



File: 350/10/015  
Ref:  
Date: 23 February 2016

**Memorandum of Understanding**  
**Between**  
**Upper Hutt City Council & Guildford Timber Company**

**1.0 Purpose**

- 1.1. The purpose of this report is to seek Council's endorsement to proceed with the signing of the MOU between Guildford Timber Company and Upper Hutt City Council.
- 1.2. The purpose of this report is to seek approval to transfer the delegation for signing the MOU on behalf of Council to the Mayor and Chief Executive.
- 1.3. This report should be read in conjunction with:

**Appendix 1** MOU Relating to Land Exchange

**Background**

- 1.4. The Trustees of the GTC approached Upper Hutt City Council with a proposal to swap 134 ha of their land located behind Pinehaven (refer to site A in appendix 1 of the MOU) in exchange for 35 ha, referred to as Silverstream Spur (Site B in appendix 1 of the MOU) which is owned by Upper Hutt City Council.
- 1.5. GTC have proposed that the 134 ha is used as a recreation opportunity for the city. They have suggested it would make an ideal mountain bike park which could be administered using a Trust.
- 1.6. Silverstream Spur would provide the access GTC requires in order to undertake a proposed housing development on the remainder of their land.
- 1.7. Silverstream Spur is currently identified for proposed disposal by land sale. Conditions of that sale would have taken into account biodiversity values, visual impact and the protection of existing neighbouring stakeholders. These values have been incorporated into the principles of the MOU.

- 1.8. The GTC land is located in the Pinehaven flood catchment. It would therefore protect a large area of the catchment from development thus reducing the risk of flooding. This is important to the local community. In addition the 134 ha would protect amenity and landscape values, also important to the community.
- 1.9. Council recognises the need for the Guildford site as a future area for housing growth in its land use strategy.
- 1.10. For the four reasons set out above Council entered into negotiations on a Memorandum of Understanding with GTC.

## **2.0 Consultation**

- 2.1. We have not consulted on the principles of the MOU with the community.
- 2.2. We do know through feedback on the Urban Growth Strategy that some of the Pinehaven / Silverstream and wider community have concerns about the impacts of development on the proposed land.

### **Discussion**

- 2.3. We have sought legal advice from DLA Phillips Fox. They advised breaking the negotiation document into two parts.
- 2.4. The first part is the Memorandum of Understanding which we are tabling for approval to sign. This document has been written on the basis it will be made publicly available for transparency purposes.
- 2.5. A second agreement is being prepared which will contain commercially sensitive detail regarding the mechanics of the land swap and will not be made available to the public. The core principles of the land swap underpin that document also. Those principles are the land swap will;
  - Provide access to GTC land to create the opportunity to subdivide and develop the land for residential purposes;
  - Help ensure that UHCC meets the long term direction and priorities for urban development and growth set out in the Urban Development Strategy;
  - Enable formalised access to UHCC land to facilitate the opportunity for new public reserve land to be created/developed;
  - Provide protection and enhancement of the forest cover for the purposes of stormwater control and management of the Pinehaven Stream catchment;
  - Ensure protection of the hill backdrop and forest cover which strongly contributes to the landscape character of the area; and

- Provide the opportunity for new public reserve land that would foster natural and heritage values, as well as provide strategic opportunity for the area to become an outdoor recreation attraction.

2.6 These principles are intended to provide certainty, clarity and a level of commitment to continue negotiations that adhere to the guiding principles. The principles are also shared by the community which we have received through multiple consultation processes. We hope therefore that despite not being consulted on this MOU specifically they will welcome the concept.

### **3.0 Legal and financial implications**

- 3.1. DLA Phillips Fox has ensured the MOU is not legally binding however it does signal the intent of both parties.
- 3.2. One of the principles of the MOU is that both parties agree to accept that the value of the respective pieces of land are like for like. Whatever value is placed on the land, which is yet to be negotiated, will be put into a trust to seed the recreation park concept.
- 3.3. There will be some on-going maintenance costs of the land Council would acquire, however to what extent is unknown at this stage. This requires due diligence through the land swap process outlined in the Further Agreement.

