

From: [Deb Taylor](#)
To: [Matt Jeffery | McKenzie Higham Architects](#); [Trudie Ward](#)
Subject: FW: Quote for work 02058333
Date: Monday, 30 April 2018 11:10:00 a.m.

Hi Folks,
See below...

Deb Taylor | Project Delivery Manager Acquisitions & Designations | Education
Infrastructure Services
DDI +64 3 378 7398 Ext 37398 | Mobile +64 21 748832
Te Uruti | 48 Hereford St | West End
Christchurch 8013

From: Network Services [mailto:NetworkServices@chorus.co.nz]
Sent: Monday, 30 April 2018 10:54 a.m.
To: Deb Taylor <Deb.Taylor@education.govt.nz>
Subject: RE: Quote for work 02058333

Thanks Deb for letting us know. When you're more ready, please let us know and we'll re-quote for this.

Kind Regards

Catherine Maher
Network Services Coordinator
T 0800 4 NETWORK (0800 463 896)
Opt 3
E Networkservices@chorus.co.nz
PO Box 9405
Waikato Mail Centre
Hamilton 3200
www.chorus.co.nz



From: Deb Taylor [mailto:Deb.Taylor@education.govt.nz]
Sent: Thursday, 26 April 2018 12:44 p.m.
To: Network Services <NetworkServices@chorus.co.nz>
Subject: Quote for work 02058333

Good afternoon,
Thank you for advising us of the revised quote (see email attached). We do want to complete this work, but can't have it done within the 30 day time frame as it needs it to completed within a larger construction programme later in the year.

We will contact you in a couple of month to confirm and then reapply for a new quote if required.

Many thanks for your assistance in this matter.
Kind regards
Deb

Deb Taylor | Project Delivery Manager Acquisitions & Designations | Education
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Christchurch 8013

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We are respectful, we listen, we learn *He ropu manaaki, he ropu whakarongo, he ropu ako matou*

We back ourselves and others to win *Ka manawanui ki a matou, me etahi ake kia wikitoria*

We work together for maximum impact *Ka mahi ngatahi mo te tukinga nui tonu*

Great results are our bottom line *Ko nga huanga tino pai a matou whainga mutunga*

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From: [Matt Jeffery | McKenzie Higham Architects](#)
To: [Trudie Ward](#); [Deb Taylor](#)
Subject: FW: 02058333 : 20 & 21 Turnbull Street, Wellington
Date: Thursday, 26 April 2018 8:46:11 a.m.
Attachments: [image001.jpg](#)
[image002.jpg](#)
[JT225029_S&SDocket_20180420_1034.pdf](#)
[JT220739_Proposed_Design_180419.pdf](#)

Hi Deb,

Chorus

Trudie and I received the revised design and quote from Chorus on Monday.

Could you please contact them and let them know that these works will take place in the future, not within the 30 day period covered by the quote?

Progress

Have we heard anything further from WCC?

I would like to update our civil engineers on a likely design start date [they are busy, so I just want to make sure we keep a window open].

Cheers

Matt Jeffery
Associate
P 04 903 4975



From: Network Services [mailto:NetworkServices@chorus.co.nz]
Sent: Monday, 23 April 2018 12:50 PM
To: Trudie.Ward@education.govt.nz; Matt Jeffery | McKenzie Higham Architects
Subject: 02058333 : 20 & 21 Turnbull Street, Wellington

Good afternoon Trudie

Thanks for your recent request for us to relocate our network at the above address.

Please sign the attached Sales & Service advice note and pay our quote of **9(2)(i)** (including GST) within 30 days of the date of this email.

If we don't receive the above within the 30 day time frame, this quote will be withdrawn and you'll need to reapply for a new quote if you still want to go ahead at a later date.

Next steps

1. Return the signed sales & service advice note to us at

networkservices@chorus.co.nz <<mailto:networkservices@chorus.co.nz>> or by post to **Chorus Network Services, PO Box 9405, Waikato Mail Centre, Hamilton 3200.**

By signing you agree to us carrying out the proposed works on the terms set out in this email and as outlined in that note and the lay plan / designs.

2. You have the following options for payment:

- **Online banking:** our account number is 03-0584-0256885-00
- **Credit card:** <<https://payments.chorus.co.nz>>. T&Cs (including relevant fees) are at <<https://www.chorus.co.nz/legal-disclaimer>>
- **Cheque:** made out to **Chorus New Zealand Limited**, sent to **Chorus Billing & Credit Management, Chorus NZ Ltd, P.O. Box 6640, Wellesley Street, Auckland.**

Please use the Chorus reference number in the email subject line as your reference when making payment, or on the back of the cheque.

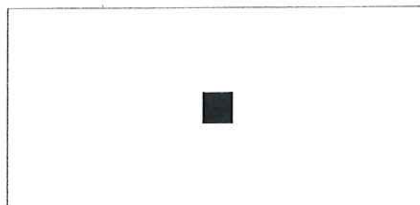
Once we've received the signed agreement and payment we can start the proposed works, which could take up to 40 days to complete.

Is there anything else I need to know?

- If the sales & service advice note contradicts the terms of this email, the email terms will prevail.
- The quote covers relocation of our network at the above address and not the provision of any telecommunications services.
- We may need to vary the quote provided in this email if certain circumstances change after the date of this letter. For example changes to on-site circumstances, scope of the works required, our ability to use existing or any other network and compliance requirements. We'll let you know if we become aware of any change which impacts this quote.
- We retain ownership of our network and the proposed works are provided in line with our End User Terms, which you can find at <<https://company.chorus.co.nz/contracts-and-agreements>>.
- You can change your mind and cancel the order. If you cancel the order, we will refund the payment to you, deducting any costs we've incurred in relation to the proposed works up to the time of cancellation. This may include design costs and any build work completed.
- We may decide to cancel the order if it's not completed within six months of the date you signed the agreement and you're directly or indirectly responsible for the delay. If we decide to cancel the order, we will refund the payment to you, deducting any costs we've incurred in relation to the proposed works up to the time of cancellation. This may include design costs and any build work completed.

