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20 October 1999

Greg Schollum
Chief Financial Officer
The Wellington Regional Council
Level 5
The Regional Council Centre
Wellington

Dear Greg,

Re: Shelly Bay

We refer to our last report on Shelly Bay dated 23 March 1998 and your report to the Policy and Finance committee PE98.128 of 25 March 1998.

Resolution to Shelly Bay is now close at hand as the Environment Court, Justice Kenderdine, has ruled in favour of a zone change, as per the request of Defence. Please refer to the attached article from the Evening Post of 31 August 1999.

We have been involved in meetings with the Ministry of Defence (Defence), Wellington City Council (WCC) and Department of Conservation (DOC). There now appears to be a collective will to resolve all matters connected with Shelly Bay and to see the property handled and disposed of in an orderly manner.

It must be recognised that the Wellington Regional Council (WRC), as the Wellington Harbour Board (the Board) successor, is a minor participant only and will be a long term beneficiary of the disposal process. The WRC interest arises from land which was reclaimed during the 1939 - 45 world war II. The reclamation was undertaken by the Ministry of Works on behalf of the Navy Office, in collaboration with the Wellington Harbour Board. The reclamation area extends to 1.4840 hectares in total, being Sections 89 and 90 Watts Peninsula District, and comprise long narrow pieces of land which are of little value in their own right. Please refer to the attached plan.

The December 1983 agreement provides for

1. The reclaimed land taken by Defence to be returned to WRC **except the formed legal road.**
2. The Crown (Defence) undertakes to **formally close the legal road and legalise the formed road.**
3. In the event of the Crown revesting the reclaimed land in the Board (now WRC) **the purchase price will remain at 10 cents** but such price does not include the value of any buildings.

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4. If any buildings encroach on the reclaimed land no longer required by Defence, the WRC shall have the option to purchase the buildings at their current market value or the WRC can reject purchase, Defence can sell the land and buildings and Defence shall pay the WRC a sum equating to the current market for the land only.
5. If the WRC and Defence fail to agree on the current market value of the land it is to be settled by arbitration.

Actions taken and to be taken

- a) Defence has declared the bulk of its Shelly Bay site surplus to requirements and has advised the Office of Treaty Settlements (OTS) of its intention to dispose of the land on the open market. It will take some six months for the OTS to advise if it requires the land to be land banked to settle current and future claims or not.
- b) The Shelly Bay block is in two distinct portions. To the rear east is the bulk of the site which is clear of all influences other than Defence ownership and buildings. It is this land that is detailed under a) above. This land is bounded to the west by the Wellington City Council owned legal but unformed road.
- c) The second portion of the Shelly Bay block comprises a mix of WCC legal but unformed road, formed but not legalised road and the land which is owned presently by Defence but which is required to be offered back to the WRC at 10 cents when it is declared surplus.
- d) Until recently the WCC was not cooperating with Defence. WCC now appears to have altered its stance, largely as a result of the Environment Court ruling and a change of WCC property division personal. WCC and Defence are presently in discussion to facilitate the formed road to be legalised, the legal road to be stopped and for the respective involved land areas to be exchanged. This action will remove the largest impediment to progress.
- e) As the land is all presently Crown owned land, it is on subdivision or disposal subject to Section 24 of the Conservation Act. This section states that there shall be deemed to be reserved from the sale or other disposition of any land by the Crown a strip of land 20 metres wide extending along and abutting the landward margin of any foreshore. This potentially has a direct influence on the land that the WRC holds an interest in. The Conservation Act take precedence over the agreement between Defence and the WRC. There is no compensation for the land so reserved. In essence the area of land available for offer back or sale is diminished.
- f) DOC was invited to attend the second meeting to clarify its requirements for foreshore reserve and the influence this may have on the legalisation of the formed road. DOC advised that the first step was for the WCC to take the land of the formed road and legalise it. This would clearly establish a legal entity isolating the land to the east of the new road from the foreshore. DOC will then focus its attentions on the land remaining between the foreshore and the new legal road. This significantly diminishes the impact of Section 24 and focuses it on to three distinct areas.
- g) As part of the Shelly Bay development, wharf structures were erected. We understand that Defence was responsible for erecting the structures during World War

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It immediately following completion of the reclamation. Resulting from the previous interest in the wharf structures expressed by Centre Port, the wharfs were inspected and reported on. The report concluded that the structures could be refurbished, the majority of piles were acceptable but the upper structure and decking all needed replacing. Centre Port could not conceive any commercial or viable use of the wharfs particularly relative to the very substantial investment that would be required to bring them up to an acceptable standard. Centre Port concluded that it had no interest in the wharfs and that rather than be retained and incur considerable capital input, they were best removed.

