

CONFIDENTIAL

Execution of the Deed of Novation by Directors (2): Easement 23 Cheshire Street, Parnell

Recommendation

That the Board:

- i. executes a Deed of Novation under which New Zealand Railways Corporation's ("NZRC") agreed obligation to grant to Auckland Transport, an access easement over land at 23 Cheshire Street, Parnell, Auckland is assumed by Summerset Villages (Parnell) Limited.

Executive summary

This report seeks nomination of two (2) directors to execute, on behalf of Auckland Transport ("AT") the attached Deed of Novation with NZRC acting through KiwiRail Limited ("KiwiRail") and Summerset Villages (Parnell) Limited ("Deed"), as per Attachment 1, relating to easements required for non-exclusive vehicle and pedestrian access to Parnell Station.

KiwiRail and Auckland Transport under a Memorandum of Understanding dated 12 March 2015 ("MOU"), referred to in Attachment 2, agreed to register, in favour of AT, a vehicular and pedestrian easement over land at 23 Cheshire Street, Parnell, Auckland ("Land"), such easement being in addition to an existing registered access easement. Under the MOU AT will pay KiwiRail \$350,000 plus GST if any, for this additional easement upon registration. Funding is approved for this purpose.

KiwiRail has sold the Land to Summerset Villages (Parnell) Limited. The MOU specifically provides for KiwiRail to novate the MOU to any party purchasing the Land. KiwiRail has prepared the Deed which novates to Summerset Villages (Parnell) Limited all of KiwiRail's obligations, liabilities, rights, title and interest in the MOU and requested that AT execute it.

AT solicitors Simpson Grierson have reviewed the Deed and certified that it is in order for signing by AT, as per Attachment 3.

Where AT is to execute a deed, the Property Law Act requires that it be signed in the name of AT by at least two directors.

CONFIDENTIAL

Strategic context

There are two (2) easements required for station access comprising an existing registered easement and a second easement to be granted and registered in favour of AT under the MOU. These easements will enable 24-hour pedestrian access to the rail platforms and vehicle access for rail commuter drop-off and station maintenance.

Background

NZRC has appointed KiwiRail to manage the Crown's railway land. AT required two (2) easements from KiwiRail for access over the Land for the construction of the new Parnell station.

AT entered into an MOU with KiwiRail dated 12 March 2015.

Under the MOU, KiwiRail has agreed to provide AT with access by an existing registered easement over the Land. This is the area marked in orange on the Boffa Miskell Drawing A14249_0007 contained in the MOU.

In addition, the MOU provides for registration of an additional easement to be granted to AT over the Land. This is the area marked in blue and red on the Boffa Miskell Drawing A14249_0007 contained in the MOU. AT will pay KiwiRail a sum of \$350,000, plus GST if any, for this easement.

In addition, clause 4(a) of the MOU gives KiwiRail the ability to novate the MOU to any party.

The Land has been sold by KiwiRail to Summerset Villages (Parnell) Limited. Consequently, KiwiRail has prepared the Deed which novates to Summerset Villages (Parnell) Limited all of its interest in the MOU. This Deed also provides a confirmation by KiwiRail to AT that it is not aware of any matter, fact or circumstance which is or which may be likely to give rise to a claim being made against AT under the MOU and vice-versa.

Issues and options

There has not been any known breach to the MOU. Following clause 4(b) of the MOU, AT is contractually required to sign the Deed. As such, AT's capacity to refuse to sign the Deed is limited.

CONFIDENTIAL

Next step

- AT to appoint two (2) directors of the board to execute the Deed.

Attachments

Attachment Number	Description
1	Deed and Signed Counterparts of the Deed
2	Copy of the MOU
3	Written Confirmation from AT Solicitors Simpson Grierson

Document ownership

Submitted by	Sean Corbett Property Manager Operations	
	Deborah Godinet Group Manager Property and Planning	
Recommended by	Greg Edmonds Chief Infrastructure Officer	
	David Warburton Chief Executive	
Approved for submission		

CONFIDENTIAL

Glossary

Acronym	Description
AT	Auckland Transport
MOU	Memorandum of Understanding
NZRC	New Zealand Railways Corporation
NZRC Act	New Zealand Railways Corporation Act 1981

DEED OF NOVATION

**HER MAJESTY THE QUEEN ACTING BY AND THROUGH
NEW ZEALAND RAILWAYS CORPORATION**

SUMMERSET VILLAGES (PARNELL) LIMITED

AUCKLAND TRANSPORT



Christchurch
Level 9, HSBC Tower
62 Worcester Boulevard
PO Box 2646
Christchurch 8140
Telephone +64 3 379 0920
Facsimile +64 3 366 9277