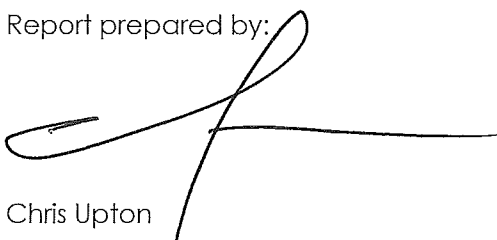
### **4.0 Conclusion**

- 4.1. This MOU seeks to indicate to GTC that Council is willing to swap Silverstream Spur for 134 ha on GTC land behind Pinehaven as a recreational reserve for the City. It also provides access to a key development required to provide for housing growth in the city over the next 30 years. Council doesn't consider the values on Silverstream Spur to be significant enough to warrant keeping it as a Council asset.

### **5.0 Recommendation**

- 5.1. **THAT** the MOU relating to land exchange between GTC and UHCC be approved.
- 5.2. **THAT** Council authorise the Mayor and Chief Executive to sign on behalf of Council.
- 5.3. **THAT** following Council approval that this report and attached MOU between GTC and UHCC be made public.

Report prepared by:



Chris Upton  
**CHIEF EXECUTIVE**

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**MEMORANDUM OF UNDERSTANDING  
RELATING TO LAND EXCHANGE**

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**The Guildford Timber Company Limited (GTC)**

**and**

**Upper Hutt City Council (UHCC)**

**("The Parties")**

## MEMORANDUM OF UNDERSTANDING

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### **1. BACKGROUND AND PURPOSE OF MEMORANDUM**

- 1.1. This memorandum sets out undertakings and principles agreed between The Guildford Timber Company Limited (GTC) and Upper Hutt City Council (UHCC) relating to a proposed series of related matters and transactions which, at its core, involves a land exchange between the parties.
- 1.2. The land subject to the proposed land exchange is as follows:
  - 1.2.1. Part of the land currently owned by GTC and its wholly owned subsidiary company located on the ridge southwest of Silverstream and Pinehaven which is to be transferred to UHCC, shown marked 'A' on the plan attached as Appendix 1.
  - 1.2.2. The land currently owned by UHCC known as 'Silverstream Spur' which is located at the lower end on the ridge southwest of Silverstream and Pinehaven which is to be transferred to GTC, shown marked 'B' on the plan attached as Appendix 1.
  - 1.2.3. The balance of the land currently owned by GTC and its wholly owned subsidiary company located on the ridge southwest of Silverstream and Pinehaven which is to be retained by GTC, shown marked 'C' on the plan attached as Appendix 1.
- 1.3. This memorandum is framed in the context of ensuring that the land exchange transactions will either involve or facilitate the following:
  - 1.3.1. Provide access to land owned by GTC and its wholly owned subsidiary company to create the opportunity to subdivide and develop the land for residential purposes;
  - 1.3.2. Help ensure that UHCC meets the long term direction and priorities for urban development and growth set out in the Land Development Strategy Upper Hutt;
  - 1.3.3. Enable access to UHCC land to facilitate the opportunity for new public reserve land to be created/developed;

## **MEMORANDUM OF UNDERSTANDING**

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- 1.3.4. Provide protection and enhancement of the forest cover for the purposes of stormwater control and management of the Pinehaven Stream catchment;
  - 1.3.5. Ensure protection of the hill backdrop and forest cover which strongly contributes to the landscape character of the area; and
  - 1.3.6. Provide the opportunity for new public reserve land that would foster natural and heritage values, as well as provide strategic opportunity for the area to become an outdoor recreation attraction.
- 1.4. The purpose of this memorandum is:
- 1.4.1. To provide the Parties with an opportunity to express their mutual intention regarding the proposed land exchange transactions but without legally committing to these transactions until such time as the Parties have had an opportunity to carry out further investigations;
  - 1.4.2. To outline the development aspirations of GTC and the responsibility of UHCC in relation to its respective obligations under the overarching legislation, particularly the Local Government Act 2002, the Resource Management Act 1991 and the Reserves Act 1977; and
  - 1.4.3. To set out how the Parties will establish and maintain a positive, co-operative and enduring relationship.
- 1.5. The Parties share a mutual interest and benefit in achieving these overarching goals.

## **2. NON-BINDING MEMORANDUM**

- 2.1. UHCC and GTC acknowledge and agree that:
- 2.1.1. the terms of this memorandum do not constitute an offer which is capable of acceptance by any party; and
  - 2.1.2. this memorandum constitutes a statement of intent but is not intended to create binding legal relations or constitute or form

## **MEMORANDUM OF UNDERSTANDING**

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part of any legally binding contract or representation having legal effect.

