

## LEGAL DUE DILIGENCE REPORT

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### PROPOSED ACQUISITION OF 650 GREAT SOUTH ROAD, AUCKLAND

19 APRIL 2016

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## **A INTRODUCTION, PURPOSE AND STRUCTURE OF REPORT**

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### **Introduction**

- 1 Anthony Harper has prepared this Report in connection with the proposed acquisition by 650 Great South Road Limited ("**Purchaser**") of the property at 650 Great South Road, Auckland ("**Property**") from Stride Property Limited ("**Vendor**"). This Report has also been prepared for the benefit of Maat Consulting Limited ("**Maat**").

### **Purpose**

- 2 The purpose of this Report is to identify key legal issues which have arisen from the legal due diligence exercise undertaken by Anthony Harper in respect of the Property, up to the date of this Report. In so doing, this Report does not address, or describe in detail, every document which has been reviewed by us as part of the legal due diligence. Instead, this Report highlights only those matters which we consider to be material and/or adverse in the context of the purchase of the Property. We make various recommendations and note where further action is required.

### **Documents reviewed**

- 3 This Report is based solely on our review of the following:
- (a) the certificate of title for the Property and the interests and memorials noted thereon as at the date of this Report;
  - (b) the Land Information Memorandum prepared by Auckland Council ("**Council**") dated 3 March 2016 ("**LIM**");
  - (c) the lease documentation for the Property made available by the Vendor;
  - (d) the agreement for sale and purchase between the Vendor and Maat or nominee dated 3 March 2016 together with a side letter containing amendments to the agreement dated 14 April 2016 (together the "**Agreement**"); and
  - (e) the Vendor's responses to our Due Diligence Questionnaire dated 4 March 2016 together with supplementary questions and answers as to title, LIM and lease matters ("**Vendor's Responses**").

We have not reviewed any other information.

### **Bases and assumptions**

- 4 This Report has been produced for the benefit of, and is addressed to, both the Purchaser and Maat for use in connection with the purchase of the Property. No responsibility or liability or duty of care is or will be accepted by Anthony Harper to any other party.
- 5 Anthony Harper consents to a copy of this report being disclosed with the Product Disclosure Statement being prepared in respect of the offer of B Shares in the Purchaser (the "**Product Disclosure Statement**"). Otherwise, this Report must not be distributed, circulated, quoted, referred to, relied upon or otherwise disseminated to or by any other entity or person at any time, other than by Anthony Harper or with Anthony Harper's prior written consent.
- 6 This Report has been prepared on the bases and assumptions set out in Appendix 1.

### **Executive Summary**

- 7 The Overview in Section B of this Report highlights briefly what we consider, on the basis of your instructions, to be the key items and most significant issues which our due diligence review has raised. The key issues are those which in the context of the other matters are considered to be the most material although it may be that from a commercial perspective you do not consider them to be material risks. **This Report must be read in**

**conjunction with the full review at Sections C to F and must not be relied upon alone.**

Yours faithfully  
**ANTHONY HARPER**

A handwritten signature in blue ink, appearing to read 'Tim Barclay', with a stylized, cursive script.

**Tim Barclay**  
Partner

## **B OVERVIEW**

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### **General**

- 1 The Property comprises land together with a late 1990's four-level office building (including basement car parking) and a separate three-level car park building. According to the Vendor's information, the office building contains 8335m<sup>2</sup> of net lettable area and 299 on-site car parks.

### **Title and Interests**

- 2 The Property is Lot 2 Deposited Plan 176485, comprising 6,573 m<sup>2</sup> more or less and contained in Computer Freehold Register (title) NA108C/559. The title is subject to the interests, instruments and memorials described in Part C of this Report. There are no material issues as to title, but there are easement arrangements benefitting and burdening the property to be aware of.

### **Leases**

- 3 The office building has six tenants, including Crown entities and substantial corporates. We have not seen a single plan mapping all tenancies within the building, but we are not aware of any vacant lettable space. Spaces within the car park building are let to the same tenants via their leases and there are also approximately 20 casual (month to month) car park licensees. The Vendor's information represents that all useable car parks are currently let.
- 4 The remaining duration of the current terms of the leases is not long, with a number of them expiring in 2018. This risk is mitigated to some extent by replacement or additional leases to be taken by the Vendor as mentioned below and in Section F of this Report.
- 5 The current base rental income to the landlord is (including Unisys' naming rights) \$2,710,062.22. Further details of the breakdown of this amount between respective tenants is included within the summary of the leases in the Product Disclosure Statement.
- 6 Three of the six tenants (IRD, Fletcher Construction and HealthAlliance) have no further rent reviews during their remaining lease terms. Of the other three, two (Ministry of Health and Northern Regional Alliance) have market reviews with soft 'ratchets' remaining and Unisys' rent increases by a fixed two percent per annum.
- 7 Three leases (IRD, Unisys and Northern Regional Alliance) contain first rights of refusal for the tenant for new leases or leases of different parts of the building that become vacant. These may make future new leasing deals for multi-floor parts of the building difficult for the landlord to put together quickly, because the relevant tenants must be given a period to elect to take up their rights first.
- 8 The IRD lease is semi-gross, which means the landlord cannot recover all outgoings costs from the tenant. In particular, certain costs relating to repair and maintenance which would usually be on-charged to the tenant must be absorbed by the landlord.
- 9 The lease forms vary as to whether they favour the tenant or the landlord. Three are substantially tenant-favouring in their amendments from the base Auckland District Law Society ("ADLS") commercial lease form (IRD, Ministry of Health and Fletcher Construction).
- 10 The nature of the material awareness points in the leases is as follows:
  - (a) Unisys

