

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
("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.
- d. Compensation Certificate 9093795 was registered against the titles to the Land on 11 June 2012.
- e. 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

J.H.P.
CJ

residential tenancy of such commencing on the Settlement Date on the terms and conditions attached to the Agreement as Schedule E ("the residential tenancy").

- f. The Owner wishes to purchase other land in substitution of the Land and has requested that the Crown pay a further deposit of \$592,200.00 plus GST if any ("the further deposit") to enable the Owner to purchase such substitute land.
- g. Upon payment of the further deposit by the Crown the Owner will have sufficient funds to purchase the substitute land and will no longer require the Crown to grant the residential tenancy such that vacant possession of the Land will be given to the Crown on the Settlement Date.
- h. The Crown and the Owner have agreed to enter into this Variation of Agreement to:
 - i. Vary the Agreement so as to remove the requirement for the Crown to grant the residential tenancy to the Owner on the Settlement Date; and to
 - ii. Arrange payment of the further deposit by the Crown to the Owner.

Agreement

- 1. The Crown and the Owner agree to vary the Agreement so as to remove the requirement for the Crown to grant the residential tenancy to the Owner on the Settlement Date.
- 2. To give effect to clause 1 above the parties agree to vary the Agreement by:
 - a. Deleting clause 1.1 of the Agreement and substituting the following;

1.1 The date of settlement shall be the later of either 22 February 2013 or such other date as may be nominated by the Owner after giving the Crown not less than 10 working days' notice PROVIDED THAT the last date for vacant possession of the Land shall be 28 June 2013 ("the Settlement Date").
 - b. Removing the Residential Tenancy Agreement attached to the Agreement as Schedule E.
- 3. In consideration for the Owner agreeing to vary the Agreement the Crown agrees to pay to the Owner the further deposit being \$592,200.00 plus GST (if any) within one month of the date of this Agreement.
- 4.
 - a. The Owner accepts the payment of the further deposit in further part payment of the purchase price for the Land.
 - b. For the avoidance of doubt the Owner acknowledges and agrees that the balance of the compensation payable by the Crown on the Settlement Date pursuant to the Agreement shall be \$4,737,600.00 plus GST (if any).

[Handwritten signatures and initials]

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 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.
7. The Owner acknowledges that the disturbance payments under Section 66 of the Public Works Act 1981 payable in accordance with clause 6 are part of the total compensation payable under this agreement. The Owner shall provide a GST 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.
8. 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.
12. 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.
13. 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 30th day of January 2013 2012 "

Signed by John Hayes Perkins

In the Presence of



John Hayes Perkins

John Hayes Perkins

[Signature]

Name

Witness

Address *Graham 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

In the presence of

Name **KERRY McPHAIL**

Signature *[Signature]*

Designation

Name *[Signature]*

Witness **Erin Stephen**
Crown Property Clearances

Address **Land Information New Zealand**
155 The Terrace
Wellington

Occupation

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Executive of Land Information New Zealand**

and

John Hayes Perkins



The Property Group Limited
PO Box 2874
WELLINGTON