

Scheme Implementation Agreement

in relation to Marsden Maritime Holdings
Limited

Northland Regional Council

Port of Tauranga Limited

Ngāpuhi Investment Fund Limited

Marsden Maritime Holdings Limited



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SCHEME IMPLEMENTATION AGREEMENT

Date: 24 February 2025

PARTIES

Northland Regional Council (*NRC*)

Port of Tauranga Limited (*POT*)

Ngāpuhi Investment Fund Limited (*Tupu Tonu*)

(each a *Consortium Member* and together the *Consortium*)

Marsden Maritime Holdings Limited (*MMH*)

BACKGROUND

- A On 7 August 2024, the Consortium approached MMH with a non-binding indicative offer to acquire all of the Shares in MMH not already held or controlled by NRC (the *Proposal*).
- B The Consortium emphasised that the Proposal was subject to satisfactory completion of due diligence (now completed to the Consortium's satisfaction) and NRC's public consultation under the Local Government Act. Such consultation is to be completed to NRC's satisfaction and NRC's decision to implement the Scheme following such consultation is at its complete discretion.
- C MMH agreed to make Due Diligence Material available under a Confidentiality Agreement.
- D The Consortium intends to record in this agreement the basis on which it will proceed to implement the Scheme should NRC's public consultation result in NRC deciding to implement the Scheme.
- E Subject to the result of NRC's public consultation, and to satisfaction of certain other conditions set out in this agreement, the Consortium and MMH have agreed that the Consortium will acquire all of the Scheme Shares by means of the Scheme.
- F This agreement is entered into to record and give effect to the terms and conditions on which the Consortium and MMH propose to implement the Scheme.
- G The parties have worked together collaboratively to formulate the terms of this agreement.
- H The Consortium has advised MMH that POA, the next largest shareholder in MMH after NRC, has been consulted and confirmed that, as long as the Consideration is within or above the valuation range of the Independent Adviser, it would accept the Scheme if implemented and, to that end, intends to enter into a Voting Agreement promptly following execution of this agreement.



THE PARTIES AGREE as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this agreement, unless the context requires otherwise:

Additional Amount has the meaning given in clause 18.3;

Associates has the meaning given to that term in the Takeovers Code;

Authorisation means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency;

Board means the board of directors of MMH;

Business means the business carried on by the MMH Group as at the date of this agreement;

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open in Auckland, New Zealand for normal business;

Companies Act means the Companies Act 1993;

Competing Proposal means any proposed:

- (a) takeover bid (whether full or partial under the Takeovers Code) for MMH;
- (b) scheme of arrangement for the acquisition of all or a majority of the Shares;
- (c) reverse takeover, capital reduction, sale of assets, sale of securities, strategic alliance, joint venture, partnership, dual listed companies structure, economic or synthetic merger or combination or other transaction or arrangement which, if completed, would result in a Third Party:
 - (i) directly or indirectly acquiring or being entitled to acquire a Relevant Interest or any other direct or indirect legal, beneficial or economic interest in or control over more than 20% of the shares of MMH or more than 20% of the shares in any other member or members of the MMH Group that, individually or collectively, contribute 20% or more of the EBITDA of the MMH Group or whose assets represent 20% or more of the total consolidated assets of the MMH Group; or
 - (ii) directly or indirectly acquiring or being entitled to acquire the whole or substantially all of the business or assets of the MMH Group or any part of the business or assets of the MMH Group that individually or collectively contributes 20% or more of the EBITDA of the MMH Group or represents 20% or more of the total consolidated assets of the MMH Group; or
 - (iii) acquiring Control of MMH or merging or amalgamating with MMH or any other member or members of the MMH Group that individually or



collectively contribute 20% or more of the EBITDA of the MMH Group or represent 20% or more of the total consolidated assets of the MMH Group; or

- (d) the transfer or issue of financial products of any member of the MMH Group to a Third Party:
 - (i) where shareholder approval is required under the Takeovers Code; or
 - (ii) in respect of financial products that are convertible into, or exchangeable for, Shares, where shareholder approval would be required under the Takeovers Code on conversion or exchange of those financial products,

or which would otherwise require MMH to abandon, or otherwise fail to proceed with, or would be inconsistent with the implementation of, the Scheme. For the purposes of the definition of Competing Proposal:

- (e) any such proposal may be an expression of interest, indicative, conditional or otherwise non-binding;
- (f) paragraphs (a), (b), (c) and (d) above include any agreement (within the meaning of section 6 of the FMCA) whereby such a transaction is effected through a series of linked or related transactions which, if conducted as a single transaction, would constitute a Competing Proposal within the meaning of either of paragraphs (a), (b) (c) or (d);
- (g) each successive material modification to or variation of a Competing Proposal will constitute a new Competing Proposal; and
- (h) references to a Third Party include all Associates of the Third Party;

Conditions mean the conditions precedent set out in the first column of the table in clause 5.1;

Confidentiality Agreement means the confidentiality agreement between the Consortium and MMH, entered into on 15 January 2025;

Consideration means NZ\$5.60 in respect of each Share held by a Scheme Shareholder reduced (subject to clause 5.1(f) (Prescribed Occurrences)) by the per Share value of any dividend the record date for which falls between the date of this agreement and the Implementation Date;

Consortium Information means all information given by any Consortium Member to MMH for inclusion in the Scheme Booklet concerning the Consortium, NZ HoldCo, their Related Entities, business and interests and dealings in the Shares;

Consortium Protected Persons means each Consortium Member and each of their respective directors, councillors, officers and employees (as applicable);

Consortium Undertakings means the undertakings set out in Part 2 of Schedule 3;

Consortium Warranties means the statements set out in Part 1 of Schedule 3;



Control means, in relation to a person (the “*relevant person*”) and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- (a) has the power to appoint or remove the majority of the members of the governing body of the relevant person;
- (b) controls or has the power to control the affairs or policies of the relevant person; or
- (c) is in a position to derive more than 50% of the economic benefit of the existence or activities of the relevant person;

Counter Proposal has the meaning given in clause 13.7(b);

Court means the High Court of New Zealand, Auckland Registry;

Court Guidance has the meaning given in clause 9.3(a)(i);

Decision has the meaning given in clause 9.4;

Deed Poll means the deed poll to be entered into by the Consortium and NZ HoldCo in favour of the Scheme Shareholders in the form attached as Annex 2 or in such other form as the parties agree in writing;

Designated Persons means Tony Gibson, John Sproat, Rosie Mercer and Vidura Galpoththage;

Due Diligence Material means:

- (a) the written information and documents made available to the Consortium or its Representatives on or before 12.00pm on 24 February 2025, in the electronic data room hosted by Ansarada and assembled by MMH and/or Northport, an index to which has been initialled for the purposes of identification by or on behalf of the parties or their advisers;
- (b) the written answers or written confirmations provided to the Consortium or its Representatives on or before 12.00pm on 24 February 2025 in response to requests for information, copies of which have been compiled and initialled for the purposes of identification by or on behalf of the parties or their advisers; and
- (c) MMH’s NZX announcements made on or after 30 June 2023 and on or before the date of this agreement;

Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and any penalty, fine, interest or additional charge payable in relation to any such duty or charge;

EBITDA means earnings before interest, tax, depreciation and amortisation;



Effective means, when used in relation to the Scheme, the coming into effect under section 236(3) of the Companies Act of the order of the Court made under section 236(1) of the Companies Act in relation to the Scheme and all of the conditions to the implementation of the Scheme having been satisfied or waived in accordance with this agreement and the Scheme;

Encumbrance means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing;

End Date means 30 September 2025;

Excluded Event means any event or change in circumstances:

- (a) which has been fairly disclosed to the Consortium prior to the date of this agreement;
- (b) resulting from the exercise by any party of its rights, or the discharge by any party of its obligations, under this agreement other than MMH's:
 - (i) obligations under clause 11.2(a) and 11.2(c); and
 - (ii) rights under clauses 11.2 and 11.3;

Exclusivity Period means the period starting on the date of this agreement and ending on the first to occur of:

- (a) termination of this agreement;
- (b) the Implementation Date; and
- (c) the End Date;

Final Orders means orders on application of MMH, that the Scheme shall be binding on MMH, the Consortium, NZ HoldCo, the Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

Final Orders Date means the day on which the Final Orders are granted by the Court;

First Court Date means the first date on which the application is made to the Court for the Initial Orders in accordance with section 236(2) of the Companies Act;

FMCA means the Financial Markets Conduct Act 2013;



Forward Looking Information means:

- (a) any information about the future performance, future prospects, future financial condition, future results of operations, or future results of the strategy and plans of the MMH Group; and
- (b) any other information about the future, including any budget, forecast, outlook about the future, scenario about the future, projection, prediction, estimate, opinion or other forward-looking statement;

Government Agency means any government, any department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity;

GST means goods and services tax charged or levied under the GST Act, and includes any GST Default Amounts;

GST Act means the Goods and Services Tax Act 1985 (as amended);

GST Default Amounts means any penalties, additional tax or interest payable in respect of goods and services tax;

GST Exclusive Consideration has the meaning given in clause 18.2;

Implementation Date means the day on which the Scheme is to be implemented, being 5 Business Days after the Record Date, or such other date agreed between the parties in writing;

Independent Adviser means the person appointed by MMH as independent adviser to prepare the Independent Adviser's Report and approved by the Takeovers Panel;

Independent Adviser's Report means the independent adviser's report prepared by the Independent Adviser in relation to the Scheme as amended or updated from time to time and including any supplementary or replacement report, stating its opinion on the merits of the Transaction;

Initial Orders means, on application by MMH, orders by the Court for the purposes of section 236(2) of the Companies Act;

Insolvency Event means, in relation to a person, the occurrence of any of the following:

- (a) the person ceases or threatens to cease to carry on all or substantially all of its business or operations;
- (b) an application or an order is made, or a resolution is passed or proposed, for the person's dissolution;
- (c) the person is or becomes unable to pay its debts when due (as defined in the Companies Act), or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;



- (d) the person goes into receivership or has a receiver, receiver and manager, official manager, trustee or other similar officer appointed in respect of all or any of its property;
- (e) a distress, attachment or other execution is levied or enforced upon or commenced against any of its assets;
- (f) any resolution is passed, or any proceeding is commenced, for the dissolution of that person;
- (g) the person takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this definition; and
- (h) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any applicable foreign law;

Joint Venture has the meaning given in clause 2.6;

Local Government Act means the Local Government Act 2002;

Matching Period has the meaning given in clause 13.7(a)(vi);

Material Adverse Change means any matter, event, condition or change in circumstances or thing which occurs or is announced, and which is not an Excluded Event (each a *Specified Event*) which:

- (a) individually, or when aggregated with all other Specified Events, reduces or is reasonably likely to reduce by 15% or more the sum of the net tangible assets of each of MMH (excluding Northport), Northport (excluding North Tugz) (as to 50%) and North Tugz (as to 25%), as at 30 June 2024;
- (b) individually, or when aggregated with all other Specified Events, reduces or is reasonably likely to reduce by 15% or more, the aggregated EBITDA (including non-recurring items) of MMH (excluding Northport), Northport (excluding North Tugz) (as to 50%) and North Tugz (as to 25%), over the 12 months ending on the month immediately preceding the Specified Event as disclosed in the most recent annual or half-yearly financial statements of those entities,

provided that such event, condition, matter, or change in circumstance is not the result of:

- (c) general changes to the market for products of the MMH Group in the markets in which the business operates or trades which are not specific to the MMH Group;
- (d) any change in exchange rates or interest rates, general economic, financial, regulatory, legal or political conditions or requirements generally affecting businesses in the industry in which the MMH Group operates or trades in which the MMH Group operates or trades;



- (e) any event, change, matter, or circumstance disclosed in the Due Diligence Material to, or known by, the Consortium or its Representatives before the date of this agreement;
- (f) any change in accounting policy required by law;
- (g) any event, change, matter, or circumstance required by this agreement, the Scheme or the transactions contemplated by them (including for the avoidance of doubt the payment of MMH's costs in considering, negotiating and implementing the Scheme and the matters contemplated by this agreement);
- (h) any of the following:
 - (i) an act of the King's enemies, terrorism, sabotage, act of war, blockade, insurrection, riot, civil disturbance, epidemic or similar event; or
 - (ii) a strike, lock-out or labour dispute or similar event; or
- (i) an event, change, matter, or circumstance previously approved in writing by the Consortium;

MMH Certificate has the meaning given in clause 7.3(a);

MMH Costs Reimbursement Amount means the lesser of:

- (a) the reasonable costs of MMH properly incurred out of pocket costs in engaging external advisers to consider the Proposal, and the non-binding indicative offers that led to the Proposal (including for the avoidance of doubt the costs of the Independent Adviser), the costs to MMH of establishing and maintaining the electronic data room hosted by Ansarada and assembled by MMH and/or Northport, and MMH's other administration costs, in each case from 7 August 2024 until the date of termination of this agreement under clause 15.4; and
 - (b) \$1.2 million,
- plus GST (if any).