- The tenant has a first right of refusal to a new lease of the same premises, which can hinder the landlord in negotiating major re-lettings within the building.
- (b) Northern Regional Alliance
- There is a right for the tenant to terminate the lease 3 years early in March 2019 (although the Agreement includes an obligation on the Vendor to enter into a replacement lease while the Purchaser seeks a replacement tenant).
  - At the date of this Report, the Vendor does not have an executed deed of lease from the tenant. The tenant is obliged by the agreement to lease to enter into the deed of lease, but the exact form was not specified. The Vendor has committed in the Agreement to use all commercially reasonable efforts to get the deed of lease complete by settlement and if it does not, the Purchaser is entitled to retain \$200,000 of the purchase price until it is complete.
  - Until the deed of lease is executed, there is no binding commitment on the tenant to lease 50 of the 78 car parks specified in its draft lease, due to those arrangements having been settled subsequent to the agreement to lease (and not referred to in that agreement).
- (c) Ministry of Health
- The lease includes unusually extensive landlord's maintenance covenants.
  - There are reduced tenant's maintenance and make-good covenants.
- (d) HealthAlliance
- There are no material points regarding this lease.
- (e) Fletcher Construction
- There is a right for the tenant to terminate the lease early, arising twice, in June-August 2016 and March-April 2017 (although the Agreement includes an obligation on the Vendor to enter into a replacement lease while the Purchaser seeks a replacement tenant).
  - There a requirement to obtain mortgagee's consent to the lease on every occasion of the Property being mortgaged (which will include any mortgage of the Purchaser's to be registered on settlement).
  - There are unusually extensive landlord's maintenance covenants.
  - There are reduced tenant's maintenance and make-good obligations.
  - Increases to the recoverable outgoings are capped.
  - The damage and destructions positions favour the tenant.
  - There are unusual landlord's warranties about contamination and health and safety laws.
  - The lease includes landlord's warranties about seismic ratings (including a tenant's right to terminate if the required level is not maintained).
- (f) Inland Revenue Department
- The lease is a "semi-gross" lease, meaning that not all outgoings are recoverable from the tenant.
  - There are unusually extensive landlord's maintenance covenants.

- There are reduced tenant's maintenance and make-good covenants.
- There are increased rights for the tenant to terminate the lease in certain circumstances following damage or destruction events or a no-access situation.

More detail about these lease issues is set out in Part D of this report.

## LIM

- 11 The LIM describes the Property as in a flood risk area and having soil issues affecting future development. There is also a material issue regarding eight outstanding code compliance certificates relating to tenants' works, current and past. Except where a certificate has not issued because works are ongoing, there are possible compliance issues behind each outstanding certificate. There are three that are higher risk than the others in this regard. More detail about these is set out in Part E of this Report.

## Sale and Purchase Agreement

- 12 The Vendor and Purchaser have entered into an agreement for sale and purchase dated 3 March 2016 ("**Agreement**"), which was varied by a side letter signed on 15 April 2016. The contracted purchase price is \$31,800,000 plus GST (zero-rated). At the date of this Report, the Agreement remains conditional upon the Purchaser's capital raising being successful by 3 June 2016. If the Agreement becomes unconditional, settlement will be on 15 June 2016.
- 13 The Agreement contains unusually restrictive limitations on the Purchaser's ability to make claims against the Vendor for breaches of warranties (including a monetary cap of 1% of the purchase price). These restrictions may make a claim that should be pursued in the ordinary course unavailable to the Purchaser after settlement, or available but uneconomic to pursue.
- 14 The Vendor has agreed to enter into replacement and/or additional leases in respect of the two premises where the tenant has early termination rights, Fletcher Construction (in 2016 and 2017) and Northern Regional Alliance (in 2019). It has also agreed to enter into a lease of the HealthAlliance premises for a 12 month period in 2018-2019 (as a consequence of HealthAlliance having indicated to the Vendor it will not be seeking a new lease when its lease expires on 31 March 2018). More specifically:
  - (a) In the case of the Fletcher Construction premises, if the tenant exercises its early termination right the Vendor must enter into a replacement lease on like terms to 18 November 2018 (which is beyond the current final expiry date of 31 July 2018), and subject to efforts by the Purchaser to find new tenants. For the period 1 August to 18 November 2018, the rent is pre-agreed on a gross (i.e. outgoings included) basis. If the tenant does not exit early, the Vendor will still enter into a new lease on like terms for the period 1 August to 18 November 2018, at the same pre-agreed gross rent.
  - (b) In the case of the NRA premises, if the tenant exercises its right to early termination the Vendor must enter into a replacement lease on like terms to the same expiry date of 31 March 2022, and subject to efforts by the Purchaser to find new tenants.
  - (c) In the case of the HealthAlliance premises, the Vendor shall take a 12 month lease following on from HealthAlliance's expiry date, on identical terms to HealthAlliance's lease except at a pre-agreed gross rent, and subject to efforts by the Purchaser to find new tenants.

The Purchaser (as then-landlord) has some discretion about what it may consider a suitable replacement tenancy in each instance, but it must act reasonably. The Vendor will not be required to enter into the replacement or additional leases for any period the current tenant remains in possession on a holding-over basis.

While these replacement/additional lease arrangements remove the commercial risk to the Purchaser presented by the tenant's early termination rights, it should be noted that the Vendor's obligations here are unsecured and the Purchaser will be relying on the Vendor to honour (and being able to honour) the contractual obligations in the Agreement if these replacement leases are required.

More detail about these issues and other relevant points is set out in Part F of this report.

## **C GENERAL REVIEW – TITLE AND INTERESTS**

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### **General**

- 1 The Property is comprised in Computer Freehold Register (title) NA108C/559 and is a fee simple (freehold) estate of 6,573m<sup>2</sup> more or less. A copy of the title is included in Appendix 2.

### **Easements benefitting the Property**

- 2 The Property has the benefit of a right of way over the area shaded green and labelled "B" on the easement plan in Appendix 3. This relates to the shared access with the neighbouring property at 660 Great South Road and is subject to typical provisions regarding repair and maintenance (i.e. costs to be shared except where necessary as a result of one party's action or omission).
- 3 The Property has the benefit of a right of way and rights to convey telecommunications, water, gas, electricity and rights of drainage over the area shaded yellow and labelled "D" on the easement plan in Appendix 3. This relates to the shared driveway with the rear building at 656 Great South Road and is subject to typical provisions regarding repair and maintenance.

