materials supplied by the Contractor for the Warranted Works will be new, unused and of the quality and in accordance with the provisions of the Contract; and

(c) all Warranted Works will be carried out in a good and workmanlike manner and in accordance with the provisions of the Contract.

2.2 The Contractor will at its own cost and risk, promptly, in a good and workmanlike manner, and to the satisfaction of the Principal:

(a) repair all defects in the Warranted Works; and

(b) make good any loss or damage to buildings, structures or services (including all fittings, fixtures and other improvements and any utilities) caused by any defect in, or repairs to, the Warranted Works,

occurring during the period specified in clause 2.1 above. If any building consent or other statutory approval or consent is required for any repair or make good work, the Contractor will obtain such consent or approval at its own cost.

2.3 If the Contractor does not repair any defect or make good any loss or damage within 14 days (or such other period as may be reasonable but taking into account the impact of the matter on the Principal, any purchaser and/or any occupier and on their assets, operations and enjoyment) after receiving notice of that defect, loss or damage, the Principal may, without being under any obligation to do so (and without prejudice to the Principal's rights under the Contract or otherwise), carry out the repair work and/or make good the loss or damage and recover all costs incurred in doing so from the Contractor as a debt due and payable but without releasing the Contractor from any obligation or liability. The Principal may not proceed to carry out such repair or make good work without first giving the Contractor written notice.

2.4 The costs referred to in clause 2.3 may include the cost of all labour, material, travelling and other charges incurred by the Principal in repairing such defect or making good any such loss or damage.

2.5 The Contractor further indemnifies the Principal against all costs, damages, fines, penalties, losses, claims, liabilities and expense which the Principal may incur or for which the Principal may become liable arising out of or in any way connected with any failure by the Contractor to

promptly repair all defects in the Warranted Works or make good any loss or damage notified to it under this deed.

2.6 The Contractor is not liable for any defect, loss or damage under this deed solely attributable to:

(a) any negligence or wilful default of the Principal or of any occupant of the Warranted Works;

(b) unintended use of the Warranted Works by the Principal or any occupant of the Warranted Works;

(c) war;

(d) earthquake or any other forces of nature that could not have been reasonably foreseen by the Contractor (but excluding earthquakes and any other forces of nature, the effect of which was, or should reasonably have been, incorporated or taken into account or otherwise catered for in the Warranted Works);

(e) fire, explosion, subsidence or slips not caused or contributed to by the Contractor, any Subcontractor or any of their respective employees, representatives or agents and for which the Contractor is not otherwise responsible for under the Contract; or

(f) any failure by the Principal, any purchaser or any occupier to maintain the Warranted Works in accordance with any proper written instructions provided to the Principal by the Contractor.

For the purposes of this clause 2.6, ***occupant*** excludes the Contractor, all "Subcontractors" (as defined in the Contract), as well as their respective employees, representatives, agents and contractors.

2.7 The Contractor will not be liable for any defect, loss or damage under this deed resulting from any neglect or delay on the part of the Principal to give notice of any defects, loss or damage within a reasonable time of the Principal becoming aware of such defects, loss or damage.

2.8 The warranty and covenant in clause 2.1 of this deed will be deemed to be a continuing warranty and covenant so that the Principal will be entitled from time to time and at all times during the period specified in that clause to give notice of any defect, loss or damage (or any one or more of the same) to which clause 2.2 of this deed applies, notwithstanding that on any other occasion prior to giving such notice the Principal may have already given notice to the Contractor in respect of such defects, loss or damage or any other defects, loss or damage to which this deed applies.

2.9 In the event that this deed is executed prior to completion of the Warranted Works, no variation to the Warranted Works subsequent to the execution of this deed will be deemed to vary the liability of the Contractor under this deed, and all references to the Warranted Works will be deemed to include the Warranted Works as originally specified together with such variations, and the issuing of any certificate of completion or any other certificate in respect of the Warranted Works or any part of the Warranted Works (or of the Contract Works or any part of the Contract Works) will not affect the liability of the Contractor under this deed.

3 DISPUTE RESOLUTION

3.1 Any dispute or difference (a ***Dispute***) between the Principal and the Contractor arising out of this deed will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification thereof.

3.2 The Dispute will be referred to a sole arbitrator. If the Principal and the Contractor fail to agree upon a sole arbitrator within 15 days after receipt of the notice of Dispute, the arbitrator will be appointed by the then President of the Arbitrators' and Mediators' Institute of New Zealand (or by his or her nominee).

4 ASSIGNMENT AND NOVATION

4.1 The Contractor may not assign, charge or novate, whether in part or in whole, any of its rights, benefits or obligations under this deed without the prior written consent of the Principal (which it may or may not give at its discretion).

4.2 The Principal may assign, charge or novate all or any part of its rights and/or obligations under this deed to any assignee, chargee or novatee of the Principal under the Contract or to any other Person without the Contractor's consent.

4.3 The Contractor must, if and when requested by the Principal, promptly do all things and execute all such documents reasonably necessary to give effect to any assignment, charge or novation by the Principal, including in the case of a novation, entering into a deed of novation with the Principal and the relevant Person nominated by the Principal in a form required by the Principal.

5 MISCELLANEOUS

5.1 Principal's rights

The obligations and liabilities on the part of the Contractor contained in this deed:

(a) will not be deemed to be in substitution for or limit in any way the Contractor's liability to the Principal under the Contract; and

(b) are in addition to the obligations of the Contractor under the Contract, at law or otherwise.

Accordingly the Principal will not be precluded from exercising any rights the Principal may have against the Contractor under the Contract in respect of any defects, loss or damage to which this deed may apply, nor will the exercise of the Principal's rights under this deed be conditional upon the exercise of those rights.

5.2 Contract Privity

(a) The Contractor acknowledges and agrees that, for the purpose of the Contract and Commercial Law Act 2017, the rights and benefits under this deed will accrue to and be enforceable by the Principal and any assignee, chargee or novatee of the Principal under clause 4.2, and by any transferee of the Principal's interest in the Warranted Works.

(b) In addition, the Principal has seen the form of this deed and agrees, in favour of the Contractor, that notwithstanding the Principal is not a party to this deed, the Principal will nevertheless be bound by the agreement to arbitrate contained in clauses 3.1 and 3.2.

5.3 Notices

Any notice or document required to be given under this deed must be in writing and may be given by hand, post, facsimile or email to the party's address for service of notices set out in the execution pages of this deed or, in the case of the Principal, to its address for service of notices under the Contract. Subject to the last paragraph of this clause 5.3, a notice or document is taken to have been received:

(a) if the notice or document is delivered by hand to the receiver, at the time of delivery;

(b) if the notice or document is posted in a postage paid registered envelope addressed to the receiver, at the time when it would be received in the ordinary course of registered post then prevailing;

(c) if the notice or document is transmitted by facsimile, and subject to receipt of an error free transmission report by the transmitter, on the date of transmission; or

(d) if the notice or document is sent by email, when receipt of the email is acknowledged by the receiving party by return email or otherwise in writing, except that return emails generated automatically will not constitute an acknowledgment.

If a notice or document is received after 5.00pm on a day or on a day that is not a Working Day, the notice will be deemed to be received on the next Working Day.

5.4 **Further assurances**

The Contractor must do or use its reasonable endeavours to cause to be done anything necessary or desirable to give effect to this deed and the arrangements set out in this deed, and will refrain from doing anything which might prevent full effect being given to this deed.

5.5 **No waiver**

A waiver of any provision of this deed will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by the Contractor or the Principal in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.

5.6 **Severability**

If any one or more of the provisions contained in this deed is invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this deed will not in any way be affected or impaired.

5.7 **Amendment**

No amendment or other modification of this deed will be effective unless it is in writing, is dated and is signed by a duly authorised representative of the Contractor and the Principal.

5.8 **Governing law**

This deed is governed by and will be construed in accordance with the laws of New Zealand, and without limitation or prejudice to clause 3 the Contractor and the Principal irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts which have jurisdiction to hear appeals from any of those courts and waive any right to object to any proceedings being brought in those courts.

EXECUTED by Enter Contractors Name as Contractor by:

(Director)	(Director)
Print name	Print name
Witness to signature	
Print name	
Occupation	
Address	

Address of the Contractor:

Physical address:
Postal address:
Facsimile:
Email:
Telephone:
Attention:

NOTE: This document is to be executed as a deed. Accordingly:

- *companies should sign by two directors, unless there is only one director of the company in which case that director should sign and his/her signature should be witnessed by another person (as well as signing, the witness should record his/her name, occupation and address); and*
- *where a party to this deed is an individual, that person should sign and his/her signature should be witnessed by another person (as well as signing, the witness hould record his/her name, occupation and address).*

Schedule 14 - Agreement for Off-Site Materials

This agreement is made on	*Enter date*	
BETWEEN	Napier City Council	('the Principal')
and	Enter Contractors Name	('the Contactor')
and	Enter Subcontractor name	('the Subcontractor')

Introduction:

a. By a Contract dated *Enter date* and known as Enter Contract Title ('the Contract') made between the Principal and the Contractor, the Contractor agreed to carry out the work and obligations imposed on the Contractor by the Contract ('the Contract Works').

b. The Contractor and the Subcontractor have entered into a subcontract for the performance of part of the Contract Works and/or the supply of Materials described in Schedule A to this agreement ('the Materials') and intended to be used by the Contractor and/or the Subcontractor in the Contract Works.

c. The Contractor or the Subcontractor (as nominated in Schedule C) ('the Bailee') proposes to store the Materials at the premises of the Bailee ('the Premises') as identified in Schedule B as bailee for the Principal, for the purpose of storage, fabrication, sub-assembly, or as otherwise required for the Contract Works prior to being delivered to the Site for incorporation into the Contract Works.

d. The Contractor has requested the Principal to authorise the Engineer to certify payment for the Materials notwithstanding that the Materials have not been delivered to the Site.

e. The Principal has agreed to authorise the Engineer to certify payment for the Materials, notwithstanding that the Materials have not been delivered to the Site, subject to all the provisions of this agreement having been fulfilled.

SCHEDULE A

Description of Materials inclusive of work performed on them:

Enter text

SCHEDULE B

The location in New Zealand at which the Materials will be stored is:

Enter text

SCHEDULE C

'The Bailee' shall be:

☐ The Contractor OR ☐ The Subcontractor

It is agreed as follows:

1. The Materials to which this agreement relates are those described in Schedule A to this agreement, all of which Materials are currently on the Premises identified in Schedule B.
2. The Premises identified in Schedule B are in the sole control of the party identified in Schedule C and that party shall act as bailee of the Materials until such time as the Materials are delivered to the Site or taken possession of by the Principal.
3. The undertakings, warranties, covenants, agreements and other obligations of the Contractor or the Subcontractor shall bind and be deemed to have been given or assumed by each of them severally and by both of them jointly.
4. The Contractor and the Subcontractor agree that they will cause the Materials to be set apart at the Premises and be clearly and visibly marked individually or in sets as being the property of the Principal and their destination as being the Site. The method used to mark the Materials and the procedures by which the mark is applied to the Materials shall be as required by the Contract or as otherwise approved by the Principal.
5. Neither the Contractor nor the Subcontractor will permit, allow, or cause the Materials to be taken away from the Premises, except:
   a. For the purpose of being transported to the Site and used in the Contract Works; or
   b. That the Principal may at its sole discretion take possession of the Materials for use other than for the Contract Works; provided that:
   c. Where the Principal takes possession of any Materials under clause 5(b) above, and the Contractor thereby suffers delay or the Contractor or the Subcontractor incurs additional cost, the taking of possession shall be treated as a Variation under the Contract, unless the taking of possession is pursuant to clauses 14.2.1 or 14.2.2 of the Contract; and
   d. Where the Principal takes possession of any Materials under clause 5(b) above, and additional work has been carried out on those Materials since being paid for by the Principal, the Principal shall pay the Contractor for that additional work in accordance with the Contract before taking possession of the Materials.
6. The Engineer, upon being satisfied that the Materials have been set apart and marked as required by this agreement, and upon the Contractor providing satisfactory evidence that the requirements of clauses 12 and 20 below have been fully satisfied, shall include in any Payment Schedule issued by the Engineer under the Contract a sum representing the reasonable value of such Materials calculated in accordance with the Contract.
7. Upon the Principal having made payment for the Materials, less any retentions or deductions prescribed in the Contract, title to such Materials shall immediately vest in the Principal free of all security interests, charges, and encumbrances of any nature whatsoever.
8. Where the Contractor receives payment for Materials and the Subcontractor is entitled to some or all of the Principal's payment, the Contractor shall promptly pay the Subcontractor for such Materials.
9. Upon the request of the Subcontractor, the Engineer shall advise the Subcontractor whether the Contractor has received any payment from the Principal for such Materials.

10. The Contractor and the Subcontractor agree that the Materials will be held by the Contractor or the Subcontractor solely as bailee for the Principal and such bailment will constitute a security interest in favour of the Principal for the purpose of the Personal Property Securities Act 1999 ('the PPSA').
11. The Principal shall (at the Contractor's reasonable cost) register a financing statement on the Personal Property Securities Register ('the PPSR') listing the Principal as a secured party and the Contractor and the Subcontractor as debtors for any security interest arising from the bailment of the Materials referred to in this agreement.
12. The Bailee shall promptly do all things including executing any documents and providing all information which the Principal requires to ensure that the Principal receives and maintains at all times a first ranking security interest in the Materials. This shall include procuring from any third party who has registered a financing statement against the Bailee, a waiver, in a form acceptable to the Principal, of any security interest or claim which might otherwise extend to the Materials or their proceeds.
13. The Bailee shall not discharge or amend any financing statement registered under clause 11 above without the prior written consent of the Principal.
14. Nothing in sections 114(1)(a), 133, and 134 of the PPSA shall apply to this agreement.
15. Any rights of the Contractor and the Subcontractor as debtors under sections 116, 120(2), 121, 125, 126, 127, 129, 131, and 148 of the PPSA shall not apply to this agreement.
16. The Bailee hereby grants to the Principal reasonable, free, and unencumbered right of access to the Premises to:
    a. Inspect the Materials, and verify or undertake the marking and setting apart of the Materials;
    b. Take possession of the Materials for the purpose of delivery to the Site and inclusion in the Contract Works;
    c. Remove the Materials from the Premises for the purpose of delivery to the Site and inclusion in the Contract Works; and
    d. Take possession of the Materials for use other than for the Contract Works, and in each case in a manner that does not cause damage to any other property at the Premises. The Bailee shall take all steps and do all things as shall be necessary to ensure that the Principal obtains access to the Premises for the purposes of this agreement.
17. The Bailee shall not, except as permitted in clause 5, remove or cause or permit the Materials to be moved from the Premises. The Bailee shall nevertheless be responsible to the Principal for any loss or damage thereto and for any costs of storage or handling.
18. The Bailee shall, when required to do so by the Contractor or the Principal, arrange for the transportation of the Materials to the Site. Such transportation shall be at the cost of the Bailee in all things including loading, unloading, and freight.
19. Where the Materials are not insured under the construction policy provided in accordance with 8.3.1 or 8.8.1 of the Contract, the Bailee shall, at its expense:
    a. Effect a material damage insurance policy covering all of the Materials subject to this agreement in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-Site storage. Such insurance may include an exclusion for loss or damage sustained during processing;

b. Effect a transit insurance policy for transit of all the Materials from the Premises to the Site in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage.

20. Within 15 Working Days of the date of this agreement, the Bailee shall furnish the Principal and the Contractor with evidence of such insurance.
21. The Bailee represents and warrants to the Principal and to the Contractor (where applicable) that:
    a. It has good and clear title to the Materials;
    b. It has the ability to assign and transfer the Materials to the Principal or the Contractor; and
    c. The Materials will be transferred to the Principal or the Contractor free of any security interest.
22. The Bailee undertakes that, if it charges or mortgages all or any part of its property (either real or personal), assets, or undertaking, it will obtain written confirmation from the chargee or mortgagee that the charge or the mortgage over such property, assets, or undertaking does not extend to the Materials once they have been paid for by the Principal or the Contractor (as applicable).
23. Nothing in this agreement shall be deemed to limit, waive, or affect the Engineer's powers under the Contract to order the removal from the Site or the Premises of Materials which are not in accordance with the Contract and the substitution by the Contractor at its own risk and expense of proper Materials. Nothing in this agreement shall be deemed to limit, waive or affect any other powers conferred on the Engineer and/or the Principal under the Contract.
24. Each party shall pay its own costs of and incidental to the negotiation, preparation, execution, and any amendment of this agreement.
25. Words and phrases in this agreement shall have the same meanings as are ascribed to them under the Contract except where the context or any express provision of this agreement requires otherwise.

Signed by		(Authorised Signatory)
of	Napier City Council	('the Principal')
Signed By		(Authorised Signatory)
of	Enter Contractors Name	('the Contractor')
Signed by		(Authorised Signatory)
of	Enter Subcontractor name	('the Subcontractor')

Schedule 15 - Practical Completion Certificate

This Practical Completion Certificate is issued under NZS 3910:2013 10.4.3(a) or 10.4.4.

Contract For	Enter Contract Title Enter Contract Number	
Principal	Napier City Council	('the Principal')
Contractor	Enter Contractors Name	('the Contractor')

This certificate relates to: *Select a. or b.*

☐ a. The whole of the Contract Works referred to above ☐ b. The following Separable Portion

(Specify Separable Portion if applicable)

Enter text

Receipt of the Contractor's notice dated Enter date and issued in accordance with 10.4.2 is acknowledged.

In accordance with ☐ 10.4.3(a) or ☐ 10.4.4 (select one), the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Practical Completion Certificate under 10.4, notwithstanding that there may be minor omissions and/or minor defects (as listed in the attached schedule) which satisfy the criteria in 10.4.1 (a), (b), and (c).

The Contractor is required to remedy all of the listed omissions or defects within the period stated in the attached schedule against the relevant omission or defect, or at the latest within *Enter days* Working Days of the date of this certificate.

Practical Completion was achieved on *Enter date* at *Enter time*.

Signed by the Engineer	
Name	*Enter name*
Date	*Enter date*

Schedule

The following omissions and/or defects have been assessed as being of a minor nature satisfying the criteria in 10.4.1(a), (b), and (c) and were identified during an inspection carried out by the Engineer or Engineer's Representative on Enter date.

(List minor omissions and defects)

- *Enter text*

Schedule 16 - Final Completion Certificate

This certificate is a Final Completion Certificate issued under 11.3.1.

Contract for	Enter Contract Title Enter Contract Number	
Principal	Napier City Council	('the Principal')
Contractor	Enter Contractors Name	('the Contractor')

This certificate relates to: *Select a. or b.*

☐ a. The whole of the Contract Works referred to above ☐ b. The following Separable Portion

(Specify Separable Portion if applicable)

Enter text

In accordance with 11.3.1, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Final Completion Certificate issued under 11.3 on *Enter date* at *Enter time*.

Signed by the Engineer	
Name	*Enter name*
Date	*Enter date*

Schedule 17 – Preliminary and General Specifications

Drafting Note: Preliminary and General Specifications to be attached. Ensure that the most current version of NCC's P&G Specifications for horizontal infrastructure, roading or water, are included.

Note: The Appendices to this Contract are deemed to form part of these Specifications.

Schedule 18 – Technical Drawings and Specifications

Drafting Note: Technical Drawings and Specifications are to be attached.

Schedule 19 – Schedule of Prices

[To be completed post tender]

Schedule 20 – Broader Outcomes

[To be confirmed post tender]

Schedule 21 – Practical Completion Requirements

Practical Completion Checklist

Drafting Note: Checklist to be reviewed and amended on a case-by-case basis to reflect the particular requirements of your project.

Project	Enter Contract Title
Contract Number	Enter Contract Number
Site Supervisor	
Engineer	
Site Address	

Guidelines:

- This is general a checklist and will not replace any obligations in the Contract.
- The Engineer may add or remove the items from this checklist in accordance with the signed Contract.
- This form must be completed by the Contractor and approved by the Engineer prior to the issuance of the Practical Completion Certificate.

Sl. No.	Work Description	Inspected (Supervisor)	Approved (Engineer)	Notes
General				
1	All works as per the Contract are completed	☐	☐	
2	All temporary works are removed and site is cleaned.	☐	☐	
3	Any disturbed soil is reinstated, including any vegetation and planting, to the original state.	☐	☐	
4	Producer Statements (if applicable) are submitted to the Engineer/ Principal.	☐	☐	
5	Site walk over by the Engineer and Principal is completed and any feedback is addressed.	☐	☐	
6	All relevant warranties and continuity guarantees have	☐	☐	

Sl. No.	Work Description	Inspected (Supervisor)	Approved (Engineer)	Notes
	been delivered to the Principal / Engineer duly executed			
7	A schedule of contact details and emergency call out protocols for defects in respect of the Contract Works	☐	☐	
8	A schedule of minor omissions and minor defects has been provided to the Engineer that has been agreed with the Engineer and which, in the opinion of the Engineer: (a) the Contractor has reasonable grounds for not promptly correcting the minor omissions and minor defects; (b) the minor omissions and minor defects do not prevent the Contract Works (as the case may be) from being used for its intended purpose; and (c) the rectification of the minor omissions and minor defects will not prejudice the convenient use of the Contract Works (as the case may be), provided however that the foregoing is without limitation or prejudice to 10.4.1 of the Special Conditions, Schedule 2;	☐	☐	
9	All applicable spare parts required by the Contract have been delivered to the Principal at the Site or other place nominated by the Principal;	☐	☐	

Sl. No.	Work Description	Inspected (Supervisor)	Approved (Engineer)	Notes
10	All applicable loose items of equipment required by the Contract such as keys, operable wall locking devices, remote controls, handsets and the like have been delivered to the Principal at the Site and they all operate as required;	☐	☐	
11	All operation and maintenance manuals, in the form and comprising the content required by the Principal, have been delivered to the Principal.	☐	☐	
12	All applicable testing (including any witness testing required by the Specifications), and commissioning has been successfully performed and test certificates have been provided to the Principal and Engineer evidencing this to their satisfaction, and the Contractor has otherwise connected, tested, commissioned, balanced and certified all applicable services and other facilities as being in accordance with the Contract;	☐	☐	
13	All other documentation, certifications and testing described as being required for Practical Completion in the Specifications or Drawings has been provided and/or successfully completed (as the case may be);	☐	☐	
14	The Contractor has provided a comprehensive training	☐	☐	

Sl. No.	Work Description	Inspected (Supervisor)	Approved (Engineer)	Notes
	programme for the Principal's staff as required for the ongoing management, operation and maintenance of the Contract Works where required by the Specifications or otherwise where required in accordance with Good Industry Practice.			
Water Supply				
1	Installed as per the design drawings, specifications, and Code of Practice.	☐	☐	
2	Any deviation from the approved design is captured and approved by the Engineer.	☐	☐	
3	All necessary information required for generating as-builts are captured by NCC designer and accepted by the Engineer.	☐	☐	
4	NCC Water supply system disinfection and flushing are completed as per the procedure and the form is approved by Engineer/ Principal.	☐	☐	
5	System is commissioned and accepted by the Engineer/Principal.	☐	☐	
Waste Water				
1	Installed as per the approved design drawings, specifications, and Code of Practice.	☐	☐	
2	Any deviation from the design is captured and approved by the Engineer.	☐	☐	

Sl. No.	Work Description	Inspected (Supervisor)	Approved (Engineer)	Notes
3	All necessary information required for generating as-builts are captured by NCC designer and accepted by the Engineer.	☐	☐	
4	System CCTV inspection reports are completed and accepted by the Engineer/Principal.	☐	☐	
Storm Water				
1	Installed as per the design drawings, specifications, and Code of Practice.	☐	☐	
2	Any deviation from the design is captured and approved by the Engineer.	☐	☐	
3	All necessary information required for generating as-builts are captured by NCC designer and accepted by the Engineer.	☐	☐	
4	System CCTV inspection reports are completed and accepted by the Engineer/Principal.	☐	☐	
Roading				
1	Installed as per the design drawings, specifications, and Code of Practice.	☐	☐	
2	Any deviation from the design is captured and approved by the Engineer.	☐	☐	
3	Any sealing above 50m in length or greater than 100m^2 shall be updated in RAMM.	☐	☐	
4	Any damaged kerb & channel, driveway, berm, footpath is reinstated to the original condition.	☐	☐	

Sl. No.	Work Description	Inspected (Supervisor)	Approved (Engineer)	Notes
5	All road markings are completed as per the design and damaged signs and marking are reinstated upto relevant standards.	☐	☐	
Gardening				
1	Planted as per the design drawings, specifications, and Code of Practice.	☐	☐	
2	Any deviation from the design is captured and approved by the Engineer.	☐	☐	
3	Any damaged plants, grassed area and garden components are reinstated.	☐	☐	
Miscellaneous – Private Property				
1	Driveway is constructed as per the plan and specifications provided.	☐	☐	
2	Any damaged properties due to the construction activities in the private property are reinstated and is accepted by the property owner.	☐	☐	
3	Any damaged plants, grassed area and garden components are reinstated.	☐	☐	
4	All necessary information required for generating as-builts are captured by NCC designer and accepted by the Engineer.	☐	☐	
Forms (All relevant forms shall be completed)				
1	Garden Topsoil Approval Form	☐	☐	
2	Stormwater Pipe Certification Form	☐	☐	
3	NCC Water Supply System Disinfection Worksheet	☐	☐	

Sl. No.	Work Description	Inspected (Supervisor)	Approved (Engineer)	Notes
4	Approval to Commence Sealing Form	☐	☐	
5	RAMM Update – Surface Information	☐	☐	
6	RAMM Update – Pre-Seal Repairs Pavement Information	☐	☐	
7	RAMM Update – Pavement Marking	☐	☐	
8	RAMM Update – Pavement Information Sheet	☐	☐	
9	Roading Inspection and Testing Schedule	☐	☐	

Notes:

Contractor's Representative/ Site Supervisor	
Name	
Role/Organisation	
Signature	
Date	

Engineer	
Name	
Role/Organisation	
Signature	
Date	

Schedule 22 – Contractor's Tender

Drafting Note: Contractor's Tender to be attached.

Note that if the Contractor's tender is included in the contract documents, there may be discrepancies between the tender documents and the final negotiated position between NCC and the Contractor. NCC to ensure that all agreed amendments to the tender document are properly documented and included in the contract either as Post-Tender Documents or in other schedules.

Appendices

The Appendices listed below form part of the Specifications for this Contract.

Drafting Note: Appendices to be reviewed on a case-by-case basis and amended where necessary or deleted if not relevant.

Appendix no.	Title
Appendix A	Heritage New Zealand Pouhere Taonga Accidental Discovery Protocol
Appendix B	Materials Testing
Appendix C	Forms

Appendix A: Heritage New Zealand Pouhere Taonga Accidental Discovery Protocol

This protocol does not apply when an archaeological authority issued under the Heritage New Zealand Pouhere Taonga Act 2014 is in place.

In the event that an unidentified archaeological site is located during works, the following applies;

1. Work shall cease immediately at that place and within 20m around the site.
2. The contractor must shut down all machinery, secure the area, and advise the Site Manager.
3. The Site Manager shall secure the site and notify the Asset Manager, Napier City Council, and the Heritage New Zealand Regional Archaeologist. Further assessment by an archaeologist may be required.
4. If the site is of Māori origin, the Site Manager shall notify the Asset Manager and the Heritage New Zealand Regional Archaeologist. The Regional Archaeologist will then notify the appropriate iwi groups or kaitiaki representative of the discovery and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under the legislation are met (Heritage New Zealand Pouhere Taonga Act, Protected Objects Act).
5. If human remains {koiwi tangata) are uncovered the Site Manager shall advise the Asset Manager, Napier City Council), the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative and the above process under 4 shall apply. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded.
6. Works affecting the archaeological site and any human remains (koiwi tangata) shall not resume until Heritage New Zealand gives written approval for work to continue. Further assessment by an archaeologist may be required.
7. Where iwi so request, any information recorded as the result of the find such as a description of location and content, is to be provided for their records.
8. Heritage New Zealand will determine if an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 is required for works to continue.

It is an offence under 587 of the Heritage New Zealand Pouhere Taonga Act 2014 to modify or destroy an archaeological site without an authority from Heritage New Zealand irrespective of whether the works are permitted or consent has been issued under the Resource Management Act.

Heritage New Zealand Regional Archaeologist contact details:

Central Regional Office
Level 1
79 Boulcott Street, Wellington 6011
PO Box 2629
Wellington 6140
Phone + 64 4 494 8320
Email: infocentral@heritage.org.nz

Appendix B: Materials Testing

[PLACEHOLDER]

Appendix C: Forms

The forms listed below apply to the Contract Documents.

Drafting Note: List of applicable forms to be reviewed on a case-by-case basis and amended or deleted as necessary

Title
Garden Topsoil Approval Form
Hazard Identification Form
Stormwater Pipe Certification Form
NCC Water Supply System Disinfection Worksheet
Approval to Commence Sealing Form
RAMM Update – Surface Information
RAMM Update – Pre-Seal Repairs Pavement Information
RAMM Update – Pavement Marking
RAMM Update – Pavement Information Sheet
Roading Inspection and Testing Schedule

Garden Topsoil Approval Form

Form for:	Enter Contract Title Enter Contract Number

This form is to be filled out by the approving Napier City Council Team Leader Garden Maintenance.

Topsoil to a depth of 500mm that is 'black' containing decomposed organic matter humus and capable of sustaining vegetative growth. The Contractor shall allow to screen the topsoil through a 25mm aperture and ensure it is free of weeds, stones, rock particles and hard clods. The Contractor shall be particularly aware of transporting and spreading noxious weed seeds such as nut grass, in soil.

Contractor: _____

Source: _____

_____

NOTES:

_____

_____

_____

_____

I, the undersigned, have visually inspected and approved the topsoil to be used for this contract.

Name:……...

(nominated representative from the Council Garden Maintenance Team)

Signature:……

Date: ……/……/…….

Hazard Identification Form

Form for:	Enter Contract Title Enter Contract Number

The Napier City Council have identified the following hazards:

(the Contractor is to record the Proposed Actions)

Hazard (Description & Location)	E	M	Proposed Actions
Underground Services Gas & Power			
Overhead Power			
Confined Spaces (Sewer & Stormwater Access Chambers)			
Public Traffic (Including cyclists & pedestrians)			
Weather i.e. sun, rain			
Stakes hitting existing underground services			
Dust			
Open Trenches			

In addition to the above, I/we, the Contractor, have identified the following additional hazards:

Hazard (Description & Location)	E	M	Proposed Actions

E – Eliminate Hazard: Is it practical to eliminate hazard

M – Minimise Hazard: Where elimination/isolation is not practicable, outline steps to minimise the likelihood of harm.

Full Name: _____

Signed: _____

Date: _____

Company Name: _____

Stormwater Pipe Certification Form

Form for:	Enter Contract Title Enter Contract Number

1. Prior to pavement sealing the Contractor shall certify that all drainage works are in accordance with the Drawings and Specifications.
2. Final “as built” drawings are required prior to the issue of the Certificate of Practical Completion.

CERTIFICATION

I have confirmed by a survey that all stormwater pipework has been constructed to the specified invert levels and gradients and all necessary inspections have been completed to the satisfaction of the Consents Engineer.

(Signature)	
Contracts Manager or Registered Drainlayer	**Contractor**

Date: ……/……/…….

NCC Water Supply System Disinfection Worksheet

Form for:	Enter Contract Title Enter Contract Number

Location: ……...