MMH Director means each director of MMH from time to time;

MMH Group means MMH and its Related Entities;

MMH Information means all MMH Group information included in the Scheme Booklet other than the Consortium Information and the Independent Adviser's Report;

MMH Protected Persons means each member of the MMH Group and its respective directors, officers and employees;

MMH Undertakings means the undertakings set out in Part 2 of Schedule 2;

MMH Warranties means the statements set out in Part 1 of Schedule 2;

Northport means Northport Limited;



North Tugz means North Tugz Limited;

NRC Existing Shares means the 22,142,907 Shares which are held or controlled by NRC at the date of this agreement and any other Shares NRC may acquire after the date of this agreement;

NZ HoldCo means Northport Group Limited;

NZX means NZX Limited and, where the context requires, the main board financial market that it operates;

NZX Listing Rules means the NZX Listing Rules as amended from time to time;

POA means Port of Auckland Limited;

PPSR means the Personal Property Securities Register established under section 139 of the Personal Property Securities Act 1999;

Prescribed Occurrence means the occurrence of any of the events listed in Schedule 1 other than an event agreed to by the Consortium in writing;

Record Date means 5.00pm on the date which is 5 Business Days after the Final Orders Date or such other date agreed between the parties in writing;

Reference Rate means in relation to interest payable on any payment due under this agreement, the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45 am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period;

Register means the register of Shares maintained by Computershare Investor Services Limited on behalf of MMH;

Registrar has the meaning given in the Companies Act;

Related Entity means:

- (a) in respect of the Consortium, an entity that:
 - (i) Controls a Consortium Member; or
 - (ii) is under the Control of a Consortium Member (excluding Northport);
- (b) in respect of MMH, each entity that is under the Control of MMH (excluding for the avoidance of doubt Northport);

Relevant Interest has the meaning given in section 235(1) of the FMCA;

Representative means in relation to a person:



- (a) any director, officer or employee, councillor or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person; and
- (b) when used in clauses 3.4 and 16.2 only, also includes any Related Entity and any director, officer or employee, councillor or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, any Related Entity;

Scheme means a scheme of arrangement under Part 15 of the Companies Act under which all of the Shares held by Scheme Shareholders will be transferred to the Consortium and NZ HoldCo and the Scheme Shareholders will be entitled to receive the Consideration, in the form attached as Annex 1 or in such other form as MMH and the Consortium agree in writing and the Court approves under section 236(1) of the Companies Act;

Scheme Booklet means the explanatory memorandum (including the notice of meeting and proxy form), the despatch of which is to be approved by the Court and which is to be sent to Shareholders in advance of the Scheme Meeting;

Scheme Meeting means the meeting of Shareholders ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting;

Scheme Plan means the scheme plan to be entered into by the Consortium and MMH in the form attached as Annex 1 or in such other form as the parties agree in writing;

Scheme Resolution means the resolution to be put to Shareholders at the Scheme Meeting to approve the Scheme;

Scheme Shareholder means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;

Scheme Shares means all of the Shares on issue at 5.00pm on the Record Date other than the NRC Existing Shares;

Second Court Date means the later of:

- (a) the last date MMH files affidavit(s) verifying the results of the Scheme Meeting and such other information as prescribed in the Initial Orders so as to obtain the Final Orders; and
- (b) if there is a hearing in respect of the Final Orders, the first date of such hearing, provided that if such hearing is adjourned, it means the first date on which the adjourned application is heard;

Share means a fully paid ordinary share in the capital of MMH;

Shareholder means a person who is registered in the Register as the holder of one or more Shares from time to time;



Superior Proposal means a written bona fide Competing Proposal for more than 50% of the Shares or all or a majority of the MMH Group's assets received by MMH after the date of this agreement that:

- (a) does not result from a breach by MMH of any of its obligations under clause 13, or from any act by a member of the MMH Group or its Representatives which, if done by MMH, would constitute a breach of clause 13 by MMH; and
- (b) the Board determines, acting in good faith and after having received written advice from its external financial and legal advisers:
 - (i) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent (including, for clarity, the likelihood of satisfying those conditions), timing considerations, the identity and financial capacity of the proponent and any other matters affecting the probability of the Competing Proposal being completed in accordance with its terms;
 - (ii) would, if completed substantially in accordance with its terms, result in a transaction that would be more favourable to Shareholders (as a whole) than the Scheme (if applicable, as amended or varied under any Counter Proposal provided under clause 13.7(b)), taking into account all the terms and conditions of the Competing Proposal (including consideration, form of consideration, conditionality, funding, certainty and timing) and the Scheme and any other matters affecting the probability of the Competing Proposal being completed in accordance with its terms; and
 - (iii) that failing to attempt to advance such Competing Proposal would be reasonably likely to constitute a breach of the fiduciary duties or statutory obligations of the MMH Directors;

Supplier has the meaning given in clause 18.3;

Surviving Clauses means clause 1 (interpretation), clause 15.8 (effect of termination), clause 15.9 (MMH Costs Reimbursement), clause 16 (announcements), clause 18 (GST), clause 19 (notices), clause 20 (general) (other than clause 20.7 (further assurance) and clause 20.9 (governing law and jurisdiction));

Takeovers Code means the takeovers code set out in the schedule to the Takeovers Regulations 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993;

Takeovers Panel means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993;

Tax means a tax, levy, charge, impost, fee, deduction, withholding or Duty of any nature, including stamp and transaction Duty or any goods and services tax, value added tax or consumption tax, which is imposed or collected by a Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts;

Third Party means a person other than a Consortium Member;



Timetable means the timetable set out in Schedule 5, or such other timetable as MMH and the Consortium agree in writing;

Transaction means the acquisition by the Consortium of all the Scheme Shares through implementation of the Scheme in accordance with the terms of this agreement;

Voting Agreement means a voting agreement between POA and the Consortium to be entered into on or after the date of this agreement; and

Voting Rights has the meaning given in the Takeovers Code.

1.2 **MMH awareness**

Where any MMH Warranty is qualified by the expression so far as MMH is aware or any similar expression, MMH will be deemed to know or be aware of all matters or circumstances of which any Designated Person is actually aware as at the date statement is made or given. Except as contemplated by this clause, knowledge, belief or awareness of any other person will not be imputed to MMH in respect of any MMH Warranty. For avoidance of doubt, and without limiting clause 14.1, none of the individuals referred to in this clause 1.2 has any personal liability in respect of the MMH Warranties.

1.3 **Things required to be done other than on a Business Day**

Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

1.4 **Other rules of interpretation**

In this agreement:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
 - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this agreement;
 - (ii) any legislation which that legislation re-enacts with or without modification; and
 - (iii) any subordinate legislation made before or after execution of this agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.4(a)(i), or under any legislation which it re-enacts as described in clause 1.4(a)(ii);
- (b) a reference to the NZX Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (c) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;



- (d) references to an individual or a natural person include his estate and personal representatives;
- (e) a reference to a clause, schedule or annex is a reference to a clause, schedule or annex of or to this agreement (and the schedules and annexes form part of this agreement);
- (f) subject to clause 20.2, references to a party to this agreement include the successors or assigns (immediate or otherwise) of that party;
- (g) a reference to any instrument or document includes any variation or replacement of it;
- (h) unless otherwise indicated, a reference to any time is, a reference to that time in New Zealand;
- (i) a reference to \$, NZ\$ or dollars is to New Zealand currency;
- (j) singular words include the plural and vice versa;
- (k) a word of any gender includes the corresponding words of any other gender;
- (l) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (m) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
- (n) nothing is to be construed adversely to a party just because that party put forward this agreement or the relevant part of this agreement;
- (o) the headings do not affect interpretation; and
- (p) a reference to 'fairly disclosed' means disclosed in writing (including via the Due Diligence Material) such that the matter, information or circumstance might reasonably be expected to come to the knowledge of a diligent and reasonable bidder or any of its representatives in the ordinary course of carrying out a due diligence exercise in respect of MMH.

1.5 **Independent Adviser's conclusion**

For the avoidance of doubt, for the purposes of this agreement:

- (a) the Independent Adviser's Report will not be treated as having concluded that the Consideration is within or above the Independent Adviser's valuation range for the Shares; and
- (b) the Independent Adviser's Report will be treated as having concluded that the Consideration is below the Independent Adviser's valuation range for the Shares,

if, after the finalisation of the initial Independent Adviser's Report but prior to the date of the Scheme Meeting, the Independent Adviser issues an updated,



replacement or supplementary report containing a revised valuation range for the Shares and the Consideration is below the revised valuation range (and, for clarity, such update, replacement or supplementary report, or any subsequent update, replacement or supplementary report, is not superseded by a further update, replacement or supplementary report prior to the date of the Scheme Meeting containing a revised valuation range for the Shares and the Consideration is within or above the revised valuation range for the Shares).

1.6 **Consents and approvals**

If the doing of any act, matter or thing under this agreement is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion (unless this agreement specifies otherwise).

2 **CONSORTIUM ARRANGEMENTS**

2.1 **Overview**

The Consortium has come together to implement a broader transaction which includes the Transaction and the Consortium procuring the following steps:

- (a) **Establishment:** the Consortium established in March 2024 to formulate and together make the Proposal;
 - (b) **Consultation:** NRC carrying out public consultation under the Local Government Act. If such consultation does not result in NRC deciding, after due consideration, to implement the Scheme, then it will not proceed;
 - (c) **Implementation – Scheme:** implementing the Transaction; and
 - (d) **De-listing:** de-listing MMH,
- (together, the *Broader Transaction*).

2.2 **Paramountcy**

The provisions of this clause 2 are paramount and, to the extent that any other provision in this agreement is inconsistent with the provisions of this clause, that other provision will be read subject to this clause.

2.3 **Purpose**

The purpose of the Joint Venture is for the Consortium to implement the Broader Transaction (the *Purpose*).

2.4 **Voting and control of NRC Existing Shares**

- (a) Nothing in this agreement or any other document contemplated by or entered into to give effect to this agreement, confers on POT or Tupu Tonu the ability to hold or control the voting rights or any other rights attaching to (or confers on POT or Tupu Tonu any interest in) the NRC Existing Shares.
- (b) NRC has the exclusive right to exercise and/or control the exercise of all Voting Rights attaching to the NRC Existing Shares in whatever manner it sees fit until immediately after the Implementation Date (at which point any shareholders' agreement between Consortium Members will fetter such Voting Rights).



2.5 **Compliance with law**

- (a) The parties acknowledge that by executing this agreement they will be Associates of each other. Other than as expressly contemplated by this agreement for so long as they are Associates of each other, each party agrees not to acquire any further legal or beneficial interest in any Shares, increase their respective holding or control of Voting Rights in MMH or take any other action, in each case that would be in breach of the Takeovers Code or the FMCA.
- (b) Nothing in this agreement will require any party to do any act or thing in contravention of the Takeovers Code, the Companies Act or the FMCA.

2.6 **Joint venture**

With effect from the date of this agreement, the Consortium forms an unincorporated joint venture on the terms set out in this agreement (*Joint Venture*).

2.7 **No other activity**

Unless the Consortium Members otherwise agree in writing, the Consortium shall not engage in any business or activity which is not the Purpose, or reasonably incidental to the Purpose.

2.8 **Several liability**

The obligations of each Consortium Member are several in the following proportions:

- (a) NRC: 43%;
- (b) POT: 50%; and
- (c) Tupu Tonu: 7%.

2.9 **Consideration**

The resources to pay the Consideration will be made available severally by the Consortium Members as required.

2.10 **Shares**

The Shares transferred under the Scheme Plan to NZ HoldCo will be allocated as between the Consortium in a manner determined by themselves outside this agreement. It is intended that, unless otherwise agreed by the Consortium Members in writing, the Consortium Members will indirectly hold the following percentages of Shares:

- (a) NRC: 43%;
- (b) POT: 50%; and
- (c) Tupu Tonu: 7%.

3 **PROPOSAL AND IMPLEMENTATION OF SCHEME**

3.1 **MMH to propose Scheme**

MMH must, as soon as reasonably practicable, propose and, subject to the Scheme becoming Effective, implement the Scheme on and subject to the terms of this agreement.



3.2 **Consideration**

Each Scheme Shareholder is entitled to receive the Consideration in respect of each Scheme Share held by that Scheme Shareholder subject to and in accordance with the terms of this agreement and the Scheme.

3.3 **Consortium to pay Consideration**

The Consortium undertakes in favour of MMH (in each Consortium Member's own right, severally, and on behalf of the Scheme Shareholders) to, in consideration for and simultaneously with the transfer to NZ HoldCo of each Scheme Share from each Scheme Shareholder under the terms of the Scheme, procure NZ HoldCo to pay the Consideration to each Scheme Shareholder in accordance with the Scheme and the Deed Poll.

3.4 **General implementation obligations**

Each party must do everything reasonably necessary, including by procuring that its Representatives work in good faith and in a timely and co-operative manner with, in the case of the Consortium, MMH and its Representatives and, in the case of MMH, the Consortium and its Representatives, to implement the Scheme in accordance with this agreement and all applicable laws and regulations applicable to the Scheme.

3.5 **Timetable**

Each party must use all reasonable endeavours to ensure that the Scheme is implemented in accordance with the Timetable or otherwise as soon as reasonably practicable. Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of this clause 3.5 to the extent that such failure is due to circumstances or matters outside the party's control provided that such party has used reasonable endeavours to meet the Timetable. Each party will keep the other parties informed about their progress against the Timetable and notify the other parties if it believes that any of the dates in the Timetable are not achievable. If any date in the Timetable is not able to be achieved due to circumstances or matters outside of a party's control, the parties must consult in good faith with a view to amending the Timetable to the extent required to permit the Scheme to be implemented before the End Date.

3.6 **No amendment to Scheme without the Consortium's consent**

MMH must not consent to any modification of, or amendment to, the Scheme or the Final Orders, or the making or imposition by the Court or any Government Agency of any condition to the Scheme, without:

- (a) the Consortium's counsel's consent, where a modification or amendment is made, imposed or requested at a Court hearing (and the Consortium must procure that such consent is not unreasonably withheld or delayed); or
- (b) the Consortium's prior written consent, in the case of any other modification or amendment (such consent not to be unreasonably withheld or delayed).

3.7 **Consortium will arrange for NZ HoldCo to complete acquisition**

The Consortium will procure, under this clause 3.7, NZ HoldCo to acquire all of the Scheme Shares under the Scheme and accordingly:

- (a) the Consortium and NZ HoldCo will both enter into the Deed Poll;



- (b) the Consortium will continue to be bound by this agreement; and
- (c) the Consortium will ensure that NZ HoldCo completes the acquisition of the Scheme Shares in accordance with the terms of this agreement and the Deed Poll.

4 ACQUISITION OF BALANCE OF NORTHPORT

Immediately after the Scheme has become Effective, the Consortium will procure MMH to, and POT agrees to, have MMH purchase and POT will sell, the Northport shares held by POT. In consideration for the purchase of the Northport shares held by POT, the Consortium will procure NZ HoldCo to issue, and POT will subscribe for, shares in NZ HoldCo at the same effective issue price per share as the Consideration, resulting in the Consortium Members holding the intended percentages of Shares as set out in clause 2.10. As NZ HoldCo will satisfy the consideration for the purchase of the Northport shares held by POT on behalf of MMH, NZ HoldCo will have an intercompany loan receivable from MMH equal to the aggregate purchase price of the Northport shares sold by POT. This clause may be supplemented by additional agreements between members of the Consortium, NZ HoldCo, and/or POT providing for warranties and a wash-up mechanism on terms agreed between them.

5 CONDITIONS PRECEDENT

5.1 Conditions

The Scheme will not become Effective and the obligations of the Consortium under clause 3.3 do not become binding unless and until each of the conditions set out in the first column of the following table has been satisfied or waived in accordance with this clause 5.1:

Condition	Responsibility	Waiver
(a) (Consultation) NRC's public consultation under the Local Government Act is completed to NRC's satisfaction and NRC, at its complete discretion, decides to implement the Scheme;	NRC	None
(b) (Court approval) subject to clause 5.2, the Court approves the Scheme in accordance with section 236 of the Companies Act;	MMH	None
(c) (Shareholder approval) Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;	MMH	None



Condition	Responsibility	Waiver
(d) (Independent Adviser's report) the Independent Adviser concludes prior to the Scheme Meeting that the Consideration is above or within the Independent Adviser's valuation range for the Shares;	MMH	None
(e) (No Material Adverse Change) no Material Adverse Change occurs between the date of this agreement and 5.00pm on the Business Day before the Implementation Date;	None	Consortium
(f) (No Prescribed Occurrence) no Prescribed Occurrence occurs between the date of this agreement and 5.00pm on the Business Day before the Implementation Date.	MMH	Consortium

5.2 Court approval

If the Court's approval of the Scheme in accordance with section 236(1) of the Companies Act would impose any terms or conditions other than those set out in the Scheme in the form attached as Annex 1, then each such term or condition must be approved in writing by MMH and the Consortium (both acting reasonably) prior to the Court granting the Final Orders.

