

# **Eden Park Trust Amendment Bill**

Private Bill

As reported from the Government  
Administration Committee

## **Commentary**

### **Recommendation**

The Government Administration Committee has examined the Eden Park Trust Amendment Bill and recommends that it be passed with the amendments shown.

This is a private bill. We report that the statements in the preamble have been proved to our satisfaction.

### **Introduction**

This bill amends the Eden Park Trust Act 1955. The purpose of the bill is to implement new governance arrangements for Eden Park agreed by the Government, the Eden Park Trust Board, and the Eden Park Board of Control, the terms of which are set out in the trust deed (the Schedule to the bill). The new governance provisions are necessary to facilitate the redevelopment of Eden Park in preparation for the 2011 Rugby World Cup.

Eden Park will remain in trustee ownership. However, the Auckland Cricket Association and the Auckland Football Union, both of which have beneficiary rights under existing legislation, have agreed to two major changes: the opening of the stadium to wider commu-

nity use, and the widening of the provisions under which trustees are appointed to allow more community representation.

This commentary discusses the main issues we considered and explains the significant amendments we recommend to the bill. It does not address minor and technical amendments.

### **Commencement**

As a general principle it is undesirable for Parliament to delegate this power to the Executive because of the risk that the will of Parliament might be frustrated. In the bill as introduced, the commencement clause provides for the Act to be brought into force by the Governor-General by Order in Council. We recommend that clause 2 be amended so that the bill would come into force 30 days after it receives the Royal assent.

### **Amendment of Schedule by Order in Council**

Clause 8 of the bill as introduced contains a Henry VIII clause, whereby delegated legislation (an Order in Council) has the power to amend primary legislation (the Act). In principle delegated legislation should not be used to amend primary legislation. However, we recommend no amendments to clause 8 because it would not put the trustees in a position where they would be able to make substantive or operative law. The substantive provisions of the legislation would continue to apply.

A copy of the text of the trust deed (which contains the governance arrangements for Eden Park) is set out in the Schedule of the bill. Clause 8 would allow the Schedule to be amended by Order in Council, but only in order to reflect any amendment that is validly made to the trust deed. The trust deed is a legal document which is separate from the bill.

The words of the trust deed are repeated in the Schedule solely to make the terms of the trust deed accessible to the public in the most robust manner possible. The trustees can amend the trust deed regardless of whether or not it is set out in the bill. Doing so would change the terms upon which the trust operates, but it would not change the application, effect, or operation of the bill.

### **Appointment and removal of trustees**

In a report on the bill under the New Zealand Bill of Rights Act 1990 the Attorney-General concluded that clauses 20.8(d), 20.9(d), and 20.9(e) of the trust deed could give rise to an issue of discrimination on the grounds of disability. The current objective of these clauses is to ensure that only people who are competent may serve as trustees. As a result of the Attorney-General's report we recommend amendments to clause 20 of the trust deed contained in the Schedule of the bill. The proposed amendments are consistent with provisions in the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008. This Act amended other legislation with similar provisions to bring them into line with New Zealand's obligations under the convention.

### **Trustees' responsibilities**

Although we do not recommend changes to clause 6 of the trust deed, we consider that one of the general principles underlying the trustees' responsibilities is that of supporting community events and other events that generate little revenue by offering the facilities for hire at a fair and reasonable rate. Since a significant financial contribution is being made to the redevelopment of Eden Park by the Government, the trustees are responsible for ensuring that the public ownership interest in the park is recognised and that the park is a venue for community use in the broader sense.

We understand the rates of hire for the main ground and its facilities will remain the same for the Auckland Cricket Association and the Auckland Rugby Association, in return for these associations' giving up their governance rights. However, we expect that the trust will move towards a more commercial model when other sporting codes hire the facilities, which should meet the objects of the trust as outlined in clause 4.1(b) of the trust deed. Clause 4.1(b) states that one of the objects for which the trust is continued is "to administer Eden Park and the Trust Assets on a prudent commercial basis so that Eden Park is a successful financially autonomous community asset".

## **Appendix**

### **Committee process**

The Eden Park Trust Amendment Bill was referred to us on 6 May 2009. The closing date for submissions was 29 May 2009. We received, considered, and heard one submission.

We received advice from the Ministry of Economic Development. The Regulations Review Committee reported to us on the powers contained in clauses 2, 5, and 8.

### **Committee membership**

David Parker (Chairperson)

Kanwaljit Singh Bakshi

Jacqui Dean

John Hayes

Chris Hipkins

Nikki Kaye (from 24 June 2009)

Grant Robertson

Louise Upston (until 24 June 2009)

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**Eden Park Trust Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Murray McCully*

## **Eden Park Trust Amendment Bill**

Private Bill

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6

**Preamble**

- (1) The Eden Park Trust Board was constituted and incorporated under the Eden Park Trust Act 1955 for the primary purpose of holding the land commonly known as “Eden Park” on trust:
- (2) Due to the redevelopment of Eden Park for the Rugby World Cup 2011, it is necessary to— 5
- (a) vary the terms upon which the Eden Park Trust Board holds property on trust:
- (b) set out the new terms upon which the Eden Park Trust Board holds property on trust:
- (c) make certain provisions for former trustees of the Eden Park Trust Board: 10
- (3) The Eden Park Trust Board also wishes to adjust the penalty set out in section 19 of the principal Act for a breach of a bylaw to take account of inflation:
- (4) The objects of this Act cannot be achieved without legislation: 15

**The Parliament of New Zealand therefore enacts as follows:****1 Title**

This Act is the Eden Park Trust Amendment Act **2009**.

**2 Commencement**

This Act comes into force on a date appointed by the Governor-General by Order in Council the 30th day after the date on which it receives the Royal assent. 20

**Part 1**

**Amendments to Eden Park Trust Act**  
**1955**

25

**3 Principal Act amended**

This **Part** amends the Eden Park Trust Act 1955.