Kind Regards

Catherine Maher
Network Services Coordinator
T 0800 4 NETWORK (0800 463 896)
Opt 3
E Networkservices@chorus.co.nz
PO Box 9405
Waikato Mail Centre
Hamilton 3200
www.chorus.co.nz



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SALES & SERVICE DOCKET

Customer Name and Address	CHORUS NBC BILLING
	20 & 21 TURNBULL STREET, THORNDON, WELLINGTON

Arrival Time									Date				
Completion Time									Date				
Reference #	0	6	7	5	5	0	7	0					
Telephone #	1	4	9	9	6	3	3	0					
Telephone Exchange	WN - WELLINGTON												

DETAILED WORK
 Complete site investigation, design.
 Remove existing terminal and cable on pole.
 Cut-in new pillar to the boundary.
 Supply and supervise installation of ducts.
 Cut-over existing customer to new pillar.
 Footpath reinstatement of access holes for cable joints and pillar installation.
 Update records.
 Note: Customer to trench and lay ducts and reinstate trench without any cost to Chorus

Visit Fee \$	
Network Connection \$	
Internal Wiring \$	
External Wiring \$	
Labour and/or Materials \$	
Authorised Quote \$	9(2)0
Fault Charges \$	
Subtotal \$	9(2)0
GST \$	9(2)0
Total \$	9(2)0

Accepted By (Print) * _____
 Signature * _____
 Service Technician (Print) CLIFFERSON MAGNO

I acknowledge supply of the above services and any applicable charges will be debited to my telephone account

Company ID# _____
 Patch # CSA 03 SO Type 7N

CUSTOMER CHARGES	Cons.	SME	Qty	Price
Connection - New Line				
Connection - 2nd Line				
Connection - Existing Line				
Connection - Demarc Pt		ISCN1		
Connection - Temporary				
Centrex Surcharge		ICCFI		
ISDN Surcharge		IIBCC		
		ICCS		
Broadband Connection Only	IAF	IAF		
Broadband Connection & Wiring	IAF	IAF		
PC/Modem Configuration	IAF	IAF		
External Wiring <65m	ILX65	IUG3R		
Chorus J/P, Not Wired	ISINT	ISN5B		
Customer J/P, Not Wired	ISINC	ISN6B		
Chorus J/P, Pre-Wired	ISAST	ISP1B		
Customer J/P, PRE-Wired	ISASC	ISP2B		
Install/Faults Only				
Service Visit Fee	IVNNR	IVN1B		
Labour (per 1/4hr)	ILN2R	ILN2B		
Materials/Miscellaneous	IMTR	IMTB		
Misc Network Charges Only				
Service Visit Fee	IVSVF	IVSVF		
Labour (per 1/4hr)	ILLAB	ILLAB		
Materials/Miscellaneous	ICMAT	ICMAT		
Cable Location				

SERVICE COMPANY CHARGES	Code	Qty
Consumer New/Rearrangement	122	
Consumer Disconnection	123	
External Wiring	124	
Business New/Rearrangement	126	
Business Disconnection	128	
Data Provisioning	129	
Complex New/Rearrangement	131	
Complex Disconnection	133	
Netrok 2 Meg Link	134	
Win-From labour	151	
Win-From Materials	152	
Broadband Connection Only	163	
Broadband Connection & Wiring	165	
PC/Modem Configuration	166	
ADSL Splitter	167	
BCL Wireless Provisioning	168	
*Miscellaneous Labour	191	
*Miscellaneous Materials	192	
Customer Charged Labour	194	
Customer Charged Materials	195	
*Work Mgmt Authority # Reqd		
DESCRIPTION	QUANTITY	
EQUIPMENT INSTALLED		
EQUIPMENT INSTALLED		
CONSIGNED EQUIPMENT		
CONSIGNED EQUIPMENT		
EQUIPMENT RECOVERED		
EQUIPMENT RECOVERED		

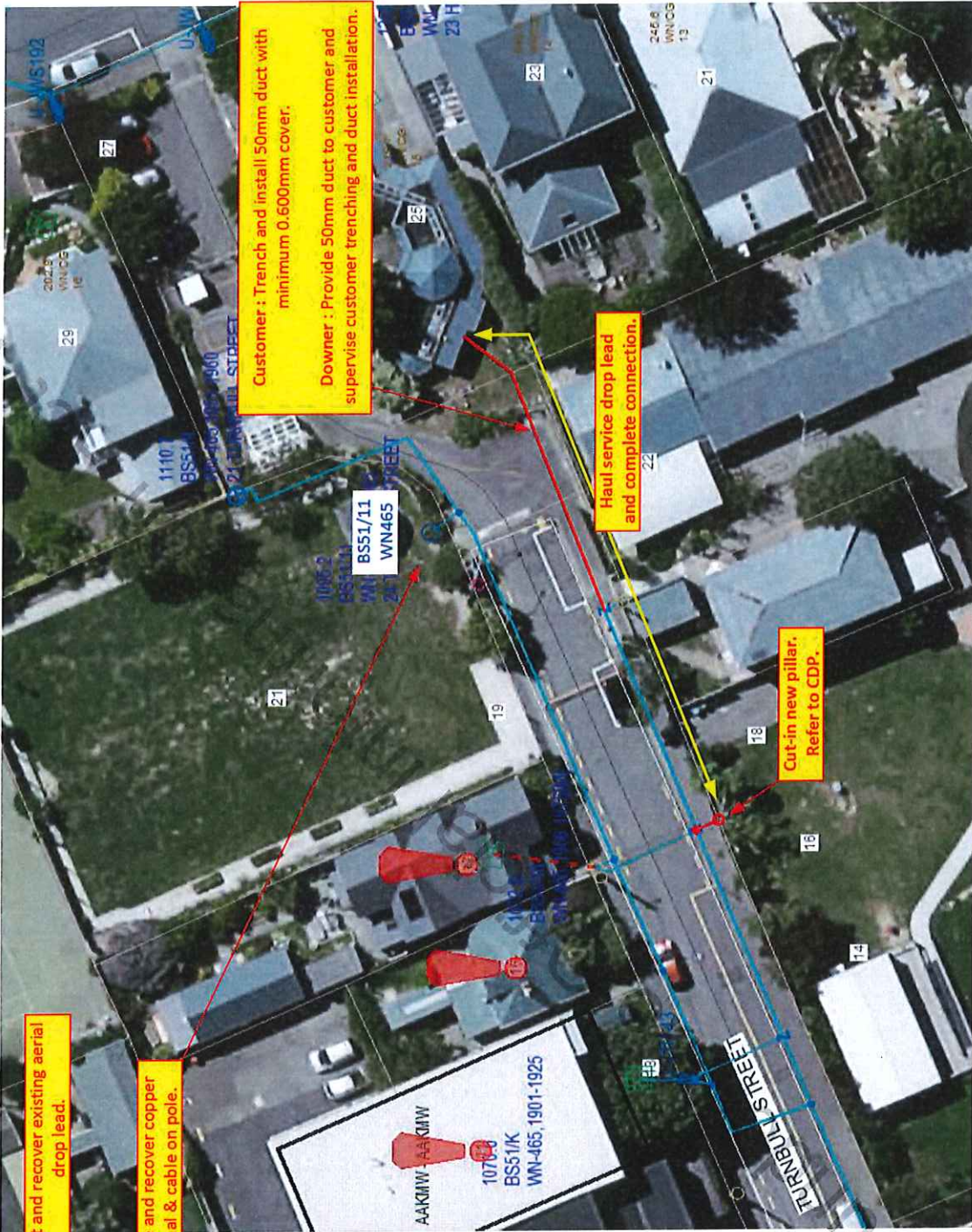
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Cut and recover existing aerial drop lead.