Disinfection type (tick one):

New Mains ☐ Mains Repairs ☐ New Reservoir ☐ Reservoir Cleaning ☐

Calculations completed by: ……..……...

Position: ……...……

Calculate the volume of the vessel to be chlorinated: (Note – All dimensions are in meters [m])

Calculation:	**Example:**
	Pipe: $V=L\pi d^2/4$; d=diameter, L= length **Circular Reservoir**: $V=D\pi d^2/4$; D=depth, d=diameter **Rectangular Reservoir**: V=LWD; L=length, W=width, D=depth

Select the Required Chlorine Concentration from the Table below (circle/mark selection):

Vessel to be disinfected	**Reason**	**Contact Time required**	**FAC target residual at the start [mg/l]**	**FAC residual required at the end [mg/l]**
Reservoir	New Reservoir introduction to supply	min 18h	25-50	>10
Reservoir	Existing Reservoir - after *E. coli* transgression and cleaning	min 18h	25-50	>10
Reservoir	Cleaning for routine maintenance	min 18h	10-15	>5
Reservoir	Boost chlorination for zero or low FAC residual (<0.20 mg/l)	N/A	0.5 – 0.8	N/A
Mains	New mains introduction to supply	min 18h	25-50	>10
Mains	Mains repair if contaminants entry is possible / likely	min 1h*	25-50	>10

* min 1h if urgent for main to be put back in service, otherwise a minimum of 18h

Record sodium hypochlorite used details and chlorination plan:

Manufacturer:	Production date*:
Expiry date:	Batch:
{HYPO} = Hypo Nominal strength [% w/v] = _____	{FAC} = Target FAC residual [mg/l] = _____
{VOLUME} = Volume to be chlorinated [m^3] = _____	Contact time [h] = _____
Calculation: **Example:** Hypo to be added [l] = $\frac{\{VOLUME\} * \{FAC\}}{10 * \{HYPO\}}$ = _____ = _____ l	

* Sodium hypochlorite shall not be more than 3 months old

Record details of each step as per below:

1. **Initial high-velocity flush** (min 15 min)

Full name and position of NCC staff overseeing the works:
Date & Hours completed: ___ / ___ / _____ at ___ : ___ Flushing time: _____ min
Details on potable water used to undertake flushing (e.g. which hydrant used):
If N/A or other procedures or methods used (e.g. hosing down the reservoir internal surfaces) provide details:

2. Chlorination Start

Full name and position of person overseeing the works:_____

Date & Hours: ___ / ___ / _____ at ___ : ___

If IANZ accredited lab not used, record the FAC colorimeter used details (brand, model, S/N, verification expiry date): _____ and

full name of trained operator undertaking FAC testing: _____

'Disinfection - Start FAC residual' [mg/l] at the entry point and at sampling locations as per **Sampling Plan***:

• Entry point =	• Location 6 =
• Location 1 =	• Location 7 =
• Location 2 =	• Location 8 =
• Location 3 =	• Location 9 =
• Location 4 =	• Location 10 =
• Location 5 =	• Location 11 =

*** Sampling Plan** to be approved as part of Engineers Approval process. Plan shall include drawing / sketch of the new pipework and associated assets (e.g. reservoir) and have clearly defined proposed testing / sampling locations.

3. Chlorination Complete

Full name and position of person overseeing the works:_____

Date & Hours: ___ / ___ / _____ at ___ : ___

Total time elapsed [h]: _____

If IANZ accredited lab not used, record the FAC colorimeter used details (brand, model, S/N, verification expiry date): _____ and

full name of trained operator undertaking FAC testing: _____

'Disinfection - End FAC residual' [mg/l] at sampling locations as per Sampling Plan:

• Location 1 =	• Location 7 =
• Location 2 =	• Location 8 =
• Location 3 =	• Location 9 =
• Location 4 =	• Location 10 =
• Location 5 =	• Location 11 =
• Location 6 =	

4. Final flush Completed

Full name and position of person overseeing the works:_____

Date & Hours: ___ / ___ / _____ at ___ : ___ Final flush time: _____ min

Note – it is good practice to check the FAC residual in the flushed mains to ensure the flush has removed all superchlorinated water from the new assets and the FAC is of similar value as in the reticulated water used to undertake the flushing. Any remaining superchlorinated water in new asset(s) will be otherwise picked up by the lab sampler and any accompanying testing results will not be accepted by NCC.

5. Sensory Test

Note – only proceed if there is at least 0.20ppm FAC present in the water to be tested.

Full name and position of person conducting the check:	
Appearance:	Colour:
Odour:	Taste:

6. Lab Testing and Sampling

Name of the lab used to undertake final testing and sampling for micro: _____

Water testing and sampling start Date & Hours: ___ / ___ / _____ at ___ : ___

Note – the lab shall test at all sampling locations as per the Sampling Plan. It is recommended to check for FAC residual first in order to make sure, there is no superchlorinated water left in the system, as the micro results of such superchlorinated water are not representative and will not be accepted by NCC.

Required tests to be done on site: FAC residual, Combined or Total chlorine, temperature, turbidity, pH, conductivity, TDS). Micro samples to be taken and tested for: *E. coli* and TC; Colilert method. Attach final lab reports when submitting for review.

7. **Connection to Network** (NCC staff only)

Approval to connect to existing NCC water supply network:

NCC Compliance Officer Full Name: _____

Date: ___ / ___ / _____ Signed:_____

Connection to NCC network completion date: ___ / ___ / _____

By whom:_____ Signed:_____

All valves turned on: YES / NO

Connections to existing network completed by Water Supply Team Leader:

Final flush conducted (date and hours): _____

Name: _____ Position:_____ Date: ___ / ___ / _____

Notes & Comments:

Approval to Commence Sealing Form

Form for:	Enter Contract Title Enter Contract Number

The Contractor shall not commence sealing until this form has been signed by the Engineer.

Stormwater Pipe Certification Form	☐
Sealing Chip Test NZS 4407:1991	☐
TNZ M4:2006 Basecourse testing	☐
Basecourse string results (surface shape)	☐
Benkelmen beam results	☐
Surface finish (road sweep)	☐
Service Lid Plan	☐
Nuclear Densometer results	☐
Spray tankers compliance with BCA E/2	☐

(Signature)

Engineer's Representative **Contractor**

Date: ……/……/…….

RAMM Update – Surfacing Information

Job Name:			
Start RP (m)		Start Name:	
End RP (m)		End Name:	
Surface Date: Width: Seal Area:		Life: Offset:	
Surface Material:			
Material Source:			
Overlay Depth (mm):			
Chip 1:		Chip 2:	
PSV:		ALD:	
Binder:		Flux Qty:	
Cutter Qty:		Cutter Type:	
Adhesion Qty:		Adhesion Type:	
Additive Qty:		Additive Type:	
Application Rate:			
Organisation:			
Surface Spec:			
Notes:			

Prepared by……

Date ……..

RAMM Update – Pre-Seal Repairs Pavement Information

Job Name:			
Start RP (m)		Start Name:	
End RP (m)		End Name:	
Repair Date:		Repair Type:	
Width:		Repair Depth:	
Repair Area:		Offset:	
Basecourse Material:			
Material Description			
Basecourse Depth: (mm)			
Subbase Material:			
Subbase Description:			
Subbase Depth:			
Subgrade Material:			
Subgrade Description:			
CBR:		Test:	Scala
Organisation:			
Notes:			

Prepared by……

Date ……..

RAMM Update – Pavement Marking

Job Name:			
Start RP (m)		Start Name:	
End RP (m)		End Name:	
Marking Type:			
Marking Description			
Side:		Offset CL:	
Width:		Colour:	
Marked Date:			
Notes:			

Type	Marking Description	Type	Marking Description
M01	Centreline 100mm continuous	M52	PED. CROSS AHEAD
M02	Centreline 100mm 3 x 7	M55	Destination Legend
M03	No Overtaking 100mm continuous	M56	SCHOOL
M03A	No Overtaking 150mm continuous	M57	SPEED HUMP
M04	No Overtaking advance 100mm 13 x 7	M58	Painted Speed Hump
M04A	No Overtaking 150mm Advance	M59	Intersection Continuity Lines (150mm 1 x 3)
M05	RPM non-reflective	M59A	Intersection Continuity Lines (200mm 1 x 3)
M0508	RPM centreline, non refl/refl combination	M59D	Intersection Continuity Dots
M07	RRPM white mono-directional	M60	No Stopping Line (yellow) 100mm 1 x 1
M08	RRPM white bi-directional	M61	Loading zone
M09	RRPM white/yellow bi-directional	M62	Bus stop
M10	RRPM yellow bi-directional	M63	Taxi stand
M100	M/C	M64	Other zone
M100A	M/C ONLY	M65	Park Limit Lines parallel
M11	RRPM red (edge line) mono-directional	M66	Park meter bays

Type	Marking Description	Type	Marking Description
M12	lane 100mm 3 x 7	M66A	Park bays parallel
M12A	Lane Line 100mm 1m x 1m	M67	Park bays angle
M15	Edge 100mm continuous	M67A	Park meter bays - angle
M16	Painted shoulder	M70	Fire hydrant
M17	Painted island	M72	CYCLE LANE
M18	Island pre warn	M72C	Cycle Lane Continuity
M19	Right turn bay	M72G	Cycle Lane Green
M20	Pedestrian crossing	M73	Cycle symbol
M21	Pedestrian crossing diamond	M73G	Cycle Symbol for Green Square
M23	Signalised intersection crosswalk	M74	Flush Median
M24	Railway crossing	M77	Traffic Signal Limit Lines
M29	ONE LANE BRIDGE	M78	Give Way Limit Lines
M30	STOP	M79	Stop Limit Lines
M31	GIVE WAY	M81	Give Way Triangle symbol
M34	ONE WAY	M84	Centreline 100mm continuous - Profiled
M35	NO ENTRY	M85	Centreline 100mm 3 x 7 - Profiled
M37	NO EXIT	M88	No Overtaking 100mm continuous - Profiled
M3850	Speed 50km/h	M90	Limit line(s)
M3870	Speed 70km/h	M91	Right Turn Bay entry dotted (Big Foot)
M40	straight arrow	M92	Splay Lines
M41	right turn arrow	M93	Exclusion Zone
M42	Left turn arrow	MWORD3	3 Words
M43	Combination arrows		
M46	KEEP CLEAR		
M46H	Keep Clear Yellow Hatching		
M47	DISABLED PARKING		
M47M	Disabled parking - metered		
M48	NO PARKING		

Prepared by……

Date ……..

RAMM Update – Pavement Information Sheet

Date: ……/……/…….

Road Information					
1.	Road No.		2.	Road Name:	
			2a.	Estimate AADT	
Location					
3.	Start Displacement	m	4.	Between	St/Rd
5.	End Displacement	m	6.	And	St/Rd
7.	Offset from LHS kerb or LHS edge of seal, or centre of recorded pavement	m	8.	Width of recorded section	mm

New Pavement Information

		Hot Mix (mm)	Premix (mm)	Seal	Slurry	Unsealed	Other
9.	Surfacing Details						

		AP40 (mm)	AP65 (mm)	Pitmetal (mm)	Other
10.	Pavement Layers				

11.	Fabric/Geotextile (tick)	Yes ☐	No ☐	If yes, details	
12.	Subgrade (tick)	Material	☐ Clay	☐ Topsoil	☐ Other
		Compaction	☐ Good	☐ Average	☐ Poor
		Moisture Content	☐ Wet	☐ Average	☐ Dry

13. Subgrade CBR/Scala Penetrometer

14. Final Compaction/Prior to Sealing Clegg Hammer/Nuclear Densometer

Existing Pavement Information

		Hot Mix (mm)	Premix (mm)	Seal	Slurry	Unsealed	Other
15.	Surfacing Details						

		AP40 (mm)	AP65 (mm)	Pitmetal (mm)	Other
16.	Pavement Layers				

17.	Grading (tick)	☐ Well Graded	☐ Excess Course	☐ Excess Fines
18.	Contamination (tick)	☐ Clay	☐ Water	☐ Other

19.	Fabric/Geotextile (tick)	Yes ☐	No ☐	If yes, details

20.	Subgrade (tick)	Material	☐ Clay	☐ Topsoil	☐ Other
		Compaction	☐ Good	☐ Average	☐ Poor
		Moisture Content	☐ Wet	☐ Average	☐ Dry

21. Subgrade CBR/Scala Penetrometer

Miscellaneous

22. Reason for Recording: Reconstruction / Maintenance / S.O.N / Test hole

Other

23. Comments, if any:

Recorded by (name): Company:

RAMM ENTRY

Roading Inspection and Testing Schedule

Phase	Testing	Passed Yes/No	Council Representative Comments / Signed / Date
Completion of subgrade	1. To confirm that the pavement excavation depth and which is in accordance with the approved design. 2. To check that the subgrade material is consistent in type and colour with the tested material on which the design was based. 3. The pavement surface is even and complies with the design crossfall. 4. To ensure that the subgrade is free from wet spots or any other visually defective areas e.g. tree stumps and other organic/inorganic matters. 5. CBR test results to confirm the strength of subgrade and are consistent with Design CBR.		
Completion of subbase	1. The pavement surface is even and complies with the design crossfall. 2. The subbase has been trimmed to the correct level to allow for the placement of the specified thickness of basecourse. 3. Testing in accordance with TNZ B/2		
Completion of basecourse	1. The pavement surface is even and complies with the design crossfall. 2. The basecourse has been trimmed to the correct level to allow for the placement of the specified thickness of surfacing. 3. Any kerb and channel which has been damaged during construction (including kerb that contains excessive visual defects, scraping etc) is to be replaced/repaired. 4. Where new work joins to the existing sealed pavement, a saw cut edge 150-300mm into the existing pavement is to be provided to enable a smooth join to be made. Where the sequence of construction dictates otherwise and the edge is liable to be damaged prior to the placement of the AC, this may be done immediately prior to the AC being replaced.		
Road surface preparation for sealing	The surface shall be clean, dry, uniform, tightly bound and shall present a stone mosaic appearance. The surface shall be rotary broomed beforehand so that the true surface is visible.		
Roadmarking, signs & controls	To confirm that all roadmarkings and signs are in accordance with the approved design & MOTSAM.		

NAPIER
CITY COUNCIL
Te Kaunihera o Ahuriri

Napier City Council

Minor Works Contract Template

****THE INSTRUCTIONS TABLE AND ALL GREEN AND YELLOW HIGHLIGHTING MUST BE DELETED BEFORE YOU ISSUE THIS DOCUMENT FOR ENDORSEMENT / APPROVAL****

Instructions

*(For internal use only - **DELETE THIS TABLE FROM THE FINAL DOCUMENT**)*

Guidance

This template is intended for minor works (low-value building and construction projects) for contracts valued at up to $250,000. This contract does not require an Engineer to the Contract. The client (Principal) administers the contract directly.

Contracts with a value of more than $250,000 may use this template but this requires consultation with the NCC Procurement Team and/or legal advice due to the risk profile.

Instructions

Green = [Drafting notes]

Yellow = [Content to be inserted]

Ensure all highlighting is removed prior to submitting for approval.

Before this contract is circulated to contractors, ensure that you:

- Ensure all green sections are deleted and yellow highlighting has been removed.
- Update the Contents table:
  - Right click on contents table
  - Select “Update field”
  - Select “Update entire table”
  - Click “OK”
- Delete the Instructions page (this page)

NAPIER CITY COUNCIL
Te Kaunihera o Ahuriri

Minor Works Construction Contract

Insert Contract Title

Insert the Contract Title above and press Enter. It will automatically populate in applicable sections of the Contract.

Insert Contract Number

Insert the NCC Contract Number above and press Enter. It will automatically populate in applicable sections of the Contract.

Between

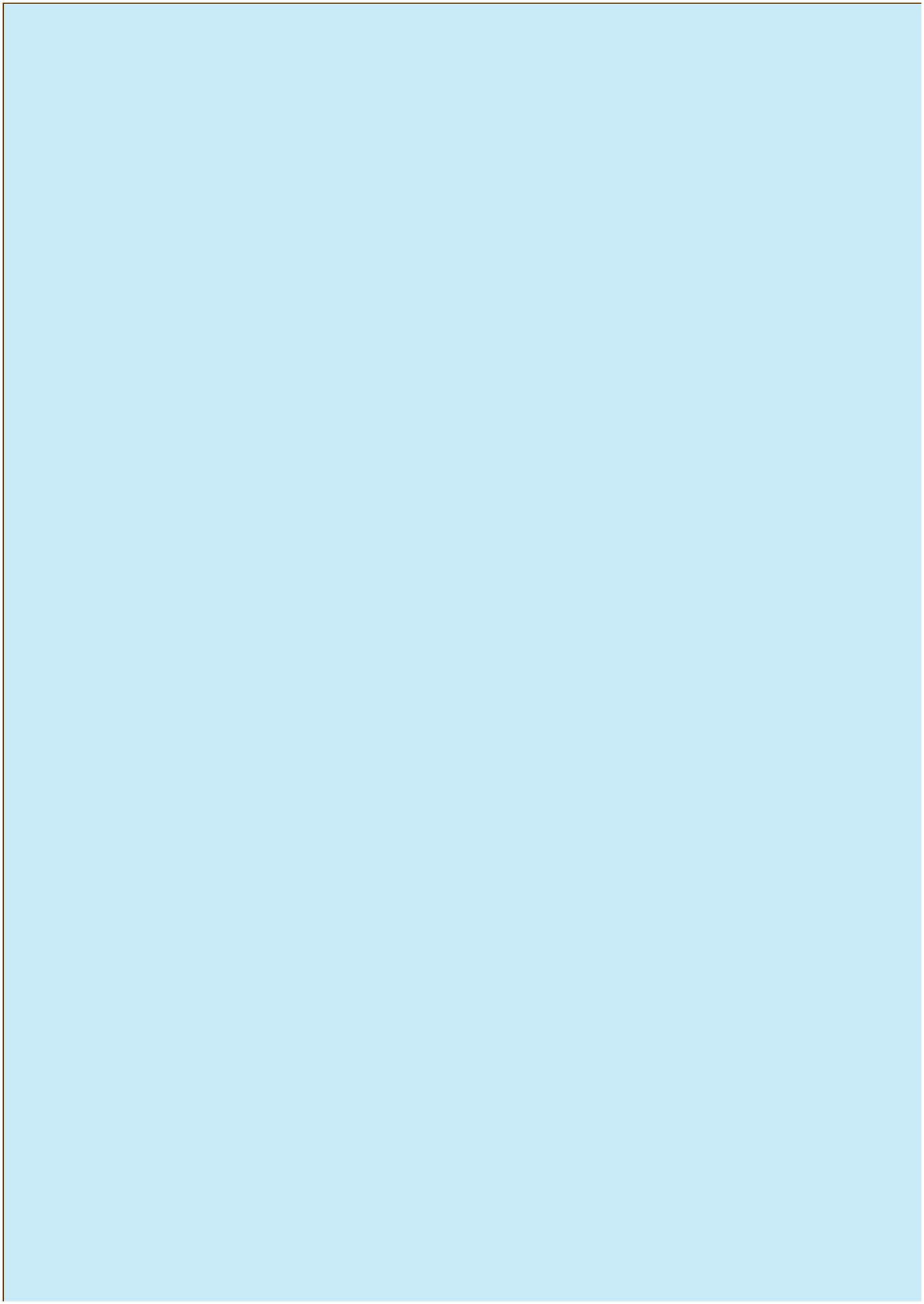
Napier City Council (‘the Principal’)

And

Insert Contractors Name (‘the Contractor’)

Insert the Contractor's name above and press Enter. It will automatically populate the remainder of the Contract, where applicable

Date *Enter date*



Contract Agreement

Contract Title	Insert Contract Title	(Contract Name)
Contract Number	Insert Contract Number	(Number)
This agreement is made on	*Enter date*	
Between	Insert Contractors Name	('the Contractor')
And	Napier City Council	('the Principal')

THE PARTIES AGREE AS FOLLOWS:

1. The Contractor shall construct, complete, deliver and remedy defects in the Works as described in the Contract.
2. The Principal shall pay the Contractor the sum of $[enter value] or such greater and lesser sum as shall become payable under the Contract, together with GST at the times and in the manner provided in the Contract.
3. Each party must carry out and fulfil all other obligations imposed on that party by the Contract.
4. The Contract comprises the following documents:
    - This Contract Agreement;
    - The Agreement Details;
    - The Terms and Conditions;
    - Schedule 1 – Specifications;
    - Schedule 2 – Drawings;
    - Schedule 3 – Schedule of Prices;
    - Schedule 4 – Additional Documents (if any);
    - Schedule 5 – Form of Insurances; and
    - Schedule 6 – Form of Bond

    Drafting Note: Remove any schedules not required by your project from the list above and in the body of the document.
5. This Contract may be executed in counterparts and by electronic signature, and provided that each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties. A party shall be entitled to transmit an electronic copy of this Contract by email (or other electronic means) to the other party.

EXECUTED as a contract:

EXECUTED for and on behalf of Napier City Council by:

Drafting Note: An appropriate NCC DFA signature is required.

Authorised Signatory

Print Name

Witness to Signature

Print Name

Occupation

Address

EXECUTED by
Insert Contractors Name
by

Director/Authorised Signatory

Print Name

Witness to Signature

Print Name

Occupation

Address

Agreement Details

Item	Details
Principal's address for notices	Physical address and address for service: Napier City Council 265 Marine Parade, Napier 4110 Postal address: Napier City Council Attention: [Enter Contact Person] 265 Marine Parade, Napier 4110 Authorised representative [Name] [Phone number(s)] [Email address]
Contractor's address for notices	Physical address and address for service: [Address] [Address] [Address] Postal address: [Address] [Address] [Address] Authorised representative [Name] [Phone number(s)] [Email address]
Contract Owners	[insert]
Commencement Date (clause 1.1)	*Enter date*
Site (clause 1.1)	[insert]
Price (clause 2)	NZD$[insert value], plus GST
Bond (clauses 3.1 and 3.2)	[Not Applicable] OR [in the form set out to schedule 6]
Retentions (clause 3.3)	[Not Applicable] OR [10% of each invoice]

Item	Details
Reporting (clause 5.1(f))	[Not Applicable] OR [Yes, reporting is required every [insert frequency]]. If 'Yes', the matters to be covered in the reports are: • [List reporting matters] Reports should be provided in [insert form]
Licenses, approvals etc, obtained or to be obtained by the Principal (clause 5.2(e))	[List]
Contractor Practical Completion deliverables (clause 6.6)	[insert all Practical Completion deliverables which must be provided before a Practical Completion Certificate will be issued.]
Time for access to the site (clause 9.2)	[insert]
Due date for completion (clause 9.3)	*Enter date*
Liquidated damages (clause 9.9)	[Not Applicable] OR [$[insert value] per day or per Business Day]
Defects Notification Period (clause 1.1)	[if this is left blank, the default under clause 1.1 is 3 months]

Terms and Conditions

The Parties agree:

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In these terms and conditions, unless the context otherwise requires:

Business Day means any day other than a Saturday, Sunday, or a statutory public holiday or regional Anniversary day (if the regional anniversary is outside Hawke's Bay, this must be notified to NCC if applicable).

Commencement Date means the date stated in the Agreement Details.

Confidential Information means:

(a) any information, including personal information as defined in the Privacy Act 2020 (written, electronic or otherwise):

(i) relating to the terms of this Contract or the business affairs of either Party; or

(ii) disclosed by either Party to the other on the express basis that such information is confidential; or

(iii) which might reasonably be expected by either Party to be confidential in nature;

(b) any knowledge or information which either Party acquires as a direct result of acquiring or holding information referred to in paragraph (a) above; and

(c) the fact of the existence of any of the information referred to in paragraph (a) or (b) above, provided that where information relates exclusively to one Party, nothing in this Contract will require that Party to maintain confidentiality in respect of that information.

Conflict of Interest means a situation in which a personal or business interest or obligation of the Contractor does or could conflict or be perceived to conflict with its obligations under this Contract, such that the Contractor's independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

(a) actual: where the conflict currently exists

(b) potential: where the conflict is about to happen or could happen, or

(c) perceived: where other people may reasonably think that a person is compromised or conflicted.

Contract means the contract between the Principal and the Contractor for the provision of the Works, comprising the Contract Agreement, the Agreement Details, the Terms and Conditions, the Schedules, and any other documents listed at clause 4 in the Contract Agreement.

Contractor means the contractor as specified in the Contract Agreement.

Defect means any deficiency, weakness, errors or failure to comply with the Contract, or the Works are not in accordance with Good Industry Practice, or where the Contractor is responsible for design, any design errors or omissions, or where the Works are not fit for the Purpose(s) contemplated by this Contract.

Defects Notification Period means the period stated in the Agreement Details, or if no period is stated, 3 months commencing on the date of Practical Completion.

Drawings means the drawings included in Schedule 2, together with any additions to or modifications of such drawings and design documents as may be supplied by the Principal to the Contractor for the purpose of the Contract. Drawings also include those drawings and other design documents that have been prepared by, or on behalf of the Contractor, and which have fulfilled any requirement in the Contract for preparation and review of such drawings prior to their issue for design and construction.

Due Date for Completion means the date by which the Works must be completed, as specified in the Agreement Details as that date may be extended in accordance with this Contract.

Final Completion Certificate is the certificate issued under 6.7.

Goods: mean the goods, equipment, software and materials supplied by the Contractor (and its subcontractors, if any) to the Principal as part of, or in connection with, the Works.

Good Industry Practice means the standards, practices, methods and procedures conforming to law and to the degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled contractor engaged in the same type of undertaking and under the same or similar circumstances as those contemplated under this Contract, and being a contractor who is familiar with and experienced in best practices that are generally recognised in New Zealand as being applicable to the provision of works and goods that are the same as, or similar to, the Works and Goods (as applicable).

GST means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985.

HSWA means the Health and Safety at Work Act 2015 and all related regulations, codes of practice and rules.

Intellectual Property means in relation to a person, all intellectual and industrial property rights and interests (including common law rights and interests) owned or held by a person, or lawfully used by that person, whether registered or unregistered, including, without limitation:

(a) patents, trademarks, service marks, copyright, registered designs, trade names, symbols, and logos;

(b) patent applications and applications to register trademarks, service marks and designs; and

(c) formulae, methods, plans, data, drawings, specifications, characteristics, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, costings, brochures and other information used by that person.

Practical Completion means when the Works have been completed in accordance with the Contract, other than minor omissions or deficiencies which, in the opinion of the Principal:

(a) do not prevent the Works from being used for their intended Purpose;

(b) the Contractor has reasonable grounds for not promptly correcting; and

(c) rectification of which will not prejudice the convenient use of the Works.

Price means the amount payable by the Principal to the Contractor for the performance of the Works.

Principal means the Principal as specified in the Contract Agreement.

Purpose means the purpose or intended use of the Works as set out in the Contract.

Site means the property where the Works are to be carried out, as specified in the Agreement Details.

Specifications means the document(s) listed in Schedule 1 containing descriptions of materials and workmanship and other requirements for carrying out the Works, together with any additions to, or modifications of such documents as may be supplied by the Principal to the Contractor for the purpose of the Contract. Specifications also include documents containing descriptions of materials and workmanship and other details of the Works which have been prepared by, or on behalf of, the Contractor and which have fulfilled any requirement in the Contract for preparation and review of such documents prior to their issue for construction.

Taxable Supply Information has the meaning given in the Goods and Services Tax Act 1985.

Works means all the works, including any temporary works to be executed in accordance with the Contract, including (if applicable) the supply and installation of any Goods (and all incidental works related thereto), as may be further specified in the Contract.

2. PRICE

2.1 **Price:** The Price payable for the Works will be as specified in the Agreement Details or as otherwise agreed by the parties in writing.

2.2 **Price inclusive:** the price includes the total cost of supply, including associated costs, duties and installation charges where applicable.

2.3 **Fixed price:** unless otherwise agreed and clearly stated in the Contract Agreement, Agreement Details, or Schedule 3, the price is fixed and not subject to adjustment due to currency fluctuation or any other reason.

3. BOND AND RETENTIONS

3.1 **Bond**: If required in the Agreement Details, the Contractor will provide a bond to the Principal 10 Business Days after the date of this Contract to ensure performance of the Contractor's obligations under the Contract. The Principal must return the bond within 10 Business Days of issue of the Practical Completion Certificate.

3.2 **Form of the bond:** The bond will be an unconditional on-demand bond in the form set out in Schedule 6:

(a) for the amount set out in the Agreement Details;

(b) that remains valid and does not expire prior to the occurrence of Practical Completion;

(c) provided by the surety approved by the Principal; and

(d) in a form approved by the Principal.

3.3 **Retentions:**

(a) **Amount to be retained:** Where stated in the Agreement Details, the Principal may retain the portion of each payment of the Price stated in the Agreement Details (Retentions). The Principal must pay the Retentions, less any deductions which the Principal is entitled to make, to the Contractor as follows:

(i) half the total Retentions within 20 Business Days of the date of issue of the Practical Completion Certificate; and

(ii) any remaining Retentions within 10 Business Days of the date of issue of the Final Completion Certificate.

(b) **Purpose of the Retentions:** The purpose of the Retentions is security for the performance of the Contractor's obligations under the Contract, including (without limitation) to:

(i) remedy omissions or defects in the Works; and

(ii) meet a liability incurred by the Contractor to the Principal under the Contract, including under 9.9; and

(iii) pay to the Principal damages or costs sustained by the Principal for defaults by the Contractor of its obligations under the Contract.

4. GST AND PAYMENT

4.1 **GST definitions:** In this clause 4, the expressions Recipient, Supplier, Taxable Supply, and Taxable Supply Information have the meanings given to those expressions in the Goods and Services Tax Act 1985.

4.2 **GST exclusive:** Unless otherwise agreed in writing or stated in the Agreement Details or Schedule of Prices, the Prices charged are exclusive of GST.

4.3 **Payment of GST:** If GST is chargeable by the Supplier on any Taxable Supply made under the Contract, the Recipient of the supply will pay to the Supplier an amount equal to the GST payable on the Taxable Supply. Subject to the supply of Taxable Supply Information that amount will be paid at the same time the consideration for the supply is payable under the Contract and will be paid in addition to the consideration.

4.4 **Costs included:** The Price includes all:

(a) taxes other than tax on the Principal's income and GST;

(b) resources and materials necessary to perform the Contractor's obligations under the Contract; and

(c) of the Contractor's wages, salaries and other payments to its personnel for compliance with all statutory and other legal requirements relating to its personnel, including the payment of all applicable taxes and levies.

4.5 **Invoices:** The Contractor must issue invoice(s) for the Works monthly or as otherwise agreed in writing. All invoices must be issued promptly, clearly identify the Works to which that invoice relates and include Taxable Supply Information for GST purposes.

4.6 **CCA 2002:** If the Contractor intends that an invoice is a payment claim for the purposes of the Construction Contracts Act 2002 (CCA 2002), then such invoice must clearly state that it is a payment claim under that Act and must include any information required to be included in a payment claim under the CCA 2002. The Principal may correct any errors in, and re-value, a previous payment schedule in any subsequent payment schedule where required.

4.7 **Payment date:** Unless the Principal disputes an invoice in accordance with clause 4.7, the Principal shall pay the Contractor's invoices on:

(a) the 20th of the month if invoices are received on or before the 5th day of the month; or

(b) the 20th of the following month if invoices are received after the 5th day of the month.

