

SOUTH WAIRARAPA DISTRICT COUNCIL

3 JUNE 2020

AGENDA ITEM C2

TOBIN STOPBANK PROJECT – EXEMPTION FROM AN ESPLANADE RESERVE, ROAD STOPPING AND VESTING A PORTION OF SWDC ROAD RESERVE WITH GWRC FOR CONSERVATION AND RIVER CONTROL PURPOSES

Purpose of Report

To inform the Council on the Tobin Stopbank Project where a 6750m² piece of land currently vested as South Wairarapa District Council (SWDC) road reserve needs to be acquired by Greater Wellington Regional Council (GWRC) for conservation and river protection purposes.

Recommendations

Officers recommend that the Council:

1. Receives the Tobin Stopbank Report.
2. Passes a resolution pursuant to Rule 24.2.3 to waive the requirement to create an esplanade reserve under Section 345(3) of the Local Government Act 1974.
3. Passes a resolution to transfer the above referred land from a SWDC council road reserve to GWRC for conservation and river protection purposes using the Local Government Act.

1. Background/Context

The road realignment and the construction of a stop bank.

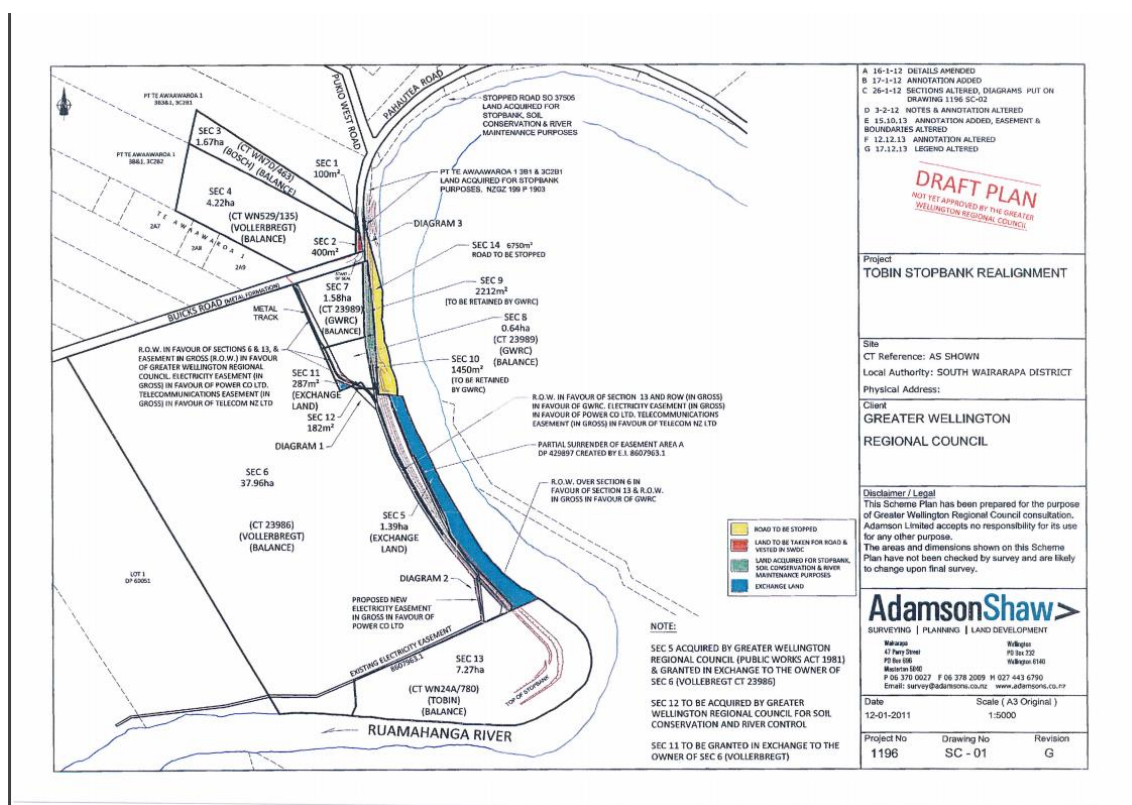
The Tobin Project involves the realignment of the Pahautea Road along the Ruamahanga River at its intersection with Buick Road. This work is located to the Southeast of Kahutara. Pursuant to an Agreement dated 4 July 2011 made between the GWRC and the SWDC, the latter had undertaken soil conservation and river control / mitigation works along the lower Ruamahanga River. GWRC's work involved the construction of a new stopbank which necessitated the realignment of this section of the public road.

The realignment of the public road required some sections of the road reserve to be widened and for that reason two areas of land were procured from adjoining land owners and vested in SWDC. These areas included Section 1 with a footprint of 100m² and Section 2 with a footprint of 400m² to allow the realignment of the subject section of the road to occur. These pieces of land have already been vested with the SWDC as road. A section of the road reserve (section 14) which lies between the road and the Ruamahanga River was supposed to serve as an esplanade

reserve but is now required by GWRC for conservation and river control purposes. It is this 6750m² piece of land that is the subject of this report.

The earlier procurement of section 1 and 2 and the vesting of these sections as SWDC road reserve and the realigning the road was done at the cost of the GWRC. It is now proposed to stop Section 14 with a footprint of 6750m² and vest it with GWRC for purposes of soil conservation and river control purposes. The SWDC is expected to take such steps or actions as necessary to stop Section 14 in accordance with Section 342 and Schedule 10 of the Local Government Act 1974 or alternatively Section 116 of the Public Works Act 1981. The choice of the legislation to be used is also part of the resolution sought from Council in this report.

The location and the sections of land (1, 2, &14) referred above are shown on the plan below.



2. Legislative Framework

It is acknowledged that as Section 14 adjoins the Ruamahanga River, the provisions of section 118(1)(a) of the Public Works Act 1981 together with section 345 of the Local Government Act 1974 requires the creation of an esplanade reserve. Section 345(4) of the Local Government Act 1974 also states that the obligations in subsection (3) is "subject to any rule included in a District Plan under section 77 of the Resource Management Act 1991".

2.1 Section 77(3) of the Resource Management Act 1991 states that,

"A territorial authority may include in its district plan a rule which provides-

- (a) that esplanade reserves, required to be set aside under [section 345\(3\)](#) of the Local Government Act 1974, shall be of a width greater or less than 20 metres:
- (b) that section 345(3) of the Local Government Act 1974 shall not apply."

The Wairarapa Combined District Plan adopted clause (a) of the subject section and Rule 24.2.3 of the Operative Plan states the following:

"Creation of Esplanade Reserves and Esplanade Strips on Road Stopping

- (i) *An esplanade reserve shall be required where any road or any part of a road along mean high water springs of the sea, or along the bank of a river or the margin of a lake is stopped, pursuant to Section 345(3) of the Local Government Act 1974.*

- (ii) *Council retains the discretion to waive by resolution the requirement to create an esplanade reserve under Section 345(3) of the Local Government Act 1974 if it is satisfied that there is adequate alternative:*
 - (1) *Public access; or*
 - (2) *Means of protecting conservation values; or*
 - (3) *Provision of public recreational use of the area of coast, river or lake in questions."*

There are opportunities for the public to use the road to access the river and footprint to be used by GWRC for conservation and river protection purposes can still be used by the public as access to the river. It is therefore considered that there are adequate alternatives for the public to gain access to the river as a national resource and the waiver will not compromise this access.

2.2 Section 342 and Schedule 10 of the Local Government Act 1974

Stopping and closing of roads

- (1) The council may, in the manner provided in [Schedule 10](#),—
 - (a) stop any road or part thereof in the district: provided that the council shall not proceed to stop any road or part thereof in a rural area unless the prior consent of the Minister of Lands has been obtained

2.3 Section 116 of the Public Works Act 1981.

Stopping roads

Subject to subsection (2), the Minister may, by notice in the Gazette, declare any road or part of a road to be stopped.

- (2) *A declaration shall not be made under subsection (1) unless—*
 - (a) *at least 10 working days' prior notice has been given to every territorial authority whose district adjoins the road or part of the road that is the subject of the declaration; and*
 - (b) *either—*
 - (i) *adequate road access to land adjoining the road is left or provided; or*
 - (ii) *the owners of the land adjoining the road or part of the road consent in writing to the stopping; and*

- (d) *if the road or part of a road is under the control of a regional council or a territorial authority, the written consent of that council or authority has been obtained.*

The 6750m² required by the GWRC will not compromise the efficient functioning and safety of the subject section of the Pahautea Road as it has already been realigned.

