

Memorandum of Agreement Pursuant to the Public Works Act 1981.

File Reference: CPC 00/5537/A

Agreement made this 09<sup>th</sup> day of June 2003.  
between the Crown and the **John Hayes Perkins** (called the Owner) being the owner of the land herein described for an estate of freehold in possession in the Wellington Land Registry being

- \* All that parcel of land containing 427.5188 hectares, more or less situate in the District of Kapiti Coast being part of Lots 2 and 5 on Deposited Plan 4269 being all the land comprised in Certificate of Title 40C/621 (Wellington Registry) ("the Owner's Land").

The Owner offers to sell the Crown those parts of the Owner's Land described in Clause 2 of Schedule C ("The Required Land") for the purposes of the Transmission Gully motorway and the associated upgrade of the MacKays Crossing intersection ("the Works") for the compensation set out in Clause 1 of Schedule C (the "Compensation") together with the further compensation provided in that Schedule free of all leases and tenancies and discharged from all encumbrances and requisitions subject to the conditions set out in the Schedules hereto:

- The Owner agrees to
  - The Required Land being acquired by Proclamation or Declaration under the Public Works Act 1981, and to
  - Accept the Compensation plus the further compensation set out in Schedule C in full settlement of compensation for the Required Land together with the rights, easements, and appurtenances thereto belonging and of all claims and demands in respect thereof or in respect of damage to the surrounding land by severance or otherwise howsoever,
- The Owner authorises the Crown to retain and pay (if demanded) to the persons entitled the whole or a sufficient portion of the Compensation to release the Required Land from all encumbrances affecting the same;
- The Owner further agrees to adduce a good title to The Required Land and to comply with the requirements set out in the Schedules.
- This agreement shall not be binding on the Crown until signed on behalf of the Crown.

Signed by **John Hayes Perkins**  
*[Signature]*

\*Signature of Owner

in the Presence of: *[Signature]*

Name of witness  
*M G McKinley*

\*Address of witness  
*Wellington*

\*Occupation of witness  
*Ray Director*

I accept the above offer to sell/confirm the above agreement to take by Proclamation or Declaration.

Signed by: *[Signature]*  
Signature of Authorised Officer  
**ROSS JAMES SUTHERLAND**

Name of Authorised Officer  
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.

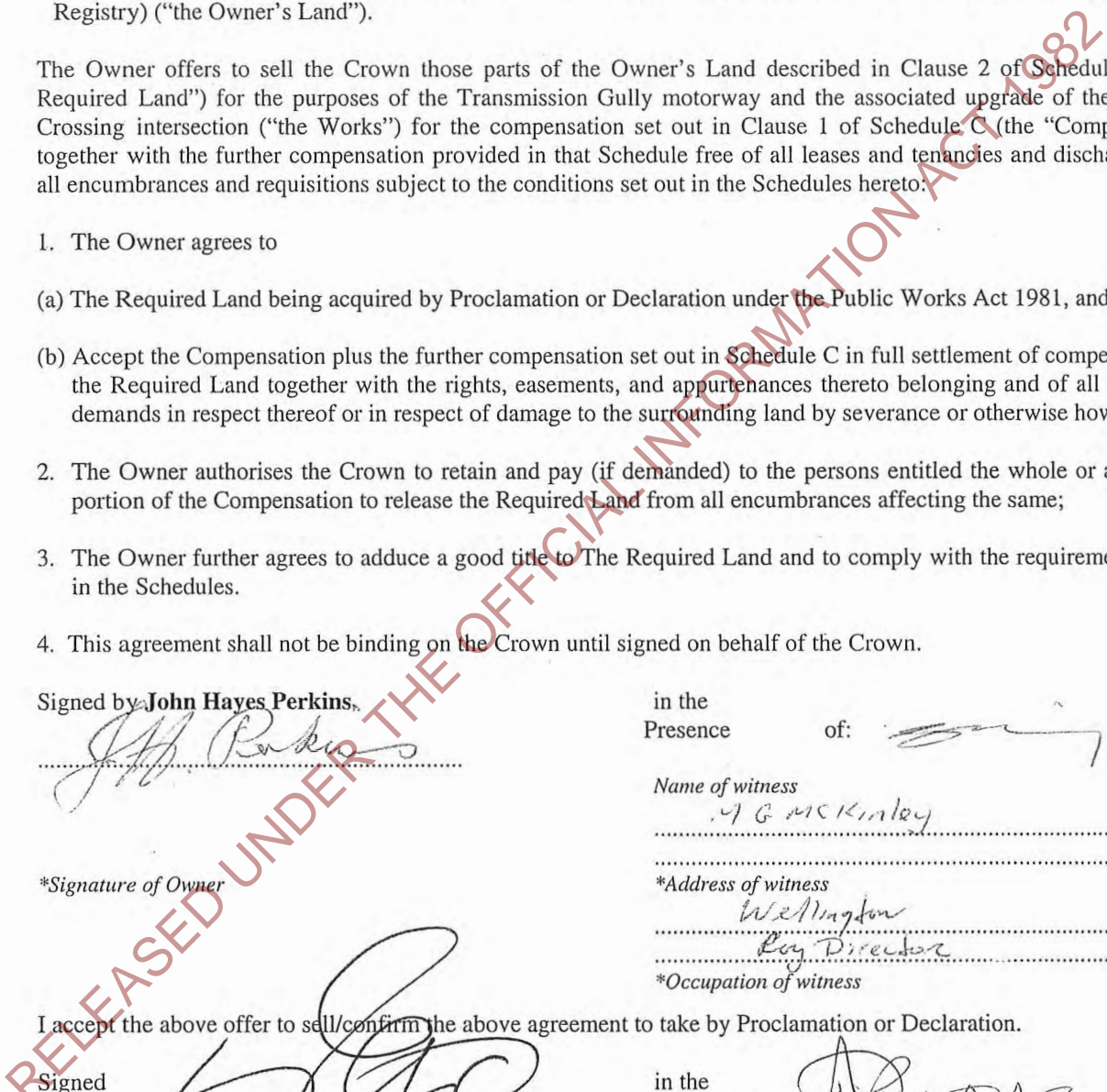
in the presence of: *[Signature]*  
Signature of witness

*Ravina Kivan*  
Name of witness

*LINZ AUCKLAND*  
Address of witness

*Operations Support*  
Occupation of witness

\* Delete if not applicable



## Schedule B: Conditions relating to land taken or to be taken by Proclamation or Declaration

### (1) Acquisition of Title

The Crown will take title by Proclamation or Declaration but may register a compensation certificate against the titles to the Owner's Land pending issue of the Proclamation or Declaration to facilitate settlement.

### (2) Possession

Vacant possession of the Required Land shall be given to the Crown in accordance with **clause 1 of Schedule C** and net rates shall not be apportioned on the Settlement Date, which shall be no later than one month from date of acceptance of offer.

### (3) Mortgagees' Statements

As the issue of the Proclamation or Declaration will clear or has cleared the Required Land of any encumbrance the Owner shall advise whether the Required Land is, or was, at the date of taking viz the Settlement Date, subject to any registered or unregistered mortgage, lien, or charge. If The Required Land is/was so subject the Owner or its solicitor shall forward to the Crown statements signed by each mortgagee and holder of the lien or charge setting out the amount required to be paid to it in discharge of reduction of the mortgage debt or for the release of the lien or charge.

### (4) Rates

~~Unless The Required Land is part only of the Owner's property in the same holding on the rating roll the Owner shall forward to the Crown the latest rate demand received by it up to date duly receipted as to payment.~~

### (5) Insurance

Insurance premium shall not be apportioned and the Required Land shall remain at the sole risk of the Owner and if any damage is done to the Required Land prior to settlement other than by the Crown such damage shall be made good by the Owner prior to settlement or the cost of making good such damage shall be deducted from the Compensation.

**Schedule C: see attached page for any conditions special for this transaction**

*Note: The Owner should initial this side of the page, any alterations in print, additions to print and attachments and should be given a copy of this form for his/her/their own use.*

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



## Schedule C: Special Conditions Relating to this Transaction

- 1
- (a) The Compensation comprises \$515,390.00 plus GST
  - (b) The Crown will pay the Compensation to the Owner on the Settlement Date, provided that GST (if any) will only be payable upon the production of a valid tax invoice prepared in accordance with Section 24 of the Goods & Services Tax Act 1985.
  - (c) The Owner acknowledges that the Crown will tender settlement by way of cheque drawn on the account of Transit New Zealand.
  - (d) The Obligations contained in clauses 2 and 3 of Schedule B and clauses 1(b) and 1(g) of Schedule C are interdependent.
  - (e) The Owner acknowledges that subject only to clause 21 below in the event any improvements are constructed on any part of the balance of the Owners land after the date of this agreement the Owner will not be entitled to any compensation for the effect of the Works or the effect of the operation of the new road in respect of such improvements, and neither will the Owner be entitled to any works in mitigation of the effect of the Works or the effect of the operation of the road on such improvements.
  - (f) The Owner agrees to lease the Required Land from Transit New Zealand from the Settlement Date on the terms set out in the form of lease attached to this agreement as Schedule D and in accordance with the following terms and conditions.
    - (i) The Commencement Date shall be the day immediately following the Settlement Date.
    - (ii) Term: From the Commencement Date for a period of 10 years provided that this Lease is subject to the condition that it may be revoked without compensation if Transit New Zealand gives the Lessee not less than 6 months' notice of its intention to revoke the Lease.
    - (iii) Rental: One peppercorn to be paid annually in advance on demand
    - (iv) Further Terms: One further term of five years
    - (v) Renewal: On the expiration by effluxion of time of the term the Lessee shall have a right to obtain a renewed lease of the Required Land for one further period of five years subject to the Lessee giving the Lessor not less than one months notice in writing prior to the expiry of the Lease advising the intention to exercise the right of renewal hereby granted. The renewed Lease shall be on the same terms and conditions as this Lease but excluding this provision for renewal and for the avoidance of doubt may be revoked without compensation if Transit New Zealand gives the Lessee not less than 6 months' notice of its intention to revoke the Lease.
    - (vi) Assignment: The benefit of this Lease shall attach to the owner for the time being of the balance of the Owners Land to the effect that any transfer of ownership of the balance of the Owners Land shall include with it through operation of this clause an assignment of the Lease hereby granted. For the avoidance of doubt it is acknowledged this Lease shall not be capable of assignment by the Lessee other than to a successor in title to the balance of the Owners Land.
    - (vii) The Crown may enter the Required Land at any time prior to the expiry of the Lease subject to giving the Owner reasonable notice, for the purpose of gathering information for design of the Works, including but not limited to survey and geotechnical work.
  - (g) The Crown will prepare the Deed of Lease and forward the same to the Owner for execution and return on or before the Settlement Date.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



Handwritten signatures and initials, including a large signature and the letter 'M' with '(g)' next to it.

2. (a) The total area of the Required Land is **15.1600** Hectares (subject to final survey) and is shown cross hatched and coloured blue on the plan (the land plan) attached as Appendix 1.
- (b) In the event that following final survey the total area of the Required Land exceeds the area stated in this agreement by 10% or more the Crown shall pay the Owner \$2.50 plus GST in respect of flat land and \$0.30 plus GST in respect of hill country for each square metre that the area of the Required Land taken that exceeds the area stated in this agreement. The Crown will pay the Owner simple interest on such amount at a rate of 7.5% pa from the date of this agreement to the date of actual payment.
- (c) In the event of there being a dispute as to whether any land taken in excess of the area stated in this agreement by 10% or more is flat land or hill country the parties shall agree on the appointment of an independent valuer to determine whether such land is flat land or hill country and whose decision shall be final and binding on the parties. In event the parties are unable to agree on the appointment of an independent valuer the valuer may be appointed by the chairman for the time being of the Wellington Branch of the New Zealand Institute of Valuers. The reasonable costs of the independent valuer shall be met equally by the parties.
- (d) In no circumstances will the area of the Required Land exceed 14% more than the 15.1600ha referred to in clause 2(a) supra.
- 3 (a) The parties acknowledge:
- (i) The Owner currently uses the existing culvert beneath State Highway 1 for stock access to and from the Owner's land on the Northern side of State Highway 1. The location of the culvert is shown on the plan attached as Appendix 3.
- (ii) Although the final road design for the proposed intersection between the Transmission Gully road and MacKays Crossing has not been completed, it is likely that the Works may affect the existing culvert, and it may be necessary for a new culvert to be installed or for the present culvert to be upgraded.
- (iii) The existence and locations of the North Island Main Trunk Gas Pipelines, and the main Paekakariki water supply line ("the Major Utilities") on the Owner's land may affect the location and construction of the replacement culvert.
- (b) The Crown will consult in good faith with the Owner as to either upgrading the existing culvert or alternatively the final design and location of any replacement culvert. Should the Crown in its absolute discretion decide that it is not physically possible to construct either an upgraded or replacement culvert which will also serve as a stock underpass or that this can be done but at a cost which the Crown considers to be unreasonable or excessive the Crown shall not be required to either upgrade or provide any new culvert which is suitable for use as a stock underpass. Should the Crown decide not to upgrade or provide any new culvert as aforesaid then the Owner may:
- (i) Require the Crown to acquire that part of the balance of the Owner's land located to the north of the State Highway or any part thereof that becomes significantly less useful to the Owner or significantly more costly to retain at the same standard as a result of the Owner's inability to use the culvert as a stock underpass, and/or
- (ii) Require the Crown to compensate the Owner for any injurious affection caused to the balance of the Owner's land as a result of the Owner's inability to use the culvert as a stock underpass, being injurious affection not already compensated for under the terms of this agreement.
- (c) The Owner will be entitled to appoint a registered valuer to assess any compensation payable to the Owner under clause 3(b) and the Crown shall reimburse the Owner for the Owner's fair and reasonable legal, Land Compensation Consultants Limited and valuation fees incurred under that clause pursuant to section 66 of the Public Works Act 1981.
- (d) The Crown will be entitled to reply to any claim made by the Owner under clause 3(b).

