

EVIDENCE Patuharakeke Te Iwi Trust Board.
TOPIC PC113. Kelly Dixon / Prue Kapua.
SUB# 17
DATE 20 NOV 2013.

IN THE MATTER OF the Resource Management Act

AND an application to for Private Plan Change (PC 113)

BY **THE WHANGAREI RACING CLUB**
Applicant

**SUBMISSIONS ON BEHALF OF PATUHARAKEKE TE IWI TRUST BOARD
DATED 20 NOVEMBER 2013**

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1. Introduction

- 1.1. The fundamental issue of the section 27B memorial was raised in legal submissions on Monday. For the Patuharakeke Trust Board it underpins the entire case for Patuharakeke.
- 1.2. The evidence of Ms Luana Pirihi from the Waitangi Tribunal hearing in October sets out many of the issues raised by Ms Hicks yesterday in relation to the submission made at page 17 of Ms Hick's evidence titled "The original leases, their intentions, a question of title and the memorial Section 27B SOE Act 1986."
- 1.3. Ms Hicks is correct in noting the level of accommodation given to the Whangarei Racing Club by Landcorp (the previous owner) and other Government Officials given the WRC's continual failure to pay the lease prior to purchasing the land. At paragraphs 17 and 18 of Ms Pirihi's evidence reference is made to the meetings held between the WRC and Ministerial Officials. Specifically, at paragraph 18 mention is made of 3 options proposed in relation to the property whereby Mr Tait, President of the WRC, posed the options whether Landcorp would gift the land to the Trust, secondly and interestingly, whether Landcorp would grant the land to the Trust with a "tag" that it never be sold and thirdly as suggested by Landcorp whether the Trust wanted an outright purchase of the land. The evidence illustrates that the WRC was well aware of the existence of the section 27B memorial on the title throughout the purchase negotiations.
- 1.4. Ms Hicks is also correct in terms of the figures given relating to the small price paid for the land in 1991. Copies of the Sale and Purchase Agreement and Ruakaka Racecourse Proposal to Freehold are attached to Ms Pirihi's evidence and confirm a purchase price of \$270,000.00.
- 1.5. Mr Fairley, in his evidence on Monday, indicated his sadness at having to sell 15 acres of land behind Peter Snell Road. However, you have a proposal before you for the sale of vastly more than that. It will indeed be a sad day if this proposal goes ahead.

Scale of Development

- 1.6. Notwithstanding that, it is submitted that the scale of this development is excessive. The number of dwellings over the course of the past 3 days has been ever-changing. The Applicant began with a number of 350

dwellings, in Ms McNeal's Opening Comments at paragraph 3(ii) this figure increased with additional visitor accommodation developments and retirement villages or similar. A further figure of 700 dwellings was also mentioned later that afternoon. The level of uncertainty is alarming and questions arise about the notification process undertaken when such variance is contemplated.

- 1.7. Despite Mr Fairley saying that the WRC is not a developer, the Hearing Panel cannot lose sight of the fact that this is a development, on a large scale with no certainty about the maximum number of dwellings that will form a large part of this proposal. The WRC is clear this process is about securing a financial return to the Club, essentially from activities entirely unrelated to its actual purpose. It is applying for this plan change to develop property it holds for sale for profit.
- 1.8. From an economic perspective we have heard that in order to be financially viable the Applicant and Whangarei District Council cannot proceed on the basis of 100 dwellings. As will be illustrated in the supplementary evidence of Ms Chetham, PTB as a secondary alternative to no development can only agree with the evidence of Mr Andrew Riddell which seeks to amend the proposed policy 1.1.4ii to a maximum of 100 residential units.
- 1.9. This Panel also is being asked to facilitate a private plan process to benefit a developer and a development. As such it undermines the entire Resource Management Act process. The normal plan review process does not provide for development of this nature in this area. To allow this development, which flies in the face of the purpose and principles of the Act in Part II, is unacceptable. A private plan change process should be approached with caution, particularly by a Council that has a statutory obligation to review its plan and assess its communities needs under the Local Government Act. A private plan change process should not be used to accommodate an ailing organisation and give it an option to raise money by developing coastal land not identified for development by the Council through its District Plan and where it is completely at odds with Part II. It is a process used because what is proposed is contrary to the Plan provisions. The most cursory costs benefit analysis under section 32 indicates how flawed this process is. This is not a proposal that the private plan change process should be used for.