4.8 **Disputed invoices:** The Principal must notify the Contractor within 10 Business Days of the date of receipt of an invoice if the Principal disputes any part of that invoice, and the Principal:

(a) must pay the portion of the invoice that is not in dispute (and the Contractor will provide a further invoice for the undisputed amount if required), and

(b) may withhold payment of the disputed portion of the invoice until the dispute is resolved.

5. UNDERTAKINGS AND WARRANTIES RELATING TO THE WORKS

5.1 **Contractor undertakings:** The Contractor must:

(a) execute the Works in every respect to the reasonable satisfaction of the Principal and in conformity with the Contract, applicable law and all the reasonable directions and requirements of the Principal in relation to the Works,

(b) ensure that the Works are carried out by qualified and experienced persons who shall be properly supervised or directed by the Contractor with the highest level of skill, care and diligence and in accordance with Good Industry Practice;

(c) design (to the extent the Contractor has design responsibility under the Contract), construct, complete, commission and remedy any Defects in the Works in accordance with the Contract;

(d) comply with all applicable laws and licences, consents, approvals and certificates obtained by the Principal or the Contractor, including the safety and security standards and Site procedures and codes of the Principal as stated in the Agreement Details;

(e) co-operate with all other contractors on the Site and afford them reasonable opportunities for the execution of their work; and

(f) supply the Principal with the information and reports, as identified in the Agreement Details, (including copies of documents and other material) the Principal reasonably requires in relation to the Contract.

5.2 **Warranty:** The Contractor represents, warrants and undertakes that:

(a) the Works performed, and all Goods provided within the Works, will, at Practical Completion, in all respects comply with the requirements of the Contract;

(b) it has read and reviewed the Contract, and all information provided to it by the Principal or persons on behalf of the Principal about the Site, the Contractor's access to the Site for the purposes of the Works, all restrictions, easements, licences and conditions on, under, about and relating to the Site and shall ensure that it abides by, and does not put the Principal in breach of, any such restrictions, easements, licences or conditions;

(c) it has obtained all necessary information and taken into account all relevant circumstances that could affect the cost of executing the Works and providing the Goods in accordance with the Contract, and that the Price is sufficient for the execution and completion of all the Contractor's obligations under the Contract;

(d) it is fully experienced and properly qualified, licensed, equipped, organised and financed to perform and complete the Works specified under the Contract; and

(e) it has obtained licences, consents, approvals and certificates necessary for the design (to the extent the Contractor has design responsibility) and performance of the Works and supply of the Goods, except for any such licences, consents, approvals and certificates for which the Principal is responsible as specified in the Agreement Details;

(f) it has no Conflict of Interest in performing the Works and will take reasonable steps to avoid a Conflict of Interest arising.

5.3 **Principal's obligations:** The Principal will provide the Contractor with the facilities (at the Site) as set out in Schedule 1 for such time as the Contractor has the right to be on the Site under this Contract and will otherwise carry out the obligations of the Principal in relation to the Works as set out in Schedule 1.

6. COMPLETION OF WORK

6.1 **Completion:** Subject to clause 6.6, to achieve Practical Completion, the Contractor must complete the Works to the stage required by the definition of Practical Completion in clause 1.1, including conducting any inspections and testing specified in Schedule 1 or as may be reasonably requested by the Principal to demonstrate that the Works have satisfied the requirements of this Contract.

6.2 **Opportunity to inspect:** The Contractor must ensure that the Principal has the opportunity to inspect the Works witness testing of the Works (including any major component of the Works) and the Contractor must give the Principal reasonable advance notice to enable the Principal to do so, and must ensure that the Principal has the necessary access to facilities to carry out any such inspections and/or witness any such tests.

6.3 **The Contractor to notify the Principal:** The Contractor must notify the Principal in writing when it considers the Works are at the stage of Practical Completion.

6.4 **Practical Completion Certificate:** The Principal will inspect the Works within 5 Business Days of receiving the Contractor's notice under clause 6.3. If the Principal considers that the Works are at the stage of Practical Completion and the Contractor has complied with all its other obligations under the Contract, the Principal must issue a Practical Completion Certificate. The Practical Completion Certificate must state the date when Practical Completion was achieved and list any items the Principal has authorised to be completed after Practical Completion, together with the date by which such items must be completed.

6.5 **Contractor not relieved:** The Contractor will not be relieved of any of its obligations under the Contract because the Principal has inspected, witnessed the testing of, or issued any certificates in respect of, the Works, nor will any such inspection, testing and/or certificates limit or otherwise affect the Principal's rights if the Works at any time thereafter fail to comply with the requirements of the Contract.

6.6 **Contractor Practical Completion deliverables:** If required by the Agreement Details, the Contractor will prior to completion of the Works, provide to the Principal all as-built drawings, operation and maintenance manuals, code of compliance certificates, supplier warranties, producer statements and records in relation to the Works as necessary to enable the Principal to operate and maintain the Works. Compliance with this clause 6.6 is a condition precedent to Practical Completion.

6.7 **Final Completion Certificate:** The Principal must issue a Final Completion Certificate at the end of the Defects Notification Period, or once the Contractor has remedied all defects in the Works as provided in clause 10, whichever is the later.

7. TITLE AND RISK

7.1 **Title:** Title of any Goods supplied in connection with this Contract will pass to the Principal on the earlier of payment and delivery to the Site. Acknowledgment of delivery of any Goods is neither an acceptance of liability nor certification of the suitability of the Goods or their compliance.

7.2 **Risk:** Risk of loss in the Works will pass from the Contractor to the Principal at Practical Completion. The Contractor is responsible for any loss of, or damage to, the Works including all Goods awaiting incorporation into the Works while they are under the Contractor's risk and will as soon as practicable make good any such loss or damage that may occur to the Works or Goods awaiting incorporation, except to the extent that the loss or damage is caused by:

(a) acts or omissions of the Principal or its agents or employees;

(b) any event or circumstance beyond the reasonable control of, and not reasonably foreseeable by the Contractor exercising Good Industry Practice, and not due to the fault of the Contractor (or any subcontractor), or

(c) any error or omission in any design of the Works supplied by the Principal.

8. VARIATIONS

8.1 **Notice of variation:** The Principal may give the Contractor written notice of a proposed variation to the Works within the scope of this Contract. The Contractor must, within five (5) Business Days after receiving such notice, notify the Principal as to the Contractor's estimate of:

(a) the effect on achieving the Due Date for Completion (if any); and

(b) any change to the Price caused by the proposed variation.

8.2 **Confirmation of variations:** The Contractor must only perform the variation following written confirmation from the Principal to proceed with the variation (a confirmed variation, a **Variation**) and may not claim any increase in the Price for any Variation work performed without first obtaining the Principal's written confirmation.

8.3 **Value of variations:** the value of each Variation will as far as possible be agreed in writing by the Principal and the Contractor, acting fairly, reasonably and in good faith, or failing agreement determined by the Principal based on the reasonable actual or assessed direct cost to the Contractor together with a reasonable margin determined by the Principal (being the allowance for overheads and profit). The Contractor will not be entitled to any compensation for the cost of processing any Variation (whether or not the Variation proceeds). When requested by the Principal, the Contractor must provide all relevant pricing documents, which may include:

(a) An itemised build-up of the Variation pricing; and

(b) A breakdown of labour costings;

(c) Subcontractor quotes or invoices; and

(d) Materials quotes or invoices.

Wherever practicable, the value of any Variation shall be agreed or determined before the work involved is commenced, but any failure to do so shall not invalidate the Variation.

8.4 **Payment:** The Principal will pay for, or receive an allowance for, all Variations (as appropriate), as an adjustment to the Price.

9. TIME

9.1 **Programme of Works:** Prior to commencing any work on the Site, the Contractor will submit to the Principal for approval a programme for the Works setting out how the Contractor proposes to complete the Works by the Due Date for Completion. Compliance with the programme will not relieve the Contractor from any of its duties, obligations or liabilities under the Contract.

9.2 **Access**: The Principal will ensure that the Contractor is provided with access to the Site from the Commencement Date specified in the Agreement Details until Practical Completion. Access will be non-exclusive unless specified in Schedule 1.

9.3 **Due Date for Completion:** The Contractor must achieve Practical Completion of the Works on or before the Due Date for Completion.

9.4 **Delay:** The Contractor must immediately report to the Principal any actual or likely delay in the performance of the Works and its cause and must take all reasonable steps to prevent and minimise the effects of any delay.

9.5 **Extensions:** The Contractor will be entitled to an extension of the Due Date for Completion if:

(a) the Contractor is fairly entitled to an extension by reason of:

(i) any circumstances not reasonably foreseeable or preventable by an experienced Contractor acting in accordance with Good Industry Practice;

(ii) A Variation; or

(iii) An act of prevention by the Principal;

(b) the relevant circumstance(s) actually affect the ability of the Contractor to complete the Works by the Due Date for Completion;

(c) the relevant circumstance(s) actually affect the ability of the Contractor to complete the Works by the Due Date for Completion;

(d) the Contractor has taken all reasonable steps to avoid or mitigate the effects of the delay; and

(e) the delay is not caused or contributed to by any act, omission, negligence or default of the Contractor (or any employee, agent or subcontractor of the Contractor).

9.6 **Notice:** The Principal shall not be bound to grant an extension of time unless:

(a) the Contractor notifies the Principal that it claims an extension and states the grounds for the extension;

(b) the notice is given within 20 Business Days after the circumstances arise which are relied on as the grounds for extension, and the giving of such notice shall be a condition precedent to the Contractor's entitlement to an extension of time; and

(c) the notice either gives details of the period of extension sought or is followed within a reasonable time by a further notice giving such details.

9.7 **No entitlement to an extension of time:** If more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is a cause of delay which would not entitle the Contractor to an extension of time under clause 9.5, then the Contractor's entitlement to an extension of time (if any) in such circumstances will be determined by the Principal apportioning responsibility for, and the effect of, the delay events (acting reasonably). The Principal and the Contractor acknowledge that this clause may be contrary to the prevention principle and agree that for the Purposes of the extension of time provisions contained in this Contract, the prevention principle will have no application.

9.8 **Discretion to grant an extension:** The Principal will (at its absolute discretion) be entitled to grant an extension of time at any time, whether or not claimed by the Contractor.

9.9 **Liquidated Damages:**

(a) If stated in the Agreement Details, the Contractor will pay to the Principal liquidated damages for the period between the Due Date for Completion and Practical Completion. If no liquidated damages are stated in the Agreement Details (including where “Nil”, “Not applicable” or “N/A” is stated), the Principal may recover damages from the Contractor for any failure by the Contractor to complete the Works by the Due Date for Completion.

(b) The parties agree that the liquidated damages are a genuine pre-estimate of the Principal's loss in the event the Contractor fails to complete Works by the Due Date for Completion, and the Principal's legitimate commercial interests in the performance by the Contractor of those obligations.

9.10 **Use of retentions for liquidated damages:** If the Principal intends to use retention monies to remedy any failure by the Contractor to meet its obligation to pay liquidated damages to the Principal under 9.9, the Principal may give the Contractor notice in writing that:

(a) **Time to remedy failure:** the Contractor has 10 Business Days to meet its obligation to pay liquidated damages to the Principal under 9.9; and

(b) **Use of retention money:** if the Contractor fails to do so within that notice period, the Principal intends to use retention monies (in full or in part) to remedy the failure by the Contractor to meet that obligation.

10. DEFECTS

10.1 **Defects Notification Period:** The period for notification of Defects shall be the Defects Notification Period following Practical Completion.

10.2 **Rights relating to Defects:** Without prejudice to any other right or remedy it may have, the Principal may at any point prior to the end of the Defects Notification Period, elect to have the Works rectified or repaired to remove any Defect.

10.3 **Rectification:** If the Principal elects to have the Works rectified or repaired under clause 10.2, the Contractor must replace, re-perform, or rectify the Works within a reasonable period specified by the Principal, in a manner that does not prejudice the convenient use of the Works. If the Contractor fails to replace, re-perform, rectify or repair the Works to the Principal's satisfaction within the specified timeframe, the Principal may take such steps as are necessary (including engaging third parties) to replace, re-perform, rectify or repair the Works and any such steps taken by the Principal will be for the account of the Contractor.

11. PERSONNEL

11.1 **Objection to Personnel:** The Principal may object to any Personnel who, in the Principal's opinion:

(a) do not have the appropriate qualifications, competency or skill to perform the relevant part of the Works in respect of which they are engaged; or

(b) engage in misconduct,

and the Contractor must, at its own cost, immediately remove and replace any such personnel upon being directed to do so by the Principal.

12. HEALTH, SAFETY AND ENVIRONMENT

12.1 **Health and safety obligations:** As between the Contractor and the Principal, the Contractor is the person in control of the Site and accordingly has the responsibility for the health and safety of all persons in an about the Site. The Contractor shall:

(a) Ensure the health, safety and welfare of all people that are or may be affected by or in close proximity to, the Works;

(b) ensure that all persons under the Contractor's control are appropriately supervised;

(c) comply with all reasonable directions and requirements of the Principal in respect of health and safety matters;

(d) in respect of the Contractor, prepare a Site-specific safety plan for the Works (**SSSP**) and provide it to the Principal for approval before starting the Works on Site. The SSSP must be consistent with Schedule 1, Good Industry Practice and any health and safety policies or requirements of the Principal;

(e) maintain a register of accidents, serious harm and near-miss incidents (**H&S Incidents**);

(f) notify the Principal of any H&S Incident as soon as reasonably practicable of becoming aware of the same;

(g) investigate all H&S Incidents and identify their cause;

(h) comply with all reasonable directions and requirements of the Principal in respect to the Contractor's investigation and resolution of H&S Incidents;

(i) provide with each invoice:

(i) a report of all H&S Incidents that occurred during the period to which the invoice relates, setting out the steps taken and/or to be taken as a result thereof, and

(ii) an updated report on any H&S Incidents previously reported on where steps are still being taken as a result;

(j) attend all induction courses as reasonably required by the Principal.

12.2 **H&S Policy:** The Contractor must have a written health and safety policy (**H&S Policy**) which has been approved by the Principal and which satisfies both WorkSafe's requirements and the requirements under the HSWA. In particular, the Contractor will comply with all the requirements of the HSWA and any replacement legislation, any other legal and statutory health and safety obligations and published codes of practice, standards and guidelines, and the Principal's health and safety requirements.

12.3 **Access to H&S Policy:** The Contractor must, prior to commencing work on the Site and to the absolute satisfaction of the Principal, provide the Principal with access to the Contractor's H&S Policy and all related systems to enable monitoring and surveillance, if required by the Principal.

12.4 **H&S Warranty**: The Contractor undertakes to the Principal that it will take all reasonably practicable steps to ensure that no act or omission:

(a) causes a hazard or harm to any employee of the Contractor or any person at the place of work or in the vicinity of the place of work;

(b) is a breach of duty or obligation of the Contractor under the HSWA; or

(c) gives rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSWA against the Principal, the Contractor, any subcontractor or other contractors.

12.5 **Subcontractors:** The Contractor undertakes that before a subcontractor commences work on the Site, the Contractor will obtain similar warranties to those stated in this clause 12 from that subcontractor in relation to the subcontract works.

12.6 **Environmental Compliance:** The Contractor is responsible for and must make good at its own cost any damage to the environment caused by it, its workers, agents, subcontractors and consultants in the execution of the Works.

13. INDEMNITY AND INSURANCES

13.1 **Indemnity:** To the extent permitted by law, the Contractor indemnifies the Principal against any of the following (**Indemnified Events**):

(a) a breach of this Contract or any law by the Contractor or any of its personnel;

(b) an act or omission of the Contactor or any of its personnel which causes the Principal or any of their respective personnel to breach a law, including the HSWA or the Resource Management Act 1991;

(c) a claim by any person that any of the Works and/or Goods infringes their intellectual property rights;

(d) an act or omission of the Contractor or any of its personnel which causes personal injury or death or damage to the property of any person; and/or

(e) a negligent or fraudulent act or omission, or wilful misconduct of the Contractor or any of its personnel relating to this Contract.

If an Indemnified Event occurs, the Principal may recover under the indemnity any and all liabilities, losses, damages, costs and expenses (including legal costs, interest, fines and penalties) it and its personnel suffer or incur relating to the Indemnified Event.

13.2 **Insurance:**

(a) The Contractor must affect and maintain insurance sufficient to cover its liabilities in connection with this Contract, including, at a minimum, the following insurance policies:

(i) public liability insurance for an insured amount of not less than the amount stated in Schedule 5;

(ii) construction insurance for an amount of not less than the amount stated in Schedule 5;

(iii) if the Contractor is undertaking any design, professional indemnity insurance (including errors and omissions) for an amount of not less than the amount stated in Schedule 5; and

(iv) such other insurance and in such amounts as are set out in Schedule 5 or are otherwise required by the Principal from time to time.

(b) If professional indemnity insurance is required, it must be maintained until the date six years after the date of Practical Completion. All other insurance policies must:

(i) be maintained from the Commencement Date until the end of the Defects Notification Period,

(ii) be primary and without any right of contribution by the Principal or any Insurance effected by the Principal;

(iii) cover the Contractor and its personnel;

(iv) name the Principal and its personnel as additional insured persons; and

(v) contain clauses providing that:

A. each of the insured and additional insured has a separate insurable interest: and

B. the additional insured is not affected by any breach of warranty or condition by the Contractor.

(c) The Contractor must, on the Principal's reasonable request, provide the Principal with satisfactory evidence of insurance from its insurers, certifying that it has the insurance required by this clause, as a condition precedent to the Contractor being entitled to:

(i) access the Site;

(ii) make a claim for payment under the Contract; and

(iii) receive any payment under the Contract.

14. CONFIDENTIAL AND INTELLECTUAL PROPERTY

14.1 **Confidentiality of information:** The Contractor must keep confidential all Confidential Information and must not use or disclose the information except for the purpose of complying with the Contract or with the prior written consent of the Principal.

14.2 **Exclusions:** The obligations of confidentiality do not extend to information that:

(a) the Contractor can show is in or has become part of the public domain other than as a result of a breach of its obligations of confidentiality;

(b) was independently disclosed to the Contractor by a third party who is not under an obligation of confidence in relation to the information; or

(c) is required to be disclosed under any applicable law, or by order of a court or governmental body or other competent authority.

14.3 **LGOIMA:** The Principal is subject to the Local Government Official Information and Meetings Act 1987 (LGOIMA), and under that Act, the Principal may be required to release information about the Contractor. To the extent permitted by law the Principal will not release any information which is Confidential Information of the Contractor without first giving the Contractor reasonable prior notice of its intended release and an opportunity to discuss the intended release of information and agree its content before the actual release of information the Contractor agrees to comply with the requirements of the LGOIMA in relation to all information relating to the Principal held by the Contractor, its contractors and employees.

14.4 **Ownership of Intellectual Property**: The Contractor hereby assigns, and acknowledges that the Principal is the owner of, any and all Intellectual Property created, discovered or developed in the course of the Contractor's supply of the Goods and/or Works which will vest immediately upon creation, discovery or development in the Principal.

14.5 **Intellectual Property licence:** The Contractor provides a perpetual, irrevocable, world-wide, royal-free licence to the Principal to use any pre existing Intellectual Property of the Contractor (and will procure the grant of a licence in the same terms from any of the Contractor's subcontractors and consultants) to the extent necessary for the Principal to enjoy the full benefit of the Works.

14.6 **Media Statements, Marks and Names:** The Contractor will not use any of the Principal's trademarks, trade names or corporate slogans in any advertising, promotional material, signs or any other written printed materials and must not make any statements to the media about the Contract without the prior without written approval of the Principal.

15. SUBCONTRACTING AND ASSIGNMENT

15.1 **Subcontracting:** The Contractor:

(a) must not subcontract any of its obligations under this Contract without the prior written consent of the Principal;

(b) remains responsible for all obligations, services and functions performed by any subcontractors to the same extent as if those obligations, services or functions were performed by the Contractor; and

(c) will subcontract parts of the Works to a subcontractor if required in Schedule 1. Any such subcontracting (where applicable) will not limit the Contractor's obligations or liability.

15.2 **Assignment:**

(a) The Contractor must not assign any of its rights or obligations under this Contract without the prior written consent of the Principal.

(b) The Principal may assign its rights under this Contract at any time.

16. TERMINATION AND CONSEQUENCES OF TERMINATION

16.1 **Termination without cause:** The Principal may, by written notice, terminate this Contract on 20 Business Days' written notice without providing any reason or compensation except for Works supplied as at the date of termination but not yet invoiced by the Contractor.

16.2 **Termination for breach or insolvency:** The Principal may terminate this Contract immediately if the Contractor:

(a) breaches clause 12 of this Contract;

(b) commits a breach of this Contract that cannot be rectified or, if capable of being rectified, has not been rectified within a reasonable time and no longer than 10 Business Days after a notice from the Principal requesting it to do so;

(c) in the Principal's reasonable opinion, abandons the Contract or is persistently or wilfully neglecting to carry out its obligations under the Contract;

(d) becomes insolvent or is unable to pay its debts as they become due;

(e) makes an assignment for the benefit of creditors or files a partition in an insolvency proceeding or in any bankruptcy, reorganisation, schedule of arrangements or reconstruction or similar proceeding; or

(f) has a receiver, statutory manager, voluntary administrator or liquidator appointed.

16.3 **Return of materials:** Upon termination or expiry of this Contract, the Contractor must

(a) return all Principal materials, access keys, codes, swipe cards and devices held by it;

(b) provide to the Principal all reports, warranties, consents and other documents and approvals held by the Contractor which relate to the Site and Works;

(c) leave the site in a tidy and safe condition.

16.4 **Termination:** Termination is without prejudice to the parties' rights under contract or at law arising at or prior to termination.

17. SUSPENSION

17.1 **Suspension:** The Principal is entitled to instruct the Contractor to suspend the Works at any time for any reason, and the Contractor must comply with such instruction.

17.2 **Protection**: During any period of suspension, the Contractor will properly secure and protect the Works and Goods against damage and leave the Site in a safe and tidy condition.

17.3 **Extension of time**: Unless the suspension is due to default on the part of the Contractor, provided the requirements of clause 9.5 are satisfied, the Contractor will be entitled to an extension to the time for completion of the Works, but will not be entitled to any time-related costs.

18. DISPUTES

18.1 **Negotiation:** The Parties agree to use their best endeavours to resolve any dispute that may arise under this Agreement. The following process will apply to disputes:

(a) a Party will notify the other in writing if it considers that a matter is in dispute

(b) the Contract Owners will attempt to resolve the dispute through negotiation

(c) if the Contract Owners have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution, and

(d) if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or, if agreed by the Parties, some other form of alternative dispute resolution.

18.2 **Mediation:** If a dispute is referred to mediation, the mediation will be conducted:

(a) by a single mediator agreed by the Parties, or if they cannot agree, appointed by the Resolution Institute

(b) on the terms of the Resolution Institute Mediation Rules, and

(c) at a fee to be agreed by the Parties or, if they cannot agree, at a fee determined by the Resolution Institute.

18.3 **Arbitration:** If the parties fail to settle a dispute within 20 Business Days of such dispute arising, then either party may refer the dispute to arbitration. Arbitration shall be conducted in accordance with the Arbitration Act 1996 and its amendments, and the AMINZ Arbitration Rules current at the time arbitration is commenced by a sole arbitrator agreed by the parties. If the parties fail to agree the arbitrator within 5 Business Days of the date that the relevant dispute is referred to arbitration, then either party may request that the President of the Arbitrators' and Mediators' Institute of New Zealand appoint the arbitrator and each party shall accept the person so appointed as the arbitrator for the purposes of that dispute. The seat of arbitration shall be in Auckland.

18.4 **Interlocutory Relief:** Nothing in this clause 18 will restrict or limit the right of either party to obtain urgent interlocutory relief.

19. GENERAL

19.1 **Notices:** Any notice or other communication to or by a party to this Contract:

(a) may be given by personal service, post or email; and

(b) must be in writing, addressed to the person at the address or email address specified in the Agreement Details, or to any other address later notified by the party to the sender. The notice given in accordance with the clause is deemed to be given by the sender and received by the addressee:

(i) if delivered in person, when delivered to the addressee,

(ii) if posted within 5 Business Days after the date of posting to the addressee, whether delivered or not; or

(iii) if sent by email, at the time the sender's email system confirms that the email was sent to the email address of the recipient (unless the recipient proves that contrary to the sender's email confirmation, the email was not sent or was not properly sent to the recipient's email address).

19.2 **Entire agreement:** This Contract contains the entire understanding and agreement of the parties concerning its subject matter and supersedes all previous oral or written representations or statements by either party. It may only be varied by the agreement in writing of both parties.

19.3 **Further assurance**: Each party will execute all documents and do all other things necessary to implement and carry out its obligations under the Contract.

19.4 **Priority:** In the case of ambiguity or conflict between the documents comprising the Contract, the documents shall be read in the following order of priority:

(a) the Contract Agreement;

(b) the Agreement Details;

(c) these Terms and Conditions;

(d) Schedule 1;

(e) Schedule 2;

(f) Schedule 3; and

(g) the other documents comprising the Contract.

19.5 **Time of the essence:** Time is of the essence in respect of all obligations of the Contractor under the Contract.

19.6 **No adverse interpretation:** This Contract is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

19.7 **Severability:** Any provision of this Contract which is invalid in any jurisdiction must, in relation to that jurisdiction:

(a) be read down to the minimum extent necessary to achieve its validity, if applicable; and

(b) be severed from this Contract in any other case, without invalidating or affecting the remaining provisions of this Contract or the validity of that provision in any other jurisdiction.

19.8 **Relationship between parties:** Nothing in this Contract is to be construed as evidence of a relationship of employment or partnership between the parties.

19.9 **Waiver of rights**: Neither party shall be considered to have waived or released any of its rights under the Contract, except by agreement in writing between the parties.

19.10 **Governing law**: This Contract is governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

Schedule 1 – Specifications

Refer below to the Principal's Specification prepared by [insert details] and dated *Enter date*.

Schedule 2 – Drawings

Refer to the **attached** copies of the drawings prepared by [insert details] and dated *Enter date*.

Schedule 3 – Schedule of Prices

Drafting Note: Only include if applicable – may be omitted if lump sum without variables.

Schedule 4 – Additional Documents

Drafting Note: Only include if applicable – may be omitted if no additional documents.

Schedule 5 – Form of Insurances

Drafting Note: Refer to the NCC Insurance Reference Guide that sets out insurance requirements. If you have any queries, talk to the NCC Insurance team. Provide details of all insurance policies required under this Agreement.

Refer to Clause 13.2 of the Terms and Conditions for the applicable requirements.

Policy Type	Details
Construction Drafting Note: Optional, remove if provided by the Principal	Provided by: [Principal OR Contractor] Cover limits (per claim and in aggregate): NZ$[insert value] Insurer: [insert answer here] Policy no: [insert answer here] Date insurance effected: [insert answer here] Expiry date: [insert answer here] Deductible/excess: [insert answer here]
Existing structure(s) and contents Drafting Note: Optional, remove if provided by the Principal. Contact the relevant Property Manager for details around Existing Structures and Other Structures in the vicinity	Provided by: [Principal OR Contractor] Cover limits (per claim and in aggregate): NZ$[insert value] Insurer: [insert answer here] Policy no: [insert answer here] Date insurance effected: [insert answer here] Expiry date: [insert answer here] Deductible/excess: [insert answer here]
Public Liability	Cover limits (per claim and in aggregate): NZ$[insert answer here] Insurer: [insert answer here] Policy no: [insert answer here] Date insurance effected: [insert answer here] Expiry date: [insert answer here] Deductible/excess: [insert answer here]

Professional Indemnity (including omissions and errors) Drafting Note: required if the Contractor is undertaking any design	Cover limits (per claim and in aggregate): NZ$[insert answer here] Insurer: [insert answer here] Policy no: [insert answer here] Date insurance effected: [insert answer here] Expiry date: [insert answer here] Deductible/excess: [insert answer here]
Third-Party Motor Vehicle	Cover limits (per claim and in aggregate): NZ$[insert answer here] Insurer: [insert answer here] Policy no: [insert answer here] Date insurance effected: [insert answer here] Expiry date: [insert answer here] Deductible/excess: [insert answer here]
Plant and Equipment	Cover limits (per claim and in aggregate): NZ$[insert answer here] Insurer: [insert answer here] Policy no: [insert answer here] Date insurance effected: [insert answer here] Expiry date: [insert answer here] Deductible/excess: [insert answer here]
Environmental Pollution Drafting Note: optional, remove if not required	Cover limits (per claim and in aggregate): NZ$[insert answer here] Insurer: [insert answer here] Policy no: [insert answer here] Date insurance effected: [insert answer here] Expiry date: [insert answer here] Deductible/excess: [insert answer here]

Schedule 6 – Form of Bond

CONTRACT FOR	Insert Contract Title Insert Contract Number	
THIS DEED is made on	*Enter date*	
BY	Insert Contractors Name	
of	*Enter address*	('the Contractor')
AND	*Enter text*	
of	*Enter text*	('the Surety')
	Enter address	(Address of Surety for service)

It is made in the following circumstances:

(a) The Contractor has entered into an agreement with Napier City Council ('the Principal') to carry out and fulfil the obligations imposed on the Contractor ('the Contract').

(b) The Contract requires the Contractor to provide the Principal with security in the form of a bond to ensure performance of the Contractor's obligations under the Contract.

(c) Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

By this deed:

1. THE Contractor and surety are jointly and severally held and bound to the Principal in the sum of NZ$[Enter amount] and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
2. ANY demand by the Principal pursuant to clause 1 of this deed shall be in writing. The amount demanded shall be paid by the Surety into a bank account advised by the Principal without reference to the position between the Contractor and the Principal, without regard to whether there has been a default under the Contract, and (in the case of the Surety) even if the Contractor has given notice not to pay.
3. THE conditions of this bond are that it shall be released if and when:
   (a) Practical Completion Certificate has been issued for the Contract Works as specified in the Agreement Details;
   (b) The surety receives a notice from the Principal releasing the Contractor and surety from this bond; or
   (c) The surety receives a notice from the Principal confirming that a replacement Contractor's Bond has been received and accepted and releasing the Contractor and surety from this bond.
4. EXCEPT as provided in clause 2 of this deed, this bond shall be and remain in full force and effect.

5. THE surety shall not be released from any liability under this bond:

   (d) By any alteration in the terms of the Contract;

   (e) By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;

   (f) By any allowance of time by the Principal; or

   (g) By any forbearance or waiver by the Principal in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor.

6. NOTWITHSTANDING anything stated in this bond, the Surety may at any time (and without being required to do so) pay the Principal the Bond Sum (less any amounts that may already have been paid) or any lesser amount that the Principal may require. This payment will be deemed to have been made at the demand of the Principal and, when paid, will discharge the Surety's liability under this bond.

7. THIS bond shall be governed by New Zealand law.

In witness of which this deed has been executed.

SIGNED on behalf of the Surety by:	SIGNED on behalf of the Contractor by:
(Director)	(Director)
(Director)	(Director)

NOTE: This bond shall be executed by the Contractor and by the surety in the manner required for execution of a deed. Any of these parties that are a company shall execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature shall be witnessed by another Person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. In the case of a party who is an individual, the party shall sign, and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.

