

**NEW ZEALAND TRANSPORT AGENCY**

**NEW ZEALAND RAILWAYS CORPORATION**

**PROJECT AGREEMENT IN RESPECT OF:**

**WESTERN RING ROUTE: WATERVIEW CONNECTION  
PROJECT**

## INTRODUCTION

### **1.0 Parties**

- 1.1 The **New Zealand Railways Corporation**, a corporation under the New Zealand Railways Corporation Act 1981 and a State Enterprise under the State-Owned Enterprises Act 1986, trading as KiwiRail, and its successors at law (***KiwiRail***). References to KiwiRail in the context of the PWA include Her Majesty the Queen for rail purposes.
- 1.2 The **New Zealand Transport Agency**, a Crown Entity established under section 92 of the Land Transport Management Act 2003, and its successors at law (***NZTA***). References to NZTA in the context of the PWA include Her Majesty the Queen acting by and through her Minister of Land Information.

### **2.0 Project Background**

- 2.1 The Project is a key component of the Western Ring Route. When completed, the Western Ring Route will provide an alternative State highway corridor to SH1 between Manukau and Albany.
- 2.2 The majority of the Project's proposed SH20 alignment between Maioro Street and the connection to SH16 at Waterview will be tunnelled, however part of the Project through Hendon Park/Alan Wood Reserve will be a surface motorway.
- 2.3 The Project alignment partly overlays land owned by KiwiRail, which is subject to the Rail Designation. Specifically the Project will overlap with the:
- 2.3.1 Rail Designation:
- (a) Above the Rail Designation at the Richardson Road Bridge,
  - (b) At the surface in the vicinity of Hendon Park and Alan Wood Reserve, and
  - (c) Below the Rail Designation in the vicinity of Alan Wood Reserve.
- 2.3.2 North Auckland Line Designation in the vicinity of the New North Road Pak N' Save Supermarket (by tunnelling underneath).
- 2.4 The Project will necessitate the realignment of the proposed rail corridor for the Future Rail Project onto land to the north of the proposed SH20 alignment, which is not presently designated for rail.
- 2.5 The parties have been co-operating to resolve issues in relation to the Project to enable designation and construction of the Project and to facilitate the Future Rail Project.

- 2.6 This Agreement sets out the obligations of the parties in relation to the issues arising in respect of the authorisations, construction and ongoing operation of the Project and facilitation of the Future Rail Project.

### **3.0 Definitions & Interpretation**

- 3.1 *Design Drawings*: the design reference drawings (as set out in **Appendix 3**), which reflect the Design Standards.
- 3.2 *Design Standards*: the standards by which NZTA will design the Richardson Road Bridge, and provide a land corridor for the Future Rail Project as set out in **Appendix 2**.
- 3.3 *District Plan*: the Auckland City District Plan – Isthmus Section.
- 3.4 *Future Rail Project*: KiwiRail’s proposed future Southdown to Avondale Railway project, which includes a railway line between Maioro Road and the existing North Auckland Line Designation, near Soljak Place.
- 3.5 *Land Plans*: the plans showing the Replacement Rail Land, the Required Land, and the Leased Land as set out in **Appendix 4**.
- 3.6 *Leased Land*: the land which NZTA wishes to lease from KiwiRail for temporary occupation for the construction of the Project or land upon which mitigation may be required such as planting. This may include land presently owned by KiwiRail and/or land which forms part of the Replacement Rail Land but which in either case is temporarily required by NZTA. The area of the Leased Land will be as provided for in the Land Plans and as listed in **Appendix 5**, unless otherwise agreed between the parties.
- 3.7 *NoRs*: the Notices of Requirement for designation for the Project.
- 3.8 *North Auckland Line Designation*: KiwiRail’s existing North Auckland Rail Line Designation (H13-09 in the District Plan).
- 3.9 *NZRC Act*: the New Zealand Railways Corporation Act 1981.
- 3.10 *Project*: The Waterview Connection Project, which will complete the Western Ring Route by connecting SH20 at Maioro Street in Mt Roskill to SH16 at Waterview and by providing increased capacity and improved resilience on SH16. NZTA is proposing a combination of surface and tunnelled road for the new section of SH20, as depicted in **Appendix 1**.
- 3.11 *Project Designation*: the future designation(s) for the Project in the District Plan.
- 3.12 *PWA*: the Public Works Act 1981 and the associated requirements of Land Information New Zealand in its administration of that Act.