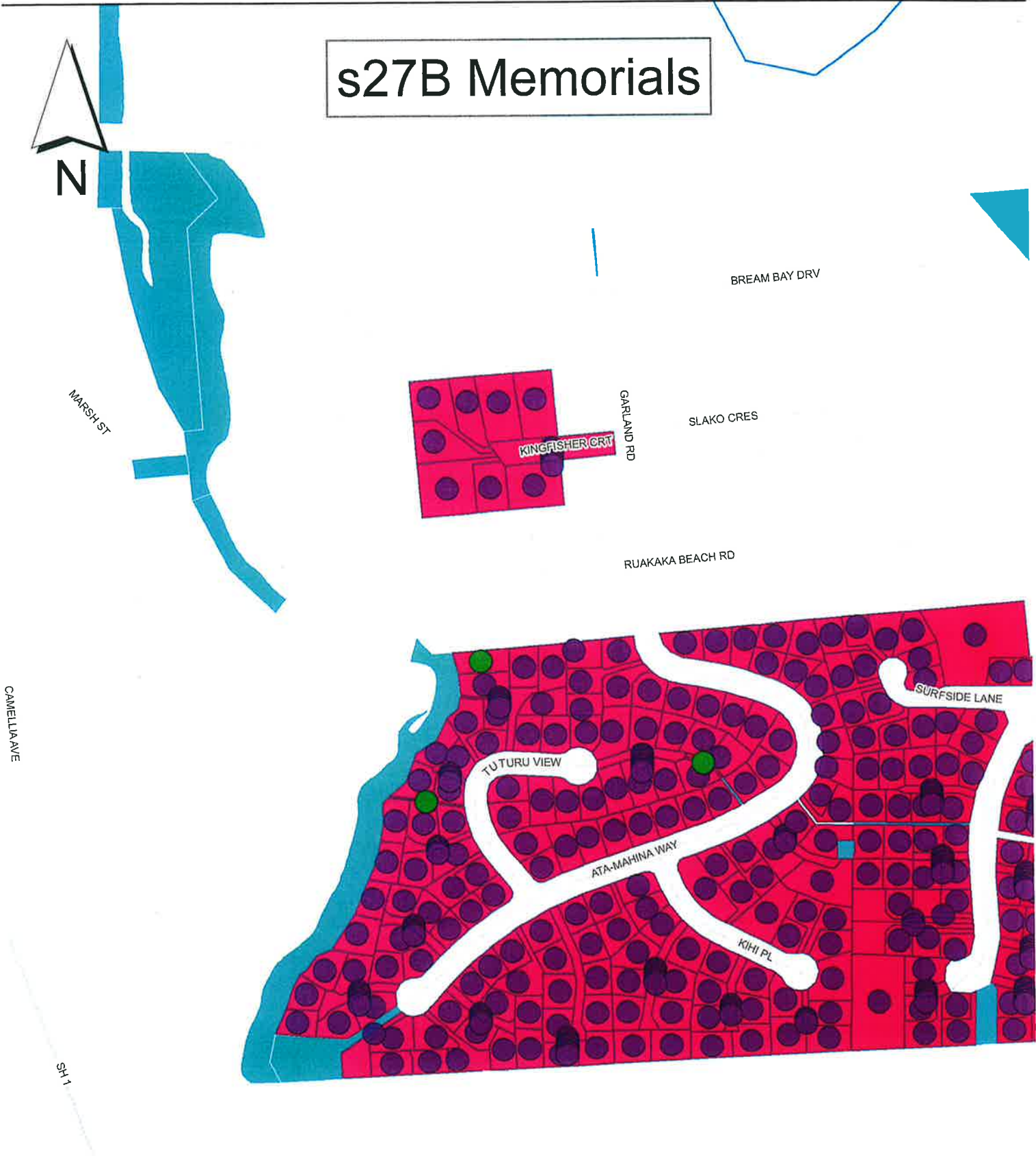
Financial Merits Overstated

- 1.10. Much has been made by the Applicant about the economic merits of the proposal, how it will save the WRC from certain closure. At its core that is all this proposal is about, saving an ever-ailing racing club in order to make a profit from land development.
- 1.11. Whether it will bring with it the economic benefits of employment and flow on effects to local businesses is questionable. The Panel only needs to drive to the empty Marsden City Development or the struggling stage 2 Hoppers Development at One Tree Point to get a perspective of how slow properties move in this area and therefore how slow any potential flow on effect would be, if at all.
- 1.12. It is submitted that the evidence is not convincing that this will be the economic beacon of hope that it purports to be.






