

Land and Easements Acquired for Carpark and Land Declared Road (Service Lane)—Lovelock Street, Whakatane, Whakatane District

Pursuant to the Public Works Act 1981, and to a delegation from the Minister for Land Information, Kerry McPhail, Land Information New Zealand:

- a. Pursuant to section 20, declares that, an agreement to that effect having been entered into, the land described in the First Schedule to this notice is hereby acquired for carpark and shall vest in the Whakatane District Council;
- b. Pursuant to sections 20 and 28, declares that, an agreement to that effect having been entered into, a right of way is hereby acquired over the land owned by The National Trading Company of New Zealand Limited (“Grantor”), described in the Fourth Schedule to this notice as servient tenement, appurtenant to the land in the First Schedule to this notice upon the terms and conditions set out in the Sixth Schedule to this notice, and shall vest in the Whakatane District Council (“Grantee”);
- c. Pursuant to section 114, declares the land described in the Second Schedule to this notice to be road (service lane) and remain vested in the Whakatane District Council;
- d. Pursuant to section 114, declares the land described in the Third Schedule to this notice to be road (service lane) and to vest in the Whakatane District Council;
- e. Pursuant to section 48, declares that the easement described in the Fifth Schedule to this notice is granted over the land described in the First Schedule to this notice on the terms and conditions set out in the Seventh Schedule to this notice

on the date of publication hereof in the *New Zealand Gazette*.

South Auckland Land District—Whakatane District

First Schedule

Land Acquired for Carpark

Area m ²	Description
539	Part Lot 3 DPS 581; shown as Section 1 on SO 480619 (part Computer Freehold Register SA1784/45).

Second Schedule

Land Declared Road (Service Lane)

Area m ²	Description
192	Part Lot 2 DPS 581; shown as Section 5 on SO 480619 (part Computer Freehold Register SA9B/144).

Third Schedule

Land Declared Road (Service Lane)

Area m ²	Description
81	Part Lot 1 DPS 581; shown as Section 6 on SO 480619 (part Computer Freehold Register SA44D/355).

Fourth Schedule

Rights of Way Acquired

Purpose	Marked on SO 480619	Servient Tenement	Dominant Tenement
Right of Way	B	Section 2 SO 480619	Section 1 SO 480619
	C	Section 3 SO 480619	Section 1 SO 480619

Fifth Schedule

Right of Way Granted

Purpose	Marked on SO 480619	Servient Tenement	Dominant Tenement
Right of Way	A	Section 1 SO 480619	Sections 2 and 3 SO 480619

Sixth Schedule

Terms and Conditions Applicable to the Right of Way Easements in the Fourth Schedule

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002. The implied rights and powers are hereby varied and added to as provided below:

1. Instrument prevails

1.1. Where the terms of this instrument are in conflict with Schedule 4 of the Land Transfer Regulations 2002 (“Regulations”), the terms of this instrument will prevail.

2. The right of way

2.1. The stipulated area of the right of way includes only the parts of Areas B and C on SO 480619 (“Area B and Area C”) used for vehicular access, ingress/egress and manoeuvring and excludes the land that is physically marked as carpark, and physically used for landscaping or traffic control.

2.2. The Grantee shall have the rights set out in paragraphs 6(1) and 6(2) of the Regulations in relation to Area B and Area C.

2.3. The Grantee shall have the rights set out in paragraph 6(3) of the Regulations in relation to Area B and Area C excluding any areas physically marked as carparks or used for traffic control purposes.

2.4. The Grantee shall ensure that the car parking layout in Area B and Area C provides reasonable and practical vehicle access (ingress and egress) through the servient land to the dominant land.

3. Formation

3.1. The Grantor will form the right of way and carpark in Area B and Area C in accordance with the high standards of like right of way and carparks and on otherwise reasonable terms and conditions such that reasonable access is available through the servient land to the dominant land.

4. Management

4.1. The Grantor will maintain or appoint a third party to maintain all power, lighting, security, planting, drainage, signage, traffic management and any other aspects of Area B and Area C to a high standard for like carparks and otherwise on reasonable terms and conditions.

5. Repair and maintenance of right of way

Subject to paragraphs 11(5) and 11(6) of the Regulations, the Grantor is responsible for:

- (a) the electricity cost of lighting the carpark on Area B and Area C; and
- (b) the timely subsurface and base course repair and maintenance and, if required, the replacement of the right of way or carparks in Area B and Area C.

6. Suspension of right of way

6.1. The Grantor may, from time to time, temporarily suspend the use all or part of the right of way for such a period of time as the Grantor reasonably requires, if the Grantor needs time to undertake:

- 6.1.1. any works, including repair, maintenance of the right of way or carpark; or
- 6.1.2. any works on the servient tenement (including any buildings or improvements on the servient tenement)

and the Grantor (acting reasonably) believes that such works will require the temporary suspension of the use of that right of way.

