

MEMORANDUM OF TRANSFER

WHEREAS CHARLES SWANSON of New Plymouth, Engineer (hereinafter referred to as "the Transferor") is registered as the proprietor of an estate in fee simple subject however to such encumbrances liens and interests as are notified by memorandum underwritten or endorsed hereon in FIRSTLY ALL THAT piece of land situate in the Borough of New Plymouth containing Thirty-five one hundredths of a perch (O acres 0 roods 0.35 perches) be the same a little more or less BEING Allotment One (1) on Deposited Plan Number 5735 and being part of Section One thousand five hundred and forty-nine (1549) on the Public Maps of the Town of New Plymouth AND BEING part of the land comprised in Limited Certificate of Title Volume 126 Folio 232 Taranaki Registry AND SECONDLY ALL THAT piece of land situate as aforesaid containing Twenty decimal one nine perches (0 acres 0 roods 20.19 perches) be the same a little more or less BEING part of Section One thousand five hundred and forty-nine (1549) on the Public Maps of the Town of New Plymouth AND BEING balance of the land comprised in Limited Certificate of Title Volume 126 Folio 232 Taranaki Registry AND WHEREAS by Agreement bearing date the Second day of May One thousand nine hundred and thirty-eight and made between the Transferor of the one part AND THE MAYOR COUNCILLORS AND BURGESSES OF THE BOROUGH OF NEW PLYMOUTH a body corporate duly constituted under the provisions of The Municipal Corporations Act, 1933 (hereinafter together with the Council of the said Borough referred to as and included in the term "the Corporation") of the other part the Transferor IN CONSIDERATION of the payment to him by the Corporation of the sum of TEN POUNDS (£10.0.0) and of the carrying out by the Corporation of certain work as set out in the said Agreement DID AGREE TO TRANSFER to the Corporation the piece of land Firstly hereinbefore mentioned for the purposes of a street and to grant to the Corporation the rights liberties licenses and powers hereinafter set forth NOW THEREFORE THIS MEMORANDUM WITNESSETH that in pursuance of the said Agreement and for the consideration aforesaid the Transferor DOTH HEREBY IRREVOCABLY DEDICATE as a public road or street the piece of land Firstly hereinbefore described AND to give effect to such dedication THE TRANSFEROR DOTH HEREBY TRANSFER unto the Corporation all his estate and interest in the said piece of land Firstly hereinbefore mentioned and described for the purpose aforesaid and to the intent that the same shall be and forever remain a public road or street AND in further pursuance of the said Agreement and for the consideration aforesaid the Transferor DOTH HEREBY TRANSFER GRANT AND CONFIRM unto the Corporation full and free right liberty license and power to permit suffer and allow the branches of the Pohutukawa Tree now growing upon the land Firstly hereinbefore mentioned in the position shown upon the plan endorsed hereon to extend or encroach while such tree shall be alive or growing upon

such portions of the land Secondly hereinafter mentioned as shall be situate within a circle centred on the centre of the bole of the said tree and having a radius of Thirty links AND ALSO full and free right and liberty of ingress egress and way to the Corporation its workmen officers and employees with or without plant and appliances in and over so much of the said land Secondly hereinbefore mentioned as shall be necessary for the purpose of lopping or trimming the said tree or of cutting lopping or removing the said tree when the same or any part thereof shall have died TO HAVE AND TO HOLD such right liberty license and power henceforth while the said tree shall be alive or growing and for a period of one month after the same shall be dead AND THE TRANSFEROR DOTH HEREBY COVENANT with the Corporation so as to bind himself as owner of the said land Secondly hereinbefore mentioned and (so far as he can) his successors in title thereto that the Transferor will not cut lop or otherwise interfere with any part or parts of the said tree within the limits of the circle hereinbefore referred to PROVIDED ALWAYS that digging in or cultivating to a depth of eighteen inches that part of the land Secondly hereinbefore described which lies within the said circle by the Owner or lawful occupier thereof shall not be deemed to be cutting lopping or otherwise interfering with any part of the said tree within the meaning of this Covenant notwithstanding that the roots of the said tree are thereby severed or injured PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that the exercise of all or any of the rights liberties licenses and powers hereby conferred upon the Corporation shall not entitle the Transferor to the payment of compensation under Section 171 of "The Municipal Corporations Act 1933" or under the provisions of any Statute or law whatsoever such rights (if any) to compensation being hereby expressly waived by the Transferor BUT nothing hereinbefore contained shall be or be construed as a waiver or release by the Transferor of his rights or remedies in respect of any breach or nonobservance by the Corporation of any covenant or agreement on its part herein contained or implied PROVIDED FURTHER AND IT IS HEREBY AGREED AND DECLARED that nothing herein contained shall restrict or affect or be deemed or construed to restrict or affect the free and unrestricted use and enjoyment of that part of the land secondly hereinbefore described which lies outside the circle aforesaid by the person for the time being the owner or in lawful occupation thereof nor shall any action or claim hereunder or by reason of anything herein contained lie against the owner or lawful occupier for the time being of the said land lying outside the said circle for any act deed thing or omission done or omitted by such owner or occupier notwithstanding that injury to the said tree may result or has resulted therefrom AND THE CORPORATION DOTH HEREBY COVENANT with the Transferor THAT the Corporation will at all times use reasonable care and skill in the exercise of the right liberty license and power hereby granted and will avoid doing any unnecessary damage to the said land secondly hereinbefore described or to

any erection building or any other thing being or growing thereon and will forth-with make good and repair any damage done by the Corporation thereto or to any building or any other thing being or growing thereon and will avoid causing any unnecessary interference with the use and enjoyment of the said land last mentioned by the lawful occupier thereof AND THAT the Corporation will when called upon so to do by the Transferor or other the owner for the time being of the said land secondly hereinbefore mentioned and at its own cost trim all or any of the branches of the said tree which may extend beyond the circle or limits hereinbefore mentioned and will in like manner lop or cut any dead branches or parts of the said tree AND when the said tree shall have died will forthwith at its own cost fell and remove the same and will on every occasion of lopping cutting or felling the whole or any part of the said tree forthwith thereafter clean up and remove from the said last mentioned land all parts of the said tree so lopped cut or felled and the debris therefrom AND will forthwith make good and repair any damage done by the Corporation to such last mentioned land or to any building or any other thing being or growing thereon.

