

Project Agreement with respect to Wellington Northern Corridor Road of National Significance

Kāpiti Expressway: Proposed Cycleway/Walkway - Queen Elizabeth Park

NZ Transport Agency

Kāpiti Coast District Council

Wellington Regional Council

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**PROJECT AGREEMENT IN RESPECT OF THE QUEEN ELIZABETH PARK
SHARED CYCLEWAY / WALKWAY**

Date: 13 day of November 2012

PARTIES

NZ Transport Agency a Crown Entity established under section 93 of the Land Transport Management Act 2003, and its successors at law (NZTA).

Wellington Regional Council a local authority and its successors at law (WRC)

Kāpiti Coast District Council a territorial local authority, and its successors at law (KCDC).

BACKGROUND

- A The NZTA wishes to construct, operate and maintain the MacKays to Peka Peka Section (Kāpiti Expressway - *the Project*) of the Wellington Northern Corridor Road of National Significance (Wellington RoNS).
- B The NZTA lodged a Notice of Requirement and associated resource consent applications for the Project with the Environmental Protection Authority (EPA) on 20 April 2012.
- C The Kāpiti Expressway forms an approximately 16 kilometre length section of the Wellington RoNS. The lodged application covers the improvements planned for the State highway corridor from Raumati (just south of Poplar Avenue) at the southern end, continuing through Paraparaumu and Waikanae to Peka Peka in the north. Other improvements on the section of State highway 1 from the Raumati Straight to MacKays Crossing will be undertaken within the existing State highway 1 designation.
- D The designation sought in the Notice of Requirement for the Kāpiti Expressway predominantly follows the path of the previous Sandhills Motorway designation, and more recently, the Western Link Road designation, and will deliver:
- a four lane highway with four full or half interchanges at Poplar Avenue, Kāpiti Road, Te Moana Road, and Peka Peka Road,
 - construction of new local roads and access roads to maintain local connectivity and
 - an additional crossing of the Waikanae River.
- E The Proposed Cycleway / Walkway does not form part of the designation sought by the MacKays to Peka Peka Notice of Requirement.
- F Queen Elizabeth Park (the Park) is owned by the Crown and classified as a recreation reserve under the Reserves Act 1977 (gazetted 7 April 2009).



- G. WRC has been appointed to control and manage the Park under section 28 of the Reserves Act 1977 (by gazette notice dated 14 August 1990) and has the delegated authority to enter into this Agreement.
- H. KCDC has identified a commuter cycle route between Paekākāriki and Raumati South, within its transport network hierarchy.
- I. This Agreement records the parties' respective roles and obligations in relation to a shared cycleway/walkway through Queen Elizabeth Park between Poplar Avenue and Paekakariki (*Proposed Cycleway/Walkway*).

THE PARTIES AGREE as follows:

1 **Purpose of Agreement**

1.1 This Agreement records:

- a) The NZTA's obligations in relation to designing and constructing the Proposed Cycleway/Walkway,
- b) WRC's role in the design of the Proposed Cycleway/Walkway,
- c) The process to finalise the design of the Proposed Cycleway/Walkway,
- d) WRC's obligations to obtain statutory authorisations for the Proposed Cycleway/Walkway if any are required,
- e) KCDC's role in the connection of the Proposed Cycleway/Walkway through the Park to the Kāpiti Coast District cycleway/walkway network; and
- f) Who will be responsible for the maintenance of the Proposed Cycleway/Walkway.

2 **Roles and Responsibilities of the Parties**

2.1 The parties recognise that the NZTA, KCDC and WRC have obligations:

- a) Arising from their respective statutory roles and responsibilities;
- b) In the case of the NZTA, to the Minister of Transport;
- c) In the case of the KCDC, to the ratepayers and residents of Kapiti Coast District;
- d) In the case of WRC, to the ratepayers and residents of the Wellington Region and, through its role in managing Queen Elizabeth Park to the Minister of Conservation and under the Reserves Act 1977.