- h) Our concern is that the WRC should not be left with the structures in its ownership due to its jurisdiction over the harbour bed under the Harbours Board Act. Our strong preference is to see the structures removed by and at the expense of Defence. An alternative would be for the wharfs to be upgraded by and at the expense of Defence to an acceptable standard before hand over to the WRC. Centre Port has confirmed to us that removal of the wharfs is a practical solution and that it would not in any way object. We have asked Oakley Moran to provide an opinion on the ability of Council to serve a notice on Defence requiring it to remove the structures and to provide the correct format for the notice.
- i) Assuming the wharf issue is resolved, the formed road is legalised and the legal road is stopped and the respective land areas are exchanged, this will leave the land which the WRC has an interest in two distinct portions. The first is to the east or **landward** side of the new road and comprises two crescent shaped portions which do have buildings on them. The WRC can say to Defence that it has no interest in taking the land back for 10 cents, that it does not wish to purchase the improvements and requires Defence to sell the property, in conjunction with its adjoining land holding, and to provide the WRC with a portion of the proceeds equal to the current market value of the land.
- j) The second portion are those three areas mentioned under (f) above and which will potentially be impacted on by DOC and section 24 of the Conservation Act. These three areas are severed from the balance land by the new legal road and sit between the road and the foreshore.

The smallest area is Section 90 which is a very narrow strip of land comprising a strip of beach supporting the grass verge to the harbour side of the road. This area possesses no potential for development and consequently has no real market value.

The next area is to the south end of Section 89 and comprises a **carpark**. This area is free of structures and potentially will have value as a public amenity to cater for parking for the public, retaining access to the harbour and preserving open space, including provision of benefit to the development land to the east.

The third and largest area is also part of Section 89 and interfaces with the wharfs. This area is occupied by a portion of a large two storey, poor condition, structure. This area does lend itself to commercial development and use and can be developed with structures ranging between 8 and 11 metres tall.

It is these last mentioned two areas that may be impacted on by DOC and its exercise of what will need to be set aside as foreshore reserve. DOC has reserved its position

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and is awaiting Defence, WRC and WCC to present it with a proposal. DOC has indicated that unless the WCC or WRC would prefer to set the land aside a Recreation Reserve, or similar, to administer and preserve for the public and its access to the foreshore, DOC is likely to set it aside as foreshore reserve.

- k) We have spoken to Wayne **Hastie**, Manager Resource Policy. Wayne confirms that all of the above proposals are supported by the WRC existing policies. Wayne does however warn that proposals to remove the wharfs may alert interest groups, much as they did when removal of the Days Bay wharf was proposed.
- l) We believe that the areas detailed under j) above, if they are to be set aside as Recreation Reserve, do not fit in with the reserve profile of the WRC. The profile is more that of the WCC. We therefore recommend, if this option is pursued, that the WRC give serious consideration to helping to facilitate the use of the land as reserve by vesting ownership in the name of the WCC.

Future actions

Discussions with the interested parties will continue until full agreement is arrived at. With your permission, we would like to promote the following WRC position at those meetings:

- i) Defence be served notice that it is required to remove its wharf structures from the harbour bed.
- ii) Defence be advised that the WRC does not wish to have the land transferred back to it at 10 cents.
- iii) Defence be advised that the WRC has no interest in acquiring any of the buildings at their current market value.
- iv) Defence be advised, in respect of the land to the east of the new legal road, that the WRC requires it to pay the WRC a sum equating to the current market value of the land at the time that the land is sold by Defence.
- v) That Defence be advised that the WRC does require the land to the west of the new legal road to be transferred to it for the sum of 10 cents. The WRC would then be free to either transfer the land to the WCC as reserve or to negotiate a limited foreshore reserve provision with DOC and to stand in the market with the balance for sale as a commercial site.

The alternative to the above recommended course of action is for the WRC to require Defence to transfer to it all the land, except the area to be legalised as road, and for the WRC to make best endeavours to dispose of the various parcels to its best advantage. This will inevitably lead to increased administration and costs, the risk of being high-jacked by public interest groups and the risk of not being able to dispose of the land to best advantage, particularly due to shape and inability to be developed independent of adjoining land.