5.3 Satisfaction of Conditions

In respect of each Condition:

- (a) each party specified in the second column of the table in clause 5.1 corresponding to that Condition must use all reasonable endeavours to procure that the Condition is satisfied:
 - (i) in the case of the Conditions in clauses 5.1(a) to 5.1(d), as soon as practicable and in any event before the End Date; and
 - (ii) in the case of the Conditions in clauses 5.1(e) and 5.1(f), at all times before 5.00pm on the Business Day before the Implementation Date; and
- (b) each party must not take any action that will or is likely to hinder or prevent the satisfaction of the Condition,

provided that nothing in this clause 5.3 will require any party to incur any additional costs (other than customary advisor costs and filing fees) or to offer, agree to or accept any undertakings, commitments or conditions.



5.4 **Waiver of Conditions**

Where the third column of the table in clause 5.1 corresponding to a Condition states "none", that Condition may not be waived. Each other Condition is only for the benefit of, and may only be waived in writing by:

- (a) if one party is specified in the third column of the table in clause 5.1 opposite that Condition, that party; or
- (b) if both MMH and Consortium are specified in the third column of the table in clause 5.1 corresponding to that Condition, those parties jointly.

A party entitled to waive, or to join in the waiver of, a Condition may do so in its absolute discretion.

5.5 **Method of waiver**

Where a Condition may be waived by one party, that party may only waive the Condition by giving notice in writing to the other party. Where a Condition may only be waived by both MMH and the Consortium jointly, those parties may only waive the Condition by agreeing in writing to do so.

5.6 **Effect of waiver**

If a party waives or joins in the waiver of a Condition in accordance with this clause 5, that waiver does not:

- (a) preclude that party from bringing a claim against the other party for any breach of this agreement; or
- (b) constitute a waiver of any other Condition.

5.7 **Termination**

Notwithstanding anything in this clause 5 or any rights of termination implied by law, this agreement may only be terminated in accordance with clause 15.

6 **SCHEME BOOKLET**

6.1 **MMH's obligations**

MMH must:

- (a) prepare the Scheme Booklet so that it contains:
 - (i) all information required by the Companies Act and any other applicable laws;
 - (ii) any information required by the Takeovers Panel in order for MMH to obtain from the Takeovers Panel a letter of intention and a statement under section 236A(2)(b)(ii) of the Companies Act;
 - (iii) the responsibility statements referred to in clause 6.4; and
 - (iv) a statement by the MMH Directors reflecting the recommendation and undertaking referred to in clause 10.1;



- (b) if not already appointed, appoint the Independent Adviser (including obtaining approval from the Takeovers Panel for that appointment), and provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (c) provide the Consortium with successive drafts of the Scheme Booklet (excluding the Independent Adviser's Report) and successive drafts of any extracts of the Independent Adviser's Report that contain any factual matters about the Consortium, in each case in a timely manner, and so that the Consortium has a reasonable opportunity to review those drafts, and consider in good faith the reasonable comments of the Consortium and its Representatives when preparing a revised draft of the Scheme Booklet or providing feedback on the Independent Adviser's Report;
- (d) as soon as practicable after preparation of an advanced draft of the Scheme Booklet suitable for review by the Takeovers Panel, provide that draft to the Consortium;
- (e) as soon as practicable after receipt of the confirmation from the Consortium referred to in clause 6.2(e), provide the Takeovers Panel the draft Scheme Booklet;
- (f) keep the Consortium reasonably informed of any issues raised by the Takeovers Panel in relation to the Scheme Booklet and use reasonable endeavours to, in consultation with the Consortium, resolve any such issues expeditiously;
- (g) as soon as practicable after the approval of the Scheme Booklet by the Takeovers Panel, procure that a meeting of the Board is convened to approve the Scheme Booklet for lodgement with the Court and, subject to the Initial Orders, for dispatch to Shareholders; and
- (h) advise the Consortium promptly if MMH becomes so aware either:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet under applicable law; or
 - (ii) that any part of the MMH Information in the Scheme Booklet is misleading or deceptive in any material respect, including by omission,and in either case, if MMH becomes aware at any time, or receives advice from the Consortium under clause 6.2(f):
 - (iii) between the approval of the Scheme Booklet in accordance with clause 6.1(g) and the date of the Scheme Meeting, then, if considered by MMH that supplementary disclosure is required, provide supplementary disclosure to Shareholders in accordance with applicable law and after consulting with the Consortium as to the content and presentation of that supplementary disclosure and will, if it considers it to be necessary or appropriate, seek the Court's guidance in respect of the supplementary disclosure and adjourn the Scheme Meeting to the earliest date reasonably practicable; and



- (iv) between the date of the Scheme Meeting and the Second Court Date, then, if considered by MMH that supplementary disclosure is required, apply to the Court for orders as to the procedure to be followed for the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme, after consulting with the Consortium in good faith and taking into account the Consortium's reasonable comments.

6.2 Consortium's obligations

Without limiting clause 3, the Consortium must:

- (a) prepare and provide to MMH for inclusion in the Scheme Booklet:
 - (i) information about the Consortium;
 - (ii) confirmation (in a form satisfactory to MMH, acting reasonably, but without disclosing any commercially sensitive terms) that the Consortium will have access to sufficient funds to fund the Consideration; and
 - (iii) information equivalent to the information that would meet the requirements of Schedule 1 to the Takeovers Code,

as required to be included in the Scheme Booklet by the Companies Act, the Takeovers Panel, and any other applicable laws or regulations;
- (b) provide MMH drafts of the information referred to in clause 6.2(a) in a timely manner, to provide MMH a reasonable opportunity to review those drafts and consider in good faith the reasonable comments of MMH and its Representatives when preparing revised drafts of that information;
- (c) provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (d) as soon as practicable after receipt of any draft of the Scheme Booklet from MMH, review and provide comments on that draft;
- (e) subject to clause 6.3, before MMH provides the Scheme Booklet to the Takeovers Panel in accordance with clause 6.1(e) deliver to MMH written consent from the Consortium to the inclusion of the Consortium Information in the Scheme Booklet in the form and context it appears;
- (f) advise MMH if the Consortium becomes aware at any time either:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Consortium Information under any applicable law; or
 - (ii) that any part of the Consortium Information is misleading or deceptive in a material respect, including by omission;



- (g) if requested by MMH, procure that it is represented by counsel at the Court hearings convened for the purposes of considering the Initial Orders and the Final Orders, at which through its counsel, the Consortium will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme. For the avoidance of doubt, MMH will prepare the Court documentation for the Initial Orders and Final Orders and the Consortium's counsel will only prepare submissions to the Court, if required, in support of MMH's application; and
- (h) before a draft of the Scheme Booklet is lodged with the Takeovers Panel, and again before the Scheme Booklet is despatched to Shareholders, confirm to MMH the accuracy and completeness of the Consortium Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect including because of any omission.

6.3 Consortium confirmations and approvals

If the Consortium requires any change to be made to the form or content of the Consortium Information as a condition of giving its consent as referred to in clause 6.2(e) then:

- (a) if MMH disagrees with the change the parties must consult in good faith about the change and the reasons for it with a view to agreeing an alternative change that satisfies both parties; and
- (b) if the parties are unable to reach agreement, MMH must make such changes to the Consortium Information as the Consortium reasonably requires.

6.4 Responsibility statements

The Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties, to the effect that:

- (a) MMH has provided, and is responsible for, the MMH Information in the Scheme Booklet, and that none of the Consortium Members or their respective officers, directors and employees assumes any responsibility for the accuracy or completeness of the MMH Information; and
- (b) the Consortium has provided, and is responsible for, the Consortium Information, and that none of MMH or its officers, directors and employees assumes any responsibility for the accuracy or completeness of the Consortium Information; and
- (c) the Independent Adviser has provided the Independent Adviser's Report and none of the Consortium, MMH or their respective officers or employees assumes any responsibility for the accuracy or completeness of the Independent Adviser's Report.



7 SCHEME IMPLEMENTATION STEPS

7.1 MMH's obligations

Without limiting clause 3, MMH must:

- (a) before the First Court Date, apply to the Takeovers Panel for a letter of intention indicating that the Takeover Panel is minded to issue a no objection statement and that it does not intend to appear at the Court in respect of the Initial Orders;
- (b) apply to the Court for Initial Orders convening the Scheme Meeting, and if the Court makes and seals those orders:
 - (i) dispatch the Scheme Booklet to Shareholders and hold the Scheme Meeting in accordance with, and otherwise complying in all respects with, the Initial Orders; and
 - (ii) promptly deliver to the Registrar for registration a copy of the Initial Orders in accordance with section 236(4) of the Companies Act, by no later than 10 Business Days after the date the Initial Orders are granted;
- (c) upon sending the Scheme Booklet to Scheme Shareholders, lodge a copy of that Scheme Booklet with NZX in accordance with the NZX Listing Rules;
- (d) if the Scheme Resolution is passed by the requisite majorities of Shareholders as set out under section 236A(4) of the Companies Act before the Final Orders Date, promptly apply to:
 - (i) the Takeovers Panel for the production of a statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting Final Orders; and
 - (ii) the Court for its approval of Final Orders; and
- (e) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court):
 - (i) promptly deliver to the Registrar for registration a copy of the Final Order;
 - (ii) use its best endeavours to procure that NZX suspend trading in the Shares from the close of trading on the later of:
 - (A) the Final Orders Date; and
 - (B) the date on which the Condition in clause 5.1(a) is satisfied or, if capable of waiver, waived in accordance with clauses 5.4 and 5.5,

or such other date as is agreed between the parties in writing;



- (iii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration;
- (iv) subject to the Consortium satisfying its obligations under clause 7.2(b), effect the transfer of the Scheme Shares to the Consortium in accordance with the Scheme on the Implementation Date; and
- (v) do all other things contemplated of it under the Scheme and all other things (if any) within its power as may be reasonably necessary for the implementation of the Transaction on a basis consistent with this agreement or necessary for MMH to lawfully give effect to the Scheme and the orders of the Court.

7.2 Consortium's obligations

Without limiting clause 3, the Consortium will execute all documents and do all acts and things within its power as may be reasonably necessary or desirable for the implementation of the Transaction on a basis consistent with this agreement and as expeditiously as possible, and in particular the Consortium must:

- (a) before the Second Court Date, deliver to MMH a copy of the Deed Poll executed by the Consortium; and
- (b) procure that, if the Scheme becomes Effective, the Consortium accepts a transfer of the Scheme Shares and provides the Consideration in accordance with clause 3.3 and the Deed Poll on or before the Implementation Date.

7.3 Conditions certificate

(a) Subject to clause 7.3(b), on both:

- (i) the Business Day following the Final Orders Date (or such other date that is on or about this date as may be notified by the Consortium to MMH at least three Business Days before such certificate is to be delivered); and
- (ii) 8.00am on the Implementation Date,

MMH must give the Consortium a certificate from MMH signed by MMH's CEO and CFO stating that so far as MMH is aware:

- (iii) except to the extent previously waived, the Conditions in clauses 5.1(e) (No Material Adverse Change) and 5.1(f) (No Prescribed Occurrence):
 - (A) in relation to the certificate provided under clause 7.3(a)(i), would have been satisfied if 5.00pm on the Business Day before the Implementation Date was read as the time the certificate is given to the Consortium and MMH is not aware of anything that would prevent those Conditions being satisfied; or
 - (B) in relation to the certificate provided under clause 7.3(a)(ii), are satisfied as at 5.00pm on the Business Day before the Implementation Date;



- (ii) it is not in breach of clauses 11.2 (*Conduct of business*) or 12.1 (*MMH representations, warranties and undertakings*); and
 - (iii) there has not been any breach of any other provision of this agreement which might entitle the Consortium to terminate under clause 15.1(a) or clause 15.1(b),

(*MMH Certificate*).
- (b) If the statements referred to in clause 7.3(a) would be inaccurate, MMH must provide a qualified MMH Certificate setting out full details of the matters which cause or are likely to cause that certificate not to be accurate.
- (c) For the avoidance of doubt:
- (i) a MMH Certificate is signed by MMH's CEO and CFO in his or her capacity as an officer of MMH, and in no other capacity;
 - (ii) no personal liability will be assumed by MMH's CEO or CFO as a result of the statements in the MMH Certificate; and
 - (iii) the statements in the MMH Certificate will not give rise to any liability of MMH to the Consortium or any other person under this agreement or otherwise.

8 MMH'S OTHER IMPLEMENTATION OBLIGATIONS

8.1 Information about Shareholders

MMH must:

- (a) comply with any reasonable request by the Consortium to require disclosure of information in accordance with sections 290 and 291 of the FMCA, subject to its statutory and contractual obligations, and provide the Consortium the information obtained as a result of requiring such disclosure;
- (b) procure that its share registry provides to the Consortium details of the Register and all other information about the Shareholders which the Consortium reasonably requires in order to:
 - (i) canvas approval of the Scheme by Shareholders; or
 - (ii) facilitate the provision by the Consortium of the Consideration in accordance with this agreement, the Scheme and the Deed Poll.

8.2 Promotion of Transaction

MMH will use all reasonable endeavours to promote, and will provide all reasonable cooperation to the Consortium in promoting the merits of the Transaction to Shareholders, including:

- (a) providing (subject to MMH's statutory or contractual obligations) such information regarding Shareholders and their holdings as the Consortium reasonably requests and will direct its share registry to provide all information reasonably requested by the Consortium;



- (b) if requested by the Consortium, and at the cost of the Consortium, MMH will retain the services of a proxy solicitation firm agreed with the Consortium, to actively solicit affirmative proxies for the Scheme and provide the Consortium with all information generated by that firm at regular intervals (but at least on a daily basis on each of the last seven Business Days before the Scheme Meeting) as to the aggregate tally of votes received by MMH in respect of the Scheme;
- (c) procuring that senior executives of the MMH Group are available on reasonable notice to:
 - (i) meet with key Shareholders if reasonably requested to do so by the Consortium;
 - (ii) communicate with the employees, joint venture partners and key suppliers of the MMH Group,
 in each case to discuss the Transaction with such persons; and
- (d) undertake, in cooperation with the Consortium, other reasonable actions to assist with promotion of the affirmative vote of Shareholders for the Transaction, as reasonably requested by the Consortium,

in each case subject to there being no Superior Proposal and the Independent Adviser's Report concluding that the Consideration is within or above the Independent Advisers valuation range for MMH.

