

APPENDIX 1

Dated

2013

DEVELOPMENT CONTRIBUTION AGREEMENT

BETWEEN

WELLINGTON CITY COUNCIL

AND

MASSEY UNIVERSITY

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THIS AGREEMENT is dated

2013

PARTIES

- (1) Wellington City Council, a city council constituted under the Local Government (Wellington Region) Reorganisation Order 1989.
- (2) Massey University, a university constituted under the Massey University Act 1963.

BACKGROUND

- A Massey is an educational institution which owns, leases, operates and develops buildings on the Wellington Campus.
- B The Council has adopted the Policy as required by section 102(2)(d) of the Local Government Act 2002.
- C The Parties acknowledge that the methodology in the Policy to calculate development contributions does not reflect the growth related demand effects of Massey on Council Infrastructure. Due to the particular circumstances at the Wellington Campus, an increase in gross floor area of buildings on the Campus does not necessarily place increased demand on Council Infrastructure. Rather, increases in equivalent full time students and staff and/or water use at the Wellington Campus does.
- D The Policy allows the Council to impose development contributions on Massey to fund growth related capital expenditure on Council Infrastructure. Clause 2.5.6 of the Policy provides:
- "The Council may enter into a private agreement with a developer. The agreement must clearly record why an agreement is being used, record the basis of the cost sharing when the infrastructure will be provided and, in particular, whether there is any variation from the Council's policy that new development should pay 100 percent of growth related capital expenditure."*
- E The Parties acknowledge that this Agreement is contemplated by clause 2.5.6 of the Policy, and that this Agreement does not provide a variation from Council's Policy that new development should pay 100% of growth related capital expenditure.
- F This Agreement has been entered into to provide an administratively efficient process for assessing and levying Development Contributions at the Wellington Campus.
- G The Parties will apply this Agreement to calculate Development Contributions payable to the Council for the Wellington Campus.

THE PARTIES AGREE:

PART 1. DEFINITIONS AND INTERPRETATION

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

"**Additional EFTSS**" means the number of equivalent full time students enrolled at the Wellington Campus and staff employed by Massey at the Wellington Campus over 4,453 (4,453 being the EFTSS at 2005), unless the Additional EFTSS is varied in accordance with clause 5.6, 6.3 or 7.3, as the case may be;

"**Agreement**" means this development agreement and includes Schedule 1;

"**Ancillary to Education Services**" means services ancillary to Educational Services including but not limited to cafeterias, events, fitness and recreation centres, convenience stores, banks, work experience and educational training, travel agents, book shops, medical centres, pharmacies, research and such other activities that support Educational Services with a financial gain that has a direct benefit to Educational Services;

"**Annual Report**" has the meaning given in clause 3.1;

"**Average Annual EFTSS**" means the average annual EFTSS at the Wellington Campus over the Invoicing Period, calculated in accordance with clause 5.2;

"**Bank Bill Bid Rate**" means the average New Zealand dollar 90 day bank bill bid rate (rounded up to the nearest second decimal place) as appearing at 11.00 am or as soon as practicable thereafter on the relevant day on page BKBM of the Reuters screen (or its successor or equivalent page);

"**Business Day**" means any day other than a Saturday, a Sunday, a public holiday (as defined in the Holidays Act 2003) in Wellington, any day in the period 24 December to 2 January (inclusive), and Easter Tuesday;

"**Change of Control**" means, in relation to Massey, where a proposal is made or a resolution passed to amalgamate Massey with another university, or to establish Massey as a privately controlled education entity outside the Government education system, but excludes any Joint Arrangement;

"**Council**" means the Wellington City Council, being a city council constituted under the Local Government (Wellington Region) Reorganisation Order 1989;

"**Council Infrastructure**" means:

- (a) network infrastructure (water supply, wastewater, stormwater and transport); and
- (b) reserves;

"**Date of this Agreement**" is the date this Agreement is signed by both Parties;

"**Default Rate**" means, in any month, the Bank Bill Bid Rate appearing on the first Business Day of the month plus 3 percent per annum, calculated daily and capitalised monthly;

"**Development Contributions**" means the development contributions to be paid by Massey in relation to the Wellington Campus under this Agreement;

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"Educational Services" means but is not limited to academic, vocational, technology and design based education training and research; tertiary (higher) education; all forms of research (pure and applied); community service, technology transfer, and extension; and business and social services related to the education and research activities of the institution and encompassing all such activities consistent with the function of a modern university;

"EFTSS" means equivalent full time students and staff at the Wellington Campus;

"EHU" means equivalent household unit, and has the meaning given to that term in the Policy;

"GST" means goods and services tax chargeable, or to which a person may be liable, under the GST Act;

"Invoice Report" has the meaning in clause 3.4;

"Invoicing Period" means:

- (a) for the fourth Annual Report, 2014 to 2017;
- (b) for the eighth Annual Report, 2018 to 2021; and
- (c) for the tenth Annual Report, 2022 to 2024;

