

View Instrument Details



Instrument No 12069328.1
Status Registered
Date & Time Lodged 09 February 2022 08:54
Lodged By Pearse, Matthew Namana
Instrument Type Easement Instrument



Affected Records of Title	Land District
CB32K/748	Canterbury

Annexure Schedule Contains 5 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 Jasmine Findlater as Grantor Representative on 08/02/2022 03:16 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 Blake Eugene Cescon as Grantee Representative on 14/06/2021 12:59 PM

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

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

Form 22

Easement instrument to grant easement or *profit à prendre*

(Section 109 Land Transfer Act 2017)

Grantor

MALLEY & CO TRUSTEES LIMITED and Deborah Margaret DEVINE

Grantee

SELWYN DISTRICT 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
required

Continue in additional Annexure Schedule, if

Purpose of Easement, or <i>profit</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Right of way	Marked A on LT 554803 (part Record of Title CB32K/748)	Rural Section 7636 Record of Title CB32K/748	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 5 of the Property Law Act 2007~~

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

~~[Memorandum number _____, registered under section 209 of the Land Transfer Act 2017]~~

~~[the provisions set out in Annexure Schedule _____]~~

The rights and powers of this easement instrument are those set out in Annexure Schedule 1. All rights and powers implied by the Land Transfer Regulations 2018 and/or Schedule Five of the Property Law Act 2007 are expressly excluded.

Annexure Schedule
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Continue in additional Annexure Schedule, if required

ANNEXURE SCHEDULE 1

1. GRANT OF RIGHTS, POWER AND PRIVILEGES IN RELATION TO THE RIGHT OF WAY

1.1. The Grantee shall, for the purposes of maintenance of its water race have the full free uninterrupted and unrestricted right liberty and licence from time to time and at all times hereafter:

- (a) to go over and along the easement facility with or without any kind of vehicle, machinery, implement or equipment;
- (b) to lay, make, construct, inspect, maintain, repair, replace, alter, extend, enlarge or remove the easement facility as the Grantee shall from time to time think fit (including the right to alter the state of the land over which the easement is granted); and
- (c) to have the easement facility kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials or unreasonable impediment) to the use and enjoyment of the easement facility.

1.2. The "easement facility" means that part of the surface of the land described as the Easement Area.

2. GRANTEE'S GENERAL RIGHTS

2.1. The Grantee may for the purpose of performing any duty or in exercise of any rights granted under this easement instrument:

- (a) enter upon the Burdened Land by the most practicable route from the nearest public street across any part of the Grantor's land;
- (b) remain on the Burdened Land for a reasonable time for the purpose of completing the work;
- (c) bring on to the Burdened Land such materials, tools, equipment, machinery, vehicles or other things as may be necessary for the purposes of completing the necessary work;
- (d) leave any vehicle or equipment in the Burdened Land for a reasonable time if work is proceeding; and
- (e) generally do and perform such acts and things in or upon the Easement Area as may be necessary or desirable for or in relation to any of the purposes of this easement instrument.

3. GRANTOR'S OBLIGATIONS

3.1. 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 obstruct the use and enjoyment of the easement facility; 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.

3.2. The Grantor will not oppose or object to any application for or issue of a building consent or resource consent in respect of the easement facility or the use or enjoyment of the same.

3.3. Upon request, the Grantor will provide the Grantee with the access code/key for any locked gates that secure the Easement Area, as necessary, to provide the Grantee with access to the Easement Area for the purposes of exercising its rights and powers granted to it under this instrument.

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4. MAINTENANCE, REPAIR AND REPLACEMENT OBLIGATIONS

- 4.1. The costs of maintaining and repairing the easement facility shall be borne by the Grantor and Grantee in the proportion to their respective usage of the easement facility so as to keep the easement facility in good order and prevent it from becoming a danger or nuisance.
- 4.2. The costs of maintaining, repairing or replacement of the easement facility that is necessary because of the act or omission by the Grantor or Grantee must be carried out promptly by that Grantor or Grantee at the sole cost of that Grantor or Grantee.

5. MUTUAL COVENANTS

- 5.1. Nothing contained or implied in this easement instrument shall be construed so as:
 - (a) to compel the Grantee to exercise all or any of the rights granted by this easement instrument at any time and the Grantee may commence discontinue or resume the exercise of all or any such rights at will; or
 - (b) to abrogate limit restrict or abridge any of the rights, powers or remedies vested in the Grantee by statute.