**4 Interpretation**

- (1) The definitions of **Board of Control, the Association, the Union, and the Second Schedule** in section 2(1) are repealed.
- (2) Section 2(1) is amended by inserting the following definition after the definition of **old board of control**: 5
- “**trust deed**—
- “(a) means The Eden Park Trust trust deed that specifies the trusts upon which the trust property must be held and the governance arrangements for the trust property, a copy of the text of which is set out in the **Schedule**; and 10
- “(b) includes all amendments validly made to the trust deed”.
- (3) The definition of **trust property** in section 2(1) is repealed and the following definition substituted: 15
- “**trust property** means—
- “(a) the land defined as ‘Primary Land’ in clause 1.1 of the trust deed; and
- “(b) all other real and personal property held by the Trust Board, being property vested in the Trust Board by this Act or acquired by the Trust Board at any time after the 20 date on which this Act comes into force.”
- (4) Section 2(2) is repealed.

**5 Incorporation of Eden Park Trust Board**

- (1) Section 3 is amended by adding “and in the trust deed”.
- (2) Section 3 is amended by adding the following subsection as 25 subsection (2):
- “(2) The Trust Board is established exclusively for charitable purposes within New Zealand.”

**6 Section 6 repealed**

Section 6 is repealed. 30

**7 New section 7 substituted**

Section 7 is repealed and the following section substituted:

- “7 **Trust property held upon trust subject to Act and trust deed**  
The Trust Board must hold and manage the trust property upon trust subject to the terms and provisions set out in this Act and in the trust deed.” 5
- 8 New section 8 substituted**  
Section 8 is repealed and the following section substituted:
- “8 **Amendment of Schedule by Order in Council**  
“(1) The Governor-General may, by Order in Council, amend the Schedule to reflect any amendment validly made to the trust deed. 10  
“(2) The Trust Board must, not later than 30 days after the date on which the trust deed is validly amended, request the Governor-General to make an Order in Council under **subsection (1)**.  
“(3) A failure to comply with this section does not invalidate the trust deed or any amendment to the trust deed.” 15
- 9 Sections 9 to 17 repealed**  
Sections 9 to 17 are repealed.
- 10 Penalty for breach of bylaw**  
Section 19 is amended by omitting “ten dollars” and substituting “\$500”. 20
- 11 New Schedule substituted**  
Schedules 1 to 3 are repealed and the Schedule set out in the Schedule of this Act is substituted.
- Part 2** 25  
**Consequential matters**
- 12 Validity of acts and liability**  
(1) All acts or omissions of the former trustees before the passing of this Act concerning the trusts declared by the principal Act are— 30  
(a) ratified; and  
(b) deemed to have been validly done or omitted.

- (2) However, **subsection (1)** does not apply to an act or omission that—
- (a) is done or omitted in bad faith:
  - (b) constitutes or forms part of an offence.
- (3) No trustee of the Trust Board (including former trustees) is or may be personally liable for any act or omission of the Trust Board or any other trustee of the Trust Board concerning the trusts declared by the principal Act. 5
- (4) In this section,—
- former trustees** means any person who held office as a trustee under the principal Act before the commencement of this Act 10
- offence** means any act or omission for which anyone can be punished under the Crimes Act 1961 or under any other enactment, whether on conviction on indictment or on summary conviction 15
- Trust Board** has the same meaning as in **section 2(1)** of the principal Act.
- 13 Trust terms**
- (1) None of the amendments made by this Act have the effect of—
- (a) winding up the Trust Board: 20
  - (b) transferring any of the trust property.
- (2) **Subsection (1)** is for the avoidance of doubt.
-

<b>Schedule</b>	<b>s 11</b>
<b>New Schedule</b>	
<b>Schedule</b>	<b>s 2(1)</b>
<b>Trust deed</b>	

**INTRODUCTION**

- A The Eden Park Trust Board is constituted under the Eden Park Trust Act 1955 and amended by the Eden Park Trust Amendment Act **2009** 5
- B The Trustees are those persons named in Section 21 of the Deed.
- C In 1912 ACA purchased land from the Eden Cricket Club comprising most of Eden Park through the support of a number of cricket enthusiasts who acted as guarantors for the necessary loan and became trustees of Eden Park. The land was then leased to ARU for the winter period from 1 January 1914. ARU financed the grandstand built in 1913 and ACA financed the Members Stand built in 1914. 10 15
- D In 1926 a deed of agreement vested control of Eden Park in a Board of Control, comprising three members each from the trustees of Eden Park, ACA and ARU. In 1955 the Eden Park Trust Act was enacted setting down the legal ownership of Eden Park and the rules by which it was administered. 20
- E In 2007 an agreement was made between the Crown, the Eden Park Trust Board and the Eden Park Board of Control whereby the Crown undertook to underwrite an amount not exceeding \$190 million for the redevelopment of Eden Park with the proviso that the redevelopment be under the control of a Redevelopment Board, and that new governance arrangements for Eden Park be agreed. 25 30
- F This deed sets out the terms of the new governance arrangements.

## COVENANTS

### 1 INTERPRETATION

1.1 **Definitions:** In this deed, unless the context otherwise requires:

**ACA** means the Auckland Cricket Association Incorporated or its successors; 5

**ARU** means the Auckland Rugby Football Union Incorporated or its successors;

**Consumer Price Index** means the Consumer Price Index provided by Statistics New Zealand 10

**Crown** means Her Majesty The Queen In Right Of New Zealand acting by and through her Minister of Sport;

**Eden Park** means the multi-purpose sporting and cultural venue located on the Primary Land, together with such other lands from time to time comprised in the Trust Assets and the grandstands, buildings, structures, fences, and appointments from time to time within, upon, or about such lands; 15

**GST** means goods and services tax charged under the Goods and Services Tax Act 1985 and any tax imposed in substitution for that tax; 20

**Financial Year** means the period referred to in clause 15.1;

**Force Majeure Event** means any major event or circumstance beyond the control of the Trustees which could potentially jeopardise the solvency of Eden Park including any:

(a) act of God; 25

(b) strike, lock out or other industrial disturbance (other than one caused by the Trustees);

(c) act of public enemy, or declared or undeclared war or threat of war;

(d) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Trustees); or 30

(e) governmental legislation,

but does not include any event or circumstance which could have been avoided by the Trustees exercising a reasonable standard of care, having regard to the Trustees' obligations under this deed; 35

**ICC** means the International Cricket Council;

**IRB** means the International Rugby Board;

**Main Ground** means the easternmost playing area and includes all surrounding grandstands and other spectator facilities and all associated player and media facilities;

