

## DEED OF AGREEMENT

THIS DEED OF AGREEMENT is made the 26th day of January 1999

BETWEEN THE ROMAN CATHOLIC BISHOP OF THE ARCHDIOCESE OF WELLINGTON a Corporation Sole (hereinafter with his successors referred to as "the Proprietor")

AND

HER MAJESTY THE QUEEN acting by and through the Minister of Education (hereinafter referred to as "the Minister").

### WHEREAS :

- A. The Proprietor intends to establish **St Pauls School, Richmond** (hereinafter referred to as "the School")
- B. The School is to be Roman Catholic Primary School for boys and girls from Year 1 to Year 8 offering Education with a Special Character.
- C. The Minister and the Proprietor have agreed to enter into this Deed of Agreement pursuant to the Private Schools Conditional Integration Act 1975 ("the Act"), whereby the School is to be established as an integrated School.
- D. The Proprietor has leased the land from the Crown for the purposes of operating the School under a Memorandum of Lease set out in the **Fourth Schedule** hereto ("the Lease").

NOW THIS DEED OF AGREEMENT WITNESSETH THAT IT IS HEREBY COVENANTED AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERETO as follows :



- 1 **THAT** the Minister and the Proprietor **HEREBY AGREE** that the School is to be established and be an integrated School pursuant to the Act
- 2 **THE** School's Special Character as is hereinafter described, shall incorporate the Education with a Special Character as provided in the School **AND IT IS** **HEREBY AGREED AND DECLARED** that the School shall at all times in the future be conducted and operated so as to maintain and preserve the School's Special Character and these presents shall be interpreted so as to maintain and preserve the Special Character of the School.
- 3 **ON** behalf of the Proprietor it is hereby agreed that :-
  - 3.1 The Proprietor is the occupier of all the land and improvements more particularly described in the **First Schedule** hereto ("**the Leased Land**"), the School premises for the purposes of this Deed of Agreement being the land and improvements more particularly described in the Second Schedule hereto ("**the School Premises**").
  - 3.2 The Proprietor shall set apart and appropriate all the School Premises and all the chattels and other assets of the Proprietor associated with the School exclusively for the purposes of the School as an integrated School, so that the St Pauls School Board of Trustees ("**the Board**") shall have the exclusive right to the possession and use of the School Premises and chattels:

**PROVIDED THAT**

- 3.2.1 At the request of the Proprietor, the Board may grant the use of the School Premises and chattels to the Proprietor or other person or persons at any time when the School Premises and chattels are not required for School purposes and the Board



shall not unreasonably or arbitrarily withhold its consent. The Board may require the Proprietor or other person or persons to pay a reasonable fee to the Board as a condition of such use.

- 3.2.2 With the consent of the Proprietor, the Board may grant the use of the School Premises and chattels to other person or persons at any time when the School Premises and chattels are not required for School purposes and the Proprietor shall not unreasonably or arbitrarily withhold his consent. The Board may require any such person or persons to pay a reasonable fee to the Board as a condition of such use
- 3.3 The Proprietor shall plan, pay for, and execute the improvements required so that School buildings and associated facilities forming part of the School Premises will be to the minimum standard for a comparable State School of the same roll.
- 3.4 The Proprietor shall plan, execute and pay for such capital works and associated facilities at the School as may be approved or required, from time to time, by the Minister pursuant to Section 40(2)(d) of the Act.
- 3.5 The Proprietor may own or hold upon trust, and control and maintain, any land, buildings and associated facilities that, although not part of the integrated School Premises in terms of this Deed of Agreement, are regarded by the Proprietor as appropriate to maintain the Special Character of the School.
- 3.6 The Proprietor shall insure all the buildings forming part of the School Premises and the Proprietor's chattels (if any) owned or held upon trust for the purposes of the School and other assets owned by the Proprietor for the purposes of the School against risks normally insured against, in

some responsible insurance office in New Zealand, and further acknowledges the obligation on him created by Section 40(2)(h) of the Act.

- 4 No person employed at the School and paid for his services in whole or in part out of moneys appropriated by Parliament, shall be paid by the Proprietor or his servants or agents any remuneration additional to that provided for by the Act or shall be granted or permitted any condition of service more favourable than that permitted in the case of a person employed in a comparable position in a State School.
- 5 THE land constituting the School Premises is subject to the easement which affects the title to the land more particularly described in the **First Schedule** hereto.
- 6 THE parties acknowledge that:-
- 6.1 The Land which is the subject of this Agreement has been leased to the Proprietor by the Crown at the request of the Minister,
- 6.2 The provisions of the Lease shall prevail over the terms of this Agreement except to the extent provided in Clause 4.15 and elsewhere in the Lease.
- 7 THE Proprietor undertakes and agrees that up to the effective date hereof he has, to the best of his knowledge and belief observed, performed, fulfilled and kept all and singular the covenants, conditions and agreements contained or implied in the Lease,

AND the Proprietor hereby further agrees that he will well and faithfully observe perform fulfil and keep all and singular the covenants conditions and



agreements contained or implied in the Lease and on the part of the Proprietor as Lessee thereunder to be observed performed fulfilled and kept,

AND the Proprietor accordingly indemnifies the Minister in respect of any breach of the obligations of the Proprietor as lessee under the Lease  
PROVIDED ALWAYS that the Minister shall be responsible to maintain the School in accordance with the provisions of clause 28 hereof.

- 8 **THE** Minister as lessor consents to the Proprietor parting with possession of the School Premises, more particularly described in the **Second Schedule** hereto, to the St Pauls School Board of Trustees.
- 9 **THE** Special Character of the School is that it is a Roman Catholic School for boys and girls established by the Roman Catholic Archbishop of the Archdiocese of Wellington for the Roman Catholic community of the Archdiocese of Wellington which promotes and supports the School and of which the School is part, to provide and to continue to provide Education with a Special Character, that is to say :-
- The School is a Roman Catholic School in which the whole School community through the general School programme and in its Religious instructions and observances, exercises the right to live and teach the values of Jesus Christ. These values are as expressed in the Scriptures and in the practices, worship and doctrine of the Roman Catholic Church, as determined from time to time by the Roman Catholic Archbishop of the Archdiocese of Wellington.
- 10 **THE** Proprietor of the School subject to the provisions of this Deed of Agreement :-
- 10.1 Shall continue to have the responsibility to supervise the maintenance and preservation of the Education with a Special Character provided by



the School;

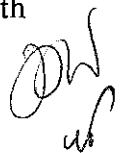
- 10.2 Shall continue to have the right to determine from time to time what is necessary to preserve and safeguard the Special Character of the Education provided by the School and described in this Deed of Agreement;
- 10.3 May invoke the powers conferred upon him by the Act, if in the opinion of the Proprietor the Special Character of the School as defined and described in this Deed of Agreement has been or is likely to be jeopardised or the Education with a Special Character provided by the School as defined and described in this Deed of Agreement is no longer preserved and safeguarded.
- 11 **THE** St Pauls School Board of Trustees shall be constituted pursuant to Part IX of the Education Act 1989.
- 12 **THE** control and management of the School shall be exercised subject to the provisions of Section 25(6) of the Act.
- 13 **IT** is agreed by and between the parties hereto that the maximum roll of the School shall be 80 pupils.
- 14 **THE** Proprietor agrees that pursuant to clause 3.3 and 3.4 of this Deed of Agreement he will bring the School up to the minimum standard of accommodation laid down from time to time by the Secretary of Education for a comparable State School.
- 15 **PREFERENCE** of enrolment at the School under Section 29(1) of the Act shall be given only to those children whose parents have established a particular or general religious connection with the Special Character of the School and

the Board shall not give preference of enrolment to the parents of any child unless the Proprietor has stated that those parents have established such a particular or general religious connection with the Special Character of the School.

