

**Notice of Intention to Take Land, Easements and a Leasehold Estate—Waimea Community Dam Project, Tasman District**

Notice is hereby given that the Tasman District Council (“Council”) proposes to take, under the Public Works Act 1981:

1. The land described in the First Schedule to this notice (“land”);
2. easements in gross for:
  - a. A right of way, right to convey electricity, computer media and telecommunications (“easement”) over those parts of the land described in the Second Schedule to this notice (“servient land”) and containing the rights and powers set out in Schedule 4 to the Land Transfer Regulations 2002 (“Regulations”) except as varied by the terms set out in the Third Schedule to this notice; and
  - b. a right of way (“ROW easement”) over that part of the land described in the Fourth Schedule to this notice and containing the rights and powers set out in Easement Instrument 6607510.8 except as added to by the terms set out in the Fifth Schedule to this notice (together called the “easements”); and
3. the leasehold estate in land (“lease”) over the land described in the Sixth Schedule to this notice (“lease land”) on the terms set out in the Seventh Schedule to this notice.

The land, easements and the lease are required for water augmentation and irrigation purposes for the Waimea Community Dam Project (“project”). More particularly, the lease is required to allow the Council to occupy the lease land during the construction of the project. The lease land will be used for the placement of temporary buildings, construction of temporary access roads, storage of materials, heavy machinery and equipment and such other purpose or purposes reasonably required for construction of the project.

The registered proprietor of the land, the servient land and the lease land and those persons with a registered interest in them have been served with notice of the Council’s intention to take the the land, the easement and the lease and advised of their right to object.

Any other person having the right to object may send a written objection to the Registrar, Environment Court, Level 1, District Court Building, 282 Durham Street, Christchurch 8013, or by post to DX WX11113, Christchurch, within 20 working days after the date of publication of this notice.

If any objection is made in accordance with this notice, a public hearing will be held with the right of the objector to appear and be heard personally, unless the objector otherwise requires, and each objector will be informed of the time and place of the hearing.

Any person requiring further information in respect of this advice should contact Heather Bryant, The Property Group Limited, 4 Akersten Street, Port Nelson, Nelson 7010. Postal Address: PO Box 1551, Nelson 7040. Telephone: (03) 546 3258.

***Nelson Land District—Tasman District***

**First Schedule**

Area ha	Description
18.6497	Part Section 4 Block II Rintoul Survey District (part Computer Freehold Register 206647); shown as Section 2 on draft SO 506650.
4.3401	Part Lot 1 DP 350533 (part Computer Freehold Register 206647); shown as Section 3 on draft SO 506650.

**Second Schedule**

- a. That part of Section 4 Block II Rintoul Survey District (part Computer Freehold Register 206647) shown as “H” on DP 350533.
- b. That part of Section 4 Block II Rintoul Survey District (part Computer Freehold Register 206647) shown as “B” and “C” on DP 454190.

**Third Schedule**

*Variation of Easement Terms*

**1. Definitions**

1.1 In addition to the definitions contained in clause 1 of the Regulations, unless the context otherwise requires:

**easement facility** in subclause (c) of the definition in clause 1 of the Regulations includes roads, tracks bridges, culverts, drains and other structures providing access and egress on the land described as the stipulated area.

**grantee** under the definition in clause 1 of the Regulations includes the Council.

**grantor** under the definition in clause 1 of the Regulations includes the owner of the servient land.

**working day** has the meaning ascribed to it under the Public Works Act 1981.

**2. Right of way**

2.1 In addition to clause 12(2) of the Regulations, the Council shall, immediately after passing through any gates on the servient land, close such of them as were closed and lock such of them as were locked.

2.2 In addition to clause 12(2) of the Regulations, the Council shall take all full and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage or disease) on the servient land, or to any trees and forest produce on the servient land and, in particular, shall (without limiting the Council's obligations pursuant to this clause 2.2):

2.2.1 comply strictly with all reasonable conditions including any Health or Safety Induction and Compliance requirements that may be imposed from time to time by any lawful authority;

2.2.2 not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames;

2.2.3 comply with any Construction Traffic Management Plan implemented under the Resource Consent conditions for the project which shall include provisions granting priority to forestry traffic; and

2.2.4 use the easement facility only for purposes associated with the project and for water quality monitoring purposes.

2.3 In addition to clause 12(5) of the Regulations, the Council shall, at its cost, repair any roads, tracks, fences, gates, drains, buildings or other structures on the servient land that are damaged by the Council, or by the exercise of the rights under these easement terms.

2.4 For the purposes of the right of way, clause 11 of the Regulations is deleted and substituted as follows:

"11(1) The cost of construction and upgrading of the right of way for the project shall be borne by the Council and thereafter the costs of maintenance, repair and renewal of the right of way shall be borne by the parties for the time being entitled to use, and actually using the same, in such shares and proportions as may be fair and reasonable having regard to the use and benefit of the easement facility derived by such parties provided however that if the easement facility shall reach such a state of disrepair or be damaged through abnormal use or wear by any of the parties entitled to use, and actually using, the same, or any of their contractors, employees or invitees, then in such case the party or parties by whose action or by the action of whose contractors, employees or invitees, such damage or state of disrepair was occasioned shall be solely liable to restore and repair such damage."

**3. Rights and powers implied in all classes of easements**

3.1 The general rights set out in clause 10 of the Regulations are amended by inserting the following at the end of paragraph 10(1)(b):

"provided that all pipes, cables, wires, conduits or other parts of the easement facility relating to the easements to convey electricity, telecommunications and computer media (where appropriate) shall be installed underground at an appropriate depth beneath the surface of the land. The costs associated with laying, installing and constructing the easement facility shall be borne solely by the Council."

