

Right of Way Easement Acquired—Te Mahoe, Whakatane District

Pursuant to sections 20 and 28 of the Public Works Act 1981, and to a delegation from the Minister for Land Information, Janine Stocker, Land Information New Zealand, declares that, an agreement to that effect having been entered into, a right of way easement over the land described in the Second Schedule with the rights and powers contained in the Third Schedule is hereby acquired over the land held by the Whakatane District Council for drainage purposes (“Grantor”) described in the First Schedule and shall vest in the Her Majesty The Queen (“Grantee”) on the date of publication hereof in the *New Zealand Gazette*.

South Auckland Land District—Whakatane District

Schedule

First Schedule

The Grantor’s Land

Part Allotment 60C Rangitaiki Parish contained in B094033 (South Auckland Land District).

Second Schedule

Easement to be Acquired

A right of way easement over that part of the easement land marked “B” on SO 497996.

Third Schedule

Terms of Easement Over the Easement Land

Background

- A. The Grantee wishes to receive the benefit of the right of way easement.
- B. The Grantor has agreed to grant to the Grantee an easement over the Grantor’s land (as set out in the First Schedule) (“Servient Land”) on the terms and conditions set out in this Deed.

Terms of This Deed

1. Definitions and Interpretation

1.1 In this Deed (including the Schedules)

Deed means this deed, the background and the Schedules.

Dominant land tenement means that piece of land situated in the South Auckland Land District containing 8045 square metres, more or less, being Section 2 SO 60568 and being all the land comprised and described in B489339.1 (South Auckland Land Registry).

Easement Land means the area of the Grantor’s Land marked “B” on SO 497996 within which the Grantee may exercise the rights granted by this Deed.

Grantee includes the Grantee’s servants, agents, employees, workers, invitees, licences and contractors.

1.2 In the interpretation of this Deed, unless the context otherwise requires:

1.2.1 the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Deed;

1.2.2 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and

1.2.3 the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

2. Grant of Easement

2.1 Pursuant to section 48 of the Public Works Act 1981, the Grantor grants to the Grantee the following easement:

2.1.1 The right to from time to time and at all times have a right of way over the Easement Land.

2.1.2 The right from time to time and at all times to enter, exit, pass through and remain on, under or over such part of the Grantor’s Land as is reasonable for the exercise of the rights granted under this Deed the Easement Land from time to time and at all times for all purposes reasonably necessary for the exercise of the rights granted under this Deed with or without vehicles or machinery necessary for such purposes but subject to the limitations expressed in the Deed.

2.1.3 The rights granted under this Deed are non-exclusive and are exercisable in common with the Grantor

and any other person having similar rights either now or in the future.

3. Consideration

3.1 In consideration of the grant of easement in this Deed:

3.1.1 The Grantee shall pay the Grantor a lump sum payment of \$1.00.

3.1.2 The Grantee shall observe the obligations imposed on it under this Deed.

4. Registration

4.1 It is intended that this easement shall be registered pursuant to section 48 of the Public Works Act 1981.

5. Obligations of the Grantee

5.1 The Grantee shall, when on the Grantor's Land (subject to clause 2.1.2):

5.1.1 Wherever possible, remain on the constructed roads and tracks and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads.

5.1.2 Immediately after passing through any gates, close such of them as were closed and lock such of them as were locked immediately before such passing through.

5.1.3 Take all reasonable precautions for guarding against any danger (including, but without limitation, fire, physical damage or disease), and in particular shall (but without limiting the general obligation to take full and proper precautions pursuant to this clause 5.1.3) comply with all conditions that may be imposed from time to time by the Grantor or any lawful authority.

5.1.4 Ensure that as little damage or disturbance as possible is caused to the surface of the Grantor's Land and that the surface is restored as nearly as possible to its former condition and any other damage done by reason of the activities permitted on the Easement Land by this Deed is similarly restored.

5.1.5 The Grantee shall, at its cost, maintain and repair to the satisfaction of the Grantor any part of the Grantor's Land, including the tracks, fences, gates, drains, buildings or other structures, which is damaged directly or indirectly by the Grantee.

5.2 The Grantee shall compensate the Grantor for any loss suffered by the Grantor resulting directly or indirectly from the actions of the Grantee.