### **3. FURTHER NEGOTIATION**

3.1. The Parties will use this memorandum as the starting point for further investigation and the basis for negotiating substantive binding legal documentation that will carry out the mutual intention of the Parties as expressed in this memorandum. As such, the parties agree to pursue their mutual intention for a period of not less than 18 months following signing of this memorandum.

3.2. To this intent, the Parties agree to:

- 1.1.1. work cooperatively and in good faith;
- 3.2.1. provide relevant information to the other party upon request;
- 3.2.2. provide reasonable access to a party's land and personnel to the other party;
- 3.2.3. meet regularly to discuss relevant issues and negotiate appropriate outcomes; and
- 3.2.4. abide by the relationship principles set out in clause 5.1 of this memorandum.

### **4. INTENTION OF THE PARTIES**

4.1. The intention of the Parties regarding the land exchange outlined in this memorandum, as well as the post transfer actions that will be required prior to the development of a District Plan Change to rezone land identified as Site C, is as follows:

- 4.1.1. GTC is the owner of Site A and wishes to transfer this land into UHCC ownership. UHCC is to take ownership of Site A and be responsible for maintenance costs associated with its ongoing upkeep and subsequent rating requirements.
- 4.1.2. UHCC is the owner of Site B (commonly known as the 'Silverstream Spur') and wishes to transfer this land into GTC ownership. GTC is to take ownership of Site B and be

## MEMORANDUM OF UNDERSTANDING

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responsible for maintenance costs associated with its ongoing upkeep and rating requirements.

- 4.1.3. GTC will retain ownership of Site C and will continue to be responsible for the land and for maintenance costs associated with its ongoing upkeep and rating requirements.

4.2. In reaching this understanding, the Parties have sought to address:

- 4.2.1. That Site B will be used, at least in part, to provide access to the wider residential development proposals on Site C and that Site A will be used for public open space purposes (such as a park).
- 4.2.2. GTC access arrangements to Site B from Council-owned land adjoining the Kiln Street paper road.
- 4.2.3. UHCC access arrangements to Site A from the Council-owned land adjoining Kiln Street paper road.
- 4.2.4. The recognition by GTC and UHCC of the prominence of Silverstream Spur (Site B) in the Pinehaven and Silverstream settings, particularly its potential contribution to visual, landscape and recreational amenity . GTC and UHCC acknowledge that re-zoning for residential purposes of Site B needs to take these values into account.
- 4.2.5. The commitment of UHCC to commence a District Plan Change process to rezone Site C and parts of Sites B for residential purposes.
- 4.2.6. The recognition by UHCC that possible adverse effects of urban growth which cannot practically be avoided, remedied or mitigated within Site C have the potential to be offset by the wider environmental and community benefits including reserves and other amenities which will be gained through formalising Site A as public land.
- 4.2.7. GTC's long association with the area and recognise GTC's sense of stewardship towards the land subject to this memorandum.



## MEMORANDUM OF UNDERSTANDING

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### **5. RELATIONSHIP PRINCIPLES**

5.1. GTC and UHCC agree to the following relationship principles in implementing this memorandum:

- 5.1.1. working in a spirit of co-operation;
- 5.1.2. ensuring early engagement on emergent issues in concerning the land;
- 5.1.3. operating on a 'no surprises' basis;
- 5.1.4. acknowledging that the relationship is an evolving, not prescribed, one;
- 5.1.5. respecting the independence of the Parties and their individual mandates, roles and responsibilities;
- 5.1.6. acknowledging that Parties benefit from working together and sharing their vision, values, knowledge and expertise; and
- 5.1.7. the highest level of collaborative engagement.

### **6. CAPACITY**

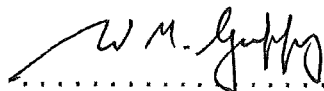
6.1. In relation to the proposed land exchange transaction referred to in this memorandum, UHCC is acting its capacity as owner of the Site B land only. Nothing is implied as to issue of consents or other permissions required from UHCC or any other statutory or regulatory body, and all required statutory processes must be complied with in relation to the proposed land exchange.

**MEMORANDUM OF UNDERSTANDING**

Executed as an agreement.