- (e) Should the Crown construct a replacement or upgraded culvert as provided in clause 3(b) the finished culvert shall provide at least the same amenity as the existing culvert when used as a stock underpass.
- (f) The Crown will take full responsibility for any damage or disruption to the Major Utilities located on the Required Land caused directly by the Works or the construction of any replacement or upgraded culvert constructed pursuant to clause 3(b) supra.
- (g) Following the construction of an upgraded or replacement culvert under clause 3(b) supra the Owner will enter into a License with Transit New Zealand on the same terms and conditions as the form of license attached to this agreement as Schedule F.
- 4 (a) The Crown acknowledges that;
- (i) The Owner currently uses water from Smiths Stream ("the water course") flowing in part through the Required Land and in part through the Owners balance land for farm requirements, and that the Works as presently envisaged will require construction of a diversion to the water course.
- (ii) In the event that the Works require a diversion to the water course which materially affects the supply of water to the Owners balance land the Owner is entitled to reinstatement of water supply to such land of similar amenity to that currently enjoyed
- (b) The Crown will as part of any Works affecting the water course ensure that the water supply to the Owners balance land following construction is as near as is practicable to the same amenity as that presently enjoyed. The Crown will further take all reasonable measures to ensure that any disruption to the water supply during construction of the Works is kept to a minimum.
- (c) The Crown will provide details of the design of any required diversion to the water course and any alteration to the water supply to the Owners balance land to the Owner for comment prior to construction. The Crown also agrees the Owner may appoint a farm consultant to advise the Owner on the above design if this is reasonably required in the circumstances and in particular having regard to the significance of works required to be undertaken and the complication of design
- (d) The Crown agrees to reimburse the Owners fair and reasonable costs in engaging such farm consultant upon production of receipt or accounts.
- 5 (a) The Crown acknowledges that an existing farm access track traverses the Required Land.
- (b) The Crown will, as part of the final road design of the Works and in consultation with the Owner, design a new farm access track on the balance of the Owner's land to replace that part of the farm access track located on the Required Land.
- (c) Prior to closing off that part of the existing farm access track located on the Required Land as part of the Works the Crown will, at its cost, construct the replacement farm access track on the balance of the Owner's land and will reconfigure the existing track on the balance of the Owner's Land so that it joins up with the replacement farm access track.
- (d) The Crown will construct the replacement farm access track to a similar standard using similar materials as the existing farm access track located on the Required Land, provided that such standard is not less than Transit's engineering standards for the time being for such type of track.
- (e) Should the Lease referred to in clause 1(f) of this agreement expire or be terminated (for whatever reason) prior to the construction of the replacement farm access track the Crown will grant the Owner a license to use the existing farm access track on the Required land for the passage of stock and farm vehicles for access to the balance of the Owner's land until such time as the replacement farm access track is operational.





\*except to the extent that the Owner shall have no maintenance upgrade or repair obligations in respect of the access track except where the need for such work is caused by the deliberate act or omission of the Owner or any person under the control of the Owner.

- 6 (f) The Owner hereby grants to the Crown a right of way over the existing access track for the purposes of accessing the Crowns adjoining land being Part Lot 1 DP 11960, held in Gazette Notice 1998 page 4495, until such time as the works commence. The right of way shall be on the terms as set out in the Land Transfer Regulations 2002. The Crown shall take all reasonable steps to ensure that the access track is used in a manner which causes minimal disruption to the activities of the Owner and shall in particular ensure that all gates are closed and that no stock are allowed to escape. The Owner shall give the Crown a key to the padlock on the gate at the boundary of the Owners land and the adjoining Crown land on settlement. The Crown may use the right of way as a means of accessing all adjoining Crown owned land for without limitation the purposes of survey, fencing, planting or geotechnical investigations where it is expedient to do so. The Crown shall not require registration of the right of way but may note its interest by way of compensation certificate against the Owners title.
- 6 (a) The Parties acknowledge:
- (i) As part of the Works, the Crown will be constructing a temporary access track on the Required Land for the passage of machinery and heavy earth moving equipment to be used for construction of the new road.
  - (ii) The typography of the Required Land is such that it might not be possible for the Crown to construct the access track solely within the Required Land.
- (b) The Owner agrees to allow the Crown the temporary occupation of such parts of the balance of the Owner's land that may be required for the construction and operation of the temporary access track subject to the Crown complying with the requirements of clause 9 below.
- (c) The Owner shall not do anything that may affect the free passage of the Crown's (including those of any of its contractors) vehicles over the temporary access track, whilst it is in use for construction purposes.
- (d) Should it be convenient for the Crown to use parts of the existing farm access track for obtaining temporary access under this clause the Crown may do so but shall ensure use by the Owner of the existing farm access track is not made difficult or impossible.
- 7 (a) The Owner acknowledges
- (i) The Owner currently enjoys a dedicated crossing place from the State Highway to the Owner's principal residential dwelling ("the Owner's Dwelling"). The dedicated crossing place is shown as crossing place 97 on the plan of crossing places (the "Limited Access Road Record Plan") attached to this agreement as Appendix 4.
  - (ii) There is also a dedicated crossing place from the State Highway to the Owner's woolshed. The dedicated crossing place for the woolshed is shown as crossing place 96 on the Limited Access Road Record Plan.
  - (iii) It will be necessary to permanently close crossing place 97 as part of the Works, and to construct a new access at crossing place 96 for both the Owner's Dwelling and the woolshed.
  - (iv) It will be necessary to construct a new driveway over the balance of the Owner's land to service the Owner's dwelling from the new access constructed at crossing place 96, which is to link up with the existing roundabout located at the front of the Owner's Dwelling.
  - (v) The location of the new access, and the design of the new driveway will be subject to Transit safety requirements in respect to the ingress to and egress from the new road.
- (b) As part of the Works, the Crown will

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

- (c) As part of the fence construction, the Crown will install standard farm gates at the locations of the authorised crossing places and elsewhere where reasonably necessary. All gates installed at the authorised crossing places will be recessed back from the new road sufficient to allow any vehicle using the crossing places to stop clear of the road traffic lanes while the gate is being opened or closed.
- (c) The parties acknowledge that paddocks on the balance of the Owner's land may be affected by the taking of the Required Land and the new road. The Owner may, at the Owner's option but at the cost of the Crown in all things, reconfigure the internal fencing of the affected paddocks to avoid inappropriate paddock sizes or stock movement hazards. Before commissioning any work, the Owner will prepare a plan of the reconfigured internal fencing together with quotes for approval by the Crown. The reconfigured internal fencing shall be constructed to the same specifications and standard as the existing internal fencing.
- 9 (a) Subject to subclause 9(b), the Owner agrees that the Crown may enter onto the balance of the Owner's land during construction of the Works (or for any reasonable period of time thereafter or as otherwise provided in this agreement) with or without such assistants, machinery, vehicles and equipment as are reasonably necessary to enable the Crown to carry out and complete any of the works described in clauses 4 to 7 (inclusive) and 21 of this Schedule C, or to carry out any other works in accordance with any resource consent obtained for the Works.
- (b) The Crown will give the Owner at least two months written notice of its intention to use parts of the balance of the Owner's land and will identify in such notice the parts of the balance of the Owner's land it requires for the temporary occupation, so as to allow the Owner time to de stock such land.
- (c) The Crown will make good any damage caused by such entry to the reasonable satisfaction of the Owner
- (d) The Crown agrees that in no circumstances will it occupy more than 5 hectares of the Owners Balance Land under the provision of this clause unless otherwise agreed by the parties
- (e) The Crown will in good faith consult with the Owner subsequent to service of notice under clause 9(b) supra to keep any entry proposed to the minimum possible area. The Crown shall have regard to any representations made by the Owner without being bound to act upon them.
- 10 On completion of construction of the Works the Crown shall survey the Required Land from the balance of the Owner's Land and complete all legalisation actions required at no cost to the Owner.
- 11 The Owner acknowledges that part of the Required Land is being taken for the proposed Transmission Gully Road and that there will be no access to this proposed motorway from the balance of the Owner's Land. The Crown may set apart any part of the Required Land for a segregation strip pursuant to section 52 of the Public Works Act 1981 specifically to enforce this requirement. In anticipation of construction of the Transmission Gully road proceeding and for the purposes of Section 114 of the Public Works Act 1981 the Owner consents to the Required Land being declared road which, at the option of Transit New Zealand may either:
- (a) Be declared motorway under section 71 of Transit New Zealand Act 1989 or
- (b) Become Limited Access Road pursuant to section 88(2) of the Transit New Zealand Act 1989.

For the avoidance of doubt it is agreed that the provisions of this clause do not affect the Crowns obligations to provide access under Clause 7 supra.



- 12 The Owner acknowledges that following construction there will be no access from that part of the balance of the Owner's land coloured orange on the Plan annexed as Appendix I to the new road, and it will be landlocked severance. The Owner further acknowledges that the Owner specifically wishes to retain ownership of such land following construction of the Works. The Crown may set apart any adjoining Crown-owned land as a segregation strip to physically enforce this requirement. The Owner agrees that such land is not a "parcel of land" as defined in section 90 of the Transit New Zealand Act 1989.
- 13 The Owner undertakes to withdraw the Owner's submission to the Notice of Requirement and provide evidence of such withdrawal upon execution of this agreement by the Crown and further agree that the Owner will not lodge any submission against the proposed works or participate in any objection or appeal which opposes any designation, resource consent or notice of requirement, or take any other action which may have the effect of preventing or interfering with the Crown's future plans in relation to the Required Land and the proposed Transmission Gully and/or the proposed MacKays Crossing interchange. This condition shall not merge upon settlement but shall remain enforceable to the fullest extent possible.
- 14 The Owner hereby acknowledges that until accepted in writing this document is only an offer to sell to the Crown 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.
- 15 This agreement shall not be binding on the Crown until signed on the Crown's behalf. Any variation of this agreement shall not be binding on the Crown unless signed on behalf of the Crown. Any separate arrangement relating to the use or occupation of the balance of the Owner's Land entered into between the Owner and any contractor or third party involved in the construction of the Works shall be a matter entirely between the Owner and the other party and shall not be binding on the Crown.
- 16 The Crown agrees to reimburse the Owner's fair and reasonable property valuation, Land Compensation Consultants Limited, Lucas Survey Ltd, and legal costs incurred in relation to this transaction pursuant to Section 66 of the Public Works Act 1981 upon the production of accounts or receipts in that regard upon settlement date or if incurred after this date as soon as reasonably practicable.
- 17 Any dispute, which may arise between the parties concerning the interpretation of this agreement or relating to any other matter arising under this agreement will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such disputes.
- (a) If the parties cannot resolve a dispute within 15 working days of any dispute arising then, unless otherwise expressly provided in this agreement, they will without prejudice to any other right, explore whether such dispute can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution).
- (b) If the parties cannot agree on any dispute resolution technique within a further 15 business days of any dispute being considered for referral by both parties to any informal dispute resolution technique under the above clause then the dispute shall be settled by reference to arbitration. Except as otherwise expressly provided in this lease the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.
- (c) For the avoidance of doubt nothing in the provisions of this clause 16 shall apply to any dispute over the assessment of compensation for injurious affection where the Owner has a statutory right to refer any such dispute to a court of compensation and elects to exercise this right.



- 18 That where any obligation or agreement remains unperformed at the settlement date of the sale of the Required Land then that obligation or agreement, notwithstanding any rule of law or equity to the contrary, shall enure for the benefit of the party concerned until fully discharged by performance and in no circumstances whatsoever shall merge upon settlement of the sale of the Required Land.
- 19 The reference to the Crown includes Transit New Zealand where the context requires this and vice versa.
- 20 The Owner agrees to obtain the consent of the Caveator under Caveat B.407087.1 to the terms and conditions of this agreement prior to settlement.
- 21 (a) The Crown acknowledges that;
- (i) The Owner intends to construct a water pipe line from Smiths Stream to the Owners land on the Northern side of State Highway 1 but the location of the pipe line is not at present known and may traverse through the Required Land.
  - (ii) Subject to clause 21(c) below the Owner is entitled to relocation and reinstatement of the water pipe line to provide similar amenity to that enjoyed prior to the Crown undertaking the Works.
- (b) Subject to clause 21(c) below in the event the Works require relocation or reinstatement of the water pipe line the Crown will complete such works so that the water pipe line runs through the balance of the Owners land and provides a similar amenity to that enjoyed prior to the works.
- (c) The works required by the Crown under this clause are conditional upon;
- (i) the Owner constructing the water pipe line as anticipated by clause 21(a)(i) prior to the Crown undertaking the Works
  - (ii) the Owner obtaining all necessary resource consents for the water pipe line and constructing the water pipe line in accordance with such consents
- (d) The Owner agrees that the Crown shall not be required to provide an alternative water supply to the water pipe line during construction.
22. For the avoidance of doubt the parties agree that in the event the Owners balance land or any part thereof passes into the ownership of any successor in title prior to completion of all obligations placed on the Crown pursuant to this agreement;
- (i) the Crown is bound to complete such obligations for the benefit of any successor in title, and
  - (ii) this provision shall be enforceable by any successor in title pursuant to section 4 Contracts (Privity) Act 1982.



RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

# Schedule D

---

*Parties*

Transit New Zealand  
(*the Lessor*)

John Hayes Perkins  
(*the Lessee*)

---

---

## DEED OF LEASE

---

---

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

*JHP*

*[Signature]*

Date:

## PARTIES

- (1) Transit New Zealand (*the Lessor*)
- (2) John Hayes Perkins (*the Lessee*)

THE PARTIES AGREE as follows:

### 1 REFERENCE SCHEDULE

#### 1.1 The Land (clause 2.1)

That area of land measuring 15.1600 hectares (subject to survey) being land acquired by Her Majesty the Queen for road purposes and coloured yellow on plan 2809133Y008 attached to this lease.

The land legally described as Part of Lots 2 and 5 on Deposited Plan 4269 Wellington Land Registry.

#### 1.2 Term (clause 5.1)

Ten years commencing on [ ] and expiring on [ ]

#### 1.3 Right of renewal (clause 5.2)

One [1] right for term of Five [5] years but the total period during which the Land will be leased inclusive of the initial term is no more than Fifteen [15] years.

#### 1.4 Rental (clause 6.1)

1 peppercorn per annum for the terms specified in clause 1.2 and 1.3 above.

#### 1.5 Lessor's Right of Revocation

The Lessor shall have the right to revoke this Lease at any time during the initial term or the renewal of this lease as provided for in clause 5.3.

#### 1.6 Public risk insurance (clause 9.5)

\$1,000,000.

#### 1.7 Permitted use of Land (clause 10.1)

Pastoral farming and cropping in accordance with good farming practice.



## 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this deed unless the context otherwise requires:

*the Broken Period* means the period from the expiration of the last full lease year until the expiration date;

*the Buildings* means houses, hay and other barns, implement and other sheds and other buildings constructed on the Land;

*the Commencement Date* means the date provided in clause 1.2 on which the term shall commence;

*Company* includes body corporate;

*the Expiration Date* means the date provided in clause 1.2 on which the term shall expire;

*Goods and Services Tax* means all tax from time to time payable under the Goods and Services Tax Act 1985;

*the Land* includes the Buildings and the Lessor's fixtures and fittings (if any) and all plant, machinery, chattels and other equipment provided by the Lessor from time to time for the Land;

*this Lease* includes the schedule forming part of this deed;

*Lease Year* means each 12 month period during the term commencing from the Commencement Date;

*the Lessee* means the Lessee and the Lessee's executors, administrators, successors and permitted assigns;

*the Lessor* means the Lessor and the Lessor's successors, assigns and where the context permits the employees and agents of the Lessor;

*persons under the control of the Lessee* includes all sublessees, licensees, employees, agents, contractors, customers and other invitees of the Lessee;

*the Property Expenses* means the amounts defined in the schedule.



## 2.2 Interpretation

In this Lease:

- (a) Where obligations bind more than one person those obligations shall bind those persons jointly and severally;
- (b) The benefits and burdens shall be binding upon the parties and their respective successors and personal representatives and any permitted assignees or transferees and references to the parties shall be construed accordingly;
- (c) Words importing the singular number include the plural and vice versa;
- (d) A "person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of state, government department or municipal authority in each case whether or not having separate legal personality;
- (e) Any schedule to this deed shall have the same effect as if set out in the body of this deed;
- (f) Clause headings are inserted for reference only and shall not affect the interpretation of this deed;
- (g) References to or any statute refer also to any regulation, by-law, order and notice made under or pursuant to the statute and:
  - (i) reference to statutes and regulations refer also to statutes and regulations amending, consolidating or re-enacting those referred to; and
  - (ii) expressions defined or explained in any statute shall bear those meanings in this lease.
- (h) Any covenant not to do anything also constitutes an obligation not to suffer permit or cause that thing to be done;
- (i) References to covenants include conditions and agreements;
- (j) References to covenants include covenants expressed or implied;

- (k) To "perform" a covenant includes to keep observe and fulfill that covenant;
- (l) A right granted or reserved may be exercised from time to time and at all times;
- (m) Words and expressions defined are indicated by capital letters for convenience but the absence of capital letter shall not alone imply that the word or expression is used with a different meaning from that given by its definition; and
- (n) Any reference to a "month" or "monthly" shall mean respectively calendar month and calendar monthly.

### 3 COVENANT TO LEASE

#### 3.1 Lease

The Lessor leases to the Lessee and the Lessee takes on lease the Land upon the terms of this Lease.

### 4 EXCLUSION OF STATUTORY PROVISIONS

#### 4.1 Exclusion of implied covenants and powers

Any covenants and powers implied in leases by virtue of the provisions of any act are to the extent they are inconsistent with anything in this Lease excluded from this Lease.

### 5 TERM AND RIGHT OF RENEWAL

#### 5.1 Term of lease

The term shall commence on the Commencement Date and shall expire on the Expiration Date.

#### 5.2 Right of renewal

That in any case where a right or rights of renewal are given in clause 1.3 then if the Lessee shall have:

- (a) duly observed the terms and conditions of this Lease; and
- (b) given to the Lessor not less than one months notice in writing prior to the Expiration Date (which notice shall be irrevocable) of intention to

renew

then the Lessor will grant to the Lessee a renewed term of this Lease:

- (c) for the relevant further term of years fixed in clause 1.3 commencing from the date after the Expiration Date of the preceding term;
- (d) at the rental payable for the preceding 12 month period; and
- (e) otherwise in the same terms and conditions of this Lease, including any rental reviews, except that the provision for renewals shall be limited in accordance with the limitation on renewals fixed in clause 1.3. For the avoidance of doubt, the renewed lease may be revoked without compensation if the Lessor gives the Lessee not less than six months notice of its intention to revoke the Lease.

### 5.3 Lessor Right of Revocation

The Lessor shall at any time during the term of this Lease or any renewal have the power to revoke this lease without compensation by giving not less than six months written notice in this regard to the Lessee and such notice shall take effect accordingly.

### 5.4 Monthly tenancy

Should the Lessee with the consent of the Lessor continue to occupy the Land beyond the Expiration Date (otherwise than pursuant to the grant of a renewed lease) the Lessee shall do so as a monthly tenant at a rental to be determined as provided in clause 6.3 and determinable by one months notice in writing given at any time by either party to the other and otherwise on the terms of this deed but applicable to a monthly tenancy.

## 6 RENTAL, RENTAL REVIEWS, PROPERTY EXPENSES AND GOODS AND SERVICES TAX

### 6.1 Covenant to pay rental

The Lessee covenants to pay rental to the Lessor at the rate stated in clause 1.4 or otherwise fixed pursuant to this Lease.

### 6.2 Additional payments by Lessee

The Lessee covenants to pay as additional rental the Property Expenses in the manner provided in the schedule. The Lessor shall be entitled to supply the Lessee's name to the appropriate local authority for inclusion on the rating

roll and the Lessee shall pay rates direct to the local authority.

### 6.3 Interest on overdue rental or other moneys

If any, Property Expenses or other moneys payable by the Lessee remain unpaid for seven days after their due date then the Lessee shall pay to the Lessor interest on those moneys at the rate provided in clause 1.7 calculated from their due date to the date of payment. The Lessor may recover the moneys in arrears and interest as if they were rental in arrears.

### 6.4 Goods and services tax

The Lessee shall at the time it falls due for payment pay to the Lessor or as the lessor shall direct all Goods and Services Tax payable on:

- (a) any of the Property Expenses

to the intent that all such rental, other amounts and Property Expenses are paid to the Lessor as net amounts clear of Goods and Services Tax.

## 7 ASSIGNMENT/SUBLETTING

### 7.1 Assignment of Lease

The benefit of this Lease shall attach to the Lessee being the owner of the property directly adjoining the Land being the balance land that will initially be left in Certificate of Title 40C/621 Wellington Land Registry or any title which subsequently issues for this balance land (hereafter referred to as the "Adjoining Property"). Any transfer of ownership of the Adjoining Property shall include with it through operation of this clause an assignment of the Lease hereby granted. For the avoidance of doubt it is acknowledged this Lease shall not be capable of assignment by the Lessee other than to a successor in title to the Adjoining Property.

## 8 MAINTENANCE AND HUSBANDRY OF THE LAND

### 8.1 Lessee to keep Land in good repair

- (a) The Lessee shall keep the Buildings and all fences, ditches, bridges, stockyards, gates, and things on or to be erected on the Land in the same good repair and condition as they were at the Commencement Date and at the expiration or sooner determination of the Lease shall yield them up in such good repair and condition;



- (b) The obligation of the Lessee stated in subclause 8.1(a) does not include responsibility for fair wear and tear and any damage caused by flood, fire, storm, tempest or aircraft where such damage is not attributable to any act or omission on the part of the Lessee or persons under the control of the Lessee.

## 8.2 General farm maintenance and repair

The Lessee shall repair, maintain and keep in good order, condition and repair:

- (a) all races, crossings and culverts, gateways and trough surrounds; and
- (b) pumps and the Lessor's other plant, equipment, fittings and fixtures and shall deliver them up in such good order, condition and repair at the expiration or sooner determination of this Lease. Where necessary the Lessee shall:
- (i) apply adequate lubricating oils and greases on all moving parts of machinery; and
  - (ii) renew all parts of such improvements (including by way of example only water pipes and milking claw tubes, inflations and other rubberware) as shall become worn out, decayed or unserviceable.

## 8.3 Further maintenance repair obligations

The Lessee shall punctually at the Lessee's expense:

- (a) provide a proper method of disposal of all effluent and comply with all statutes relating to the same;
- (b) comply with the Forest and Rural Fires Act 1977.

## 8.4 Top dressing

The Lessee shall in each Lease Year and the Broken Period top dress in a husband like manner at the proper times for so doing so much of the Land as is from time to time laid down in pasture with fertiliser to at least the value specified in clause 1.8 and of a type determined by the Lessee in accordance with good farming practice.

## 8.5 Stocking

The Lessee shall stock the pasture on the Land in accordance with the rules

of good husbandry generally recognised in the area in which the Land is situated. The Lessee shall not overstock the Land or depasture more stock than it will reasonably carry.

#### 8.6 Drains, ditches etc

The Lessee shall not less than once every Lease Year and the Broken Period clean out and open all ditches, drains and other water courses on the Land and take all proper steps to keep such ditches, drains and water courses clear and unobstructed.

#### 8.7 Hedges, orchards and horticulture

The Lessee shall:

- (a) keep all hedges on the Land in the same order and condition as at the Commencement Date;
- (b) keep all gardens, plant beds, nurseries, orchards and shrubberies on the Land properly cultivated, planted, stocked and manured and in neat order; and
- (c) preserve and keep well pruned and trained all plants, fruit trees, bushes, vines and shrubs and remove and replant any of them with replacement stock of no less quality than that which has died.

#### 8.8 Clearance of noxious plants and vermin

The Lessee shall:

- (a) take all reasonable steps in accordance with good farming practices to clear and keep clear the Land from all noxious weeds, rabbits and vermin;
- (b) comply with the provisions of the Biosecurity Act 1993 and all other acts dealing with noxious weeds and vermin; and
- (c) comply with all lawful notices and demands given or made by any competent authority.

So long as the Lessee does not permit noxious weeds, rabbits and vermin to increase beyond their level at the Commencement Date and the Lessee shall have complied with the Lessee's obligations under this clause, the Lessor shall comply with subclauses 8.8(a), (b and (c) to the extent the Lessee is not



obliged to.

#### 8.9 Water reticulation

The Lessee shall be responsible for maintaining the water reticulation system in good condition, fair wear and tear and damage caused by flood, fire, storm, tempest or inevitable accident where such damage is not attributable to any act or omission on the part of the Lessee or persons under the control of the Lessee, excepted.

#### 8.10 Cropping

The Lessee shall be entitled to crop areas of the Land during the term in accordance with good farming practice.

#### 8.11 Regrassing

The Lessee shall at the expiration or sooner determination of this Lease leave such parts of the Land capable of cultivation in good grass-pasture of at least three months standing.

"Good grass pasture" shall mean good English grass and clovers suitable for the Land and of the description and proportions usually sown in the area in which the Land is situated. Any dispute arising out of this clause shall be referred for final and binding resolution to the nearest farm advisory office of the Minister of Agriculture and Fisheries with the cost of such reference to be borne equally between the parties.

#### 8.12 Hay

The Lessee shall be entitled to sell any hay grown on the Land but at the expiration or sooner determination of this Lease leave in the hay barns on the Land not less than the number of good quality standard hay bales, or their equivalent in large hay bales, provided in clause 1.9. Any dispute as to whether the number of hay bales left or their quality complies with this clause shall be referred for final and binding resolution to the nearest farm advisory office of the Ministry of Agriculture and Fisheries with the cost of such reference to be borne equally between the parties.

