

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

Kāpiti Expressway: Road Linkages at Nga Manu

NZ Transport Agency

Kāpiti Coast District Council

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PROJECT AGREEMENT IN RESPECT OF ROAD LINKAGES AT NGA MANU

Date: 13 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).

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 (*the Expressway*) 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 Expressway with the Environmental Protection Authority (EPA) on 20 April 2012.
- C The 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 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 Kāpiti Coast District Plan has set out requirements for an east/ west connection between the present State Highway 1 in the Waikanae North area and Ngarara Road. This route is indicative only and does not provide for detailed design of access. The relevant District Plan maps are attached at Appendix 1.

- F NZTA must provide for access for Nga Manu to Ngarara Road as a result of the planned Expressway severing Nga Manu's current private access and must take into account impacts of the Expressway on planned roading networks and connectivity. NZTA has identified a direct route by which this can be achieved and has identified estimated costs. This is referred to as the '*direct route*' in the remainder of this Agreement. This is attached at Appendix 2.
- G NZTA has identified in the Expressway application a proposed designation based in part on accommodating an alternative alignment or design to the direct route which would ensure future connection to SH1 as set out in the District Plan. This alternative alignment and design is referred to as the '*Council preferred route*' in the remainder of this Agreement. The design is attached at Appendix 3.

THE PARTIES AGREE as follows:

1. Purpose of Agreement

1.1 This Agreement records that:

- a) NZTA will design and construct the Nga Manu direct access route, if Council does not approve the additional funding for the Council-preferred Nga Manu access route;
- b) KCDC will decide whether to fund the Council-preferred Nga Manu access route and will confirm its contribution of the additional funding to give effect to the design and construction of the Council-preferred route before 1 July 2013;
- c) If KCDC provide the additional funding, NZTA will provide the funding that would otherwise have been required to complete the design and to construct the direct Nga Manu route and will construct the Council-preferred route.

2 Roles and Responsibilities of the Parties

2.1 The parties recognise that the NZTA and KCDC 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.



3. Conditional Agreement

- 3.1 The parties' obligations under this Agreement are conditional on:
- a) Resource Management Act 1991 (RMA) approvals required for the Expressway being granted; and
 - b) The NZTA deciding, in its sole discretion, to proceed with construction of the Expressway.
- 3.2 This Agreement will cease to have effect if the construction of the Expressway 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 and make any decisions required under this Agreement in a timely and reasonable manner.

4 Design and Costing of the Proposed Access Route to Nga Manu

- 4.1 The parties agree that :
- a) If KCDC confirms their commitment to fund the difference in cost between the remaining design and construction of the Council preferred Nga Manu access route and the direct route, the Alliance will complete detailed design and costing of the Council preferred Nga Manu access route instead of the direct route, subject to clause 6.1;
 - b) The Alliance will construct the Council preferred Nga Manu access route, subject to clause 4.1.(a).

5 Timeline and Process for Confirming Construction of the Preferred Route.

- 5.1 The Alliance has completed *specimen design* and an estimate of costs of the direct Nga Manu access route ;
- 5.2 The Alliance will also provide a specimen design of the Council preferred Nga Manu access route and an estimate of the cost of construction;
- 5.3 KCDC will confirm if it wishes to proceed with the Council preferred route and that specific funding is allocated for that purpose via the 2013/14 Annual Plan process which will provide a formal approved position by 1 July 2013.
- 5.4 NZTA will keep KCDC advised of the Expressway construction programme.



6 Funding of the Preferred Route

- 6.1 NZTA will provide funding for the Council preferred Nga Manu access route to the amount that would have otherwise have been required to complete design and construction of the direct Nga Manu route as identified under Clause 4.1.
- 6.2 KCDC will provide any remaining funding for the design and construction of the Council preferred Nga Manu route, subject to approval in Clause 5.3, with the payment timetable for that funding to be agreed within 1 month of the Project Alliance Agreement taking effect or by 31 July 2013, whichever is the later.

7 General

- 7.1 The parties agree to use best endeavours and work in good faith to enable construction of the Council preferred Nga Manu route, subject to clause 5.3.