GENERAL

Green = Approved
Orange = Draft
Red = On hold/not started/being archived

New	Status	Document type
00 Business Case		
Single Stage Business Case Lite	Approved	NEW
Single Stage Business Case overview _ex Treasury	Approved	NEW
10 Probity and Conflict of Interest		
Conflict of Interest Agreement for Panel Chair	Approved	NO CHANGE
Conflict of Interest Agreement	Approved	NO CHANGE
Guide - Conflicts of Interest	Approved	NO CHANGE
Quick Guide - Managing Conflicts of Interest	Approved	NEW
02 Planning		
Guide - Procurement Quick Reference	Approved	UPDATED
Full Procurement Plan - ICT, Goods & Services	Approved	NEW
Full Procurement Plan - Contract Works	Approved	NEW
Full Procurement Plan - Professional Services	Approved	NEW
Procurement Strategy	Approved	NEW
Short Procurement Plan - ICT, Goods & Services	Approved	NEW
Short Procurement Plan - Contract Works	Approved	NEW
Short Procurement Plan - Professional Services	Approved	NEW
Stakeholder Engagement Plan Template	On hold	NEW
Timeline Procurement Simple	Approved	NEW
Procurement Exemption Request	On hold	NEW
Price Quality Attribute Weight Setting Tool	Approved	NEW
30 Before you tender		
Guide - Communicating with suppliers during a tender process	Approved	NO CHANGE
Guide - Constructive Market Engagement.pdf	Approved	NO CHANGE
Guide - GETS PO & ETCO Training Manual from MBIE	Approved	NEW
Guide - GETS Procurement Officer Guide	Approved	NEW
Advance Notice of a contract opportunity	Approved	NEW
GETS Checklist Tender Advertisement	Approved	NEW
NZS3910 RFT Review Checklist	Approved	NEW
GETS Training Workshop	Approved	NEW
40 RFx Documents		
Notice to Tenderers	Approved	NEW
Part 1 RFI Request for Information	Approved	NEW
Part 2 RFI Response	Approved	NEW
Part 1 ROI Contract Works	Approved	NEW
Part 2 ROI Non Price Response Contract Works	Approved	NEW
Part 1 ROI Professional Services	Approved	NEW
Part 2 ROI Non Price Response Professional Services	Approved	NEW
Part 1 ROI ICT, Goods & Services	Approved	NEW
Part 2 ROI Response Form ICT, Goods & Services	Approved	NEW
Part 1 RFT Contract Works	Approved	NEW
Part 2 RFT Non Price Response Contract Works	Approved	NEW
Part 3 RFT Price Response Contract Works	Approved	NEW
Part 1 RFP Professional Services	Approved	NEW
Part 2 RFP Non Price Response Professional Services	Approved	NEW
Part 3 RFP Price Response Professional Services	Approved	NEW
Part 1 RFP ICT Goods and Services	Approved	NEW
Part 2 RFP Non Price Response ICT, Goods & Services	Approved	NEW
Part 3A RFP Price Response ICT	Approved	NEW
Part 3B RFP Price Response Goods and Services	Approved	NEW
Part 1 RFQ Request for Quote	In progress	NEW
Part 2 RFQ Response Form	In progress	NEW
50 Evaluation & Award		

Guide - Tender Evaluations	Approved	NEW
Guide - Due Diligence	Approved	NEW
Guide - Supplier Debrief	Approved	NEW
Evaluation Briefing to TET - presentation	Approved	NEW
Suppliers Questions - Log	Approved	NEW
Tenders Received and Compliance Check	Approved	NEW
Evaluation Worksheet - Lowest Price Conforming	Approved	NO CHANGE
Evaluation Worksheet - Price Quality	Approved	NEW
Evaluation Worksheet - Weighted Attribute	Approved	NEW
Tender Notification - Non-conforming	Approved	NEW
NZS3910 Contract Works Tender Notification Acceptance	Approved	NEW
NZS3910 Contract Works Tender Notification Decline	Approved	NEW
Tender Notification Non Preferred Respondent	Approved	NEW
Tender Notification Preferred Respondent	Approved	NEW
Tender Notification Shortlisted Respondent	Approved	NEW
Reference Checks	Approved	NEW
Tender Recommendation Approval Report	Approved	NO CHANGE
60 Contract Templates		
Contract for Goods GMC.docx	Approved	NO CHANGE
Contract for Services ACENZ SFA	Approved	NO CHANGE
Contract for Services CCCS - Long Form	Approved	NO CHANGE
Contract for Services GMC.docx	Approved	NO CHANGE
Contract for Goods and Services	Approved	NEW
Purchase Order Terms and Conditions of Supply (PDF)	Approved	NO CHANGE
Confidentiality Agreement (one way)	Approved	NEW
Confidentiality Agreement (mutual)	Approved	NEW
Poster - Which Contract should you use	Approved	NEW
Guide - Council Contract Templates	Approved	NEW
Guide - GM Government Model Contracts	Approved	NEW
65 Construction Contract Templates		
Contract Template NZS3910_2013 Construction Contract - Horizontal	Approved	NEW
Schedule 17 Preliminary and General Specification - Roading	Approved	NEW
Schedule 17 Preliminary and General Specification - Water	Approved	NEW
Contract Template NZS3910_2013 Construction Contract - Vertical		NEW
Minor Works Contract	Approved	NEW
NZS 3917:2013 Conditions of contract for building and civil engineering - Fixed term	In progress	NEW
NZS 3910:2023 Conditions of contract for building and civil engineering construction	In progress	NEW
Basis of Payment	In progress	NEW

70 Contract Management		
Contract for Goods GM - Contract Variation	Approved	NO CHANGE
Contract for Services GM - Contract Variation	Approved	NO CHANGE
Notice to Contractor.docx	Approved	NEW
NZS3910 Appointment of Engineers Representative.docx	Approved	NEW
NZS3910 Construction Monitoring Report.docx	Approved	NEW
NZS3910 Contract Progress Meeting Agenda and Minutes.docx	Approved	NEW
NZS3910 Contract Start Up Meeting Agenda and Minutes.docx	Approved	NEW
NZS3910 Liquidated Damages Pre-Assessment.docx	Approved	NEW
NZS3910 Notice to Release Bond.docx	Approved	NEW
NZS3910 Pre Contract Meeting Checklist.docx	Approved	NEW
NZS3910 Progress Payment Template_R1.xlsx	Approved	NEW
NZS3910 Project Handover Checklist.docx	Approved	NEW
NZS3910 Quality Plan Review Checklist.docx	Approved	NEW
NZS3910 Request for Extension of Contract Budget.docx	Approved	NEW
NZS3910 Site Safety Audit Checklist.docx	Approved	NEW
NZS3910 Site Safety Management Plan Review Checklist.docx	Approved	NEW
NZS3910 Traffic Management Plan Review Checklist.docx	Approved	NEW
NZS3910 Variation Order.docx	Approved	NEW
NZS3910 Variation Price Request.docx	Approved	NEW
NZS32910 Pace Evaluation Forms and Eval Criteria	Approved	NO CHANGE
Contract Management Plan	Approved	NEW
80 Guidance Documents		
Policy - Procurement Policy 2021	Approved	NO CHANGE
Strategy - Transportation Procurement Strategy 2023	Approved	NO CHANGE
Napier City Council Supplier code of conduct	Approved	NO CHANGE
Guide - Procurement Quick Reference	Approved	UPDATED
Guide - Emergency Procurement	Approved	NEW
Guide - Constructive Market Engagement	Approved	NO CHANGE
Guide - Conflicts of Interest	Approved	NEW
Quick Guide - Managing Conflicts of Interest	Approved	NEW
Guide - Communicating with suppliers during a tender process.docx	Approved	NEW
Guide - Tender Evaluation	Approved	NEW
Guide - Due Diligence	Approved	NEW
Guide - Supplier Debrief	Approved	NO CHANGE
Guide - Council Contract Templates	Approved	NEW
Guide - GMC Government Model Contracts	Approved	NEW
Guide - Napier City Council Health and Safety Risk Guidance	Approved	NEW
Guide - Reducing carbon emissions in building and construction	Approved	NEW
Procurement for Broader Outcomes	Approved	NO CHANGE
Guide - Progressive Procurement Supplier Guide	Approved	NO CHANGE
Guide - Progressive Procurement Toolkit	Approved	NO CHANGE
Guide - Insurance Requirements	Approved	NEW
XContract Management Guide	Approved	NEW
NZTA Procurement manual	Approved	NO CHANGE
Construction projects and procurement - Rapid Mobilisation Playbook.pdf	Approved	NO CHANGE

‘Health and Safety by Design’ and Te Kete - the Civic Precinct

To: **NCC Audit & Risk Committee**

From: **Strategic Programmes Team**

Date: **21 July 2025**

Actions Requested:

1. **Note** the contents of this report.
2. **Note** the work that has occurred in the design of Te Kete – the Civic Precinct to prioritise the health and safety of people working in and visiting the new buildings and public spaces.

- **Approve** the continuation of the ‘health and safety by design’ principle into the operations of Te Kete’s buildings, activities and spaces into the development of aa precinct operating model.
- **Note** NCC’s Te Kete Transition Manager will lead the development of the Operating Model.
- **Note** That any Health & Safety development within the operating model will be reported back through Audit & Risk for feedback and endorsement.

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1. Opening Statement

The Civic Precinct project will now be known as *Te Kete*, being the name and accompanying cultural narrative gifted to the project by Mana Whenua.

2. Purpose of this Report

This report requests the Audit and Risk Committee's endorsement of NCC beginning a new piece of work for the Te Kete project – the preparation of an Operating Model.

The Operating Model will guide the set-up and operation of the public facing activities across the Te Kete site. Of significance, it will continue the principle of 'health and safety by design' from the design phase of Te Kete into how the buildings and spaces are used and managed.

Te Kete will consist of new public buildings that have been designed for contemporary and flexible use. The buildings are designed to be open and welcoming to all and to work in the round, recognising the whole site as a location that people will move through in all directions.

NCC's public facing activities located in Te Kete[1] also need to operate in a contemporary, flexible and open way, in sync with the new buildings design.

For some NCC teams this will require a change from how they currently operate. It is understood that some teams have raised safety concerns regarding the open and flexible spaces that staff and visitors will share. This paper presents the significant work undertaken by the project team to-date to ensure health and safety for staff and visitors is paramount in the design of Te Kete.

Many aspects of 'health and safety by design' were considered and incorporated into the design of the buildings and public spaces in Te Kete. These design decisions were made to reduce the potential for negative impacts on Te Kete staff and customer safety, including their perceptions of safety.

Now work needs to continue the 'health and safety by design' priority into the operations of Te Kete, via the creation of an Operating Model. It is recommended that the Operating Model is developed by the newly created Transition Manager role, in partnership with the public-facing activity managers from Te Kete, such as the library, governance, customer services and Napier Assist managers[2].

3. Background

3.1. Project Scope

NCC's Te Kete project consists of the development of *Te Aka*, a new library and community facility building, *Piripono*, new Council Chambers, *Maranga*, a redeveloped tower building for NCC staff accommodation and the redevelopment of the surrounding urban realm.

The project is guided by five principles that were established in the 2018 NCC Library Strategy. These include:

> ***Space for All***
>
> *We have a diverse community with differing needs and expectations. People want areas where they feel welcome and safe.*

[1] Such as the library, community spaces, toi ora studios, customer service, council chambers and more
[2] Also with potential input from an external expert, such as Sue Sutherland who has provided previous input to the purpose of Te Aka and corresponding design

> *Accessible, adaptable and appropriate multi-purpose areas fit for today and the future. Spaces to encourage a safe and welcoming environment.*

The Te Kete development will bring significant investment to a part of Napier's central city that has been under invested in recent years. The project will result in a high-quality development of buildings and public space that will lift the overall environment and activity of the area. It will attract people to the area, providing activation and surveillance that will help resolve or reduce current safety concerns (including the perception of safety).

Detailed design of the project's buildings and spaces is complete, as is procurement of the main contractor. Construction of the development started on 23 June 2025.

An extract from Te Aka's design brief demonstrates the design ethos of the new building:

> *Welcome / Showcase – there is 'no wrong door' to the facility. This area will host and welcome, enabling powhiri, and be used for formal and informal occasions. Containing a map of Ahuriri that is permanently on display, it is a space that speaks to the place (whenua) and its history, re-revealing the significance of the site.*

3.2. Central Library

Napier's central library was previously located in the tower building on the Te Kete site. This building was closed in 2017 due to earthquake-prone building risks. The library was relocated to NCC's MTG building on Herschell Street, as a temporary location until a new permanent home was found.

The temporary library is housed in four rooms on the ground floor of the MTG building. This space has proven to be inadequate for both library users and staff. The layout of the space is essentially a cul-de-sac, with a single access route from the library entrance through one room to another, finishing at a dead-end. This layout has led to health and safety concerns for both library customers and staff and has influenced how the library service operates.

The experience from the design of the library's temporary home has informed the design of the Te Aka building and the whole Te Kete site, so to avoid recreating similar issues. Decisions taken within the design are intended to enable library staff to deliver a contemporary community facility and the many services within it, in a modern and purpose-built building and surrounds.

3.3. NCC Customer Service Centre

Post Covid, the NCC Customer Services Team noted a significant change in customer behaviour with staff members beginning to feel more unsafe as people became angry and unhappy with the restrictions that Covid brought to society.

The layout of the desks at that time did not easily allow Customer Service staff to safely exit into the call center behind the customer service front of house. It was easy for customers to go behind the desks and for staff to feel trapped and the team were instructed to relocate to a lockable meeting room in the event of an aggressive and/or violent customer. This behaviour continued and a decision was made in 2022 to reconfigure the front counter in the customer service center in Dunvegan House.

The new set up has a single long customer service bench with a full height screen. The space has a secure door to prevent access from aggressive or violent customers and staff can move easily to the call center if they feel threatened.

The preparation of an operating model for Te Kete has significant opportunities to further avoid, reduce and manage operational health and safety risks for the Customer Services Team and all visitors.

4. Overview

This report presents the purpose of an operating model and three key components of managing the health and safety of all people working in, visiting and using Te Kete:

- Health & Safety by Design – work undertaken in the project's design phase to identify potential risks to health and safety and their mitigation via subsequent design decisions
- Te Aka Design – design decisions made to mitigate risks, and perception of risks, to health and safety of library customers and staff
- Operating Model – health and safety aspects that the Operating Model must consider and manage

Many of the design decisions and work described in this report needs to be further cemented into the future of Te Kete via incorporation in the Operating Model document. It is intended that this work will be led by NCC's Transition Manager, in the Strategic Projects Team, working closely with the managers of NCC teams who will have a public-facing role in Te Kete.

5. What is an Operating Model

"*An operating model is a framework that defines how an organization operates to deliver value to its customers and stakeholders. It encompasses the structure, processes and systems used to implement strategy and achieve goals. ….it serves as a blueprint for day-to-day operations, illustrating how value is created and delivered. Additionally, it can be visualised through charts and graphics to show the organization's operational dynamics.*"[3]

Appendix One provides examples of diagrams summarising the information that Operating Models typically contain.

An operating model takes an organisation's strategy (why it does what it does) and details what the organisation does in order to achieve this (and how).[4] This highlights the importance of creating an operating model for Te Kete at this point in time.

The operating model will start from the Te Kete project's purpose, scope and vision for Te Kete as a contemporary community precinct. It will then define the new ways of working and partnering that need to occur in Te Kete. This will establish how the operation of public-facing activity in Te Kete contributes to achieving the vision for this significant investment in Napier's future.

Without an operating model for Te Kete, NCC and Elected Members hold a significant reputational risk if the opportunity and potential of the new buildings and spaces are not realized.

6. Health & Safety by Design

In the absence of specific standards to guide the design and operation of civic buildings and associated public spaces (beyond the requirements of the New Zealand Building Code), the NCC

[3] From Microsoft Copilot using five sources: gartner.com; Wikipedia.org; bakkah.com; tability.io; and indeed.com
[4] What Is an Operating Model? (And What To Include in One) | Indeed.com

project team chose to prioritise a precinct-wide view of health and safety. This led to ‘health and safety by design’ being central to the work of the project’s lead architects and designers, Athfield Architects Ltd and Boffa Miskell Ltd.

The design team undertook thorough site analysis and stakeholder engagement to identify existing safety risks on and around the site and in the proposed buildings and public space.

NCC’s project team also commissioned several assessments of the site and surrounds and of the proposed design – Crime Prevention Through Environmental Design (CPTED), traffic safety and the potential of threats from hostile vehicles. A summary of these assessments are presented below:

6.1. CPTED

CPTED describes the use of specific principles in the design and construction of buildings and public spaces to avoid creating physical conditions that encourage crime and anti-social behaviour. Importantly, successful use of the CPTED principles also reduces the perception of risks to safety for people using the buildings and spaces.

Boffa Miskell Ltd undertook a CPTED review of both the project site and the development’s proposed design. The following aspects informed the CPTED assessment:

- Familiarisation with the project and site
- Daytime and night-time site visits
- Meetings with key staff from Napier City Council relevant to CPTED
- Design team meetings to discuss the project (including working collaboratively with the design team to reach design-lead solutions)
- Review of the Concept Design Package
- Review of Police Intelligence Data available on the New Zealand Police website

From a CPTED perspective, activation is one of the most powerful strategies in creating a safe environment. Activation describes how the activity of people in a building or public space can provide increased safety to other people in that same or an adjacent building or space. This is due to when someone has an awareness of other people being nearby it typically moderates people’s own behaviour. This results in less antisocial activity than may otherwise occur. Equally, knowing other people are nearby can help increase a sense of safety due to the ability to call for help if ever needed.

Activation is a fundamental principle of health and safety in design used within the design of Te Kete.

Boffa Miskell’s CPTED review covered two aspects:

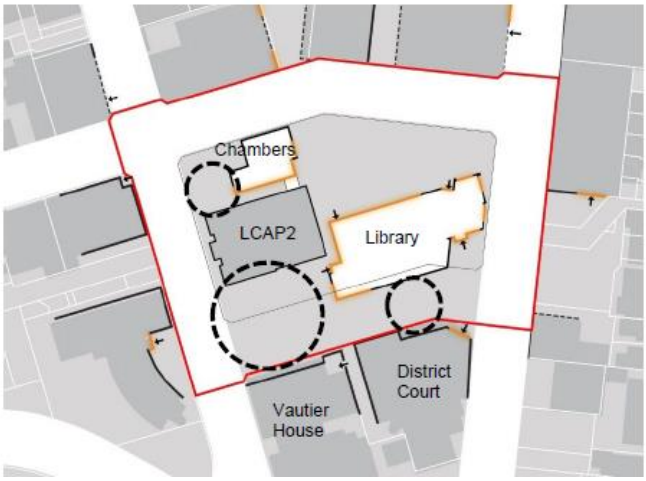
1. Safety concerns present in the existing site and surrounds, that require consideration and resolution through the design of the new development
2. Features of the proposed design that will positively contribute to a safe environment in the buildings, site and surrounds

The CPTED review considered all buildings and public spaces in the precinct, so to ensure they work well together when considering the presence of different user groups, activities occurring at different times of day and night and any potential 'forgotten about' spaces that may encourage anti-social behaviour. In doing so, the review also considered how buildings and spaces in Te Kete interact with those outside of the site.

The CPTED review identified the following locations and elements of concern, which were then resolved or mitigated in the development’s design response as described below:

- **Southern Laneway and Carpark; alleyway between Te Aka and Maranga buildings; and Council Chambers**

These three locations were identified as areas of potential risk to people's safety, primarily because of a lack of lighting and night-time activation. Mitigations for this are outlined in a following section on lighting.



Gaps in activation, where CPTED risks could be heightened (Boffa Miskell CPTED memo Dec. 2023)

- **Vautier House and District Court Alleyway**

The CPTED assessment identified the alleyway as a "high CPTED risk, with clear evidence of drug use, antisocial behaviour, rough sleeping and a high risk of entrapment."[5]

A re-development of Vautier House (by Wallace Development) is well underway with the building now occupied by new tenants. The District Court Alleyway is also being used again, providing car parking for the occupants of Vautier House. With the building now being occupied, this area is less attractive to rough sleepers and anti-social behaviour.

- **Bus Stops**

The CPTED analysis considered the location, design and use of the bus shelter located at the front of the Civic Precinct on Dalton Street and the associated safety of bus users and passing pedestrians. The CPTED assessment noted that bus shelters can often be a place for loitering and antisocial behaviour.

Activity on the ground floor of Maranga will provide passive surveillance over the new bus stop location as well as the Chambers courtyard.

- **Court Interface**

The interface between the District Court building on Hastings Street and Te Kete represents possible CPTED issues due to multiple groups of people, potentially with high emotions, using this space while waiting for access to the court building. Design of the Te Kete buildings and site took this into consideration and provides a clear waiting area for those visiting the courthouse, located sufficiently away from the entrance to the Southern Laneway. This also creates an open access point to Te Aka in this location.

[5] Boffa Miskell Te Aka CPTED Review – Receiving Environment and Concept Design Review Memo, 1 December 2023

Left – landscape plan with key movement areas to remain clear (Boffa Miskell, December 2023).

Right - excerpt from Civic Precinct diagram in 21-22 Station St Facility – Stage 1 Design Report – Design Brief. (Jon Rennie (Athfield Architects Ltd) and Darran Gillies (NCC))

- **Lighting**

Safety in Design recognises that managing potential risks to health and safety (and the perception of) requires consideration of a full 24-hour scenario. Therefore, the role of lighting on a site and in a building is an important element to consider. Lighting advice received from Boffa Miskell as part of its CPTED review proposed a lighting strategy that tailors different lighting responses to different areas of the precinct based on how they are intended to be used in hours of darkness.

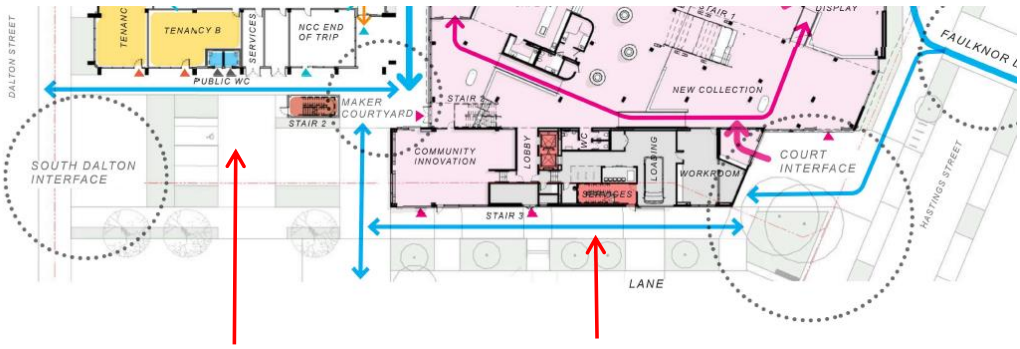
- Bright lights for areas where people are encouraged to move through, rather than dwell in, such as next to the Court and along the Southern Laneway
- Low light in areas such as Te Aka public realm and the Chambers courtyard, so people can see if other people are in the space but without encouraging it to be used as a thoroughfare
- No lighting in areas such as the north/south pedestrian link, which people are discouraged to use when the buildings are not in use

Boffa Miskell's CPTED assessment reports are provided in *Appendix Two*.

6.2. Road Safety Review

A traffic safety review was undertaken by Stantec to identify potential safety concerns from vehicles accessing and using the Civic Precinct's southern laneway. This review primarily considered potential risks to pedestrians. The review examined pedestrian crossings, pedestrian movements, visibility between pedestrians and vehicles at crossings and vehicle movements into the precinct via the Southern Laneway.

The provision of accessible car parks at the southwest of the site (behind Maranga) was also considered, so to ensure sufficient visibility between drivers with restricted mobility and pedestrians walking through the site.



Excerpt from Concept Design Report Version 1 – Athfield Architects 16 May 2024

The analysis then informed the design of upgrades proposed for the streets surrounding the precinct and vehicle and pedestrian movement routes through the site, so to improve the safety of all users of Te Kete.

6.3. Hostile Vehicle Threats

The potential for hostile vehicles to create a threat to people using Te Kete was considered as part of the public realm design and further raised in Boffa Miskell's review. NCC's Transport Planner subsequently provided advice that while such a threat is an unlikely occurrence, the potential for such can be reduced by the use of retractable bollards at entrance points so to prevent or reduce unwelcome vehicles accessing the site.

It is anticipated that accidental events resulting from cars parked in or moving through the Civic Precinct site will be a more likely issue than hostile vehicle threats.

7. Te Aka library and community building

The position of the Te Aka building on the site and the design of the building's physical form, façade design, internal floor plan and servicing provisions will all impact the health and safety of the future building's users and staff.

The impact of design decisions on health and safety is central to the work undertaken by the Te Kete design consultants and project team. Details of key decisions made specifically in the design of the Te Aka building to promote positive health and safety for all are summarised below:

7.1. Building Design

The building is designed in accordance with a 'no wrong door' principle. Instead of a single entrance / exit, the building has three public entrances / exits. These will allow people to access the building from the northeast and southeast of the building adjacent to Hastings Street and from the northwest, adjacent to Maranga.

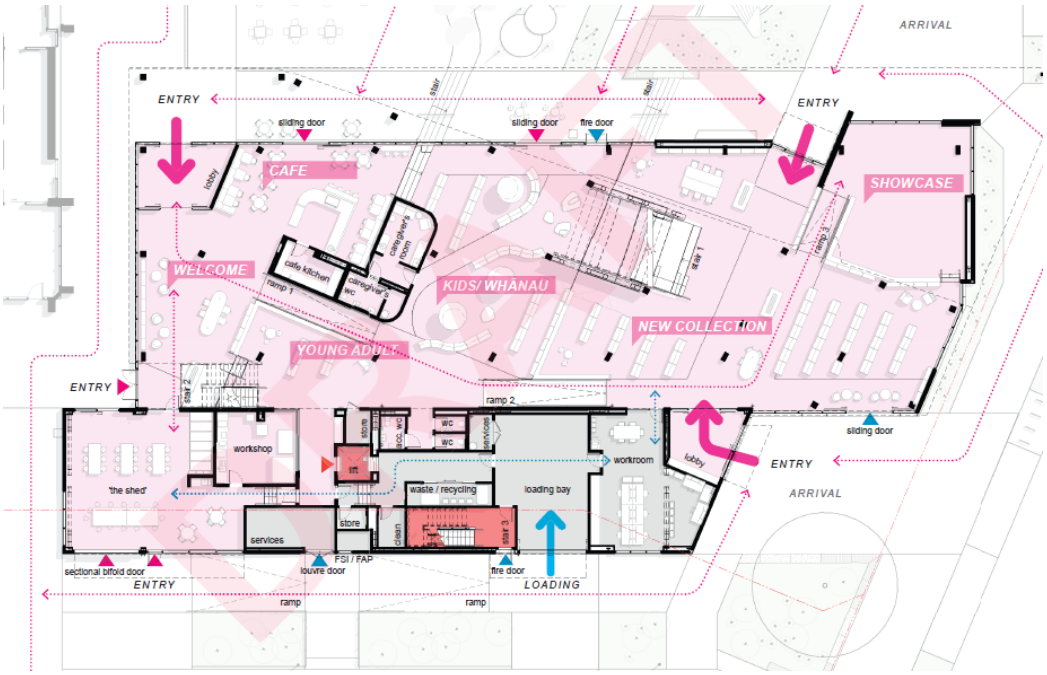
There is an additional entrance that provides access to the large ground floor Toi Ora space; this entrance may be closed when the Toi Ora space is not in use.

The 'no wrong door' principle means the Te Aka building will be open to people on all sides, distributing activity throughout the building and generating a sense of belonging and ownership in

all spaces. This will have a flow on effect of discouraging anti-social behaviour as all spaces are experienced as open and well used, reducing the ability to be there without being seen.

The building is designed to be welcoming, which is highly significant to its role as a civic building. Entrances are clearly articulated in the building design and are supported by high levels of permeability (visibility and access) through the building. In particular, the 'shop front' approach of the design of the building's ground floor encourages people to enter, explore and use the new community spaces. These design decisions seek to avoid people interpreting the building and its spaces as open to only certain people.

The spatial arrangement of activities on the ground floor will activate all sides of the building. The clustering of service areas, staff areas and circulation core along the southern edge of the building is logical and clearly articulated in the building's physical design.



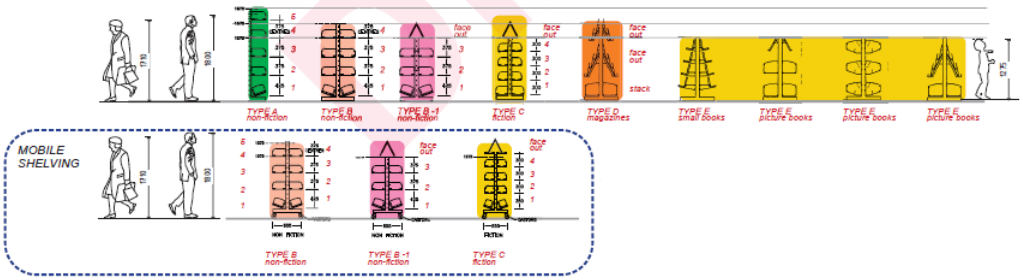
Te Aka ground floor plan (Draft Aug. 2024, Athfield Architects Ltd)

Large picture windows in the southern façade of the Te Aka building are generous and will enable a relationship between activities in the building and the street. These windows are important in the activation and safety of the public space surrounding Te Aka, particularly the space between Te Aka and the existing District Court building.

Southern elevation Te Aka – looking north, with Hastings Street on the right (Draft Aug. 2024, Athfield Architects Ltd)

7.2. Fit Out

The height of shelves within the library will enable views across the internal spaces, supporting passive surveillance and safety.



7.3. Urban Realm

The public space around Te Aka has been designed to connect people with one another. A series of outdoor rooms are proposed within the space, which will enable different people and activities to be there at the same time. Seating areas, a youth space and play areas for younger children will encourage people to pause and spend time here, increasing activity / activation and associated passive surveillance. The high-quality and logical public space design will facilitate instinctive wayfinding for people coming to Te Kete or passing through. The design of the public space will encourage people to walk through the area on their way through town, interacting with the variety of activities (passive and active) that will occur there.

The NCC staff office tower will house approximately 300 people, further contributing to activation and passive surveillance over the site and surrounds.

8. Operating Model

The ‘health and safety by design’ ethos that is central to the design of Te Kete must now continue into its Operating Model.

An Operating Model is needed to define how the Te Kete buildings and spaces are used, including policies for how different activities and different users will be catered for. The Operating Model will guide both NCC staff in how they use and manage the buildings, spaces and community groups and others who use, borrow or hire spaces within it.

The Operating Model also needs to guide how activities in Te Kete interact both across the site and with the surrounding streets, public spaces, neighbouring buildings and activity.

Preparation of the Operating Model will be led by NCC’s newly created Te Kete Transition Manager role. This work will be done in partnership with the managers of NCC’s public-facing activities based in Te Kete, such as Governance, Customer Services, Napier Assist / Āwhina Tāngata and Library Team. The Operating Model needs to be complete by mid-2027, six months before the scheduled completion of the Te Kete development in December 2027.

The Operating Model will not only build upon the site and building design but also build on work done to date that considers operational decisions for activities and services that occur in Te Kete, such as those described below:

8.1. Te Aka

- The design, use and staffing of Te Aka is intended to reflect the community it serves.
- The co-design process, where the design team worked with mana whenua, built a sense of community stewardship over the precinct, which helps to reduce safety concerns. The sense of local identity present in the building's design helps to create shared ownership, resulting in spaces people will be less likely to damage or disrespect.
- Napier and Taradale libraries currently act as destination libraries, which with their single use can leave them relatively isolated in terms of activation and passive surveillance. In contrast, Te Aka will cater for a wide range of activities and users, surrounded by public space that welcomes everyone.
- The design of both Te Aka and surrounding outdoor spaces will encourage community connection and oversight, offering improved safety for all.
- Innovation spaces within the Te Aka building will be used by community groups and for community events. Activity within these spaces and a shared sense of ownership by community groups and users will support positive feelings of safety and discourage anti-social behaviour.