Auckland
Level 8, Chorus House
66 Wyndham Street
PO Box 2646
Auckland 1140
Telephone +64 9 920 6400
Facsimile +64 9 920 9599

PARTIES

- 1 **HER MAJESTY THE QUEEN ACTING BY AND THROUGH NEW ZEALAND RAILWAYS CORPORATION ("Outgoing Party")**
- 2 **SUMMERSET VILLAGES (PARNELL) LIMITED ("Incoming Party")**
- 3 **AUCKLAND TRANSPORT ("Continuing Party")**

BACKGROUND

- A The Outgoing Party and the Incoming Party are parties to a Particulars and Conditions of Sale of Real Estate by Tender for the sale and purchase of 23 Cheshire Street, Parnell dated 6 June 2015 ("**the Agreement**").
- B The Outgoing Party and the Continuing Party are parties to a Memorandum of Understanding dated 12 March 2015 ("**the Memorandum**").
- C Pursuant to clause 28.2(b) of the Agreement and clause 4 of the Memorandum, the Outgoing Party wishes to be discharged and released from the Memorandum and the Incoming Party wishes to be bound by the terms of the Memorandum as purchaser.
- D The Continuing Party has agreed to discharge and release the Outgoing Party with effect from the Effective Date upon the undertakings of the Incoming Party to perform the obligations of the Outgoing Party under the Memorandum and to be bound by the terms of the Memorandum in place of the Outgoing Party.
- E The parties agree to the novation of the Memorandum on the terms of this Deed.

THIS DEED RECORDS THAT:**1 DEFINITIONS AND INTERPRETATION**

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

Agreement means the Agreement described in paragraph A of the Background of this Deed.

Effective Date means 13 August 2015 or such later date on which settlement under the Agreement takes place.

Memorandum means the Memorandum described in paragraph B of the Background of this Deed.

- 1.2 **Interpretation:** In this Deed, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this Deed have the defined meaning throughout this Deed, including the Background;
- (b) **Headings:** section, clause and other headings are for ease of reference only and will not affect the interpretation of this Deed;
- (c) **Parties:** a reference to any party includes the executors, administrators, successors and permitted assigns of that party;
- (d) **Persons:** references to a person include an individual, company, corporation, partnership, firm, joint venture, trust, unincorporated body of persons, authority or entity, in each case whether or not having a separate legal identity;

- (e) **Plural and Singular:** any reference to the singular includes the plural and vice versa;
- (f) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in and the schedules and attachments of, this Deed. Each schedule and attachment forms part of this Deed;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand, and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to allow, permit or cause that thing to be done;
- (i) **Inclusive Expressions:** the term includes or including (or any similar expression) is deemed to be followed by the words "without limitation";
- (j) **Documents:** a reference to any document (however described) is a reference to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form;
- (k) **Discharge and Release:** any reference to discharge and release means the unconditional, irrevocable and full discharge and release; and
- (l) **Obligations and Liabilities:** references to obligations and liabilities mean all obligations and liabilities, actual and contingent.

2 **CONDITION**

- 2.1 The novation of the Memorandum pursuant to this Deed is conditional in all respects (as a condition precedent) on the completion of settlement of 23 Cheshire Street, Parnell in accordance with the Agreement.

3 **NOVATION, ACCEPTANCE, CONSENT AND RELEASE**

- 3.1 **Novation:** Subject to the terms and conditions of this Deed, with effect on and from the Effective Date the parties agree and acknowledge that:
 - (a) **Parties Substituted:** The Outgoing Party novates to the Incoming Party all of the Outgoing Party's obligations, liabilities, rights, title and interest in the Memorandum and the Incoming Party accepts such novation.
 - (b) **Consent:** The Continuing Party consents to the novation of all of the Outgoing Party's obligations, liabilities, rights, title and interest in the Memorandum.
 - (c) **Incoming Party Bound:** All the property, rights, powers and privileges of the Outgoing Party together with all obligations and liabilities arising under or in respect of the Memorandum are vested absolutely in the Incoming Party.
 - (d) **Entitlements Cease:** The Outgoing Party ceases to be entitled to any of the rights, powers or privileges in respect of the Memorandum and is released and discharged from all obligations and liabilities under the Memorandum.
 - (e) **New Agreement:** The Continuing Party and the Incoming Party are parties to a new agreement on the same terms as the Memorandum.