- 3.13 *Rail Designation*: the existing designation for the Future Rail Project, recorded as designation G08-05 in the District Plan for which the New Zealand Railways Corporation is the requiring authority. The Rail Designation is due to lapse on 15 November 2011, but KiwiRail is seeking to extend that lapse date.
- 3.14 *Replacement Rail Land*: the land which KiwiRail wishes to acquire from NZTA, being land NZTA already owns or has agreed to acquire for the Project (and does so acquire), and which allows a new rail alignment to the north of the proposed SH20 motorway alignment. The area of the Replacement Rail Land will be as provided for in the Design Standards and the Land Plans and as listed in **Appendix 5**, unless otherwise agreed between the parties.
- 3.15 *Required Land*: the land which NZTA wishes to permanently acquire from KiwiRail for the Project (and which KiwiRail already holds for railway purposes) including sub-strata land. The area of the Required Land will be as provided for in the Land Plans and as listed in **Appendix 5**, unless otherwise agreed between the parties.
- 3.16 *Richardson Road Bridge*: the bridge to be constructed by NZTA as part of the Project, to facilitate the future passage of SH20 and the Future Rail Project under Richardson Road.
- 3.17 *RMA*: the Resource Management Act 1991.
- 3.18 *SH16*: State Highway 16.
- 3.19 *SH20*: State Highway 20.
- 3.20 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 3.20.1 "including" and similar words do not imply any limitation;
- 3.20.2 references to any form of law is to New Zealand law, including as amended or re-enacted;
- 3.20.3 references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- 3.20.4 except as provided in this Agreement every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at anytime;
- 3.20.5 singular includes plural and vice versa;
- 3.20.6 New Zealand time and dates apply;
- 3.20.7 any word or expression related to or derived from a definition in this Agreement has a meaning corresponding or construed to the definition;
- 3.20.8 references to sections, clauses, schedules, annexes or other identifiers are to those in this Agreement;
- 3.20.9 references to a document or agreement (other than a plan or other document created as part of a statutory process) includes it as varied, novated or replaced; and
- 3.20.10 each schedule and any other attachment is part of this Agreement.

## 4.0 Principles

- 4.1 Both parties recognise that they have obligations:
  - 4.1.1 Arising from their respective statutory roles and responsibilities; and
  - 4.1.2 To the Minister of Transport.
- 4.2 Each party commits to consider, investigate and endeavour to resolve any conflicts as they arise in a manner that maintains the integrity, professionalism and statutory accountabilities of each party and recognises each party's objectives.
- 4.3 The parties acknowledge the importance of keeping each other informed before making any statement or releasing any information in relation to the subject matter of this Agreement, which may affect the interests of the other party.
- 4.4 Each party will maintain "sovereignty" over their respective areas of accountability and responsibility and will endeavour to keep the other advised of issues that may affect one party as a result of the activities of the other.
- 4.5 This Agreement:
  - 4.5.1 Applies on the assumption that the required RMA approvals for the Project will be granted and that the Project proceeds. It will cease to have effect if NZTA decides not to proceed with the Project or if the required approvals are not obtained (for the avoidance of doubt the Agreement will not cease to have effect if the NZTA proceeds with an altered form of the Project but the parties will need to reconsider the Design Drawings, Design Standards and Land Plans as detailed in clause 6.5);
  - 4.5.2 Is contemplated by clause 7.1.2 of the relationship Memorandum of Understanding dated January 2008 between KiwiRail's and NZTA's respective statutory predecessors ONTRACK and Transit New Zealand; and
  - 4.5.3 Forms part of that Memorandum of Understanding.
  - 4.5.4 Is intended to be binding on the parties.

