

Project Agreement in respect of Waterview Connection

New Zealand Transport Agency
(NZTA)

Waterview Primary School Board of
Trustees (School Board)

Minister of Education (MOE)



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PROJECT AGREEMENT IN RESPECT OF WATERVIEW CONNECTION

Date: 18 March 2011

PARTIES

New Zealand Transport Agency (NZTA) a Crown Entity established under section 93 of the Land Transport Management Act 2003, and its successors at law (NZTA).

Waterview Primary School Board of Trustees (School Board) a Crown Entity constituted pursuant to section 93 of the Education Act 1989.

Minister of Education acting by and through the Secretary for Education (MOE).

BACKGROUND

- A The NZTA is seeking approvals for the Waterview Connection Project. The Project is a key component of the Western Ring Route, which is a road of national significance. When completed, the Western Ring Route will provide a strategic 48km route through Auckland, reducing dependency on the Auckland Harbour Bridge and State Highway 1. It is proposed that most of the State Highway 20 extension for the Project will be tunnelled.
- B The Waterview Primary School (*School*) sits on land owned by the Crown and administered by the MOE, adjacent to the proposed northern tunnel portal with its associated infrastructure and ventilation stack. Construction activities for the Project will occur adjacent to the MOE land.
- C The MOE designation for the School includes an unused and undeveloped access to Great North Road over land not owned by the Crown or the MOE. This portion of the MOE designation overlaps with the proposed NZTA motorway designation for the Project. The existing School access to Oakley Avenue is not presently designated by the MOE.
- D The School Board and the MOE wish to ensure that the effects of the Project on the School are appropriately avoided, remedied or mitigated.
- E The parties have established that their respective objectives can best be met through the mitigation measures detailed in this Agreement.

THE PARTIES AGREE as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this agreement, unless the context requires otherwise:

Board of Inquiry – The Board of Inquiry formed to consider the Project;

CEMP – The Construction Environmental Management Plan required for the Project;



Education Liaison Group - The group proposed to be set up under proposed social condition SO.1 of the Project Conditions;

Inhabited Rooms – Rooms which are inhabited for extended durations throughout the day for teaching or administration functions (for example this includes classrooms, offices, the staffroom, library and School hall and annex, but does not include hallways, bathrooms, toilets, changing rooms, storage rooms, or ancillary structures such as sheds).

Kindergarten – the Waterview Kindergarten;

Ministry of Education Construction Rates - the standard Ministry of Education Construction Rates applied to its funding programmes for new construction. Refer: <http://www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/SchoolOperations/PropertyManagement/NetworkNoticeboard/AnnualProgrammes/ConstructionRates.aspx>

Project - The Waterview Connection Project, which will complete the Western Ring Route by connecting State Highway 20 at Maioro Street in Mt Roskill to State Highway 16 at the Great North Road interchange in Waterview, and by providing increased capacity and improved resilience on State Highway 16 as depicted in **Annexure A** to this Agreement;

Project Conditions - The conditions attaching to the Project Designation and/or to relevant consents for the Project;

Project Designation – The future designation for the Project;

Project Manager – an architect or other suitably qualified property consultant;

RMA - the Resource Management Act 1991;

RTLB Unit – the resource teaching learning and behaviour unit located at the school;

School – Waterview Primary School.

1.2 Construction

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) *Including* and similar words do not imply any limitation;
- (b) References to any form of law is to New Zealand law, including as amended or re-enacted;
- (c) References to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (d) Except as provided in this Agreement every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at anytime;



- (e) Singular includes plural and vice versa;
- (f) New Zealand time and dates apply;
- (g) Any word or expression related to or derived from a definition in this Agreement has a meaning corresponding or construed to the definition;
- (h) References to sections, clauses, schedules, annexes or other identifiers are to those in this Agreement;
- (i) References to a document or agreement (other than a plan or other document created as part of a statutory process) includes it as varied, novated or replaced; and
- (j) Each Annexure is part of this Agreement.