**Major Transaction** means any transaction, undertaking 5  
agreement or arrangement that has or is likely to have the  
effect of the Trustees acquiring or disposing of assets, rights  
or interests, or incurring obligations or liabilities the value of  
which is more than 10% of the value of the Trust Assets at  
that time; 10

**No. 2 Ground** means the outer and westernmost playing area  
and includes all surrounding grandstands and other spectator  
facilities and all associated player and media facilities;

**Objects** means the objects of the Trust as set out at clause 4.1;

**Permanent Associated Facilities** means the office space and 15  
associated technology infrastructure for ACA executive, staff  
and management, six portable pitch trays, the ACA High Per-  
formance Centre and the outdoor turf net training centre and  
associated car parking;

**Preferential Use Right** means the first right to use the rele- 20  
vant part of the Trust Assets over the period specified within  
this deed unless written confirmation has been given by the  
right holder to the Trust in accordance with clause 6.6(c) that  
a booking may be accepted from another party;

**Primary Land** means all that parcel of land more particularly 25  
described in the Schedule to this deed;

**Region** means The Auckland Region constituted by clause 4  
of the Local Government (Auckland Region) Reorganisation  
Order 1989;

**Related Party** means: 30

- (a) the Crown or any Minister or employee of the Crown  
or any company or other entity owned or controlled by  
the Crown;
- (b) the ARU and the ACA and any employee or officer of  
either of them; 35
- (c) any of the Trustees from time to time;
- (d) any spouse or partner (as defined in the Property (Rela-  
tionships) Act 1976) or child of a Trustee; or

- (e) any company, partnership, trust, or other entity in which a Trustee or any spouse or partner (as defined in the Property (Relationships) Act 1976) or child of a Trustee is financially interested, whether as a shareholder, partner, director, employee, beneficiary or otherwise; 5
- Seasonal Associated Facilities** means the player and lounge facilities in the West Stand on the No. 2 Ground, the Cricket Society Lounge and Grandstand, the electronic Score Board, the Indoor School Grandstand including the spectator facilities on the Western side of the West Stand and the associated car parking; 10
- Special Resolution** means a resolution of Trustees passed at a meeting of Trustees at which not less than three quarters of the Trustees present and entitled to vote, vote in favour of the resolution provided that where a body has the power to appoint two or more Trustees, the quorum must include at least one Trustee appointed by that body; 15
- Trust** means the trust the subject of this deed known as The Eden Park Trust, and includes any subsidiary company or other controlled entity of the Trust; 20
- Trust Assets** means all money, investments, property and assets, and leases of property and assets, from time to time owned or beneficially held by the Trust and, unless inconsistent with the context, the income from such assets; 25
- Trustees** means the trustees of the Trust from time to time; 25
- Week** means a consecutive period of seven days starting at midnight on a Tuesday and ending at midnight on the following Tuesday;
- Working Day** means a day other than a Saturday, a Sunday or a statutory holiday in Auckland. 30
- 1.2 **Interpretation:** In this deed:
- (a) A person includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of state (in each case whether or not having separate legal personality). 35
- (b) Headings are included for convenience only and do not affect the interpretation of this deed.

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- (c) This deed is binding upon the parties and their respective successors and permitted assigns.
- (d) Where the context permits words describing the singular include the plural and vice versa and words imputing masculine, feminine or neuter gender include all genders. 5
- (e) Unless the context otherwise requires, any reference to any legislation includes a modification and re-enactment of that legislation or legislation enacted in substitution for any regulation, Order in Council and other instrument from time to time issued or made under that legislation. 10
- 2 DECLARATION OF THE TRUST**
- 2.1 The Trustees declare and acknowledge that the Trustees shall continue to stand possessed of the Trust Assets upon the trusts, and with and subject to the powers and discretions, contained or implied in this deed, as varied from the initial trusts, powers and discretions pursuant to the Eden Park Trust Act 1955. 15
- 2.2 The Trust Assets shall be held on trust by the Trustees and shall be managed and administered on the terms contained in this deed. 20
- 2.3 The Trust shall continue until terminated under clause 17.
- 3 NAME OF THE TRUST**
- 3.1 The name of the Trust is **The Eden Park Trust**.
- 4 OBJECTS OF THE TRUST** 25
- 4.1 The Objects for which the Trust is continued are:
- (a) To promote, operate and develop Eden Park as a high quality multi-purpose stadium for the use and benefit of rugby and cricket (including under the organisations of ARU and ACA respectively pursuant to their rights under this deed) as well as other sporting codes and other recreational, musical, and cultural events for the benefit of the public of the Region; and 30
- (b) To administer Eden Park and the Trust Assets on a prudent commercial basis so that Eden Park is a successful financially autonomous community asset. 35



- 4.2 In promoting, operating and developing Eden Park, the Trustees in fulfilling the Trustees' duties as prescribed by this deed will have due regard to the needs of, and contributions made by, and historical interests of, ARU and ACA, and the contributions of the Crown, and shall make relevant determinations as regards use and access to Eden Park in implementing the Objects based on these and all other relevant circumstances which the Trustees shall in their discretion deem appropriate. 5
- 4.3 The Trust's Objects shall primarily be carried out in, or to benefit people in, the Region. 10
- 4.4 The Trustees shall do all such things, not being contrary to law or prohibited by this deed, as shall or may be necessary for the carrying out and promotion of the Objects of the Trust.
- 5 POWERS OF THE TRUSTEES** 15
- 5.1 In addition to the powers conferred on the Trustees by law, the Trustees shall, subject to any restrictions in this deed, have the widest possible powers and discretions to achieve the Objects of the Trust and shall be empowered to exercise all the rights, powers and privileges in relation to the Trust Assets and may incur all the liabilities and obligations of a natural person of full age and capacity. 20
- 5.2 Without in any way limiting the wide powers conferred by clause 5.1 the Trustees shall:
- (a) have power to invest the Trust Assets and the income from the Trust Assets not immediately required for the Objects of the Trust; 25
  - (b) in making any investment exercise the care, diligence and skill required of a prudent trustee as set out in the Trustee Act 1956, provided that no Trustee shall be liable for any breach of trust merely because the investments of the Trust Assets are not diversified; 30
  - (c) have power to sell, lease, or licence the whole or any part of the Trust Assets provided that any sale or lease (other than a lease in the ordinary course of business) of Primary Land shall require High Court approval unless the Trustees have unanimously agreed otherwise. If High Court approval is required, notice of the appli- 35

