

Schedule 5: Property

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Part 1 – General Provisions

1. Definitions

In addition to the definitions set out in clause 1 (Definitions) of the Base Agreement:

[REDACTED]

Aurecon is defined in paragraph 15(a) of this Schedule 5 (Property);

[REDACTED]

[REDACTED]

DOC means Department of Conservation;

Ecological Protection Encumbrances means the agreements relating to grant of encumbrance attached as Appendix 9 (Ecological Protection Encumbrances) to this Schedule 5;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Flightys Road Extension means the extension of road relating to properties 51, 52, 53, 54, 55, 56 and 57 as shown on the TG Site Plans;

Partial Surrender Area is defined in paragraph 9(a) of this Schedule 5 (Property);

Partial Surrender Date is defined in paragraph 9(a) of this Schedule 5 (Property);

PCC means Porirua City Council;

[REDACTED] **Access Track** means the access track described in paragraph 24 of this Schedule 5;

Property Mapping Table means the key to the TG Site Plans as set out in Appendix 2 (TG Site Plans);

[REDACTED]

[REDACTED] is defined in paragraph 5.5 of this Schedule 5 (Property);

Road Access is defined in paragraph 19(d) of this Schedule 5 (Property);

[REDACTED] **Licence Area** is defined in paragraph 5.4 of this Schedule 5 (Property);

Surrender Notice is defined in paragraph 9(a) of this Schedule 5 (Property);

WCC means Wellington City Council; and

WRC means Wellington Regional Council.

Part 2 – TG Construction Lease Terms

2. Use of the TG Project Site

The Contractor and the Contractor Personnel shall use the TG Project Site only for the purposes set out in this Agreement.

[REDACTED]

[REDACTED]

4. Quiet enjoyment

Subject to paragraph 5 (Rights reserved to Transport Agency), provided the Contractor complies with all of its obligations under this Agreement, the Contractor and the Contractor Personnel shall be entitled to quietly hold and enjoy possession of the TG Project Site throughout the term of the TG Construction Lease without any interruption by the Transport Agency, subject to any right of access or inspection the Transport Agency has under this Agreement.

5. Rights reserved to Transport Agency

5.1 [REDACTED]

The Contractor acknowledges that, as at Financial Close, [REDACTED] occupy [REDACTED] within the Initial Site. The Contractor shall permit [REDACTED] and [REDACTED] to continue to occupy [REDACTED] and [REDACTED] at no cost up to [REDACTED]. [REDACTED] and [REDACTED] right to occupy and access [REDACTED] and [REDACTED] will not be subject to the Site Access Protocols.

5.2 [REDACTED] **Construction**

The Contractor grants the Transport Agency and its contractors the right to pass and re-pass with or without vehicles, machinery and equipment over and along those parts of the Initial Site as is necessary for the purpose of accessing [REDACTED] in order to carry out [REDACTED]. Access shall be agreed between the parties but must allow reasonable access for the Transport Agency and its contractors to complete [REDACTED] from Financial Close [REDACTED]. Any access agreed between the parties will be subject to the Site Access Protocols.

5.3 [REDACTED]

(a) The Contractor acknowledges that, as at Financial Close, [REDACTED] (the [REDACTED] occupies an area behind [REDACTED]) within the Initial Site. The Contractor shall permit [REDACTED] to continue to occupy [REDACTED] at no cost up to [REDACTED] right to occupy and access [REDACTED] will not be subject to the Site Access Protocols.

- (b) The Contractor grants the Transport Agency and its contractors the right to pass and re-pass with or without vehicles, machinery and equipment over and along those parts of the TG Project Site as is necessary for the purpose of accessing [REDACTED] in order to carry out [REDACTED] remediation works. Access shall be agreed between the parties but must allow reasonable access for the Transport Agency and its contractors to complete [REDACTED] remediation works from Financial Close up to [REDACTED]. Any access agreed between the parties will be subject to the Site Access Protocols.

5.4

[REDACTED]

The Contractor acknowledges that, as at Financial Close, [REDACTED] has a right to occupy [REDACTED] within the Initial Site for the purposes of carrying on its forestry activities. The Contractor shall permit [REDACTED] to continue to access the [REDACTED] at no cost up to [REDACTED]. [REDACTED] right to occupy the [REDACTED] will not be subject to the Site Access Protocols.

5.6

Tenancy

The Contractor acknowledges that, as at Financial Close, [REDACTED] and [REDACTED] occupy [REDACTED] within the Initial Site. The Contractor shall permit [REDACTED] and [REDACTED] to continue to occupy [REDACTED] at no cost up to [REDACTED]. [REDACTED] and [REDACTED] right to occupy and access [REDACTED] will be subject to the Site Access Protocols.

[REDACTED]

The Contractor acknowledges that, as at Financial Close, [REDACTED] occupy [REDACTED] within the Initial Site. The Contractor will permit [REDACTED] to continue to occupy [REDACTED] at no cost up to [REDACTED]. For the avoidance of doubt, the Transport Agency acknowledges that it cannot and will not grant [REDACTED] any right to continue in occupation of [REDACTED] past [REDACTED]. [REDACTED] right to occupy and access [REDACTED] will not be subject to the Site Access Protocols.

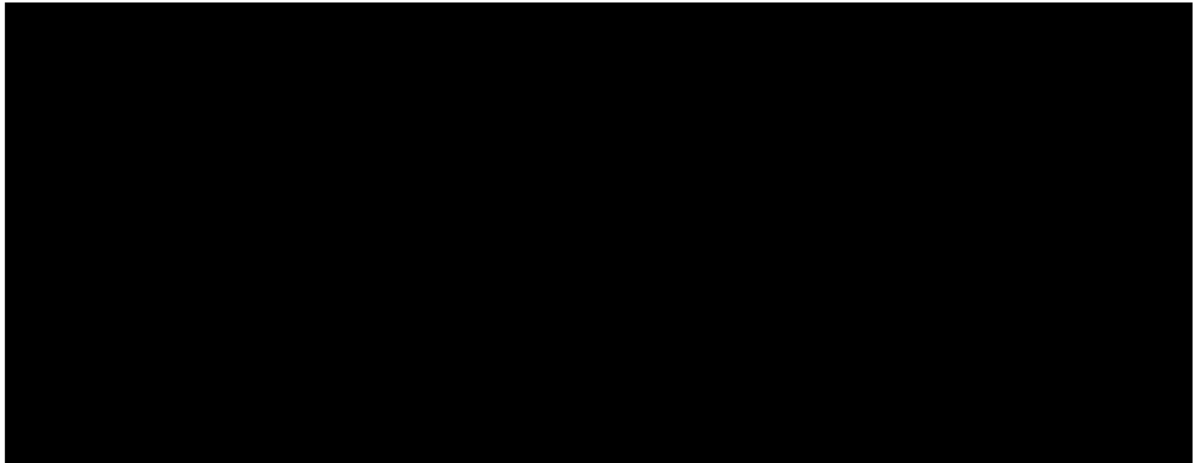
5.9

[REDACTED]

The Contractor acknowledges that, as at Financial Close, [REDACTED] occupies [REDACTED] within the Initial Site. The Contractor will permit [REDACTED] to continue to occupy [REDACTED] at no cost up to [REDACTED]. [REDACTED] right to occupy and access [REDACTED] will not be subject to the Site Access Protocols.

[REDACTED]

[REDACTED]



5.11 **Transpower Decommissioning**

The Contractor grants the Transport Agency and its contractors the right to pass and re-pass with or without vehicles, machinery and equipment over and along the TG Project Site and to occupy the TG Project Site for the purpose of decommissioning the overhead transmission lines currently located on the TG Project Site. Any such access and occupation will be subject to the Third Party Interface Protocols.

5.12 **[REDACTED] Tenancy**

The Contractor acknowledges that, as at Financial Close, [REDACTED] occupy [REDACTED] within the Initial Site. The Contractor shall permit [REDACTED] to continue to occupy [REDACTED] at no cost up to [REDACTED]. [REDACTED] right to occupy and access [REDACTED] will be subject to the Site Access Protocols.

6. **Dwellings included in Initial Site**

6.1 **Dwellings included**

The parties acknowledge that the following dwelling houses are included in the Initial Site and are not to be demolished but are to be Returned in accordance with paragraph 6.2:

- (a) the dwelling located on property 12 (as shown on the TG Site Plans), 330 SH1, Paekakariki;
- (b) the dwelling located on property 4 (as shown on the TG Site Plans), 525 SH1, Paekakariki;
- (c) the dwelling located on property 6 (as shown on the TG Site Plans), 378 SH1, Paekakariki; and
- (d) the dwellings located on the property 15 (as shown on the TG Site Plans), 324 SH1, Paekakariki but excluding the dwelling located on Lot 2 DP 368307 (which is not included in the Initial Site).

6.2 **Maintenance and return of dwellings**

In respect of the dwelling houses referred to in paragraph 6.1:

- (a) the Contractor will:

- (i) keep the dwellings reasonably clean and reasonably tidy; and
- (ii) prior to Returning any land on which a dwelling is situated:
 - (A) remove all of the Contractor's chattels from the dwelling;
 - (B) leave the dwelling in the condition it was at the commencement of the TG Construction Lease (fair wear and tear excepted) and otherwise in a reasonably clean and tidy condition and remove or arrange for the removal of all rubbish from the dwelling; and
 - (C) return to the Transport Agency all keys, and security or pass cards or other such devices, which the Transport Agency provided to the Contractor at the commencement of the TG Construction Lease; and
- (b) the Contractor will not:
 - (i) intentionally or carelessly damage, or permit any other person to damage, the dwellings; or
 - (ii) use the dwellings, or permit the dwellings to be used, for any unlawful purpose.

7. Proceeds of clearing and demolition

The Transport Agency acknowledges that the Contractor may keep any commercial proceeds which may arise out of forestry and shelterbelt clearing and any demolition work undertaken as part of the Works Provisioning.

8. Prohibition on subletting, restriction on assignment

- (a) This TG Construction Lease shall bind the parties and their respective successors and permitted assigns.
- (b) The Contractor shall not:
 - (i) without the prior written consent of the Transport Agency and otherwise in accordance with clause 91 (Assignment) of the Base Agreement, assign or transfer; or
 - (ii) mortgage or charge except by way of Permitted Security Interest, the TG Project Site or any part of the TG Project Site.
- (c) Subject to paragraph 8(b), the Contractor shall not sublet, sublicense or otherwise part with possession of the TG Project Site or any part of the TG Project Site.
- (d) Paragraphs 8(b) and 8(c) do not apply to the extent that the assignment, transfer, mortgage or charge, sublet, sublicense or other parting with possession of the whole or any part of the TG Project Site is contemplated under:
 - (i) the Project Documents; or
 - (ii) the Ancillary Documents, to the extent that these have been reviewed and approved by the Transport Agency prior to the Execution Date.

9. Option to call for partial surrender

- (a) The Transport Agency may, at any time during the term of this TG Construction Lease, give notice in writing to the Contractor (**Surrender Notice**) requiring this lease to be surrendered in respect of that part of property 96 shown on the TG Site Plans attached in Appendix 2 (TG Site Plans) to this Schedule 5 (**the Partial Surrender Area**). The Surrender Notice shall specify the date on which the surrender will take effect which must be no less than 30 days from the date upon which the Surrender Notice is served on the Contractor (**the Partial Surrender Date**). On the Partial Surrender Date, the Contractor shall:
 - (i) yield vacant possession of the Partial Surrender Area; and
 - (ii) do all such acts and things and sign all such documents as are reasonably required of it by the Transport Agency.
- (b) Following the Partial Surrender Date, all other terms of the TG Construction Lease shall remain in full force and effect.

10. Protection of public access

The parties acknowledge that the TG Project Site is leased to the Contractor pursuant to section 63 of the Land Transport Management Act 2003 to enable the Contractor and the Contractor Personnel to construct a new public road that will form the MacKays Crossing to Linden segment of the Wellington Northern Corridor which runs from Levin to Wellington Airport. During the term of this TG Construction Lease, the TG Project Site will be an active construction site and public access will be restricted to the access described in Appendix 4 (Site Access Protocols – Prior to Works Completion) to this Schedule 5.

11. Authority for entry into Lease

This TG Construction Lease is entered into by the Transport Agency, as a Road Controlling Authority, under section 63 (Leasing) of the Land Transport Management Act 2003.

12. Property Law Act 2007

To the extent permitted by law, the covenants and conditions set out in section 218 and 219 of the Property Law Act 2007 are excluded from this TG Construction Lease.

13. Agreement

The parties agree that:

- (a) if this Agreement is cancelled or terminated for any reason then this TG Construction Lease is immediately terminated and of no further effect; and
- (b) this TG Construction Lease can only be terminated in the circumstances described in paragraph 13(a).

Part 3 – Disclosed Title Matters

14. Disclosed Title Matters

14.1 Interests in land

The interests in land comprising the Initial Site [REDACTED] are subject to the following, each of which comprise Disclosed Title Matters:

- (a) the Designation and all publically available documentation and reports filed in support of the application for the Designation;
- (b) all registered easements, conditions of easement instruments, covenants, transfers, encumbrances and any other registered interests or memorials recorded on the Computer Freehold Registers for the land comprising the Initial Site and [REDACTED];
- (c) all other publically available information held by Land Information New Zealand, the DOC, the WRC, WCC, Porirua City Council, KDCDC, Upper Hutt City Council and the New Zealand Historic Places Trust;
- (d) in the case of the Initial Site, the restrictions and obligations set out in the Third Party Property Agreements;
- (e) those matters affecting the Disclosed Contaminants Area and the Disclosed Ordnance Areas; and

[REDACTED]

14.2 Third Party Property Agreements

[REDACTED]

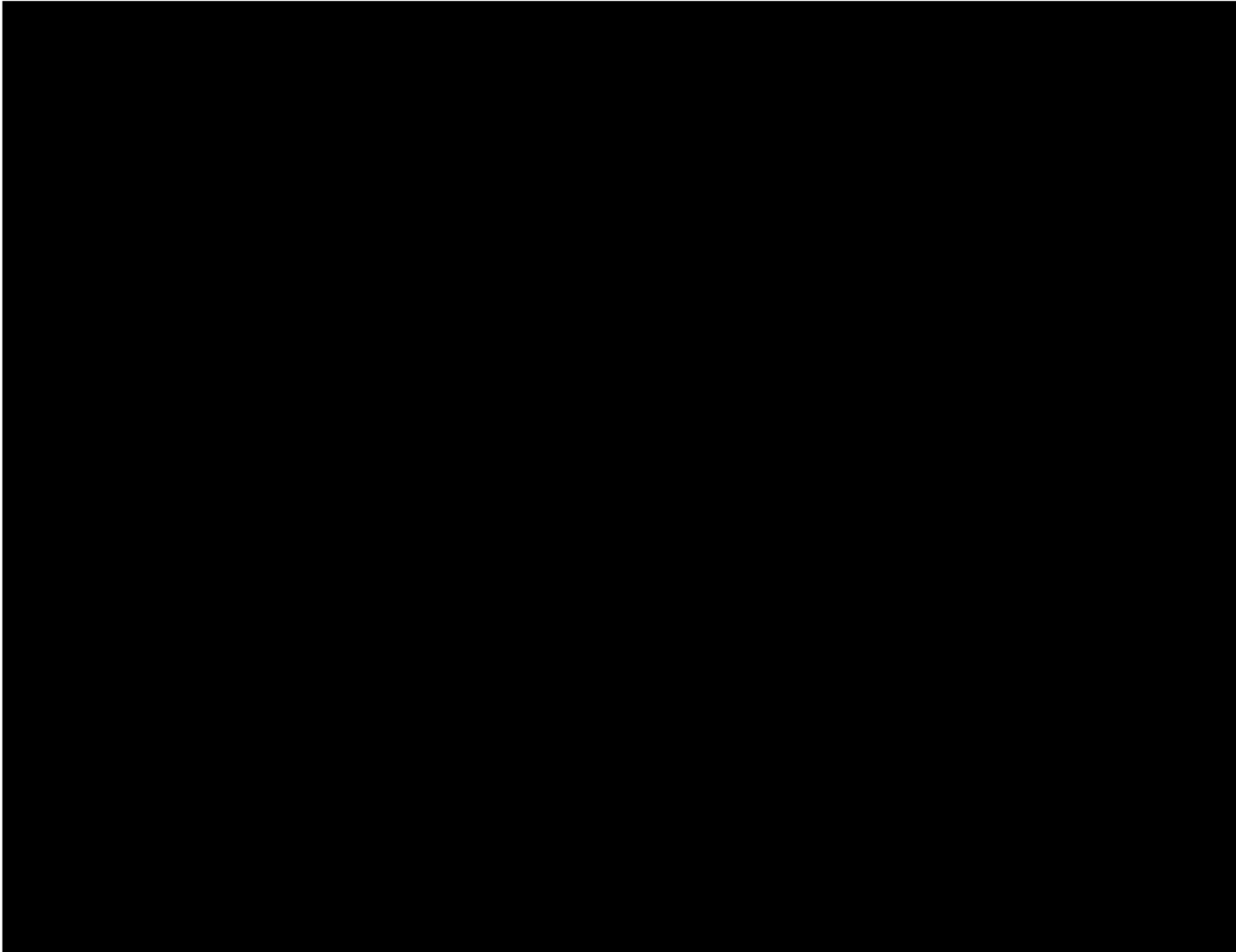
(d) Subject to Part 12 (Changes) of the Base Agreement, the Transport Agency must not, following Financial Close, amend any term of any Third Party Property Agreement with which the Contractor is required to comply without the prior written consent of the Contractor (not to be unreasonably withheld or delayed).

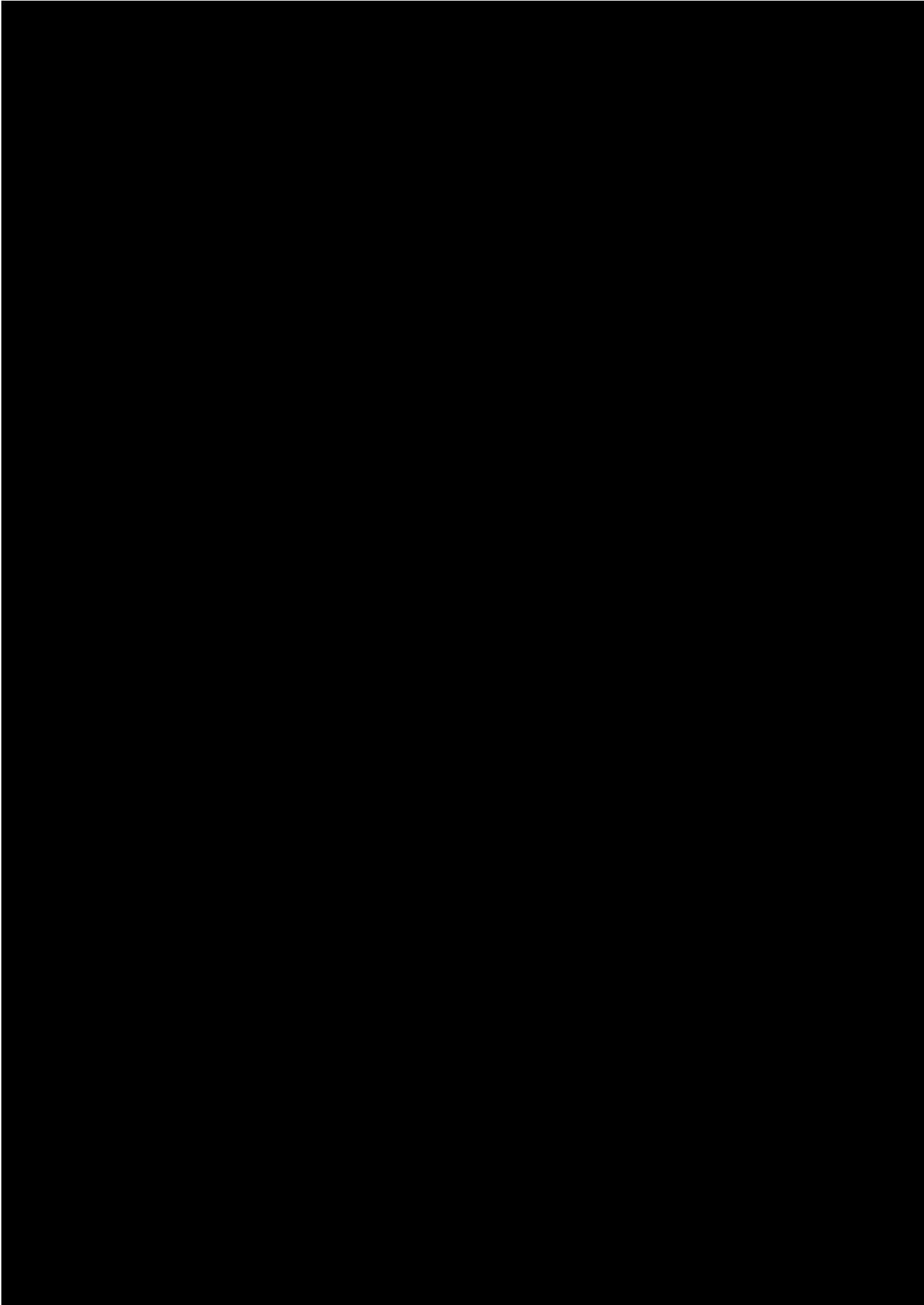
(e) The Contractor is not required to comply with the following obligations contained within the following Third Party Property Agreements:

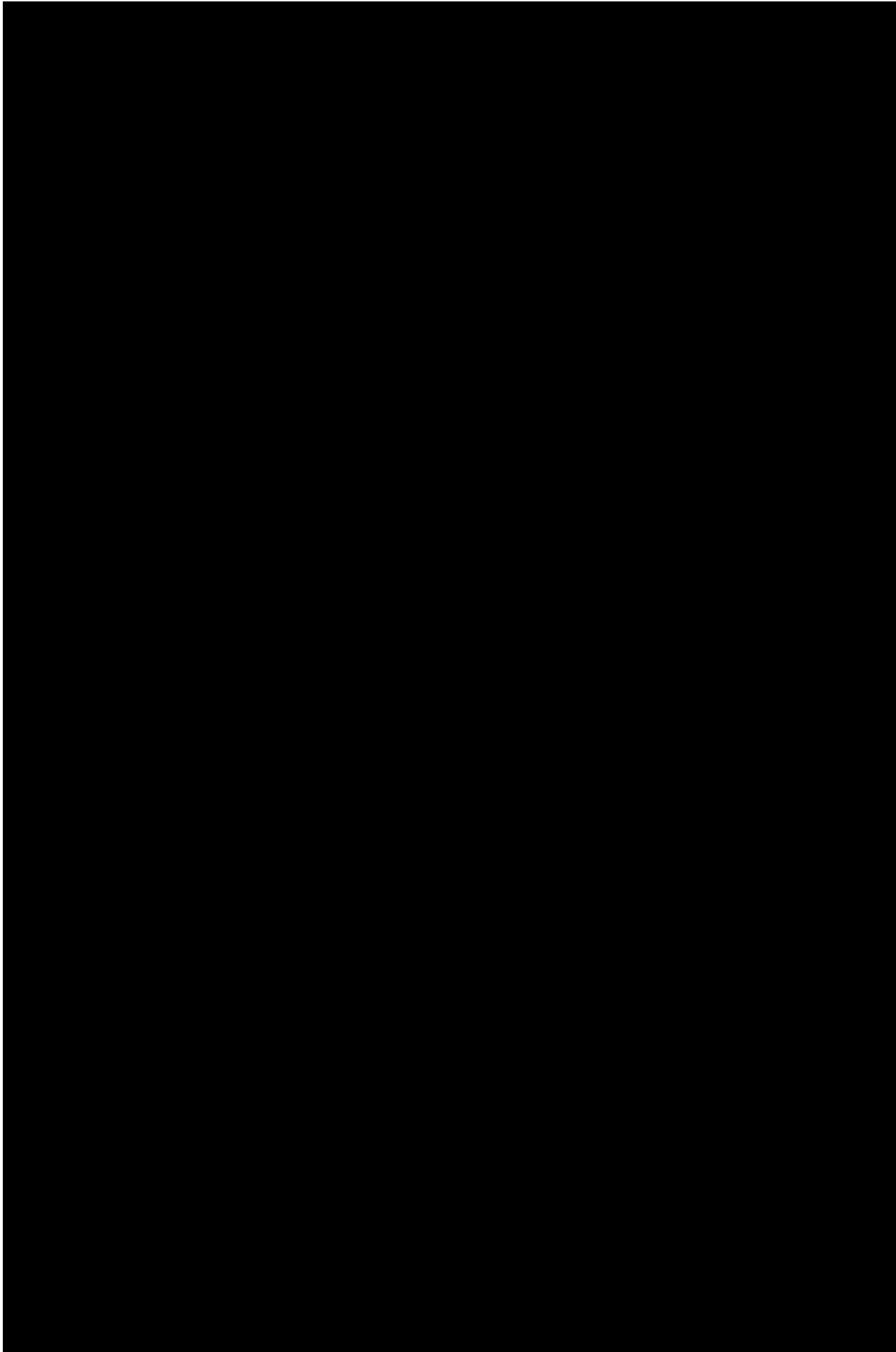
■ [REDACTED]

■ [REDACTED]

(f) The obligations contained in the Third Party Property Agreements referred to in paragraph 14.2(e) shall remain the responsibility of the Transport Agency and any survey, legalisation, reinstatement work, felling and removal of trees or fencing associated with [REDACTED] shall also remain the responsibility of the Transport Agency.









14.7 Precedence of documents

- (a) Subject to paragraph 14.7(b) and for the avoidance of doubt, in the case of any inconsistency between this Schedule and the Computer Freehold Registers for the titles comprising the Initial Site and [REDACTED], the Computer Freehold Registers prevail.



15. Disclosed Contaminants Areas

The Disclosed Contaminants Areas are identified in Appendix 6 (Disclosed Contaminants Areas) to this Schedule 5 and are referred to in:

- (a) “Contaminated Land Assessment – Transmission Gully Technical Report #16” (prepared by Aurecon New Zealand Limited (**Aurecon**) for the Transport Agency and the Porirua City Council);
- (b) “Additional Site Investigation - Warspite Avenue Interchange – 27 September 2010” prepared by Aurecon;
- (c) “Additional Site Investigation - State Highway 1 near Kenepuru Road Link – 27 September 2010” prepared by Aurecon; and
- (d) “Additional Site Investigation - 37 Kenepuru Drive, Porirua – 16 February 2011” prepared by Aurecon.

16. Disclosed Ordnance Areas

The Disclosed Ordnance Areas are identified in Appendix 7 (Disclosed Ordnance Areas) to this Schedule 5 and are referred to in “Transmission Gully – Wellington Geophysical survey to search for unexploded ordnance (UXO)” April 2010.

Part 4 – TG Operating Site and Return of Surplus Land

17. Identification of TG Operating Site and Surplus Land

17.1 Identification of TG Operating Site and Surplus Land

- (a) The TG Site Plans identify, as at Financial Close, what land is expected to be Surplus Land and what land is expected to form part of the TG Operating Site following the Service Commencement Date.
- (b) The Contractor must, during the Works Provisioning and at least six months prior to the Service Commencement Date:
 - (i) confirm the TG Operating Site and Surplus Land identified in paragraph 17.1(a);
 - (ii) identify any amendments to the TG Operating Site and Surplus Land required as a result of:
 - (A) Finalised Design Documentation;
 - (B) the Consent Conditions;
 - (C) identification of final boundaries as a result of any legal survey undertaken to date; or
 - (D) the provision of the Services; or
 - (iii) initiate a Change relating to the TG Operating Site and the Surplus Land, in which case Part 12 (Changes) of the Base Agreement will apply.
- (c) For the avoidance of doubt, to the extent the proposed TG Operating Site falls outside the TG Project Site, clause 22.1(f) of the Base Agreement will apply.
- (d) Where the Contractor proposes amendments to the TG Operating Site and Surplus Land under paragraph 17.1(b)(ii), the Transport Agency will review the proposed TG Operating Site and Surplus Land, and will, acting reasonably, determine whether it accepts the proposed amendments. Any changes accepted by the Transport Agency to the TG Operating Site and Surplus Land under this paragraph 17.1(d) will be deemed to constitute a Confirmed Change (at no cost to the Transport Agency).
- (e) To the extent that the Transport Agency does not accept the proposed amendments to the TG Operating Site and Surplus Land under paragraph 17.1(d), the Contractor may:
 - (i) refer the matter to the Dispute Resolution Procedures for determination of the TG Operating Site and Surplus Land. The parties must comply with any determination made under the Dispute Resolution Procedures, provided that the Transport Agency will not be liable for any Change in Costs resulting from such determination; or
 - (ii) initiate a Change in accordance with Part 12 (Changes) of the Base Agreement.
- (f) Any amendments to the TG Operating Site that are the subject of a Confirmed Change during the Works Provisioning must be identified by the Contractor under paragraph 17.1(b)(ii), and the Transport Agency must accept such amendments under paragraph 17.1(d), in accordance with the Confirmed Change.

- (g) Subject to paragraph 17.1(h), the Contractor shall ensure that Surplus Land is not landlocked and that resale values for the Transport Agency in relation to the Surplus Land are not otherwise unreasonably reduced as a result of the Contractor's actions, except to the extent that the Contractor's actions are expressly permitted by this Agreement.
- (h) Notwithstanding paragraph 17.1(g), the Transport Agency agrees that the following blocks of land may be Returned to the Transport Agency landlocked:

TG Site Plan Reference	Chainage (approx)	Orientation in relation to TG Main Alignment
14	3950-4150	East
18	3000-4100	East
19	4000-5400	East
23a & 26a	5200-8400	East
34	8700-9550	West
45	12050-12350	East
45	12050-12350	West
59	14350-15150	East
65a	15550-16700	East
66	16700-17050	East
67	17050-17200	East
88-88a	19850-20800	East
90-91	22800-23050	West
94	23800-23900	North
95	23800-24000	North
96	24200-24550 & 24800-25550	South
100, 101, 102, 103-109	25600-26650	South

17.2 TG Operating Site Subject to Survey

- (a) The TG Operating Site identified in accordance with paragraph 17.1 shall be shown on a plan prepared by the Contractor which will be attached to and form part of the TG Project Lease as at the Service Commencement Date. The plan identifying the TG Operating Site will be subject to survey in accordance with paragraph 18.1 (Legal survey).
- (b) Subject to paragraph 17.1, the identification of the final boundaries of the TG Operating Site and Surplus Land as a result of the survey described in this paragraph 17 will not constitute a Change.

18. Legal survey

18.1 Legal survey

- (a) As soon as possible following commencement of the TG Project Lease, the Contractor must:
 - (i) complete a legal survey using a registered surveyor to finalise the boundaries of the TG Operating Site, with the final legalisation survey plans to identify:
 - (A) all cadastral boundaries, all crossing places and all title details;
 - (B) the TG Main Alignment's legal boundaries;
 - (C) the State Highway and Motorway legal boundaries;
 - (D) the extent of any covenants or other legal protections required as a result of the TG Project (including a survey of the boundaries of any Ecological Protection Area on Surplus Land sufficient to enable registration of an encumbrance to secure protection of the Ecological Protection Area in perpetuity);
 - (E) all easements, covenants or encumbrances required by any Third Party Property Agreement or under paragraph 19 (Returning Surplus Land); and
 - (F) all survey control marks, including any Land Information New Zealand survey control marks, including any that have been established or relocated; and

the Contractor must provide the survey plans to the Transport Agency for its review and approval prior to the plans being finalised.
 - (ii) provide the Transport Agency with all assistance required by the Transport Agency to complete legalisation of all boundaries. For the avoidance of doubt, the Transport Agency will be responsible for all New Zealand Gazettal processing to declare land taken for road or motorway and for obtaining titles following subdivision, boundary adjustment or other re-titling of the TG Operating Site from adjacent parcels of land.
- (b) Surveys and the preparation of associated plans and documentation must be completed, at the Contractor's risk and cost, to a standard that enables subdivision, boundary adjustment or other re-titling of the TG Operating Site from adjacent parcels of land. The Contractor shall regularly consult with the Transport Agency while undertaking its survey and provide the Transport Agency the ability to comment on its

process before any survey plan is finalised for deposit with Land Information New Zealand.

- (c) To the extent the Transport Agency is required to lodge documentation to complete the legalisation of any subdivision, boundary adjustment or other re-titling, it will do so, at the cost and risk of the Contractor.
- (d) For the avoidance of doubt, the survey described above may be undertaken in stages including during Works Provisioning.

18.2 Declaration of Motorway

- (a) The parties agree that those parts of the TG Roads that are to be declared Motorway are described in Appendix 12 (Indicative Motorway Boundaries).
- (b) The Contractor must, following:



- (ii) any amendment of the Designation required in respect of those parts of the TG Roads which are described in Appendix 12 (Indicative Motorway Boundaries),

provide to the Transport Agency scheme plans showing the land described in Appendix 12 (Indicative Motorway Boundaries), in a form suitable for:
 - (iii) describing the land for the purposes of section 71(1) of the GRPA; and
 - (iv) depositing in the Office of the District Land Registrar for the purposes of section 71(4) of the GRPA or the office of the Registrar of the Maori Land Court (as applicable),

provided that, notwithstanding the Contractor's obligations under paragraph 18.1, the Contractor will not be required to complete additional legal surveys under this clause 18.2.

- (c) Subject to paragraph 18.2(a), the Transport Agency must, as soon as reasonably practicable following the receipt of the information under paragraph 18.2(b) (having regard to its statutory obligations under section 71 of the GRPA and in consultation with the Ministry of Transport), request the Governor-General to declare the relevant parts of the TG Roads to be a Motorway.
- (d) The Contractor must provide all assistance and information necessary for the Transport Agency to comply with its obligations under this paragraph 18.2.

19. Returning Surplus Land

- (a) The parties acknowledge that:
 - (i) prior to the Service Commencement Date, Surplus Land will remain part of the TG Project Site until it is Returned in accordance with this Agreement; and
 - (ii) following the Service Commencement Date, Surplus Land will remain part of the TG Residual Site until it is Returned in accordance with this Agreement.
- (b) The Contractor must return the Surplus Land to the Transport Agency as follows:

- (i) each parcel of Surplus Land will comprise a Close-out Deliverable; and
- (ii) each parcel of Surplus Land will be allocated, in the Close-out Plan and/or the Close-out Sub-Programme:
 - (A) a Planned Close-out Date, by which date it must be surrendered to the Transport Agency; and
 - (B) Close-out Tests, which must be met before a Close-out Certificate will be issued for that parcel of Surplus Land.
- (c) As part of preserving the value of all Returned Land, the Contractor shall undertake the following works prior to the land being Returned:

TG Site Plan reference	Preserved Item
4	Road access to driveway can connect to the Coastal Route connector road. Any driveway reconfiguration should be metalled as per existing driveway.
	Boundary with road should be fenced (approximately 400m in length).
	Reinstatement of all affected services if impacted.
5	Road access, to new local road.
	Reinstatement of all affected services if impacted.
6	Road access to new local road to bridge 2 underpass.
	Provide legal (surveyed) access to local road.
	Reinstatement of all affected services if impacted.
9	Road access to new local road.
10	Survey KCDC water treatment plant and associated access and infrastructure.
12	Road access to existing state highway.
12	The existing access to this high value property is severed by the new motorway. A new access will need to be constructed (possibly over the stream on property number 11 and linked into the underpass being constructed over property number 9). Earthworks and consents may be required.
	Reinstatement of all affected services if impacted.
13	Provide legal (surveyed) access to local road.
	Reinstatement of all affected services if impacted (cap at boundary).
15/16	WGP to maintain existing ridge line access track if used.
17	Reinstatement of all affected services if impacted.
39-41	Road access to PCC access road.
	Provide legal (surveyed) access to right of way constructed for accessing property number 43.

TG Site Plan reference	Preserved Item
	New road access on western side.
46	Reinstatement of all affected services if impacted.
47	Provision of utility services to boundary.
58/59	Provide legal (surveyed) access to road for the land to the west of the Main Alignment.
	Provision of utility services to boundary (may need to run through underpass).
111	Ensure that permanent access is reinstated to this property from Rangatira Road.
112-121	Remove houses.
	Seal services.
ADD17	Remove house.
	Seal services.
122-123	Remove house.
	Seal services.
	New access to Little Collins Avenue, (sufficient width retained to balance of property to enable possible future development).

- (d) For the purposes of this paragraph 19:

Road access means new, metal, all weather, single-lane road that is to be constructed in compliance with any applicable District Plan requirements to at least the standard of any existing road access or otherwise to the industry standard at the time of construction.

- (e) At the time the Independent Reviewer confirms that a block of Surplus Land has met its Close-out Tests and has issued a Close-out Certificate for that block of land, the land will become Returned Land for the purposes of this Agreement and the Contractor's licence to access and/or occupy such land will immediately terminate.

Part 5 – Other Land

20. Contractor’s rights over Ecological Protection Areas

- (a) During the term of the TG Construction Lease, the Ecological Protection Areas will be located on land which is either:
 - (i) comprised in the TG Project Site; or
 - (ii) subject to the Ecological Protection Encumbrances.
- (b) During the term of the TG Operating Lease, the Ecological Protection Areas will be located on land which is either:
 - (i) comprised in the TG Operating Site;
 - (ii) subject to the Ecological Protection Encumbrances; or
 - (iii) TG Residual Site over which an encumbrance will be registered.
- (c) The Transport Agency grants to the Contractor and the Contractor Personnel the benefit of the Ecological Protection Encumbrances which have been or will be entered into in order to secure access to and use of the Ecological Protection Areas as required by the Consent Conditions.
- (d) The Contractor will perform and observe the covenants and conditions contained or implied in the Ecological Protection Encumbrances to be performed, observed or kept by the Transport Agency under the Ecological Protection Encumbrances as if all the covenants and conditions were set out at length in this Agreement with all necessary modifications to make them apply to this Agreement.
- (e) The Transport Agency will, at the Contractor’s request and the event of breach by the relevant counterparty, take all reasonable steps to enforce the Ecological Protection Encumbrances.

21. Contractor’s rights over KiwiRail Land

- (a) The Transport Agency grants to the Contractor and the Contractor Personnel the benefit of the KiwiRail Deeds of Grant which have been entered into in order to secure access to and use of the KiwiRail Land.
- (b) Subject to paragraphs 21(c) and 21(d), of this Schedule 5 (Property), the Contractor will perform and observe the covenants and conditions contained or implied in the KiwiRail Deeds of Grant to be performed, observed or kept by the Transport Agency under the KiwiRail Deeds of Grant as if all the covenants and conditions were set out at length in this Agreement with all necessary modifications to make them apply to this Agreement.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- (d) Notwithstanding any provision to the contrary in the KiwiRail Deeds of Grant, the Contractor is permitted to grant a security interest over its interest or benefit in the KiwiRail Deeds of Grant to the extent such security interest is a Permitted Security Interest.
- (e) The Transport Agency will, at the Contractor's request and the event of breach by the relevant counterparty, take all reasonable steps to enforce the KiwiRail Deeds of Grant.

22. Contractor's rights over the VMS Sites

- (a) Within 20 Business Days of the date of receipt of written request from the Contractor, the Transport Agency will grant and the Contractor will accept (including for the benefit of the Contractor Personnel) an easement over those VMS Sites located on land outside the TG Project Site but within road reserve controlled by the Transport Agency for the purpose of constructing, operating and maintaining the VMS and conveying electricity, telecommunications and computer media associated with the VMS Sites as is necessary to comply with the Works Requirements and Service Requirements.

