

# **Memorandum of Understanding - Overweight Permits**

Between

**PALMERSTON NORTH CITY COUNCIL**

And

**New Zealand Transport Agency**

## PARTIES

**New Zealand Transport Agency**, a Crown entity established under the Land Transport Management Act 2003 of 50 Victoria Street, Wellington (the “**Transport Agency**”)

AND

**Palmerston North City Council** a Territorial Authority established under the Local Government Act 2002 (the “**Council**”).

## BACKGROUND

- A. The Land Transport Rule: Vehicle Dimensions and Mass 2016 (“VDAM”) requires operators of certain vehicles to obtain a permit.
- B. **Under clause 5.8(1)** of VDAM a Road Controlling Authority may, in accordance with the requirements of VDAM, issue Overweight Permits for heavy motor vehicles transporting indivisible loads that exceed the mass limits prescribed in Parts 1 or 2 of Schedule 3 of VDAM and are not high-productivity motor vehicles (“HPMV”s).
- C. “Road Controlling Authority” is defined under VDAM as follows:  
*“Road controlling authority in relation to a road, means the authority, body or person having control of the road; and includes a person acting under and within the terms of a delegation or authorisation given by the controlling authority.”*
- D. Both the Council and the Transport Agency are Road Controlling Authorities in respect of roads under their control and neither party may issue **Overweight** Permits with regard to roads under the control of the other party **unless they have obtained the written approval of that other party in accordance with clause 5.8 of VDAM.**
- E. The Council has requested the Transport Agency to issue **Overweight** Permits in respect of the Council’s roads on its behalf, and the Transport Agency has agreed to do this.
- F. The Transport Agency does not have authority to issue **Overweight** Permits for travel on the Council’s roads without the Council’s specific **written approval**. The Council, by this Memorandum, gives the Transport Agency that approval.
- G. Although the Transport Agency has been given **written Approval** to issue **Overweight** Permits, the Council will continue to **comply with clause 5.3(2) of VDAM and to provide the Transport Agency with all relevant route and structure information necessary for the Transport Agency's evaluation and approval of applications for Overweight Permits.**
- H. This Memorandum sets out the understandings of the Parties and the Parties agree to be bound by it.

## 1. INTERPRETATION

1.1 For the purpose of the interpretation or construction of this Memorandum, unless the context provides otherwise:

- (a) terms defined in VDAM will have the same meaning in this Memorandum;
- (b) references to clauses are references to clauses of this Memorandum and references to Parties are references to the parties in this Memorandum;
- (c) references to Appendices, are references to Appendices to this Memorandum;
- (d) references to any statute include all legislative instruments or other subordinate legislation made under that statute. A reference to a statute, legislative instrument, subordinate legislation or manual is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute, legislative instrument, subordinate legislation or manual;
- (e) references to this Memorandum include all variations made in accordance with this Memorandum;
- (f) the invalidity of any part or provision of this Memorandum shall not affect the enforceability of any other part or provision thereof; and
- (g) the word including and other similar words do not imply any limitation.

1.2 In this Memorandum, unless the context otherwise requires:

**“Approval”** means the written approval given in clause 2.1 of this Memorandum by the Council in accordance with clause 5.3 of VDAM.

**“Commencement Date”** means the date on which this Memorandum is signed by Agency and the Council.

**“Confidential Information”** means all information obtained as a result of performing this Memorandum, information which relates to the subject matter of this Memorandum or another Party or is by its nature confidential to another Party. To avoid any doubt Route and Structure Information is not Confidential Information and may be published as open source information by either Party in accordance with this Memorandum.

**“Overweight Permit”** means an Overweight Permit for a heavy motor vehicle that exceeds the mass limits prescribed in Part 1 or Part 2 of Schedule 3 of VDAM and transports an indivisible load and is not a high productivity motor vehicle.

**“VDAM Permitting Manual”** means the current version of the manual, issued and maintained by the Transport Agency, which specifies the requirements for Overweight Permits. It is published on the Transport Agency’s website.

**“Memorandum”** means this memorandum between the Parties.

**Overweight Motor Vehicle”** has the same meaning as in VDAM.

**“Parties”** means the Transport Agency and the Council.

“**Personal Information**” has the same meaning as in section 2 of the Privacy Act 1993.

“**Road Controlling Authority**” has the same meaning as in VDAM.

“**Route and Structure Information**” means that information provided to the Transport Agency by the Council in accordance with clause 3 of this Memorandum.

“**Structure**” includes a bridge, culvert, tunnel, underpass and overpass.