- cation to the High Court shall be given to ACA, ARU and such other person or bodies as the High Court shall direct shall be entitled to be heard on any such application;
- (d) have the power to employ or otherwise contract with any person or entity on such terms as the Trustees consider appropriate to do any act of whatever nature relating to the Trust and its administration; 5
- (e) have the power to determine all questions and matters of doubt which arise in the course of the administration of the Trust; and 10
- (f) generally do all acts, matters and things that the Trustees consider necessary or conducive to:
- (i) further or attain the Objects; and
- (ii) carry out and fulfil the duties and obligations placed upon the Trustees in this deed. 15
- 5.3 The Trustees shall be empowered to create membership schemes and the Trustees shall, through negotiations and discussions with the relevant parties, determine the terms upon which any such membership scheme shall operate. 20
- 6 TRUSTEES' RESPONSIBILITIES**
- 6.1 The Trustees shall have overall control of and responsibility for the governance of the Trust. The Trustees will perform all of their responsibilities under this deed in a prudent manner and shall exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others, subject to clause 5.2(b). 25
- 6.2 The Trustees shall devote adequate and sufficient time, attention and resources to carry out their obligations under this deed to ensure that the Trust achieves its Objects. 30
- 6.3 Notwithstanding anything to the contrary in this deed, the Trustees shall use, manage and administer Eden Park and the Trust Assets, in a manner that makes specific provision for the interests of ACA and ARU as described in clauses 6.4, 6.5 and 6.6. 35
- 6.4 ACA shall:

- 
- (a) have the preferential use right to the No. 2 Ground and the Seasonal Associated Facilities from 1 October until 15 April annually;
  - (b) have permanent use and occupation of the Permanent Associated Facilities on a year-round basis; 5
  - (c) have concessionary annual venue hire fee for the No. 2 Ground, and both the Permanent Associated Facilities and the Seasonal Associated Facilities for \$30,000 per annum (plus GST if applicable) which will be increased annually in accordance with the increases (if any) in the Consumer Price Index; 10
  - (d) be the sole negotiation party with the Trustees for all games of cricket to be played at Eden Park excepting Cricket World Cup games sanctioned by ICC;
  - (e) have the Preferential Use Right to the Main Ground for every alternate week commencing from 1 November until 31 March for any cricket matches sanctioned by ACA, including but not limited to international cricket; 15
  - (f) hire the Main Ground and its facilities from the Trust under concessionary terms and conditions to be negotiated annually taking into account the long term contribution made and to be made to Eden Park by the ACA; 20
  - (g) derive revenue from:
    - (i) the Eden Park ground membership scheme on the terms as set out in the agreement between the Trust, ACA and ARU dated on or about 28 August 2007; 25
    - (ii) any additional membership schemes promoted and administered by the Trust incorporating cricket fixtures booked through ACA on the main ground with revenue to be determined annually by negotiation with the Trust on the basis of ticket value provided; 30
    - (iii) in consideration for the ACA surrendering certain beneficial rights and interests previously held under the Eden Park Trust Act, an annuity of \$300,000 per annum (plus GST if applicable) which will be increased annually in accordance with the increases (if any) in the Consumer Price 35

Index payable the date this deed comes into effect in six equal instalments over the months of October to March.

6.5 ARU shall:

- (a) Be the sole negotiation party with the Trustees for all games of Rugby Union to be played at Eden Park excepting Rugby World Cup matches sanctioned by the IRB; 5
- (b) Derive revenue from the Eden Park ground membership scheme on the terms as set out in the agreement between the Trust, ACA and ARU dated on or about 28 August 2007; 10
- (c) Derive revenue from any additional membership schemes promoted and administered by the Trust incorporating rugby fixtures booked through ARU on the main ground with revenue to be determined annually by negotiation with the Trust on the basis of ticket value provided; 15
- (d) Hire Eden Park and its facilities from the Trust at a variable fixed annual fee, based on an agreed schedule of games, under concessionary terms and conditions to be negotiated annually taking into account the long term contribution made to and to be made to Eden Park by ARU. The concessionary terms to be based on either a rate which is not more than two-thirds of the standard commercial hire rate applying at the time the hire agreement is entered into, or at a fixed annual fee (that reflects the concessionary terms and conditions) based on an agreed schedule of games; 20 25
- (e) Book games in advance based on established patterns of hire and according to booking procedures to be mutually agreed, based on best practice venue management. ARU accepts that games booked during the period 1 November to 31 March are subject to ACA's Preferential Use Right and may need consultation with other sports that traditionally play during this period before being confirmed. ARU undertakes to work with other hirers of Eden Park to ensure that where conflicts arise 30 35

- they will be mediated in a fair and open manner or by such means as management decree are appropriate;
- (f) occupy offices and gymnasium facilities within the Eden Park complex on agreed terms.
- 6.6 The Trustees shall: 5
- (a) Maintain the No. 2 Ground and Permanent Associated Facilities and the Seasonal Associated Facilities to an equivalent standard to that existing at the date of this deed, or to the standard required by the New Zealand Cricket warrant of fitness as amended from time to time, whichever is the higher standard, and in particular shall at all times during the period of ACA's Preferential Use Right in relation to the No. 2 Ground ensure that there is a sufficient number of pitches to meet all ACA's domestic playing requirements; 10 15
- (b) Maintain the Main Ground cricket oval to ICC and IRB standards and the Permanent Associated Facilities in good order and conditions at all times;
- (c) Notwithstanding ACA's Preferential Use Right, have the right exercisable within the 4 month period prior to the day which the Trustees wish to book the relevant part of the Trust Assets for another use to require ACA to provide within 14 days written confirmation that ACA will actually be using the relevant part of the Trust Assets on that day and if ACA are not doing so, the Trustees shall be entitled to book the relevant part of the Trust Assets for that other use on that day provided that such use will not have any detrimental impact on ACA's use of those Trust Assets during the remainder of the period to which such Preferential Use Rights apply; 20 25 30
- (d) Maintain and meet the leasing costs as agreed by the Trust, of a training ground for the ARU. At the time of this deed the training ground and associated facilities are located at UNITEC, Carrington Road.
- 6.7 In a spirit of mutual goodwill and co-operation the parties shall from time to time meet with each other as necessary to discuss in good faith any differences or difficulties which may arise in relation to clauses 6.4 – 6.6 or matters arising from it and each 35

party shall use its best endeavours to resolve the matter before recourse to any legal process.