- 16 IN accordance with Section 7(6)(h) of the Act unless the Proprietor and the Secretary of Education otherwise agree and subject to places being available, the number of pupils whose parents do not have a preference of enrolment at the School in accordance with the provisions of Section 29(1) of the Act shall be limited at all times to 8 percent of the maximum roll as determined by clause 13 hereof and the Board shall not enrol more than that number **PROVIDED THAT** to maintain and preserve the Special Character of the School the Board in classifying such pupils so enrolled shall endeavour to reasonably distribute them through the range of classes offered by the School
- 17 IT is agreed by and between the parties hereto that as Religious observances and Religious instruction form part of the Education with a Special Character to be provided by the School, Religious observances and Religious instruction in accordance with the determination made from time to time by the Roman Catholic Archbishop of the Archdiocese of Wellington shall form part of the School programme in accordance with Sections 31 and 32 of the Act
- 18 THE Proprietor, together with his servants, agents and licensees, shall, subject to the proviso to Section 40(2)(i) of the Act, have at all reasonable times access to the School to ensure that the Special Character of the School is being maintained.
- 19 THE Proprietor, together with his servants, agents and licensees, shall have at all reasonable times access to the land and buildings constituting the School Premises sufficient to enable him to exercise the powers and carry out the responsibilities vested in him and imposed on him by the Act and by this Deed of Agreement.



- 20 The Minister and officers of the Ministry of Education shall have at all reasonable times the right to enter upon the land more particularly described in the **Second Schedule** hereto for the purpose of viewing the state and condition thereof and of the buildings and erections thereon.
- 21 AN advertisement for the position of Principal of the School shall in accordance with Section 65(1)(a) of the Act state that a willingness and ability to take part in Religious instruction appropriate to the Special Character of the School shall be a condition of appointment. Any person so appointed to the position of Principal shall accept these requirements as a condition of appointment. The principal so appointed shall accept and recognise a responsibility to maintain and preserve the Special Character of the School.
- 22 IN the event of the staffing entitlement of the School altering during the currency of the Deed of Agreement so that the School becomes entitled to a position designated Director of Religious Studies in accordance with the **Third Schedule** hereto there shall be a position at the School to be designated Director of Religious Studies in accordance with Section 65(1)(b) of the Act, which position shall be a position of responsibility and part of the Total Staffing Entitlement of the School as established pursuant to the Education Act 1989. Any advertisement for that position shall state that a willingness and ability to take part in Religious instruction appropriate to the Special Character of the School shall be a condition of appointment. Any person so appointed to the position of Director of Religious Studies shall accept these requirements as a condition of appointment. The Director of Religious Studies shall give guidance and provide effective leadership in Religious instruction and observances throughout the School. A person appointed to the position of Director of Religious Studies at the School shall undertake such teaching duties, if any, as may be required by the Principal of the School.
- 23 THE number of other teaching positions (if any) which, in accordance with





section 65(1)(c) of the Act shall be positions of importance carrying a responsibility for Religious instruction shall be determined from the Total Staffing Entitlement of the School as established pursuant to the Education Act 1989 by reference to the **Third Schedule** hereto. Any advertisement for those positions shall state that a willingness and ability to take part in Religious instruction appropriate to the Special Character of the School shall be a condition of appointment. Any person so appointed to these positions shall accept these requirements as a condition of appointment.

- 24 **WHENEVER** there is a position of Deputy Principal at the School, however designated, it is agreed pursuant to Section 66(1) of the Act that the position is to be a special position that requires particular capabilities in the teacher appointed, namely to maintain programmes and activities that reflect the Special Character of the School and an advertisement for the position of Deputy Principal shall state that possession of these capabilities shall be a condition of appointment. Any person so appointed to the position of Deputy Principal shall accept these requirements as a condition of appointment.
- 25 **IT** is agreed by and between the parties hereto that as Religious observances and Religious instruction form part of the Education with a Special Character provided by the School the Proprietor may employ any person as a chaplain or otherwise for the purposes of Religious observances or instruction and the provisions of Section 69(2) and (3) of the Act shall apply.
- 26 **THE** Proprietor of the School shall have the right to enter into an Agreement with the parents or other persons accepting responsibility for the education of a child providing that, as a condition of enrolment and attendance of that child at the School, the parents or other persons shall pay attendance dues established in respect of the School or group of integrated Schools owned by the Proprietor or Proprietors of other Roman Catholic Integrated Schools at such rates and subject to such conditions as may be approved from time to time by

the Minister, by notice in the New Zealand Gazette in accordance with Section 36 of the Act .

- 27     **THE** Proprietor shall not engage any teachers between the date of execution of this Deed of Agreement and the effective date of Integration other than those who names have already been notified by the Proprietor to the Secretary of Education without first obtaining the consent of the Secretary of Education.
- 28     **THE** Minister shall subject to clause 3.3 and 3.4 of this Deed of Agreement after the effective date hereof maintain the School Premises and the associated facilities in a state of repair order and condition as for a comparable State School and provide for the maintenance of the chattels as through the School were a State School. The School shall be entitled to such furniture and equipment as the Minister supplies from time to time to comparable State Schools.
- 29     **THE** effective date of the Deed of Agreement shall be the 27th day of January 1999
- 30     **ON** and after the effective date specified in this Deed of Agreement the School shall be an integrated school in terms of the Act.

**IN WITNESS WHEREOF** these presents have been executed the day and year first hereinbefore written.

A handwritten signature in dark ink, appearing to be a stylized 'J' or 'G' followed by a flourish.

Signed by Thomas Stafford Williams

The Roman Catholic Archbishop of  
the Archdiocese of Wellington and

Sealed with his seal of office in the

presence of:

*John O'Neill*  
*Witness for Education*  
*88 Hobson St*  
*Wellington*

*+ Thomas S. Williams*

Signed by Kathy Phillips

Senior Manager, National Operations

Ministry of Education pursuant to  
authority delegated by the Minister  
of Education acting on behalf of

Her Majesty the Queen in the

presence of:

*Kathy Phillips*

*[Signature]*  
*Advisee*  
*Wellington*

## **FIRST SCHEDULE**

Description of Leased Land.

### **The Leased Land**

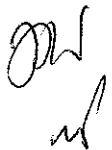
All that land, buildings and other improvements occupied by the Roman Catholic Archbishop of the Archdioceses of Wellington situate in Salisbury Road, Richmond being known as St Pauls School, Richmond and being part of Part Lot 1 on Deposited Plan 18938 and delineated in red on the plan forming part of the Second Schedule hereto **SUBJECT TO** a right to drain water over the part marked A-B on DP 18828 appurtenant to Lots 1 & 2 DP 15879 CsT 10D/1213 & 1214 created by Transfer 375696.3-11.2.1998 at 11.36, **TOGETHER WITH** the full right of ingress and egress to and from Salisbury Road, Richmond over the right of way shown green on the annexed plan.

## **SECOND SCHEDULE**

Description of land, buildings and other improvements comprising the School Premises.

### **The School Premises:**

All that part of the Leased land as described in the **First Schedule** hereto delineated in red on the annexed plan of the Leased Land which forms part of this Schedule, **TOGETHER WITH** all the School buildings and other improvements thereon.



### THIRD SCHEDULE

*Schedule of staff appointments to St Pauls School Richmond under Section 65 of the Private Schools Conditional Integration Act 1975 being special positions related to the Special Character of the School.*

This Schedule has been prepared for use when the Total Staffing Entitlement of the School as established pursuant to the Education Act 1989 alters at any time during the currency of this Deed of Agreement.

#### 1 **Director of Religious Studies**

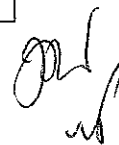
- 1.1 Whenever the Total Staffing Entitlement of the School is 5.2 or more teachers, but not otherwise, there shall be a position at the School to be designated Director of Religious Studies in accordance with clause 22 of this Deed of Agreement.
- 1.2 If the Total Staffing Entitlement of the School is 8 or more teachers then at least one Permanent Management Unit is to be allocated to the teacher holding the position of Director of Religious Studies.