#### 8.13 Improvements by lessee

- (a) The Lessee shall not make alterations or additions to the Buildings, construct any new building or buildings, nor install, alter or interfere with any equipment, fitting or fixture or other system servicing the Land and the Buildings without the Lessor's prior written approval. The Lessee shall also not excavate the Land or, except for the purposes of cultivating crops, alter, remove or otherwise deal with the subsoil or

contours of the Land without the Lessor's prior written approval.

- (b) In seeking the Lessor's approval under subclause 8.13(a) the Lessee shall submit plans and specifications of the proposed work. The Lessor may require as a condition of approval that:
- (i) the Lessee obtains all approvals or permits necessary to enable the proposed work to be lawfully effected and on request produces to the Lessor copies of them; and
  - (ii) upon completion of the work the Lessee produces to the lessor any certificates of compliance issued by the relevant authorities.
- (c) The Lessee shall reimburse the Lessor for any costs incurred by the Lessor under subclause 8.13(a) or as a result of the carrying out, installation, operation or removal of any excavations, alterations, additions, partitions, equipment, fixtures, fittings, plant or machinery.
- (d) Any works carried out by the Lessee pursuant to this clause 8.13 which are in the nature of capital improvements to the Buildings or to the Lessor's equipment may be purchased by the Lessor from the Lessee in accordance with any agreement reached between the parties in writing at the expiration of the term of this Lease or earlier termination of the Lease.

#### 8.14 Removal of fixtures and fittings by lessee on termination

- (a) The Lessee shall if required by the Lessor:
- (i) prior to or on the expiration of the term remove all alterations or additions installed or made by the Lessee; and
  - (ii) restore and make good damage to the Land caused by such removal or otherwise caused by the Lessee, including excavations; and
  - (iii) where the term is determined for any reason effect such removal, making good and restoration immediately after determination.
- (b) If the Lessee fails to complete any removal and making good when required under subclause 8.14(a) the Lessor may either:
- (i) do so, when the Lessee shall on demand pay all costs and expenses incurred by the Lessor in so doing;

- (ii) elect not to effect such removal and give written notice to the Lessee that unless the Lessee effects removal within 14 days of the date on which the notice is given the partitions or additions not removed shall be forfeited to the Lessor without compensation. If the Lessee fails to comply with the notice the partitions alterations and additions shall become the property of the Lessor accordingly.

#### 8.15 Notice of damage and defects by lessee

The Lessee shall immediately give notice to the Lessor of:

- (a) any damage or accident to or defects in the Land; and
- (b) any circumstances occurring within the Land likely to cause damage or injury.

### 9 INSURANCE AND INDEMNITY

#### 9.1 Lessor to insure buildings

The Lessor shall insure and keep insured in the joint names of the Lessor and the Lessee for their respective interests all Buildings on the Land against destruction or damage by fire, earthquake, storm, water damage and malicious damage and such other risks as the Lessor may from time to time require to the full insurable value of the Land on any indemnity cover basis or, at the option of the Lessor, up to the full replacement value of the Land, such insurance to be effected with such insurance office as the Lessor may from time to time select.

#### 9.2 Lessee not to prejudice Lessor's insurance or premium rate

The Lessee shall not and covenants persons under the control of the Lessee shall not do anything upon the Land whereby any insurance effected by the Lessor may be rendered void or voidable or (except with the Lessor's prior written approval) whereby the premiums may increase. The Lessee shall upon demand pay all extra premiums payable as a result of any breach to this clause.

#### 9.3 Lessee to occupy Land at Lessee's risk

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the full extent permitted by the law the Lessor and the Lessor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident damage or injury occurring to any person or property in or about the Land.

#### 9.4 Indemnity by Lessee

The Lessee shall keep the Lessor indemnified against all claims, actions, losses and expenses of any nature which the Lessor may suffer or incur or for which the Lessor may become liable in respect of:

- (a) the neglect or careless use or misuse by the Lessee or persons under the control of the Lessee of the Land or arising out of any faulty fixture or fitting of the Lessee;
- (b) any accident or damage to property or any person arising from any occurrence in or near the Land wholly or in part by reason of any act or omission by the Lessee or persons under the control of the Lessee.

#### 9.5 Public risk insurance

The Lessee at the Lessee's expense shall effect and keep current in respect of the Land and the Lessee's use at the Land a policy of public risk insurance for an amount not less than that provided in clause 1.10, or such other amount from time to time reasonably required by the Lessor, for any one event with a substantial reputable insurance office or company first approved in writing by the Lessor (such approval not to be unreasonably or arbitrarily withheld).

### 10 USE OF LAND AND BUILDINGS

#### 10.1 Use to which Land may be put by Lessee

The Lessee shall only use the Land for the purposes stated in clause 1.11.

#### 10.2 No warranty by Lessor as to suitability of Land

- (a) The Lessor does not warrant:
  - (i) that the Land is or will remain suitable or adequate for any of the purposes of the Lessee, including the permitted use provided in clause 1.11; or
  - (ii) that the permitted and conditional uses of the Land provided in the relevant townplanning ordinances permit the operation of such purposes or the permitted use.
- (b) The Lessee accepts the Land as being satisfactory in all respects and with full knowledge of and subject to any prohibitions or restrictions on the use of the Land.



### 10.3 Payment of utility charges by Lessee

The Lessee shall pay the proper authorities all charges for utilities and other services connected or used in the Land. Should the Lessee make default in payment of such charges the Lessor may pay them and immediately recover the amount paid as if it were rental in arrears payable by the Lessee.

### 10.4 Use of Land by Lessee

The Lessee shall:

- (a) secure all houses and any lockable buildings against unauthorised entry at all times when the Land is left unoccupied and the Lessor reserves the right by the Lessor's employees and agents to enter upon the Land and fasten them if they are left unsecured; and
- (b) upon the cessation of the Lessee's right to occupy the Land deliver to the Lessor all keys to all houses and lockable buildings.

### 10.5 Restrictions on use of Land by Lessee

The Lessee shall not:

- (a) use for other than their designed purpose any of the fixtures or fittings on the Land;
- (b) store or use inflammable or dangerous substances upon the Land save those reasonably required for the Lessee's use;
- (c) do or permit to be done on the Land anything which in the opinion of the Lessor may become a nuisance, disturbance or obstruction or cause damage whether to the Lessor or to neighbouring owners or occupants nor use the Land in any noisy, noxious or offensive manner.
- (d) use the Land for any illegal purpose or in any illegal manner.

## 11 RIGHTS RESERVED BY LESSOR

### 11.1 Maintenance by Lessor

The Lessor may use, maintain and repair all services and fixtures and fittings in, on, or passing through the Land but in so doing the Lessor will cause as little inconvenience to the Lessee as is reasonably possible.



### 11.2 Entry by Lessor to view and effect repairs and alterations

The Lessor may enter upon the Land with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time and without notice in the case of an emergency):

- (a) to view the state of repair of the Land and to ascertain whether or not there has been any breach of the covenants in this Lease; and
- (b) to carry out repairs or other works on the Land or to any adjacent property; and
- (c) to execute any work required to remedy a defect the Lessee's duty to remedy if the Lessee has not within 21 days of the date of receipt of written notice from the Lessor requiring remedial action, taken that action, and without prejudice to other remedies, the Lessor may recover the costs of the remedial action from the Lessee on demand; and
- (d) for the purposes of complying with the terms of any statute affecting the Land or any notice served on the Lessor or Lessee by any competent authority for which the Lessee is not responsible under this Lease; and
- (e) in the event any of the Buildings are either destroyed or damaged for the purpose of rebuilding or restoration; and
- (f) for the purpose of carrying out any repairs, alterations, additions or other works to the utility or other services provided to the Land.

### 11.3 Entry by Lessor for road investigation purposes

The Lessor, and agents of, may enter the Land at any time prior to the expiry of the lease subject to giving the Lessee reasonable notice, for the purpose of gathering information for the design of roading and associated projects, including, but not limited to, survey and geotechnical work.

In exercising such rights the Lessor shall use best endeavours to minimise disturbance to the Lessee.

### 11.4 Work by Lessor to remedy Lessee's default

The Lessor may elect to at any time without notice remedy any default by the



Lessee under this Lease and whenever the Lessor so elects all costs and expenses incurred by the Lessor (including legal costs and expenses) in remedying such default shall be paid by the Lessee to the Lessor immediately on demand.

### 11.5 Default by Lessee

If at any time:

- (a) the Lessor gives written notice to the Lessee specifying any breach of this Lease which breach remains unremedied seven days after giving the notice; or
- (b) repairs required by any notice given by the Lessor under this Lease are not commenced within 14 days of such notice having been given or if commenced are not diligently completed; or
- (c) the Lessee (if an individual) is declared a bankrupt or insolvent according to law; or
- (d) any assignment is made of the Lessee's property for the benefit of creditors or if the Lessee compounds with the Lessee's creditors; and
- (e) the interests of the Lessee in or under this Lease or in the Land are attached or taken in execution or under any legal process; or
- (f) the Lessee (if a company) has a resolution passed or an order made by a court for the winding up of the Lessee (except for the purposes of reconstruction approved by the Lessor) or if the Lessee is placed in receivership or under official or statutory management.

the Lessor may:

- (g) immediately or at any time subsequently and without any notice or demand immediately re-enter (forcibly if necessary) the Land or any part of the Land;
- (h) by such action determine the Lessee's estate and interest in the Land; and



MGGPERKINS LEASE.DOC



- (i) expel and remove the Lessee and the effects of the Lessee and those claiming under the Lessee without being guilty of any manner of trespass or conversion.

Upon such event this Lease shall cease and determine but without releasing the Lessee from liability in respect of any breach of this Lease.

#### 11.6 Distraint

The Lessor may levy distraint for rental, Property Expenses and any other moneys payable by the Lessee under this deed where the Lessee has made default in making payment of the same for more than seven days from the due date for payment.

#### 11.7 Essential terms

- (a) Any breach of the following covenants by the Lessee shall be a breach of an essential term of this Lease:
  - (i) the covenant to pay, Property Expenses and other moneys due to the Lessor throughout the term where such breach of covenant gives rise to a right of re-entry pursuant to this Lease (clauses 6.1 to 6.6 (inclusive) and clause 11.4);
  - (ii) the covenant dealing with assignments, subletting and parting with possession (clauses 7.1 to 7.4 (inclusive));
  - (iii) the covenants dealing with maintenance and husbandry of the Land (clauses 8.1 to 8.15 (inclusive)).
- (b) The Lessee shall compensate the Lessor for any breach of an essential term of this Lease and the Lessor is entitled to recover damages from the Lessee in respect of such breaches. The Lessor's entitlement under this clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including the right to terminate this Lease).
- (c) In respect of the obligation referred to in clause 11.6(a)(i) acceptance by the lessor of arrears or of any late payment of rental shall not be a waiver of the essentiality of the Lessee's obligation to pay rental in respect of those arrears or late payment or the Lessee's continuing obligation to pay rental throughout the term.



### 11.8 Compensation for breach

- (a) In the event the Lessee's conduct (whether acts or omissions) constitutes a repudiation of the Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any Lease covenants the Lessee shall compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.
- (b) The Lessor shall be entitled to recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the whole of the term.
- (c) The Lessor's entitlement to recover damages shall not be affected or limited by any of the following:
- (i) if the Lessee shall abandon or vacate the Land;
  - (ii) if the Lessor shall elect to re-enter or to terminate the Lease;
  - (iii) if the Lessor shall accept the Lessee's repudiation;
  - (iv) if the parties' conduct shall constitute a surrender by operation of law.
- (d) The Lessor shall be entitled to recover damages against the Lessee in respect of the entire term including the periods before and after the Lessee has vacated the Land and before and after the events referred to in subclause 11.7(c) whether recovery proceedings are instituted before or after such conduct.

### 11.9 Removal of lessee's chattels and improvements

Upon the expiration or earlier determination of this Lease, the Lessor may remove from the Land any chattels in the possession of the Lessee or any person under the control of the Lessee and place them outside the Land without being responsible or liable for any resultant loss or damage.

## 12 COVENANTS BY LESSOR

### 12.1 Rates

The Lessor shall pay all rates, taxes and assessments charged upon the Land except those which the Lessee is obliged to pay.



## 12.2 Quiet Enjoyment

The Lessee performing the Lessee's obligations under this Lease shall peaceably possess and enjoy the Land without any undue interruption or disturbance from the Lessor.

## 13 MISCELLANEOUS

### 13.1 Application of insurance moneys

(a) If the Buildings shall be damaged and

(i) the Lessor's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Lessee; and

(ii) all the necessary permits and consents shall be obtainable;

the Lessor shall with all reasonable speed expend the insurance moneys received by the Lessor towards repairing such damage or reinstating the Buildings but the Lessor shall not be liable to expend any sum of money greater than the amount of the insurance money received.

(b) Any repair or reinstatement shall be:

(i) Carried out using such materials and form of construction and according to such plan as the Lessor thinks fit;

(ii) Sufficient so long as it is reasonably adequate for the Lessee's occupation and use of the Land; and

(iii) Carried out so as to cause as little disturbance to the Lessee as is reasonably possible.

The Lessee shall permit the Lessor and the Lessor's agents, employees and contractors with all necessary equipment and materials to enter the Land to carry out repairs or reinstatement to the Buildings.