Remove and recover copper terminal & cable on pole.

Dig and locate existing 50" / 0.63 copper cable concrete footprint and cut 15" / 0.40 copper cable tail.



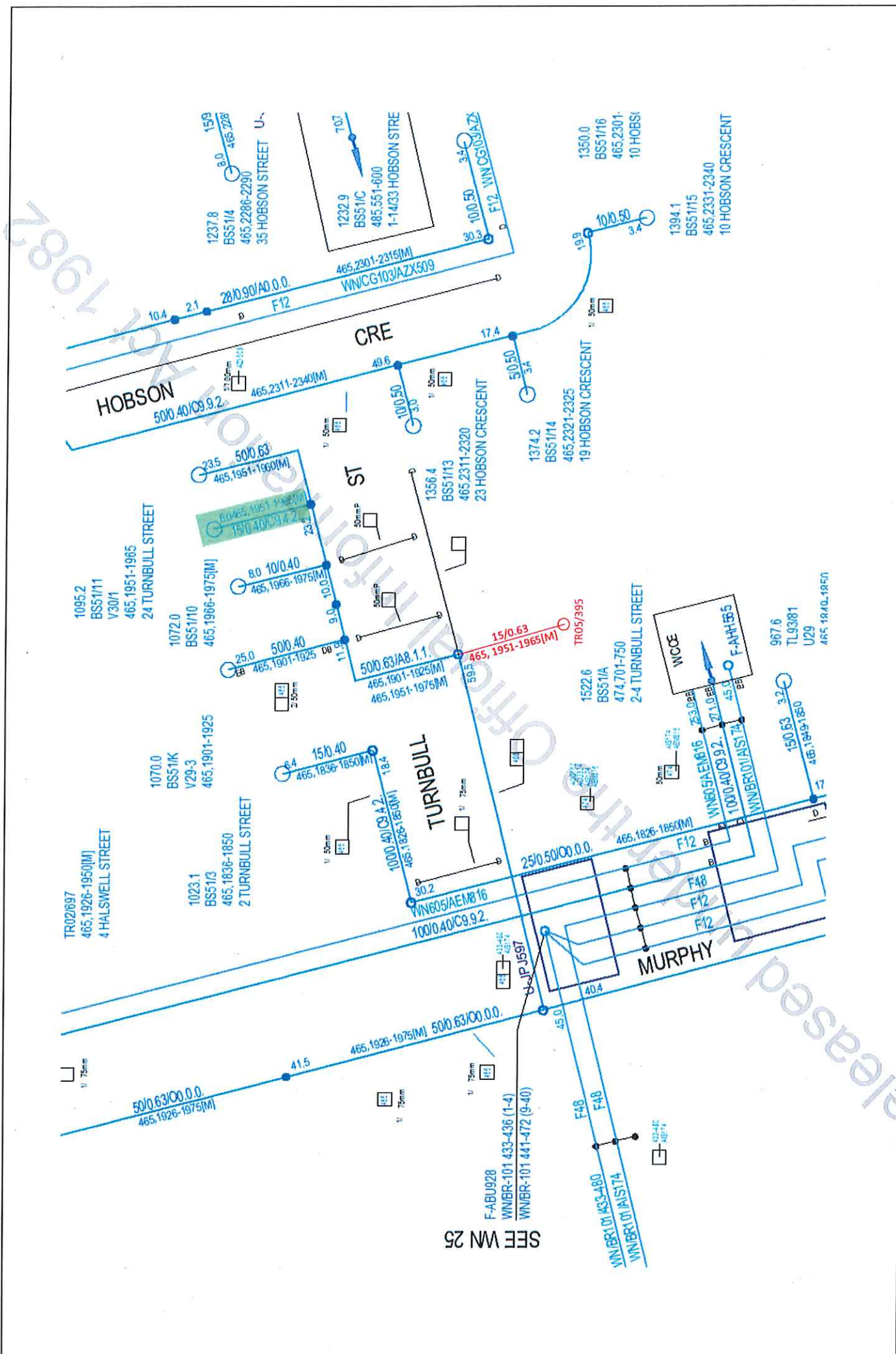
Customer: Trench and install 50mm duct with minimum 0.600mm cover.
Downer: Provide 50mm duct to customer and supervise customer trenching and duct installation.

Haul service drop lead and complete connection.

Cut-in new pillar. Refer to CDP.

