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Report seeking approval for a surface encroachment licence for the occupation of road reserve adjacent to 982a-986 East Coast Road, Northcross, Auckland

Recommendation

That the Board:

- i. Approves and agrees to execute a new surface encroachment licence as a Deed to allow The New Zealand Fire Service Commission occupation of legal road adjoining 982a-986 East Coast Road, Northcross for use as a parking area in front of the new fire station.

Executive summary

1. The New Zealand Fire Service Commission is seeking Auckland Transport's consent, as landowner, to occupy part of the road corridor adjacent to 982a-986 East Coast Road, Northcross for the parking of vehicles associated with the fire service station on either side of the authorised crossing place providing access to the fire station.
2. The application has been reviewed by Auckland Transport's internal teams. They have no issues with the proposed use for parking purposes and made no amendments to the proposed layout. The berm is sufficiently wide to allow pedestrian use without creating a conflict with the proposed parking area. It does not impact on the neighbours' access requirements.
3. It is recommended that The New Zealand Fire Service Commission be granted a surface licence to occupy a portion of the berm as shown in the attached plan (**Attachment 1**) for a period of 20 years together with early termination provisions should the land be required for other purposes by Auckland Transport.

Strategic context

4. The proposed utilisation of the unused portion of the berm to provide public benefit uses is consistent with the policies and objectives of the Auckland Unitary Plan.

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Background

5. New Zealand Fire Service Commission (“NZFSC”) owns the Property situated at 982a to 986 East Coast Road, Northcross, Auckland (“Property”). NZFSC have applied to Auckland Transport (AT) for a surface encroachment licence to occupy part of the road corridor adjacent to the Property for parking of vehicles associated with the fire service station.
6. NZFSC intend to construct a new fire station on the Property. Part of the proposed works (parking and access) will be located within the road corridor (**Attachment 1**).
7. AT’s approval, as landowner, to construct the works within the road corridor will be conditional upon NZFSA undertaking such works in accordance with the Auckland Transport’s Code of Practice (ATCOP) and NZFSC meeting all regulatory approvals.
8. The surface encroachment licence will include provision that the parking is not exclusive to the NZFSA. AT also reserves the right to terminate use or amend the area if additional land is required for the future road widening. Approval by AT will be subject to a number of standard and site specific conditions being included in the Licence to Occupy.

Internal and external Consultation

9. Internal approvals were sought and obtained from AT’s internal teams including Road Corridor Delivery (Maintenance), Network Operations and Safety (NOS), Road Corridor (Access), Strategy (Planning and Policy), Investigation and Design and Asset Management Planning and Policy.
10. In reviewing the application, AT’s internal teams confirmed they had no issues as long as AT’s standard conditions are imposed and the proposed works do not impact on future road widening requirements.

Issues and options

11. AT encroachment policy guideline require licences for the use of the road to be for a maximum period of 5 years. NZFSC require a licence period of 20 years. AT’s internal teams have no issues in allowing the NZFSC to use this location for a term of 20 years subject to standard conditions being included in the licence including early termination provisions.
12. The Chief Executive’s Register of Delegations ATDI2012/01 does not allow Deeds to be executed under delegation.

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Licence fee

13. Although AT's Encroachment Policy Guidelines for the use of road surface, airspace and subsoil refers to an annual lease fee for surface encroachments AT also reserves the right to waive the annual fee where an encroachment provides a public benefit or provides a public safety concern. Such waivers will be considered under the financial delegation's policy.
14. An annual licence fee is not considered applicable in this instance as NZFSC is a public body tasked with providing a public service in the interests of safety. The NZFSC is not a commercial organisation.

Terms of the Licence to Occupy

Licensee	The New Zealand Fire Services Commission
Property	982a-986 East Coast Road, Northcross being Computer Freehold Register - 260024, NA4A/463, & NA5A/1071
Term	Term of 20 years
Commencement Date	The date the licence is signed
Licence Fee	Nominal \$1.00 Plus GST (If demanded.)
Early termination provisions	6 months' notice by AT
Permitted Use	Parking
Conditions	AT standard terms and site specific terms following internal consultation.

15. Such other terms as contained in the attached licence document (**Attachment 2**).

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Next steps

16. Solicitors Simpson Grierson prepared the attached Licence to Occupy in accordance with AT's instructions. Should the Board approve the recommendations contained therein, the Licence to Occupy is in order for execution, by two Board Members.

Attachment

Attachment Number	Description
1	Plans showing proposed parking areas
2	Licence to Occupy Land Adjoining 982A-986 East Coast Road, Northcross, Auckland

Document ownership

Submitted by	Irene Tulloch Property Management Manager	
	Jane Small Group Property & Planning Manager	
	Greg Edmonds Chief Infrastructure Officer	
Approved for submission	David Warburton Chief Executive	