### **Easements burdening the Property**

- 4 The Property is subject to a right of way over the area shaded blue and labelled "A" on the easement plan in Appendix 3. This relates to the shared access with the neighbouring property at 660 Great South Road and is subject to typical provisions regarding repair and maintenance.
- 5 The Property is subject to a right of way over the areas shaded orange and labelled "C" on the easement plan in Appendix 3. This relates to the shared driveway with the rear building at 656 Great South Road and is subject to the usual provisions regarding repair and maintenance.
- 6 The Property is subject to a right to convey electricity to and from a substation located in the basement of the building and owned by Vector Limited. Vector is responsible for maintaining the substation and equipment (at its cost) and the owner of the Property is responsible for maintaining the internal room ("**Accommodation**") within which the substation is located (at its cost). There are restrictions on the right to access the Accommodation and inspections can only be undertaken with a representative from Vector and no more than twice per year (except in emergency). There is a right to terminate the easement where power is no longer being supplied to the tenants of the Property. If the easement is terminated, the owner of the Property is responsible for all costs in this instance (including Vector's legal costs and costs of removal of the equipment).
- 7 The Property is subject to a right to convey telecommunications and computer media to and from the neighbouring property at 660 Great South Road for the purpose of data storage services being provided to Genesis Energy Limited by a tenant in the Property (Unisys New Zealand Limited). Genesis is responsible for all repair and maintenance of the easement facility (at its cost) and there is a right for the owner of the Property to terminate the easement at the end of the Unisys lease as well as a right for Genesis to transfer the benefit of the easement to an assignee or replacement tenant. The easement instrument does not specify that any easement equipment installed is to be removed by the party that installed it upon termination, although we do not have enough information about that equipment to know whether it would be reasonable to expect this and/or whether this is likely to be burdensome for the property owner at the time.



## **D GENERAL REVIEW – LEASES**

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### **General**

- 1 The collective covenant strength of the tenants is high, with two (IRD and Ministry of Health) being government departments, two (Northern Regional Alliance and HealthAlliance) being subsidiaries of local District Health Boards and the remaining two (Fletcher Construction and Unisys) being significant corporates. The four government-related tenants between them lease a majority of the lettable areas and carparks.
- 2 However, there are some significant awareness points in the leases for the Purchaser. The leases for the IRD, Ministry of Health and Fletcher Constructions are substantially tenant-favouring when compared to the ADLS lease form. They are ADLS leases altered in the tenant's favour. The issues with these are set out in more detail below, but they include limited tenant's make-good and maintenance obligations, expanded landlord's maintenance requirements, and tenant-favouring damage and destruction and no-access positions including termination rights.
- 3 In addition, the average reliable remaining lease term across the tenancies is not long and Fletcher Construction and Northern Regional Alliance have break rights allowing them to exit early. There is a possibility of multiple of the current tenancy spaces becoming vacant as early as 2018, and, at that time, significant make-good and refurbishment expenses falling to the owner before re-letting, due to limited tenant's make-good obligations in the relevant Leases.
- 4 Three of the six tenants (IRD, Fletcher Construction and HealthAlliance) have no further rent reviews during their remaining lease terms. Of the other three, two (Ministry of Health and Northern Regional Alliance) have market reviews remaining but with soft 'ratchet' clauses applying (i.e. ratchet clauses saying that the rent cannot drop below the rent at the commencement of the then-current lease terms, which are 2013 and 2016 dates respectively). Unisys' rent increases by a fixed two percent per annum to current-term expiry in December 2019.
- 5 Most of the leases include a right for the tenant to terminate the lease following an emergency event where the tenant is denied access to the premises because of a red-zone cordon or similar. This concept was new to the Sixth Edition 2012 ADLS lease and makes long-term denial of access to the premises the landlord's risk and no longer the tenant's. In the ADLS lease the tenant may terminate where it is denied access for 9 months or can evidence in advance it will be denied access for 9 months, although some of the subject leases specify shorter periods. In those instances the landlord's risk is increased.
- 6 The tenancy schedules in the Product Disclosure Statement summarises the key details for each lease. Other comments on the more material awareness points in each lease follow.

### **Unisys**

- 7 There can be no further market rent reviews during the remainder of the lease (including the renewal term to December 2022), although there is a fixed 2% per annum rent increase in December of each year.
- 8 The base form for the Unisys lease is the ADLS Fourth edition 2002 lease form and it does not include no-access termination rights for the tenant.
- 9 The tenant must redecorate the premises in the last 6 months of the term and there are other landlord-favouring maintenance positions in the tenant's make-good and maintenance clauses. However, the tenant is entitled to do no further make-good to the office part of the premises upon expiry other than removal of its fittings and fixtures (making good resulting damage) and otherwise leaving the area clean and tidy.
- 10 The tenant has a first right of refusal to a new lease of the premises if the landlord decides to continue leasing the premises for the purposes permitted in terms of the lease. The landlord must give notice specifying proposed terms and conditions and the tenant has 21 days to accept. The landlord cannot offer to another on more favourable terms without re-

offering to tenant. It's possible that this first right of refusal could hinder a quick leasing deal with a tenant needing multiple parts of the building and who required certainty about this part.

- 11 The tenant has exclusive naming rights to the building while it is the tenant under this lease. It pays (currently) \$25,000 plus GST per annum for the naming rights, which increases 2% per annum along with its premises rent.