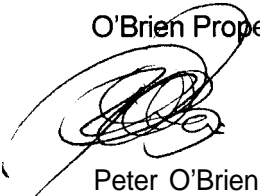
Section 40 of the public Works Act issues (offer back to a former owner) should not be of concern and is unlikely to arise. The land was reclaimed by the Crown. It is the Crown

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which owns the bed of the Harbour and the Crown which is declaring the land surplus to its requirements. The **WRC** therefore has no need to offer back to any former owner. This places the **WRC** in the clear to offer the land to the WCC and any other party if that is the position adopted.

We trust that this is an adequate interim report. Please advise if you wish to meet and discuss the issues raised. We would appreciate your direction on which way you would like us to steer the process to achieve the **WRC's** preferred outcome.

Yours sincerely
O'Brien Property Consultancy Limited.



Peter O'Brien

OK for Shelly Bay houses

By BERNIE NAPP

Residential and commercial development at Shelly Bay can go ahead after an Environment Court ruling on the former Air Force base.

Wellington City Council's district plan will be changed to allow housing and businesses to be built on the Miramar headland, the court has ruled.

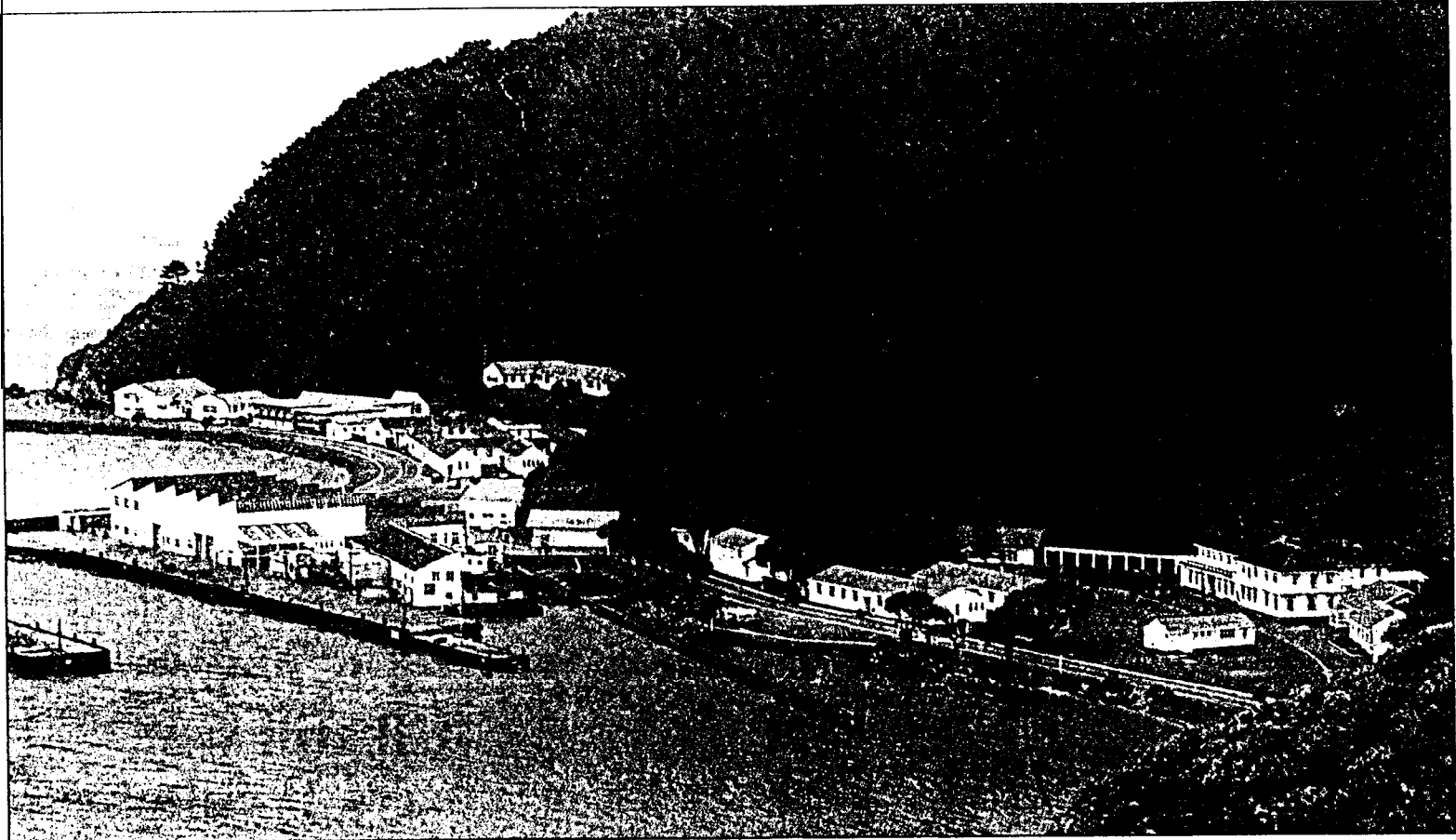
Defence property director Peter Bollman said the Ministry wanted to sell the site as soon as possible and the result was pleasing.