"Joint Arrangement" means an arrangement entered into by Massey and one or more other parties for Educational Services;

"Law" includes any rules of common law, statute, regulation, order in council, bylaw, ordinance or other subordinate or secondary legislation in force from time to time;

"Massey" means Massey University, being a university constituted under the Massey University Act 1963;

"Party" means a party to this Agreement including its personal representatives, successors and permitted assignees;

"Peak Year Water Use" means the highest total metered water use over a calendar year for the Wellington Campus within an Invoicing Period;

"Policy" means the policy on development contributions adopted by Council in July 2009 under the Local Government Act 2002, and any future amendments or substitutions to the Policy as may be adopted by the Council from time to time;

"Relationship Manager" has the meaning given in clause 14.1;

"Surplus Land" has the meaning given in clause 4.6;

"Term" means ten years from 1 January 2014 and includes any renewed term under clause 12.2;

"Wellington Campus" means all that land shown outlined in red on the Plan attached as Schedule 1, or any other land as agreed between the parties during the Term (as contemplated in clause 4.8) and excludes, from the date of disposal, any land disposed of by Massey in respect of which a notice has been given to the Council under clause 4.6(a); and

"2005 Derived Water Use" means the derived metered water use for 2005, calculated in accordance with clause 8.4.

PART 2. PURPOSE AND PRINCIPLES

- 2.1 The purpose of this Agreement is to determine the Development Contributions payable by Massey to the Council for the actual growth related demand effects of the Wellington Campus on Council Infrastructure.
- 2.2 Consistent with the purpose, this Agreement applies the following principles to Development Contributions payable for the Wellington Campus:
- (a) Massey will pay 100% of growth related capital expenditure;
 - (b) the Agreement uses 2005, the year the Council could first levy development contributions, as the base year against which any Development Contributions are calculated (unless a later year sets a new base year);
 - (c) the Agreement:
 - (i) is based on an EFTSS 'trigger' (above which Development Contributions are payable) for transport, reserves and Adelaide Road Precinct Development Contributions;
 - (ii) is based on a metered water use 'trigger' for water and wastewater Development Contributions; and
 - (iii) applies the assessment for stormwater development contributions in the Policy;
 - (d) if the development contribution levies in the Policy are changed, new levies are applied to the assessment of Development Contributions in this Agreement;
 - (e) the Agreement excludes those activities set out in clause 4.4, including student accommodation; and
 - (f) the Agreement is based on equity and fair payments.

PART 3. MASSEY REPORTING OBLIGATIONS

- 3.1 No later than 31 May each year, the Massey Relationship Manager shall provide the Council Relationship Manager with a report ("**Annual Report**") specifying the matters listed in this part 3 and parts 5 to 10 of this Agreement.
- 3.2 Massey's Relationship Manager, and the Vice-Chancellor of Massey or a senior officer at Massey delegated that function by the Vice-Chancellor, shall sign each Annual Report, verifying that the information contained within it is true and correct. In the event that an error is discovered in the Annual Report, the Relationship Managers will forthwith liaise to correct the same.
- 3.3 Each Annual Report shall contain all supporting information reasonably necessary to enable the Council to audit and verify the accuracy of the information in the Annual Report.
- 3.4 The fourth, eighth and tenth Annual Report (each an "**Invoice Report**") must advise the Council of any Development Contributions payable for the Wellington Campus over each Invoice Report's Invoicing Period, calculated in accordance with parts 5 to 10 of this Agreement.

PART 4. APPLICATION OF DEVELOPMENT CONTRIBUTIONS TO THE WELLINGTON CAMPUS

- 4.1 The Council will not charge Massey, through any other mechanism, for the growth related demand cost of the Wellington Campus on Council Infrastructure that is funded by this Agreement, other than in accordance with this Agreement.
- 4.2 No Development Contributions paid by Massey under this Agreement will be refunded by the Council if EFTSS or water consumption decreases from the previous Invoicing Period.
- 4.3 Massey is not liable for any Development Contribution under this Agreement to the extent that the Development Contribution exceeds what would be payable for a development under the Policy.
- 4.4 Development Contributions for the Wellington Campus are assessed under the methodology set out in parts 5 to 10 of this Agreement, except for the following activities which are assessed under the Policy:
 - (a) new buildings built, or existing buildings converted or extended, for student accommodation;
 - (b) new buildings built, or existing buildings converted or extended, for a purpose that is not Educational Services or Ancillary to Education Services; and
 - (c) premises leased to a third party for purposes not related to Educational Services or Ancillary to Education Services.
- 4.5 Schedule 2 of this Agreement contains examples of Development Contributions calculated under this Agreement. Schedule 2 is provided by way of example only and does not form part of this Agreement.
- 4.6 If Massey sells the fee simple estate in any part of the Wellington Campus or otherwise disposes of part of the Wellington Campus ("**Surplus Land**"):
 - (a) Massey shall forthwith notify the Council in writing of the disposal, the contact details of the disposee, details of the Surplus Land and the date disposed of;
 - (b) following issue of that notice to the Council, the description of the Wellington Campus is to be read as excluding the Surplus Land, with effect from the date of disposal; and
 - (c) Massey shall also notify the disposee that from the date of the disposal, any developments on the Surplus Land will be assessed under the Policy.
- 4.7 Each Invoice Report will include any Development Contributions owing under this Agreement in respect of the Surplus Land prior to the date of disposal, notwithstanding that as at the date of an Invoice Report the Surplus Land may no longer be part of the Wellington Campus.
- 4.8 If Massey acquires the fee simple estate in any land outside the Wellington Campus, it may request the Council to include the additional land in the Wellington Campus, subject to such conditions and from such date as the Council and Massey may agree.

