

View Instrument Details



Instrument No 12075614.8
Status Registered
Date & Time Lodged 27 August 2021 13:52
Lodged By Vane, Davina Lila
Instrument Type Easement Instrument



Affected Records of Title	Land District
976966	Wellington
976967	Wellington
976975	Wellington
976936	Wellington
976937	Wellington
976938	Wellington
976939	Wellington
976940	Wellington
976941	Wellington

Annexure Schedule Contains 6 Pages.

Grantor Certifications

I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Grant Alister Harris as Grantor Representative on 27/08/2021 12:00 PM

Grantee Certifications

I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Grant Alister Harris as Grantee Representative on 27/08/2021 12:01 PM

***** End of Report *****

Form 22

Easement Instrument to grant easement or *profit à prendre*

(Section 109 Land Transfer Act 2017)

Grantor

Kenepuru LP

Grantee

Porirua City Council

Grant of Easement or *Profit à prendre*

The Grantor, being the registered owner of the burdened land 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, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A*Continue in additional Annexure Schedule, if required*

Purpose of easement, or <i>profit</i>	Shown (plan reference) DP 557561	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Right to Drain Water	AA	Lot 224 DP 557561 (RT 976966)	In gross
	A	Lot 225 DP 557561 (RT 976967)	
	B, BK, BL	Lot 233 DP 557561 (RT 976975)	
Right to drain water and sewage, right to convey water	BM	Lot 2021 DP 557561 (part RTs 976936 to 976941 (inclusive))	In gross

Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)*Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required*

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2018 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby ~~varied~~ ~~negated~~ ~~added to~~ or ~~substituted~~ by:

~~[Memorandum number #9-memorandum number#, registered under section 209 of the Land Transfer Act 2017]~~

[the provisions set out in Annexure Schedule].

Insert instrument type

Easement Instrument

Continue in additional Annexure Schedule, if required

1. DEFINITIONS

1.1 In this easement instrument unless the context indicates otherwise:

"Burdened Land" means the land owned by the Grantor over which the easement is registered being all the land described in Records of Title 976936 to 976941 (inclusive), 976966, 976967 and 976975 (Wellington Land Registration District);

"Drain water" means rain, spring, soakage or seepage as well as water accumulated on other land and from any public land or street;

"Easement Area" means;

"Easement Area" means:

- (a) for the right to drain water areas AA, A, B, BK and BL on Deposited Plan 557561; and
- (b) for the right to drain water and sewage, and the right to convey water area BM on Deposited Plan 557561;

"Easement Facility" means:

- (a) for the right to drain sewage any pipes, conduits, open drains, open channels, 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;
- (b) for the right to convey water, any pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution; and
- (c) for the right to drain water any pipes, conduits, open drains, open channels, 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;

"Grantee" means the person shown as grantee on the first page of this easement instrument and where applicable includes its successors and its agents, employees, contractors, tenants, licensees and invitees;

"Grantor" means the person named as grantor on the first page of this easement instrument and where applicable includes its successors in title and its agents, employees, contractors, tenants, licensees and invitees;

2. GRANT OF DRAINAGE EASEMENTS

2.1 The Grantor grants to the Grantee the right for the Grantee (in common with the Grantor)

2.1.1 Right to Drain Sewage: as an easement in gross forever the right to convey and drain sewage and other waste material and fluid without obstruction and in any quantity through the Easement Facility now laid or to be laid through the

Easement Area and to discharge it into the public sewer beyond the Burdened Land.

2.1.2 Right to Convey Water: as an easement in gross forever the right to take, convey and lead water without obstruction and in any quantity through the Easement Facility via any mix of open channel or closed conduits now laid or to be laid through the Easement Area.

2.1.3 Right to Drain Water: as an easement in gross forever the right to convey and Drain Water without obstruction and in any quantity through the Easement Facility via any mix of open channel or closed conduits now laid or to be laid through the Easement Area and to discharge the water beyond the Burdened Land.

2.2 The Grantee also has the right, subject to section 3, to enter the Easement Area and any other parts of the Burdened Land as are reasonable to do the following work:

2.2.1 to dig and lay the Easement Facility through or on the Easement Area, at a depth and line determined by the Grantee;

2.2.2 to inspect, maintain, repair, dig up, alter, enlarge, renew or replace the Easement Facility (including replacement with an Easement Facility of the same or larger diameter);

2.2.3 to do anything else in the full exercise of the rights in this easement instrument, with the Grantee's agents, contractors and employees, and with or without tools, plant, equipment and vehicles; and

2.2.4 to connect other open channel or closed conduit drains at the Grantee's discretion, whether or not they are within an easement, to the drain within the easement.

2.3 The Grantee may leave any vehicles or equipment on the Burdened Land for a reasonable period of time if work is proceeding.

2.4 The Grantee will ensure that any work it performs is carried out in a professional manner.

2.5 The Grantee will not be liable for, or pay any compensation for any damage to any improvements such as fences, structures, paving, surfacing, tree, shrub or plants etc that have extended or encroached upon the Easement Area in breach of the Grantor's obligations set down in section 5.