IN WITNESS whereof these presents have been executed this seventh day of December One thousand nine hundred and thirty-eight. 9

SIGNED by the said CHARLES SWANSON }
 in the presence of:- } Chas. Swanson.

Austin Bewley,
 Solicitor,
 New Plymouth.

SEALED with the Common Seal of THE)
MAYOR COUNCILLORS AND BURGESSES OF)
THE BOROUGH OF NEW PLYMOUTH and) Seal
SIGNED by two members of the New)
 Plymouth Borough Council on behalf)
 of and by direction of the said)
 Council in the presence of:-)

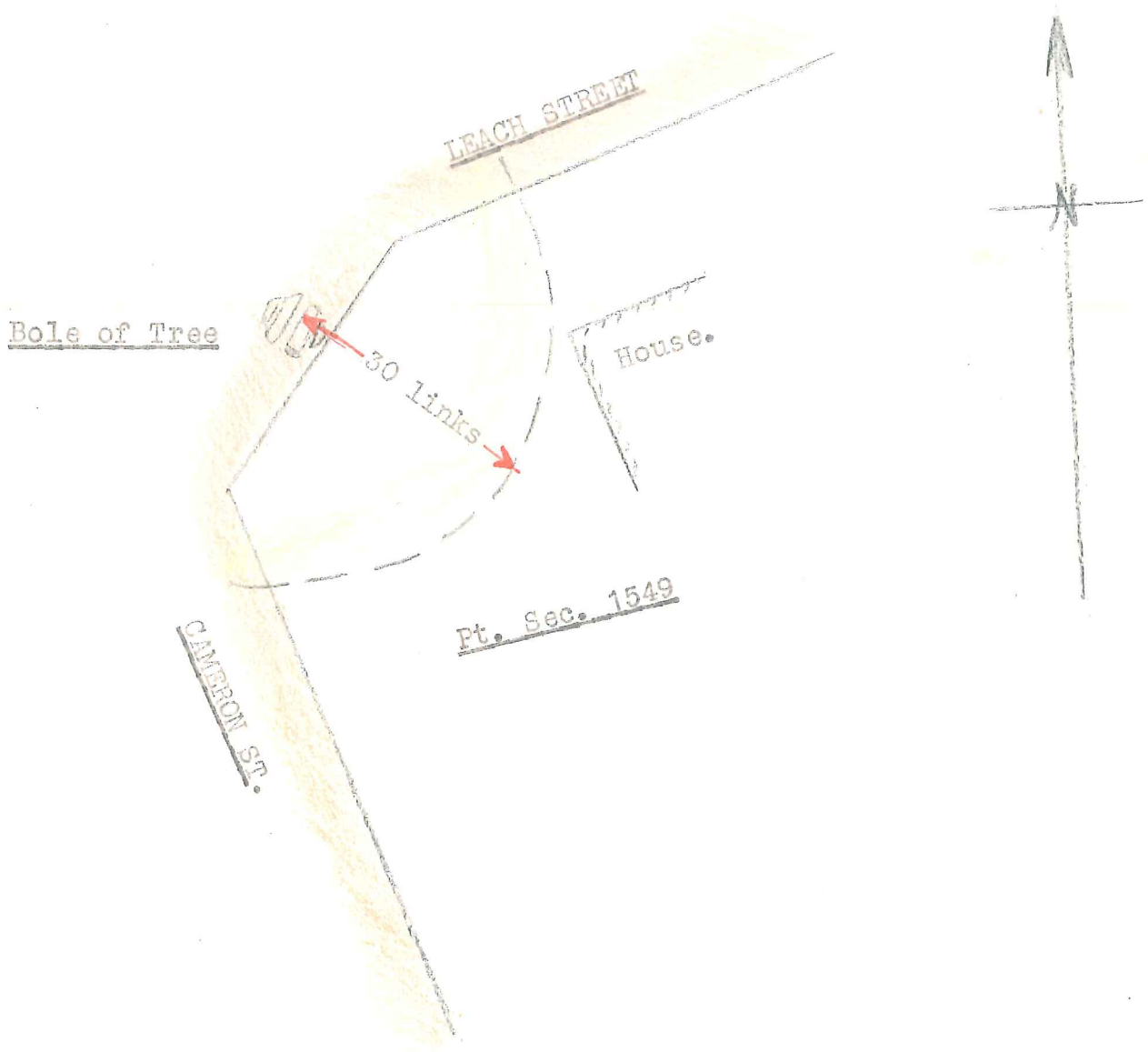
E. Gilmour.
 J. W. Bailey.

J. W. Palmer,
 Clerk,
 Town Clerk's Office,
 New Plymouth.

I, RALPH CHARLES BOND hereby consent as Purchaser.

SIGNED by the said RALPH CHARLES }
BOND in the presence of:- } Ralph C. Bond.

Philip Grey,
 Solicitor,
 New Plymouth.



PLAN SHOWING POSITION OF POHUTUKAWA TREE

Scale: 20 Links to an Inch