If the parties are unable to resolve any dispute in accordance with this clause 6.7, such dispute may be referred by any party (upon written notice to the other parties) to arbitration by a single arbitrator agreed upon by the parties or, in the absence of such agreement, by a single arbitrator appointed by the President for the time being of the Auckland District Law Society. Any such reference shall be deemed a submission to arbitration with the meaning of the Arbitration Act 1996.

## **7 INCOME OF THE TRUST**

7.1 The Trustees shall with respect to all or any part of the income arising from the Trust Assets for each Financial Year:

- (a) pay, apply, or appropriate from income all expenses and other charges and provisions ordinarily met from income; and
- (b) make, retain or charge against income any payments, reserves or provisions necessary or desirable for the proper administration and maintenance of the Trust and the Trust Assets including appropriate reserves for capital works which the Trustees consider sufficient to meet the anticipated cost of repairs, refurbishment and replacement of the grandstands, buildings, structures and other improvements, and the associated plant, machinery and equipment, or otherwise desirable to achieve the Objects of the Trust.

7.2 Any income of any Financial Year not dealt with under clause 7.1 shall be used to reduce or repay any loans or liabilities of the Trust, or accumulated and added to the Trust Assets.

## **8 TRUSTS OF CAPITAL**

8.1 At any time the Trustees may or may decide to (subject to clause 5.2(c)), pay, apply or appropriate as much of the capital of the Trust Assets as they think fit for or towards one or more of the Objects of the Trust having taken into account the Trustees' obligations under clauses 6 and 7.1. If the Trustees provide for more than one such Object they need not treat each Object equally. Any payment, application or appropriation of

capital may be made either in addition to or in place of any payment, application or appropriation of income.

## **9 CONTROLS ON EXERCISE OF POWERS**

- 9.1 Notwithstanding any provision in this deed the Trustees may not enter into a Major Transaction unless the Major Transaction is authorised by a Special Resolution or contingent upon the passing of a Special Resolution. 5

## **10 TRANSACTIONS WITH RELATED PARTIES**

- 10.1 The Trustees shall not, without the passing of a Special Resolution: 10
- (a) sell, purchase or otherwise acquire or dispose of any Trust Asset to or from any Related Party; or
  - (b) cause any Trust Assets that comprise cash to be invested or lodged with any Related Party; or
  - (c) enter into any contract, agreement or other arrangement with any Related Party to provide management, administration or other services for the Trust; or 15
  - (d) enter into any other transaction with any Related Party in relation to the Trust, 20
- unless they are doing so either in the normal course of business and on arms length commercial terms.

## **11 TRUSTEES' DECLARATION OF INTEREST**

- 11.1 It shall be the duty of a Trustee who is materially directly or indirectly interested in any contract or arrangement or proposed contract or arrangement with the Trust to declare the nature of his or her interest at a meeting of the Trustees. A Trustee who is interested shall, subject to clause 11.2, be entitled to vote on any issue related to the contract, proposed contract or other matter in which the interest lies. 25
- 11.2 A Trustee who has a material interest in any matter under clause 11.1 by virtue of the personal interests of that Trustee or of his or her business or family associates, shall declare that interest and shall not be entitled to vote. If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain 30 35

- from voting, such question shall be referred to the chairperson of the meeting (or a replacement chairperson if the previous chairperson was the "interested Trustee") and his or her ruling in relation to any such Trustee shall be final and conclusive.
- 11.3 Failure to properly declare an interest shall not disqualify the Trustee or invalidate the contract, proposed contract or any other matter in which the interest lies unless the other party to the contract, proposed contract or other matter has actual knowledge of the Trustee's interest. 5
- 12 TRUSTEES' INDEMNITY AND LIABILITY 10**
- 12.1 The Trustees shall not be liable for:
- (a) any losses or liabilities; or
  - (b) any act or acts or attempted act done in exercise of or pursuant to any trust, power or discretion vested in them by this deed; or 15
  - (c) any omission or omissions or non-exercise in respect of any trust, power or discretion of the Trustees under this deed,
- except losses or liabilities arising from their own dishonesty, willful default or willful breach of trust or recklessness in the carrying out of their legal responsibilities. 20
- 12.2 The Trustees, and every other person acting on behalf of the Trustees, shall be indemnified out of the Trust Assets against all proper liabilities and expenses incurred by them in the exercise or attempted exercise of the trusts, powers and discretions vested in the Trustees pursuant to this deed and in respect of any matter or thing done or omitted to be done in any way relating to this deed and the Trust. This indemnity shall extend to any payments made to any person whom the Trustees bona fide believe to be entitled though it may be subsequently found that the person was not in fact so entitled. The Trustees shall have a lien or charge on the Trust Assets and may retain and pay out of any moneys in the Trust all sums and amounts necessary to give effect to this indemnity. 25 30
- 12.3 The liability of the Trustees in connection with this deed or at law, in equity, or on any other basis shall at all times be limited to the Trust Assets. 35



**13 DELEGATION BY TRUSTEES**

- 13.1 The Trustees shall have, to the extent permitted by law, full power to delegate to any officers, employees, managers, agents, committee or to any attorney or other person nominated or appointed by the Trustees, all or any of the powers, authorities and discretions exercisable by the Trustees under this deed but without releasing the Trustees from their obligations under this deed. Without affecting the generality of the power of delegation the Trustees may in exercising it: 5
- (a) appoint, by power of attorney, any person to be the attorney or agent of the Trustees for such purposes and with such powers, authorities or discretions as the Trustees think fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions; or 10
- (b) appoint, by writing or otherwise, any person to be an officer, employee, manager, committee member, agent or sub-agent of the Trustees as the Trustees may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Trustees) as they think fit and to supersede or suspend any such officer, employee, manager, committee member, agent or sub-agent for any reason as the Trustees think sufficient. 15 20