The land was zoned to stay as open space, but when staff moved out in 1995 the Ministry asked for this to be changed to allow housing and businesses in the area, so the sale value would increase.

Wellington City Council objected, but Defence appealed to the Environment Court which has allowed the changes with restrictions.

The Shelly Bay area will become a "suburban centre" which means residential and commercial development is allowed under the district scheme.

The restrictions include conditions that the buildings be in keeping with the "character" of the area. Any developments should be "sensitively approached by carefully considering any potential effects on



CIVVY STREET – The former Air Force base at Shelly Bay can now be developed for housing and businesses to become a suburban centre after an Environment Court ruling. Picture: CRAIGSIMCOX

the area's special qualities".

The decision allows buildings to cover up to 49 percent of the site - double the area of buildings there now.

Judge Shonagh Kenderdine's ruling on August 19 to include Shelly Bay in Wellington's suburban centre zone will allow Defence to sell the land for a better price.

The council was also satisfied with the

result, said policy adviser Brett McKay. The judge's ruling includes restrictions recommended by the council to respect the low rise and scenic character of the area.

Building height along the waterfront is limited to 8m, with up to 11m on parts of the buildings. Normally 12m hi buildings are allowed.

Both sides of the road through Shelly

Bay can be redeveloped. The pedestrian walkway along the waterfront will be maintained and enhanced.

"Without any controls, there is the danger of a big warehouse to serve the airport going up, which would be out of character with the environment," Mr McKay said.

The next step would be to consider Maori claims to the land, said Office of

Treaty Settlements policy analyst Carol Thomas. Four groups have filed claims.

Ms Thomas said she expected the Ministers of Treaty Negotiations, Maori Affairs and Finance to decide on the claims by early November.

If a Maori claim is upheld, the OTS would purchase the land from Defence for disbursement to Maori.