#### **Northern Regional Alliance**

- 12 The final deed of lease has not yet been executed. We have seen a draft lease as forwarded to NRA, and it is generally landlord-favourable. We have not seen any confirmation that this exact form is accepted by NRA, however, the heads of agreement specifies that the deed shall be an ADLS Sixth Edition 2012(4) Deed of Lease form in the "Vendor's format". What format this means exactly was not specified. The Vendor has undertaken to use all commercially reasonable endeavours to get NRA to execute the lease in substantially the same form as the draft, by settlement. The Vendor must consult with the Purchaser about any material concessions or amendments to the lease (from the draft). If the lease is not executed by settlement, the Purchaser is entitled to retain \$200,000 from the purchase price, meaning that this sum will not be released until the requirement is satisfied. In the meantime the signed agreement to lease carries the weight of a deed of lease for the purposes of the Property Law Act 2007.
- 13 The most immediate risk arising to the Purchaser out of the current state of the NRA documentation is that there is no contractual commitment from NRA as to 50 of the 78 car parks it is occupying, due to the arrangements as to car parks having been resolved with the Vendor subsequent to the agreement to lease and therefore they are not referenced in it. The deed of lease will need to be executed to resolve this.
- 14 The heads of agreement with the tenant says there shall be 3 yearly market rent reviews, with the next to occur in April 2019. If the final lease uses the standard ADLS ratchet clause as to those market rent reviews, the reviewed rent cannot be less than the rent payable at commencement (i.e. a 'soft ratchet').
- 15 The tenant has a first right of refusal to lease the balance of Level 2, on market terms, should it become available during the term of this lease. It is possible that this first right of refusal could hinder a quick deal with a tenant needing multiple parts of the building who required certainty about this part.
- 16 The tenant may terminate the current term of the lease 3 years early, on 19 March 2019, provided that it gives at least 9 months' prior notice and repays half (\$170,365) of the landlord's incentive payment. Under the Agreement, this payment is to be made to the Vendor provided the Vendor has met its commitment to enter into a replacement lease for the balance of the current term (from the early termination date), on like terms; subject to an obligation on the Purchaser to take steps to find a replacement tenant in which event the Vendor's lease may be surrendered. This obligation is described in more detail in Part F of this Report.
- 17 The landlord covenants to maintain air conditioning performance to certain temperature specifications, at its cost, and if it fails to do so the tenant is entitled to do necessary works itself and recover costs from the landlord.
- 18 The tenant has no-access rights similar to those in a standard ADLS lease, with the termination right arising if the tenant is denied access because of an act of a civil authority for 9 months.

#### **Ministry of Health**

- 19 There are 3 yearly market rent reviews, with the next to occur in December 2016. The reviewed rent cannot be less than the rent payable at commencement of the lease in December 2013 (i.e. a 'soft ratchet').
- 20 There are expanded and unusually extensive landlord's maintenance covenants, in particular:

- (a) the landlord must maintain building services in good working operational order, repair and condition and in accordance with the tenant's performance criteria attached to the lease;
  - (b) the landlord must keep clean and maintain the roof and exterior (including exterior windows) in good and substantial repair, order and condition and in a structurally sound and weatherproof and watertight condition;
  - (c) the landlord must clean and maintain the exterior of the building to a good order and condition and shall immediately remove graffiti or defacement, and shall maintain common areas and car parks (including lighting);
  - (d) various standard exceptions from the landlord's responsibilities (i.e. where work is a tenant's responsibility, where there is a service maintenance contract or where the building service is not supplied by the landlord, where the repair or maintenance is not reasonably necessary for the tenant's use and enjoyment of the premises and loss suffered by a tenant unless the landlord has received notice and failed to remedy) are deleted and replaced with a single exception, being for the tenant's negligent act error or default or resulting from any cause beyond the landlord's reasonable control subject to the landlord's best endeavours; and
  - (e) if the landlord fails to take any steps after notice from the tenant, the tenant may take the steps in its place and costs shall be payable on demand.
- 21 Key tenant's maintenance and make-good covenants are deleted or made at the tenant's discretion, in particular:
- (a) the tenant is not responsible for defects, faulty design or construction workmanship;
  - (b) there is no obligation to paint and redecorate;
  - (c) there is no obligation to replace floor coverings; and
  - (d) the tenant may elect to leave its partitions, fittings, fixtures and improvements or remove them (and reinstate the affected parts of the premises if it does remove).
- 22 The landlord's right to terminate the lease if it's required by law to do works to the property that are not the responsibility of the tenant and the cost would be unreasonable is deleted.
- 23 The landlord is prohibited from leasing any other part of the property or the building for specific uses, including adult and sex venues, gambling, medical facilities and education.
- 24 Where the landlord must enter the premises to do works the landlord expressly indemnifies the tenant as to costs, losses, liabilities resulting to the tenant.

### **HealthAlliance**

- 25 There can be no further rent reviews during the lease.
- 26 The base form for the lease is the ADLS Fifth edition 2008 lease form and it does not include no-access termination rights for the tenant.
- 27 The tenant is entitled to a partial rebate of rent of \$10,692.92 plus GST per month for the period from 1 April 2015 to 30 September 2016. This would affect the Purchaser as landlord for the period from settlement on 8 June 2016 to 30 September 2016], except that the Vendor has undertaken in the Agreement to pay out the full value of this incentive to the tenant prior to settlement, so the Purchaser's rental income will not be affected.
- 28 The landlord's maintenance obligations are expanded such that the landlord is expressly required to keep the premises watertight (not standard to the 2008 ADLS lease) and to immediately remedy any water ingress or egress (except where tenant-caused).

- 29 The Vendor has agreed with the tenant and NRA that six car parks currently included in this lease will be surrendered and included in the car parks specified in NRA's new lease. At the date of this Report, we have seen correspondence between those parties agreeing this in principle, but it has not been properly documented by a deed. The Vendor has undertaken in the Agreement to use all commercially reasonable endeavours to complete this deed by settlement, and if it fails to do so, the \$200,000 retention described in paragraph 12 above will apply, on the same basis. It is noted also that the Vendor must resolve this deed (and also complete execution of a deed of surrender as to a different office space and another 44 car parks previously occupied by HealthAlliance) before it can complete execution of the new deed of lease with NRA.

