

Euan Kyle

From: Euan Kyle
Sent: Wednesday, 29 April 2020 11:34 AM
To: [REDACTED]
Subject: RE: LGOIMA Request
Attachments: Response Letter to Official Information Request - [REDACTED].pdf; BHSI CGL Certificate of Currency - Hutt City Council.pdf; 2019-20 PI PL Excess Layer Cover Summary.pdf; BHSI CGL Wording.pdf

29/04/2020

Dear [REDACTED]

Request for Information – Local Government Official Information and Meetings Act 1987

We refer to your official information request dated 18 April 2020 for information regarding insurance and 5G policies.

Please find our response attached.

Yours sincerely,

Euan Kyle

Senior Advisor, Official Information and Privacy

Hutt City Council, 30 Laings Road, Private Bag 31912, Lower Hutt 5040, New Zealand
T 04 570 6702 W www.huttcity.govt.nz

From: Euan Kyle
Sent: Tuesday, 21 April 2020 2:23 PM
To: [REDACTED]
Subject: RE: LGOIMA Request

21/04/2020

Dear [REDACTED]

REQUEST FOR INFORMATION - LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987: ACKNOWLEDGEMENT OF REQUEST

I am writing to acknowledge receipt of your official information request dated 18 April 2020 for information regarding information about insurance and 5G policies.

We received your request on 20 April 2020. Given the current Covid-19 pandemic and the steps taken to mitigate it we will be endeavouring to respond to your request as soon as possible. However in some cases we may need to ask for an extension of the timeframe or further clarification to ensure we are responding efficiently and correctly. If this is the case we will keep in contact with you throughout the process and advise you of this.

If you have any queries, please feel free to contact me at ewan.kyle@huttcity.govt.nz. If any additional factors come to light which are relevant to your request, please do not hesitate to contact us so that these can be taken into account.

Yours sincerely,

Euan Kyle

Senior Advisor, Official Information and Privacy

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From: Contact
Sent: Saturday, 18 April 2020 5:26 p.m.
To: Corporate Records
Subject: LGOIMA Request

Name [REDACTED]

Organisation

Address [REDACTED]

Telephone

Mobile [REDACTED]

Email [REDACTED]

Response By Email

Information requested Dear Council, Under the Local Government Official Information and Meetings Act 1987, you are requested to please provide the following: Copies of all commercial Hutt City Council public liability insurance policy certificates with what is covered, policy numbers, providers and underwriters held by Hutt City Council. In particular, make sure anything regarding 'pollution liability', 'policy enhancement' and 'schedules of exclusions' documents in relation to the commercial public liability insurance policy held by Hutt City Council. Copies of the 'certificate of indemnity' from Hutt City Council that may include the public insurance provider and underwriters, confirming that any injuries, damages or adverse health effects directly or indirectly arising out of, resulting from or contributed to by electromagnetic fields, electromagnetic radiation, electromagnetism, radio waves or noise, wireless RF radiation, microwave radiation, non-ionising radiation emitting devices and equipment. Do you have a 5G strategy? 3.1 If yes, I request to see the complete strategy, its ambitions and its objectives in PPTX, Word, PDF or picture format. 3.2 If yes, has the public had the opportunity to read and understand Hutt City Council's 5G strategy? Where was this information published? 3.3 I also request a supplementary document that includes the highest level of detail on all 5G technology that's planned to be used and current in use in public spaces within Hutt City Council: (a) Companies and entities involved and the names of the company/entity officers. (b) Specification sheets of 5G technology. (c) What technology e.g. units and arrays are not currently 5G, but can be 5G enabled e.g. with current software, future software, hardware upgrades or retrofitting? (d) What NZ and International safety standards is Hutt City Council complying with for the 5G strategy and existing 5G technology. (e) I request proof e.g. a certificate from Hutt City Council that confirms that NZ and International safety standards for workers and the public have been met. 3.4 If no, I request to know when you will be chairing a 5G strategy? 4. I request the name/s of the Officer/s in charge of the 5G strategy and roll out for 5G and Smart Cities; and who their subject area expert or consultancy is, their CV and qualifications on 5G and Smart Cities. I require written receipt of this Request for Official Information. Sincerely and without ill will, vexation or frivolity, Yours Sincerely [REDACTED]

File upload

Urgency Reason possible 5G imminent deployment including close to schools, kindies..

Invisible CAPTCHA 2020-04-18 17:22:45|

24/04/2020



Dear 

Request for Information – Local Government Official Information and Meetings Act 1987

We refer to your official information request dated 18 April 2020 for information regarding insurance and 5G policies.

Part of the information regarding Hutt City Council public liability insurance that you have requested is enclosed. However, we have decided to refuse your request for information which relates to a 5G strategy under section 17(g) of the LGOIMA, because Hutt City Council does not hold this information.

Copies of all commercial Hutt City Council public liability insurance policy certificates with what is covered, policy numbers, providers and underwriters held by Hutt City Council. In particular, make sure anything regarding 'pollution liability', 'policy enhancement' and 'schedules of exclusions' documents in relation to the commercial public liability insurance policy held by Hutt City Council. Copies of the 'certificate of indemnity' from Hutt City Council that may include the public insurance provider and underwriters, confirming that any injuries, damages or adverse health effects directly or indirectly arising out of, resulting from or contributed to by electromagnetic fields, electromagnetic radiation, electromagnetism, radio waves or noise, wireless RF radiation, microwave radiation, non-ionising radiation emitting devices and equipment.

- Please find attached a Certificate of Insurance, Excess Layer coverage summary and Policy Wording for the General Liability policy.

