

Project Agreement with respect to Kāpiti Expressway:

Application of Open Graded Porous Asphalt

NZ Transport Agency (NZTA)

Kāpiti Coast District Council (KCDC)

PROJECT AGREEMENT WITH RESPECT TO THE KĀPITI EXPRESSWAY

Date: this^{7th}.....day of August 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).

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

DEFINITIONS

Protected premises and facilities (PPFs) means:

- Buildings used for residential activities
- Marae
- Spaces in buildings used for overnight medical care
- Teaching areas and sleeping rooms in educational facilities and
- Playgrounds that are part of such educational facilities that are located within 20m of buildings used for teaching purposes,

but does not include:

- Residential accommodation in buildings which predominantly have other uses, such as commercial or industrial premises, or
- Garages and ancillary buildings.

Noise sensitive corridor means that area of land running parallel to the section of the Kāpiti Expressway within the area bounded by the black line on the attached plan in Appendix One; being land within 200 metres of the road edge of the Kāpiti Expressway.

Reverse sensitivity effects in the context of this Agreement means the vulnerability of the Kāpiti Expressway to objection from an owner or occupier of a PPF in relation to noise effects.

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 Kāpiti Expressway forms an approximately 16 kilometre length section of the Wellington RoNS. It covers the improvements planned for the State highway corridor from Raumati at the southern end, continuing through Paraparaumu and Waikanae, to Peka Peka in the north.

- C The Kāpiti Expressway will predominantly follow the path of the previous but withdrawn Sandhills Motorway designation and will deliver: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 respectively,
 - construction of new local roads and access roads to maintain local connectivity, and
 - an additional crossing of the Waikanae River.
- D The NZTA lodged a Notice of Requirement and applications for resource consent with the Environmental Protection Authority (EPA) on 20 April 2012. The mitigation options for operational noise have been assessed in accordance with NZS 6806:2010, the *New Zealand Standard – Acoustics – Road traffic noise – New and altered road*, and noise mitigation is proposed in a number of areas, primarily where the Project is in close proximity to existing residential areas.
- E A key mitigation measure is the application of open graded porous asphalt (OGPA) on the Kāpiti Expressway that passes through areas where there is residential development. OGPA will be applied on the whole Kāpiti Expressway with the exception of two areas being:
- a) Chainage 15400 to 17000; and
 - b) An approximately 1,600 metre stretch of the Expressway as indicated in green on the attached plan being chainage 13000 to 14600.
- F KCDC agrees that the NZTA need not seal the section of the Kāpiti Expressway identified in E b) above with OGPA at the time the Kāpiti Expressway is originally constructed. This section of the Kāpiti Expressway runs through an area identified for future residential development in the Kāpiti Coast District Plan in plan changes 79 and 80. KCDC has agreed to this on the basis that while identified as an area where there will be residential development, this development is unlikely to occur until after initial construction of the Kāpiti Expressway.
- G NZTA's and KCDC's view is that this should only be a deferral of the application of OGPA to this section of the Kāpiti Expressway and that OGPA should be introduced later when certain trigger events occur.
- H In the case of plan change 79 (Waikanae North Eco Hamlet Area), KCDC is currently undertaking a structure planning exercise. The proposed structure plan incorporates the structure plan prepared for the Ngarara Precinct.
- I In the case of plan change 80 (Ngarara Zone), development cannot proceed until land use consents have been granted for Neighbourhood Development Areas along with subdivision consent. Detailed Neighbourhood Development Plans are to be developed and approved as part of the Neighbourhood Development Area consenting process. Proposed dwellings

that are in accordance with a KCDC approved Neighbourhood Development Plan and permitted activity standards are permitted activities and therefore once a Neighbourhood Development Plan is approved can proceed without resource consent.

THE PARTIES AGREE as follows:

1. Purpose of Agreement

- 1.1 This Agreement sets out a process to enable the parties to determine when OGPA should be used in response to future land use development adjoining that part of the Kāpiti Expressway identified in green on the attached plan in Appendix One.

2 Parties' Obligations

- 2.1 The parties recognise that the NZTA and KCDC have functions and obligations:
- a) Arising from their respective statutory roles and responsibilities;
 - b) In the case of the NZTA, including, but not limited to, under the Land Transport Management Act 2003 (*LTMA*) and the Government Roadway Powers Act 1989; and
 - c) In the case of the KCDC, to the ratepayers and residents of Kapiti District.
- 2.2 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.
- 2.3 The NZTA's obligations under this Agreement are subject to NZTA's statutory obligations and any conditions imposed on any designation and resource consents granted with respect to the Kāpiti Expressway.
- 2.4 This Agreement will cease to have effect if construction of the Kāpiti Expressway does not commence within 12 years of both parties having signed this Agreement.
- 2.5 The parties agree to carry out any actions or make any decisions required under this Agreement in a timely and reasonable manner.

