

Transfer Instrument  
Section 90, Land Transfer Act 1952



Land registration district

NORTH AUCKLAND

Unique identifier(s)  
or C/T(s)

All/part

Area/description of part or stratum

183617

All

Transferor

Surname(s) must be underlined.

SHELLS AT SOUTH HEAD LIMITED AND CR TRUSTEES LIMITED

Transferee

Surname(s) must be underlined.

HOWARD MARTIN LIMITED

Estate or interest to be transferred, or easement(s) or *profit(s) à prendre* to be created

State if fencing covenant imposed.

Fee simple subject to Land Covenants (continued on pages 1 to 7 Annexure Schedule)

Operative clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or *profit à prendre* is described above, that easement or *profit à prendre* is granted or created.

Dated this

2nd

day of

February

2005

Attestation

(If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule).

Signed in my presence by the Transferor SHELLS AT SOUTH HEAD LIMITED by its director ROBERT LOVELL GARDEN

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Diane Joy Whalen

Occupation

Law Clerk

Address

AUCKLAND

(continued on page 7 Annexure Schedule)

Signature (common seal)

of Transferor

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Transferee

## Annexure Schedule

Insert type of instrument

"Mortgage", "Transfer", "Lease" etc

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(Continue in additional Annexure Schedule, if required)

Continuation of 'Estate or Interest or Easement to be created'

WHEREAS the Transferor when registered proprietor of the land formerly contained in Certificates of Title NA109A/146 sand 156091 subdivided the land into residential lots in the manner shown and defined on Deposited Plan 344735.

AND WHEREAS it is the Transferor's intention to create for the benefit of the land in the Certificates of Title set out in Schedule A other than the land hereby transferred (hereinafter referred to as the "Dominant Lots") the land covenants set out in Schedules B, C and D over the land in Certificate of Title 183617 (hereinafter referred to as the "Servient Lot") TO THE INTENT that the Servient Lot shall be bound by the stipulations and restrictions set out in Schedules B, C and D hereto and that the owners and occupiers for the time being of the Dominant Lots may enforce the observance of such stipulations against the owners for the time being of the Servient Lot

AND AS INCIDENTAL to the transfer of the fee simple so as to bind the Servient Lot and for the benefit of the respective Dominant Lots the transferee DOTH HEREBY COVENANT AND AGREE in the manner set out in Schedules B and C hereto so that the covenants run with the Servient Lot for the benefit of the Dominant Lots and the Transferor and the Transferee agree that the Transferee shall be bound by a fencing covenant as defined in Section 2 of the Fencing Act 1978 in favour of the Transferor.

### SCHEDULE A

Certificates of Title Nos:

156071	156080	156088	183622	183630	183638	183646
156072	156081	156089	183623	183631	183639	183647
156074	156082	156090	183624	183632	183640	183648
156075	156083	183617	183625	183633	183641	
156076	156084	183618	183626	183634	183642	
156077	156085	183619	183627	183635	183643	
156078	156086	183620	183628	183636	183644	
156079	156087	183621	183629	183637	183645	

### SCHEDULE B

### SCHEDULE OF RESTRICTIVE COVENANTS

### DEFINITIONS

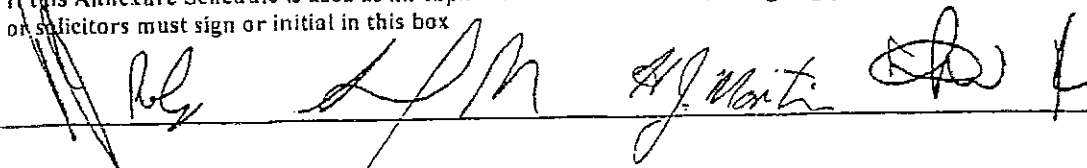
1.0 In these restrictive covenants:

1.1 "front yard" means:

1.1.1 that area of Lots 21 to 24 inclusive, 30 to 35 inclusive, 43 to 51 inclusive and 53 on DP 344735 and being the land situated between the road boundary and a line drawn parallel to the boundary of the road from the point of the dwelling closest to the road boundary; and

Continued on page 2 Annexure Schedule

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box



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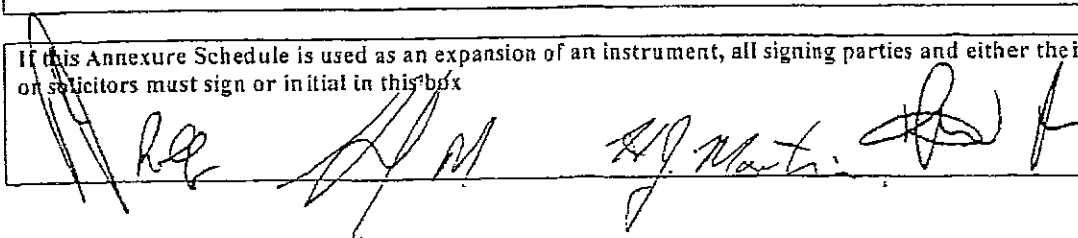
(Continue in additional Annexure Schedule, if required)

Continuation of 'Estate or Interest or Easement to be created'

- 1.1.2 that area of lots 25, 27, 28 and 29 on DP 344735 and being the land situated between that part of lot 28 marked "C" on DP 334735 (hereinafter "Part C") and a line drawn parallel to the boundary of Part C from the point of the dwelling closest to Part C; and
- 1.1.3 that area of lot 26 on DP 344735 and being the land situated between that part of lot 25 marked "K" on DP 344735 (hereinafter "Part K") and a line drawn parallel to the boundary of Part K from the point of the dwelling closest to Part K; and
- 1.1.4 that area of lots 36 and 42 on DP 344735 and being the land situated between the road boundary and that part of lot 42 marked "E" on DP 344735 (hereinafter together referred to as "the road boundary and Part E") and a line drawn parallel to the road boundary and Part E from the point of the dwelling closest to the road boundary and Part E.
- 1.2 "the Transferor" means Shells at South Head Limited and CR Trustees Limited as trustees of the Garden Party Trust being a trust constituted by deed of trust dated the 3<sup>rd</sup> day of December 2002. For the sake of clarity CR Trustees Limited is the professional and independent trustee of the Garden Party Trust and the extent of its liability in respect to these covenants is limited to the assets of the Garden Party Trust.
- 1.3 "the Transferee" means the Transferee and the registered proprietor for the time being of the property if such registered proprietor is not the Transferor.
- 1.4 "the Council" means the Rodney District Council or such other territorial authority that has jurisdiction over the district within which the property is situated.
- 1.5 "commencement of work" means the commencement of substantial construction work to the substantive building in accordance with plans approved by the Transferor, but does not mean the carrying out of investigation, planning or excavation work.
- 1.6 "completion of work" means the later of the date of completion of the building and landscaping work set out in the plans approved by the Transferor pursuant to these restrictive covenants and the date of issue of a Code Compliance Certificate by the Council in respect of that work.
- 1.7 "Transferor's subdivision" means the subdivision of the Transferor's land formerly described as Lot 7 DP 176777 contained in Certificate of Title NA109A/146 into approximately 51 residential lots under successive stages of development.
- 1.8 "the property" means the subject of these restrictive covenants.

Continued on page 3 Annexure Schedule

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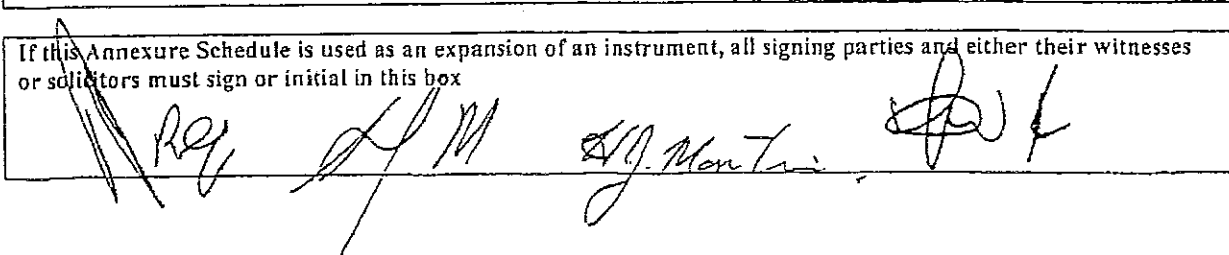
### GENERAL COVENANTS