2.4 Section 118 of the Public Works Act 1981

Application of other Acts to stopped roads

- (1) *Notwithstanding [section 117](#), where any road or any portion of a road along the mark of mean high-water springs of the sea, or along the bank of any river, or the margin of any lake (as the case may be) is stopped under [section 116](#)—*
- (a) *[section 345\(3\)](#) of the Local Government Act 1974 (relating to esplanade reserves) shall apply to the land comprising the road or portion of the road so stopped if that land was formerly a road vested in a local authority (including a State highway vested in a local authority)*

2.5 Schedule 10 Conditions as to stopping of roads and the temporary prohibition of traffic on roads

Stopping of roads

- 1 *The council shall prepare a plan of the road proposed to be stopped, together with an explanation as to why the road is to be stopped and the purpose or purposes to which the stopped road will be put, and a survey made and a plan prepared of any new road proposed to be made in lieu thereof, showing the lands through which it is proposed to pass, and the owners and occupiers of those lands so far as known, and shall lodge the plan in the office of the Chief Surveyor of the land district in which the road is situated. The plan shall separately show any area of esplanade reserve which will become vested in the council under [section 345\(3\)](#).*
- 2 *On receipt of the Chief Surveyor's notice of approval and plan number the council shall open the plan for public inspection at the office of the council, and the council shall at least twice, at intervals of not less than 7 days, give public notice of the proposals and of the place where the plan may be inspected, and shall in the notice call upon persons objecting to the proposals to lodge their objections in writing at the office of the council on or before a date to be specified in the notice, being not earlier than 40 days after the date of the first publication thereof. The council shall also forthwith after that first publication serve a notice in the same form on the occupiers of all land adjoining the road proposed to be stopped or any new road proposed to be made in lieu thereof, and, in the case of any such land of which the occupier is not also the owner, on the owner of the land also, so far as they can be ascertained.*
- 3 *A notice of the proposed stoppage shall, during the period between the first publication of the notice and the expiration of the last day for lodging objections as aforesaid, be kept fixed in a conspicuous place at each end of the road proposed to be stopped:*

provided that the council shall not be deemed to have failed to comply with the provisions of this clause in any case where any such notice is removed without the authority of the council, but in any such case the council shall, as soon as conveniently may be after being informed of the unauthorised removal of the notice, cause a new notice complying with the provisions of this clause to be affixed in place of the notice so removed and to be kept so affixed for the period aforesaid.

- 4 *If no objections are received within the time limited as aforesaid, the council may by public notice declare that the road is stopped; and the road shall, subject to the council's compliance with clause 9, thereafter cease to be a road.*
- 5 *If objections are received as aforesaid, the council shall, after the expiration of the period within which an objection must be lodged, unless it decides to allow the objections, send the objections together with the plans aforesaid, and a full description of the proposed alterations to the Environment Court.*
- 6 *The Environment Court shall consider the district plan, the plan of the road proposed to be stopped, the council's explanation under clause 1, and any objection made thereto by any person, and confirm, modify, or reverse the decision of the council which shall be final and conclusive on all questions.*
- 7 *If the Environment Court reverses the decision of the council, no proceedings shall be entertained by the Environment Court for stopping the road for 2 years thereafter.*
- 8 *If the Environment Court confirms the decision of the council, the council may declare by public notice that the road is stopped; and the road shall, subject to the council's compliance with clause 9, thereafter cease to be a road.*
- 9 *Two copies of that notice and of the plans hereinbefore referred to shall be transmitted by the council for record in the office of the Chief Surveyor of the land district in which the road is situated, and no notice of the stoppage of the road shall take effect until that record is made.*
- 10 *The Chief Surveyor shall allocate a new description of the land comprising the stopped road, and shall forward to the Registrar-General of Land or the Registrar of Deeds, as the case may require, a copy of that description and a copy of the notice and the plans transmitted to him by the council, and the Registrar shall amend his records accordingly.*

3. Defining the problem

The SWDC and the GWRC entered into an Agreement dated 4 July 2011 to allow GWRC to undertake work on the Pahautea Road reserve. The work included the realignment of the existing public road and under the provisions of the Public Works Act 1981 after acquiring areas of land from adjoining land owners and vesting them in SWDC as legal road. The agreement was reviewed on 31 January 2018 and the latest version was signed on 7 May 2020. The agreements are attached in appendix 2 of this report.

It has taken a long time but GWRC is now in a position to progress the land transactions required under its agreement with SWDC relating to the Tobin Stopbank project. GWRC

has engaged a surveyor to produce a scheme plan which records the various land transfers and easements relating to the respective landowner agreements. The scheme plan is attached for your consideration and approval as appendix 1.

In context of the GWRC agreement with this Council, the transactions shown on the plan are as follows:

1. Section 1 already acquired and vested in SWDC as road.
2. Section 2 already acquired and vested in SWDC as road.
3. Section 14 road to be stopped and is the subject of this report.

The first two stages were accomplished and stage 3 was complicated in that it appears the stopping of any road adjoining a water body requires a 20 metre esplanade reserve to be created. The existing agreement intended that the stopped road be transferred to GWRC for soil conservation and river control purposes. The GWRC is therefore seeking an opportunity to finalise stage 3 so the Tobin Stopbank project can be finalised.

4. Options and analysis

Section 77 of the Local Government act sets the following requirements in relation to Council decisions:

- (a) A local authority must, in the course of the decision-making process, seek to identify all reasonably practicable options for the achievement of the objective of a decision; and assess the options in terms of their advantages and disadvantages.

It is in this context that the following options are being assessed by way of the table below.

Options for BCA	Risk	Cost	Benefit
1-Do nothing	<ul style="list-style-type: none"> • There is a risk to Council if the conservation and river control works are not established and managed as there could be damage to the road as a result of flooding or landslip. 	<ul style="list-style-type: none"> • Cost to Council for repairing the road if and when damaged. 	<ul style="list-style-type: none"> • No current cost to Council in terms of land loss.
2-Waive the requirement to create an esplanade reserve under section 345(3) of the Local Government act and transfer section 14 to GWRC using <i>Section 342 and Schedule 10 of the Local Government Act 1974</i>	<ul style="list-style-type: none"> • The public may lose the opportunity to use the esplanade reserve to access the Ruamahanga River, depending on the nature of the conservation and river control works. 	<ul style="list-style-type: none"> • Council will lose 6750m² of road reserve as this will be vested with GWRC 	<ul style="list-style-type: none"> • A more secure and protected section of the road
3-Waive the requirement to create an esplanade reserve under section 345(3) of the Local Government act and transfer section 14 to GWRC Use Section 116 of the Public Works Act 1981	<ul style="list-style-type: none"> • The public will lose the opportunity to use the esplanade reserve to access the Ruamahanga River depending on the nature of the conservation and river control works 	<ul style="list-style-type: none"> • Council will lose 6750m² of road reserve as this will be vested with GWRC 	<ul style="list-style-type: none"> • A more secure and protected section of the road

<p>3-Establish an esplanade reserve and vest in GWRC the balance of Section 14 and provide written agreement to allow GWRC to declare by notice in the Gazette pursuant to Section 237 of the RMA that the esplanade reserve created shall cease to be vested in and administered by the SWDC but instead shall vest in GWRC for purposes of soil conservation and river control</p>	<ul style="list-style-type: none"> • A lengthy process of establishing the esplanade reserve and then declare by notice in the gazette • The public will lose the use of that portion of the 6725m² footprint that will be used by the GWRC. 	<ul style="list-style-type: none"> • While part of the 6750 m² land will be used as an esplanade reserve, It will lose the balance of the 6750m² of road reserve that will be vested with GWRC 	<ul style="list-style-type: none"> • A well-defined esplanade reserve and a partially secure section of the road
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5. Recommendation

In light of the above, for pragmatic soil conservation and river control works purposes option 2 above is recommended as the most suitable option. It is recommended that Council makes an exemption to the need for an esplanade reserve and transfers the 6275m² of land referred to as section 14 for purposes of soil conservation and river control using section 345(3) of the Local Government act and transfers section 14 to GWRC using *Section 342 and Schedule 10 of the Local Government Act 1974*.

6. Consultation

Consultation with the public will be required as part of the road stopping process. However, communication with the public about the broader use of public facilities in the district is recommended.

7. Legal implications

The legal requirements and implications of this issue are identified in paragraphs 2 above.

8. Financial considerations

The financial costs relating to this proposal are identified in the schedule of options in table 4 above. The financial cost to Council will be the value of the 6750m² that will be transferred to GWRC. This value will be assessed as part of the land exchange process and will be noted in the Council asset register. The opportunity cost of the 6750m² as a road reserve will be similar to its proposed use for soil conservation and river control works as the public will still benefit.