## 5.0 Parties' Objectives

### Generally

5.1 NZTA's objectives for the Project as they relate to this Agreement are to:

- 5.1.1 Cooperate with KiwiRail where the Project affects KiwiRail's interests.
- 5.1.2 Secure the necessary approvals (including resource consents, designations and other statutory permits and authorisations) for the Project.
- 5.1.3 Acquire the Required Land and lease the Leased Land.
- 5.1.4 Obtain KiwiRail's approval under section 177 of the RMA to construct the Project over or under parts of the Rail Designation and the North Auckland Line Designation.
- 5.1.5 Construct and operate the Project.
- 5.1.6 Acquire the Replacement Rail Land for construction of the Project and transfer, in accordance with the PWA and this Agreement, this land to KiwiRail when it is no longer required by NZTA for construction purposes, or subject to a lease-back to NZTA for construction purposes.

5.2 KiwiRail's objectives as they relate to the Project and this Agreement are to:

- 5.2.1 Cooperate with NZTA in NZTA's delivery of the Project.
- 5.2.2 Maintain a physical designated corridor to enable the Future Rail Project.
- 5.2.3 Secure NZTA's support to:
  - (a) acquire the Replacement Rail Land to facilitate a potential new rail alignment;
  - (b) designate and rezone the Replacement Rail Land for the Future Rail Project; and
  - (c) uplift that part of the Project Designation that relates to the Replacement Rail Land once the Project is operational.

### Specifically

5.3 In order to better achieve the parties' objectives outlined in clauses 5.1 and 5.2, the parties have entered into this Agreement to provide for:

- 5.3.1 A record of the Design Drawings, Design Standards and Land Plans which have been developed so that rail can be enabled in the future on the Replacement Rail Land.

- 5.3.2 The acquisition by NZTA of the Required Land, and the lease of the Leased Land, from KiwiRail.
- 5.3.3 The acquisition by NZTA and transfer, pursuant to the PWA and this Agreement, of the Replacement Rail Land from NZTA to KiwiRail once that land is no longer required by NZTA for construction purposes (or prior transfer if subject to a lease-back to NZTA for the construction phase of the Project) to create a replacement land corridor for the Future Rail Project to the north of the proposed SH20 alignment.
- 5.3.4 The grant of approval by KiwiRail under section 177 of the RMA to the construction, operation and maintenance of the Project over and under parts of the Rail Designation and the North Auckland Line Designation.
- 5.3.5 KiwiRail ensuring that the Replacement Rail Land is designated (and zoned) for rail purposes to enable the Future Rail Project (KiwiRail intends to lodge a Notice of Requirement for a designation over the Replacement Rail Land following its acquisition by NZTA and/or its transfer to KiwiRail).
- 5.3.6 NZTA's support to realign the Rail Designation along the Replacement Rail Land corridor.
- 5.3.7 A record of the measures agreed to be undertaken by NZTA in respect of mitigating the effects of the location of the Replacement Rail Land.
- 5.3.8 A record of the costs payable between the parties in respect of the Project and Future Rail Project.

## **AGREEMENT**

### **6.0 Provision for Future Rail Project in design standards**

- 6.1 NZTA records that it has developed the Design Drawings, Design Standards and Land Plans to ensure that the Replacement Rail Land is, based on information available to NZTA as at the date of this Agreement, sufficient to enable rail to be constructed in the future.
- 6.2 NZTA agrees to construct, as part of the Project, the Richardson Road Bridge with sufficient gauge clearance to allow for the later construction of the Future Rail Project under this bridge structure.
- 6.3 KiwiRail has confirmed and approved that the Design Drawings, Design Standards and Land Plans meet the objective recorded in clause 5.3.1.
- 6.4 NZTA agrees to consult with KiwiRail further during the design phase of the Project to ensure that the Project will not compromise the Future Rail Project.