3 **Conditional Agreement**

- 3.1 The parties' obligations under this Agreement are conditional on:
- a) Resource Management Act 1991 (*RMA*) approvals required for the Kāpiti Expressway being granted; and
 - b) The NZTA deciding, in its sole discretion, to proceed with construction of the Kāpiti Expressway.
- 3.2 This Agreement will cease to have effect if the Project does not proceed within 5 years of the date that all of the parties have signed this Agreement.
- 3.3 The parties agree to carry out any actions or make any decisions required under this Agreement in a timely and reasonable manner.

4 **Design, consenting and construction of the Proposed Cycleway/Walkway**

- 4.1 The parties agree that:
- a) the primary function of the Proposed Cycleway/Walkway is to provide a safe alternative to Raumati Straight for cycling and walking,
 - b) the provision of the Proposed Cycleway/Walkway would improve connectivity by providing an off-road commuting alternative for cyclists between the communities of Paekakariki and Raumati South.
- 4.2 The WRC shall develop indicative design options for the Proposed Cycleway/Walkway, in accordance with the "easiest" grade as set out in the New Zealand Cycle Trail Design Guide (refer to **Attachment One** for an indicative location for the Proposed Cycleway/Walkway).
- 4.3 Subject to clauses 3.1, 3.2, 4.7 and 4.8, NZTA agrees to meet the costs of preparing the final design and constructing the Proposed Cycleway/Walkway up to a maximum amount of \$450,000 (excluding GST).
- 4.4 Within 12 months of the parties signing this Agreement, the WRC and the NZTA, in consultation with KCDC shall agree on which of the indicative design options they prefer as the potential final design for the Proposed Cycleway/Walkway.
- 4.5 In consultation with WRC and KCDC, the NZTA will prepare a detailed design for the preferred option for the Proposed Cycleway/Walkway.
- 4.6 Following the preparation of the detailed design the NZTA will undertake an assessment of:
- a) The costs incurred in the detailed design process; and
 - b) The estimated costs of constructing the Proposed Cycleway/Walkway in accordance with the detailed design.



- 4.7 In the event that the NZTA determines that the total costs under clause 4.6 a) and b) above exceed \$450,000 (excluding GST), it will notify WRC of this in writing.
- 4.8 The WRC and NZTA, in consultation with KCDC, shall consider options to enable the preferred option to be delivered within the budget of \$450,000 (excluding GST) including (but not limited to) the consideration of:
- a) Alternative design standards
 - b) Staging the project; and/or
 - c) Seeking funding from sources other than NZTA.
- 4.9 If following the process under clause 4.8 the preferred option cannot be delivered within the budget of \$450,000 (excluding GST) then the WRC and NZTA shall revisit the indicative design options developed by WRC.
- 4.10 WRC shall be responsible at its own cost for seeking all necessary statutory authorisations for the Proposed Cycleway/Walkway that the parties agree will be pursued following the process set out in clauses 4.4 to 4.9.
- 4.11 The NZTA will be under no obligation to construct the Proposed Cycleway/Walkway if:
- a) The NZTA and WRC cannot agree to a preferred design option for the Proposed Cycleway/Walkway within 18 months of signing this Agreement; or
 - b) WRC fails to obtain all necessary statutory authorisations necessary for the Proposed Cycleway/Walkway (as shown in the detailed design prepared under clause 4.5) to be constructed and operational within 3 years of the date of all of the parties having signed this Agreement
- 4.12 If all necessary statutory authorisations for the Proposed Cycleway/Walkway (as shown in the detailed design prepared under clause 4.5) are obtained by WRC then the NZTA will construct the Proposed Cycleway/Walkway in accordance with those statutory authorisations.
- 4.13 WRC agrees (subject to any conditions of statutory authorisations or any lease or other agreement that affects the Park) to the NZTA, its employees, contractors, consultants and invitees, entering onto the Park, including with materials, plant and machinery, in order to undertake all works necessary to construct the Proposed Cycleway/Walkway, including any enabling works.



