

Project Agreement with respect to Kāpiti Expressway:

East/West Connectivity

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*).

BACKGROUND

- A The NZTA wishes to construct, operate and maintain the MacKays to Peka Peka Section (*Kāpiti Expressway*) 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- C The Kāpiti Expressway will predominantly follow the path of the previous but now withdrawn Sandhills Motorway designation and will deliver: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 address local connectivity and
 - an additional crossing of the Waikanae River.
- D The NZTA lodged a Notice of Requirement and associated resource consent applications with the Environmental Protection Authority (*EPA*) on 20 April 2012.
- E The KCDC has longer term growth management aspirations for the Kapiti District and may undertake structure planning exercises in relation to shaping growth patterns for the District.
- F The NZTA and KCDC are members of the Alliance, who are responsible for the design and delivery of the Kāpiti Expressway. The parties agreed to a series of objectives as the basis for advancing consideration of the Expressway under the Alliance structure. These objectives include:

Community severance is to be avoided, mitigated or minimised as far as reasonably practicable consistent with local planning documents including KCDC Community Outcomes, Development Management Strategy, Sustainable Transport Strategy, and Cycle, Walkways and Bridleways Strategy



KCDC's views

- G KCDC holds the view that good east/ west connectivity is a fundamental aspect of managing the effects of the Kāpiti Expressway within the urban area, and that planned or existing but unformed connections are a fundamental aspect of this.
- H KCDC has identified three east/west crossing points which it considers to be either desirable in principle, or where actual requirements are already established, but where it considers that construction can be deferred for a period of time (see Appendix One for plans of indicative east/west crossings). These are:
- Leinster Avenue, Raumati South which is zoned Rural but does not have a current structure plan nor a plan change associated with the surrounding land.
 - Ferndale Road to Te Moana Road which has operative plan changes 79 and 80 associated with the surrounding land, with a connection clearly marked in the operative District Plan as part of the Ngarara Structure Plan. A further planning stage relevant to this Agreement is the requirement for Neighbourhood Development Plans.
 - Ngarara Road (north) which is a paper road crossing with an existing zoning of Rural but does not have a current structure plan nor plan change associated with the surrounding land.
- I KCDC recognises that in some cases there is no immediate necessity for the east/west crossings but is of the view that in principle the ultimate provision of these connections is fundamental to giving effect to the objectives agreed to by the parties in the context of the Alliance relationship.

The parties respective views re Leinster Avenue/Raumati South

- J NZTA is of the view that there is not yet a proven need for a future crossing at Leinster Avenue, Raumati South at this time but is prepared to work with KCDC in the context of a future structure planning and/or district plan change process to address such a need, if proven, in a timely manner. NZTA is of the view that a structure planning process is the most useful mechanism for addressing the issue of east/west connectivity for any future development at this location.
- K KCDC is of the view that maintenance of an east/west connection at Leinster Avenue, Raumati South for all or some modes is desirable for wider community connectivity and is prepared to work with NZTA in the context of future structure planning and/or a district plan change to address this issue provided this is done in the context of good urban form development. It agrees to do so in a timely manner.

The parties' respective views - Ferndale Avenue Vicinity

- L KCDC is of the view that the need for a crossing at or near Ferndale Road is a proven necessity and that a proposed connection is clearly set out in the Ngarara Structure Plan in the operative District Plan. KCDC is prepared to address the form, detailed location and timing of the crossing at or near Ferndale Road crossing in a timely manner and in the context of the wider low impact urban development area which it addresses.
- M The NZTA is of the view that a crossing at or near Ferndale Road may or may not be necessary when the land in this area is developed in future. NZTA is prepared to work with KCDC in the context of a future structure planning and/or a district plan change process to identify whether or not there is such a need and if so, to seek to address any such identified need in a timely manner.

The parties' respective positions Ngarara Road (north)

- N KCDC is of the view that:
 - a) the capacity to ensure connectivity via the existing paper road must be retained as part of the Kāpiti Expressway consenting process; and
 - b) that a connection should be formed if this is deemed necessary after an independent urban design peer review process.