8.2. Passive Surveillance

- One of the best ways to reduce the occurrence of anti-social behaviour from a CPTED perspective is to provide opportunities for passive surveillance between buildings and public space (including streets).
- The design of both the Civic Precinct and the Te Aka building specifically has been developed to encourage people to walk through the building and site. The Civic Precinct is intended to be a vibrant community space, surrounded and overlooked by people using the many buildings and streets surrounding it[6].

8.3. Council Services

- NCC's Customer Service Team will be located on the ground floor of the redeveloped tower building (Maranga), in a highly accessible position for the public. This will generate foot traffic and movement through the precinct.
- There are two office spaces proposed in the southern side of the ground floor of the Maranga building, originally considered as possible income generating tenancies. One of these spaces will now house the Napier Assist / Āwhina Tāngata Team. This is where the team's patrols through the city will start from, making them highly visible in the precinct. This space is located close to Te Aka, enabling the Napier Assist team to support people in Te Aka if ever needed.
- There will also be a public café located in the precinct. The café will act as an informal meeting space and provide additional activity, vibrancy and passive surveillance out over the civic precinct. It will also invite people into the precinct, increasing patronage of the area.

8.4. Policies to Support the Operating Model

As part of the development of the Operating Model for Te Kete, the following policies should also be prepared. These will provide guidance and assurance to staff and visitors.

- Building lockdown procedure

[6] Including the Napier Courthouse, Dalton Street, Vautier House, Hawke's Bay Regional Council, Probation Service, NZ Police, Dundas House, Dunvegan Houses and Station Street.

- Evacuation in an emergency
- Use of confined spaces
- Protection of staff and Elected Members

Training for staff should cover both how to effectively work in and manage the open and flexible nature of Te Aka (and how to support the many activities it will contain and many users it will welcome), as well as how to implement the above policies if required.

The Operating Model should identify how regularly staff training will occur, to ensure the ethos of Te Aka remains and evolves positively over time.

9. Risk Registers

The following registers have been developed by the project team and are live documents which are reviewed and updated regularly. Responsibility for the registers currently sits with NCC's Strategic Programmes Manager.

- Safety in Design Register – held jointly by NCC and the lead design consultants, recording risks identified during the design phase and how these are resolved or mitigated
- Risk Register – records the project's operational risks that do not relate to the development's design
- Health & Safety Register – this will record issues identified once the Te Kete buildings and spaces are operational

A summary of each register is discussed at the Te Kete Project Advisory Board's monthly meetings.

10. Next Steps

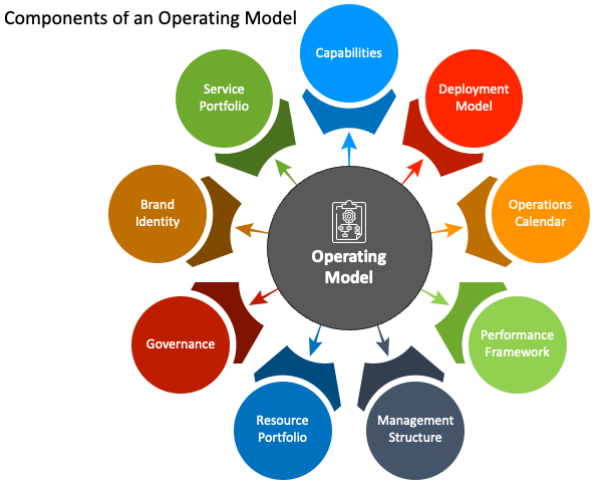
With the Audit and Risk Committee's endorsement, preparation of the Te Kete Operating Model will begin. Workshops will be held with relevant teams across NCC, including:

- Governance
- Customer Services
- Libraries
- Napier Assist
- Procurement (in regard to potential commercial tenants on the ground floor spaces in the Maranga building)

Equally, input to the Operating Model will be invited from partner groups, such as Ngā Toi and Creative Arts Napier, who may run activities in the Toi Ora and maker spaces or connect NCC with partners who will.

A draft Operating Model will be shared across NCC for feedback in approximately mid-2026. A final Operating Model will be signed off by ELT.

Appendix One: Operating Model Diagram Examples



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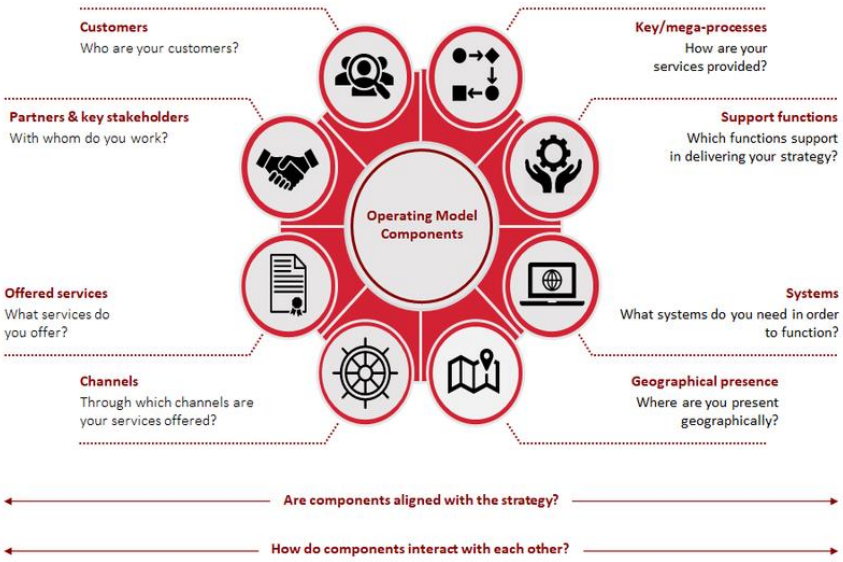

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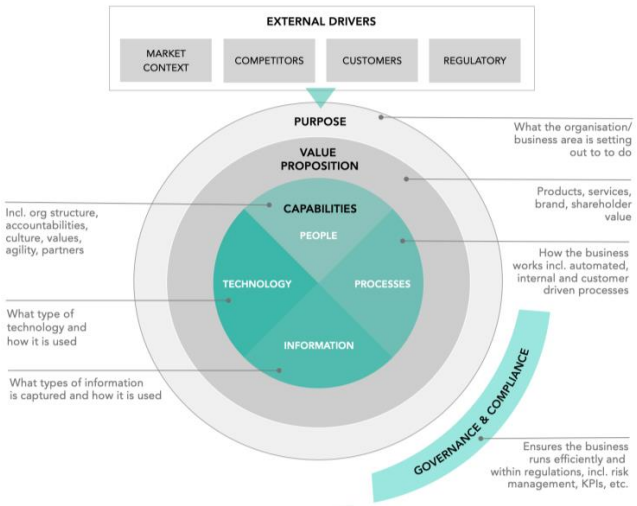

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Source: design.udlvirtual.edu.pe 250703

Appendix Two: CPTED Assessments by Boffa Miskell Ltd – December 2023 and November 2024

Boffa Miskell

Memorandum

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Attention:	Darran Gilles
Company:	Napier City Council
Date:	1 December 2023
From:	Prepared by: Kylie Boivin: Senior Landscape Architect and CPTED Practitioner Reviewed by: Jane Rennie (Associate Partner, Urban Designer and CPTED Practitioner)
Message Ref:	**Te Aka CPTED Review** Receiving Environment and Concept Design Review
Project No:	BM200778B

1. Introduction and Overview of the Project

Boffa Miskell has been engaged by Napier City Council to provide CPTED advice for the Concept and Preliminary design phases of the Te Aka project. This Memorandum focuses on the Concept Design stage and includes CPTED advice to guide the Preliminary Design and the preparation of a resource consent application. This is the first CPTED review for the project and identifies highlight 'key CPTED issues' along with the positive CPTED attributes of the design which are key in reducing CPTED risks.

Boffa Miskell will in due course prepare a CPTED assessment to accompany the resource consent application. The policy context and assessment matters relevant to CPTED are yet to be confirmed, and this will need to be fully understood prior to undertaking the assessment.

The Te Aka project (referred to as 'the Project') includes the design of a new Library, civic public realm, and council chambers. The existing council building (known as LCAP2 and which will be refurbished or replaced in the future) is also within the Site. The Project is situated where the old

(now demolished) Napier Library was sited, as pictured in *Figure **1*** (the 'Project Site'[7]). The staging of this Project is yet to be determined, with the LCAP2 building likely to occur sometime after the completion of the Library, Council Chambers and Public Realm, as illustrated in ***Figure 2***. For the purposes of this CPTED advice, it is assumed the LCAP2 remains unoccupied and 'as is'.

The overall objective of CPTED is to ensure that the Project within the receiving environment does not add to the security risk profile, and that the development addresses known CPTED risks. This includes not inadvertently creating CPTED conditions that are worse than the current situation, including crimes against people using or moving through the Site or nuisance crimes which include vandalism or graffiti of public property. This does not include traffic safety issues which are covered by others.

Figure 1: *Landscape Concept Design, prepared by Boffa Miskell, October 2023*

Figure 2: *Staging Plan, prepared by Boffa Miskell, October 2023*

The following CPTED tasks have been completed in preparing this Memorandum:

- Familiarisation with the Project and Site;
- Daytime and night-time site visits;
- Meetings with key stakeholders from Napier City Council[8] relevant to CPTED;
- Design team meetings to discuss the Project (including working collaboratively with the design team to reach design-lead solutions);
- Review of the Concept Design Package; and
- Review of 'Police Intelligence Data' included on the New Zealand Police website.

2. Receiving Environment

[7] *The 'Red Line' indicated in **Figure 1** shows the extent of the concept design area, which has been considered 'the Site' for the purposes of this CPTED review. The extent of the Site will need to be clarified prior to the resource consent application being prepared.*

[8] *Meeting on 22/11/2023 with; Alix Burke and Darran Gillies (PM for the project), Steph Kennard and Dan Hicks, Keelie Nye and Nicola Saunders (Napier Library). Note it has not been possible to meet with representatives of the District Court yet, however this is recommended.*

From a CPTED perspective the 'receiving environment' refers to both the project Site and the surrounding context, including physical attributes and behavioural patterns. An assessment of the receiving environment is useful for identifying the perceived and actual safety of a site and understanding how these may be addressed through the design process.

The following summarizes the key CPTED findings to date for the receiving environment and this is also illustrated in the attached CPTED **Graphic Attachment** which should be read in conjunction with this Memorandum[9]. This background provides useful context and will assist with informing the preliminary design.

The Wider Context to the Project Site (beyond the red line)

- **Crime Statistics** - Review of the crime statistics[10] reveals that the Site has low incidences of crime for an urban environment, and this is likely due to the Site being un-used. The adjoining areas to the south and west, however have significant incidences of crime. This is largely due to theft associated with the big-box retail units. There is also a presence of serious crime including aggravated robbery, serious/common assaults, and sexual assault and this is thought to be associated with homelessness in the area.

- **Environmental Quality** – The environmental quality drops significantly south of Dunvegan House. This is due to a lack of finer grain activation, less investment in the public realm, empty buildings, lower quality of built development and generally less vibrancy.

- **Homelessness** - There is a significant homelessness issue in the wider Hawkes Bay. This has resulted in a significant presence of homeless sleeping along Marine Parade and on the Beach and spilling over into the area surrounding the Site. Unfortunately, this can be the source of antisocial behaviour and toileting across the City.

- **Marine Parade** – The Parade includes several Motels which have been used as transitional housing, emergency housing and accommodation for people prior to going to Prison. This has resulted in antisocial / criminal activity around Marine Parade. In time, landowners are wanting to transition back to accommodation, however this will take time.

- **Current Library** (located north towards Tennison Street) – The Library has seen a trend of increased hostile/aggressive behaviour towards staff (consistent with many Libraries throughout New Zealand). This is thought to be largely mental health and stress related, increasing significantly since Covid. Unsupervised minors often get dropped off to the library in lieu of childcare.

- **Library staff** - There are risks to personal safety for Library / Council staff getting to and from work. There have been several incidences surrounding Council and Library facilities of staff being assaulted, followed back to cars and harassed. Most staff drive to the city and park their cars on street (often free parking) and walk from their vehicles.

- **Clive Square** – The western side of Clive Square has a significant presence of homelessness and antisocial behaviour, exacerbated by the presence of the TAB and KFC.

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[9] *Graphic Attachment Figure 2: Existing Site CPTED Safety Map.*

[10] *New Zealand Police Victimization website for period October 2022 to September 2023.*

- **Public Toilets** – There are few public toilets in Napier City and the perception is that there are not enough toilets. Public toilets have considerable issues with vandalism and soiling, in addition to being locations where drugs are taken. These issues have led the Council to lock these facilities at night, which has disbursed the issue onto private properties elsewhere in the City.

- **Civic Court and link to Dickens Street** – The Civic Court and associated building cut-through has recently been upgraded by the property owner and this has had a positive environmental outcome for the area. This link is closed after 5pm, which is considered appropriate given the day-time nature of Emerson Street.

- **Arcade link from Dickens Street to Emerson Street** (Ocean Boulevard) – This mid-block arcade is an important link to the primary shopping area during the day. This is a location for antisocial behaviour and has only two tenancies occupied, creating a sense of isolation. This link is closed after 5pm, which is considered appropriate given the day-time nature of Emerson Street.

The Project Site (Within the Red Line)

- The Site has low environmental quality due to the demolished and unoccupied buildings. There is evidence of rough sleeping and soiling on the Site.

- The Napier District Court adjoins the Project Site and is often a gathering place for people waiting (or loitering) outside the Court. The nature of the activities within the Court are often gang-related or associated with domestic violence and family court matters. People involved in Court proceedings often spill over into the external spaces (and into the old library) and this can create an intimidating atmosphere for people on Hastings Street and moving through the area.

- We understand that Vautier House may be redeveloped into an office building with Te Whatu Ora as a potential tenant. This building and its immediate surroundings pose significant CPTED risks given its poor environmental quality, evidence of rough sleeping, drug use and antisocial behaviour. The alleyway between the District Court has significant CPTED risks relating to entrapment.
- The old Library (decommissioned in 2017 and now vacant) was a hot spot for a number of anti-social and criminal activities. These included men approaching young women, harassment, and antisocial behaviour, some of which is thought to be related to people visiting the Court. It also acted as a refuge (safe space) for families and vulnerable individuals to wait while Court was sitting/breaking. The vacant building is now a hot spot for antisocial behaviour and rough sleeping.

- The bus stops located on Dalton Street are a hot spot for antisocial behaviour and pose significant CPTED risks. This is due to the narrow footpath and the unoccupied Council Building, which together create a threatening environment.

Given the nature of the receiving environment, particularly in relation to the proximity to the District Court, and the vulnerable nature of some users and the public nature of the Court it is recommended that the design of the Te Aka building and surrounding landscape is designed to minimise CPTED risks.

3. CPTED Review

The following CPTED advice considers the National Guidelines for CPTED (2005) in relation to the Concept design packages prepared by Athfield Architects and Boffa Miskell and outlines the key issues and findings to date for the proposed 'Project'. These findings are also illustrated in the CPTED **Graphic Attachment**[11].

The following documents have been reviewed in identifying the key issues and findings:

- 23.04 Te Aka Concept Design For Pricing - 8th September 2023, prepared by Athfield Architects Limited.
- 23.04 Te Aka Concept Design Report - 28th September 2023, prepared by Athfield Architects Limited.
- Te Aka Landscape Concept Report – October 2023, prepared by Boffa Miskell.

With CPTED being a design tool, it is important to focus on the 'right issues at the right time', and avoid delving into the detail too quickly, missing any fundamental high-level CPTED issue or opportunity. As such, this review is structured as follows:

1. CPTED considerations which present risks at the current design stage and require consideration prior to lodgement of a resource consent;
2. CPTED considerations to be addressed later in the design phase (Developed Design onwards); and
3. CPTED features which positively contribute to a safe environment.

3.1 CPTED Issues to Consider Prior to Resource Consent

3.1.1 High-level CPTED Considerations

Project Staging and Interdependencies

The masterplan for Te Aka was prepared in 2020. When the vision of the masterplan for Te Aka is fully realised, it is anticipated that this part of the City will become a key 'civic precinct' with a clustering of Local Government, community assets and (potentially) Government agencies. This development would see significant investment into a part of the City which has lacked investment in recent time. This Project, in partnership with some adjoining projects (including Vautier House and LCAP2) have the potential to be a catalyst for future development of the surrounding context, which is likely to reduce CPTED risks across the area.

The Project scope currently includes the Library Building, Council Chambers and surrounding public realm.
Outside of the project scope is the redevelopment of the existing Council Building (known as LCAP2). Vautier House, which shares the southern boundary with the Site and includes significant CPTED risks, is beginning refurbishment internally (with an unknown finish date). Currently Vautier House and LCAP2 are unoccupied, which presents CPTED risks due to the lack of activation they offer and potential for antisocial behaviour. Timeframes for these developments are unknown.

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[11] *Graphic Attachment Figure 3: Proposed Environment CPTED Safety Map.*

The Council Building will be redevelopment in the future, which may take the form of a refurbishment or a complete replacement. Options have been presented for a replacement building either within the current footprint (solid blue block, ***Figure 3***), or in a new alignment to gain a greater interface with Dalton Street (dotted blue, ***Figure 3***).

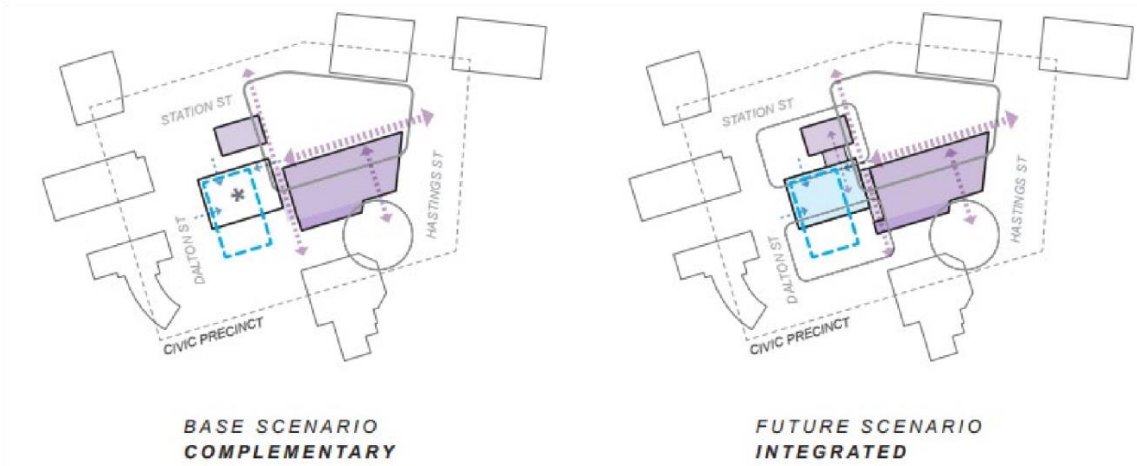

Figure 3: *Scenarios for the redevelopment of LCAP2, Athfield Architects*

The **Graphic Attachment** and specifically ***Figure 3*** illustrates the existing CPTED risks for the Site and how the development of the Project is anticipated to change these risks. It assumes that LCAP2 and Vautier House remain 'as is' with the anticipated risks of this reflected. With the development of each of these buildings, CPTED risks are anticipated to reduce for the adjoining areas. This Safety Map (***Graphic Attachment Figure 2 and 3)*** illustrates the key areas which have interdependencies associated with the development of these buildings, including:

- **Bus stop** – This currently presents CPTED risks and reducing these risks is dependent on the redevelopment of LCAP2 with further details relating to this outlined in ***section 3.1.2*** – point 2.
- **Library Pedestrian Link** – The safety of the pedestrian link between the Library and LCAP2 is dependent on the development and occupation of both buildings, as outlined in ***section 3.1.2*** – point 4. The development of Vautier House and creation of a 'public sector hub' has the potential to further the viability of this link from a CPTED perspective through greater activation.
- **Carpark and Southern Lane** – The CPTED risks related to the car park and the Southern Laneway could be reduced by the development and occupation of both these buildings, as outlined further in ***section 3.1.2*** – point 3.

At a more detailed scale, when phasing a project from a CPTED perspective and noting the importance of this project of a civic nature, consideration should be given to the following:

- Safe access can be achieved with no dead-ends created;
- Clear views are facilitated with consideration given to the locations of hoardings; and
- If it is appropriate for the lane between the Library and Council Building should be accessed in interim phases.

Activation and Access

From a CPTED perspective activation is one of the most powerful CPTED strategies in creating a safe environment: by attracting people to provide supervision, antisocial behaviour is far less likely to result. ***Figure 4*** summarises the activation and public access for the Site identifying where the 'gaps' in activation occur and where potential CPTED risks could be heightened.

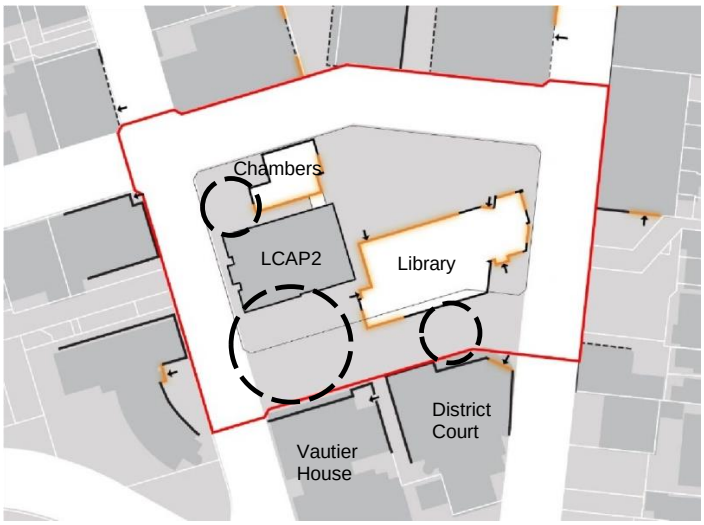

Figure 4: *Activation in the proposed environment with areas of limited activation dotted in black w orange indicating active edges to buildings (source: Boffa Miskell)*

This mapping exercise has identified that the Site is largely reliant on activation from within the new building, with the surrounding buildings not providing much by way of this. As this precinct develops, this has potential to change, and it could be anticipated that finer grain activities which provide activation and supervision will develop. Given the knowledge that LCAP2 may not be built for some time, it is helpful to understand the areas which are more sensitive to CPTED risks due to having less supervision. The key parts of the site which have limited activation/supervision post development are, illustrated in ***Figure 4***:

- Car park end of Southern Lane;
- Southern Lane outside the District Court; and
- Chambers Courtyard.

Public Toilets and Facilities

The new buildings will provide internal facilities for the public during opening hours. Outside of these times the nearest facilities are located on Dickens Street 200m away (refer to the ***Graphic Attachment Figure 1*** for toilet locations). Given the civic nature of Te Aka and the likelihood that there will be small-scale events into the evenings, it would be prudent to provide an externally accessed public toilet on the Site. If appropriate facilities are not provided, soiling can become an issue.

From a CPTED perspective the following factors should be considered in the design process:

- Public toilets are located to take advantage of natural supervision, positioned to enable 'situational awareness' for the safety/comfort of users. The northeastern part of the Site, or along Station Street would be an ideal location.

- A landing/waiting area is provided in front of the toilets which is off to the side of any key movement route.
- Integrating toilets within a building envelop yields more integrated designs with favourable environmental outcomes.
- Toilets could be supported by CCTV and 'help points' depending on context.

It is understood that facilities are planned for the LCAP2 building in the long-term (refer to ***Figure 5***). This is supported from a CPTED perspective; however, the issue of phasing would mean there would not be an externally accessed toilet until LCAP2 is developed. A multi-purpose facility which can provide toilets, waiting space, a place to charge your phone (convenience pit-stop) which is managed by a custodian would be an asset to the City, support the projects manaakitanga aspirations for caring for the community and have positive CPTED benefits.

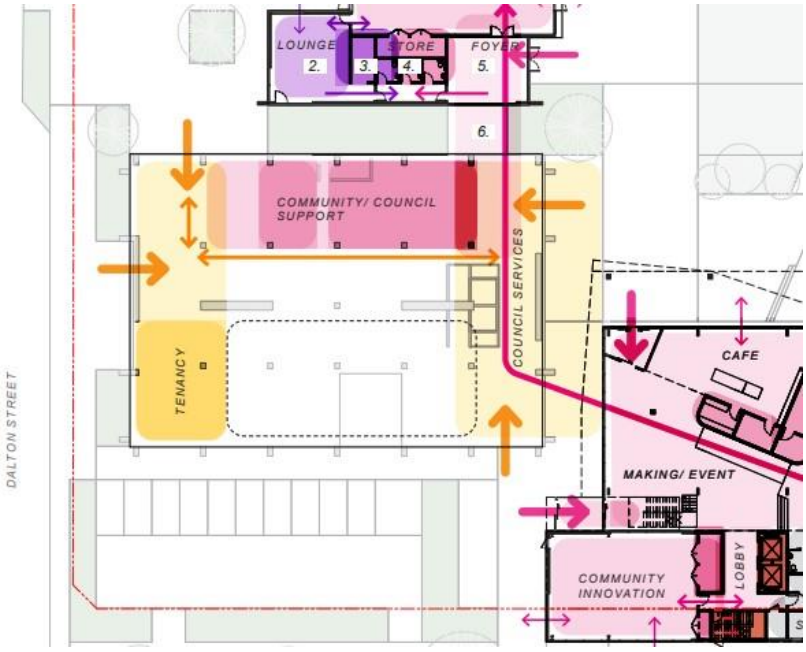

Figure 5: *Potential redevelopment of LCAP2 ground floor, Athfield Architects*

3.1.2 Site-specific CPTED Considerations

The following six site-specific CPTED considerations are illustrated in the 'Proposed Environment CPTED Safety Map' in the **Graphic Attachment** (the numbers correspond with the map).

1. Vautier House and District Court Alleyway

As indicated earlier, the alleyway between the District Court Building and Valtier House has high CPTED risks. There is clear evidence of drug use, antisocial behaviour, rough sleeping and there is a high risk of entrapment (refer to ***Figures 6*** and ***7***). The risks associated with this space are of a serious nature. As such, it is recommended that this alleyway is closed until the development of Valtier House is completed or at a stage where it is possible to appropriately reduce the CPTED risks (see further discussion in ***section 3.2***).

Figure 6: *Image of alleyway between District Court courtyard internally in Vautier House, and Vautier House, recommended to be access with high entrapment risks and evidence of antisocial behaviour.*

Figure 7: *Image of controlled.*

2. Bus Stops

As noted earlier, the current bus stops have high CPTED risks due to the lack of supervision from the unoccupied building, narrow footpath and is often a hot spot for antisocial behaviour, creating a threatening environment. The new Council Chambers do not have much interaction with Dalton Street, which means there is a reliance on activation from the ground floor of the LCAP2 to enable the bus stop in the current location to have adequate supervision.

Because LCAP2 has an unknown timeline for completion, this current scenario could be in place for some time after the Library is open. It is anticipated that this bus stop could get busier with the new Library. As such, it is recommended that the bus stops are shifted north along the street, closer to Station Street. This would enable greater supervision from Station Street, the Council Chambers and the Police Station. It is also recommended that the existing bike shelter (largely unused) is refurbished to be a bus waiting area, to provide a comfortable waiting experience with more space around it (refer to ***Figures 8*** and ***9***).

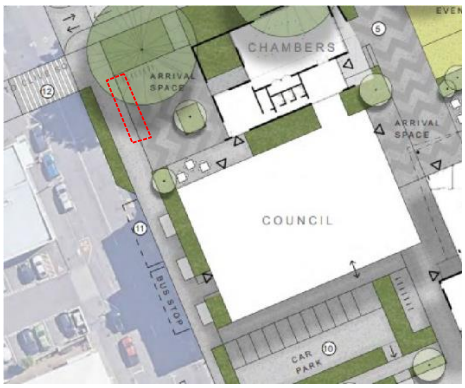

Figure 8: *Landscape plan with current bus stops indicated and proposed relocation area in red.*

Figure 9: *Existing bike shelter recommended to be refurbished into a bus shelter. The northern 'bay' could potentially be retained as bikes.*

3. Southern Laneway and Car Park

Moderate CPTED risks are identified in the Southern Lane and car park area. This is largely due to the lack of activation and poor environmental quality from the two adjoining unoccupied buildings (refer to ***Figure 10***). The Library Building (and specifically the Makers Space) has potential to introduce vulnerable people into this area after hours. The presence of the Court Building also adds to the CPTED risks for this area.

Whilst the introduction of the Library Building will provide new activity to the area, and a new landscape design for the Southern Lane will improve circulation on the Site and its overall quality, the CPTED risks cannot be eliminated given the lack of supervision. It is anticipated that the redevelopment of LCAP2 and Vautier House in the future will each reduce risks to this area further, by providing supervision and introducing more people to the Site.

It is recommended that after-hours access is allowed through the Library into the Markers Space in the interim phase before the adjoining buildings are redeveloped. Tidying up LCAP2 in the interim would assist in providing a more positive environmental quality. The introduction of an entranceway into the Markers Space from the Laneway (the southwest corner of the building) could be positive from a CPTED perspective and we understand this is currently under design development.

Figure 10: *District Court and Vautier House frontage area and Vautier House in background.*
with a lack of activation.

Figure 11: *Car park*

4. Alleyway between Library and LCAP2 Building

The alleyway between the Library and LCAP2 Building has several CPTED risks due to the following:

- The repositioning of the bus stop away from LCAP2 is anticipated to move a ‘potential key movement route’ between the bus stop and Library to around the north of the Council Chambers. This could result in less activation than in the current plan.
- The Car Park has CPTED risks due to the adjacent unoccupied buildings which may further discourage people from using this entrance.
- Supervision is limited. There will be supervision from Library Building only into this space. The potential water tanks in this area will also further restrict the route and sightlines.

There is potential for some glazing from the north wall of the Markers Space, in providing views into the alleyway.

These factors result in a space which is not anticipated to be busy or well overlooked until Vautier House is occupied. As such, it is recommended that the entranceway into the Library from the alleyway is removed. Noting it would likely be closed during the construction of LCAP2 anyway.

5. Court Interface

The District Court has a direct interface with the Sites southern boundary to the Southern Lane and the arrival space for the Court is within the 'red line'. As noted earlier, this area is often a gathering place for people waiting (or perceptively loitering) outside the Court. Spending time outside Court (taking a break or waiting for others) is a legitimate use of a public space and should be provided for. However, in order to avoid potential conflict between different user groups within the public realm, it is recommended that the external space is redesigned to enable space for gathering away from key movement zones. This allows people to moderate their own personal space and avoid feeling they are 'running the gauntlet'. The Southern Laneway separates the Court threshold from the Library threshold/arrival space and is supported from a CPTED perspective (refer to ***Figure 12***).

Careful consideration should also be given to enabling unimpeded access for the various groups who use the building and may have separate entrances. This could include judges, prisoners, victims and jury members. Further understanding of the functional aspects of this building would assist in this process, and it is recommended that there is a discussion with District Court representatives.