9. Appendices

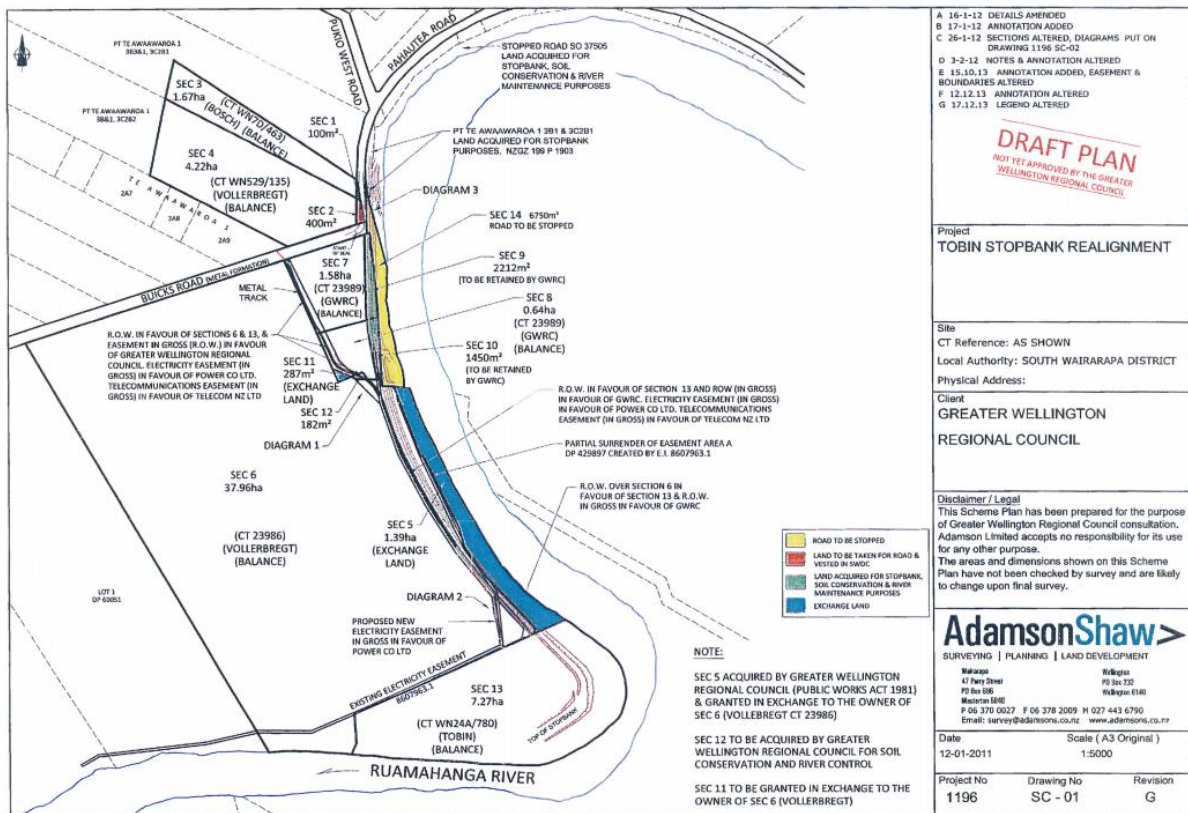
Appendix 1 – Scheme Plan

Appendix 2 - Agreements

Contact Officer: Godwell Mahowa, Planning Manager

Reviewed By: Russell O’Leary, Group Manager Planning and Environment

APPENDIX 1 - SCHEME PLAN



A 16-1-12 DETAILS AMENDED
 B 17-1-12 ANNOTATION ADDED
 C 26-1-12 SECTIONS ALTERED, DIAGRAMS PUT ON DRAWING 1196 SC-02
 D 3-2-12 NOTES & ANNOTATION ALTERED
 E 15.10.13 ANNOTATION ADDED, EASEMENT & BOUNDARIES ALTERED
 F 12.12.13 ANNOTATION ALTERED
 G 17.12.13 LEGEND ALTERED

Project
TOBIN STOPBANK REALIGNMENT

Site
 CT Reference: AS SHOWN
 Local Authority: SOUTH WAIRARAPA DISTRICT
 Physical Address:

Client
GREATER WELLINGTON REGIONAL COUNCIL

Disclaimer / Legal
 This Scheme Plan has been prepared for the purpose of Greater Wellington Regional Council consultation. Adamson Limited accepts no responsibility for its use for any other purpose. The areas and dimensions shown on this Scheme Plan have not been checked by survey and are likely to change upon final survey.

AdamsonShaw >
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 Christchurch 100 Main Street Christchurch 8010
 Dunedin 100 Rattray Street Dunedin 9010
 Email: survey@adamsonshaw.co.nz www.adamsonshaw.co.nz

Date	Scale (A3 Original)	
12-01-2011	1:5000	
Project No	Drawing No	Revision
1196	SC - 01	G

Appendix 2 - Agreements

AGREEMENT DATED THE 31st DAY OF JANUARY 2017 8

BETWEEN WELLINGTON REGIONAL COUNCIL

A N D SOUTH WAIRARAPA DISTRICT COUNCIL

**SUPPLEMENTARY AGREEMENT TO THE
AGREEMENT DATED 4 JULY 2011 TO CONSTRUCT
STOPBANK AND REALIGN PUBLIC ROAD**

**OAKLEY MORAN
SOLICITORS
P O BOX 241
WELLINGTON**

(Person Acting: Warren Lim)
Phone: (04) 472 3055
Facsimile: (04) 472 6657

THIS AGREEMENT made the 31st day of JANUARY 2017 8

BETWEEN WELLINGTON REGIONAL COUNCIL a Council under the Local Government Act 2002 ("GW")

A N D SOUTH WAIRARAPA DISTRICT COUNCIL ("SWDC")

BACKGROUND

- A. SWDC is responsible for the administration of local roads within its jurisdiction.
- B. Pursuant to an Agreement dated 4 July 2011 made between the parties ("the Agreement"), GW had undertaken soil conservation and river control / mitigation works along the lower Ruamahanga River. Part of GW's work involved the construction of a new stopbank which would partially be on existing road reserve approximately at the corner of Buicks Road and Pahautea Road which construction also necessitates the realignment of this part of the public road.
- C. The realignment of the public road required the area of the road reserve to be increased or widened and for that reason two areas of land was taken from adjoining land owners and vested in SWDC.
- D. The parties have entered into an Agreement dated 4 July 2011 to allow GW to undertake GW's work on road reserve, realign the existing public road and under the provisions of the Public Works Act 1981 acquired areas of land from adjoining land owners and vest it in SWDC as legal road.
- E. Subsequent to the agreement, the parties entered into a variation of the above arrangement as recorded by way of an exchange of correspondence from Jigsaw Property Consultancy Limited to SWDC dated 9 March 2012 and confirmation from SWDC by its letter of 1 May 2012 ("the Variation").

- F. The Agreement as varied by the Variation was partially implemented by way of a legalisation completed in 2014. The parcels of land defined as the "Required Area" in the Agreement and referred to as Sections 1 and 2 on the draft Scheme Plan 1196 SC-01 Rev D attached to the Variation have vested in SWDC as a legal road. The arrangement in respect to that part of the legal road shown as section 15 on the draft Scheme Plan 1196 SC-01 Rev D attached to the Variation (and as Section 14 on the attached Plan) has still to be implemented as a result of difficulties arising from the way the arrangement between the parties was recorded.
- G. Section 14 is a local road vested in SWDC and is not formerly a government road or a state highway or other road vested in the Crown.
- H. The parties now wish to enter into this Supplementary Agreement to clarify or record in greater detail the above arrangements in respect to Section 15 (and now referred to as Section 14).

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this Supplementary Agreement, including the Recitals, unless the context otherwise requires:
- 1.1.1 "**Agreement**" means Agreement to Construct Stopbank and Realign Public Road dated 4 July 2011 between the parties.
- 1.1.2 "**GW**" means Wellington Regional Council and its successors.
- 1.1.3 "**SWDC**" means South Wairarapa District Council and its successors.
- 1.1.4 "**Section 14**" means that part of the local road of SWDC to be stopped and vested in GW in accordance with this Supplementary Agreement and being of approximately 6,750 square metres and described as Section 14 on the Plan.

- 1.1.5 **"Plan"** means the draft scheme plan 1196 SC-01 Rev G prepared by Adamson Shaw and attached to this Supplementary Agreement.
- 1.1.6 **"Variation"** means the variation to the Agreement as the recorded by way of an exchange of correspondence from Jigsaw Property Consultancy Limited to SWDC dated 9 March 2012 and confirmation from SWDC by its letter of 1 May 2012.
- 1.2 In this Supplementary Agreement including the recitals unless the context otherwise requires:
- 1.2.1 References to clauses, subclauses, and schedules are to the clauses, subclauses and the schedules to this Supplementary Agreement.
- 1.2.2 Words denoting the singular number include the plural number and vice versa.
- 1.2.3 Words denoting a gender include all genders.
- 1.2.4 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- 1.2.5 A reference to any party of this Supplementary Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors, and permitted assigns.
- 1.2.6 A reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry including the inquiry which a reasonable person would have determined to make by reason of knowledge of a fact or omission brought to the notice of that person.

