

BEFORE THE INDEPENDENT COMMISSIONER

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Notice of Requirement from the Palmerston North City Council for a designation of a new road connection between Abby Road and Johnstone Drive, Palmerston North

MEMORANDUM OF COUNSEL FOR THE REQUIRING AUTHORITY

Dated: 24 June 2020



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MEMORANDUM OF COUNSEL FOR THE REQUIRING AUTHORITY

MAY IT PLEASE THE COMMISSIONER:

- [1] This memorandum is to report on progress.
- [2] In preparing its information to respond to requests for further information from the reporting officers, the Council as Requiring Authority has undertaken further work in terms of preliminary roading design. This has included gaining a better understanding of the earthworks and traffic safety effects, and how the alignment relates to the Manga O Tane Reserve to the north in relation to connectivity, visual amenity, and landscape considerations.
- [3] Through this process, the Requiring Authority has identified that a modification to the alignment of the proposed road is desirable. The modification would include:
 - (a) shifting the road alignment through the middle section closer to the Manga O Tane Reserve;
 - (b) ensuring that there is enough width through the middle section across the gully to allow for earthworks and mitigation planting;
 - (c) adjusting the proposed connection onto Johnstone Drive by shifting the connection slightly to the north.
- [4] The **attached** preliminary drawing shows the modified alignment of the road, and an indicative consequential modification to the spatial boundaries of the requirement (green dashed line). This can be compared against the notified alignment in the Notice of Requirement, with the purple dashed lines.
- [5] The Council as Requiring Authority reserves its position as to whether it would be within the Commissioner's jurisdiction to modify the requirement in the manner proposed. Whether it is within the Commissioner's jurisdiction involves consideration of various factors, including the effects of the change, prejudice to parties, and (broadly speaking) issues of procedural fairness. In certain circumstances, it will be within a decision maker's jurisdiction to allow a modification that enlarges or is outside the boundaries of a proposed

requirement. The recent Environment Court decision of *Director-General of Conservation v New Zealand Transport Agency* [2020] NZEnvC 19 addresses this issue in the context of the Manawatu Gorge replacement road project.

[6] Before the Requiring Authority decides whether it is appropriate to proceed on the current process (inviting the Commissioner to exercise powers of modification), or undertake a renotification based on the modification, it is first necessary to carry out the following:

- (a) Prepare updated technical reports and information assessing the modified alignment. This will allow the requiring authority to make an informed decision as to the effects of the modification, relative to the notified proposal;
- (b) Attempt to engage in discussion with Submitters about the modification and how the modification might impact their submission.

[7] The Requiring Authority does not have a precise timeframe in mind for completing the work, but the information in correspondence will be completed as soon as possible.

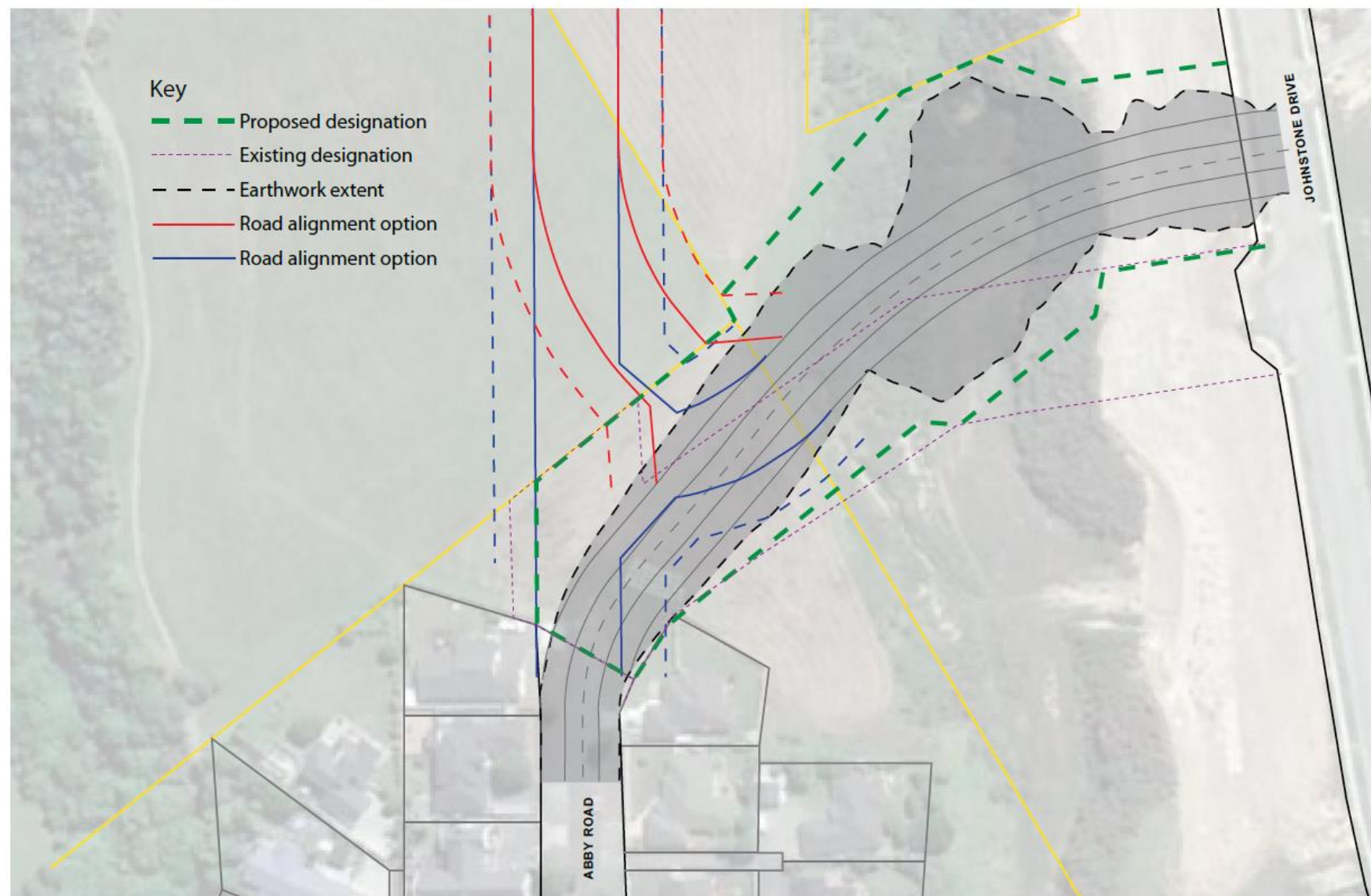
[8] Subject of course to the Commissioner's views on the approach set out in this memorandum, a further progress report can be provided in two weeks.