2.6 The Grantee has no obligation to take, convey or lead water or direct, divert, detain, concentrate or convey water through, under, or over or drain sewage through the Burdened Land continuously or at all.

3. ACCESS

3.1 The Grantee's right of access in clause 2.2 may be exercised on giving reasonable notice to the Grantor, except in an emergency.

3.2 When obtaining access to the Easement Area for maintenance and repair purposes, the Grantee must:

3.2.1 so far as is practicable, use existing driveways and other areas suitable for access;

3.2.2 in exercise of the powers granted by this easement, take reasonable and proper care not to damage any property of the Grantor;

3.2.3 reinstate the surface of the Burdened Land as soon as possible after any works have been completed, and resurface it if necessary with appropriate materials;

3.2.4 repair any fences or other improvements and replace any trees, shrubs and plants which have been destroyed or severely damaged on the Burdened Land by the Grantee while accessing the Easement Area.

4. GRANTOR'S OBLIGATIONS

4.1 The Grantor may not:

4.1.1 Subject to clause 4.2, permit the growth of any trees, shrubs or other vegetation or the erection or establishment of any structure or surfacing on any part of the Easement Area, or do or permit or suffer thereon any act or acts which:

- (i) in the opinion of the Grantee or its appropriate officer interfere with the Grantee's rights or operations pursuant to this easement; or
- (ii) endanger or cause nuisance to the Grantee's operations, works, employees, agents or contractors in the course of their duties; or
- (iii) transgress any by-law of the Grantee or any statutory power relating to any of the Grantee's installations, works, or facilities on the Easement Area;

4.1.2 change the existing surface levels of the Easement Area except with the Grantee's prior approval;

4.1.3 cause or allow any damage to occur to the Easement Facility; or

4.1.4 do anything or allow anything to be done which would interfere with, or affect, the rights of the Grantee under this easement instrument.

4.2 To avoid doubt, the Grantee may, at its sole discretion (subject to any conditions it considers appropriate and taking into account its operational requirements for the Easement Facility) permit the construction of standard pathways, driveways and boundary fences that may cross over the Easement Area at a right angle for a short length.

5. MAINTENANCE

The Grantee shall use its best endeavours to maintain the Easement Facility in or on the Easement Area so that it does not become a nuisance or a danger.

6. NO POWER TO TERMINATE

There is no implied power in this easement instrument for the Grantor to terminate the easement rights due to the Grantee breaching any term of this easement instrument or for any other reason, it being the intention of the parties that the easement rights will continue forever unless surrendered.

7. STATUTORY RIGHTS

The easement rights are in substitution for those set out in Schedule 5 to the Land Transfer Regulations 2018 but otherwise this easement does not affect any statutory powers which the Grantee may have.

8. DEFAULT

If either party fails (**defaulting party**) to perform, or join with the other party (**other party**) in performing, any obligation under this easement instrument, the following provisions will apply:

- 8.1** the other party may serve a written notice on the defaulting party (**default notice**) specifying the default and requiring the defaulting party to perform or to join in performing the obligation and stating that, after the expiry of one month from service of the default notice, the other party may perform the obligation;
- 8.2** if after the expiry of one month from service of the default notice, the defaulting party has not performed or joined in performing the obligation, the other party may:
 - 8.2.1** perform the obligation; and
 - 8.2.2** for that purpose enter on to the Burdened Land;
- 8.3** the defaulting party must pay to the other party the costs of:
 - 8.3.1** the default notice; and
 - 8.3.2** the other party in performing the obligation of the defaulting party;within one month of receiving written notice of the part party's costs; and
- 8.4** the other party may recover any money payable under clause 8.3 from the defaulting party as a liquidated debt.

9. DISPUTES

If any dispute arises between the Grantor and Grantee about the rights in this easement instrument which cannot be resolved by negotiation, the parties must submit at the request of either party to the arbitration of an independent arbitrator. This arbitrator is to be appointed jointly by the parties, and if they cannot agree on one within 14 days, by the President or any Vice President for the time being of the New Zealand Law Society (or his or her nominee). The arbitration will be determined in accordance with the Arbitration Act 1996 and its amendments or any statute which replaces it. The parties' execution of this easement instrument is to be treated as a submission to arbitration.

10. GRANTEE

- 10.1** The Grantee may exercise and enjoy with regard to this easement all authorities, powers, rights, remedies, immunities from liability, privileges, liberties and licences contained or implied herein or (without being limited or restricted by anything herein) 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 law; and in particular nothing herein contained shall be deemed to abrogate, limit, restrict or abridge any of the rights, powers and remedies vested in the Grantee by the Local Government Act 1974, Local Government Act 2002 or the Public Works Act 1981 or any amendment thereto or any Act or Acts passed in substitution therefore.
- 10.2** The Easement Facility remains 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. The Grantee may assign, transfer or licence all or any part of its interest in the Easement Land and its rights in this easement instrument or part thereof without the consent of the Grantor.

11. INDEMNITY

The Grantee shall indemnify the Grantor against all actions, suits, proceedings, claims and demands which may be brought or made against the Grantor as a direct result of the exercise by the Grantee of any of the rights granted by this Easement Instrument.

12. NOTICES

Any notice required to be given to the Grantor by the Grantee 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.