Note:
 Customer to remove existing power pole. Copper cable and terminal attached will be removed and recover.
 Customer to trench and install 50mm duct from end of existing 50mm duct to termination point. Approx. 30m
 Customer to arrange removal of WE pole after removal of chorus terminal and cable.
 New DP will be cut at the boundary of the Thorndon School to transfer and serve the customer on the existing terminal at pole.
 Site Contact : Trudie Ward — 027 406 3166

Downer	Project: 20 & 21 Tumbull St Thorndon	Plan Title: Key Plan	JobTrak # 225029	COINS # 20593.7600	Designer Cliff Magno	Date 19/04/18	Page 1
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SEE VN 25

	Project: 20 & 21 Turnbull St Thorndon	Plan Title: Key Plan	JobTrak # 225029	COINS # 20593.7600	Designer Cliff Magno	Date 19/04/18	Page 2
	Project: 20 & 21 Turnbull St Thorndon						

From: [Deb Taylor](#)
To: [Trudie Ward](#)
Subject: FW: Turnbull Street: Thorndon School
Date: Tuesday, 8 May 2018 2:03:00 p.m.

Trudie,
See below from John.

Do you have any objection in giving the details to John?

Cheers
Deb

Deb Taylor | Project Delivery Manager Acquisitions & Designations | Education
Infrastructure Services
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Te Uruti | 48 Hereford St | West End
Christchurch 8013

From: John Vriens [mailto:John.Vriens@wcc.govt.nz]
Sent: Tuesday, 8 May 2018 2:01 p.m.
To: Deb Taylor <Deb.Taylor@education.govt.nz>
Subject: RE: Turnbull Street: Thorndon School

Hi Deb

Thank you very much for this.

You will have seen survey quote acceptance to Adamson Shaw and Council purchase order number, this afternoon. I have also requested our legal services team to instruct Simpson Grierson for the agreement etc.

Depending on how quickly the survey goes I expect to do the public notice in about a month (we need the LINZ approved survey plan to do it). I will contact you a few days beforehand so you can let the school know as I will be putting up a couple of signs at either end of the road stopping proposal.

I'm happy to call the principal as a matter of courtesy as well – do you have contact details?

Kind Regards

John Vriens
Senior Property Advisor | Property | Wellington City Council
P 04 801 3246 | M 021 227 3246 | F 04 801 3200
E John.Vriens@wcc.govt.nz | W Wellington.govt.nz | |

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From: Deb Taylor [mailto:Deb.Taylor@education.govt.nz]
Sent: Tuesday, 8 May 2018 1:18 p.m.
To: John Vriens
Subject: Turnbull Street: Thorndon School

Hi John,
Thanks for your emails regarding the surveying and legal quotes. These are accepted by the MoE.
As discussed, WCC will engage the consultants and on-charge to the MOE as appropriate and agreed.

How are you going with the process? Are you waiting for anything from us? Please let us know the timeframes for your public consultation and we would like to make sure the school is in the loop.
Also, if you need any Ministry support over that time, please do not hesitate to contact me.

Kind regards
Deb

Deb Taylor | Project Delivery Manager Acquisitions & Designations | Education
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We work together for maximum impact *Ka mahi ngatahi mo te tuinga nui tonu*

Great results are our bottom line *Ko nga huanga tino pai a matou whaingā mutunga*

From: [Deb Taylor](#)
To: [Chris Leech \(cleech@propertygroup.co.nz\)](mailto:cleech@propertygroup.co.nz)
Subject: FW: Land Exchange Agreement - WCC and MoE - Turnbull Street [SG-SGDMS.FID982913]
Date: Friday, 1 June 2018 2:14:00 p.m.
Attachments: [AGMT_WCC Land Exchange MOE Turnbull Street - 30622024 v 2.pdf](#)

From Turnbull Street.

Deb Taylor | Project Delivery Manager Acquisitions & Designations | Education
Infrastructure Services
DDI +64 3 378 7398 Ext 37398 | Mobile +64 21 748832
Te Uruti | 48 Hereford St | West End
Christchurch 8013

From: John Vriens [mailto:John.Vriens@wcc.govt.nz]
Sent: Friday, 1 June 2018 1:59 p.m.
To: Deb Taylor <Deb.Taylor@education.govt.nz>
Subject: FW: Land Exchange Agreement - WCC and MoE - Turnbull Street [SG-SGDMS.FID982913]

Hi Deb

Please see attached, for your review, a draft land exchange agreement for the Turnbull Street land exchange proposal (including "road stopping") and tying in construction of the vehicle turning area.

Would you like the McKenzie Higham plans from me at this stage?

I'm still awaiting a draft SO Plan from Adamson Shaw surveying.

If you have any queries please contact me.

Have a good long weekend.

Regards

John Vriens
Senior Property Advisor | Property | Wellington City Council
P 04 801 3246 | M 021 227 3246 | F 04 801 3200
E John.Vriens@wcc.govt.nz | W Wellington.govt.nz |

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<http://wellington.govt.nz/~media/Images/email-signatures/wcc-banner-new.jpg>

From: Donna Hurley [<mailto:Donna.Hurley@simpsongrierson.com>]
Sent: Thursday, 31 May 2018 5:18 p.m.
To: John Vriens
Cc: Charles Kingsford; Neil Johnstone; Beth Keightley
Subject: RE: Land Exchange Agreement - WCC and MoE - Turnbull Street [SG-SGDMS.FID982913]

Hi John

Clean version for sending on to MoE.

Please note that there were some numbering issues that I have also corrected in this latest version.

Regards
Donna

Donna Hurley
Senior Associate | **Simpson Grierson**

Level 24, 195 Lambton Quay, P O Box 2402, Wellington 6140, New Zealand
DDI +64-4-924 3500 | **Mobile** +64-21 484 711 | **Fax** +64-4-472 6986
donna.hurley@simpsongrierson.com | [My LinkedIn](#)

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**LAND EXCHANGE AGREEMENT
16-24 TURNBULL STREET, THORNDON,
WELLINGTON**

WELLINGTON CITY COUNCIL

**HER MAJESTY THE QUEEN acting by and through the
MINISTRY OF EDUCATION**

DRAFT

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Simpson Grierson

Barristers & Solicitors
Auckland & Wellington, New Zealand
www.simpsongrierson.com