DATED 24 June 2020

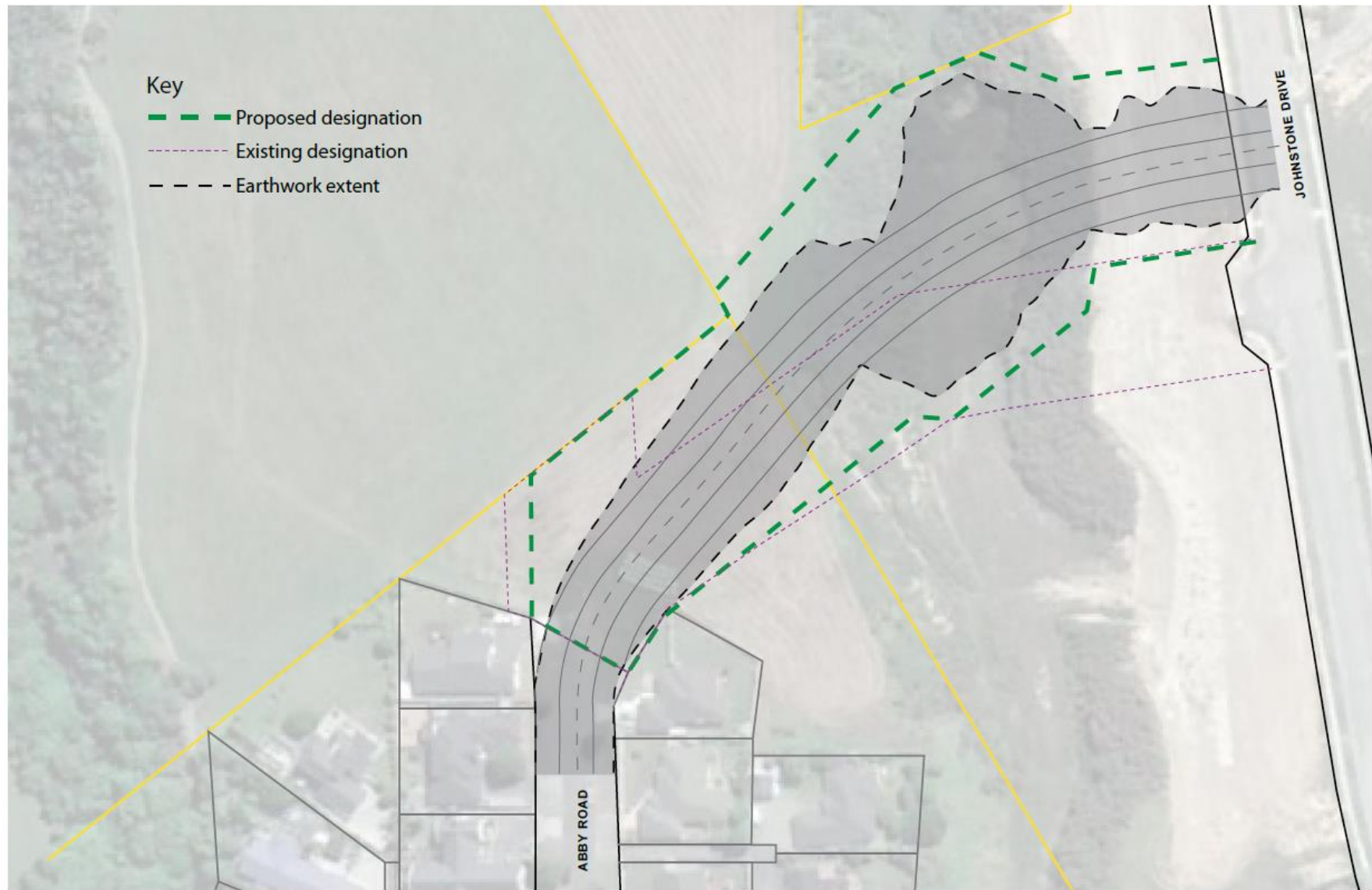
A handwritten signature in blue ink, appearing to read 'N. Jessen', is written over a horizontal line.

Nicholas Jessen

Counsel for Palmerston North City Council



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|  <p>Ph 021 324 409 john@hudsonassociates.co.nz www.hudsonassociates.co.nz</p> | <p>Abby Road Northern Designation with road alignment options</p> | <p>DWG # 62-001 Revision # B</p> | <p>Date 24/06/2020 Scale @ A3 not to scale Do not scale from plan</p> |
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Abby Road
Northern Designation
 without road alignment options

DWG # 62-002

Revision #
B

Date 24/06/2020

Scale @ A3 not to scale
 Do not scale from plan