KCDC is prepared to defer the consideration of a crossing at this stage and to make final provision in the context of surrounding development requirements and pressures.
- O NZTA is prepared to address the question of connectivity in relation to the paper road at an appropriate time in the future.

General

- P It is on this basis that the parties wish to establish a process within which to consider and address the potential need for future crossings in the three locations identified in Appendix One.

THE PARTIES AGREE as follows:

1. Purpose of Agreement

- 1.1 This Agreement sets out a process to enable the parties to determine:
 - a) In what circumstances access across the Kāpiti Expressway may be required in those locations identified in Appendix One.
 - b) The funding sources that may be available to provide for any future crossings in these locations.

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 Roding Powers Act 1989; and
 - c) In the case of the KCDC, to the ratepayers and residents of Kāpiti District.
- 2.2 The parties' obligations under this Agreement are conditional on:
- Resource Management Act 1991 (*RMA*) approvals required for the Kāpiti Expressway being granted; and
 - 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 Principles

- 3.1 The parties agree that east/west connectivity through the proposed Kāpiti Expressway corridor is an important principle to connect communities and to seek to ensure the safe and efficient functioning of the local network.
- 3.2 The parties agree that the appropriate level of east/west connectivity will be one of the matters at issue when considering any proposals for future development of land in the vicinity of any of the suggested crossings identified by KCDC in Appendix One.
- 3.3 The parties acknowledge that discussions on east/west connectivity will also occur in the context of the Wellington Northern Corridor Road of National Significance Network Plan.



4 **Process to Determine Need for Crossing**

- 4.1 The parties agree to follow the process as described below and set out in Appendix Two to establish the final position on the need for connectivity across the Kāpiti Expressway at the general locations identified in Appendix One.

Step 1: Urban Design Assessment

- 4.2 If and when the KCDC undertakes a structure planning or a district plan change process or receives a request for a private plan change in relation to land in the vicinity of one or more of the locations identified in Appendix One it shall work with the NZTA and apply the following principles and processes for the purposes of seeking to resolve the issue of the appropriate level of east/west connectivity for any development that would be authorised by the structure plan or plan change process.
- 4.3 KCDC and the NZTA shall consider the following matters when developing future land use patterns, including roading connections, in the context of a draft or proposed structure plan or district plan change:
- a) urban design and best practice planning principles in the context of the New Zealand Urban Design Protocol 2005 to which the parties are signatories including the context for surrounding communities;
 - b) access by active modes and vehicle traffic within the area, through the area, and to outside services;
 - c) any local social and economic impacts of any severance created by the Kāpiti Expressway and mechanisms to address that; and
 - d) vehicle traffic movements.
- 4.4 Independent urban design consultants will be selected and funded jointly by both parties and guidance will be taken from those consultants by both parties on the nature, location and form of any east/ west connection.
- 4.5 The parties agree that as part of the urban design assessment:
- a) A traffic impact assessment shall be undertaken at the expense of the KCDC in the case of a structure planning and/or council initiated district plan change process, and
 - b) KCDC shall request the applicant for a private plan change to prepare a traffic impact assessment at the applicant's own cost,
- where the proposal that is the subject of that structure plan or plan change would provide for a change in land use and/or additional development on land within the vicinity of any of the locations identified in Appendix One. Any such traffic assessment shall be undertaken, or required to be undertaken, by a suitably qualified independent traffic engineer.