- 6.5 NZTA shall consult KiwiRail if any substantive changes to the Design Drawings, Design Standards and Land Plans are proposed. If changes to the Design Drawings, Design Standards and Land Plans are required as a result of an altered form of the Project proceeding, the parties shall work together in good faith to agree a set of amended Design Drawings, Design Standards and Land Plans. If the parties cannot agree upon a set of amended Design Drawings, Design Standards and Land Plans clause 16.2 will apply.

## **7.0 Acquisition of Required Land and Lease of Leased Land**

- 7.1 The parties agree that:

- 7.1.1 The Required Land will be acquired by NZTA under the PWA, and the Leased Land will be leased by NZTA, for use in connection with a road (the SH20 motorway extension for the Waterview Connection Project) including construction or mitigation associated with that road;
- 7.1.2 The compensation to which KiwiRail is entitled for NZTA acquiring the Required Land and for leasing the Leased Land will be determined in accordance with clause 9.0, which the parties agree is a methodology that meets the relevant PWA requirements; and
- 7.1.3 The transfer of the Required Land, and lease of the Leased Land to NZTA will be undertaken pursuant to the PWA and in accordance with the provisions of this Agreement;
- 7.1.4 The parties agree to use every endeavour to give primacy to the specific terms of this Agreement, and/or to give best effect to their intention to the extent permissible by law.

- 7.2 The parties will co-operate in relation to the acquisition of the Required Land, and lease of the Leased Land, to minimise any difficulties or delays.

## **8.0 Transfer of the Replacement Rail Land**

- 8.1 NZTA agrees to make best efforts to acquire, under the PWA, such of the Replacement Rail Land that is not already owned by the NZTA, at no cost to KiwiRail, with the value of such Replacement Rail Land being accounted for in clause 9.0.
- 8.2 The parties agree that:



- 8.2.1 NZTA does require occupation of some of the Replacement Rail Land - for construction or other aspects of the Project, and may therefore need to retain that Replacement Rail Land until after construction of the Project or to transfer it to KiwiRail prior to construction but subject to a lease to NZTA for NZTA's activities. Any such lease would be at a rental that compensates KiwiRail for any rental income that KiwiRail would otherwise have been able to receive from that land, based on actual historical financial information.
- 8.2.2 NZTA may not allow third parties to use the Replacement Rail Land except with KiwiRail's prior written approval.
- 8.3 NZTA agrees to transfer a freehold interest in the Replacement Rail Land to KiwiRail pursuant to the PWA as soon as practicable following such Replacement Rail Land no longer being required for the construction of the Project. Unless agreed otherwise by KiwiRail, that freehold interest will be subject only to:
- 8.3.1 any interests to which the land was subject when it was acquired by NZTA;
  - 8.3.2 a reverse sensitivity encumbrance in favour of NZTA for the Project including its continued operation and maintenance; and
  - 8.3.3 an easement in favour of NZTA for any infrastructure (including, without limitation, the motorway tunnel portal building, retaining structures, swales and grout walls) relating to the Project and access to that infrastructure provided the easement does not materially compromise the Future Rail Project.
- 8.4 The parties will, reflecting clause 8.2, discuss and agree the timing of the transfer to NZTA of the Required Land and the transfer to KiwiRail of the Replacement Rail Land, which may occur in the 2010/2011 financial year.
- 8.5 The transfer of the Replacement Rail Land under clause 8.3 will occur in either parcels or in total as further agreed between the parties.
- 8.6 NZTA acknowledges that KiwiRail may also be interested in acquiring other land declared surplus to the needs of the Project. NZTA (as the owning agency) will work with KiwiRail, fill the role of "lead agency" and appoint a Crown Agent to manage any negotiations between the parties as to that surplus land.