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
2. CONDITION	3
3. EXCHANGE OF LAND	3
4. ROAD STOPPING PROCEDURE	4
5. LAND ACQUISITION	5
6. PHYSICAL WORKS	6
7. CONSENTS	6
8. LAND EXCHANGE AND SETTLEMENT	6
9. UTILITIES IN THE STOPPED ROAD LAND	7
10. PROCESSING OF APPLICATIONS	8
11. SURVEY	8
12. WARRANTIES	8
13. RATES	9
14. COSTS	9
15. CROWN ACKNOWLEDGEMENT	9
16. NO REPRESENTATION OR WARRANTIES	10
17. CONTAMINATION	10
18. FURTHER ASSURANCE	10
19. NON-MERGER	11
20. DISPUTE RESOLUTION	11
21. GOVERNING LAW AND JURISDICTION	11
22. LOWEST PRICE	11
23. GST	12
24. EXECUTION OF AGREEMENT	13

SCHEDULE ONE

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AGREEMENT DATED

2018

PARTIES

1. WELLINGTON CITY COUNCIL (Council)
2. HER MAJESTY THE QUEEN acting by and through the
MINISTRY OF EDUCATION (Crown)

BACKGROUND

- A. The School Land (which includes the Exchange Land) is vested in the Crown for Education purposes.
- B. Turnbull Street (which includes the Stopped Road Land) is vested in the Council as legal road.
- C. The Crown requires the Stopped Road Land for Education purposes.
- D. The Council requires the Exchange Land for road.
- E. The Council has agreed to the Crown acquiring the Stopped Road Land for education purposes (subject to completion of a road stopping) in exchange for the vesting of the Exchange Land in the Council as road and the completion of the Physical Works and payment of the costs in clause 14 by the Crown.

THE PARTIES AGREE THAT:

1. **INTERPRETATION**

1.1 **Definitions:** In this Agreement, unless the context indicates otherwise:

Agreement means this Agreement and includes any schedules and annexures;

Council means Wellington City Council and includes its successors and assigns;

Crown means Her Majesty the Queen acting through the Ministry of Education and includes its successors and assigns;

Designation means *Designation E65 - School* in the Wellington City District Plan;

Design Plan means the plans attached to this Agreement as Schedule 1;

Exchange Land means that part of the School Land shown coloured orange and marked "Area vested in WCC" on the Plan, being approximately 0.0022 hectares more or less (subject to survey);

GST means goods and services tax imposed by the GST Act and includes any tax levied in substitution of such tax;

GST Act means the Goods and Services Tax Act 1985;

Land Exchange means the exchange of the Stopped Road Land and the Exchange Land on the Settlement Date;

LGA means the Local Government Act 1974;

Minister means the Minister for Land Information;

Physical Works means all works required to complete construction of a vehicle turning area on the Exchange Land, in accordance with the Design Plans, the *Wellington City Council Code of Practice for Land Development 2012*, and otherwise to the satisfaction of the Council taking into account detailed design completed by qualified civil engineers approved by the Council, including but not limited to all works related to the installation, removal, decommissioning, termination and/or relocation of utility services on or from the Exchange Land and/or the Stopped Road Land;

Plan means McKenzie Higham plan TH07 A Proposed Land Swap attached to this Agreement as Schedule 2; **[Drafting Note: if the Land is surveyed before the agreement is signed we will update to include the SO Plan.]**

PWA means the Public Works Act 1981;

School Land means the land at 16-24 Turnbull Street being all of the Land comprised and described in Computer Freehold Register 782453 attached to this Agreement as Schedule 3;

Settlement Date means the later of:

- (a) 20 Working Days from the date that the Council receives notification from its solicitor that the Stopped Road Land has been stopped and a new Computer Freehold Register is available for the Stopped Road Land; or
- (b) 20 Working Days following the publication of the declaration pursuant to section 114 of the PWA in the *New Zealand Gazette* giving effect to the legalisation of the Exchange Land as road in accordance with clause 8.1(c);

Stopped Road Land means that part of Turnbull Street shown approximately coloured orange and marked "Land to MOE" on the Plan, being 0.0141 hectares more or less (subject to survey); and

Working Days has the meaning given to it by the Property Law Act 2007.

1.2 Defined Expressions: expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background;

1.3 Headings: section, clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;

1.4 Joint and Several Obligations: an obligation by two or more persons binds those persons jointly and severally;

1.5 Negative Obligations: an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

- 1.6 **Parties:** references to parties are references to parties to this Agreement;
- 1.7 **Plural and Singular:** the singular includes the plural and vice versa;
- 1.8 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- 1.9 **Schedules:** the schedules to this Agreement and anything in those schedules have the same effect as if set out in the body of this Agreement;
- 1.10 **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this Agreement's sections, clauses and schedules; and
- 1.11 **Statutes and Regulations:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. **CONDITION**

- 2.1 This Agreement is conditional upon:
- (a) the completion of the stopping of the Stopped Road Land in accordance with clause 4 of this Agreement within six (6) months from the date of signing of this Agreement by both parties; and
 - (b) the Minister issuing a Gazette Notice that declares the Exchange Land to be vested in the Council under section 114 of the PWA within 20 Working Days of the satisfaction of clause 2.1(a).
- 2.2 The conditions in clauses 2.1(a) and (b) are inserted for the benefit of both parties and may not be waived.
- 2.3 If either of the conditions in clause 2.1 are not confirmed within the specified time frames then, unless the parties otherwise agree at any time prior to the satisfaction of that condition, this Agreement may be cancelled at the option of either party and if cancelled no party will have any further right or claim against the other and clause 2.4 will apply.
- 2.4 Notwithstanding any other provision contained or implied in this Agreement, if the conditions contemplated in clause 2.1 are not able to be met for any reason, or either party decides not to proceed under clause 4.6(b) or 4.8, neither party will be entitled to bring any claims against the other party.

3. **EXCHANGE OF LAND**

- 3.1 Subject to the terms and conditions in this Agreement, the parties have agreed to the following exchange:
- (a) the Exchange Land being part of the School Land is to be acquired for road and vested in the Council in accordance with clauses 5 and 8; and

- (b) the Stopped Road Land is to be stopped and transferred to the Crown to be amalgamated with the balance of the School Land in accordance with clauses 4 and 8.

3.2 The Crown and the Council agree that there is nil consideration payable by either party for the Land Exchange by way of equality of exchange.