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5 Management and Maintenance of Cycleway/Walkway

- 5.1 The Proposed Cycleway/Walkway is considered to be an improvement to the Park and once completed will be the responsibility of the body which has responsibility for the control and management of the Park, being WRC who manage and control the Park on behalf of the Department of Conservation.
- 5.2 The WRC shall take into account in its management of the Park that the Proposed Cycleway/Walkway will perform a primary function of providing an alternative to Raumati Straight for cyclists and pedestrians. The WRC shall consult with the NZTA before making any decisions regarding the use and/or closure of the Proposed Cycleway/Walkway to ensure that there continues to be a safe alternative to the Raumati Straight for cyclists and pedestrians.
- 5.2 WRC and the Crown record, and KCDC and NZTA acknowledge, that the Proposed Cycleway/Walkway is to be part of the Park and that neither WRC nor the Crown intends to dedicate the Proposed Cycleway/Walkway as a public highway.
- 5.3 In consideration for the NZTA's obligations under this Agreement, WRC will be responsible for the maintenance of the Proposed Cycleway/Walkway.
- 5.4 WRC may apply to the NZTA for a contribution towards the costs of maintaining the Proposed Cycleway/Walkway under the Land Transport Management Act 2003 (LTMA). The parties acknowledge that any such application will be dealt with by the NZTA in accordance with its normal processes under the LTMA.

6 Connections to KCDC Cycle Paths

- 6.1 WRC and NZTA shall consult with KCDC in deciding what is the best approach route and connection at the southern and northern ends of the Proposed Cycleway/Walkway route. In doing so, the NZTA and WRC shall consider the following matters:
- a) The need in the northern connection to minimise impacts on the wetter areas, reduce safety issues at the proposed Poplar Avenue interchange and maximise access from the residential area;
 - b) The potential to link with other access routes at the southern end.

7 General

- 7.1 The parties agree to use best endeavours and work in good faith to enable construction of the Proposed Cycleway/Walkway to be achieved as expeditiously as is reasonably practicable.



8 **Force majeure**

8.1 Neither party shall be liable for any failure or delay in performance under this Agreement to the extent that such failures or delays are proximately caused by conditions beyond the parties' reasonable control which the party claiming the benefit of this force majeure clause is unable to overcome by the exercise of reasonable diligence and at a reasonable cost; including but without limitation:

- a) An Act of God, fire, earthquake, storm, flood or landslide
- b) Explosion, public mains electrical supply failure or nuclear accident
- c) Sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not,

but does not include any event which the party claiming the benefit of this force majeure clause could have prevented or overcome by exercising a standard of reasonable care or reasonable endeavours.

9 **Dispute Resolution**

- 9.1 If any dispute arises under this Agreement, the parties agree to comply with the following provisions of this clause before commencing any other form of dispute resolution (including court proceedings).
- 9.2 Any party claiming that a dispute has arisen under this Agreement between the parties shall give written notice to the other parties of the dispute and require all of the parties' representatives to meet together to attempt to settle the dispute. The other parties shall, upon receipt of such notice, promptly ensure that their representatives attend such meeting and attempt to resolve the dispute.
- 9.3 The parties shall use their reasonable endeavours to ensure that the parties' representatives who attend a meeting under clause 8.2 shall, within 10 business days after the giving of the notice, seek to resolve the dispute.
- 9.4 The parties shall within a further period of 10 business days (or within such longer period as the representatives may agree is appropriate), use their reasonable endeavours to agree, in good faith, on a process for resolving the whole or part of the dispute through means other than litigation or arbitration (including, without limitation, further negotiations, mediation, conciliation or independent expert determination).
- 9.5 In the unlikely event that agreement is not reached through escalation, the parties shall agree to arbitration on the following basis:
- a) The arbitration shall be conducted by a sole arbitrator in New Zealand pursuant to the Arbitration Act 1996;



- b) The parties' respective responsibilities for the costs of the arbitration shall be determined by the arbitrator; and
- c) The parties shall be bound by the decision of the arbitrator.

Provided always that the arbitrator shall have no jurisdiction in relation to any dispute that concerns the operation (including, without limitation, the exercise or non-exercise) of any statutory function, obligation or power of any of the NZTA, WRC or KCDC.

- 9.6 The parties acknowledge that any negotiated or arbitrated outcome or outcome arising as a result of an independent expert determination will need to be consistent with any conditions imposed on any designations, resource consents or other statutory authorisations obtained for either the Kapiti Expressway or the Proposed Cycleway/Expressway and with each of the parties' statutory functions, obligations and powers.