23. Contractor's rights over Landscaping Areas

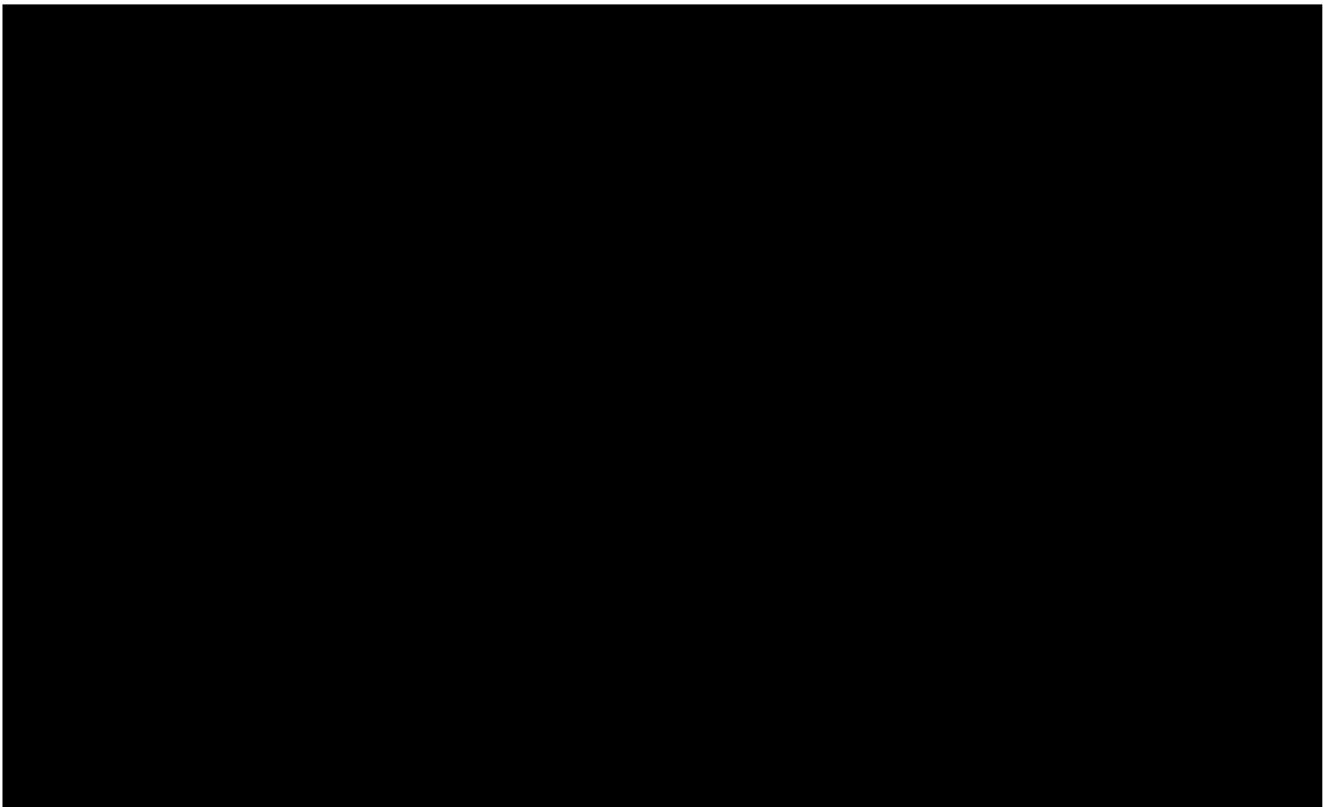
The Contractor will obtain all rights of access to and use of the Landscaping Areas as are necessary to enable the Contractor to comply with the Consent Conditions.

24. Contractor's rights over the [REDACTED] Access Track

- (a) The Transport Agency grants to the Contractor and the Contractor Personnel the right to pass and re-pass over the ridge line access track located on land shown as property 15 and 16 on the TG Site Plans. The Contractor may use the access track at

any time with or without any kind of vehicle, machinery, or equipment (including, without limitation, heavy traffic) subject to any reasonable conditions imposed by the Transport Agency, such conditions to be notified to the Contractor in writing from time to time. The Contractor must make good at its cost any damage caused to the access track as a result of use of the track by heavy traffic or improper, careless or abnormal use by the Contractor.

- (b) Upon legalisation of the TG Project Site in accordance with paragraph 18, the Transport Agency will use reasonable endeavours to procure agreement of the relevant body which administers the land to registration of an easement in favour of the Transport Agency or Her Majesty the Queen (as applicable) on the terms and conditions set out in paragraph 24(a) under the Land Transfer Act 1952.
- (c) The Transport Agency will grant the Contractor and the Contractor Personnel the benefit of any easement procured in accordance with paragraph 24(b). The Contractor will perform and observe the covenants and conditions contained or implied in any such easement to be performed, observed or kept by the Transport Agency to the extent those covenants and conditions are consistent with the Contractor's obligations under this Agreement.
- (d) The Transport Agency will, at the Contractor's request and in the event of breach by the relevant counterparty, take all reasonable steps to enforce any easement procured in accordance with paragraph 24(b).



■ [Redacted text]

■ [Redacted text]

27. Contractor's conduct on Other Land

- (a) In carrying out the Services on the Other Land, the Contractor must (and must procure that any Contractor Personnel must):
- (i) not act or omit to act in any way that shall give rise to a right for any person to obtain title to or any right or interest over the Other Land or any part of it (save in accordance with the terms of this Agreement);
 - (ii) comply with and observe all relevant Consents and Consent Conditions (including, without limitation, those applicable to the cut and fill, quarrying, and remediation of land areas) and all relevant planning restrictions;
 - (iii) observe and comply with any third party rights (including public rights) that may exist from time to time in respect of land comprising and adjoining the Other Land;
 - (iv) ensure that the Services are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation other than to the extent that such interference is permitted under any applicable regional plan or Consent;
 - (v) not use or occupy the Other Land for any purpose other than for the purposes of the Project, or the performance of its obligations under this Agreement;
 - (vi) not (except to the extent reasonably required for Works Provisioning as set out in the Construction Programme and/or in the Works Project Management Plan):
 - (A) cause any damage to the Other Land or any Utilities Infrastructure or any appurtenances, services, fittings, Fixtures or other items on the Other Land;
 - (B) cause any disruption to any Utility Services that has not been agreed with the supplier of those Utility Services and the owner of any equipment or structures used in the delivery of those Utility Services; or
 - (C) dispose of any earth, clay, sand, gravel, chalk or other material from the Other Land or permit or suffer the same to be removed other than in accordance with this Agreement and the Consent Conditions;
 - (vii) at the Contractor's expense, transport all surplus materials arising from Works Provisioning and arrange for the recycling or tipping of the same at such places as may lawfully be used for recycling or tipping (as applicable);
 - (viii) not use the Other Land so that:
 - (A) any Industrial Waste or Hazardous Substances are abandoned or dumped on the Other Land and/or Adjoining Properties;

- (B) any Industrial Waste or Hazardous Substances are handled in a manner that is likely to cause damage to the Environment; or
 - (C) except to the extent agreed by the Transport Agency in writing, any other substance is released, deposited or emanates from the Other Land that results in Contamination affecting the Other Land and/or land adjoining the Other Land;
- (ix) ensure that all of its vehicles leaving the Other Land are adequately cleaned to prevent the deposit of waste materials and debris on the land adjoining the Other Land and if any such material or debris is so deposited, the Contractor shall employ such measures as necessary to remove the material and debris and to clean and reinstate the Adjoining Property to the reasonable satisfaction of the owners or occupiers of the Adjoining Property;
 - (x) not permit or suffer the blockage of any rivers, ditches or Utilities Infrastructure by reason of anything done or omitted on the Other Land by the Contractor or Contractor Personnel;
 - (xi) comply, at the Contractor's expense, with any legal, regulatory, or planning requirements so far as such requirements relate to, or affect the Services;
 - (xii) procure that those parts of the Other Land that are from time to time occupied by the Contractor and/or Contractor Personnel for the purpose of carrying out the Services are, so far as practicable having regard to the nature of the Services, maintained in a clean, orderly, safe and secure state, and the working areas on the Other Land are secure against trespassers and clean and tidy;
 - (xiii) prior to the Service Commencement Date, clear from the Other Land to the reasonable satisfaction of the Transport Agency all temporary structures, rubbish and all building and surplus material and equipment of the Contractor or any Contractor Personnel and in default of that, the Transport Agency shall be entitled to employ an alternative contractor to clear them and shall be entitled to be reimbursed by the Contractor for any costs reasonably incurred in clearing or procuring the clearing of them;
 - (xiv) not, without the prior written consent of the Transport Agency, erect any signage, advertising or temporary structure except (in the case of a temporary structure) site accommodation as contemplated by the Construction Programme; and
 - (xv) take all practicable steps in accordance with any Laws for ensuring that the health and safety of all:
 - (A) occupants and users of the Other Land;
 - (B) individuals invited on to the Other Land; and
 - (C) occupants of Adjoining Properties,is not adversely impacted on by the Services.
- (b) The Contractor indemnifies the Transport Agency and each Transport Agency Related Person from and against all Losses and Liabilities suffered or incurred as a direct or indirect result of the Contractor breaching its obligations under this paragraph 27.

Part 6 – Local Roads

28. Local Roads Constructed by Contractor

28.1 Access for construction of Local Roads

- (a) The TG Project Site includes land required by the Contractor to construct the Flightys Road Extension, the local road tie in to Paekakariki Hill Road over properties 39, 40, 41, 41a and 42 (as shown on the TG Site Plans), the local road tie in over property 7 (as shown on the TG Site Plans) and the access to [REDACTED]
- (b) To the extent that any land outside of the Initial Site and [REDACTED] is required by the Contractor during Works Provisioning in order to construct the TG Project, local road links to the TG Project, and local road links to the Flightys Road Extension, the local road tie in to Paekakariki Hill Road over properties 39, 40, 41, 41a and 42, the local road tie in over property 7 and the access to [REDACTED], the Contractor will be solely responsible for obtaining the necessary access to any such land (for example by acquiring Extra Land or reaching agreement with the relevant Road Controlling Authority to open any local roads).

28.2 Local Roads to vest

- (a) The Flightys Road Extension, the local road tie in to Paekakariki Hill Road over properties 39, 40, 41, 41a and 42 and the access to [REDACTED] will remain part of the TG Residual Site until a Close-out Certificate is issued in respect of the Flightys Road Extension, the local road tie in to Paekakariki Hill Road over properties 39, 40, 41, 41a and 42 and the access to [REDACTED] in accordance with clause 29 (Completion) of the Base Agreement and accordingly:
 - (i) vesting of the Flightys Road Extension, the local road tie in to Paekakariki Hill Road over properties 39, 40, 41, 41a and 42 and access to [REDACTED] will each comprise a Close-out Deliverable; and
 - (ii) The Flightys Road Extension, the local road tie in to Paekakariki Hill Road over properties 39, 40, 41, 41a and 42 and the access to [REDACTED] will each be allocated, in the Close-out Plan and/or the Close-out Sub-Programme:
 - (A) a Planned Close-out Date, by which date it must be vested in PCC; and
 - (B) Close-out Tests, which must be met before a Close-out Certificate will be issued for the Flightys Road Extension, the local road tie in to Paekakariki Hill Road over properties 39, 40, 41, 41a and 42 and the access to [REDACTED]
- (b) The local road tie in over property 7 will remain part of the TG Residual Site until a Close-out Certificate is issued in respect of the local road tie in over property 7 in accordance with clause 29 (Completion) of the Base Agreement and accordingly:
 - (i) vesting of the local road tie in over property 7 will comprise a Close-out Deliverable; and
 - (ii) the local road tie in over property 7 will be allocated, in the Close-out Plan and/or the Close-out Sub-Programme:
 - (A) a Planned Close-out Date, by which date it must be vested in KCDC; and

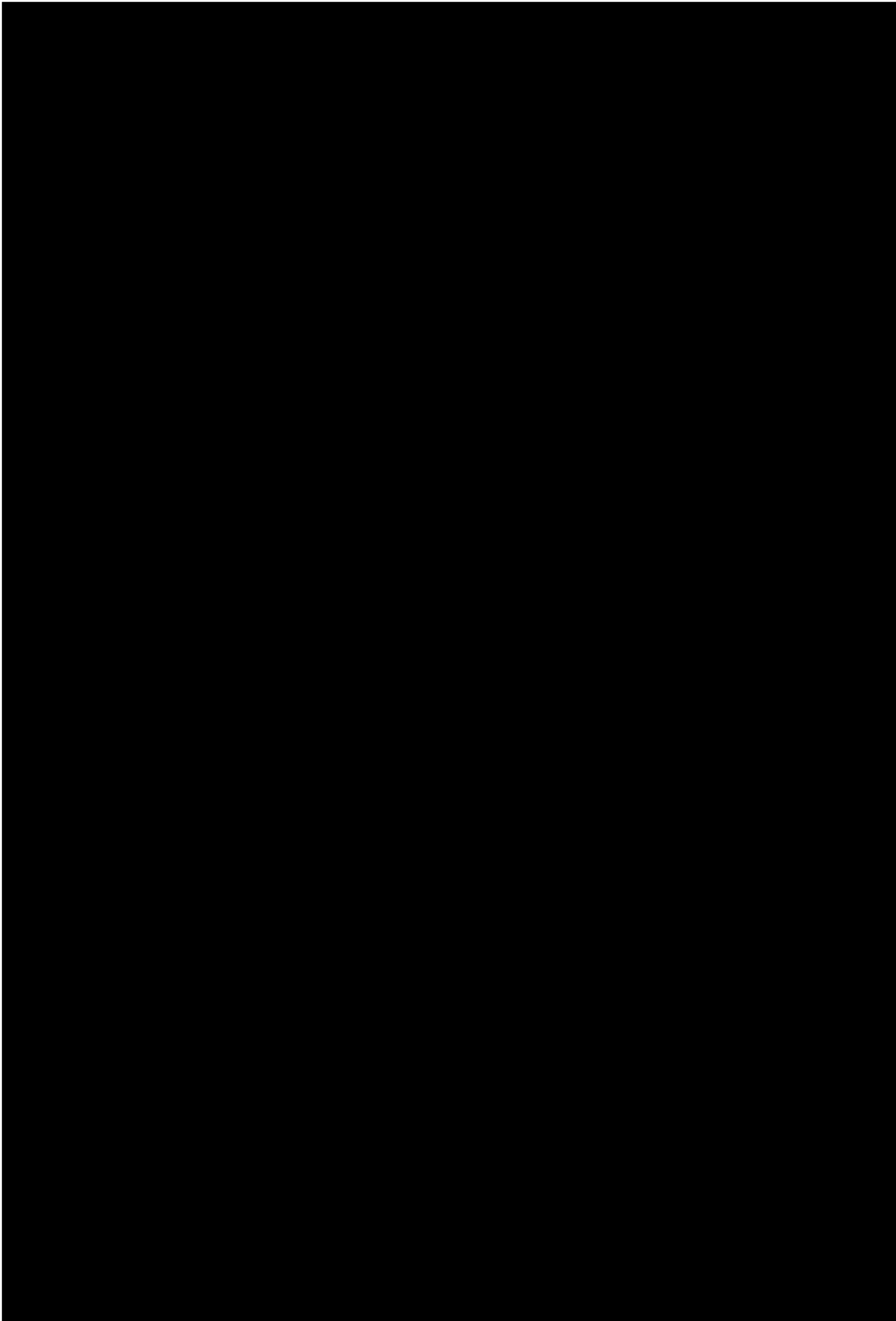
- (B) Close-out Tests, which must be met before a Close-out Certificate will be issued for the local road tie in over property 7.

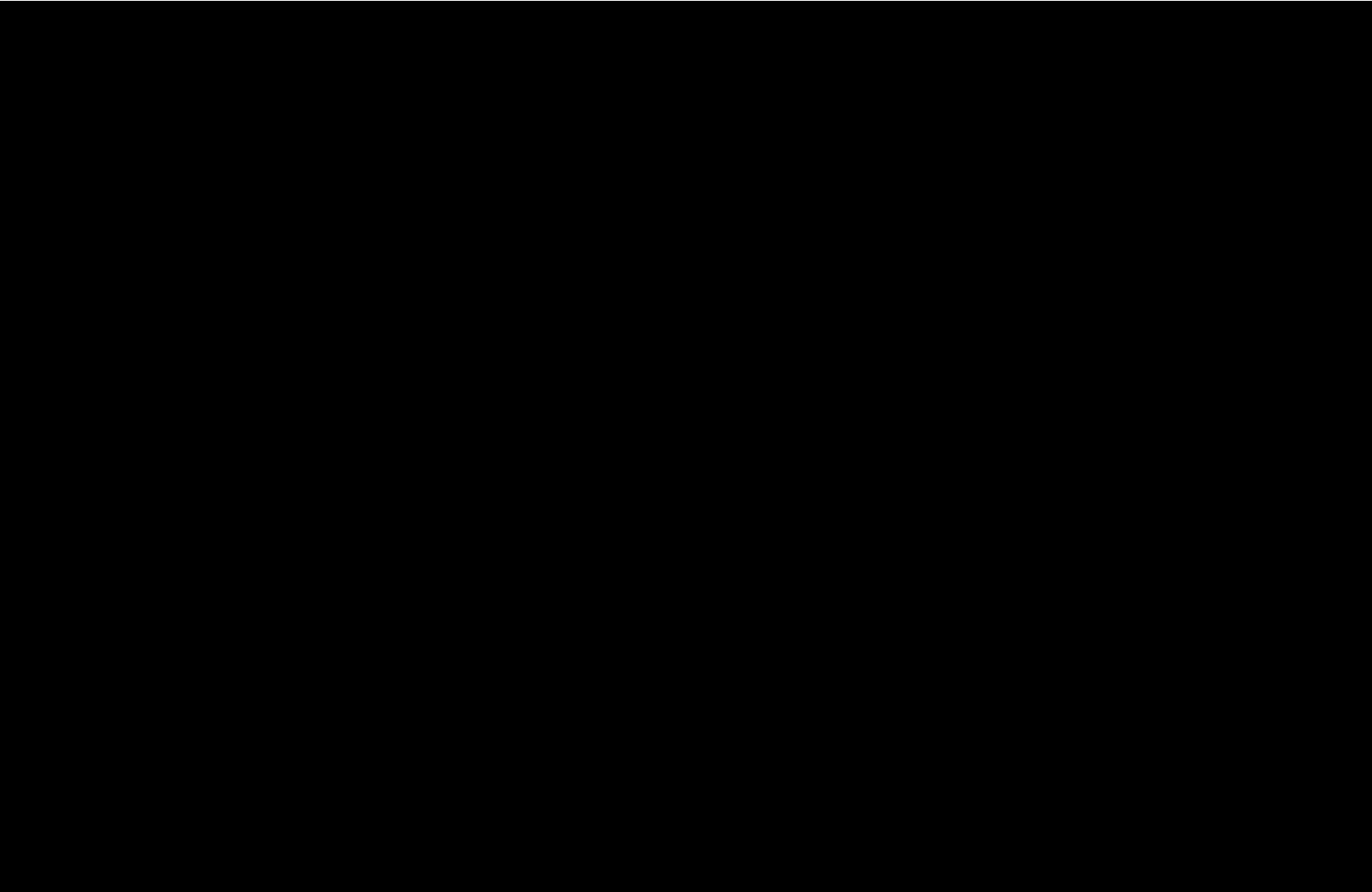
Part 7 – Unique land matters

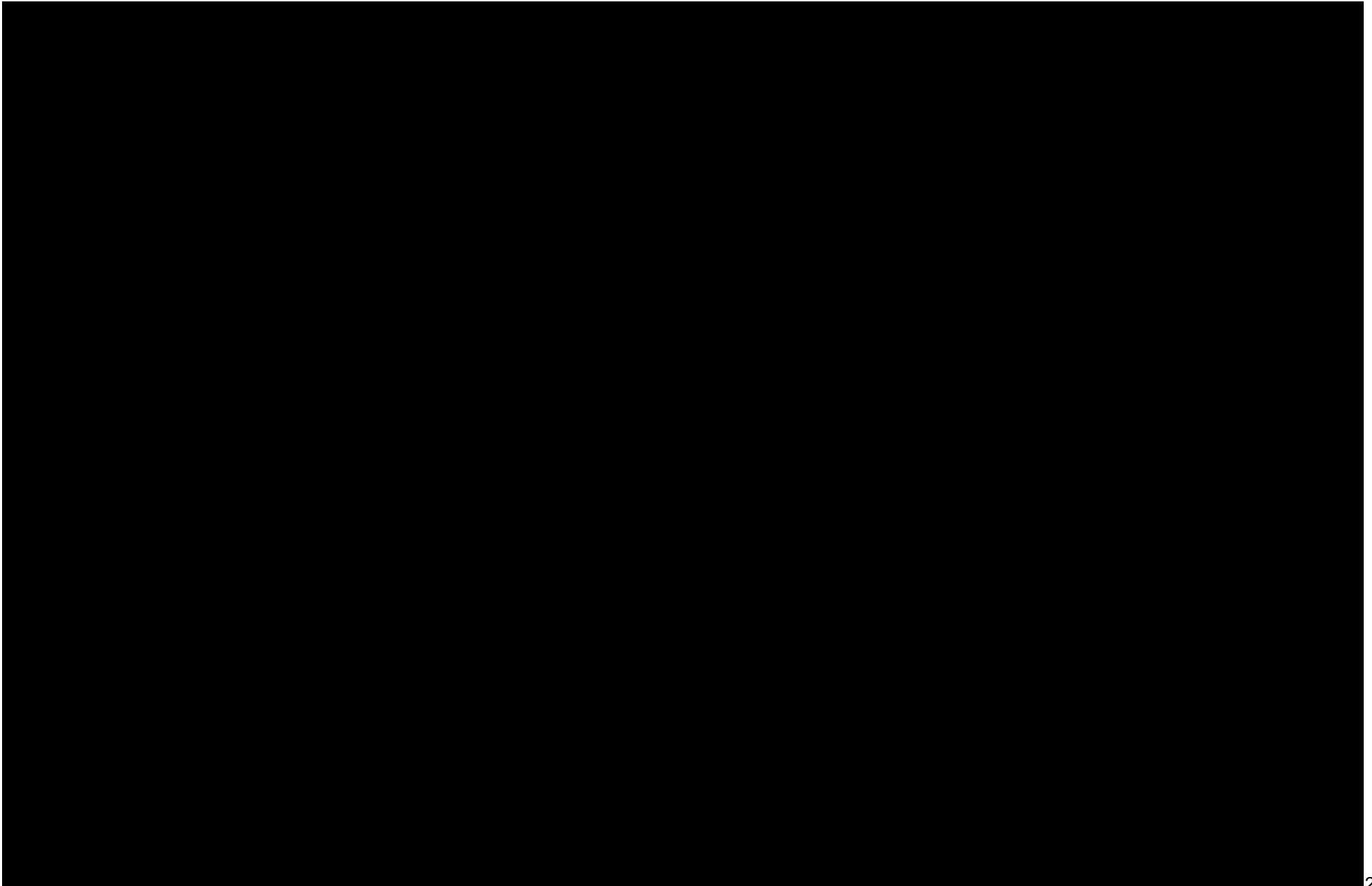
29. Belmont Walkway

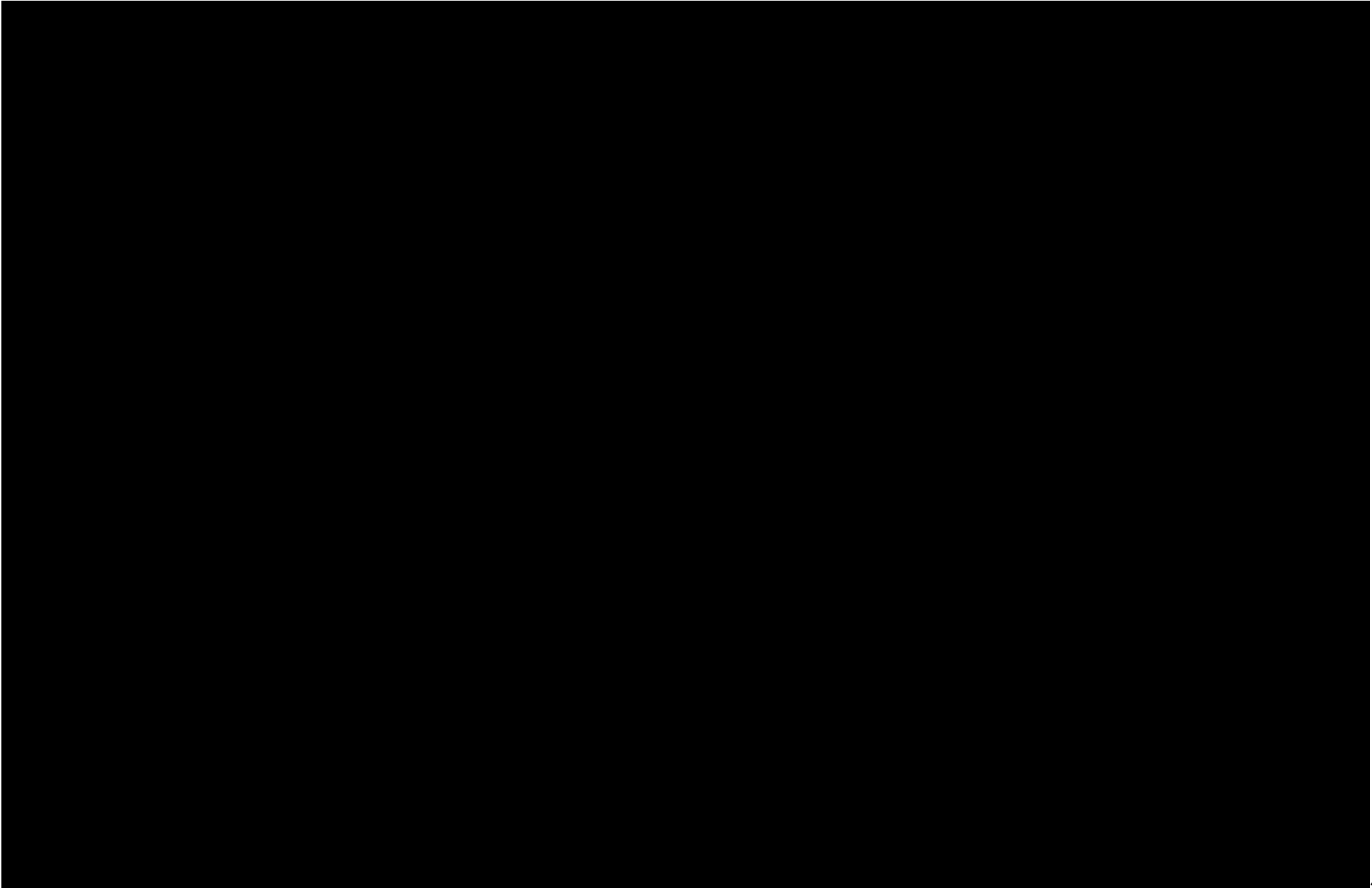
- (a) The parties acknowledge that parts of the Belmont Walkway (a walkway established under the Walkways Act 1990) are located within the TG Project Site. During Works Provisioning, public access to these parts of the Belmont Walkway will be regulated pursuant to the relevant Site Access Protocols. As part of Works Provisioning, the Contractor will re-align the Belmont Walkway and survey the re-aligned walkway to the standard required in order to establish the new alignment as a walkway under the Walkways Act 1990. The Contractor will provide the relevant Conservation Board and the WRC all reasonable assistance in order to enable the temporary closure, re-alignment and re-opening of the Belmont Walkway.
- (b) The Transport Agency will notify the Contractor when the Crown has obtained consent from the Minister of Conservation that the Required Land including “the marginal strip land” has been declared road.

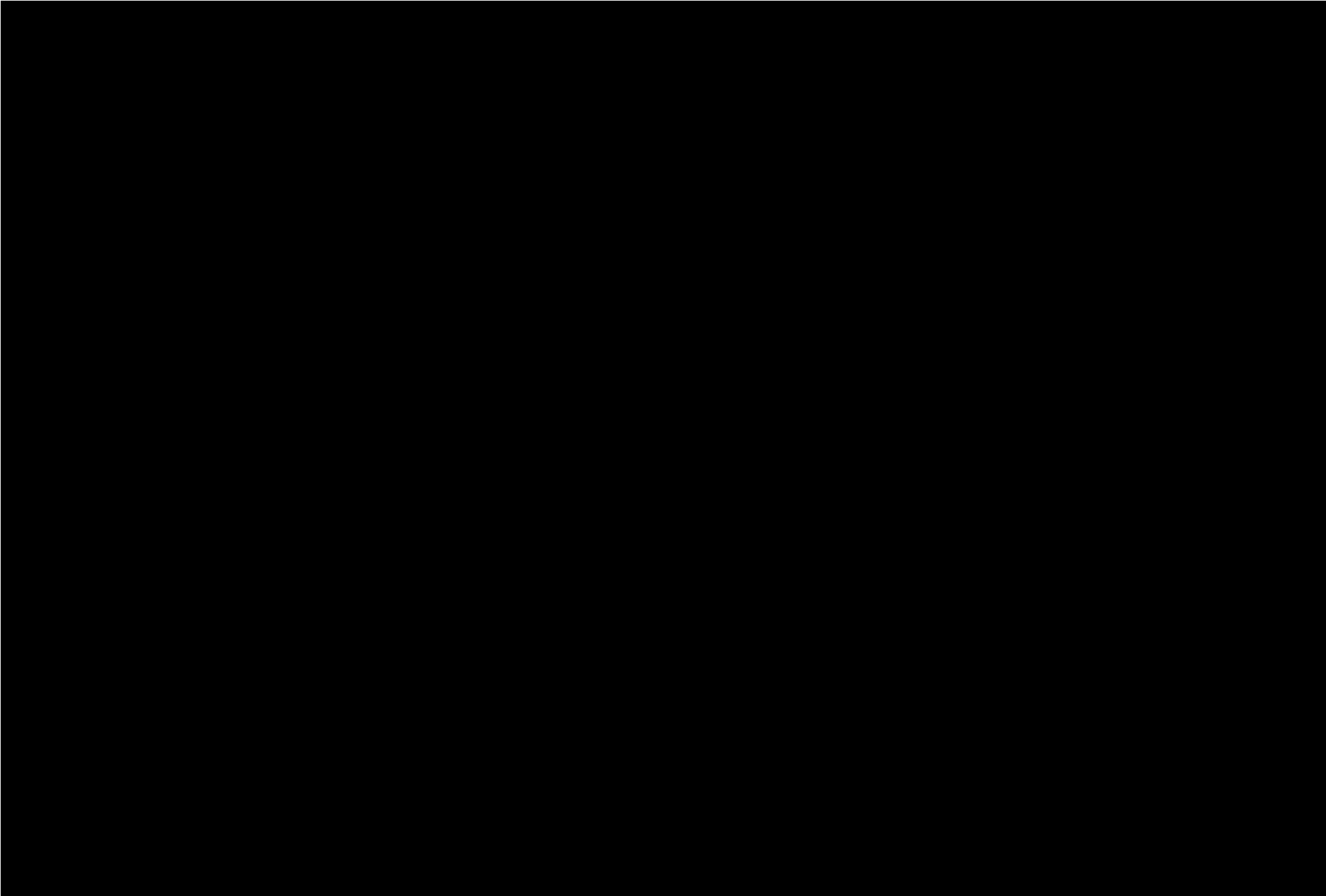
30. Not used







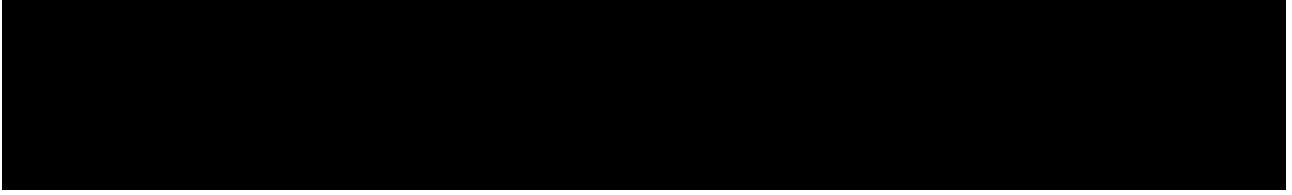


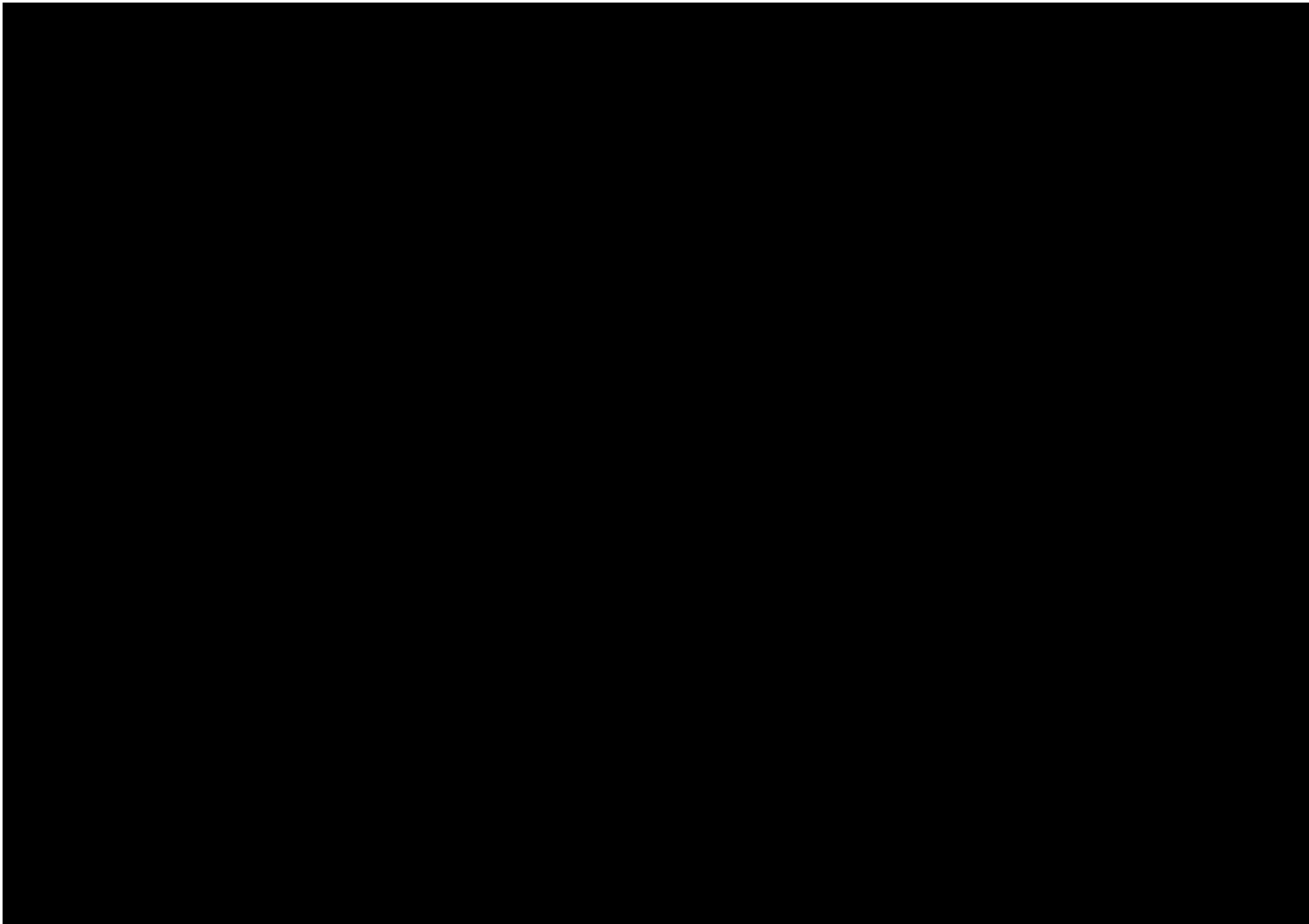


Appendix 2: TG Site Plans

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Appendix 2A: Second Stage TG Project Site



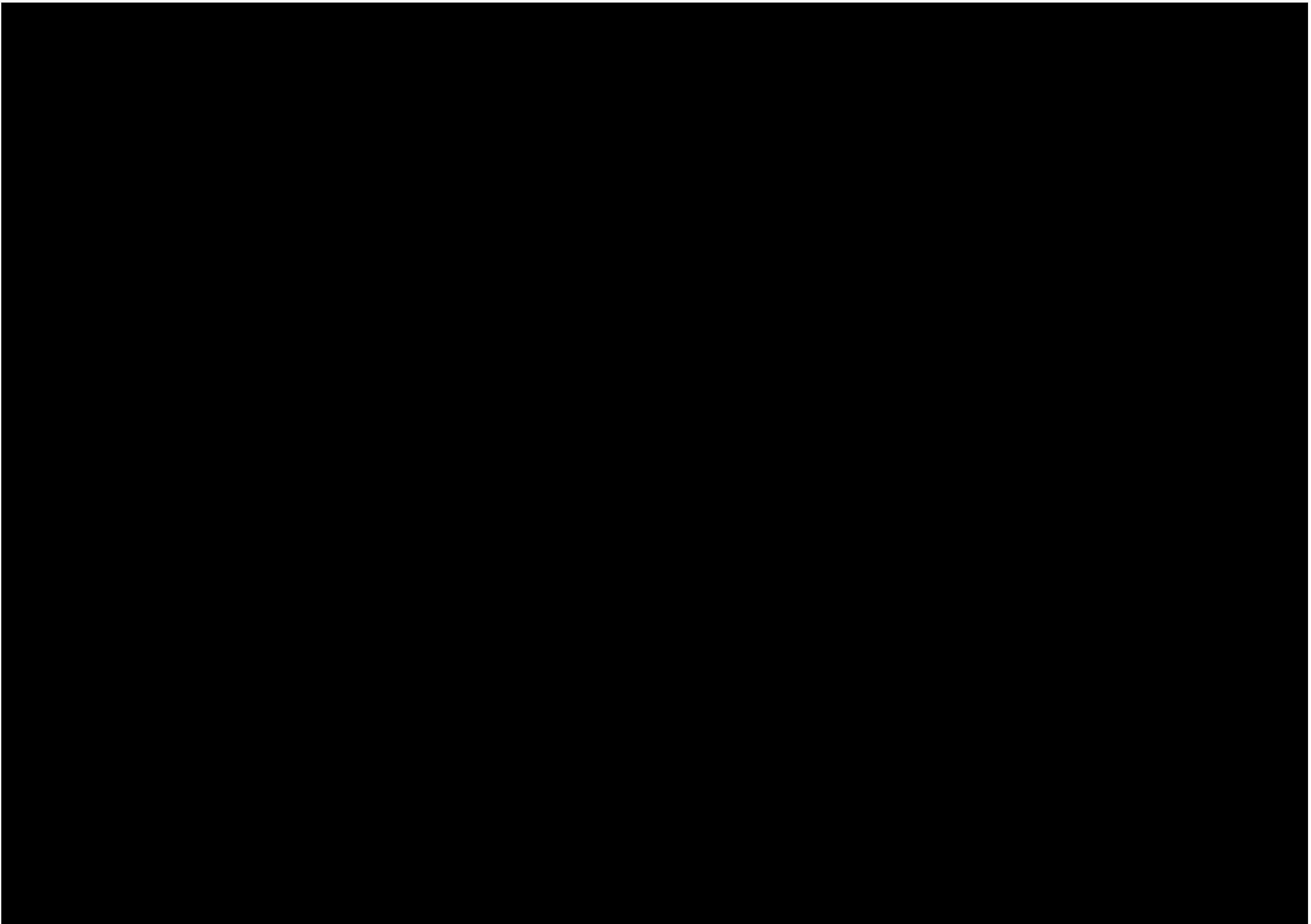


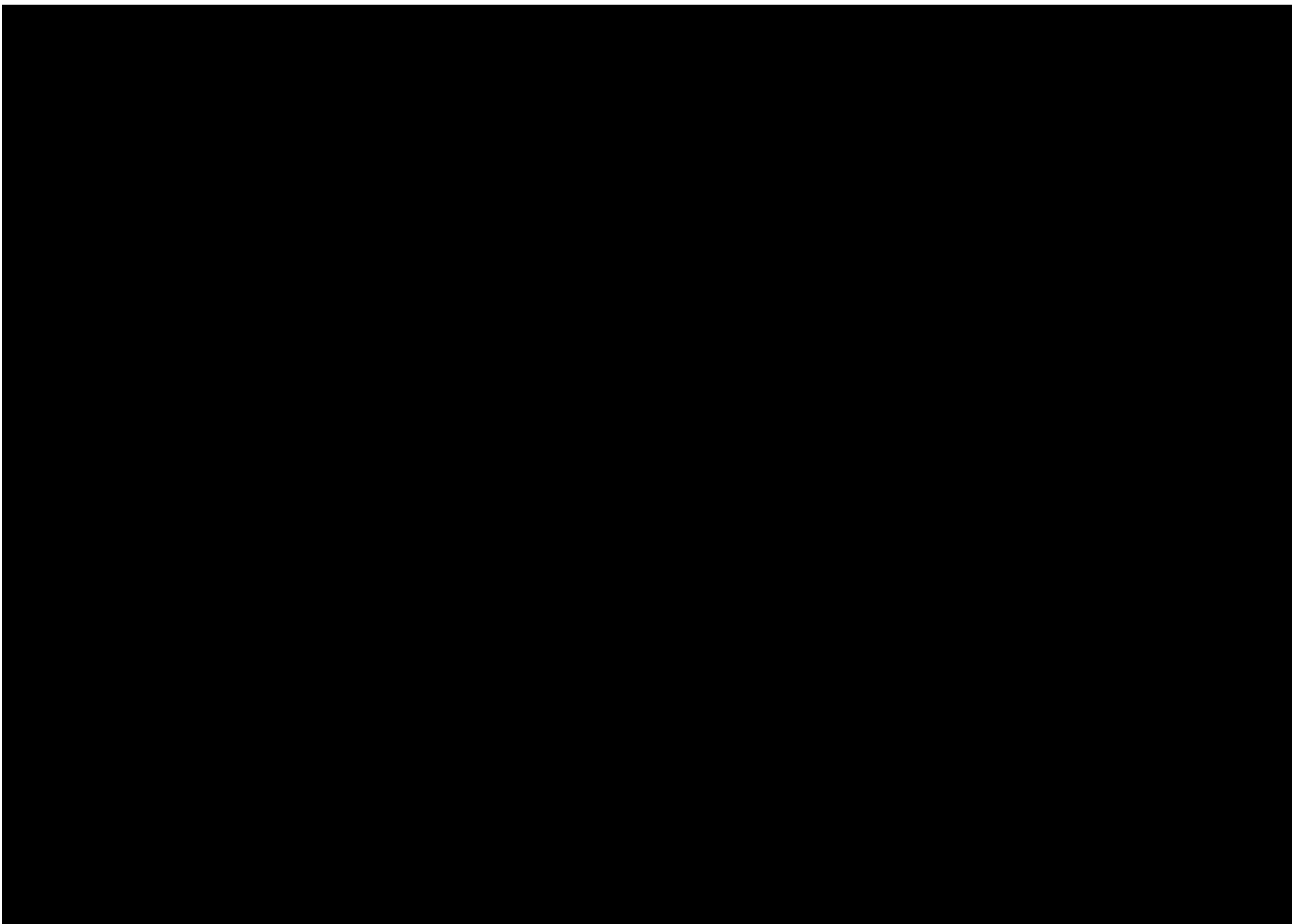
[REDACTED]