Figure 12: *Landscape Plan with the key movements to 'keep clear' indicated (source: Boffa Miskell)*

6. Council Chambers

The space between the Council Building (existing or proposed) and the Chambers could be a location for antisocial behaviour due to the recessed environment and entrapment risk. The 'gap'

between the buildings is supported and will be an elegant architectural feature, however it is recommended that more is done to discourage people from entering this space. For example, a very shallow pond could work well and links to the landscape design narrative around water.

3.2 CPTED Considerations at Developed Design

The following CPTED issues are relevant to promoting a safe environment. However, these are matters that the design team could begin to consider at the Preliminary design stage.

1. Redevelopment of Vautier House

As outlined earlier, Vautier House currently poses significant CPTED risks (see *section 2*). A key recommendation outlined above is to close the alleyway between the District Court and Vautier House until the building can be developed to an appropriate standard to support a safe environment. Noting that this is outside of the scope of this project, this building has a significant impact on the environment within the Site and influences how comfortable people may feel and the resultant environmental quality. As such, the following design factors could assist in reducing CPTED risks within the Site:

- Elimination of nooks and recesses.
- Upgrading of the environmental quality of the building through renovations.
- Replacement of the concrete balustrades around the ‘terrace’ near the District Court and Southern Laneway interface with a transparent material to enable views into the Laneway.
- Introduction of active uses at ground floor level wherever possible to enhance natural supervision given the windows have clear views into the Laneway.
- Redevelopment of the main courtyard between Vautier House and the District Court to remove entrapment risks, noting this area will only support a safe environment when Vautier House is fully occupied, and this area has activation from the building.

2. Hostile Vehicles

It is recommended that a Risk Assessment is carried out to understand if there is a Hostile Vehicle Risk for the project. It is recommended that Hostile Vehicle devices are in place for the area around the District Court, given the sensitive nature of this building.

Hostile Vehicle barriers are recommended to be integrated into the landscape design, avoiding the widespread use of bollards wherever possible (noting that ‘hostile vehicle barriers’ are expensive). Integrated features such as planters, the use of topography and trees are much more effective.

3. Opening Hours and Events Mode

Opening hours for the Library are yet to be confirmed, but these are likely to be 9am – 5pm during the week, with reduced hours in the weekend and likely closed on Sunday. There is currently very limited activity in Napier City after 5pm, with hospitality largely located on Hastings Street. Given the Library has a close relationship with Hastings Street, later opening hours could be supported from a CPTED perspective and enable events and use of community rooms with supervision from the Library. There is also the potential for smaller scale Library-related events to take place in the public realm, which would also assist to activate this area in the evenings and is supported from a CPTED perspective. The management of large crowds may need further consideration, especially in relation to protests given the civic nature of this space.

4. Lighting

Lighting has a significant influence on the environmental quality and safety of a place at night. A holistic and creative lighting strategy which involves a multidisciplinary team will be important for the buildings and surrounding site. Well resolved lighting creates a sense of quality and safety at night, reinforces wayfinding and allows for good levels of surveillance at night.

Reinforcing the terraces through the landscape design, creating a series of outdoor rooms could provide an opportunity for a high-quality environment by night. More creative, layered lighting is recommended (using Gobo, up-lights features and integrated furniture lighting) to support the public realm design and reinforce wayfinding.

3.3 Positive CPTED Features

There are a range of design measures included in the Concept design which align with best-practice CPTED and are important to be retained throughout the duration of the project. This includes the following:

- **Overall Project** - The project demonstrates a strong desire that the Te Aka Project reflects the community it serves. This is demonstrated through the strong design narratives and how the buildings will be commissioned, occupied and staffed. From a CPTED perspective this gives the project the best chance to have a sense of community stewardship, which can assist in reducing CPTED risks.
- **Public Realm** – The design includes a high-quality and logical public realm which facilitates instinctive wayfinding. A series of outdoor rooms are proposed, which will enable different users to co-exist within the space avoiding conflict points. The Southern Lane divides the arrival thresholds of the District Court and Library.
- **Library Building** – The building is welcoming and has a sense of significance as a civic building.
  The entrances are clearly articulated and support high levels of permeability through the building.
  The ‘shop frontage’ approach to the ground floor is supported and encourages people to use this space. Spatial arrangement of the ground floor will support activation on all sides of the building. The clustering of service/private staff areas and circulation core in the ‘backpack’ is logical and clearly articulated. ‘Picture windows’ in the southern façade of the Library Building (in the area of the building known as ‘the backpack’) at ground floor and first floor are generous and create a relationship between the building and the street. These windows are important in the activation of this external space, particularly given its proximity to the District Court.
- **Council Chamber / Existing Council Building** - This building demonstrates the concept of ‘democracy on display’ through the prominence of the buildings siting and windows into the Chambers from the main public realm on the east. The flexible use of the Chambers is supported as a community facility to assist in the activation of the Site as a whole.

4. Conclusion

The Te Aka Project will bring significant investment to a part of Napier City which has been neglected in recent years. The Project will not only bring a high-quality development which will lift the overall environmental quality of the area, but it will attract people and in turn provide activation and supervision. Additionally, it is anticipated that the development could be a catalyst to attract

other private investment in the area and result in regeneration of this part of the City. Overall, this Project will have a significant positive CPTED benefits on the wider area and reduces many of the CPTED risks which are currently present.

A key challenge of this Project is the phasing and lack of certainty around the LCAP2 buildings redevelopment. There are CPTED issues associated with unoccupied buildings which are challenging to mitigate. LCAP2 is a key part of the wider Te Aka masterplan and there are interdependencies which have an impact on the CPTED risks, especially directly adjoining LCAP2. Without the LCAP2 development, key community-orientated facilities (such as all-hours public toilets and bus lounge) do not have certainty of delivery. An all-hours public toilet will be challenging to develop elsewhere on the Site and not having this facility could create CPTED challenges.

Six key CPTED considerations are outlined in this Memorandum and Graphic Attachment at the Concept design stage and require consideration prior to finalisation of the design for resource consent. These acknowledge the difficulty of the phasing and focus on mitigating the CPTED risks in the medium term until LCAP2 is developed. A key message from this CPTED review is that LCAP2 is an important piece in realising the full community benefits of Te Aka, and without LCAP2 residual CPTED risks remain.

Overall, the design of the new buildings and the associated public realm is supported from a CPTED perspective and will reduce CPTED risks which present in the Site currently. Ongoing CPTED review are recommended, and this will ensure that CPTED risks are identified and mitigated (where possible) as the design evolves.

KEY

- KEY FEATURE (SIGNIFICANT PEOPLE GENERATOR)
- CPTED RISK AREA
- PRIMARY PEDESTRIAN ROUTE
- CONNECTING PEDESTRIAN ROUTE
- SECONDARY PEDESTRIAN ROUTE
- KEY BUS ROUTE
- SITE BOUNDARY
- PROPOSED BUILDING
- EXISTING BUILDING
- BUS STOPS
- TOILETS

NOTES

The purpose of this map is to broadly summarize high-level CPTED influences and assist in understanding how these influence on the Site.

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Not to scale

DRAFT

TE AKA - CPTED REVIEW

FIGURE 1 - Broadscale CPTED Context

Date: 1 December 2023 | Revision:0

Plan prepared by Boffa Miskell Limited

Project Manager: kylie.bolvin@boffamiskell.co.nz | Drawn: EJo | Checked: KBo

KEY

- POSITIVE CPTED ATTRIBUTE
- LOW RISK CPTED ATTRIBUTE
- MEDIUM RISK CPTED ATTRIBUTE
- HIGH RISK CPTED ATTRIBUTE
- NEUTRAL CEPTED AREA
- ACCESS CONTROLLED AREA
- SITE BOUNDARY
- EXISTING BUILDING
- EXISTING BUS STOP
- SOLID FACADE
- FACADE WITH WINDOWS - NO ACTIVATION CURRENTLY
- FACADE WITH WINDOWS AND ACTIVATION
- BUILDING ENTRANCE

NOTES

This safety plan assesses the CPTED risk in the receiving environment after hours and at night.

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DRAFT

TE AKA - CPTED REVIEW

FIGURE 2 - Existing Site CPTED Safety Map

Date: 1 December 2023 | Revision:0

Plan prepared by Boffa Miskell Limited

Project Manager: kylie.boivin@boffamiskell.co.nz | Drawn: EJo | Checked: KBo

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KEY

- POSITIVE CPTED ATTRIBUTE
- LOW RISK CPTED ATTRIBUTE
- MEDIUM RISK CPTED ATTRIBUTE
- HIGH RISK CPTED ATTRIBUTE
- NEUTRAL CPTED AREA
- ACCESS CONTROLLED AREA
- SITE BOUNDARY
- PROPOSED BUILDING
- EXISTING BUILDING
- EXISTING BUS STOP
- 1 LOCATION OF INTEREST
- SOLID FACADE
- ----- FACADE WITH WINDOWS - NO ACTIVATION CURRENTLY
- ▪▪▪▪▪▪▪ FACADE WITH WINDOWS AND ACTIVATION
- ▶ BUILDING ENTRANCE

NOTES

This Safety Map assumes Vautier House and LCAP2 are undeveloped and unoccupied (current scenario). It is anticipated these will be redeveloped in the future, which will have a positive CPTED impact on the Site.

This safety plan assesses the CPTED risk in the receiving environment after hours and at night.

1. The alleyway between the District Court and Vautier House - (recommended closure extent indicated with access control hatching)
2. Bus Stop - recommended to be repositioned to 2B
3. The Southern Lane / Car park area
4. The pedestrian link between LCAP2 and the Library
5. The District Court arrival space
6. The Chambers Courtyard

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TE AKA - CPTED REVIEW

FIGURE 3 - Proposed Site CPTED Safety Map

Date: 1 December 2023 | Revision:0

Plan prepared by Boffa Miskell Limited

Project Manager: kylie.bolvin@boffamiskell.co.nz | Drawn: EJo | Checked: KBo

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Boffa Miskell

Memorandum

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Attention:	Darran Gilles and Alix Burke
Company:	Napier City Council
Copy to:	Athfield Design Team
Date:	12 November 2024
From:	Prepared by: Kylie Boivin: Senior Landscape Architect and CPTED Practitioner
03 Message Ref:	**Memo** **Te Aka and Maranga - CPTED Advice Summary**
Project No:	BM200778B

Boffa Miskell has been engaged by Napier City Council to provide CPTED advice for the Te Aka project. This memorandum summarises advice that has been given to the Design Team related to Te Aka and Maranga to date. This builds upon initial advice in Memo 01 and discussion of Hostile Vehicle Risks in Memo 02.

Maranga design advice:

We have meet on several occasions with the Maranga design team (over the past 4 months), we are supportive of the emerging design from a CPTED perspective.

Key CPTED advice discussed includes:

1. **Lobby Space –** The layout of reception desks and ‘back of house’ offices should be carefully considered to strike the balance between staff protection and creating a welcoming environment. All queuing areas needs to be clear to movement routes to avoid conflict points.

2. **Elevator Circulation Space** – We are comfortable with the proposal to remove doors that separate this space from the lobby and have the elevators form the 'secure line' with swipe card access.
3. **Public toilets** – Advice was given in Memo 01 that an externally located public toilet be considered within this building to facilitate after-hours use (especially related to events). Note that this has not been adopted for the precinct.
4. **Public toilets** – Advice was given that public toilet (internally located) have entrances to the toilets visible from a reception / cafes to enable supervision.

Closing out on CPTED matters:

1. A review of the Maranga 80% Detailed design package has identified:
    a. That there are possible conflict points related to queuing to the reception desks, this could be managed with ropes or a 'take a number' system (which means people wait in the seating area before being served).
    b. The reception desk and café will provide good supervision to the exterior spaces and bus stop.
    c. The design of the lobby facilitates a welcoming and 'civic' presence, which is supported.
    d. The internal public toilets are tucked away with limited supervision, which could present CPTED risks that can be managed through cameras.
    e. No external public toilet is provided in the precinct, this could result in soiling throughout the precinct (especially around the bus stops courtyard area). Recommend installing additional taps for washdown.

Dalton St Bus Stop advice:

CPTED advice was given through an online workshop in September 2024, in relation to bus stop on Dalton Street. Various options for the location of a bus shelter were discussed, including:

a. Adjoining the café outdoor space
b. Adjoining the café glazed wall
c. In a kerbside build out

The following CPTED advice was discussed:

1. **The current bus stops on Dalton Street** – these shelters were identified in the receiving environment CPTED assessment (Memo 01) as presenting CPTED risks due to the confined footpath (making people feel they are running the gauntlet) and poor supervision. Repeating the same situation should be avoided through the new design, therefore a location relating to the entrance to Maranga is recommended.
2. **A set-back shelter** – locating the shelter set back into the landscape buffer creates a space that is confined on 3-sides due to the change in level between the street and the public space. The ramps and steps beside the bus stop creates a space that is tucked in. This restricts movement and could create user discomfort, as well as and block sightlines to the Maranga entrance and public space.
3. **Conflict points on footpath** – if the shelter spills out onto the movement zone of the footpath this creates friction between people waiting and those passing by, which can be uncomfortable and potentially intimidating, particularly if there are people loitering in the space who are not legitimate bus users (similar to the existing situation).
4. **Defining spaces** - blurring the line between public space and bus waiting space may encourage loitering and inappropriate use of the bus stop waiting space. At a building entrance this is especially problematic from a CPTED perspective.

In light of the above, the **preference is for the bus shelter to be positioned kerbside** and positioned to the north of the Maranga entrance (while keeping clear visibility and movement to the building entrance).

The benefits from a CPTED perspective are as follows:

a. **Clarity of use** – Defining the bus waiting space as separate from the café seating and general public seating would clarify the intended use of the space, promoting legitimate use and behaviour.
b. **Deter loitering** - Bus stops should be designed to deter loitering to improve the sense of comfort and safety for bus customers. Locating the bus stop kerbside is a more 'exposed' position, that is more visible and obvious if someone is spending time in the space for other purposes.
c. **User conflicts** – the kerbside location means people queuing for the bus do not need to cross the footpath and spill into the movement space.
d. **Flexibility** - Overflow / flexible seating is also recommended opposite the bus stop (other side of the footpath) to provide people with alternative places to sit and to accommodate extra capacity in peak times. Note that it is suggested that this is uncovered to allow clear views towards the building entrance.
e. **Sightlines** – The kerbside location is highly visible from the street and Police Station, rather than being 'set-back' the landscape. There is a clear line of sight between the driver and people waiting.
f. **North of Dalton for the head of the stop** - Options to locate bus shelters further south on Dalton Street have been considered, however this is less desirable from a CPTED perspective because this area will not have reliable supervision.

A drawing package (BM240598_Dalton_St_proposed_bus_stop.pdf) was subsequently prepared and illustrates the preferred bus top configuration from a CPTED perspective (illustrated in Figure 1).

Figure 1: Bus Stop arrangement for Dalton Street, prepared by Boffa Miskell 2024.

Lighting advice:

We have reviewed the Lighting Concept design (***Figure 2***) and are supportive of this approach which reflects CPTED advice given to the lighting design team in October. The following summarizes the CPTED advice:

1. **Te Aka Public Realm** – From a CPTED perspective it is recommended that a low level of light is provided throughout this space so that people can see if someone is in the space, but not overly lit to encourage people to move through the space. The lighting design should enable flexibility to support events. Light edges of the space as a backdrop to silhouette people in the public realm and support passive surveillance, this includes the Plane trees and light spill from glazing from the Library and Chambers built edge.
2. **Chambers West –** This space will not be used at night and lighting could be low level – sufficient to see if there is someone in the space. Lighting to the west (rear) wall of the Chambers is recommended to define the edge of the space and silhouette people within the space. The café may have independently controlled lighting to enable evening use of the outdoor space. The bus stop will need to meet a higher lux level and will be provided outside of the Te Aka project. This will help to spill into the public space and footpath.
3. **Court Space** – Bright, pole mounted lighting to encourage movement through rather than dwelling.
4. **Southern Lane** – This will read as a street even if it technically is not a street. Recommend a consistent warm tone of lighting on poles.
5. **Station Street –** The existing lighting on Station Street is inconsistent due to aged lights and trees. The two proposed light poles on the southern side of Station Street are important to cast wide coverage beneath the trees, as lighting levels in the public realm are lower / atmospheric. Station St could potentially be too dark to be comfortable at night, now that poles within the pre-demolition landscape have been removed.
6. **North south pedestrian link** - The route through the centre of the site between Library and Maranga will need to be considered carefully from a lighting perspective. Due to the lack of passive surveillance and entrapment risks, it is recommended not to encourage use of the route when the buildings are not open. Therefore, this route should not be lit all the time. Motion-activated security could assist with deterring rough sleeping and is recommended be included in the lighting design.
7. **Southern car park** – Accessible car parks need to meet NZ Standards with lighting from overhead poles. That is all that is required from a CPTED perspective as this space should not be used generally at night.
8. **Turning lights off 12-6am** – It was discussed that lighting is turning off late at night to meet Greenstar requirements, from a CPTED perspective this is acceptable.

Figure 2: *Lighting Concept Plan for the Library, prepared by Energy Light*

Appendix Three: Hostile Vehicle Threat – Boffa Miskell

Boffa Miskell

Memorandum

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Dunedin 9016
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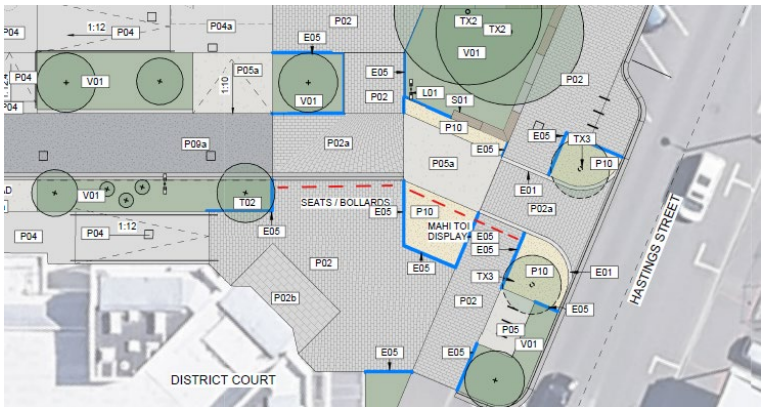
Attention:	Darran Gilles and Alix Burke
Company:	Napier City Council
Copy to:	Athfield Design Team
Date:	4 November 2024
From:	Prepared by: Kylie Boivin: Senior Landscape Architect and CPTED Practitioner
Message Ref:	**Te Aka Hostile Vehicle Mitigation**
Project No:	BM200778B

Boffa Miskell has been engaged by Napier City Council to provide CPTED advice for the Te Aka and Maranga projects in relation to Hostile Vehicle risks. The following summarises our advice to date.

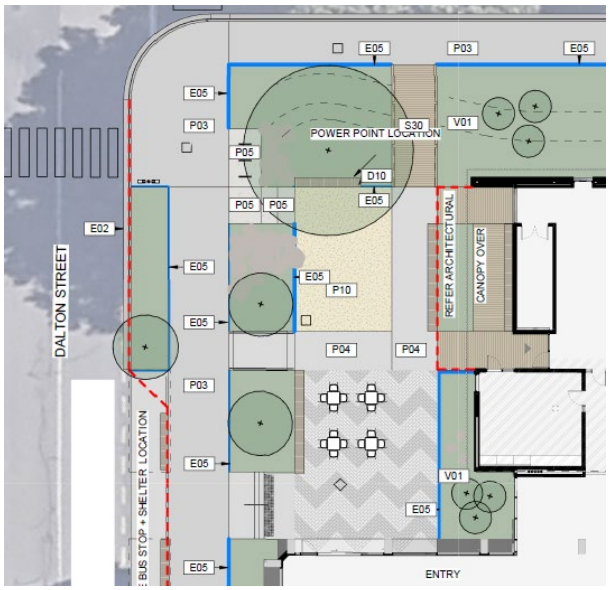
This advice comes with a caveat that hostile vehicle mitigation should be based upon a risk assessment, which is outside our area of expertise. It is recommended as part of a thorough approach that this is undertaken by others (such as a security consultant) in order to understand the level of protection required as part of the overall design response. At a minimum, a discussion with the Ministry of Justice is recommended to understand the specific security needs of the Courthouse and the adjoining public realm in particular, noting that there can also be risks associated with other terrorist threats, i.e. from parked vehicles, individual acts and in relation to large public gatherings.

Court Space

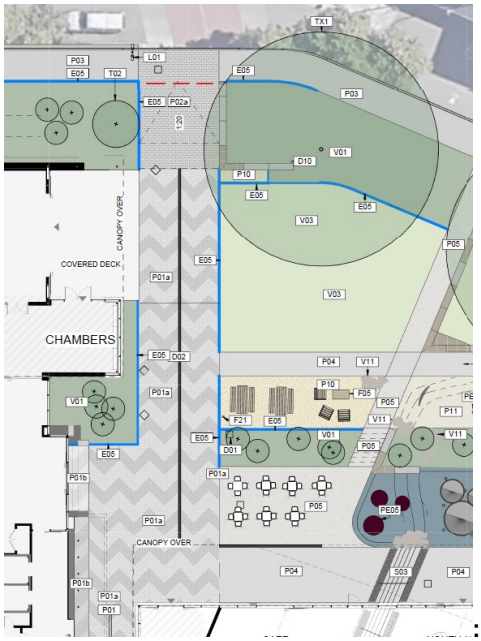
From a high-level perspective, the space adjoining the Courthouse could be accessed by vehicles easily via the lane (however not at speed). Fixed elements would be recommended between the lane and forecourt space (see dashed red line in the image below). There is a preference to not use bollards as they are considered to be 'hostile architecture' and can increase the perception of risk and sense of authority/control. Integrated features (such as a plinth to display art, fixed seating or objects would be a preferred approach and have broader benefit for the public space.



Public Space to the West of the Council Chambers
It would be difficult for a vehicle to access this area given the level change and positioning of furniture and planting. As such, no change is suggested to the design at this stage (subject to the findings of the risk assessment).



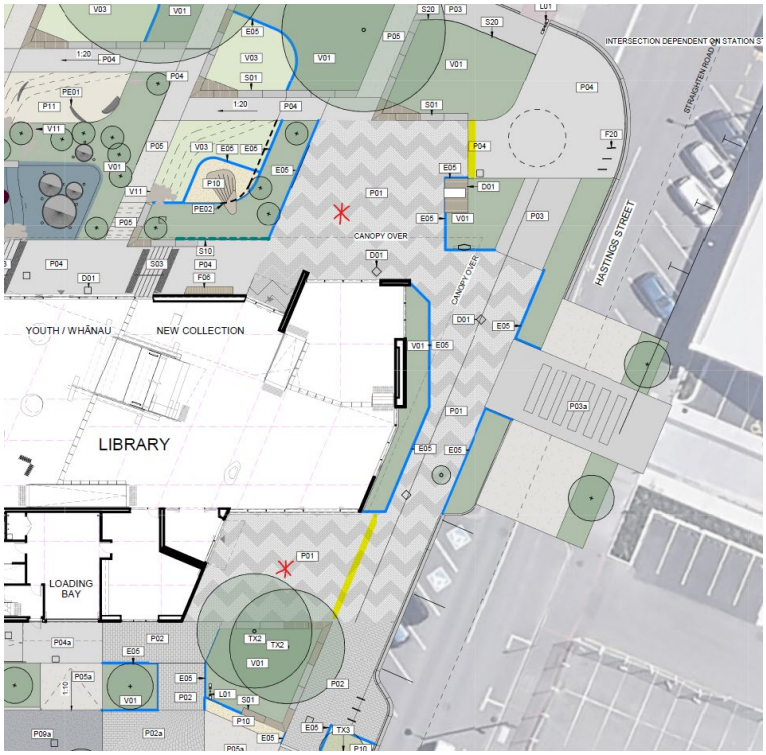
Chambers East Lawn Area
This space is required to provide vehicle access for events and general service needs. The space is also designed to be able to accommodate groups of people, which could include protesters. As such, there could be a risk to public safety if a vehicle was to access this space at speed during such an event. Given vehicle access requirements, removeable bollards would be recommended (see dashed red line in the image below) which could be generally locked. The risk assessment would however be beneficial in determining if this level of protection is justified.



Hastings Street Arrival Spaces
These spaces could be accessed by a vehicle after mounting the kerb.

North Arrival Space
The arrangement of proposed planting and landscape elements makes the route into the space indirect and makes it more challenging for the vehicle to travel at speed. The space marked in yellow in the image below could include a removeable bollard, however it would be ideal if the space was as open and welcoming as possible.

South Arrival Space
This space will generally be used for movement through, rather than gathering. The risk here is more to the building than people. Vehicle access is required in order to load large objects to the library on the south facing glazing, so if any elements were to be included in this space, it would ideally be removeable bollards and align with the yellow line in the image below.



Summary

This CPTED advice in relation to potential hostile vehicle threats is high level and is based upon our understanding to date of how the spaces and buildings will be used and observation of similar spaces in New Zealand. Typical instances of vehicles being intentionally driven into buildings / spaces are where there are high value goods or places where people gather. The NZ Government has prepared a crowded places strategy, but there is no current guidance on hostile mitigation. As such, we recommend that a specific risk assessment is undertaken to confirm the level of risk associated with the project and to more fully understand what the appropriate design response should be.

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Appendix Four: Te Aka Precinct Road Safety Review - Stantec

39

Road Safetyt

Stantec

Road Safety Review

To:	Megan Walker Boffa Miskell Christchurch	From:	Mike Smith Level 3, 2 Hazeldean Road Addington, Christchurch 8024 NEW ZEALAND Mail to: PO Box 13052, Christchurch 8140
Project/File:	310206406	Date:	13 March 2025

Reference: Te Aka Precinct Road Safety Review

1 Introduction

This safety review has been undertaken to determine potential road safety elements, along with potential risk to users to ensure that safety of all users is identified, as far as reasonably practicable, for the proposed design for the Te Aka Precinct.

This Safety Review has been undertaken by a single expert road safety and CPTED practitioner. In accordance with best practice, this report has been peer reviewed by a second practitioner.

This report does not constitute a full Road Safety Audit. As requested, this review has been undertaken by a single person and does not meet the specified guidelines for a multi-person team. All effort and care have been applied to ensure that the process of the Road Safety Audit guidelines have been applied.

For consistency, a similar style of Road Safety issues and ranking for a formal Safe System Audit reporting has been applied, where applicable, ensuring that appropriate designer and client comments can be tracked throughout the project lifecycle.

2 Site Visit

A site visit has not been undertaken for this assessment. The auditor has relied on site photos supplied by the design team, aerial and street imagery (Google Street View©), and Napier City Councils GIS platform (Aerial imagery).

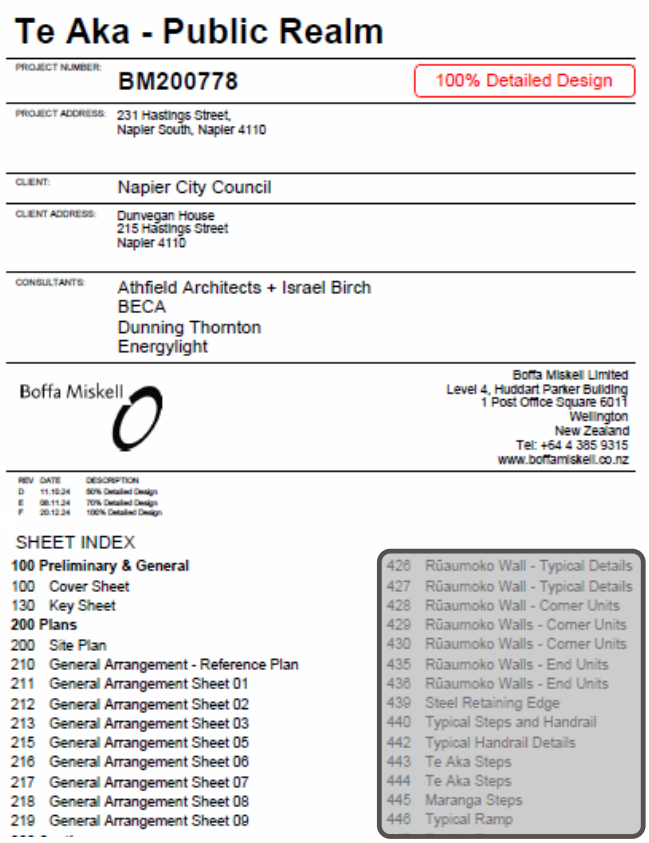
3 Supplied Information

The following drawings and documents have been supplied by the designer for this assessment. The material supplied to the auditor is to assist in an understanding of the project scope and intent.

A MS Team's© call has been undertaken on 15 April 2025 with the Megan Walker (Boffa Miskell) and Alix Burke (Napier City Council) to understand the design philosophy and intent.

13 March 2025
Megan Walker
Page 2 of 19

Reference: **Te Aka Precinct Road Safety Review**



Te Aka - Public Realm

PROJECT NUMBER: **BM200778** — 100% Detailed Design

PROJECT ADDRESS: 231 Hastings Street,
Napier South, Napier 4110

CLIENT: Napier City Council

CLIENT ADDRESS: Dunvegan House
215 Hastings Street
Napier 4110

CONSULTANTS: Athfield Architects + Israel Birch
BECA
Dunning Thornton
Energylight

Boffa Miskell

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REV	DATE	DESCRIPTION
D	11.10.24	90% Detailed Design
E	08.11.24	70% Detailed Design
F	20.12.24	100% Detailed Design

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Boffa Miskell
WITH ISRAEL BIRCH

LANDSCAPE DESIGN REPORT

TE AKA AND LCAP2

REVISION 1: LCAP2 PRELIMINARY DESIGN UPDATE
PREPARED FOR NAPIER CITY COUNCIL
JULY 2024

(17 Sheets)

Where applicable, screen captures of the design drawings have been taken to detail an issue, along with relevant aerial imagery.

4 Assessment Ranking System

The safe system audit process has ranking of identified safety concerns together with four categories of suggested actions as shown in Table 1.

Table 1. Safety concern ranking

Ranking	Suggested action
Serious	A serious safety concern that must be addressed and requires changes to avoid serious safety consequences.
Significant	A significant safety concern that should be addressed and requires changes to avoid serious safety consequences.
Moderate	A moderate safety concern that should be addressed to improve safety.
Minor	A minor safety concern that could be addressed where practical to improve safety.

The ranking of safety concerns is based on the probability of a crash combined with the most likely severity outcome of that crash, as indicated in Table 3 below.

4.1.1 Probability of a crash

The road safety auditors have drawn on historic crash rates or other research for similar elements of projects, or projects as a whole where appropriate, to assist in understanding the likely crash types, frequency, and likely severity that may result from a particular safety issue.
The probability of a crash in Table 2 has been qualitatively assessed on the basis of expected exposure (how many road users will be exposed to a safety issue) and the risk of a crash resulting from the presence of the issue.
It is sometimes helpful to use crash frequency as a surrogate indicator of crash probability as shown in Table 2

Table 2. Crash Frequency as a Surrogate Indicator of Probability

Crash Frequency	Crash Probability
Multiple crashes (more than one per year)	Very likely
1 every 1 to 5 years	Likely
1 every 5 to 10 years	Unlikely
Less than 1 every 10 years	Very unlikely

4.1.2 Severity outcome

A crash of a particular type can result in a range of severity outcomes for the people involved. For the purposes of this assessment, crash severity outcome in Table 3 has been qualitatively assessed as the most likely or predominant severity outcome on the basis of factors such as speed, type of crash, type of vehicles, and the people likely to be involved.5

The severity of an injury is determined in part by the ability of a person to tolerate the crash forces. A person wearing safety restraints in a modern motor vehicle will have a greater tolerance to the forces involved than a pedestrian or cyclists struck by a motor vehicle.