2. SECTION 14 TO BE STOPPED

- 2.1 In consideration of the road of SWDC being realigned at the cost of GW and the Required Area referred to in the Agreement being acquired by GW and vested in SWDC as a legal road, SWDC agrees to stop the Section 14 and transfer or vest Section 14 in GW for purposes of soil conservation and river control.
- 2.2 SWDC shall take such steps or actions as is necessary to stop Section 14 in accordance with Section 342 and Schedule 10 of the Local Government Act 1974 or alternatively Section 116 of the Public Works Act 1981.
- 2.3 The parties acknowledge that as Section 14 adjoins a river, the provisions of section 118(1)(a) of the Public Works Act 1981 together with section 345 of the Local Government Act 1974 requires the creation of an esplanade reserve. Section 345(4) of the Local Government Act 1974 also states that the obligations in subsection (3) is "*subject to any rule included in a District Plan under section 7 of the Resource Management Act 1991*".

Section 77(3) of the Resource Management Act 1991 states that,
"A territorial authority may include in its district plan a rule which provides—

...

- (b) *that section 345(3) of the Local Government Act 1974 shall not apply."*

Rule 24.2.3 of the Wairarapa Combined District Plan states the following:

"Creation of Esplanade Reserves and Esplanade Strips on Road Stopping

- (i) *An esplanade reserve shall be required where any road or any part of a road along mean high water springs of the sea, or along the bank of a river or the margin of a lake is stopped, pursuant to Section 345(3) of the Local Government Act 1974.*

- (ii) *Council retains the discretion to waive by resolution the requirement to create an esplanade reserve under Section 345(3) of the Local Government Act 1974 if it is satisfied that there is adequate alternative:*
- (1) *Public access; or*
 - (2) *Means of protecting conservation values; or*
 - (3) *Provision of public recreational use of the area of coast, river or lake in questions."*

SWDC shall endeavour to pass a resolution pursuant to Rule 24.2.3 to waive the requirement to create an esplanade reserve under Section 345(3) of the Local Government Act 1974.

2.4 In the event that SWDC could not for any reason pass the necessary resolution as required by clause 2.3 above, then SWDC agrees to,

2.4.1 transfer to or vest in GW the balance of Section 14 after the esplanade reserve has been defined; and

2.4.2 provide written agreement to GW to allow GW to declare by notice in the Gazette pursuant to Section 237D of the Resource Management Act 1991 that the esplanade reserve created above shall cease to be vested in and administered by SWDC but instead shall vest in Greater Wellington and classified as a local purpose reserve for purposes of soil conservation and river control.

3. PUBLIC WORKS ACT

3.1 The parties agree that Section 14 (or the balance of Section 14, as the case may be) shall be transferred from SWDC to GW pursuant to section 50 of the Public Works Act 1981. The parties acknowledges that following the realignment of the road by GW and vesting of land in SWDC as a legal road pursuant to the Agreement, Section 14 is no longer required by SWDC as legal road but is required by GW to protect the stopbank constructed by GW pursuant to the Agreement on part of Section 14.

- 3.2 The transfer of land to GW shall be implemented by way of a declaration issued pursuant to section 20 of the Public Works Act 1981 and/or such other statutory provisions as may be applicable.

4. SURVEY

- 4.1 The parties acknowledge and agree that the shape, size and position of the boundaries of Section 14 showed on the attached Plan are approximate and are subject to final survey. The parties acknowledge and anticipate that there will be variations and differences in the final survey plans from the approximate area shown on the Plan attached to this Supplementary Agreement. In the event of slight variations and differences, neither party shall be entitled to cancellation or rescission of this Supplementary Agreement or to any compensation or damages against the other party.

5. PREPARATION OF PLANS, DOCUMENTS AND REGISTRATION

- 5.1 GW shall at its expense arrange for the preparation and lodgement of all survey plans by a registered surveyor nominated by GW.
- 5.2 GW shall meet all legal and registration costs relating to the applications of all consents and the preparation and registration of all declarations and documents contemplated by this Supplementary Agreement.
- 5.3 GW shall meet the reasonable legal costs of SWDC incurred in the perusal and approval of all documents submitted by GW including this Supplementary Agreement.
- 5.4 The parties agree to complete such documents and obligations required of them under this Supplementary Agreement in a timely fashion and shall further undertake to execute all documents and plans when required without delay.

6. DISPUTE RESOLUTION

6.1 The parties agree that all differences and disputes which may arise between the parties as to this Supplementary Agreement or any act or thing done, or omission, or the interpretation of this Supplementary Agreement shall be dealt with in the following manner –

6.1.1 The difference or dispute shall be submitted to a process of Alternative Dispute Resolution (in the manner usually conducted within the Wellington region) with the intent that the matter be resolved as expeditiously as possible and to the mutual benefit of both parties.

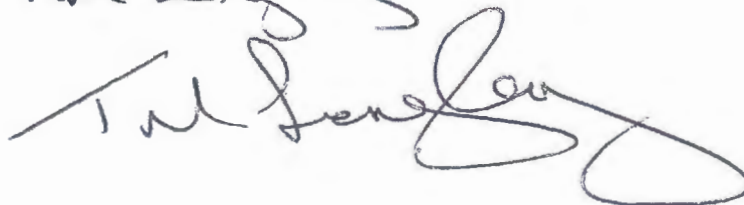
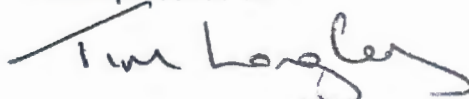
6.1.2 In the event that the Alternative Dispute Resolution procedure is unsuccessful, the difference or dispute shall be referred to arbitration in accordance with the Arbitration Act 1996 and any amendments and/or substitution to the said Act.

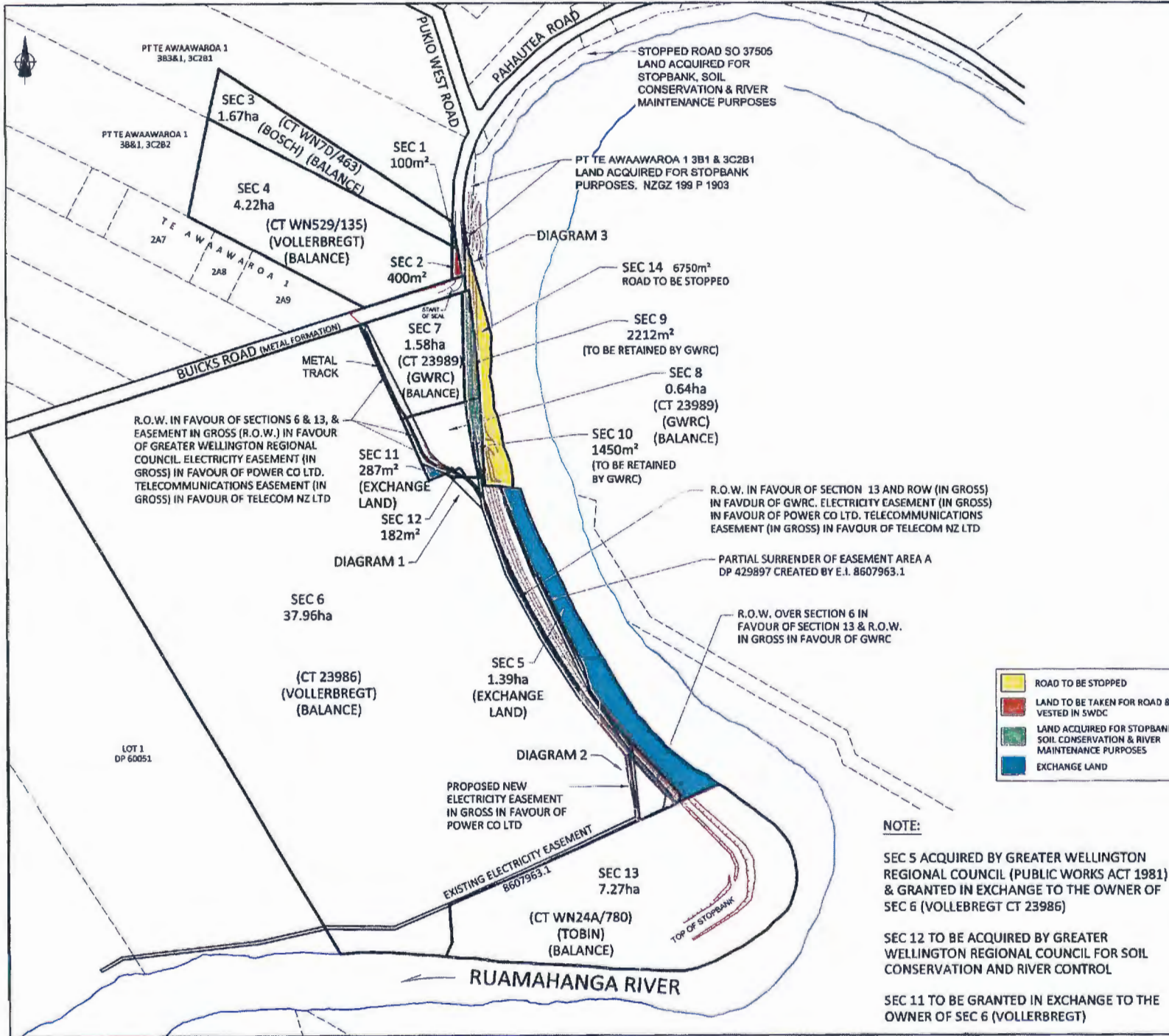
SIGNED by)
WELLINGTON REGIONAL COUNCIL)
by its authorised signatory)
in the presence of:)



