

Form B

Easement instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

AUCKLAND COUNCIL

Grantee

AUSTINO HOBSONVILLE 1 LIMITED

Grant of Easement or *Profit à prendre* or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way (Existing Use and Infrastructure Construction Works Access)	Area A on Deposited Plan 518709	Section 2 SO 511858 comprised in CIR 817759	CFR 817760

Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)

The implied rights and powers implied in specified classes of easement by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007 are excluded and are replaced by the provisions set out in the Annexure Schedule.

Covenant provisions

The provisions applying to the specified covenants are those set out in the Annexure Schedule.

Form L

Annexure Schedule

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Insert instrument type

Easement

INTERPRETATION

In this schedule, unless the context requires otherwise, —

accessway, means the surface of the stipulated course formed as a temporary accessway, together with the culvert and other subsurface infrastructure supporting the accessway.

buildings, includes by way of example only, —

- (a) houses, apartment blocks and other residential structures;
- (b) shops and other commercial buildings and other improvements intended for private ownership and use;

dominant land,— means the land described as sections 1, 3 SO 511858 being the land in computer freehold register 817760.

grantee,—

- (a) means the registered proprietor of the dominant land; and
- (b) includes the agents, employees, contractors and tenants of the grantee.

grantor,—

- (a) means the registered proprietor of the servient land; and
- (b) includes the agents, employees, contractors, tenants, licensees, and other invitees of the grantor.

HSW Act, means the Health and Safety at Work Act 2015.

infrastructure construction works, means and is restricted to the following construction works on section 1:

- earthworks;
- water supply and drainage (all types) works;
- electricity, gas, and telecommunications infrastructure installation;
- road works, including footpaths and street lighting,
- formation of reserves and other public use facilities required by any resource consent and that are to be vested in the grantor.

section 1, means section 1 SO 511858 being the land in computer freehold register 817760.

servient land,— means the land described as section 2 SO 511858 being the land in computer interest register 817759.

stipulated course,— means the area of the servient land that is shown A on deposited plan 518709.

walking and cycling path, means the walking and cycling path the grantor intends to construct on the servient land and that will cross the stipulated course.

RIGHTS AND POWERS UNDER EASEMENT

1. Right of Way (Existing Use and Infrastructure Construction Works Access)

- 1.1 A right of way (existing use and infrastructure construction works access) means the right for the grantee in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to go over and along the accessway strictly for the following purposes only:
- (a) access to and from section 1 to use section 1 for "countryside living", which is its permitted use under the Auckland Unitary Plan at the date of this instrument. However, that use is restricted to just the dwelling constructed on section 1 at the date of this instrument; and
 - (b) access to and from section 1 for infrastructure construction works.
- 1.2 The grantee is not entitled to and must not use the accessway for access to section 1 for or relating to:
- (a) construction works that are not infrastructure construction works, including by way of example only the construction of buildings;
 - (b) use of completed buildings, and any allotments into which section 1 is subdivided.
- 1.3 The grantee must not use the easements granted under this instrument as the access to section 1 in an application for resource or subdivision consent to develop and/or subdivide section 1.
- 1.4 The right to go over and along the accessway includes the right to go over and along the accessway with or without any kind of vehicle, machinery, or implement, or animal.
- 1.5 A right of way (existing use and infrastructure construction works access) includes the rights —
- (a) to upgrade, repair and maintain the existing accessway on the stipulated course, and (if necessary for any of those purposes) to alter the state of the stipulated course. However, the grantor must not damage any formed walking or cycle path; and
 - (b) to have the accessway kept clear at all times of parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the accessway.

2. Walking and cycling path

- 2.1 The grantor intends to develop the servient land for the public work for which the grantor acquired the servient land, namely open space, walking and cycling access and stormwater and riparian purposes. This will involve among other things the construction of a walking and cycling path, which will cross the stipulated course and which may be available for public use before the termination and surrender of the easement created under this instrument. The grantor is entitled to carry out such development, including constructing the walking and cycling path, at any time, and whether before or after the grantee begins to use the accessway for access to section 1 for infrastructure construction works.
- 2.2 Before using the accessway for access to section 1 for infrastructure construction works, the grantee at its cost must develop and obtain the grantor's approval to an access management plan that will manage traffic using the accessway in a manner that will prevent harm to pedestrians and cyclists using the walking and cycling path. The plan will include by way of example only a requirement that vehicles must halt before entering the accessway from either direction and only proceed when the driver is certain that no pedestrian or cyclist is approaching the accessway along the walking and cycling path or any pedestrian or cyclist has safely passed. The grantor will not withhold or delay its approval of the plan unreasonably.
- 2.3 The grantee will implement the access management plan the grantor approves under clause 2.2, and will ensure adherence to it is a term of all contracts it lets in relation to construction works on section 1.
- 2.4 Without derogating from the generality of clauses 2.2 and 2.3, the grantee will do all things necessary in its use of the stipulated course to comply with the HSW Act, including but not limited to:
- (a) comply with the relevant WorkSafe New Zealand guidelines and regulations;
 - (b) take all steps reasonably practicable to ensure that any person in, on or in the vicinity of the stipulated course is not harmed by any Hazard arising in or on the accessway. "Hazard" shall have the same meaning as in the HSW Act;
 - (c) before using the accessway for access for infrastructure construction works, carry out and provide to the grantor a risk and hazard analysis of the stipulated course, which analysis will be reviewed whenever required to address a newly identified Hazard;
 - (d) develop, maintain and implement at all times a programme promoting health and safety of people in the stipulated course and a system of auditing such programme, and shall upon written request by the grantor provide reasonable details of the programme implemented by the grantee; and
 - (e) comply with any notice issued pursuant to sub part 3 of the HSW Act.