“**VDAM**” means the Land Transport Rule: Vehicle Dimensions and Mass 2016 and any amendments to that Rule.

“**VDAM Permit**” means a permit issued by the Transport Agency in accordance with VDAM and with this Memorandum in respect of roads under the control of the Council.

“**VDAM Permitting Manual**” means the current *Vehicle Dimension and Mass Permitting Manual* available on the Transport Agency’s website.

## 2. ISSUE OF PERMITS UNDER VDAM

- 2.1 The Council **in accordance with clause 5.3 of VDAM** approves the Transport Agency to issue permits pursuant to clause 5.8(1) of VDAM to allow Overweight Motor Vehicles to travel on certain roads and Structures under the Council’s control.
- 2.2 The Transport Agency may, under the Approval, issue Overweight Permits in respect of the particular roads and Structures that the Council notifies the Transport Agency of from time to time in accordance with the VDAM Permitting Manual.

## 3. COUNCIL’S ROLE AND RESPONSIBILITIES

- 3.1 In accordance with clauses 5.2(1)(b) & (c) **and 5.3(2)** of VDAM the Council will duly consider the safety of road users and the durability of roads and bridges on which any vehicle for which an **Overweight Permit** may be issued in accordance with this Memorandum may operate.
- 3.2 Based on its consideration of the matters referred to in clause 3.1 above, the Council will from time to time provide the Transport Agency with all relevant route and structure information necessary for the Transport Agency’s evaluation and approval of applications for **Overweight Permits**. Such information must indicate the roads, routes and structures suitable for vehicles travelling at the maximum limits for the type of vehicle set out in VDAM and must include both a list and a map of all roads and structures on which such vehicles are permitted to travel. The information will be provided in a format consistent with the Transport Agency’s Geospatial mapping processes and include any reasonable conditions required by the Council
- 3.3 In particular the Council will provide the Transport Agency with its list of Structures in [a](#) format agreed by the Parties. The Council is responsible for ensuring that all such lists are accurate and up to date and include all current restrictions imposed by the Council as a Road Controlling Authority.

- 3.4 In accordance with clause 5.3 of the VDAM Rule, the Council must ensure that all lists and maps of restricted structures that it provides to the Transport Agency reflect the Council's consideration of the matters set out in clause 5.3(2) of VDAM.
- 3.5 The Council will immediately notify the Transport Agency of any changes to the lists and maps referred to in clauses 3.2 and 3.3. This includes by adding any structures that were not included in previous data, but, having regard to the matters set out in clause 5.3(2) that the Council considers should be included or excluded.
- 3.6 The Council will, on request, provide the Transport Agency with any additional information the Transport Agency reasonably requires to assess an application for an Overweight Permit.
- 3.7 The Council will promptly notify the Transport Agency if:
- (a) in its opinion, the continued operation of a vehicle that is the subject of an Overweight Permit may cause extraordinary damage to the road infrastructure; or
  - (b) it considers that any of the conditions of an Overweight Permit have not been complied with; or
  - (c) it considers there is a significant risk to public safety, so that the Transport Agency can consider revocation under 5.7(2) of VDAM.
- 3.8 The Council must ensure that all of information it provides to the Transport Agency under or in relation to this Memorandum will be true, accurate and up-to-date to the best of its knowledge.
- 3.9 The Council will refer any customers who wish to apply for an Overweight Permit to the Transport Agency's website and application process.

#### **4. TRANSPORT AGENCY'S ROLE AND RESPONSIBILITIES**

- 4.1 The Transport Agency will incorporate the information provided by the Council in accordance with clause 3 above into its route network and VDAM Permitting processes. Conditions imposed by the Council relating to roads or structures will be included as critical conditions.
- 4.2 The Transport Agency will process all Overweight Permit applications falling within the parameters of Schedule 1 relating to roads under control of the Council, and the Transport Agency will issue Overweight Permits, together with any conditions it considers appropriate, where the requirements of VDAM are met.
- 4.3 The Transport Agency will ensure that each Overweight Permit issued is conditional on the operator of the vehicle complying with all applicable route restrictions. The Transport Agency will include as a condition of any Overweight Permit issued a condition that the operator must ensure compliance with clauses 3.1(1), (2) and (3) of VDAM. The condition will state that - ***“A vehicle and its load must comply with the dimension and performance requirements in the Rule ,must be manoeuvrable, fit safely on a road and interact safely with road users for the route on which it operates. and must not be operated on a road if it or its load is likely to damage any wires, cables or***