**14 COMMON SEAL**

- 14.1 The Trustees shall maintain the common seal for the Trust and shall provide for its custody. Any documents required to be signed under the common seal shall be attested by any three Trustees. 25

**15 ACCOUNTS AND AUDIT**

- 15.1 The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and the Trust Assets, liabilities and funds are kept giving a true and fair view of the financial position of the Trust. The Financial Year for the Trust shall commence on the 1st day of November in each year and end on the 31st day of October in the following year. 30 35
- 15.2 At the end of each Financial Year the Trustees shall prepare accounts for the Trust which comply with the requirements of

- the Financial Reporting Act 1993, or any other generally accepted accounting practices which may from time to time replace that Act. The Trustees will have those accounts audited by a chartered accountant firm appointed for that purpose.
- 15.3 The Trustees shall ensure that within three months of the end of each Financial Year an annual report including financial statements and audit report is prepared on the activities of the Trust for the past Financial Year, including a comparison of performance of the Trust with its objectives. The report shall be copied to the ARU and ACA. 5 10
- 16 ALTERATION TO THE DEED**
- 16.1 The Trustees may alter, rescind or add to the provisions of this deed by Special Resolution of the Trustees provided however no change can be made to sections 4, 5, 6, 16, 17, 20 or the definitions of "Primary Land" or "Special Resolution" unless made by unanimous resolution of the Trustees. 15
- 16.2 At least 28 days' notice of intention to make any amendment to this deed must be given to all Trustees.
- 16.3 No alteration, rescission or addition may be made to this deed which is prejudicial to the legal charitable status of the Trust. 20
- 17 WINDING UP OF THE TRUST**
- 17.1 The Trust shall terminate and be wound up and dissolved only by order of the High Court or by law.
- 17.2 A resolution to wind up the Trust (subject to High Court approval) shall specify an effective termination date of the Trust and thereafter the Trustees shall realise or dispose of the Trust Assets as soon as reasonably practicable in accordance with clause 17. 25
- 17.3 The Trust Assets or the proceeds resulting therefrom shall be applied by the Trustees upon the winding up in the following order of priority and manner: 30
- (a) Firstly, in meeting all costs, expenses and liabilities of the Trust including the costs and expenses of winding up the Trust and setting aside any amount that the Trustees consider necessary or desirable (having regard to generally accepted accounting practices) in respect of any contingent liability of the Trust; 35

- (b) Secondly, if the Trustees so resolve, in or towards the purchase and development of other land to be held subject to the same or substantially similar terms as this Trust; and
- (c) Thirdly, in the payment or distribution of the remaining assets of the Trust for the benefit and advancement of cricket, rugby union, or other athletic games and pursuits of an amateur character within the Region and in such manner in all respects as the Trustees in their untrammelled discretion may think fit. 5 10
- 18 REMUNERATION OF TRUSTEES**
- 18.1 The Trustees may be paid such remuneration as the Trust from time to time considers appropriate, but in fixing the level of remuneration the Trust must have regard to the public purpose of its function and the extent of public funding of its activities. 15
- 19 ARU AND ACA LIABILITY**
- 19.1 The ARU and ACA shall not in any circumstances be liable for the debts, liabilities or commitments of the Trust unless they agree in writing to such liability.
- 19.2 The ARU and ACA shall not in any circumstances be deemed to be acting as trustees or held to be responsible as trustees. 20
- 20 APPOINTMENT AND REMOVAL OF TRUSTEES**
- 20.1 There shall be not less than five nor more than nine Trustees.
- 20.2 The Trustees shall be appointed and may at any time be removed from office as follows: 25
- (a) As to five Trustees, by the Crown;
- (b) For the first three years, as to two Trustees, by the members of the existing trust board constituted immediately prior to this deed coming into effect;
- (c) For the first three years as to one Trustee, and thereafter as to two Trustees, by the ARU; 30
- (d) For the first three years as to one Trustee, and thereafter as to two Trustees, by the ACA.
- 20.3 The Trustees named at the front of this deed have been appointed as follows: 35

- (a) [ ], [ ], [ ], [ ] and [ ] by the Crown under clause 20.2(a), each for a term of three years;
- (b) [ ] and [ ], under clause 20.2(b), each for a term of three years;
- (c) [ ], by the ARU under clause 20.2(c) for a term of three years; 5
- (d) [ ], by the ACA under clause 20.2(d) for a term of three years.
- 20.4 The initial Trustees for the time being of the Trust shall hold office for a period of three years and thereafter a policy of rotation of Trustees shall be implemented. Such policy to be decided upon by resolution of a majority of the Trustees for the time being of the Trust. 10
- 20.5 Each holder of a power of removal of Trustees shall, in exercising its or their power of removal, act reasonably having regard to the Objects of the Trust and the criteria set out at clause ~~20.10~~ 20.11. 15
- 20.6 A certificate signed by or on behalf of a holder of a power of appointment and removal of Trustees to the effect that a person has been appointed a Trustee or removed from the office of Trustee by that holder shall be conclusive evidence of that fact. 20
- 20.7 A person appointed as a Trustee shall hold office for the term specified in the instrument of appointment which term shall not be more than three years. A person appointed as a Trustee, who remains eligible to be appointed as a Trustee, may be reappointed as a Trustee for two further periods of three years. A former Trustee who has not been a Trustee for at least three years shall be eligible for appointment as if he or she had never been a Trustee. 25
- 20.8 The appointment of a Trustee shall be vacated if a Trustee: 30
- (a) resigns or the term of appointment of that Trustee expires;
- (b) dies;
- (c) is removed from office by the holder for the time being of the power of removal in respect of that Trustee; 35
- (d) is, under clause ~~20.9~~ 20.10, not capable of holding office as a Trustee;
- (e) refuses to act; or