3.3 The consideration passing from one party to the other under this Agreement will be treated as being equivalent in all respects, so that no further claim will be made by either party in respect of the vesting or transfer of the parcels of land under this Agreement or any other consequential matter.

4. ROAD STOPPING PROCEDURE

4.1 The Council will, as soon as practicable after the signing of this Agreement by both parties, initiate road stopping procedures for the Stopped Road Land under the LGA.

4.2 The Council will, acting in accordance with its usual policies and processes:

- (a) arrange a suitable survey plan that shows the Stopped Road Land under clause 11.1 and lodge that plan with the Chief Surveyor as required by clause 1 of the Tenth Schedule to the LGA; and
- (b) open the plan, 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 as required by clause 1 of the Tenth Schedule, for public inspection at the office of the Council and give notice of the proposal as required by clause 2 of the Tenth Schedule to the LGA; and
- (c) affix a notice of the proposed stoppage at the Stopped Road Land as required by clause 3 of the Tenth Schedule to the LGA.

4.3 The Crown will provide such information and assistance as may be reasonably required by the Council for the road stopping process under the LGA.

4.4 The parties agree that if the Stopped Road Land is successfully stopped, it will be amalgamated with the adjoining balance of the School Land under section 345(2) of the LGA. To facilitate this, the Council will prior to Settlement Date, in accordance with clauses 9 and 10 of the Tenth Schedule to the LGA, take all steps necessary to ensure that a new Computer Freehold Register is issued for the Stopped Road Land. The Crown will then, as a term of settlement, apply for an amalgamated Computer Freehold Register as part of the e-dealing to complete the registration of the transfer of the Stopped Road Land to the Crown, with the following text (or words to the same effect) to be added to the e-dealing transfer instrument:

"Pursuant to section 345(2) of the Local Government Act 1974, the Transferor requires section [X] SO Plan [XXX] to be amalgamated with the Transferee's adjoining land in Computer Freehold Register 782453."

4.5 Notwithstanding clauses 4.1 and 4.2 the parties agree and acknowledge that:

- (a) there is no mandatory obligation or other obligation on the Council acting in its regulatory capacity to complete the stopping of the

Stopped Road Land under clause 4 of the Tenth Schedule of the LGA, or to disallow any objections to the road stopping;

- (b) while the Council acting in its capacity as landowner will initiate the road stopping procedures and comply with clause 4.2, the outcome of those procedures is entirely dependent on due compliance with section 342 and the Tenth Schedule of the LGA; and
- (c) while the Council acting in its capacity as landowner has initiated the road stopping procedures the outcome of those procedures is entirely dependent on the due compliance with the Tenth Schedule of the LGA, and the due exercise of the Council's regulatory functions and those of the Environment Court in relation to the stopping of the road may result in a decision by either the Council or the Environment Court not to stop the Stopped Road Land.

4.6 If it becomes necessary to refer the road stopping application to the Environment Court in accordance with clause 5 of the Tenth Schedule of the LGA the following clauses will apply:

- (a) the Council will provide the Crown with an estimate of costs, an assessment of the strength of the Environment Court case and an outline of the process (including mediation) from the Council's solicitors; and
- (b) a meeting will be held between the Crown and the Council to discuss the process, and to decide whether to proceed. If either party decides not to proceed with the road stopping through the Environment Court, this Agreement will be at an end and the provisions of clause 2.4 will apply.

4.7 Where the road stopping can only proceed subject to the terms and conditions imposed by the Council, the Environment Court, or otherwise, then both the Council and Crown have the right, in the twenty (20) Working Days after receiving notice of the conditions, in which to approve or disapprove the terms and conditions or otherwise negotiate appropriate amendments. The Council and the Crown are not obliged to accept any terms and conditions which materially and adversely affect the character, size, value or usefulness of the Stopped Road Land.

4.8 If either the Crown or the Council (as the property owner and not as the local authority) withholds approval to any matter requiring approval, the parties will enter into discussions and endeavour to negotiate a solution to the matter of concern on terms and conditions satisfactory to both parties. If the parties are unable to reach agreement within 10 Working Days of the date on which the Crown or the Council notifies the other party that it does not approve the matter in question (or such other period as the parties may agree) then either party may cancel this Agreement and the provisions of clause 2.4 will apply.

5. LAND ACQUISITION

5.1 The Crown agrees to sell to the Council the freehold estate in the Exchange Land, free of encumbrances, under the PWA for road. The acquisition will be by sections 20 and 50 of the PWA and declared road under section 114 of the PWA or at the Council's option may be by registrable transfer instrument under the Land Transfer Act 1952 for the purposes of a road.

- 5.2 The Crown consents to the operation of the Exchange Land as road and associated works, and will not oppose any notice of requirement for a designation, application for resource consent or other authorisation under the Resource Management Act 1991 or any other enactment (together called **authorisations**) for that purpose. The Crown agrees not to make any submission in opposition to any such authorisations, or to participate in or fund any proceedings in that respect.

6. PHYSICAL WORKS

- 6.1 The Crown is responsible (at its cost in all respects) for the completion of the Physical Works as soon as possible after this Agreement becomes unconditional and to the satisfaction of the Council, acting reasonably.

7. CONSENTS

- 7.1 The Council consents as the territorial authority in whose district the Exchange Land is situated, to the Exchange Land being declared road pursuant to section 114(2)(h) of the PWA.

- 7.2 The Crown consents:

- (a) to the Exchange Land being declared road pursuant to section 114(2)(c) of the PWA; and
- (b) to the stopping of the Stopped Road Land for the purposes of the Tenth Schedule of the LGA.

- 7.3 If the School Land is subject to any registered encumbrance, easement or other interest, it is a condition precedent to the Council having any obligation under this Agreement that the Crown first obtains the consent of the person entitled to the benefit of that interest to the exchange of the Exchange Land and the Stopped Road Land in accordance with this Agreement.