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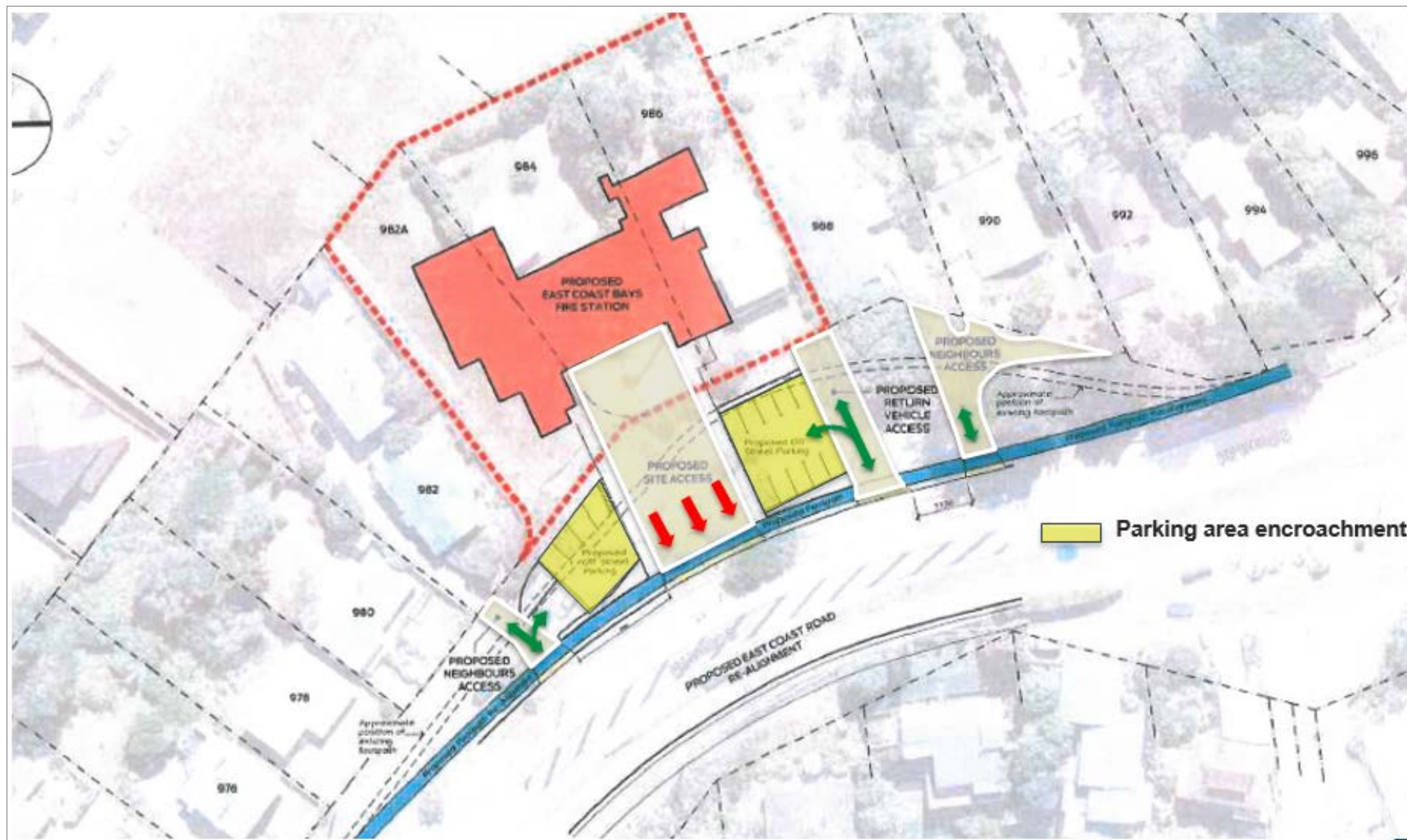
Glossary

Acronym	Description
ATCOP	Auckland Transport Code of Practice
AT	Auckland Transport
AC	Auckland Council
NZFSC	The New Zealand Fire Service Commission

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Attachment 1

Area Plan showing proposed parking areas





LICENCE TO OCCUPY LAND ADJOINING 982A-986 EAST COAST ROAD, NORTHCROSS, AUCKLAND

between

Auckland Transport (Licensor)

and

**New Zealand Fire Service Commission
(Licensee)**

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THIS DEED dated the _____ day of _____ 2017

BETWEEN AUCKLAND TRANSPORT (Licensor)

AND NEW ZEALAND FIRE SERVICE COMMISSION (Licensee)

BACKGROUND

- A. The Road is managed and controlled by the Licensor under section 45 of the Local Government (Auckland Council) Act 2009 (**LGACA**).
- B. Pursuant to section 357 of the Local Government Act 1974, the Licensor has authority to grant a licence to occupy part of the Road.
- C. The Licensee is the registered proprietor of the Adjoining Land which adjoins the Licensed Area.
- D. The Licensor and the Licensee have agreed that the Licensor will grant a licence of the Licensed Area to the Licensee, and the Licensee will accept a licence of the Licensed Area.
- E. In entering into this licence, the Licensee acknowledges that the Licensed Area is within legal road. In recognition of this grant of licence, the Licensee has agreed to conduct its activities within the Licensed Area at all times having regard to the status of the Licensed Area as part of the Road.

THIS DEED RECORDS THAT:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions: In this licence, unless the context indicates otherwise:

Adjoining Land means the land described in Schedule 1;

Authorised Work means the authorised work referred to in Schedule 1;

Bylaws means Council's bylaws (which is subject to amendment by Council) for the district and related authorised work;

Council means Auckland Council and includes where appropriate its successors and its officers and agents;

Default Interest Rate means the default interest rate which is equivalent to the interest rate charged by the Inland Revenue Department in unpaid tax under the Tax Administration Act 1994 during the period for which the default interest is payable, plus 5 per cent per annum;

District Plan means the territorial district plan for the Council;

Improvements means any signs, structures, improvements, chattels, stock, equipment, machinery, fixtures or other items;

Licensed Area means that part of the Road as described in Schedule 1;

Licensee means the original Licensee named in this licence and its successors and assigns being the registered proprietor of the Adjoining Land;

Licensor means Auckland Transport and includes its successors and its officers and agents;

Road means the road in Auckland referred to in Schedule 1 which the use of the Licensed Area is authorised by this licence and includes every public place, public or private service, culvert, drain, sewer pipe, channel, kerb, footway, gate, building, tree, shrub, light pole or other thing lying upon, under, over or within its limits; and

Working Day has the meaning given to it in the Property Law Act 2007.