6.2. The Grantee will not be entitled to any compensation if the right of way is suspended or access is limited.

6.3. The Grantor will consult with the Grantee and will give to the Grantee reasonable prior written notice of its intention to suspend a right of way (except in the case of an emergency).

6.4. The Grantor will, to the maximum extent possible, preserve the Grantee's right to continued access at all times and shall use its best endeavours to minimise the disruption to the access of the Grantee's land while carrying out its works on the right of way pursuant to this clause 6.

7. Rules

7.1. The Grantee will ensure its employees, agents, occupiers and invitees of the dominant tenements comply with the Grantor's rules and directions, as amended from time to time, governing the use of the right of ways provided that no rule will materially or adversely affect the use and functionality of the right of ways.

8. Miscellaneous

8.1. Paragraph 12 of the Regulations shall not apply.

9. Interpretation

9.1. A reference in this notice to any law, legislation or legislative provision includes any statutory modifications, amendment or re-enactment and any subordinate legislation or regulations issued under that legislation or legislative provision.

10. Deed concerning car parking and access

10.1. The deed between the parties dated 25 February 2016 concerning car parking and access forms the basis for this easement. The deed takes precedent in respect of all matters associated with this easement.

Seventh Schedule

Terms and Conditions Applicable to the Right of Way Easement in the Fifth Schedule

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002. The implied rights and powers are hereby varied and added to as provided below:

1. Instrument prevails

1.1. Where the terms of this instrument are in conflict with Schedule 4 of the Land Transfer Regulations 2002 ("Regulations"), the terms of this instrument will prevail.

2. The right of way

2.1. The stipulated area of the right of way includes only the parts of Area A on SO 480619 ("Area A") used for vehicular access, ingress/egress and manoeuvring and excludes the land that is physically marked as carpark, or physically used for landscaping or traffic control. Comprises the area shown as "A" on SO 480619 ("Area A").

2.2. The Grantee shall have the rights set out in paragraphs 6(1) and 6(2) of the Regulations in relation to Area A.

2.3. The Grantee shall have the rights set out in paragraph 6(3) of the Regulations in relation to Area A excluding any areas physically marked as carparks or used for traffic control purposes.

2.4. The Grantee shall ensure that the car parking layout in Area A provides reasonable and practical vehicle access (ingress and egress) through the servient land to the dominant land.

3. Formation

3.1. The Grantee will form the right of way and carpark in Area A in accordance with the high standards of like right of way and carparks and on otherwise reasonable terms and conditions.

4. Management

4.1. The Grantee will maintain or appoint a third party to maintain all planting, drainage, signage, traffic management and any other aspects of Area A to a high standard for like carparks and otherwise on reasonable terms and conditions.

5. Repair and maintenance of right of way

Subject to paragraphs 11(5) and 11(6) of the Regulations, the Grantee is responsible for the timely subsurface and base course repair and maintenance and if required the replacement of the right of way or carpark in Area A.

6. Suspension of right of way

6.1. The Grantee may from time to time, temporarily suspend the use all or part of the right of way for such a period of time as the Grantee reasonably requires, if the Grantee needs time to undertake:

6.1.1. any works including repair, maintenance of the right of way or carpark; or

6.1.2. any works on the servient tenement (including any buildings or improvements on the servient tenement);

and the Grantee (acting reasonably) believes that such works will require the temporary suspension of the use of that right of way.

6.2. The Grantor will not be entitled to any compensation if the right of way is suspended or access is limited.

6.3. The Grantee will consult with the Grantor and will give to the Grantor reasonable prior written notice of its intention to suspend a right of way (except in the case of an emergency).

6.4. The Grantee will, to the maximum extent possible, preserve the Grantor's right to continued access at all times and shall use its best endeavours to minimise the disruption to the access of the Grantor's land while carrying out its works on the right of way pursuant to clause 6.

7. Rules

7.1. The Grantee will ensure its employees, agents, occupiers and invitees of the dominant tenements comply with the Grantor's rules and directions, as amended from time to time, governing the use of the right of ways provided that no rule will materially or adversely affect the use and functionality of the right of ways.

8. Miscellaneous

8.1. Paragraph 12 of the Regulations shall not apply.

8.2. The right of revocation, in terms of section 48 of the Public Works Act 1981, is specifically excluded.

9. Interpretation

9.1. A reference in this notice to any law, legislation or legislative provision includes any statutory modifications, amendment or re-enactment and any subordinate legislation or regulations issued under that legislation or legislative provision.

10. Deed concerning car parking and access

10.1. The deed between the parties dated 25 February 2016 concerning car parking and access forms the basis for this easement. The deed takes precedent in respect of all matters associated with this easement.

Dated at Wellington this 5th day of May 2016.

K. McPHAIL, for the Minister for Land Information.

(LINZ CPC/2006/11337)