#### 2.0 The Transferee covenants:

- 2.1 Not to permit the property or any ~~berm in front of the property~~ to remain in an unkempt or untidy state and by way of example not to allow the lawns thereon to grow to an unsightly length.
- 2.2 ~~Not to park~~, nor suffer any person residing in or in occupation of the property to park ~~any caravan, boat, trailer or truck on the road to which the property has frontage, (including any parking bays), for more than 24 hours on any occasion, nor to park any vehicle of any nature on the road berm at any time.~~
- 2.3 Not to delay the commencement of work on a dwellinghouse on the property beyond a date ~~36 calendar months~~ after the date of this transfer and not to delay completion of the same once work has commenced so as to have the exterior of the dwelling fully closed in and finished within six months of the date of commencement of work and to ensure ~~completion of work within 12 months of the date of commencement of work.~~
- 2.4 Not to erect or permit to remain any signage on the property or on the road or accessway adjoining the property other than one ~~"For Sale" sign.~~
- 2.5 Not to place or permit to remain upon the property any caravan unless such caravan is currently registered with a current warrant of fitness, has wheels and is not used under any circumstances for accommodation while it is situated on the property and is not kept in the front yard.
- 2.6 Not to carry out any work on the property which will cause any damage to the landscaping, roading, footpaths, kerbs, concrete or other structures forming part of the Transferor's subdivision and in the event that any damage is caused to the landscaping, roading, footpaths, kerbs, concreting or any other structures, the Transferee shall immediately, at the Transferee's own expense, carry out all works required to reinstate and/or replace any such landscaping, roading, footpaths, kerbs, concreting or any structures, all such works to be carried out to the satisfaction of the Transferor.
- 2.7 If the property being the subject of this Transfer is specified in Schedule D attached hereto, the Transferee hereby further covenants as follows:
  - 2.7.1 Not to use or permit any part of the property to be used for the purpose of providing any access or connection to any road laid out on DP 344735 for the benefit Lot 1 DP 194007 or any part thereof without first obtaining the prior written consent of the Transferor.

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Continuation of 'Estate or Interest or Easement to be created'

2.7.2. In covenanting in the manner set forth the Transferee hereby acknowledges and agrees that:

2.7.2.1 The giving or otherwise of the Transferor's prior written consent shall be at the Transferor's sole and absolute discretion;