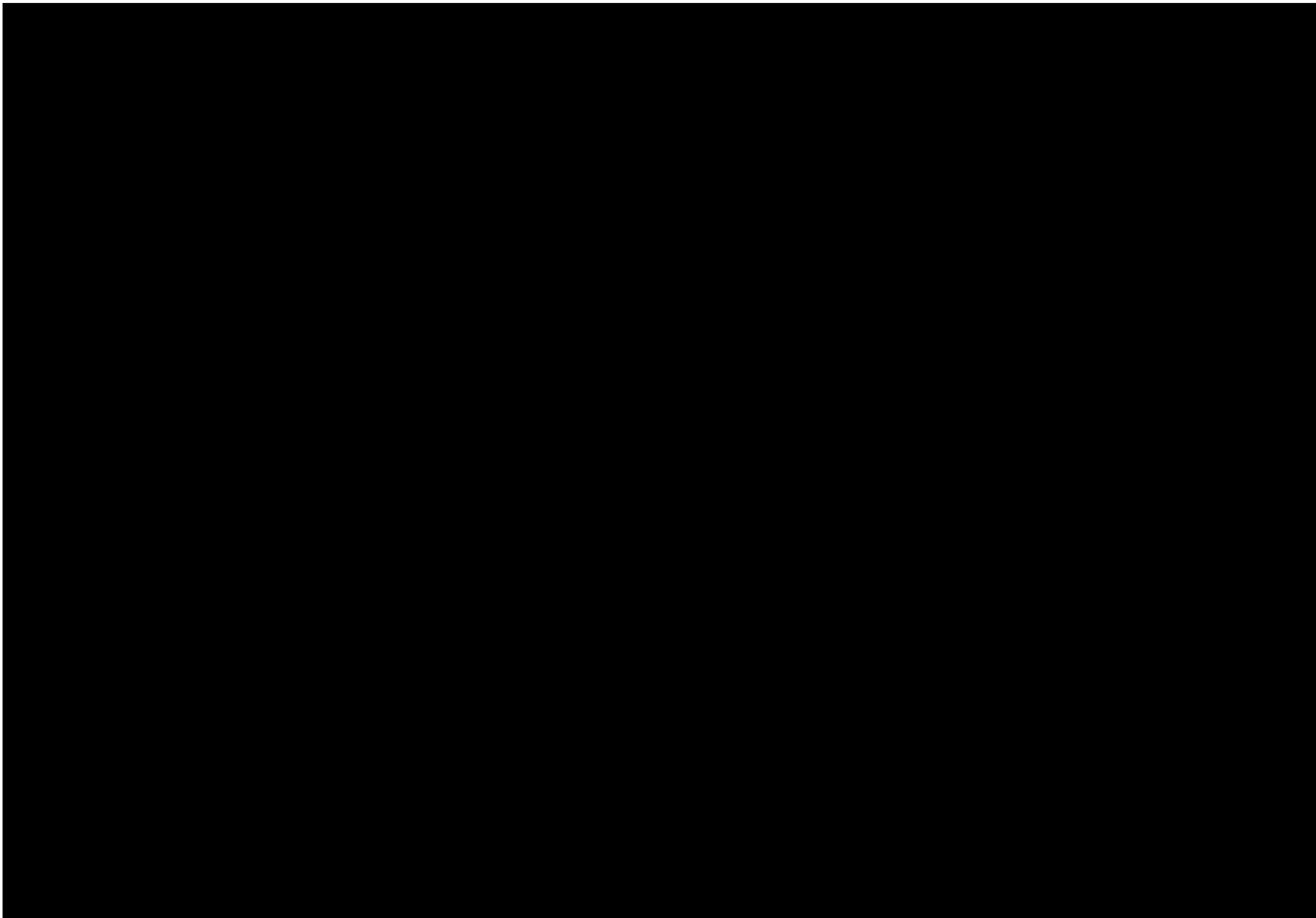
[REDACTED]

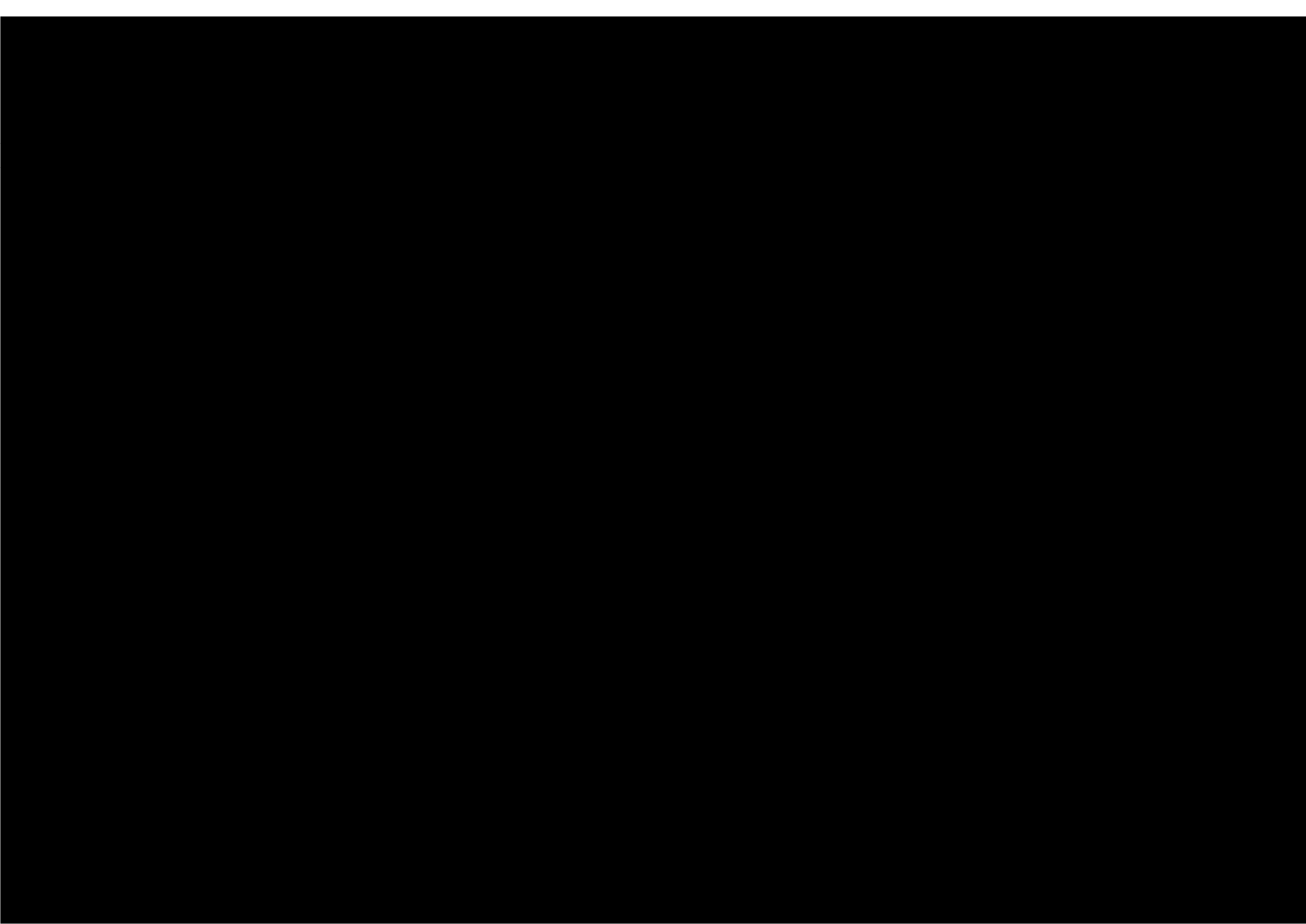


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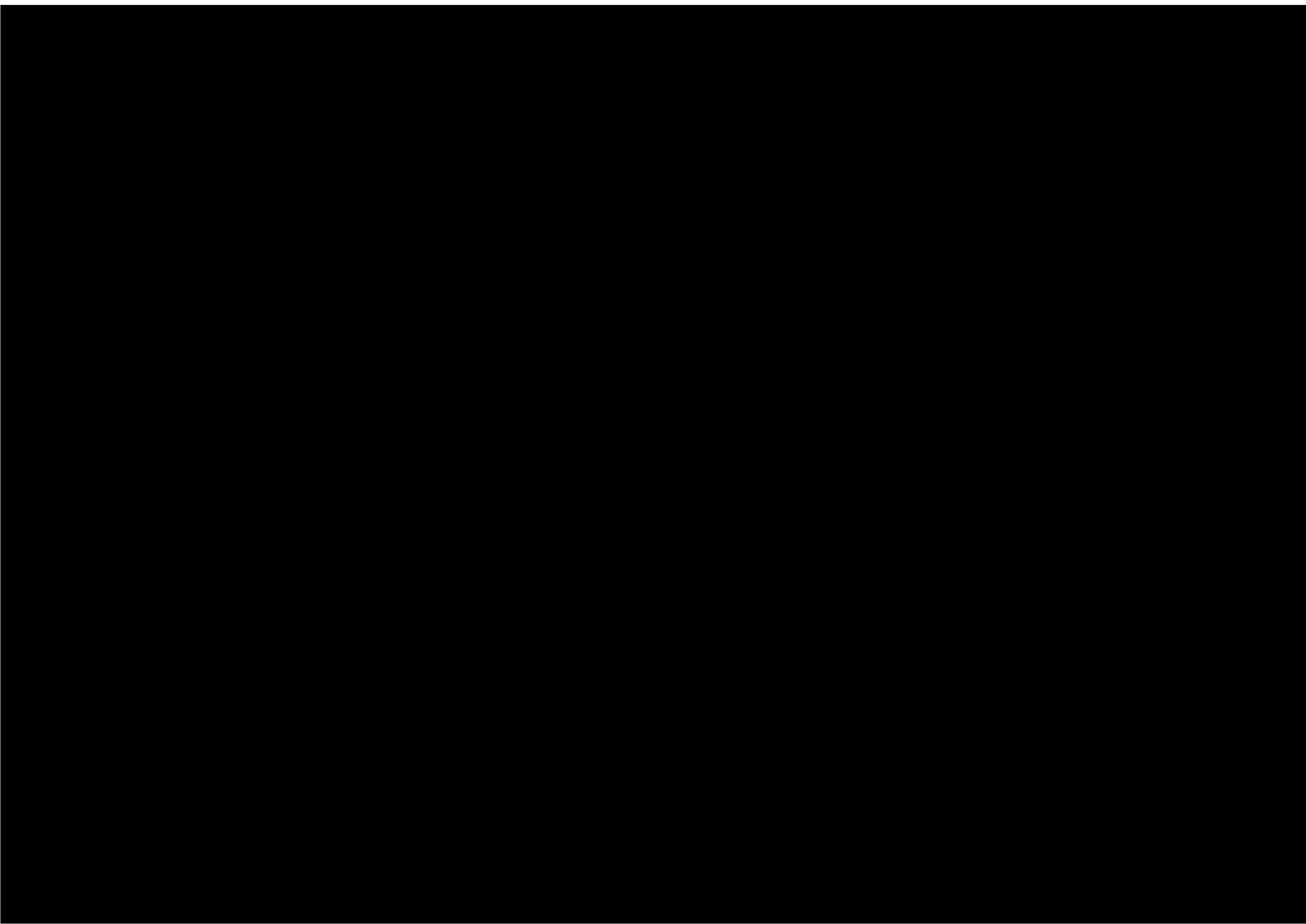


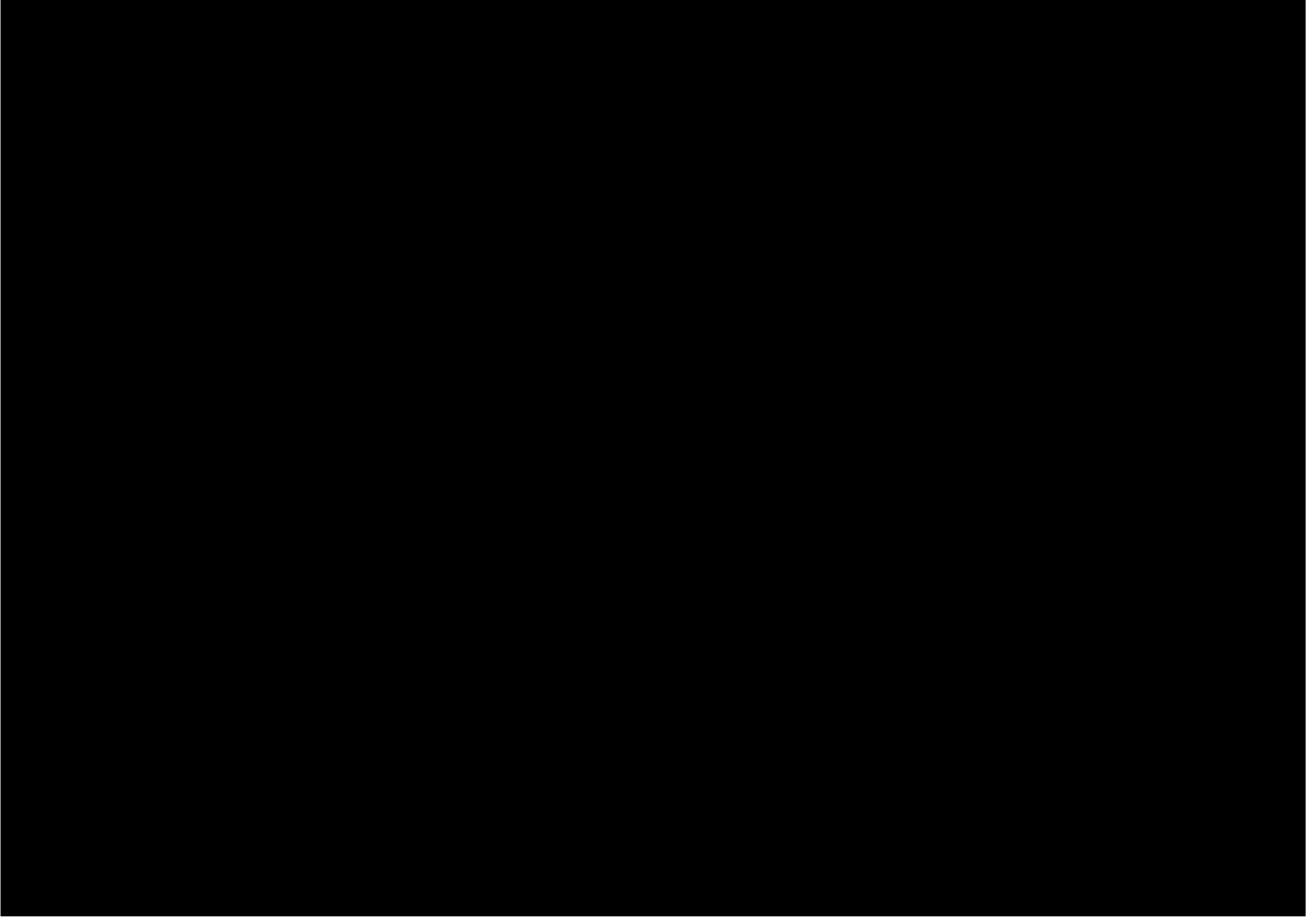


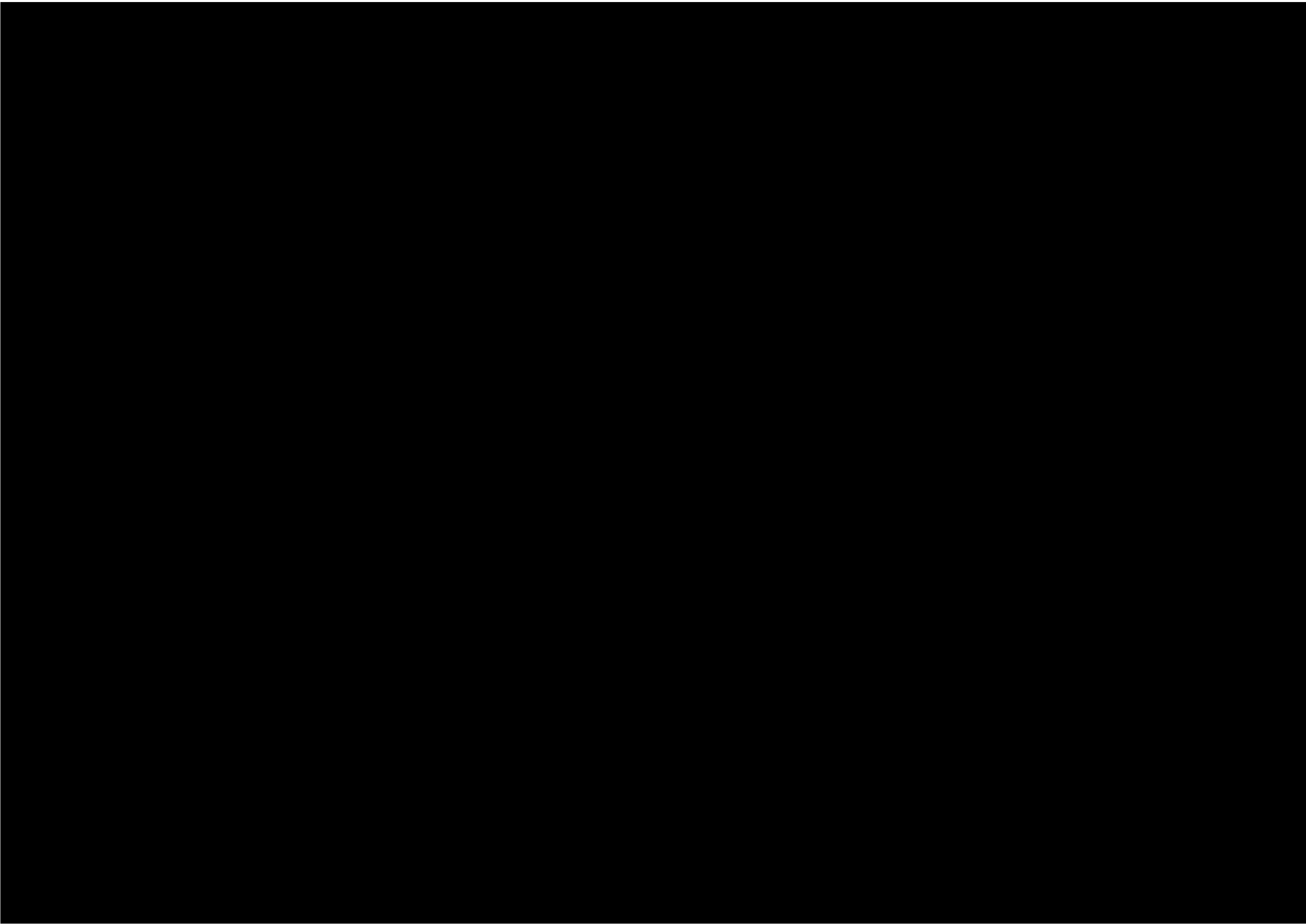


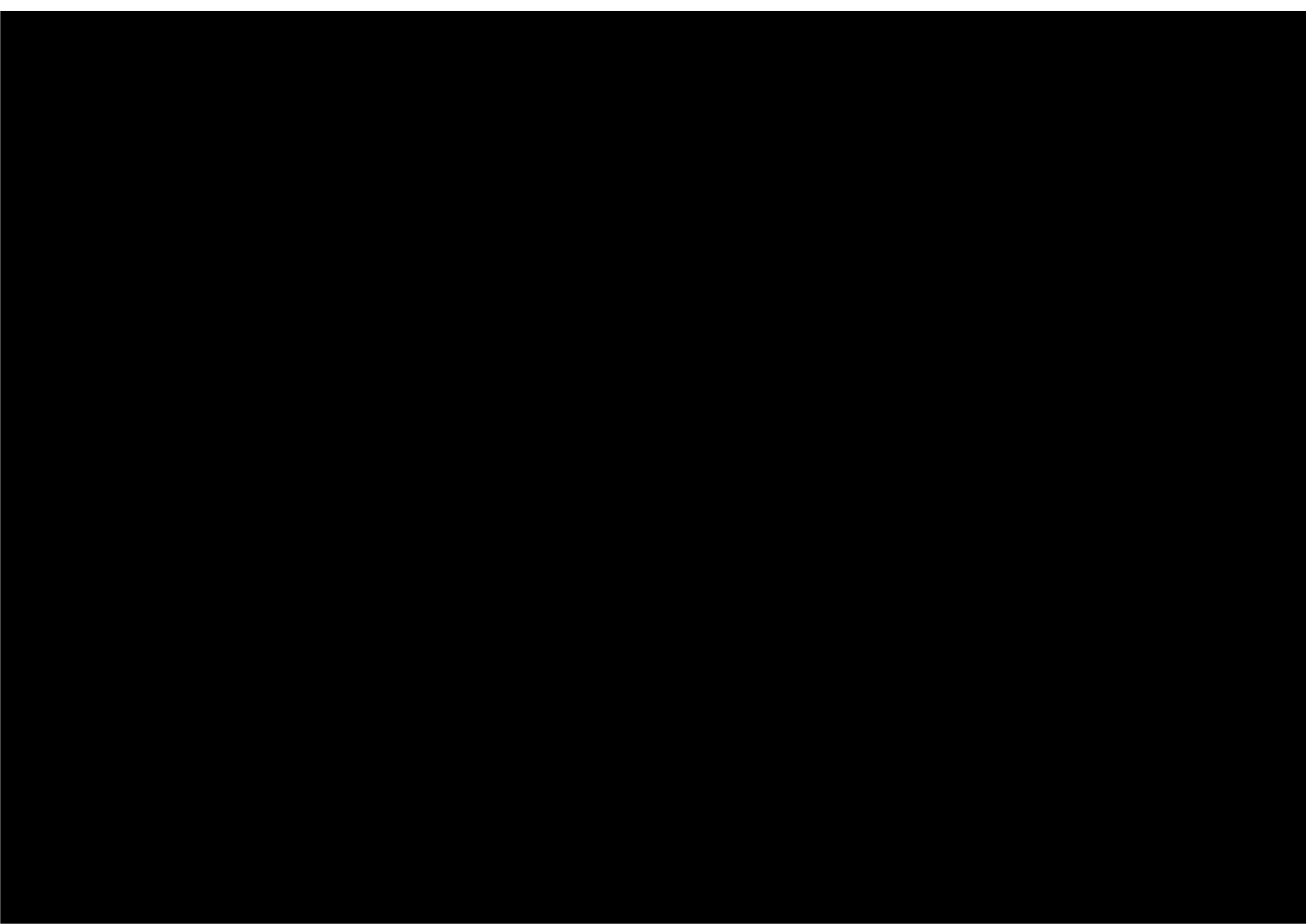












Appendix 3: Site Access Protocols – Prior to Works Completion

1. Definitions

In addition to the definitions set out in clause 1 (Definitions) of the Base Agreement:

Infrequent Visitors means infrequent visitors to the TG Project Site who will not undertake any construction work onsite;

Personal Protective Equipment means all safety equipment reasonably required to protect those on work sites in the construction industry, including a hard hat, safety footwear, Transport Agency compliant hi-visibility vest, safety eye wear, gloves, long sleeves and pants and other necessary hearing and protective equipment.

2. Scope and application

- (a) These Site Access Protocols describe how the Contractor will meet certain of its obligations under this Agreement prior to Works Completion, including with respect to access to and egress from the TG Project Site and the Ecological Protection Areas and compliance with all health and safety obligations on the TG Project Site and the Ecological Protection Areas.
- (b) These Site Access Protocols:
 - (i) must be read in conjunction with the Construction Health and Safety Plan, the Construction Environmental Management Plan and the Construction Traffic Management Plan; and
 - (ii) are subject to the Consent Conditions and the Third Party Interface Protocols.
- (c) Notwithstanding anything in these Site Access Protocols, but without prejudice to clause 7.6 (Transport Agency's obligations to Contractor), clause 14.4 (Co-ordination with other contractors) and Part 11 (Events) of the Base Agreement, nothing in these Site Access Protocols shall in any way reduce, limit, restrict or affect:
 - (i) any of the Transport Agency's rights under this Agreement; or
 - (ii) any of the Contractor's obligations under this Agreement, including, without limitation, the requirements set out in clause 22.2 (Contractor's conduct on TG Project Site) of the Base Agreement.

3. Works Provisioning

These Site Access Protocols will only apply until (and including) the date on which Works Completion is achieved. The parties acknowledge and agree that from the date of Works Completion, the Site Access Protocols contained in Appendix 4 (Site Access Protocols – Following Works Completion) to this Schedule will apply.

4. TG Project Site access

- (a) Access to the TG Project Site will be via [REDACTED], or another location as notified by the Contractor to the Transport Agency from time to time.

- (b) All access to and parking at the TG Project Site, including heavy vehicle access, must comply with the requirements of the Consent Conditions, the Construction Environmental Management Plan and the Construction Traffic Management Plan.

5. Access during Works Provisioning

5.1 Contractor obligations

- (a) Subject to paragraph 2.3(c) of Annexure 5 (Third Party Interface Protocols) to Schedule 3 (Project and Ancillary Documents), the Contractor is responsible for ensuring that all health and safety requirements are complied with in respect of the TG Project Site and, to the extent applicable, the Ecological Protection Areas. The Contractor acknowledges that it is responsible for controlling access to the TG Project Site.
- (b) The Contractor will undertake inductions to educate the Contractor Personnel on the TG Project Site procedures and protocols. The TG Project Site induction will cover site procedures, evacuation procedures and health and safety protocols and will be conducted at a pre-arranged time by a member of the Contractor's or a Sub-contractor's staff. The Contractor will ensure that the Contractor Personnel have all Personal Protective Equipment reasonably required in order for the Contractor Personnel to carry out their function on the TG Project Site and the Ecological Protection Areas.
- (c) The Contractor is responsible for the management of all third party vehicles on the TG Project Site.

6. Site access procedures - third party contractor and visitor obligations

All third party contractors (including any Other Provider) and visitors will be required, as a condition of entry to the TG Project Site:

- (a) subject to paragraph 2.3(c) of Annexure 5 to Schedule 3 (Third Party Interface Protocols), to comply with the Contractor's site safety requirements, induction processes and all reasonable directions of the Contractor while on the TG Project Site;
- (b) to give two Business Days' notice to the Contractor of their intention to access the TG Project Site, provided that such notice may be waived by the Contractor on request (acting reasonably);
- (c) to provide their own Personal Protective Equipment other than that provided by the Contractor under paragraph 6.2; and
- (d) to sign into and then subsequently sign out of the TG Project Site in accordance with the Contractor's procedures.

6.1 Site access procedures - Transport Agency obligations

The Transport Agency shall procure:

- (a) that, where there are notice requirements prior to accessing the TG Project Site or the Ecological Protection Areas in accordance with the Base Agreement for a specific purpose, the Transport Agency complies with such notice requirements before accessing the site (and otherwise provides the Contractor with prior notice as to its intention to access the TG Project Site or the Ecological Protection Areas);

- (b) that all Transport Agency Personnel and Transport Agency Related Persons comply with the Contractor's site safety requirements, induction processes and all reasonable directions of the Contractor while on the TG Project Site or the Ecological Protection Areas;
- (c) that all Transport Agency Personnel and Transport Agency Related Persons provide their own Personal Protective Equipment while on the TG Project Site other than that provided by the Contractor under paragraph 6.2; and
- (d) that all Transport Agency Related Personnel and Transport Agency Related Persons are signed into and then subsequently signed out of the TG Project Site in accordance with the Contractor's procedures.

6.2 Site access procedures - Infrequent Visitors

Infrequent Visitors will be required to sign in and report to the TG Project Site office where a member of the Contractor's or a Sub-contractor's staff will inform them about relevant hazards and site rules. Infrequent Visitors will be issued Personal Protective Equipment for the duration of their site visit and will be escorted throughout the TG Project Site at all times by a member of the Contractor's or a Sub-contractor's staff who has been properly inducted. An Infrequent Visitor must give two Business Days' notice to the Contractor of its intention to access the TG Project Site. Notice may be waived by the Contractor on request (acting reasonably).

7. Access prior to Close-out

Where a permanent access way is to be provided as a Close-out Deliverable, the Contractor must maintain any temporary access way to ensure that access is provided in accordance with the Consent Conditions, until such time as the Independent Reviewer issues a Close-out Certificate in respect of that Close-out Deliverable.

8. Safety of public

- (a) Members of the general public will not be allowed access on to the TG Project Site except as set out in paragraph 11 to these Site Access Protocols and then (as between the Contractor and the Transport Agency) at the Contractor's sole risk.
- (b) Members of the general public will not be allowed access on to the Ecological Protection Areas on Other Land except as set out in paragraph 11 to these Site Access Protocols and then (as between the Contractor and the Transport Agency) at the Contractor's sole risk.

9. Communication protocols

The Contractor and any Other Provider must comply with any communication protocols required by the Base Agreement or the Consent Conditions, including the Communication Plan.

10. Public access over TG Project Site

10.1 Overview

Set out below are the public and private access ways within the TG Project Site that will be affected during Works Provisioning. Members of the public that require access through

these access ways during Works Provisioning must do so only in accordance with paragraphs 10.4 and 10.5 (as applicable).

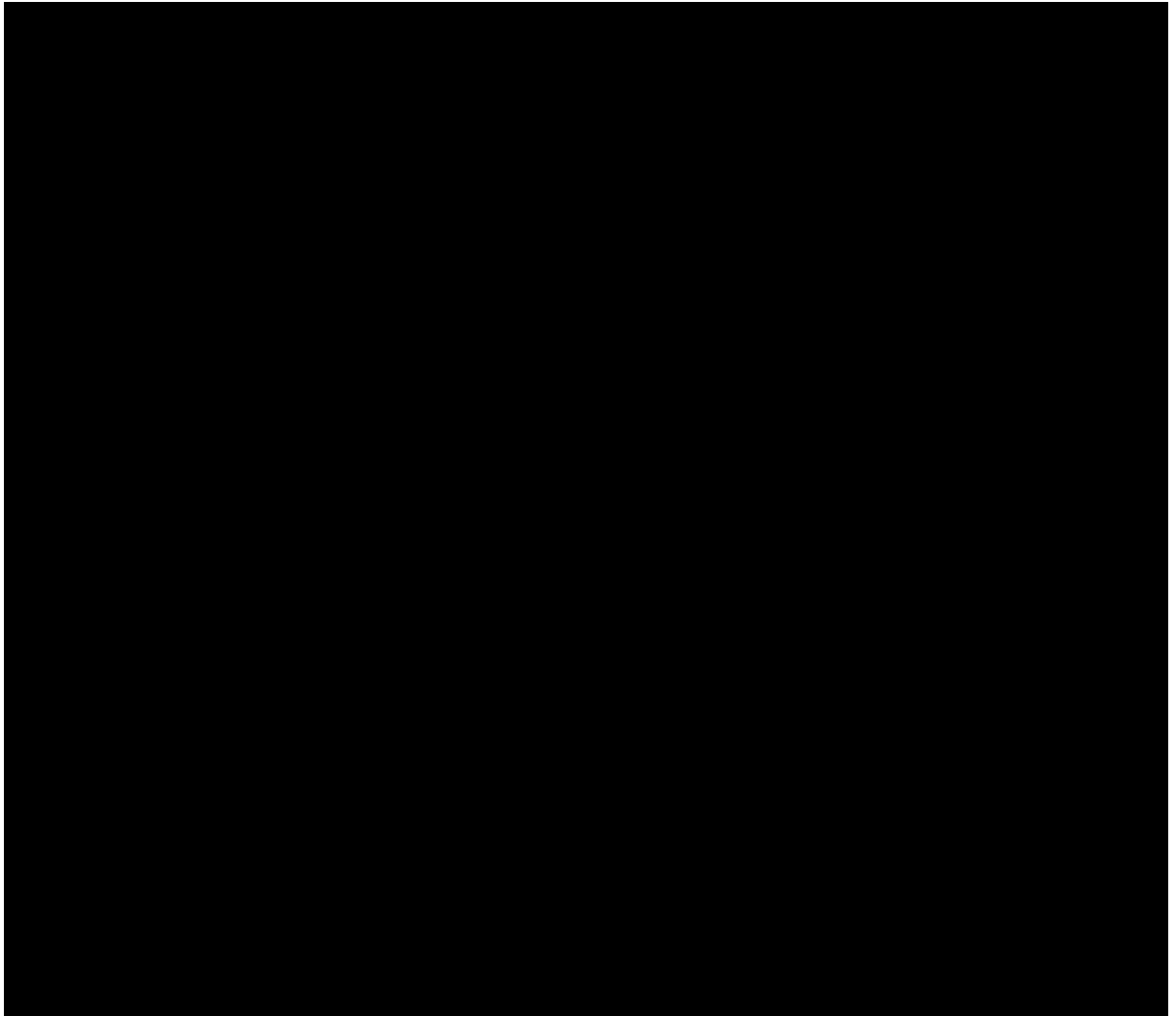
10.2 Public access ways

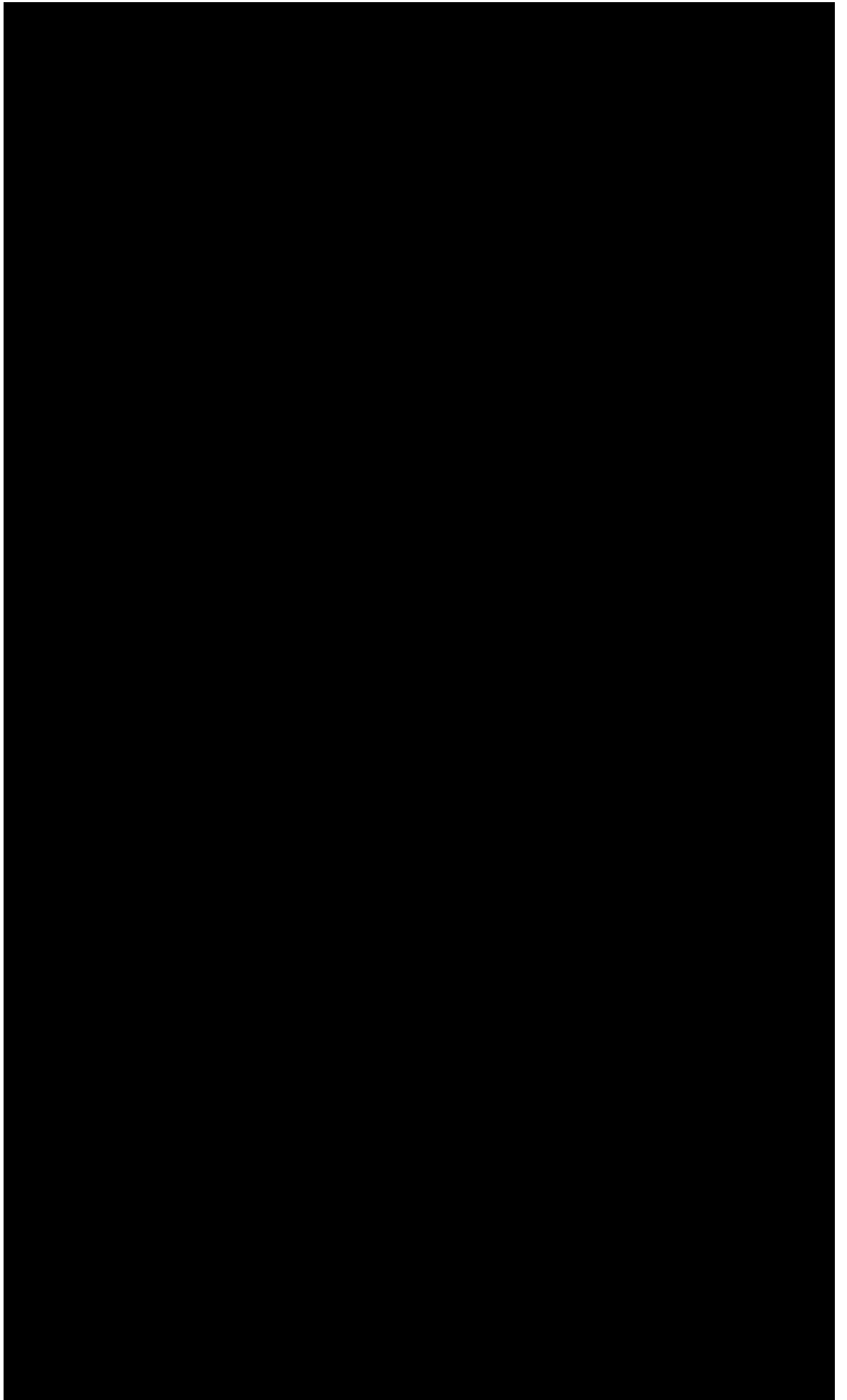
The following are the access ways that provide access to the public, and are within the TG Project Site:

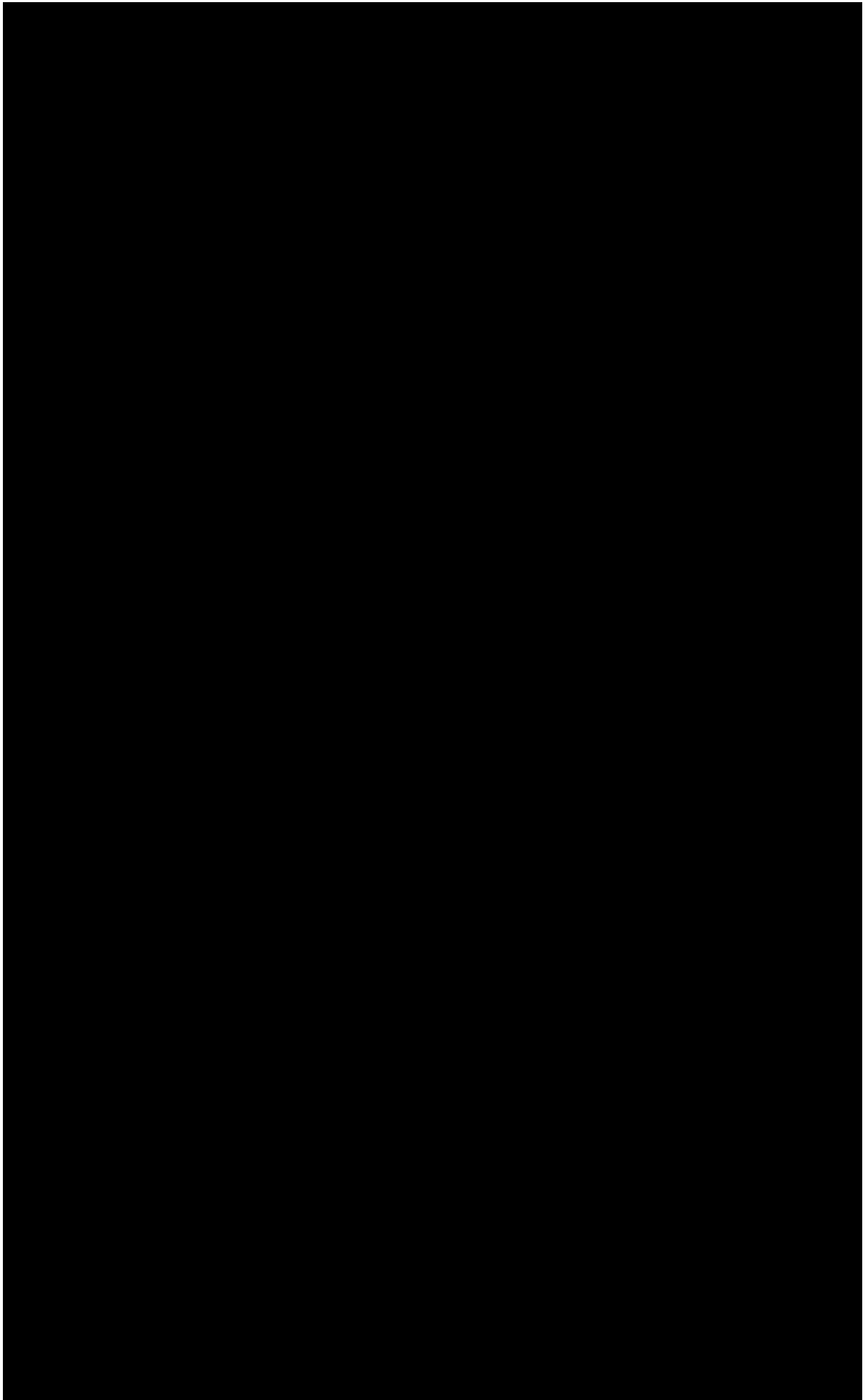
- (a) State Highways 1 and 58;
- (b) all existing walking, cycling and horse-riding tracks within Battle Hill Farm Forest Park and Belmont Regional Park;
- (c) the existing joint pedestrian and cycle track under the SH58 Interchange;
- (d) all existing walking, cycling and horse-riding tracks within Mount Wainui and Akatarawa Forest Park; and
- (e) the existing roundabout at MacKays Crossing giving access to Emerald Glen Road and Waterfall Road (which is the primary access to numerous lifestyle/rural properties between MacKays Crossing and Paraparaumu).