#### 2 **Other Positions Carrying a Responsibility for Religious Instruction.**

- 2.1 Whenever the Total Staffing Entitlement of the School is two or more teachers but not otherwise there shall be one or more teaching positions (other than those of Principal and Director of Religious Studies (if any)) at the School which in accordance with clause 23 of this Deed of Agreement shall be positions of importance carrying a responsibility for Religious Instruction.
- 2.2 The number of such positions shall be determined from the Total Staffing Entitlement of the School by reading the table below from left to right PROVIDED THAT if the Total Staffing Entitlement of the School falls between adjacent numbers in Column 1 of the table, the number in Column 2 opposite the smaller of those two adjacent numbers is the number of such positions.



Column 1	Column 2
Total Staffing Entitlement of the School	Positions of Importance in Terms of Clause 23 Carrying a Responsibility for Religious Instruction.
1.1	-
2.1	1
3.2	1
4.2	2
5.2	1
6.3	2
7.3	2
8.0	3
9.0	3
10.0	4
11.0	4
12.0	5
13.0	5
14.0	6
15.0	7
16.0	8
17.0	8
18.0	8
19.0	9
20.0	9
21.0	10
22.0	10
23.0	10
24.0	11
25.0	11
26.0	12
27.0	12
28.0	13
29.0	13
30.0	14



# FOURTH SCHEDULE

## LESSOR

HER MAJESTY THE QUEEN  
Acting by and through the Minister  
of Lands

## LESSEE

THE ROMAN CATHOLIC  
ARCHBISHOP OF THE ARCHDIOCESE  
OF WELLINGTON

a corporation sole under  
the provisions of the Roman Catholic  
Bishops Empowering Act 1997

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## MEMORANDUM OF LEASE

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THE SECRETARY  
MINISTRY OF EDUCATION  
NATIONAL OFFICE  
WELLINGTON

DEED made this

27th Jan. day of January 1999

LESSOR HER MAJESTY THE QUEEN acting through the Minister of  
Lands ("the Lessor")

LESSEE THE ROMAN CATHOLIC ARCHBISHOP OF THE  
ARCHDIOCESE OF WELLINGTON a corporation sole under the  
provisions of the Roman Catholic Bishops Empowering Act 1997  
("the Lessee")

10PATZ 18/02/1999 2047539  
NZ Stamp Duty - NOT LIABLE  
\$0.00

WHEREAS the Lessor owns the Land hereafter described in Item 1 of Schedule A (hereafter called "the Land") AND WHEREAS the Lessor has agreed to lease the Land to the Lessee on the terms and conditions hereinafter appearing, the Lessor HEREBY LEASES to the Lessee pursuant to the provisions of Section 45 Public Works Act 1981 the Land from the Commencement Date, at the annual rental, for the term and for the permitted use all as described in Schedule "A".

10PATZ 18/02/1999 2047539  
NZ Stamp Duty - NOT LIABLE  
\$0.00

The Lessor and the Lessee covenant as set out in Schedule "B".

SIGNED for and on behalf )  
of HER MAJESTY THE QUEEN as )  
Lessor by ROSS JAMES SUTHERLAND )  
(acting pursuant to a delegation )  
given to him by the Minister of )  
Lands pursuant to Section 4B of )  
the Public Works Act 1981) )

Witness  
Occupation  
Address

SIGNED by THOMAS STAFFORD )  
WILLIAMS The Roman Catholic Archbishop )  
of the Archdiocese of Wellington and sealed )  
with his seal of office in the presence of: )



## SCHEDULE A

### ITEM 1 THE LAND

All that land buildings and other improvements occupied by the Lessee situate in Salisbury Road, Richmond being known as St Paul's School, Richmond containing approximately 1.9152ha and being part of Lot 1 on Deposited Plan 18938 delineated in red on the scheme plan of subdivision attached as **Annexure A TOGETHER WITH** the full right of ingress and egress to and from Salisbury Road, Richmond over the right of way delineated in yellow on the said plan.

### ITEM 2 THE COMMENCEMENT DATE

The Commencement Date of this Lease shall be the 27<sup>th</sup> of January 1999 .

### ITEM 3 ANNUAL RENTAL

One peppercorn per annum payable annually in advance of the Commencement Date and each annual anniversary of that date during the continuance of this Lease (if demanded by the Lessor) with a first payment due on the 27th day of January 1999.

### ITEM 4 TERM OF LEASE

Twenty years less one day from the Commencement Date to determination on the 26<sup>th</sup> day of January 2019.

### ITEM 5 LESSEE OUTGOINGS

All Lessee Outgoings as defined in **Clause ~~1.07~~** following for which the Lessee is responsible in terms of this Lease.

1.08

per 7

EPN

2

EPN

**ITEM 6      PERMITTED USE**

Integrated State School or any other educational use consented to by the Lessor under the provisions of **Clause 2.03**.

**ITEM 7      RENT REVIEW DATES**

Refer to **Clause 4.05** (if applicable).

**ITEM 8      LESSOR'S PROPERTY**

The fences bounding the Land and the properties on Darcy Street, Richmond.

**ITEM 9      LESSEE'S IMPROVEMENTS**

All buildings and improvements on the Land other than the Lessor's Property described in Item 8 above.

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A handwritten signature in dark ink, appearing to be 'M. J. [unclear]', located below the text of Item 9.

## SCHEDULE B

### PART I - PRELIMINARY

#### 1.00 DEFINITIONS

1.01 "**The Act**" means the Private Schools Conditional Integration Act 1975 and all amendments thereto.

1.02 (a) The expression "**the Lessor**" shall include and bind:

- (i) the persons executing this Lease as Lessor; and
- (ii) any Lessor for the time being under it; and
- (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally; and
- (iv) the Minister of Education and the Secretary for Education (hereafter collectively called "the Minister") where the context requires this.

(b) The expression "**the Lessee**" shall include and bind:

- (i) the person executing this Lease as Lessee;
- (ii) all the Lessees for the time being under it; and
- (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally.

(c) Words importing the singular or plural number shall include the plural or singular number respectively. 7

- 1.03 **"Lessee's Improvements"** shall mean all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property of any kind whatsoever constructed or placed on the Land by the Lessee prior to or after the commencement of this Lease but shall exclude "Lessor's Property".
- 1.04 **"Lessor's Property"** means the Lessor's property listed in **Item 8 of Schedule A**.
- 1.05 **"The Land", "The Commencement Date", "Annual Rental", "Term of the Lease", "Lessee's Outgoings" and "Permitted Use"** shall have the meanings ascribed to them in **Schedule A**.
- 1.06 **"Integration Agreement"** means an agreement dated 27<sup>th</sup> January 1999 between the Minister and the Lessee made pursuant to the provisions of Section 7 of the Act in respect of the School and includes any subsequent variation of the Integration Agreement whether by way of supplementary agreement or otherwise howsoever.
- 1.07 **"Board of Trustees"** means the Board of Trustees of St Pauls School, Richmond being a body corporate under and by virtue of the 6<sup>th</sup> Schedule to the Education Act 1989.
- 1.08 **"Lessee Outgoings"** shall mean all rates, taxes, impositions and demands levied in respect of the Land by any lawful authority (excepting only any Land Tax levied on the Lessor by virtue of the Lessor's ownership of the Land) and all charges made for the supply of any utilities or services to the Land and all charges relating to the maintenance and repair of the Land or any improvements on it except where the provisions of the Lease require the Lessor to pay these charges.
- 1.09 **"Property Management Document(s)"** means the School's Charter or any notice issued by the Minister pursuant to Section 70 Education Act 1989 or any other like agreement or notification in force between the Board of Trustees and the Minister which, inter alia, deals with the Minister's responsibilities to fund maintenance and repair of



School buildings and improvements and the Board of Trustees's responsibilities to carry out those works.

- 1.10 **"The School"** and **"School"** means Saint Pauls School, Richmond, Nelson or any other School the Lessor may permit upon the Land.

A handwritten signature in black ink, appearing to be 'M. J. W.' or similar, located to the right of the definition text.