8.3 Board changes

Subject to the Consideration having been paid to the Shareholders in accordance with and subject to the terms of the Scheme, MMH must procure that:

- (a) such persons as the Consortium nominates (by notice to MMH no later than five Business Days before the Implementation Date) and who have provided to MMH a signed consent to act by that time are appointed as additional directors of MMH and/or such other MMH Group members on the Implementation Date (by no later than 5.00pm); and
- (b) unless otherwise agreed by the Consortium in writing, each member of the Board and, if requested by the Consortium, any director of the other MMH Group members, other than those appointed in accordance with clause 8.3(a), resigns as a director of MMH and/or such other MMH Group member with effect from the Implementation Date and acknowledges in writing that he or she has no claim against any member of the MMH Group other than for accrued directors fees and expenses.

9 COURT PROCEEDINGS

9.1 Court documents

- (a) In relation to each Court application made in relation to the Scheme, including any appeal, MMH must provide the Consortium drafts of all documents required to be given by MMH to the Court (including the originating applications, affidavits, memoranda, submissions and draft Court orders) a reasonable time before they are due to be submitted to the Court (and in any event not less than 48 hours before



submission unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of the Consortium and its Representatives on those documents.

- (b) MMH must not provide the Court with any Court orders (whether in draft or not) or applications for Court orders, or consent to any changes to any Court orders, without the Consortium having approved such documents being submitted to the Court or such changes being consented to.

9.2 **Representation**

In relation to each Court application made in relation to the Scheme, including any appeal:

- (a) MMH must, if requested by the Consortium, consent to the separate representation of the Consortium by counsel; and
- (b) the Consortium may appear and be represented in relation to the Court applications.

9.3 **Court proceedings and conditionality**

- (a) If the Court declines to make the orders sought by MMH under clause 7.1(b) or 7.1(d)(ii), due in whole or in part to the lack of satisfaction of, or the potential timing for satisfaction of (or where capable of waiver, waiver of) the Conditions, MMH must promptly make a further application for Initial Orders or Final Orders (as applicable), as soon as practicable after the earlier of:
 - (i) the parties satisfying the steps or matters specified by the Court or apparent from its directions or reasons as required, or desirable, in order to grant the Initial Orders or Final Orders (as the case may be) (*Court Guidance*); or
 - (ii) the condition in clause 5.1(a) having been satisfied, or where capable or waiver, waived.
- (b) MMH will use its best endeavours to follow the Court Guidance and any guidance or requirements of the Takeovers Panel including, if indicated, providing supplementary information to Shareholders and/or convening a second Scheme Meeting.

9.4 **Appeal if orders not made**

If the Court does not make any order sought by MMH under clause 7 (the *Decision*) to the extent clause 9.3 does not apply:

- (a) MMH and the Consortium must consult in good faith as to the effect of the refusal and whether to appeal the Decision; and
- (b) if, within 10 Business Days after the Decision, MMH and the Consortium agree to appeal the Decision or either of those parties obtains an opinion from an independent King's Counsel, practising in the field of corporate and securities law litigation, to the effect that there are reasonable prospects of successfully appealing the Decision, then:
 - (i) MMH must appeal the Court's decision within the timeframe set out in rule 29 of the Court of Appeal (Civil) Rules 2005;



- (ii) the cost of any such appeal is to be borne:
 - (A) if MMH and the Consortium agreed to appeal the Decision, by NZ HoldCo; or
 - (B) if MMH and the Consortium did not agree to appeal the Decision, by the party who obtained the opinion from the independent King's Counsel;
- (iii) if the End Date would otherwise occur before the appeal is finally determined, the End Date is deferred to the date that is 10 Business Days after the appeal from the Decision is finally determined; and
- (iv) if the appeal is successful and the relevant order is made, the End Date is further deferred to the date which is X days after the original End Date (disregarding the effect of clause 9.4(b)(iii)) where X is equal to the number of days between the date of the Decision and the date on which the appeal from the Court's decision is finally determined, or to such other date as the parties agree in writing.

10 RECOMMENDATION AND VOTING INTENTIONS

10.1 Recommendation and voting intentions of MMH Directors

- (a) MMH must use all reasonable endeavours to ensure that each MMH Director recommends that Shareholders vote in favour of the Scheme and each MMH Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme subject to:
 - (i) no Superior Proposal having been received by MMH; and
 - (ii) the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.
- (b) MMH must ensure that no senior executive of MMH makes any public statement that is not supportive of the implementation of the Scheme.

10.2 Change to recommendation or voting intentions

MMH must use all reasonable endeavours to ensure that no MMH Director changes, qualifies or withdraws the recommendation or the undertaking referred to in clause 10.1 or makes any statement inconsistent with that recommendation or that undertaking unless:

- (i) MMH receives a Superior Proposal and such change, qualification, withdrawal or statement is made in accordance with clause 13.7(a); or
- (ii) the Independent Adviser's Report concludes that the Consideration is below the Independent Adviser's valuation range for the Shares.



11 ACCESS, INFORMATION AND CONDUCT OF BUSINESS

11.1 Access and information

Until and including the Implementation Date, MMH must:

- (a) procure that the Consortium and its Representatives are given reasonable access to the properties, books and records, management, suppliers and customers of the MMH Group during normal business hours at mutually convenient times and on reasonable notice to MMH for the purposes of:
 - (i) enabling the Consortium and its financiers to understand the MMH Group's business and operations and its financial position, transactional banking requirements, financial performance and prospects;
 - (ii) implementing the Scheme and enabling the Consortium to prepare for the transition of ownership of the MMH Group to the Consortium; and
 - (iii) any other purpose agreed between MMH and the Consortium in writing,

except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed to third parties and provided that:

 - (iv) the Consortium will focus on material issues, having regard to management commitments, the impact of information requests on the MMH Group's business and MMH's obligations under clause 11.2 and the fact that the rights set out in this clause are not intended to accommodate ongoing due diligence by the Consortium as that has been completed prior to the date of this agreement;
 - (v) providing access or information pursuant to this clause 11.1(a) does not result in unreasonable disruptions to the MMH Group's business in the opinion of MMH, require MMH to make further disclosure to any other entity or Government Agency or require the disclosure of any document that would compromise the MMH Group's legal professional privilege; and
 - (vi) nothing in this clause 11.1(a) will require MMH to provide information concerning its directors' and management's consideration of the Scheme (other than where required to enable NRC's compliance with the Local Government Official Information and Meetings Act 1987 or Tupu Tonu's compliance with the Official Information Act 1982) or any Competing Proposal (but this proviso does not limit MMH's obligations under clause 13);
- (b) provide the Consortium copies of papers provided to the Board (including monthly management accounts for the MMH Group) within three Business Days after they are provided to Board members, however, MMH may redact information from such papers to the extent it is commercially sensitive or relates to the Transaction or any Competing Proposal; and
- (c) procure that one or more members of the Board meets with the Consortium and its Representatives (either in person or by teleconference) at such times as the Consortium reasonably requests for the purposes of keeping the



Consortium informed of material developments in relation to the MMH Group and discussing and resolving matters arising in relation to this agreement or the Transaction.

11.2 **Conduct of business**

From the date of this agreement until and including the Implementation Date, MMH must ensure that it, and must procure that each other member of the MMH Group:

- (a) carries on its business in the ordinary course consistent with business plans fairly disclosed in the Due Diligence Material and in substantially the same manner as conducted in the 12 months prior to the date of this agreement and does not make any significant change to the nature or scale of its business or enter any business or undertake any activities in which it was not engaged as at the date of this agreement;
- (b) maintains insurance in respect of the MMH Group's business and assets covering such risks and for such amounts as would be maintained in accordance with the MMH Group's ordinary practice and in any event to a level no less than that in place immediately prior to the date of this agreement;
- (c) uses all reasonable endeavours to:
 - (i) keep available the services of its directors and the leadership team of MMH;
 - (ii) maintain its assets in a reasonable state of operating condition, order and repair as they were at the date of this agreement, having regard to the age and book value of such assets, except for ordinary depreciation and fair wear and tear (but provided, in the case of fair wear and tear, that the MMH Group continues to comply with its ordinary practices for monitoring and repairing wear and tear of its assets);
 - (iii) maintain all material Authorisations necessary to operate the Business, and ensure all conditions attaching to those Authorisations are complied with in all material respects;
 - (iv) promptly notify the Consortium of:
 - (A) any claim that is made or legal proceedings instituted against MMH, or another member of the MMH Group, or any director or employee of any member of the MMH Group (of which it becomes aware), other than any claim or legal proceeding that has potential liability which is less than \$100,000; and
 - (B) any actual or threatened material enquiries or investigations by any Government Agency in relation to the Business (including in relation to Tax) and any material correspondence with any Government Agency in relation to the Business; and
 - (v) preserve its relationships with all Government Agencies and all customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;



- (d) does not:
- (i) incur unbudgeted capital expenditure (external to the MMH Group) exceeding \$250,000 or, except in the ordinary course of trading, transfer or otherwise dispose of or create any Encumbrance in respect of, an asset or assets (either singularly or in the aggregate) having a value exceeding \$250,000;
 - (ii) create or incur any liability or indebtedness (whether contingent or otherwise), except normal liabilities or indebtedness incurred in the ordinary course of the Business and not exceeding (either singularly or in the aggregate) \$250,000;
 - (iii) increase the facility limit on any of the MMH Group's bank facilities or exceed borrowing or cash reserve limitations as established by any financier of the MMH Group, except for increases in the ordinary course of business not exceeding \$500,000 (provided that, for the avoidance of doubt, MMH is not restricted from increasing the aggregate level of its borrowings under any existing debt facility, where increasing the level of its borrowings does not require an increase in the facility limits of any of its existing bank facility);
 - (iv) enter into, extend, renew or waive any material rights under any contract, commitment or arrangement relating to procurement (including for the purchases of raw materials or renewals of existing procurement arrangements for goods or services) which:
 - (A) if the minimum term is 12 months or less, may require annual expenditure by the relevant member of the MMH Group in excess of \$250,000; or
 - (B) if the minimum term is more than 12 months, may require annual expenditure by the relevant member of the MMH Group in excess of \$500,000,

save for entering into, extending, or renewing, or giving any waiver in respect of, a contract, commitment or arrangement relating to procurement (including for the purchases of raw materials or renewals of existing procurement arrangements for goods or services) in the ordinary course of business and on arm's length terms. For the avoidance of doubt, this clause 11.2(d)(iv) does not apply to purchases made on a purchase order basis in the ordinary course to the extent the commitment under the purchase order does not exceed 12 months;
 - (v) enter into, waive any material rights under, vary or terminate any contract, commitment or arrangement which:
 - (A) may require annual expenditure by the relevant member of the MMH Group in excess of \$250,000;
 - (B) may result in annual revenues to the relevant member of the MMH Group in excess of \$250,000; or



- (C) restrains any member of the MMH Group from engaging in or competing with any business in any place,

or vary any other existing contract, commitment or arrangement in a way that may increase the expenditure by or annual revenue to the relevant member of the MMH Group by more than \$250,000 or has the effect referred to in clause 11.2(d)(v)(C), other than any contract entered into, rights waived, or variation or termination agreed to, in the ordinary course of business and on arm's length terms;
- (vi) give any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the MMH Group, other than in the ordinary course of business and consistent with the past practice of MMH Group in the 12 months prior to the date of this agreement;
- (vii) increase the remuneration of, make any bonus payment, retention payment or termination payment to, or otherwise change the terms and conditions of employment of any MMH Director or any employee of any member of the MMH Group whose salary exceeds \$150,000, except:
 - (A) in accordance with any contractual entitlement existing as at the date of this agreement;
 - (B) for salary increases in the normal course not exceeding 5% per annum; and
 - (C) for any payments of commission made to agents appointed by the MMH Group in accordance with any contractual entitlement which exists as at the date of this agreement or is entered into following the date of this agreement in the ordinary course of business on arm's length terms;
- (viii) accelerate the rights of any MMH Director or any employee of any member of the MMH Group to receive any benefit under any MMH incentive plan;
- (ix) change its constitution or pass any resolution of shareholders or any class of shareholders (other than the Scheme Resolution, any resolution to appoint (or reappoint) a director of MMH and any resolution to authorise the Board to fix the fees and expenses of MMH's auditor);
- (x) fail to comply in all material respects with all laws and regulations applicable to the Business or do or omit to do anything which results in a material risk of termination, revocation, suspension, modification or non-renewal of any material Authorisation held by it;
- (xi) commence, compromise or settle any litigation or similar proceedings for an amount exceeding \$100,000; and



- (xii) agree, conditionally or otherwise, to do any of the things referred to in the preceding paragraphs of this clause 11.2(d), or announce or represent to any person that any of those things will be done.

11.3 Exception

Any member of the MMH Group may do any thing referred to in clause 11.2(d), or not do any thing required to be done under clauses 11.2(a) or 11.2(c):

- (a) with the prior written consent of the Consortium (such consent not to be unreasonably withheld, conditioned or delayed);
- (b) to the extent that matter is expressly and specifically provided for in the Due Diligence Material including in any business plans and/or forecasts in the Due Diligence Material;
- (c) necessary for any member of MMH Group to perform its contractual obligations as fairly disclosed in the Due Diligence Material;
- (d) necessary to comply with any law or any regulatory requirement or direction of a Government Agency;
- (e) necessary to respond to any emergency, pandemic, act of god or other disaster; or
- (f) necessary for the MMH Directors to fulfil their fiduciary and legal obligations to MMH Group in response to a Competing Proposal provided that such act or omission is permitted under clause 13.7 and is otherwise in accordance with the terms of this agreement; or
- (g) to the extent required to permit MMH to comply with its obligations under any other provision of this agreement,

and in the case of the situations described in (e) or (g) above, only provided that MMH informs the Consortium as soon as possible of the actions taken or proposed to be taken, and, to the extent practicable, considers any feedback or suggestions made by the Consortium as to the proposed course of action. The parties note that the objective of this clause is that no action is taken or not taken, which may affect the future prospects of the MMH Group, including its relationships with constituencies, without reasonable involvement of the Consortium.

11.4 Consents to change of control

In respect of each contract that MMH and the Consortium agree (acting reasonably) in writing prior to the First Court Date requires a counterparty notification or consent in relation to the change of control of MMH:

- (a) MMH and the Consortium will agree in good faith a communications plan to notify the relevant counterparty of the change of control of MMH that will occur if the Scheme becomes Effective and request that such counterparty provides any consents required in relation to that change of control; and
- (b) each party must promptly provide to the relevant counterparty all information reasonably required for the purposes of making any notification or seeking any consent referred to in clause 11.4(a).