The road safety auditors have considered the likely user composition, and hence the likely severity of injury to the people involved in the crash. An able-bodied adult may have a greater ability to recover from higher trauma injuries than a child, whereas an elderly person may have poor ability to recover from high trauma injuries.

Table 3. Safety concern risk matrix

		Severity Outcome				
		Non-injury	**Minor**	**Safe System Injury Threshold**	**Serious**	**Fatal**
		Property damage only (PDO).	Injury that is not serious but requires first aid, or that causes discomfort or pain to the person injured.		Injury (fracture, concussion, severe cuts, or other injury) requiring medical treatment or removal to and retention in hospital.	Death occurring as the result of injuries sustained in a crash within 30 days of the crash.
Probability of a crash	**Very likely**	**Minor**	**Moderate**		**Serious**	**Serious**
	Likely	**Minor**	**Moderate**		**Serious**	**Serious**
	Unlikely	**Minor**	**Minor**		**Significant**	**Serious**
	Very unlikely	**Minor**	**Minor**		**Significant**	**Significant**

Qualitative risk ranking requires professional judgement and a wide range of experience in projects of all sizes and locations. Factors that have been considered when qualitatively assessing the probability of a crash and the most likely severity outcome of that crash are described below.

5 Observations and Findings

5.1 Pedestrian Crossings

A review of the street utilising Google Streetview© indicates that the crossing point on Hastings Street is formed as a raised platform. Drawing BM200778_216 details that this will be reformed as a raised platform, with inclusion of a formal pedestrian crossing. Similar treatments are proposed for the two crossing locations on Dalton Street.

It is noted that the crossing point on Station Street does not indicate similar raised table type treatments and appears to be an uncontrolled crossing point. This crossing point links to the civic court area north of Station Street and could reasonably be expected to be well used by people. While it is understood that Station Street will ultimately have reformation, and calming, this crossing remains a critical pedestrian linkage.

It is recommended that the Station Street crossing location is formed as a full pedestrian crossing point in accordance with the Traffic Control Devices Manual, and as detailed in the Pedestrian Planning and Design Guide.

13 March 2025
Megan Walker

Reference: **Te Aka Precinct Road Safety Review**

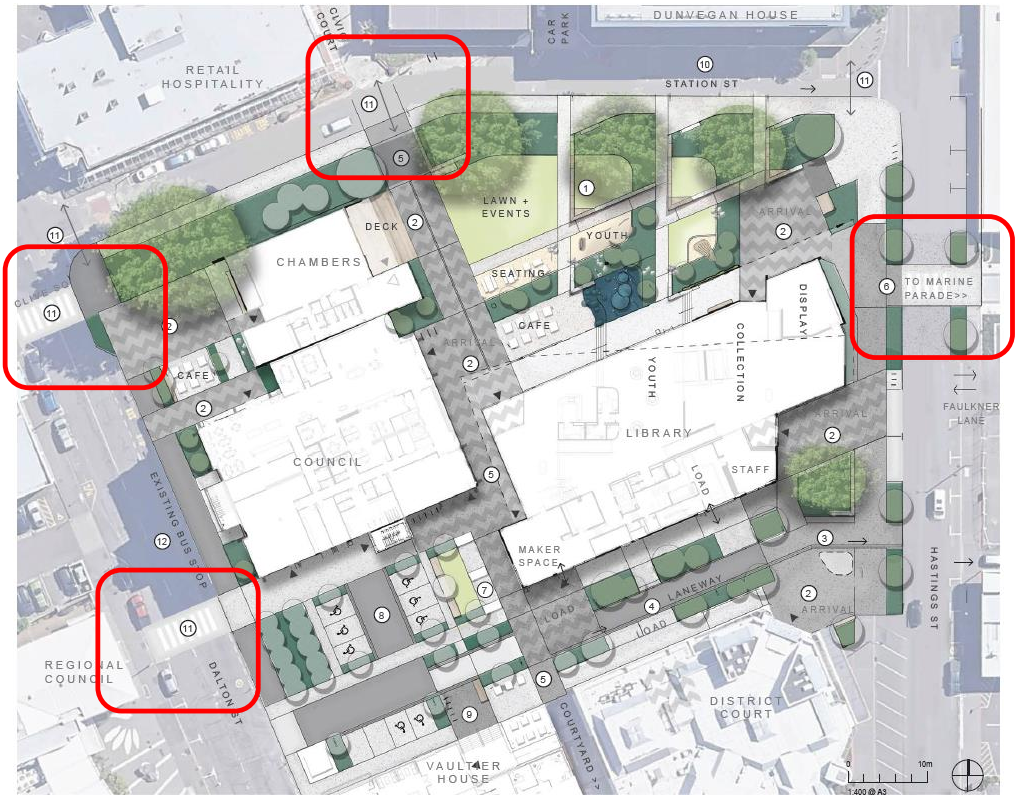


Figure 1: Pedestrian crossing locations *Source: Boffa Miskell Landscape Design; Sheet 11*

The design does not indicate all features and required controls for a pedestrian crossing over a roadway. It is assumed that these will be undertaken in accordance with relevant requirements, with full lighting, markings, signs and markings.

Care will be required for the location of advance pedestrian crossing signs as adjacent bus stops, on street parking and landscaping may obstruct forward visibility to the sign and the crossing.

Risk Ranking

The safe system audit team has assigned the following risk ranking to this safety concern.

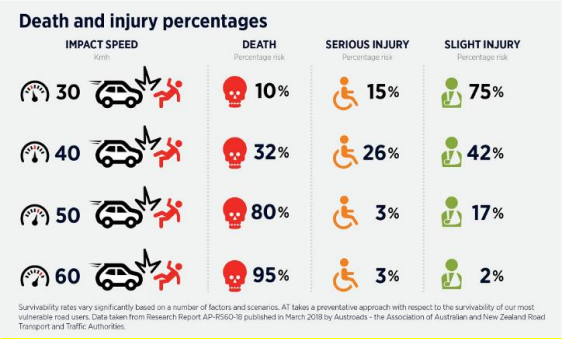
While the precinct is a generally slow speed environment, an impact of a vehicle with a pedestrian still retains a 10% chance of fatality at 30 km/h. It is important to note that 30 km/h also has a 15% chance of serious injury, and a 75% chance of slight injury, as indicated below.

Furthermore, research has shown that a person aged 70 years has a 400% greater chance of being killed at 32 km/h, demonstrating the vulnerability of elderly in pedestrian crashes.

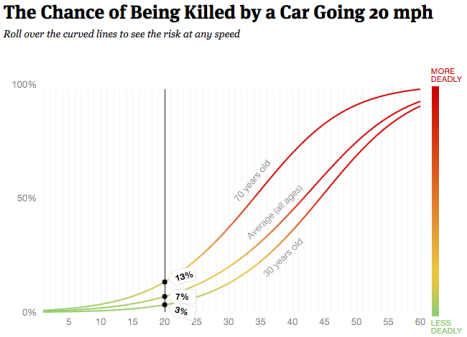
13 March 2025
Megan Walker

Reference: **Te Aka Precinct Road Safety Review**

Tillou et al[1] states: *In comparison to younger patients, older trauma patients suffer greater morbidity and mortality, and their prolonged and complicated hospital course results in poorer recovery of functional abilities.*



Death and Injury Percentages; *Source: AT research*



Fatality rate by age. *Source: Tillou et al*

The following assessment is made in consideration of the most vulnerable user, and highest injury expectation, being the elderly or mobility impaired.

It is recognised that the surrounding pedestrian crossings may be outside of this current project, however, these are considered a critical tool for the safe movement of pedestrians as the project opens. It is recommended that strong consideration be given to appropriate and safe transitional treatments to maximise pedestrian safety until the full facilities can be developed.

Probability of a crash	Crashes resulting from this safety concern are likely.
Severity outcome rating	The predominant outcome of a crash resulting from this safety concern is likely to be serious.
Risk ranking	The safety concern is therefore deemed to be serious.

Recommendation

1 That the Station Street crossing location is formed as a full pedestrian crossing point in accordance with the Traffic Control Devices Manual, and as detailed in the Pedestrian Planning and Design Guide.

2 That strong consideration be given to appropriate and safe transitional treatments for the pedestrian crossing locations outside of this project to maximise pedestrian safety until the full facilities can be developed

3 Include an assessment of all required sight lines, and movement paths, to ensure that intervisibility is maintained at the crossing points.

4 Include a signs and markings drawing, including full assessment of sign location for forward visibility to critical information, and marking styles that will be visible under all road conditions. This may include, but not be limited to, profile markings, or Wetmark™ or similar.

Decision Tracking

Design team response	

[1] *Long-term post-injury functional recovery: Outcomes of geriatric consultation; Tillou et al, JAMA Network | Journals, 2014*

Reference: **Te Aka Precinct Road Safety Review**

Client safety engineer comment	
Client decision	
Action taken	

5.2 Intersection Pedestrian Movement

It is indicated in the detailed design drawings (BM200778_213) that an upgrade will be made to the tactile pavers at the crossing point on the south side of Station Street, as indicated in Figure 2 below.

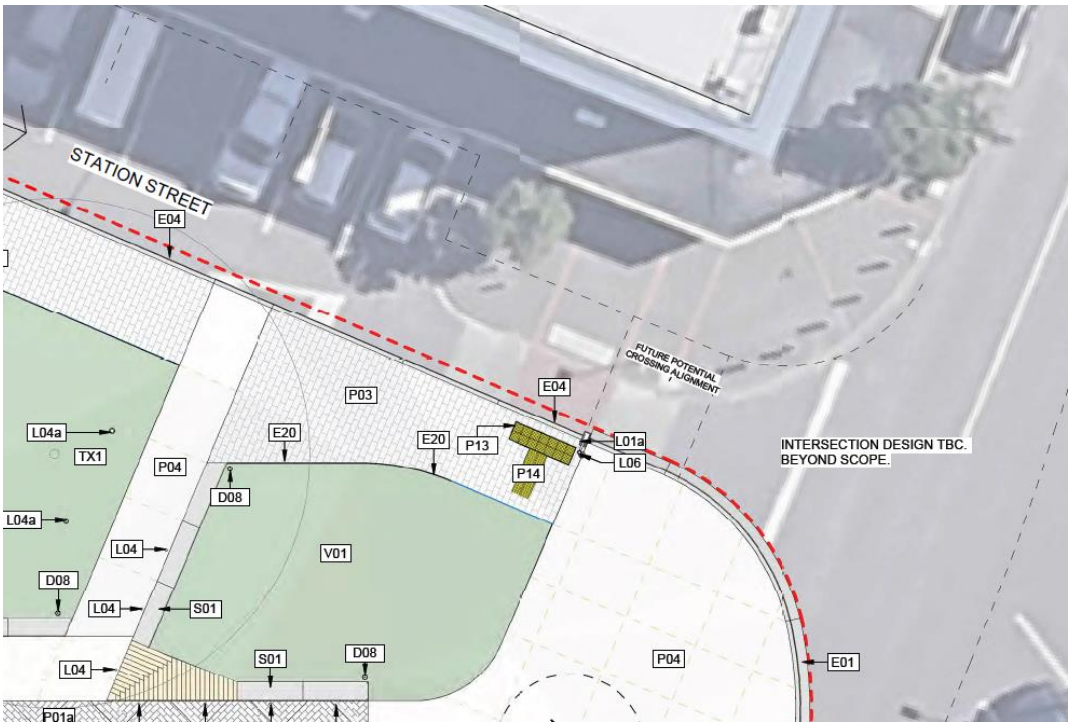


Figure 2: Pedestrian crossing facility, Station Street

It is acknowledged that the drawings indicate that the intersection design is to be confirmed, and that it is beyond the scope of the current project.

A review of Google Street View © indicates that the crossing point over Station Street, at the intersection of Dalton Street, is a raised platform that appears to act as a courtesy crossing point. A similar style is currently in place at the intersection of Station Street and Hastings Street.

The design details that Station Street will be narrowed to a single lane at the Hastings Street crossing, measured from the plans as being approximately 2m in width. This will require removal of a large extent of the raised crossing and is an opportunity to consider the full upgrade to a formal pedestrian crossing now, ensuring a safe facility, and saving rework in the future.

A lane of some 2m in width would be generally unsuitable for the movement of larger vehicles such as delivery trucks and refuse collection vehicles. An 8m rigid vehicle has a vehicle width of approximately 2.4m. A B99 vehicle has a standard vehicle width of 1.94m.

It is further noted that there is a long radius curve for the precinct side of Station Street. Considering that Station Street will be a one-way system towards Hastings Street, it is considered that this long radius is not required, and a short radius curve could enhance the area and calming measures for the general area.

Risk Ranking

The safe system audit team has assigned the following risk ranking to this safety concern.

A narrow road width, in conjunction with an informal crossing point that has a moderate to high demand can create risk of side swipe of a large vehicle with pedestrians waiting to cross over Station Street. Side swipe type crashes can cause serious injury, especially for the elderly or medically frail.

Probability of a crash	Crashes resulting from this safety concern are unlikely.
Severity outcome rating	The predominant outcome of a crash resulting from this safety concern is likely to be serious.
Risk ranking	The safety concern is therefore deemed to be significant.

Recommendation

1 Upgrade the Station Street crossing point at Hastings Street as a priority for this project

2 Review the road width, ensuring that the width is suitable for the passage of the largest expected vehicle without increasing the risk of side swipe type crashes for pedestrians waiting to cross.

3 Review the kerb line for the southeast quadrant, and modify the radii of the curve, preventing higher speed turn movements and restricting potential for the left turn in off Hastings Street.

Decision Tracking

Design team response	
Client safety engineer comment	
Client decision	
Action taken	

5.3 Station Street – On street parking

Station Street, in the vicinity of Hastings Street, will be reformed to a narrow single lane. At the location, Station Street is currently characterised as having perpendicular parking on the north side of Station Street. While not indicated, it is assumed that the perpendicular parking will be converted to parallel parking.

A characteristic of this change is the resultant depth of the parking stall, potentially resulting in a wide lane alongside the parallel parking, reducing the overall effect of a narrow-calmed street. This could be addressed through the enlargement of the footpath on the north side or utilising some of the current parking space for

temporary pop-up style treatments such as café platforms for seating, or temporary bike racks, until a permanent solution is developed.

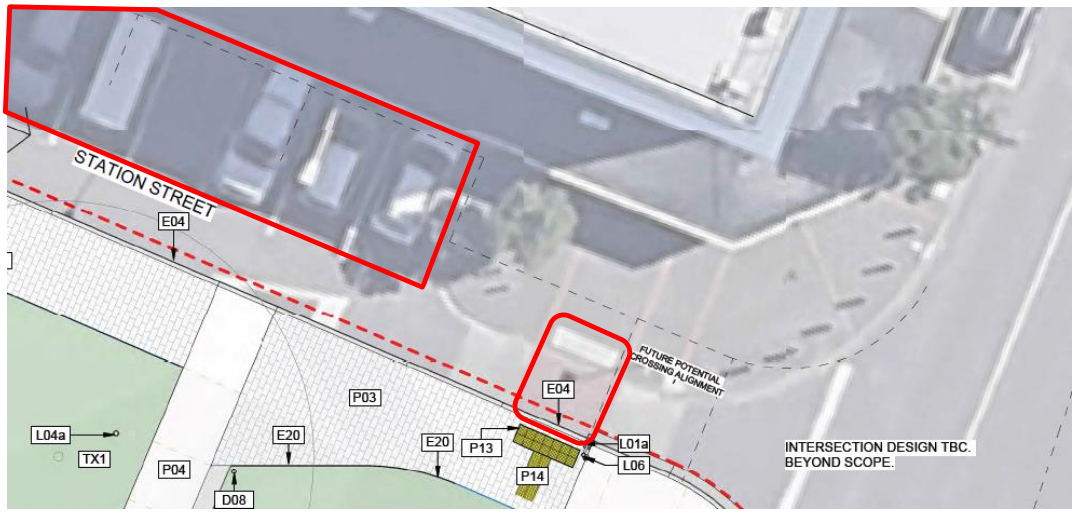


Figure 3: Pedestrian crossing facility and parking, Station Street

This change will result in a loss of parking capacity, with a potential for a higher level of circulation traffic for people searching for a park close to their destination.

The current raised platforms on Station Street will have an effect on vehicle speed, reducing speeds to levels whereby should a crash occur with a pedestrian, the injuries would typically be survivable. This is generally further enhanced by the street typology creating a calmed street feel, with the exception of the commentary above on wide lanes against the parking.

Risk Ranking

The safe system audit team has assigned the following risk ranking to this safety concern.

An impact of a vehicle with a vulnerable user at a slow speed would typically result in a low risk of serious injury. However, should the vulnerable user be elderly or medically frail, the likelihood of serious injury greatly increases.

Probability of a crash	Crashes resulting from this safety concern are unlikely.
Severity outcome rating	The predominant outcome of a crash resulting from this safety concern is likely to be serious.
Risk ranking	The safety concern is therefore deemed to be significant.

Recommendation

1 Reduce the effective lane width past the parking on Station Street by installing appropriate temporary kerbside treatments, combined with the formation of parallel parking until a permanent solution for Station Street can be constructed. The temporary reduction can be achieved through the use of planters, café platforms or street engagement treatments.

2 Install traffic calming features to reduce vehicle speeds, as far as reasonably practicable, ensuring that any crash would be within the human tolerable levels.

Decision Tracking

Design team response	
Client safety engineer comment	
Client decision	
Action taken	

5.4 Adjacent Street Form – Hastings Street

Hastings Street is being reformed, with Hastings Street trafficable lanes being generally shifted to the east, and a reallocation of diagonal parking to parallel parking on the east side of Hastings Street, as indicated in Figure 4 below.

Figure 4: Hastings Street reconfiguration

This street reconfiguration will result in a very wide aspect at the intersection of Station Street and Hastings Street, with a lateral lane shift occurring within the intersection form. It is identified that Station Street will be converted to a one lane road, being eastbound to Hastings Street. The supplied plans do not detail signs and markings to enforce and inform this one lane direction. It is assumed that these will be developed as part of a signs and lines design package.

Considering the intersection form, the design in the southwest quadrant (new formation) for the right turn out appears to enable a long radius curve that would enable faster turning speeds, especially given the wide space within the intersection. As detailed in Section 5.2, reducing the curve radii will inform the driver of a slow speed environment, and prevent high speed exit movements and assist informing northbound motorists that the left turn into Station Street is not available.

There are no details on the tracking of the expected vehicle type, and the impact of this turn movement on lane intrusion while turning or impacts on kerbside parking.

Considering the left turn out movement, it is understood that the current kerb line remains, yet the road centreline is displaced to the east, potentially resulting in a faster turn speed. This results in a wide area of road formation that detracts from a calmed street look and feel. Solutions can include, but not be limited to, flush medians with chevron bars for the left turn out, placement of continuity lines over the Station Street intersection, and lane edge definition for the lane shift occurring at Station Street, on Hastings Street.

It is recommended that the designers undertake full tracking assessments for the expected largest vehicle for movement along Station Street, including both the left turn out and the right turn out movement into Hastings Street.

Alter kerb lines to minimise vehicle turn speed for drivers exiting from Station Street, based upon the tracking indicated from the assessment undertaken as detailed above.

Risk Ranking

The safe system audit team has assigned the following risk ranking to this safety concern.

Probability of a crash	Crashes resulting from this safety concern are unlikely.
Severity outcome rating	The predominant outcome of a crash resulting from this safety concern is likely to be serious.
Risk ranking	The safety concern is therefore deemed to be significant.

Recommendation

1 Introduce additional slow speed control measures for the intersection of Station Street and Hastings Street. Solutions can include, but not be limited to, flush medians with chevron bars for the left turn out, placement of continuity lines over the Station Street intersection, and lane edge definition for the lane shift occurring at Station Street, on Hastings Street.

2 undertake full tracking assessments for the expected largest vehicle for movement along Station Street, including both the left turn out and the right turn out movement into Hastings Street.

3 Alter kerb lines to minimise vehicle turn speed for drivers exiting from Station Street, based upon the tracking indicated from the assessment undertaken.

Decision Tracking

Design team response	
Client safety engineer comment	
Client decision	

Reference: **Te Aka Precinct Road Safety Review**

Action taken	

5.5 Vehicle Movement into precinct

Access off Dalton Street has been enabled to provide movement into disability parking for the precinct area. It is understood that deliveries and vehicle movements associated with the library and areas such as the Marker Space will require access in some form.

The access is via a kerb cutdown over the footpath onto Dalton Street. While the design details the form to the kerb edge, there is a lack of detail on the changes required to enable the access, especially how it relates to pedestrian movement along Dalton Street, and the kerb side parking / bus stops.

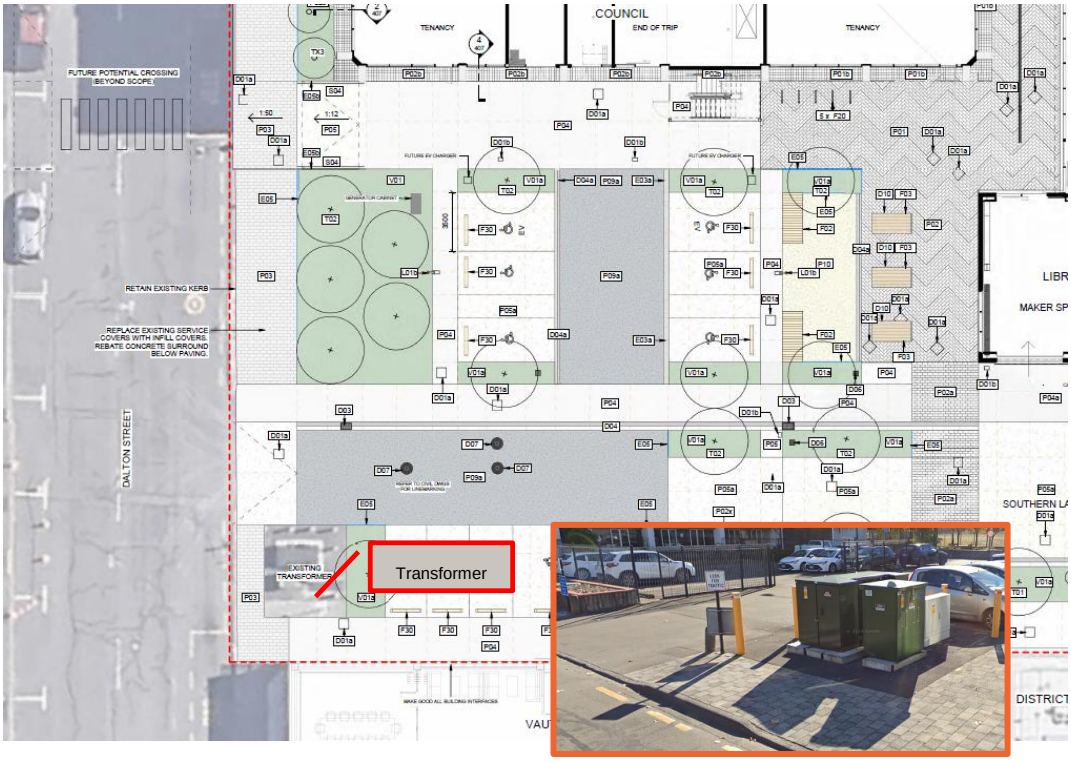


Figure 5: Dalton Street access configuration

On the southern side of the access onto Dalton Street is an existing utility kiosk, being a power transformer. The current design of the transformer impedes intervisibility between a driver exiting, and a pedestrian moving along the Dalton Street footpath. The transformer height is above the driver's eye height, eliminating all ability to observe a vulnerable user on the footpath, especially so for visually impaired and faster moving e-device users. It is noted on Google Street View © that additional signs have been installed warning pedestrians of emerging traffic.

The proposed design implies that pedestrians must yield to vehicles through the use of different surfacing typologies. The location and size of the transformer may require the design to consider formal pedestrian features such as symbols, for formal controls for traffic (if that is the intent), tactile pavers, speed platforms (access road) etc

at the access point, better defining the need for the most appropriate user to yield given the site constraints. At a high level of effectiveness is the inclusion of vehicle activated visual or audible warnings of emerging vehicles.

A vehicular access onto Dalton Street will require provision of suitable intervisibility sight lines at the access, ensuring that an exiting driver can identify approaching vehicles.

The design team advise that the expected user of the lane is service vehicles, library van and emergency vehicles that would complete the movement through the access, continuing through the laneway. Mobility users would typically access via Dalton Street and return to Dalton Street when exiting. The design and typology of the laneway would enable the general public to access from Dalton Street to Hastings Street, unless a suitable form of deterrent is installed.

It is critical that the design team has a good understanding of expected user, ensuring that this user and vehicle type does not result in locations where larger vehicles have poor intervisibility of vulnerable users due to blind sports in vehicle design.

It is acknowledged that the laneway may very well operate similar to the Oxford Street Plaza area around Te Pae Conference Centre in Christchurch, whereby vehicles and other users intermix at walking pace.

The design drawings indicate a movement lane width of some 5.5m, for two-way traffic, with an approximate 2.5m wide footpath alongside. It is assumed that the footpath and traffic lanes will be separated by a standard dish channel. A characteristic of the design is that drivers will be required to undertake a 90^{o} turn into the disability parking area, over the pedestrian path. The submitted plans do not indicate the tracking of either a B85, B99 or Semi-rigid vehicle. The B99 vehicle size is critical as this is the larger end of mobility adapted vehicles. This 90^{o} movement over the pedestrian path may be difficult for a mobility impaired driver, or elderly to observe people on their periphery, due to generally poor head / neck rotational ability.

Emergency vehicles are expected to have random access, including FENZ, Hato Hone St Johns and Police. All emergency service vehicles would typically be responding under lights and sirens, clearly defining their presence and priority movement. Movement, even under emergency situations, would be a low speed given the environment. Considering the larger vehicles (Fire Engine) it is recommended that tracking of that vehicle type be undertaken to ensure that there are no physical objects that would impede their movement into the precinct.

General public access as a through movement can raise concerns for pedestrian and vulnerable user safety. The proximity to the Court building raises a further element of disgruntled or malicious movement within the area. Where practicable, constraints should be installed that limit, as far as reasonably practicable, inappropriate movement, be it full time, or during times of larger events. This restrain can take many forms, ranging from temporary barrier / bollard systems, through to permanent systems that can be opened and closed by selected users.

Thinking of bollard systems, these can be automatic or manual. Manual bollards can be lockable, requiring someone to have a key set to gain access, or temporary and removable as indicated in the examples below.

Reference: **Te Aka Precinct Road Safety Review**

Temporary Bollard – event use only

Inground removable bollard

Automatic inground bollard

In ground systems that are automated have capacity to enable an emergency all down remote control from council building / library / courts, as required. This enables access to approved users without having to attend the site. Similar automatic bollards have been installed on Oxford Tce in Christchurch and will be a feature of the entertainment precinct around Te Kaha stadium in Christchurch.

Provision of access bollards restricts movement and has an additional feature of complimenting CPTED accessibility and security against malicious actors seeking to cause harm by vehicle.

Considering an appropriate form of control, full consideration should be given to installing the ground sockets at the time of development

Risk Ranking

The safe system audit team has assigned the following risk ranking to this safety concern.

The typology of the laneway design would visually inform the driver of a low-speed environment. However, given the proximity to the court building, and the possible negative or anti-social behaviour that may arise from the courts, their remains a risk that speeds, and movement may be higher, increasing the severity risk should someone be struck.

Probability of a crash	Crashes resulting from this safety concern are very unlikely.
Severity outcome rating	The predominant outcome of a crash resulting from this safety concern is likely to be serious.
Risk ranking	The safety concern is therefore deemed to be significant.

Recommendation

1 Install safe and effective vehicular access bollard restraints as required, especially where massing of people would require restriction of vehicle access.

Decision Tracking

Design team response	
Client safety engineer comment	

13 March 2025
Megan Walker

Reference: **Te Aka Precinct Road Safety Review**

Client decision	
Action taken	

5.6 Vehicle Path through Precinct

The vehicle path through the precinct generally follows that as defined in Figure 6 below.

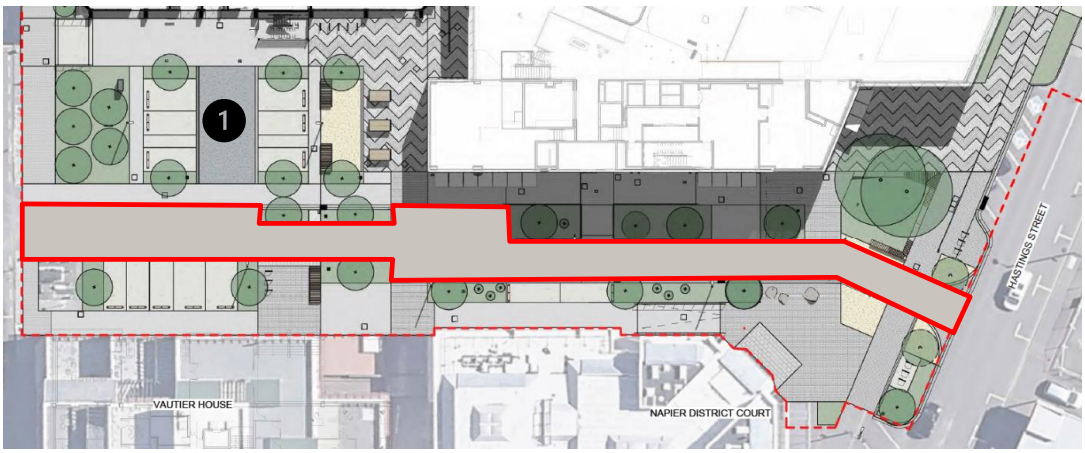
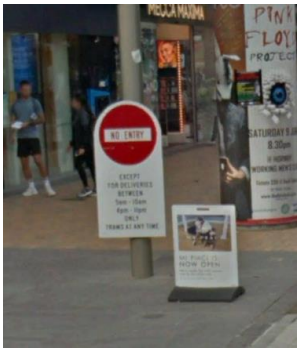


Figure 6: Precinct vehicle path

The trafficable space is approximately 5.5m wide as it enters from Dalton Street. East of the disability parking area, the trafficable lane reduces to approximately 3.5m and generally remains that width through to Hastings Street. Plans indicate (via arrows on the drawing – BM200778_200) that east of the disability parking (1), the lane is one way

It is acknowledged that at this phase of the design, there may not be signs and lines drawings. It is further acknowledged that the intent of the area is more in line with a calmed precinct, with potentially minimal signs and markings, in keeping with the intent of the design.

As a one-way system, there are regulatory obligations for signing the direction of travel, and the provision of NO-ENTRY signs to prevent drivers moving in a direction contrary to the main flow. This can incorporate access restriction signs such as that installed in Cashel Mall, Christchurch and Te Pae Conference Centre.



As a one-way system, there is no need, nor capacity for a left turn into the precinct area, off Hastings Street. In this regard, the current radii of the left turn can be reduced to an absolute minimum required to enable the right turn out only.

Kerb tactile pavers will be required for the pedestrian movement over the laneway, should vehicles have priority.

Risk Ranking

The safe system audit team has assigned the following risk ranking to this safety concern.