6. LIMITATION OF LIABILITY

- 6.1. Any right of action which shall at any time accrue to the Grantee by reason of breach or non-observance by the Grantor of any of the covenants contains in this easement instrument may be enforced by the Grantee only against:
 - (a) the registered owner for the time being of that part of the Burdened Land in respect of which such breach or non-observance shall occur; and
 - (b) the registered owner at the time of such occurrence,
 to the intent that the liability of any registered owner of the Burdened Land shall cease (except as to any breach or non-observance occurring during the period of ownership of that registered owner) upon registration of a transfer of ownership.

7. GENERAL PROVISIONS

- 7.1. The following provisions are applicable to the easement granted by this easement instrument:
 - (a) the grant shall be for all time;
 - (b) the use of the easement shall be without any limitation as to quantity or frequency;
 - (c) no power is implied in respect of the easement for the Grantor to determine the easement for breach of any provision of this easement instrument (whether express or implied) or for any other cause, it being the intention of the parties that the easement shall subsist unless it is surrendered in writing;
 - (d) if any party ("the defaulting party") neglects or refuses to perform any of its obligations under the easement instrument the following shall apply:
 - (i) the other party may serve upon the defaulting party a written notice requiring the defaulting party to perform its obligations and stating that, after the expiration of seven day period from service of such notice, the other party shall perform such obligations;
 - (ii) if upon the expiry of seven day period referred to above, the defaulting party has still neglected or refused to perform the obligation the other party may:

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Continue in additional Annexure Schedule, if required

- (1) perform such obligation; and
- (2) for that purpose enter onto the Grantor's land and carry out any work;
- (iii) the defaulting party shall be liable to pay the other party all costs incurred in performing such obligations;
- (e) notwithstanding the requirement to give notice under clause 7.1(d) above, where the Grantor has not complied with an obligation under this easement instrument and as a result the Grantee's use of the easement facility has been obstructed in any way, then the Grantee may immediately undertake all works required to ensure the unimpeded use of the easement facility and recover any costs from the Grantor; and
- (f) the Grantor shall not do any act which impedes, interferes with or restricts the rights of the Grantee and other authorised persons in relation to this easement instrument.

8. DISPUTES

- 8.1. The parties shall use reasonable endeavours to resolve any dispute or difference arising out of or in connection with this easement instrument in good faith by negotiation. Failing resolution by negotiation the parties may agree to an alternative method to resolve the dispute or difference. However, nothing in this clause will prevent either party from taking immediate steps to seek relief before an appropriate court at any time.

9. INTERPRETATION

- 9.1. In this easement instrument unless the context otherwise requires:

"**Easement Area**" means all areas of the Burdened Land specified under the heading "Shown (plan reference)" on the front page of this easement instrument in Schedule A.

"**Grantee**" means the Selwyn District Council, and includes the agents, employees, contractors, tenants, licensees, and other invitees of the Grantee.

"**Grantor**" means the registered owner of the Burdened Land, and includes the agent, employees, contractors, tenants, licensees, and other invitees of the Grantor.

"**Burdened Land**" means all the land described as the Burdened Land on the front page of this easement instrument in Schedule A.

"**Utilities**" mean any pipe, conduit, wire, structure, pole or other appurtenant structure for the provision of services to the land, including but not limited to electricity, gas, telephone, storm water, sewage and water services.

- 9.2. In the interpretation of this easement instrument:

- (a) words importing the singular or plural number shall be deemed to include plural or singular number respectively;
- (b) words importing any gender shall include every gender and the word "person" shall include a corporation and vice versa;
- (c) the headings appearing are inserted only as a matter of convenience and in no way define, limit or prescribe the scope or intent of the clauses of this easement instrument nor in any way affect this easement instrument;
- (d) references to any party include that party's executors, administrators, and assigns, or being a corporate entity, its successors and assigns.

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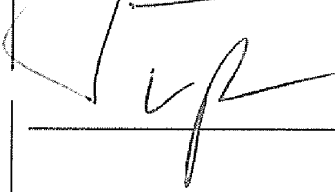
Easement Instrument

Continue in additional Annexure Schedule, if required

Council permission to layout, form and grant a right of way is confirmed by Selwyn District Council pursuant to section 348 Local Government Act 1974



Chief Executive, Selwyn District Council



Councillor, Selwyn District Council