Patuharakeke Evidence

- 1.13. Mrs Margaret Hicks yesterday mentioned two words that for her are fundamental to this proposal - Trust and Integrity. Likewise for Patuharakeke. They are two words fundamental to any relationship moving forward. Ms Pitman in her evidence addresses this issue along with concerns around density and the apparent conflict of interest that exists with this application.
- 1.13. As indicated above the supplementary evidence of Ms Chetham deals with the outstanding issues raised in the Cultural Impact Assessment and submissions namely those relating to height and density. However, the evidence will also address the significant way in which Patuharakeke connects to this area and how further ecological effects will impact on Patuharakeke.
- 1.14. Undoubtedly, as with many of the other submitters in opposition who have not been assisted with funding and resourcing from the Whangarei District Council like the Applicant, there are Planning and Ecological issues that PTB have not been able to address fully. PTB is however, grateful to Ms Hicks for the evidence that she has provided, and adopts it in its entirety. Her evidence may not be treated as strictly "expert evidence" but this Panel should consider it such, given the nature in which she has carried out her analysis and the manner in which she has come to her findings. Her evidence incorporates a rigorous process based on all the facts and is to be preferred over that offered by the Applicant that conveniently ignores some basic facts.

s27B Memorials



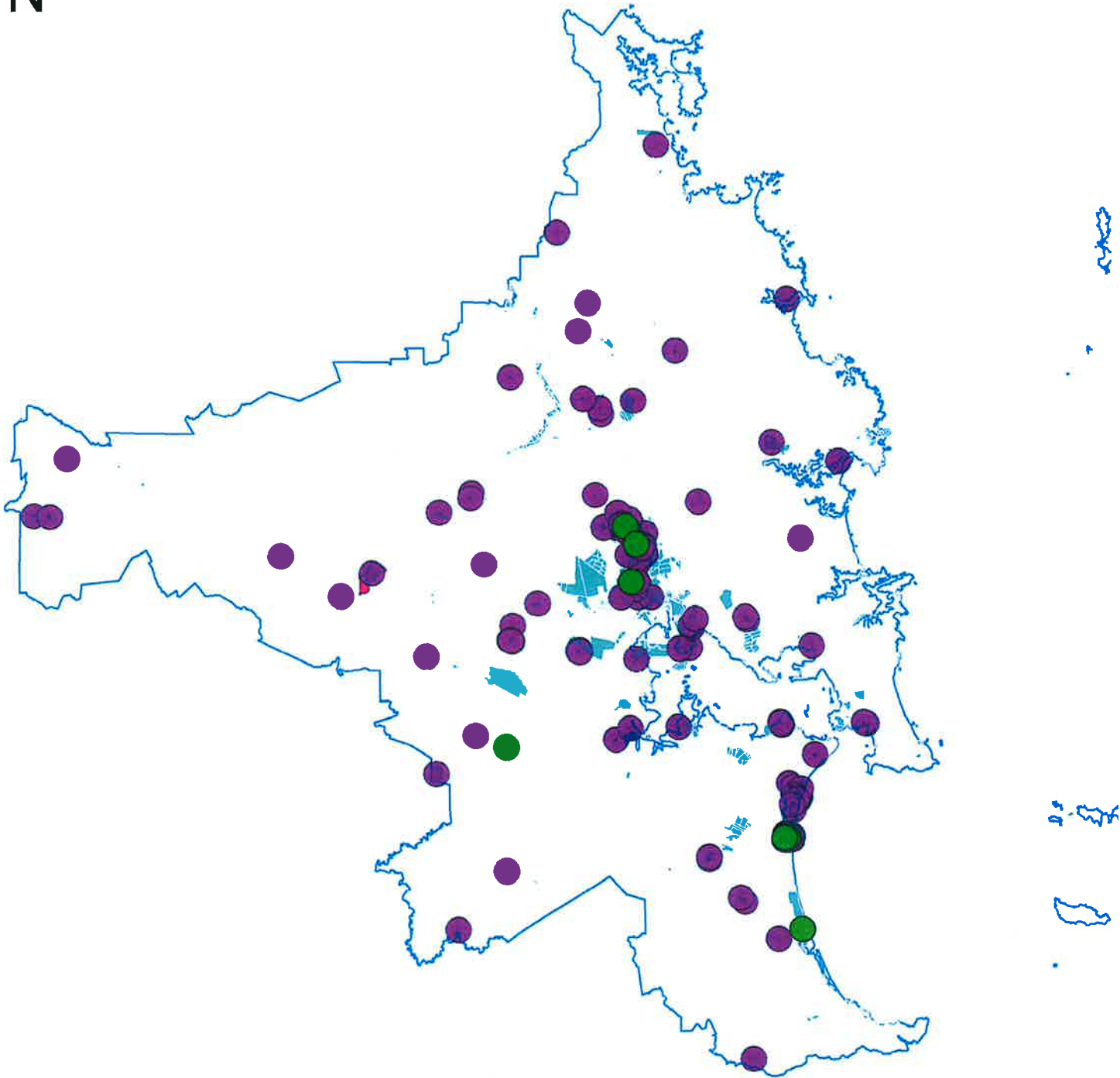
Legend

-  27B Memorials on WDC Land
-  27B Memorials
-  All Land with Memorials
-  WDC Owned Land
-  Whangarei District