***construction on, over or alongside that road. It is always the responsibility of the operator to ensure compliance with these requirements. If a vehicle cannot for any reason relating to the vehicle or wider circumstances (including atmospheric conditions) be operated safely, then that vehicle must not be operated even though a permit may be held.***

- 4.4 The Transport Agency will, on reasonable request, and to the extent it is permitted to do so by law, provide the Council with information it holds relating to Overweight Permits it has issued.
- 4.5 The Transport Agency will use its best endeavours to meet the processing time expectations set down in the VDAM Permitting Manual. Processing times will commence from the date the Transport Agency receives all of the information required to process the permit as set out in the VDAM Permitting Manual.
- 4.6 The Transport Agency is responsible for the operation and maintenance of its Overweight Permit issuing system.
- 4.7 The Transport Agency will operate in accordance with the VDAM Permitting Manual when evaluating applications for, and issuing, Overweight Permits.
- 4.8 The Transport Agency will only issue an Overweight Permit to a vehicle where the Transport Agency considers (taking into account the information provided by the Council in accordance with clause 3 of this Memorandum) that the relevant requirements of VDAM are satisfied.
- 4.9 For the avoidance of doubt, the Council acknowledges that the Transport Agency may revoke Overweight Permits issued by the Transport Agency under this Memorandum in accordance with the requirements of clause 5.7 of VDAM. Where the Transport Agency intends to make such a revocation the Transport Agency will take into account any information provided to the Transport Agency by the Council in accordance with clause 3 of this Memorandum.
- 4.10 The Transport Agency will promptly consider and respond appropriately to any notification from the Council under clause 3.7.

## **5. ACKNOWLEDGEMENT**

- 5.1 The Parties acknowledge that each has powers, functions and obligations under law. The performance by each Party of its obligations under this Memorandum is subject to such powers, functions and obligations under law.

## **6. COSTS AND REVENUE**

- 6.1 The Transport Agency will be responsible for all costs associated with receiving, processing and issuing Overweight Permits under this Memorandum.

- 6.2 The Council will be responsible on an on-going basis for the costs of assessing the roads routes, and Structures in its network or under its control and for communicating the information to the Transport Agency under this Memorandum.
- 6.3 Any costs not covered by clauses 6.1 or 6.2 above will lie where they fall.
- 6.4 The Transport Agency will be entitled to retain any revenue generated by issuing Overweight Permits under this Memorandum.

## **7. REVIEW AND VARIATION OF DELEGATION MEMORANDUM**

- 7.1 The Parties will, upon written request by either party, review this Memorandum from time to time
- 7.2 Every review required by clause 7.1 above must include consideration of:
- (a) the Transport Agency's performance of its obligations described in clause 4;
  - (b) the Council's performance of its obligations described in paragraph 3.
  - (c) the resources and capacity of the Transport Agency to continue to issue Overweight Permits under this Memorandum; and
  - (d) any issues relating to costs.
- 7.3 Any amendments to this Memorandum must be recorded in writing and signed by both Parties.

## **8. TERM**

- 8.1 This Memorandum commences on the Commencement Date and will continue until terminated by either Party giving the other Party one month's notice in writing.
- 8.2 Termination of this Memorandum shall not affect any Overweight Permits issued prior to the date of such termination, which shall remain in effect until their expiry or revocation.

## **9. PROBLEM RESOLUTION**

- 9.1 The Parties will work together in good faith with a view to resolving any problems or differences between the Parties in relation to the interpretation or performance of this Memorandum.
- 9.2 If the problem or difference cannot be settled in this way, it will be referred to the Representatives listed in paragraph 12. The Representatives will in good faith meet and negotiate with a view to resolving the dispute or difference as quickly as possible.
- 9.3 If the problem or difference cannot be settled by the Representatives within 10 working days, it will be referred to the Chief Executives or Regional Managers of the Parties or their approved delegates. The Chief Executives or Regional Managers or their approved delegates will in good faith meet and negotiate with a view to resolving the problem or difference as quickly as possible.

## **10. OFFICIAL INFORMATION ACT 1982 REQUESTS**

10.1 The Parties will consult each other on any request for information under the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 that relates to this Memorandum.

## **11. CONFIDENTIALITY**

11.1 Except as permitted by the exceptions in clause 11.2 or otherwise expressly permitted in this Memorandum, each Party shall keep Confidential Information confidential and shall not disclose such Confidential Information to any person or use such Confidential Information for any purpose other than the purpose of this Memorandum.

