

## **Easement Acquired (Right to Drain Water in Gross)—Edinburgh Street and Wilson Road, Waihi Beach, Western Bay of Plenty District**

Pursuant to sections 20 and 28 of the Public Works Act 1981, and to a delegation from the Minister for Land Information, Sophie Watkins Goossens, Land Information New Zealand, declares that, pursuant to agreements to that effect having been entered into, an easement acquired (right to drain water in gross), with the rights and powers contained in specified classes of easement are those prescribed by Schedule 5 of the Land Transfer Regulations 2018, together with the implied rights and powers as set out and varied by the provisions set out in Second Schedule, is hereby acquired over the land described in the First Schedule to this notice and shall vest in the Western Bay of Plenty District Council ("Grantee") on the date of publication hereof in the *New Zealand Gazette*.

### ***South Auckland Land District—Western Bay of Plenty District***

#### **First Schedule**

*The Grantor's Land - Easement Acquired (Right to Drain Water in Gross)*

Part Lot 6 DP 37326 (Part Record of Title SA979/4); shown as area B on LT 609947.

Part Lot 5 DP 37326 (Part Record of Title SA979/273); shown as area C on LT 609947.

Part Lot 138 DPS 1263 (Part Record of Title SA1086/5); shown as area D on LT 609947.

Part Lot 137 DPS 1263 (Part Record of Title SA1226/75); shown as area E on LT 609947.

Part Lot 4 DP 37326 (Part Record of Title SA979/249); shown as area F on LT 609947.

Part Lot 136 DPS 1263 (Part Record of Title SA1255/55); shown as area G on LT 609947.

Part Lot 2 DP 37326 (Part Record of Title SA976/32); shown as area J on LT 609947.

Part Lot 134 DPS 1263 (Part Record of Title SA1086/28); shown as area K on LT 609947.

Part Lot 132 DPS 1263 (Part Record of Title SA1086/40); shown as area M on LT 609947.

Part Lot 1 DP 350426 (Part Record of Title 206253); shown as area N on LT 609947.

Part Lot 26 DP 37325 (Part Record of Title SA25A/450); shown as area Q on LT 609947.

Part Lot 2 DP 351287 (Part Record of Title 210154); shown as area S on LT 609947.

Part Lot 125 DPS 1263 (Part Record of Title SA1202/259); shown as area T on LT 609947.

#### **Second Schedule**

*The Parties Agree*

1. Any terms used in this easement instrument that are defined in the Land Transfer Regulations 2018 shall otherwise take those meanings.

2. Where there is a conflict between the provisions of Schedule 5 to the Land Transfer Regulations 2018 and the modifications in this Easement Instrument, the modifications shall prevail.

3. The rights and powers set out in clause 4 of Schedule 5 of the Land Transfer Regulations 2018 provided that clause 4(3) shall not apply to this Easement Instrument.

4. The definition of a "right to drain water" easement facility in clause 1 of Schedule 5 of the Land Transfer Regulations 2018 is deleted and replaced with:

"(d) for a right to drain water, means pipes, conduits, open drains (including open drains constructed of concrete, rock or such other suitable material and including drain walls that extend above the surface of the land), pumps, tanks (with or without headwalls), manholes, valves, surface boxes, and other equipment suitable for that purpose, whether above, on or under the ground), and anything in replacement or substitution:"

5. Clause 10(1)(b) of Schedule 5 to the Land Transfer Regulations 2018 is deleted and replaced with the following:

"10(1)(b) The right to lay, install, construct or replace in the easement area (including the right to excavate land for the purpose of construction or replacement) an easement facility that the Grantee may from time to time reasonably require."

6. Clause 10(2) of Schedule 5 to the Land Transfer Regulations 2018 is deleted.

7. The Grantee shall alone determine both the nature of the easement facility and where, how and when it is to be laid or installed along the easement area and the agreement of the Grantor is not required to any of this.

8. The Grantee is not compelled to drain water along the easement area.

9. The Grantee may at any time and at its own expense erect and maintain a fence(s) and gate(s) (including locked gates) on or within the easement area to keep the easement facility secure. The Grantor agrees not to interfere with, or remove, such fence(s) or gate(s).

10. Any maintenance, repair or replacement of the easement facility (including any fence(s) or gate(s) erected

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pursuant to clause 9 above), whether on the burdened land or similar facilities of the Grantee connected to the easement facility that is necessary because of any act or omission by the Grantor (which includes agents, employees, contractors, subcontractors and invitees of the Grantor) must be carried out by the Grantee at the Grantor's sole cost. Where the Grantor's act or omission is the partial cause of the maintenance, repair or replacement, the Grantor must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission, with the balance of the costs payable by the Grantee.

11. The Grantee's rights to the easement facility or facilities under this easement instrument are exclusive.

12. Any notice required to be given by either party to the other shall be deemed sufficiently served if delivered personally or sent by prepaid post to the addressee's last known address in New Zealand or in the case of a body corporate, its registered office. Any notice personally delivered or posted shall be valid if served or given under the hand of any authorised representative of the notifying party.

13. Any part of the easement facility, including any improvements of the Grantee, (whether on, over or under the burdened land) laid, erected, constructed or installed by the Grantee on the easement area shall remain at all times the property of the Grantee subject to its exclusive supervision and control, and may at any time be removed by the Grantee in its sole discretion without incurring any liability to the Grantor except as may be herein expressly provided.

14. This Easement Instrument shall run forever or until the Grantor and Grantee, for the time being, otherwise mutually agree.

15. The exercise of any rights or powers conferred on the Grantee by this Instrument shall not entitle the Grantor to the payment of compensation under the provisions of any enactment or at law but nothing in this clause shall operate as a waiver of the Grantor's rights or remedies if the Grantee breaches any of the provisions of this Easement Instrument.

16. Any rights or immunities from liabilities, powers and remedies which the Grantee may have or be entitled to by virtue of statute or at common law shall not be affected by the easement and the Grantee may exercise any such other powers vested in it at common law or by statute independently of this grant of easement.

17. No breach of the terms of this Easement Instrument by the Grantee shall entitle the Grantor to cancel or revoke this Easement Instrument.

18. For the purposes of this Easement Instrument, all references to "Western Bay of Plenty District Council" includes any successor organisation of Western Bay of Plenty District Council.

Dated at Christchurch this 11th day of February 2025.

SOPHIE WATKINS GOOSSENS, for the Minister for Land Information.

(LINZ CPC/2005/10913)