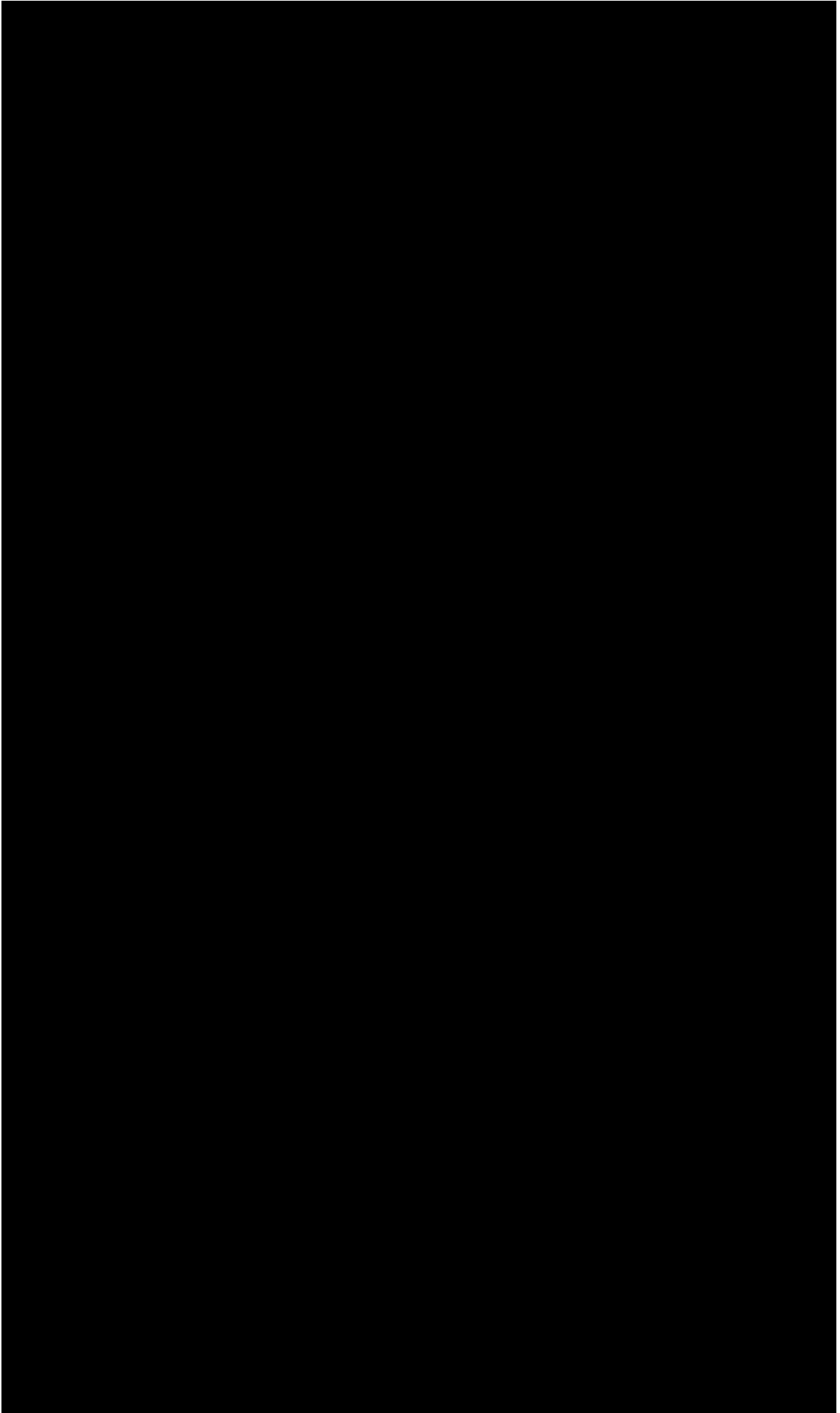
10.3 Private access ways

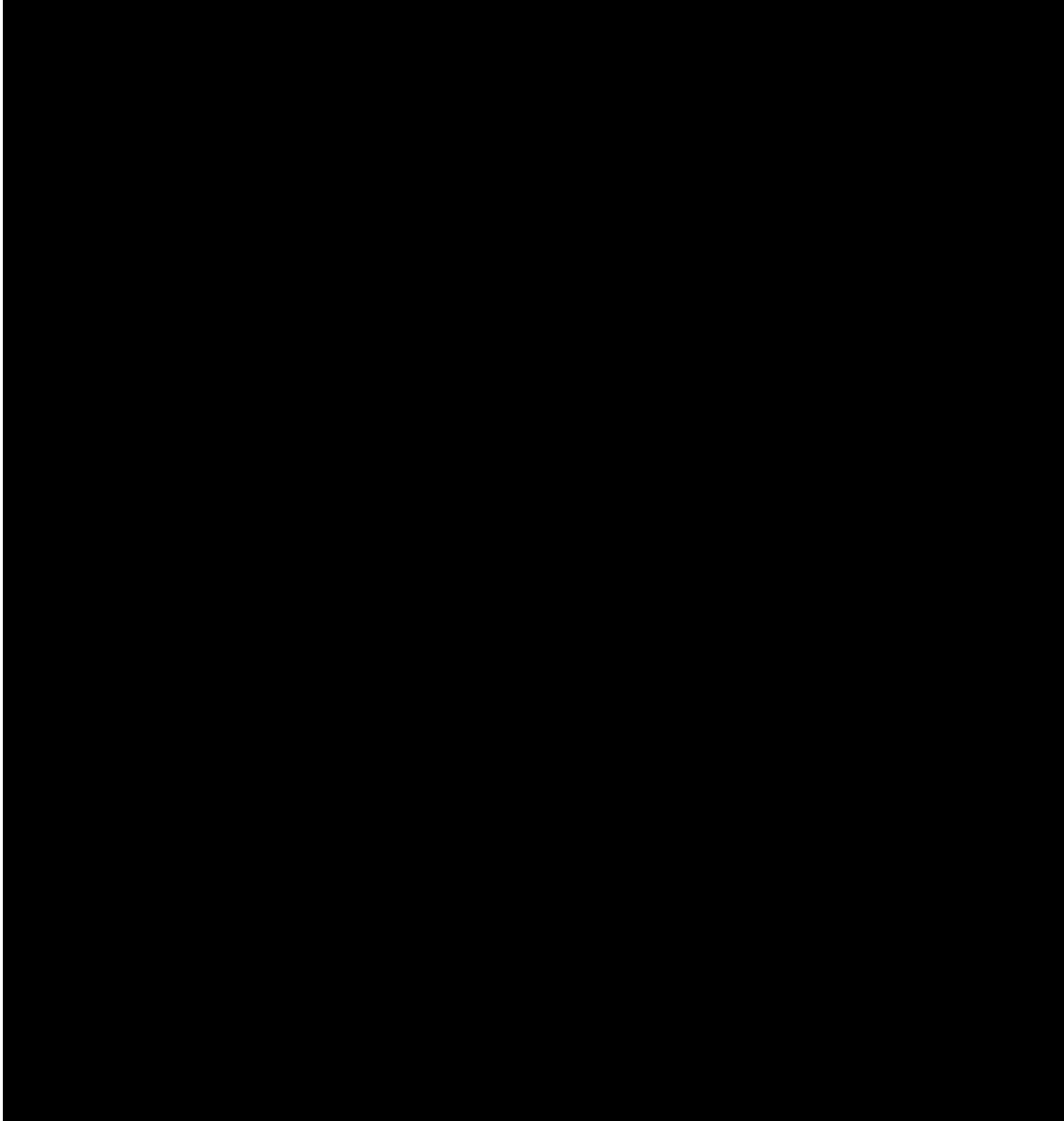
The following are the private properties that require access over the TG Project Site prior to Works Completion:











10.4 Protocol for access through roads and roadside walkways

- (a) Access will be provided to State Highway and local road traffic passing through the TG Project Site as far as practicable. From time to time as the construction progresses, the Contractor will have the need to restrict access to the public for safety reasons.
- (b) When it is identified that the risk to the public requires access to be restricted, the Construction Traffic Management Plan (**CTMP**) will inform on how and when access can be restricted.
- (c) The implementation of specific access restrictions will be detailed in approved Site Specific Traffic Management Plans (**SSTMP**). SSTMPs will be developed by the Contractor and submitted for approval by the relevant Road Controlling Authority. Details in SSTMPs will include
 - (i) locations of restrictions;
 - (ii) detour routes;
 - (iii) operating times when access is restricted;

- (iv) communication and advertising requirements; and
 - (v) contact information.
- (d) On-going communication with the public will be undertaken in accordance with both the Communication Management Plan (**CMP**) and Construction Traffic Management Plan (**CTMP**). This will include newspaper and newsletter advertising of upcoming construction activities and closures. In addition, specific consultation as detailed within Consent Conditions NZTA.14 and NZTA.24 will be carried out.
- (e) Where practicable, physical barriers and separation will be used to ensure public is not put at risk to construction hazards. Detours on roading networks will be sign posted to COPTTM standards.

10.5 Protocol for access through other public accessways

- (a) Public access along tracks in the Battle Hill Farm Forest Park, Belmont Regional Park, Mount Wainui Forest Park and Akatarawa Forest Park will require intermittent restrictions until Service Commencement.
- (b) For short term closures where access is unavailable for a period less than three months, consultation, notification and communication of restrictions will be carried out in accordance with the CTMP and CMP. In addition, signs will be erected to notify track users of the access restrictions. Signs will be erected at locations where alternative routes exist.
- (c) For restrictions where a closure is to be in place for a period of longer than three months, a SSTMP will be prepared. The SSTMP will be prepared following consultation with GWRC, Tararua Tramping Club, Battle Hill Eventing Mana Cycle Club. Matters arising from this consultation will be addressed as reasonably as practicable within the SSTMP. The SSTMP is to be approved for use by the WRC.
- (d) The SSTMP will specifically deal with:
- (i) providing signage at an appropriate starting point on the track explaining the nature of any access changes, such that it makes it easy for the user to make a decision about whether to continue along the track;
 - (ii) measures to maintain, where practicable, safe and clearly sign-posted alternative tracks around the construction works; and
 - (iii) measures to provide for the shortest and most convenient detours that are reasonably practicable.

10.6 Protocol for access through private access ways

- (a) If an access protocol exists in the Third Party Property Agreement for a private property, this will be observed by the contractor when varying access to a property.
- (b) Where no access protocol is included in the Third Party Property Agreement the minimum requirements will be:
- (i) the Contractor will ensure reasonable practicable access is maintained to the property during works provisioning;
 - (ii) the Contractor will provide regular updates to landowners/tenants of upcoming construction works by way of a newsletter;

- (iii) provided a minimum 48 hours written notice when access to the affected landowner or tenant's property is temporarily unavailable; and
 - (iv) the Contractor will provide affected landowners/tenants with a 24 hour toll free number to contact the project if they have any queries.
- (c) The CTMP and the SSTMP prepared in accordance with the Consent Conditions will make allowance for access to these properties without conflict with construction vehicles. Physical barriers will delineate private access ways from the construction site.

11. Public access over Ecological Protection Areas

11.1 Overview

Set out below are the public access ways within the Ecological Protection Areas located on Other Land that will be affected during Works Provisioning. Members of the public that require access through these access ways during Works Provisioning must do so only in accordance with paragraph 11.3.

11.2 Public access ways

The existing walking, cycling and horse-riding tracks within Battle Hill Farm Forest Park and Belmont Regional Park that provide access to the public, and are within the Ecological Protection Areas.

11.3 Protocol for access through public access ways

- (a) Public access along tracks in the Regional and Forest Parks will require intermittent restrictions during the construction period.
- (b) For short term closures where access is unavailable for a period less than three months, consultation, notification and communication of restrictions will be carried out in accordance with the CTMP and CMP. In addition, signs will be erected to notify track users of the access restrictions. Signs will be erected at locations where alternative routes exist.
- (c) For restrictions where a closure is to be in place for a period of longer than three months, a SSTMP will be prepared. The SSTMP will be prepared following consultation with GWRC, Tararua Tramping Club, Battle Hill Eventing Mana Cycle Club. Matters arising from this consultation will be addressed as reasonably as practicable within the SSTMP. The SSTMP is to be approved for use by the WRC.
- (d) The SSTMP will specifically deal with:
 - (i) providing signage at an appropriate starting point on the track explaining the nature of any access changes, such that it makes it easy for the user to make a decision about whether to continue along the track;
 - (ii) measures to maintain, where practicable, safe and clearly sign-posted alternative tracks around the construction works; and
 - (iii) measures to provide for the shortest and most convenient detours that are reasonably practicable.

Appendix 4: Site Access Protocols – Following Works Completion

1. Scope and application

- (a) These Site Access Protocols describe how the Contractor will meet certain of its obligations under this Agreement following Works Completion and during the Operating Term, including with respect to access to and egress from the TG Project Site and the Ecological Protection Areas and compliance with all health and safety obligations on the TG Project Site.
- (b) These Site Access Protocols:
 - (i) must be read in conjunction with the Operational Health and Safety Plan; and
 - (ii) are subject to the Third Party Interface Protocols.
- (c) Notwithstanding anything in these Site Access Protocols, but without prejudice to clause 7.6 (Transport Agency's obligations to Contractor), clause 14.4 (Co-ordination with other contractors) and Part 11 (Events) of the Base Agreement, nothing in these Site Access Protocols shall in any way reduce, limit, restrict or affect:
 - (i) any of the Transport Agency's rights under the Agreement; or
 - (ii) any of the Contractor's obligations under this Agreement, including, without limitation, the requirements set out in clause 22.2 (Contractor's conduct on TG Project Site) of the Base Agreement.

2. Transport Agency access

- (a) The Contractor must provide the Transport Agency with access to enable the Transport Agency to effectively exercise its rights under the Agreement and, in particular, the Contractor must provide the Transport Agency access to the TG Project for the conduct of any Asset Survey under clause 33 (Asset Surveys) of the Base Agreement.
- (b) To the extent that the exercise of the Transport Agency's access rights under the Base Agreement and these Site Access Protocols impacts on the Contractor's ability to meet the Availability Criteria, any relief will be addressed in accordance with Schedule 13 (Performance Regime) to the Base Agreement and the Lane Closure Protocols.

3. Access prior to Close-out

Where a permanent access way is to be provided as a Close-out Deliverable, the Contractor must maintain any temporary access way to ensure that access is provided in accordance with the Consent Conditions, until such time as the Independent Reviewer issues a Close-out Certificate in respect of that Close-out Deliverable.

4. Public access

4.1 Overview

Set out below are the public and private access ways within the TG Project Site and the Ecological Protection Areas that will exist following Works Completion. Members of the public that require access through these access ways following Works Completion must do so only in accordance with paragraphs 5 (Protocol for access through public access ways) and 6 (Protocol for access through private access ways) of this Appendix (as applicable).

4.2 Public access ways over TG Project Site

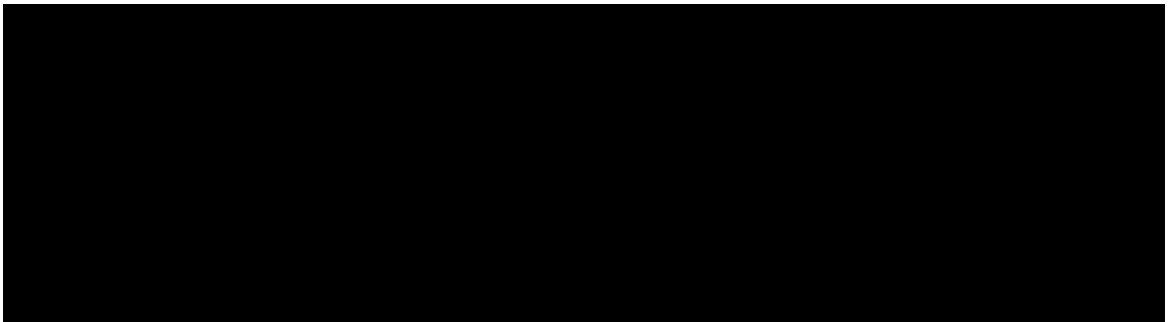
- (a) The following are the access ways that provide access to the public, and will be located within the TG Project Site following Works Completion:
- (i) The TG Roads;
 - (ii) part of the Public Access Track;
 - (iii) part of State Highways 1 and 58;
 - (iv) parts of the walking, cycling and horse-riding tracks within Battle Hill Farm Forest Park and Belmont Regional Park;
 - (v) parts of the walking, cycling and horse-riding tracks within Mount Wainui and Akatarawa Forest Park;
 - (vi) the joint pedestrian and cycle track under the SH58 Interchange; and
 - (vii) the existing roundabout at MacKays Crossing giving access to Emerald Glen Road and Waterfall Road (which is the primary access to numerous lifestyle/rural properties between MacKays Crossing and Paraparaumu).
- (b) These access ways and the extent to which they fall within the TG Project Site following Works Completion are identified on the TG Site Plans.

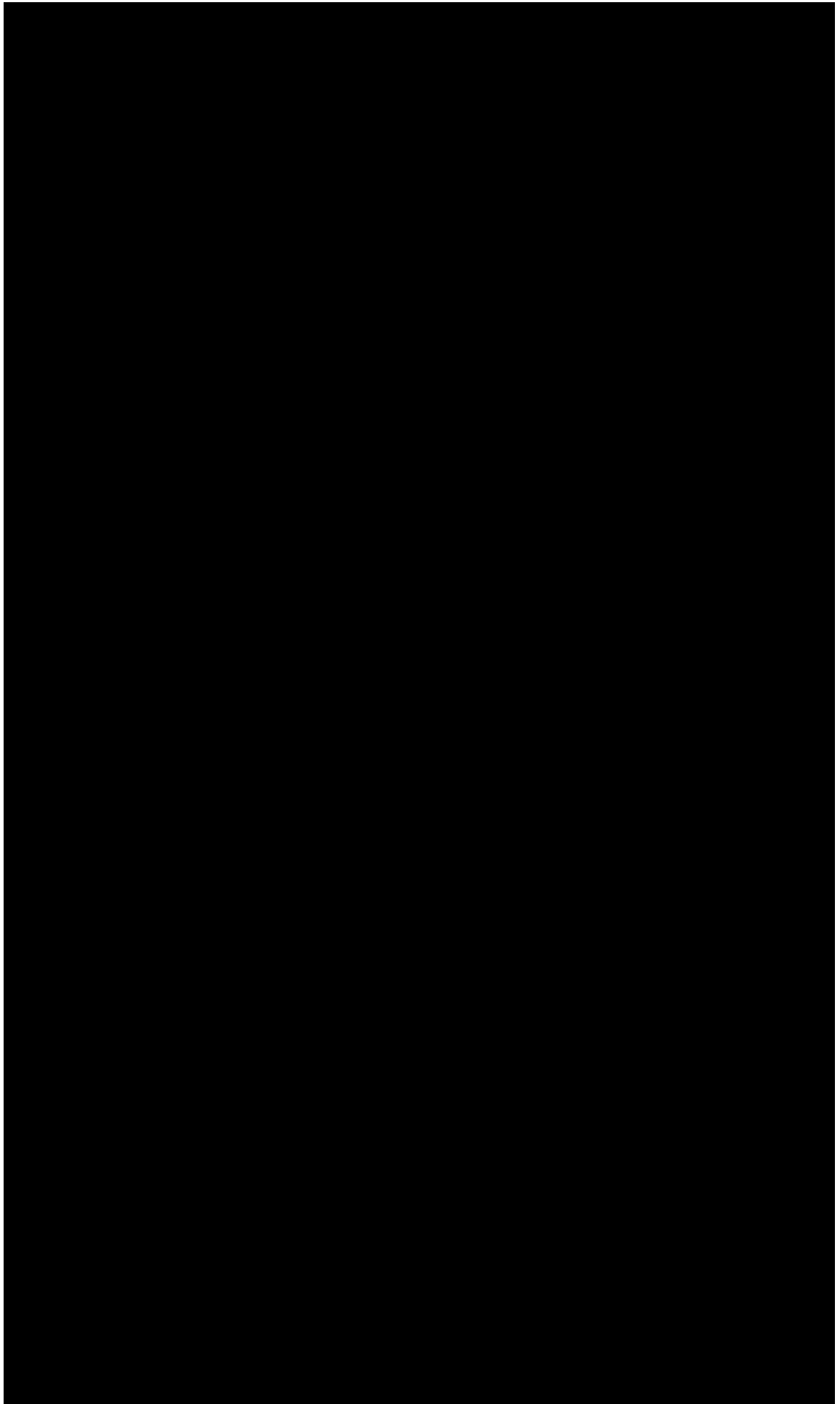
4.3 Public access ways over Ecological Protection Areas

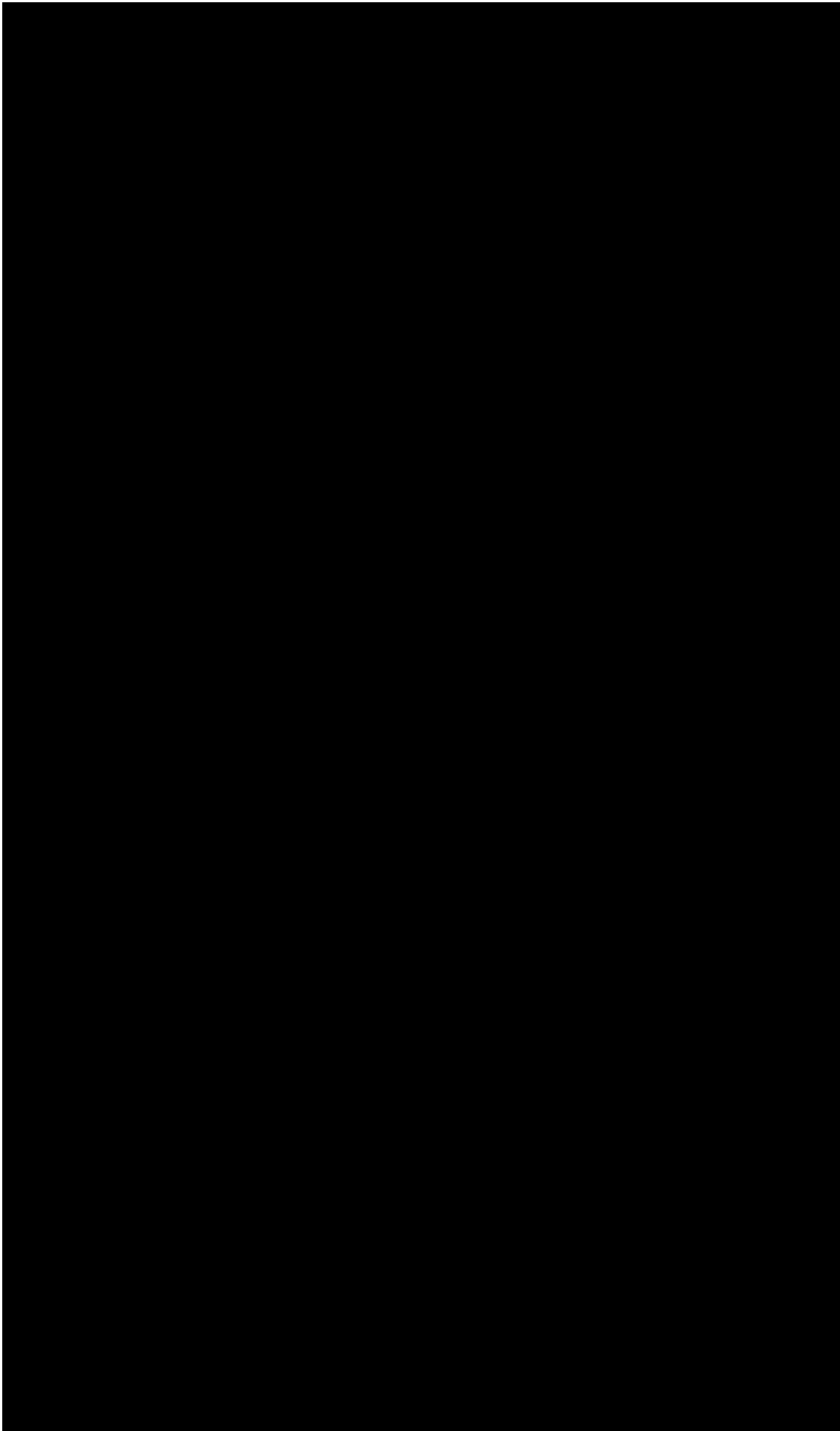
The walking, cycling and horse-riding tracks within Battle Hill Farm Forest Park and Belmont Regional Park that provide access to the public and are located within the Ecological Protection Areas.

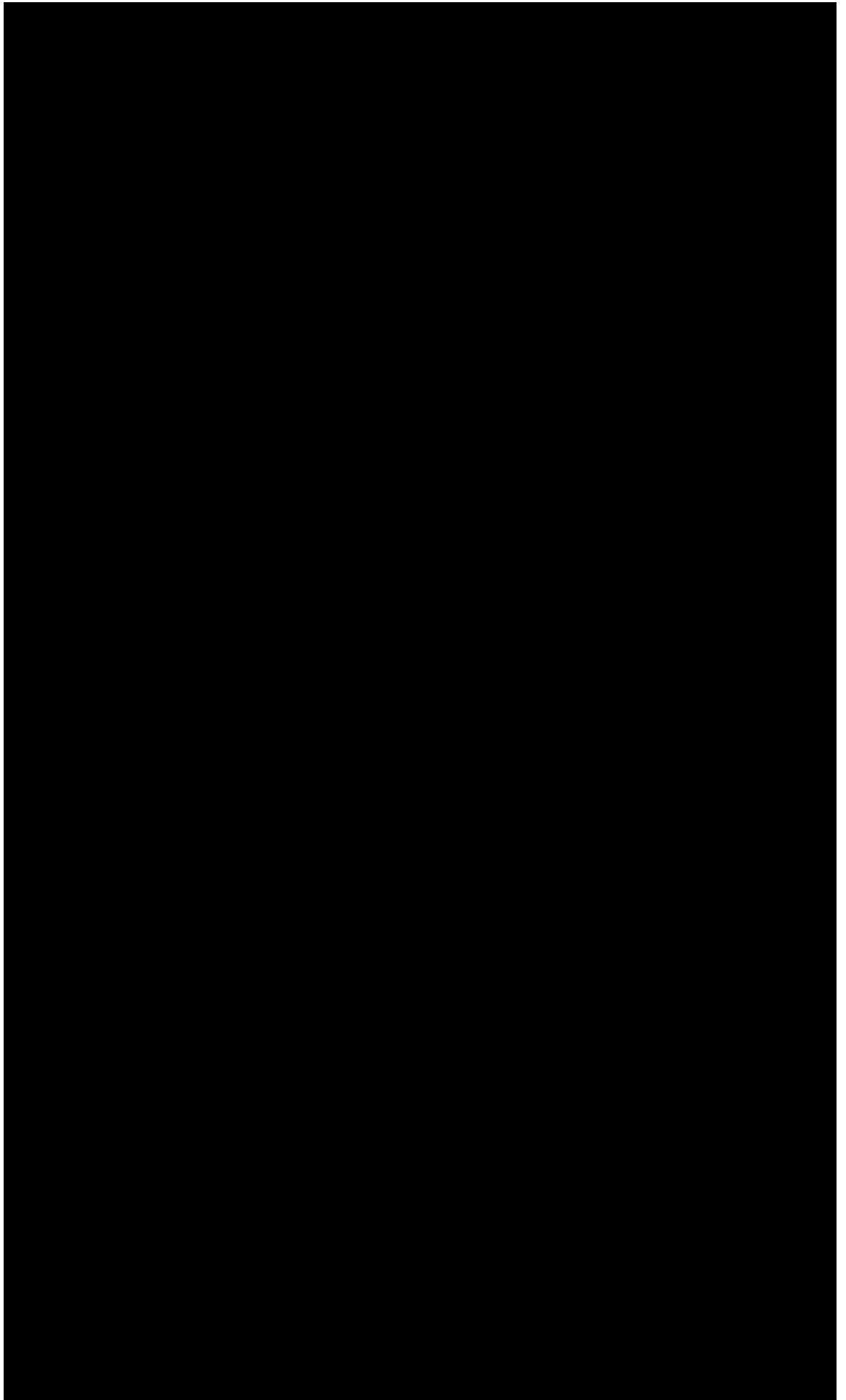
4.4 Private access ways over TG Project Site

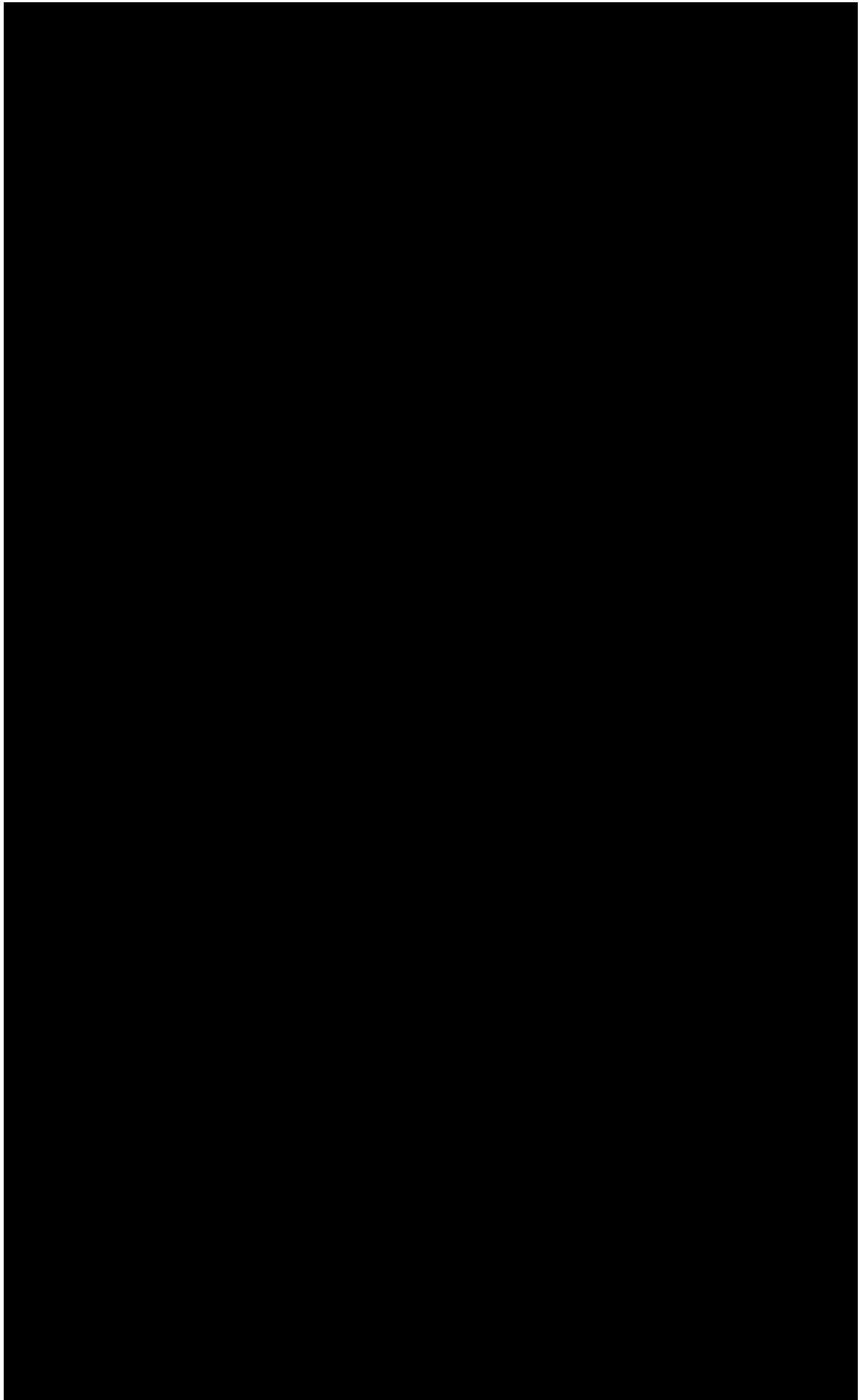
The following are the private properties that require access over the TG Project Site following Works Completion:











5. Protocol for access through public access ways

5.1 TG Roads

The Contractor shall provide the public access through the TG Roads in accordance with the Base Agreement and in particular Part 6 (General Terms relating to Services) and Part 10 (Operational Services) of the Base Agreement and Schedule 12 (Service Requirements) and Schedule 13 (Performance Regime).

5.2 Public Access Track

- (a) The Contractor shall provide the public access through the Public Access Track as provided for in accordance with paragraph 15 (Maintenance and public access track) of Schedule 11 (Works Requirements) and paragraph 15 (Maintenance and public access track) of Schedule 12 (Service Requirements) and in accordance with the protocol set out in paragraph 5.2(b).
- (b) Public access along the Public Access Track may require intermittent restrictions for maintenance and/or repair works or incidental management. Any such temporary access restriction will be communicated to the public via:
 - (i) providing signage at an appropriate starting point in the track explaining the nature of any access restrictions, such that it makes it easy for the user to make a decision about whether to continue along the track;
 - (ii) measures to maintain, where practicable, safe and clearly sign-posted alternative tracks around the maintenance or repair works; and
 - (iii) measures to provide for the shortest and most convenient detours that are reasonably practicable.

5.3 Other public access ways

Public access along the other public access ways may require intermittent restrictions for maintenance and/or repair works or incidental management. Any such temporary access restriction will be communicated to the public via:

- (a) providing signage at an appropriate starting point in the track explaining the nature of any access restrictions, such that it makes it easy for the user to make a decision about whether to continue along the track;
- (b) measures to maintain, where practicable, safe and clearly sign-posted alternative tracks around the maintenance or repair works; and
- (c) measures to provide for the shortest and most convenient detours that are reasonably practicable.

6. Protocol for access through private access ways

- (a) The Contractor shall provide the public access through the private access ways as provided for in accordance with paragraph 27 (Property Agreements) of Schedule 11 (Works Requirements) and paragraph 26 (Third Party Property agreements) of Schedule 12 (Service Requirements) and in accordance with the following protocol:
 - (i) if an access protocol exists in the Third Party Property Agreement for a private property, this will be observed by the contractor when varying access to a property; and
 - (ii) where no access protocol is included in the Third Party Property Agreement the minimum requirements will be:
 - (A) the Contractor will ensure reasonable practicable access is maintained to the property during the Operating Term; and
 - (B) the Contractor will provide a minimum 48 hours written notice when access to the affected landowner or tenant's property is temporarily unavailable or restricted. Such notice will include a toll free contact number the affected landowners/tenants may use if they have any queries.