1.2. Interpretation: In this licence, unless the context indicates otherwise:

- (a) **Schedule 1 Terms:** terms which are defined in Schedule 1 have the meanings given to those terms in Schedule 1;
- (b) **Defined Expressions:** expressions defined in the main body of this licence have the defined meaning in the whole of this licence including the background;
- (c) **Gender:** words importing one gender include the other genders;
- (d) **Headings:** clause and other headings are for ease of reference only and will not affect this licence's interpretation;
- (e) **Joint and Several Obligations:** where two or more persons are bound by a provision in this licence, that provision will bind those persons jointly and each of them severally;
- (f) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (g) **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;
- (h) **Plural and Singular:** references to the singular number include the plural and vice versa;
- (i) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having separate legal identity;
- (j) **Schedules:** the schedules to this Licence and the provisions and conditions contained in these schedules will have the same effect as if set out in the body of this licence;
- (k) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are references to clauses, schedules and attachments in this licence; and
- (l) **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.

2. GRANT OF LICENCE

- 2.1.** In consideration of the Licence Fee reserved by this licence the Licensor grants and the Licensee accepts a licence for the use of the Licensed Area for the Term for the purpose of constructing, using and maintaining the Authorised Work.

- 2.2. If the Licensor permits the Licensee to remain in occupation of the Licensed Area after the expiry or earlier termination of this licence, the Licensee's occupation will be on the same terms as this licence except that the Licensee's occupation will be terminable by either party giving one month's notice.

3. LICENCE FEE

- 3.1. The annual licence fee for the Licensed Area will be the Licence Fee specified in Schedule 1.
- 3.2. The Licensee must pay the Licence Fee to the Licensor on demand (if demanded) without set-off or deduction, by automatic bank payment unless the Licensor otherwise agrees.

4. INTEREST ON UNPAID MONEY

If the Licensee defaults in payment of the Licence Fee or other moneys payable under this licence for 10 Working Days, then the Licensee will pay on demand interest at the Default Interest Rate on the moneys unpaid from the due date for payment until the date of payment.

5. INDEMNITY

The Licensee will indemnify the Licensor and Council from and against all legal liability for actions, proceedings, costs, claims, demands, loss and liability that may be made against the Licensor or Council for loss or damage caused by, or arising out of, or in connection with any act or omission of the Licensee, its staff or contractors.

6. CONSENT OF THE LICENSOR

- 6.1. The Licensee must, before commencing any work of construction, maintenance or repair of the Licensed Area or Authorised Work, obtain consent from the Licensor as road controlling authority in addition to any other regulatory consents that may be required. The Licensee must include with the application:
- (a) engineering design drawings;
 - (b) a producer statement certifying the design and stability of the Authorised Work on the Licensed Area; and
 - (c) a programme of works, which must include a safety management plan and a traffic management plan.

7. OTHER CONSENTS

- 7.1. The Licensee must also obtain and fully comply with all other necessary statutory and other consents and the requirements of the following parties:
- (a) all network utility operators, including but not limited to electricity, gas, telecommunications, water, wastewater and stormwater providers;
 - (b) all owners of private property affected;
 - (c) all consents which may be required under the Resource Management Act 1991 and the Building Act 2004; and

- (d) all consents and other documents required to enable the registration of the encumbrance instrument required under clause 27 with Land Information New Zealand as a first charge against the computer freehold register to the Adjoining Land.

8. CONDUCT OF WORK

- 8.1.** The Licensee must comply with the District Plan, Bylaws and any amendments to the District Plan and Bylaws in relation to the Authorised Work and the Auckland Transport Code of Practice, New Zealand Building Code or any subsequent code of practice in force at the time when it carries out any work in the Road. These conditions may be amended by the Licensor or the Council at any time.
- 8.2.** Before commencing any work in the Road the Licensee must ensure that its contractor has obtained and carries adequate public liability insurance cover (being at least \$1,000,000.00) to indemnify the contractor(s), the Licensee and the Licensor against public liability. The Licensee must produce to the Licensor reasonable evidence of the existence and currency of that cover before the commencement of construction or maintenance of the Authorised Work and whenever the Licensor requires.
- 8.3.** The Licensee must not, without the prior written consent of the Licensor, do anything or allow anything to be done, which causes interruption to the passage of vehicular and pedestrian traffic using the Road. All work must be carried out continuously at times reasonably approved by the Licensor, and is to be completed as soon as is reasonably possible.
- 8.4.** The Licensee must reinstate those parts of the Road not occupied by the Licensed Area or the Authorised Work to the Licensor's standard specification immediately after completion of any works. No materials, plant or equipment should be abandoned or left in the Road but must be removed as soon as possible after the completion of the work.
- 8.5.** The Licensor may at all reasonable times inspect any construction, maintenance or repair of the Authorised Work on the Licensed Area. The Licensee will pay all reasonable expenses incurred by the Licensor in supervision or inspection of that construction, maintenance or repair.
- 8.6.** The Licensee must, at five yearly intervals after the Commencement Date, arrange for a detailed inspection of the Authorised Work by a suitably experienced chartered engineer and provide a report by the engineer in a form satisfactory to the Licensor as to the structural soundness and general state of repair of the Authorised Work. If the Licensee fails to provide this report by the required date the Licensor may arrange for an inspection and report by its own engineer for this purpose, the cost of which will be borne by the Licensee. The Licensee must carry out any works recommended in the report provided by its own or the Licensor's engineer within one month of receiving the report. This clause will not relieve the Licensee of any other obligation or liability.
- 8.7.** The Licensee must pay the cost of any alteration to or interference with power, gas, water, telephone, drainage or other services necessitated by the construction, repair, maintenance or use of the Authorised Work on the Licensed Area and must make good all damage done by the Licensee to property belonging to or controlled by any person, firm, company, local authority, public body, or Government Department and must pay full compensation to all parties for any loss or damage caused by any interference by the Licensee with that property or with those services.
- 8.8.** The Licensee will be responsible for maintaining the road surface reinstated in accordance with clause 8.4 for 12 months following completion of the Authorised Work to the satisfaction of the Licensor. If the Licensee fails to maintain the road surface to the required standard, the Licensor reserves the right to carry out any remedial work on the road surface which it considers necessary and to recover the cost of this work from the Licensee.