5.3 The Grantee shall at all times in the exercise of the rights set out in this Deed not obstruct or hamper the Grantor, or any agents, employees and contractors of the Grantor, in its or their normal or reasonable use of the Grantor's Land.

5.4 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any activity which is not included within clause 2 of this Deed on the Grantor's Land, or do any other thing which would affect the ability of the Grantor to use the Grantor's Land.

5.5 The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed.

5.6 The Grantee shall at all times use its best endeavours to keep the Easement Land clear of noxious weeds and pests.

6. Costs

6.1 The Grantor shall bear all reasonable costs and expenses (including the Grantor's legal costs) in relation to the preparation, registration and enforcement of any provisions in this Deed.

6.2 The Grantor shall be solely responsible for the registration (if any) of this Deed and any associated costs.

6.3 All costs for the installation and maintenance of structures permitted by this Deed shall be at the Grantor's cost.

7. Indemnity

7.1 The Grantee hereby indemnifies the Grantor against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor in connection with this Deed or as a result of the exercise by the Grantee of its rights under this Deed, or any breach by the Grantee of its obligations, undertakings or warranties contained or implied in this Deed.

8. Grantor's Liability Excluded

8.1 Under no circumstances will the Grantor be liable in contract, tort, or otherwise to the Grantee for any expense, costs, loss, injury, or damage, whether consequential or otherwise, arising directly or indirectly from this Deed or any activity undertaken by the Grantor on the Grantor's Land, whether the expense, cost, loss, injury or damage is the direct or indirect result of negligence or otherwise.

9. Termination

9.1 The Grantor may terminate the rights created by this Deed if the Grantee breaches any of the terms of this

Deed and the breach remains unrectified following written notice to the Grantee specifying the breach and seeking rectification within seven days or such other time provided the parties agree.

9.2 If the breach remains unrectified (or is unable to be rectified) then termination must be by written notice from the Grantor.

9.3 Upon Termination (for whatever reason) of the grant of easement evidence by this Deed all rights of the Grantee shall immediately cease but the Grantee shall not be released from any liability to pay consideration or other moneys up to the date of termination.

9.4 Upon termination the Grantee shall formally surrender the rights under this Deed and surrender the grant of easement.

10. Assignment

10.1 The Grantee may not transfer, lease, assign or licence all or any part of its interest in the Easement Land, and/or the rights in this Deed or any parts of those rights without the prior written consent of the Grantor. Any such transfer, lease, assignment or licence shall be subject to the rights and obligations set out in this Deed.

10.2 Any transfers of shareholding effectively changing the control of the Grantee shall be deemed to be an assignment.

11. Disputes

11.1 If any dispute arises between the Grantor and the Grantee concerning the rights created by this Deed, the parties shall enter into negotiations in good faith to resolve their dispute. If the dispute is not resolved within one month of the date on which the parties begin their negotiations, the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties and, if one cannot be agreed upon within 14 days, to an independent arbitrator appointed by the President for the time being of the Branch of the New Zealand Law Society in which the Grantor's Land is situated. Such arbitration shall be determined in accordance with the Arbitration Act 1996, excluding the Second Schedule thereof, and the parties' execution of this Deed shall be deemed to be a submission to arbitration provided that this clause shall be subject in all respects to the provisions of section 17 of the Land Act 1948.

12. Notices

12.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the address in writing to the other party.

12.1.1 The Grantor's Address as set out in paragraph 2 of the Schedule below.

12.1.2 The Grantee's Address as set out in paragraph 4 of the Schedule below.

12.2 Any notice posted shall be deemed to be served three working days after the date of posting.

13. Severability

13.1 If any part of this Deed is held by any court or administration body of competent jurisdiction to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

Schedule

1. Grantor's Land

Part Allotment 60C Rangitaki Parish, Te Mahoe.

2. Grantor's Address

Commerce Street, Whakatane 3158.

3. Grantee's Land

Section 2 SO 60568.

4. Grantee's Address

155 The Terrace, Wellington 6011.

Dated at Wellington this 20th day of January 2017.

J. STOCKER, for the Minister for Land Information.

(LINZ CPC/2006/11337)