## **PART II - LESSEE'S COVENANTS**

### **2.00 LESSEE'S COVENANTS**

#### **2.01 PAYMENT OF ANNUAL RENT**

To pay the annual rent in the manner and at the times provided in **Item 3 of Schedule A**.

#### **2.02 PAYMENT OF LESSEE OUTGOINGS**

- (a) The Lessee shall pay the Lessee Outgoings in respect of the Land which are specified in **Item 5 of Schedule A** direct to the creditors concerned.
- (b) The Lessee's liability to pay Lessee's Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.

#### **2.03 USE OF LAND**

The Lessee shall not, without the prior written consent of the Lessor first had and obtained, use the Land for any purpose other than the Permitted Use described in **Item 6 of Schedule A**. The Lessor shall not unreasonably or arbitrarily withhold its consent to any change in the Permitted Use of the Land if that use is an educational use permitted by the District Plan or any designation of the Land but shall in all other cases have the absolute and unfettered discretion to give or withhold any consent sought to change the use of the Land.

#### **2.04 COMPLIANCE WITH LAW**

- (a) Subject to **Clause 2.04(b)** the Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the

*M*  
*BN*

7

provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land;

- (b) The provisions of **Clause 2.04(a)** shall be of no application where any Lessee breach or default under that provision is directly caused by Lessor breach or default of the Lessor's obligations under the Integration Agreement or the Property Management Document(s).

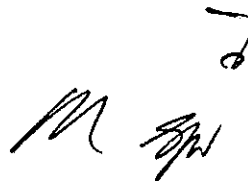
## **2.05 AVOIDANCE OF DANGER**

The Lessee shall:

- (a) take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard.
- (b) promptly remedy any danger or hazard that may arise on the Land.

## **2.06 MAINTENANCE OF LESSEE'S IMPROVEMENTS**

- (a) Subject to **Clause 2.06(b)** the Lessee shall at the Lessee's own expense in all things keep any Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease;

Handwritten signature and initials, possibly 'M' and 'SPW', with a small circular mark above them.

- (b) The provisions of **Clause 2.06(a)** shall be of no application where any Lessee breach or default under that provision is directly caused by Lessor breach or default of the Lessor's obligations under the Integration Agreement or the Property Management Document(s).

## **2.07 NO LESSOR MAINTENANCE**

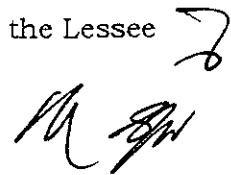
- (a) Subject to **Clause 2.07(b)** the Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land;
- (b) The acknowledgment given in **Clause 2.07(a)** is given without prejudice to the Lessees or the Board of Trustees right to sue the Lessor for any breach of the Integration Agreement or Property Management Document(s) to fund maintenance and repair of Lessees improvements.

## **2.08 RUBBISH REMOVAL**

The Lessee shall regularly cause all rubbish and garbage to be removed from the Land and will keep any rubbish bins or containers in a tidy condition. The Lessee will also at the Lessee's own expense cause to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the Territorial Authority.

## **2.09 SIGNAGE**

The Lessee shall have the right to affix names, signs, nameplates, signboards and advertisements relating to the purposes of the Permitted Use without the consent of the Lessor. The Lessee shall not otherwise affix, paint or exhibit or permit to be affixed, painted or exhibited any name, sign, name-plate, signboard or advertisement of any description on or to the exterior of the Lessee's Improvements or the Land or any Lessors' Property thereon without the prior approval in writing of the Lessor. Any signage shall be secured in a substantial and proper manner so as not to cause any damage and the Lessee





shall at the end or sooner determination of this Lease remove the signage and make good any damage occasioned thereby.

## **2.10 PUBLIC LIABILITY INSURANCE**

The Lessee shall insure at its own cost against all public liability in the sum of at least \$2,000,000 in respect of any single event in the name of the Lessee at all times during the continuance of this Lease.

## **2.11 SUNDRY LESSEE ACKNOWLEDGEMENTS**

The Lessee acknowledges:

- (a) That the parties shall contribute in equal shares to the maintenance and replacement of any fence common to the Land and any adjoining land of the Lessor as provided by the Fencing Act 1978 and otherwise the Lessee shall be responsible for the repair and replacement of all boundary fencing on the Land, whether this is Lessor's Property or not;
- (b) That the Lessee shall at its own cost and expense in all things fence the boundaries of the Land insofar as the Lessee deems this reasonably necessary for the purposes of the Permitted Use.
- (c) That the Lessee shall indemnify the Lessor to the fullest extent permitted by law against all loss, harm and damage resulting from any act or omission on the part of the Lessee or the Lessee's employees, contractors or invitees (but excluding always the Board of Trustees, the Board of Trustees employees, contractors or invitees). The Lessee shall be liable to indemnify only to the extent that the Lessor is not fully indemnified under any policy of insurance.

A handwritten signature in black ink, appearing to be 'M. J. W.', is located below the third list item.

- (d) The foregoing indemnity in **Clause 2.11(c)** shall be of no application where any act or omission causing loss, harm or damage to the Lessor is directly caused by Lessor breach or default in the performance of the Lessor's obligations under the Integration Agreement or the Property Management Document(s).
- (e) That no warranty or representation expressed or implied has been or is made by the Lessor that the Land is suitable or will remain suitable or adequate for use by the Lessee or that any use of the Land by the Lessee will comply with the bylaws or ordinances or other requirements of any authority having jurisdiction.

## **2.12 GST**

The Lessee shall pay to the Lessor or as the Lessor shall direct the GST payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable on demand.

## **2.13 DE-INTEGRATION OF SCHOOL**

The Lessee acknowledges that in the event the School conducted on the Land ceases to be an Integrated School under the provisions of the Act, then the provisions of **Clauses 1.01, 1.06, 1.07, 1.09, 2.04(b), 2.06(b), 2.07(b), 2.11(d), 3.04(a)(ii), 4.02** and ~~4.16~~ shall thereafter be of no application.

4-15 MS 7  
MGN

## **2.14 LESSEE'S ACKNOWLEDGEMENT**

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury

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occurring to any personal property in or about the Land arising from the Lessee's use and occupation of the Land.

## 2.15 RESOURCE CONSENT AND DESIGNATION

- (a) The ~~Lessor~~<sup>LESSOR</sup> acknowledges as follows:
- (i) The Lessee will at its own cost in all things fully comply with conditions 1, 2 and 3 of a Resource Consent dated 5 November 1998 (hereafter called "the Consent") which is appended as **Annexure B**.
  - (ii) The Lessee shall indemnify the Lessor to the fullest extent permitted by law against all loss harm and damage accruing to the Lessor (whether directly or indirectly) from any breach or default in the performance of the Lessee's obligations under clause 2.15(a)(i) above.
- (b) The Lessee further acknowledges as follows:
- (i) That the Lessee will not request the Minister to designate the land for educational purposes until the Lessee's development of the land is completed and conditions 1, 2 and 3 of the Consent have been fully complied with by the Lessee.
  - (ii) That the Lessee will pay the Minister's reasonable costs and disbursements in seeking the designation of the Land for educational purposes.
  - (iii) That should the Minister be unsuccessful in seeking the designation then the Lessee shall maintain the Consent for the duration of this Lease unless otherwise agreed with the Minister.

## PART III

### LESSOR COVENANTS

#### **3.00 LESSOR'S COVENANTS**

##### **3.01 QUIET ENJOYMENT**

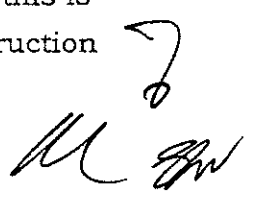
Should the Lessee pay the rent and observe and perform all the covenants and agreements herein expressed or implied, the Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor.