JOZSEF BOGNAR
PROPERTY MANAGER
WELLINGTON

SIGNED by Mark Allingham)
SOUTH WAIRARAPA DISTRICT COUNCIL)
by its authorised signatory)
in the presence of:)





- A 16-1-12 DETAILS AMENDED
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- C 26-1-12 SECTIONS ALTERED, DIAGRAMS PUT ON DRAWING 1196 SC-02
- D 3-2-12 NOTES & ANNOTATION ALTERED
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- G 17.12.13 LEGEND ALTERED

DRAFT PLAN
NOT YET APPROVED BY THE GREATER WELLINGTON REGIONAL COUNCIL

Project
TOBIN STOPBANK REALIGNMENT

Site
CT Reference: AS SHOWN
Local Authority: SOUTH WAIRARAPA DISTRICT
Physical Address:

Client
GREATER WELLINGTON REGIONAL COUNCIL

Disclaimer / Legal
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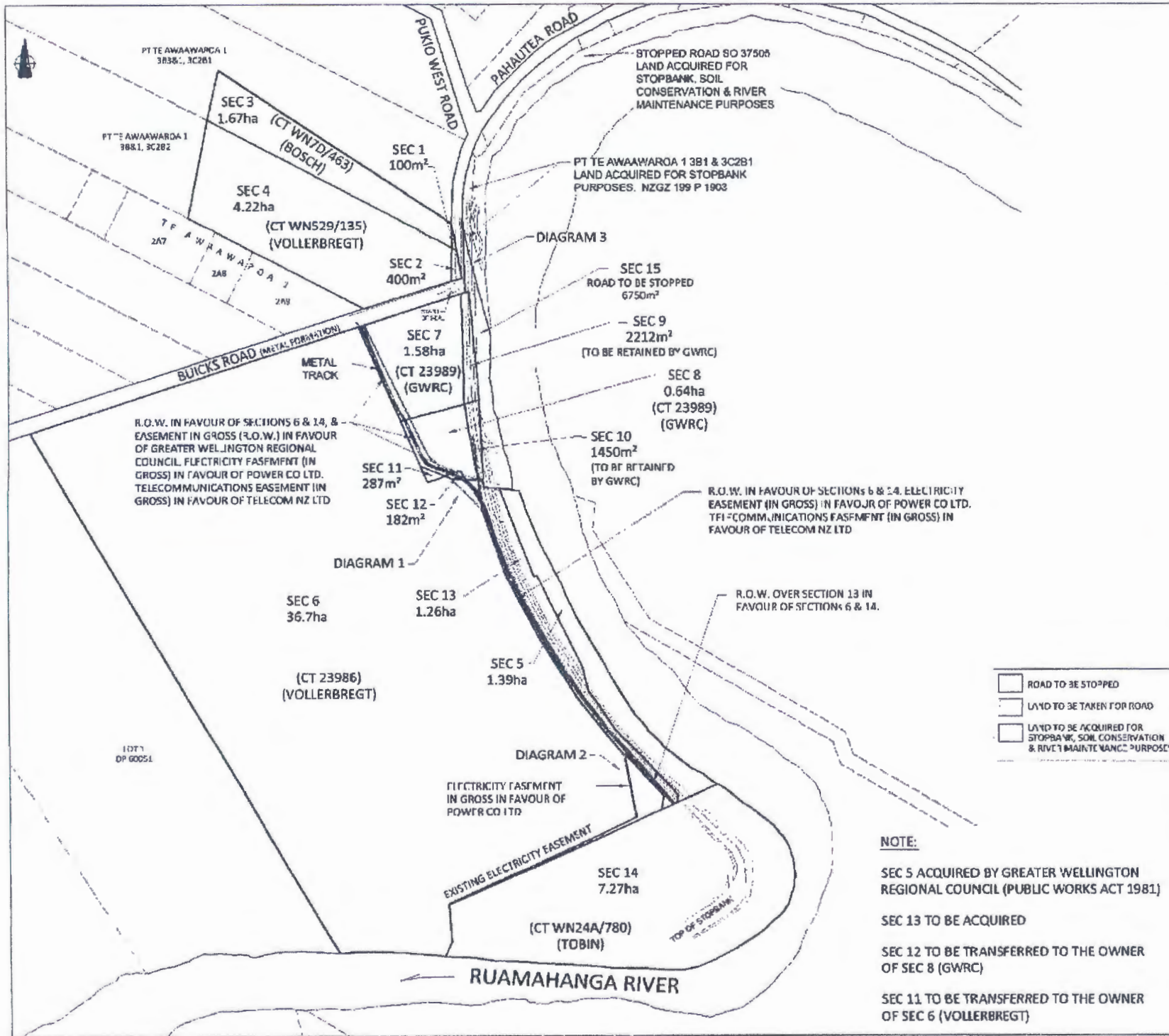
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Wairarapa 47 Perry Street PO Box 696 Masterton 6840 P 06 370 0027 F 06 378 2009 M 027 443 6790 Email: survey@adamsons.co.nz www.adamsons.co.nz	Wellington PO Box 232 Wellington 6140
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Date: 12-01-2011 Scale: (A3 Original) 1:5000

Project No	Drawing No	Revision
1196	SC - 01	G



- A 16-1-12 DETAILS AMENDED
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DRAFT PLAN
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Project
TOBIN STOPBANK REALIGNMENT

Site
 CT Reference: AS SHOWN
 Local Authority: SOUTH WAIRARAPA DISTRICT
 Physical Address:

Client
GREATER WELLINGTON REGIONAL COUNCIL

Disclaimer / Legal
 This Scheme Plan has been prepared for the purpose of Greater Wellington Regional Council consultation. Adamson Limited accepts no responsibility for its use for any other purpose. The areas and dimensions shown on this Scheme Plan have not been checked by survey and are likely to change upon final survey.

AdamsonShaw >

SURVEYING | PLANNING | LAND DEVELOPMENT

Wairarapa 47 Pory Street PO Box 688 Masterton 5840 P 06 370 0027 F 06 378 2069 M 027 443 6790 Email: survey@adamsonson.co.nz	Wellington PO Box 232 Wellington 6140 www.adamsonson.co.nz
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Date: 12-01-2011
 Scale: (A3 Original) 1:5000

Project No	Drawing No	Revision
1196	SC - 01	D

NOTE:

- SEC 5 ACQUIRED BY GREATER WELLINGTON REGIONAL COUNCIL (PUBLIC WORKS ACT 1981)
- SEC 13 TO BE ACQUIRED
- SEC 12 TO BE TRANSFERRED TO THE OWNER OF SEC 8 (GWRC)
- SEC 11 TO BE TRANSFERRED TO THE OWNER OF SEC 6 (VOLLERBREGT)

AGREEMENT DATED THE 7TH DAY OF *MAY* ^{ES}~~2011~~
2020

BETWEEN WELLINGTON REGIONAL COUNCIL

A N D SOUTH WAIRARAPA DISTRICT COUNCIL

**SUPPLEMENTARY AGREEMENT TO THE
AGREEMENT DATED 4 JULY 2011 TO CONSTRUCT
STOPBANK AND REALIGN PUBLIC ROAD**

**OAKLEY MORAN
SOLICITORS
P O BOX 241
WELLINGTON**

(Person Acting: Warren Lim)
Phone: (04) 472 3055
Facsimile: (04) 472 6657

THIS AGREEMENT made the 7TH day of MAY 20~~11~~²⁰ 2020

BETWEEN WELLINGTON REGIONAL COUNCIL a Council under the Local Government Act 2002 ("GW")

A N D SOUTH WAIRARAPA DISTRICT COUNCIL ("SWDC")

BACKGROUND

- A. SWDC is responsible for the administration of local roads within its jurisdiction.
- B. Pursuant to an Agreement dated 4 July 2011 made between the parties ("the Agreement"), GW had undertaken soil conservation and river control / mitigation works along the lower Ruamahanga River. Part of GW's work involved the construction of a new stopbank which would partially be on existing road reserve approximately at the corner of Buicks Road and Pahautea Road which construction also necessitates the realignment of this part of the public road.
- C. The realignment of the public road required the area of the road reserve to be increased or widened and for that reason two areas of land was taken from adjoining land owners and vested in SWDC.
- D. The parties have entered into an Agreement dated 4 July 2011 to allow GW to undertake GW's work on road reserve, realign the existing public road and under the provisions of the Public Works Act 1981 acquired areas of land from adjoining land owners and vest it in SWDC as legal road.
- E. Subsequent to the agreement, the parties entered into a variation of the above arrangement as recorded by way of an exchange of correspondence from Jigsaw Property Consultancy Limited to SWDC dated 9 March 2012 and confirmation from SWDC by its letter of 1 May 2012 ("the Variation").