- (f) is absent without leave from three consecutive ordinary meetings of the Trustees.
- 20.9 If a property order is made in respect of a Trustee under section 30 of the Protection of Personal and Property Rights Act 1988 (which relates to temporary orders),— 5
- (a) clause 20.8(d) does not apply to the Trustee by virtue only of the making of that order; but
- (b) while the order remains in force, the Trustee is deemed to have been granted leave of absence and is not capable of acting as a Trustee during that period. 10
- ~~20.9~~20.10 The following persons shall not be capable of being appointed or reappointed, or of holding office, as a Trustee:
- (a) A bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled; 15
- (b) A person who has been convicted within the last three years of a criminal offence punishable by imprisonment;
- (c) A person to whom an order made under section 383 of the Companies Act 1993 applies; 20
- ~~(d) A mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;~~
- ~~(e)~~ (ed) Any A person who is the subject of an order under to a property order made under section 30 or 31 of the Protection of Personal and Property Rights Act 1988; 25
- ~~(f)~~ (fe) A person who does not reside in the Region.
- ~~20.10~~20.11 In exercising the power to appoint a Trustee each holder of such power shall have regard to the following criteria in relation to that appointment: 30
- (a) prior experience as a director, trustee or experience in any other governance role;
- (b) occupational skills, abilities and experience;
- (c) empathy for the Objects; and 35
- (d) the need for there to be diversity of community representation and a wide range of skills and expertise present amongst the Trustees.

~~20.11~~20.12 In performing the function and duties, and exercising the powers, of the Trust each Trustee must act at all times in the interests of the Trust rather than in the interests of the body that appointed that Trustee.

**21 APPOINTMENT OF CHAIRPERSON OF THE TRUST 5**

21.1 The Trustees shall appoint one of the Trustees to be chairperson of the Trust. The chairperson of the Trust shall hold that office for one year, and shall be eligible for reappointment for so long as the chairperson is a Trustee.

21.2 If a chairperson is unable for any reason to perform the chairperson's duties then the Trustees may elect an acting chairperson during the relevant period of inability. 10

21.3 Notwithstanding the provisions of clause 21.1, the Trustees may, by majority replace the current chairperson with a new chairperson at any time within the current chairperson's period of office provided at least 10 Working Days' written notice of such resolution to remove the chairperson is given to all Trustees. 15

**22 PROCEEDINGS OF TRUSTEES**

22.1 Subject to this deed the Trustees may meet together for the dispatch of business and may adjourn or otherwise regulate their meetings as they think fit. With the exception of the Annual Meeting under clause 23.4, meetings of Trustees shall not be open to the public. 20

22.2 At any meeting of the Trustees the chairperson of the Trust shall preside or in the absence of the chairperson of the Trust (including in the circumstances contemplated by clause 11.2) the Trustees may elect one of the Trustees to preside. 25

22.3 In the event of an equality of votes, the chairperson shall have a second or casting vote. 30

22.4 No business shall be transacted at any meeting unless the required quorum is present at the commencement of business.

22.5 The quorum for passing a Special Resolution shall be three quarters of the number of Trustees provided that where a body has the power to appoint two or more Trustees, the quorum must include at least one Trustee appointed by that body. 35

- 22.6 The quorum for the transaction of any other business shall be a majority of the Trustees.
- 22.7 An act or decision of the Trustees shall not be invalid by reason only of:
- (a) a fault, default or irregularity in or in connection with the appointment of a Trustee; or
  - (b) a vacancy in the number of the Trustees including a vacancy arising because of the failure to appoint a Trustee.
- 22.8 The Trustees shall keep a minute book and shall cause minutes to be kept of all meetings, resolutions and decisions made by them. Minutes purporting to be signed by the chairperson of the Trustees of a meeting shall be receivable as prima facie evidence of the matters contained in such minutes.
- 22.9 At least five Working Days' notice shall be given of any meeting of the Trustees, unless waived by all Trustees.
- 23 CONVENING OF MEETINGS**
- 23.1 The Trustees shall hold at least six meetings in each Financial Year, including the Annual Meeting under clause 23.4.
- 23.2 The chairperson shall convene the meetings of the Trustees.
- 23.3 The chairperson shall convene any additional meeting of the Trustees if the chairperson receives a written request from at least three Trustees to hold a meeting. At least five Working Days' prior notice of meetings of Trustees shall be given to all Trustees.
- 23.4 An Annual Meeting shall be held in the Region within four months of the end of the Financial Year. The Annual Meeting shall be open to the public. At least 10 Working Days' prior notice of the Annual Meeting shall be given to the public by advertisement in a daily Auckland newspaper and to the ARU and ACA by separate written notice. At the Annual Meetings, the annual audited accounts and the annual report for the Trust in respect of the last Financial Year shall be tabled and discussed. At the discretion of the chairperson of the Trust, any other business may be raised at the Annual Meeting.
- 24 RESOLUTION ASSENTED TO BY TRUSTEES**
- 24.1 A resolution in writing signed or assented to by letter, facsimile or other written manner, by all Trustees for the time being

entitled to receive notice of meetings of the Trustees and entitled to vote shall be as valid and effective as if it had been passed at a meeting of Trustees duly called and constituted. Any such resolution may consist of several documents in like form either signed or purporting to have been despatched by any one or more of the Trustees. 5

## **25 TELECONFERENCE MEETING OF TRUSTEES**

25.1 The contemporaneous linking together by telephone or other means of communication of a number of Trustees not less than the quorum (whether or not any one or more of the Trustees is out of New Zealand) shall be deemed to constitute a meeting of Trustees and all the provisions of this deed in respect of such meetings shall apply so long as the following conditions are met: 10

- (a) All Trustees for the time being entitled to receive notice of a meeting of the Trustees shall be entitled to notice of the meeting by telephone or other means of communication and to be linked by telephone or other means for the purpose of such meeting, and shall have first received two Working Days' prior notice of such meeting; 15 20
- (b) Each Trustee taking part in a meeting by telephone or other means of communication must throughout the meeting be able to hear each of the Trustees taking part in the meeting; and
- (c) At the commencement of the meeting each Trustee must acknowledge the Trustee's presence for the purpose of the meeting to all other Trustees taking part. 25

## **26 SERVICE OF NOTICES**

26.1 Notices shall be deemed served by one party upon another party: 30

- (a) if posted, five Working Days following posting;
- (b) if delivered personally, on the date of service;
- (c) if sent by facsimile or other electronic device, on the date of transmission provided that the sender's facsimile machine confirms transmission to the intended recipient; or 35



- (d) if sent by e-mail, when acknowledged by the recipient orally or by return e-mail or otherwise in writing.