4 **NO KNOWN CLAIMS**

- 4.1 **Against Continuing Party:** The Outgoing Party confirms to the Continuing Party that, as at the date of this Deed, it is not aware of any matter, fact or circumstance which is or which may be likely to give rise to a claim being made against the Continuing Party by it under the Memorandum.

4.2 **Against Outgoing Party:** The Continuing Party confirms to the Outgoing Party that, as at the date of this Deed, it is not aware of any matter, fact or circumstance which is or may be likely to give rise to a claim being made against the Outgoing Party by it under the Memorandum.

5 GENERAL

- 5.1 **Costs:** Unless otherwise stated in this Deed, each party will bear its own costs and expenses in connection with the negotiation, preparation and implementation of this Deed.
- 5.2 **Assignment:** No party will assign or otherwise transfer any of its rights or obligations under this Deed to any other person without the prior written consent of the other parties.
- 5.3 **Amendment:** No amendment to this Deed will be effective unless it is in writing and signed by a duly authorised representative of each party.
- 5.4 **Waiver:** Any waiver by a party of any of its rights or remedies under this Deed or the Memorandum will only be effective if recorded in writing and signed by that party. If the waiver relates to a breach of any provision of this Deed or of the Memorandum this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach or failure to enforce any provision, of this Deed at any time by any party will in any way affect, limit or waive that party's right to subsequently require strict compliance.
- 5.5 **Counterparts:** This Deed may be executed in any number of counterpart copies which, read together, will constitute one and the same document. Any facsimile copy of this Deed (including any facsimile copy of any document evidencing any party's signature of this Deed) may be relied on by any other party as though it were an original copy. This Deed may be entered into on the basis of an exchange of such facsimile copies.
- 5.6 **Severability:** If any provision of this Deed is or becomes invalid or unenforceable, that provision will be deemed deleted from this Deed. The invalidity or unenforceability of that provision will not affect the other provisions of this Deed, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

EXECUTED BY THE PARTIES AS A DEED

SIGNED for and on behalf of)
)
HER MAJESTY THE QUEEN ACTING)
BY AND THROUGH NEW ZEALAND)
RAILWAYS CORPORATION) _____
)
 in the presence of)

Witness signature

Full Name

Address

Occupation

SIGNED for and on behalf of)
)
SUMMERSET VILLAGES (PARNELL))
LIMITED)
by its Directors)
in the presence of)

Director

Director/
Authorised Signatory

Witness signature

Full Name

Address

Occupation

SIGNED for and on behalf of)
)
AUCKLAND TRANSPORT)
in the presence of)

Witness signature

Full Name

Address

Occupation

Execution of the Deed of Novation by Directors (2) - Easement 23 Cheshire Street, Parnell

Memorandum of Understanding

Parties

KIWIRAIL LIMITED ("KiwiRail")

and

AUCKLAND TRANSPORT ("AT")

INTRODUCTION

- A. The New Zealand Railways Corporation ("NZRC") is a statutory corporation established under the New Zealand Railways Corporation Act 1981 ("NZRC Act"). Pursuant to the NZRC Act, NZRC administers the Crown's railway estate (the "Railway Land").
- B. Auckland Transport is a council controlled organisation of Auckland Council established under the Local Government (Auckland Council) Act 2009 with responsibility for the Auckland transport system which includes amongst other things, the metro rail services in Auckland.
- C. Pursuant to a 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 ("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. The Railway Land is included in the Core Lease. KiwiRail is now the lessee under the Core Lease.

1) Purpose

The purpose of this Agreement is to:

- a. confirm the easement area for AT over the blue and red areas on the Boffa Miskell Drawing A14249_00007 for the purposes of non exclusive vehicle and pedestrian access.
- b. confirm the conditions for AT to access to the corridor to undertake its site works for the creation of a new platform and access way.
- c. confirm the payment to be made by AT to KiwiRail for the easement area required.



1 of 4



2) Objectives

To provide AT with the access to construct the new Parnell station.

To use best endeavours to register prior to the sale of the Parnell site an easement of KiwiRail land to provide AT with future vehicle and pedestrian access to the new station additional to the existing easement in gross over the orange area on the Drawing and existing Deed of Grant.

To ensure that any purchaser of the Parnell site has notice of the easement to be registered and purchases the site subject to the easement.

For KiwiRail to obtain fair value for the loss of value from the easement area.

For KiwiRail to be able to progress the sale of the Parnell site.