##### **3.02 CONSTRUCTION OF OR ALTERATIONS TO LESSEE'S IMPROVEMENTS**

The Lessee shall be allowed to construct Lessee's Improvements and to make any alterations or additions to Lessee's Improvements with the prior written approval of the Lessor first had and obtained where this is necessary to the Permitted Use of the Land and the Lessor shall not unreasonably or arbitrarily withhold such consent. In all other cases, the Lessee shall be obliged to seek the prior written consent of the Lessor to the construction of any Lessee's Improvements which are not necessary to the Permitted Use of the Land and such consent may be given or withheld at the absolute and unfettered discretion of the Lessor in all things.

##### **3.03 LESSOR'S PROPERTY**

The Lessor acknowledges that the Lessor's Property on the Land at the Commencement Date of this Lease (if any) is as listed in **Schedule A Item 8** and that the Lessor shall not during the continuance of this Lease place any further Lessor's Property on the Land unless this is expressly permitted in writing by the Lessee prior to its construction

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or placement. The Lessor further acknowledges that the Lessee may at its absolute discretion in all things decline consent to the construction or placement of any Lessor's Property on the Land, except where this relates to the construction and installation of reticulated services under the provisions of **Clause 4.17**.

### **3.04 LESSOR'S ACKNOWLEDGEMENTS AS TO LESSEE'S IMPROVEMENTS**

- (a) The Lessor acknowledges in relation to Lessee's Improvements that:
  - (i) Notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease and irrespective of how such property is annexed to the Land;
  - (ii) Lessee's Improvements are to be fully insured as required by the provisions of Sections 40(2)(g) and (h) of the Act whilst the School on the Land continues to be an Integrated School subject to the provisions of the Act. Should the Land cease to be used as an Integrated School, the Lessee shall insure Lessee's Improvements in its own name; and
  - (iii) When any Lessee's improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds is also solely with the Lessee;
- (b) That the Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such removal.

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## **PART IV**

### **MUTUAL COVENANTS**

#### **4.00 MUTUAL COVENANTS**

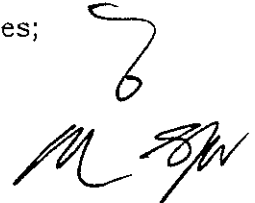
##### **4.01 ASSIGNMENT SUB LETTING & OCCUPANCY BY SCHOOL BOARD OF TRUSTEES**

Subject to **Clause 4.02** the Lessee is prohibited from assigning or sub letting under the within Lease notwithstanding any rule of law or equity to the contrary. Notwithstanding the foregoing, the Lessor shall consent to an assignment where this is a consequence of a reorganisation of the Lessee's affairs and the Assignee:

- (a) Is to assume the Proprietor's responsibilities under the Integration Agreement for the School.
- (b) Is a respectable and solvent entity.

##### **4.02 OCCUPANCY BY SCHOOL BOARD OF TRUSTEES**

- (a) Where the Lessee hereunder has permitted the establishment and operation of an Integrated School upon the Land (which School has been integrated into the State School System under the provisions of the Act) then the use and occupation of the Land by the Board of Trustees shall:
  - (i) be deemed to have been permitted as of right; and
  - (ii) the Covenant for Quiet Enjoyment contained in **Clause 3.01** hereof shall be deemed to extend to and include the occupancy of the Land by the Board of Trustees;

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and that otherwise the provisions of this Lease relating to assignment and sub letting shall be of no application to any such Board of Trustees' occupancy for the purposes of the Permitted Use;

- (b) Subject to the provisions of **Clause 4.02(d)** the Lessee covenants that it will save harmless and indemnify the Lessor to the fullest extent permitted by law from and against any claim for loss, damage or harm howsoever brought by any third party against the Lessor, in its capacity as Lessor which arises from any School Board of Trustees' use and occupation of the Land;

- (c) *SUBJECT TO LESSOR COMPLIANCE WITH CANVAS 4.15(b)*  
Any default by the Board of Trustees in complying with the provisions of this Lease shall for the purposes of this Lease be deemed to be the default of the Lessee notwithstanding any rule of law or equity to the contrary;
- KL*  
*EW*

- (d) The indemnity given by the Lessee in **Clause 4.02(b)** shall be null and void if the loss, damage or harm suffered by the Lessor is directly caused by Lessor breach or default in the performance of the Lessor's obligations under the Integration Agreement or the Property Management Document(s);
- (e) The Lessee covenants that whilst the Integration Agreement remains in force, it will allow the Board of Trustees the use and occupation of the Land without demanding the payment of any rental.

#### **4.03 LESSOR MAY REMEDY LESSEE DEFAULT**

- (a) Should the Lessee default in the observance or performance of any of the Lessee's obligations hereunder and should the Lessor have first served not less than twenty one (21) clear days written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such acts, deeds, matters and things required to make good any
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

Lessee default, then it shall be lawful for the Lessor in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee;

- (b) Any notice served under the provisions of **Clause 4.03(a)** shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any such notice void.

#### **4.04 LESSEE'S IMPROVEMENTS**

The parties acknowledge that:

- (a) The Lessee may, prior to or on the expiry of the term of this Lease, remove all Lessee's Improvements (or such lesser portion as may be acceptable to the Lessor) from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed within a period of six months from the expiration or sooner determination of the within Lease, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee until this time and that no prior written consent or any other consent of the Lessor shall be required in respect of any such removal. The Lessor further acknowledges that it will be deemed by the provisions of this clause to have granted to the Lessee a Licence to Enter the Land and remove Lessee's Improvements for the six month period previously specified and further that this provision shall enure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and shall also bind any successor in title to the Lessor subsequent to the expiry of the Lease;
- (b) In the event the Lessee removes its Lessee's Improvements from the Land as aforesaid, it shall restore the Land to a neat, tidy and safe condition subsequent to any such removal;

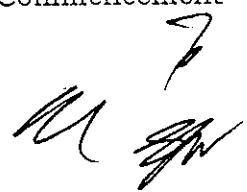
  






- (c) The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the expiration or sooner determination of the Lease or within six months after this time and notwithstanding any rule of law or equity to the contrary;
- (d) That in any review of rent under the provisions of this Lease any Lessee's Improvements shall be entirely excluded from the assessment of any new rental.

#### 4.05 CESSATION OF PEPPERCORN RENTAL

- (a) Notwithstanding any provision in this Lease to the contrary, should the Land cease to be used as an Integrated School as defined in the Act, then the following provisions shall apply;
- (b) The Lessee and the Lessor shall agree upon a fair market rental to replace the peppercorn rental effective as from the day after the date the Integrated School ceases to operate on the Land (and even if it continues as a non-integrated School);
- (c) In the event the parties are unable to agree upon a fair market rent for the Land, which shall exclude any allowance for Lessee's improvements, the Lessor may initiate the rent review provided for in **Clause 4.06** following and the provisions of that clause shall apply with such modifications as may be necessary to the determination of a fair market rental;
- (d) When a fair market rent is agreed or otherwise determined, **Item 3 of Schedule A** shall be varied to recite the new rental and the period it was payable from and a new **Item 7 of Schedule A** shall provide for five yearly rent reviews as from each ensuing fifth yearly anniversary from the Commencement Date.