The Primary \$15 million policy is underwritten by the following...

- 60.0% Berkshire Hathaway Speciality Insurance
- 40.0% QBE Insurance (Australia) Limited

The excess layer of \$145 million in excess of \$15 million (total cover is \$160 million) is underwritten 100% by syndicates within Lloyd's of London.

Policy exclusions are noted in Section 5 of the attached policy wording.

Do you have a 5G strategy?

- Hutt City Council does not have a 5G strategy and is not considering 5G technologies at this time. As such we don't hold any of the information you have requested.

3.1 If yes, I request to see the complete strategy, its ambitions and its objectives in PPTX, Word, PDF or picture format. 3.2 If yes, has the public had the opportunity to read and understand Hutt City Council's 5G strategy? Where was this information published? 3.3 I also request a supplementary document that includes the highest level of detail on all 5G technology that's planned to be used and current in use in public spaces within Hutt City Council: (a) Companies and entities involved and the names of the company/entity officers. (b) Specification sheets of 5G technology. (c) What technology e.g. units and arrays are not currently 5G, but can be 5G enabled e.g. with current software, future software, hardware upgrades or retrofitting? (d) What NZ and International safety standards is Hutt City Council complying with for the 5G strategy and existing 5G technology. (e) I request proof e.g. a certificate from Hutt City Council that confirms that NZ and International safety standards for workers and the public have been met. 3.4 If no, I request to know when you will be chairing a 5G strategy?

4. I request the name/s of the Officer/s in charge of the 5G strategy and roll out for 5G and Smart Cities; and who their subject area expert or consultancy is, their CV and qualifications on 5G and Smart Cities.

- Our Smart Cities role is currently vacant.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

If you wish to discuss this decision with us, please feel free to contact our Senior Advisor, Official Information and Privacy, Euan Kyle at ewan.kyle@huttcity.govt.nz.

Yours sincerely,



Lyndon Allott

Chief Digital Officer

Encl:

BHSI CGL Certificate of Currency - Hutt City Council.pdf

2019-20 PI PL Excess Layer Cover Summary.pdf

BHSI CGL Wording.pdf

Professional Indemnity/ Public Liability Excess Layer

Type	Section 1 Section 2	Excess Public and Products Liability insurance Excess Professional Indemnity Insurance	
Insured	As per schedule attached for New Zealand Councils and/or associated organisations and trusts and/or subsidiary companies and/or Council Controlled Organisations and Council Owned Organisations for their respective rights and interests and/or as may be agreed		
Period of Insurance	From: 4:00pm To: 4:00pm	29 November 2019 1 November 2020	
	Local Standard Time at the Insured's Address		
Interest	To Indemnify the Insured in respect of their legal liabilities arising out of the Insured's activities		
Territorial Scope	Section 1 Section 2	Worldwide Worldwide excluding USA/Canada And as more fully set forth in the underlying primary policies	
Limit of Liability 100% Each and Every Council	Section 1	General Liability Each and every occurrence	NZD145,000,000
		Product Liability Each and every occurrence and in the annual aggregate	NZD145,000,000
	Section 2	Professional Indemnity Each and every claim and in the annual aggregate (costs and expenses inclusive)	NZD145,000,000
Retention / Excess 100%	Section 1	General Liability Each and every occurrence	NZD15,000,000
		Product Liability Each and every occurrence and in the annual aggregate (costs and expenses in addition)	NZD15,000,000
	Section 2	Professional Indemnity Each and every claim and in the annual aggregate (costs and expenses inclusive)	NZD15,000,000

Cover Summary



Conditions

Section 1 to follow all Terms and Conditions of the underlying Public and Products Liability primary wording

Section 2 to follow all Terms and Conditions of the underlying Professional Indemnity primary wording.

Choice of Law and Jurisdiction

Any dispute concerning the interpretation of the Terms, Conditions, Limitations and/or exclusions contained herein is understood and agreed by both the Assured and Underwriters to be subject to the laws of New Zealand.

Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within New Zealand and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the laws and practice of such court.

Schedule of Councils

Bay of Plenty Regional Council
Buller District Council
Far North District Council
Gisborne District Council
Grey District Council
Hamilton City Council
Horizons Regional Council
Horowhenua District Council
Hutt City Council
Kapiti Coast District Council
Kaipara District Council
Kawerau District Council
Manawatu District Council
Northland Regional Council
Opotiki District Council
Porirua District Council

Queenstown Lakes District Council
Rangitikei District Council
Rotorua Lakes District Council
Ruapehu District Council
South Waikato District Council
Taranaki District Council
Taupo District Council
Tauranga City Council
Thames Coromandel District Council
Waikato District Council
Waitaki District Council
Western Bay of Plenty District Council
West Coast Regional Council
Westland District Council
Whanganui District Council



Berkshire Hathaway
Specialty Insurance

Combined General & Products Liability Certificate

Policy Number: 47-ZCA-306358-02

Policyholder: Hutt City Council

Address: C/o: AON New Zealand

Policy Period: From: 29 November 2019 To: 01 November 2020
Both days at 4.00PM New Zealand Local Time

Limit of Indemnity: \$15,000,000 any one **Occurrence** in respect of public liability and in the aggregate during the **Policy Period** in respect of **Product** liability.