3 Noise

- 3.1 The parties recognise the importance of avoiding, remedying and mitigating:
- a) The noise effects from vehicles travelling along the Kāpiti Expressway on existing adjoining PPFs.
 - b) The reverse sensitivity effects of PPFs establishing in the vicinity of the Kāpiti Expressway.
- 3.2 The parties agree that the provision of OGPA road surface on the Kāpiti Expressway is an appropriate base level treatment of the road surface through existing residential areas and is part of an overall proposed package of noise mitigation methods that addresses effects of noise from the Kāpiti Expressway on existing adjacent land uses.
- 3.3 The parties agree that OGPA will not be provided initially on the section of the Kāpiti Expressway that adjoins the area zoned for low impact urban development north of Te Moana Road but where actual residential settlement has not yet happened (being the section of Expressway identified in green on the attached plan in Appendix One).
- 3.4 KCDC agrees that, subject to any final decision with respect to the Notice of Requirement and applications for resource consent for the Project, it will use its best endeavours to ensure that there is appropriate provision for the management of building design and placement and location of PPFs in the noise sensitive corridor through any District Plan review and consenting processes, irrespective of when OGPA is applied.

4 Triggers for Timing of Use of Open Graded Porous Asphalt

- 4.1 The parties agree that the following tests shall apply in determining when OGPA should be used when resealing the section of Kāpiti Expressway identified in green on the attached plan in Appendix One (being chainage 13000 to 14600).

Test 1: Maintenance Due

- 4.2 The NZTA anticipates that resealing of the Kāpiti Expressway will be required approximately 8 years post construction of the Kapiti Expressway.
- 4.3 The parties agree that there shall be a presumption that an OGPA surface should be applied at the time of the first reseal post construction of the section of the Kāpiti Expressway shown coloured green on the attached plan (being chainage 13000 to 14600) in Appendix One unless at the time of that first reseal:
- a) The trigger in clause 4.5 has not been met, and
 - b) All PPFs in the section of the noise sensitive area (being that area within the black line identified on the attached plan in Appendix One) immediately adjoining that section of the Kāpiti Expressway

coloured green that are within 200m of the Kāpiti Expressway and that did not exist at the date of this Agreement are designed and located in compliance with the NZTA's Reverse Sensitivity Guidelines,

in which case the application of OGPA need not be applied at that first reseal.

- 4.4 The NZTA shall advise the KCDC of its intention to reseal the Kāpiti Expressway, at which point KCDC shall advise the NZTA of the likely future date at which the trigger identified in clause 4.5 is likely to be met.

Test 2: Settlement Change Threshold

- 4.5 The parties agree that an OGPA surface should be applied to that section of the Kāpiti Expressway identified in green on the attached plan in Appendix One within twelve months of KCDC having advised NZTA in writing that all building consents have been issued in relation to the development of PPFs in accordance with an approved Neighbourhood Development Plan for any land subject to Plan Change 80 to the Kāpiti Coast District Plan.
- 4.6 For the avoidance of doubt nothing in this Agreement prevents the NZTA in its sole discretion from applying OGPA to all or any part(s) of the section of the Kāpiti Expressway coloured green on the attached plan in Appendix One if it considers it appropriate, and chooses to do so even if it is not required to do so under this Agreement.

5 Force Majeure clause

- 5.1 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.



6 Dispute Resolution

- 6.1 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).
- 6.2 Any party claiming that a dispute has arisen under this Agreement between the parties shall give written notice to the others of the dispute and require representatives of all 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.
- 6.3 The parties shall use their reasonable endeavours to ensure that the parties representatives who attend a meeting under clause 6.2 shall, within 10 business days after the giving of the notice, seek to resolve the dispute.
- 6.4 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).
- 6.5 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 either the NZTA or KCDC.

- 6.6 The parties acknowledge that any negotiated or arbitrated outcome will need to be consistent with any conditions imposed on any designations, resource consents or other statutory authorisations obtained for the Project and with the statutory functions, obligations and powers of the NZTA and KCDC.

7 Notices

7.1 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 or the address or fax number last notified by the intended recipient to the sender.