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#### 4.06 RENT REVIEW

- (a) Should rental be reviewed under the provisions of **Clause 4.05**, then the annual rent may be reviewed by the Lessor as from the day after the peppercorn rental ceases to apply and thereafter at each ensuing five yearly anniversary of the Commencement Date as follows:
- (i) The Lessor shall commence a review by not earlier than three (3) months prior to a review date or at any time up to the next following review date giving written notice to the Lessee specifying the annual rent considered by the Lessor to be the fair current market rent as at that review date;
  - (ii) If, by written notice to the Lessor within twenty eight (28) days after receipt of the Lessor's notice, the Lessee disputes that the proposed new annual rent is the fair current market rent, then the new rent shall be determined in accordance with the provisions of **Clause 4.06 (b)**;
  - (iii) The annual rent so determined or accepted shall be the annual rent from the review date or the date of the Lessor's notice if such notice is given later than three (3) months after the review date;
  - (iv) Pending the determination of the reviewed rent, the Lessee shall pay the rent specified in the Lessor's notice provided that the rent is substantiated by a registered valuer's report. Upon determination of the reviewed rent, an appropriate adjustment shall be made;
  - (v) The reviewed rent may at the option of either party be recorded in a variation of this Lease, the cost of which and the stamp duty thereon shall be payable by the Lessee;
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(b) Immediately following receipt by the Lessor of the Lessee's notice, the parties shall endeavour to agree upon the fair current market rent but if agreement is not reached within twenty eight (28) days then the new rent may be determined either:

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(i) by one party giving written notice to the other requiring the new rent to be determined by arbitration; or

(ii) if the parties so agree by registered valuers acting as experts and not as arbitrators as follows:

(aa) each party shall appoint a valuer and give written notice of the appointment to the other party within twenty eight (28) days of the parties agreeing to so determine the new rent;

(bb) the valuers appointed before commencing their determination shall appoint an umpire who shall be a registered valuer or Solicitor of the High Court experienced in these matters. In the event the valuers fail to agree upon an Umpire, the appointment of an Umpire shall be made by the President of the Arbitrator's Institute of New Zealand Incorporated on the joint application of the valuers;

(cc) the valuers shall determine the fair current market rent of the premises and if they fail to agree then the rent shall be determined by the umpire;

(dd) each party shall be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may

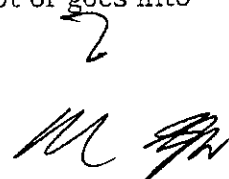
prescribe and they shall have regard to any such representations but not be bound thereby;

When the rent has been determined, the umpire or the valuers shall give written notice thereof to the parties. Any umpire notice shall provide how the costs of the determination shall be borne and such provisions shall be binding on the parties. Where the rent is determined by the parties' valuers and not the umpire, the parties shall pay their own costs;

- (c) Notwithstanding the generality of the foregoing, the parties agree reviewed fair current market rental shall be determined at an appropriate percentage of:
  - (i) The bare land value of the Land; and
  - (ii) An appropriate percentage of the value of any Lessor's Property on the Land.

#### **4.07 RE-ENTRY**

- (a) The Lessor may re-enter the premises where:
  - (i) Rent is in arrears for a period exceeding 30 days after any rent payment date;
  - (ii) The Lessee is in breach of any covenant on the Lessee's part herein expressed or implied;
  - (iii) The Lessee makes or enters into or attempts to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's Creditors;
  - (iv) The Lessee becomes insolvent, bankrupt or goes into liquidation;



and the term of this Lease shall terminate on such re-entry but without prejudice to the rights of either party against the other;

(b) Whilst THE ROMAN CATHOLIC ARCHBISHOP OF THE ARCHDIOCESE OF WELLINGTON is the Lessee hereunder and should THE ROMAN CATHOLIC ARCHBISHOP OF THE ARCHDIOCESE OF WELLINGTON either default in the payment of any rent for a period exceeding thirty days or more or otherwise breach any covenant on the Lessee's part herein expressed or implied, then before exercising any rights of re-entry the Lessor shall:

(i) Serve a notice (hereafter called "the Default Notice") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged;

(ii) The Default Notice notwithstanding anything to the contrary contained in **Clause 4.07(a)** above shall specify that:

(aa) The Lessee must within 30 days of receipt of such notice remedy the default specified; and

(bb) That should the Lessee not remedy the default specified within this time, the Lessor shall thereafter be at liberty to re-enter the Land and to determine this Lease pursuant to this **Clause 4.07(b)**;

(c) The Lessor acknowledges that it shall not re-enter the Land unless and until the provisions of this **Clause 4.07(b)** have been satisfied in full and further that any re-entry contrary to the provisions of this **Clause 4.07(b)** shall be null and void ab initio.

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#### **4.08 INSURANCE**

- (a) The Lessor shall be responsible for insuring any Lessor's Property on the Land;
- (b) The Lessee shall be responsible for insuring any Lessee's Improvements on the Land;
- (c) Should any property referred to in sub clauses (a) and (b) above be damaged or destroyed, then it shall be the sole responsibility of the party effecting insurance to decide whether to effect reinstatement or not and the other party shall abide by this decision whatever it may be.

#### **4.09 RATING ASSESSMENTS**

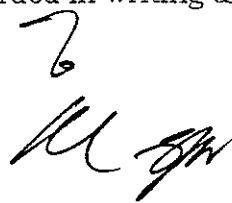
The parties agree that the Lessee shall upon the commencement of this Lease make application to the Valuation Department for a separate rating assessment of the Land in its name and thereafter account direct to the Territorial Authority for all rates payable on the Land.

#### **4.10 CHARGING OF THIS LEASE**

The Lessee shall not mortgage or otherwise charge or pledge this Lease in any way without the prior written consent of the Lessor first had and obtained which may be given or withheld, at the absolute and unfettered discretion of the Lessor in all things.

#### **4.11 ENTIRE AGREEMENT**

This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the Land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

A handwritten signature in black ink, appearing to be 'M. J. W.', is written over the text of the 'ENTIRE AGREEMENT' section.

#### 4.12 DIFFERENCES AND DISPUTES

- (a) Except as otherwise expressly provided herein, should any dispute or difference arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease, the parties will actively and in good faith negotiate with a view to a speedy resolution of such dispute or difference.
- (b) If the parties are unable to resolve such dispute or differences, then the same shall be referred by the parties to an expert agreed upon by the parties within seven (7) days of such dispute or difference arising and such expert shall endeavour to resolve such dispute or difference within seven (7) days of referral and the decision of the expert shall be final and binding on the parties unless either party notifies the other within seven (7) days of such decision being available that the decision is rejected, whereupon the matter shall be arbitrated in the manner hereinafter provided.
- (c) If the parties are unable to agree upon the appointment of an expert or the expert's decision is rejected, then the dispute or difference shall be settled by reference to the arbitration of one arbitrator to be appointed jointly by the parties within fourteen (14) days of the date notice that arbitration is required is given by one party to the other. Should an arbitrator not be appointed within that time, then either party may thereafter request the President of the Wellington District Law Society to appoint an Arbitrator and the President's appointment shall be final and binding on the parties. The Arbitration shall be conducted in accordance with the **Arbitration Act 1996**.
- (d) The parties will co-operate to ensure the expeditious conduct of the arbitration. In particular, each will comply with all such time limits as may reasonably be sought by the other with respect to the settling of terms of reference, interlocutory

matters, and generally, all steps preliminary and incidental to the hearing and determination of the proceedings.

#### **4.13 COSTS**

The Lessee shall pay the reasonable costs of both itself and the Lessor, of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall also pay all costs of and incidental to the negotiation, preparation and execution of any variation, renewal, assignment or surrender of this Lease or the obtaining of any consents of approvals associated with this Lease and shall also pay all stamp duty at any time payable on this Lease for any variation or extension of it..

#### **4.14 INTEREST**

- (a) If the Lessee shall fail to pay any instalment of rent or other sum of the money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand (made in writing by the Lessor) any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such written demand is received by the Lessee, then any amount not so paid shall bear interest of 10% p.a. accruing on a daily basis from the due date for payment or the due date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

#### **4.15 INTEGRATION AGREEMENT AND PROPERTY MANAGEMENT DOCUMENT(S)**

- (a) The parties hereto mutually agree that where the Lessee is unable to comply with its obligations under this Lease as a direct and immediate consequence of Lessor breach or default of its covenants under:





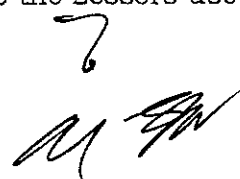
- (i) The Integration Agreement; or
- (ii) The Property Management Document(s) -

then the Lessor shall be prohibited from taking any action to enforce Lessee compliance with the obligations herein that the Lessee has been unable to comply with.