PART 5. DEVELOPMENT CONTRIBUTIONS FOR TRANSPORT

5.1 Each Annual Report must specify the EFTSS for the preceding year.

The EFTSS for the preceding year is calculated as follows (taking the first Annual Report as an example):

$$a + b = 2014 \text{ EFTSS}$$

Where:

a = equivalent full time students enrolled at the Wellington Campus for 2014

b = equivalent full time staff enrolled at the Wellington Campus for 2014

If someone is both enrolled and employed at Massey they may be counted only once.

5.2 Each Invoice Report must specify the Average Annual EFTSS at the Wellington Campus for the Invoicing Period.

For example, the Average Annual EFTSS for 2014 to 2017 is calculated as follows:

$$(2014 \text{ EFTSS} + 2015 \text{ EFTSS} + 2016 \text{ EFTSS} + 2017 \text{ EFTSS}) \div 4 = \text{Average Annual EFTSS}$$

5.3 The first Invoice Report must specify whether the Average Annual EFTSS exceeds 4,453 and, if so, by how many.

5.4 If the Average Annual EFTSS does not exceed 4,453 under clause 5.3, the first Invoice Report must specify that no Development Contribution for transport is payable.

5.5 If the Average Annual EFTSS exceeds 4,453, the first Invoice Report must specify the Development Contribution for transport payable under clause 11.3 for each Additional EFTSS, calculated as follows:

$$((a \div b) \times (c \div d)) \times e$$

Where:

a = Additional EFTSS

b = # people per EHU assumed in Policy

c = NZTA sourced trips per person per day

d = Policy assumption on trips per person per day

e = Policy rate per EHU for transport

5.6 Each subsequent Invoice Report must include the information required by clauses 5.1 to 5.5 above, but if the Average Annual EFTSS exceeds 4,453 in an earlier Invoice Report, then the reference to "4,453" in clause 5.5 must be read as the highest Average Annual EFTSS in an earlier Invoice Report.

PART 6. DEVELOPMENT CONTRIBUTIONS FOR RESERVES

- 6.1 If the Average Annual EFTSS does not exceed 4,453, the first Invoice Report must specify that no Development Contribution for reserves is payable.
- 6.2 If the Average Annual EFTSS exceeds 4,453, the first Invoice Report must specify the Development Contribution for reserves payable under clause 11.3 for each Additional EFTSS, calculated as follows:

$$(a \div b) \times c$$

Where:

a = Policy rate for reserves

b = # people per EHU assumed in Policy

c = Additional EFTSS

- 6.3 Each subsequent Invoice Report must include the information required by clauses 6.1 and 6.2 above, but if the Average Annual EFTSS exceeds 4,453 in an earlier Invoice Report, then the reference to "4,453" in clause 6.2 shall be read as the highest Average Annual EFTSS in an earlier Invoice Report.

PART 7. DEVELOPMENT CONTRIBUTIONS FOR ADELAIDE ROAD PRECINCT

- 7.1 If the Average Annual EFTSS does not exceed 4,453, the first Invoice Report must specify that no Development Contribution for the Adelaide Road Precinct is payable.
- 7.2 If the Average Annual EFTSS exceeds 4,453 the first Invoice Report must specify the Development Contribution for the Adelaide Road Precinct payable under clause 11.3 for each Additional EFTSS, calculated as follows:

$$(((a \times b) \div c) \times (d \div e)) \times f$$

Where:

a = % of Wellington Campus within the Adelaide Road Precinct

b = Additional EFTSS

c = # people per EHU assumed in Policy

d = NZTA sourced trips per person per day

e = Policy assumption on trips per person per day

f = Policy rate per EHU for Adelaide Road Precinct

- 7.3 Each subsequent Invoice Report must include the information required by clauses 7.1 and 7.2 above, but if the average annual EFTSS exceeds 4,453 in an earlier Invoice Report, then the reference to "4,453" in clause 7.2 must be read as the highest Average Annual EFTSS in an earlier Invoice Report.

PART 8. DEVELOPMENT CONTRIBUTIONS FOR WATER

8.1 Massey must ensure that, no later than 1 January 2014, water meters are installed for the whole Wellington Campus, and that those meters only show readings for water consumed within the Wellington Campus.