## **9.0 Compensation and Valuation methodology**

- 9.1 NZTA will compensate KiwiRail for the acquisition of the Required Land (other than sub-strata rights) and recognise the value of the Replacement Rail Land being transferred to KiwiRail by paying KiwiRail the appropriate current market value for the differential in area between the Required Land (other than sub-strata rights) acquired by NZTA and the Replacement Rail Land transferred to KiwiRail, based on the per square metre value of Required Land as set out in clause 9.5.
- 9.2 NZTA will separately compensate KiwiRail for the current market value of sub-strata rights included in the Required Land, which will not be compensated under clause 9.1.
- 9.3 NZTA will compensate KiwiRail for the lease of the Leased Land on an equivalent rental that KiwiRail was receiving prior to the termination of leases on the affected land, except that no rental will be paid for any land upon which mitigation may be required after construction of the Project such as planting.
- 9.4 The parties agree that the methodology in this clause is one that meets the relevant PWA requirements.
- 9.5 The parties agree to issue joint instructions to their respective valuers to ascertain the compensation payable for each property comprising the Required Land for the differential in area of the Required Land over and above the area of the Replacement Rail Land, and the Leased Land, and for this purpose have agreed that:
- 9.5.1 Any Required Land south of Richardson Road will be valued on the basis of adjacent business zoning;
- 9.5.2 Any Required Land between Richardson Road and New North Road will be valued on the basis of open-space; and
- 9.5.3 Contamination will be accounted for as set out in clause 10.3.
- 9.6 If the parties cannot agree upon the value or rental value of any property included in the Required Land or the Leased Land:
- 9.6.1 The parties shall liaise further as to how any such difference(s) can be resolved; and
- 9.6.2 Should further liaison be unsuccessful, clause 16.1 will apply.

## 10.0 Contamination

- 10.1 NZTA and KiwiRail acknowledge the importance of early proactive engagement over contaminated land.
- 10.2 The parties agree that:
- 10.2.1 The responsibility for determining the extent of investigations for:
- (a) The Required Land rests with NZTA; and
  - (b) The Replacement Rail Land rests with KiwiRail.
- 10.2.2 The investigation process will be as follows:
- (a) Extent of investigation is determined by the respective parties in accordance with clause 10.2;
  - (b) Investigation by environmental specialist;
  - (c) Joint briefing on findings;
  - (d) Opportunity for mitigation by KiwiRail or NZTA as appropriate;
  - (e) Post - mitigation investigation by environmental specialist;
  - (f) Joint briefing on findings;
  - (g) Further mitigation under step (d) if required;
  - (h) Brief to property valuer.
- 10.2.3 The cost of contamination investigations for the Required Land and Replacement Rail Land (both pre and post mitigation investigation) will be met by NZTA.
- 10.2.4 Every reasonable step will be taken to require the contaminator to mitigate the relevant property prior to the property being exchanged as contemplated by this Agreement.
- 10.3 For the Required Land the valuers will be directed to ignore the prospect of the public work and to value the properties on their current zoning. Further, if contamination is established on the Required Land (following the process in clause 10.2.2) the valuation will only take account of the costs of any de-contamination work required to achieve the value under that zoning, and not any further de-contamination work that might be required for the Project.
- 10.4 NZTA and KiwiRail agree not to make any further claims against the other in relation to contamination mitigation on the Required Land or Replacement Rail Land, except as provided for in this clause 10.0.

## **11.0 Resource Management Act Approvals**

### 11.1 KiwiRail agrees to:

- 11.1.1 Grant NZTA approval under section 177 of the RMA to designate, construct, operate and maintain the Project over and/or under parts of its Rail Designation and the North Auckland Line Designation as depicted in Appendix 1.
- 11.1.2 Continue to support the NoRs and related consent applications (or other approvals) for the Project. KiwiRail's submissions and evidence (if any) to the Board of Inquiry will generally support the Project, and in particular confirm the need to retain a rail corridor in accordance with the Design Standards and Design Drawings. For the avoidance of doubt, this clause does not constrain KiwiRail from making submissions and presenting evidence to ensure that the conditions on the Project Designation do not adversely impact that Future Rail Project.
- 11.1.3 In accordance with the RMA, withdraw the Rail Designation once the Project is constructed, to the extent that the Rail Designation overlaps with the constructed surface motorway or is 'stranded' on the southern side of the surface motorway alignment.