Appendix 5: Third Party Property Agreements

[Redacted in full]

Appendix 6: Disclosed Contaminants Areas

Report	Relevant Land Blocks		
	Title	Description	Address
Contaminated Land Assessment – Transmission Gully Technical Report #16 (prepared by Aurecon New Zealand Limited (Aurecon) for the Transport Agency and the Porirua City Council) (the Transport Agency Contaminated Land Assessment Report)	467073	Section 4 SO Plan 404046	530 SH1
	467073	Section 5 SO Plan 40460	None
	[REDACTED]	[REDACTED]	[REDACTED]
	None	Section 101 BLK II, Paekakariki SD	None
	None	Lot 1 DP 52615	None
	WN27B/863	Part Lot 4 DP 714	515 SH1
	None	Part Section 1 SO Plan 36580	528 SH1
	WN24A/200	Lot 1 DP 53032	362 SH1
	WN18D/456	Lot 1 DP 47726	350 SH1
			358 SH1
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	439219	Section 1 SO Plan 402089	None
	None	Part SO Plan 38167	None
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	None	Part Section 1 SO Plan 36634	473 Takapu Road
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	Lot 6 DP 78422	31 Ribbonwood Tce
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	WN23A/875 and WN39A/328	Lot 1 DP 40411	3 – 5 Commerce Cres
	[REDACTED]	[REDACTED]	[REDACTED]

Report	Relevant Land Blocks		
	Title	Description	Address
	None	Lot 1 DP 48357	1/37, 2/37, 3/37 Kenepuru Road
Additional Site Investigation - Warspite Avenue Interchange – 27 September 2010 (prepared by Aurecon) <i>[Relevant land blocks already included in the Transport Agency Contaminated Land Assessment Report]</i>	WN23A/875 and WN39A/328	Lot 1 DP 40411	3 – 5 Commerce Cres
Additional Site Investigation - State Highway 1 near Kenepuru Road Link – 27 September 2010 (prepared by Aurecon)			
Additional Site Investigation - 37 Kenepuru Drive, Porirua – 16 February 2011 (prepared by Aurecon) <i>[Relevant land blocks already included in the Transport Agency Contaminated Land Assessment Report]</i>	None	Lot 1 DP 48357	1/37, 2/37, 3/37 Kenepuru Road
Porirua City Council Assessment of Effects on the Environment – NZTA Transmission Gully Project Contaminated Sites (August 2013 report 1378203187-002-R-Rev E – AEE) <i>[Relevant land blocks already included in the Transport Agency Contaminated Land Assessment Report]</i>			
	439219	Section 1 SO Plan 402089	None
	None	Part SO Plan 38167	None
	WN23A/875 and WN39A/328	Lot 1 DP 40411	3 – 5 Commerce Cres
	None	Part Section 1 SO Plan 36634	473 Takapu Road
	None	Lot 1 DP 48357	1/37, 2/37, 3/37 Kenepuru Road

Appendix 7: Disclosed Ordnance Areas

Report	Relevant Land Blocks		
	Title	Description	Address
Transmission Gully – Wellington Geophysical survey to search for unexploded ordnance (UXO) April 2010 <i>[Relevant land blocks provided in the Transport Agency Contaminated Land Assessment Report]</i>	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]

Appendix 8: Ecological Protection Areas


The areas in the following table identify the land parcels and areas of proposed ecological protection required to satisfy Conditions NZTA.53 and G.31 of Volume 2 of the Transmission Gully Board Of Inquiry Decision.

Design development may necessitate further minor amendments to the mitigation measures and areas, but will deliver compliance with Conditions NZTA.53 and G.31.

Note that the ecological mitigation sites contained within these parcels do not necessarily comprise the entire parcel (in most cases, only part of the parcel is required for ecological mitigation).

Certificates of title	Legal descriptions	Current Legal Owner	Area of Mitigation (approx. in hectares)
Mitigation Site 1 (Te Puke Stream)			
WN38A/630	Lot 7 Deposited Plan 70122	Her Majesty the Queen	1.39ha
277518 (Wellington Registry)	Lot 1 Deposited Plan 368307	Her Majesty the Queen	100.17ha
WN38A/633	Lot 10 Deposited Plan 70122	Her Majesty the Queen	3.70ha
WN38A/636	Lot 13 Deposited Plan 70122	████████████████████ (Crown acquisition protected by registered compensation certificate)	6.64ha
535244	Section 1 Survey Office Plan 431609	Her Majesty the Queen	5.82ha
535245	Section 2 SO Plan 431609	WRC	0.003ha
Mitigation Site 2 (Horokiwi Stream)			

Certificates of title	Legal descriptions	Current Legal Owner	Area of Mitigation (approx. in hectares)
Gazette Notice B696329.1	Area Marked "B" on Survey Office Plan 37984	Her Majesty the Queen	0.25ha
Gazette Notice B696329.1	Area marked "B" on Survey Office Plan 37984	Her Majesty the Queen	21.75ha
WN58A/100	Lot 6 Deposited Plan 90282	Her Majesty the Queen	1.00ha
WN58A/101	Lot 7 Deposited Plan 90282	Her Majesty the Queen	2.42ha
Gazette Notice B696329.1	Area marked "A" on Survey Office Plan 37984	Her Majesty the Queen	206.95ha
WN41D/399	Lot 2 DP 71399	[REDACTED]	19.38ha
WN16B/184	Sec 45 Horokiwi District	[REDACTED] (Crown acquisition protected by registered compensation certificate)	3.55ha
WN17B/1054	Sec 42 Horokiwi Valley District	[REDACTED] (Crown acquisition protected by registered compensation certificate)	12.08ha
Mitigation Site 3 (Ration Creek – AEM 7,8)			
18881 (Wellington Registry)	Lot 1 Deposited Plan 304740	Her Majesty the Queen	1.07ha
Gazette Notice 2014/1400; Proclamation 9731290.1	Lot 4 Deposited Plan 337497	Her Majesty the Queen	1.00ha
Legal Road Gazette Notice B840358.1	Section 1 on Survey Office Plan 38343	Her Majesty the Queen	0.11ha
Gazette Notice B729415.1	Marked "B" on Survey Office Plan 38084.	Her Majesty the Queen	1.69ha

Certificates of title	Legal descriptions	Current Legal Owner	Area of Mitigation (approx. in hectares)
Gazette Notice B729415.1	Marked "A" on Survey Office Plan 38084	Her Majesty the Queen	1.84ha
Mitigation Site 4 (Ration Creek – AEM 6)			
WN50D/616	Lot 1 Deposited Plan 83730	Her Majesty the Queen	0.66ha
102713 (Wellington Registry)	Section 1 Survey Office Plan 314239	Her Majesty the Queen	2.37ha
Mitigation Site 5 (Pauatahanui Stream – AEM 5)			
57408 (Wellington Registry)	Part Lot 3 Deposited Plan 314471	 (Crown acquisition protected by registered compensation certificate)	5.30ha
Mitigation Site 6 (Pauatahanui Stream – LANES)			
Gazette Notice B799511.2	Section 4 Survey Office Plan 38167	Her Majesty the Queen	0.65ha
Gazette Notice B799511.1	Section 1 Survey Office Plan 38167	Her Majesty the Queen	1.24ha
Gazette Notice B799511.2	Section 3 on Survey Office Plan 38167	Her Majesty the Queen	1.58ha
Gazette Notice B799511.2	Section 4 on the Survey Office Plan 38167	Her Majesty the Queen	4.38ha
Mitigation Site 7 (Duck Creek – AEM 1,2,3)			
510286 (Wellington Registry)	Section 3 Survey Office Plan 368657	WRC	129.95ha
232279 (Wellington Registry) 31168 (Wellington Registry)	Part Sec 31 Horokiwi Rd District	Her Majesty the Queen	3.69ha

Certificates of title	Legal descriptions	Current Legal Owner	Area of Mitigation (approx. in hectares)
232279 (Wellington Registry) 31168 (Wellington Registry)	Part Sec 30 Horokiwi Rd District	Her Majesty the Queen	12.13ha
Mitigation Site 8 (Cannons Creek)			
510285 (Wellington Registry)	Section 2 Survey Office Plan 368657	Porirua City Council (Crown acquisition protected by registered compensation certificate)	1.48ha
WN10A/706	Part Lot 1 Deposited Plan 28193	Porirua City Council (Crown acquisition protected by registered compensation certificate)	2.75ha
Recreation Reserve formally held in cancelled title WND4/718 (cancelled)	Part Lot 55 DP 27640 vested in Porirua City Council as recreation reserve pursuant to s352(4) of the Municipal Corporations Act 1954 subject to the Reserves and Domain Act 1953 formally held in WND4/718	Porirua City Council (Crown acquisition protected by registered compensation certificate)	0.65ha
WN58C/309	Part Lot 2 Deposited Plan 90736	Her Majesty the Queen	0.02ha

Appendix 9: Ecological Protection Encumbrances

Agreement

relating to

Grant of Encumbrance

Wellington Regional Council

Owner

and

New Zealand Transport Agency

Transport Agency

Date 28 July 2009

BELL GULLY

WELLINGTON 171 FEATHERSTON STREET
P O BOX 1291, WELLINGTON 6140, DX SX11164, NEW ZEALAND
TEL 64 4 915 6800 FAX 64 4 915 6810

Contents

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2. Agreement to Grant Encumbrance.....	2
3. Investigations	3
4. Obligations of Owner.....	3
5. No disposals or assignment	4
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7. No merger.....	4
8. Notices	4
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Schedule 2: Encumbrance Instrument.....	7

This Agreement is made on 23 July 2014

between (1) Wellington Regional Council (Owner)

and (2) New Zealand Transport Agency (Transport Agency)

Introduction

- A. The Owner is the registered proprietor of the Land.
- B. The Land is classified as a Recreation Reserve under the Reserves Act 1977.
- C. In compliance with the Consent Conditions, the Transport Agency wishes to undertake certain ecological protection and mitigation works on the Ecological Protection Areas.
- D. In order to protect and preserve these Ecological Protection Areas in perpetuity, the Owner has agreed to grant the Transport Agency an encumbrance over the Land on the terms and conditions set out in this Agreement.

It is agreed

1. Definitions and Interpretation

1.1 Definitions

In this Agreement unless the context requires otherwise or a contrary intention is expressed:

Agents include the Transport Agency's employees, contractors, surveyors, engineers, consultants, licensees and invitees;

Agreement means this agreement and includes all the schedules;

Business Day means a day that is not a Saturday, Sunday or statutory holiday in Wellington;

Consent Conditions means the conditions set out in the Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal;

Ecological Protection Area means the Ecological Protection Area shown on the Ecological Protection Area Plan attached as Schedule 1;

Ecological Protection Works means the works described in paragraph 5 of the Encumbrance Instrument;

Encumbrance Instrument means the Encumbrance Instrument attached as Schedule 2 (as it may be subsequently amended by agreement between the Owner and the Transport Agency or as may be required to put the Encumbrance Instrument in registrable form);

Investigations means the inspections, appraisals, evaluations and surveys (including placing survey pegs or markers on the Land); and

Land means the land described in unique identifier 510286 (Wellington Registry) and having an area of 1025.0082 hectares being legally described as Section 2-3 Survey Office Plan 36635 and Section 4-6 Survey Office Plan 36636 and Section 7-10 Survey Office Plan 36637 and Section 3 Survey Office Plan 368657.

1.2 Interpretation

In this Agreement unless the context requires otherwise or a contrary intention is expressed:

- (a) words importing a gender include all other genders;
- (b) words in the singular number include the plural and vice versa;
- (c) reference to the Transport Agency includes its successors and assigns and except where inconsistent with the context, includes the Transport Agency's Agents;
- (d) reference to the Owner includes the Owner's executors, administrators, successors and permitted assigns;
- (e) reference to a party will mean reference to a party to this Agreement;
- (f) any provision of this Agreement to be performed by two or more persons shall bind those persons jointly and severally;
- (g) the illegality, invalidity or unenforceability of any provision in this Agreement will not affect the legality, validity or enforceability of any other provision;
- (h) the use of the word "includes" when introducing an example does not limit the meaning of the words to which the example relates;
- (i) headings in this Agreement are included for ease of reference only and will not affect the construction or interpretation of this Agreement; and
- (j) the references in the Encumbrance Instrument to the terms Encumbrancer and Encumbrancee refer respectively to the Owner and the Transport Agency.

1.3 Business Day

If anything under this Agreement is required at a time and to be completed on a day that is not a Business Day then it will be deemed to be required to be completed at the same time on the next Business Day.

2. Agreement to Grant Encumbrance

2.1 Grant

In consideration of the Transport Agency undertaking the Ecological Protection Works (such works being consistent with sections 53 (1) (a) and 94 (1) (d) and (i) of the Reserves Act 1977), the Owner agrees to grant the Transport Agency an encumbrance over the Ecological Protection Area on the terms and conditions set out in this Agreement and the Encumbrance Instrument.

2.2 Contract

From the date of execution of this Agreement, the Owner and the Transport Agency will become immediately bound as encumbrancer and encumbrancee respectively on the terms set out in this Agreement and the Encumbrance Instrument.

2.3 Registration of Encumbrance Instrument

The Owner will sign all documentation and undertake all acts required to enable the Transport Agency to register the Encumbrance Instrument as a first ranking charge against the title to the Land within 20 Business Days of being requested to do so by the Transport Agency. The Owner agrees to sign all documents and plans and do all acts necessary (including obtaining any consent or approval referred to in clause 6) to enable the Transport Agency to register the Encumbrance Instrument as a first ranking charge against the title to the Land.

2.4 Before Encumbrance Instrument executed

At any time after execution of this Agreement and before the Encumbrance Instrument is executed by the parties and registered, the Transport Agency may enter on to the Land and exercise any of its rights under this Agreement and the Encumbrance Instrument.

3. Investigations

3.1 Survey

- (a) Any time following execution of this Agreement by both parties, the Transport Agency shall be entitled to undertake a survey of the Ecological Protection Area to establish the location and size of the Ecological Protection Area and prepare a plan in the form required by the relevant authorities and shall lodge that plan (the Encumbrance Plan) for approval and deposit with Land Information New Zealand.
- (b) The Owner acknowledges that the Ecological Protection Area Plan is indicative only and that the eventual surveyed location and size of the Ecological Protection Area may differ.
- (c) Subject to clause 3.3, all measurements and areas relating to the Ecological Protection Area will be subject to any variation(s) of area and dimension which may be necessary upon checking of the surveyed Ecological Protection Area by the relevant authorities (including Land Information New Zealand).

3.2 Access

The Owner agrees and acknowledges that from the date of this Agreement, the Transport Agency may with their vehicles, machinery and other equipment at any reasonable times access the Land for the purpose of carrying out the Investigations and the Ecological Protection Works. Access shall be by prior consultation with the Owner.

3.3 Material change

If, following the Investigations, there is to be a material change in the location or size of the Ecological Protection Area from that shown on the Ecological Protection Area Plan, the Transport Agency will obtain the consent of the Owner (which is not to be unreasonably withheld).

4. **Obligations of Owner**

The Owner acknowledges that the Ecological Protection Area is to be preserved and protected as required by the Consent Conditions and described in the Encumbrance Instrument.

5. **No disposals or assignment**

5.1 **Assignment of Owner**

Prior to registration of the Encumbrance Instrument, the Owner will not sell or transfer the Land or assign this Agreement except where the Owner first obtains from the transferee or assignee a deed of covenant acceptable to the Transport Agency under which that assignee or transferee is bound to the perform the Owner's obligations under this Agreement and the Encumbrance Instrument.

5.2 **Chargeable consent**

Prior to registration of the Encumbrance Instrument the Owner will not create mortgages or charges over the Land except where the mortgagees and chargeholders have first acknowledged in writing to the Transport Agency their acceptance of this Agreement and the terms of the Encumbrance Instrument.

6. **Consents**

The Owner will obtain the written consent of any mortgagee, chargeholder or other person having an interest in the Land to this Agreement and the Encumbrance Instrument together with a registrable deed of priority in order that, upon registration, the Encumbrance Instrument shall be a first ranking charge against the Land. The consent and registrable deed of priority will be delivered to the Transport Agency within 20 Business Days of the date of the Transport Agency's request.

7. **No merger**

Except to the extent the provisions of this Agreement are repeated in the Encumbrance Instrument they will not merge in the Encumbrance Instrument but will remain in full force and effect and be operative and enforceable to the fullest extent.

8. **Notices**

8.1 **Service of notices**

Any notice or document required or authorised to be delivered or served under this Agreement may be delivered or served:

- (a) by personal delivery; or
- (b) by post; or
- (c) by facsimile,

to the address or facsimile number specified for the relevant party in the execution section of this Agreement.

8.2 Time of service

Any notice or other document will be treated as delivered or served and received by the other party:

- (a) on personal delivery;
- (b) three business days after being posted by prepaid registered post; or
- (c) on completion of an error free transmission, when sent by facsimile.


8.3 Signature of notices

Any notice or document to be delivered or served under this Agreement must be in writing and may be signed by the party or any attorney, officer, employee or solicitor for the party giving the notice, or any other person authorised by that party.

Execution

Executed as an agreement.

Wellington Regional Council by



Witness Signature
JOSEPH BOGNAR

Print Name
PROPERTY MANAGER

Occupation
WELLINGTON


Address



Authorised Signatory
David Benham

Print Name

New Zealand Transport Agency
by its Authorised Signatory



Roderick Samuel James

State Highway Manager
Wellington Region
New Zealand Transport Agency

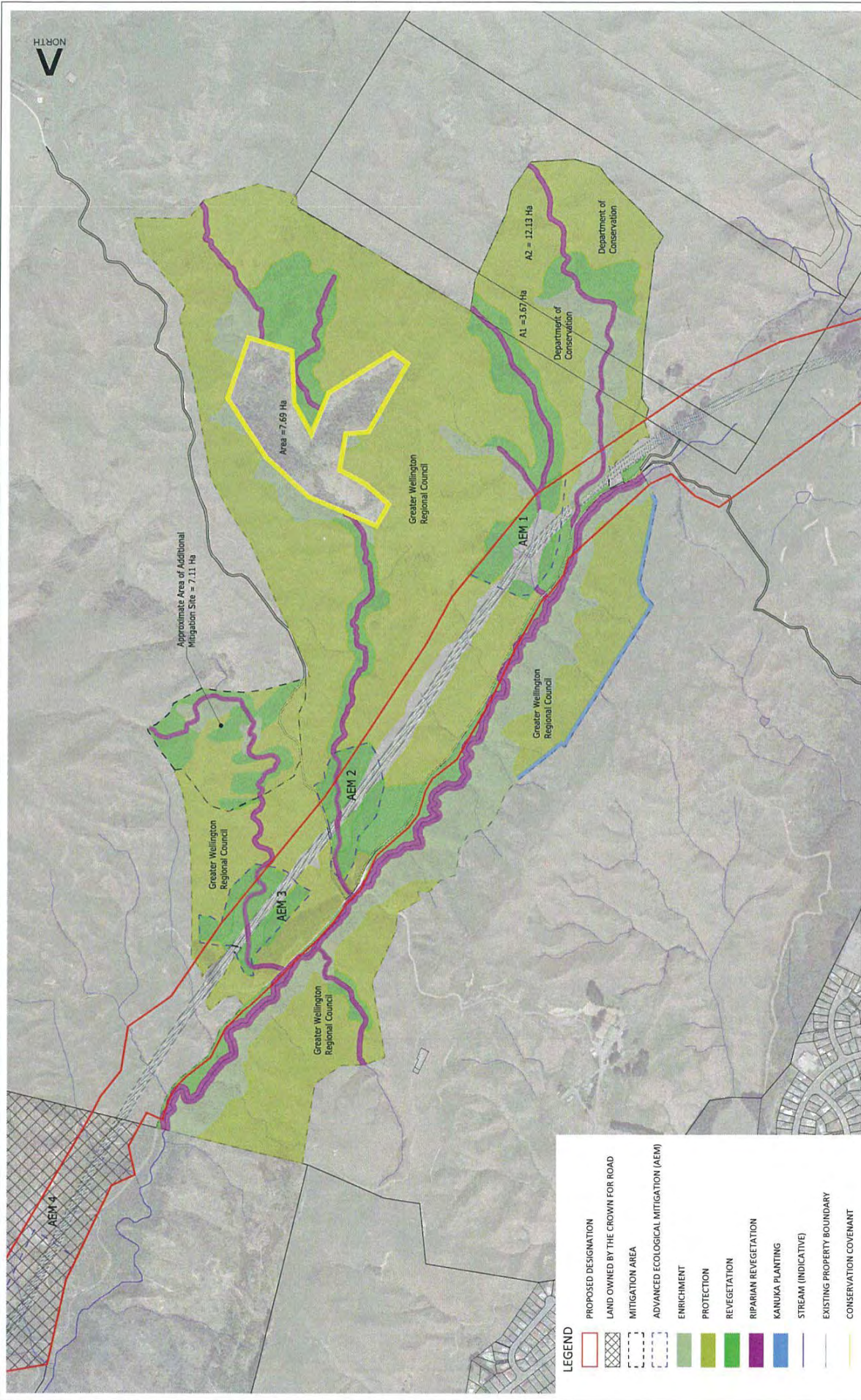
Peter Ward.
Witness Signature

Peter Ward
Print Name

Senior Project Manager
Occupation

Lower Hutt.
Address

Schedule 1: Ecological Protection Area Plan



- LEGEND**
- PROPOSED DESIGNATION
 - LAND OWNED BY THE CROWN FOR ROAD
 - MITIGATION AREA
 - ADVANCED ECOLOGICAL MITIGATION (AEM)
 - ENRICHMENT
 - PROTECTION
 - REVEGETATION
 - RIPARIAN REVEGETATION
 - KANUKA PLANTING
 - STREAM (INDICATIVE)
 - EXISTING PROPERTY BOUNDARY
 - CONSERVATION COVENANT

TRANSMISSION GULLY PROJECT

Proposed Mitigation Sites and Treatments
Duck Creek (AEM 1, 2, 3)

Status: For Information

Sheet No. SK35

Version No. 1

NZ TRANSPORT AGENCY
WAKA KOTAHU

Revision	Description	M/E	DATE
1	CONSERVATION COVENANT AND ADDITIONAL MITIGATION AREAS ADDED	M/E	19/04/12

Scale: 1:4000 @ A1, 1:8000 @ A3

Project: TRANSMISSION GULLY PROJECT

Title: Proposed Mitigation Sites and Treatments
Duck Creek (AEM 1, 2, 3)

Status: For Information

Sheet No. SK35

Version No. 1

NZ TRANSPORT AGENCY
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Revision	Description	M/E	DATE
1	CONSERVATION COVENANT AND ADDITIONAL MITIGATION AREAS ADDED	M/E	19/04/12

Scale: 1:4000 @ A1, 1:8000 @ A3

Project: TRANSMISSION GULLY PROJECT

Title: Proposed Mitigation Sites and Treatments
Duck Creek (AEM 1, 2, 3)

Status: For Information

Sheet No. SK35

Version No. 1

Schedule 2: Encumbrance Instrument

Form E

Encumbrance instrument

(Section 101 Land Transfer Act 1952)

Affected instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum

Encumbrancer

Wellington Regional Council

Encumbrancee

New Zealand Transport Agency

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

Encumbrance Memorandum Number

N/A

Nature of security

State whether sum of money, annuity or rentcharge and amount

\$

Encumbrance

Delete words in [], as appropriate

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above computer register(s) with the above sum of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in the Annexure Schedule(s) and so as to incorporate in this Encumbrance the terms and other provisions set out in the Annexure Schedule(s) for the better securing to the Encumbrancee the payment(s) secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Terms

- 1 Length of term: See paragraph 2 of the Annexure Schedule.
- 2 Payment date(s): See paragraph 3 of the Annexure Schedule.
- 3 Rate(s) of interest: [REDACTED]
- 4 Event(s) in which the sum, annuity or rentcharge becomes payable: See paragraph 3 of the Annexure Schedule.
- 5 Event(s) in which the sum, annuity or rentcharge ceases to be payable: See paragraph 3 of the Annexure Schedule.

Covenants and conditions

Continue in Annexure Schedule(s), if required

See attached annexure schedule

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

See attached annexure schedule

ANNEXURE SCHEDULE

Background

- (a) The Encumbrancer is registered as proprietor of the Land.
- (b) The Land is classified as a Recreation reserve under the Reserves Act 1977.
- (c) In accordance with sections 53 (1) (a) and 94 (1) (d) and (i) of the Reserves Act 1977, the Encumbrancer has agreed with the Encumbrancee that the Encumbrancee shall undertake the Ecological Protection Works described in paragraph 5 of this Instrument.
- (d) The Encumbrancer and the Encumbrancee have agreed to enter into this encumbrance instrument to better secure to the Encumbrancee, the observance and performance of the Encumbrancer's covenants and agreements with respect to the Land.

Covenants

1 Interpretation

In this instrument unless the context indicates otherwise:

1.1 Definitions

Agents include the Encumbrancee's employees, contractors, surveyors, engineers, consultants, licensees and invitees;

Consent Conditions means the conditions set out in the Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal;

EMMP means the Ecological Mitigation Management Plan prepared by the Encumbrancee in compliance with the Consent Conditions;

Ecological Protection Area means *[reference to surveyed area]*;

Land(s) means *[unique identifier]*, Wellington Land Registry.

1.2 Interpretation

In this Encumbrance unless the context requires otherwise or a contrary intention is expressed:

- (i) words importing a gender include all other genders;
- (ii) words in the singular number include the plural and vice versa;
- (iii) reference to the Encumbrancee includes its successors and assigns and except where inconsistent with the context, includes the Encumbrancee's Agents;
- (iv) reference to the Encumbrancer includes the Encumbrancer's executors, administrators, successors and permitted assigns;

- (v) reference to a party will mean reference to a party to this Encumbrance;
- (vi) any provision of this Encumbrance to be performed by two or more persons shall bind those persons jointly and severally;
- (vii) the illegality, invalidity or unenforceability of any provision in this Encumbrance will not affect the legality, validity or enforceability of any other provision;
- (viii) the use of the word "includes" when introducing an example does not limit the meaning of the words to which the example relates; and
- (ix) headings in this Encumbrance are included for ease of reference only and will not affect the construction or interpretation of this Encumbrance.

2 Term of Encumbrance

The Encumbrancer encumbers the Land for the benefit of the Encumbrancee and no power is implied for the Encumbrancer to terminate this instrument or unilaterally discharge itself of the obligations set out in this instrument, it being the intention of the parties that the obligations and rights described in this instrument will continue in perpetuity unless discharged by the Encumbrancee.

3 Rent Charge

The Encumbrancer will pay to the Encumbrancee the annual rent charge to be paid on 1 January each year of the term of this encumbrance, if demanded, but no such demand will be made while the Encumbrancer duly observes and performs the obligations of the Encumbrancer recorded in paragraph 4 of this instrument.

4 Encumbrancer's Obligations

4.1 Initial Grant

From the date of first planting until three (3) years following the date of last planting, the Encumbrancee shall have the right:

- (i) to pass and re-pass over the Land at all times by day and by night with or without vehicles, machinery and equipment for the purpose of accessing the Ecological Protection Area by any existing road or track on the Land and otherwise by any other reasonable route; and
- (ii) to use and occupy of the Ecological Protection Area to undertake the Ecological Protection Works described in paragraph 5 of this Instrument,

provided that the Encumbrancee shall give to the Encumbrancer reasonable notice prior to entry, use or occupation of the land.

4.2 Subsequent Grant

After the initial three (3) year term referred to in paragraph 4.1, the Encumbrancee shall have the right:

- (iii) to pass and re-pass over the Land for the purpose of accessing the Ecological Protection Area by any existing road or track on the Land and otherwise by any other reasonable route agreed with the Encumbrancer; and
- (iv) to use and occupy the Ecological Protection Area to undertake maintenance of the Ecological Protection Areas in compliance with the Consent Conditions (including

any maintenance and/or revegetation works required as a result of the 10 year monitoring review described in the Consent Conditions;

provided that the Encumbrancee shall first request the Encumbrancer's consent prior to entry, use or occupation, such consent not to be unreasonably withheld.

4.3 Non-interference – first three (3) years

The Encumbrancer will not do anything whereby the rights, powers and licences granted to the Encumbrancee under this Encumbrance Instrument may be interfered with or affected in any way and in particular, but without limitation, from the date of first planting until three (3) years following the date of last planting, the Encumbrancer will not:

- (i) fell any trees in, remove any planting or improvement from or make any alteration or addition to, the Ecological Protection Area; and
- (ii) undertake or carry out any other activity (including fencing work, horticultural spraying, earthworks, cultivation, blasting, cutting trees or vegetation or burning off) on the Ecological Protection Area or in such proximity to the Ecological Protection Area which in each case could reasonably be expected to damage or endanger any part of the Ecological Protection Area or the Ecological Protection Works or which could prevent or restrict the Encumbrancee from carrying out the Ecological Protection Works.

4.4 Non-interference after three (3) years

- (a) Subsequent to the said period of three (3) years from the date of last planting by the Encumbrancee, the Encumbrancer will preserve, enhance and protect the Ecological Protection Area.
- (b) Except for the purposes of preserving, enhancing or protecting the Ecological Protection Area or for the protection of the health and safety of its employees or contractors or the visitors to the Ecological Protection Area, the Encumbrancer will not:
 - (i) fell any trees in, remove any planting or improvement from or make any alteration or addition to, the Ecological Protection Area; and
 - (ii) undertake or carry out any other activity (including fencing work, horticultural spraying, earthworks, cultivation, blasting, cutting trees or vegetation or burning off) on the Ecological Protection Area or in such proximity to the Ecological Protection Area which in each case could reasonably be expected to damage or endanger any part of the Ecological Protection Area or the Ecological Protection Works.

4.5 Notice on Disposal

If the Encumbrancer wishes to sell or otherwise dispose of the Land, the Encumbrancer must notify the Encumbrancee of the sale or disposal and provide the Encumbrancee with the name and contact address of the new owner, lessee or licensee.

4.6 Public Access

The Encumbrancer shall take all reasonable steps to ensure that its invitees are aware of the terms of this encumbrance and in particular, clauses 4.3 and 4.4.

4.7 Indemnity

The Encumbrancer indemnifies the Encumbrancee to the fullest extent permitted by law against all claims, actions, demands, losses, damages, costs and expenses arising as a result of the Encumbrancer's failure to comply with its obligations under this instrument.

This indemnity is subject to the Encumbrancee's obligation to mitigate against such costs.

4.8 Remedy

If the Encumbrancee causes or permits any breach of the obligations set out in paragraph 5, the Encumbrancer will be entitled (at the Encumbrancee's cost) to take all reasonable steps to abate or remedy the breach (in addition to any other remedies that may be available to the Encumbrancer under this instrument or at law). In exercising its rights under this paragraph 4.8, the Encumbrancer shall take reasonable steps to mitigate the costs it incurs. In the absence of negligence, the Encumbrancer will not be liable to the Encumbrancee, whether in contract, tort or otherwise, for any loss, compensation, damage or expenses incurred or suffered by the Encumbrancee as a consequence of the Encumbrancer exercising its rights under this paragraph 4.8.

5 Ecological Protection Works

- (a) The Encumbrancee may undertake the following works on the Ecological Protection Area:
- (i) Active or passive restoration of vegetation and associated ongoing management which may include:
 - (A) Retiring land from farming to allow natural regeneration;
 - (B) Retiring or restoring pioneer shrubland or undergoing enrichment planting in these areas to direct succession toward coastal lowland podocarp broadleaved forest appropriate for the site;
 - (C) Retiring grassed slopes, and river flats and stream banks in pasture and undergoing revegetation in these areas to commence successions necessary to develop into coastal lowland podocarp broadleaved forest appropriate for the site.
 - (ii) Stream mitigation works including enriching riparian habitat and enhancing fish passage.
 - (iii) Construction of fences described in paragraph 5(b)(vi) below.
- (b) In undertaking the works described in paragraph (a) above, the Encumbrancee shall comply with the:
- (i) The EMMP; and
 - (ii) The Consent Conditions,
- in particular and without limitation:
- (iii) The felling, removal, burning or taking of any native trees, shrubs or plants or native fauna shall only be undertaken in accordance with the EMMP;
 - (iv) In undertaking any planting of trees, shrubs or plants the Encumbrancee shall, to the extent practicable, source specimens from the ecological district within which the Land is situated;
 - (v) The Encumbrancee shall take reasonable steps to prevent the introduction of any noxious substances or substances otherwise injurious to plant life (except in the control of pests);
 - (vi) The Encumbrancee shall, to the extent necessary in order to comply with the Consent Conditions and otherwise in consultation with the Encumbrancer, erect fencing on the boundary of the Ecological Protection Area in order to both clearly

delineate the Ecological Protection Area from the surrounding land and to protect the Ecological Protection Area from stock;

- (vii) The Encumbrancee shall control deer, goats, pigs, and weeds to levels that are necessary to achieve the Consent Conditions and to prevent significant loss of existing natural values;
 - (viii) The Encumbrancee shall manage all weeds and pests on the Ecological Protection Area to the extent required by any statute and in particular, shall comply with the provisions of, and any notices given under the Biosecurity Act 1993 and the Wild Animal Control Act 1977;
 - (ix) Enrichment planting shall include planting of future canopy species, for example: Rewarewa, Titoki, Kowhai, Kohekohe, Nikau, Pigeonwood, Tawa, and Podocarps);
 - (x) Revegetation shall include standard mass planting in pasture using native pioneer species, for example: Tauhinu, Cottonwood, Coprosma, Hebe, Kanuka, Tarata, Ngaio), followed by enrichment with future canopy species;
 - (xi) Riparian revegetation shall include using rapid growing and strongly rooted native pioneer species suited to riparian environments, for example: Toetoe, Flax, Kowhai, Cabbage Tree, Tutu, Kohuhu, Wineberry, with some future canopy species interspersed, for example: Kahikatea, Pukatea, Swamp maire; and
 - (xii) Kanuka planting shall include mass planting of Kanuka in areas where this would be the normal successional pattern.
- (c) If the Encumbrancer causes or permits any breach of the obligations set out in paragraph 4, the Encumbrancee will be entitled (at the Encumbrancer's cost) to take all reasonable steps to abate or remedy the breach (in addition to any other remedies that may be available to the Encumbrancee under this instrument or at law). The steps may include, but are not limited to, the removal of any structure, vehicle, crops, stock or that the Encumbrancee considers necessary for the protection of any part of the Ecological Protection Area and the Ecological Protection Works. In exercising its rights under this paragraph 5(c), the Encumbrancee shall take reasonable steps to mitigate the costs it incurs. In the absence of negligence, the Encumbrancee will not be liable to the Encumbrancer, whether in contract, tort or otherwise, for any loss, compensation, damage or expenses incurred or suffered by the Encumbrancer as a consequence of the Encumbrancee exercising its rights under this paragraph 5(c).
- (d) The Encumbrancee indemnifies the Encumbrancer to the fullest extent permitted by law against all claims, actions, demands, losses, damages, costs and expenses arising as a result of the Encumbrancee's failure to comply with its obligations under this instrument. This indemnity is subject to the Encumbrancer's obligation to mitigate against such costs.

6 Modification of statutory provisions

Sections 203 and 204 of the Property law Act 2007 shall apply to this encumbrance but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent-chargee):

- i. The Encumbrancee shall be entitled to none of the powers and remedies given to mortgagees and encumbrancee by the Land Transfer Act 1952 and the Property Law Act 2007; and
- ii. No covenants on the part of the Encumbrancer and the Encumbrancer's successors in title are implied in this encumbrance other than the covenants for further assurance implied by section 154 of the Land Transfer Act 1952.

Agreement

relating to

Grant of Encumbrance

Her Majesty the Queen

Owner

and

New Zealand Transport Agency

Transport Agency

and

Wellington Regional Council

Administering Body

Date

28 July 2019

BELL GULLY

WELLINGTON 171 FEATHERSTON STREET
P O BOX 1291, WELLINGTON 6140, DX SX11164, NEW ZEALAND
TEL 64 4 915 6800 FAX 64 4 915 6810



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This Agreement is made on 28 July 2014
between (1) Her Majesty the Queen (Owner)
and (2) New Zealand Transport Agency (Transport Agency)
and (3) Wellington Regional Council (Administering Body)

Introduction

- A. The Owner is the registered proprietor of the Land.
- B. The Land is classified as a Recreation Reserve under the Reserves Act 1977.
- C. The Land is administered by the Administering Body.
- D. In compliance with the Consent Conditions, the Transport Agency wishes to undertake certain ecological protection and mitigation works on the Ecological Protection Areas.
- E. In order to protect and preserve these Ecological Protection Areas in perpetuity, the Owner has agreed to grant the Transport Agency an encumbrance over the Land on the terms and conditions set out in this Agreement.

It is agreed

1. Definitions and Interpretation

1.1 Definitions

In this Agreement unless the context requires otherwise or a contrary intention is expressed:

Agents include the Transport Agency's employees, contractors, surveyors, engineers, consultants, licensees and invitees;

Agreement means this agreement and includes all the schedules;

Business Day means a day that is not a Saturday, Sunday or statutory holiday in Wellington;

Consent Conditions means the conditions set out in the Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal;

Ecological Protection Area means the Ecological Protection Area shown on the **Ecological Protection Area Plan** attached as Schedule 1;

Ecological Protection Works means the works described in paragraph 5 of the Encumbrance Instrument;

Encumbrance Instrument means the Encumbrance Instrument attached as Schedule 2 (as it may be subsequently amended by agreement between the Owner and the Transport Agency or as may be required to put the Encumbrance Instrument in registrable form);

Investigations means the inspections, appraisals, evaluations and surveys (including placing survey pegs or markers on the Land); and

Land means the land described in unique identifier 232279 (Wellington Registry) and having an area of 280.4828 hectares being legally described as Lot 2 Deposited Plan 66905 and Section 25-30 Horokiwi Road District and Part Section 31 Horokiwi Road District.

1.2 Interpretation

In this Agreement unless the context requires otherwise or a contrary intention is expressed:

- (a) words importing a gender include all other genders;
- (b) words in the singular number include the plural and vice versa;
- (c) reference to the Transport Agency includes its successors and assigns and except where inconsistent with the context, includes the Transport Agency's Agents;
- (d) reference to the Owner includes the Owner's executors, administrators, successors and permitted assigns;
- (e) reference to a party will mean reference to a party to this Agreement;
- (f) any provision of this Agreement to be performed by two or more persons shall bind those persons jointly and severally;
- (g) the illegality, invalidity or unenforceability of any provision in this Agreement will not affect the legality, validity or enforceability of any other provision;
- (h) the use of the word "includes" when introducing an example does not limit the meaning of the words to which the example relates;
- (i) headings in this Agreement are included for ease of reference only and will not affect the construction or interpretation of this Agreement; and
- (j) the references in the Encumbrance Instrument to the terms Encumbrancer and Encumbrancee refer respectively to the Owner and the Transport Agency.

1.3 Business Day

If anything under this Agreement is required at a time and to be completed on a day that is not a Business Day then it will be deemed to be required to be completed at the same time on the next Business Day.

2. Agreement to Grant Encumbrance

2.1 Grant

In consideration of the Transport Agency undertaking the Ecological Protection Works (such works being consistent with sections 53 (1) (a) and 94 (1) (d) and (i) of the Reserves Act 1977), the Owner agrees to grant the Transport Agency an encumbrance over the Ecological

Protection Area on the terms and conditions set out in this Agreement and the Encumbrance Instrument.

2.2 Contract

From the date of execution of this Agreement, the Owner and the Transport Agency will become immediately bound as encumbrancer and encumbrancee respectively on the terms set out in this Agreement and the Encumbrance Instrument.

2.3 Registration of Encumbrance Instrument

The Owner will sign all documentation and undertake all acts required to enable the Transport Agency to register the Encumbrance Instrument as a first ranking charge against the title to the Land within 20 Business Days of being requested to do so by the Transport Agency. The Owner agrees to sign all documents and plans and do all acts necessary (including obtaining any consent or approval referred to in clause 6) to enable the Transport Agency to register the Encumbrance Instrument as a first ranking charge against the title to the Land.

2.4 Before Encumbrance Instrument executed

At any time after execution of this Agreement and before the Encumbrance Instrument is executed by the parties and registered, the Transport Agency may enter on to the Land and exercise any of its rights under this Agreement and the Encumbrance Instrument.