- 8.9.** The Licensee must comply with the Code of Practice for Utility Operators' Access to Transport Corridors approved by the Minister for Infrastructure under the Utilities Access Act 2010 when it carries out the Authorised Work. This includes lodging a Corridor Access Request via submitica.co.nz before commencing any work of construction, maintenance or repair of the Authorised Work and complying with any additions imposed by the Work Access Permit associated with that Corridor Access Request. These requirements may be amended by the Licensor at any time by notice to the Licensee. If the Licensee proposes changes to the installation methodology or installation depth of the Authorised Work, such changes must be approved by the Corridor Access Request Team Leader.
- 8.10.** Notwithstanding any other provision of this licence, in the event of an emergency or where there is an immediate risk of injury or damage to persons or property, the Licensee must, as soon as possible after it becomes aware of the same (and in any event within 72 hours), undertake all work and take all other steps necessary to prevent such injury or damage occurring or continuing.
- 8.11.** If the Licensee fails to undertake all work and take the other steps necessary referred to in clause 8.10 within 72 hours of becoming aware of the relevant risk, the Licensor may undertake the work and take the other steps itself, and all charges for doing so will be payable by the Licensee.

9. NON-EXCLUSIVE USE

The Licensee acknowledges that the Licensee's use of the Authorised Work is non-exclusive and the Authorised Work can be used by the general public.

10. MAINTENANCE AND REPAIR OF LICENSED AREA AND AUTHORISED WORK

- 10.1.** The Licensee must at all times maintain the Licensed Area and Authorised Work, and take all reasonable steps to protect the Licensed Area and Authorised Work, including any Improvements, structures, buildings, fixtures or fittings, installations, fences, hedges, trees (including shelter belts), gates and any sealed areas or other property of the Licensor, free from any damage by the Licensee, the Licensee's employees, agents or invitees.
- 10.2.** The Licensee will not bring about the cause of any waste on the Licensed Area or any contamination to the Licensed Area, and will not disturb the surface of the Licensed Area, apart from such disturbance as is necessary for the structures referred to in the Permitted Use.
- 10.3.** The Licensee will regularly remove all rubbish from the Licensed Area and maintain the Licensed Area in a clean and tidy condition to the satisfaction of the Licensor.
- 10.4.** The Licensee will not plant, or allow to be planted, any hedges or trees on the Licensed Area and will not construct or allow to be constructed any structures on the Licensed Area except for the Authorised Work permitted under this licence.
- 10.5.** If the Licensee defaults in any of its obligations to maintain or repair under this licence, the Licensor may arrange for such repair or maintenance to be undertaken at the cost of the Licensee, but without prejudice to the Licensor's other rights and remedies under this licence. The Licensee must immediately reimburse the Licensor for such expense.
- 10.6.** The Licensee will not require, under the Fencing Act 1978 or otherwise, the Licensor to fence any boundary between the Licensed Area and any Adjoining Land owned or occupied by the Licensee, or to contribute to the cost of any such fence or any work on it.

11. ALTERATIONS BY LICENSEE

If the Licensee wishes to carry out any work not provided for as part of the Authorised Work, or in the plans previously approved by the Licensor, the Licensee must obtain the Licensor's written approval which may be granted or withheld at the Licensor's discretion. This licence may be varied at the cost of the Licensee to record any such approval and plans showing the location of the proposed work in relation to the Authorised Work are to be lodged with the Licensor.

12. ALTERATIONS REQUIRED BY THE LICENSOR OR COUNCIL

12.1. If at any time during the Term:

- (a) the Authorised Work does not comply with the Bylaws;
- (b) the Authorised Work gives rise to a public or private nuisance;
- (c) the Authorised Work unreasonably interferes with any other lawful work; or
- (d) the Licensor reasonably considers removal or alteration of the Authorised Work necessary for safety, or for widening, realignment or reconstruction of the Road or to accommodate any other public work,

the Licensor may on reasonable notice (being at least 20 Working Days) require the Licensee to remove or alter the Authorised Work.

12.2. If the Licensee fails to comply with the Licensor's notice then the Licensor may carry out the alterations or removal at the cost of the Licensee. The Authorised Work removed by the Licensor will be released to the Licensee upon payment of the costs incurred in its removal and storage.

12.3. The Licensee will not be entitled to any compensation or damages as a result of any alteration or removal required by the Licensor pursuant to this clause.

12.4. The Licensor may sell or dispose of the removed Authorised Work if the Licensee fails to reclaim the removed Authorised Work pursuant to clause 12.2 above and the Authorised Work remains unclaimed or not released for a period exceeding one month. The sale proceeds will firstly apply towards the payment of the Licensor's costs and the balance (if any) will be paid to the Licensee on application.

13. TERMINATION

13.1. During the term of this licence, either party may terminate this licence on 6 months' written notice to the other. Any termination of this licence is without prejudice to the right of the parties arising prior to the date of termination. If this licence is terminated by either party in accordance with this clause, the Licensee must remove the Authorised Work and restore the Road in accordance with clause 34.

13.2. From the expiry of the period specified in the Termination Notice:

- (a) every estate and interest of the Licensee in the Licenced Area and in this licence will determine and cease absolutely, but without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach; and
- (b) clause 34 will apply.

13.3. Neither party will be entitled to any form of compensation, damages or claim of whatever kind for termination of the licence pursuant to this clause 13, on account of any inconvenience or loss suffered, or for any other reason, as a consequence of such termination.

13.4. The parties acknowledge that this clause reflects the fact that the Licensed Area is held for a public work, and is therefore an essential term which is paramount to this licence, and will operate notwithstanding any other provision in this licence.

