

C/C/2007/12514

VARIATION OF AGREEMENT

Parties

The Crown acting by and through the Chief Executive of Land Information New Zealand
("the Crown")

and

John Hayes Perkins
("the Owner")




MEMORANDUM OF VARIATION OF AGREEMENT

Parties

1. The Crown
2. John Hayes Perkins ("the Owner")

Background

- a. The Owner is the registered proprietor for an estate of freehold in possession of that land being 419.9323 hectares more or less being:
 - i. 1056 square metres more or less being Section 78 Wainui District being all the land comprised in Computer Freehold Register WN782/95;
 - ii. 410.9192 hectares (subject to survey) more or less being Lots 1, 3 and 4 DP 368307 being the balance land comprised in Computer Freehold Register 277518 subject to Compensation Certificate 5653133.1;
 - iii. 4713 square metres more or less being Lot 2 DP 368307 being all the land comprised in Computer Freehold Register 277519;
 - iv. 3.3930 hectares more or less being Section 1 Survey Office Plan 36522 being all the land comprised in Computer Freehold Register WN38B/456;
 - v. 3.0784 hectares more or less being Part Lot 2 DP 4269 and defined on DP 5618 and being all the land comprised in Computer Freehold Register WN296/143;
 - vi. 7659 square metres more or less being Part Section 10 Wainui District and being all the land comprised in Computer Freehold Register WN428/145; and
 - vii. 1.1989 hectares more or less being Part Lot 2 DP 4269, Coloured Orange Survey Office Plan 20909 and Coloured Orange Survey Office Plan 20980 being all the land comprised in Computer Freehold Register WN530/53(together called "the Land").
- b. By an Agreement dated 25 May 2012 ("the Agreement") the Owner agreed to sell the Land to the Crown for the purposes of the State Highway 1 Transmission Gully and State Highway 1 (MacKays Crossing to Paekakariki) Safety Improvements – Wire Barrier ("the Works").
- c. On 22 June 2012 the Crown paid a deposit of \$592,200.00 plus GST if any in part payment of the purchase price for the Land. Compensation Certificate 9093795 was registered against the titles to the Land on 11 June 2012.
- d. Pursuant to the Agreement the parties agreed that if the principal dwelling and curtilage of the residence in which the Owner resided could not reasonably be vacated by the Settlement Date the Crown would grant to the Owner and the Owner would accept a residential tenancy of such commencing on the Settlement Date on the terms and conditions attached to the Agreement as Schedule E ("the residential tenancy").



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- e. The Owner subsequently identified other land to purchase in substitution of the Land and requested that the Crown pay a further deposit of \$592,200.00 plus GST if any ("the second deposit") to enable the Owner to purchase such substitute land.
- f. By further agreement dated 30 January 2013 ("the Second Agreement") the Crown agreed to pay the second deposit with the intent that the Owner would have sufficient funds to purchase the substitute land and would no longer require the Crown to grant the residential tenancy such that vacant possession of the Land could be given to the Crown on the Settlement Date.
- g. On 22 February 2013 the Crown paid the second deposit of \$592,200.00 plus GST if any in further part payment of the purchase price for the Land. Compensation Certificate 9308292 was registered against the titles to the Land on 8 February 2013.
- h. The Owner has entered into unconditional agreements for the purchase of substitute land ("the Substitute Land Agreements") and has requested that the Crown;
- i. pay a sufficient proportion of the remaining purchase price payable to the Owner to assist the Owner to complete the purchase of the substitute land ; and
 - ii. defer the settlement date to 23 August 2013.
- i. More particularly the Owner has requested that the Crown pay \$4,365,600.00 plus GST if any to enable the Owner to settle the Substitute Land Agreements ("the third deposit"). The third deposit excludes an amount of \$372,000.00 plus GST which is to be withheld pending the Owner giving vacant possession of the Land to the Crown.
- j. The Crown and the Owner have agreed to enter into this Variation of Agreement to:
- i. Vary the Agreement so as to provide for vacant possession of the Land to be given to the Crown on 23 August 2013; and to
 - ii. Arrange payment of the third deposit by the Crown to the Owner.

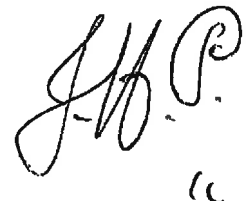
Agreement

1. The Crown and the Owner agree to vary the Agreement and the Second Agreement to provide for vacant possession of the Land to be given to the Crown on 23 August 2013 and to thereby reduce the disturbance costs potentially otherwise payable to the Owner.

2. To give effect to clause 1 above the parties agree to vary the Agreement by:

- a. Deleting clause 1.1 of the Agreement as varied by clause 2(a) of the Second Agreement and substituting the following;

1.1 The date of settlement shall be 23 August 2013 ("the Settlement Date"). Vacant possession of the Land shall be given to the Crown on the Settlement Date.