0.025 0.05 0.1 0.15 0.2 Kilometers

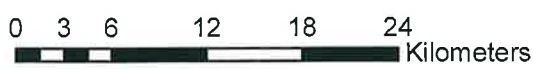


s27B Memorials



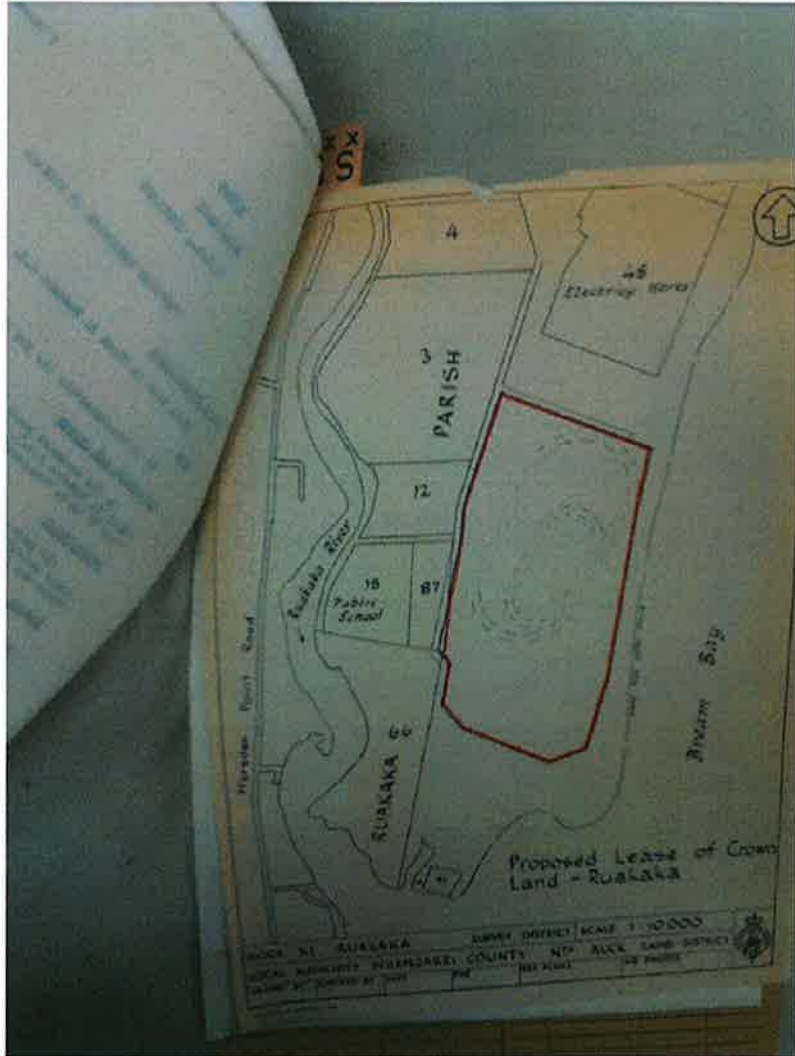
Legend

- 27B Memorials on WDC Land
- 27B Memorials
- All Land with Memorials
- WDC Owned Land
- Whangarei District



EVIDENCE _____
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Appendix A





Bream Bay

Legend

- Registered s27B Memorials
- Land subject to s27B memorials
- Parcel Boundaries (LINZ)

Scale @ A3:
1:10,000



Appendix B



Appendix C



**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**



Historical Search Copy

Identifier NA139A/702
Land Registration District North Auckland
Date Issued 04 June 2002

Prior References
NA80D/713

Estate Fee Simple
Area 50.5300 hectares more or less
Legal Description Lot 2 Deposited Plan 210980
Original Proprietors
Whangarei Racing Club Incorporated

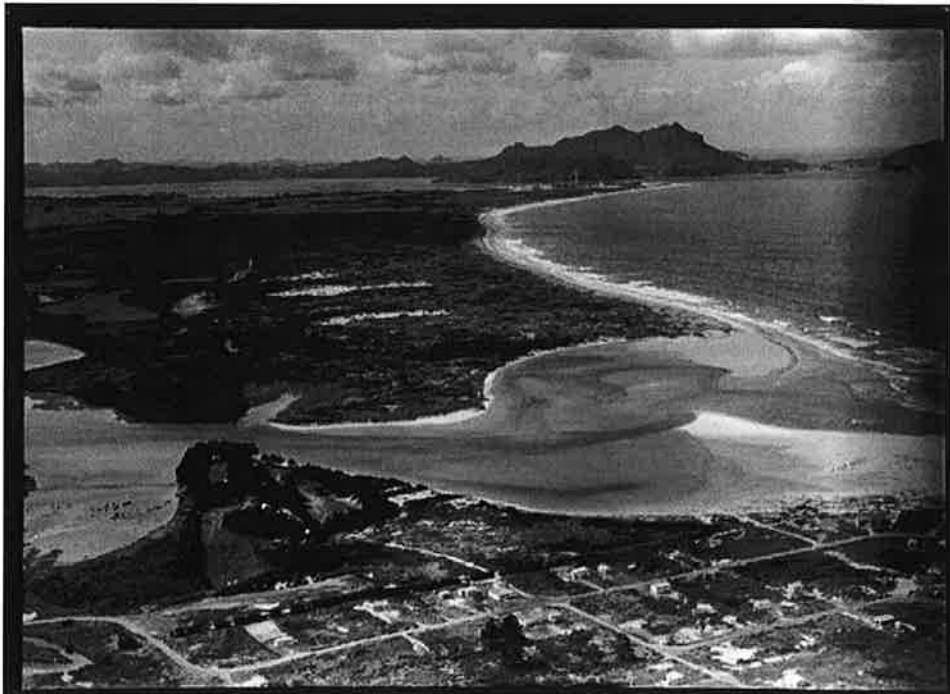
Interests

Subject to Part IV A Conservation Act 1987
Subject to Section 3 Petroleum Act 1937
Subject to Section 27B State-Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be heard in relation to the making of any such recommendation)
Subject to Section 8 Atomic Energy Act 1945
Subject to Sections 5 and 261 Coal Mines Act 1979
Subject to Sections 3 Geothermal Energy Act 1953
Subject to Sections 6 and 8 Mining Act 1971
Appurtenant hereto is a right of way and a water right created by Application C253081.1 - 8.4.1991
8038517.1 Mortgage to New Zealand Thoroughbred Racing Incorporated - 14.1.2009 at 11:12 am
8059265.1 Change of Name of New Zealand Thoroughbred Racing Incorporated to New Zealand Thoroughbred Racing Incorporated in Mortgage 8038517.1 - 3.2.2009 at 9:08 am

Appendix D



Appendix E



Appendix F

NORTHLAND RACING TRUST
MEETING HELD 14 FEBRUARY 1989 IN LANDCORP OFFICE, WHANGAREI

Meeting commenced 11 am.