8. LAND EXCHANGE AND SETTLEMENT

- 8.1 Once this Agreement has been signed by both parties and the conditions in clauses 2.1 have been satisfied:

- (a) the Crown will take all steps necessary to comply with the notice requirements of sections 112 and 113 of the Port Nicholson Block (Taranaki Whanui ki Te Upoko Te Ika) Claims Settlement Act 2009;
- (b) the Crown will confirm to the Council that:
 - (i) it has given notice as required by section 182(1) of the Resource Management Act that it no longer requires the Designation to apply to the Exchange Land; and
 - (ii) no decision to decline to remove the Designation from the Exchange Land has been made in accordance with section 182(5); and

- (iii) the Wellington City Council (as regulatory authority) has confirmed that it will amend the District Plan in accordance with section 182(2); and
- (iv) pursuant to section 70A if the Education Act 1989, it has published a notice in the New Zealand Gazette declaring that the Exchange Land is no longer required for education purposes.
- (c) the Council will promptly request that the Minister issue a Gazette Notice declares the Exchange Land to be vested in the Council under section 114 of the PWA.
- 8.2** The Council will arrange for the publication of the Gazette Notice giving effect to the declaration in clause 7.1(b) in the *New Zealand Gazette* as soon as possible following:
- (a) receipt of notice from the Crown that the Crown has complied with its obligations under section 112 and 113 of the Port Nicholson Block (Taranaki Whanui ki Te Upoko Te Ika) Claims Settlement Act 2009 in accordance with clause 8.1(a); and
- (b) confirmation of the matters required in clause 8.1(b).
- 8.3** On the Settlement Date:
- (a) the Council will be entitled to vacant possession of the Exchange Land (subject to clause 8.4 and the obligation of the Crown to complete the Physical Works);
- (b) the Stopped Road Land will be transferred to the Crown and amalgamated with the balance of the School Land; and
- (c) the Gazette Notice or transfer referred to in clause 5.1 will be lodged contemporaneously with the transfer of the Stopped Road Land as referred to in clause 4.4.
- 8.4** If the Physical Works are not completed by the Settlement Date, the Council grants to the Crown a licence to access and occupy the Exchange Land for the express purpose of completing the Physical Works in accordance with clause 6.
- 8.5** The Crown will execute all instruments by way of dedication, transfer or produce all documents and do anything else which is reasonably necessary for the purposes of this Agreement.

9. UTILITIES IN THE STOPPED ROAD LAND

- 9.1** Any water, wastewater, gas, electricity, telecommunications or other utility infrastructure installed in the Stopped Road Land will be removed, relocated, decommissioned or terminated by the Crown (at its cost) in accordance with the requirements of the relevant utility providers within two (2) months of request by the relevant utility provider.
- 9.2** The obligations of the Crown pursuant to clause 9.1 will not merge with and will survive settlement.

10. PROCESSING OF APPLICATIONS

- 10.1** Nothing in this Agreement will require the Council to process and deal with any application to the Council for consents, or approvals or to initiate road stopping procedures except in accordance with its normal procedures and time frames, or to determine any such application (where a determination by Council is required) except in accordance with normal principles and standard criteria for such applications.
- 10.2** Notwithstanding any other provision contained or implied in this Agreement, if the Stopped Road Land is not able to be stopped under the LGA, or the Exchange Land is not able to be vested as contemplated by this Agreement for any reason (other than default by Council in performance of its obligation under this Agreement), the Council will not be liable nor will the Crown be entitled to bring any claims against the Council whether for damages, costs, expenses or for specific performance or otherwise, it being the intention that, in that event, the sole remedy of the Crown will be that the Crown will be entitled to terminate this Agreement.
- 10.3** The Council has signed this Agreement in a non-regulatory capacity. This Agreement does not bind the Council in its capacity as a regulatory authority in any way, and any consent or agreement given by the Council under this Agreement is not an agreement or consent in its regulatory capacity and vice versa. When acting in its regulatory capacity, the Council must consider all applications to it without regard to this agreement.

11. SURVEY

- 11.1** The Council will (at the cost of the Crown), as soon as practicable after the signing of this Agreement by both parties, prepare and have approved any survey plans which are necessary to give effect to the vesting of the Exchange Land in the Council for road and the stopping and transfer of the Stopped Road Land to the Crown pursuant to clauses 5.1 and 4.4.

12. WARRANTIES

- 12.1** The Crown (in respect of the Exchange Land) and the Council (in respect of the Stopped Road Land) respectively warrant and undertake that:
- (a) at the date of this Agreement it has not received any notice nor has it any knowledge of any requisition or outstanding requirement imposed by any territorial or government authority in respect of that land or any notice from any tenant or any regulatory notice which has not been disclosed to the other party;
 - (b) at the giving and taking of possession there are no arrears of general or water rates or charges outstanding on that land; and
 - (c) if it receives any notice or demand from the Crown or any territorial authority after the date of this Agreement it will, if not paying or complying with such notice or demand forthwith deliver it to the other party or that party's solicitor, and if it fails to do so it will be liable for any penalty incurred.

13. RATES

- 13.1** There will be no apportionment of rates on the exchange of the Exchange Land and Stopped Road Land.
- 13.2** Immediately after the Settlement Date, the Crown will give notice of sale of the Exchange Land to the territorial authority and the Council will give notice of sale of the Stopped Road Land to the territorial authority.

14. COSTS

- 14.1** The Crown will meet all of the Council's costs to give effect to this Agreement and its negotiation, signing and completion, including (but not limited to) all reasonable survey, legal, consultancy, valuation, publication and registration costs and disbursements, the cost of all statutory processes including Gazettal costs, and any costs related to any Environment Court consideration of the road stopping (if applicable).
- 14.2** The Crown will be solely responsible for its own costs (including legal costs) in connection with the negotiation, signing and completion of this Agreement, any Environment Court consideration of the road stopping (if applicable) and all costs related to completion of the Physical Works, including, but not limited to, any costs related to the installation, removal, relocation, decommissioning or termination of utility services from the Stopped Road Land or Exchange Land.
- 14.3** The sums payable by the Crown under clause 14.1 must be paid within 10 Working Days of request by the Council, and such payments are to be made without set off or deduction. For the avoidance of doubt, the Council can request payment of such sums as and when they arise. The Council will not be required to settle until payment of those costs has been made in full.
- 14.4** If this Agreement is cancelled by either party under clause 2.3 or the road stopping procedure outlined in clause 4 of this Agreement is not completed for any reason, the payment required by the Crown under this clause must be made in full within 10 Working Days of receipt of a tax invoice from the Council.