- b) Where the Lessee is unable to comply with its obligations under this Lease as a direct and immediate consequence of Board of Trustees breach or default of Board of Trustees covenants or obligations under any Property Management Document(s) then the Lessor shall take all practicable steps available to the Lessor, in its opinion, to make the Board of Trustees remedy any such breach or default before requiring the Lessee to make good such breach or default under the terms of this Lease.

#### 4.16 RETICULATED SERVICES

- (a) Notwithstanding anything to the contrary contained in this Lease the parties acknowledge that:
  - (i) The Lessee shall with the prior written consent of the Lessor be permitted to construct and install "Reticulated Services" as hereinafter defined in **Clause 4.16(c)** over, upon or under adjoining lands of the Lessor where this is necessary or reasonably incidental to the operation of the school.
  - (ii) The Lessee shall with the prior written consent of the Lessor be permitted to construct and install "Reticulated Services" as hereafter defined in **Clause 4.16(c)** over, upon or under the Land where this is necessary or reasonably incidental to the Lessors use of lands it owns which adjoins the land.



- (b) Where either party seeks the written consent of the other under **Clause 4.16(a)** above then the party from whom consent is sought shall not unreasonably or arbitrarily withhold consent and may impose such conditions on the giving of the consent as will:
- (i) Minimise the impact of the construction, installation and operation of the Reticulated Service on the use of any land concerned.
  - (ii) Ensure the safety of those using or occupying any land concerned.
  - (iii) Ensure the reinstatement of any land concerned to a neat and tidy condition after completion of any construction and installation of any reticulated service.

Subsequent to the completion of any construction and installation as aforesaid the party installing the Reticulated Service shall be permitted reasonable access to the land concerned to maintain repair or replace any part of the Reticulated Service as necessary.

- (c) "Reticulated Service" shall mean any system over upon or under land for the reticulation of electricity, telecommunications, gas, water, stormwater or sewage but shall not include any apparatus relating to the relay of microwaves.

#### **4.17 RIGHT OF WAY**

- (a) The parties acknowledge that during the continuance of this Lease they shall have non exclusive, mutual and common rights by their servants agents, contractors and invitees (including any Board of Trustees of any school) to use the land

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delineated in yellow on annexure A (hereinafter called "the Right of Way").

(b) The Right of Way shall be deemed to contain:

- (i) The covenants implied in the Seventh Schedule to the Land Transfer Act 1952; and
- (ii) The covenants implied in the Ninth Schedule to the Property Law Act 1952;

except to the extent that maintenance and upkeep of the carriageway, curbs, paths and other areas in the Right of Way shall be contributed to in equal shares by the parties (except where the need for repair or maintenance arises through the act or neglect of the parties or their agents or contractors).

(c) For the avoidance of doubt the parties acknowledge that the Early Childhood Centre on Salisbury Road shall not have the right to use any part of the Right of Way unless the parties otherwise mutually agree in writing.

#### 4.18 SERVICE OF NOTICES

(a) Notices given under this Lease by the Lessor shall be served on the Lessee by hand delivery in accordance with Section 152 of the **Property Law Act 1952** or by registered mail addressed to:

The Roman Catholic Archbishop of the  
Archdiocese of Wellington,  
C/O The Chief Executive Officer,  
Catholic Education Management Board,  
P O Box 12341, (22 - 28 Hill Street),  
WELLINGTON

or such other postal address as the Lessee may from time to time advise.

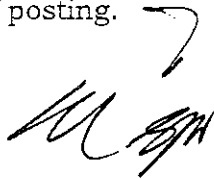


- (b) Notices given under this Lease by the Lessee shall be served on the Lessor by hand delivery in accordance with **Section 152** of the **Property Law Act 1952** or by registered mail addressed to:

The Property Manager  
National Office  
Ministry of Education  
Private Bag 1666 (45 - 47 Pipitea Street)  
WELLINGTON

or such other postal address as the Lessor may from time to time advise.

- (c) Notices shall be deemed to be served at the time of delivery, or in the case of notices which are posted by registered mail, two days after the date of posting.

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## ANNEXURE "B"

06/11 '98 FRI 11:31 FAX 04 3 5447240

T D C RICHMOND

0003

RM980365

In the matter of the Resource Management Act  
1991

and

In the matter of the application lodged by  
CATHOLIC EDUCATION MANAGEMENT  
BOARD

for a Resource Consent for a NON-  
COMPLYING activity under the provisions of  
Sections 104 and 105 of the aforesaid Act

**PROPOSAL**

To develop St Pauls Primary School catering for Year 1-8 children on approximately 2.0600 hectares of 11.85 hectares of land designated Salisbury Special School for Girls with an underlying zone of residential being Pt Sections 80, 81 SO 11050 and having access to Salisbury Road.

**DECISION**

Acting under authority delegated by the Council the District Planner considered the Resource Consent application under the provisions of Section 104 and Section 105 of the Resource Management Act 1991 and resolved that the application by the Catholic Education Management Board to develop St Pauls Primary School catering for Year 1-8 children on approximately 2.0600 hectares of 11.85 hectares of land designated Salisbury Special School for Girls with an underlying zone of residential being Pt Sections 80, 81 SO 11050 and having access to Salisbury Road, be consented to subject to the following conditions.

1. The development is to be undertaken generally in accordance with the plans submitted with the application.
2. That the access upgrade and works affecting Salisbury Road be undertaken within 12 months of this consent taking effect and completed to the satisfaction of Council's Engineering Manager.
3. That the buildings be single storey and no buildings be constructed within 5 metres of the property boundary with D'Arcy Street properties.

**NOTATION:**

The applicant shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.



22/01/99

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T D C RICHMOND

2003

RM980365

In the matter of the Resource Management Act  
1991

and

In the matter of the application lodged by  
CATHOLIC EDUCATION MANAGEMENT  
BOARD

for a Resource Consent for a NON-  
COMPLYING activity under the provisions of  
Sections 104 and 105 of the aforesaid Act

## PROPOSAL

To develop St Pauls Primary School catering for Year 1-8 children on approximately 2.0600 hectares of 11.85 hectares of land designated Salisbury Special School for Girls with an underlying zone of residential being Pt Sections 80, 81 SO 11050 and having access to Salisbury Road.

## DECISION

Acting under authority delegated by the Council the District Planner considered the Resource Consent application under the provisions of Section 104 and Section 105 of the Resource Management Act 1991 and resolved that the application by the Catholic Education Management Board to develop St Pauls Primary School catering for Year 1-8 children on approximately 2.0600 hectares of 11.85 hectares of land designated Salisbury Special School for Girls with an underlying zone of residential being Pt Sections 80, 81 SO 11050 and having access to Salisbury Road, be consented to subject to the following conditions.

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## NOTATION:

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0004

## REASONS FOR THE DECISION

The 11.85 hectare Salisbury Special School for Girls' site is designated and while an application for change of designation was suggested it could not be pursued as the Catholic Education Management Board is not a Requiring Authority pursuant to the Resource Management Act 1991 at the time this consent issued. The Minister of Education and Salisbury Girls' School have consented to the proposal as affected land owner and neighbour.

The site is located within the Salisbury Girls' School property and is adjacent to a child care centre, residences while nearby across Salisbury Road are located Waimea College, Waimea Intermediate School and Henley Primary School. The site was until recently, used for tertiary education by the Nelson Polytechnic's Rural Campus. In short, the site and general area has a history of educational use and the proposed St Pauls Primary School can be regarded as not out of keeping with the designated purpose of the land.

In terms of the Council's planning documents, the Proposed Tasman Resource Management Plan is the relevant document by virtue of Section 19 of the Act. Because the applicant, the Catholic Education Management Board, is not yet a Requiring Authority in terms of the Resource Management Act 1991, the application must be considered against the site's underlying residential zoning.

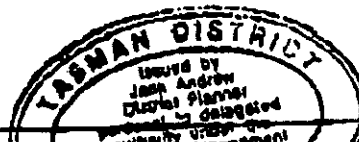
The residential zone provides for primary schools except where they have access from Arterial Roads. St Pauls will have access from Salisbury Road which is classified as an Arterial Road and so in terms of the Plan, the application is for a non-complying activity because of the Arterial Road status of Salisbury Road.

