



SUBDIVISION PLAN GUIDE

A REFERENCE GUIDE
FOR SURVEYORS
DRAFTING SUBDIVISION
SCHEME PLANS AND LAND
TRANSFER PLANS FOR
KĀINGA ORA PROJECTS

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RĀRANGI UPOKO

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INTRODUCTION

This guide is produced by the Kāinga Ora – Homes and Communities Land Compliance and Advisory team (Land Advisory) to advise on the preferred approach to a number of common matters related to scheme plans and land transfer (LT) plans (i.e. survey plans). The Land Advisory team provide guidance on land and title matters and review these plans to ensure that Kāinga Ora operational and asset management requirements are provided for on our Records of Title.

The guide provides easy-to-follow guidance and reasoning behind the Kāinga Ora preferred approach. This guide should be used by surveyors and/or civil consultants working on Kāinga Ora developments when preparing fee simple and unit title scheme plans for subdivision consent applications, LT plans for Resource Management Act 1991 section 223 certification and any other relevant survey plans for projects such as amalgamation and easement plans. This will allow surveyors to have some early indication on how to approach common scheme and LT plan matters when working on a Kāinga Ora project and will also provide context as to when and why this approach is taken.

This guide may also be useful for Kāinga Ora development managers and project managers when making decisions related to project delivery.

Disclaimer

Please note that this is a reference guide only, and any cost or project delivery implications in response to the guidance provided in this document should be discussed and approved by the Kāinga Ora development manager and/or project manager before proceeding.

FEE SIMPLE SUBDIVISION GUIDE

SERVICES AND UTILITIES

Services and utilities easements should be shown on the scheme plan and, after location and ownership of all civil infrastructure and utilities is confirmed, shown on the draft LT plan. The following matters should be reviewed and confirmed prior to drafting of the LT plan:

- **Civil infrastructure ownership:** Review of as-builts to confirm infrastructure ownership (private versus public), which may change during construction from the approved resource consent plans.
- **Easements in gross for utilities:** Review of as-builts, works agreements and/or completion certificates to confirm ownership of utility infrastructure (for example, telecommunications,

electricity) to determine whether an easement in gross should be provided to the utility provider. If ownership is unclear, the surveyor should confirm easement requirements with the utility provider. If an easement in gross is required, ensure the name of utility provider is provided in full and that each easement purpose is separated out in the easement table.

- **Existing easements to remove:** Review of existing easements registered on the head titles (for example, party wall, pipeline certificate) to determine whether these existing easements can be surrendered, and update the easement table accordingly.

ACCESS LOT VERSUS RIGHT OF WAY

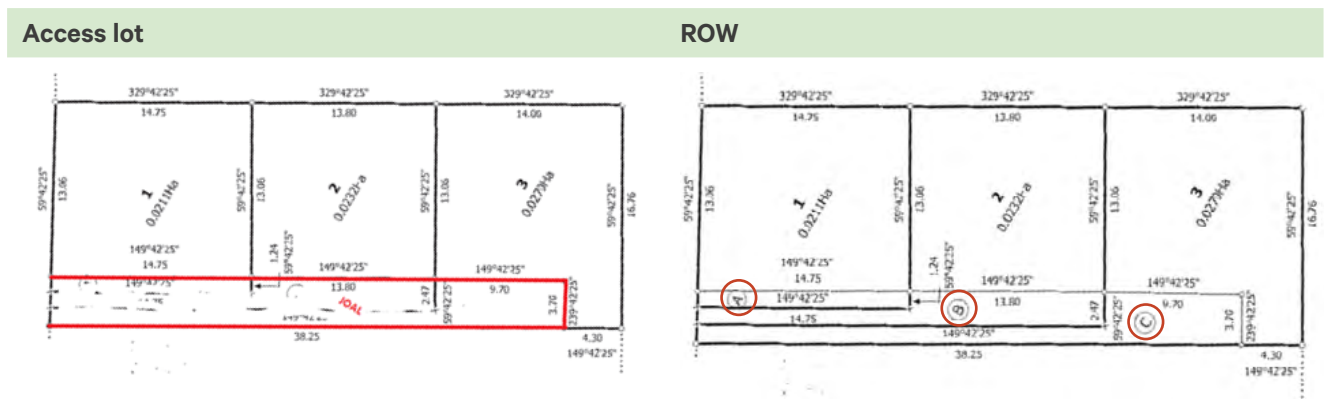
Two distinct methods for providing vehicular access to the lots in a subdivision via a shared driveway are:

- access lot – known as jointly owned access lot (JOAL) or commonly owned access lot (COAL)
- right of way (ROW).

The preferred approach for Kāinga Ora is as follows:

- If more than 4 lots are sharing the driveway, use access lot.
- If 4 or fewer lots are sharing the driveway, use either access lot or ROW.