11.5 **Northport and North Tugz**

Without limiting clause 11.2, from the date of this agreement until and including the Implementation Date, MMH must not take any action within its control in respect of its 50% investment in Northport or its indirect investment in North Tugz that would not be in the ordinary course of business, without the agreement of the Consortium.

12 **REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

12.1 **MMH representations, warranties and undertakings**

- (a) MMH represents and warrants to the Consortium on the date of this agreement and at 8.00am on the Implementation Date that each of the MMH Warranties is true, accurate and not misleading by reference to the circumstances subsisting at the time they are repeated.
- (b) MMH undertakes to the Consortium to comply with each of the MMH Undertakings.
- (c) The MMH Warranties are given subject to and are qualified by the following matters and circumstances:
 - (i) matters and/or circumstances fairly disclosed to the Consortium prior to the date of this agreement; and
 - (ii) matters and/or circumstances which, as at the date of this agreement, are within the actual knowledge of the Consortium or any of the Consortium's directors or employees who have been involved in the assessment and/or negotiation of the Transaction.
- (d) MMH shall have no liability for any information (or claim in relation to information) in the Due Diligence Material provided by or in relation to Northport or North Tugz.
- (e) MMH shall have no liability in respect of any Forward Looking Information provided by it or on its behalf except to the extent that such Forward Looking Information is knowingly or intentionally false or misleading.

12.2 **Consortium representations, warranties and undertakings**

- (a) The Consortium represents and warrants to MMH on the date of this agreement and at 8.00am on the Implementation Date that each of the Consortium Warranties is true, accurate and not misleading.
- (b) The Consortium represents and warrants to MMH on the date of this agreement that, having undertaken due diligence, it is not aware of any matter which would render any MMH Warranty untrue, inaccurate or misleading.
- (c) The Consortium undertakes to MMH to comply with each of the Consortium Undertakings.

12.3 **Status of representations, warranties and undertakings**

Each representation, warranty and undertaking made or given under this clause 12 is severable and survives termination of this agreement and each undertaking given in this clause 12 is a continuing obligation.



12.4 **Scheme becoming Effective**

After the Scheme becomes Effective, any breach of the representations and warranties or the undertakings made or given under this clause 12 may only give rise to a claim for damages and does not entitle a party to terminate this agreement.

13 **EXCLUSIVITY**

13.1 **No shop restriction**

Subject to clause 13.12, during the Exclusivity Period, MMH must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage, initiate or otherwise seek to procure any Competing Proposal or any offer, proposal, expression of interest, enquiry, negotiation or discussion with any Third Party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 13.1(a) on its behalf.

13.2 **No talk restriction**

Subject to clause 13.3 and clause 13.12, during the Exclusivity Period MMH must not, and must procure that none of its Representatives, directly or indirectly:

- (a) enter into, permit, continue or participate in, negotiations or discussions with any Third Party in relation to a Competing Proposal, or for the purpose of or
- (b) that may reasonably be expected to encourage or lead to a Competing Proposal; or
- (c) assist, encourage, procure or induce any person to do any of the things referred to in clause 13.2(a) on its behalf,

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged, initiated or otherwise procured by MMH or any of its Representatives, was received before the date of this agreement or has been publicly announced.

13.3 **No talk exception**

The restriction in clause 13.2 does not apply to the extent that it restricts MMH or its Representatives from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated, initiated or otherwise procured in contravention of clause 13.1 or 13.2) if acting in good faith and after having received written advice from its external legal and financial advisers, the Board has determined that:

- (a) the Competing Proposal is, or is reasonably likely to become, a Superior Proposal; and
- (b) it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of the Board.



13.4 **No due diligence restriction**

Subject to clause 13.5 and clause 13.12 but without limiting clause 13.2, during the Exclusivity Period, MMH must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to MMH or any of its Related Entities that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 13.4(a) on its behalf.

13.5 **No due diligence exception**

The restriction in clause 13.4 does not apply in respect of a bona fide Competing Proposal (in either case which was not encouraged, solicited, invited, facilitated or initiated in contravention of clause 13.1 or 13.2) if all of the following requirements are satisfied:

- (a) acting in good faith and after having obtained written advice from its external legal and financial advisers, the Board has determined that:
 - (i) the Competing Proposal is, or is reasonably likely to become, a Superior Proposal; and
 - (ii) it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of the Board;
- (b) the Third Party has first entered into a written agreement in favour of MMH restricting the use and disclosure by the Third Party and its affiliates and advisers of the information made available to the Third Party, on terms not more favourable in any material respect to the Third Party than those in the Confidentiality Agreement; and
- (c) to the extent that any information made available to the Third Party has not previously been provided to the Consortium (or differs in any material respect from any information previously provided to the Consortium), MMH provides that information to the Consortium at the same time as it is provided to the Third Party.

13.6 **General notification obligations**

- (a) During the Exclusivity Period, MMH must as soon as practicable in the circumstances and in any event within 48 hours notify the Consortium if:
 - (i) MMH or any of its Representatives receives any Competing Proposal, or an inquiry or approach from a Third Party to initiate any discussions or negotiations that could reasonably be expected to lead to a Competing Proposal, or any request to take any action contemplated by clause 13.2(a) or 13.4(a);
 - (ii) MMH or any of its Representatives receives any request for information relating to the MMH Group or its Business or any request for access to any non-public information of any member of the MMH Group in



connection with a current or future Competing Proposal; or

- (iii) MMH proposes to, or does, take any action in reliance on the exceptions in clause 13.3 or clause 13.5.
- (b) A notice given under clause 13.6(a) must be accompanied by all material details of the relevant event, including (as the case may be):
- (i) the identity of the person who provided the Competing Proposal or made the relevant inquiry or approach to initiate discussions or to whom any information is proposed to be provided as referred to in clause 13.6(a);
 - (ii) all material terms and conditions of any Competing Proposal, including the amount and form of consideration to be offered, the conditions to which it is subject, the proposed timetable and any break fee arrangements (to the extent known);
 - (iii) whether or not MMH intends to progress or respond to the relevant inquiry, approach, offer, bid, proposal or request (or whether, acting in good faith, MMH has not yet been able to make such a decision); and
 - (iv) the nature of the information and access requested and/or provided or action proposed to be taken.
- (c) Without limiting MMH's other obligations under this clause 13.6, MMH shall keep the Consortium reasonably informed on a prompt and timely basis of the status and any developments regarding any Competing Proposal which MMH (acting reasonably) considers are material (which shall include any change in price or form of consideration or other material amendment thereto), within 24 hours after receipt or delivery thereof (including, if a notice given under clause 13.6(a) states, in accordance with clause 13.6(b)(iii) that MMH has not yet decided whether it intends to progress or respond to the relevant inquiry, approach, offer, bid, proposal or request (or similar statement), updating the Consortium on a prompt and timely basis when it makes such a decision).

13.7 Matching rights

- (a) Without limiting clause 13.1 or clause 13.2, during the Exclusivity Period, MMH:
- (i) must not, and must procure that each of its Representatives does not, enter into, or agree to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement any Competing Proposal;
 - (ii) must procure that no MMH Director changes, qualifies or withdraws his or her recommendation in favour of the Scheme in order to publicly recommend any Competing Proposal; and
 - (iii) must not make, and ensure that no MMH Director makes, any public statement recommending any Competing Proposal to Shareholders,

unless and until:



- (iv) acting in good faith and after having received written advice from its external financial and legal advisers, the Board has determined that:
 - (A) the Competing Proposal is a Superior Proposal; and
 - (B) failing to take one or more of the actions specified in clause 13.7(a)(i) to (iii) would be likely to constitute a breach of the fiduciary duties or statutory obligations of the MMH Directors; and
- (v) MMH has provided the Consortium with all the information in relation to the Competing Proposal it is required to provide under clause 13.6 and a written explanation as to why MMH considers the Competing Proposal is a Superior Proposal;
- (vi) MMH has given the Consortium at least 10 Business Days from the date MMH gives notice to the Consortium under clause 13.7(a)(v) (including all of the information required to be provided under that clause) in respect of the Competing Proposal (*Matching Period*) in which to provide a Counter Proposal in accordance with clause 13.7(b); and
- (vii) upon the expiry of the Matching Period:
 - (A) the Consortium has not provided a Counter Proposal under clause 13.7(b); or
 - (B) if the Consortium has provided a Counter Proposal under clause 13.7(b) and MMH having complied with clause 13.8 then, acting in good faith and after having received written advice from its external legal and financial advisers, the Board has determined that:
 - (AA) the Competing Proposal nevertheless continues to constitute a Superior Proposal (taking into account the Counter Proposal); and
 - (BB) failing to respond to such Competing Proposal would be likely to continue to constitute a breach of the fiduciary duties or statutory obligations of the Board.
- (b) During the Matching Period, the Consortium may offer to amend the terms of the Scheme and this agreement or make an alternative proposal to MMH or Shareholders with a view to providing an outcome for Shareholders that, taken as a whole, is no less favourable to Shareholders than that offered under the relevant Competing Proposal (a *Counter Proposal*).

13.8 MMH's response to Counter Proposal

If, during the Matching Period, the Consortium makes a Counter Proposal:

- (a) MMH must procure that the Board considers the Counter Proposal in good faith and, if it considers that the terms and conditions of the Counter Proposal



(taken as a whole) are less favourable to Shareholders than those in the relevant Superior Proposal, must consult with the Consortium as to the relative merits of the Counter Proposal and the Superior Proposal; and

- (b) if the Board acting in good faith determines that the terms and conditions of the Counter Proposal taken as a whole are no less favourable to Shareholders than those in the relevant Competing Proposal, then:
 - (i) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and
 - (ii) MMH must procure that each MMH Director makes a public statement recommending the Counter Proposal to Shareholders.

13.9 Changes to Proposals

Each successive material modification to or variation of a Competing Proposal including:

- (a) any material change to the terms referred to in clause 13.6(b)(i) and/or (ii); or
- (b) any incomplete or non-binding proposal or expression of interest becoming complete, capable of acceptance or binding on the Third Party bidder,

will be taken to constitute a new Competing Proposal in respect of which MMH must separately comply with its obligations under clause 13.6 to clause 13.8.

13.10 Termination if unmatched Superior Proposal progresses

If:

- (a) MMH has complied with clause 13.6 in relation to a Competing Proposal; and
- (b) in compliance with clause 13.7(a):
 - (i) MMH enters into, or agrees to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement the Competing Proposal; or
 - (ii) any MMH Director changes, qualifies or withdraws his or her recommendation in favour of the Scheme in order to publicly recommend the Competing Proposal; or
 - (iii) MMH makes, or any MMH Director makes, any public statement recommending the Competing Proposal to Shareholders,

then either party may terminate this agreement by notice to the other party.

13.11 Standstill arrangements with other parties

During the Exclusivity Period, except with the prior written consent of the Consortium, MMH must not amend or waive, and must enforce, the terms of any standstill agreement or arrangement between MMH and any person other than a



member of the Consortium.

13.12 Normal provision of information

Nothing in this clause 13 prevents a party from:

- (a) providing information required to be provided by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules; or
- (b) making presentations to, and responding to bona fide enquiries from, stockbrokers, portfolio investors and equity market analysts in relation to the Scheme or in accordance with its usual practices.

14 RELEASES

14.1 Release of MMH Protected Persons

The Consortium (and each Consortium Member) agrees that no MMH Protected Person (other than MMH) shall have any personal liability under or in respect of this agreement (including in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that MMH Protected Person in connection with any representation, warranty or undertaking given by MMH in this agreement or the preparation of the MMH Information or the Due Diligence Material) except where the MMH Protected Person has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) MMH has sought and obtained the undertakings in this clause 14.1 as agent for and on behalf of each MMH Protected Person and may enforce the provisions of this clause 14.1 on behalf of any MMH Protected Person;
- (b) any MMH Protected Person may plead this clause 14.1 in response to any claim made by any Consortium Member against them; and
- (c) the undertakings contained in this clause 14.1 are given for the benefit of each MMH Protected Person and are intended to be enforceable against the Consortium by each MMH Protected Person in accordance with the provisions of the Contract and Commercial Law Act 2017.

14.2 Release of Consortium Protected Persons

MMH waives and releases, and must procure that each member of the MMH Group waives and releases, all rights and claims which it may have against any Consortium Protected Person (other than the Consortium) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Consortium Protected Person in connection with any representation, warranty or undertaking given by the Consortium in this agreement or the preparation of the Consortium Information except where the Consortium Protected Person has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) the Consortium has sought and obtained the waiver and release in this clause 14.2 as agent for and on behalf of each Consortium Protected Person and may enforce the provisions of this clause 14.2 on behalf of any Consortium Protected Person;
- (b) any Consortium Protected Person may plead this clause 14.2 in response to any claim made by any member of the MMH Group against them; and



- (c) the undertakings contained in this clause 14.2 are given for the benefit of each Consortium Protected Person and are intended to be enforceable against MMH by each Consortium Protected Person in accordance with the provisions of the Contract and Commercial Law Act 2017.

15 TERMINATION

15.1 Events affecting the MMH Group

Subject to clause 15.3, the Consortium may terminate this agreement by giving notice in writing to MMH before 5.00pm on the Business Day before the Implementation Date if:

- (a) MMH is in breach of this agreement and that breach is material in the context of the Scheme and the MMH Group taken as a whole. For the avoidance of doubt, it will be a material breach of this agreement if any MMH Director fails to make the recommendation, or any MMH Director fails to give the undertaking, referred to in clause 10.1 or changes, qualifies or withdraws that recommendation or undertaking once made or makes any statement inconsistent with that recommendation or that undertaking, except where there is a Superior Proposal in compliance with clause 13.7(a) or where the Independent Adviser issues an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares;
- (b) a Prescribed Occurrence occurs on or after the date of this agreement; or
- (c) a Material Adverse Change occurs on or after the date of this agreement.

15.2 Events affecting the Consortium

Subject to clause 15.3, MMH may terminate this agreement by giving notice in writing to the other parties before 5.00pm on the Business Day before the Implementation Date if:

- (a) the Consortium is in breach of this agreement and that breach is material in the context of the Scheme and the Consortium taken as a whole;
- (b) an Insolvency Event occurs in respect of the Consortium.

