

UNDERTAKING UNDER SECTION 74A OF THE COMMERCE ACT 1986

DEED dated day of April 2022

GIVEN BY WILSON PARKING NEW ZEALAND LIMITED (*Wilson Parking*)

IN FAVOUR OF NEW ZEALAND COMMERCE COMMISSION (the *Commission*)

1 Introduction

- A On 9 April 2020, Wilson Parking offered, and the Commission accepted on 14 April 2020, a divestment undertaking (the **Undertaking**).
- B The Undertaking was amended on 12 January 2021, 13 April 2021, 31 August 2021, and 29 October 2021, pursuant to agreements between the Commission and Wilson Parking.
- C The Commission and Wilson Parking have agreed that Wilson Parking may further vary the Undertaking to the extent set out in this Deed so that Wilson Parking no longer undertakes to dispose of the lease of the Capital Car Park (the **Fifth Varied Undertaking**).
- D This Fifth Varied Undertaking is a Court enforceable undertaking under section 74A of the Commerce Act 1986 (the **Commerce Act**).
- E This Fifth Varied Undertaking may be made public by the Commission (including on the Commission's website).

2 Fifth Varied Undertaking and Commencement

- 2.1 The Undertaking is varied as set out in this Fifth Varied Undertaking. In all other respects the Undertaking remains as given on 9 April 2020 and as varied on 12 January 2021, 31 August 2021 and 29 October 2021 and they and this Fifth Varied Undertaking can be enforced under section 74C of the Commerce Act.
- 2.2 This Fifth Varied Undertaking comes into effect once accepted by the Commission under section 74A of the Commerce Act.

3 Divestment of Capital Car Park not required

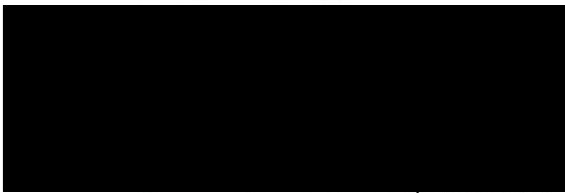
- 3.1 The definition of Divestment Car Parks in clause 3.1 of the Undertaking is amended to:
 - (a) Replace the words "three car parks" with "two car parks"; and
 - (b) delete the words "the Capital Car Park (comprising 659 bays)".

Executed as a deed on behalf of Wilson Parking New Zealand Limited on ____ April 2022



JOSE DA SILVA GROUP CEO & EXECUTIVE DIRECTOR

Print Name and Title



N JOHN CARTER DIRECTOR

Print Name and Title

NEW ZEALAND COMMERCE COMMISSION

WILSON PARKING NEW ZEALAND LIMITED

**FIFTH VARIATION OF SETTLEMENT AGREEMENT AND
UNDERTAKING GIVEN ON 9 APRIL 2020**

APRIL 2022

THIS AGREEMENT dated 29 April 2022

PARTIES

NEW ZEALAND COMMERCE COMMISSION ("Commission")

WILSON PARKING NEW ZEALAND LIMITED ("Wilson Parking")

(collectively "Parties")