(c) Until the completion of the repairs or reinstatement a fair proportion of the rental and the Property Expenses shall cease to be payable according to the nature and extent of the damage.



RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

- (d) The term shall in no way be affected or terminated excepting when subclauses 13.1(a)(i) and (ii) are not satisfied when this Lease shall terminate and neither party shall have any prior claim on the other excepting for any prior breach of this Lease.

### 13.2 Right of mortgagee paramount

The terms of clause 13.1 shall in respect of the application of any insurance moneys be subject to the rights of any mortgagee of the Land. If insurance moneys are paid to a mortgagee the Lessor may elect to treat such moneys as moneys actually received pursuant to subclause 13.2(a)(ii) and reinstate as provided in clause 13.1.

### 13.3 Lessee to pay Lessor's costs

In addition to the rental and other moneys reserved by this Lease the Lessee shall pay:

- (a) all costs, charges and expenses for which the lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance of any of the covenants in this lease.

### 13.4 Lessee to permit inspection and display of signs

The Lessee will at all reasonable times permit the Lessor to exhibit the Land to prospective tenants or purchasers and will during the period of three months prior to the termination date of this Lease allow the Lessor to affix to the Land appropriate sale or reletting notices.

### 13.5 Notices

- (a) Any notice or other document required to be given or served under this Lease may (in addition to any other method permitted by law):
- (i) in the case of the Lessee be given or served by registered post or by delivery to the Lessee at the Lessee's last known place of abode or business or by delivery to the Land; and
  - (ii) in the case of the Lessor by registered post or by delivery to the Lessor's principal place of business or such address as may be notified to the Lessee from time to time.
- (b) Any notice or other document shall be deemed to have been served on the other party one business day after the date of posting or delivery.



- (c) In the case of any notice or document required to be served or given by the Lessor the same may be signed on behalf of the Lessor by any authorised officer of the Lessor or by the Lessor's solicitors.

### 13.6 Arbitration

- (a) If any dispute or difference shall arise between the parties as to:
- (iii) the meaning or application of any part of this Lease; or
  - (iv) any other matter in connection with or which may have an effect on this Lease

the dispute or difference (*the Issue*) shall be referred to the award of a single arbitrator to be agreed upon between the Lessor and the Lessee.

- (b) If the Lessor and the Lessee are unable to agree upon a single arbitrator within 10 days of either party notifying the other in writing of their wish to have the Issue arbitrated then either party (*the Notifying Party*) may at any time subsequently by written notice to the other party (*the Receiving Party*) require the Issue to be determined by two arbitrators (one to be appointed by the Lessor and one to be appointed by the Lessee) and their umpire (to be appointed by the arbitrators before proceeding to determine the Issue). The notice to be given by the Notifying Party pursuant to this subclause shall:
- (i) nominate the arbitrator appointed by the Notifying Party; and
  - (ii) require the Receiving Party to nominate their arbitrator by a date not less than 10 days after the date of service of the notice by the Receiving Party; and
  - (iii) warn the Receiving Party of the consequences under subclause 13.6(c) of failure to appoint an arbitrator by the date specified by the Notifying Party.
- (c) If the Receiving party fails to appoint their arbitrator by the date specified then the Notifying Party may by written notice to the Receiving Party have the Issue determined solely by the Notifying Party's arbitrator.
- (d) If any arbitrator appointed pursuant to subclauses 13.6(a) or (b) refuses or fails to act (including appointing an umpire if necessary) within a

reasonable time of their appointment then either the Lessor or the Lessee may (provided the defaulting arbitrator has first been given in writing a reasonable time in which to act) request the President of the New Zealand Law Society to appoint a replacement arbitrator or an umpire who shall act in lieu of the defaulting arbitrator or as the umpire as the case may be.

- (e) Time shall be of the essence under this clause.
- (f) The parties agree to be bound by any decision or award completed pursuant to this clause.
- (g) This provision shall survive the expiration or earlier determination of this Lease.
- (h) Any referral to arbitration under this clause shall be a submission to arbitration under the Arbitration Act 1996 which Act shall, to the extent not inconsistent with anything in this clause, apply to any such submission.

### 13.7 No registration

The Lessee shall not call upon the Lessor to execute a registrable memorandum of lease of the Land unless the Lessee shall have first paid to the Lessor the full amount of the costs and expenses to be incurred, including legal, survey and Lessor's administration, in preparing, executing and causing to be registered such memorandum of lease and the Lessee shall not at any time lodge a caveat against any title to the land comprised in the Land.

EXECUTED AS A DEED

**SIGNED** for and on behalf of  
**TRANSIT NEW ZEALAND**  
by Neil Carr, National Property  
Manager (acting pursuant to  
delegated  
authority):

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:  
Occupation:  
Address:

Signed by **JOHN HAYES PERKINS**

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:  
Occupation:  
Address:



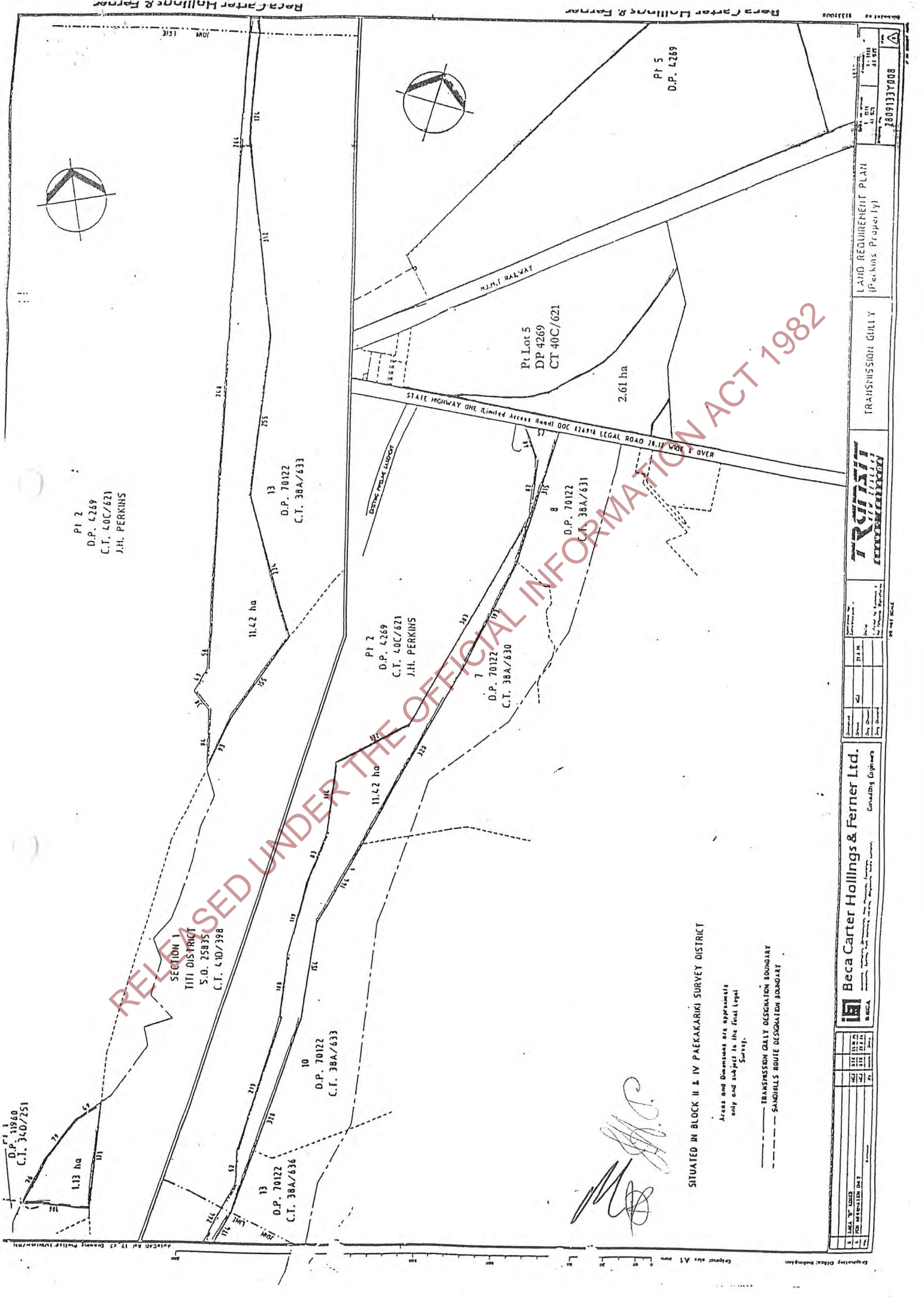
RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



**SCHEDULE****Property Expenses**

- 1 The Lessee shall pay to the Lessor on demand the Property Expenses incurred or payable during the term.
- 2 *The Property Expenses* means:
  - (a) rates or levies payable to any local or territorial authority in respect of the Land and all other charges imposed including by way of example only any charges in connection with all water and electricity consumed on the Land, water catchment and pest destruction; and
  - (b) insurance premiums and related valuation fees incurred in relation to the insurances referred to in clause 9.1.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



Pt 1  
D.P. 11960  
C.T. 300/251

Pt 2  
D.P. 4269  
C.T. 40C/621  
J.H. PERKINS

SECTION 1  
TITI DISTRICT  
S.O. 25835  
C.T. 410/398

10  
D.P. 70122  
C.T. 38A/636

10  
D.P. 70122  
C.T. 38A/633

Pt 2  
D.P. 4269  
C.T. 40C/621  
J.H. PERKINS

7  
D.P. 70122  
C.T. 38A/630

Pt Lot 5  
DP 4269  
CT 40C/621

Pt 5  
D.P. 4269

SITUATED IN BLOCK II & IV PAKAKARIKI SURVEY DISTRICT

Areas and Dimensions are approximates  
only and subject to the final legal  
Survey.

--- TRANSMISSION DAILY DESIGNATION BOUNDARY  
--- SANDWICHES ROUTE DESIGNATION BOUNDARY

*[Handwritten signature]*

 Beca Carter Hollings & Ferner Ltd.		CONSULTING ENGINEERS	
PROJECT NO. 2809133Y008	DATE 11/11/82	DRAWN BY J.H.P.	CHECKED BY J.H.P.
TITLE LAND REQUIREMENT PLAN	PROJECT PERKINS PROPERTY	SCALE AS SHOWN	SHEET NO. 1 OF 1
TRANSMISSION GULLY	TRANSMISSION GULLY	PROJECT NO. 2809133Y008	SHEET NO. 1 OF 1

# Schedule E

## Fencing Specification For New Boundary

NO 8 GALVANISED SOFT

1. 9 wires using High-Tensile-Steel-Wire 3.15mm-gauge.
2. 6 posts/chain using No. 1 1/2 rounds. J.H.P.
3. 4 batters/posts - (50mm x 50mm).
4. Strainers - 2.4m long (No. 1's) Stay posts - No. 1 round 1.8 m long.
5. Angles - 2.1m long (No. 1's) Stay posts - No. 1 round 1.8 m long.
6. All footing and stay blocks are to be No. 1 half rounds.
7. All wooden materials shall be tanalised.
8. All staples to be galvanised and barbed. J.H.P.
9. All posts, staples and wire to be new material.
10. All posts, strainers and stays can include those taken from the temporary fencing if new when used for the temporary fence line.

11. All footing to be TEE footed, slotted, & secured with stainless steel wires. J.H.P.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

J.H.P.

J.H.P.

Schedule F

BETWEEN

TRANSIT NEW ZEALAND  
("TRANSIT")

AND

JOHN HAYES PERKINS  
("the GRANTEE")

STOCK UNDERPASS USE AGREEMENT

Dated

20

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

J.H.P.

M.B.

## STOCK UNDERPASS USE AGREEMENT

This agreement is made on the ..... day of ..... 20

### BETWEEN

- (1) **Transit New Zealand**, a statutory authority established by the Transit New Zealand Act 1989 (herein after referred to as "Transit").

### AND

- (2) John Hayes Perkins of Paekakariki. (herein after referred to as "the Grantee").

### BACKGROUND

- A. Transit having the statutory responsibility and control of all matters in relation to the State highway network has authority to agree to the stock underpass use.
- B. Ownership of the stock underpass will be vested in Transit.
- C. Transit and the Grantee have agreed to the use of a stock underpass on State Highway ..... at or near Route Position .... / ..... and as shown on Plan No. ....

Now therefore in consideration of the above the parties wish to record the terms and conditions relating to the agreement as follows:

#### 1.0 Defined Terms

- 1.1 In this agreement, unless the context requires otherwise:

**Stock underpass** means a stock access structure together with associated fencing, drainage and safety facilities, over or under a State highway, connecting two parts of a property or properties.

**Grantee** means the property owner, whose property or properties is/are bisected by the State highway, or whose property is afforded access across the State highway, at the position where the stock underpass is proposed or is constructed, who is party to this agreement or any other document.

**Parties** means Transit New Zealand and the Grantee, their personal representatives/ successors and permitted assigns.

**Words** in the singular are deemed to include the plural.

**2.0 Title**

2.1 Ownership of the stock underpass shall be vested in Transit.

**3.0 The parties mutually**

3.1 Confirm the contents of BACKGROUND.

3.2 Agree that they shall each carry out and fulfil all their respective obligations set out in this document.

**4.0 The Grantee**

4.1 The Grantee agrees and confirms that:

4.1.1 the Grantee shall have the right to use the stock underpass in consideration of the payment to Transit of an annual fee of one dollar (\$1.00) if demanded.