13.5. If this licence is terminated in accordance with clause 13.1 as to part only, the Licensor's solicitors will prepare a Deed of Partial Surrender of Licence and refer it for execution in duplicate to the Licensee or its solicitors. The Licensee will execute the Deed of Partial Surrender and return it to the Licensor's solicitors within 10 Working Days of receipt by the Licensee or its solicitors.

14. HOLDING TOGETHER OF INTERESTS AND ASSIGNMENT

14.1. The Licensee may not assign this licence or sublet or otherwise part with possession or dispose of the Licensed Area, other than by way of assignment to a person who is the transferee of the freehold estate in the Adjoining Land being a person approved by the Licensor, which approval is not to be unreasonably withheld.

14.2. If the Licensee is a company that is not listed on the main board of a public stock exchange in New Zealand or Australia then any change in the legal or beneficial ownership of its shares or the shares of its shareholder or issue of new capital in the company or its shareholder where in any case there is a change in the effective management or control of the company will be deemed an assignment and clause 14.1 will apply.

14.3. The Licensee may not transfer the freehold estate in the Adjoining Land except to an assignee of this licence, subject to any such assignee first being approved by the Licensor under clause 14.1.

14.4. It will be a condition of the Licensor consenting to any assignment of this licence that the assignee or assignees executes a form of covenant, prepared by the Licensor's solicitors at the Licensee's cost, covenanting to observe and perform the covenants and conditions of the Licensee expressed or implied in this licence.

14.5. Any breach of this clause will be deemed to be the breach of an essential term of this licence entitling the Licensor to terminate this licence immediately on notice in writing to the Licensee.

15. COMPLIANCE WITH STATUTORY REQUIREMENTS

The Licensee must at its own expense comply with all Acts, Bylaw and regulations including requisitions by any competent authority, in respect of the Licensed Area and Authorised Work, to the extent that they relate to the Licensed Area and Authorised Work and the Licensee's use of it. In particular, but without limitation, the Licensee must take all practicable steps to ensure that any person in or on the Road or in the vicinity of the Road is not harmed by any hazard arising from the Licensed Area and the Authorised Work or the Licensee's use of it.

16. HEALTH AND SAFETY AT WORK ACT 2015

16.1. The Licensee must, in carrying out any work in respect of the Authorised Work, comply with:

- (a) all the requirements of the Health and Safety at Work Act 2015 (HSWA), including any regulations, codes or guidance made under the HSWA; and

- (b) any health and safety policies, standards or procedures notified to it by the Licensor.

16.2. Without limiting clause 16.1, the Licensee must ensure so far as is reasonably practicable:

- (a) the health and safety of its workers and the health and safety of any workers whose activities in carrying out work are influenced or directed by the Licensee;
- (b) that the health and safety of other persons is not put at risk from work carried out by the Licensee; and
- (c) it does not do anything that will or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSWA against the Licensor, the Council, the Licensee or their contractors or subcontractors.

16.3. Prior to carrying out any work in respect of the Authorised Work, the Licensee must obtain the Licensor's approval (such approval not to be unreasonably withheld) to the Licensee's site-specific safety management plan.

16.4. If the Licensor is not satisfied that the requirements of this clause 16 are being complied with, it may issue the Licensee with a written notice specifying the health and safety requirement it considers the Licensee is not meeting, and may require the Licensee to suspend work until it is satisfied that the matter has been remedied.

16.5. Following the notification of any notifiable event (as defined in the HSWA) to WorkSafe NZ or any other regulatory agency in relation to the Authorised Work, the Licensee will as soon as practicable notify the Licensor of the facts and circumstances of the notifiable event, including promptly communicating to the Licensor any indication from WorkSafe NZ or any other regulatory agency of an intention to prosecute or take any action against the Licensee, the Licensor, the Council or any of their contractors or subcontractors.

17. PUBLIC RISK INSURANCE

The Licensee must during the continuation of this licence and until the Authorised Work is removed from the Road, at its own expense effect and maintain adequate public risk insurance cover (being at least \$2,000,000.00) to indemnify both the Licensee and the Licensor against public risk. The insurance must be with an insurer approved by the Licensor. The Licensor will not unreasonably withhold its approval of the Licensee's insurer. The Licensee will produce reasonable proof to the Licensor of the existence of that insurance before it commences any Authorised Work including any removal or decommissioning.

18. NO COMPENSATION ON TERMINATION

Nothing contained or implied in this licence will be deemed to impose on the Licensor any liability to pay compensation or damages to the Licensee or any other person if this licence is determined in accordance with clause 13 or any other term of this licence.

19. PROVISIONS OF AS-BUILT PLANS

The Licensee must provide "as built" plans of the Authorised Work to the Licensor and any other authorities or persons as the Licensor directs on completion of the Authorised Work and any subsequent alterations to it. The Licensee must hold a copy of these plans and make them available to the Licensor on request.

20. GOODS AND SERVICES TAX

The Licensee must on demand pay to the Licensor or other person or body as appropriate all Goods and Services Tax (or any similar tax levied in substitution for it) on the Licence Fee and other payments payable by the Licensee under this licence.

21. DEFAULT

Cancellation

21.1. The Licensor may (in addition to the Licensor's right to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007 cancel this licence by re-entering the Licensed Area at the time or at any time after that:

- (a) if the Licence Fee is in arrears 10 Working Days after any Licence Fee payment date and the Licensee has failed to remedy that breach within 10 Working Days after service on the Licensee of a notice in accordance with section 245 of the Property Law Act 2007;
- (b) in case of breach by the Licensee of any covenant or agreement on the Licensee's part expressed or implied in this licence (other than the covenant to pay the Licence Fee) after the Licensee has failed to remedy that breach within the period specified in a notice served on the Licensee in accordance with section 246 of the Property Law Act 2007;
- (c) if the Licensee makes or enters into or endeavours to make or enter into any composition assignment or other arrangement with or for the benefit of the Licensee's creditors;
- (d) in the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Licensee; or
- (e) if the Licensee suffers execution to issue against the Licensee's property goods or effects under any judgement against the Licensee in any Court for a sum in excess of five thousand dollars (\$5,000).