8.2 The Annual Report must specify the metered water use at the Wellington Campus for the preceding year.

The metered water use for the preceding year is calculated as follows (taking the first year of this Agreement as an example):

On 31 May 2015 the Annual Report states the Wellington Campus metered water use from the sum of metered water use from 1 January 2014 to 31 December 2014.

8.3 The first Invoice Report must specify the Peak Year Water Use over the preceding Invoiced Period. If there is an extraordinary event resulting in unusually high Peak Year Water Use the Relationship Managers shall use best endeavours to determine, as soon as reasonably practicable, what adjustments (if any) may be made to the Peak Year Water Use.

8.4 The first Invoice Report must specify the 2005 Derived Water Use.

The 2005 Derived Water Use is calculated as follows:

$$((a \div b) \div 2) \times 4,453$$

Where:

a = total metered water use for 2014 + 2015 (m³)

b = total EFTSS for 2014 + total EFTSS for 2015

4,453 = 2005 EFTSS

8.5 If the Peak Year Water Use does not exceed the 2005 Derived Water Use, the first Invoice Report must specify that no Development Contribution for water is payable.

8.6 If the Peak Year Water Use exceeds the 2005 Derived Water use, the first Invoice Report must specify the Development Contribution for water payable under clause 11.3 for each m³ over the 2005 Derived Water Use, calculated as follows:

$$(a \times (((b - c) \div 365) \div d)) \times 1,000$$

Where:

a = Policy rate for water supply

b = Peak Year Water Use (m³)

c = 2005 Derived Water Use (m³)

365 = days per year of metered water use

d = daily usage per EHU assumed in the Policy (litres)

1,000 = litres to m³ conversion

8.7 Each subsequent Invoice Report must include the information required by clauses 8.1 to 8.6 above, but if the Peak Year Water Use exceeds the 2005 Derived Water Use in an earlier Invoice Report,

then references to the "2005 Derived Water Use" in clause 8.6 must be read as the highest Peak Year Water Use in an earlier Invoice Report.

PART 9. DEVELOPMENT CONTRIBUTIONS FOR WASTEWATER

- 9.1 If the Peak Year Water Use does not exceed the 2005 Derived Water Use the first Invoice Report must specify that no Development Contribution for wastewater is payable.
- 9.2 If the Peak Year Water Use exceeds the 2005 Derived Water use, the first Invoice Report must specify the Development Contribution for wastewater payable under clause 11.3 for each m³ over the 2005 Derived Water Use, calculated as follows:

$$(a \times ((b - c) \div 365) \div d) \times 1,000$$

Where:

a = Policy rate for wastewater

b = Peak Year Water Use (m³)

c = 2005 Derived Water Use (m³)

365 = days per year of metered water use (litres)

d = daily usage per EHU assumed in the Policy

1,000 = litres to m³ conversion

- 9.3 Each subsequent Invoice Report must include the information required by clauses 9.1 and 9.2 above, but if the Peak Year Water Use exceeds the 2005 Derived Water Use in an earlier Invoice Report then references to the "2005 Derived Water Use" in clause 9.2 must be read as the highest Peak Year Water Use in an earlier Invoice Report.

PART 10. DEVELOPMENT CONTRIBUTIONS FOR STORMWATER

- 10.1 Each Annual Report must specify the additional gross floor area of any new buildings built, or existing buildings extended, over the preceding year.
- 10.2 If there is no additional gross floor area over the preceding Invoicing Period, each Invoice Report must specify that no Development Contribution for stormwater is payable.
- 10.3 If there is additional gross floor area over the Invoicing Period, each Invoice Report must specify the Development Contributions for stormwater payable under clause 11.3, in accordance with the rate specified in the Policy.
- 10.4 Nothing in clauses 10.1 to 10.3 prevents Massey from undertaking a self-assessment for stormwater development contributions under the Policy.

PART 11. PAYMENT

- 11.1 **Invoices:** Following receipt of an Invoice Report advising that a Development Contribution is payable, the Council may issue an invoice to Massey for the Development Contributions payable under this Agreement. Each invoice must:
- (a) be in the form of a valid tax invoice for GST purposes; and
 - (b) be addressed, and sent, to the Massey Relationship Manager.
- 11.2 Any invoice issued under clause 11.1 must not exceed the amount that would be payable under the Policy for all developments over the Invoiced Period on the Wellington Campus.
- 11.3 **Payment:** Subject to clause 11.4, Massey shall pay the Council the amount payable in respect of each invoice issued under clause 11.1 within 20 Business Days from the date Massey receives the invoice.
- 11.4 **Disputed invoices:** If Massey disputes any amount in an invoice issued under clause 11.1, Massey shall:
- (a) notify Council's Relationship Manager within 10 Business Days, identifying the amount in dispute and the reasons for the dispute;
 - (b) pay any balance of the invoice which is not in dispute by the due date; and
 - (c) the Parties shall use the dispute resolution process in clauses 15.1 to 15.7 to resolve the dispute.
- 11.5 **Default interest:** If Massey does not pay a sum required to be paid under this Agreement by the due date, unless Massey is successful in its dispute of an invoice, Massey shall pay interest on that sum at the Default Rate for the period beginning on the due date and ending on the date the sum is paid (and the period shall continue after as well as before judgment).
- 11.6 **Taxes:** The Development Contributions (and all associated calculations and formulas) are listed exclusive of GST, but GST will be added to that amount and will be payable at the time the amount itself is payable.