4.1.2 the Grantee shall not do anything or allow anything to be done that will affect the structural integrity of the stock underpass.

4.1.3 the Grantee shall maintain, at the Grantee's cost, the stock underpass, including associated fencing, drainage and safety facilities, in good order and condition at all times, and immediately make safe and repair damage to the stock underpass caused through direct or indirect use or activity, and in any event shall carry out such maintenance or repair as may be reasonably be required, in writing, by Transit.

4.1.4 the Grantee shall advise Transit when any maintenance or repair, other than that of a routine nature, is required. The Grantee shall effect such maintenance or repair in accordance with the instructions of and to the satisfaction of Transit.

4.1.5 the Grantee shall be responsible for the cost of maintenance of the access through or over the structure.

4.1.6 the Grantee shall obtain the consent of Transit before entering onto the State highway to effect maintenance or repairs to the stock underpass.

4.1.7 the Grantee shall immediately make good any damage caused by the Grantee, his servants, agents or visitors, to the State highway or legal road reserve.

4.2 On receipt of advice under Clause 4.1.4, or as determined through its own inspection, Transit may elect to carry out all or part of any maintenance or repairs at the Grantee's cost or otherwise. Transit will, in such case, notify the Grantee accordingly within 14 days of receipt of advice or inspection.

4.3 The Grantee shall indemnify Transit against all costs, actions, demands, suits, damages and proceedings of any kind for any loss or damage that might result to any property of any person or any agency of the Crown directly or indirectly by reason of the exercise of the rights under this agreement.

**5.0 Transit**

5.1 Notwithstanding the provisions of Clause 4.0, Transit shall meet the cost of repairs of any structural defect in the stock underpass where Transit is satisfied such defect is not directly or indirectly attributable to the use of the stock underpass by the Grantee.

**6.0 Removal of Stock Underpass**

6.1 The Grantee shall have the right to have the stock underpass removed at any time subject to the following conditions:

6.1.1 Two months written notice to Transit of the Grantee's exercise of right.

6.1.2 Transit shall undertake removal of the stock underpass and reinstate the State highway to its satisfaction. Transit will ensure that its consultants and contractors take all reasonable care in removal of the stock underpass but Transit will not be responsible for any damage that may occur to the stock underpass as a result of its removal.

6.1.3 The Grantee shall reimburse Transit for the costs of such removal and reinstatement. Upon receipt of notice under Clause 6.1.1, Transit will provide the Grantee with an estimate of cost of such removal. The estimated amount shall be paid to Transit, pending completion of the removal and reinstatement, and then applied to the cost of removal and reinstatement.

6.1.4 Ownership of the stock underpass structure shall pass to the Grantee upon removal and reinstatement.

6.1.5 Consent may not be given to the grantee, upon removal of the stock underpass, to allow access to and stock to traverse the State highway at or near the stock underpass location.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

**7.0 Termination**

7.1 Transit may terminate this agreement and may remove the stock underpass:

7.1.1 at the expiration of three months written notice of intention to terminate if the land under which the stock underpass is constructed ceases to form part of the State Highway Network or is otherwise removed from Transit control; or

7.1.2 without notice if the Grantee fails, within twenty eight (28) days of receiving notice requiring the Grantee to remedy any default on the Grantee's part under this agreement; or

7.1.3 immediately without notice if any default on the Grantee's part under the terms of this agreement in the opinion of Transit interferes or may interfere with the safe and/or efficient operation of the State highway.

7.2 The Grantee shall not be liable for any compensation on termination of this agreement.

**8.0 Assignment**

8.1 The rights of the Grantee shall not be assigned under this agreement without prior written consent of Transit, which shall not unreasonably be withheld.

**9.0 Notices**

9.1 All notices under this agreement shall be sent to the following addresses by hand, post or facsimile or to such other addresses as are from time to time nominated in writing by the parties:-

Transit:- The Regional State Highway Manager  
Transit New Zealand

.....  
.....  
.....

Facsimile: .....

Phone: .....

Grantee:- .....

.....  
.....  
.....

Facsimile: .....

Phone: .....

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



9.2 It will be sufficient in cases where notice is to be given by Transit that some person acting under Transit's express or implied authority sign such notice.

**SIGNED** for and on behalf of }  
Transit New Zealand by }  
..... }  
..... }  
Regional State Highway Manager }  
(acting pursuant to delegated authority) } .....

In the presence of:

*Witness Signature* .....  
*Name* .....  
*Occupation* .....  
*Address* .....  
.....  
.....

**SIGNED** by the Grantee } .....  
..... } .....  
..... } .....

In the presence of:

*Witness' Signature* .....  
*Name* .....  
*Occupation* .....  
*Address* .....  
.....  
.....



RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

The Common seal of

.....

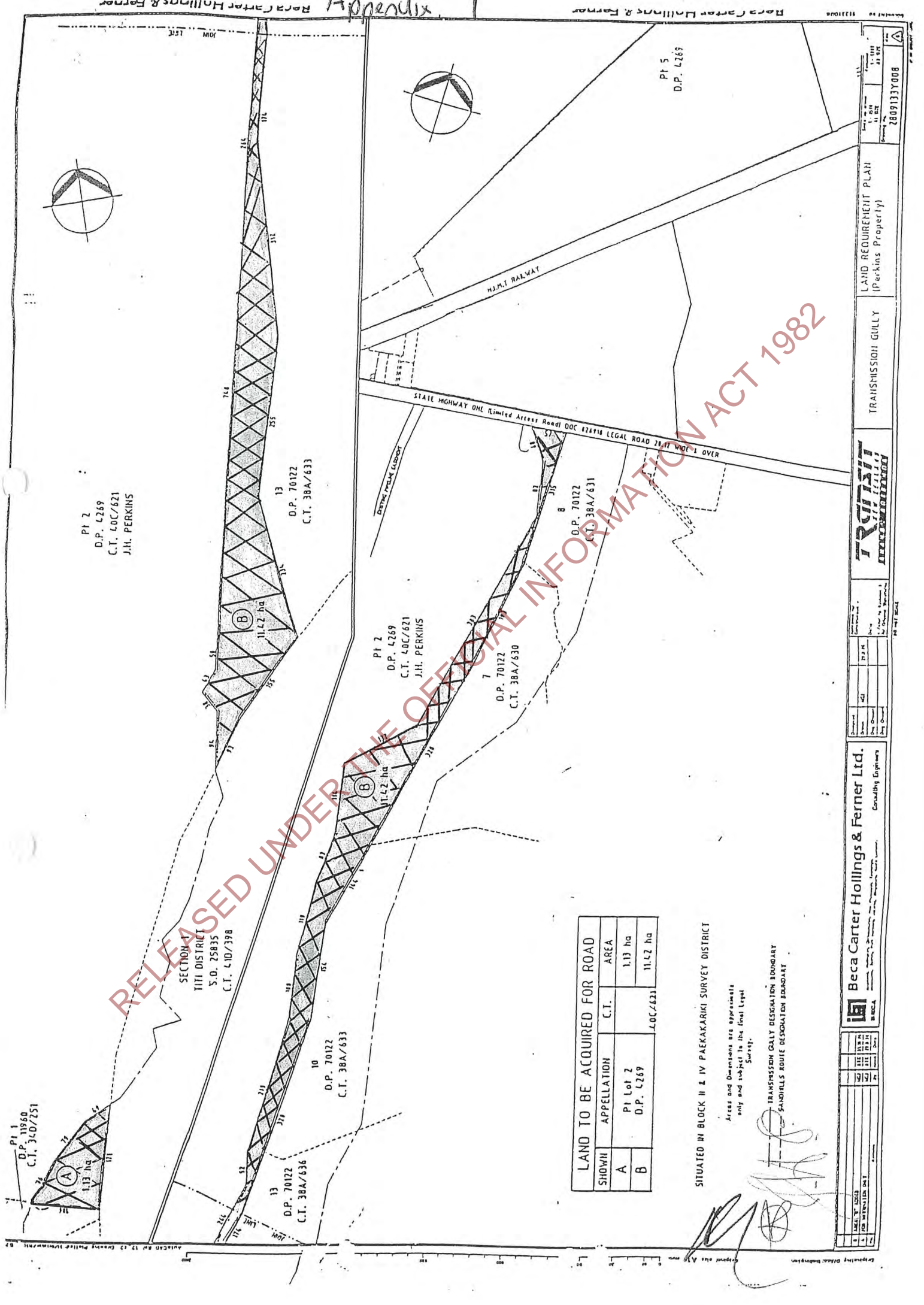
was hereto affixed in the presence of:

.....

.....

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982





PI 2  
D.P. 4269  
C.T. 40C/621  
J.H. PERKINS

13  
D.P. 70122  
C.T. 38A/633

PI 2  
D.P. 4269  
C.T. 40C/621  
J.H. PERKINS

8  
D.P. 70122  
C.T. 38A/631

7  
D.P. 70122  
C.T. 38A/630

10  
D.P. 70122  
C.T. 38A/633

13  
D.P. 70122  
C.T. 38A/636

SHOW	APPELLATION	C.T.	AREA
A	PI Lot 2 D.P. 4269		1.13 ha
B		LOC 4231	11.42 ha

SITUATED IN BLOCK II & IV PAKAKARIKI SURVEY DISTRICT

Areas and Dimensions are approximate  
only and subject to the final legal  
Survey.

TRANSMISSION GULLY DESIGNATION BOUNDARY  
SANDWELL ROUTE DESIGNATION BOUNDARY

*[Handwritten signatures and notes]*

LAND TO BE ACQUIRED FOR ROAD

SECTION IV TITI DISTRICT  
S.O. 25835  
C.T. 41D/398

LAND REQUIREMENT PLAN  
(Perkins Property)