21.2. The Term will terminate on the cancellation but without prejudice to the rights of either party against the other.

Essentiality of Payments

21.3. Failure to pay the Licence Fee or other moneys payable under this licence on the due date will be a breach going to the essence of the Licensee's obligations under this licence. The Licensee must compensate the Licensor and the Licensor will be entitled to recover damages from the Licensee for such breach. This entitlement will subsist notwithstanding any determination of the licence and will be in addition to any other right or remedy which the Licensor may have.

21.4. The acceptance by the Licensor of arrears of the Licence Fee or other moneys shall not constitute a waiver of the essentiality of the Licensee's continuing obligation to pay the Licence Fee and other moneys.

Repudiation

21.5. The Licensee must compensate the Licensor and the Licensor will be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Licensee constituting a repudiation of the licence or the Licensee's obligations under the licence. Such entitlement will subsist notwithstanding any determination of the licence and will be in addition to any other right or remedy which the Licensor may have.

22. COSTS

The Licensee must pay:

- (a) the Licensor's reasonable costs of the negotiation and preparation of this licence and the encumbrance instrument referred to in clause 27;
- (b) the Licensor's reasonable costs incurred in considering any request by the Licensee for the Licensor's consent to any matter contemplated by this licence;
- (c) the Licensor's reasonable costs incurred in examining, approving or supervising the Authorised Work; and
- (d) the Licensor's costs of and incidental to the enforcement of the Licensor's rights and remedies and powers under this licence.

23. STATUTORY AUTHORITY

This licence is granted pursuant to section 357 of the Local Government Act 1974.

24. SERVICE OF NOTICES

24.1. All notices must be in writing and must be served by one of the following means:

- (a) in the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (b) in all other cases, unless otherwise required by sections 352 and 361 of the Property Law Act 2007:
 - (i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
 - (ii) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.

24.2. In respect of the means of service specified in clause 24.1, a notice is deemed to have been served:

- (a) in the case of personal delivery, when received by the addressee.
- (b) in the case of posting by mail, on the second Working Day following the date of posting to the addressee's last known address in New Zealand.
- (c) in the case of facsimile transmission, when sent to the addressee's facsimile number.
- (d) in the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically will not constitute an acknowledgement.

24.3. In the case of a notice to be served on the Licensee, if the Licensor is unaware of the Licensee's last known address in New Zealand or the Licensee's facsimile number, any notice placed conspicuously on any part of the Adjoining Land shall be deemed to have been served on the Licensor in the day on which it is affixed.

24.4. A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.

24.5. Where two or more notices are deemed to have been served at the same time, they will take effect in the order in which they would have been served.

24.6. Any period of notice required to be given under this licence will be computed by excluding the date of service.

25. REGULATORY POSITION

The Licensor has signed this licence as manager and controller of the Road and in its non-regulatory capacity. This licence does not bind the Licensor or Council, in their regulatory capacity, in any way and any consent or agreement the Licensor gives as licensor under this licence is not an agreement or consent in its or Council's regulatory capacity and vice versa. When acting in its regulatory capacity, the Licensor and Council are entitled to consider all applications to them without regard to this licence. Neither the Licensor nor Council will be liable to the Licensee or any other party if, in their regulatory capacity, the Licensor or Council declines or imposes conditions on any consent or permission that the Licensee or any other party seeks for any purpose associated with this licence.

26. COVENANTS IN FAVOUR OF AUCKLAND COUNCIL

Any covenants or agreements in this licence in favour of the Licensor are intended to be enforceable by Council for the purposes of the Contracts (Privity) Act 1982.

27. ENCUMBRANCE

27.1. The Licensee must immediately, as a condition of it being entitled to exercise the rights under the licence, register an encumbrance instrument in favour of the Licensor against the Adjoining Land, as a first charge, which will:

- (a) give notice of this licence;
- (b) ensure that the registered proprietor of the Adjoining Land for the time being is bound by the terms of this licence; and
- (c) prohibit the transfer of the Adjoining Land, or the assignment of this licence, except in conjunction with the other.

27.2. The encumbrance instrument will be prepared by the Licensor's solicitor, the reasonable cost of which will be borne by the Licensee, and will be registered by the Licensee at its cost.

27.3. On the expiry or earlier termination of this licence and the removal and decommissioning of the improvements on the Licensed Area and Authorised Work in accordance with clause 34 (if required), the Licensor will authorise the discharge of the encumbrance.

28. PERMITTED USE

28.1. The Licensee must not in any circumstances:

- (a)** use the Licensed Area:
 - (i)** for any purpose other than the Permitted Use;
 - (ii)** in any noisy, noxious, offensive or illegal manner;
 - (iii)** for any residential or illegal purpose; or
 - (iv)** in any manner that restricts the rights of public passage (over road) across the Land;
- (b)** use the Authorised Work other than for its designed purpose;
- (c)** store or use inflammable or dangerous substances upon the Licensed Area; or
- (d)** do anything which in the opinion of the Licensor may become a nuisance, disturbance or obstruction, or cause damage, whether to the Licensor or to neighbouring owners or occupants.

28.2. If the Permitted Use is permissible only with the consent, permit or permission of any authority, or under or in pursuant to any statute, Regional and District Plans, regulation, other enactment or order of Court, the Licensee must obtain:

- (a)** such consent, permit, permission or order at the sole cost and expense of the Licensee including, but not limited to, any costs or financial contributions involved in complying with any conditions of such consent, permit, permission or order obtained; and
- (b)** the approval of the Licensor to the conditions of that consent, permit, permission or order.