Excess: \$10,000 each and every **Occurrence**


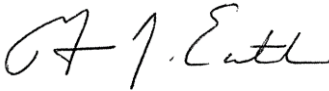
Policy Wording: AON General Liability for Councils

Territory: New Zealand

Underwriter: Berkshire Hathaway Specialty Insurance: 60%
QBE Insurance (Australia) Limited: 40%

Territory: New Zealand

Dated: 29 November 2019

Signed:  

Ralph Tortorella, Secretary

Peter Eastwood, President

For and on behalf of Berkshire Hathaway Specialty Insurance
Company

For and on behalf of QBE Insurance (Australia) Limited

This is a summary of cover only, and subject always to the terms,
conditions, exclusions and limitations of the Policy.

Combined General & Products Liability Insurance

In consideration of the payment of the premium to the **Insurer(s)** and in reliance on the written proposal, declaration and any other underwriting information provided, which shall be deemed to be incorporated into and to be the basis of this **Policy**, the **Insurer(s)** will indemnify the **Insured** as follows.

1 Insuring Clauses

1.1 Public and Products Liability

Subject to the **Policy** terms, the **Insurer(s)** will indemnify the **Insured** for all sums that the **Insured** shall become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** happening during the **Period of Insurance** within the **Policy Territory** and caused by an **Occurrence** in connection with the **Business of the Insured**.

2 Limit of Indemnity

2.1 Limit of Indemnity

The **Insurers'** maximum liability in respect of any claim, or any series of claims, arising out of one **Occurrence**, or in the aggregate during the **Period of Insurance** in respect of an **Occurrence** involving the **Insured's Products**, shall not exceed the Limit of Indemnity stated in the **Policy Schedule**, or the sub-limit in any applicable Automatic Coverage Clause. All **Personal Injury** or **Property Damage** in respect of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one **Occurrence**.

PROVIDED THAT:

2.1.1 immediately that the **Insurer(s)** has paid the Limit of Indemnity in respect of any judgment or settlement, it's liability in relation to **Costs and Expenses** shall cease;

2.1.2 if a payment exceeding the Limit of Indemnity has to be made to dispose of a claim, the **Insurers'** liability in relation to **Costs and Expenses** shall be limited to the same proportion as the Limit of Indemnity bears to the amount required to dispose of the claim.

2.2 Costs and Expenses

In addition to the applicable Limit of Indemnity or sub-limit, the **Insurer(s)** will pay **Costs and Expenses** necessarily and reasonably incurred in relation to a claim against the **Insured** for which there is cover under this **Policy** (irrespective of whether or not the **Insured** is found legally liable).

3 Automatic Coverage Clauses

To be read in conjunction with the Insuring Clauses above.

The following sub-limits and **Excesses** apply unless there is a different sub-limit or **Excess** shown in the **Policy Schedule**. The sub-limits are included in, are not in addition to and may be less than the Limit of Indemnity in the **Policy Schedule**.

3.1 Business Advice or Service

Notwithstanding Exclusion 5.18, the **Insurer(s)** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** arising out of an error or omission in:

- 3.1.1 advice or services rendered by the **Insured** without charge;
- 3.1.2 professional medical advice by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

3.2 Landlords Liability

The **Insurer(s)** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** arising from the **Insured's** legal ownership, but not physical occupation, of any premises.

3.3 Mechanical Plant Liability

Notwithstanding Exclusion 5.23, the **Insurer(s)** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage**:

- 3.3.1 arising from loading or unloading any **Vehicle** used by or on behalf of the **Insured** but not in the **Insured's** care, custody or control;
- 3.3.2 arising from any **Vehicle** while it is being operated for its specialised function or purpose, and not as a **Vehicle**;
- 3.3.3 relating to the operation or ownership of a car-park so as to cause damage to **Vehicles** within it (other than to **Vehicles** belonging to, or used by or on behalf of the **Insured**);
- 3.3.4 relating to any bridge, viaduct, weigh bridge, road or anything beneath the **Vehicle** caused by vibration or by the weight of any **Vehicle** and/or its load

PROVIDED THAT:

- (a) any designated weight restrictions were not exceeded.
- (b) an **Excess** of \$10,000 shall apply.

3.4 Product Withdrawal Costs

Notwithstanding Exclusion 5.25, the **Insurer(s)** will indemnify the **Insured** for up to 80% of those costs reasonably incurred in the withdrawal or recall from use in New Zealand of the **Insured's Products** which have the same defect as a product that has already given rise to a claim in respect of which the **Insured** is entitled to indemnity under Insuring Clause 1.

PROVIDED THAT:



3.4.1 A Limit of Indemnity of \$100,000, inclusive of **Costs and Expenses**, shall apply in respect of all such withdrawals or recalls during any one **Period of Insurance**.

3.4.2 an **Excess** of \$10,000, inclusive of **Costs and Expenses**, shall apply to each such withdrawal or recall.

3.5 **Property in Care Custody or Control**

Notwithstanding Exclusion 5.20, but subject to Exclusions 5.7 and 5.19, the **Insurer(s)** will indemnify the **Insured** in respect of **Property Damage** to property, including employees' property, where the liability arises while the property is in the care, custody or control of the **Insured**

PROVIDED THAT:

3.5.1 real property, or property owned by, hired, leased or rented to or by the **Insured** is excluded;

3.5.2 property held under a contract of bailment for reward is excluded;

3.5.3 a Limit of Indemnity of \$1,000,000 any one **Period of Insurance** shall apply;

3.5.4 an **Excess** of \$10,000 shall apply.