- 4.6 Any such urban design assessment undertaken under clauses 4.2 to 4.5 shall be required to identify whether any east/west connections across the Kāpiti Expressway are required to address connectivity and severance issues arising from the Kāpiti Expressway for the surrounding community as well as to support the level of development proposed.
- 4.7 If the urban design assessment undertaken pursuant to clauses 4.2 to 4.5 concludes (having reviewed available options) that a crossing over or under the Kāpiti Expressway corridor would be the best practicable option to achieve east/west connectivity to support the level of development proposed in the vicinity of any of the locations identified in Appendix One within the local road network then the assessment shall be required to provide indicative costs for any such east/west connection(s) with and without the Expressway, and indicative information regarding any travel time savings if the connection was provided for.
- 4.8 The parties shall jointly select and fund an independent urban design consultant to peer review the urban design assessment of any proposed structure plan in relation to land in the vicinity of one or more of the locations identified in Appendix One. The independent urban design peer reviewer shall produce a report for the parties identifying whether or not there is a need for a crossing over or under the Kāpiti Expressway corridor to support the development proposed in the structure plan.

Step 2: Independent report

- 4.9 Where the consultants undertaking the urban design assessment and the independent urban design peer review undertaken in accordance with clause 4.8 of this Agreement, conclude that there is a need for a crossing to support the development proposed then the parties shall jointly fund the preparation of an independent report that assesses the *Independent Urban Design Peer Review* including the traffic impact assessment (prepared in accordance with clause 4.5) to achieve an appropriate level of east/west connectivity including an assessment of:
- a) who generates the need for a connection,
 - b) who benefits from a proposed connection across the Expressway,
 - c) the historical right to a connection across the Expressway; and
 - d) the severance caused by the Expressway,
- and provide recommendations on any future funding of the connection.
- 4.10 The parties will not be bound by any of the findings or recommendations made in the independent urban design peer review and the independent report where any recommendation would bind them to something they cannot lawfully undertake.

5 Process to Determine Indicative Funding Sources

Step 3: Indicative Funding Sources

5.1 If the parties reach agreement that there is a need for a crossing in any of the three locations identified in Appendix One following the process set out in clauses 4.2 to 4.10 above, then each party will identify indicative funding sources to provide for the delivery of any such future crossing(s) in accordance with the following principles:

- a) That there are six funding sources which might potentially be available:
 - (i) Developer's direct cost as part of any development
 - (ii) Development contributions associated with any infrastructure growth demand arising from a development which are levied under the Local Government Act via KCDC's Long Term Plan
 - (iii) Financial contributions under the Resource Management Act 1991
 - (iv) Local authority rates expended on the local road network to provide for wider community connectivity benefits
 - (v) Funding from the National Land Transport Fund as per any financial assistance rate
 - (vi) NZTA funding as a result of any liability arising from severance as a result of the Kāpiti Expressway
- b) That there are three factors that need to be addressed, along with any other relevant factors, in determining the attribution of costs for the funding of any crossing over the Kāpiti Expressway:
 - (i) The severance caused by the Kāpiti Expressway
 - (ii) The community need for the crossing
 - (iii) Developer's need for the crossing

6 Force majeure clause

6.1 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.

7 Dispute Resolution

- 7.1 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).
- 7.2 Any party claiming that a dispute has arisen under this Agreement between the parties shall give written notice to the other party of the dispute and require the parties' representatives to meet together to attempt to settle the dispute. The other party shall, upon receipt of such notice, promptly ensure that its representatives attend such meeting and attempt to resolve the dispute.
- 7.3 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.
- 7.4 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).
- 7.5 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

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.

- 7.6 The parties acknowledge that any negotiated or arbitrated outcome or outcome arising from an independent expert determination will need to be consistent with any conditions imposed on any designations, resource consents or other statutory authorisations obtained for the Kāpiti Expressway and with the statutory functions, obligations and powers of the NZTA and KCDC.

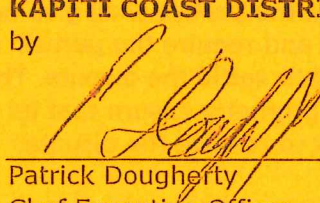
8: Conditional Agreement


- 8.1 This agreement is conditional upon the approval of the elected Council of the Kāpiti Coast District Council.