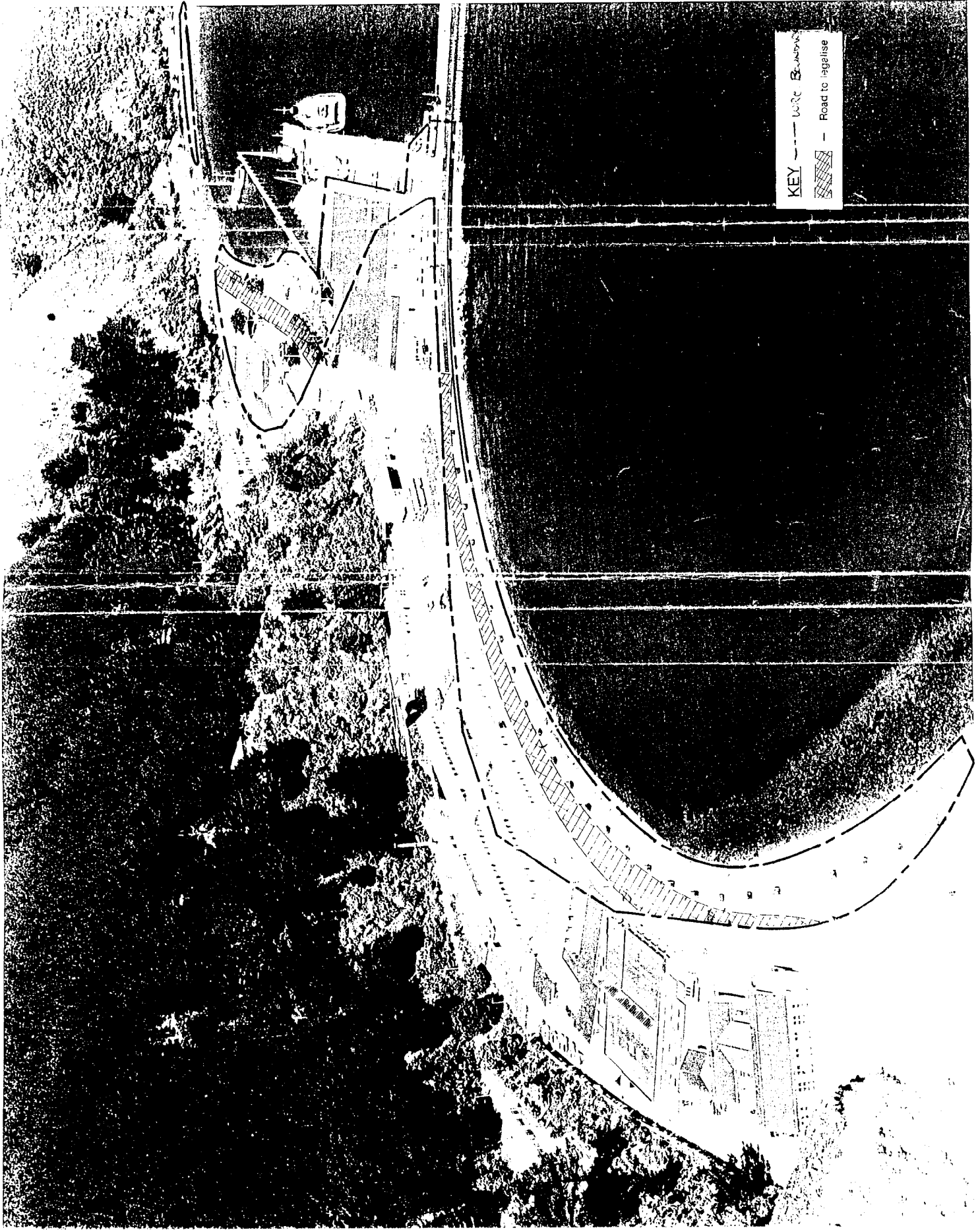
The map displays the Watts Peninsula District, divided into two sections. Section 89 is the northern portion, and Section 90 is the southern portion. Section 90 contains a detailed street grid with numerous small lots, while Section 89 is mostly open land with a few irregular shapes. A large, irregularly shaped area is shaded in the upper right quadrant of the map.

Sec 89 WATTS PENINSULA DISTRICT

Sec 90 WATTS PENINSULA DISTRICT

Attachment 2 to Report 95.

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4/1/13



AGREEMENT made this nd 25th day of ^{December} August 1983

BETWEEN THE WELLINGTON HARBOUR BOARD a harbour board within the meaning of the Harbours Act 1950 (hereinafter called "the Board")

AND the Minister of Works and Development acting on behalf of HER MAJESTY THE QUEEN (hereinafter called "the Crown")

IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1 THE Board being the owner of the land comprising 1 hectare **4840** m² more or less being Sections 89 and 90 Watts Peninsula District and being formerly part of the bed of the Harbour of Port Nicholson and being the land more particularly shown outlined in red on SO Plan 32424 a copy of which is attached hereto (hereinafter called "the reclaimed land")

HEREBY ACCEPTS as compensation from the Crown for the reclaimed land the sum of TEN CENTS (10¢) on and subject to the conditions hereinafter appearing.

2 THE Crown will acquire by proclamation or declaration under the Public Works Act 1981 the reclaimed land in consideration of the said sum of 10¢ being paid to the Board.

3 CONDITIONS RELATING TO THE TAKING OF THE RECLAIMED LAND BY PROCLAMATION OR DECLARATION

(a) The Crown will take the land by proclamation or declaration but may register a compensation certificate against any title which may issue for the land pending the issuing of the proclamation or declaration.

(b) Vacant possession of the reclaimed land shall be given to the Crown on the date of settlement which shall be one (1)



month from the date of execution hereof.

- (c) The Board acknowledges that the reclaimed land is not subject to any registered or unregistered mortgage lien or charge as at the date hereof or will be so subject as at the date of settlement.