- 2.5 The grantee shall notify the grantor as soon as practicable of any hazards arising upon the stipulated course identified by the grantee.
3. **Formation, repair, maintenance, and costs**
- 3.1 Before using the accessway for access to section 1 for infrastructure construction works, the grantee at its cost must upgrade the accessway to the level required for use by construction vehicles, to the reasonable satisfaction of Council. Such upgrading will include by way of example only:
- (a) topping up the accessway with 200mm (or a greater amount if that is required) of blue metal;
 - (b) replacing the existing culvert with one strong enough to bear the weight of construction vehicle traffic, if required;
 - (g) upgrading and maintaining the existing culvert to allow the Rawiri Stream to flow freely under the accessway if construction of the accessway will affect the flow of the Rawiri Stream;
 - (c) any other work reasonably necessary to protect the walking and cycling path (if already constructed) from damage cause by vehicles.
- 3.2 The grantee will provide the grantor with a report from a suitably qualified civil engineer confirming that the upgrading works are sufficient to prevent damage to the culvert (existing or replaced) and to the walking and cycling path (if already constructed) and to ensure the unimpeded flow of the Rawiri Stream.
- 3.3 The grantee will immediately repair any damage to the culvert and the walking and cycling path caused by the grantee's vehicles, to the grantor's reasonable satisfaction.
- 3.4 The grantee is responsible for arranging the maintenance, repair and replacement of the accessway, to keep it in good and safe order to the reasonable satisfaction of the grantor, and to prevent it from becoming a hazard, danger or nuisance or impeding the flow of the Rawiri Stream.
- 3.5 The grantor will not be responsible for maintaining any part of the accessway, or to contribute to the cost of doing so, unless any specific use by the grantor has directly lead to the need for repairs. However, the grantor will maintain the walking and cycling path and Rawiri Stream, subject to clause 3.3.
4. **Rights of entry**
- 4.1 The grantee may do any one or more of the following in order to perform any duty or in the exercise of any rights conferred under this easement instrument —
- (a) enter upon the servient land by the most convenient route and with all necessary tools, vehicles, equipment and materials; and
 - (b) remain on the servient land for a reasonable time for the sole purpose of completing the necessary work.

4.2 The grantee must ensure that—

- (a) as little damage or disturbance as possible is caused to the servient land or to the grantor;
- (b) all work carried out in accordance with this clause 4 is performed in a proper and workmanlike manner; and
- (c) all work carried out in accordance with this clause 4 is completed promptly.

4.3 The grantor must immediately make good any damage done to the balance of the servient land by restoring the surface of the land as nearly as possible to its former condition.

5. **Default**

5.1 If the grantor or the grantee does not meet the obligations implied or specified in this easement instrument,—

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation;
- (b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may—
 - (i) meet the obligation; and
 - (ii) for that purpose, enter the servient land:
- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation;
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

6. **Disputes**

6.1 If a dispute in relation to an easement created by this instrument arises between parties who have a registered interest under the easement,—

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties),—

- (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
- (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the District Law Society (being the District Law Society that has its headquarters closest to the land).

7. Termination and surrender

- 7.1 The easements created under this instrument will automatically terminate and be surrendered when the grantee acquires any interest in land, other than section 1 and the dominant tenement, which interest provides alternative access to section 1 and that alternative access is formed, or could easily be formed. The grantee will immediately sign any documents or authorities necessary to give effect to the surrender, including registration of the surrender against the title to the servient land.
- 7.2 In consideration of the grantor granting the easements created under this instrument the grantee irrevocably appoints the grantor as its attorney for the purpose of executing all documents, including authority and instruction forms for registration purposes, to enable the registration of the surrender of this instrument. The Owner will not revoke this appointment.
- 7.3 The grantor is not obliged under any circumstances to provide temporary or permanent replacement access to section 1. The grantee will reinstate the stipulated course to its condition before the grantee carried out work under clause 3.1 when the easements created under this instrument automatically terminate under clause 8.1. However, the grantee will not interfere with the walking and cycling path if the grantor constructed it after the grantee undertook the works under clause 3.1.

8 Regulatory position

- 8.1 This easement instrument does not bind the grantor in its capacity, as a regulatory authority in any way and any consent or agreement the grantor gives under this easement instrument is not an agreement or consent in its regulatory capacity and vice versa. When acting in its regulatory capacity, the grantor is entitled to consider all applications to it without regard to this easement instrument. The grantor will not be liable to the grantee if, in its regulatory capacity, the grantor declines or imposes conditions on any consent or permission that the grantee or anyone else seeks for any purpose associated with this easement instrument.