- F. The Agreement as varied by the Variation was partially implemented by way of a legalisation completed in 2014. The parcels of land defined as the "Required Area" in the Agreement and referred to as Sections 1 and 2 on the draft Scheme Plan 1196 SC-01 Rev D attached to the Variation have vested in SWDC as a legal road. The arrangement in respect to that part of the legal road shown as section 15 on the draft Scheme Plan 1196 SC-01 Rev D attached to the Variation (and as Section 14 on the attached Plan) has still to be implemented as a result of difficulties arising from the way the arrangement between the parties was recorded.
- G. Section 14 is a local road vested in SWDC and is not formerly a government road or a state highway or other road vested in the Crown.
- H. The parties now wish to enter into this Supplementary Agreement to clarify or record in greater detail the above arrangements in respect to Section 15 (and now referred to as Section 14).

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this Supplementary Agreement, including the Recitals, unless the context otherwise requires:
- 1.1.1 "**Agreement**" means Agreement to Construct Stopbank and Realign Public Road dated 4 July 2011 between the parties.
- 1.1.2 "**GW**" means Wellington Regional Council and its successors.
- 1.1.3 "**SWDC**" means South Wairarapa District Council and its successors.
- 1.1.4 "**Section 14**" means that part of the local road of SWDC to be stopped and vested in GW in accordance with this Supplementary Agreement and being of approximately 6,750 square metres and described as Section 14 on the Plan.

- 1.1.5 **"Plan"** means the draft scheme plan 1196 SC-01 Rev G prepared by Adamson Shaw and attached to this Supplementary Agreement.
- 1.1.6 **"Variation"** means the variation to the Agreement as the recorded by way of an exchange of correspondence from Jigsaw Property Consultancy Limited to SWDC dated 9 March 2012 and confirmation from SWDC by its letter of 1 May 2012.
- 1.2 In this Supplementary Agreement including the recitals unless the context otherwise requires:
 - 1.2.1 References to clauses, subclauses, and schedules are to the clauses, subclauses and the schedules to this Supplementary Agreement.
 - 1.2.2 Words denoting the singular number include the plural number and vice versa.
 - 1.2.3 Words denoting a gender include all genders.
 - 1.2.4 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
 - 1.2.5 A reference to any party of this Supplementary Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors, and permitted assigns.
 - 1.2.6 A reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry including the inquiry which a reasonable person would have determined to make by reason of knowledge of a fact or omission brought to the notice of that person.

2. SECTION 14 TO BE STOPPED

- 2.1 In consideration of the road of SWDC being realigned at the cost of GW and the Required Area referred to in the Agreement being acquired by GW and vested in SWDC as a legal road, SWDC agrees to stop the Section 14 and transfer or vest Section 14 in GW for purposes of soil conservation and river control.
- 2.2 SWDC shall take such steps or actions as is necessary to stop Section 14 in accordance with Section 342 and Schedule 10 of the Local Government Act 1974 or alternatively Section 116 of the Public Works Act 1981.
- 2.3 The parties acknowledge that as Section 14 adjoins a river, the provisions of section 118(1)(a) of the Public Works Act 1981 together with section 345 of the Local Government Act 1974 requires the creation of an esplanade reserve. Section 345(4) of the Local Government Act 1974 also states that the obligations in subsection (3) is *"subject to any rule included in a District Plan under section 7 of the Resource Management Act 1991"*.

Section 77(3) of the Resource Management Act 1991 states that,
"A territorial authority may include in its district plan a rule which provides—

...

- (b) *that section 345(3) of the Local Government Act 1974 shall not apply."*

Rule 24.2.3 of the Wairarapa Combined District Plan states the following:

"Creation of Esplanade Reserves and Esplanade Strips on Road Stopping

- (i) *An esplanade reserve shall be required where any road or any part of a road along mean high water springs of the sea, or along the bank of a river or the margin of a lake is stopped, pursuant to Section 345(3) of the Local Government Act 1974.*

- (ii) *Council retains the discretion to waive by resolution the requirement to create an esplanade reserve under Section 345(3) of the Local Government Act 1974 if it is satisfied that there is adequate alternative:*
- (1) *Public access; or*
 - (2) *Means of protecting conservation values; or*
 - (3) *Provision of public recreational use of the area of coast, river or lake in questions."*

SWDC shall endeavour to pass a resolution pursuant to Rule 24.2.3 to waive the requirement to create an esplanade reserve under Section 345(3) of the Local Government Act 1974.

- 2.4 In the event that SWDC could not for any reason pass the necessary resolution as required by clause 2.3 above, then SWDC agrees to,

2.4.1 transfer to or vest in GW the balance of Section 14 after the esplanade reserve has been defined; and

2.4.2 provide written agreement to GW to allow GW to declare by notice in the Gazette pursuant to Section 237D of the Resource Management Act 1991 that the esplanade reserve created above shall cease to be vested in and administered by SWDC but instead shall vest in Greater Wellington and classified as a local purpose reserve for purposes of soil conservation and river control.

3. PUBLIC WORKS ACT

- 3.1 The parties agree that Section 14 (or the balance of Section 14, as the case may be) shall be transferred from SWDC to GW pursuant to section 50 of the Public Works Act 1981. The parties acknowledge that following the realignment of the road by GW and vesting of land in SWDC as a legal road pursuant to the Agreement, Section 14 is no longer required by SWDC as legal road but is required by GW to protect the stopbank constructed by GW pursuant to the Agreement on part of Section 14.

- 3.2 The transfer of land to GW shall be implemented by way of a declaration issued pursuant to section 20 of the Public Works Act 1981 and/or such other statutory provisions as may be applicable.

4. SURVEY

- 4.1 The parties acknowledge and agree that the shape, size and position of the boundaries of Section 14 showed on the attached Plan are approximate and are subject to final survey. The parties acknowledge and anticipate that there will be variations and differences in the final survey plans from the approximate area shown on the Plan attached to this Supplementary Agreement. In the event of slight variations and differences, neither party shall be entitled to cancellation or rescission of this Supplementary Agreement or to any compensation or damages against the other party.

5. PREPARATION OF PLANS, DOCUMENTS AND REGISTRATION

- 5.1 GW shall at its expense arrange for the preparation and lodgement of all survey plans by a registered surveyor nominated by GW.
- 5.2 GW shall meet all legal and registration costs relating to the applications of all consents and the preparation and registration of all declarations and documents contemplated by this Supplementary Agreement.
- 5.3 GW shall meet the reasonable legal costs of SWDC incurred in the perusal and approval of all documents submitted by GW including this Supplementary Agreement.
- 5.4 The parties agree to complete such documents and obligations required of them under this Supplementary Agreement in a timely fashion and shall further undertake to execute all documents and plans when required without delay.