3. Investigations

3.1 Survey

- (a) Any time following execution of this Agreement by both parties, the Transport Agency shall be entitled to undertake a survey of the Ecological Protection Area to establish the location and size of the Ecological Protection Area and prepare a plan in the form required by the relevant authorities and shall lodge that plan (the Encumbrance Plan) for approval and deposit with Land Information New Zealand.
- (b) The Owner acknowledges that the Ecological Protection Area Plan is indicative only and that the eventual surveyed location and size of the Ecological Protection Area may differ.
- (c) Subject to clause 3.3, all measurements and areas relating to the Ecological Protection Area will be subject to any variation(s) of area and dimension which may be necessary upon checking of the surveyed Ecological Protection Area by the relevant authorities (including Land Information New Zealand).

3.2 Access

The Owner agrees and acknowledges that from the date of this Agreement, the Transport Agency may with their vehicles, machinery and other equipment at any reasonable times access the Land for the purpose of carrying out the Investigations and the Ecological Protection Works. Access shall be by prior consultation with the Administering Body.

3.3 Material change

If, following the Investigations, there is to be a material change in the location or size of the Ecological Protection Area from that shown on the Ecological Protection Area Plan, the

Transport Agency will obtain the consent of the Owner (which is not to be unreasonably withheld).

4. Obligations of Owner

The Owner acknowledges that the Ecological Protection Area is to be preserved and protected as required by the Consent Conditions and described in the Encumbrance Instrument.

5. No disposals or assignment

5.1 Assignment of Owner

Prior to registration of the Encumbrance Instrument, the Owner will not sell or transfer the Land or assign this Agreement except where the Owner first obtains from the transferee or assignee a deed of covenant acceptable to the Transport Agency under which that assignee or transferee is bound to perform the Owner's obligations under this Agreement and the Encumbrance Instrument.

5.2 Chargeable consent

Prior to registration of the Encumbrance Instrument the Owner will not create mortgages or charges over the Land except where the mortgagees and chargeholders have first acknowledged in writing to the Transport Agency their acceptance of this Agreement and the terms of the Encumbrance Instrument.

6. Consents

The Owner will obtain the written consent of any mortgagee, chargeholder or other person having an interest in the Land to this Agreement and the Encumbrance Instrument together with a registrable deed of priority in order that, upon registration, the Encumbrance Instrument shall be a first ranking charge against the Land. The consent and registrable deed of priority will be delivered to the Transport Agency within 20 Business Days of the date of the Transport Agency's request.

7. No merger

Except to the extent the provisions of this Agreement are repeated in the Encumbrance Instrument they will not merge in the Encumbrance Instrument but will remain in full force and effect and be operative and enforceable to the fullest extent.

8. Notices

8.1 Service of notices

Any notice or document required or authorised to be delivered or served under this Agreement may be delivered or served:

- (a) by personal delivery; or
- (b) by post; or



(c) by facsimile,

to the address or facsimile number specified for the relevant party in the execution section of this Agreement.

8.2 Time of service

Any notice or other document will be treated as delivered or served and received by the other party:

- (a) on personal delivery;
- (b) three business days after being posted by prepaid registered post; or
- (c) on completion of an error free transmission, when sent by facsimile.

8.3 Signature of notices

Any notice or document to be delivered or served under this Agreement must be in writing and may be signed by the party or any attorney, officer, employee or solicitor for the party giving the notice, or any other person authorised by that party.


Execution

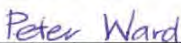
Executed as an agreement.

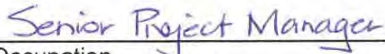
New Zealand Transport Agency
by its Authorised Signatory

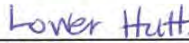


Roderick Samuel James
State Highway Manager
Wellington Region
New Zealand Transport Agency



Witness Signature


Print Name


Occupation


Address



Wellington Regional Council by



Witness Signature

JOSEF BOGNAR

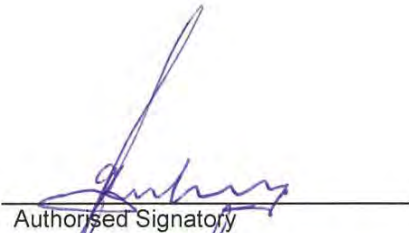
Print Name

PROPERTY MANAGER

Occupation

WELLINGTON.

Address



Authorised Signatory

David Benham

Print Name

Her Majesty the Queen

Signed for the Minister of Conservation pursuant to an authority delegated by the Minister of Conservation dated 29 August 2013 by:



Reg Kemper

**Director Conservation Partnerships
Lower North Island Region
Department of Conservation**



Witness Signature

DAVID BISHOP

Print Name

SLM Advisor
Wellington Service Centre
Department of Conservation

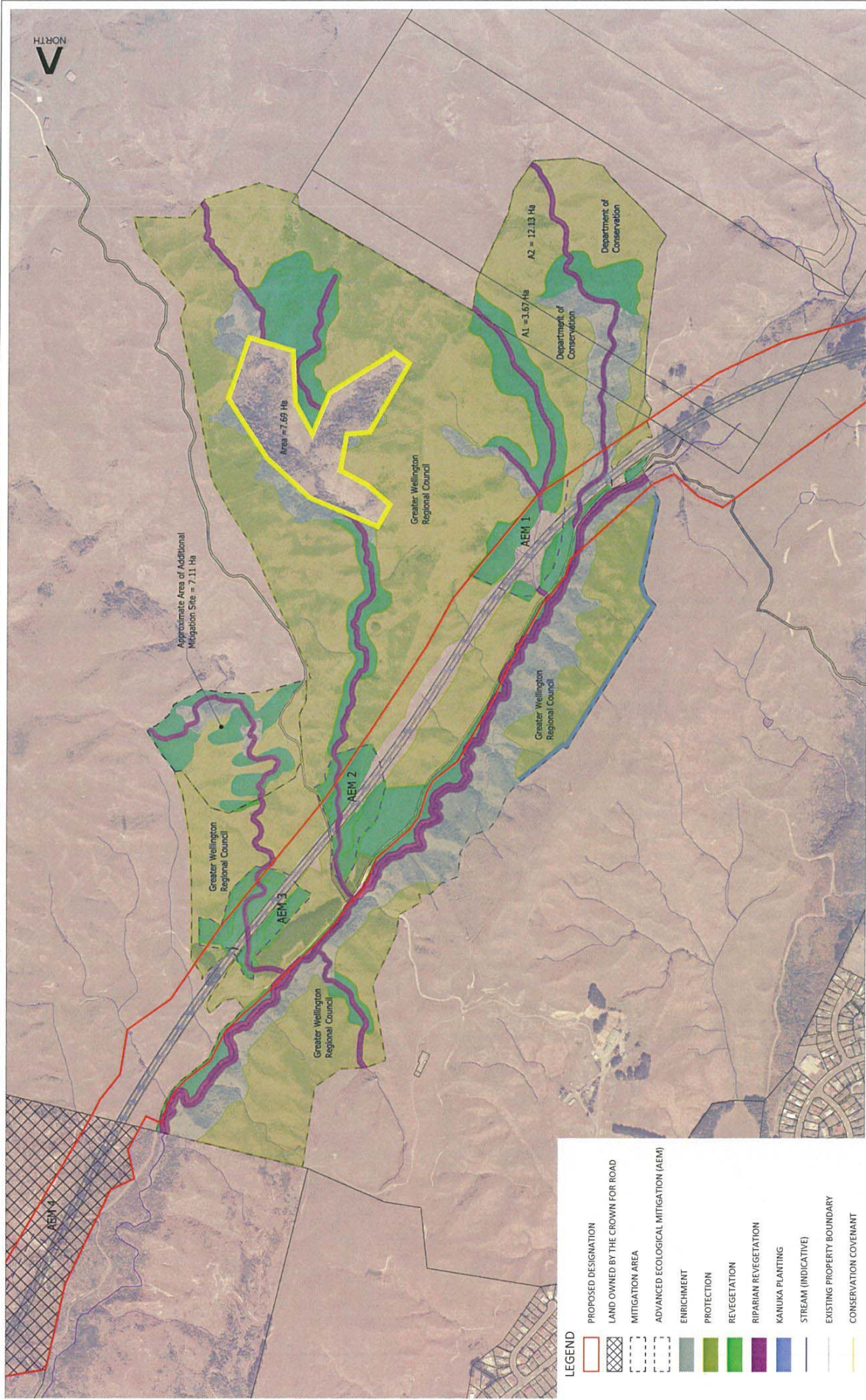
Occupation

National Office, Wellington

Address 18-32 Manners Street
Wellington

Schedule 1: Ecological Protection Area Plan





LEGEND

- PROPOSED DESIGNATION
- LAND OWNED BY THE CROWN FOR ROAD
- MITIGATION AREA
- ADVANCED ECOLOGICAL MITIGATION (AEM)
- ENRICHMENT
- PROTECTION
- REVEGETATION
- RIPARIAN REVEGETATION
- KAMUKA PLANTING
- STREAM (INDICATIVE)
- EXISTING PROPERTY BOUNDARY
- CONSERVATION COVENANT



Revision	Attachment	DATE	APPROVED DATE
1	CONSERVATION COVENANT AND ADDITIONAL MITIGATION AREAS ADDED	18/04/12	



Project: **TRANSMISSION GULLY PROJECT**

Title: **Proposed Mitigation Sites and Treatments Duck Creek (AEM 1, 2, 3)**

Status: **For Information**
 Sheet No. **SK35**
 Version No. **1**

Schedule 2: Encumbrance Instrument

Form E

Encumbrance instrument

(Section 101 Land Transfer Act 1952)

Affected instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum

Encumbrancer

Her Majesty the Queen

Encumbrancee

New Zealand Transport Agency

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

Encumbrance Memorandum Number

N/A

Nature of security

State whether sum of money, annuity or rentcharge and amount

\$

Encumbrance

Delete words in [], as appropriate

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above computer register(s) with the above sum of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in the Annexure Schedule(s) and so as to incorporate in this Encumbrance the terms and other provisions set out in the Annexure Schedule(s) for the better securing to the Encumbrancee the payment(s) secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Terms

- 1 Length of term: See paragraph 2 of the Annexure Schedule.
- 2 Payment date(s): See paragraph 3 of the Annexure Schedule.
- 3 Rate(s) of interest: [REDACTED]
- 4 Event(s) in which the sum, annuity or rentcharge becomes payable: See paragraph 3 of the Annexure Schedule.
- 5 Event(s) in which the sum, annuity or rentcharge ceases to be payable: See paragraph 3 of the Annexure Schedule.

Covenants and conditions

Continue in Annexure Schedule(s), if required

See attached annexure schedule

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

See attached annexure schedule

ANNEXURE SCHEDULE

Background

- (a) The Encumbrancer is registered as proprietor of the Land.
- (b) The Land is classified as a Recreation reserve under the Reserves Act 1977.
- (c) In accordance with sections 53 (1) (a) and 94 (1) (d) and (i) of the Reserves Act 1977, the Encumbrancer has agreed with the Encumbrancee that the Encumbrancee shall undertake the Ecological Protection Works described in paragraph 5 of this Instrument.
- (d) The Encumbancer and the Encumbrancee have agreed to enter into this encumbrance instrument to better secure to the Encumbrancee, the observance and performance of the Encumbrancer's covenants and agreements with respect to the Land.

Covenants

1 Interpretation

In this instrument unless the context indicates otherwise:

1.1 Definitions

Agents include the Encumbrancee's employees, contractors, surveyors, engineers, consultants, licensees and invitees;

Consent Conditions means the conditions set out in the Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal;

EMMP means the Ecological Mitigation Management Plan prepared by the Encumbrancee in compliance with the Consent Conditions;

Ecological Protection Area means [*reference to surveyed area*];

Land(s) means [*unique identifier*], Wellington Land Registry.

1.2 Interpretation

In this Encumbrance unless the context requires otherwise or a contrary intention is expressed:

- (i) words importing a gender include all other genders;
- (ii) words in the singular number include the plural and vice versa;
- (iii) reference to the Encumbrancee includes its successors and assigns and except where inconsistent with the context, includes the Encumbrancee's Agents;
- (iv) reference to the Encumbrancer includes the Encumbrancer's executors, administrators, successors and permitted assigns;

- (v) reference to a party will mean reference to a party to this Encumbrance;
- (vi) any provision of this Encumbrance to be performed by two or more persons shall bind those persons jointly and severally;
- (vii) the illegality, invalidity or unenforceability of any provision in this Encumbrance will not affect the legality, validity or enforceability of any other provision;
- (viii) the use of the word "includes" when introducing an example does not limit the meaning of the words to which the example relates; and
- (ix) headings in this Encumbrance are included for ease of reference only and will not affect the construction or interpretation of this Encumbrance.

2 Term of Encumbrance

The Encumbrancer encumbers the Land for the benefit of the Encumbrancee and no power is implied for the Encumbrancer to terminate this instrument or unilaterally discharge itself of the obligations set out in this instrument, it being the intention of the parties that the obligations and rights described in this instrument will continue in perpetuity unless discharged by the Encumbrancee.

3 Rent Charge

The Encumbrancer will pay to the Encumbrancee the annual rent charge to be paid on 1 January each year of the term of this encumbrance, if demanded, but no such demand will be made while the Encumbrancer duly observes and performs the obligations of the Encumbrancer recorded in paragraph 4 of this instrument.

4 Encumbrancer's Obligations

4.1 Initial Grant

From the date of first planting until three (3) years following the date of last planting, the Encumbrancee shall have the right:

- (i) to pass and re-pass over the Land at all times by day and by night with or without vehicles, machinery and equipment for the purpose of accessing the Ecological Protection Area by any existing road or track on the Land and otherwise by any other reasonable route; and
- (ii) to use and occupy of the Ecological Protection Area to undertake the Ecological Protection Works described in paragraph 5 of this Instrument,

provided that the Encumbrancee shall give to the Encumbrancer reasonable notice prior to entry, use or occupation of the land.

4.2 Subsequent Grant

After the initial three (3) year term referred to in paragraph 4.1, the Encumbrancee shall have the right:

- (iii) to pass and re-pass over the Land for the purpose of accessing the Ecological Protection Area by any existing road or track on the Land and otherwise by any other reasonable route agreed with the Encumbrancer; and
- (iv) to use and occupy the Ecological Protection Area to undertake maintenance of the Ecological Protection Areas in compliance with the Consent Conditions (including

any maintenance and/or revegetation works required as a result of the 10 year monitoring review described in the Consent Conditions;

provided that the Encumbrancee shall first request the Encumbrancer's consent prior to entry, use or occupation, such consent not to be unreasonably withheld.

4.3 Non-interference – first three (3) years

The Encumbrancer will not do anything whereby the rights, powers and licences granted to the Encumbrancee under this Encumbrance Instrument may be interfered with or affected in any way and in particular, but without limitation, from the date of first planting until three (3) years following the date of last planting, the Encumbrancer will not:

- (i) fell any trees in, remove any planting or improvement from or make any alteration or addition to, the Ecological Protection Area; and
- (ii) undertake or carry out any other activity (including fencing work, horticultural spraying, earthworks, cultivation, blasting, cutting trees or vegetation or burning off) on the Ecological Protection Area or in such proximity to the Ecological Protection Area which in each case could reasonably be expected to damage or endanger any part of the Ecological Protection Area or the Ecological Protection Works or which could prevent or restrict the Encumbrancee from carrying out the Ecological Protection Works.

4.4 Non-interference after three (3) years

- (a) Subsequent to the said period of three (3) years from the date of last planting by the Encumbrancee, the Encumbrancer will preserve, enhance and protect the Ecological Protection Area.
- (b) Except for the purposes of preserving, enhancing or protecting the Ecological Protection Area or for the protection of the health and safety of its employees or contractors or the visitors to the Ecological Protection Area, the Encumbrancer will not:
 - (i) fell any trees in, remove any planting or improvement from or make any alteration or addition to, the Ecological Protection Area; and
 - (ii) undertake or carry out any other activity (including fencing work, horticultural spraying, earthworks, cultivation, blasting, cutting trees or vegetation or burning off) on the Ecological Protection Area or in such proximity to the Ecological Protection Area which in each case could reasonably be expected to damage or endanger any part of the Ecological Protection Area or the Ecological Protection Works.

4.5 Notice on Disposal

If the Encumbrancer wishes to sell or otherwise dispose of the Land, the Encumbrancer must notify the Encumbrancee of the sale or disposal and provide the Encumbrancee with the name and contact address of the new owner, lessee or licensee.

4.6 Public Access

The Encumbrancer shall take all reasonable steps to ensure that its invitees are aware of the terms of this encumbrance and in particular, clauses 4.3 and 4.4.

4.7 Indemnity

The Encumbrancer indemnifies the Encumbrancee to the fullest extent permitted by law against all claims, actions, demands, losses, damages, costs and expenses arising as a result of the Encumbrancer's failure to comply with its obligations under this instrument. This indemnity is subject to the Encumbrancee's obligation to mitigate against such costs.

4.8 Remedy

If the Encumbrancee causes or permits any breach of the obligations set out in paragraph 5, the Encumbrancer will be entitled (at the Encumbrancee's cost) to take all reasonable steps to abate or remedy the breach (in addition to any other remedies that may be available to the Encumbrancer under this instrument or at law). In exercising its rights under this paragraph 4.8, the Encumbrancer shall take reasonable steps to mitigate the costs it incurs. In the absence of negligence, the Encumbrancer will not be liable to the Encumbrancee, whether in contract, tort or otherwise, for any loss, compensation, damage or expenses incurred or suffered by the Encumbrancee as a consequence of the Encumbrancer exercising its rights under this paragraph 4.8.

5 Ecological Protection Works

- (a) The Encumbrancee may undertake the following works on the Ecological Protection Area:
 - (i) Active or passive restoration of vegetation and associated ongoing management which may include:
 - (A) Retiring land from farming to allow natural regeneration;
 - (B) Retiring or restoring pioneer shrubland or undergoing enrichment planting in these areas to direct succession toward coastal lowland podocarp broadleaved forest appropriate for the site;
 - (C) Retiring grassed slopes, and river flats and stream banks in pasture and undergoing revegetation in these areas to commence successions necessary to develop into coastal lowland podocarp broadleaved forest appropriate for the site.
 - (ii) Stream mitigation works including enriching riparian habitat and enhancing fish passage.
 - (iii) Construction of fences described in paragraph 5(b)(vi) below.
- (b) In undertaking the works described in paragraph (a) above, the Encumbrancee shall comply with the:
 - (i) The EMMP; and
 - (ii) The Consent Conditions,in particular and without limitation:
 - (iii) The felling, removal, burning or taking of any native trees, shrubs or plants or native fauna shall only be undertaken in accordance with the EMMP;
 - (iv) In undertaking any planting of trees, shrubs or plants the Encumbrancee shall, to the extent practicable, source specimens from the ecological district within which the Land is situated;
 - (v) The Encumbrancee shall take reasonable steps to prevent the introduction of any

noxious substances or substances otherwise injurious to plant life (except in the control of pests);

- (vi) The Encumbrancee shall, to the extent necessary in order to comply with the Consent Conditions and otherwise in consultation with the Encumbrancer, erect fencing on the boundary of the Ecological Protection Area in order to both clearly delineate the Ecological Protection Area from the surrounding land and to protect the Ecological Protection Area from stock;
 - (vii) The Encumbrancee shall control deer, goats, pigs, and weeds to levels that are necessary to achieve the Consent Conditions and to prevent significant loss of existing natural values;
 - (viii) The Encumbrancee shall manage all weeds and pests on the Ecological Protection Area to the extent required by any statute and in particular, shall comply with the provisions of, and any notices given under the Biosecurity Act 1993 and the Wild Animal Control Act 1977;
 - (ix) Enrichment planting shall include planting of future canopy species, for example: Rewarewa, Titoki, Kowhai, Kohekohe, Nikau, Pigeonwood, Tawa, and Podocarps);
 - (x) Revegetation shall include standard mass planting in pasture using native pioneer species, for example: Tauhinu, Cottonwood, Coprosma, Hebe, Kanuka, Tarata, Ngaio), followed by enrichment with future canopy species;
 - (xi) Riparian revegetation shall include using rapid growing and strongly rooted native pioneer species suited to riparian environments, for example: Toetoe, Flax, Kowhai, Cabbage Tree, Tutu, Kohuhu, Wineberry, with some future canopy species interspersed, for example: Kahikatea, Pukatea, Swamp maire; and
 - (xii) Kanuka planting shall include mass planting of Kanuka in areas where this would be the normal successional pattern.
- (c) If the Encumbrancer causes or permits any breach of the obligations set out in paragraph 4, the Encumbrancee will be entitled (at the Encumbrancer's cost) to take all reasonable steps to abate or remedy the breach (in addition to any other remedies that may be available to the Encumbrancee under this instrument or at law). The steps may include, but are not limited to, the removal of any structure, vehicle, crops, stock or that the Encumbrancee considers necessary for the protection of any part of the Ecological Protection Area and the Ecological Protection Works. In exercising its rights under this paragraph 5(c), the Encumbrancee shall take reasonable steps to mitigate the costs it incurs. In the absence of negligence, the Encumbrancee will not be liable to the Encumbrancer, whether in contract, tort or otherwise, for any loss, compensation, damage or expenses incurred or suffered by the Encumbrancer as a consequence of the Encumbrancee exercising its rights under this paragraph 5(c).
- (d) The Encumbrancee indemnifies the Encumbrancer to the fullest extent permitted by law against all claims, actions, demands, losses, damages, costs and expenses arising as a result of the Encumbrancee's failure to comply with its obligations under this instrument. This indemnity is subject to the Encumbrancer's obligation to mitigate against such costs.

6 Modification of statutory provisions

Sections 203 and 204 of the Property law Act 2007 shall apply to this encumbrance but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent-chargee):

- i. The Encumbrancee shall be entitled to none of the powers and remedies given to mortgagees and encumbrancee by the Land Transfer Act 1952 and the Property Law Act 2007; and

- ii. No covenants on the part of the Encumbrancer and the Encumbrancer's successors in title are implied in this encumbrance other than the covenants for further assurance implied by section 154 of the Land Transfer Act 1952.



Appendix 10: KiwiRail Deeds of Grant



L60806

DATED

14th May

2004

TRANZ RAIL LIMITED

TO

TRANSIT NEW ZEALAND

GRANT OF RIGHT TO erect an overbridge
on Railway land at MacKays Crossing,
Paekakariki.

Grant No. 60806

To NZ
Rail Ltd

THIS AGREEMENT made the 14th day of May two thousand and four between TRANZ-RAIL LIMITED being a duly incorporated Company having its registered office in Wellington (hereinafter with its successors and assigns referred to as "the Grantor") of the one part and TRANSIT NEW ZEALAND hereinafter referred to as "the Grantee" which expression shall include the successors, executors, administrators and permitted assigns of the Grantee) of the other part WITNESSETH that in exercise of the power held by the Grantor pursuant to the lease dated 20 December 1991 and a variation of lease dated 28 April 1993 and in consideration of the payments to be made as hereinafter provided and subject to the terms covenants and conditions herein contained or implied and on the part of the Grantee to be observed and performed the Grantor hereby GRANTS to the Grantee and the servants, agents, workmen, invitees and licensees of the Grantee for the term of one (1) year from and inclusive of the first day of April two thousand and four unless sooner determined under any of the provisions hereinafter contained and so on from year to year unless or until determined under any of the said provisions the right to erect, use and maintain an overbridge on Railway land at MacKays Crossing, Paekakariki at approximately 42.120 kilometres on the railway metrage as more particularly shown on the plan hereto attached.

AND the Grantee hereby covenants with the Grantor as follows:

- 1 a) TO pay the Grantor the sum of "ten cents" per annum if demanded.
- b) NOT to proceed with the construction of the overbridge without first obtaining in writing from the Grantor approval of the location of the overbridge piers and the approaches to the overbridge and the clearances from railway buildings or structures and the clearances above the railway lines AND the Grantee shall submit to the Grantor before the work is commenced detailed plans and specifications of the overbridge duly certified by a Civil Engineer registered under the provisions of the Engineer's Registration Act 1924 together with plans and specifications for temporary structure and to pay to the Grantor the Grantors reasonable costs for appraising and approving such plans and specifications PROVIDED ALWAYS HOWEVER that the sole responsibility for the erection, construction and materials therein and the design and safety of the overbridge and any associated temporary works shall always be on the Grantee.
- c) TO comply with any legislation, law or statute governing the design, erection, maintenance, use and construction of the overbridge and to submit to the Grantor proof that any necessary consent or approval required from any authority has been obtained including but not limited to consent and compliance certificates as specified in the Buildings Act 1991.
- d) TO erect and maintain the overbridge over railway land together with any supports carrying the overbridge at the Grantee's own cost and to the entire satisfaction of the said Grantor PROVIDED THAT if the Grantor decides that the whole or any part of the work shall be done by or under the supervision of railway workmen then the Grantee shall pay to Tranz Rail Limited the cost of such work or supervision PROVIDED ALWAYS that such work shall not begin in any case without the Grantee first obtaining a permit to enter Railway land from the Grantor.
- e) THAT the overbridge, the approaches thereto and anything connected therewith shall be constructed so as to afford clearances not less than those approved under the provisions of Clause 1(b) hereof.
- f) NOT to hold the Grantor liable for any accident or damage to the said overbridge or supports however caused and to pay to the Grantor the cost of removing or making any alteration in the position of the overbridge or the supports thereof necessitated by any alteration or addition to the railway.
- g) TO pay to the Grantor the cost of repairing any damage which may occur directly or indirectly to the railway or the property of the Grantor by reason of the existence or use of the overbridge or the supports thereof.

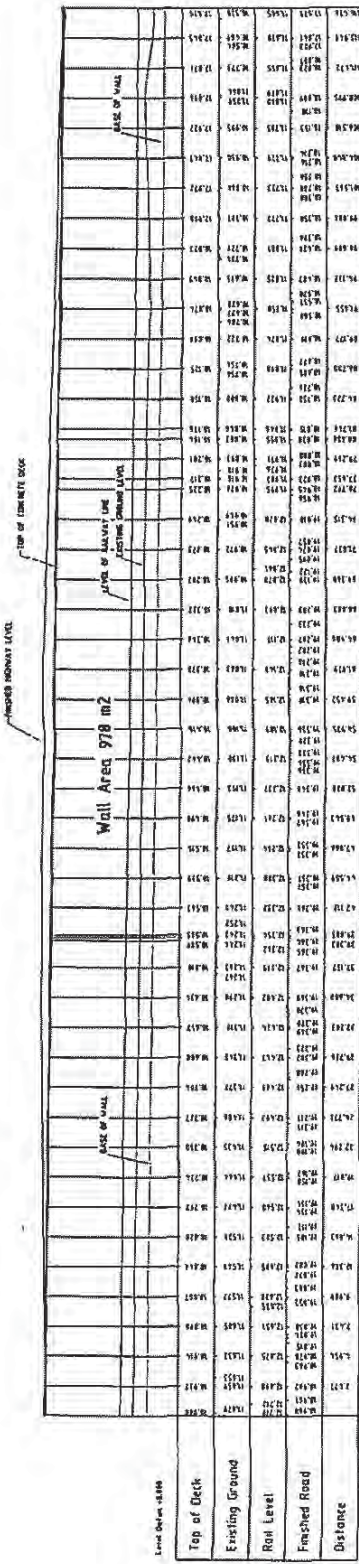
9

- h) TO save harmless and keep fully indemnified the Grantor, the Minister of Railways, the New Zealand Railways Corporation, the Managing Director of Tranz Rail Limited and the Government of New Zealand from and against all claims, costs, petitions, suits, actions and demands whatsoever which may be made for or on account of any accident or injury to any person or for damage to any property arising out of or caused or contributed to either directly or indirectly by the use or existence of the overbridge or any associated supports on Railway land and anything connected therewith or by any defect in the construction or maintenance of the overbridge.
- i) NOT to assign or in any way deal with the rights hereby conferred without the prior written consent of the Grantor.
- j) ON the determination of this Agreement to remove the overbridge and any associated supports and everything belonging to the Grantee connected therewith and to leave the railway property in the same good order and condition as it was before this right was granted to the entire satisfaction of the Grantor.

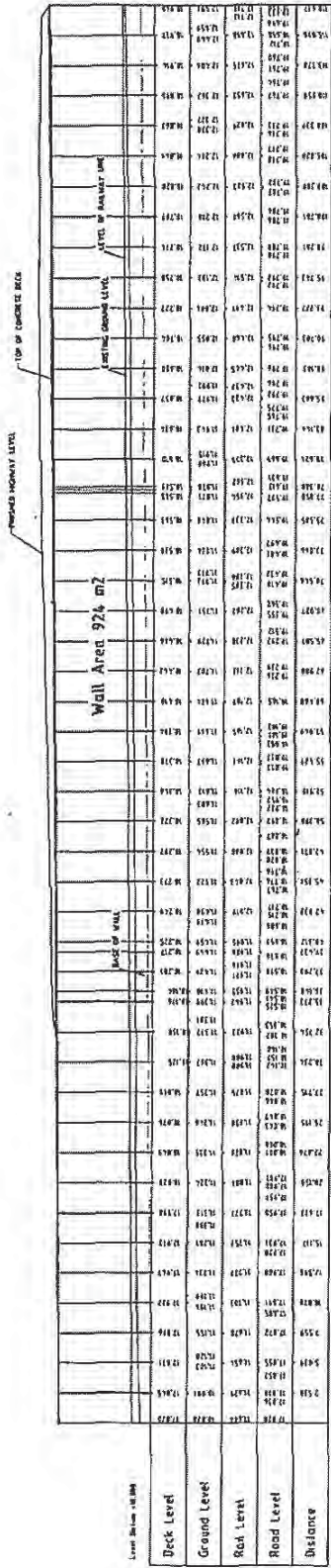
PROVIDED ALWAYS and it is hereby agreed and declared:

- a) THAT this agreement shall be terminable at any time by either party giving to the other twelve calendar months' notice in writing AND it shall at all times be subject to the provisions of Section 35 of the New Zealand Railways Corporation Act 1981 and Section 12 of the Railway Safety and Corridor Management Act 1992 AND that it shall be subject to revocation without compensation at any time when the service of the public requires it and subject to immediate revocation if the charge for any year shall remain unpaid after due date of payment thereof or in case of breach of any term, covenant, condition or provision herein expressed or implied and that no compensation shall be payable to the Grantee upon the revocation or determination hereof from whatsoever cause.
- b) THAT prior to entering upon railway property for the purpose of carrying out any works or maintenance in connection with the overbridge, approaches or supports the Grantee shall first obtain a permit to enter Railway land from the Grantor PROVIDED ALWAYS that the provisions of Clause 1(d) relating to supervision, the Grantor undertaking such work and costs shall apply in each and every case.
- c) THAT when any notice is to be given or any action is to be taken by the Grantor hereunder it shall be sufficient if the notice be signed or such action taken by the Manager Director of Tranz Rail Limited or by some person acting under his express or implied authority and that any such notice shall be validly given if sent by letter or facsimile addressed to the Grantee at the Grantee's then or last known office/abode or place of business.
- a) BY an agreement dated 28 September 1990, ("Facilities Agreement") Clear Communications Limited ("Clear") has certain ownership, access, and other rights in respect of a Fibre Optic System (the "System") located within Railway land together with System extension rights where the system exists and if future System extensions are constructed on or under the land to which this Grant relates, then Clear's rights shall take precedence over the Grantee's rights.
- b) WHERE this Grant conflicts with Clear's rights under the Facilities Agreement, the Grantee's acknowledges that this Grant shall be subordinate to and shall not derogate from, those rights.
- c) THE Grantee covenants and agrees as follows:
 - i) not to interfere with or disturb the System;
 - ii) not to do anything which might cause increased maintenance or operating expenses of the System, or reduce the System's efficiency;
 - iii) to indemnify Clear for any liability, claim, damage or loss (excluding economic or consequential loss or loss of revenue) arising out of installation maintenance or use by the Grantee of its facilities or of failure to comply with these requirements;





RAIL OVERBRIDGE WESTERN ABUTMENT (LOOKING WEST)
1:200



RAIL OVERBRIDGE EASTERN ABUTMENT (LOOKING EAST)
1:200

NOT FOR CONSTRUCTION

**TRANSIT NEW ZEALAND
S.H.1 MACKAYS RAIL OVERBRIDGE
SPECIMEN DESIGN-ABUTMENT LONGSECTION
RP 942/6.0 - RP 942/9.0**

DATE: 23-10-2003

SCALE: 1:200

70904

C43 B

WORKING PILOT

70904

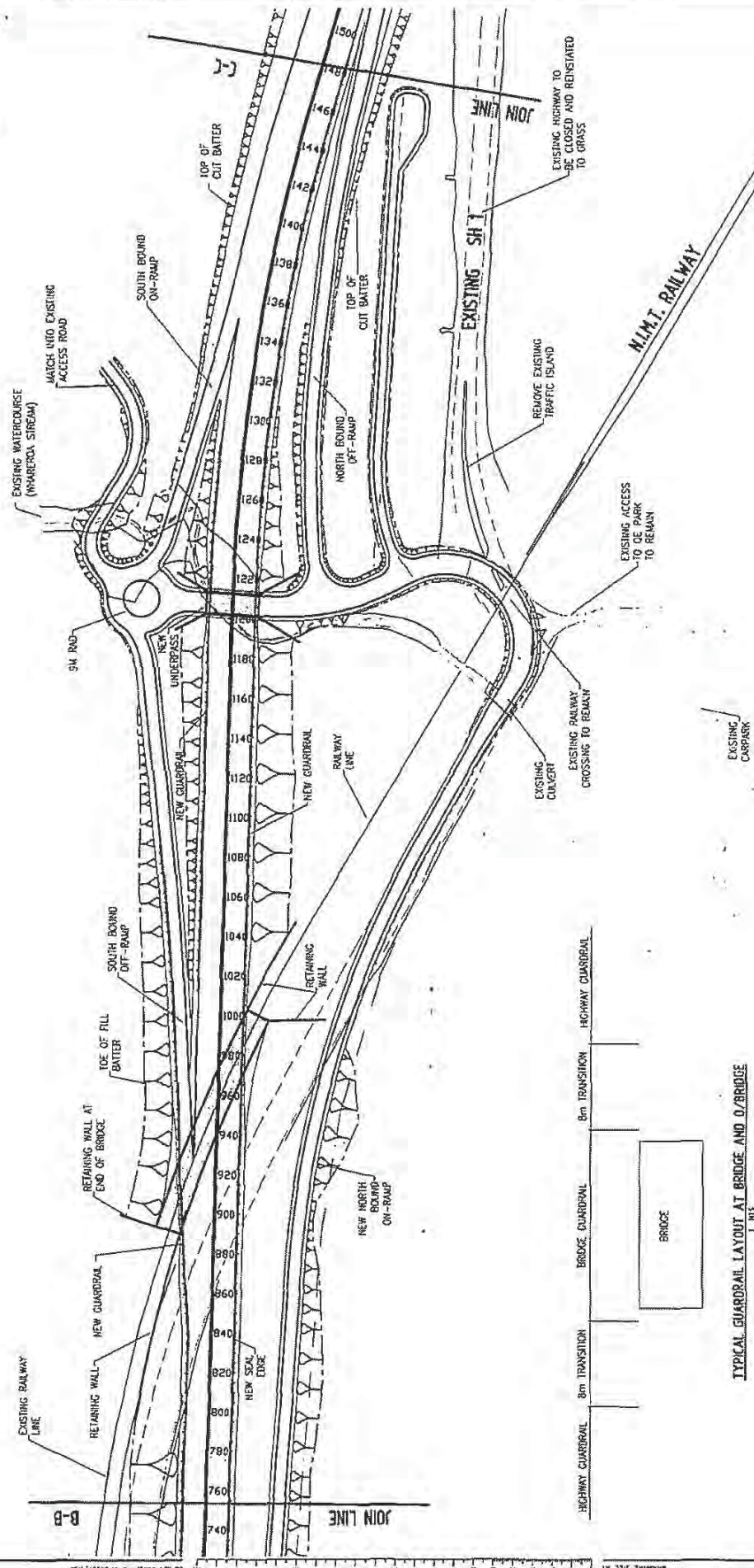
70904

MWH

TRUST

NO.	DESCRIPTION	DATE	BY	CHECKED	APPROVED
1	DESIGN	23/10/03
2
3
4
5
6
7
8
9
10

DESIGNER: SHI CHANG, PROJECT MANAGER: SEVERIN MURPHY, CHECKER: MURPHY, APPROVED: MURPHY
 THIS DRAWING IS THE PROPERTY OF MWH CONSULTANTS AND SHOULD NOT BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF MWH CONSULTANTS.



TYPICAL GUARDRAIL LAYOUT AT BRIDGE AND O/B BRIDGE

NOTE:
FOR JOIN LINES REFER 70504 SH 005

NOT FOR CONSTRUCTION

TRANSIT NEW ZEALAND S.H.1 MACKAYS RAIL OVERBRIDGE		WORKING PLOT No. 23.10.2003 SCALE 1:1000 DATE 10/03/04	
MWH		TRUST	
SPECIMEN DESIGN - PLAN OF INTERSECTION RP 942/6.0 - RP 942/9.0		70504 [40] E	
PREPARED BY: [] CHECKED BY: [] APPROVED BY: []	DRAWN BY: [] CHECKED BY: [] APPROVED BY: []	DATE: [] SCALE: []	PROJECT: []

TOLL NZ CONSOLIDATED LIMITED
CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Neil Davies, of Wellington in New Zealand Manager, Lease Management of Toll NZ Consolidated Limited, hereby certify that:

- 1 By deed dated 30 March 2000 I was, by virtue of holding the office of Manager, Lease Management of Tranz Rail Limited, appointed attorney of Tranz Rail Limited on the terms and subject to the conditions set out in that deed.

Copies of that deed are deposited in the Land Transfer Offices listed below under the number shown alongside each of those offices:

North Auckland	D 495195	Nelson	396530
South Auckland	B 601291	Marlborough	211090
Gisborne	228837	Canterbury	A 455078
Hawkes Bay	701031	Westland	114112
Taranaki	469524	Otago	5000005
Wellington	B 777693	Southland	272410

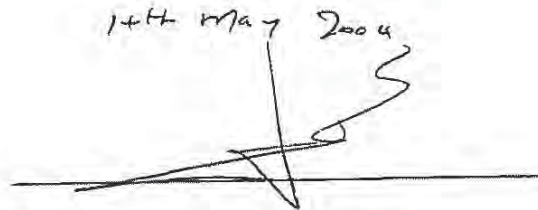
- 2 By way of Certificate of Incorporation number 487638, Tranz Rail Limited changed its name to Toll NZ Consolidated limited.
- 3 I am an employee of Toll NZ Consolidated Limited and hold the office of Manager, Lease Management.
- 4 At the date of this certificate, I have not received any notice or information of the revocation of that appointment by the liquidation or dissolution of Toll NZ Consolidated Limited or otherwise.

DATED

SIGNED

NEIL DAVIES:

14th May 2004



- iv) to reimburse Clear its costs of any relocation which Clear carries out to meet the Grantee's requirements;
 - v) that Clear shall be entitled to seek injunctive relief restraining any actual or threatened breach of this Grant by the Grantee causing interference with or disturbance to the System;
 - vi) that for the purposes of the Contracts (Privity) Act 1982, Clear is designated to benefit under this Grant in respect of its rights under the Fibre Optic System Agreement.
- d) IN respect of the two metre strip centred on the fibre optic cable of the System, the Grantee shall have no right of entry (except for normal use in passing over the strip without obstructing it) or excavation or subterranean activities, without notifying and obtaining the consent of the Grantor and Clear.

IN WITNESS WHEREOF the Manager, Lease Management in exercise of the power in this behalf duly delegated to him by the Managing Director of Tranz Rail Limited hath executed these presents and the Grantee hath/have hereunto affixed the seal/subscribed his/her/their name/s the day and year first hereinbefore written.