### 11.2 NZTA agrees to:

- 11.2.1 Support and not submit in opposition to any notice of requirement by KiwiRail to designate the Replacement Rail Land or plan change to rezone the Replacement Rail Land for the Future Rail Project, once the Project is constructed and the final designation boundary between SH20 and the proposed rail line is confirmed (although the parties agree that NZTA may provide a submission to the relevant consent authority in conditional support of the Future Rail Project, with the conditions relating to the need to protect, maintain and operate the SH20 motorway corridor).
- 11.2.2 Grant KiwiRail approval under section 177 of the RMA to designate, construct, operate and maintain the Future Rail Project over parts of the Project Designation (if approved) that relate to the Replacement Rail Land (provided this does not impede, in any material way, the construction, operation or maintenance of the SH20 motorway).
- 11.2.3 In accordance with the RMA, withdraw that part of the Project Designation that relates to the Replacement Rail Land (excluding to the extent necessary to operate overpasses or tunnels or for any motorway infrastructure referred to in clause 8.3.3) once the Replacement Rail Land becomes surplus to NZTA's requirements.

11.2.4 Unless KiwiRail agrees otherwise in writing, the NZTA will oppose the imposition of any conditions on the Project Designation (or associated consents) that relate to the use of the Replacement Rail Land once the Project is operational, other than conditions requiring temporary planting pending future rail use.

## **12.0 Mitigation of Additional Future Rail Project Costs**

12.1 When the Future Rail Project proceeds the parties will compare the cost (including construction costs) of developing the Future Rail Project:

12.1.1 On the land currently held by KiwiRail (which includes the Required Land) as if the Project had not been developed; and

12.1.2 On the land that continues to be held by KiwiRail together with the Replacement Rail Land with the Project in place.

12.2 KiwiRail will detail its assumptions on the extent of mitigation required for both scenarios.

12.3 The cost comparison will be carried out when KiwiRail undertakes the Future Rail Project, by engaging consultants agreed at the time to develop option level estimates for each scenario under a brief approved by both parties. The cost estimates produced will be reviewed by an independent cost advisor agreed at the time.

12.4 This comparative assessment will establish the basis of any cost disadvantage to KiwiRail of developing the Future Rail Project on the land that continues to be held by KiwiRail together with the Replacement Rail Land as well as the likelihood of future additional mitigation requirements (i.e. when the Future Rail Project is constructed) disadvantaging KiwiRail over and above its current most likely cost exposure (i.e. if the Project, including mitigation works which benefit KiwiRail, had not been developed).

12.5 If the comparative assessment indicates that:

12.5.1 It is cheaper for KiwiRail to construct the Future Rail Project on the land that continues to be held by KiwiRail together with the Replacement Rail Land, even allowing for future mitigation, then no compensation will be required to be paid by NZTA to KiwiRail.

12.5.2 The costs (including the final form of required mitigation) of constructing the Future Rail Project on the land that continues to be held by KiwiRail together with the Replacement Rail Land could exceed the costs of constructing the Future Rail Project on the land currently held by KiwiRail, then NZTA will either:

- (a) Make a one-off payment in full and final settlement; or
- (b) Meet the actual additional costs as they arise in the future when the Future Rail Project proceeds.

12.6 NZTA will, in consultation with KiwiRail, seek to minimise its development costs of the Project by not carrying out any works which have the sole purpose of accommodating the Future Rail Project, but will ensure that Project works do not adversely impact the Future Rail Project.

### **13.0 KiwiRail Reverse Sensitivity**

13.1 NZTA acknowledges KiwiRail's concerns about reverse sensitivity issues in relation to the Future Rail Project, and its desire to minimise those issues by registering on the titles of land that may be affected by the Future Rail Project an obligation on the owner of that land not to object to or complain about the Future Rail Project or applications for its associated planning approvals.