The following provides a comparison of these methods.



Overview:

- Each owner of the access lot owns an undivided share of the driveway.
- Under section 298 of the Property Law Act 2007, each owner of the access lot has the same right to pass and re-pass over and along the access lot as a vehicular ROW.
- An access lot will not need a typical ROW created over it for use by the access lot’s owners.

Overview:

- Each lot is granted a ROW over each burdened property in order to legally access the property.
- Each burdened land owner owns a divided share of the driveway, which can be equal or unequal, depending on the size of each ROW easement area.

On the LT Plan:

Amalgamation condition:

Lot 4 (legal access) shall be held as to three undivided one-third shares by the owners of Lots 1–3 hereon as tenants in common in the said shares and individual Records of Title issue in accordance therewith.

On the LT Plan:

- Lots 1 and 2 have ROW over easement area C on Lot 3.
- Lots 1 and 3 have ROW over easement area B on Lot 2.
- Lots 2 and 3 have ROW over easement area A on Lot 1.

EASEMENTS ON AN ACCESS LOT

Being the owner of the access lot only gives that owner the following rights, as per section 298 and Schedule 5 of the Property Law Act 2007:

- Right to pass and re-pass.
- Right to establish and maintain driveway.
- Right to have land restored after completion of work.

Therefore, all scheme plans and LT plans will need to include any other easements (including but not limited to services and utilities easements, right to overhang eaves, right to support, maintenance easement) over the access lot in favour of the benefited lot(s). The wording for the easement purpose in the easement table must be in accordance with section 2 Schedule 5 of the Land Transfer Regulations 2018 and the Kāinga Ora Easement Memorandum (attached as Appendix A).

STORAGE

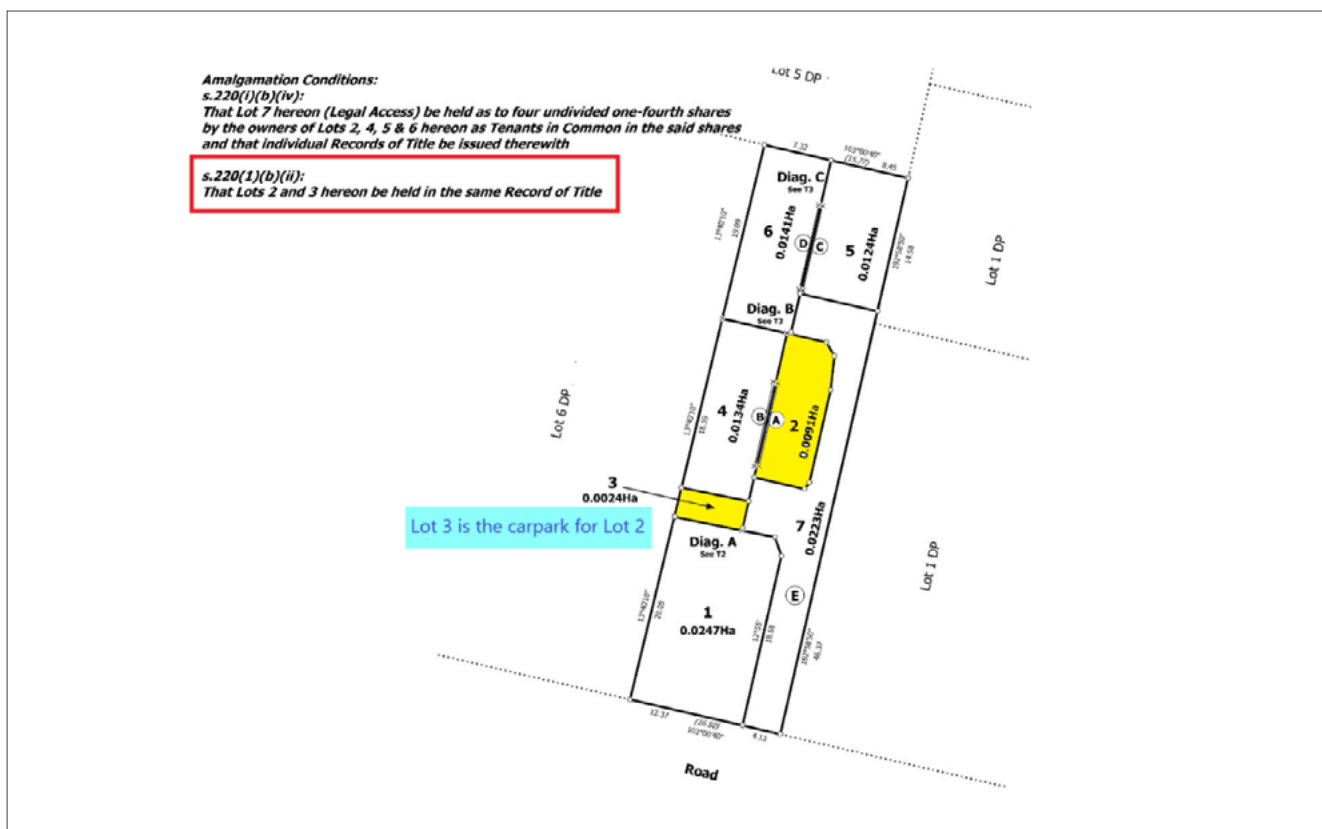
For fee simple subdivisions, the carpark and exclusive bin storage for each lot should be within the boundary of the lot it services (i.e. the lot itself contains its parking space/bin storage).