3.6 **Punitive or Exemplary Damages**

Notwithstanding Exclusion 5.10 and Definition 4.4, the **Insurer(s)** will indemnify the **Insured** in respect of punitive or exemplary **Damages** awarded for **Personal Injury** in New Zealand,

PROVIDED THAT:

3.6.1 any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;

3.6.2 any award of punitive or exemplary **Damages** by any Court outside New Zealand is excluded;

3.6.3 a Limit of Indemnity of \$1,000,000, inclusive of **Costs and Expenses**, any one **Period of Insurance** shall apply;

3.6.4 an **Excess** of \$10,000, inclusive of **Costs and Expenses**, shall apply.

3.7 **Tenants Liability**

Notwithstanding Exclusion 5.20, the **Insurer(s)** will indemnify the **Insured** in respect of **Property Damage** to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the **Insured**.

3.8 **Underground Services**

The **Insurer(s)** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** in New Zealand to existing underground services, cables, pipes or equipment,



PROVIDED THAT:

- 3.8.1 prior to the commencement of any work, the **Insured** inquired of the relevant authority, corporation or company as to the location of such services;
- 3.8.2 the **Insured** took all reasonable precautions to prevent **Personal Injury** or **Property Damage**;
- 3.8.3 the Limit of Indemnity, inclusive of **Costs and Expenses**, shall be \$50,000,000 any one **Period of Insurance**;
- 3.8.4 an **Excess** of \$10,000 shall apply.

3.9 **Vehicle and Watercraft Service/Repair Liability**

Notwithstanding Exclusions 5.19, 5.20 & 5.23, the **Insurer(s)** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** in New Zealand arising from the service or repair by the **Insured** of any **Vehicle**, and/or **Watercraft** not exceeding 10 metres in length, and/or its internal combustion engine, accessories or fittings,

PROVIDED THAT:

- 3.9.1 the **Vehicle** or **Watercraft** is not owned, hired, leased, or rented by the **Insured**, and is in the care, custody or control of the **Insured** for the purposes of the service or repair;
- 3.9.2 the cost of rectifying defective workmanship in respect of the actual part or parts worked on is excluded;
- 3.9.3 a Limit of Indemnity of \$500,000 any one **Period of Insurance** shall apply;
- 3.9.4 an **Excess** of \$10,000 shall apply.

3.10 **Vibration and Removal of Support**

The **Insurer(s)** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** in New Zealand arising from vibration, or removing, weakening or interfering with, the support of land or buildings,

PROVIDED THAT:

- 3.10.1 the land or buildings are not owned or occupied by the **Insured**;
- 3.10.2 the **Personal Injury** or **Property Damage** arises from the actions of the **Insured**;
- 3.10.3 a Limit of Indemnity of \$500,000 any one **Period of Insurance** shall apply;
- 3.10.4 an **Excess** of \$10,000 shall apply.

3.11 **Visits to North American Countries**

Notwithstanding Exclusions 5.13 and 5.14, the **Insurer(s)** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** in the **North American Countries** arising solely out of the



actions of non-resident directors, executives and salespersons temporarily visiting the **North American Countries** in the course of the **Business of the Insured**,

PROVIDED THAT:

- 3.11.1 the **Insured** has no premises, branch or subsidiary operation in the **North American Countries**;
- 3.11.2 any work performed in, on, or in connection with, the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of the **Insured's Products** is excluded;
- 3.11.3 the ownership, possession, control, or maintenance or use of any **Vehicle** or **Watercraft** is excluded;
- 3.11.4 the Limit of Indemnity, inclusive of **Costs and Expenses**, any one **Period of Insurance** shall be the Limit of Indemnity in the **Policy Schedule**.

4 Definitions

In this **Policy**, including any endorsements, unless specifically stated to the contrary:

4.1 **"Aircraft"** means:

any machine, craft or thing made or intended to fly or move in or through the atmosphere or space.

4.2 **"Business of the Insured"** means:

4.2.1 The business stated in the **Policy Schedule**, which shall include:

- (a) the provision and management of lunch room facilities, social, sports, welfare and similar organisations for the benefit of the **Insured's** employees;
- (b) Fire Brigade, first aid, medical and ambulance services.

4.2.2 Any other activity that the **Insured** may undertake provided that the **Insured** gives prior written notice to the **Insurer(s)** and obtains the **Insurer(s)** acknowledgement of coverage.

4.3 **"Costs and Expenses"** means:

4.3.1 Any legal costs, disbursements, witnesses' costs, assessors or adjuster's costs or experts' costs incurred by the **Insurer(s)**, or by the **Insured** with the **Insurers'** prior written consent;

4.3.2 Any first aid expenses incurred by the **Insured** arising from a **Personal Injury**.

4.4 **"Damages"** means:

Any amount payable as compensation, including interest.

4.5 “**Excess**” means:

The amount shown in the **Policy Schedule**, or in any applicable Automatic Coverage Clause, as the **Excess**, shall be borne by the **Insured** in respect of each and every claim, or series of claims arising out of one **Occurrence**.

4.6 “**Insured**” means:

4.6.1 The **Insured(s)** named in the **Policy Schedule**.

4.6.2 All subsidiaries incorporated in New Zealand, and any other organisation under the sole control of a named **Insured** and which it actively manages:

- (a) as at the commencement of the **Period of Insurance**;
- (b) acquired or taken control of during the **Period of Insurance**, provided that a named **Insured** gives written notice to **Insurer(s)** and obtains the **Insurers’** acknowledgement of coverage within 60 days of acquisition or taking control.

4.6.3 Every director, officer, employee, student, councillor, Elected Member, Local Board Member Appointment Member or mayor whilst engaged in activities for the **Insured**, partner or shareholder of an **Insured** designated in paragraphs 4.6.1 & 4.6.2 whilst acting within the scope of their duties as such, except in respect of any liability under the Companies Act. For the purposes of this definition, employee is deemed to include secondees, casual and or volunteers performing duties for and under the direction and direct supervision of any other **Insured**.