13.2 NZTA agrees to:

13.2.1 register reverse sensitivity covenants in favour of KiwiRail over land acquired or currently owned by NZTA for the Project along the route of the Future Rail Project or adjacent to the Future Rail Project; and

13.2.2 use its best endeavours to register reverse sensitivity covenants over other land in Hendon Avenue which may be adversely affected by the Future Rail Project where NZTA is negotiating with the owners of the land in relation to the Project.

13.3 The covenants in clause 13.2 will restrict the ability of future owners to object to the Future Rail Project.

### **14.0 Project Related Costs**

14.1 In addition to the costs of acquiring the Required Land and leasing the Leased Land, NZTA will fund all reasonable costs of:

14.1.1 The works associated with the Richardson Road Bridge detailed in clause 6.2.

14.1.2 KiwiRail providing its support of the Project (limited to any submissions, evidence and attendances at the Board of Inquiry hearing for the NoRs) as provided by clause 11.1.2, provided that a reasonable opportunity is given to NZTA to consider the work proposed and any estimate for that work and provide its approval, such approval not to be unreasonably withheld;

- 14.1.3 Any notice of requirement (or other statutory approval) by KiwiRail seeking to alter the Rail Designation or to seek a new designation (and any associated re-zoning) to realign it along the Replacement Rail Land, provided that a reasonable opportunity is given to NZTA to consider the work proposed and any estimate for that work and provide its approval, such approval not to be unreasonably withheld;
- 14.1.4 Any mitigation costs ascertained following the process provided for in section 12.0; and
- 14.1.5 All costs of investigations for matters set out in clause 10.2.3.
- 14.2 In the event that NZTA is not able to acquire the Replacement Rail Land as a freehold interest, NZTA shall reimburse KiwiRail for any reasonable cost KiwiRail incurs to acquire the Replacement Rail Land itself (whether through negotiation or acquisition under the PWA).
- 14.3 In the event that KiwiRail is not able to acquire the Replacement Rail Land, NZTA will use its best endeavours to facilitate alternative land on which to locate the Future Rail Project and/or work with KiwiRail to find a way to provide a continuous corridor on which to locate the Future Rail Project.
- 14.4 For the avoidance of doubt, KiwiRail will be solely responsible for funding its application to extend the lapse date for the Rail Designation.

## 15.0 Project Control Group

- 15.1 As soon as practicable after signing this Agreement, the parties shall constitute a Project Control Group (*PCG*), which shall consist of:
- 15.1.1 the following representatives:

	NZTA	KiwiRail
Property	Rick Galli	Neil Buchanan
Design methodology	Andre Walter	Neil Buchanan
Construction cost apportionment	Andre Walter	Neil Buchanan
RMA / Planning	Deepak Rama	Pam Butler

- 15.1.2 such other persons as the parties agree on from time-to-time.
- 15.2 The parties will, as soon as practicable after signing this Agreement, set the frequency and location of meetings of the PCG.

15.3 The PCG shall be:

- 15.3.1 the forum through which NZTA and KiwiRail shall discuss all issues, matters, or concerns relating to and arising out of the Project;
- 15.3.2 responsible for co-ordinating any changes in design or specifications affecting either the Project or the Future Rail Project; and
- 15.3.3 responsible for liaison over contamination remediation requirements and agreeing apportionment of costs where provided for in this Agreement.

## 16.0 **Dispute Resolution**

16.1 If a dispute arises under this Agreement in connection with any valuation issue under the PWA, that dispute will be:

- 16.1.1 referred to an independent valuer for non-binding advice to the parties;
- 16.1.2 resolved by the Land Valuation Tribunal if the parties are not able to resolve the matter between themselves within a reasonable time after receiving the independent valuer's advice.

16.2 If any other dispute under this Agreement arises, the parties agree to comply with the following provisions of this clause before commencing any other form of dispute resolution (including court proceedings).

16.2.1 *Appointment and Representatives:* Either party ("the First Party") claiming that a dispute has arisen under this Agreement between the parties shall give written notice to the other of the dispute and require both parties' representatives to meet together to attempt to settle the dispute. The other party shall, upon receipt of the First Party's notice, promptly ensure that its representatives attend such meeting and attempt to resolve the dispute.