2.7.2.2 This covenant is for the sole benefit of the Shells at South Head Limited and CR Trustees Limited.

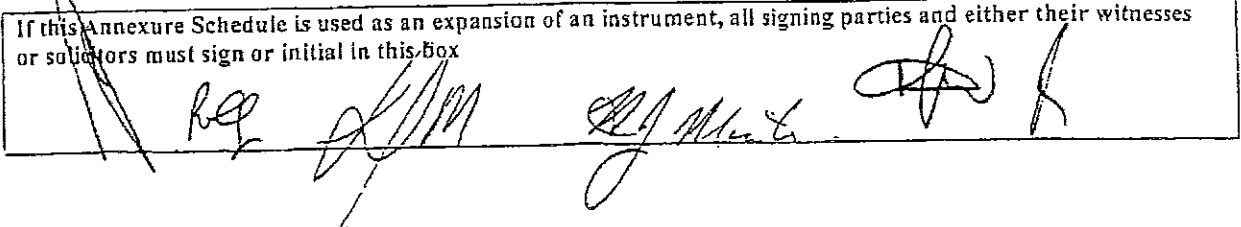
### COVENANTS IN RESPECT OF BUILDING

#### 3.0 The Transferee covenants:

- 3.1 Not to commission any plans for building on the property, apply to the Rodney District Council for a building consent, or proceed with the erection or construction on the property of any building, unless such building is a new single private residential dwelling, the plans and siting of which dwelling and a landscape plan of the property showing the design and location of paths, driveways, vehicle crossings, planting, letterbox and external amenities in relation to the proposed dwelling have received the prior written approval of the Transferor. The Transferor's written approval as referred to herein shall only apply to the initial single private residential dwelling constructed on the property. If the initial private single residential dwelling is destroyed or removed the Transferor's consent to the construction of a replacement single private residential dwelling will not be required if such replacement dwelling complies in all respects with the remainder of the Restrictive Covenants.
- 3.2 That the Transferee accepts the Transferor's desire to create a high quality rural lifestyle environment that will not use materials, finishes, exterior colours and architectural styles which detract from that goal and that the Transferor will have regard to the elevation and situation of each of the lots when considering the grant of its approval and the requirements of compliance with the design requirements set out herein.
- 3.3 That the Transferee further accepts that the Transferor's approval of the plans, design and siting of a new single private residential dwelling shall not be withheld if:
- 3.3.1 The design of the dwelling incorporates internal garaging and does not provide for any carport unless it is incorporated into the dwelling unit under the same roof structure; and
- 3.3.2 The dwelling has a living area (excluding garaging, carports, decking, roof overhang and accessory buildings or outbuildings) of not less than 90 m<sup>2</sup> and

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## Annexure Schedule

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### Continuation of 'Estate or Interest or Easement to be created'

- 3.3.3 The vehicle crossing serving the property (other than a vehicle crossing constructed by the Transferor), its associated driveway to the site boundary, and all driveways within the property boundary shall be constructed:
- 3.3.3.1 by the Transferee at the Transferee's expense;
  - 3.3.3.2 in compliance with all statutory and bylaw requirements;
  - 3.3.3.3 in a position which shall not interfere with any swale, existing trees, parking bays and street lights.
  - 3.3.3.4 of materials and in a manner sympathetic to the vehicle crossing construction.
- 3.4 Not to erect or seek approval of the Transferor to erect:
- 3.4.1 buildings that will incorporate any second hand materials or incorporate into the exterior any corrugated galvanised iron product or any other building material (including certain fibrolite products) which in the opinion of the Transferor detracts from the quality of the subdivision or the housing standard established for the subdivision;
  - 3.4.2 buildings that are second hand relocatable dwellings;
  - 3.4.3 kitset buildings, unless their design and specifications have received the prior written approval of the Transferor and comply in all respects with the covenants contained herein.
- 3.5 Not to make any change to the plans and specifications of the exterior design and appearance of the approved dwelling or building unless such changes are first approved in writing by the Transferor.
- 3.6 Not to commence works after approval of building plans until the Transferee has advised the Transferor in writing of the construction start and period, size and location of temporary building structures including toilets, the restrictions on noise and hours of work.
- 3.7 Not to erect any fence, whether or not on a boundary, without the prior written consent of the Transferor which will not be unreasonably or arbitrarily withheld if such fence is not:
- 3.7.1 greater than 1 metre in height if such fence is located on any part of the front yard or on any boundary of the front yard;
  - 3.7.2 constructed in post and wire, corrugated iron, plywood sheeting or any such material which in the opinion of the Transferor detracts from a high quality residential environment.