15.3 Notice of termination

A party may only exercise a right of termination under clause 15.1 or clause 15.2 if:

- (a) the party wishing to terminate has given notice to the other party or parties (as applicable) setting out the circumstances that it considers permit it to do so and stating its intention to do so;
- (b) the relevant circumstances have not been remedied within 10 Business Days after the time that the notice is given or any shorter period ending at 5.00pm on the Business Day before the Implementation Date; and
- (c) the party wishing to terminate does so before the earlier to occur of 15 Business Days after the time that the notice is given and 5.00pm on the Business Day before the Implementation Date.

**15.4 Local Government Act consultation results in decision not to proceed**

NRC may terminate this agreement by notice to the other parties if the condition in clause 5.1(a) is not satisfied.

15.5 Scheme Resolution not passed

Either MMH or the Consortium may terminate this agreement by giving notice in writing to the other if:

- (a) the Scheme Meeting is held but the Scheme Resolution is not passed by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act; and
- (b) the terminating party has complied in all material respects with its obligations under this agreement.

15.6 Court determines not to grant the Final Orders

Subject first to complying with clauses 9.3 and 9.4, either party may terminate this agreement by giving notice in writing to the other party if the Court determines not to grant the Final Orders and the terminating party has complied in all material respects with its obligations under this agreement.

15.7 End Date

Either MMH or the Consortium may terminate this agreement by giving notice in writing to the other if the Scheme has not become Effective by the End Date, provided that the terminating party's failure to comply with its obligations under this agreement has not directly and materially contributed to the Scheme not becoming Effective by the End Date.

15.8 Effect of termination

If this agreement is terminated under this clause 15 then:

- (a) except as provided in clause 15.8(c), all the provisions of this agreement cease to have effect and each party is released from its obligations to further perform this agreement;
- (b) each party retains all rights that it has against the other party in respect of any breach of this agreement occurring before termination; and
- (c) the provisions of, and the rights and obligations of each party under, this clause 15 and each of the Surviving Clauses survive termination of this agreement.

15.9 MMH costs reimbursement

If this agreement is terminated in accordance with this clause 15 other than pursuant to clause 15.1(a) or clause 15.1(b), then the Consortium will pay MMH the MMH Costs Reimbursement Amount within 20 Business Days of written notice from MMH of the MMH Costs Reimbursement Amount together with copies of each external adviser's invoice.



16 ANNOUNCEMENTS

16.1 Initial announcements

As soon as reasonably practicable after this agreement is signed MMH must issue an announcement in a form agreed with the Consortium and including a statement that:

- (a) each MMH Director recommends that Shareholders vote in favour of the Scheme; and
- (b) each MMH Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme,

in each case in the absence of a Superior Proposal and subject to the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.

16.2 Other announcements

Each party must not make, and must procure that its Representatives do not make, any public announcement concerning the Scheme or the subject matter of this agreement other than:

- (a) the announcement referred to in clause 16.1;
- (b) an announcement which provides an update on progress with implementing the Scheme or, in the case of MMH, any administrative information in relation to the Shareholders approving the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;
- (c) with the written consent of the other party, which must not be unreasonably withheld or delayed; or
- (d) if required by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules, but if either party is so required to make any announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement,

provided that the obligations in this clause will not prevent the parties from responding to media and other stakeholders and, in respect of POT, analysts, where not inconsistent with announcements that are permitted to be made in accordance with the terms of this agreement, including this clause 16.2.

17 PAYMENTS

17.1 Manner of payments

Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this agreement must be made in NZ\$ by transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds. The relevant account



for a given payment is the account that the party due to receive the payment specifies, not less than 10 Business Days before the date on which payment is due, by giving notice to the party due to make the payment.

17.2 **Default interest**

If a party defaults in making any payment when due of any sum payable under this agreement, it must pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 5% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

18 **GST**

18.1 **Interpretation**

Words and expressions that are defined in the GST Act have the same meaning when used in this clause 18. For the purposes of this clause 18, references to GST chargeable and input tax credit entitlements of any entity include GST chargeable against, and the input tax credit entitlements of, the representative member of the GST group of which the entity is a member.

18.2 **Consideration exclusive of GST**

For avoidance of doubt, the parties agree that the supply of Shares pursuant to this agreement is an exempt supply of a financial service and therefore not subject to GST. All other stated amounts payable or consideration to be provided under or in connection with this agreement do not include GST (*GST Exclusive Consideration*).

18.3 **Payment of GST**

If GST is chargeable on any supply made under or in connection with this agreement the recipient must pay to the party that has made or will make the supply (the *Supplier*), in addition to the GST Exclusive Consideration, an additional amount equal to the GST chargeable on that supply (the *Additional Amount*). The recipient must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required:

- (a) to pay the Additional Amount unless and until the Supplier has issued taxable supply information under clause 18.4; or
- (b) to pay any GST Default Amounts included in the Additional Amount if those GST Default Amounts result from the Supplier failing to comply with its obligations under the GST Act.

18.4 **Taxable supply information**

For any supply to which clause 18.3 applies, the Supplier must issue taxable supply information (such as a tax invoice) which complies with the GST Act.

18.5 **Adjustments**

If an event referred to in section 25(1) of the GST Act occurs in relation to a taxable supply made under or in connection with this agreement, the GST payable on that supply will be recalculated to reflect that adjustment, with supply correction information being issued as required by the GST Act and an appropriate payment will be made between the parties.



18.6 Input tax credits

Notwithstanding any other provision of this agreement, if an amount payable under or in connection with this agreement is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit or other deduction from output tax to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates.

19 NOTICES

19.1 Manner of giving notice

Any notice or other communication to be given under this agreement must be in writing (which includes email) and may be delivered or sent by email to the party to be served as follows:

(a) to MMH at:

Address: 8 Marsden Bay Drive, Marsden Point, Ruakaka, 0171

Email: rosie.mercer@marsdenmaritime.co.nz

For the attention of: Rosie Mercer, Chief Executive Officer

(b) to NRC at:

Address: 36 Water Street, Whangārei 0110

Email: jong@nrc.govt.nz

Attention: Jonathan Gibbard, Chief Executive Officer

(c) to POT at:

Address: 2 Salisbury Avenue, Mount Maunganui, Mount Maunganui 3116

Email: leonard.sampson@port-tauranga.co.nz

Attention: Leonard Sampson, Chief Executive Officer

(d) to Tupu Tonu at:

Address: Level 4 Rawlinsons House, 5 Willeston Street, Wellington Central, Wellington 6011

Email: tom.woods@tuputonou.co.nz

Attention: Tom Woods, Chief Investment Officer

with a copy (which does not constitute notice) to:



Address: Chapman Tripp, Level 34, PwC Tower, 15 Customs Street, Auckland Central, Auckland 1010, New Zealand

Email: roger.wallis@chapmantripp.com

For the attention of: Roger Wallis

or at any such other address or email address notified for this purpose to the other parties under this clause.

19.2 **When notice given**

Any notice or other communication is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by email, four business hours (being the hours between 9.00am and 5.00pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message),

but if the notice or other communication would otherwise be taken to be received after 5.00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

19.3 **Proof of service**

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the email was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's email system, as the case may be.

19.4 **Documents relating to legal proceedings**

This clause 19 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this agreement.

20 **GENERAL**

20.1 **Amendments**

- (a) This agreement may only be amended prior the Scheme becoming Effective.
- (b) Any amendment to this agreement will only be effective if it is in writing and signed by all the parties.
- (c) Notwithstanding clause 14.1(c) this agreement may be varied by the parties to it without the approval of any MMH Protected Person, any Consortium Protected Person or any director, officer or employee of MMH or of any other member of the MMH Group.



20.2 **Assignments**

None of the rights or obligations of a party under this agreement may be assigned, transferred or novated without the prior written consent of the other party (such consent not to be unreasonably withheld).

20.3 **Costs**

Except as otherwise expressly provided in this agreement, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this agreement, the Scheme and the Deed Poll.

20.4 **Entire agreement**

This agreement contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction except for the Confidentiality Agreement.

20.5 **Execution in counterparts**

This agreement may be executed in counterparts, which taken together must constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this agreement by executing a counterpart. Scanned signatures are taken to be valid and binding to the same extent as original signatures.

20.6 **Exercise and waiver of rights**

The rights of each party under this agreement:

- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by this agreement, are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically,

and delay in exercising or non-exercise of any such right is not a waiver of that right.

20.7 **Further assurance**

Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this agreement.

20.8 **Severability**

The provisions contained in each clause of this agreement are enforceable independently of each other clause of this agreement and the validity and enforceability of any clause of this agreement will not be affected by the invalidity or unenforceability of any other clause.

20.9 **Governing law**

This agreement and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.



EXECUTION

Marsden Maritime Holdings Limited by:

Rosie Mercer, Chief Executive Officer

Northland Regional Council by:

Jonathan Gibbard, Chief Executive Officer

Port of Tauranga Limited by:

Leonard Sampson, Chief Executive Officer

Ngāpuhi Investment Fund Limited by:

Tom Woods, Chief Investment Officer



EXECUTION

**Marsden Maritime Holdings
Limited** by:

Rosie Mercer, Chief Executive Officer

Northland Regional Council by:

Jonathan Gibbard, Chief Executive Officer

Port of Tauranga Limited by:

Leonard Sampson, Chief Executive
Officer

**Ngāpuhi Investment Fund
Limited** by:

Tom Woods, Chief Investment Officer



EXECUTION

Marsden Maritime Holdings Limited by:

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Leonard Sampson, Chief Executive Officer

Ngāpuhi Investment Fund Limited by:

Tom Woods, Chief Investment Officer



EXECUTION

**Marsden Maritime Holdings
Limited** by:

Rosie Mercer, Chief Executive Officer

Northland Regional Council by:

Jonathan Gibbard, Chief Executive Officer

Port of Tauranga Limited by:

Leonard Sampson, Chief Executive
Officer

**Ngāpuhi Investment Fund
Limited** by:



Kelly Dunn, Acting Chief Executive Officer



SCHEDULE 1 – PRESCRIBED OCCURRENCES

- 1 MMH authorises, declares, pays, or makes any dividends, bonuses or other payments or distributions (within the meaning of the Companies Act) of any nature (including, without limitation, any Share buybacks, redemptions or other form of capital reduction) on or in respect of, any of the Shares.
- 2 Any MMH Group member issuing, agreeing to issue, or granting an option or right to subscribe for, shares, convertible securities, other securities or financial products of any nature (including warrants, options, phantom or cash settled rights over Shares, convertible notes, entitlements, rights or interests in any ordinary shares) other than the issuing of shares by a wholly owned subsidiary of MMH to MMH or another wholly owned subsidiary of MMH.
- 3 MMH or a member of the MMH Group:
 - (a) altering the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any member of the MMH Group; or
 - (b) converting all or any of the Shares into a larger or smaller number.
- 4 Any alteration to the constitutional documents of any member of the MMH Group.
- 5 An Insolvency Event occurs in respect of a member of the MMH Group that is material to the MMH Group taken as a whole.
- 6 A resolution is passed for any amalgamation of any member of the MMH Group, or any of them is involved in any merger or scheme of arrangement (other than a solvent scheme of arrangement or an amalgamation, merger or scheme of arrangement involving solely MMH and/or one or more wholly owned subsidiaries of MMH).
- 7 The Shares cease to be quoted on the NZX.



SCHEDULE 2 – MMH WARRANTIES AND UNDERTAKINGS

Part 1 - MMH Warranties

- 1 MMH is a corporation validly existing under the laws of New Zealand.
- 2 MMH has the power to execute this agreement and to perform its obligations under this agreement and the Scheme and has taken all necessary corporate action to authorise such execution and the performance of such obligations.
- 3 MMH's obligations under this agreement are legal, valid and binding obligations enforceable subject to and in accordance with their terms.
- 4 The execution by MMH of this agreement and the performance of its obligations under this agreement and the Scheme do not and will not conflict with or constitute a default under any provision of:
 - (a) its constitution; or
 - (b) any law, order, judgment, award, injunction, decree, rule or regulation by which MMH is bound.
- 5 MMH has filed with the Registrar and NZX all documents required to be filed with the Registrar or NZX.
- 6 MMH is in compliance with its continuous disclosure and periodic disclosure obligations under the FMCA or the NZX Listing Rules and is not relying on the carve-out in NZX Listing Rule 3.1.2 to withhold any information from public disclosure (other than in relation to the confidential negotiations that have led to entry into this agreement).
- 7 No Prescribed Occurrence has occurred on or after 30 June 2024 other than payment of the dividend MMH advised to NZX on 23 August 2024.
- 8 Each member of the MMH Group has complied in all material respects with all New Zealand laws and regulations applicable to them, has all material Authorisations for them to conduct the business of the MMH Group as presently being conducted and so far as MMH is aware no member of the MMH Group is under investigation with respect to the violation of any laws or applicable Authorisations.
- 9 As at the date of this agreement MMH's capital structure is as set out in Schedule 4 Part A, and the MMH Group's capital structure as set out in Part B and there are no other shares, options or other securities (including equity securities, debt securities or convertible securities) or other instruments which are convertible into securities in a member of the MMH Group on issue nor has any member of the MMH Group offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any such shares, options or other securities or other instruments to any third party.
- 10 The execution of this agreement by MMH will not affect any waiver or amendment of any standstill agreement or arrangement between MMH and any person other than a Consortium Member.



- 11 The MMH Group does not have any outstanding financing that is not reflected in either its financial statements and notes thereto for the year ended 30 June 2024 or its financial statements and notes thereto for the six months ended 31 December 2024, and since 31 December 2024 no member of the MMH Group has engaged in any financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.
- 12 It has prepared the Due Diligence Material in good faith.
- 13 As far as MMH is aware, all information in the Due Diligence Material is true and correct and all known contingent liabilities are disclosed in all material respects and is not misleading or deceptive in any material respect, including by omission.

Part 2 – MMH Undertakings

- 1 MMH will ensure that the MMH Information:
 - (a) is prepared in good faith and on the understanding that each of the Consortium Protected Persons will rely on that information for the purposes of considering and approving the Consortium Information in the Scheme Booklet;
 - (b) complies with the Companies Act, FMCA and all other applicable laws; and
 - (c) in the form and context in which it appears in the Scheme Booklet is to the reasonable knowledge and belief of MMH, true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
- 2 MMH will provide to Shareholders and the Consortium all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the MMH Information, in the form and context in which it appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive, including by omission.
- 3 All information provided by or on behalf of MMH to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's report for inclusion in the Scheme Booklet, and, to the reasonable knowledge and belief of MMH, will be true and correct in all material respects and will not be misleading or deceptive including by omission.