4.6.4 Every principal, in respect of its vicarious liability arising solely out of the performance, by an **Insured** as defined under 4.6.1, 4.6.2 or 4.6.3, of any contract of work for such principal, but always subject to the terms of this **Policy**.

4.6.5 Every office bearer or member of social and sporting clubs formed with the consent of the **Insured** (other than an **Insured** designated in paragraph 4.6.4 or 4.6.6) in respect of claims arising from the duties connected with the activities of any such club.

4.6.6 Each joint venturer, co-venturer or joint lessee of a named **Insured** but only with respect to liability incurred as a joint venturer, co-venturer or joint lessee, provided that a named **Insured** gives written notice to **Insurer(s)** and obtains **Insurers’** written acknowledgement of coverage for such joint venture, co-venture or joint lease.

4.7 “**Insured’s Products**” means:

Any goods, products, including labels, instructions for use and advice and property after they have ceased to be in the possession of or under the control of the **Insured**, manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the **Insured** (including any container, other than a **Vehicle**).

4.8 “**Insurer(s)**” means:

Berkshire Hathaway Specialty Insurance Company (incorporated in Nebraska, USA).

4.9 “**Medical Persons**” means:

Any legally qualified medical practitioner, legally qualified registered nurse, dentist or first aid attendant.

4.10 “**North American Countries**” means:

The United States of America and Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.

4.11 “**Occurrence**” means:

An event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** that is neither expected nor intended from the standpoint of the **Insured**.

4.12 “**Period of Insurance**” means:

The **Period of Insurance** stated in the **Policy Schedule**.

4.13 “**Personal Injury**” means:

Bodily injury (including resulting death, illness or care), disability, shock, fright, mental anguish or mental injury, including such injury arising from the following by the **Insured**:

4.13.1 false arrest, wrongful detention, false imprisonment or malicious prosecution or humiliation;

4.13.2 wrongful entry or eviction or other invasion of the right of privacy;

4.13.3 assault and battery, provided that this was not committed by or at the direction of the **Insured** except for the purpose of preventing or eliminating danger to persons or property;

4.13.4 trespass to the person.

4.14 “**Policy**” means:

This document, the **Policy Schedule** and any endorsements issued by the **Insurer(s)**.

4.15 “**Policy Schedule**” means:

The schedule issued by the **Insurer(s)**.

4.16 “**Policy Territory**” means:

Worldwide, unless otherwise stated in the **Policy Schedule**, and subject to Exclusions 5.13 & 5.14, (**North American Countries** & North American Exports) and the limitations to New Zealand only in Automatic Coverage Clauses 3.4, 3.6, 3.8, 3.9 and 3.10.

4.17 **“Pollutants”** means:

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

4.18 **“Property Damage”** means:

4.18.1 physical injury to or destruction or loss of tangible property including resulting loss of use, or;

4.18.2 loss of use of tangible property which has not been physically injured or destroyed.

4.19 **“Vehicle”** means:

Any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine, and includes its accessories, tools, specialised equipment and spare parts.

4.20 **“Watercraft”** means:

Any vessel, craft or thing made or intended to float on or in or travel on or through water.

5 Exclusions

The **Insurer(s)** shall not indemnify the **Insured** for any claim in respect of or alleging:

5.1 Aircraft and Watercraft

Personal Injury or **Property Damage** arising out of the ownership, possession, control, operation, use, service or repair, loading or unloading by the **Insured** of any:

5.1.1 **Aircraft** or hovercraft;

5.1.2 **Watercraft** exceeding 10 metres in length.

5.2 Aircraft Products

Personal Injury or **Property Damage** arising out of any of the **Insured’s Products** which, with the **Insured’s** knowledge were, or were intended to be, incorporated into the structure, machinery or controls of any **Aircraft** or aerial device.

5.3 Asbestos

Any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.



5.4 **Building Defect**

Personal Injury or Property Damage arising out of:

5.4.1 the failure or alleged failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code contained in the First Schedule of the Building Regulations 1992 or any applicable New Zealand Standard (or amended or substituted Regulation or Standard) in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system;

OR

5.4.2 Mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

5.5 **Contractual Liability**

Liability assumed by the **Insured** under any contract or agreement except to the extent that the **Insured** would have been liable even if there had been no contract in existence. But this Exclusion shall not apply to liability pursuant to any:

5.5.1 lease or hire of real or personal property;

5.5.2 representation or warranty of fitness or quality in respect of the **Insured's Products**, or a representation or warranty that work performed by or on behalf of the **Insured** will be done in a workmanlike manner;

5.5.3 contracts or agreements noted in the **Policy Schedule**.

5.6 **Defamation**

Libel or slander.

5.7 **Defective Materials, Design & Workmanship**

Liability for the cost of:

5.7.1 rectifying, repairing or replacing defective materials;

5.7.2 remedying any defect in any design, plan or specification;

5.7.3 remedying defective workmanship;

5.7.4 correcting or improving any work undertaken by the **Insured**.

5.8 **E-Commerce**

5.8.1 **Personal Injury or Property Damage** arising, directly or indirectly, out of, or in any way involving the **Insured's "Internet Operations"**.

This exclusion does not apply to **Personal Injury or Property Damage** arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.