### **Fletcher Construction**

- 30 The tenant may terminate the lease early, on 1 months' notice; such notice able to be given between 19 June and 14 August 2016 or 20 March and 5 April 2017. In this event, the Vendor is obliged to enter into a replacement lease on like terms to a date beyond the current expiry date of the full term. This obligation is described in more detail in Part E of this Report.
- 31 There can be no further rent reviews during the lease.
- 32 Key tenant's maintenance and make-good covenants are deleted or made at the tenant's discretion, in particular:
- (a) there is no obligation to paint and redecorate;
  - (b) there is no obligation to replace floor coverings; and
  - (c) the tenant may elect to leave its alterations, additions or chattels which "do not devalue the premises or are likely to be required by a subsequent tenant".
- 33 There are additional landlord's maintenance obligations, in particular:
- (a) the landlord's covenants are extended to include common areas;
  - (b) the landlord's covenant carve-outs are deleted as to the following (which expands the landlords covenants):
    - (i) where the landlord is maintaining a service contract;
    - (ii) where building services have not been provided by the landlord; and
    - (iii) where the work is not reasonably required for tenant's use and enjoyment of premises and carparks; and
  - (c) if the landlord fails to do work within a reasonable time the tenant may do it and invoice landlord for cost or deduct cost from rent.
- 34 There are unusually onerous damage and destruction provisions, in particular:
- (a) if the premises are untenable, either party may terminate within 20 working days of the date of damage. If the lease isn't so terminated, the landlord must reinstate with all reasonable speed, subject only to insurance not being invalidated by an act or default of the tenant and getting consents. In our experience, this period (20 working days) may be too short to determine whether the building can be rebuilt or not;
  - (b) the landlord must pay any shortfall in insurance monies and costs of repair;
  - (c) the premises must be reinstated as near as possible to their previous state;
  - (d) the lease terminates where consents to reinstate can't be obtained or insurance has been invalidated by act or default of the tenant (not where insurances are insufficient); and

- (e) the tenant may terminate if the landlord fails to:
  - (i) demonstrate it has funds to reinstate within 3 months;
  - (ii) obtain all consents within 6 months of date of damage; and
  - (iii) repair or reinstate within 9 months from date of damage.(these are extremely tight timeframes in the context of a substantial repair or rebuild).

- 35 The tenant can require additional insurances as would from time to time be covered under a comprehensive building insurance policy.
- 36 The landlord must use best endeavours to manage outgoings effectively and prudently and actual outgoings payable by the tenant cannot be more than 105% of budgeted outgoings.
- 37 The tenant may paint the exterior of the premises in colours it may determine. We note that Unisys may view this as inconsistent with its exclusive naming rights for the building.
- 38 The landlord must remediate contaminants promptly and at its cost.
- 39 The tenant may sublet or licence up to 20% of the premises without landlord's consent.
- 40 The landlord warrants the building has a minimum 67% NBS seismic rating and is graded 'B' under the Building Grading System and is free from seismic vulnerabilities that threaten life or safety and that it will do any works required (at its cost) to maintain this rating. The tenant may terminate the lease if this covenant is breached and not remedied within 4 months of tenant's notice.
- 41 The landlord warrants there are no contaminants in the premises or on the property and the yards and surfaced areas are fit for the business use and not subject to unreasonable repair or maintenance costs.
- 42 The tenancy schedule provided by the Vendor notes a payment of \$43,353.33 plus GST being due to Colliers for letting services should Fletcher Construction not exercise its early termination right. There was been correspondence between the Vendor and the Purchaser during due diligence in which the Vendor expressed an opinion that this will be for the Purchaser's cost at that time. We do not agree with this analysis, as there is no transfer of responsibility in the Agreement and the matter is otherwise in the nature of a private contract payment between the Vendor and Colliers.

#### **IRD**

- 43 The lease contains no further rent reviews during the current term. The next rent review will occur if the lease is renewed in March 2018; to market, but subject to a very soft ratchet whereby the reviewed rent cannot fall lower than the rent at commencement of the initial term (in March 2012). This creates the possibility of a rent drop on renewal if market rents have fallen at that time.
- 44 Outgoings payable by the tenant are limited to:
  - (a) rates;
  - (b) water, gas, electricity, telephones and other utilities or services (i.e. the tenant's own utility accounts);
  - (c) insurance premiums, related valuation fees and any insurance excess; and
  - (d) provisioning of toilets and other shared services.

The lease is accordingly a semi-gross lease, leaving costs (and future costs rises) in all other outgoings areas as the landlord's costs. The inability to pass on costs related to repair and maintenance work in the usual way may especially be costly for the landlord.

- 45 There is no obligation for the replacement of worn or damaged floor coverings. This obligation rests with the landlord instead of the tenant.
- 46 The usual tenant's obligations for reinstatement and make-good are modified so that:
- (a) the tenant may elect, but is not required, to reinstate any alterations or additions it has made to the premises; and
  - (b) there is no obligation on the tenant to remove and make good its fixtures and fittings at the end of the lease – it can elect whether to do so.
- 47 There are additional and onerous landlord's maintenance obligations, including the following:
- (a) the landlord's obligation extends to maintaining the building, building services, landlord's fittings and fixtures and carparks in "good, tenantable and watertight condition";
  - (b) the standard exception to the landlord's maintenance obligations, where it is not liable for any repair or maintenance which is not reasonably necessary for the tenant's use and enjoyment of the premises and the car parks has been deleted;
  - (c) the landlord must supply annual reports to the tenant relating to the condition, testing, maintenance and repair of fire protection, emergency lighting, air conditioning, heating and ventilation plant, lifts, energy supply systems and emergency systems;
  - (d) the Landlord is liable to the tenant for all water damaged to the tenant's property except where caused by the tenant or where any known defect or leak is not notified to the landlord by the tenant;
  - (e) the landlord must ensure that the building remains compliant with all relevant legislation, and must maintain the common areas and exterior to a standard of repair and appearance as near as practicable to the condition of the building at the commencement of the lease;
  - (f) there are detailed requirements for cleaning the building on a regular basis;
  - (g) the landlord must replace floor coverings which are damaged, unsafe or worn with new floor coverings of equivalent quality and cover, unless the floor coverings have been damaged by the negligent acts or omissions of the tenant. On the first renewal date (19 March 2018), the tenant may request that the landlord (at its cost) replaces the carpet tiles. If the tenant does request that replacement, but does not renew the lease again in March 2021, the tenant must reimburse the landlord for half of the cost of the new ceiling tiles;
  - (h) the landlord must meet with the tenant annually to discuss and agree an annual maintenance programme for the building and all plant and services. At that meeting the parties must also discuss any improvements to the systems (including any new initiatives for environmental sustainability), although there is no obligation on the parties to agree to any improvements;
  - (i) the tenant may, at its cost, conduct a full technical audit of the premises against the Tenancy Performance Specifications set out in the lease. Those Tenancy Performance Specifications are detailed, and include a seismic requirement (67% of New Building Standard), temperature tolerances (summer 22 degs +/- 1 deg, winter 21 degs +/- 1 deg) and lighting levels. If the audit reveals any defects or shortcomings, the landlord must put a remedial works programme into effect as promptly as possible; and
  - (j) there is a self-help remedy available to the tenant enabling it to carry out any works to rectify any default by the landlord of any of its obligations in the lease (including if any aspect of the Tenancy Performance Specifications fails to be met), and to then be reimbursed for any costs incurred.