6. DISPUTE RESOLUTION

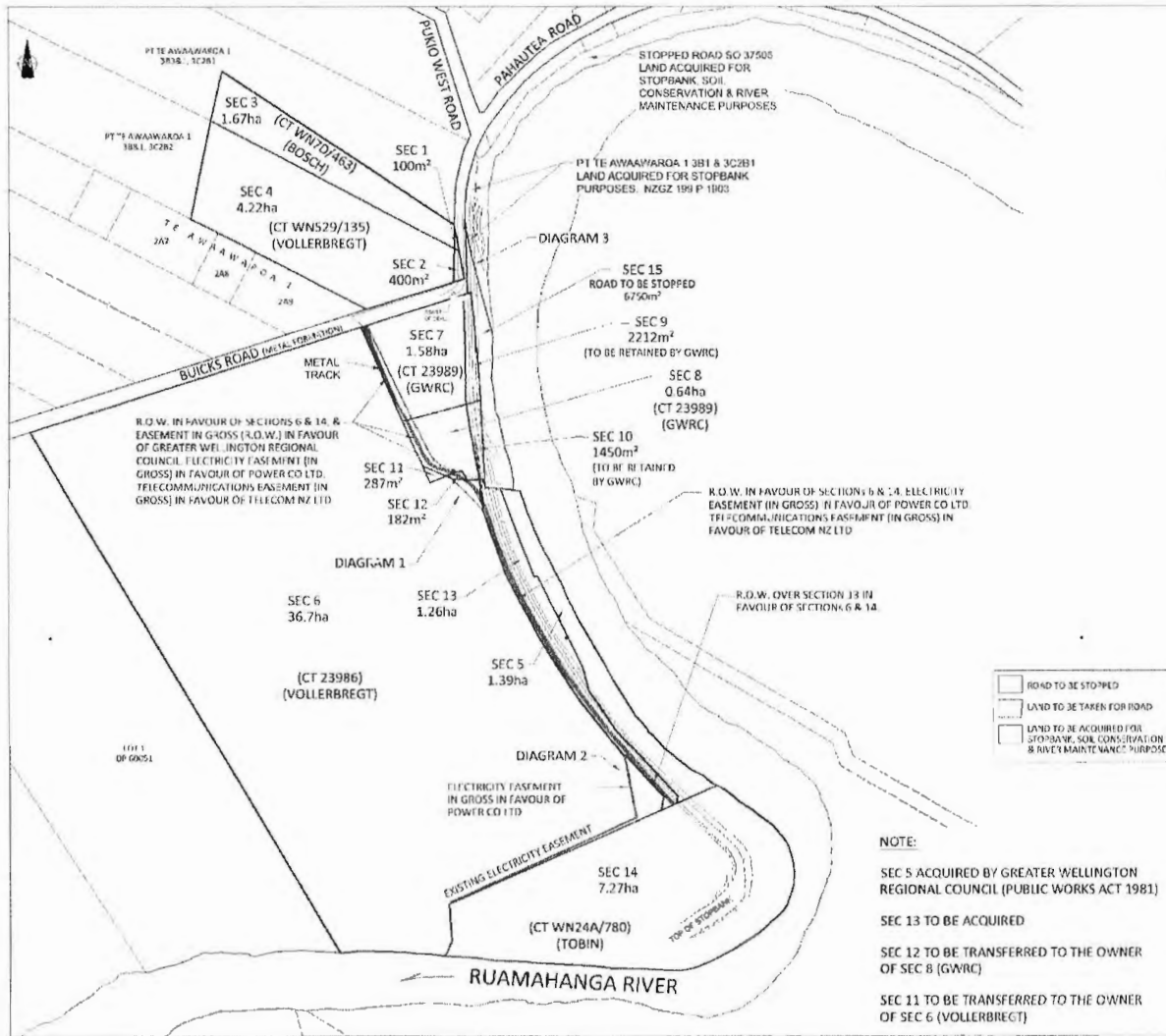
6.1 The parties agree that all differences and disputes which may arise between the parties as to this Supplementary Agreement or any act or thing done, or omission, or the interpretation of this Supplementary Agreement shall be dealt with in the following manner –

6.1.1 The difference or dispute shall be submitted to a process of Alternative Dispute Resolution (in the manner usually conducted within the Wellington region) with the intent that the matter be resolved as expeditiously as possible and to the mutual benefit of both parties.

6.1.2 In the event that the Alternative Dispute Resolution procedure is unsuccessful, the difference or dispute shall be referred to arbitration in accordance with the Arbitration Act 1996 and any amendments and/or substitution to the said Act.

SIGNED by)
WELLINGTON REGIONAL COUNCIL)
by its authorised signatory)
in the presence of:)

SIGNED by EUAW STITT) 
SOUTH WAIRARAPA DISTRICT COUNCIL)
by its authorised signatory)
in the presence of: Lauren Beth Stitt) 



- A 16-1-12 DETAILS AMENDED
- B 17-1-12 ANNOTATION ADDED
- C 26-1-12 SECTIONS ALTERED, DIAGRAMS PUT ON DRAWING 1196 SC-02
- D 3-2-12 NOTES & ANNOTATION ALTERED

DRAFT PLAN
 NOT YET APPROVED BY THE CIBATLA
 WELLINGTON REGIONAL COUNCIL

Project
TOBIN STOPBANK REALIGNMENT

Site
 CT Reference: AS SHOWN
 Local Authority: SOUTH WAIRARAPA DISTRICT
 Physical Address:

Client
GREATER WELLINGTON REGIONAL COUNCIL

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AdamsonShaw >

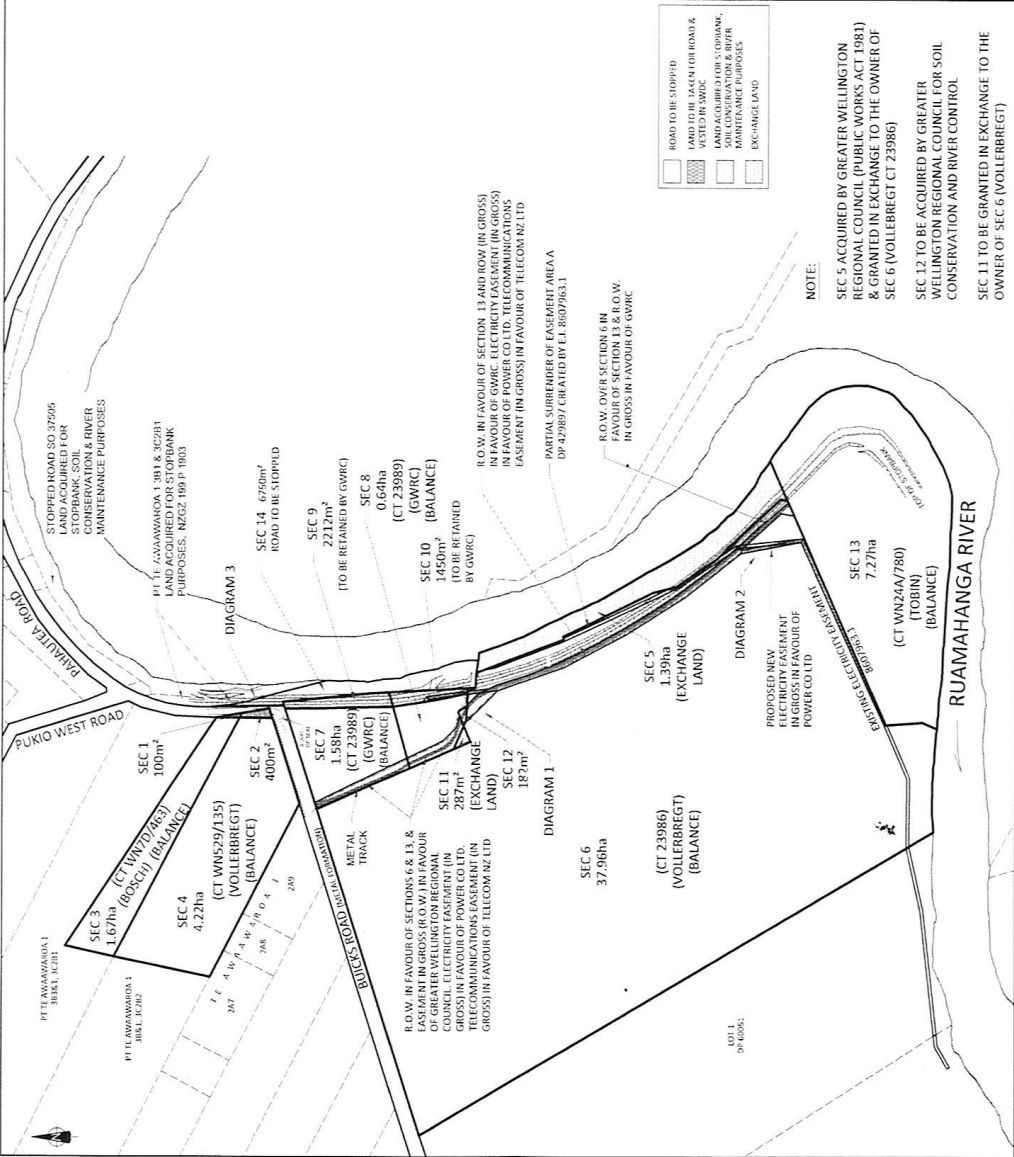
SURVEYING | PLANNING | LAND DEVELOPMENT

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Date: 12-01-2011 Scale: (A3 Original) 1:5000

Project No	Drawing No	Revision
1196	SC - 01	D

<p>A 16-1-12 DETAILS AMENDED B 17-1-12 ANNOTATION ADDED C 26-1-12 SECTIONS ALTERED, DIAGRAMS PUT ON DRAWING 1196 SC-02 D 3-2-12 NOTES & ANNOTATION ALTERED E 15-10-13 ANNOTATION ADDED, EASEMENT & BOUNDARIES ALTERED F 12-12-13 ANNOTATION ALTERED G 17-12-13 LEGEND ALTERED</p> <p style="text-align: center;">DRAFT PLAN NOT YET APPROVED BY THE CHAIRMAN WELLINGTON REGIONAL COUNCIL</p>	<p>Project TOBIN STOPBANK REALIGNMENT</p>
<p>Client GREATER WELLINGTON REGIONAL COUNCIL</p>	<p>CT Reference: AS SHOWN Local Authority: SOUTH WAIRARAPA DISTRICT</p>
<p>Physical Address: GREATER WELLINGTON REGIONAL COUNCIL</p>	<p>Disclaimer / Legal This Scheme Plan has been prepared for the purpose of Greater Wellington Regional Council consultation. Adamson Shaw Limited accepts no responsibility for its use for any other purpose. The areas and dimensions shown on this Scheme Plan have not been checked by survey and are likely to change upon final survey.</p>
<p>Adamson Shaw SURVEYING PLANNING LAND DEVELOPMENT Wellington 47 Ferry Street PO Box 232 PB Box 636 Wellington 6140 Phone: 07 379 0022 F 06 378 2009 M 027 443 6790 Email: survey@adamson.co.nz www.adamson.co.nz</p>	<p>Date 12-01-2011</p> <p>Scale (A3 Original) 1:5000</p>
<p>Project No 1196</p> <p>Drawing No SC - 01</p> <p>Revision G</p>	