2 PRINCIPLES

- 2.1 The parties recognise that the NZTA, the MOE and the School Board have obligations:
 - (a) Arising from their respective statutory roles and responsibilities; and
 - (b) In the case of the NZTA, to the Minister of Transport.
- 2.2 Each party commits to consider, investigate and endeavour to resolve any conflicts as they arise in a manner that maintains the integrity, professionalism and statutory accountabilities of each party and recognises each party's objectives.
- 2.3 Each party will maintain "sovereignty" over their respective areas of accountability and responsibility and will endeavour to keep the other advised of issues that may affect one party as a result of the activities of the other.
- 2.4 This Agreement applies on the assumption that the required RMA approvals for the Project will be granted and that the Project proceeds. This Agreement will cease to have effect if the NZTA decides not to proceed with the Project or if the required approvals are not obtained. (For the avoidance of doubt, and as set out in clause 8.1, the Agreement will not cease to have effect if the NZTA proceeds with an altered form of the Project).

3 PARTIES' OBJECTIVES

- 3.1 The NZTA's objectives as they relate to the Project and this Agreement are to:
 - (a) Secure the necessary approvals (including designations, resource consents and other statutory permits and authorisations) for the Project;
 - (b) Construct, operate and maintain the Project;



- (c) Cooperate with the MOE and the School Board where the Project affects the interests of those parties; and
- (d) Provide mitigation measures for the MOE and the School Board in respect of the effects of the Project on the School.

3.2 The MOE and the School Board's objectives as they relate to the Project and this Agreement are to:

- (a) Ensure that any effects on the School, and in particular on teaching activities, are appropriately avoided, remedied or mitigated by the NZTA; and
- (b) Cooperate with the NZTA in the NZTA's delivery of the Project.

4 MASTER PLAN FOR THE SCHOOL

- 4.1 The NZTA agrees to appoint an appropriately qualified architect, in consultation with the MOE and the School Board, to act as Project Manager with responsibility to prepare a Master Plan for the School and oversee its delivery.
- 4.2 The preparation of the Master Plan and the construction pursuant to the Master Plan will be peer reviewed by a suitably qualified person appointed by the MOE and the School Board, and all reasonable costs associated with that supervision will be paid by the NZTA.
- 4.3 The Master Plan will need to be approved by the School Board and the MOE prior to its implementation.
- 4.4 The School Board and the MOE will retain ownership of the development of the Master Plan.
- 4.5 The NZTA will pay all costs associated with preparing the Master Plan, and, within the scope of the mitigation measures set out in this Agreement, of implementing the Master Plan.

5 WORKS TO BE IMPLEMENTED BY THE NZTA

- 5.1 The NZTA agrees to undertake the following works (which will be identified in the Master Plan) in relation to the School (references to specific rooms and locations are as depicted in the map of the School site attached as **Annexure B**):
 - (a) Relocation and alteration of junior classrooms (Rooms 1 and 2) to the present location of Spaces 7 and 8 (Rooms 10 and 11), including enlarging those rooms to junior classroom standards and alterations to the junior toilets in Spaces 9 and 10;
 - (b) Upgrading of the toilets in the former junior classrooms (Rooms 1 and 2);
 - (c) Demolition of the existing junior playground;



- (d) Construction of a new junior playground (including safety matting and shade cover) adjacent to the relocated junior classrooms;
- (e) Demolition of the existing Kindergarten building and infrastructure;
- (f) Construction of a new RLTB Unit on the existing Kindergarten site;
- (g) Conversion of the junior classrooms (Rooms 1 and 2) into the RLTB unit should the existing kindergarten not be relocated;
- (h) Conversion of Spaces 6 and 31 (Rooms 5 and 5A) into one classroom;
- (i) Redesign of the Oakley Avenue entry to the School to become the main entrance;
- (j) Upgrade and redesign of the School administration block, front entry and foyer;
- (k) Alterations to the staffroom;
- (l) Relocation of Spaces 3 (the dental clinic), 8, 9 and 10 (sheds) to elsewhere on the School site or, if the NZTA considers that relocation is not practical, then provision of replacement facilities;
- (m) Relocation of the Waterview Garden Club garden and infrastructure;
- (n) Extension to the School Hall and Community Annex (including redesign of the Community Annex, addition to the eastern side to accommodate larger community room and facilities) and 6 additional car parks;
- (o) Installation of insulation in inhabited rooms, including acoustic insulation where required to meet the internal construction noise criteria for the Project;
- (p) Installation of aluminium joinery and acoustic glazing, and appropriate ventilation and air conditioning in inhabited rooms;
- (q) Installation of solar panels for the School as a supplementary power and/or water heating supply;
- (r) Fencing, painting and development of the surrounding infrastructure of the School pool;
- (s) Provision of a cover for the School pool;
- (t) Provision of a fitness trail, or equivalent fitness facilities, for the School, through the Master Plan process.
- (u) Install a classroom PA system at the School;
- (v) Complete security fencing around the School;



