

Land and Easement in Gross Acquired—Poutama Drain, Richmond, Tasman District

Pursuant to section 20(1) of the Public Works Act 1981, and an agreement to that effect having been entered into, and to a delegation from the Minister for Land Information, Nina Weir, Land Information New Zealand, declares that:

- a. The land in the First Schedule to this notice is acquired for drainage and public walkway purposes and shall vest in the Tasman District Council; and
- b. Pursuant to section 28, the easements in gross described in the Third Schedule to this notice are acquired over the land described in the Second Schedule to this notice upon the terms and conditions set out in the Fourth Schedule to this notice and shall vest in the Tasman District Council (“Grantee”)

on the date of publication of this notice in the *New Zealand Gazette*.

Nelson Land District—Tasman District

First Schedule

Land Acquired for Drainage and Public Walkway Purposes

| Area m ² | Description |
|------------------------|---|
| 3094 | Part Lot 3 DP 15764; shown as Section 6 SO 555056 (Record of Title 916710) |
| 4827 | Part Lot 303 DP 542339; shown as Section 7 SO 555056 (Record of Title 916710) |

Second Schedule

The Grantor’s Land

Section 1 SO 555056 (balance Record of Title 916710).

Third Schedule

Easements in Gross Acquired

A right to drain water and a public access (non-vehicular) right of way easement in gross over the area marked A on SO 555056 (“Easement”).

Fourth Schedule

Easement Rights and Powers

1. Definitions

1.1 In this instrument unless the context indicates otherwise:

“Easement Facility” means:

- a. for a right of way, means the surface of the land described as the easement area, including any walkway; and
- b. for a right to drain water, means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution.

“Grantor” means the registered proprietor of the burdened land for the time being and includes its successors in title and its agents, employees, contractors, tenants, licensees and invitees; and

“Grantee” means Tasman District Council and includes its successors, agents, employees, contractors, tenants, licensees and invitees including the general public.

“Utilities” means any structure, pole or other appurtenant structure for the provision of utilities or services supplied to or used on the burdened land including but not limited to electricity, gas, telephone, stormwater, sewage and water.

2. Grant of Pedestrian Right of Way

2.1 The Grantor grants to the Grantee and the general public the right for the Grantee and the general public in common with the Grantor at all times, to go over and along the easement area at any time on foot or by bicycle or any other form of human powered transportation and includes the right to go over and along the easement area with or without any kind of:

- a. pram, skateboard, bicycle (including electrically powered), un-motorised scooter, wheelchair or disability/mobility vehicle; or

b. domestic animal.

2.2 The right to go over and along the Easement Facility does not include the right to go over and along the Easement Facility with any type of powered motor vehicle including but not limited to cars, trucks, vans, quadbikes and motorbikes. For the avoidance of doubt, electrically powered bicycles are able to go over and along the Easement Facility.

2.3 The pedestrian right of way shall be for the use of the general public and:

- a. the Grantee is entitled in relation to the Easement Facility or its use to enforce any bylaws made by the Grantee and for the time being in force. The Easement Facility is deemed to be a “public place” for the purpose of those bylaws;
- b. the Grantee is entitled to close the Easement Facility if it reasonably considers that a serious threat exists to the safety of the public, or for maintenance purposes.

2.4 The pedestrian right of way includes:

- a. the right to establish a walkway, to repair and maintain an existing walkway, and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted including clearing by the Grantee, by any means, vegetation that impedes access by the Grantee; and
- b. the right to have the easement facility kept clear at all times of obstructions including any obstruction caused by bush and/or vegetation, that impedes access by the Grantee.

2.5 Nothing in this easement requires the Grantor to contribute to the cost of the establishment of any dedicated walkway/footpath on the easement area.

3. Grant of Right to Drain Water

3.1 The Grantor grants to the Grantee a right to drain water under, along and through the Easement Facility and enter upon the easement area with or without vehicles, machinery, tools, equipment and materials by such route as is reasonable and practicable and to remain there for any reasonable time to construct, alter, maintain, repair, renew, relay, replace, substitute, add to, change, extend, enlarge, upgrade and remove a stormwater drain or pipeline within the easement area as the Grantee may consider necessary, convenient or desirable from time to time.

Clauses Applicable to Both Easements Granted in This Easement Instrument

4. Entry and Access

4.1 The Grantee may, at all reasonable times, enter the burdened land with or without its employees, contractors and agents and with or without vehicles, machinery and implements of any kind for purposes associated with the creation and exercise of its rights and powers under this Easement. In case of an emergency the Grantee may enter the burdened land without notice, provided that the Grantee endeavours to notify the Grantor of its intention to enter (or its entry on to) the burdened land as soon as is reasonably practicable.