**27 FORCE MAJEURE**

- 27.1 If a Force Majeure Event arises the Trustees may by way of Special Resolution suspend any obligation of the Trust Board 5 under this deed, the performance of which is affected by the Force Majeure Event, to the extent of the effect for the duration of the Force Majeure Event.

## Schedule Primary Land

Area	Legal Description
6.3928ha	Lot 1 Deposited Plan 45553 and Lot 3-4 Deposited Plan 46401 being all the land contained in NA 1624/6.
675m <sup>2</sup>	Part Allotment 137 Section 10 Suburbs of Auckland being all the land contained in NA 762/2 (Limited as to Parcels).
708m <sup>2</sup>	Part Allotment 137 Section 10 Suburbs of Auckland being all the land contained in NA 762/3 (Limited as to Parcels).
443m <sup>2</sup>	Part Allotment 137 Section 10 Suburbs of Auckland being all the land contained in NA 762/5 (Limited as to Parcels).
440m <sup>2</sup>	Part Allotment 137 Section 10 Suburbs of Auckland being all the land contained in NA 762/6 (Limited as to Parcels).
440m <sup>2</sup>	Part Allotment 137 Section 10 Suburbs of Auckland being all the land contained in NA 762/7 (Limited as to Parcels).
663m <sup>2</sup>	Part Allotment 137 Section 10 Suburbs of Auckland as shown on Deposited Plan 28687 being all the land contained in NA 726/8.
676m <sup>2</sup> (1/2 share)	Lot 1 Deposited Plan 132323 being all the land contained in NA 78A/174.
676m <sup>2</sup> (1/2 share)	Lot 1 Deposited Plan 132323 being all the land contained in NA 78A/175.
668m <sup>2</sup>	Lot 2 Deposited Plan 3841 being all the land contained in NA 395/124.
822m <sup>2</sup>	Lot 3 Deposited Plan 3841 being all the land contained in NA 372/208.

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<b>Area</b>	<b>Legal Description</b>
661m <sup>2</sup>	Lot 1 Deposited Plan 83356 being all the land contained in NA 39D/329.
1033m <sup>2</sup>	Lot 2 Deposited Plan 83356 being all the land contained in NA 39D/330.
847m <sup>2</sup>	Lot 6 Deposited Plan 3841 being all the land contained in NA 152/144.
845m <sup>2</sup>	Part Lot 7 Deposited Plan 3841 being all the land contained in NA 640/11.
696m <sup>2</sup>	Part Lot 12 Deposited Plan 3841 being all the land contained in NA 266/103.
696m <sup>2</sup>	Part Lot 13 Deposited Plan 3841 being all the land contained in NA 159/255
696m <sup>2</sup>	Lot 1 Deposited Plan 46401 being all the land contained in NA 1624/8.
696m <sup>2</sup>	Lot 2 Deposited Plan 46401 being all the land contained in NA 1624/7.
696m <sup>2</sup>	Part Lot 16 Deposited Plan 3841 being all the land contained in NA 422/99.
852m <sup>2</sup>	Lot 17 Deposited Plan 3841 being all the land contained in NA 150/247.
852m <sup>2</sup>	Lot 18 Deposited Plan 3841 being all the land contained in NA 150/249.
1387m <sup>2</sup>	Lot 19-20 Deposited Plan 4194 being all the land contained in NA 82C/304.
620m <sup>2</sup>	Lot 21 Deposited Plan 4194 being all the land contained in NA 210/282.
746m <sup>2</sup>	Part Lot 140-142 Deposited Plan 3513 being all the land contained in NA 154/187.
599m <sup>2</sup>	Part Lot 142-143 Deposited Plan 3513 being all the land contained in NA 150/110.
506m <sup>2</sup>	Part Lot 143 Deposited Plan 3513 being all the land contained in NA 149/202.

<b>Area</b>	<b>Legal Description</b>
507m <sup>2</sup>	Part Lot 143 Deposited Plan 3513 being all the land contained in NA 1189/27.
602m <sup>2</sup>	Part Lot 56 Deposited Plan 4194 being all the land contained in NA 630/209.
673m <sup>2</sup>	Lot 57 Deposited Plan 4194 being all the land contained in NA 153/123.
673m <sup>2</sup>	Lot 58 Deposited Plan 4194 being all the land contained in NA 156/20.
673m <sup>2</sup>	Lot 59 Deposited Plan 4194 being all the land contained in NA 356/199.
673m <sup>2</sup>	Lot 60 Deposited Plan 4194 being all the land contained in NA 356/200
680m <sup>2</sup>	Lot 139 Deposited Plan 3513 being all the land contained in NA 147/94.
680m <sup>2</sup>	Lot 138 Deposited Plan 3513 being all the land contained in NA 147/93.
617m <sup>2</sup>	Lot 137 Deposited Plan 3513 being all the land contained in NA 157/258.
609m <sup>2</sup>	Lot 136 Deposited Plan 3513 being all the land contained in NA 60D/723.
617m <sup>2</sup>	Lot 135 Deposited Plan 3513 being all the land contained in NA 159/243.
622m <sup>2</sup>	Lot 134 Deposited Plan 3513 being all the land contained in NA 138/215.
627m <sup>2</sup>	Lot 133 Deposited Plan 3513 being all the land contained in NA 165/71.
635m <sup>2</sup>	Lot 132 Deposited Plan 3513 being all the land contained in NA 161/138.
640m <sup>2</sup>	Lot 131 Deposited Plan 3513 being all the land contained in NA 142/279.
645m <sup>2</sup>	Lot 130 Deposited Plan 3513 being all the land contained in NA 150/97.

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**Eden Park Trust Amendment Bill**

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<b>Area</b>	<b>Legal Description</b>
653m <sup>2</sup>	Lot 129 Deposited Plan 3513 being all the land contained in NA 154/67.
658m <sup>2</sup>	Lot 128 Deposited Plan 3513 being all the land contained in NA 161/289.
663m <sup>2</sup>	Lot 127 Deposited Plan 3513 being all the land contained in NA 161/288.
701m <sup>2</sup>	Lot 126 and Part Lot 125 Deposited Plan 3513 being all the land contained in NA 413/2.

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**Legislative history**

26 March 2009  
6 May 2009

Introduction (Bill 23–1)  
First reading and referral to Government  
Administration Committee

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