16.2.2 *Initial Resolution:* The parties shall use their reasonable endeavours to ensure that the persons designated in this Agreement shall, within 10 business days after the giving of the notice seek to resolve the dispute.

16.2.3 *Order of Escalation:* The parties will endeavour to resolve the dispute by negotiation between personnel holding the following positions within their respective organisations (or equivalent positions where such position or designation ceases to exist) beginning at 1 in the table below. In the event that the dispute cannot be resolved at a particular level then the parties will refer the dispute to the next level within their organisations as shown in the table below.



	NZTA	KiwiRail
1	Project Director (Sumi Eratne)	General Manager, Commercial (Neil Buchanan)
2	General Manager (Colin Crampton)	General Manager - Network (Rick van Barneveld)
3	Chief Executive (Geoff Dangerfield)	Chief Executive (Jim Quinn)

16.2.4 *Resolution*: The parties shall within a further period of 10 business days (or within such longer period as the representatives may agree is appropriate) use their reasonable endeavours to agree, in good faith, on a process for resolving the whole or part of the dispute through means other than litigation or arbitration (including, without limitation, further negotiations, mediation, conciliation or independent expert determination) and on:

- (a) The procedure and timetable for any exchange of documents and other information relating to the dispute;
- (b) Procedural rules and a timetable for the conduct of the selected mode of proceedings;
- (c) A procedure for selection and compensation of any neutral person who may be employed by the parties in dispute;
- (d) Whether the parties should seek the assistance of a dispute resolution organisation, and
- (e) The parties shall be bound to proceed to resolve the dispute if agreement is reached on the dispute resolution process as set out in this clause and any resolution arising out of such process shall be binding on the parties.

16.2.5 *Arbitration*: In the unlikely event that agreement is not reached through escalation, the parties shall agree to arbitration on the following basis:

- (a) The arbitration shall be conducted by a sole arbitrator in New Zealand pursuant to the Arbitration Act 1996.
- (b) The parties' respective responsibilities for the costs of the arbitration shall be determined by the arbitrator.
- (c) The parties shall be bound by the decision of the arbitrator.

## 17.0 Contacts

- 17.1 The parties have each appointed a contact person(s) (as noted in clause 15.3 below) who is the first point of contact for the other party.
- 17.2 Each party agrees that nominated contact persons will keep themselves well informed of the Project, and have a sufficient level of authority to represent their party's view to the other contact person.
- 17.3 The parties' Project contacts are:

### 17.3.1 For NZTA:

Name	Rick Galli
Title	
Physical Address	Level 11, HSBC House 1 Queen Street Auckland
Postal Address	Private Bag 106602 Auckland 1143
Telephone	09 9699800
Facsimile	09 9699813
Email	rick.galli@nzta.govt.nz

### 17.3.2 For KiwiRail:

Name	Neil Buchanan
Title	General Manager, Commercial
Physical Address	Bunny Street, Wellington
Postal Address	P O Box 593, Wellington 6140
Telephone	(04) 4983126
Facsimile	(04) 4731460
Email	neil.buchanan@kiwirail.co.nz

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

## 18.0 Written Record of Substantive Discussions

- 18.1 Whenever substantive proposals are being discussed between them, the parties will make and circulate a single written record of those discussions.
- 18.2 No amendment to this Agreement will be effective unless it is in writing and signed by all the parties.

19.0 Signed

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

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

Colin Crampton  
Group Manager, Highways & Network Operations

Signed for New Zealand Railways Corporation by its authorised signatory:

Rick van Barneveld  
General Manager, Network

in the presence of:

Signature: *Richard Gally*

Name: RICHARD GALLY

Occupation: ARCHITECT

Address: 6 ABINGDON PLACE  
AUCKLAND

23-2-2011

22 FEB 2011  
in the presence of:

Signature: *Rachael Evans*

Name: RACHAEL EVANS

Occupation: EXECUTIVE ASSISTANT

Address: 302 MAIN ROAD, TAWA.

22/2/11