- (w) Data upgrade to classrooms in Block 1 (all classrooms) and the new RLTB unit and associated electrical upgrade;
 - (x) Construct a shade structure in front of the classrooms to extend over seating areas;
 - (y) Planting along the Herdman Street and the Great North Road boundary of the School;
 - (z) Protection of the Pohutakawa tree at the Herdman St entrance to the School, from construction activities;
 - (aa) Planting and graphics outside the School where deemed appropriate as part of the Master Plan process;
 - (bb) Progress opportunities for the noise mitigation to meet the School's overall development plans (for example landscaping and integration of noise bunding within the Master Plan process); and
 - (cc) Assessment, and as necessary, redesign of the pedestrian crossing on Oakley Avenue and Herdman Street for the safety of children accessing the School and Kindergarten.
- 5.2 The NZTA shall ensure to the satisfaction of both the School Board and the MOE that the design and construction of the works set out in clause 5.1 will comply with all relevant statutory and regulatory requirements, including the MOE's own design standards and project management requirements (as set out on the Ministry of Education's website at www.minedu.govt.nz).
- 5.3 The NZTA's liability for construction costs for the works set out in clause 5.1 shall be limited to the standard Ministry of Education Construction Rates applied to its funding programmes for new construction and an equivalent standard of fit out for alterations and upgrades to existing buildings, except that the acoustic mitigation measures will be of suitable standard to achieve the internal noise criteria set out in Condition CNV.2(d) to the Project Designation.
- 5.4 The works set out in clause 5.1 will occur as soon as practicable after the NZTA has obtained a confirmed Project designation but will not commence until the Master Plan, design details and compliance requirements set out in clause 5.2 have been agreed by the NZTA, MOE and the School Board.
- 5.5 Provided that the School Board and the MOE have given approval to the Master Plan, design details and compliance requirements by the 1st September 2010 date (or such later date as the NZTA advises in writing), the works will be carried out prior to the commencement of construction in the Waterview area (including the demolition of any houses).
- 5.6 Works which are likely to be disruptive, such as the relocation of rooms or major construction work, will to the extent possible, occur in periods when students are on holiday.



- 5.7 The parties note that the detail of the works in relation to the new Kindergarten building is to be set out in a separate agreement between the NZTA, the MOE and the Auckland Kindergarten Association.
- 5.8 The NZTA agrees to meet the reasonable costs of transporting the School students to the Duck n Dive Swim Academy at Freyburg Community School in Te Atatu, for two swimming terms per year for the duration of the period during which surface construction activities are occurring within the Outline Plan of Works area for the northern tunnel portal (Refer Figure DC.A to the Proposed Project conditions). The NZTA will also meet the reasonable costs of swimming lessons at the alternative pool.

6 MAINTENANCE OF ROLL

- 6.1 The NZTA shall monitor the School roll:
- (a) At commencement of construction in the Waterview area (including any demolition of houses within the confirmed designation footprint); and
 - (b) For a period of up to 3 years after Project construction is completed, and the operational designation footprint has been confirmed, in the Waterview area or until monitoring shows the roll has stabilised to the 2006 roll level of 155 students over 2 consecutive years (whichever is shorter).
- 6.2 Should this monitoring indicate that the School roll has dropped below 155 students, the NZTA will provide financial resources to ensure that resources are maintained to the 2006 roll level during the required length of monitoring. The MOE will provide information to the NZTA in relation to the roll, staffing and funding levels and the funding shortfall required to be paid by the NZTA. Any funding shortfall shall be paid at the same times as any funding which would have been paid by the MOE had the roll level been above the 2006 roll level.