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 9.2 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 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, and



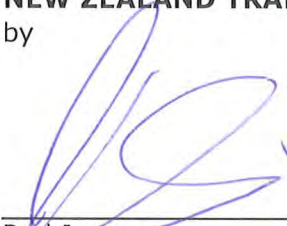
- b) Must either be delivered to the intended recipient by post or by hand or fax to the address or fax number below of the address or fax number last notified by the intended recipient to the sender

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

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



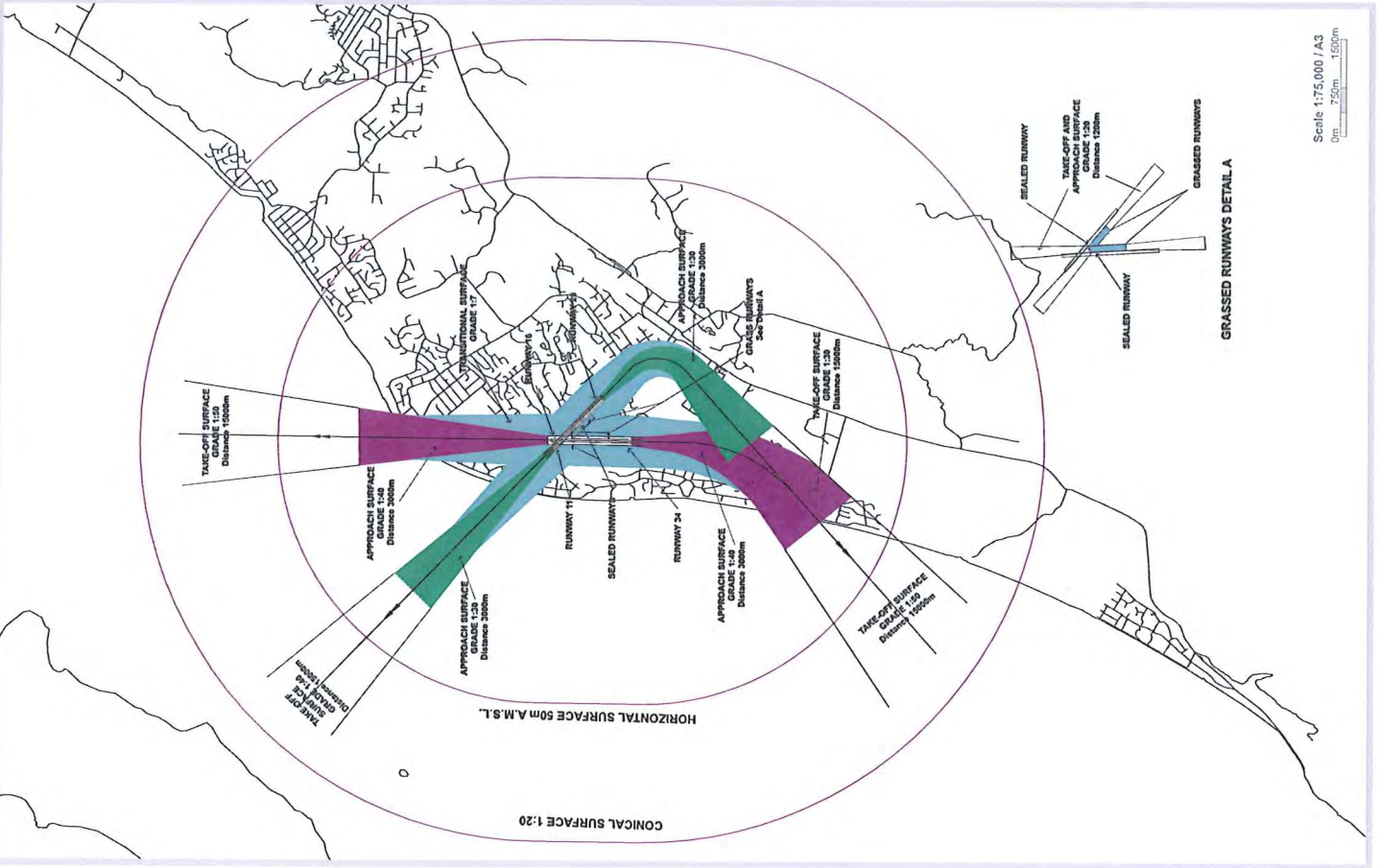
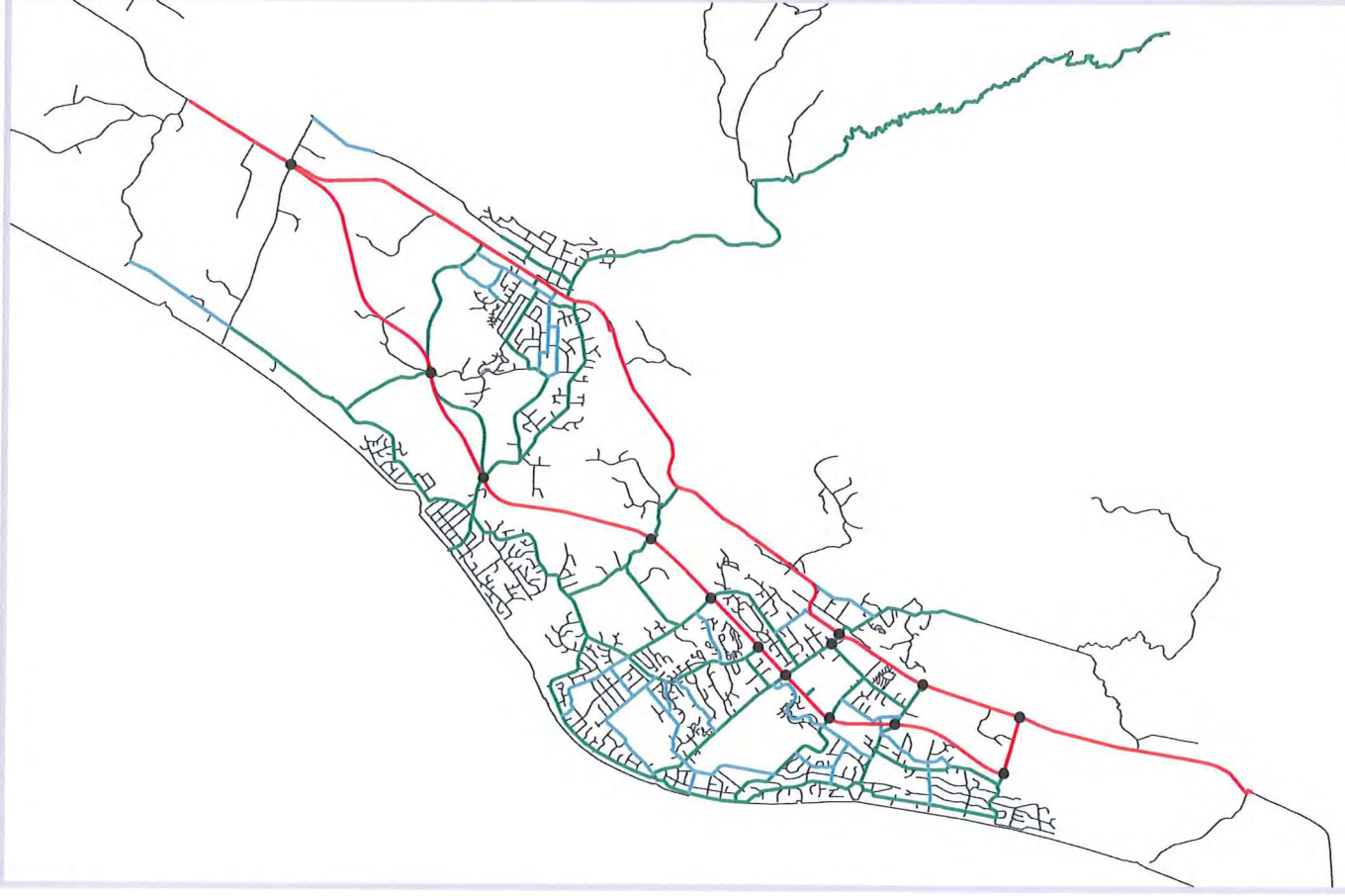
Pat Dougherty
Chief Executive Officer



Appendix One:

District Plan Roading Hierarchy Map

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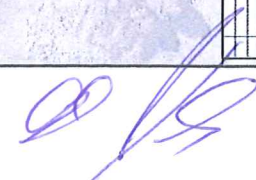


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Appendix Two:

Nga Manu Access Direct Route – Indicative Design

A handwritten signature in blue ink, consisting of stylized, cursive letters, located in the bottom right corner of the page.