3) Conditions of Access to site

a. AT to provide

- i. Representation and warranty from AT that no further access is required and that the access being provided will enable AT to comply with all legislative requirements in relation to the operation of the station

b. Access to the site will be provided once AT has:

- i. Obtained all necessary corporate governance approvals for the agreement
- ii. Obtained a Permit to Enter the site

c. AT will co-operate with KiwiRail and Mainline Steam Trust to enable Mainline Steam Trust to vacate the Parnell site on or before 30 June 2015.

d. KiwiRail will ^{use best endeavours to ensure} ensure that Mainline Steam Trust demobilises, clears and vacates the site on or before 30 June 2015.

4) Further conditions of providing the Easement and Access

- a. The agreement can be novated by KR to any party, with AT's approval.
- b. KiwiRail will prepare an executable agreement for AT to sign. AT will sign and return this to KiwiRail within 10 working days of receipt of the documentation.
- c. AT will pay the reasonable costs for KiwiRail to complete the easement, including but not limited to registration documentation, surveying, external legal fees associated with the easement.

5) Disputes

The parties agree to attempt resolution of any disputes in good faith, using this MoU as a benchmark against which each Party, and the Team as a whole, can set its approach. Failing a result in a reasonable time period the parties agree to resolve disputes by mediation or an agreed alternative form of dispute resolution.

6) Payment

AT will pay to KiwiRail a sum of \$350,000, plus GST if any, for the easement area noted on the attached plan. Payment will be made within 10 working days of registration of the easement and AT having received a tax invoice from KiwiRail, *or novated party as noted in clause 4.a.* Payment is anticipated on or before 31 May 2015 upon completion of registration of the easement.

7) Effect

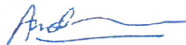
This MoU is at-will and may be modified with the mutual consent of the authorised individuals of KiwiRail and AT. Once signed by authorised officials of both groups, this MoU will begin on the date of those signatures and remain in effect for a nominal period of three months or until the joint objectives are achieved, whichever comes later. The term of the MoU may be extended by mutual agreement.

8) Executed as a Memorandum of Understanding

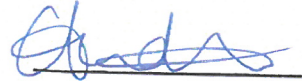
Signed on behalf of KiwiRail by:

Witnessed by:

Signature:

AR


Signature:



Name: Andrew Robinson

Name:

Chloe Underwood

Position: National Manager Property

Position:

Executive Assistant

Date: *12* 4 March 2015

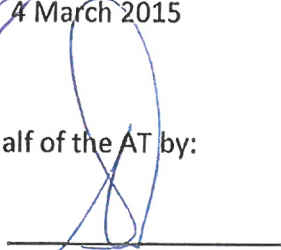
Date:

12 March 2015

Signed on behalf of the AT by:

Witnessed by:

Signature:

AR


Signature:

L.J Holland

Name: Greg Edmonds

Name:

LISA HOLLAND

Position: Chief Development Officer

Position:

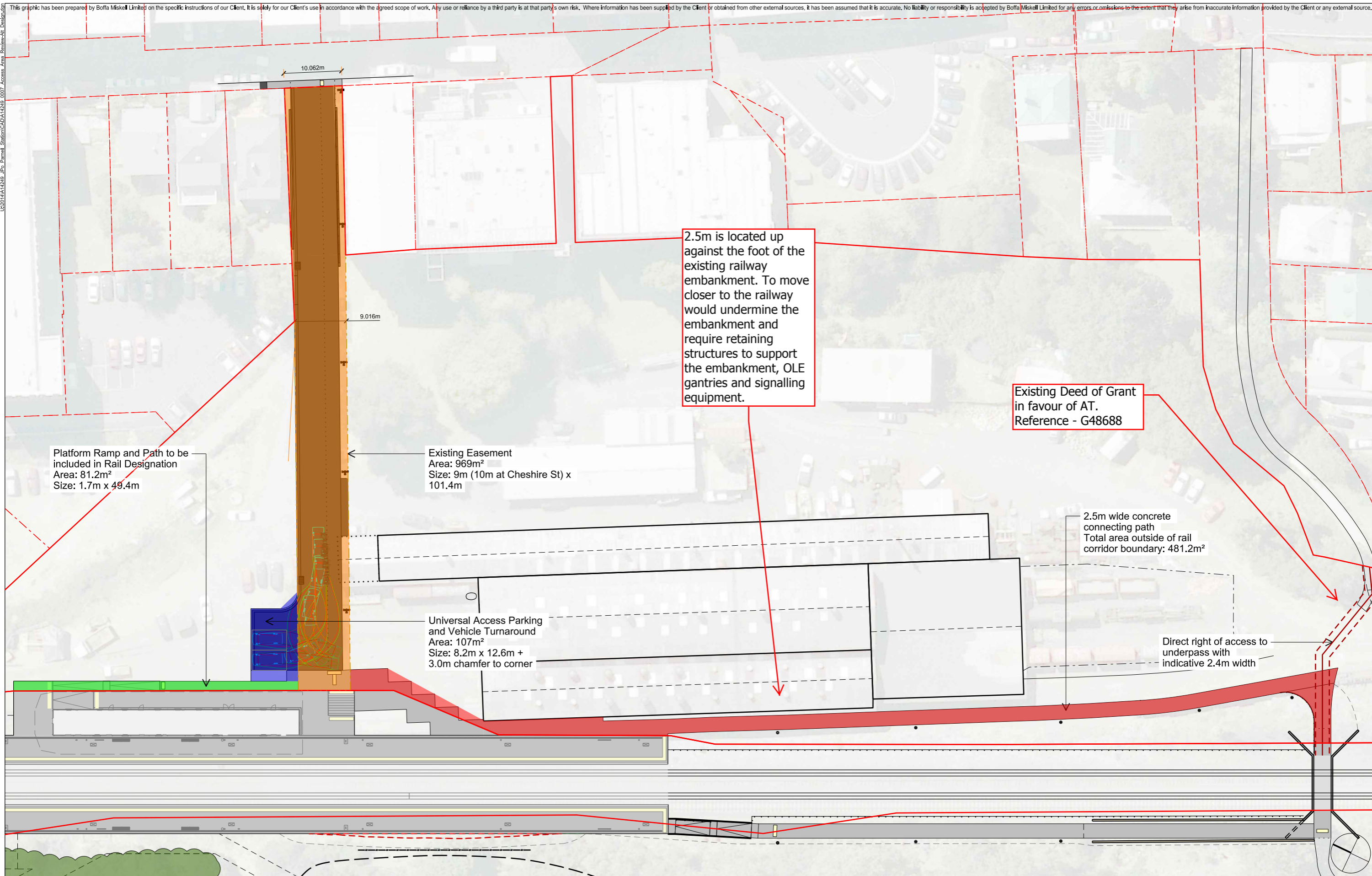
EA to CDO

Date: 4 March 2015

Date:

09-03-15

This graphic has been prepared by Boffa Miskell Limited on the specific instructions of our Client. It is solely for our Client's use in accordance with the agreed scope of work. Any use or reliance by a third party is at that party's own risk. Where information has been supplied by the Client or obtained from other external sources, it has been assumed that it is accurate. No liability or responsibility is accepted by Boffa Miskell Limited for any errors or omissions to the extent that they arise from inaccurate information provided by the Client or any external source.



Boffa Miskell Limited
Level 3, IBM Centre, 82 Wyndham Street
PO Box 91250, Auckland, New Zealand
Tel: 64-9-358-2526 Fax: 64-9-359-5300
www.boffamiskell.co.nz

NOTES

REV	DATE	DESCRIPTION
-	25.02.15	FOR INFORMATION

CLIENT
AUCKLAND TRANSPORT

CONSULTANTS

FOR INFORMATION

Parnell Railway Station

STATION ACCESS
AREAS OUTSIDE OF RAIL
CORRIDOR PROPERTY BOUNDARY
ALTERNATE DESIGN

Design	JPo	Scale	Date
Drawn	ASm	1:300 @ A1	25.02.15
Check	JPo	1:600 @ A3	
Appv'd	JPo		
DRAWING NO.		REVISION	
A14249_0007		-	
A14249_0007_Access_Area_Review-Alt_Design.dgn			



Execution of the Deed of Novation by Directors (2) - Easement 23 Cheshire Street, Parnell



21 August 2015

Partner Reference
M A J Wood - Auckland

Auckland Transport
Private Bag 92250
AUCKLAND 1142

Writer's Details
Direct Dial: +64-9-977 5329
Fax: +64-9-977 5026
Email: michael.wood@simpsongrierson.com

BY EMAIL

For: Lyann Grace Serrano

23 Cheshire Street, Parnell

Further to our previous correspondence on this matter, we confirm that we have reviewed the proposed form of Deed of Novation between Her Majesty the Queen acting by and through New Zealand Railways Corporation, Summerset Villages (Parnell) Limited and Auckland Transport and it contains the usual provisions we would expect for a Deed of Novation. Therefore we consider it to be suitable for acceptance by Auckland Transport and confirm it is in order for signing.

Yours faithfully
SIMPSON GRIERSON

A handwritten signature in blue ink, appearing to read "Michael Wood/Nick Wilson".

Michael Wood/Nick Wilson
Partner/Senior Associate

26629056_1.docx