INTRODUCTION

- A. The Parties entered into a settlement agreement dated 9 April 2020 ("Agreement") pursuant to which Wilson Parking gave, inter alia, a divestment undertaking to the Commission ("Undertaking"), which was accepted by the Commission on 14 April 2020.
- B. The Agreement and Undertaking were varied on 11 January 2021 and 12 January 2021 respectively and on 13 April 2021, 31 August 2021 and 29 October 2021.
- C. In the Agreement and Undertaking (as varied), Wilson Parking undertook to the Commission under section 74A of the Commerce Act 1986 ("Commerce Act") inter alia to dispose by way of assignment or surrender of the leases of the car parks known as the Athol Crescent Car Park, 37 Boulcott Street Car Park and Capital Car Park.
- D. Wilson Parking has divested the leases of the Athol Crescent Car Park and 37 Boulcott Street Car Park.
- E. The Divestment Period expired on 31 May 2021. As at that date, and despite using its best endeavours in good faith, Wilson Parking had been unable to divest the lease of the Capital Car Park.
- F. On 1 June 2021, pursuant to the Agreement and Undertaking (as varied), a Divestment Agent was appointed to divest the Capital Car Park and a Divestment Supervisor was appointed to supervise the conduct of the business at the Capital Car Park pending divestment.
- G. The Parties varied the Agreement and Undertaking to extend the period within which the Divestment Agent was to divest the Capital Car Park to 30 April 2022.
- H. As at the date of this Agreement, the Divestment Agent, despite using its best endeavours in good faith, has been unable to divest the Capital Car Park.
- I. The Commission has incurred costs in bringing the Proceeding concerning Wilson Parking's acquisition of Capital Car Park (which was discontinued when the Agreement was signed), monitoring compliance with the Undertaking, considering divestment proposals and agreeing variations to the Agreement and Undertaking.
- J. The Parties are agreed that the circumstances that existed at the time of the Heads of Agreement (settling the Proceeding) and the Agreement and Undertaking have materially altered (including as a consequence of the impact of the COVID – 19 pandemic) and that a divestment of the Capital Car Park lease is unlikely to be possible in the foreseeable future.
- K. The Parties have therefore agreed to vary the Agreement and the Undertaking to discharge Wilson Parking's undertaking to divest the Capital Car Park and for Wilson Parking to make a further contribution of \$100,000 towards the Commission's costs.

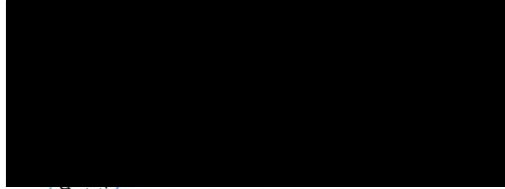
AGREEMENT

1. The Parties agree to vary the Agreement (as varied) only to the extent necessary to reflect the variations to the Undertaking given by Wilson Parking set out in clause 2 below.
2. The Parties agree to vary the Undertaking (as varied) given by Wilson Parking, to reflect that Wilson Parking is no longer required to dispose of the lease of the Capital Car Park and the Undertaking is varied so as not to apply to the Capital Car Park, as follows:
 - (a) The definition of Divestment Car Parks in clause 3.1 of the Undertaking is amended to:
 - (i) Replace the words "three car parks" with "two car parks"; and
 - (ii) delete the words "the Capital Car Park (comprising 659 bays)".
3. For the avoidance of doubt, the Parties confirm that, following execution of this Agreement and the provision and acceptance of the varied Undertaking, there being no further Divestment Car Parks:
 - (a) None of the obligations in the Undertaking will continue to apply to the Capital Car Park.
 - (b) Schedule One to the Undertaking ceases to apply.
 - (c) Wilson Parking can:
 - (i) Pursuant to clause 10 of Schedule One of the Undertaking, terminate the appointment of each of the Divestment Supervisor and Divestment Agent; and
 - (ii) Pursuant to clauses 8, 9 and 10 of Schedule One of the Undertaking, revoke the powers of attorney granted to the Divestment Agent and to the Divestment Supervisor.
4. Wilson Parking will, within 10 Days of the date of this Agreement, pay to the Commission a contribution of \$100,000 (excluding GST, if any) towards the Commission's costs in relation to bringing the Proceeding concerning Wilson Parking's acquisition of Capital Car Park, and the performance of the Agreement and Undertaking.
5. The Parties may enter into this Agreement and/or provide an Undertaking by signing a number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single document. A Party may execute this Agreement and/or Wilson Parking may provide an Undertaking by one signatory executing one counterpart and another signatory executing a different counterpart. A Party's delivery of a signed pdf counterpart by email will have the same legal effect as that Party's delivery of a signed original counterpart.



SIGNATURES

**SIGNED by and on behalf of NEW
ZEALAND COMMERCE COMMISSION:**

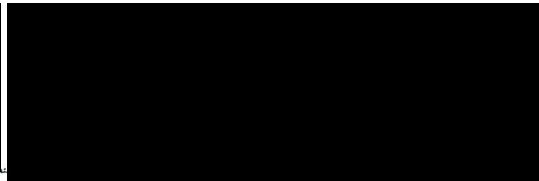


Derek Johnston (Commissioner)
New Zealand Commerce Commission

**SIGNED by and on behalf of WILSON
PARKING NEW ZEALAND LIMITED:**



JOSE DA SILVA
Name of director



N JOHN CARTER
Name of director