SCHEDULE 3 – CONSORTIUM WARRANTIES AND UNDERTAKINGS

Part 1 – Consortium Warranties

- 1 POT and Tupu Tonu as companies, and NRC as a local government body, validly exist under the laws of New Zealand.
- 2 The Consortium has the power to execute and deliver and to perform its obligations under this agreement and the Deed Poll, and has taken all necessary corporate and regulatory actions to authorise such execution and delivery and the performance of such obligations.
- 3 The obligations of the Consortium under this agreement are, and the obligations of the Consortium under the Deed Poll will, on execution of the Deed Poll be, legal, valid and binding obligations enforceable subject to and in accordance with their terms.
- 4 The execution and delivery by each Consortium Member of this agreement and the execution and, in due course, delivery by the Consortium of the Deed Poll do not and will not conflict with or constitute a default under any provision of:
 - (a) any agreement or instrument to which the Consortium is a party;
 - (b) the constitution or equivalent documents of the Consortium; or
 - (c) any law, order, judgment, award, injunction, decree, rule or regulation by which the Consortium is bound.
- 5 As at 8.00am on the Second Court Date the Consortium will have binding agreements in place to fund its obligation to pay the Consideration in accordance with the Scheme and the Deed Poll conditional only upon:
 - (a) the Court approving the Scheme and the Scheme becoming Effective; and
 - (b) the Conditions (to the extent they have not been satisfied or waived prior to the Second Court Date) and other customary conditions precedent to draw down.

Part-2 - Consortium Undertakings

- 1 Each Consortium Member will ensure that the Consortium Information:
 - (a) is prepared in good faith and on the understanding that each of the MMH Protected Parties will rely on that information to prepare the Scheme Booklet and to propose and implement the Scheme in accordance with the Companies Act;
 - (b) complies with the Companies Act and the FMCA and all other applicable laws; and
 - (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.



- 2 The Consortium will provide to MMH all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Consortium Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive in any material respect, including by omission.
- 3 All information provided by or on behalf of the Consortium to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive, including by omission.
- 4 Subject to the Companies Act and the Scheme becoming Effective, the Consortium undertakes in favour of MMH and each MMH Protected Person that it will:
 - (a) subject to clause 5 below, for a period of 7 years from the Implementation Date, ensure that the constitutions of MMH and each MMH Group member continue to have equivalent obligations to those currently contained in their constitutions at the date of this agreement that provide for each company to indemnify each of its current and former directors and officers against any liability (excluding for fraud or wilful misconduct) incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the MMH Group member; and
 - (b) procure that MMH and each MMH Group member complies with any provisions in deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, the Consortium will ensure that the directors' and officers' run-off insurance cover already in place and fully paid before the date of this agreement, for those directors and officers is maintained on no less favourable terms than MMH's current directors and officers policy, subject to clause 5 below, for a period of 7 years from the retirement date of each director and officer. For the avoidance of doubt, this clause does not intend to impose any obligation on the Consortium to pay for run-off insurance or any further insurance to achieve these purposes.
- 5 The undertakings contained in clause 4 above are given until the earlier of the end of the relevant period specified in that clause or the relevant MMH Group member ceasing to be part of the Consortium.



SCHEDULE 4 – MMH CAPITAL STRUCTURE

Part A - MMH

Type of security	Total number on issue
Shares	41,300,651

Part B – MMH Group

Entity name	Total number on issue	Class	Name of shareholder(s)
Marsden Maritime Holdings Limited	41,300,651	Ordinary	Publicly listed on NZX
Marsden Cove Marinas Limited	10,000	Ordinary	Marsden Maritime Holdings Limited
Marsden Cove Canals Management Limited	100	Ordinary	Marsden Maritime Holdings Limited (50) Marsden Cove Limited (50)



SCHEDULE 5 – TIMETABLE

#	Event	Indicative Date
1	Execution of this agreement by the Consortium and MMH	24 February 2025
2	Announcement that this agreement has been entered into	25 February 2025
3	Commencement of public consultation	26 February 2025
4	Draft Scheme Booklet provided to the Consortium	Within 15 Business Days of item 1
5	Draft Scheme Booklet provided to the Takeovers Panel for review	Within 5 Business Days of item 4
6	Scheme Booklet (including Independent Adviser's Report) approved by Takeovers Panel	Within 15 Business Days of item 5
7	Completion of consultation	28 March 2025
8	MMH advised by NRC if consultation has resulted in a decision to proceed	Within 15 Business Days of item 7 (Note: The transaction will not proceed further if NRC determines not to proceed, having considered the consultation)
9	First Court Date	Within 5 Business Days of item 8
10	Scheme Booklet sent to Shareholders (including Independent Adviser's Report)	Within 5 Business Days of receiving the Initial Orders
11	Time and date for determining eligibility to vote at Scheme Meeting	48 hours before the scheduled meeting time for the Scheme Meeting
12	Scheme Meeting	Within 20 Business Days of item 10
13	Second Court Date	Within 6 Business Days after the Scheme Meeting
14	Final Orders Date	Estimated to be between 2 and 3 Business Days after the Second Court Date



#	Event	Indicative Date
15	Record Date	5 Business Days after the Final Orders Date
16	Implementation Date	5 Business Days after the Record Date



ANNEXURE 1 - SCHEME PLAN

SCHEME PLAN

SCHEME OF ARRANGEMENT UNDER PART 15 OF THE COMPANIES ACT 1993

PARTIES

Northland Regional Council (*NRC*)

Port of Tauranga Limited (*POT*)

Ngāpuhi Investment Fund Limited (*Tupu Tonu*) (each a *Consortium Member* and together the *Consortium*)

Northport Group Limited (*NZ HoldCo*)

Marsden Maritime Holdings Limited (*MMH*)

Each person who is registered in the Register as the holder of one or more Scheme Shares (together the *Scheme Shareholders*)

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this Scheme Plan, unless the context otherwise requires:

Business Day means any day other than a Saturday, Sunday, a statutory public holiday in Auckland, New Zealand;

Companies Act means the Companies Act 1993;

Computershare means Computershare Investor Services Limited;

Conditions means:

- (a) the conditions set out in clause 5.1 of the Scheme Implementation Agreement; and
- (b) such other conditions made or required by the Court under section 236(1) or section 237(1) of the Companies Act and approved in writing by MMH and the Consortium in accordance with clause 5.2 of the Scheme Implementation Agreement;

Consideration means \$5.60 in respect of each Scheme Share held by a Scheme Shareholder, as adjusted in accordance with the Scheme Implementation Agreement, which is payable in cash;

Court means the High Court of New Zealand, Auckland Registry;

Deed Poll means the deed poll entered into by each Consortium Member and NZ HoldCo in favour of the Scheme Shareholders;

Encumbrance means:

- (a) any security interest within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999 and any option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business); and
- (b) any agreement to create any of the foregoing;

End Date has the meaning given to that term in the Scheme Implementation Agreement;

Final Orders means orders made on application of MMH, that the Scheme is binding on MMH, the Consortium, NZ HoldCo, the Scheme Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

Final Orders Date means the day on which the Final Orders are granted by the Court;

Funds has the meaning given to that term in clause 3.1;

Government Agency means any government, department, officer or minister of any government and any governmental, semi-governmental, regulatory, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity, and includes the Takeovers Panel and the Financial Markets Authority;

Implementation Date means the day on which the Scheme is to be implemented, being the date five Business Days after the Record Date, or such other date as the Consortium and MMH agree in writing, and Implementation correspondingly means the time at which implementation commences with the first step under clause 4.1(d);

NRC Existing Shares has the meaning given to that term in the Scheme Implementation Agreement;

NZX means NZX Limited and, where the context requires, the main board financial market that it operates;

NZX Listing Rules means the NZX Listing Rules for the NZX Main Board;

Record Date has the meaning given to that term in the Scheme Implementation Agreement;

Register means the Share register maintained by Computershare on behalf of MMH;

Registered Address means, in relation to a Shareholder, the address of that Shareholder shown in the Register as at the Record Date;

Scheme means the scheme of arrangement contemplated by this Scheme Plan, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by MMH and the Consortium in writing;

Scheme Implementation Agreement means the scheme implementation agreement dated 24 February 2025 between MMH and the Consortium;

Scheme Meeting means the special meeting of Shareholders ordered by the Court to be convened pursuant to section 236(2)(b) and 236A(2) of the Companies Act in respect of the Scheme (and including any meeting convened following any adjournment or postponement of that meeting);

Scheme Shareholder means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;

Scheme Shares means all of the Shares on issue at 5.00pm on the Record Date other than the NRC Existing Shares;

Share means a fully paid ordinary share in MMH;

Shareholder means a person who is registered in the Register as the holder of one or more Shares from time to time;

Takeovers Panel means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993;

Trading Halt Date means the date which is two Business Days after the Final Orders Date or such other date as the Consortium and MMH agree in writing;

Trust Account has the meaning given to that term in clause 3.1; and

Unconditional means all of the Conditions having been satisfied or, if capable of waiver in accordance with the Scheme Implementation Agreement, waived.

1.2 **Interpretation**

In this Scheme Plan, unless the context otherwise requires:

- (a) headings are to be ignored in construing this document;
- (b) the singular includes the plural and vice versa;
- (c) words of any gender include all genders;
- (d) a reference to a clause, is a reference to a clause of this Scheme Plan;
- (e) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) reference to any document (including this Scheme Plan) includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (g) reference to a party, person or entity includes:
 - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and

- (ii) an employee, sub-contractor, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity;
- (h) written and in writing include any means of reproducing words, figures or symbols in a tangible and visible form;
- (i) the words including or includes do not imply any limitation;
- (j) a reference to any time is a reference to that time in New Zealand; and
- (k) references to money or \$ are to New Zealand dollars.

1.3 **Things required to be done other than on a Business Day**

Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

1.4 **No contra proferentem**

No term or condition of this Scheme Plan will be construed adversely to a party solely because that party was responsible for the preparation of this Scheme Plan or a provision of it.

1.5 **NZ HoldCo**

In accordance with clause 3.7 of the Scheme Implementation Agreement NZ HoldCo, a special purpose vehicle established by the Consortium, will acquire all of the Scheme Shares under the Scheme. The Consortium will ensure that NZ HoldCo completes the acquisition of the Scheme Shares, and the Consortium will procure NZ HoldCo to pay the Consideration in accordance with the terms of the Scheme Implementation Agreement and the Deed Poll.

2 **CONDITIONS**

2.1 **Conditions**

The implementation of the Scheme is conditional in all respects on:

- (a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date; and
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 8.00am on the Implementation Date.

3 **CONSIDERATION INTO TRUST ACCOUNT**

3.1 **Obligation to pay Consideration into Trust Account**

Subject to the Scheme Implementation Agreement not having been terminated and the Scheme having become Unconditional (except for the Conditions set out in clauses 5.1(e) and (f) of the Scheme Implementation Agreement), the Consortium must, by no later than 5.00pm on the Business Day before the Implementation Date, deposit (or procure the deposit of) in immediately available cleared funds an amount equal to the aggregate amount of the Consideration payable to Scheme Shareholders in a New Zealand dollar denominated trust account operated by Computershare and notified by Computershare to

the Consortium no later than 5.00pm on the Business Day falling three Business Days before the Implementation Date (the *Funds* and that account the *Trust Account*).

3.2 **Details of Trust Account**

- (a) Subject to clauses 3.2(b), 5.4, 5.5 and 5.6, the Trust Account will be held and operated by Computershare on the basis that the Funds are held on trust for the Consortium and to its order, such that only the Consortium may direct how the Funds will be paid from the Trust Account.
- (b) Clause 3.2(a) is subject to a standing written direction from the Consortium to MMH and to Computershare to make payment of the Consideration to the Scheme Shareholders in accordance with this Scheme Plan upon transfer of the Scheme Shares to the Consortium under clause 3.2(a).
- (c) The details of the Trust Account will be provided to the Consortium by (or on behalf of) Computershare not less than three Business Days before the Implementation Date.

3.3 **Interest**

Any interest earned on the amount deposited in the Trust Account up to Implementation will be payable to the Consortium by Computershare as directed by the Consortium (less bank fees and other third party charges relating to the Trust Account).

3.4 **Scheme not implemented**

Should the implementation of the Scheme not occur by 5.00pm on the Implementation Date for any reason, Computershare will immediately repay the Funds to the Consortium to such New Zealand dollar denominated account instructed to Computershare by the Consortium.

4 **IMPLEMENTATION**

4.1 **Implementation**

Subject to:

- (a) any amendments or variations as may be required by the Court;
- (b) the conditions referenced in clause 2 being satisfied (to be confirmed to Computershare by written notice given by the Consortium and MMH prior to 9.00am on the Implementation Date, which written notice must be so given immediately after 8.00am on the Implementation Date upon the conditions set out in clause 2 being satisfied);
- (c) the Consideration having been deposited into the Trust Account in accordance with clause 3.1,

commencing at 9.00am on the Implementation Date, the following steps will occur sequentially:

- (d) without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to NZ HoldCo, and MMH must enter, or procure that Computershare enters, the name of NZ HoldCo in the Register as holder of all of the Scheme Shares; and

- (e) in accordance with the direction set out in clause 3.2(b), subject to compliance in full with clause 4.1(d) MMH must instruct Computershare to pay or procure the payment from the Trust Account of the cash Consideration to each Scheme Shareholder based on the number of Scheme Shares held by that Scheme Shareholder as set out in the Register as at the Record Date.

5 PAYMENT OF CONSIDERATION

5.1 Method of payment

The payment obligations under clauses 4.1(d) and 4.1(e) will be satisfied by:

- (a) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable Computershare and MMH to make payments of New Zealand dollars by electronic funds transfer, Computershare must pay the Consideration in New Zealand dollars to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder;
- (b) where a Scheme Shareholder that has an address outside of New Zealand has, prior to the Record Date, provided sufficient written instructions to enable Computershare to make payment in foreign currency (and Computershare is able to make payment in that currency), Computershare must pay that Consideration (less any applicable costs and fees) to such Scheme Shareholder (in the currency nominated by such Scheme Shareholder at such exchange rate that Computershare may determine to convert the New Zealand dollar amount of Consideration to that foreign currency); or
- (c) where a Scheme Shareholder has not provided the information and/or taken the steps contemplated by clauses 5.1(a) and 5.1(b) to enable payment to be made to such Scheme Shareholder in a manner contemplated by one of those clauses (or if an electronic payment to such Scheme Shareholder is rejected by the recipient bank), Computershare must retain the Consideration owed to that Scheme Shareholder in the Trust Account to be claimed by the Scheme Shareholder in accordance with clause 5.5.

If a Shareholder has given more than one payment direction, then the later direction in time of receipt will be followed.