7 PROPOSED CONDITIONS OF PROJECT DESIGNATION

- 7.1 The parties acknowledge that the NZTA will be providing the following additional measures as part of the Project:
- (a) Maintenance of School buildings and playground from emissions from the Project (including as necessary washing down of these facilities) during the construction period– (monitoring, mitigation and remedial actions are provided for in the Construction Air Quality Management Plan of the CEMP);
 - (b) Air quality monitoring and reporting to the School Board – provided for in Social Condition SO.1(a);
 - (c) Monitoring of ground settlement and, if necessary, repairs to buildings and structures including the School pool if damaged by construction activities – provided for in the proposed Ground Settlement Conditions – provided for in Ground Settlement Conditions S.1, S.7(k), S.10 and S.11;



- (d) Management of graffiti on School property over the construction period – provided for in the CEMP and required in CEMP Condition CEMP.6;
 - (e) Provision of a wider footpath on the western side of Great North Road – provided for in the Plans submitted in support of the designation, particularly the 'PT and Active Mode Transport Routes Existing and Proposed', required to be delivered by the Project in General Designation Condition DC.1(d);
 - (f) Provision of recreation facilities in Waterview Park and Saxon Reserve – as required by the Proposed Open Space Conditions particularly OS.4 and OS.9; and
 - (g) Opportunities to replace residential dwellings in Waterview (by uplifting the Project designation over land not required for operational activities) – as provided for in General Designation Conditions DC.10 and through the Working Liaison Group forum established by Social Condition SO.6.
- 7.2 The parties will support an amendment to General Designation Condition DC.8(j) so that the words 'and maintains a safe walking environment for children using this path' are added at the end of that proposed condition.
- 7.3 The NZTA records its intention that, subject to the requirements of Operational Air Condition OA.2, one of the air quality monitoring stations noted in that condition should be located within, or as near as is practical, to the School.
- 7.4 The NZTA confirms that the NZTA is seeking conditions in the Project Designation to provide for the MOE to be included in the Working Liaison Group, Community Liaison Group and Education Liaison Group.

8 MATERIAL ALTERATION TO PROJECT OR CONDITIONS

- 8.1 The parties recognise that the Board of Inquiry will make the final decision on the Project and the substance and wording of the final Project Conditions. If the Board of Inquiry alters the Project or a proposed condition in a way that is material to this Agreement, the parties agree to meet to consider if and how the relevant issue can be addressed (for example, if this Agreement may need to be amended).
- 8.2 For the avoidance of doubt, a requirement from the Board that the northern ventilation stack must be relocated will not constitute a material change of itself, but the resulting changes in construction effects (a potential increase in construction effects on the School) may do so.
- 8.3 The parties acknowledge that any amended Agreement must be consistent with the Board of Inquiry's decision.
- 8.4 Any decision by the NZTA to delay the Project may constitute a material change to the agreement to the extent that the works and measures proposed under this agreement may also be delayed at the NZTA's discretion.



- 8.5 Any decision by the NZTA to alter the Project, in a manner requiring alterations to the Project Designation (including to conditions of the Project Designation) or resource consent applications, may constitute a material change to the agreement. If such a material change occurs, the parties will negotiate in good faith to assess which parts of the agreement remain relevant or require alteration.

9 ALTERATION TO DESIGNATION

- 9.1 The MOE and the NZTA agree that the MOE will, at the NZTA's cost and subject to the provisions of the RMA, designate the current School access over 19 Oakley Avenue, and uplift the designation for the current unformed and privately owned access from Great North Road.

10 TUNNEL OPERATION MANAGEMENT PLAN

- 10.1 A Tunnel Operation Management Plan will be prepared for the Project (as provided for in proposed Condition OT.2). The Plan will include the development of contingency planning in the event of an emergency.
- 10.2 This contingency planning will include consideration of appropriate processes to provide warnings and protocols for safety procedures for adjoining land-use activities, which include the School.