For the purposes of this Exclusion “Internet Operations” means the following:

- (a) use of electronic mail systems by the **Insured** or the **Insured’s** employees, including part-time and temporary staff, contractors and others within the **Insured’s** organisation;
- (b) access through the **Insured’s** network to the world wide web or a public internet site by the **Insured’s** employees, including part-time and temporary staff, contractors and others within the **Insured’s** organisation;
- (c) access to the **Insured’s** intranet (meaning internal company information and computing resources) which is made available through the world wide web for customers of the **Insured** or others outside the **Insured’s** organisation; and
- (d) the operation and maintenance of the **Insured’s** web site.

Nothing in this exclusion shall be construed to extend coverage under this **Policy** to any liability which would not have been covered in the absence of this exclusion.

5.8.2 **Property Damage** to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:

- (a) the use of any computer hardware or software;
- (b) the provision of computer or telecommunication services by the **Insured** or on the **Insured’s** behalf;
- (c) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

5.9 **Failure to Insure**

Any breach of an obligation to insure property.

5.10 **Fines, Penalties, etc**

Liability arising for any fines, penalty, performance warranty or liquidated **Damages**, punitive and/or exemplary **Damages**.

5.11 **Insured’s Products**

Property Damage to the **Insured’s Products**.

5.12 **Loss of Use**

Loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- 5.12.1 a delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement, or



5.12.2 the failure of the **Insured's Products** to meet the level of performance, quality, fitness or durability that has been warranted or represented expressly or impliedly by the **Insured**.

5.13 **North American Countries**

Personal Injury or Property Damage happening in or instituted against the **Insured** in the **North American Countries**, including any liability from or based on a settlement or arbitration in, or a judgment or order of a court in the **North American Countries**.

5.14 **North American Exports**

Liability arising from any of the **Insured's Products** knowingly exported by the **Insured** (or exported by the **Insured's** agents or distributors with the **Insured's** knowledge) to the **North American Countries**, including any liability arising from or based on a settlement or arbitration in, or a judgment or order of a court in the **North American Countries**.

5.15 **Offshore Gas or Oil Platforms**

Liability arising from work performed on or about any offshore gas or oil platform.

5.16 **Personal Injury to Employees**

5.16.1 **Personal Injury** arising directly or indirectly out of or in the course of employment with the **Insured**;

5.16.2 An obligation on the **Insured** under any accident or workers compensation legislation or any industrial award, employment contract, agreement or determination.

5.17 **Pollution**

Personal Injury or Property Damage, including **Costs and Expenses** incurred in the prevention, removing, nullifying or clean-up, arising out of the discharge, dispersal, release or escape of **Pollutants** into or on land, the atmosphere, or any watercourse or body of water, unless the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended from the standpoint of the **Insured** and takes place in its entirety at a specific time and place.

5.18 **Professional Liability**

An error or omission in professional advice or service.

5.19 **Property Being Worked Upon**

Property Damage to property on which the **Insured** is or has been working, and which arises out of such work.

5.20 **Property Owned**

Property Damage to any property owned by, or in the care, custody or control of the **Insured**.

5.21 **Radioactivity**

Personal Injury or **Property Damage** directly or indirectly caused by, contributed to or arising from:

5.21.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion only combustion shall include any self-sustaining process of nuclear fission;

5.21.2 nuclear weapons material.

5.22 **Terrorism**

Loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this Exclusion an “Act of Terrorism” means an act, including but not limited to the use of force or violence and/or threat, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This **Policy** also excludes loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

5.23 **Vehicles**

Personal Injury or **Property Damage** arising out of the ownership, possession, repair, operation, control, maintenance or use by or on behalf of the **Insured** of any **Vehicle** which is:

5.23.1 required by legislation to be registered and/or licensed and/or **Insured**;

5.23.2 being operated while in an unsafe condition;

5.23.3 being operated by any person who is under the influence of any liquor, substance or drug;

5.23.4 **Insured**, or in respect of which the **Insured** is **Insured** under any other **Policy**, even if the other insurance is not collectable because of a breach of condition or applicable exclusion.



5.24 **War**

Any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or expropriation including lawful seizure, resumption, confiscation, nationalisation, destruction or **Property Damage** by or under the order of any Government or public or local authority.

5.25 **Withdrawal or Repair of Products**

The recall (including making any refund on the price paid), repair, withdrawal, inspection, removal, altering, treating, modification, replacement or loss of use of the **Insured's Products** or any property of which such products form a part, or of work undertaken by or for the **Insured**, if such products, property or work are withdrawn from the market or from use, because of any defect or deficiency which the **Insured** knew or has reason to suspect or because of any Government or statutory ban, order or notice.

6 Conditions

6.1 **Cancellation**

6.1.1 The **Insured** may cancel this **Policy** at any time by giving notice to the **Insurer(s)**. The **Insurer(s)** shall refund to the **Insured** the amount of the unexpired premium already paid on a pro rata basis, subject to any minimum premium applicable.

6.1.2 The **Insurer(s)** may cancel this **Policy** by sending at least 30 days' notice to the **Insured** in accordance with Conditions 6.14.2 and 6.14.3. The **Insurer(s)** will refund the amount of any unexpired premium already paid on a pro rata basis.

6.2 **Claims**

6.2.1 The **Insured** shall not (without the prior consent in writing of the **Insurer(s)**) make any admission, offer, promise or payment in connection with any **Occurrence** or claim. The **Insurer(s)** shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any claim, and the prosecution of any available counterclaim. The **Insurer(s)** shall have full discretion in the conduct of any proceedings in connection with any claim or available counterclaim.

6.2.2 The **Insured** shall use its best endeavours to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair shall be effected without the written consent of the **Insurer(s)** until the **Insurer(s)** shall have had an opportunity of inspection and authorized such repairs.