PART 12. TERM

- 12.1 Once signed by both Parties, this Agreement will commence on 1 January 2014 and will continue for the Term, unless earlier terminated in accordance with this Agreement.
- 12.2 One year prior to the expiry of the Term, the Parties shall meet through the Relationship Managers to discuss the option of renewing this Agreement upon the expiry of the Term.

PART 13. TERMINATION

13.1 **Termination by Council:** The Council may terminate this Agreement immediately by notice to Massey if:

- (a) Massey fails to pay an amount owing to Council under clause 11.3 on the time and in the manner required by this Agreement, and fails to remedy that breach within 30 Business Days after receipt of notice requiring the breach to be remedied;
- (b) Massey assigns or transfers any of its rights or obligations under this Agreement in breach of clause 19.3; or
- (c) the Council benefits from an agreement or ruling under clause 15.5 requiring Massey to pay it an amount and Massey fails to pay the required amount within 5 Business Days.

13.2 **Termination by Massey:** Massey may terminate this Agreement immediately by notice to the Council if:

- (a) the Council varies the Policy on terms more favourable to Massey;
- (b) the Council terminates the Policy; or
- (c) the legislative authority for the Council to levy development contributions is revoked.

13.3 **Consequences of termination:** On and following termination or expiry of this Agreement for any reason, the termination shall be without prejudice to either Party's rights and remedies in respect of any breach by either Party of this Agreement, where the breach occurred before the termination or expiry of this Agreement.

13.4 No development contributions under the Policy (or any new or varied development contributions policy adopted by the Council) will apply retrospectively to Massey on expiry of this Agreement. Application of the Policy (or any new or varied development contributions policy adopted by the Council) on termination will only apply as from the last Development Contribution assessment payable under this Agreement.

PART 14. RELATIONSHIP MANAGEMENT

14.1 **Relationship Managers:** Each Party appoints the person referred to below as its relationship manager for the purposes of this Agreement ("**Relationship Manager**") who will serve as the primary point of contact with the other Party.

Council Relationship Manager

Role: Manager, Policy

Address:

PO Box 2199
Wellington 6140
New Zealand

Massey Relationship Manager

Role: Facilities Director

Address:

PO Box 756
Wellington 6140
New Zealand

- 14.2 **Replacements:** Each Party may replace its Relationship Manager from time to time provided it gives the other Party, as soon as reasonably practicable, notice of such replacement.
- 14.3 **Communication:** The Parties shall, throughout the Term, co-operate, attend and participate in meetings as reasonably requested by the other Party, and notify the other Party of any circumstance that may have a material effect on the operation of this Agreement.

PART 15. DISPUTE RESOLUTION

- 15.1 **Dispute resolution process to apply:** Subject to clause 15.7, no Party may undertake any Court proceedings relating to any dispute between the Parties under this Agreement.
- 15.2 **Dispute notice:** If there is a dispute between the Parties in relation to this Agreement, either Party may give the other Party notice of the nature and details of the dispute.
- 15.3 **Negotiation:** Within 10 Business Days of receipt of the notice of dispute, the Relationship Managers shall meet to endeavour to amicably resolve the dispute. If the Relationship Managers cannot resolve the dispute the Chief Executive of Council and the Vice Chancellor of Massey (or the Vice Chancellor's delegate) shall meet to endeavour to amicably resolve the dispute.
- 15.4 **Mediation:** If the dispute is not resolved within 30 Business Days of receipt of the notice of dispute, either Party may by notice to the other Party refer the dispute to mediation. The mediation will be conducted in Wellington under the LEADR New Zealand Incorporated ("**LEADR**") standard mediation agreement. If the Parties do not agree on a mediator, or the mediator's fees, within 5 Business Days of receipt of the notice of mediation, the mediator shall be appointed, or the fees set, by the chair of LEADR (or his/her nominee) at the request of either Party. The Parties shall bear the mediator's fees equally and pay their own costs of mediation.
- 15.5 **Arbitration:** If the dispute is not resolved within 15 Business Days of the appointment of the mediator, either Party may by notice to the other Party refer the dispute to arbitration. The arbitration will be conducted in Wellington by a single arbitrator under the Arbitration Act 1996. If the Parties do not agree on an arbitrator within 5 Business Days of receipt of the notice of arbitration, the arbitrator shall be appointed by the President of the New Zealand Law Society (or his/her nominee) at the request of either Party. The Arbitrator's decision shall be final and binding on the Parties.
- 15.6 **Continued performance:** While any dispute remains unresolved each Party shall continue to perform this Agreement to the extent practicable, but without prejudice to their respective rights and remedies.
- 15.7 **Urgent relief:** Nothing in clauses 15.1 to 15.6 precludes a Party from seeking urgent interlocutory relief before a court.