Attendance

Representing Landcorp
Mr C McMillan - Chief Executive, Landcorp
L G Fraser

Representing Racing Clubs
Ian Fraser - Chairman, Northland Racing Trust
Bob Tait - President Whangarei Racing Club
Max Braithwaite - Secretary, Northland Racing Club
John Shephard - Solicitor for Northland Racing Trust

Mr Ian Fraser is also Chairman of Whangarei County Council.

Mr McMillan opened the meeting and outlined the Ministers' position and that he was reporting to the Minister on the situation as a party that had not been previously involved in the lease. He had an open mind on the subject but had made extensive readings of the past history of the case.

Mr Shephard presented the Trust's position which they reviewed from 1984 onwards when they received Commissioner of Crown Land, Auckland's notification on 23 November 1984 folio 439 and 430, that the Minister of Lands had approved in principal reservation of the race course area.

Letter to same effect from DG Lands dated 18 September 1984 folio 438.

Mr Shephard reviewed a series of letters (see attachment) up to 31 March 1987 which dealt with Management Plan requirements and alterations plus reservation proposals.

The main point the Trust were making was that they would like Landcorp and/or the Crown, to revert to the terms and conditions of the letter of 14 December 1984, folio 442 (copy attached) which sets out reservation proposal and payment of arrears and rental. Mr I Fraser pointed out that while the letter of 14 December 1984 may have indicated that the Trust agreed to pay arrears and rental as set out in the letter, it was his recollection that the Trust never agreed to pay the arrears and rental and were going to pursue that aspect through political contacts.

Mr I Fraser also mentioned that ACCL Smith indicated at their meeting that he would not be prepared to recommend write off of arrears or rental.

Mr I Fraser stated past administration by various Trust secretaries had been poor and Trust executives had not been informed of all relevant and important matters.

Mr Shepherd stated that the Trust had relied very heavily on the letter of 14 December 1981.

Mr McMillan reviewed Lands and Survey Department functions of Crown Land administration and provision of reserves and the flow on to Department of Conservation and contrasted this with Landcorp's functions and belief to act in a commercial manner.

He traversed the Land Allocation process and covered the point that while some parties may have mistakenly assumed the race course land was going to Department of Conservation, but as the land was a Section 67 lease the Cabinet decision (late 1986) was that the lease was a Landcorp asset. Landcorp purchased 3598 in a bulk purchase of all special leases, no individual price allocation.

Mr I Fraser commented that if reservation had come into being, he considered rental should not have been charged from day one, ie 1974.

Mr Tait commented that he could recall a Land and Survey Department person (not able to be identified) stating at a meeting in 1974 that a pepper corn rental would be charged and the pepper corn rental was always the Trust's conception.

Mr McMillan commented that the extensive research on file over many years and on many occasions did not support this view and the Trust had signed a lease and affidavit in August 1981 which provided for payment of rent and payment of arrears.

Mr Shepherd commented that the Trust had no legal grounds to request a pepper corn rental and the Trust was bound by the lease document. Mr Tait agreed he was bound by decisions of past presidents of the Racing Club.

Mr McMillan said he considered the Trust to be legally caught by the lease but Landcorp was not unsympathetic to the Trust's predicament. Mr McMillan then suggested the discussion change tack and set the matter of arrears aside for the present and consider other options.

Mr McMillan asked what the club's financial position was. Mr Tait responded that the Racing Club was quite viable and any surplus was ploughed back into new developments and maintenance. The Trotting Club was struggling to survive. The Racing Club pays 4/7 and the Trotting Club 3/7 of the running costs which amount to \$150-160,000 per annum.

Mr McMillan asked if the Trust had approached Department of Conservation over reservation. The Trust had not approached Department of Conservation. Mr McMillan suggested if, for the sake of an example, Landcorp was to ignore the arrears and agreed to a surrender of the lease and transfer to Department of Conservation, he would expect Department of Conservation to institute user pay principle to the race course area, ie charge rent.