11.2 Notwithstanding clause 11.1, either Party may disclose any Confidential Information:

- (a) to its board members, employees or contractors who need to know such information for the purposes contemplated in this Memorandum, or to its professional advisers, auditors or bankers for a proper purpose, provided that the Party disclosing the Confidential Information ensures that each such person to whom it discloses Confidential Information complies with the restrictions in this clause as if such person were a Party to this Memorandum;
- (b) if and to the extent disclosure is required by law, or any Governmental Agency, Minister of the Crown or parliamentary officer or body, provided that the Party disclosing the Confidential Information gives the affected Party notice of the requirements as soon as practicable before such disclosure is made, and works collaboratively with the affected Party in respect of any such disclosure; or
- (c) if and to the extent the Confidential Information:
  - (i) was known to the receiving Party before the Confidential Information was disclosed to it;
  - (ii) is disclosed to the receiving Party on a non-confidential basis by a third party who has the right to make such disclosure;
  - (iii) is generally available to the public through no fault of the receiving Party; or
  - (iv) is developed by the receiving Party independently of the Confidential Information disclosed by the disclosing Party.

11.3 Each Party acknowledges their respective obligation to deal with Personal Information in accordance with the provisions of the Privacy Act 1993.

## **12. DATA SHARING**

12.1 The parties acknowledge that the Route and Structure Information provided to the Transport Agency by the Council in accordance with this Memorandum is not Confidential Information. As a consequence that Information may be freely shared by either party as open source information and may be accessed by third parties at no cost. In particular,



the Transport Agency may make such Information freely available to third parties on its website or through other means.

**13. REPRESENTATIVES**

The representatives for the Transport Agency and the Council are as follows:

The Transport Agency	Palmerston North City Council
Senior Network Manager	
<b>Riccardo Areosa</b>	<b>Riaan Grobbelaar</b>
Manager, Permitting Assessments	Activity Manager - Transport

13.1 Changes to Representatives must be notified in writing to the other Party.

13.2 The Representatives are responsible for:

- (a) Dealing with day-to-day matters relating to the administration and operation of this Memorandum;
- (b) Keeping the Memorandum current;
- (c) Monitoring the application of the provisions of this Memorandum;
- (d) Managing any review and/or variation process of this Memorandum; and
- (e) Working together to settle any disputes or differences in accordance with 9.

**14. SUBCONTRACTING**

14.1 Either party may with the prior written agreement of the other party (not to be unreasonably withheld), subcontract, some or all of its obligations under this Memorandum to a third party.

14.2 The entry by either party into a subcontract will not relieve that party from liability for the performance of any obligations under this Memorandum. Each party is liable to the other party for the acts and omissions of each of its subcontractors as if they were acts or omissions of that party.

**15. NOTICES**

15.1 Each notice given under this Memorandum (each "**notice**") shall be in writing and delivered personally or sent by post, email or facsimile.

15.2 Each notice shall be delivered to the address of the relevant representatives set out in clause 13, or to any other address from time to time designated for that purpose by at least 5 working days' prior notice to the other Party.

15.3 A notice under this Memorandum is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, 3 working days' after the date of posting;
- (c) **Email:** sent by email, on the next working day after the day on which the email is sent (unless sooner acknowledged by the recipient); but it is not deemed to be received if the sender receives notification of failure of delivery (including an "Out of Office" response). ;
- (d) **Facsimile:** sent by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the recipient designated for the purposes of this Memorandum,

provided that any notice deemed received after 5 pm on a working day or on a non-working day shall be deemed to have been received on the next working day.

**16. GENERAL**

16.1 **Survival:** Following expiry or termination of this Memorandum, clauses 8 (Term), 9 (Problem Resolution), 10 (Official Information Act 1982 Requests) and 11 (Confidentiality), together with other provisions that are by their nature intended to survive, will remain in effect.

16.2 **Counterparts:** This Memorandum may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), each of which shall be deemed an original, but all of which together shall constitute the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

**EXECUTED** as a binding Memorandum

<b>SIGNED</b> for and on behalf of	)	
<b>NEW ZEALAND TRANSPORT</b>	)	
<b>AGENCY</b> by	)	
	)	_____
	)	Signature
	)	
_____	)	_____
[Print Name]	)	Position

Date:

**SIGNED** for and on behalf of  
**Palmerston North City Council**

)  
)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
Position

Date:

**APPENDIX 1**

**Road Sections Approved for Access by HPMV with Overweight Permits**

**As at ..... Date....**

Road Name	From	To

1.