7.2 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
NZ Transport Agency
PO Box 5084, Lambton Quay
Wellington 6145
Fax: 64 4 894 3305


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

Signed on behalf of the
NZ TRANSPORT AGENCY
by



Rod James
State Highway Manager, Wellington

Signed on behalf of the
KĀPITI COAST DISTRICT COUNCIL
by

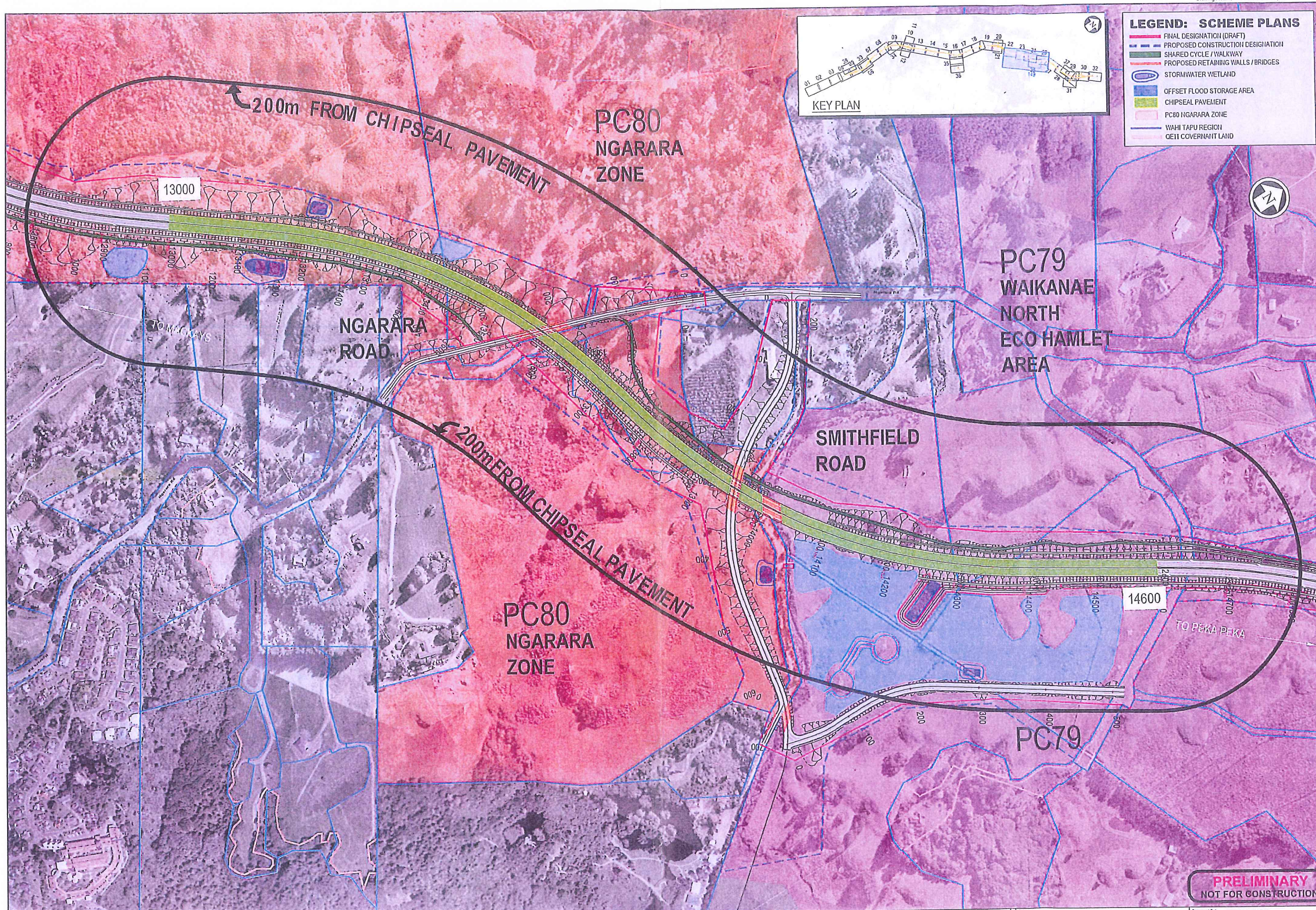


Patrick Dougherty
Chief Executive Officer

Appendix One:

Proposed Kāpiti Expressway Chipseal 200m Zone Plan





PRELIMINARY
NOT FOR CONSTRUCTION

| | | | |
|------|-----------------|------|----------|
| P-02 | FOR PRELIMINARY | MISE | 05.07.12 |
| P-01 | FOR PRELIMINARY | WZC | 19.04.12 |
| No. | Revision | By | CHK |
| | | Appd | Date |

| | | | | |
|---------------------|----------|-----|----------|--------------|
| Original Scale (A1) | Design | WZC | 19.04.12 | Approved For |
| 1:2500 | Drawn | | | |
| | Dwg. No. | | | |
| | Drawn By | | | |
| | Checked | | | |
| | Scale | | | |
| | 1:5000 | | | |

NZ TRANSPORT AGENCY

Mackays to Peka Peka

SH1 MACKAYS TO PEKA PEKA EXPRESSWAY
RP 1012/0.00 TO 1023/5.00

PROPOSED EXPRESSWAY
CHIPSEAL 200m ZONE
PLAN

| | | | |
|--------------|--------------|------|------|
| Document No. | M2PP-TOC-SKT | Rev. | |
| Drawing No. | CV-GE-200 | Rev. | P-02 |