10 Notices

- 10.1 Any notice, demand, consent or other communication (*Notice*) given or made under this Agreement:
- a) Must be in writing and signed by a person duly authorised by the sender
 - b) Must either be delivered to the intended recipient by post or by hand or fax to the address or fax number below of the address or fax number last notified by the intended recipient to the sender



- 10.2 Unless and until the relevant party gives notice of different contact details the parties contact details for the purposes of this Agreement are:

NZTA -State highway Manager – Wellington
PO Box 5084, Lambton Quay
Wellington 6145
Fax: 64 4 894 3305

WRC – Chief Executive
Wellington Regional Council
PO Box 11646
Wellington 6142

KCDC: Chief Executive
Kāpiti Coast District Council
Private Bag 60601
Paraparaumu 5254

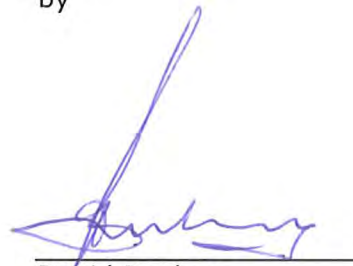
Signed on behalf of the
NEW ZEALAND TRANSPORT AGENCY
by


Rod James
State Highway Manager, Wellington
acting pursuant to delegated authority
under the Crown Entities Act 2004

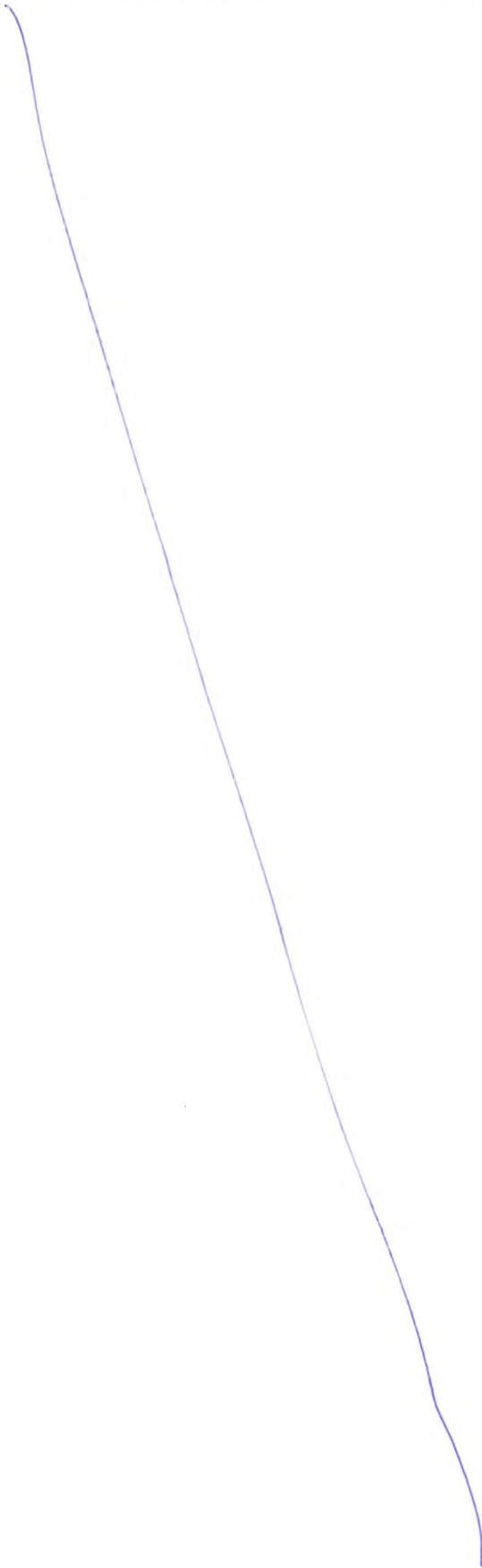
Signed on behalf of the
KAPITI COAST DISTRICT COUNCIL
by


Pat Dougherty
Chief Executive Officer
Lyndon Hammond,
Planning and Investment Manager,
Wellington
acting pursuant to delegated authority
under the Crown Entities Act 2004

Signed on behalf of the
WELLINGTON REGIONAL COUNCIL
by


David Benham
Chief Executive

Attachment One – Indicative Location of Proposed Cycleway/Walkway



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236