Signed on behalf of the
NEW ZEALAND TRANSPORT AGENCY
by


Rod James
State Highway Manager, Wellington

Signed on behalf of the
KĀPITI COAST DISTRICT COUNCIL
by

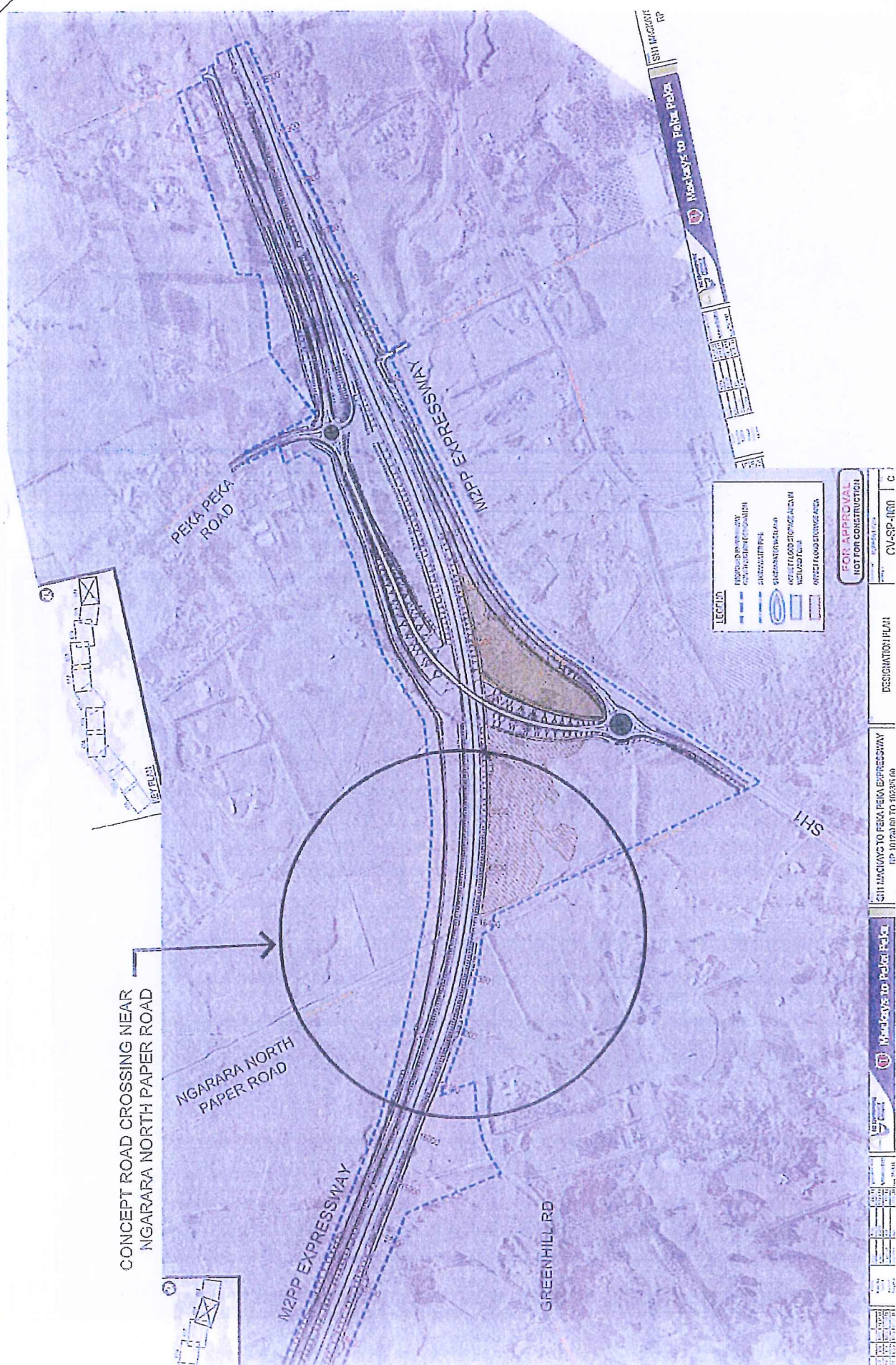