SIGNED by NEIL DAVIES, Manager,
Lease Management acting for and on behalf
of TRANZ RAIL LIMITED in the presence of:

Witness: *[Signature]*
Occupation: Property Administrator
Address: Wellington

[Signature]

THE COMMON SEAL of
TRANSIT NEW ZEALAND



Was affixed in the presence of:

Director: *[Signature]*
Director: Chief Executive Act

29.06.04

KIWIRAIL LIMITED
KiwiRail

NEW ZEALAND TRANSPORT AGENCY
Grantee

VARIATION OF GRANT

MCKAY'S CROSSING, PAEKAKARIKI

Grant G60806



DEED dated

21ST July

2014

PARTIES

KIWIRAIL LIMITED ("KiwiRail")

NEW ZEALAND TRANSPORT AGENCY ("Grantee")

INTRODUCTION

- A. NZRC is a statutory corporation established under the New Zealand Railways Corporation Act 1981 ("NZRC Act").
- B. Pursuant to the NZRC Act, NZRC is responsible for and controls the right to grant interests in property vested in the Crown for railway purposes.
- C. By the Core Lease, the Crown and NZRC has granted KiwiRail a lease of New Zealand's railway estate, including the Premises. KiwiRail holds the lessee's interest under that lease.
- D. By deed of grant dated 14 May 2004 between Tranz Rail Limited and Transit New Zealand and numbered Grant 60806 ("Grant") Tranz Rail granted to Transit the right to use and locate certain infrastructure on that part of the railway estate situated at McKay's Crossing, Paekakariki at approximately 42.120 kilometres on the railway metreage and as is more particularly shown shaded in blue on the plan attached to this Deed ("Land") upon the provisions contained in the Grant.
- E. The Grant provides that the Annual Fee payable for the Land is ten (10) cents.
- F. TranzRail's interest in the Grant is now vested in KiwiRail and Transit's interest is vested in the Grantee.

DEED

The parties agree that the Grant shall be varied in the following manner:

1. **Installation of additional infrastructure by the Grantee:** KiwiRail will permit the Grantee to install a road overbridge and off ramp (*Additional Infrastructure*) on the Land. The developments and approvals provisions in the Grant will apply to the construction, maintenance and removal of the Additional Infrastructure. The additional infrastructure shall be located on the Grant Area shown outlined in yellow on the plan supplied by KiwiRail and attached to this deed of variation and Drawing TG-DRG-ALL-PW-2002 supplied by the Grantee and likewise attached to this deed.
2. **Grant Fee associated with additional infrastructure:** In consideration for kiwiRail's entry into this deed of variation, the Grantee shall pay:
 - a. a lump sum payment of \$17,226 plus GST for the initial fixed term expiring on 29 July 2049 payable within 14 days of the date of this deed;
 - b. Thereafter an annual payment determined in accordance with clause 3 of this deed of variation in relation to subsequent years of the Term. The Annual Fee will be varied in accordance with clause 3 of this deed of variation and will be paid annually and in the manner provided in the Grant.

3. **Grant fee reviews:** The Grant Fee will be reviewed on each Review Date (being 30 July 2049 and each 10 year anniversary of that date) with such reviewed grant fee to be determined in accordance with the following formula:

$$A = B \times (C/D)$$

Where:

A is the new Grant Fee.

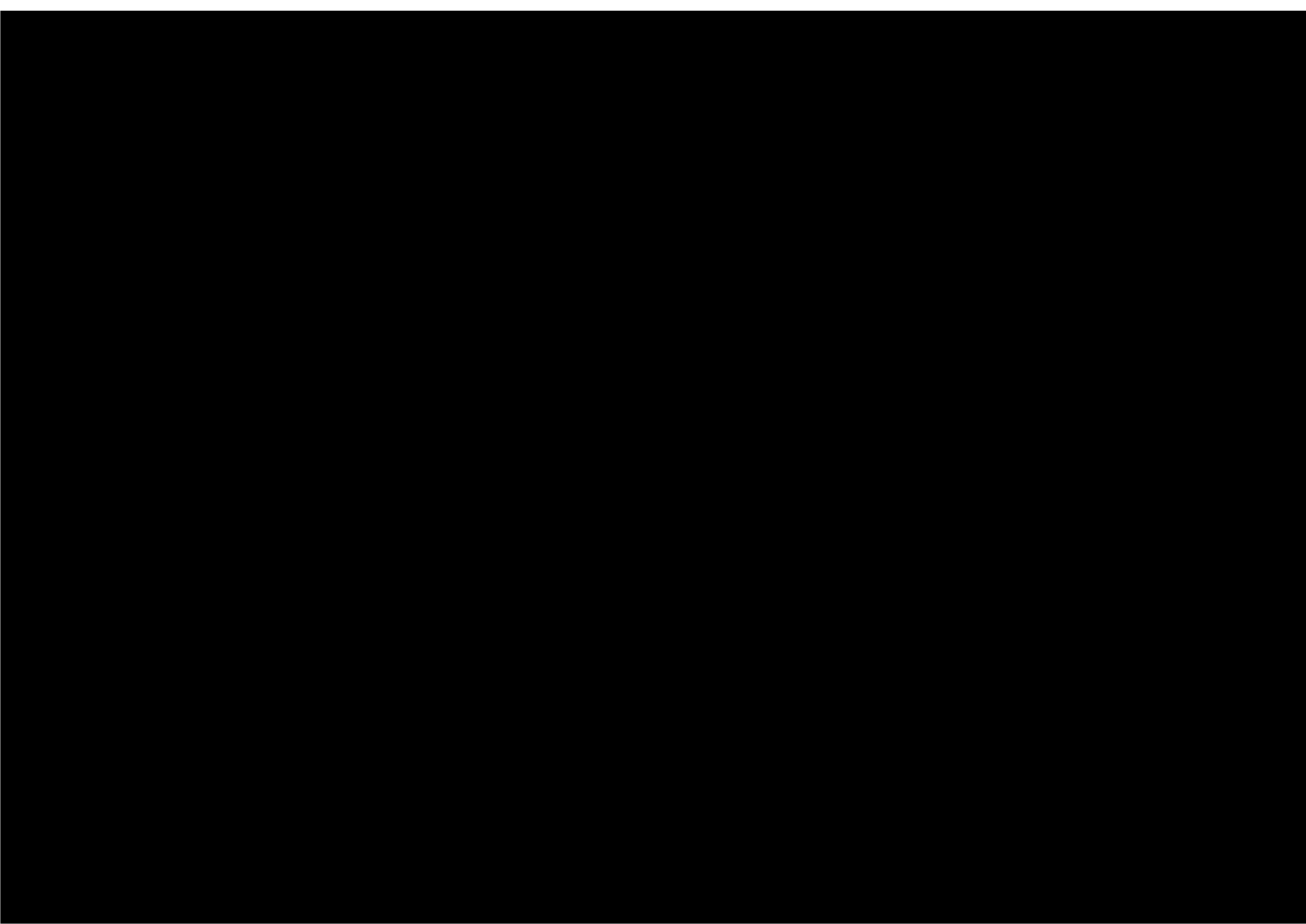
B is the Grant Fee payable immediately prior to the Review Date.

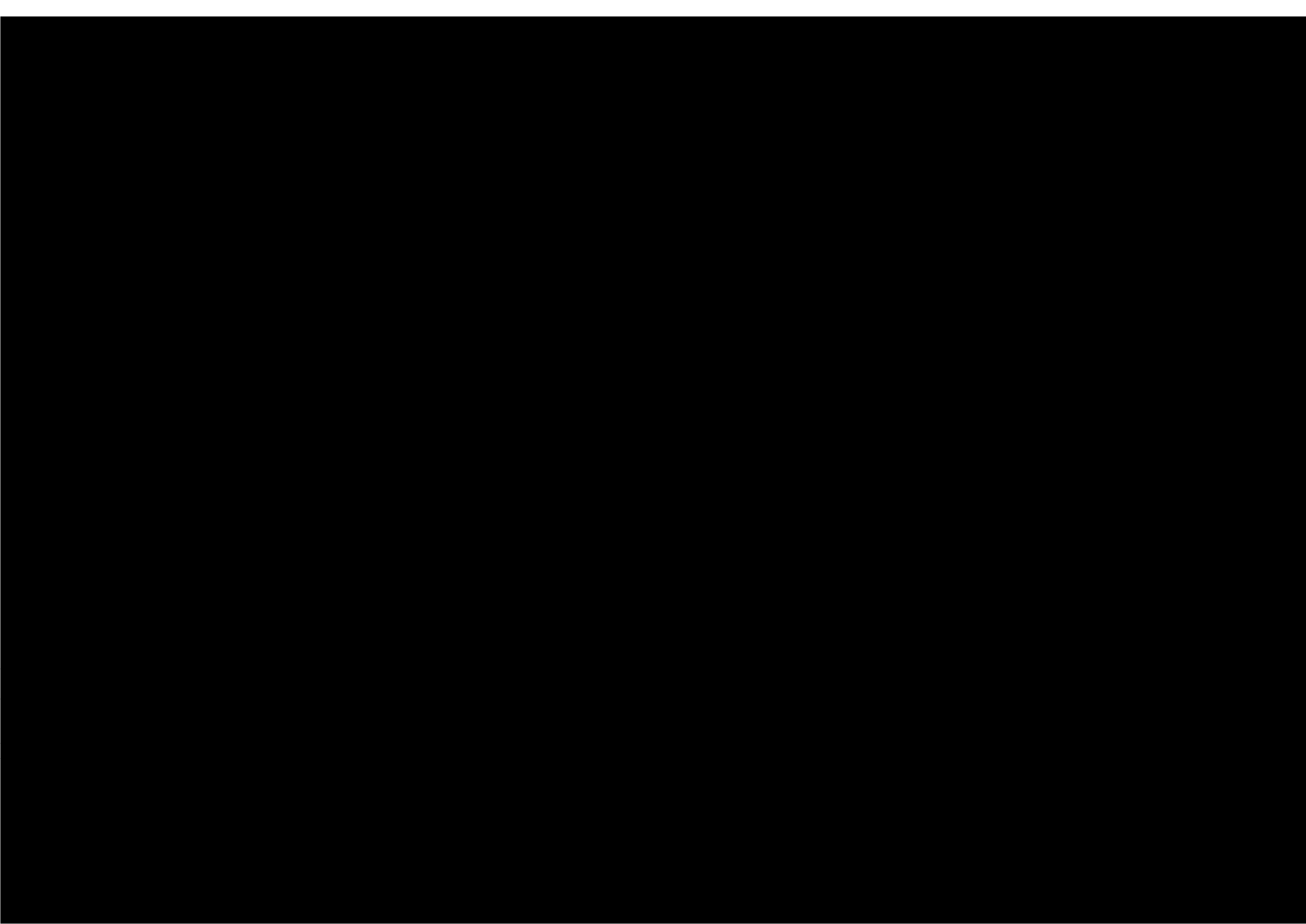
C is the figure at which the CPI stood immediately prior to the relevant Review Date.

D is the figure at which the CPI stood immediately prior to the previous Review Date or 30 July 2048 (whichever is the later),

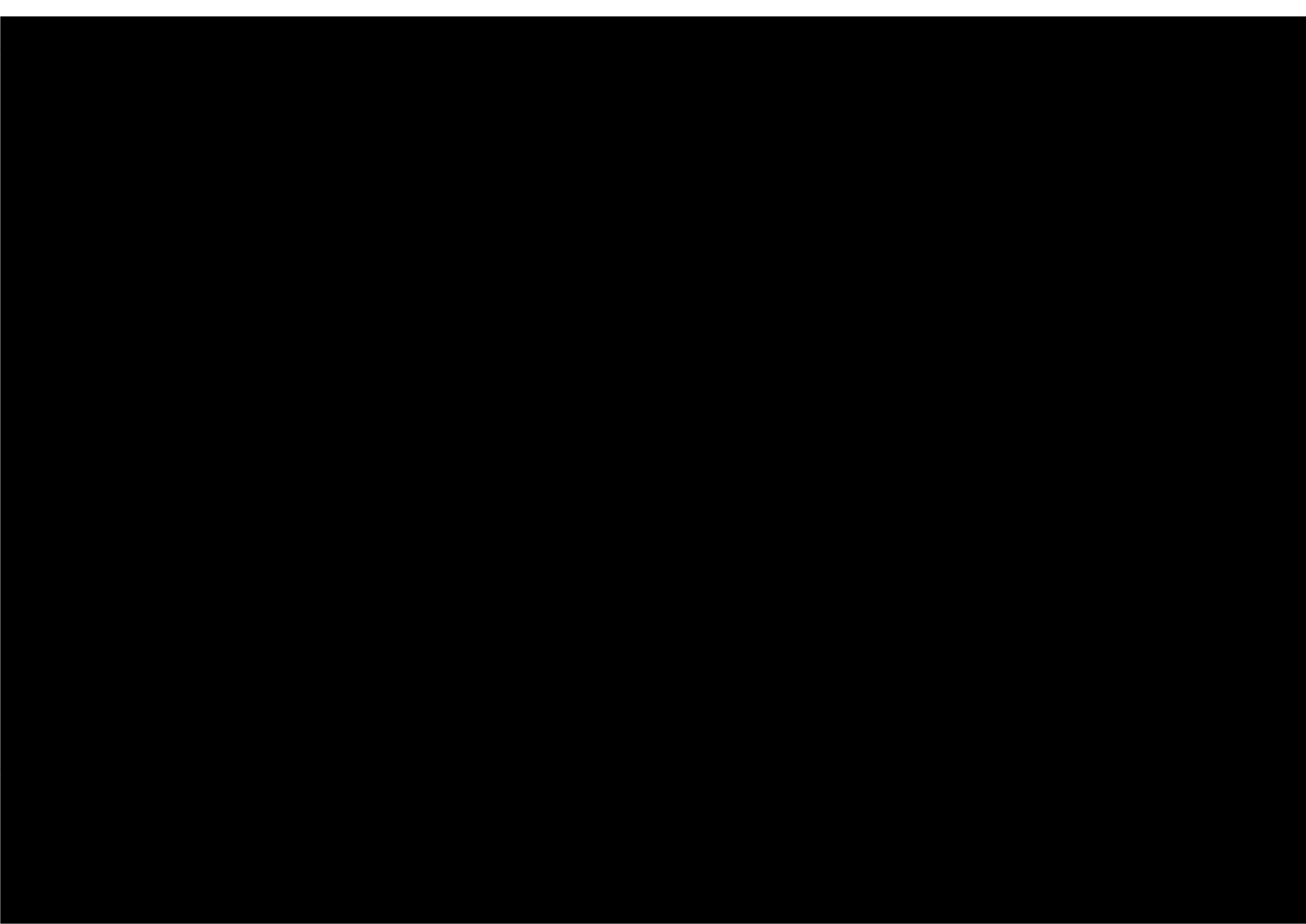
provided that:

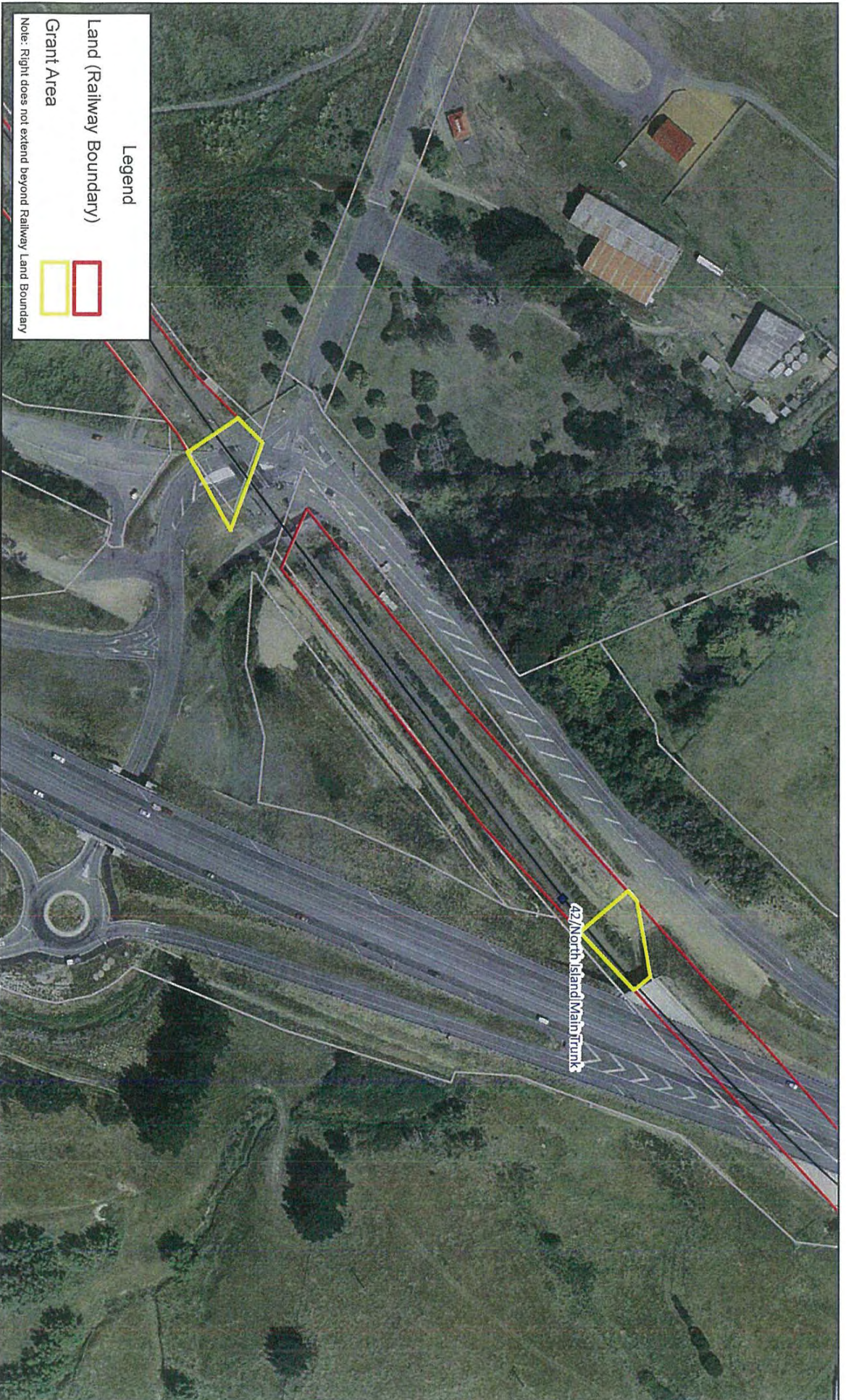
- a. C/D shall never be less than 1.00.
 - b. On the first Review Date (being 30 July 2049) the Grant Fee payable immediately prior to the Review Date is agreed to be \$3,608.
 - c. In the event that there has been no increase in the CPI, there shall be no adjustment to the Grant Fee.
4. **Compliance with Grant:** Except as provided by this Deed, KiwiRail and the Grantee covenant that they shall comply with the obligations imposed on them under the Grant as if those obligations had been repeated in full herein with such modification only as necessary to make them applicable to this deed.
5. **Term:** The term of the grant is amended to a fixed term expiring on 29 July 2049 during which fixed term clause 2 (a) of the Grant shall not apply and KiwiRail shall not require the Grantee to remove the overbridge or supports. From 30 July 2049 the term shall be one (1) year and from year to year unless or until terminated in accordance with the Grant.
6. **Grantee:** Reference to the Grantee shall include the Grantee's lessee's and contractors.
7. **Confirmation:** In all other respects the provisions of the Grant are confirmed.
8. **Costs:** The Grantee shall pay KiwiRail's costs of and incidental to the preparation and execution of this Deed and counterpart copy. The Grantee shall pay Kiwirail's reasonable costs of any alteration or addition to the railway necessitated by the Grantee's additional infrastructure described in clause 1 of this deed, including any incidental costs associated with such alteration or addition. Kiwirail will provide an estimate of such costs as part of assessing the Grantee's detailed plans and specifications under clause 1 (b) of the Grant.







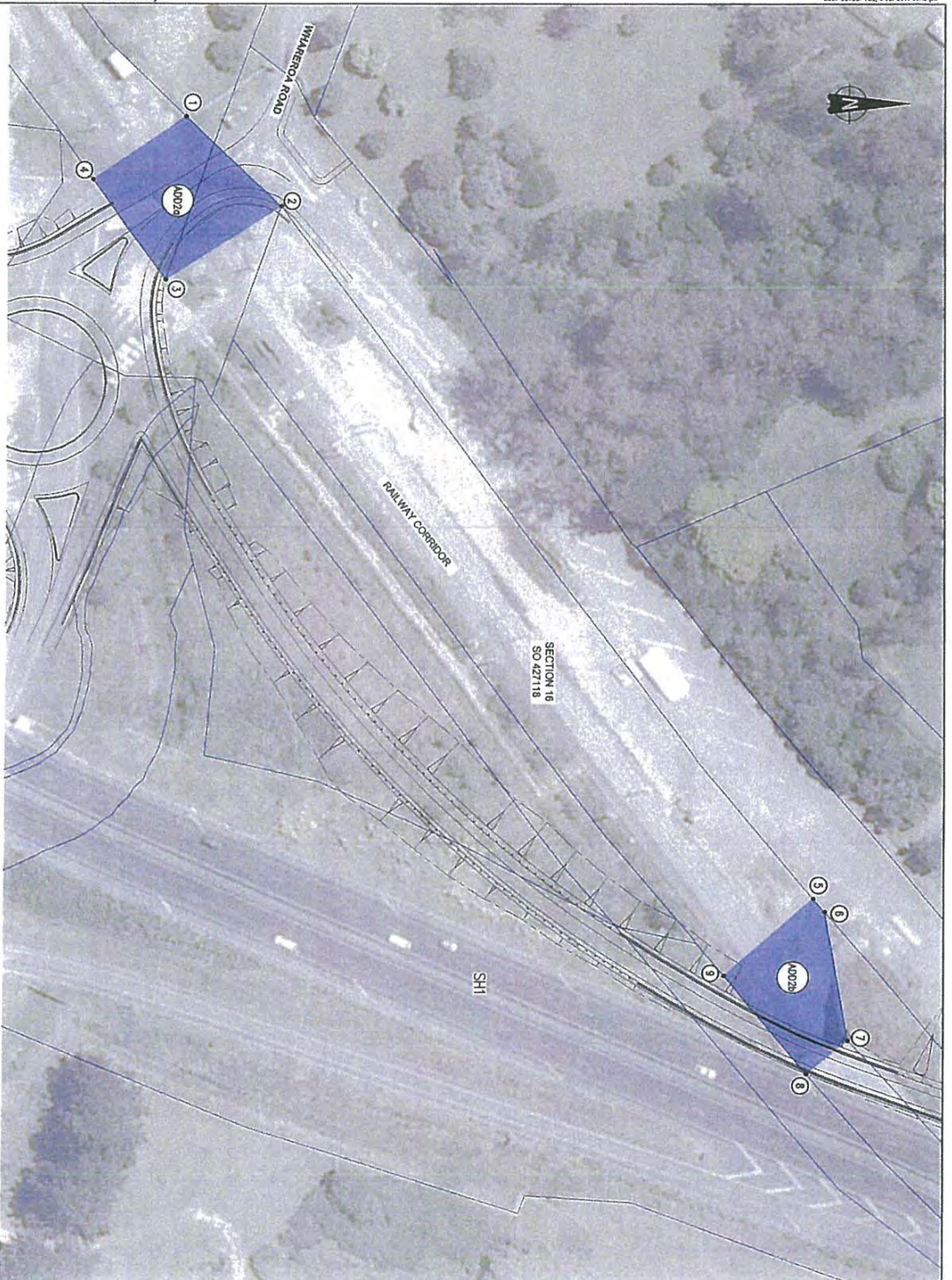




Printed: 11/07/2014
Produced By: nsevillia



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Cadastral information from LINZ Core Record System (CRS)
The information displayed here is indicative only
This data is made available in good faith but its accuracy or completeness is not guaranteed



NOTE:
1. LAND BOUNDARIES SUBJECT TO FINAL SURVEY AND CONTRIBUTION OF MEASUREMENTS.

LEGEND
 PROPERTY BOUNDARY
 LAND REQUIREMENTS FOR DEED OF GRANT

SCHEDULE - SET OUT LOCATIONS

	EASTINGS	NORTHINGS
1	1766700.991	5462629.152
2	1766722.130	5462651.676
3	1766739.421	5462624.402
4	1766715.814	5462607.054
5	1766886.112	5462778.241
6	1766699.224	5462790.980
7	1766691.651	5462798.206
8	17666927.613	5462778.246
9	1766894.273	5462758.903

APPROVED BY NZTA DATE
Robert Munn 9/10/15

SCHEDULE - LAND REQUIREMENTS FOR DEED OF GRANT

PROPERTY ID	OWNERSHIP	LEGAL DESCRIPTION	AREA (HA)	SEVERANCE	BALANCE	EXISTING EASEMENTS
ADD2a	KIMRAIL	SECTION 16, SO 427118	0.067	-	-	-
ADD2b	KIMRAIL	SECTION 16, SO 427118	0.065	-	1.461	-

REVISIONS

No.	BY	DATE	DESCRIPTION	APP
1	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
2	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
3	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
4	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
5	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
6	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
7	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
8	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
9	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
10	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
11	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
12	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
13	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
14	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
15	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
16	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
17	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
18	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
19	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC
20	HC	15/07/15	ISSUED TO NZTA FOR INITIAL CHECK OF GRANT	HC

SCALES
 SCALE A 1 : 1000 (A3) 1 : 500 (A4)
 SCALE B 1 : 1000 (A3) 1 : 500 (A4)

WELLINGTON GATEWAY PARTNERSHIP

NZ TRANSPORT AGENCY

TRANSMISSION GULLY PPP PROJECT
 LAND REQUIREMENT PLAN
 ADD2a AND ADD2b
 PRELIMINARY DESIGN TG-DHG-ALL-PW-2002

SIGNATURES

Executed as a deed by **KiwiRail Limited**
as Grantor:



Witness signature

ALISON CASHIN.


Print Name

GRANTS ADMINISTRATOR .

Occupation

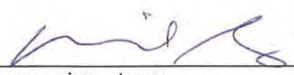
WELLINGTON

Address



Authorised Signatory
Andrew Robinson
Property Development & Leasing Manager

Executed as a deed by **New Zealand Transport Agency** as Grantee:



Witness signature

MICHAEL SIAZON


Print Name

SENIOR PROJECT MANAGER

Occupation

UPPER HUTT, WELLINGTON

Address



Authorised Signatory
ROD JAMES

Print Name

KIWIRAIL LIMITED

NEW ZEALAND TRANSPORT AGENCY

**AGREEMENT TO GRANT RIGHT TO A ROAD
BRIDGE OVER RAIL AT KENEPURU
BETWEEN 16.336 AND 16.360KM ON THE
NORTH ISLAND MAIN TRUNK LINE**

Grant G89313



AGREEMENT dated 21st July 2014

BETWEEN

KIWIRAIL LIMITED ("KiwiRail")


AND NEW ZEALAND TRANSPORT AGENCY ("Grantee")

BACKGROUND

- A. NZRC is a statutory corporation established under the New Zealand Railways Corporation Act 1981 ("NZRC Act").
- B. Pursuant to the NZRC Act, NZRC is responsible for and controls the right to grant interests in property vested in the Crown for railway purposes.
- C. By the Core Lease, the Crown and NZRC granted to New Zealand Rail Limited a lease of certain land owned by the Crown or owned, held, used, or occupied by NZRC. KiwiRail is now the lessee under the Core Lease.
- D. The Grantee is a Crown Entity established under the Land Transport Management Act 2003, with responsibility for, amongst other things, the State highway network.
- E. The Grantee has requested KiwiRail grant certain rights to the Grantee in respect of the Land and the Grant Area as set out in Schedule 1 hereto.
- F. The parties enter into this Agreement to record the terms on which the above will occur.

EXECUTED AS AN AGREEMENT

SIGNED by **KIWIRAIL LIMITED** as Grantor:

and witnessed by: 

Signature of witness

Alison CASHIN.

Name of witness

GRANTS ADMINISTRATOR

Occupation

WELLINGTON

City/town of residence



Authorised Signatory

Andrew Robinson
Property Development & Leasing Manager

SIGNED by **NEW ZEALAND TRANSPORT AGENCY** as Grantee by:



Name of authorised signatory **ROD JAMES**

Signature of authorised signatory

and witnessed by:



Signature of witness

MICHAEL SIAZON

Name of witness

SENIOR PROJECT MANAGER

Occupation

UPPER HUTT, WELLINGTON

City/town of residence

SCHEDULE 1
REFERENCE SCHEDULE

ITEM 1	Land:	The railway land identified outlined in red on plan G89313/1-1: A copy of which is attached at Schedule 3.
ITEM 2	Grant Area:	Means that part (or those parts) of the Land more particularly shown in outlined in yellow on the plan attached at Schedule 3 supplied by KiwiRail and Drawing TG-DRG-ALL-PW-2007 supplied by NZ Transport Agency.
ITEM 3	Term:	A period of thirty five (35) years and thereafter on an annually renewable basis subject to earlier expiry or termination in accordance with the provisions of this agreement.
ITEM 4	Commencement Date:	The date of this agreement
ITEM 5	Expiry Date	The initial term is for thirty five (35) years (Initial Term) and thereafter on an annually renewable basis subject to earlier expiry or termination in accordance with the provisions of this agreement.
ITEM 6	Grant Fee:	An initial payment of \$27,226plus GST for the Initial Term. Thereafter a further payment determined in accordance with clause 4.1 in relation to the subsequent years of the Term.
ITEM 7	Grant Fee payment frequency:	The initial payment in Item 6 is payable within 14 days of the Commencement Date. Any further payments under Item 6 are payable annually in advance, unless otherwise agreed.
ITEM 8	Review Date	30 July 2049 and each 10 year anniversary of that date.
ITEM 9	Default Interest Rate:	5% per annum above the Bank of New Zealand's prime overdraft rate.
ITEM 10	Minimum Public Risk Cover:	\$10,000,000 or such greater amount as may be required from time to time by KiwiRail.
ITEM 11	Purpose:	The right to construct and thereafter maintain and operate as part of the Grantee's State Highway Network a road bridge structure over the railway

		land at Kenepuru between the 16.460km and 16.490km on the North Island Main Trunk Line
ITEM 12	Grantee's Works:	To erect, and construct a road overbridge structure (<i>Structure</i>) on railway land between the 16.460 and the 16.490km on the North Island Main Trunk Line at Kenepuru

SCHEDULE 2

OPERATIVE PROVISIONS

1. INTERPRETATION

In this Agreement unless the context indicates otherwise:

1.1 Definitions:

"**Authority**" means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over the Land, the Grant Area or any part of it, or its use;

"**Building Act**" means the Building Act 2004 and "**Building Work**" has the meaning given in the Building Act;

"**Commencement Date**" means the date set out in Schedule 1;

"**Core Lease**" means the Memorandum of Lease dated 20 December 1991 entered into between the Crown and NZRC (as lessor), and New Zealand Rail Limited (as lessee), as varied from time to time before the date of this Agreement;

"**CPI**" means the Consumer Price Index for New Zealand published quarterly by Statistics New Zealand (or, if it ceases to exist, such index as most closely approximates the same);

"**Crown**" Her Majesty the Queen in Right and New Zealand acting by and through her Ministers of Finance and State Owned Enterprises;

"**Default Interest Rate**" means the rate set out in Schedule 1;

"**Grant Area**" means the area specified in Schedule 1 and shown on the plan attached at Schedule 3;

"**Grantee**" means the Grantee, its successors and permitted assigns together with the Grantee's servants, agents, employees, workers, lessees, invitees and contractors with or without vehicles, machinery or equipment;

"**Grantee's Property**" means all equipment, chattels, partitions and fixtures and fittings installed by the Grantee in the Grant Area;

"**Grantee's Works**" means the works to be erected or constructed by the Grantee on or within the Grant Area as described in Schedule 1, such works being necessary or desirable for the Grantee's use and enjoyment of the Grant Area for the Purpose;

"**Grant Fee**" means the amount set out in Schedule 1;

"**GST**" means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax;

"**KiwiRail**" means KiwiRail Limited and includes KiwiRail's successors and assigns;

"**Land**" means all that land described in Schedule 1;

"**NZRC**" means the New Zealand Railways Corporation;

"**Purpose**" means the purposes for which the Grantee shall be entitled to use the Grant Area specified in Schedule 1;

"**Railway Infrastructure**" shall adopt the meaning given to that term in the Railways Act 2005;

"**Review Dates**" means the dates set out in Schedule 1;

"**Structure**" means any structure constructed or erected on or within the Grant Area pursuant to the Grantee's Works, including any supports incidental to such structure;

"**Term**" means the term of this Agreement specified in Schedule 1; and

"**Working Day**" means any day of the year other than Saturdays, Sundays, the provincial anniversary as observed in Auckland, Wellington and the province where the Land is situated, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day and any day in the period commencing 24 December and ending on 5 January the next year (both days inclusive).

- 1.2 **Building Act:** The terms "building code", "building consent", "building work" and "code compliance certificate" have the meanings given to those terms in the Building Act.
- 1.3 **Defined Expressions:** Expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background.
- 1.4 **Headings:** Section, clause and other headings are for ease of reference only and do not form any part of the context or affect this agreement's interpretation.
- 1.5 **Negative Obligations:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.
- 1.6 **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.
- 1.7 **Plural and Singular:** Singular words include the plural and vice versa.
- 1.8 **Sections and Clauses:** References to sections and clauses are references to this Agreement's sections and clauses.
- 1.9 **Statutes and Regulations:** References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise.
- 1.10 **Implied Terms excluded:** To the fullest extent permitted by law the implied provisions of the Property Law Act 2007, Land Transfer Act 1952 and the Land Transfer Regulations 2002 are expressly excluded from this Agreement.

2. GRANT OF RIGHT

- 2.1 **Grant of Right for Term:** KiwiRail grants to the Grantee the right to use the Grant Area for the Purpose during the Term, upon payment of the Grant Fee and subject to the terms, covenants, conditions herein contained or implied and the provisions of section 35 of the New Zealand Railways Corporation Act 1981 and the Railways Act 2005. The

Grantee accepts those rights and covenants with KiwiRail to observe and perform the terms and stipulations set out in this Agreement.

3. PAYMENT OF GRANT FEE

3.1 **Payment:** The Grantee must, during the Term, pay the Grant Fee to KiwiRail in the frequency specified in Schedule 1, in full without any deduction or set-off. The Grant Fee and any other payments to be made under this Agreement shall be paid to KiwiRail by direct bank payment or as KiwiRail may direct.

3.2 **Default Interest:** If the Grantee fails to pay any instalment of the Grant Fee or any other money payable under this Agreement for 10 Working Days after the due date for payment or the date of KiwiRail's demand, if there is no due date, then the Grantee must pay on demand interest at the Default Interest Rate on the money unpaid from the due date or the date of KiwiRail's demand (as the case may be) down to the date of payment.

4. GRANT FEE REVIEWS

4.1 **Review of Grant Fee:** The Grant Fee will be reviewed on each Review Date with such reviewed grant fee to be determined in accordance with the following formula:

$$A = B \times (C/D)$$

Where:

A is the new Grant Fee.

B is the Grant Fee payable immediately prior to the Review Date.

C is the figure at which the CPI stood immediately prior to the relevant Review Date.

D is the figure at which the CPI stood immediately prior to the previous Review Date or 30 July 2048 (whichever is the later),

provided that:

(a) C/D shall never be less than 1.00.

(b) On the first Review Date (being 30 July 2049) the Grant Fee payable immediately prior to the Review Date is agreed to be \$3,608.

4.2 In the event that there has been no increase in the CPI, there shall be no adjustment to the Grant Fee.

5. GRANTEE'S WORKS

5.1 **Construction:** The Grantee shall not proceed with construction or erection of the Grantee's Works including any Structure until and unless:

- (a) KiwiRail has provided written approval for such construction or erection of the Grantee's Works, including (where relevant):
 - (i) the location of any Structure; and
 - (ii) the required clearances above railway lines.
- (b) the Grantee has submitted to KiwiRail detailed plans and specifications of the Grantee's Works including any Structure (including plans and specifications for any temporary Structure) duly certified by a Civil Engineer with at least 5 years' current and continuous standing in the engineering profession; and
- (c) the Grantee has made payment to KiwiRail of KiwiRail's reasonable costs for appraising and approving such plans and specifications.
- (d) the Grantee has made payment to Kiwirail of Kiwirail's reasonable costs of any alteration or addition to the railway necessitated by the Grantee's Works including any incidental costs associated with such alteration or addition. Kiwirail will provide an estimate of such costs as part of assessing the Grantee's detailed plans and specifications under clause 5.1(b) above.

5.2 **General Approvals for Structural alterations:** The Grantee may not make any alterations to the Grantee's Works (including any Structure forming part of the Grantee's Works), or construct any building, undertake any excavation or earthmoving on the Grant Area without the written consent of KiwiRail which may be granted or withheld in KiwiRail's absolute discretion.

5.3 **Building Work:** In addition to the provisions of clause 5.1, the Grantee must:

- (a) not carry out any Building Work on the Grant Area without first obtaining all building consents required to enable that Building Work to be lawfully carried out. If KiwiRail is as owner of the land required to provide its consent to the relevant Authority to enable such building consent to be obtained, then such consent shall, if provided, be solely for the purposes of enabling the building consent to be obtained and shall not be taken as being approval pursuant to clause 5.1(a);
- (b) carry out all Building Work strictly following the building code and the building consents issued for that Building Work (including conditions of those consents), and only while the building consents for that Building Work are current and otherwise in strict compliance with all conditions and requirements imposed by KiwiRail as part of providing its approval under clause 5.1(a), including without limitation obtaining a Permit to Enter from the applicable Area Manager's Office together complying with the associated health and safety requirements;
- (c) comply immediately with all notices issued by any Authority relating to any Building Work carried out by the Grantee;

- (d) obtain a code compliance certificate for any Building Work carried out by the Grantee on the Grant Area immediately on completion of that Building Work; and
 - (e) not do or allow anything to be done (including any Building Work) which would be a breach of any obligation under the Building Act, or which would constitute an offence under the Building Act.
- 5.4 **Indemnity:** Subject always to clause 14.2, the Grantee indemnifies KiwiRail against all notices, calls, orders, liabilities, actions, claims, demands, losses, proceedings, damages, costs (including legal costs) and expenses of any kind:
- (a) imposing a liability on KiwiRail;
 - (b) suffered or incurred by KiwiRail; or
 - (c) for which KiwiRail is or may become liable,
- arising from a breach by the Grantee or any person for whom the Grantee is responsible, of any obligations under the Building Act.
- 5.5 **Responsibility:** Notwithstanding the provisions of clause 5.1, the Grantee acknowledges that the Grantee shall be solely responsible for the erection, construction and materials comprised in the Grantee's Works and for the design and safety of the Grantee's Works, the Structures and any associated temporary works.
- 5.6 **Supervision of works:** Following satisfaction of the requirements in clause 5.1, the Grantee shall complete the Grantee's Works at the Grantee's sole cost in accordance with the provisions of clause 5.3 (where relevant) and to the entire satisfaction of KiwiRail. KiwiRail shall be entitled to require that completion of the Grantee's Works shall either in whole or part be supervised by KiwiRail's appointed railway personnel in which case, the costs of such supervision shall be paid by the Grantee.
- 5.7 **Commencement of works:** Notwithstanding anything contained in this clause 5, construction or erection of the Grantee's Works shall not commence until such time as the Grantee has obtained a permit from KiwiRail to access the Grant Area for such purpose.
- 5.8 **No nuisance:** In the course of construction or maintenance of the Grantee's Works, the Grantee shall not unduly interfere with or obstruct any other lawful user of the Grant Area or the Land and shall carry out all work expeditiously and on completion of the work shall immediately restore the surface of any affected part of the Land or the Grant Area as nearly as possible to its former state and condition at the Grantee's sole cost and expense.
- 5.9 **KiwiRail not liable for damage:** The Grantee:
- (a) shall not hold KiwiRail liable for any accident or damage to the Grantee's Works, any theft, loss or damage caused or sustained in any way to the Grant Area or any Structures, equipment, fixtures, fittings and chattels installed or located in the Grant Area, or any of the Grantee's equipment, Structures, fixtures, fittings or chattels howsoever caused; and
 - (b) Subsequent to the initial 35 year term, must pay to KiwiRail the cost of removing or making any alteration to the position of any part of the Grantee's Works necessitated by any alteration or addition to the railway on the Land including all infrastructure, structural and other features comprised in the current or future operations of the railway on the Land.