PART 16. NOTICES

- 16.1 **Writing:** Each notice, demand, consent or other communication expressly contemplated under this Agreement (each a "**Notice**") shall be in writing and delivered personally or sent by post, facsimile or email to the recipient's last known address.

16.2 **Addresses:** Each Notice shall be sent to the relevant Relationship Manager.

16.3 **Receipt:** A Notice under this Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, three Business Days after the date of posting;
- (c) **Facsimile:** sent by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the recipient designated for the purposes of this Agreement;
- (d) **Email:** sent by email, upon receipt by the sender of a delivery receipt with no indication of failure to reach the recipient,

provided that any notice deemed received after 5 pm or on a non-Business Day shall be deemed to have been received on the next Business Day.

PART 17. WARRANTY

17.1 Each Party warrants, undertakes and represents to the other that:

- (a) it has obtained all authorisations and has done all things necessary in order to enter into this Agreement and to perform its obligations under this Agreement; and
- (b) it is not aware of anything which will, or might reasonably be expected to, prevent or inhibit that Party from performing all of its obligations under this Agreement, in the manner and at the times contemplated by this Agreement.

PART 18. COUNCIL AS REGULATOR

18.1 Massey acknowledges that the Council enters into this Agreement solely in its capacity having responsibility for Council Infrastructure, and not in its regulatory capacity (which includes all functions under the Resource Management Act 1991 and the Building Act 2004). Nothing in this Agreement affects the Council's performance of those regulatory functions which it is free to discharge objectively and independently of its obligations under this Agreement.

PART 19. GENERAL

19.1 **Local Government reorganisation:** The parties agree that in the event of a local government reorganisation in the Wellington region, the Council may elect to transfer, assign or novate its rights and obligations under this Agreement to the relevant public entity. In the event that the Council exercises its right under this clause to transfer, assign or novate this Agreement, Massey agrees to sign all documents and do all things necessary to give effect to such transfer, assignment or novation.

19.2 Amendments:

- (a) If there is a material change to the Policy or the Local Government Act 2002 insofar as it relates to development contributions, the Relationship Managers will meet to discuss what, if any, changes are required to this Agreement.
- (b) Notwithstanding clause 19.2(c), if the Local Government Act 2002 is amended to incorporate a reconsideration and independent objection process in respect of development contributions implementing recommendations 18 to 29 of the Cabinet Paper *Better Local Government: Improving Development Contributions* dated 8 August 2013, then this process shall be used in place of the dispute resolution process set out in clauses 15.2 to 15.5 of this Agreement, with modifications as necessary to reflect that development contributions for the Wellington Campus are assessed under this Agreement.
- (c) No amendment to this Agreement will be effective unless it is in writing and signed by the Parties.

19.3 Assignment:

- (a) Massey may only assign or transfer the whole or any part of its rights and obligations under this Agreement with the prior written consent of Council (such consent not to be unreasonably withheld).
- (b) For the purposes of this clause, a Change of Control of Massey shall not be deemed an assignment by Massey.

19.4 **Entire agreement:** This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between the Parties, relating to the matters dealt with in this Agreement.

19.5 **Further assurances:** Each Party shall, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this Agreement.

19.6 **Privity:** A person who is not a Party shall not have any rights under or in connection with this Agreement by virtue of the Contracts (Privity) Act 1982.

19.7 **Severance:** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, that provision shall be read down to the extent necessary to make it legal, valid and enforceable or, if it cannot be read down, be deemed severed from this Agreement. Such change shall not affect the legality, validity and enforceability of the other provisions of this Agreement. This clause shall have no effect if such damage would so alter the bargain between the Parties that it would be unreasonable for the Agreement to stand.

19.8 **Survival:** Following expiry or termination of this Agreement, clauses 13.1 to 13.4 (*Termination*) and 15.1 to 15.7 (*Dispute resolution*) together with other provisions that are by their nature intended to survive, will remain in effect.