Mr I Fraser enquired if Landcorp would gift the land to the Trust. Mr McMillan replied this was highly unlikely. If Landcorp was to transfer the asset to Department of Conservation, Landcorp would expect to be paid.

Mr Tait enquired if Landcorp could grant the land to the Trust with a tag that it never be sold. This was not considered to be a practical/legal option.

Mr McMillan next traversed the option of straightout purchase by the Trust. The Trust indicated quite an interest in this option.

Mr McMillan asked Mr L Fraser what he considered Landcorp's interest in the lease was worth. A figure of \$250-300,000 was mentioned. Mr Tait commented that the Trust would have to very carefully consider this option and were keen to explore the possibility.

Mr McMillan suggested there may be alternatives of relinquishing some areas of the lease that were not used or of high general public use, this would reduce the purchase price.

Mr Shepheard mentioned a Writ of Mandamus. Mr McMillan commented that ownership had transferred to Landcorp and all the Trust could expect, even if successful, was compensation, and on reflection, Mr Shepheard agreed.

Mr McMillan summarised and said that Landcorp was not unsympathetic to the Trust's position but the Trust could not expect Landcorp to act in an uncommercial way. He would like the Trust and Landcorp to work together to see if a purchase package could be put together that was acceptable to both parties. rental arrears could be considered in any package deal. Mr McMillan restated he could not accept any notion of pepper corn rental as from very early times in 1974 valuation and rental were referred to.

Mr I Fraser asked if Landcorp Director, Mr P Egan had spoken to Mr McMillan about the lease. Mr I Fraser had spoken to Mr Egan at a recent AFPCO meeting. Mr McMillan replied that Mr Egan was not able to attend the recent Landcorp Board meeting and they had not had a discussion on the subject.

The meeting concluded with the Trust leaving to consider the purchase option and get back to Landcorp Whangarei if they required that option to be taken further.

In the meantime the arrears position would be held in abeyance.

Recorded by L G Fraser

Appendix G

064

THIRD EDITION 1987

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

This form is approved by the Real Estate Institute of New Zealand and by the New Zealand Law Society.

28 August 1989

VENDOR: Landcorp Investments Limited at Whangarei

PURCHASER: NORTHLAND RACING TRUST BOARD of Whangarei

Address of property: Ruakaka Racecourse, Ruakaka

Legal description: Estate: FREEHOLD (unless otherwise described)

Lot: _____ **DP:** _____ **CT:** _____ **Area:** 56.1700 hectares

Section 55 Block XI Ruakaka Survey District TOGETHER WITH the Right of Way and Water Easements over the areas marked A and B on SO Plan 52996 specified in the unregistered lease dated 11 August 1981 between Her Majesty the Queen (as lessor) and Whangarei Racing Club and Northland Trotting Club (both as lessees) AND SUBJECT TO Section 27B of the State Owned Enterprises Act 1986.

Purchase price: \$ 270,000.00 (including chattels at \$ NIL)

Delete one of these: Plus-GST (if any) **OR** Inclusive of GST (if any).
If neither is deleted the purchase price includes GST (if any).

Deposit: \$ 5,000.00

Balance of purchase price to be paid or satisfied as follows:
 To be paid in cash in one lump sum on the possession date

LSP date: _____ **GST date:** _____

Possession date: 1 September 1989 **Interest rate for late settlement:** 15 % p.a.

Financial conditions: FIRST MORTGAGE (unless otherwise stated)		
INSTITUTIONAL:	OR OTHER MORTGAGE:	
Amount required:	Amount required:	
Lending institution:	Term:	
Term:	Interest rate: % p.a.	
Interest rate: % p.a.	Penalty rate: % p.a.	
LAST ONE WITH ADVANCED FINANCE		
Details of business of any kind:	Term:	Right of renewal:

CHATTELS: The following chattels if any situated on the property, are included in the sale (delete out those not applicable):
 OTHER: _____
 All other chattels included in the sale of land.

Only to be signed if legal advice given. Landcorp Investments Limited
 Box 1480
 Whangarei

If it is agreed that the vendor will and the purchaser will purchase the above described property, and the chattels included in the sale, on the terms set out above, on the conditions hereinafter stated and any special conditions hereinafter appearing.