These non-standard obligations will impose additional costs on the landlord than those which exist under a standard ADLS leased premises. None of those additional costs (or any standard costs for landlord's repair, maintenance and decoration) can be passed onto this tenant given the limited recoverable outgoings.

- 48 The damage and destruction clauses are altered from the usual ADLS lease position in ways that may be onerous to the landlord, as follows:
- (a) either party can terminate the lease if that party determines that the premises require demolition or reconstruction within 3 months of an event causing damage or destruction. This differs from the usual position where it is only the landlord who can terminate; and
  - (b) if, by reason of any natural event, Act of God or any statute or law, the tenant is prevented from having full access to the premises for a continuous period of three months, then the Tenant may terminate the lease. This would include any lack of access caused by damage to the building. Three months is a very short timeframe, and so any event such as a fire or earthquake could give rise to this termination right if the premises cannot be restored quickly.
- 49 While the Crown is the tenant, it has a right of first refusal to take a lease of any space that becomes available on the ground floor of the building.

## **E      GENERAL REVIEW - LAND INFORMATION MEMORANDUM (LIM)**

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### **General**

- 1      A copy of the LIM is uploaded separate to this Report to the Purchaser's disclosure register. The proposed zoning for the site under the Auckland Council Unitary Plan is Light Industry. However, the Council's "current preliminary position" is to rezone the site to Mixed Use. Regardless of the final decision in this respect, the ability to develop the Property in the future may be affected although the Property will retain the benefit of existing use rights for the current use of the property as commercial offices.

### **Material issues**

- 2      The LIM includes details of building permits and consents issued for various works carried out on the Property. The following points are relevant and may be material issues, depending on the background behind each one:
  - (a)      there are two related building consents from 2015 and 2016 for a commercial interior fit out by the tenant Northern Regional Alliance for which Code Compliance Certificates ("**CCCs**") have not yet issued. The Vendor has confirmed these works are ongoing and so it is not unusual that the CCCs have not yet issued;
  - (b)      there is one building consent from 2013 relating to a commercial interior fitout undertaken by the tenant IRD for which a CCC has not yet issued. The Vendor has confirmed a final inspection passed on 7 April 2016 and an application for a CCC is currently with Council.
  - (c)      there are two building consents from 2006 and 2010 relating to commercial interior fit outs by Unisys for which CCCs have not yet issued. Unisys has confirmed in writing to the Vendor that it is in the process of obtaining the CCCs. In our experience this may be challenging as to the one from 2006, given the lapse of time since, although we have no specific information on the likelihood of these issuing;
  - (d)      there is one building consent from 2010 relating to the construction of two rooms in the basement carpark to house a Vector substation for which a CCC was "refused" by Council (according to the LIM). Council has advised us this was due to the application deadline having expired, but that a final inspection was obtained and that there is no impediment to someone applying for the CCC. Unisys has confirmed in writing to the Vendor that it is in the process of obtaining the CCC; and
  - (e)      there are two building consents where code compliance certificates have not issued but the Vendor's enquiries with Council have indicated that this is because the particular consents were superseded by subsequent consents for which code compliance certificates have issued. The Vendor is seeking written confirmation of this from Council; i.e. confirming that there is nothing to be done and no issue.
- 3      Where CCCs are outstanding it is not certain whether the works (if indeed they were ever undertaken) were done in accordance with the relevant building consents and building code. There is a notional risk that the Purchaser could end up having to meet the costs of any remedial work or the removal of the improvements, if required by the Council. However as the works in question involved tenants (and Vector) primary responsibility for obtaining the CCCs will rest with those parties. The Vendor has undertaken to use all commercially reasonable endeavours up to settlement to procure the relevant tenants to resolve the outstanding CCCs.
- 4      At the date of this Report we do not have enough information to gauge the likelihood of the Vendor and/or the relevant tenants being successful in procuring all the outstanding CCCs by settlement. In our view the most high-risk are the three from 2006 and 2010 relating to works by (and for) Unisys. Especially in the case of these older ones, there may be complex issues not detailed in the LIM that exist and have prevented the CCCs



from issuing. The Purchaser should consider the worst-case scenario which is that the Property will have to be purchased with no improvement to the situation by settlement. End-liability for works or costs may default to the Purchaser as the property owner (albeit with the ability to pursue the tenants/Vector). It may also cause issues and affect value in the future when the Purchaser sells the Property.

- 5 The LIM includes reference to soil issues in the area and states that the land may not be suitable for particular development or land use purposes. In addition, a soils report must be submitted with any building and/or resource consent application.
- 6 The LIM includes reference to a flood risk and states that the site is potentially at risk of flooding during heavy rainfall events.