2809133Y008

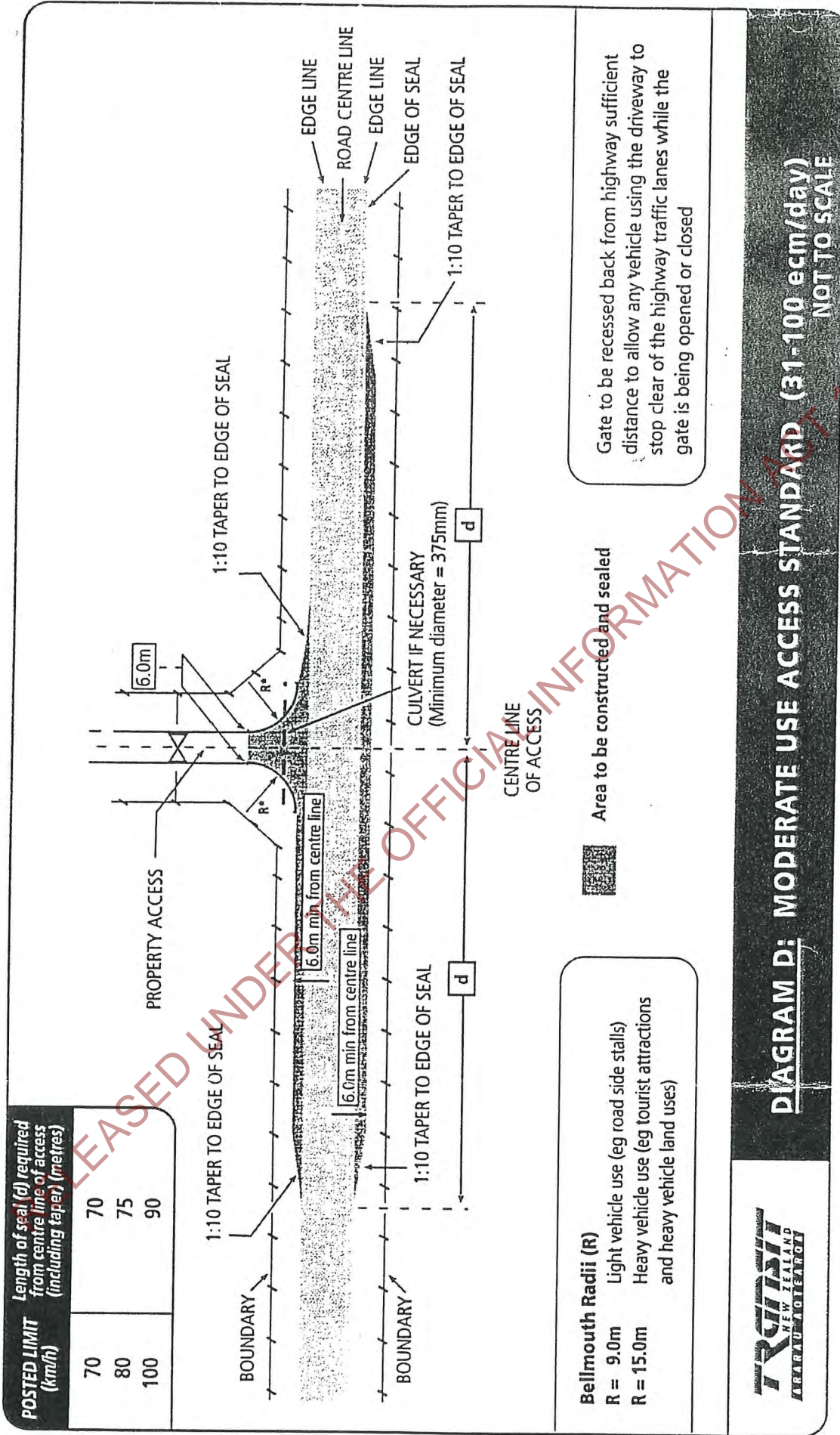
**TRUST**

CONSULTING ENGINEERS

Beca Carter Hollings & Ferner Ltd.  
Consulting Engineers

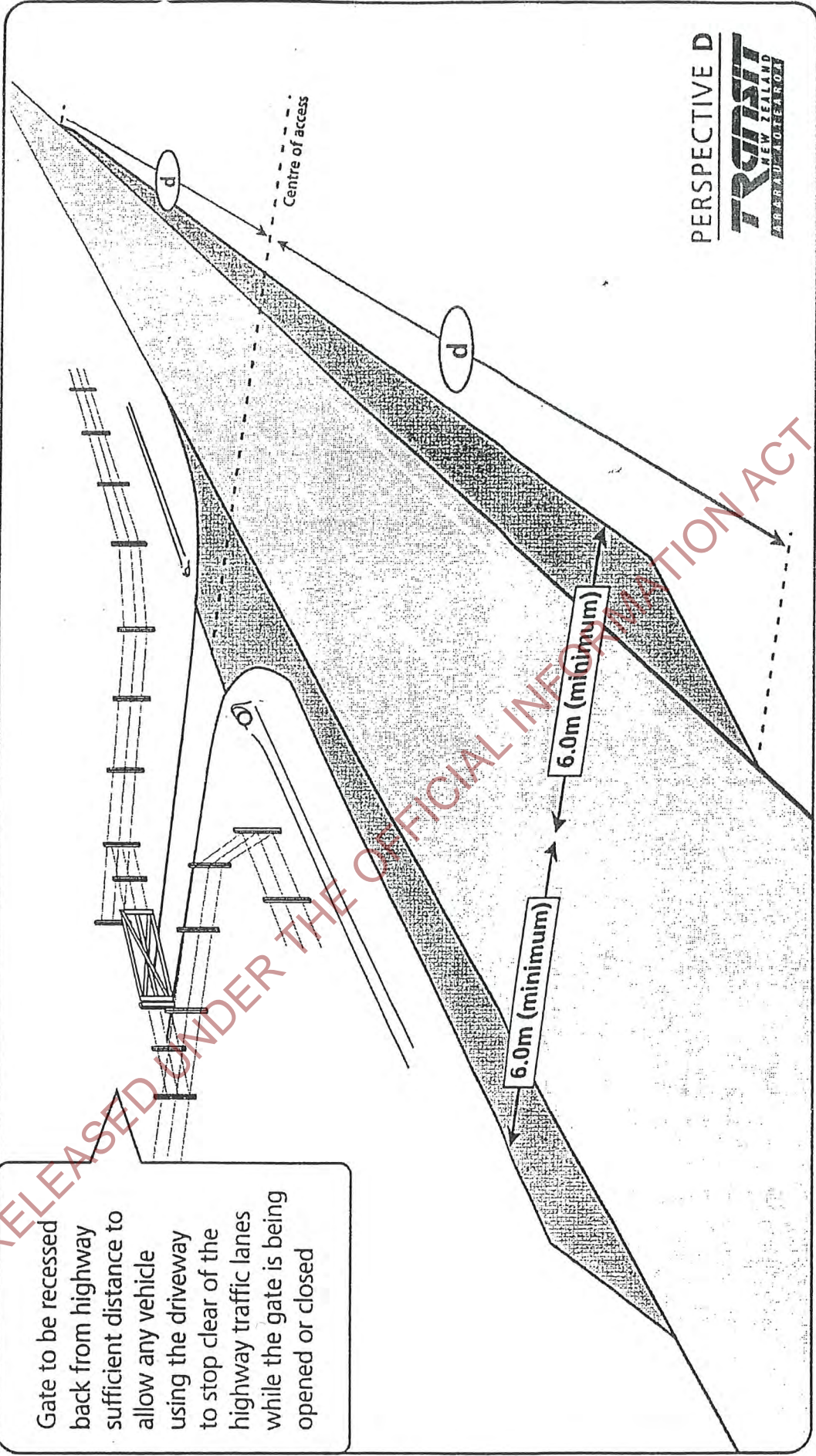
2809133Y008



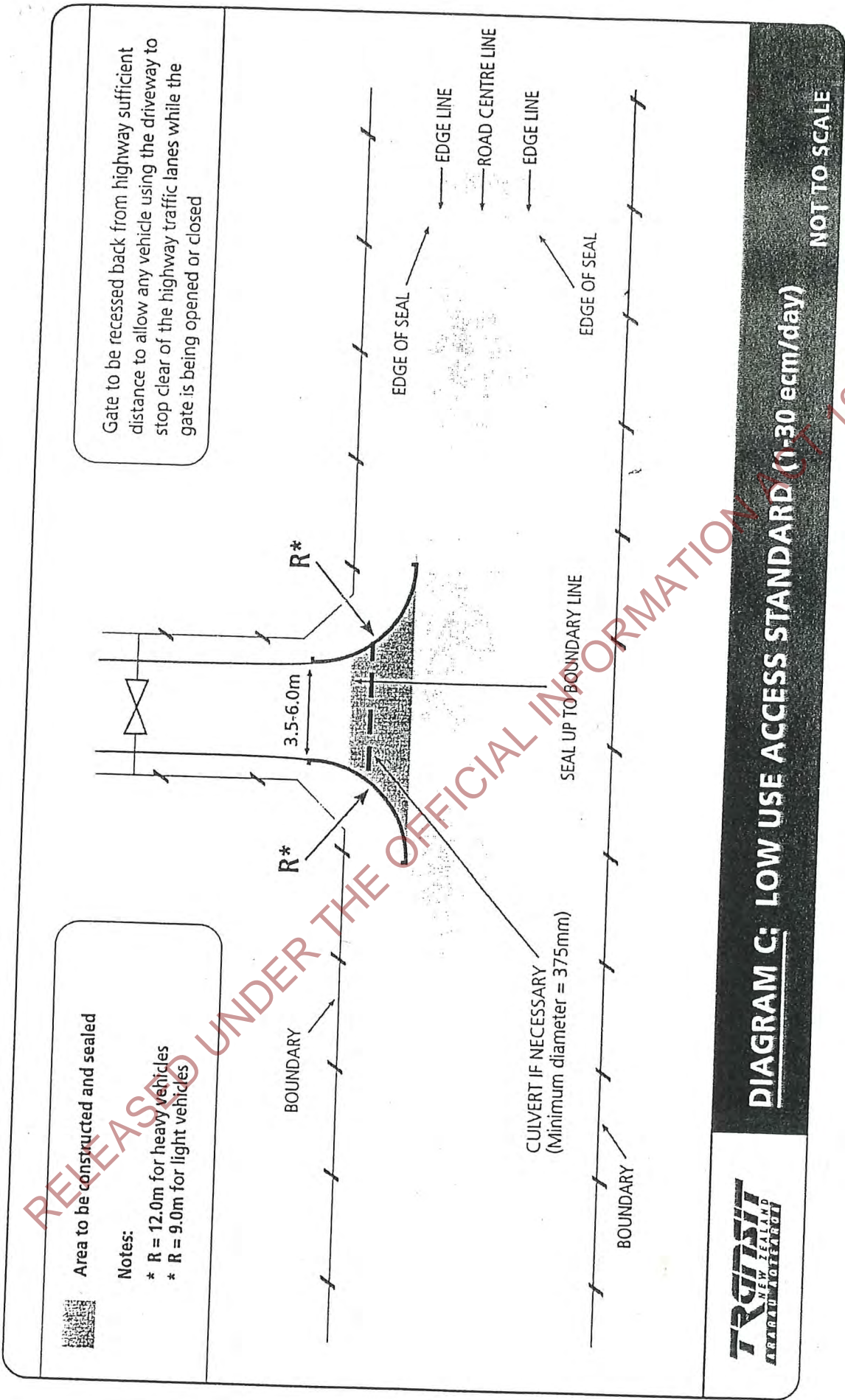


Handwritten signature/initials.

Handwritten signature/initials.