3.2 The provisions of clause 11 of the Regulations (as it relates to easements other than the right of way easement) are modified by deleting paragraph 11(6) and inserting the following at the end of paragraph 11(5):

"provided that the owner of the servient land shall not be responsible for repair or maintenance of damage to the easement facility caused by logging activities on the servient land."

**4. Disputes**

4.1 The provisions of clause 14 of the Regulations are modified by deleting paragraphs 14(a) to (c) and inserting the following:

"If any dispute or difference arises in any way out of or in connection with the easement the parties agree to discuss the matter fully in the spirit of goodwill and cooperation with a view to reaching a resolution for the purposes of which either party may require the other to enter into mediation in the manner adopted by

LEADR or an equivalent facility for alternative dispute resolution available in New Zealand. If the parties cannot resolve any such dispute or difference and such dispute cannot be resolved through mediation, either party may require the matter to be referred to arbitration on the following terms:

- (a) the arbitrator is to be jointly agreed upon by the parties;
- (b) if the parties fail to agree on an arbitrator within Seven working days of the issue being submitted to them any party may require the President of the Nelson District Law Society to nominate an arbitrator and that nomination will bind the parties;
- (c) the reference is to arbitration under the Arbitration Act 1996;
- (d) the arbitration decision is final and binding on and may include;
  - (i) an order for costs;
  - (ii) an order for enforcement; or
  - (iii) interest on monies payable."

**5. Conflict**

5.1 In the event a conflict exists between the provisions of the Regulations and the modifications in this notice, the modifications shall prevail.

**Fourth Schedule**

- a. That part of Section 4 Block II Rintoul Survey District (part Computer Freehold Register 206647) shown as "C" on draft SO 506650;
- b. That part of Lot 1 Deposited Plan 350533 (part Computer Freehold Register 206647) shown as "D" on draft SO 506650.

**Fifth Schedule**

*Additional ROW easement terms*

**1. Definitions**

1.2 In addition to the definitions contained in clause 1 of the Regulations, unless the context otherwise requires:

- easement corridor** means the 100 metre wide footprint required for construction of the ROW easement.
- grantee** under the definition in clause 1 of the Regulations includes the Council.
- grantor** under the definition in clause 1 of the Regulations includes the owner of the servient land.
- invitee** under the definition of "grantee" in clause 1 of the Regulations expressly includes the registered proprietor for the time being of that land being Part Section 13 Block II and Section 15 Block II Rintoul Survey District comprised in Computer Freehold Register 220759.

**2. Formation of the ROW easement**

2.1 The easement facility shall be formed to a width of 10 metres within the easement corridor. Following construction the Council shall survey the easement facility and required verge and register a partial surrender of easement in respect of the balance of the easement corridor.

**3. Right of way**

3.1 The cost of construction of the right of way shall be borne by the Council.

**Sixth Schedule**

Area ha	Description
3.5486	Part Section 4 Block II Rintoul Survey District (part Computer Freehold Register 206647); shown as Area 1B on draft SO 506650.

**Seventh Schedule**

*Terms of the Lease*

- 1. For the purpose of the lease any reference to the Council includes its employees, engineers, assistants, consultants, contractors and authorised invitees.
- 2. The lease shall commence on the 14th day after publication of a proclamation taking the land and the lease in the *New Zealand Gazette*, and terminate on that date five years thereafter ("term").

3. The Council may, on the giving of written notice to the registered proprietor, extend the term for one further period of two years should the project not be completed by the expiry of the original term. The current market rent shall be reviewed at the time the registered proprietor is given notice of any such extension.
4. Notwithstanding the term created, the Council may terminate the lease at any time by giving the registered proprietor three months' notice in writing.
5. The Council shall have the right to occupy the lease land for the term and, for the avoidance of doubt, such right shall include the right to enter and re-enter the lease land at all times, with or without such vehicles, machinery or materials for the purpose set out in this notice.
6. The registered proprietor shall have the right to use the forestry roads within the lease land (in common with the Council and the Council's contractors) and the existing logging skid sites (exclusively), for forestry purposes provided that, except in the case of emergency, the registered proprietor will advise the Council of its requirements no less than three months ahead of any scheduled harvesting activities requiring use of the same.
7. The Council shall have the right to fell and remove any trees on the lease land in accordance with the resource consent conditions relating to the project (which require consultation with the registered proprietor in the course of the preparation of a vegetation clearance plan to be prepared at least 20 days before the commencement of construction).
8. On expiry of the lease, or earlier termination, the Council shall have the value of any of the commercial plantation trees actually felled under the authority of clause 6 of these terms and conditions, reassessed by the Council's valuer and pay the registered proprietor for all such trees at the compensation value as at the date of expiry or earlier termination of the lease (provided that the above rates shall be used if the value has fallen) and shall deliver the lease land to the registered proprietor with all roads reinstated to the same condition as at commencement of the lease.
9. On expiry of the lease, or earlier termination, the Council shall be responsible for delivery of the lease land to the registered proprietor as follows
  - a. All areas where commercial plantation trees have been felled shall be prepared to industry standards ready for replanting; and
  - b. all other cleared areas shall be remediated by way of suitable planting and subject to the right for Council to replant all or part of such areas in hill slope beech forest in accordance with condition 18(a) of the resource consent conditions for the project (which require replanting of 5ha in hill slope beech forest).

The land is located at Lee Valley.

Dated at Richmond this 4th day of May 2017.

LINDSAY MCKENZIE, Chief Executive, Tasman District Council.

2017-ln2418

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