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Reg. [Signature] [Signature] [Signature] [Signature]

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### Continuation of 'Estate or Interest or Easement to be created'

- 3.8 Not to erect place or permit to remain on the property any accessory building or outbuilding other than one building which has a floor area not exceeding 80m<sup>2</sup> and is constructed of materials and with a decorative finish that blends with the dwelling.
- 3.9 Not to erect or permit to be erected on any part of the property any building or appurtenance exceeding 5 metres in height nor to permit any tree shrub or plant to remain on any part of the property where such tree shrub or plant exceeds 5 metres in height if the lot number of the property is specified in Schedule C attached hereto. For the sake of clarity such height contemplated by this provision is to be measured from finished ground level.
- 3.10 Not to place erect or permit any satellite dish to remain on any part of any building located on the property unless the satellite dish is located in such an area that it does not rise above the highest point of the roof structure of any such building.

### COVENANTS IN RESPECT OF THE FRONT YARD

#### 4.0 The Transferee covenants:

- 4.1 Not to bring or permit to be brought on or remain upon the front yard (except in the course of construction of the dwelling) any materials, debris, rubbish, unregistered vehicles, vehicle body parts or any items of any unsightly nature.
- 4.2 Not to create or construct any building structure, garage or shed in the front yard.
- 4.3 Not to erect a clothesline or water tank(s) on any part of the front yard or on any other part of the property where such clothesline and water tank(s) are visible from the adjoining road.

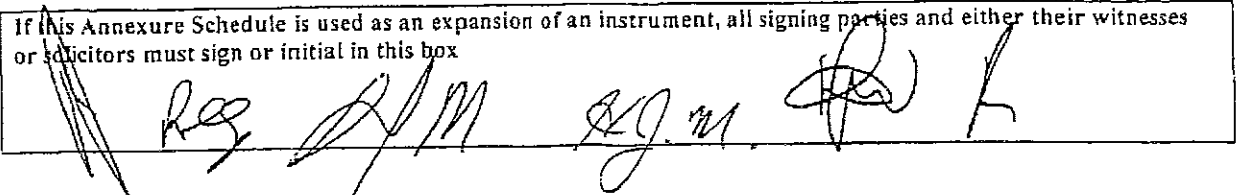
### PROCEDURE IN RESPECT OF BREACH OF COVENANTS

#### 5.0 Failure to complete Construction

- 5.1 If there is a breach of covenant 2.3, the Transferee shall pay to the Transferor upon demand a sum equivalent to 5% of the purchase price paid by the Transferee to the Transferor for the property for each month after the expiry of 12 months from the date of commencement of works during which completion of work has not been achieved. The benefit of this clause is limited to the Transferor and does not extend to its successors in title in respect of the property.

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## Annexure Schedule

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*(Continue in additional Annexure Schedule, if required)*

Continuation of 'Estate or Interest or Easement to be created'

### 6.0 Breach of Covenant

- 6.1 If there is a breach of Covenant 2.7 and its subparagraphs the Transferee shall pay to the Transferor upon demand a sum equivalent to 5% of the purchase price paid by the Transferee to the Transferor for the property for each month or part month during which Covenant 2.7 and its subparagraphs has been breached, in addition to any other remedies that may be available to the Transferor at law. The benefit of this clause is limited to Shells at South Head Limited and CR Trustees Limited and does not extend to its successor in title in respect of the property.

### 7.0 Other Breach of Covenant

- 7.1 Without prejudice to any other liability which the Transferee may have to the Transferor or any person having the benefit of the covenants and restrictions, the Transferee shall upon written demand being made by the Transferor, or by the majority of owners of the land taking benefit of the Restrictive Covenants:
- 7.1.1 pay to the party who has made demand the sum of \$200.00 per day for every day that such breach or non observance continues after the date upon which written demand has been made;
- 7.1.2 take all steps as are required to ensure that the non-compliance with these covenants specified in the notice ceases immediately.
- 7.2 If however the breach of covenant which is the subject of the written demand has been rectified or if there is more than one breach of covenant then all breaches of covenants have been rectified to the Transferor's satisfaction or to the satisfaction of the majority of the owners taking the benefit of the Restrictive Covenants, as the case may be, within 7 days of the date upon which written demand has been made then the penalty of \$200 per day as provided herein is not payable nor claimable by any party.