## **F GENERAL REVIEW – AGREEMENT FOR SALE AND PURCHASE**

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### **General**

- 1 The Agreement is a modified version of the ADLS/REINZ Ninth Edition 2012(3) form; as negotiated by the parties.
- 2 The key commercial terms of the Agreement are:
  - (a) **Price:** \$31,800,000 plus GST (zero-rated);
  - (b) **Conditions:**
    - (i) Vendor's board approval (which has been satisfied);
    - (ii) Purchaser's due diligence (which has been satisfied); and
    - (iii) Purchaser's capital raising by 3 June 2016;
  - (c) **Deposit:** 5% (\$1,590,000), with \$50,000 payable on a non-refundable basis on satisfaction of the purchaser's due diligence condition and the balance of the deposit payable on satisfaction of the purchaser's capital raising condition (i.e. when the agreement is unconditional); and
  - (d) **Settlement date:** 15 June 2016.

### **Material matters**

- 3 The Agreement contains exceptions to the Vendor's warranties and unusually restrictive limitations on the Purchaser's ability to make warranty claims against the Vendor for breaches of warranties after settlement. Warranties are statements in the Agreement about the Property, made by the Vendor for the benefit of the Purchaser. Where they prove to have been given incorrectly, causing the Purchaser loss, the Purchaser may be able to substantiate a monetary claim against the Vendor for damages.
- 4 The warranty positions in the Agreement may make a warranty claim that would ordinarily be pursued unavailable to the Purchaser, or available but uneconomic to pursue. In particular:
  - (c) no warranty claim can be made more than 12 months after settlement. Even where a claim is notified to the Vendor within 12 months, the vendor is still entitled to refuse liability unless court proceedings are commenced or a settlement reached within a further 12 months; and
  - (d) no warranty claim can be made for a sum more than 1% of the purchase price (\$318,000), including legal costs. These is a very onerous monetary claim limit and may make a major claim uneconomic to pursue (taking into account the costs of doing so) even where good grounds exist. While it is common in large transactions such as this for a vendor to negotiate a cap on its warranty liability, generally this cap would be somewhere in the region of 20% to 50% of the purchase price. A 1% cap is very unusual.
- 5 The Agreement contains obligations on the Vendor to enter into replacement and/or additional leases in respect of the two leases where the tenant has early termination rights, Fletcher Construction Company Limited (in 2016 and 2017) and Northern Regional Alliance Limited (in 2019) and also an additional 12 month lease for the HealthAlliance premises following expiry on 31 March 2018. More specifically:
  - (a) the Vendor will sign (as tenant) a replacement deed of lease on identical terms to the lease terminated early by NRA or Fletcher Construction, including the rent, for the balance of the current term of the NRA lease, and beyond the expiry date of the current term of the Fletcher Construction lease, to 18 November 2018 (except that in the case of the extra period for the replacement Fletcher Construction lease

(being the period 1 August – 18 November 2018) a gross (or including outgoings) rent of \$157,303 plus GST for the period has been agreed). The Vendor has also agreed to enter into the gross lease for 1 August - 18 November 2018 even if Fletcher Construction does *not* terminate early; so that there is an extended lease term commitment in place either way.

- (b) the Vendor will sign (as tenant) an additional lease of the ex-HealthAlliance premises, to commence on 1 April 2018 (being the day after expiry of HealthAlliance's lease) for 12 months, on identical terms to the HealthAlliance lease, except that the rent for the period has been agreed at \$392,697 plus GST, on a gross basis;
- (c) in all three cases the Purchaser must actively market the relevant premises for lease (at its own cost) with the intention that the Vendor will be released from the replacement lease if a new third-party tenant is found (and there can be a partial release as to part-only of the premises); and
- (d) the Purchaser must keep the Vendor informed of the results of the marketing and allow the Vendor to introduce prospective new third-party tenants (which the Purchaser must accept for a proposal on market commercial terms).

While these replacement/additional lease arrangements remove the commercial risk to the Purchaser presented by the relevant tenant's early termination rights, it should be noted that the Vendor's obligations here are unsecured and the Purchaser will be relying on the Vendor to honour (and being able to honour) the contractual obligations in the Agreement if the replacement leases are required. The warranty caps described in paragraphs 3 and 4 above do not apply to the replacement/additional lease arrangements.

- 6 The Agreement includes commitments by the Vendor, backed up by a settlement retention arrangement, in respect of the incomplete surrender of lease documentation required from HealthAlliance and the new deed of lease to be executed by NRA. In particular:

- (a) the Vendor must use all commercially reasonable endeavours to complete a deed of lease with NRA by settlement, substantially in the form of the draft lease approved by the Purchaser (and seeking the Vendor's approval to any material concessions or amendments to that form);
- (b) the Vendor must complete execution of the deed of surrender of lease executed by HealthAlliance as to the office space and 44 car parks now occupied by NRA, by settlement;
- (c) the Vendor must use all commercially reasonable endeavours to complete a deed of partial surrender of lease with HealthAlliance as to 6 car parks currently leased to HealthAlliance but now occupied by NRA (in accordance with car parking arrangements agreed by the three parties) and included in NRA's new lease to be executed;
- (d) if the Vendor hasn't completed the three deeds referred to above by settlement, the Purchaser may withhold \$200,000 of the settlement monies as a retention (in the Purchaser's solicitors' trust account), which the Vendor will not be entitled to receive until it has delivered the three completed deeds.

The Purchaser's view is that the \$200,000 retention is adequate to incentivise the Vendor to complete the deeds and to compensate the Purchaser for any loss it might suffer arising from any of the deeds never being completed.

## **APPENDIX 1 BASES AND ASSUMPTIONS OF THIS REPORT**

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This Report is subject to the qualifications set out below.