4 SPECIAL CONDITIONS RELATING TO THE TAKING OF THE RECLAIMED LAND BY PROCLAMATION OR DECLARATION

The Crown will at its own expense undertake and comply with the following:

- (a) The foreshore of the reclaimed land shall be vested in the Board in the same terms as the original foreshore was so vested prior to the reclamation being, carried out.
- (b) (i) If the reclaimed land or any part thereof ceases to be required by the Crown for Defence purposes, except the formed Legal road, the Crown will retransfer the reclaimed land or any part thereof as the case may be to the Board for such purposes of the Board for which it is authorised by statute.
- (ii) In the event of the Crown revesting the reclaimed land in the Board the purchase price will remain at 10 ¢ but such price does not include the value of any buildings erected thereon.
- (iii) If any buildings encroach or are situated entirely on the reclaimed land no longer required by the Crown the Board shall have the option to purchase singularly or all those buildings at a price to be nominated by the Crown being the Current Market

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A circular stamp containing a handwritten signature, possibly 'J.B.', is located in the bottom right corner of the page.

Value of the buildings and failing agreement the Current Market Value to be determined by arbitration in accordance with the Arbitration Act 1908 and notwithstanding the outcome of any arbitration the Board still has the final option of rejecting purchase of any building or buildings whereby the Crown shall then have the option of selling the existing building or buildings rejected from purchase together with such land as is required to comply with local authority requirements and provide frontage to a legal street PROVIDED THAT once such land and buildings are sold the Crown shall pay to the Board that sum of money equating to the current market value of the land only to be assessed as at the said date of sale and failing agreement such to be settled by arbitration.

- (c) The Crown undertakes to formally close the legal road and legalise the formed road as delineated on the attached plan and shall give the Board unrestricted rights of access over the formed road and further shall afford the Board unrestricted access to any part of the foreshore adjoining the said reclaimed land PROVIDED THAT

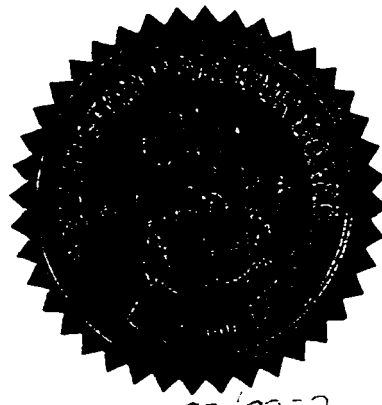
The Minister of Defence may at any time or from time to time close the said road to the use of the public (deemed to include the Wellington Harbour Board) in the event of any emergency or where the Base Shelly Bay is required for some operational purpose other than the routine use of the Base and the continued access of the public through the Base will interfere with or disrupt that specific operation

THEN Whenever the Minister of Defence decides to close the said road he may cause to be erected thereon such notices declaring the said road closed, together with such adequately lighted barricades as he deems advisable, and thereon the said road shall be closed to the use of the public until the said notice and barricades are removed under the authority of the Minister of Defence NOTWITHSTANDING THAT before closing the said road the Minister of Defence shall wherever practicable give public notice in one or more newspapers circulating in the City of Wellington of his intention to close the road but it shall not be obligatory for such notice to be given.

(d) Notwithstanding the proviso to paragraph (c) of this clause the staff of the Wellington Harbour Board on presenting authority from the Secretary or General Manager of the Board shall have right of access to attend to any urgent maintenance matters or to carry out any emergency work which the Board considers necessary notwithstanding that the road might be otherwise closed to the public.

IN WITNESS WHEREOF THESE PRESENTS HAVE BEEN EXECUTED the day and year first hereinbefore appearing.

THE COMMON SEAL of THE
WELLINGTON HARBOUR BOARD)
was hereunto affixed by)
order of the said Board)
in the presence of:)



..... *[Signature]* Chairman
..... *[Signature]* Member
..... *[Signature]* Member
..... *[Signature]* Secretary

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ACTING ON BEHALF of HER MAJESTY THE QUEEN pursuant to Section 9 of the Public Works Act 1981 and pursuant to an authority given to me by the Minister of Works and Development I have hereby confirmed this agreement to take by proclamation or declaration.

SIGNED BY the said)
)
RODERICK MASON INGLE)
)
Person authorised by the)
)
Minister of Works and)
)
Development in the)
)
presence of:)



B. Hill
of Wellington
Public Servant.