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1.2 The Owner agrees that the Crown shall have full, unrestricted access to the Land for the purposes of investigating and carrying out the Works at all times from 28 June 2013. The Crown acknowledges that there is heightened sensitivity around stock movements during the period 8 July 2013 to 25 July ("the stock transfer period"). The Crown shall use reasonable endeavours during the stock transfer period to leave gates as they are found whether open or closed and to limit vehicle speeds around stock. To access the Transmission Gully route the Crown shall during the stock transfer period use the driveway to the main residence on the Land so as to avoid the woodshed. For the avoidance of doubt the Owner shall have no claim against the Crown for any disruption caused by the Crown's entry to the Land pursuant to this clause. The Crown shall endeavour to give the Owner reasonable advance notice of any entry but without any obligation to do so.

1.3 Should the Owner be unwilling or unable to give the Crown vacant possession of the Land on the Settlement Date the Owner shall pay to the Crown upon receipt of a tax invoice an amount of \$1,000 plus GST (if any) for each day in the period commencing from the Settlement Date until the date the Crown takes possession of the Land.

3. In consideration for the Owner agreeing to vary the Agreement and the Second Agreement the Crown agrees to pay to the Owner the third deposit, being \$4,365,600.00 plus GST (if any), on 28 June 2013. For the avoidance of doubt the parties agree that the third deposit comprises payment of those portions of Compensation payable under the Agreement being:

a. Dwelling and curtilage	\$ 350,000 inclusive of GST
b. Solatium	\$ 2,000
c. Part payment for Land and improvements	\$4,013,600 plus GST (if any)
Total	\$4,365,600

4. The Owner accepts the payment of the third deposit in further part payment of the purchase price for the Land.

5. GST (if any) will only be payable upon the production of a valid tax invoice prepared in accordance with Section 24 of the Goods and Services Tax Act 1985.

6. The Owner warrants that he has entered into unconditional agreements for the purchase of substitute land under the Substitute Land Agreements requiring settlement no later than 22 July 2013.

7. The Crown agrees to reimburse the Owner's reasonable legal costs incurred in relation to this agreement on production of account or receipt in accordance with Section 66 of the Public Works Act 1981.

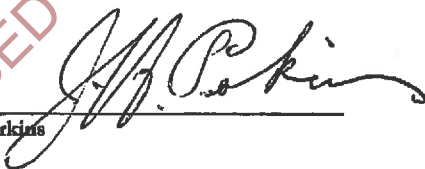
8. The Owner acknowledges that the disturbance payments under Section 66 of the Public Works Act 1981 payable in accordance with clause 7 are part of the total compensation payable under this agreement. The Owner shall provide a tax invoice with respect to such payments in accordance with Section 24 of the Goods and Services Tax Act, provided that where the Owner is not registered for GST, the Owner must provide an invoice for the full amount of the disturbance payments referred to in this clause.

9. The Crown shall as soon as practicable following execution of this agreement prepare and register a compensation certificate against the title to the Owner's Land to record this agreement in accordance with section 19 of the Public Works Act 1981.
10. The parties agree that the terms of the Agreement are unchanged save those that are expressly varied by this agreement. The parties further agree that but for the variations hereby made the terms of the Agreement have been fully carried out and thus discharged by performance.
11. The Owner acknowledges and agrees:
 - a. Until accepted in writing this document can be withdrawn any time prior to acceptance, and its acceptance will not be anticipated and the Owner will not enter into any consequential commitments in reliance of this offer being accepted by the Crown.
 - b. This agreement and any variation of this agreement shall not be binding on the Crown unless signed on behalf of the Crown.
12. The parties mutually acknowledge and agree:
 - a. That where any obligation or agreement hereunder remains unperformed at settlement of the sale of the land then that obligation or agreement, notwithstanding any rule of law equity to the contrary, shall endure until fully discharged by performance and in no circumstances whatsoever shall merge upon settlement of the sale of the land evidenced herein.
 - b. That reference to the Crown includes NZTA where the context requires this and vice versa.

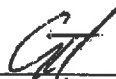
Dated this 14th day of July 2013

Signed by John Hayes Perkins

In the Presence of



 John Hayes Perkins



 Name


 Witness

 Address **GRAHAM JOHN MOWBRAY**
SOLICITOR
PARAPARAUMU

 Occupation


Signed for and on behalf of:
Her Majesty the Queen and acting pursuant
to delegated authority from the Chief Executive
of Land Information New Zealand pursuant to
Section 41 of the State Sector Act 1988

Name
KERRY McPHAIL

Signature


Designation

In the presence of

Name


Witness
Teresa Buckthought

Address
Crown Property Clearances
Land Information New Zealand
165 The Terrace
Wellington

Occupation

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

VARIATION OF AGREEMENT

Parties

**The Crown acting by and through the Chief
Executive of Land Information New Zealand**

and

John Hayes Perkins



The Property Group Limited
PO Box 2874
WELLINGTON

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982