15. CROWN ACKNOWLEDGEMENT

- 15.1** The Crown acknowledges that in all respects in acquiring the Stopped Road Land the Crown:
- (a)** is acting solely in reliance on its own investigations and judgements; and
 - (b)** has not acted in reliance on any representation or warranty made by the Council, employees, agents or any other person or persons directly or indirectly associated with the Council; and
 - (c)** has carried out all inspections to the Stopped Road Land which the Crown considers necessary to satisfy itself as to the condition of the Stopped Road Land and purchases the Stopped Road Land on an 'as is, where is' basis.

16. NO REPRESENTATION OR WARRANTIES

16.1 With respect to the Stopped Road Land the Crown accepts that the Council has made no representations or warranties of any nature in respect of the Stopped Road Land. Without limitation, the Council does not warrant:

- (a) that the Stopped Road Land is or will remain suitable for the Crown's use; or
- (b) the suitability, bearing capacity or potential of the Stopped Road Land for any uses that the Crown may contemplate; or
- (c) that the Stopped Road Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Stopped Road Land.

16.2 With respect to the Exchange Land the Council accepts that the Crown has made no representations or warranties of any nature in respect of the Exchange Land. Without limitation, the Crown does not warrant:

- (a) that the Exchange Land is or will remain suitable for the Council's use; or
- (b) the suitability, bearing capacity or potential of the Exchange Land for any uses that the Council may contemplate; or
- (c) that the Exchange Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Exchange Land.

17. CONTAMINATION

17.1 The Crown will not make any claim against the Council for any loss or damage that the Crown suffers or incurs because of any contaminant in or under the soil at the Stopped Road Land. The Crown will not sponsor such a claim by any other person.

17.2 The Council will not make any claim against the Crown for any loss or damage that the Council suffers or incurs because of any contaminant in or under the soil at the Exchange Land. The Council will not sponsor such a claim by any other person.

18. FURTHER ASSURANCE

18.1 The Crown will at the request of the Council sign any documents and plans and do anything else within the power of the Crown which may reasonably be required for the purpose of:

- (a) vesting or transferring the Exchange Land free of all encumbrances;
- (b) stopping and transferring the Stopped Road Land and amalgamating the Stopped Road Land with the School Land; and

- (c) otherwise giving effect to this Agreement according to its spirit and intent.

19. NON-MERGER

- 19.1** The agreements, obligations and warranties of the parties in this Agreement will not merge on settlement of the exchange of the Exchange Land for the Stopped Road Land under this Agreement but will continue until fully discharged by performance.

20. DISPUTE RESOLUTION

- 20.1** 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 prompt resolution of such disputes.

- 20.2** If the parties cannot agree on any dispute resolution technique within fifteen (15) Working Days of any dispute being referred in writing by one party to the other, then the dispute shall be settled by reference to arbitration in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

- 20.3** Except as otherwise expressly provided in the agreement the reference will be to a single arbitrator:

- (a) to be agreed on by the parties; or
- (b) in the absence of any agreement within five (5) Working Days of either party first nominating an arbitrator (or such longer period as the parties may agree in writing), nominated by the President for the time being of the New Zealand Law Society.

- 20.4** The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

21. GOVERNING LAW AND JURISDICTION

- 21.1** This Agreement is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

22. LOWEST PRICE

- 22.1** The parties agree that:

- (a) the consideration provided for the supplies by the Council to the Crown under this Agreement and for the supplies by the Crown to the Council under this Agreement does not, in either case, include any capitalised interest;
- (b) the "lowest price" in respect of the supplies by the Council to the Crown under this Agreement and in respect of the supplies by the

Crown to the Council under this Agreement for the purposes of section EW 32 of the Income Tax Act 2007 is, in each case, equal to the value of the consideration provided for the supplies under this Agreement; and

- (c) each party will compute their income tax position for the relevant period and file their income tax return for the period accordingly.

23. GST

- (a) Unless the context requires otherwise, words and phrases used in this clause have the same meaning as those words and phrases have in the GST Act.
- (b) Each party warrants that it is a registered person.
- (c) The parties agree, for the purposes of the GST Act, that:
 - (i) the supply of the Stopped Road Land by the Council to the Crown (**Council's Supply**) is a taxable supply;
 - (ii) the supply of the Exchange Land by the Crown to the Council (**Crown's Supply**) is a taxable supply.
- (d) The parties agree that, as at the Settlement Date and any other relevant time, each of the Crown's Supply and the Council's Supply is a supply that wholly or partly consists of land (the "**Land Component**") and that each supply is zero-rated for GST purposes under section 11(1)(mb) of the GST Act.
- (e) The Council confirms, for the purposes of section 78F(2) of the GST Act, that, as at the Settlement Date and any other relevant time:
 - (i) the Council is acquiring the goods and services included in the Crown's Supply with the intention of using them for making taxable supplies;
 - (ii) the Council does not intend to use the Land Component included in the Crown's Supply as a principal place of residence for the Council or a person associated with the Council under section 2A(1)(c) of the GST Act; and
 - (iii) the Council's GST number is 53-204-635.
- (f) The Crown confirms, for the purposes of section 78F(2) of the GST Act, that, at the Settlement Date and any other relevant time:
 - (i) the Crown is acquiring the goods and services included in the Council's Supply with the intention of using them for making taxable supplies;
 - (ii) the Crown does not intend to use the Land Component included in the Council's Supply as a principal place of residence for the Crown or a person associated with the Crown under section 2A(1)(c) of the GST Act; and

(iii) the Crown's GST number is [TBC].

(g) If, for any reason, the application of section 11(1)(mb) of the GST Act to either the Council's Supply or the Crown's Supply is challenged by Inland Revenue, the parties agree to work together in good faith, and with the objective of minimizing the GST risk for both parties.

24. EXECUTION OF AGREEMENT

24.1 This Agreement will not be legally binding on either party until it has been signed by both parties.

SIGNATURES

SIGNED for and on behalf of the
WELLINGTON CITY COUNCIL by:

Name of Authorised Signatory

Signature of Authorised Signatory
in the presence of:

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

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 by:

Full name and office held

Signature

Released under the Official Information Act 1982

DRAFT