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*[Handwritten signatures and initials]*



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Continuation of 'Estate or Interest or Easement to be created'

### SCHEDULE C

(refer Covenants in Respect of Buildings 3.9)

Lot No (DP 344735)

21  
22  
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RG, [Signature] [Signature] [Signature] [Signature]

## Annexure Schedule

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Continuation of 'Estate or Interest or Easement to be created'

### SCHEDULE D

(refer Covenants in Respect of Buildings 2.7)

Lot No (DP 344735)

45  
46  
47  
48  
49  
50  
51

Continuation of 'Attestation'

Signed by the Transferor CR TRUSTEES LIMITED  
by two of its directors

Director

Director

Signed in my presence by the Transferee

HOWARD MARTIN LIMITED  
by two of its directors  
Signature of witness

Witness name Kevin Absalom

Occupation Truck Driver

Address 404 Greerton Rd  
Tauranga

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RQ

[Signature]

[Signature]

**IN THE MATTER** of a Plan lodged for  
Deposit under  
Number 337956

Pursuant to Section 221 of the Resource Management Act 1991 **THE RODNEY DISTRICT COUNCIL HEREBY GIVES NOTICE** that its subdivision consent given in respect of the land in the Second Schedule as shown on Land Transfer Plan 337956 is conditional inter alia upon the compliance on a continuing basis by the Subdivider and the subsequent owners of the land in the Third Schedule hereto with the conditions set forth in the First Schedule hereto.

**FIRST SCHEDULE**

**(building restrictions)** Any buildings development on Lots 1 – 20 shall be subject to the requirements of the earthworks completion report prepared by Foundation Engineering Ltd, reference 11063, dated 21 June, 2004. Copies of the said report are held at the offices of the Council, Centreway Road, Orewa.

**(building restrictions)** Except with the prior consent of the Council, no buildings shall be erected over or within one metre of the alignment of the pipeline stormwater pipelines within Lots 2 – 6, 9, 11, 12, 13, 14, 15, 18, 19, 20 and 56. Foundations located within a horizontal distance of the said pipeline equal to the invert depth of the pipeline plus 300 mm shall be specifically designed in accordance with the Council's "Guidelines For Building Close To Public Stormwater And Sewage Pipelines".

**(subsoil drains)** The subsoil drains within Lots 7, 8, 9, 11, 12, 13, 17, 18, 20 and 56 identified on drawing J/16118, prepared by Cato Bolam Consultants, dated 01/06/04 (contained in the earthworks completion report) shall be protected and maintained at all times. Any construction that intercepts the drains shall maintain the integrity of the pipe and drainage medium, and shall reinstate the surface seal above the drainage medium.

**(secondary overland flow path)** No buildings or other structures including fences shall be erected, nor shall the ground contour be changed in any way, that would impede the surface flow of stormwater within the secondary overland flow path over that portion of Lot 20 identified on the drawing J/16118, prepared by Cato Bolam Consultants, signed and dated 12/07/ 2004.

**SECOND SCHEDULE**

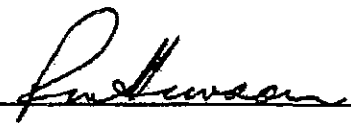
An estate in fee simple in 12.4877 hectares more or less being Lot 7 DP 176777 comprised in Certificate of Title 1094/146 North Auckland Land Registry.

**THIRD SCHEDULE**

Lots 1 – 20 and 56 DP 337956 totalling 12.44529 hectares in area.