6.2.3 In the event of an **Occurrence**, or the likelihood of an **Occurrence**, the **Insured** shall promptly take at its own expense all reasonable steps to prevent **Personal Injury** or **Property Damage** from arising or continuing out of the same or similar conditions, but such expense shall not be recoverable from the **Insurer(s)**.



6.2.4 The **Insured** shall give all information, co-operation and assistance as the **Insurer(s)** may require in the prosecution, defence or settlement of any claim, including any available counterclaim.

6.3 **Claims Notification**

The **Insured** shall advise in writing as soon as practicable and provide all information to the **Insurer(s)** of any:

6.3.1 **Occurrence** or circumstances, which might give rise to a claim under this **Policy**;

6.3.2 notice of claim, writ, summons, proceedings, impending prosecution or inquest which might give rise to a claim under this **Policy**; regardless of whether the **Insured** believes that:

- (a) a claim will not in fact proceed;
- (b) any claim which, should it proceed, would fall below the applicable **Excess**;
- (c) any claim which, should it proceed, would be groundless.

6.4 **Conditions Precedent**

Compliance by or on behalf of the **Insured** with Conditions 6.2, 6.3, 6.8, 6.9, 6.11 and 6.13 is a condition precedent to the **Insurers'** liability to make any payment under this **Policy**.

6.5 **Constructive Notice / No Waiver**

Except as provided by statute, notice to any agent or broker or knowledge possessed by any agent, broker or other person shall not constitute notice to the **Insurer(s)**.

The terms of this **Policy** shall not be waived or changed, except by written agreement with the **Insurer(s)**.

6.6 **Cross Liability / Joint Insured's**

If more than one legal entity is **Insured** under this **Policy**, each entity is covered in the same manner as though the **Insurer(s)** had issued them with a separate **Policy**.

If there is a claim against more than one entity in respect of the same **Occurrence**, only one **Excess** and one Limit of Indemnity shall apply, regardless of the number of entities indemnified. Where the Limit of Indemnity is insufficient to fully indemnify all **Insured** entities, it will apply in priority to the named **Insured**.

6.7 **Discharge of Liabilities**

At any time, the **Insurer(s)** shall be entitled to pay to the **Insured** the balance of indemnity available up to the applicable Limit of Indemnity or such lesser sum for which the claim can be settled. Upon such payment, the **Insurer(s)** shall be under no further liability to the **Insured**

under this **Policy**, except for **Costs and Expenses** already incurred up until the time of payment.

6.8 **Due Diligence**

The **Insured** shall take all reasonable steps to avoid the happening of any **Occurrence** and, in particular, shall ensure that:

- 6.8.1 all employees are properly trained and supervised;
- 6.8.2 every employee complies with all statutory obligations;
- 6.8.3 there are proper safety systems, equipment, practices and procedures in place, and that all employees use and comply with them at all times;
- 6.8.4 all plant is kept properly maintained.

6.9 **Fraud**

If any answers or statements in support of any claim, or in any information provided to obtain, amend or renew this insurance, are false in any way, the **Insurer(s)** shall not provide any indemnity to the **Insured** under this **Policy**.

6.10 **Goods and Services Tax**

Where, on receiving any indemnity payment under this **Policy**, the **Insured** is liable to pay tax under section 5(13) of the Goods and Services Tax Act 1985 (or any substitute), the **Insurer(s)** will indemnify the **Insured** for the cost of that tax. The indemnity under this clause is in addition to the applicable Limit of Indemnity.

6.11 **Hot Work**

Where the **Insured** carries out any welding and/or cutting work it is warranted that the **Insured** shall comply with the New Zealand Standard 4781:1973 Code of Practice for Safety in Welding and Cutting (or any substitute).

6.12 **Inspection of Property**

The **Insurer(s)** shall be permitted, but not obligated to, inspect the **Insured's** property and operations at any reasonable time.

6.13 **Material Change**

The **Insured** shall give immediate notice to the **Insurer(s)** of any material change to any of the facts or circumstances existing at the commencement of the **Period of Insurance**. The **Insurer(s)** shall be entitled to charge an additional premium.

6.14 **Notices By The Insurer(s)**

- 6.14.1 Any notice given in writing by the **Insurer(s)** to the first named **Insured** in the **Policy Schedule**, or to the broker through which the **Insured** arranged this **Policy** with the **Insurer(s)**, shall be deemed to be notice to each **Insured**;
- 6.14.2 Any notices by the **Insurer(s)** may be effected by sending a fax, email or letter to the last known contact number or address;
- 6.14.3 Any such notice shall be deemed to have been received, if sent by fax or email, at the time of transmission, and if sent by post, three business days after the date of posting.

6.15 **Other Insurance**

If the **Insured** is entitled to indemnity under any other insurance, this **Policy** shall operate in **Excess** of such other insurance, even if the other insurance **Policy** has another insurance condition to similar effect.

6.16 **Policy Disputes**

This **Policy** shall be governed by the laws of New Zealand whose courts shall have jurisdiction in relation to any dispute.

6.17 **Subrogation**

- 6.17.1 If the **Insurer(s)** makes any payment under this **Policy** to or on behalf of the **Insured**, whether in respect of any judgment, settlement, **Damages** or **Costs and Expenses**, the **Insurer(s)** shall be subrogated to all the **Insured's** rights of recovery.
- 6.17.2 The **Insured** shall execute all papers and do all that is necessary to assist the **Insurer(s)** in the full exercise of such rights, including prosecuting proceedings in the name of the **Insured** at the **Insurers'** expense.
- 6.17.3 If the **Insured** effects any recovery in respect of the claim, it shall account to the **Insurer(s)** for the full amount received.