As a non-complying activity, the application has been considered in accordance with Part II and Sections 104 and 105 of the Resource Management Act 1991.

I consider that the purpose and principles of the Act are not offended by the granting of consent and that it recognises in a practical way Section 5 and the intent of Sections 7(b) and (c). The development of a primary school on a property that has long been used for educational purposes and is located close to other schools, including a college, will result in the land resource as a whole being managed and used in a manner which will enable the community to provide for their social, economic and cultural well-being and help meet the needs of future generations.

Developing a primary school at the application site is also in accord with the objectives and policies of the Council's Planning documents provided a safe and efficient access intersection is developed to Salisbury Road. The applicant has been advised by traffic engineering experts employed by the firm Traffic Design Group and the access proposal submitted with the application has been carefully considered and is agreed to by the Council's Engineering Department, the nearby schools, and a child care centre which have access onto Salisbury Road.

In relation to the actual and potential adverse effects of the proposal, these include traffic effects and sewerage and stormwater effects.





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The adverse traffic effects on the safe and efficient operation of Salisbury Road have been mitigated by the access and road designs submitted with the application. While the applicant will make every endeavour to have completed the access and road works before St Pauls opens, in practice that may not be possible. It is not expected that St Pauls will have a large pupil role in its first two terms and in this situation it is reasonable and practical to allow 12 months for completion of the road and access works on the firm understanding that if it is possible those works will be completed before St Pauls opens.

Sewerage and stormwater were a concern of some residents on D'Arcy Street. All but one of the concerned residents signed a consent to St Pauls. I contacted the one neighbour who would not sign a neighbour's consent, Mrs Knox at 2/8A D'Arcy Street, and was advised by Mrs Knox that while she and her husband were not at all opposed to St Pauls, they did not have to sign and would not do so while they experienced sewage problems on their own property.

The matter of sewerage and stormwater reticulation for the St Pauls property has been considered by a Registered Civil Engineer, Mr W Page, for the applicant. Mr Page advised me that St Pauls sewer reticulation will drain to the existing sewer draining from Waimea College through Salisbury School to the main 375mm diameter sewer which drains from D'Arcy Street under the Richmond Deviation to the Beach Road pumping station.

He assured me that the St Pauls sewerage line is a separate branch line to that serving the D'Arcy Street residents and Mrs and Mr Knox's property and that it will have no direct or indirect adverse effect on the Knox property or other properties. Mr Page also said that the site would have a reticulated piped stormwater system and that should result in a slight indirect improvement for D'Arcy Street properties including Mr and Mrs Knox's property.

Council's engineering staff concur with Mr Page's conclusions.

Given that the Knox's are not opposed to St Pauls and that a registered Civil Engineer is quite satisfied that there will be no adverse sewerage or stormwater problems created for the Knox or other residential properties by the development of St Pauls, I consider the adverse effects to be no more than minor.

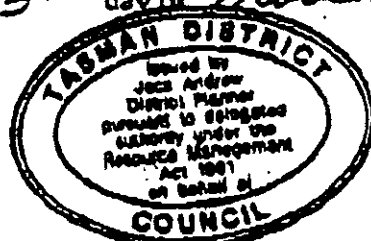
Overall, the proposal meets the statutory tests of Section 105 and the adverse effects on the environment are no more than minor given the conditions attached to this consent. I am also of the opinion that the application would have met the statutory tests under Section 181 to be processed as a non-notified change of designation had the Catholic Education Management Board been a Requiring Authority under the Resource Management Act 1991. In this regard when Council receives the necessary authorisation to change the designation to recognise St Pauls that should proceed and include the resource consent conditions.

Dated at Richmond this

5<sup>th</sup> day of November

1998

J R Andrew  
District Planner



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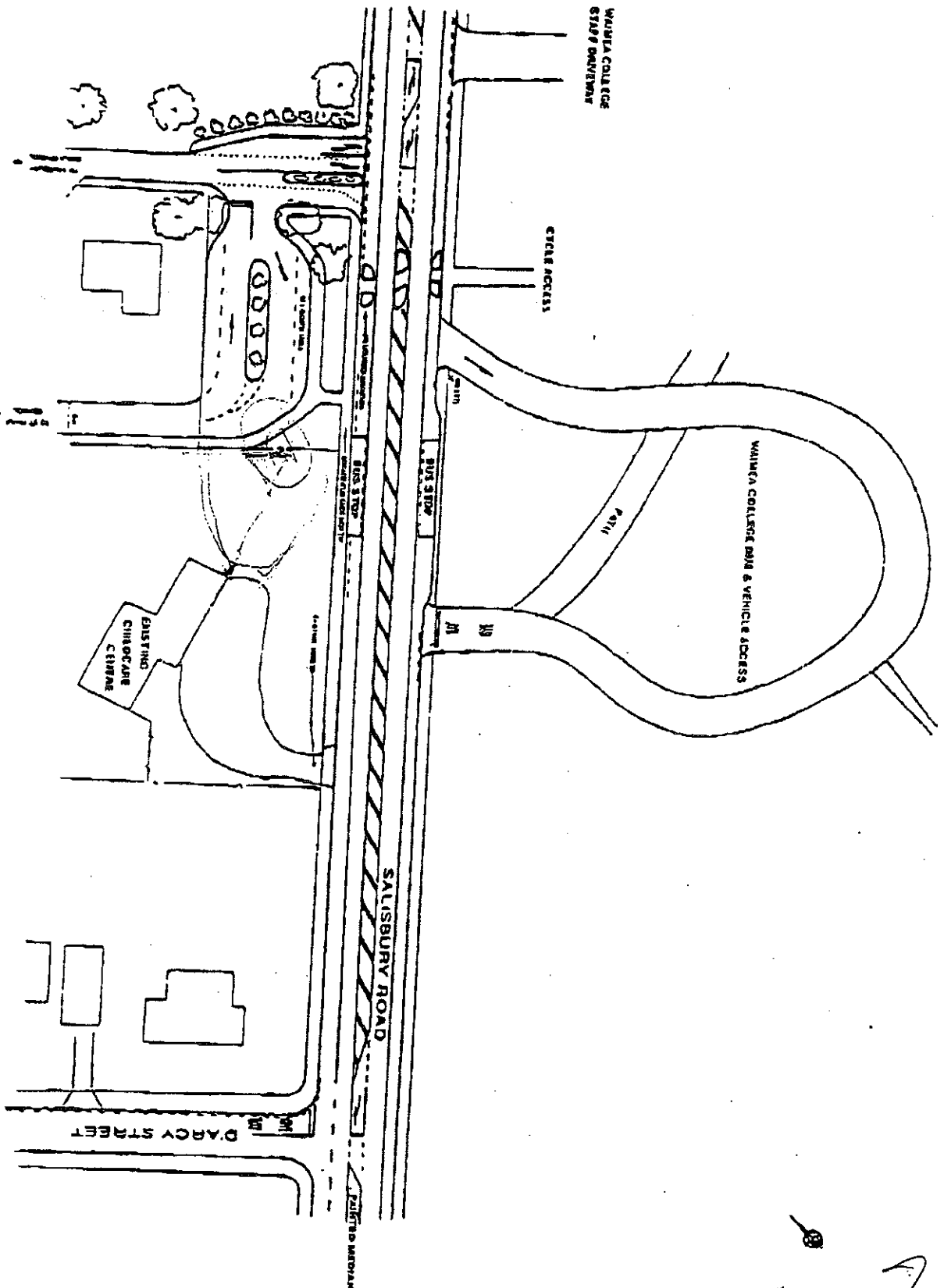
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# PROPOSED ACCESS



ST PAUL'S SCHOOL ACCESS TO SALISBURY RD

ST PAUL'S SCHOOL ACCESS TO SALISBURY RD

TRAFFIC THROUGH UP