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- 19.9 **Governing Law and jurisdiction:** This Agreement is governed by New Zealand Law and the Parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in any proceedings relating to it.
- 19.10 **Counterparts:** This Agreement may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), each of which shall be deemed an original, but all of which together shall constitute the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.
- 19.11 **Interpretation:** In this Agreement, unless the context requires otherwise:
- (a) terms that are defined in the Policy, but not in this Agreement, have the meaning set out in the Policy;
 - (b) terms that are defined in the Policy and this Agreement have the meaning set out in this Agreement;
 - (c) references to **clauses** and **schedules** are to clauses of and schedules to this Agreement;
 - (d) **derivations** of any defined word or term shall have a corresponding meaning;
 - (e) the **headings** to clauses are inserted for convenience only and shall be ignored in interpreting this Agreement;
 - (f) the word **including** and other similar words do not imply any limitation;
 - (g) a **person** includes any individual, company, corporation, firm, club, partnership, joint venture, association of persons (incorporated or not), trust or Governmental Agency (in each case, whether or not having separate legal personality);
 - (h) the **plural** includes the **singular** and vice versa;
 - (i) a reference to a statute includes all regulations and other subordinate legislation made under that statute. A reference to a statute, regulation or other subordinate legislation includes that statute, regulation or other subordinate legislation as amended or replaced from time to time.
 - (j) all **amounts** payable under this Agreement are expressed in New Zealand dollars;
 - (k) a **document** (however described and including this Agreement) includes that document as amended or replaced from time to time;
 - (l) any **obligation falling due** for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day;
 - (m) an **obligation not to do something** includes an obligation not to allow or cause that thing to be done;
 - (n) an **obligation not to unreasonably withhold agreement, consent or approval** (or any similar obligation) includes an obligation not to unreasonably condition or delay such agreement, consent or approval;

APPENDIX 1

- (o) if a **Party** comprises more than one person, each person's liability is joint and several;
- (p) the **recitals** to this Agreement under the heading "Background" form part of this Agreement; and
- (q) a **year** means a calendar year, a month means a calendar month and a day means a calendar day.

19.12 **Precedence:** If there is any conflict between the body of this Agreement and Schedule 1, the body of this Agreement will prevail.

EXECUTED as an agreement

SIGNED for and on behalf of)
WELLINGTON CITY COUNCIL by)

Signature

Print Name

Position

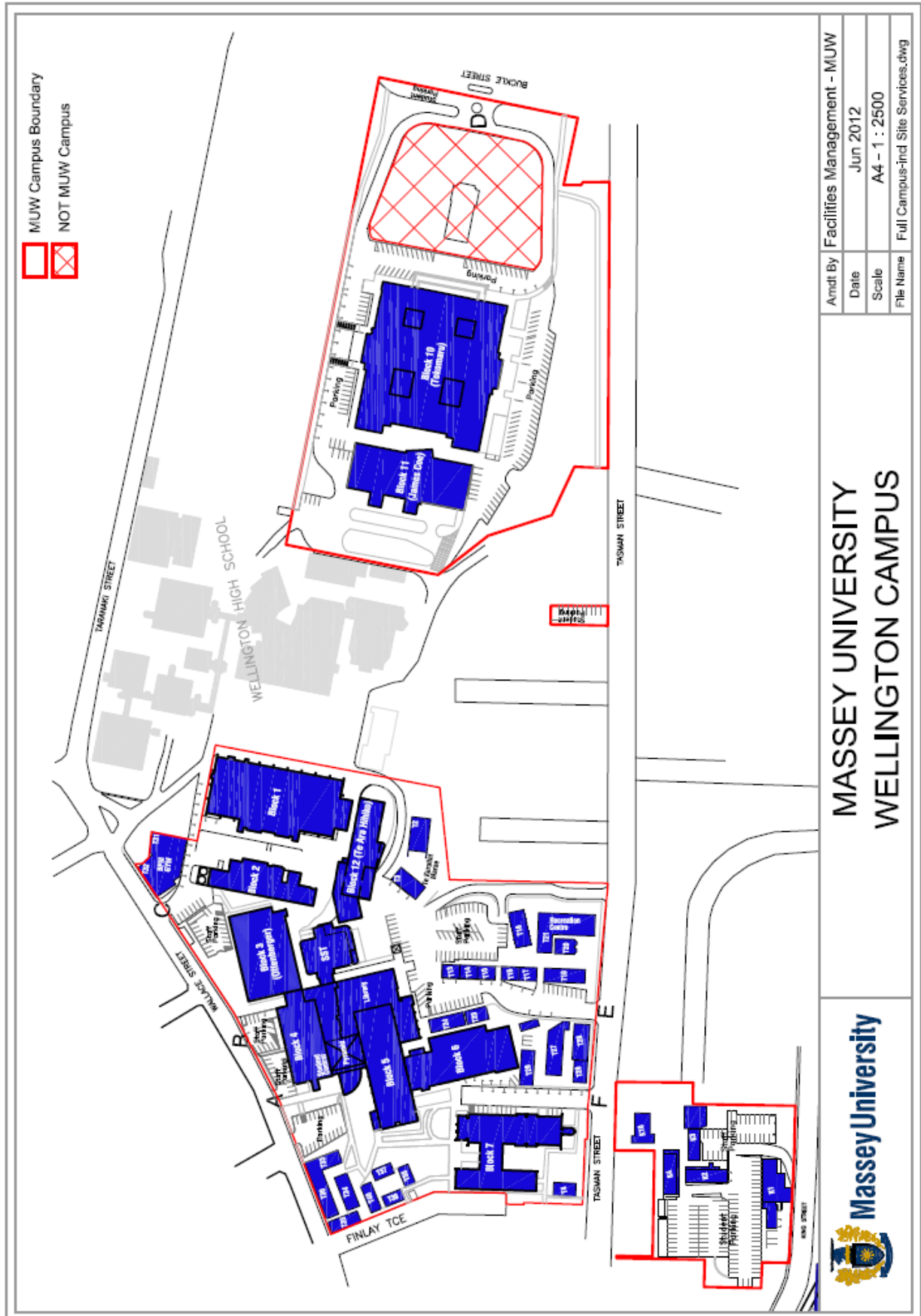
SIGNED for and on behalf of)
MASSEY UNIVERSITY by)