- 5.10 **Grantee liable for damage:** The Grantee shall pay KiwiRail the cost of repairing any damage which may occur directly or indirectly to the railway, Railway Infrastructure, the Land or the Grant Area caused as a result of any breakage of, or the existence or use of the Grantee's Works, including any Structure.

6. LIMITATION ON RIGHTS

- 6.1 **Security Interest:** The Grantee must not grant or agree to grant any security interest (as defined in the Personal Property Securities Act 1999) in or over its interest this Agreement.
- 6.2 **No Registration / Caveat:** The Grantee acknowledges that this Agreement does not create a registrable interest in the Grant Area or the Land and The Grantee must not register a caveat over the title(s) to the Land relating to the Grantee's interest under this Agreement.

7. ASSIGNMENT

- 7.1 **No assignment:** The Grantee shall not, assign, transfer, or otherwise part with the rights conferred on the Grantee under this Agreement or any part thereof without first obtaining the written consent of KiwiRail.

8. GENERAL PROVISIONS RELATING TO GRANT

- 8.1 **Use of the Grant Area:** The Grantee shall use the Grant Area only for the Purpose set out in this Agreement.
- 8.2 **Compliance:** The Grantee must at all times comply with:
- (a) all statutes, ordinances, regulations, by-laws or other enactments affecting or relating to the use of the Grant Area and with all requirements which may be given by any Authority and all obligations and requirements exercised under statute or regulation from time to time, including in compliance with the requirements of all railway legislation;
 - (b) all statutes, ordinances, regulations, by-laws or other enactments governing the design, erection, maintenance, use and construction of the Grantee's Works, including any Structures and to submit to KiwiRail proof that any necessary consent or approval required from the relevant Authority has been obtained and continues to be held current including, but not limited to, consent and compliance certificates as required pursuant to the Building Act 2004; and
 - (c) any rules or building regulations imposed by KiwiRail which apply to the control, safe use, security and protection of, access to, use and occupation of, improvements to and the operation of any equipment installed in the Grant Area and the Land.
- 8.3 **Compliance with easements:** The Grantee shall perform and observe the obligations of KiwiRail in connection with any easement of any kind for the time being affecting the Grant Area (whether as dominant or servient tenement).
- 8.4 **Access by Grantee:** The Grantee shall only access the Grant Area in the manner pre-approved by KiwiRail with such access being reasonable given the nature of the Purpose for which the Grantee has been granted rights in respect of the Grant Area.

8.5 **Access by KiwiRail:** KiwiRail reserves the right for KiwiRail, together with KiwiRail's employees, agents, contractors and invitees to:

- (a) pass and re-pass with or without materials or implements of any kind over the Grant Area for the purpose of carrying out any works or inspections to railway, Railway Infrastructure or the Grant Area; and
- (b) KiwiRail reserves the right to be able to fix supporting structures to the underside of the Structure in the event that KiwiRail considers that there is a need to fix supporting structures to the Structure for electrification purposes.
- (c) erect, construct and maintain drainage pipes and other works including telecommunications, electric power lines or cables on, over or within the Grant Area together with any necessary supports;

provided that KiwiRail will use all reasonable endeavours to ensure that:

- (i) the location of these installations is acceptable to the Grantee (acting reasonably) and does not obstruct or hinder the Grantee's ability to use the Grant Area for the Purpose; and
- (ii) any access to or maintenance of these installations is carried out in consultation with the Grantee and in accordance with any reasonable timing, safety or other operational requirements of the Grantee to minimise any interference or incompatibility between the Purpose and those installations or works; and

The Grantee will make no claim against KiwiRail on account of any such installations or works.

8.6 **No Interruption to KiwiRail's Activities:** The Grantee must not do or permit to be done in the Grant Area anything which may become a nuisance, disturbance or obstruction to KiwiRail.

8.7 **Core Lease:** The Grantee will comply with all of KiwiRail's obligations in the Core Lease insofar as they relate to the Grant Area (other than the covenants for payment of rent and other money under the Core Lease) as if all those obligations were set out in this Agreement as obligations on the Grantee.

9. SPECIFIC PROVISIONS RELATING TO GRANTEE'S WORKS

9.1 **Application:** The following additional provisions shall apply where the Grantee's Works are specified to include such works.

9.2 Above Ground Structures

- (a) **Clearances:** The Grantee shall ensure that the Structure, the approaches thereto and anything connected therewith shall be constructed so as to afford clearances of not less than those approved under the provisions of clause 5.1 hereof.
- (b) **Rubbish Removal:** The Grantee shall ensure that any rubbish deposited or accumulated on the Grant Area is promptly and regularly removed. Should KiwiRail be required to remove any such rubbish, all costs incurred will be paid by the Grantee to KiwiRail upon demand.

10. REPAIR AND MAINTENANCE

- 10.1 **Maintenance:** The Grantee shall be solely responsible for the cost of repairs and maintenance to the Grantee's Works and shall, subject to the provisions of clause 10.2, at all times keep and maintain the Grant Area and the Grantee's Works in and on the Grant Area in good and substantial repair so as to ensure no loss, cost or damage shall be caused to or suffered by KiwiRail as a result of any failure by the Grantee to keep the Grantee's Works in such condition.
- 10.2 **Access for maintenance and repairs:** Prior to entering the Grant Area for the purposes of carrying out any repairs or maintenance to the Grantee's Works, the Grantee shall first obtain a permit to enter the Grant Area from KiwiRail. Any permit granted by KiwiRail pursuant to this clause 10.2 shall be subject to the provisions of clause 5.6 in relation to supervision.
- 10.3 **KiwiRail may undertake repairs:** KiwiRail may give notice in writing to the Grantee requiring the Grantee within a reasonable time to repair, maintain or clean the Grant Area, in accordance with the Grantee's liability under this Agreement. If the Grantee fails to carry out any work or make good any damage in accordance with any such notice within the time specified, KiwiRail may at all reasonable times enter the Grant Area and (if applicable) the structures on the Grant Area bringing all necessary equipment and materials and execute all or any of the required work or repairs as KiwiRail shall think fit.
- 10.4 **Recovery of Costs:** In addition to KiwiRail's other remedies, KiwiRail shall be entitled to recover from the Grantee all costs of such work or repairs pursuant to clause 10.3, including all fees and expenses for inspecting the Grant Area and (if applicable) any Structure, the issue of the notice and all sums of money paid on account of any insurance or indemnities or otherwise with respect to such work or repairs as a debt due payable on demand together with interest at the Default Interest Rate.

11. INSURANCE

- 11.1 **Public Risk Insurance:** The Grantee must take out and keep current at all times during the Term of this Agreement a public liability insurance policy with an amount of cover not less than the Minimum Public Risk Cover, and which must include liability for:
- (a) damage to or destruction of:
 - (i) any Structures erected on or within the Grant Area; and
 - (ii) all fixtures, fittings, chattels and equipment affixed to, located in or installed in any Structures (including equipment owned by other Grantees of KiwiRail, adjacent to or near the Grant Area); and
 - (b) losses, excluding consequential losses, damages and costs arising directly or indirectly from any one or more of the following:
 - (i) any fire, explosion or other hazard emanating from the Grant Area;
 - (ii) the use or operation of the Grant Area; and/or

- (iii) any act or default of the Grantee or of any person for whom the Grantee is responsible.

11.2 **Global Public Risk Insurance:** KiwiRail acknowledges that the public liability insurance referred to in clause 11.1 is a global policy, and the Minimum Public Risk Cover will be an aggregate level of cover, and neither will be specific to the Grantee's Works. The policy and cover will apply to all grants between the parties.

12. SUITABILITY OF GRANT AREA

12.1 **Rail Use:** KiwiRail does not make any warranty or representation, express or implied, that the Grant Area is or will remain suitable or adequate for the Purpose. All warranties as to suitability and adequacy implied by law are expressly excluded to the fullest extent permitted by law. The Grantee acknowledges that trains may pass without warning at any time during the day or night and use of the Grant Area shall be at the sole risk of the Grantee. Where the Purpose specified in this Agreement includes use of the Grant Area as a right of way with or without a level crossing, such risk shall extend to all persons using the Grant Area pursuant to the Grantee's rights under this Agreement.

12.2 **Safety Measures:** KiwiRail is not responsible for providing any safety measures to protect the Grantee's Works including any Structure from water damage, fire, explosion, storm, earthquake, hazard or potential hazard whether coming from inside the Grant Area (including equipment installed in the Grant Area) or from outside.

13. TERMINATION AFTER INITIAL TERM

13.1 **Termination by either party:** Subsequent to the expiry of the Initial Term, either party may terminate this Agreement for any reason whatsoever at any time by giving the other party twelve (12) calendar months' written notice of such termination.

13.2 **Termination for breach by Grantee:** Subsequent to the expiry of the Initial Term, if:

- (a) the Grantee fails to pay the Grant Fee or any other money payable under this Agreement to KiwiRail for 10 Working Days after the date of KiwiRail's demand for such payment;
- (b) the Grantee fails to perform or observe any of the Grantee's other obligations under this Agreement for a reasonable period of time taking into account the nature of the breach and the process required to remedy such breach;
- (c) the Grantee assigns or attempts to assign the Grantee's rights under this Agreement, either in whole or part,

then KiwiRail may terminate this Agreement by notice in writing served on the Grantee either immediately or at any later time.

13.3 **Termination by KiwiRail - Public Requirement:** The Grantee acknowledges that subsequent to the expiry of the Initial Term, KiwiRail may terminate this Agreement upon 3 months' notice, where the Grant Area is required for public use for railways purposes.

13.4 **No Compensation:** In the event of termination of this Agreement under clauses 13.1, 13.2 or 13.3 from whatsoever cause, no compensation shall be payable to the Grantee.

14. INDEMNITY

14.1 **Indemnity by Grantee:** Subject always to clause 14.2, the Grantee indemnifies KiwiRail and NZRC from and against:

- (a) any accident or injury to any person or for damage to any property arising out of or caused or contributed to either directly or indirectly by the Structure, its use or anything connected therewith or by any defect in the construction or maintenance of the Structure, as a result of:
 - (i) the act or neglect of the Grantee or of any person for whom the Grantee is responsible relating to the Structure or its use or operation or any equipment installed in the Grant Area; or
 - (ii) the Grantee's breach of, or failure to comply with, the Grantee's obligations under this Agreement;
- (b) all costs (including legal costs) and expenses incurred by KiwiRail in taking action to demand and/or recover any part of the Grant Fee or other money payable by the Grantee under this Agreement; and
- (c) all actions, proceedings, calls, costs (including legal costs), expenses, claims, demands, damages, losses or liabilities of any kind suffered or incurred by KiwiRail as a result of:
 - (i) the act or neglect of the Grantee or of any person for whom the Grantee is responsible relating to the use of the Grant Area (including any Structure forming part of the Grantee's Works on the Grant Area) or the use or operation of any equipment installed in the Grant Area; or
 - (ii) the Grantee's breach of, or failure to comply with, the Grantee's obligations under this Agreement;

and except to the extent caused by any act or omission by KiwiRail or NZRC.

14.2 The parties acknowledge and agree that, pursuant to regulation 14(2) of the Crown Entities (Financial Powers) Regulations 2005 ("Regulations"), the Grantee cannot provide indemnities without the consent of the Ministers holding responsibility for transport and finance. Any indemnities provided for under this Agreement will not be effective unless and until:

- (a) the Regulations are amended to allow the Grantee to provide indemnities without the consent of the Ministers; or
- (b) consent from the Ministers is obtained.

14.3 **Payment by Grantee:** The Grantee must pay on demand all amounts owing to KiwiRail as a result of the indemnity contained in clause 14.1, together with interest on those amounts at the Default Interest Rate calculated on a daily basis from the date KiwiRail notifies the Grantee that KiwiRail has actually suffered a loss in respect of that liability, until the Grantee pays the relevant amount.

15. REMOVAL OF GRANTEE'S WORKS ON TERMINATION

15.1 **Removal on Expiry or Termination:** The Grantee must within a reasonable period of time following the expiry of the Term or termination of this Agreement given the nature of

the Grantee's Works and the Grantee's Property remove all such Grantee's Works and the Grantee's Property (including any Structures forming part of the Grantee's Works and any other alterations or additions made to the Grant Area pursuant to clause 5), and repair any damage caused by that removal

- 15.2 **Failure to Comply:** If the Grantee fails to comply with clause 15.1, KiwiRail may remove the Grantee's Works (including Structures forming part of the Grantee's Works and any other alterations or additions made to the Grant Area pursuant to clause 5), the Grantee's Property and repair any damage caused by that removal and the Grantee must pay to KiwiRail on demand all costs incurred by KiwiRail in doing so.
- 15.3 **Removal by Grantee:** Notwithstanding the provisions of clause 15.2, KiwiRail may choose not to remove the Grantee's Works and the Grantee's Property, and then the Grantee's Works and the Grantee's Property will become KiwiRail's property and KiwiRail will not have to pay compensation for the Grantee's Works or the Grantee's Property to the Grantee.
- 15.4 **Disputes:** For the avoidance of doubt, the parties agree that any disputes regarding the operation of this clause 15 will be dealt with in accordance with the disputes resolution procedure under clause 17.

16. COSTS

- 16.1 **Costs:** The Grantee must pay to KiwiRail on demand all reasonable costs (including legal costs), charges and other expenses which KiwiRail may incur or for which KiwiRail may become liable relating to:
- (a) **Preparation of Agreement:** the negotiation, preparation and execution of this Agreement, any renewal of this Agreement and of any variation of this Agreement;
 - (b) **Grantee Fee Review:** any documents evidencing a review of the Grant Fee;
 - (c) **Remedying Breach:** KiwiRail remedying the Grantee's breach of any term of this Agreement;
 - (d) **Exercise of Powers:** KiwiRail's exercise or attempted exercise or enforcement of any power, right or remedy conferred on KiwiRail by this Agreement; and
 - (e) **Proposals:** the consideration and approval (if given) of any proposals made to KiwiRail by the Grantee in respect of any matter contemplated by this Agreement (including costs incurred in employing consultants).

17. RESOLUTION OF DISPUTES

- 17.1 **Disputes:** If any dispute, difference or question arises between the parties about:
- (a) the interpretation of this Agreement;
 - (b) anything contained in or arising out of this Agreement;
 - (c) the rights, liabilities or duties of KiwiRail or the Grantee; or
 - (d) anything else relating to the relationship of KiwiRail and the Grantee under this Agreement (including claims in tort as well as in contract);

the parties may refer that matter to informal mediation, if both parties agree, having regard to the nature of the dispute or difference between them and the potential delays and costs which might arise if that matter is referred to arbitration.

- 17.2 **Appointment of Mediator:** The parties must try to agree on the mediator, who must be a senior solicitor or barrister practising in the district in which the Land is situated. If they cannot agree, the president or any vice-president for the time being of the district law society for the place where the Land is situated (or his or her nominee) will nominate the mediator on either party's application. The mediator's decision will be final and binding on both parties.
- 17.3 **Arbitration:** If the parties do not agree to refer the dispute, difference or question to mediation under clause 17.1 within 5 Working Days of that dispute, difference or question arising, then it will be referred to the arbitration of a single arbitrator under the Arbitration Act 1996.
- 17.4 **Arbitrator:** The parties must try to agree on the arbitrator. If they cannot agree, the president or any vice-president for the time being of the New Zealand Law Society (or his or her nominee) will nominate the arbitrator on either party's application.
- 17.5 **Action at Law:** The parties must go to arbitration under this section before they can begin any action at law (other than an application for injunctive relief or debt collection).

18. NOTICES

- 18.1 **Service of Notices:** Any notice to be given by KiwiRail under this Agreement shall be sufficient if the notice is signed in accordance with clause 18.2 and shall be validly given if sent by letter or facsimile addressed to the Grantee at the Grantee's last known residential or business address.
- 18.2 **Signature of Notices:** Any notice or document to be delivered or served under this Agreement must be in writing and may be signed by:
- (a) the party giving or serving the notice;
 - (b) any attorney, officer, employee or solicitor for the party serving or giving the notice; or
 - (c) the solicitor or any director, officer, employee or any other person authorised by that party to give or serve the notice.
- 18.3 **Time of Service:** Any notice or other document will be treated as delivered or served and received by the other party:
- (a) on personal delivery;
 - (b) three Working Days after being posted by prepaid registered post to the addressee's last known residential or business address in New Zealand; or
 - (c) on completion of an error free transmission, when sent by facsimile.

19. FIBRE OPTIC CABLE

- 19.1 **Cable located on Land:** Vodafone New Zealand Limited ("Vodafone") and KiwiRail have certain ownership, access and other rights in respect of a fibre optic system ("System") located on the Land by virtue of an agreement dated 28 September 1990

("Fibre Optic Cable Agreement"). Where future extensions to the System are constructed on or under the Land, Vodafone's and KiwiRail's rights under the Fibre Optic Cable Agreement shall take precedence over the Grantee's rights under this Agreement to the extent of any conflict, and the Grantee acknowledges that this Agreement shall be subordinate to, and shall not derogate from, those rights.

19.2 **Grantee's covenants in respect of the cable:** The Grantee covenants and agrees:

- (a) not to interfere with or disturb the System;
- (b) not to do anything which might cause increased maintenance or operating expenses of the System, or reduce the System's efficacy;
- (c) to the extent permitted by law and subject to clause 14.2, to indemnify Vodafone and KiwiRail for any liability, claim, damage or loss arising out of installation maintenance or use by the Grantee of its facilities or interference with the use, operation or maintenance of the System or failure to comply with this clause of the Agreement;
- (d) to reimburse Vodafone and KiwiRail for the costs of any relocation which Vodafone or KiwiRail carries out to meet the Grantee's requirements;
- (e) that either Vodafone or KiwiRail shall be entitled to seek injunctive relief restraining any actual or threatened breach of this Agreement by the Grantee causing interference with or disturbance to the System; and
- (f) that for the purpose of the Contracts (Privity) Act 1982, Vodafone and KiwiRail are each designated to benefit under this Agreement in respect of their respective rights under the Fibre Optic Cable Agreement.

19.3 **Limitation of access:** In respect of the two metre strip centred on the fibre optic cable of the System, the Grantee shall have no right of entry (except for normal use in passing over the strip (without obstructing it)) or excavation or subterranean activities, without notifying and obtaining the prior written consent of KiwiRail and Vodafone.

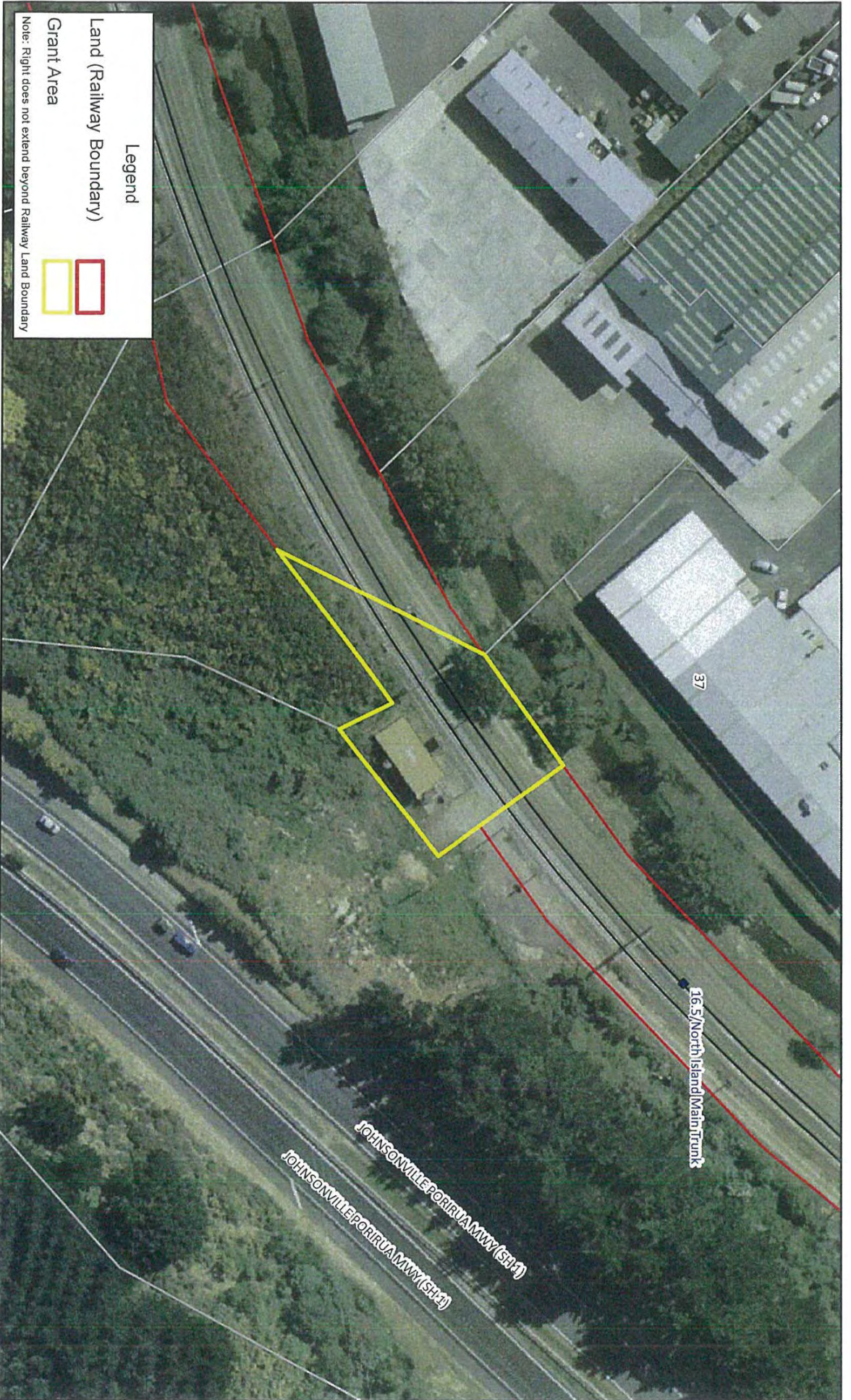
20. ACKNOWLEDGEMENTS

Throughout the continuance of this Agreement the Grantee shall use reasonable endeavours to maintain security and integrity of the State Highway network in relation to the local government planning regime, and in particular ensure that access over the Grant Area is limited to the proposed Structure over railway land..

SCHEDULE 3
PLAN OF GRANT AREA

Plan number G89313/1-1 supplied by KiwiRail

Drawing number TG-DRG-ALL-PW-2007 supplied by NZ Transport Agency



Legend

Land (Railway Boundary)

Grant Area

Note: Right does not extend beyond Railway Land Boundary

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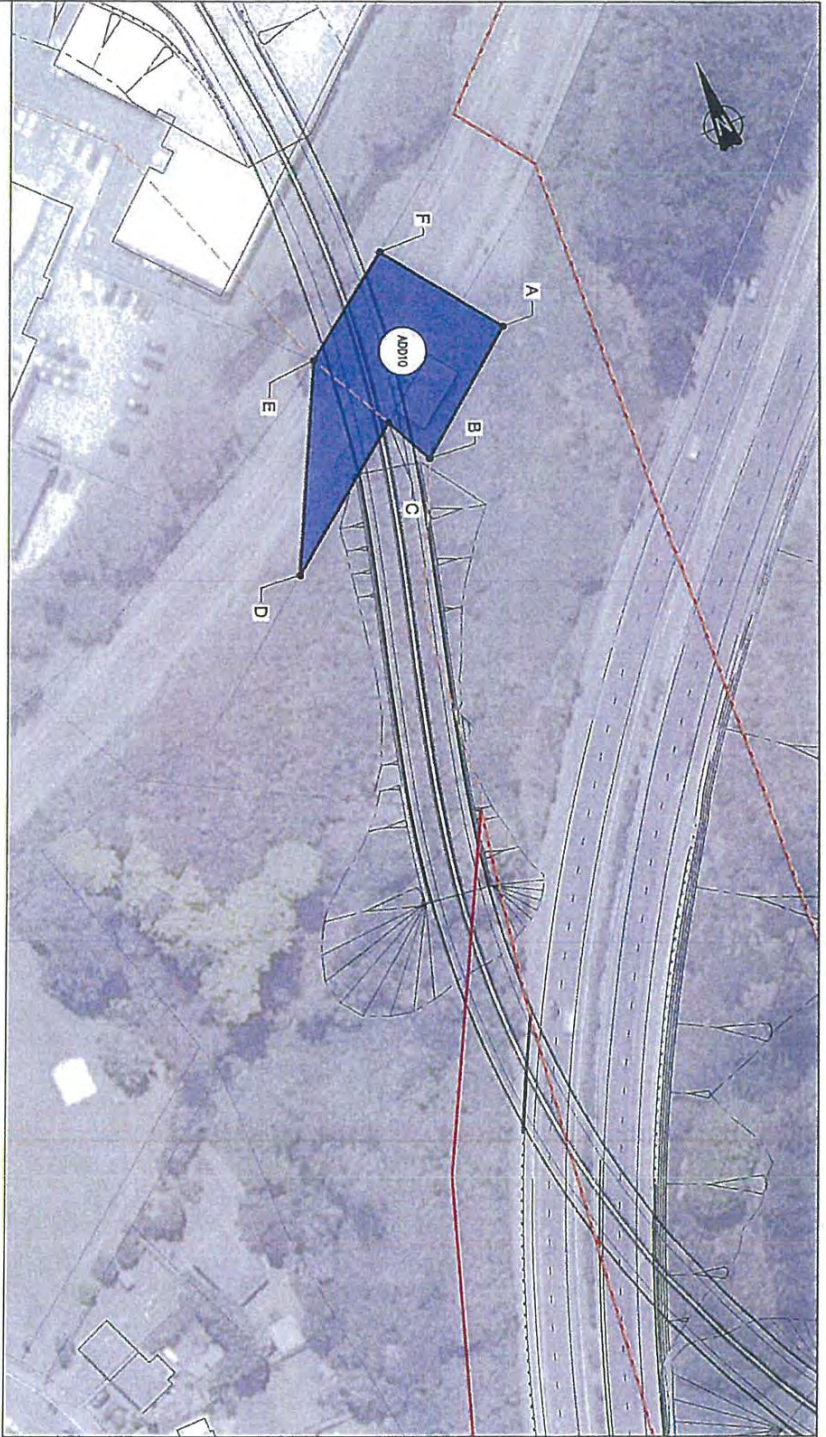


Road Bridge Grant at Kenepuru

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- NOTE:
1. LAND BOUNDARIES SUBJECT TO FINAL SURVEY AND CONFIRMATION OF MEASUREMENTS.
 2. REFER TO DRAWING TG-DRG-ALL-PW-2007 FOR BRIDGE DETAILS.

LEGEND

	PROPERTY BOUNDARY
	TO DESIGNATION (2012)
	KEREPURU LINK ROAD DESIGNATION
	LAND REQUIREMENTS

SCHEDULE - SET OUT LOCATIONS

	NORTHINGS	EASTINGS
A	5443094.702	1754620.139
B	5443075.543	1754620.477
C	5443085.772	1754499.448
D	5443083.648	1754470.052
E	5443103.683	1754490.111
F	5443119.140	1754911.009

SCHEDULE - LAND REQUIREMENT

PROPERTY ID	OWNERSHIP	LEGAL DESCRIPTION	AREA (HA)	SERVANCE	BALANCE	EXISTING EASEMENTS
ADD10	KIWIRALI	PART SECTION 58 PORIRUA DISTRICT	0.124	-	-	-

APPROVED BY NZTA DATE
Robert Wood 9/7/14

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This drawing is confidential and shall not be used for the purposes of this project.

The Standard of this drawing complies with the New Zealand Landlink Standard for the design and production of drawings with the design quality standard (S101) 19 09 01-2009.

REV	BY	DATE	DESCRIPTION	APPROVED	DATE
1	AK	12/01/13	ISSUE FOR PERMIT	AK	12/01/13
2	AK	13/01/13	ISSUE FOR PERMIT	AK	13/01/13
3	AK	13/01/13	ISSUE FOR PERMIT	AK	13/01/13
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9	AK	13/01/13	ISSUE FOR PERMIT	AK	13/01/13
10	AK	13/01/13	ISSUE FOR PERMIT	AK	13/01/13

SCALE: 1:1000 (A3) 1:500 (A0)

WELLINGTON GATEWAY PARTNERSHIP

NZ TRANSPORT AGENCY

TRANSMISSION GULLY PPP PROJECT

LAND REQUIREMENT PLAN

ADD10 - KIWIRALI

PRELIMINARY DESIGN

TG-DRG-ALL-PW-2007



[Redactions in full]



Appendix 12: Indicative Motorway Boundaries

1. Southbound Transmission Gully motorway carriageway

The southbound Transmission Gully motorway carriageway begins at the nose of the southbound off-ramp splitter island at MacKays and extends southwards over SH58 to the connection with the existing Johnsonville-Porirua Motorway at Linden.

The southbound motorway on-ramp at the MacKays interchange begins at the edge of the circulating carriageway of the eastern roundabout.

The termination of the southbound motorway off-ramp at the SH58 interchange is the limit line at the eastern roundabout.

The southbound motorway on-ramp at the SH58 interchange begins at the edge of the circulating carriageway of the eastern roundabout.

The termination of the southbound motorway off-ramp at the James Cook interchange is the limit line at the eastern roundabout, and does not include the roundabout or the bridge over the Transmission Gully motorway.

The southbound motorway on-ramp at the James Cook interchange begins at the edge of the circulating carriageway of the eastern roundabout.

The termination of the southbound motorway off-ramp at the Kenepuru interchange is the limit line at the intersection of the Kenepuru Link road with Kenepuru Drive, and includes the eastern roundabout and the Kenepuru Link road.

The southbound on-ramp to the Transmission Gully motorway at the Kenepuru interchange begins at the edge of the circulating carriageway of the eastern roundabout.

The Transmission Gully motorway shall extend laterally from fence to fence or, if no fence is in place which adequately delineates the boundary of the motorway, the Transmission Gully motorway shall extend laterally along the same line as the lateral boundary of the TG Operating Site as identified in paragraph 17.1(a) of Schedule 5 (Property).

2. Northbound Transmission Gully motorway carriageway

The northbound Transmission Gully motorway carriageway begins at the nose of the northbound off-ramp diverge between the Johnsonville-Porirua Motorway and the Transmission Gully motorway at Linden and extends northwards over SH58 to the termination of the northbound on-ramp being the nose of the merge with SH1 at MacKays.

The northbound motorway on-ramp at the Kenepuru interchange begins at the edge of the Kenepuru Drive carriageway at the intersection of Kenepuru Drive and the Kenepuru Link road, and includes the Kenepuru Link road.

The termination of the northbound motorway off-ramp at the James Cook interchange is the limit line at the western roundabout, and does not include the roundabout or the bridge over the Transmission Gully motorway.

The northbound motorway on-ramp at the James Cook interchange begins at the edge of the circulating carriageway of the western roundabout.

The termination of the northbound motorway off-ramp at the SH58 interchange is the limit line at the western roundabout.

The northbound motorway on-ramp at the SH58 interchange begins at the edge of the circulating carriageway of the western roundabout.

The termination of the northbound motorway off-ramp at the MacKays interchange is the limit line at the western roundabout.

The Transmission Gully motorway shall extend laterally from fence to fence or, if no fence is in place which adequately delineates the boundary of the motorway, the Transmission Gully motorway shall extend laterally along the same line as the lateral boundary of the TG Operating Site as identified in paragraph 17.1(a) of Schedule 5 (Property).

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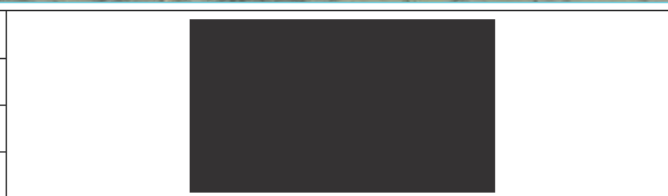
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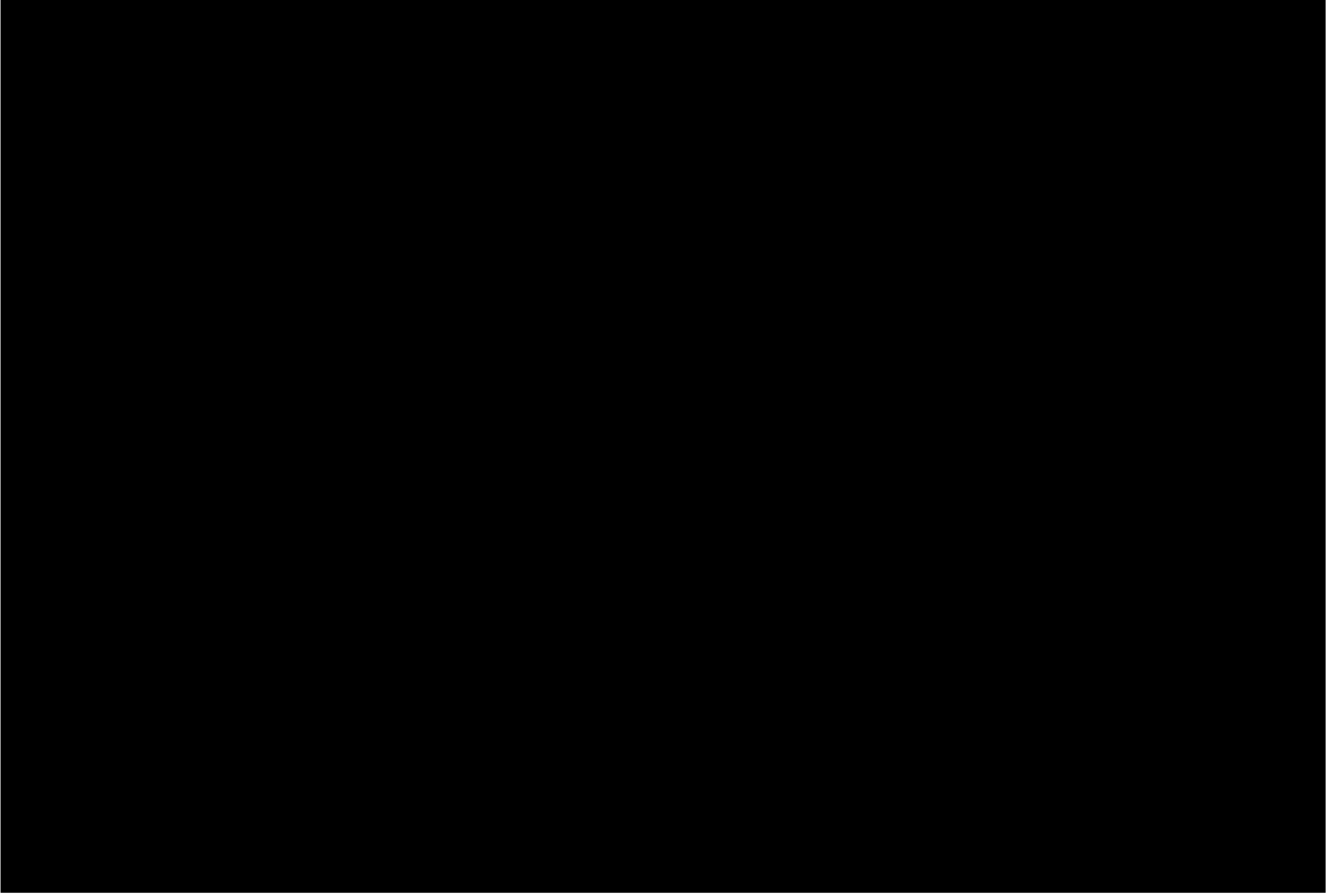
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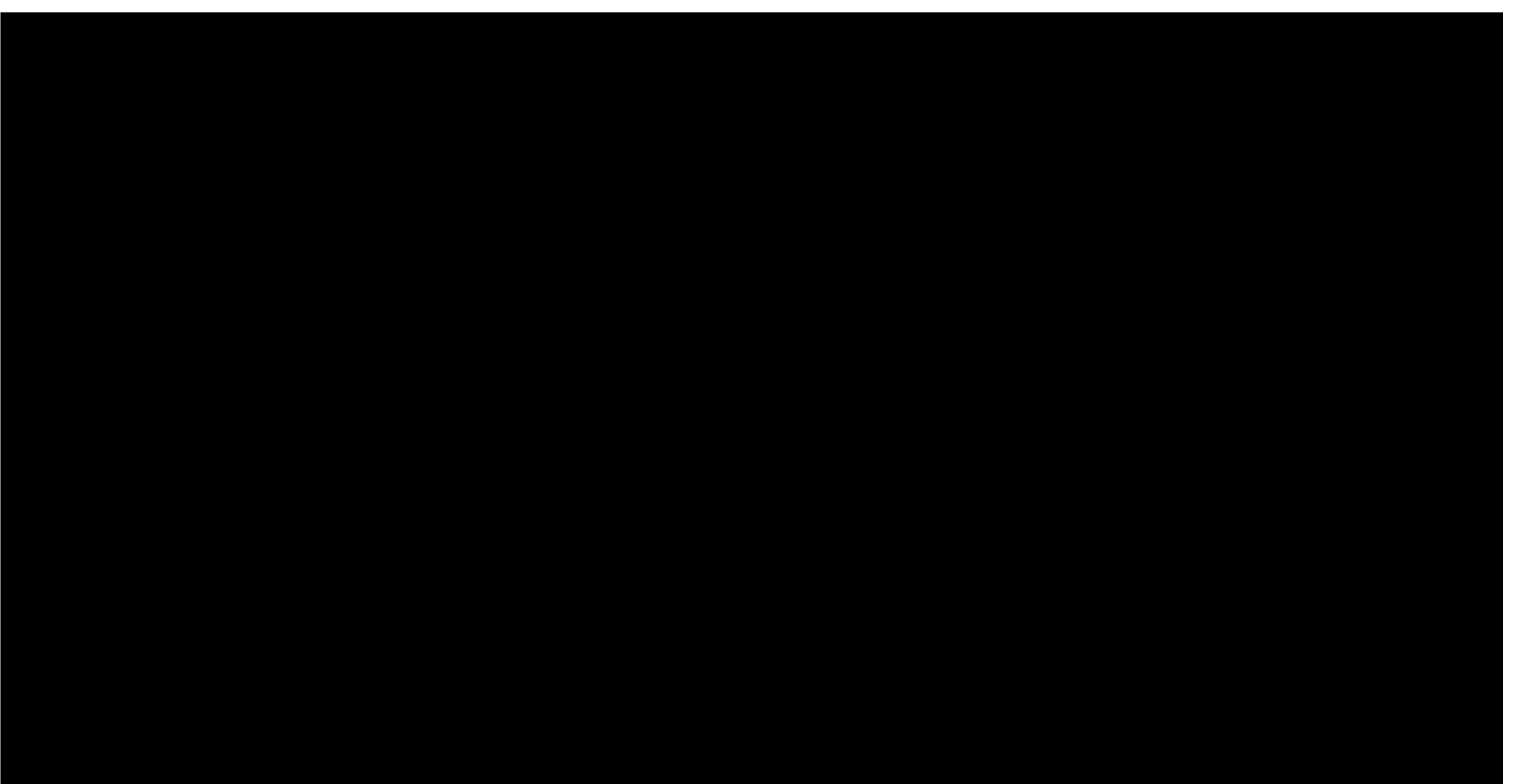


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