**DATED** this 14<sup>th</sup> day of July 2004.

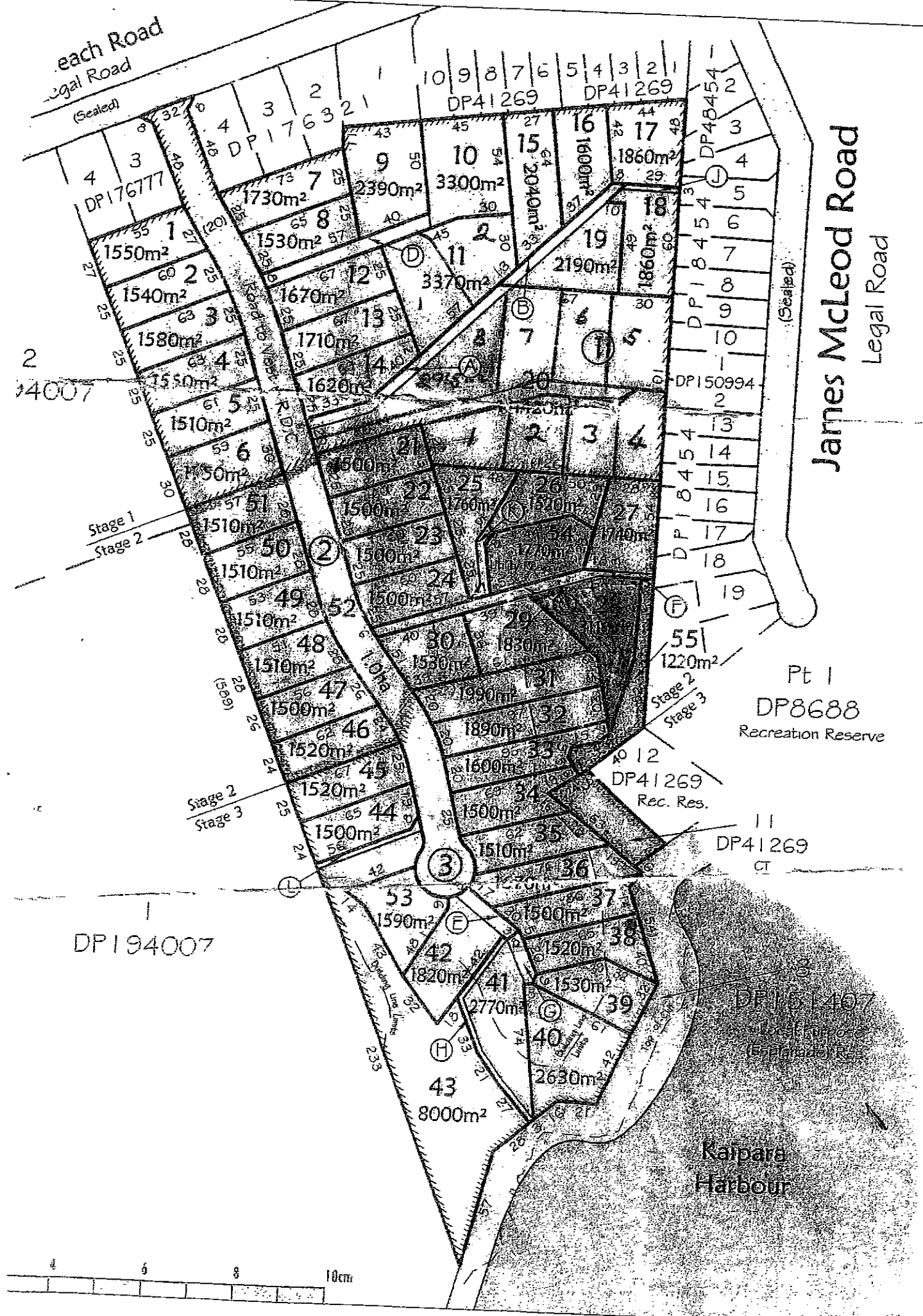
**SIGNED** for and on behalf of )  
the **RODNEY DISTRICT COUNCIL** )

  
\_\_\_\_\_  
Authorised Officer

**SCHEME PLAN:** R34178

each Road  
Legal Road

(Sealed)



James McLeod Road  
Legal Road

Pt 1  
DP8688  
Recreation Reserve

DP41269  
Rec. Res.

DP41269  
CT

DP151407  
Local Purpose  
(Esplanade) Res.

Kaipara  
Harbour

DP194007