28.3. The Licensee must not make or allow to be made any alterations or additions to any part of the Licensed Area or alter the external appearance of the Authorised Work or Improvements on the Licensed Area without first producing to the Licensor on every occasion plans and specifications and obtaining the written consent of the Licensor (such consent may be granted or withheld at the Licensor's discretion) for that purpose.

28.4. If the Licensor authorises any alterations or additions which are made before the Commencement Date or during the Term of this licence, the Licensee will at the Licensee's own expense if required by the Licensor no later than the end or earlier termination of the Term reinstate the Road. Ownership of the alterations or additions that are not removed by the end or earlier termination of the licence may at the Licensor's election pass to the Licensor without compensation payable to the Licensee.

28.5. If the Licensee fails to reinstate the Road then any costs incurred by the Licensor in reinstating the Road whether in whole or part, within 6 months of the end or earlier termination of the Term will be recoverable from the Licensee.

28.6. The Licensee may occupy the Licensed Area only for the purposes of the Permitted Use.

28.7. The Licensee will regularly inspect the Authorised Work on the Licensed Area to ensure that such Improvements continue to comply with all relevant statutes, regulations or consents and with this licence, and that no damage or graffiti has occurred.

28.8. If the Authorised Work does not comply with all relevant statutes, regulations or consents, or with this licence, or has been damaged or graffitied the Licensee will do all things necessary to put the Authorised

Work into the condition required to make it comply with the relevant statutes, regulations or consents, or with this licence and will repair damage or will remove graffiti immediately upon the non-compliance being made known to the Licensee.

28.9. All construction and maintenance of the Authorised Work will be undertaken to the satisfaction of the Licensor.

29. NO WARRANTY AND LICENSEE'S ACKNOWLEDGEMENT OF RISK

29.1. The Licensor does not warrant that:

- (a) the Licensed Area is or will remain suitable or adequate for the Permitted Use or any of the Licensee's purposes; or
- (b) the Permitted Use, or any other use, is a permitted activity under the relevant Regional or District Plans.

29.2. The Licensee accepts the Licensed Area and the Authorised Work as being satisfactory in all respects and with full knowledge of, and subject to, any prohibitions or restrictions on the use of the Licensed Area and Authorised Work. The Licensee acknowledges that it has entered into this licence completely in reliance on its own skill and knowledge, and not in reliance on any warranty or representation made by or on behalf of the Licensor.

29.3. The Licensee agrees to occupy and use the Licensed Area and any structures at the Licensee's risk.

30. NO OBJECTION TO THE LICENSOR'S FUTURE PLANS FOR THE LICENSED AREA

The Licensee agrees that it will not lodge any submission or participate in any objection or appeal which opposes any designation, resource consent or notice of requirement, or take any other action which may have the effect of preventing or interfering with the Licensor's future plans in relation to the Licensed Area, or any adjoining land, and in particular any proposed public work by the Licensor in the locality.

31. THE LICENSOR'S RIGHT TO ENTER AND USE THE LICENSED AREA

This licence in no way limits the Licensor's free use of the Licensed Area:

- (a) the Licensor, and all other persons authorised by the Licensor, may enter onto any part of the Licensed Area at any time, and for any purpose. In exercising this right of entry, the Licensor will use reasonable endeavours to ensure that no disturbance or inconvenience is caused to the Licensee and the Licensee's property on the Licensed Area; and
- (b) the Licensor may use, occupy and deal with the Licensed Area without reference to the Licensee, including granting rights to other parties, provided the Licensor does not unreasonably restrict the Permitted Use or the Licensee's rights under this licence.

32. CONTAMINATION

32.1. The Licensee must, throughout the Term, adopt practices to avoid and mitigate contamination to the Licensed Area consistent with any mandatory code or practice, and any statutory or regulatory requirements in existence from time to time. Before the Expiry Date or earlier termination the Licensee must remove the adverse effects of any contamination to:

- (a) the Licensed Area; and

- (b) any land, including water (whether over or under the ground), surrounding the Licensed Area which may have become contaminated directly or indirectly due to the Licensee's occupation and use of the Licensed Area;

by carrying out all necessary work required (after full consultation with the Licensor and the appropriate authorities) to return the Licensed Area and the surrounding licensed area to the same condition as they were in at the Commencement Date.

32.2. The Licensee's obligations contained in clause 32.1 will, in relation to the Resource Management Act 1991, be limited to responsibility for any contamination or other activity or inactivity directly or indirectly caused or carried out by the Licensee, or arising out of the use and occupation of the Licensed Area by the Licensee, except to the extent that the contamination, activity or inactivity arises out of the wilful act or negligence of the Licensor or any other occupier of the Licensed Area.

32.3. The Licensor may require the Licensee to prepare and present to the Licensor a report, prepared by an expert, certifying that the Licensee has complied with all requirements relating to contamination under this clause 32.2.

33. SIGNAGE

The Licensee may not place any advertising signage, or exhibit any advertising, on the Licensed Area or Authorised Work. Where any advertising signage is displayed in breach of this clause, the Licensor may remove such advertising signage without notice and at the Licensee's cost.

34. LICENSEE'S OBLIGATIONS ON EXPIRY OR TERMINATION

34.1. The Licensee may at any time before and will if required by the Licensor no later than the end or earlier termination of the Term remove the Authorised Work and/or any of the Licensee's alterations or additions.

34.2. In addition to the Licensee's obligation to reinstate the Licensed Area pursuant to subclause 28.4 the Licensee will make good at the Licensee's own expense all resulting damage and if the Authorised Work and/or any of the alterations or additions are not removed by the end or earlier termination of the term, ownership of the Authorised Work and/or any of the additions or alterations may at the Licensor's election pass to the Licensor or the Licensor may remove them.

34.3. The cost of making good the resulting damage and the cost of removal of the Authorised Work and/or any of the alterations or additions will be recoverable from the Licensee and the Licensor will not be liable to pay any compensation nor be liable for any loss suffered by the Licensee.