Date: 4 - 3 - 2016

Upper Hutt City Council by:

  
.....  
Signature of authorised person

WAYNE GUPPY  
.....  
Name of authorised person (print)

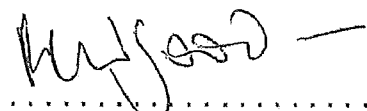
MAYOR  
.....  
Office held

  
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Signature of authorised person

Chris Upton  
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Name of authorised person (print)

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Office held

The Guildford Timber Company Limited  
by:

  
.....  
Signature of authorised person

Ralph Goodwin  
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Name of authorised person (print)

Director  
.....  
Office held

The Guildford Timber  
Company

2.3.2016

## MEMORANDUM OF UNDERSTANDING

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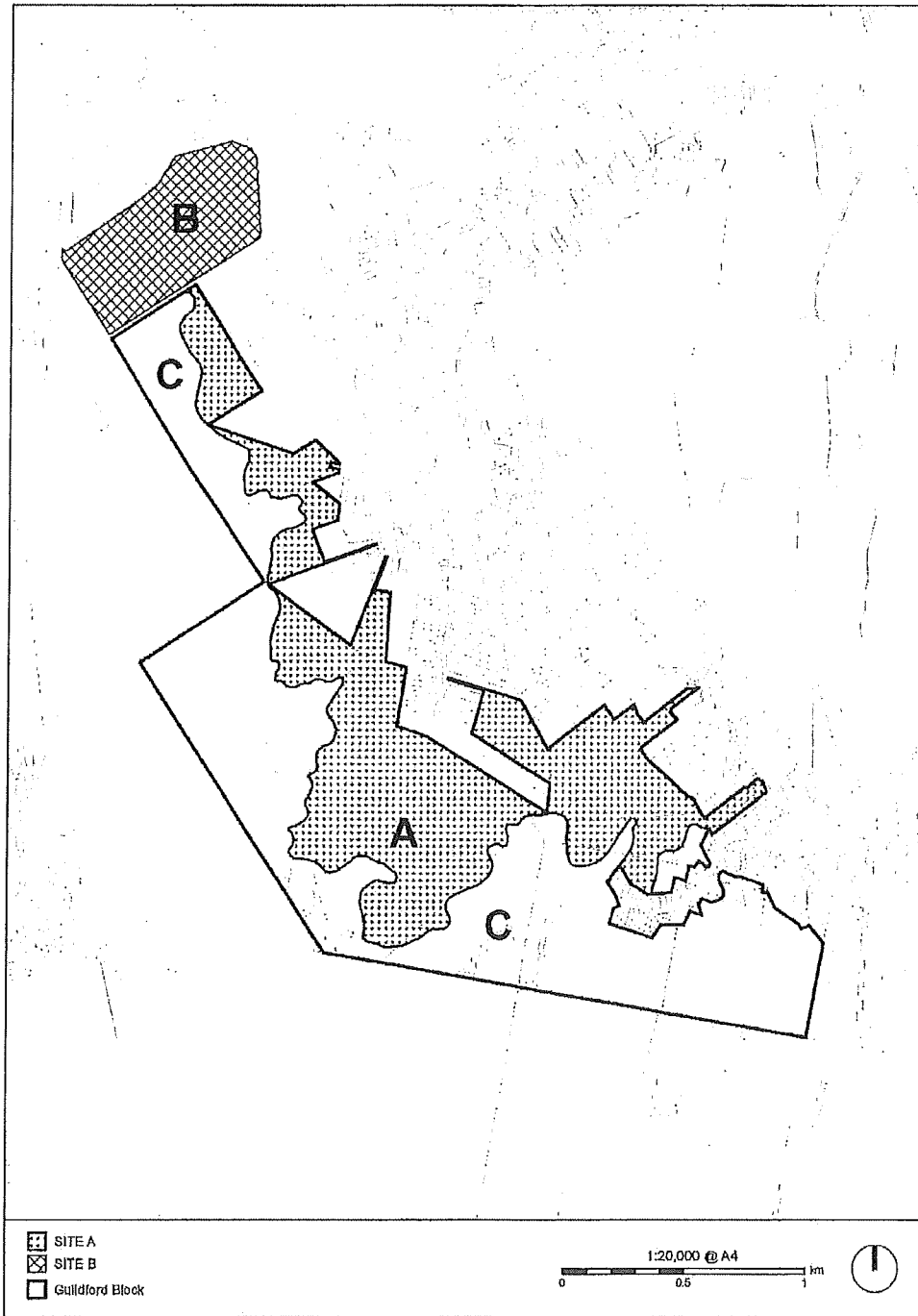
**MEMORANDUM OF UNDERSTANDING**

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**APPENDIX 1**

**Land subject to this Memorandum of Understanding**

MEMORANDUM OF UNDERSTANDING



POTENTIAL LAND TRANSFER SITES