5.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) the Consideration is payable to the bank account nominated by the joint holders or, at the sole discretion of MMH, nominated by the holder whose name appears first in the Register as at the Record Date; and
- (b) any other document required to be sent under this Scheme Plan will be sent to either, at the sole discretion of MMH, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

5.3 Surplus in Trust Account

To the extent that, following satisfaction of the obligations under clause 4.1(e), there is a surplus in the Trust Account, that surplus (less the aggregate amount of the Consideration retained in the Trust Account in accordance with clause 5.1(c) or clause 5.6(b), and less bank fees and other third party charges relating to the Trust Account) shall be promptly paid in full to the Consortium as directed by the Consortium in writing.

5.4 **Holding on Trust**

MMH must, in respect of any monies retained by Computershare pursuant to clause 5.1(c) or clause 5.6(b), instruct Computershare to hold such monies in the Trust Account on trust for the relevant Scheme Shareholders for a period of two years and thereafter, subject to clause 5.6, to pay any remaining money in the Trust Account to MMH.

5.5 **Unclaimed monies**

During the period of two years commencing on the Implementation Date, on request in writing from a Scheme Shareholder that has not received payment of the Consideration in accordance with clause 5.1(a) or 5.1(b), Computershare must, if such Scheme Shareholder has taken the necessary steps required to effect payment to such Scheme Shareholder in a manner contemplated by clause 5.1(a) or 5.1(b), pay to that Scheme Shareholder the Consideration held on trust for that Scheme Shareholder in a manner contemplated by clause 5.1(a) or 5.1(b) (or in any other manner approved by Computershare and agreed to by that Scheme Shareholder).

5.6 **Orders of a court or Government Agency**

Notwithstanding any other provision of this Scheme Plan, if written notice is given to MMH prior to the Record Date of an order or direction made by a court of competent jurisdiction or a Government Agency that:

- (a) requires Consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 4.1(e), MMH will be entitled to procure, and the Consortium will be deemed to have instructed Computershare to ensure, that provision of that Consideration is made in accordance with that order or direction; or
- (b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 4.1(e), or the payment of such Consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Consideration) will be retained in the Trust Account until such time as provision of the Consideration to the Scheme Shareholder in accordance with clause 4.1(e) or clause 5.5 (as applicable) is permitted by that order or direction or otherwise by law,

and such provision or retention (as the case may be) will constitute the full discharge of the Consortium's and MMH's obligations under clause 4.1(e) with respect to the amount so provided or retained.

5.7 **Exchange rate**

If a Scheme Shareholder elects to be paid in a foreign currency as contemplated by clause 5.1(b), the conversion of the Consideration into such foreign currency will be undertaken in a manner and at an exchange rate determined by Computershare, and neither MMH nor the Consortium will be responsible for (or have any liability in connection with) any such conversion (including for the exchange rate at which the relevant conversion occurs).

6 DEALING IN SHARES

6.1 Trading halt

- (a) Following the sealing of the Final Orders, MMH will advise NZX of the grant of the Final Orders and, once known, the Trading Halt Date and Record Date and use its reasonable endeavours to procure that the NZX suspend trading in the Shares from the close of trading on the Trading Halt Date.
- (b) MMH must not accept for registration, nor recognise for any purpose (except a transfer to NZ HoldCo pursuant to this Scheme Plan and any subsequent transfer by NZ HoldCo or its successors in title), any transfer or transmission application or other request received after 5.00pm on the Record Date or received prior to such time, but not in registrable or actionable forms.

6.2 Register

- (a) MMH must register registrable transmission applications or registrable transfers of Shares received prior to the Trading Halt Date before 5.00pm on the Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires MMH to register a transfer that relates to a transfer of Shares on which MMH has a lien.
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares, or any interest in them, after 5.00pm on the Trading Halt Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and MMH and the Consortium shall be entitled to disregard any such disposal.
- (c) For the purposes of determining entitlements to the Consideration, but subject to the requirements of the NZX Listing Rules, MMH must maintain the Register in accordance with the provisions of this clause 6 until the Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Consideration.
 - (i) From 5.00pm on the Record Date, each entry that is current on the Register (other than entries on the Register in respect of the NRC Existing Shares), will cease to have effect except as evidence of entitlement to the Consideration in respect of the Shares relating to that entry.
 - (ii) As soon as possible on the first Business Day after the Record Date and in any event by 5.00pm on that day, MMH must make available to the Consortium in the form the Consortium reasonably requires, details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Register on the Record Date.

7 GENERAL PROVISIONS

7.1 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme Plan to NZ HoldCo will, at the time of transfer to NZ HoldCo, vest in NZ HoldCo free from all Encumbrances and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder is taken to have warranted to the Consortium and NZ HoldCo on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme Plan

will, at the time of transfer, be fully paid and free from all Encumbrances and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Shares to NZ HoldCo together with any rights and entitlements attaching to those Shares.

7.2 **Authority given to MMH**

Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date, irrevocably appoints MMH as its attorney and agent for the purpose of enforcing the Deed Poll against the Consortium (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints MMH as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and MMH accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 7.2 to one or more of MMH's directors or senior managers.

7.3 **Binding effect of Scheme:**

(a) The Scheme binds:

- (i) MMH;
- (ii) the Consortium;
- (iii) NZ HoldCo; and
- (iv) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on the Scheme, did not vote at the Scheme Meeting, or voted against the Scheme at the Scheme Meeting).

(b) In the event of any inconsistency, this Scheme Plan overrides the constitution of MMH.

7.4 **End Date**

If the Scheme has not become Unconditional on or before the End Date, or if the Scheme Implementation Agreement is terminated in accordance with its terms at any time, this Scheme Plan is immediately void and of no further force or effect (other than any provision of the Scheme or this Scheme Plan relating to the repayment to the Consortium of any Funds deposited in accordance with clause 3 and the interest thereon (less bank fees and other third party charges relating to the Trust Account)).

7.5 **No liability when acting in good faith**

Each Scheme Shareholder agrees that none of the directors, officers or employees of MMH, the Consortium or NZ HoldCo will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.

7.6 **Successor obligations**

To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on the Consortium, NZ HoldCo or MMH that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of the Consortium, NZ HoldCo or MMH (as applicable) in

which case the obligation will be satisfied as if performed by the Consortium, NZ HoldCo or MMH (as applicable).

7.7 Governing law

- (a) This Scheme Plan and any non-contractual obligations arising out of or in connection with it is governed by and must be construed in accordance with the laws of New Zealand.
- (b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme Plan (including a dispute relating to any non-contractual obligations arising out of or in connection with this Scheme Plan) and the parties irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.



ANNEXURE 2 - DEED POLL

SCHEME DEED POLL

This **Deed Poll** is made on

2025

PARTIES

Northland Regional Council (*NRC*)

Port of Tauranga Limited (*POT*)

Ngāpuhi Investment Fund Limited (*Tupu Tonu*)

(each a *Consortium Member* and together the *Consortium*)

Northport Group Limited (*NZ HoldCo*)

Each registered holder of Scheme Shares as at 5.00pm on the Scheme Record Date (*Scheme Shareholders*)

INTRODUCTION

- A Marsden Maritime Holdings Limited (*MMH*) and the Consortium are parties to the Scheme Implementation Agreement.
- B MMH has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between MMH, the Consortium, and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to NZ HoldCo and the Consortium will provide or procure the provision of the Consideration to the Scheme Shareholders.
- C The Consortium is entering into this Deed Poll for the purpose of undertaking in favour of Scheme Shareholders to pay the Consideration on behalf of NZ HoldCo to Scheme Shareholders in accordance with the terms of the Scheme Plan.
- D NZ HoldCo is entering into this Deed as the Consortium's nominee to acquire all of the Scheme Shares in accordance with the terms of the Scheme Plan in consideration for, and simultaneously with, the payment of the Consideration by the Consortium on behalf of NZ HoldCo to Scheme Shareholders.

IT IS AGREED

1 DEFINED TERMS AND INTERPRETATION

1.1 Defined terms

In this Deed, unless the context requires otherwise:

Computershare means Computershare Investor Services Limited;

Final Orders means orders made on application of MMH, that the Scheme is binding on MMH, the Consortium, NZ HoldCo, the Scheme Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

Scheme Implementation Agreement means the scheme implementation agreement between MMH and the Consortium dated 24 February 2025; and

Scheme Plan means the scheme plan attached as Annexure 1 to the Scheme Implementation Agreement, subject to any alterations or conditions approved by the Consortium and MMH in writing and which are disclosed to the Court prior to the Court making the Final Orders; and

words defined in the Scheme Plan which are not separately defined in this Deed Poll have the same meaning when used in this Deed Poll.

1.2 **Interpretation**

Clauses 1.2 and 1.3 of the Scheme Plan apply to the interpretation of this Deed Poll, except references to "this Scheme Plan", which are to be read as reference to "this Deed Poll".

2 **NATURE OF THIS DEED POLL**

2.1 **Third party rights and appointment of attorney**

- (a) This Deed Poll is intended to, and does, confer a benefit on, and therefore may be relied on and enforced by, any Scheme Shareholder in accordance with its terms under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 (but not otherwise), even though the Scheme Shareholders are not party to the Deed Poll.
- (b) Under the Scheme Plan, each Scheme Shareholder appoints MMH as the Scheme Shareholder's attorney and agent to enforce this Deed Poll against the Consortium with effect on and from the date prescribed for such appointment in the Scheme Plan (but without limiting each Scheme Shareholder's right to itself enforce this Deed Poll).
- (c) Notwithstanding clauses 2.1(a) and 2.1(b), this Deed Poll may be varied by the Consortium and MMH in accordance with clause 7.2 without the approval of any Scheme Shareholder.

2.2 **Continuing obligations**

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until either:

- (a) the Consortium and NZ HoldCo have fully performed their respective obligations under this Deed Poll; or
- (b) this Deed Poll is terminated under clause 3.2.

3 **CONDITIONS**

3.1 **Conditions**

This Deed Poll, and the obligations of the Consortium and NZ HoldCo under it, are conditional in all respects on the Scheme becoming Unconditional.

3.2 **Termination**

The obligations of the Consortium and NZ HoldCo under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if the Scheme Implementation Agreement is validly terminated in accordance with its terms before the Scheme becomes Unconditional, unless the Consortium and MMH otherwise agree in writing.

3.3 **Consequences of termination**

If this Deed Poll is terminated under clause 3.2, then the Consortium and NZ HoldCo are each released from their respective obligations to further perform this Deed Poll.

4 SCHEME CONSIDERATION

- (a) Subject to the Scheme Implementation Agreement not being terminated and the Scheme having become Unconditional (save for the Conditions set out in clauses 5.1(e) and (f) of the Scheme Implementation Agreement), the Consortium (on behalf of NZ HoldCo) undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 5.00pm on the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into the Trust Account to be held and dealt with by Computershare in accordance with the Scheme Plan.
- (b) Subject to clause 3, the Consortium irrevocably acknowledges and agrees that, subject to compliance in full by MMH with its obligations under clause 4.1(d) of the Scheme Plan, the Consideration deposited into the Trust Account must be, and will be, paid in accordance with clause 4.1(e) of the Scheme Plan in satisfaction of the Scheme Shareholders' respective entitlements to receive the Consideration under the Scheme in accordance with the Scheme Plan.

5 WARRANTIES

Each of the Consortium Members and NZ HoldCo warrants in favour of each Scheme Shareholder that:

- (a) it is a corporation (in the case of POT, Tupu Tonu and NZ HoldCo) or a local government authority (in the case of NRC) validly existing under the laws of New Zealand;
- (b) it has the power to enter into, and perform its obligations under, this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary action to authorise its entry into this Deed Poll and has taken, or will prior to the Implementation Date take, all necessary action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

6 NOTICES

6.1 Manner of giving notice

Any notice or other communication to be given under this Deed Poll must be in writing and may be physically delivered or sent by email to each Consortium Member as follows:

- (a) to NRC at:
 - Address: 36 Water Street, Whangārei 0110
 - Email: jong@nrc.govt.nz
 - Attention: Jonathan Gibbard, Chief Executive Officer

(b) to POT at:

Address: 2 Salisbury Avenue, Mount Maunganui, Mount Maunganui
3116

Email: leonard.sampson@port-tauranga.co.nz

Attention: Leonard Sampson, Chief Executive Officer

(c) to Tupu Tonu at:

Address: Level 4 Rawlinsons House, 5 Willeston Street, Wellington
Central, Wellington 6011

Email: tom.woods@tuputonu.co.nz

Attention: Tom Woods, Chief Investment Officer

with a copy (which does not constitute notice) to:

Address: Chapman Tripp, Level 34 PwC Tower, 15 Customs Street
West, Auckland CBD, Auckland 1010

Email: roger.wallis@chapmantripp.com

Attention: Roger Wallis

or at any such other address or email address notified for this purpose to the other parties under this clause.

6.2 **When notice given**

In the absence of earlier receipt, any notice or other communication is deemed to have been given:

(a) if delivered, on the date of delivery; or

(b) if sent by email, four business hours (being the hours between 9am and 5pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message),

but if the notice or other communication would otherwise be taken to be received after 5.00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

6.3 **Proof of service**

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the email was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's email system, as the case may be.

6.4 **Documents relating to legal proceedings**

This clause 6 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Deed Poll.

7 GENERAL

7.1 **Waiver**

(a) The Consortium and NZ HoldCo may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.

(b) For the purposes of clause 7.1(a):

(i) conduct includes a delay in exercising a right;

(ii) right means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and

(iii) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

7.2 **Variation**

(a) Subject to clauses 7.2(b) and 7.2(c), this Deed Poll may not be varied.

(b) Before the date on which the Final Orders are made, this Deed Poll may be varied by agreement in writing between the Consortium and MMH, in which event the Consortium and, if applicable, NZ HoldCo, will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

(c) If the Court orders that it is a condition of the Scheme that the Consortium enters into a new deed poll which has the effect of reversing any variation under clause 7.2(b), then, if the Consortium so agrees, the Consortium and, if applicable, NZ HoldCo, must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

7.3 **Cumulative rights**

The rights, powers and remedies of the Consortium, NZ HoldCo, and Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, power or remedies provided by law independently of this Deed Poll.

7.4 **Assignment**

The rights and obligations of the Consortium, NZ HoldCo and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 7.4 is invalid.

7.5 **Further assurance**

The Consortium must, at its own expense, do all things reasonably required of it to give full force and effect to this Deed Poll and the transactions contemplated by it.

7.6 **Governing law and jurisdiction**

(a) This Deed Poll and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.

- (b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed Poll (including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed Poll) and the Consortium and NZ HoldCo irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

EXECUTION

Executed as a deed poll.

Northland Regional Council by

Elected Member

Elected Member

Print Name

Print Name

Port of Tauranga Limited by

Director

Director

Print Name

Print Name

Ngāpuhi Investment Fund Limited

by

Director

Director

Print Name

Print Name

Northport Group Limited by

Director

Director

Print Name

Print Name