34.4. Termination of this licence will be without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach.

35. DISPUTE RESOLUTION

35.1. The parties will first endeavour to resolve any dispute or difference by agreement and if they agree by mediation.

35.2. Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, this will be submitted to the arbitration of one arbitrator who will conduct the arbitral proceedings in accordance with the Arbitration Act 1996 or any other statutory provision then relating to arbitration.

35.3. If the parties are unable to agree on the arbitrator, an arbitrator will be appointed, on request of any party, by the president or vice president of the New Zealand Law Society. That appointment will be binding on all parties to the arbitration and will be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.

35.4. The procedures described in this clause will not prevent the Licensor from taking proceedings for the recovery of any rent or other monies payable under this licence which remain unpaid or from exercising the rights and remedies on the event of the default prescribed in clause 211.

36. WAIVER

No waiver or failure to act by the Licensor in respect of any breach by the Licensee will operate as a waiver of another breach.

37. SEVERABILITY

If any part of this licence is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this licence.

38. PARTIAL INVALIDITY

The invalidity of any part or provision of this licence will not affect the enforceability of any other part or provision of this licence.

39. NON-MERGER

The parties acknowledge and agree that certain covenants set out in this licence will continue beyond the expiry or sooner determination of this licence for the benefit of the parties notwithstanding expiry or sooner determination of the licence.

40. AMENDMENT

No amendments, variations or modifications to this licence will be effective unless made in writing and signed by or on behalf of each of the parties.

41. RATES

The Licensee must pay to the Licensor all local authority rates or charges levied or assessed on the Authorised Work.

EXECUTED AND DELIVERED AS A DEED

SIGNED for and on behalf of **AUCKLAND
TRANSPORT**:

Auckland Transport Board Member

Auckland Transport Board Member

**SIGNED by NEW ZEALAND FIRE SERVICE
COMMISSION by:**

Paul McGill
Full name of authorised signatory

[Signature]
Signature of authorised signatory

Full name of authorised signatory

Signature of authorised signatory

Witness:

[Signature]
Signature of witness

Tracy Morgan
Full name of witness


Exec. Assistant
Occupation of witness

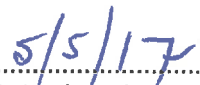
2 Marewa Rd, Hataitai
Address of witness

**Certificate of non-revocation and non-suspension of
enduring power of attorney**

I, **PAUL MCGILL**, Deputy National Commander of Wellington, certify that:

- 1 On 5 March 2013, New Zealand Fire Service Commission granted to me an enduring power of attorney, registered at LINZ as Supplementary Document 1323216, to execute on its behalf any of the following documents (and documents that are incidental to or give effect to the following):
 - 1.1 the sale and purchase of land (including the disposal of land)
 - 1.2 the leasing and subleasing (registered or unregistered) of land (and renewals, surrenders, variations, transfers, and assignments of lease, and rent reviews)
 - 1.3 the licensing and sublicensing of third parties to occupy land (and renewals, surrenders, variations, transfers, and assignments of licence, and licence fee reviews)
 - 1.4 the licensing and sublicensing of the New Zealand Fire Service Commission to occupy land (and renewals, surrenders, variations, transfers, and assignments of licence, and licence fee reviews)
 - 1.5 the caveating of land (and withdrawals of caveat and consents of caveator)
 - 1.6 the creation of easements (and variation and surrender of easements)
 - 1.7 the creation (and surrender or termination) of covenants and encumbrances
 - 1.8 boundary adjustments
 - 1.9 the amalgamation (and merger) of land titles
 - 1.10 the creation of new land titles, and
 - 1.11 service agreements, management agreements and facilities deeds for facilities on land owned by third parties, or in relation to occupation by third parties of New Zealand Fire Service Commission facilities.
- 2 I have not received notice of an event revoking my authority to act under the enduring power of attorney.
- 3 I have not received written notice from New Zealand Fire Service Commission suspending my authority to act under the enduring power of attorney.


.....
Signature of **PAUL MCGILL**


.....
Date signed

SCHEDULE 1

Authorised Work:	Carpark formation covering an area of approximately 857m ² as shown on plan attached at Schedule 2
Adjoining Land:	982A-986 East Coast Road, Northcross, Auckland being: <ul style="list-style-type: none"> (a) Lot 1 Deposited Plan 49016 comprised in computer freehold register NA5A/1071; (b) Lot 2 Deposited Plan 49016 comprised in computer freehold register NA4A/463; and (c) Lot 134 Deposited Plan 363905 comprised in computer freehold register 260024 (North Auckland Registry).
Licensed Area:	That part of the Road adjoining the Adjoining Land as shown highlighted in yellow on the plan attached in Schedule 2, being approximately 857m ² and includes the Authorised Work
Road:	East Coast Road, Northcross, Auckland
Term:	20 years
Commencement Date:	The date this licence is signed by both parties
Expiry Date:	The date that is 20 years (less one day) from the Commencement Date
Licence Fee:	\$1.00 plus Goods and Services Tax
Permitted Use:	Construction and use of the Authorised Work

SCHEDULE 2

Plan Showing the Licensed Area

S1.06

Approved under
H-402534

**Road Reserve
Encroachment**

1. All encroachments must be made in accordance with the relevant provisions of the Resource Management Act 1991 and the Resource Management Act Regulations 1992.

2. All encroachments must be made in accordance with the relevant provisions of the Resource Management Act 1991 and the Resource Management Act Regulations 1992.

**NEW ZEALAND
FIRE SERVICE
COMMISSION**

**EAST COAST BAYS
FIRE STATION**
NEW ZEALAND FIRE SERVICE



S SITE PLAN-ROAD RESERVE AREA
Scale: 1:100 (A1, 1:200 (A2))