4.2 When accessing the burdened land the Grantee must so far as is reasonably practical:

- a. do as little damage as possible to the burdened land;
- b. cause as little disturbance as possible to the Grantor’s use and enjoyment of the burdened land;
- c. reinstate the surface of the burdened land as soon as possible after the work has been completed, and resurface it if necessary with appropriate materials so as to restore it as nearly as possible to its former condition.

5. Grantees’ Covenants

5.1. The Grantee hereby covenants with the Grantor that the Grantee will:

- a. maintain the Easement Facility, and keep it in good order and condition;
- b. at all times use reasonable care and skill when exercising the rights and powers set out in this easement instrument;
- c. avoid causing any unnecessary interference with the Grantor’s use or enjoyment of the burdened land.

5.2. Notwithstanding anything in clause 2.2, for the purpose of performing any duty or in the exercise of any rights conferred by this easement the Grantee may:

- a. enter upon the burdened land by a reasonable route with or without vehicles and machinery, engineers, contractors and workers and with all necessary tools and equipment for the purposes of constructing, altering, maintaining, repairing, renewing, relaying, replacing, substituting, adding to, changing, extending, enlarging,

upgrading and removing the Easement Facility;

- b. remain on the burdened land for a reasonable time for the sole purpose of completing any necessary work set out in clause 5.2(a);
- c. leave any vehicle or equipment on the burdened land for a reasonable time if work pursuant to clause 5.2(a) is proceeding.

5.3. The Grantor will not be liable for any damage which may be caused to any equipment placed by the Grantee on any part of the burdened land otherwise than through the wilful act or default of the Grantor or the Grantor's employees, contractors and other invitees.

6. Grantor's Obligations

6.1. The Grantor covenants with the Grantee that it will not at any time do or permit to be done anything on the easement area which may damage or obstruct the easement facilities or which may interfere with or affect the full free use and enjoyment by the Grantee and the members of the public the rights, powers and privileges granted under this Easement.

6.2 In addition to clause 6.1 the Grantor will not:

- a. build over or erect any other improvements upon, plant trees upon or permit any tree roots to grow within the easement area;
- b. do or permit or suffer to be done anything which may in any way injure or damage the easement facility or interfere with the free flow and passage of water through the easement facility (right to drain water). If the Grantor is in breach of this obligation the Grantor will forthwith at the Grantor's expense properly repair and make good all such injury or damage and restore such free flow and passage. If the Grantor fails to promptly comply with this obligation then notwithstanding anything else contained in the easement, the Grantee may immediately perform the obligation and recover any costs incurred from the Grantor; or
- c. permit any Utilities to be located within the easement area unless the siting and installation of such Utilities is expressly consented to in writing by the Grantee such consent not to be unreasonably withheld.

7. Repair and Maintenance

7.1 Except as otherwise provided for in this easement instrument, the Grantee will be responsible for arranging the repair and maintenance of the Easement Facility, and for associated costs, so as to keep the Easement Facility in good, clean order and to prevent it from becoming a danger or nuisance.

8. Easement Facility to be Property of Grantee

8.1 The Easement Facility installed by the Grantee will be the property of the Grantee.

8.2 Any damage to the burdened land caused by the removal of the Easement Facility or any part by the Grantee will immediately be remedied by the Grantee at its own cost.

9. Limitations on Grantee Rights

9.1 The Grantee may exercise and enjoy all rights, immunities from liability, powers and remedies to which it now or in the future may possess or be entitled to or have vested in it by virtue of any statute or at common law without being limited or restricted by anything in this easement instrument.

10. Surrender

10.1 If at any time the easement area is acquired or vested in an acquiring authority for road, the easements herein affecting the burdened land shall be surrendered and extinguished.

11. General

11.1 In an emergency situation the Grantor or Grantee may restrict access to the burdened land immediately and must notify the other party of that restriction as soon as possible in the circumstances.

12. Implied Terms

12.1 The rights and powers implied in this easement instrument are in addition to and a variation of those prescribed by the fifth schedule to the Land Transfer Regulations 2018 (Implied Terms, and where the modifications and the Implied Terms are in conflict, the modifications will prevail.

12.2 The meaning of any words in this easement will be that given in the Fifth Schedule of the Land Transfer Regulations 2018 where applicable.

12.3 For the avoidance of doubt the rights and powers implied by the Fifth Schedule of the Property Law Act 2007 are negated, the grant not being a vehicular right of way.

13. Governing Law

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13.1 This Easement is governed by, and shall be construed in accordance with, the laws of New Zealand.

14. Severability

14.1 If any part of this Easement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Easement.

Dated at Wellington this 31st day of August 2021.

N. WEIR, for the Minister for Land Information.

(LINZ CPC/2005/10754)

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