11 TEMPORARY TRAFFIC MANAGEMENT PLAN

- 11.1 The NZTA confirms that the Temporary Traffic Management Plan prepared for the Project will identify and include assessment of safety of the pedestrian crossing at the School's Herdman Street and Oakley Avenue entrances.

12 BOARD OF INQUIRY SUBMISSION

- 12.1 The MOE and the School Board agree to advise the Board of Inquiry in their legal submissions, and as necessary through their witnesses, that the mitigation measures set out in this Agreement have addressed their concerns with the construction effects of the Project and that they are not seeking any further mitigation in relation to the Project.

13 DISPUTE RESOLUTION

- 13.1 If any dispute arises under this Agreement, the parties agree to comply with the following provisions of this clause before commencing any other form of dispute resolution (including court proceedings).
- 13.2 Any party claiming that a dispute has arisen under this Agreement between the parties shall give written notice to the others of the dispute and require all parties' representatives (as set out in clause 14.3) to meet together to attempt to settle the dispute. The other parties shall, upon receipt of such notice, promptly ensure that their representatives attend such meeting and attempt to resolve the dispute.



- 13.3 The parties shall use their reasonable endeavours to ensure that the persons designated in clause 14.3 this Agreement shall, within 10 business days after the giving of the notice, seek to resolve the dispute.
- 13.4 The parties shall within a further period of 10 business days (or within such longer period as the representatives may agree is appropriate), use their reasonable endeavours to agree, in good faith, on a process for resolving the whole or part of the dispute through means other than litigation or arbitration (including, without limitation, further negotiations, mediation, conciliation or independent expert determination).
- 13.5 In the unlikely event that agreement is not reached through escalation, the parties shall agree to arbitration on the following basis:
- (a) The arbitration shall be conducted by a sole arbitrator in New Zealand pursuant to the Arbitration Act 1996;
 - (b) The parties' respective responsibilities for the costs of the arbitration shall be determined by the arbitrator; and
 - (c) The parties shall be bound by the decision of the arbitrator.
- 13.6 The parties acknowledge that any negotiated or arbitrated outcome will need to be consistent with the Board of Inquiry's decision on the Project and with the statutory obligations and powers of the NZTA and the MOE.

14 CONTACTS

- 14.1 The parties have each appointed a contact person(s) (as noted in clause 14.3 below) who is the first point of contact for the other parties.
- 14.2 Each party agrees that nominated contact persons will keep themselves well informed of the Project, and have a sufficient level of authority to represent their party's view to the other contact people.
- 14.3 The parties' contacts are:

NZTA

Name	Tommy Parker
Title	State Highway Manager – Auckland and Northland
Physical Address	Level 11 HSBC House, 1 Queen Street, Auckland
Postal Address	Private Bag 106602, Auckland 1143
Telephone	09 969 9800
Email	tommy.parker@nzta.govt.nz

MOE

Name	
Title	Regional Property Manager – Northern



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Physical Address	12-18 Normanby Road
Postal Address	Private Bag 92644, Symonds Street
Telephone	632 9400
Email	

School Board

Name	Brett Skeen
Title	Principal
Physical Address	19 Oakley Avenue
Postal Address	
Telephone	828 7227
Email	

14.4 The parties agree to keep each other informed of any change in contact person(s) or their contact details.

15 WRITTEN RECORD OF SUBSTANTIVE DISCUSSIONS

15.1 Whenever substantive proposals are being discussed between them, the parties will make and circulate a single written record of those discussions.

15.2 No amendment to this Agreement will be effective unless it is in writing and signed by both parties.

16 SIGNED

This Agreement may be executed in any number of counterparts. Once a party has executed a counterpart, and the other party has received a copy of the signed counterpart, that counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.



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Signed for the **New Zealand Transport Agency** by its authorised signatory:

in the presence of:

Name:

Occupation:

Address:

Signed for the **Minister of Education** by its authorised signatory:

in the presence of:

Name:

Occupation:

Address:

Signed for **Waterview Primary School Board of Trustees** by its authorised signatory:

in the presence of:

Name:

Occupation:

Address:



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ANNEXURE A – PROJECT MAP



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ANNEXURE B – SCHOOL SITE MAP