- 1 We have relied exclusively on the accuracy and completeness of the information made available to us and the results of our searches, and have not undertaken any separate verification of this information.
- 2 We have assumed:
  - (a) that all documents made available to us are authentic, complete and factually accurate, and that all copy documents are true and complete copies of the originals of them;
  - (b) that all signatures, stamps, seals and dates, if any, on all documents made available to us as originals or as copies of originals are genuine;
  - (c) that, where extracts only of a document have been made available to us, the extracts do not give a misleading view of the document as a whole;
  - (d) the accuracy of all searches conducted by us, the continuing correctness of those searches from the date of the relevant search until the date of this Report, and that further searches would not have revealed additional or different matters;
  - (e) the responses to the questions which we have put to the Vendor have been true and correct in all respects and have contained no material omissions;
  - (f) that all agreements, instruments and documents reviewed by Anthony Harper were duly authorised and validly executed, and that all necessary corporate actions to authorise their delivery and performance were taken and that the relevant parties to them then had all necessary capacity under their constitutions to do such things and that, except as otherwise expressly indicated, all documents are valid and binding on all parties to them;
  - (g) that such agreements, instruments and documents still exist and continue unamended and in full force and effect, and have not been varied, cancelled or superseded by some other document or agreement of which we are unaware; and
  - (h) that no information which is material in the context of the matters under review has been withheld from us.
- 3 Agreements comprised in documents made available to us may not in fact have been performed in accordance with their terms or at all.
- 4 Any term of any agreement comprised in the documents made available to us may have been amended already by the parties either orally or by conduct or by course of dealings without our being aware of such amendment. In addition, there may be agreements which are wholly oral of which we are unaware.
- 5 There may be breaches of the obligations of any of the parties to the documents made available to us which have not been disclosed.
- 6 This Report is based on the information provided to us at the date of this Report. Unless subsequently specifically agreed, no responsibility is undertaken to update this Report.
- 7 This Report is strictly limited to the matters stated in it, and does not extend and is not to be read as extending by implication to any other matter. Without limitation:
  - (a) this Report does not include any comments on the value of the Property;

- (b) this Report does not include any comment on the development potential of the Property or any uses to which the Property may be put other than its existing use; and
  - (c) except as otherwise expressly indicated, this Report does not advise on the commercial nature or effect of the transactions contemplated by or associated with the agreements and documentation referred to in this Report.
- 8 In addition, we have not carried out a "plan check" in respect of the Property to confirm that the Property complies with all relevant Resource Management Act requirements, and as such:
  - (a) we have not inspected any Auckland Council files in relation to the Property; and
  - (b) we have limited our planning investigations to reviewing the LIM in order to confirm that there are no outstanding requisitions or enforcement notices in respect of the Property and no outstanding resource consent conditions which are immediately apparent from our review of the LIM.
- 9 Our review does not extend to commenting on matters of business judgement or property valuation.

## **APPENDIX 2 CERTIFICATE OF TITLE**

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## COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952

Guaranteed Search Copy Issued under Section 172A  
of the Land Transfer Act 1952



**Identifier** NA108C/559  
**Land Registration District** North Auckland  
**Date Issued** 04 March 1997

### Prior References

NA103B/136

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**Estate** Fee Simple  
**Area** 6573 square metres more or less  
**Legal Description** Lot 2 Deposited Plan 176485

**Proprietors**  
Stride Property Limited

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### Interests

Appurtenant hereto is a party wall right created by Transfer B706744.1

Appurtenant hereto are rights to drain sewage and drain water specified in Easement Certificate C189342.2

The easements specified in Easement Certificate C189342.2 are subject to Section 309 (1) (a) Local Government Act 1974

Appurtenant hereto are rights of way created by Transfer C189342.6

Subject to a right of way over parts marked D and E on DP 176485 created by Transfer C189342.6

Subject to a right of way over part marked C on DP 176485 specified in Easement Certificate D114586.4 - 4.3.1997 at 2.26 pm

Appurtenant hereto are rights of way and telecommunications, water, gas, drainage and power rights specified in Easement Certificate D114586.4 - 4.3.1997 at 2.26 pm

The easements specified in Easement Certificate D114586.4 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right of way over parts marked D, E & Z on Plan 179947 specified in Easement Certificate D114586.5 - 4.3.1997 at 2.26 pm

7954363.2 Mortgage to ANZ National Bank Limited - 2.10.2008 at 9:35 am

Subject to a right (in gross) to convey electricity over parts marked A, B and C on DP 459138 in favour of Vector Limited created by Easement Instrument 9282515.1 - 5.2.2013 at 9:05 am

Subject to a right (in gross) to convey telecommunications and computer media over part marked A on DP 469291 in favour of Genesis Energy Limited created by Easement Instrument 9632653.1 - 10.6.2015 at 5:07 pm

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Transaction Id  
Client Reference 296908-2

Guaranteed Search Copy Dated 2/03/16 3:50 pm, Page 1 of 2  
Register Only

NA108C/559

**Site Plan Details:**

- North Arrow:** Located in the upper left corner, pointing towards the top of the page.
- Scale Bar:** Located in the upper right corner, indicating distances in feet.
- Property Boundaries:** The plan shows several lots, including Lot 1 (6.51 Acres), Lot 2 (2.68 Acres), and Lot 3 (1.85 Acres). It also shows various easements and setbacks.
- Setbacks:** The plan indicates setbacks of 10 feet, 20 feet, and 30 feet from the property lines.
- Other Features:** The plan includes a "Gravel Driveway" and a "Gravel Driveway" (labeled as such in the original image).

**Title Block Information:**

<p><b>PROJECT: LOT 2, SUBDIVISION OF LOT 2</b></p> <p><b>OWNER: NORTH AUSTRALIA</b></p> <p><b>PREPARED BY: CHANDRA</b></p> <p><b>DATE: 10/08/08</b></p>	
<p><b>LOT 2, SUBDIVISION OF LOT 2</b></p> <p><b>OWNER: NORTH AUSTRALIA</b></p> <p><b>PREPARED BY: CHANDRA</b></p> <p><b>DATE: 10/08/08</b></p>	

06 MAR 1997







This map is for illustrative purposes only and all information is subject to change without notice. Auckland Council does not warrant the accuracy or completeness of the information. Auckland Council is not responsible for any errors or omissions in the information. Auckland Council 1946.



# 650 Great South Road

Scale @ A4 1:1000

Created: Tuesday, 5 April 2016 3:52:51 p.m.