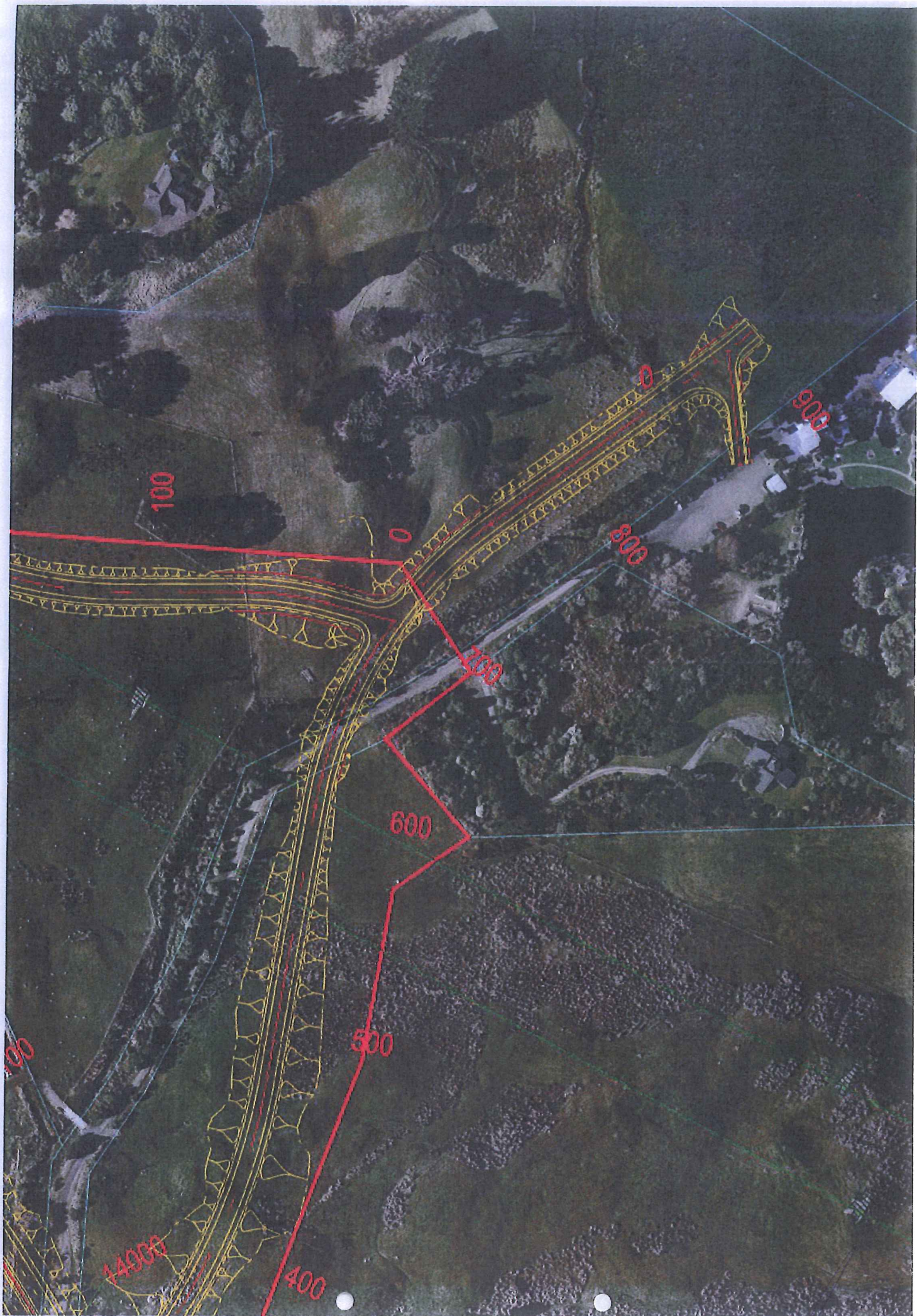


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Appendix Three:

Nga Manu Access Council Preferred Route – Indicative Design

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