6.18 **Words**

Words importing persons shall include companies and other legal entities. The singular includes reference to the plural and vice versa, and reference to any gender includes all other genders.

7 Endorsements

7.1 **Employees Property Extension**

Notwithstanding anything contained in Exclusion 5.20 (Property Owned) to the contrary, the **Insurer(s)** will indemnify the **Insured** in respect of the **Insured's** legal liability arising out of loss of or damage to property belonging to the **Insured's** employees and/or elected members.



Provided always that the **Insurer(s)** shall not indemnify the **Insured** for any claim in respect of:

- a) property provided by the employee and/or elected member primarily for use on the **Insured's** business;
- b) property provided by the employee and/or elected member as a condition of employment; or
- c) loss and/or damage sustained directly or indirectly as a result of the employee's and/or elected member's own actions or negligence

Provided also that **Insurer(s)** liability in respect of this extension shall be limited to NZ\$1,000,000 which is part of and not in addition to the Limit of Indemnity stated in the schedule and an **Excess** of NZ\$10,000 shall apply.

All other terms and conditions of this **Policy** remain unchanged.

7.2 **Sanctions Clause**

The **Insurer(s)** will not be liable to provide any coverage or make any payment hereunder if to do so would be in violation of any sanctions law or regulation which would expose us, our parent company or its ultimate controlling entity to any penalty under any sanctions law or regulation.

All other terms and conditions of this **Policy** remain unchanged.

7.3 **Hall Hirers Liability**

In respect of properties operated or owned by the **Insured**, Definition 4.6 "**Insured**" is extended to include community and sporting groups, individuals, and the like who use and hire the properties listed, operated or owned by the **Insured**, in relation to all activities related to the hireage or use of these properties, who do not hold liability Insurance that would respond to any legal liability incurred.

PROVIDED THAT:

- 7.3.1 a Limit of Indemnity of \$1,000,000 any one **Period of Insurance** shall apply;
- 7.3.2 an **Excess** of NZ\$10,000 shall apply.

All other terms and conditions of this **Policy** remain unchanged.

7.4 **Airport Operators Liability Exclusion**

The **Insurer(s)** shall not indemnify the **Insured** for any claim in respect of or alleging **Personal Injury** or **Property Damage** arising out of any of the **Insured's** aviation or airside activities including but not limited to ownership, possession, control, maintenance, engineering, refuelling, baggage handling, operation or use of **Aircraft** or hangar keeper's activities and any liability intended to be covered by any Airport Owners and Operators Liability **Policy**, whether such **Policy** indemnifies the **Insured** for the specific liability incurred or not.

All other terms and conditions of this **Policy** remain unchanged.

7.5 **Marina Operators Liability Exclusion**

The **Insurer(s)** shall not indemnify the **Insured** for any claim in respect of or alleging **Personal Injury** or **Property Damage** arising out of:

1. the **Insured's** marine activities including but not limited to:
 - a) port, marina or terminal operation;
 - b) stevedoring or wharfingering;
 - c) ship refuelling or devanning;
 - d) operation of any dry docks, docks, wharves, slipways or ramps;
 - e) marine engineering, construction or repairing; or
2. any liability that is intended to be covered by any Port/Terminal Owners and Operators, Marine Hull or Marine Protection and Indemnity or similar **Policy** whether such **Policy** indemnifies the **Insured** for the specific liability incurred or not.

All other terms and conditions of this **Policy** remain unchanged.

7.6 **Contract Works Maximum Contract Value Endorsement**

The following Definition is added to the **Policy**.

Contract Works means any work that the **Insured** or a contractor or sub-contractor contracted by the **Insured** is employed to do that involves building, construction or carrying out repairs, alterations, extensions or demolition of any building, structure or infrastructure project carried out in the course of the contract.

The following Exclusion is added to the **Policy**.

Contract Works

The **Insurer(s)** shall not indemnify the **Insured** for any claim in respect of or alleging **Personal Injury** or **Property Damage** arising out of or in connection with any Contract Works, where the total value of the Contract Works exceeds NZ\$5,000,000, regardless of whether the Contract Works are **Insured** or not.

All other terms and conditions of this **Policy** remain unchanged.

7.7 **Indemnity to Ratepayers**

The **Insurer(s)** will indemnify ratepayers and/or residents for their legal liability arising out of:

- a) the use of lawn mowers when mowing public thoroughfares;
- b) garbage receptacles placed on the public thoroughfares; or
- c) the use or presence of shelters, creamstands, rural mail boxes, calf pens, grocery and newspaper and similar structures where placed, erected or maintained upon a public road with the consent of the **Insured**.

Provided also that the **Insurer(s)** liability in respect of this extension shall be limited to NZ\$1,000,000 which is part of and not in addition to the Limit of Indemnity stated in the schedule and an **Excess** of NZ\$10,000 shall apply.

All other terms and conditions of this **Policy** remain unchanged.

7.8 **Co-Insurance Endorsement**

Definition 4.8 (**Insurer(s)**) is deleted and replaced with the following:

Insurer means the following companies who severally agree each for the proportion set against its name to indemnify the **Insured** within the terms of this **Policy** and the liability for each company individually in respect of any Loss or **Costs and Expenses** will be limited to its stated proportion.

<u>Company</u>	<u>Proportion</u>
Berkshire Hathaway Specialty Insurance Company	60%
QBE Insurance (Australia) Limited	40%

All other terms and conditions of this **Policy** remain unchanged.