Patrick Dougherty
Chief Executive Officer

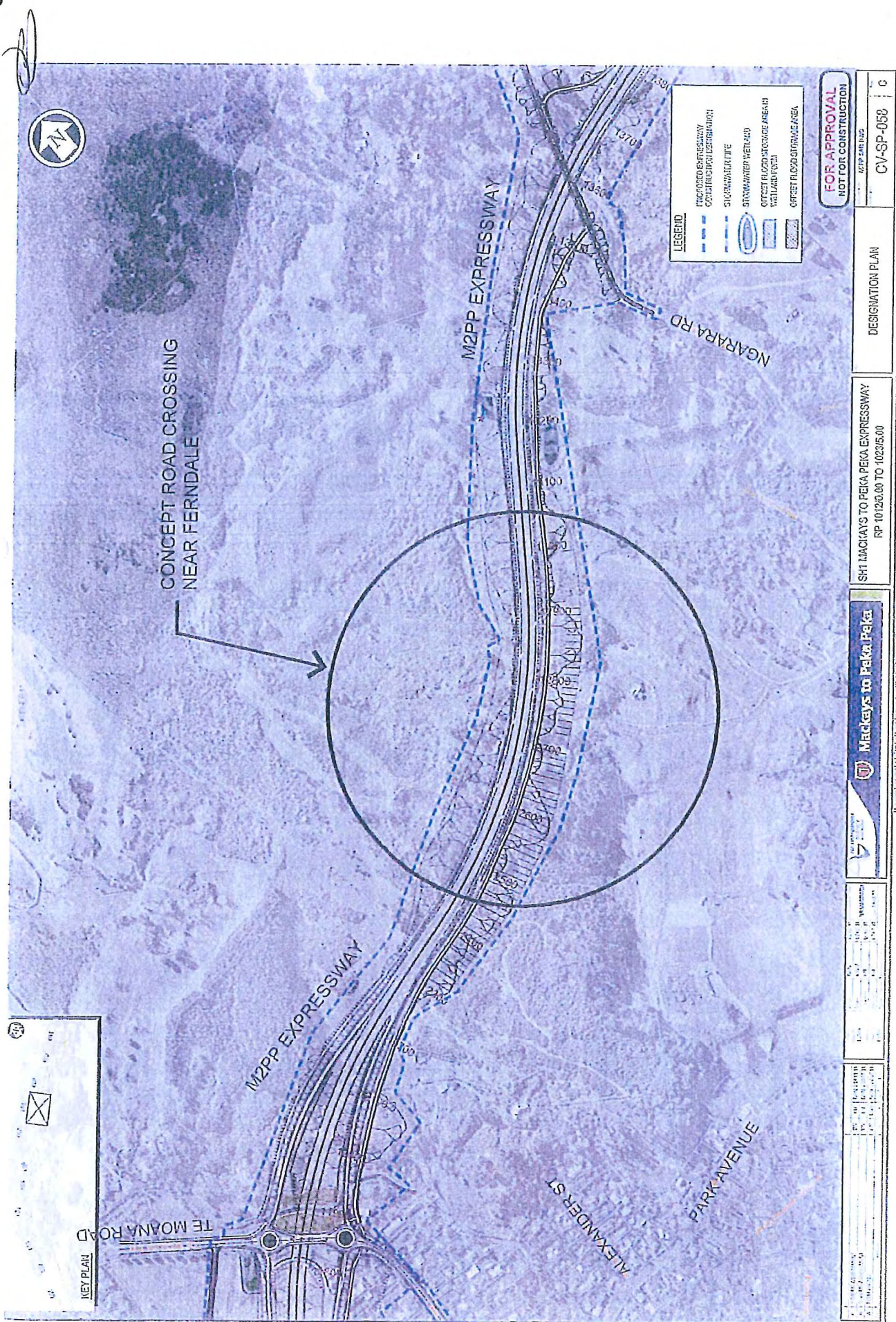

Lyndon Hammond
Planning and Investment Manager,
Central

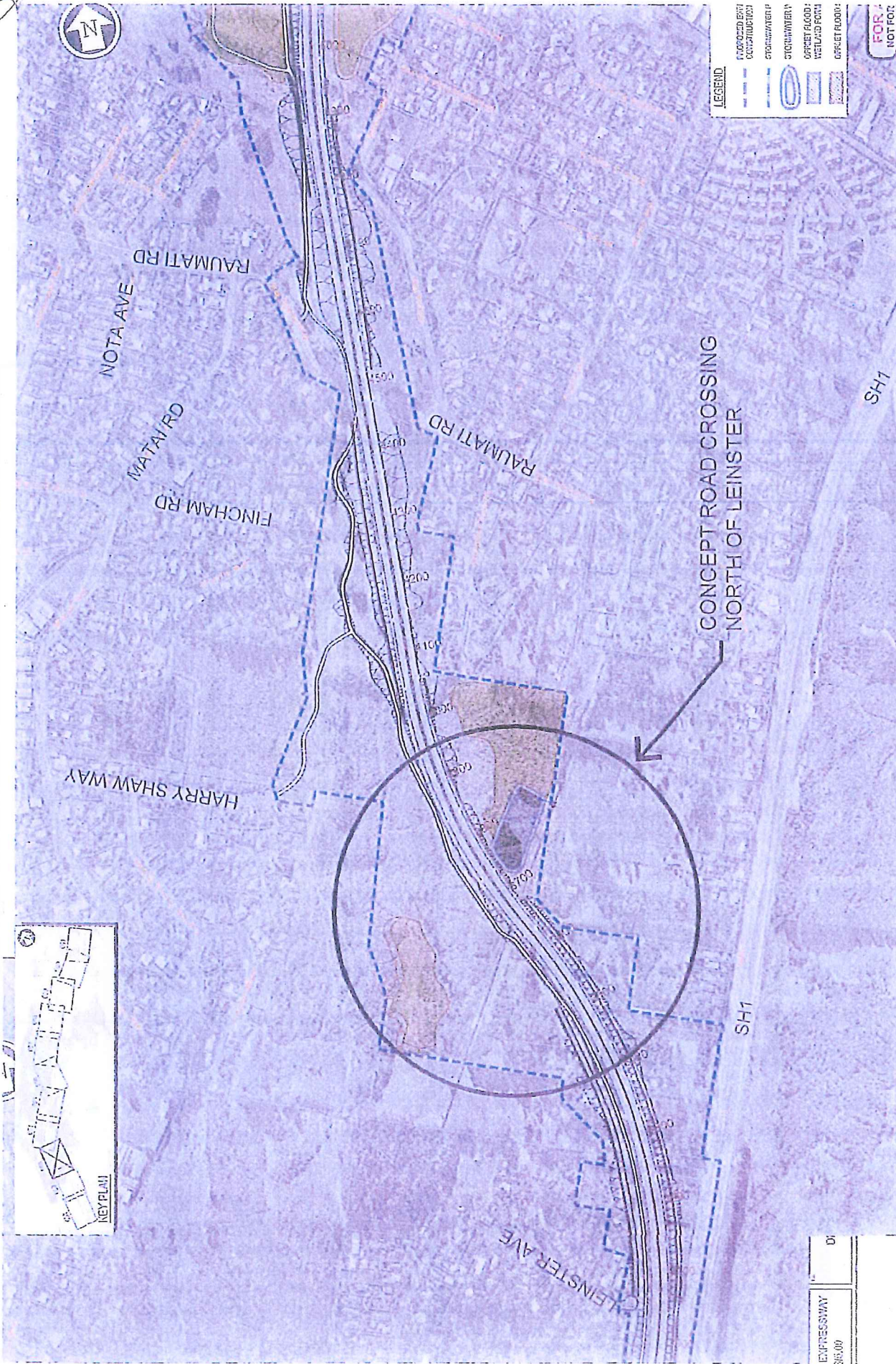
Appendix One:

Location of Indicative Crossings

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Appendix Two:**Process to Determine Need and Funding Sources for Crossing**