Probability of a crash	Crashes resulting from this safety concern are very unlikely.
Severity outcome rating	The predominant outcome of a crash resulting from this safety concern is likely to be serious.
Risk ranking	The safety concern is therefore deemed to be significant.

Recommendation

1 Install the required regulatory signs for a one-way lane

2 Install access restriction / exceptions signs as appropriate for the intended and permitted user.

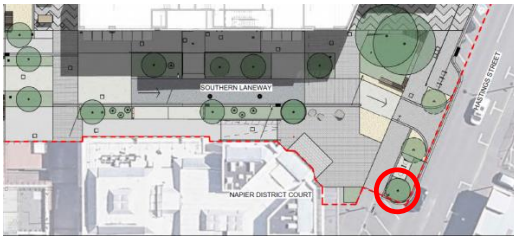
3 Adjust kerb lines to restrict as far as reasonably practicable the left turn in movement from Hastings Street.

Decision Tracking

Design team response	
Client safety engineer comment	
Client decision	
Action taken	

5.7 Pedestrian intervisibility at crossings

It is noted that there is a discrepancy between the Landscape Plans and the Detailed design plans on the form in and around this vehicle crossing. Some drawings show what appears to be planting, other not so. It is understood that the “100% Detailed Design” plans take precedence.



Plan BM200778_200

Landscape Plans – Page 11

The landscape plans indicate a kerb connection with no radii at the junction, with planting alongside the lane at kerb boundary, while the 100% Detailed Design plans indicate a curve radius for the same location. We have considered the configurations with the curve radius detailed.

The details of the connection indicate that the existing street trees are to be retained at this Hastings Street kerb line. A review of Google Street View © indicates that the trees are well established, and they appear to be trimmed to such a height that they would not impose a sight line restriction to an exiting driver. The lower limbs should be cleared to a height of 1.5m to ensure clearance of a driver's sight line (typical vehicle), however a small truck driver's eye height would be approximately 2m, dependant on vehicle type / model. The intervisibility sight lines should be checked on site.

The design team have confirmed that the diagonal parking outside of the Courts will remain. The current use of this area is considered to not affect any intervisibility sight lines, however these should be checked on site. The proposed precinct layout eliminates one diagonal park space to enable the new formation.

The landscape plan indicates a plant (T02 – Circled above), being a "Small Grade Tree in Garden". The combination of a small tree, with potential for low branches within the sight line, and a large van parked in the first diagonal park could result in a blockage to the intervisibility sight lines sufficient for an exiting driver to not see an approaching vehicle on Hastings Street.

Risk Ranking

The safe system audit team has assigned the following risk ranking to this safety concern.

Probability of a crash	Crashes resulting from this safety concern are unlikely.
Severity outcome rating	The predominant outcome of a crash resulting from this safety concern is likely to be serious.
Risk ranking	The safety concern is therefore deemed to be significant.

Recommendation

1 Undertake an intervisibility sight line check for drivers exiting from the laneway, ensuring that the existing trees will not impede intervisibility.

2 New planting should be selected sufficient that the plants / trees when installed, do not obstruct intervisibility sight lines.

Decision Tracking

Design team response	
Client safety engineer comment	
Client decision	
Action taken	

5.8 CPTED – Related to Road Safety

In considering the overall design, and the proximity to adjacent buildings and land use, we remain of concern, from a CPTED risk, of a vehicle travelling along Hastings Street, veering right into plaza area and direct at the mixing /;

engagement area around the Courts. A disgruntled actor with malicious intent could cause significant injury if they are not prevented from a high-speed movement.

Simple CPTED solutions could include sufficient planting and landscape features around the projection path, to prevent a direct high-speed access into the plaza area.

This type of event has caused significant injury and death internationally and has required authorities to rethink their risk and response approach to locations where this type of event could occur.

Risk Ranking

The safe system audit team has assigned the following risk ranking to this safety concern.

The following assessment is ranked based upon a CPTED threat, with no mitigation to the risk of a high-speed vehicle intrusion into the front of the court building.

Probability of a crash	Crashes resulting from this safety concern are very unlikely.
Severity outcome rating	The predominant outcome of a crash resulting from this safety concern is likely to be fatal.
Risk ranking	The safety concern is therefore deemed to be serious.

Recommendation

1 Install appropriate landscape and planting forms to minimise the threat of high-speed vehicle intrusion into areas of mass assembly of people.

Decision Tracking

Design team response	
Client safety engineer comment	
Client decision	
Action taken	

5.9 Lighting Design / CCTV

While the detailed design pack shows luminaire pole, there is no indication on effectiveness of the level of lighting proposed for the site.

Poor placement of luminaires within the site can result in areas of low lighting within the precinct, creating a CPTED risk, especially in the evenings and during winter commute times, that may need additional lighting to mitigate CPTED risks.

While not stated, it is assumed that the environment would have effective and appropriate CCTV coverage, be it from council buildings or from the court building. Given the extent of the work required to develop the site, it is prudent that ducting and cabling be installed, even if the actual CCTV cameras are not to be included in this first phase.

Reference: **Te Aka Precinct Road Safety Review**

Risk Ranking

The safe system audit team has assigned the following risk ranking to this safety concern.

The following assessment is ranked based upon a CPTED threat, with less than standard lighting and CCTV treatments.

Probability of a crash	Crashes resulting from this safety concern are very unlikely.
Severity outcome rating	The predominant outcome of a crash resulting from this safety concern is likely to be serious.
Risk ranking	The safety concern is therefore deemed to be significant.

Recommendation

1 Install precinct wide lighting to meet the applicable AS/NZS Lighting standards.

2 Install appropriate CCTV camera systems, providing appropriate and effective coverage of the precinct.

Decision Tracking

Design team response	
Client safety engineer comment	
Client decision	
Action taken	

Yours sincerely

Stantec New Zealand

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Audit Year	Reference	Recommendation	Priority	Management Comment	Progress July 2025	Commentary July 2025
2024	5.1	**Severance payment disclosure in the financial statements** - relevant personnel are familiar with the severance disclosure requirements of the Local Government Act 2002 and accounting standards, and management review the disclosure to supporting information to ensure its accuracy before providing the information to the Finance team for inclusion in the annual report. As an overall and final check for accuracy with the requirements, management should also review the disclosure in the financial statements.	Necessary	We acknowledge that the 2023/24 period faced challenges due to significant staff changes within the People and Capability team. However, the team has since enhanced its skills to meet these requirements and implemented improved record-keeping practices for severance payments, ensuring that information for 2024/25 is accurate and provided in a timely manner.	Complete	Severance pay information has not yet been reviewed by Audit NZ for 2024/25, but we remain confident that this issue will not remain for this Annual Report.
2024	5.2	**Compliance with financial delegations -** Purchases are approved within delegated financial authority. Management should also consider including definitions or guidance in the policy as to what constitutes a single transaction (for example, purchase order, asset item).	Necessary	The manager has been advised of the issue and the correct treatment for future, and we have put monitoring for this situation in place across Council. The new Financial Delegations Policy which will be implemented during the 2024/25 financial year provides definitions and guidance on this matter, and training and acceptance of the policy will happen for all DFA holders over the implementation of the policy.	Complete	The new Financial Delegations Policy is in place. We await review from Audit NZ to ensure this can be signed off for the 2024/25 Annual Report.
2024	5.3	**Review of monthly reconciliation schedules -**The City Council's policy, which is consistent with accepted good practice requires reconciliations be prepared and reviewed after each month end.	Necessary	New procedures are in place to ensure ease of approval and timeliness. For the 2024/25 year timeliness has been a focus and so far all reconciliations for bank, creditors and suspense accounts have been reviewed within the following month.	Complete	For the 2024/25 year timeliness continues to be a focus and all reconciliations for bank, creditors, and suspense accounts have been reviewed within the following month. We await review from Audit NZ to ensure this can be signed off for the 2024/25 Annual Report.
2022	4.1	**Attendance and resolution times performance measures** - We continue to recommend that the City Council address the evidential issues associated with the Attendance and resolution times performance measures, and any possible impacts on the City Council's 2022/23 annual report.	Necessary	The issues raised previously have been addressed by Council. Unfortunately the new data entry errors found have been in other areas from where our efforts were previously focused. Now that we are aware of these issues we have provided further training to avoid the errors, and further exceptions testing to identify some of these errors.	In progress	Audit NZ have reviewed a sample of service requests for the 2024/25 Annual Report and have found that there are discrepancies with the time recorded compared to the actual call log from Liquid Voice. Although this is not on all calls, it is significant enough that our results for the attendance and resolution time performance measures cannot be verified for the 2024/25 Annual Report. As this has been highlighted so soon into the 2025/26 year, officers are reviewing calls taken to date, and planning reviews throughout the year to confirm whether this issue has been addressed before we get to the 2025/26 audit.
Prior to 2016		**High annual leave balances -** Encourage those with high annual leave balances to take leave.	Necessary	Managers have been directed to reduce annual leave balances and leave plans are being implemented for staff with significant balances	In progress	Recent reports continue to show an improvement in leave balances compared to the same time last year.
2015		**Conflict of interest risk management – interest register** - The register could be improved by documenting the assessment of interests disclosed for any potential conflicts and how any identified conflicts will be managed or mitigated. Apply the interest register, to lower management level staff, consultants and contractors involved in procurement and projects. Declarations should be updated at regular intervals (eg six monthly). Training should also be provided on the conflict of interest policy and should apply to Councillors, senior management, management and staff involved in the procuring of goods and services.	Beneficial	The Conflict of Interest process review was completed by the end of the 2024 calendar year. The new process via Sharepoint is now live and training has been provided to all leaders.	Complete	We await review from Audit NZ to ensure this can be signed off for the 2024/25 Annual Report.
		Procurement and contract management - Provide additional guidance to staff involved with procurement about the documentation that needs to be retained to support the procurement (including contract management) activity.	Necessary	A Procurement and Contract Management Improvement Plan is in place and progress is being reported back to management regularly.	In progress	Procurement and Contract Management updates are provided to the Audit and Risk Committee separately.
2022	5.2	**Depot's systems and processes** – Council undertake a review in general of the modus operandi and systems and processes at the Depot.	Necessary	We have taken this recommendation on board and will begin an internal review as soon as resources allow.	In progress	Good momentum continues to be made across an initial set of projects, albeit there have been some delays due to additional complexity and capacity/focus due to the organisational re-design. Esker and improved purchasing practices have been rolled out. There continues to be monitoring and support to embed the change however overall, this is going well. Further improvements have been identified to the operation of the warehouse. A developer is on board and the etimesheet solution is progressing. The work has identified opportunities to improve recording of call-out and standby data The field staff app is well progressed, and work is underway on the Team Leader/admin app for approvals. Overall it is expected these are embedded and in use across all team by the end of October at the latest. Work is underway to ensure all operational staff have a device (phone or tablet) to enable both purchasing and etimehseet systems. A detailed set of changes and requirements for cost tracking has been documented and a small project team is coming together to work through the change impacts and implementation of these. A dedicated finance resource with the right systems and job costing knowledge has been secreted on a fixed term contract to support this work. He will be available from late July to progress the work. The above changes continue to are ambitious, and a "better not perfect" approach is being taken. Further refinements are expected across these areas over FY25/26 as knowledge and understanding deepens. A specific area of refinement is likely will include deeper consideration of what data is tracked via operational practices and how this intersects with the financial data. Once the above changes have progressed and are being embedded, a next phase of work will be planned. It should be noted that the focus for the above work is on both Water Services Operations and City Operations.
2019		**Kennedy Park: Weakness in Till Takings sign off** - A more appropriate sign–off process be put in place, where the employee signing off the Cashier Balance Sheet report can be easily verified.	Beneficial	Kennedy Park staff have been provided with a digital solution, however due to internal processes this solution is not able to be implemented. Further work on a solution is in progress	Complete	The Financial Controller visited Kennedy Park on 21 May 2025 to confirm an interim process which is expected to meet Audit requirements. We await review from Audit NZ to ensure this can be signed off for the 2024/25 Annual Report.
2021		**Delegations** - A procedure be put in place for approving operating expenditure in excess of $1,000,000.	Necessary	Outstanding. A review is underway to address this issue.	Complete	The new Financial Delegations Policy is in place. We await review from Audit NZ to ensure this can be signed off for the 2024/25 Annual Report.

2019		**Stocktake of fixed assets** - A periodic stocktake of fixed assets be completed to ensure that all assets included in the financial records are still held by the City Council.	Beneficial	The City Council have now started completing a stocktake of all fixed assets, however it will take some to complete.	On hold	The finance team do not currently have the resource to complete fixed asset stocktakes proactively. Management Accountants manage reviews and disposals as part of the year end capitalisation process but this is not a full replacement for stocktakes.

INTERNAL POLICY

Sensitive Expenditure Policy			
Approved By	Chief Executive		
Department	Corporate and Commercial Services – Finance		
Original Approval Date	12 June 2011	**Review Approval Date**	24 June 2025
Next Review Deadline	24 June 2027	**Document ID**	349335
Relevant Legislation	Local Government Act 2002 Local Authority (Members' Interest) Act 1968 Public Audit Act 2001		
NCC Docs Referenced	Procurement Policy		1367676
	Motor Vehicle Policy		218460
	Disposal of Surplus Assets Policy		219066
	Recognition Policy and Framework		382700
	Gifts and Gratuities Policy		556126
	Credit Card Policy		352631
	Koha Policy		1330767
	Conflict of Interest Policy		350732
	Relocation Policy		1370181
	Financial Delegations Policy		446057
	Elected Members' Allowances and Expenses Policy		1755748
	Travel Policy		837431

Purpose

The purpose of this Policy is to provide Elected Members, the Chief Executive and Council employees with a clear framework for managing sensitive expenditure. The most fundamental fact applicable to all expenditure by Council is that money used is ratepayers' funds. Consequently, sensitive expenditure needs to be consistent with the standards of probity and prudence that are expected of a public entity and be able to withstand elected members and public scrutiny.

Definition of sensitive expenditure: Expenditure by a public entity that provides, has the potential to provide or has the perceived potential to provide a private benefit to an individual staff member of a public entity that is additional to the business benefit to the entity of the expenditure. It also includes expenditure by a public entity that could be considered unusual for the entity's purpose and/or functions.

Policy

1.0 Principles applicable to sensitive expenditure

In order to satisfy the requirements above, the Council expects all employees involved in arranging, making or approving expenditure to:

- do so only for Council purposes (i.e. expenditure is consistent with the Long Term Plan or Annual Plan);
- exercise integrity, prudence and professionalism
- not derive personal financial gain (unless a conflict of interest has been declared and the transaction is managed in according to the procedure agreed in the declaration of the conflict of interest);
- act impartially;
- ensure the expenditure is moderate and conservative in the extent of the given situation;
- ensure the transaction is made transparently
- ensure the transaction is approved with the proper authority based on this policy, the Financial Delegations Policy, and other relevant policies
- have read and adhered to this and other relevant Council Policies;
- record the business purpose and recipients of all sensitive expenditure
- ensure transactions are appropriate in all respects.

The above principles and Council Policies should be applied comprehensively (i.e. no single principle or Policy should be excluded)

2.0 Deciding when sensitive spending is appropriate

2.1 For all expenditure, consideration needs to be given to Fringe Benefit Tax (FBT) requirements.

2.2 In deciding what appropriate sensitive expenditure is, elected members and employees need to take account of both individual transactions and the total value of sensitive expenditure.

2.3 Even when sensitive expenditure decisions can be justified at the item level, the combined amount of spend on a category of expenditure may be such that, when viewed in total, the entity could be considered extravagant and wasteful.

3.0 Responsibilities of the Mayor, Councillors and Executive Leadership Team

3.1 To be truly effective, this Sensitive Expenditure Policy, procedures and other controls must be embedded in the Council's values, philosophy practices and business processes. When this occurs, everyone at Council becomes involved in the proper and prudent management of sensitive expenditure.

3.2 Overall responsibility for this Policy rests with the Mayor, Councillors and the Executive Leadership Team (ELT). This group is required to make it clear to employees what is and is not 'acceptable sensitive expenditure' and model these behaviours to the highest standard.

4.0 Good controls and judgement

4.1 While the good controls at Council will assist with good sensitive expenditure conditions, good judgement will also be required. This is because it is not possible or desirable to attempt to set rules for every possible situation that may arise. In the absence of a specific rule for a given situation, the Mayor, Councillors and ELT are expected to exercise good judgement by taking the principles in this policy into account in the context of the given situation.

4.2 The Mayor, Councillors and ELT are required to ensure transparency in both sensitive expenditure and remuneration systems, to avoid any trade-off between the two. Items of expenditure that may not be justified under the principles of this policy should not be included as part of the employee's remuneration for the purposes of avoiding scrutiny against sensitive expenditure principles.

5.0 General controls for reimbursement

5.1 The approver must be the supervisor or manager of the recipient of the benefit derived from sensitive expenditure and hold the appropriate financial delegation, or someone of similar or greater seniority. Refer to the NCC's Financial Delegation Policy (Doc ID 446057)

5.2 All claims must be submitted promptly after the expenditure is incurred. Except in exceptional circumstances, this means within one month.

5.3 Sensitive expenditure will only be reimbursed if it is deemed reasonable, actual and has been incurred directly in relation to Council business.

5.4 Valid GST compliant invoices/receipts and other supporting documentation must be maintained/submitted for all sensitive expenditure. Credit card statements and Eftpos receipts do not constitute adequate documentation for reimbursement.

5.5 All claims must clearly state the business purpose of the expenditure where it is not clear from the supplier documentation supporting the claim.

5.6 All claims must document the date, amount, recipients of any benefit and description.

5.7 Wherever possible, Councils preferred suppliers are to be used. Refer to NCC's Procurement Policy (Doc ID 1367676).

6.0 Approval for sensitive expenditure

6.1 Approval for sensitive expenditure must be:

- Given only when the person approving the expenditure is satisfied that there is a justified business purpose and all policies have been adequately met.
    - Given before the expenditure is incurred, whenever practical.
    - Made only when budgetary provisions and delegated authority exist.
- Given by the person senior to the person who will benefit or might be perceived to benefit from the sensitive expenditure. The approver must be the supervisor or manager of the recipient of the benefit derived from sensitive expenditure and hold the appropriate financial delegation, or someone of similar or greater seniority. Refer to the NCC's Financial Delegation Policy (Doc ID 446057)

6.2 Sensitive Expenditure where an Elected Member is the recipient will be reviewed and approved by the Mayor for compliance with this Policy. Refer to NCC's Elected Members' Allowances and Expenses Policy (Doc ID 1755748).

6.3 Sensitive Expenditure where the Mayor is the recipient will be approved by the Chief Executive. A report of all sensitive expenditure where the Mayor is the

recipient will be provided to the Audit and Risk Committee who will review for compliance with this policy.

6.4 In the case of the Chief Executive, the Mayor shall approve the expenditure. A report of all sensitive expenditure where the Chief Executive is the recipient will be provided to Audit and Risk Committee who will review for compliance with this policy.

6.5 In the event that both the Mayor and the Chief Executive attend an event and incur an expense that is considered sensitive expenditure, these expenses should be reviewed and approved by the Chief Financial Officer. These expenses are then reviewed by the Audit and Risk committee.

Specific Areas of Expenditure

7.0 Credit cards

Using credit cards is not a type of sensitive expenditure. However, they are a common method of payment for such expenditure. Employees issued with Credit Cards need to refer to NCC's Credit Card Policy (Doc ID 224194)

8.0 Travel

8.1 For information specific to Travel refer to NCC's Travel Policy (Doc ID 837431). The Travel Policy covers the use of private vehicles for Council business, rental cars, taxis/shuttles and public transport, accommodation, air travel, and other travel-related expenditure.

9.0 Entertainment and Hospitality

Entertainment and hospitality can cover a range of items from tea, coffee and biscuits to catering, such as meals. It also includes non-catering related items such as Council funded entry to sporting or cultural events.

9.1 The principles of a justified business purpose, moderate and conservative expenditure, should be applied.

9.2 Council expenditure on entertainment and hospitality should be limited to the following business justifications:

- Building relationships
- Representing the organisations
- Reciprocity of hospitality where this has a clear business purpose and is within normal bounds – acceptance of hospitality is expected to be consistent with the principles and guidance for the provision of hospitality.
- Recognising significant business achievement
- Building revenue

9.4 Supporting the Council's internal organisational development may, in occasional circumstances, also be a legitimate business purpose for moderate expenditure.

9.5 All entertainment and hospitality expenditure must be pre-authorised by an ELT member, the Mayor or Chief Executive where practical and always supported by clear documentation. This documentation must identify the date, venue, costs, recipients and benefits derived and/or reasons for the event.

9.6 The most senior person present (with delegated authority) should approve and confirm the expenditure as being appropriate at the time, and the expenditure must then be approved by their manager as per clause 5.1. Refer also to NCC's Gifts and Gratuities Policy (Doc ID 556126).

10.0 Alcohol

10.1 Alcohol may be purchased with NCC funds where there is a clear business purpose and expenditure and consumption is not excessive for the circumstances. A business purpose may include celebrating successes, team building, and building internal and external relationships.

10.2 Expenditure on alcohol is to be approved under the general provisions in clause 6.1.

10.3 Alcohol consumed when travelling on Council business is covered by the Travel Policy.

10.4 Refer to the Alcohol and Drug Policy, and the Motor Vehicle Policy and ensure that the consumption of alcohol does not result in undesirable conduct by employees.

11.0 Staff Recognition and meetings

11.1 Expenditure on events to recognise staff related milestones, such as farewells, retirements and staff achievements are permitted but should not be extravagant or inappropriate, must be within available budgets, and should be consistent across the organisation.

11.2 Small expenses are permitted by Managers in recognition of staff achievements. These must fall within their budget for staff recognition. Refer to NCC's Recognition Policy and Framework (Doc ID 382700).

11.3 Expenditure by staff when attending either internal or external meetings locally in Napier and Hastings is permitted but must be prudent, have a definite business purpose and the spender must supply a list of the attendees along with their receipt/invoice. Expenditure must be coded appropriately, and fall within available budgets.

11.4 Expenditure by staff when attending meetings elsewhere in New Zealand is covered by the NCC Travel Policy.

12.0 Vouchers and Gift Cards

12.1 Purchase of Vouchers and Gift cards is permitted provided that there is a clear business purpose and is moderate and conservative in amount. The intended use and recipient must be specified and can be; for small marketing promos, rewards for volunteers and for staff recognition.

12.2 Vouchers must be purchased only as required rather than being purchased in advance and held, and should be treated like cash until gifted to the intended recipient.

Goods and Services Expenditure

13.0 Disposal of Surplus Assets

As part of normal business, Council will from time to time dispose of surplus assets. Typically, this is when assets have become obsolete, worn out or surplus to requirements. Council's disposals are intended to be transparent and fair. Refer to NCC's Disposal of Surplus Assets Policy (Doc ID 219066).

14.0 Loyalty reward scheme benefits

Loyalty reward schemes provide a benefit to the customer for continuing to use a particular supplier of goods and services. Generally, the rewards tend to be given in the name of the individual who obtains the goods and services, regardless of who has paid for them.

14.1 Except in the case of Airline loyalty rewards (covered in the NCC Travel Policy) and loyalty schemes such as Fly buys etc. Council treats loyalty rewards accruing to employees carrying out their official duties as property of the Council.

14.2 Prizes, incentive schemes and gifts are covered further by NCC's Gifts and Gratuities Policy.

15.0 Private use of Councils assets

15.1 Any physical item owned, leased or borrowed by Council is considered an asset for the purpose of this policy. This includes plant items, tools, photocopiers, mobiles, means of accessing the internet, and stationery.

15.2 The principles of transparency, moderate and conservative expenditure, are particularly relevant. Private use for personal purposes will only be permitted in limited circumstances and with approval from a member of ELT.

15.3 The costs to Council of private use will be recovered unless it is impractical or uneconomic to separately identify those costs.

15.4 Private use of Council assets can incur FBT so the impact of this must be considered before approval is granted.

16.0 Private use of Council suppliers

16.1 Council will not enable employees or Elected Members to obtain goods or services from a supplier on the same or similar basis to Council except in the limited way provided for below. This is to ensure that they may not receive preferential access to goods and services, and potentially a preferential price, which is not available to the public.

16.2 Staff may, however, make moderate use of any access to goods or services through Council's suppliers only under the approved Staff Discount scheme. All transactions are direct with suppliers and on a cash sale basis only. Staff may not use Council purchasing privileges on behalf of any third party. This includes family members or friends.

16.3 In rare circumstances, a Council order may cover expenditure with a personal component e.g a travel or accommodation booking. In this case payment to Council for the personal component must be made on the earlier of the confirmation of costs or receipt of the invoice from the supplier. Refer to NCC's Travel Policy (Doc ID 837431).

17.0 Council Use of Private Assets

17.1 Council may decide that reimbursing for use of Private Assets is appropriate for reasons such as cost, convenience or availability. Council may also decide to do this in circumstances where it would not fully use an asset of the same type if it acquired it directly. Examples include private motor vehicles, private mobiles and private computers or BYOD (buy your own device).

17.2 Insurance for the private asset being utilised is the responsibility of the employee.

17.3 To reduce the risk of the Council paying reimbursement costs that benefit the employee or elected member, pre-approval by an ELT member is required. In assessing the request particular attention is to be paid to the principles of a justified business purpose and preserving impartiality and integrity.

17.4 Reimbursement will be set at actual and reasonable costs. All claims require supporting documentation.

17.5 Employees must not approve or administer payments to themselves for the Council's use of their private assets.

Employee Support and Welfare Expenditure

18.0 Clothing

18.1 Other than official uniforms and authorised Personal Protective Equipment, staff will not be clothed at the Council's expense when they are engaged in normal business activity.

18.2 The Chief Executive may authorise in exceptional circumstances the reimbursement of actual and reasonable costs in relation to the care of dependents. Some possible examples are when the employee is unexpectedly required to perform additional duties at very short notice, or a dependant unexpectedly requires additional care that the employee cannot provide because of the essential nature of their duties at the time. In all other instances care of dependants is to be treated as a personal and private expense of the employee.

19.0 Financing Social Club Activities

19.1 Council may make a prudent and reasonable monetary contribution to the Council Social Club. The contribution may be a grant or subsidy for a specific event or item and must be approved by the Chief Executive.

20.0 Sponsorship of staff and others

20.1 Staff taking part in an activity that is not part of their job, such as a sporting event, maybe sponsored by Council through the provision of, or payment for goods and services (for example a t-shirt or entry fee).

20.2 Sponsorship should have a justified business purpose, which could include both publicity for the entity and its objectives and organisational development. The cost to Council must be moderate and conservative.

20.3 In normal circumstances, sponsorship will be provided through a social club rather than directly to the staff member.

21.0 Professional Memberships

Membership to a professional body is a sensitive expenditure due to its personal nature.

21.1 Payment of professional fees by Council on behalf of an employee must be:

- clearly relevant to the performance of the employee's duties and responsibilities;
- for the employee alone and is not to cover members of their family or other persons;
- for no longer than one-year in duration unless significant discounts are available and it is reasonable to expect a two-year membership to be an advantage to the Council;
- for the benefit of the Council and are not intended to be a personal benefit to employees, and accordingly are not liable for FBT; refunded directly to council if the membership is cancelled and a refund is made available

Other types of expenditure

22.0 Donations and Koha

A donation or a koha is a payment (in money or by way of goods or services) made voluntarily and without the expectation of receiving goods or services in return. Refer to NCC's Koha Policy (Doc ID 1330767).

23.0 Communications technology

23.1 Communications technology – such as mobiles, telephones, email and internet access, are widely used in the Council workplace. While some personal use of this technology is unavoidable, excessive use incurs costs, including lost productivity to Council.

23.2 Council's policies on the use of communications equipment are contained within NCC's IT Acceptable Use Policy - Employees (Doc ID 392121).

24.0 Gifts given

24.1 A gift is usually given as a token of recognition of something provided by the recipient. Gifts given to employees are covered in NCC's Recognition Policy and Framework (Doc ID 382700).

25.0 Gifts received

25.1 The receiving of a gift is not strictly sensitive expenditure, however; it is a sensitive issue. Refer to NCC's Gifts and Gratuities Policy (Doc ID 556126).

Policy Review

The review timeframe of this policy will be no longer than every two years.

Document History

Version	Reviewer	Change Detail	Date
3	Operations Accountant	Review in line with Travel Policy	Sept 2019
4	Accounting Manager	Full Review, including new clauses 10 – 25 and removal of the provision of alcohol.	Dec 2021
5	Accounting Manager	General review including changes in ELT naming convention, changes in alcohol approved by ELT	June 2025
6	Policy Gatekeeper	Fix PDF & re-publish	July 2025

Mayor Sensitive Expenditure

Report for Audit and Risk Committee Meeting

Transactions processed for periods 202503 to 202506

Transaction Date	Transaction Source	Supplier		Value	Details	Compliant with Policy
Conferences						
Apr-25	CC	LGNZ	$	133.94	LGNZ Combined Sector Meeting Registration	✔
May-25	CC	LGNZ	$	1,436.40	LGNZ SuperLocal 2025 Conference Registration	✔
Total Conferences			**$**	**1,570.34**		
Mayor's Travel & Accommodation						
Apr-25	AP	Orbit Travel Wellington	$	526.96	Flights - LGNZ Combined Sector Meeting	✔
May-25	AP	Orbit Travel Wellington	$	417.27	Flights - LGNZ Super Local 2025 Conference	✔
Total Mayor's Travel & Accommodation			**$**	**944.23**		
Total For Quarter			**$**	**2,514.57**		

Transaction Source key:	
EC	Transaction approved through expense claim process
CC	Transaction processed through NCC's corporate card
AP	Transaction approved through normal purchasing & payables process
IN	Internal transfer

Chief Executive Sensitive Expenditure

Report for Audit and Risk Committee Meeting
Transactions processed for periods 202503 to 202506

Transaction Date	Transaction Source	Supplier		Value	Details	Compliant with Policy
Conferences						
Mar-25	CC	LGNZ	$	133.94	LGNZ All of Government Meeting Registration	✔
May-25	CC	LGNZ	$	1,436.40	LGNZ SuperLocal 2025 Conference Registration	✔
Total Conferences			**$**	**1,570.34**		
Entertainment						
Mar-25	CC	Ocean Spa	$	5.25	Coffee at Redesign two day meeting	✔
Apr-25	AP	Hawke's Bay Club	$	77.29	Lunch and morning tea Redesign Workshop 7 April	✔
Apr-25	CC	Ocean Spa	$	3.96	Coffee at Redesign event	✔
May-25	CC	Roam	$	4.35	Refreshment at Redesign Project Group meeting	✔
Jun-25	AP	Hawke's Bay Club	$	61.84	Lunch and morning tea Redesign Workshop 10 June	✔
Total Entertainment			**$**	**152.69**		
Travel & Accommodation						
Apr-25	AP	Orbit Travel Wellington	$	368.34	Flights - PwC Meeting and stayed on for Taituara Awards	✔
Apr-25	AP	Orbit Travel Wellington	$	441.25	Flights - LGNZ All of Government Meeting	✔
Apr-25	AP	Orbit Travel Wellington	$	380.63	Flights - LGNZ Conference	✔
Total Travel & Accommodation			**$**	**1,190.22**		
Total For Quarter			**$**	**2,913.25**		

Transaction Source key:	
EC	Transaction approved through expense claim process
CC	Transaction processed through NCC's corporate card
AP	Transaction approved through normal purchasing & payables process
IN	Internal transfer