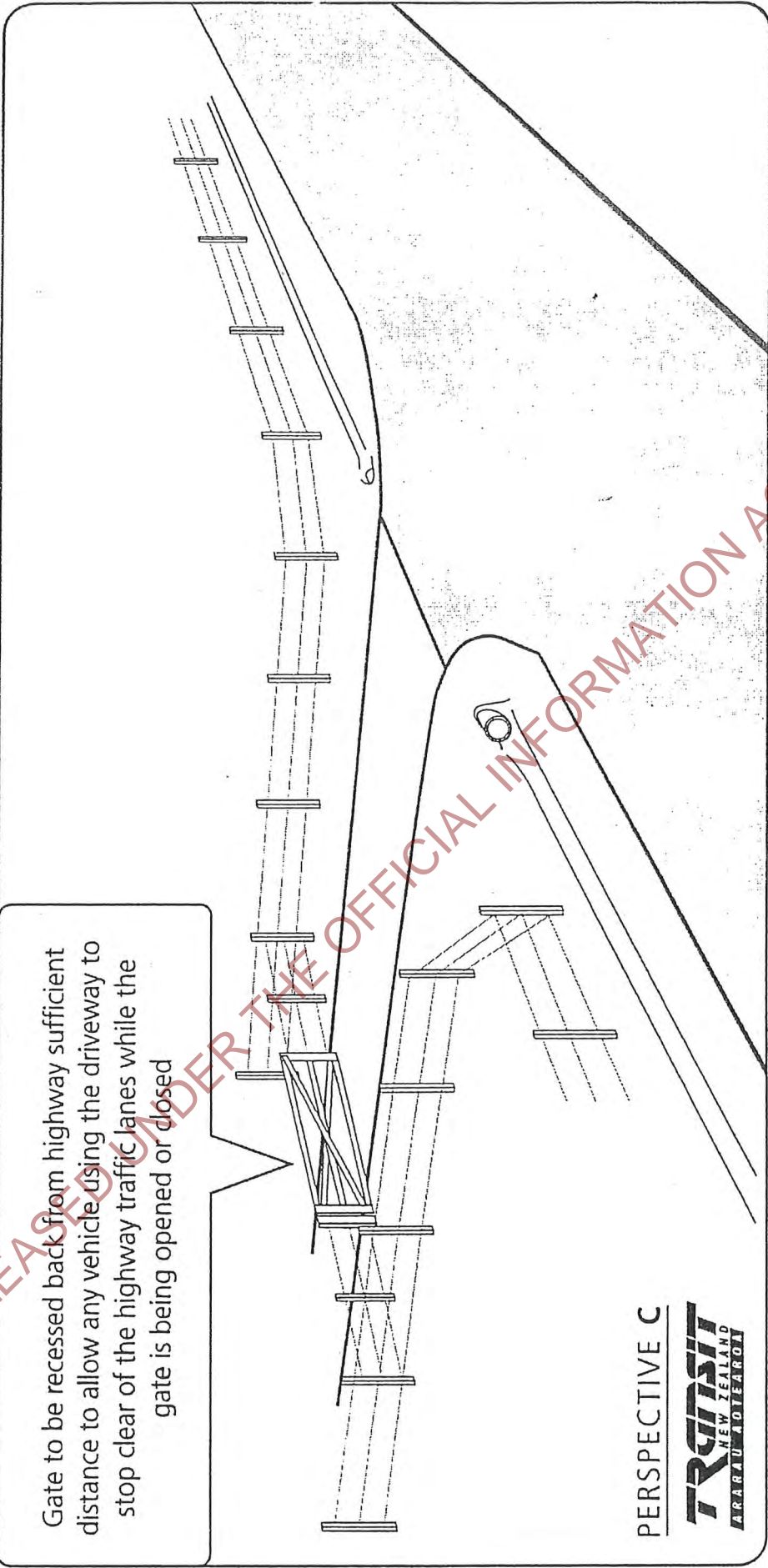
4/18/82



*M*

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

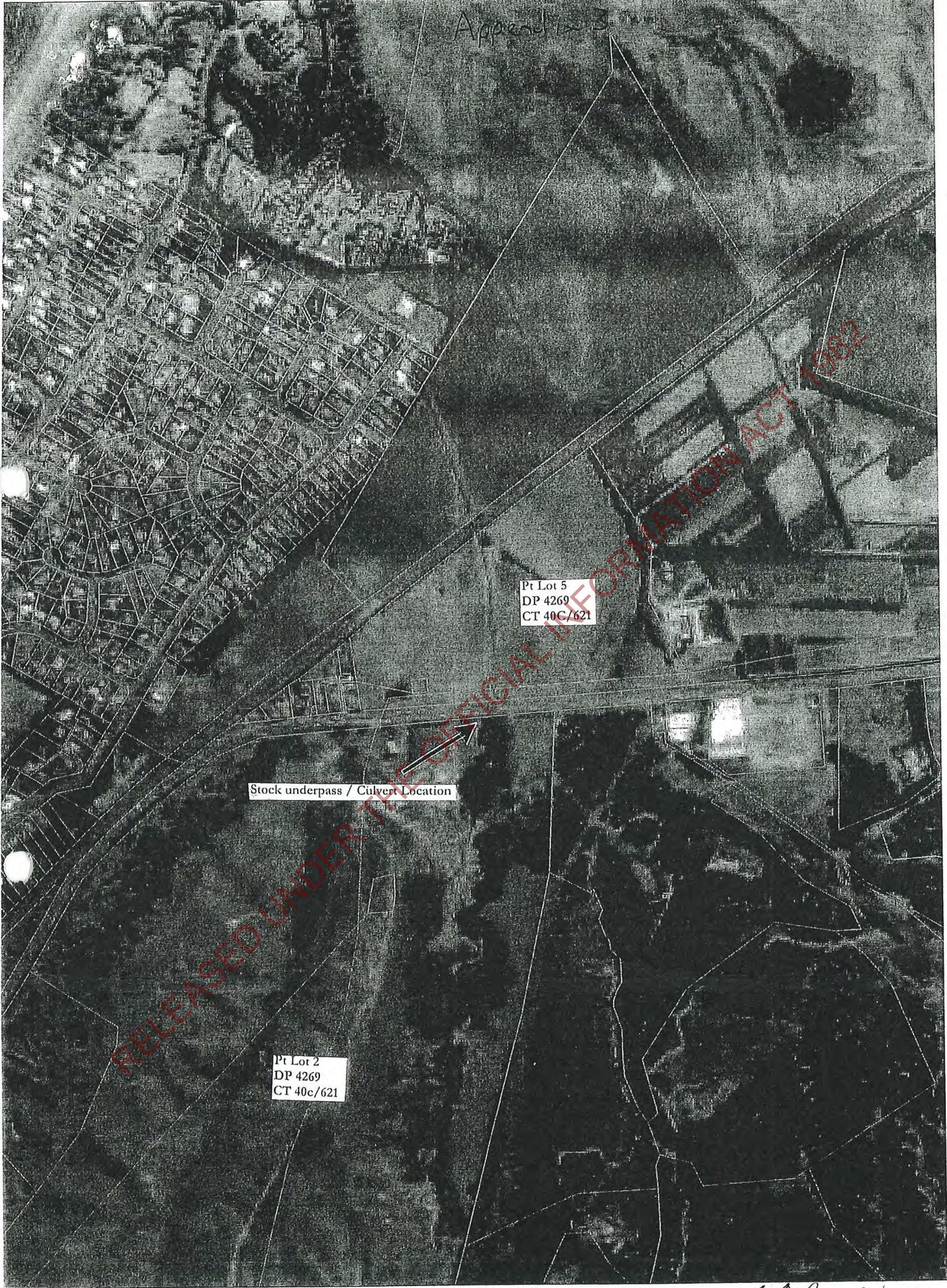
Gate to be recessed back from highway sufficient distance to allow any vehicle using the driveway to stop clear of the highway traffic lanes while the gate is being opened or closed



PERSPECTIVE C  
**TRANSIT**  
NEW ZEALAND  
ARARAU ADTEARON

2/1/8





Pt Lot 5  
DP 4269  
CT 40C/621

Stock underpass / Culvert Location

Pt Lot 2  
DP 4269  
CT 40c/621




RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982





*[Handwritten signatures]*

# Appendix 4

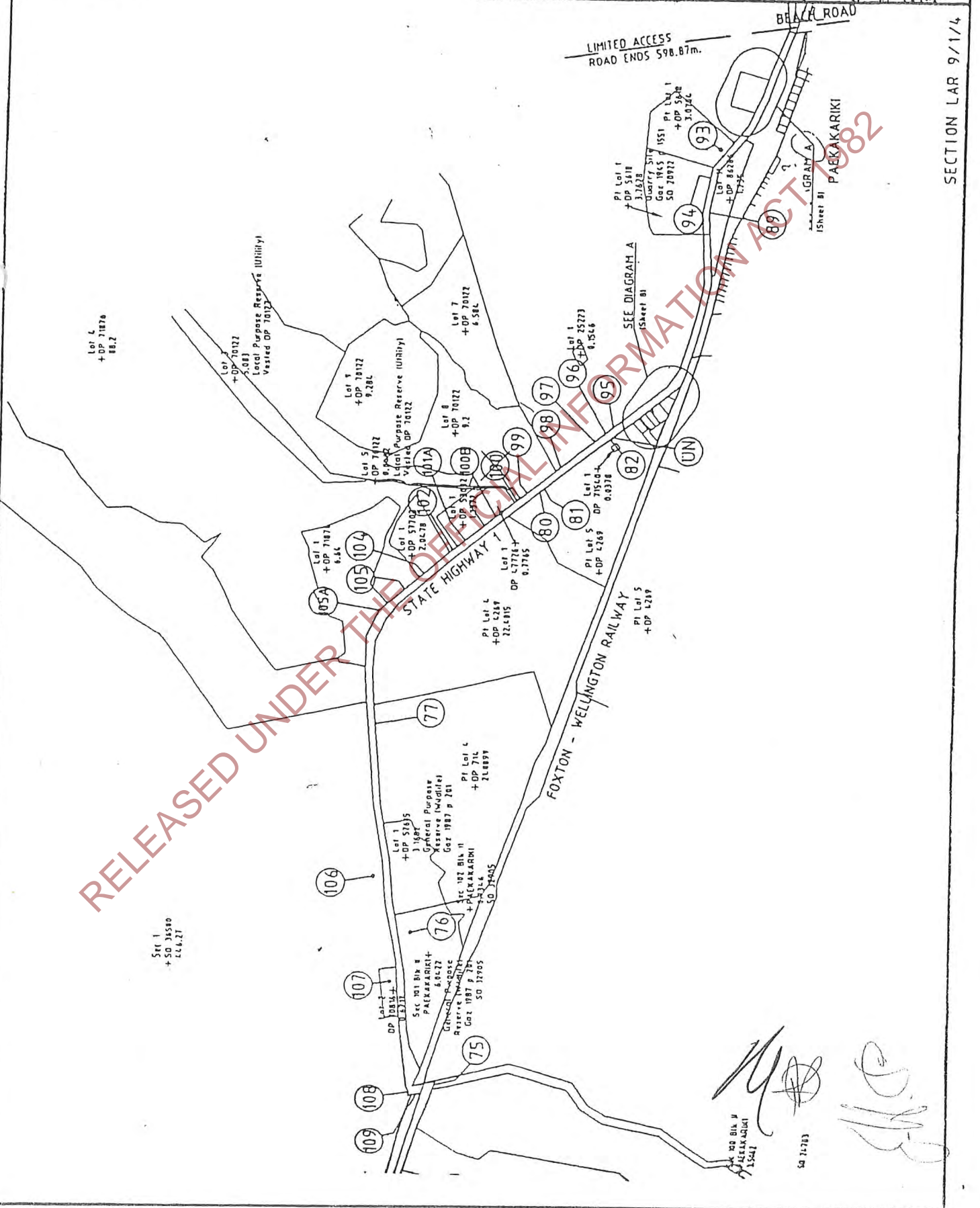
## LEGEND

-  AUTHORIZED ACCESS
-  ACCESS TO BE ALLOCATED
-  CANCELLED



	
REGION 9	SH1
KAPITI COAST DISTRICT	
LIMITED ACCESS ROAD	
PAPARALUMU TO	
PAEKAKARU - SHEET SEVEN	
	
DATE: APRIL 2009 SCALE: 1:1,000	
LA 52/5/1	7 of 8
1	




RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



SECTION LAR 9/1/14

  
 SO 21-703  


**LEGEND**

-  AUTHORIZED ACCESS
-  ACCESS TO BE ALLOCATED
-  CANCELLED



NO.	DATE	REVISIONS
1	1982	ISSUE FOR THE FIRST TIME
2	1982	REVISED TO SHOW THE PROPOSED ACCESS
3	1982	REVISED TO SHOW THE PROPOSED ACCESS
4	1982	REVISED TO SHOW THE PROPOSED ACCESS
5	1982	REVISED TO SHOW THE PROPOSED ACCESS
6	1982	REVISED TO SHOW THE PROPOSED ACCESS
7	1982	REVISED TO SHOW THE PROPOSED ACCESS
8	1982	REVISED TO SHOW THE PROPOSED ACCESS
9	1982	REVISED TO SHOW THE PROPOSED ACCESS
10	1982	REVISED TO SHOW THE PROPOSED ACCESS



REGION 9  
 SH1  
 KAPITI COAST DISTRICT  
 LIMITED ACCESS ROAD  
 PARAPARAIRU TO  
 PAENAKARUO - SHEET EIGHT



DATE: APRIL 2001  
 SCALE: 1:1,000

LA 52/5/1 8 of 8 1

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

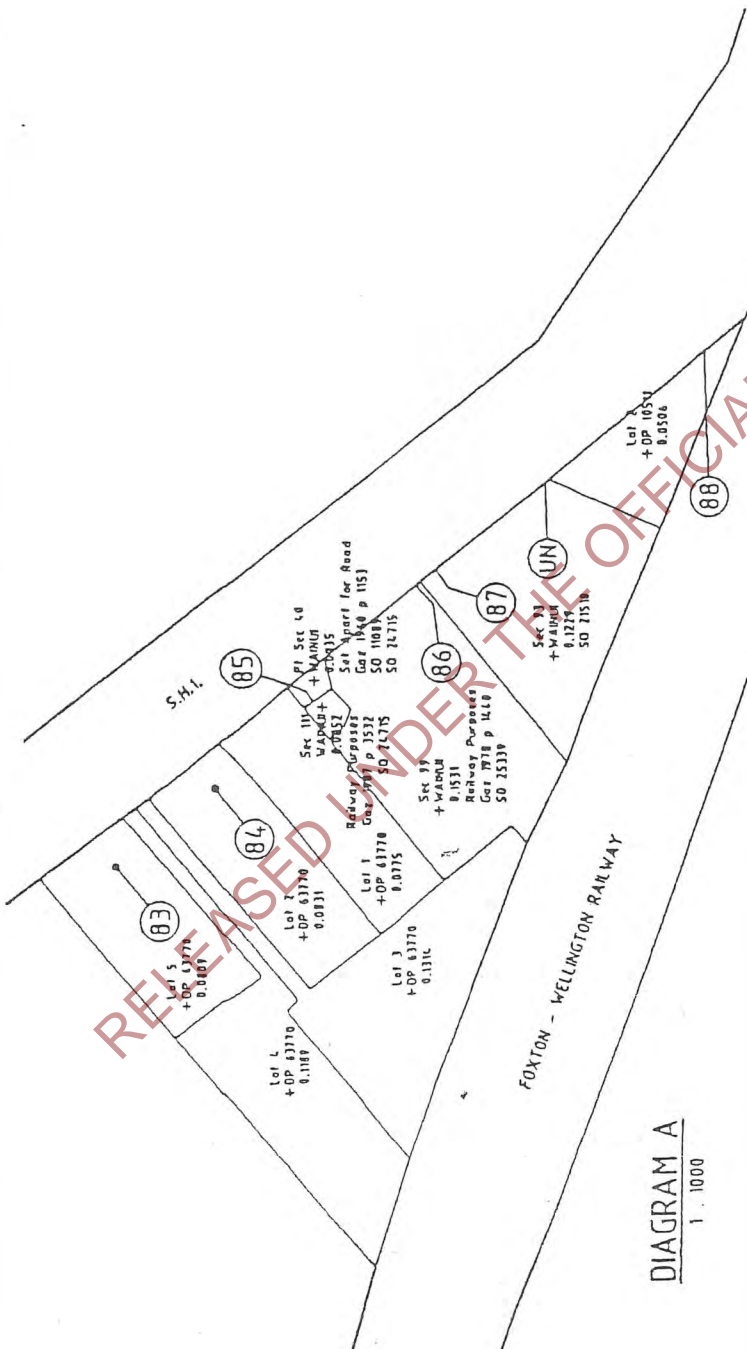


DIAGRAM A  
 1 : 1000

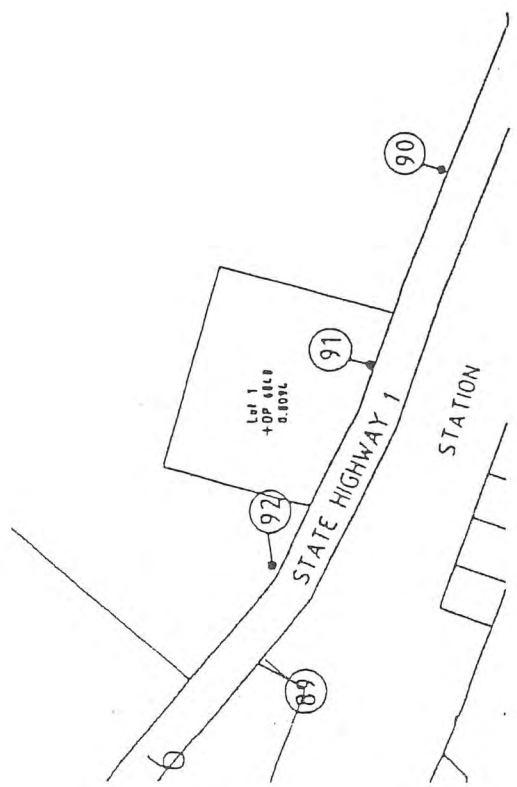


DIAGRAM B  
 1 : 1000

*[Handwritten signatures and initials]*