Signature

Print Name

Position

SCHEDULE 1: PLAN OF WELLINGTON CAMPUS



Amdt By	Facilities Management - MUW
Date	Jun 2012
Scale	A4 - 1 : 2500
File Name	Full Campus-Ind Site Services.dwg

MASSEY UNIVERSITY WELLINGTON CAMPUS



SCHEDULE 2: EXAMPLE CALCULATIONS

This Schedule does not form part of the Agreement. Its purpose is to provide working examples of the formulae included in the Agreement, to help clarify how those formulae are to be used. The numbers and dollar figures used in the example formulae are those that applied at the date of signing the Agreement.

Transport Calculation

Formula in Agreement: $((a \div b) \times (c \div d)) \times e$

Where:

a = Additional EFTSS

b = # people per EHU assumed in Policy (as at the Date of this Agreement, 2.6)

c = NZTA sourced trips per person per day (as at the Date of this Agreement, 1.4¹)

d = Policy assumption on trips per person per day (as at the Date of this Agreement, 3.8)

e = Policy rate per EHU for transport (Citywide) (as at the Date of this Agreement, \$1,090)

$$((1 \div 2.6) \times (1.4 \div 3.8)) \times \$1,090$$

Therefore, for each Additional EFTSS, the required transport payment is \$154.45.

Reserves Calculation

Formula in Agreement: $(a \div b) \times c$

Where:

a = Policy rate for reserves (Citywide) (as at the Date of this Agreement, \$680)

b = # people per EHU assumed in Policy (as at the Date of this Agreement, 2.6)

c = Additional EFTSS

$$(\$680 \div 2.6) \times 1$$

Therefore, for each Additional EFTSS, the required reserves payment is \$261.54.

Adelaide Road Precinct Calculation

$$(((a \times b) \div c) \times (d \div e)) \times f$$

Where:

a = % of Wellington Campus within Adelaide Road (as at the date of this Agreement, 0.28%)

b = Additional EFTSS

c = # people per EHU assumed in Policy (as at the Date of this Agreement, 2.6)

d = NZTA sourced trips per person per day (as at the Date of this Agreement, 1.4)

e = Policy assumption on trips per person per day (as at the Date of this Agreement, 3.8)

f = Policy rate per EHU for Adelaide Road Precinct (as at the Date of this Agreement, \$3,856)

$$(((0.28 \times 1) \div 2.6) \times (1.4 \div 3.8)) \times \$3,856$$

Therefore, for each Additional EFTSS, the required Adelaide Road Precinct payment is \$152.99.

¹ *Trips and parking related to land use*, NZ Transport Agency research report 453, November 2011, p 98.

Water Calculation

$$(a \times (((b - c) \div 365) \div d)) \times 1,000$$

Where:

a = Policy rate for water supply: Central and Coastal (as at the Date of this Agreement \$873) and Citywide (as at the Date of this Agreement \$474)

b = Peak Year Water Use (m³)

c = 2005 Derived Water Use (m³)

365 = days per year of metered water use

d = daily usage per EHU assumed in the Policy (as at the Date of this Agreement, 780 litres)

1,000 = litres to m³ conversion

$$((\$873 + \$474) \times (((\text{Peak Year Water Use} - 2005 \text{ Derived Water Use}) \div 365) \div 780)) \times 1,000$$

Therefore, for each m³ over the 2005 Derived Water Use (or re-set threshold if clause 8.7 applies), the required water payment is \$4.73.

Wastewater Calculation

$$(a \times (((b - c) \div 365) \div d)) \times 1,000$$

Where:

a = Policy rate for wastewater: Central (Moa Point) Catchment (as at the Date of this Agreement, \$1,185) and Citywide (as at the Date of this Agreement, \$293)

b = Peak Year Water Use (m³)

c = 2005 Derived Water Use (m³)

365 = days per year of metered water use

d = daily usage per EHU assumed in the Policy (as at the Date of this Agreement, 390 litres)

1,000 = litres to m³ conversion

$$((\$293 + \$1,185) \times (((\text{Peak Year Water Use} - 2005 \text{ Derived Water Use}) \div 365) \div 390)) \times 1,000$$

Therefore, for each additional m³ over the 2005 Derived Water Use (or re-set threshold if clause 9.3 applies) the required wastewater payment is \$14.88.