AGREEMENT DATED THE 4 DAY OF July 2011

BETWEEN WELLINGTON REGIONAL COUNCIL

AND SOUTH WAIRARAPA DISTRICT COUNCIL

**AGREEMENT TO CONSTRUCT
STOPBANK AND REALIGN PUBLIC ROAD**

**OAKLEY MORAN
SOLICITORS
P O BOX 241
WELLINGTON**

(Person Acting: Warren Lim)
Phone: (04) 472 3055
Facsimile: (04) 472 6657

THIS AGREEMENT made the

4

day of

July

2011

BETWEEN WELLINGTON REGIONAL COUNCIL a Council under the Local Government Act 2002 ("GW")

A N D SOUTH WAIRARAPA DISTRICT COUNCIL ("SWDC")

BACKGROUND

- A. SWDC is responsible for the administration of local roads within its jurisdiction.
- B. GW wishes to undertake soil conservation and river control / mitigation works along the lower Ruamahanga River. Part of GW's work involves construction of a new stopbank which would partially be on existing road reserve approximately at the corner of Buicks Road and Pahautea Road which construction also necessitates the realignment of this part of the public road.
- C. The realignment of the public road will require the area of the road reserve to be increased or widened and for that reason land will need to be taken from adjoining land owners.
- D. The parties have entered into an arrangement whereby GW will undertake GW's work on road reserve, realign the existing public road and will under the provisions of the Public Works Act 1981 acquire areas of land from adjoining land owners and vest it in SWDC.
- E. The parties now wish to enter into this Agreement to record the above arrangements.

THE PARTIES AGREE AS FOLLOWS:**1. DEFINITIONS**

1.1 In this Agreement, including the Recitals, unless the context otherwise requires:

1.1.1 **"GW"** means Wellington Regional Council and its successors.

1.1.2 **"SWDC"** means South Wairarapa District Council and its successors.

1.1.3 **"Vollebregt"** means Gerardus Cornelis Vollebregt and Meredith Vollebregt.

1.1.4 **"Bosch"** means **Brian Florus Bosch and Joanne Bosch**

1.1.5 **"Land"** means:

1.1.5.1 all that parcel of land of 4.2325 hectares more or less being Part Lot 2 Deposited Plan 2924 in Computer Freehold Register WN529/135 and

1.1.5.2 all that parcel of land of 1.7364 hectares more or less being part Awaawaroa 1 3B, 3C3B, 1 Blocks in Computer Freehold Register WN7D/463

1.1.6 **"Required Area"** means the area of land of approximately 500 m² outlined in blue on the attached Road Plan to be acquired under this Agreement and vested in SWDC as public road.

1.1.7 **"Road Plan"** means the Plan attached to this Agreement showing the Required Area to be acquired and vested in SWDC pursuant to this Agreement.

1.1.8 **"Stopbank Plan"** means the Plan attached to this Agreement showing the areas of the public road affected by the works of GW.

1.2 In this Agreement including the recitals unless the context otherwise requires:

1.2.1 References to clauses, subclauses, and schedules are to the clauses, subclauses and the schedules to this Agreement.

1.2.2 Words denoting the singular number include the plural number and vice versa.

1.2.3 Words denoting a gender include all genders.

1.2.4 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.

1.2.5 A reference to any party of this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors, and permitted assigns.

1.2.6 A reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry including the inquiry which a reasonable person would have determined to make by reason of knowledge of a fact or omission brought to the notice of that person.

2. GW'S WORK

2.1 GW is authorised to undertake soil conservation and river control / mitigation works on parts of public road vested in SWDC as shown on the Stopbank Plan.

2.2 GW's work shall consist of the following:

2.2.1 Construction of a temporary stopbank on the area shaded in blue on the Stopbank Plan.

2.2.2 Construction of a permanent stopbank on the two areas shaded in yellow on the Stopbank Plan.

2.2.3 Removal of the existing road formation on such part of the area shaded yellow on the Stopbank Plan at the intersection of Buicks Road and Pahautea Road.

2.2.4 Construction of a new road formation to a standard equivalent to the road formation removed.

3. ACQUISITION OF LAND FOR ROAD RESERVE

3.1 GW shall be responsible for arrangements with Vollebregt and Bosch, the owners of the Land, to acquire the Required Area for vesting on SWDC as road reserve. All costs and compensation payable to Vollebregt and Bosch shall be the sole responsibility of GW.

3.2 The Required Area is as currently outlined in blue on the Road Plan but the area is subject to survey and also subject to the requirement of SWDC that the minimum width of the road reserve is to be 15 metres parallel to the toe of the stopbank.

4. SURVEY

4.1 The parties acknowledge and agree that the shape, size and position of the boundaries of the Required Area showed on the Road Plan are approximate and are subject to final survey. The parties acknowledge and anticipate that there will be variations and differences in the final survey plans from the approximate area shown on the Plan attached to this Agreement. In the event of slight variations and differences, neither party shall be entitled to cancellation or rescission of this Agreement or to any compensation or damages against the other party.

4.2 The final shape, size and positions of the boundaries of the Required Area shall be determined by reference to the toe of the stopbank and subject to the minimum requirements of the South Wairarapa District

Council that the minimum width of the road reserve shall be 15 metres parallel to the toe of the stopbank.

5. TAKING OF THE LAND UNDER THE PUBLIC WORKS ACT 1981

- 5.1 GW shall take the Required Area using the provisions of the Public Works Act 1981 and shall vest the Required Area on SWDC as public road.
- 5.2 The parties agree that GW's obligations (if any) to provide compensation pursuant to the provisions of the Public Works Act 1981 shall be as set out in this Agreement.

6. PREPARATION OF PLANS, DOCUMENTS AND REGISTRATION




- 6.1 GW shall at its expense arrange for the preparation and lodgement of all survey plans by a registered surveyor nominated by GW.
- 6.2 GW shall meet all legal and registration costs relating to the applications of all consents and the preparation and registration of all documents contemplated by this Agreement.
- 6.3 GW shall meet the reasonable legal costs of SWDC incurred in the perusal and approval of all documents submitted by GW including this Agreement.
- 6.4 The parties agree to complete such documents and obligations required of them under this Agreement in a timely fashion and shall further undertake to execute all documents and plans when required without delay.

7. DISPUTE RESOLUTION

- 7.1 The parties AGREE that all differences and disputes which may arise between the parties as to this Agreement or any act or thing done, or omission, or the interpretation of this Agreement shall be dealt with in the following manner –

7.1.1 The difference or dispute shall be submitted to a process of Alternative Dispute Resolution (in the manner usually conducted within the Wellington region) with the intent that the matter be resolved as expeditiously as possible and to the mutual benefit of both parties.

7.1.2 In the event that the Alternative Dispute Resolution procedure is unsuccessful, the difference or dispute shall be referred to arbitration in accordance with the Arbitration Act 1996 and any amendments and/or substitution to the said Act.

SIGNED by <i>David Benham</i> <i>CEO</i>)	
WELLINGTON REGIONAL COUNCIL)	
by its authorised signatory)	
in the presence of:)	
<i>KATHRYN MARTIN</i>)	<i>K M Martin</i>
<i>SECRETARY</i>)	
<i>WELLINGTON</i>)	
SIGNED by <i>Mark Allingham</i>)	
SOUTH WAIRARAPA DISTRICT COUNCIL)	
by its authorised signatory)	
in the presence of: <i>Ian Richards</i>)	
<i>MANAGER</i>)	
<i>UPPER HUTI</i>)	



Approximate Area Required For Road

500m²

**CFR WN529/135
(Vollebregt)**

**CFR WN7D/463
(Bosch)**

Land Acquired for Stopbank

LAND ACQUIRED FOR STOPBANK

LAND ACQUIRED FOR STOPBANK

WAIOTETUTA TRUST





Legend

Owner

- Tobin Stopbank Stage I
- Tobin Stopbank Stage II
- Removal of Trees & Over Burden Stage III
- Davenport Stopbank - Stage IV
- Wairarapa Rivers Cross Section Lines