If this is not possible, the carpark/exclusive bin storage should be a separate fee simple lot that will be held in the same Record of Title with the lot it services via an amalgamation condition (Figure 1).

In some district plans, the creation of separate lots with no development potential may require specific assessment in the resource consent. If in doubt about how to approach these scenarios, please contact the Kāinga Ora Development Planning team.

PARKING AND EXCLUSIVE BIN

Figure 1: Parking as a separate fee simple lot



ZERO-LOT BOUNDARIES

In fee simple subdivisions, sometimes the resource consent plans show that part of a lot's dwelling is on the boundary with another fee simple lot or the access lot (Figure 2).

Where dwellings are built on a boundary, an easement will be required to allow the owner to access and maintain the external walls of the property.

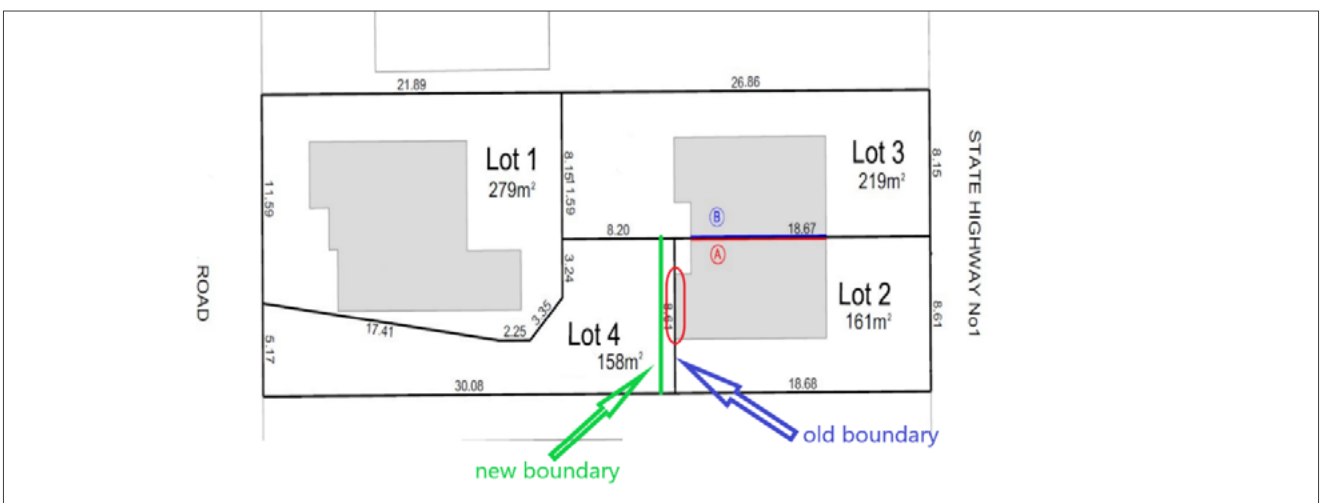
Figure 2: Zero-lot boundary



In this example, part of Lot 2's dwelling (circled in red) is on the boundary with Lot 4. This can be either overhanging eaves or a dwelling wall.

In this situation, the preferred approach is to adjust the boundary between Lot 2 and Lot 4 so that this portion will be completely within Lot 2 (Figure 3). The wall will need to be fire rated where the distance between wall and boundary is less than 1m.

Figure 3: Boundary adjustment



If this is not possible, **an easement** (a right to overhang eaves or a maintenance easement, depending on what it is) in favour of Lot 2 over Lot 4 will be required on the LT plan. This is to enable the owner of Lot 2 to access and maintain the eaves/external walls of their property.

RETAINING WALLS

Where retaining walls are to be built along property boundaries, the property boundaries should be aligned to ensure that the structure of retaining walls is:

- for **boundaries located within Kāinga Ora development** (Figure 4) – located within the lot that owns the retaining walls rather than on the boundary line
- for boundaries **shared with adjoining landowners** (Figure 5) – located within the Kāinga Ora development/lot to avoid an easement over the adjoining property.

The structure of retaining walls includes the pole and its complete embedment depth.

Easements for retaining walls

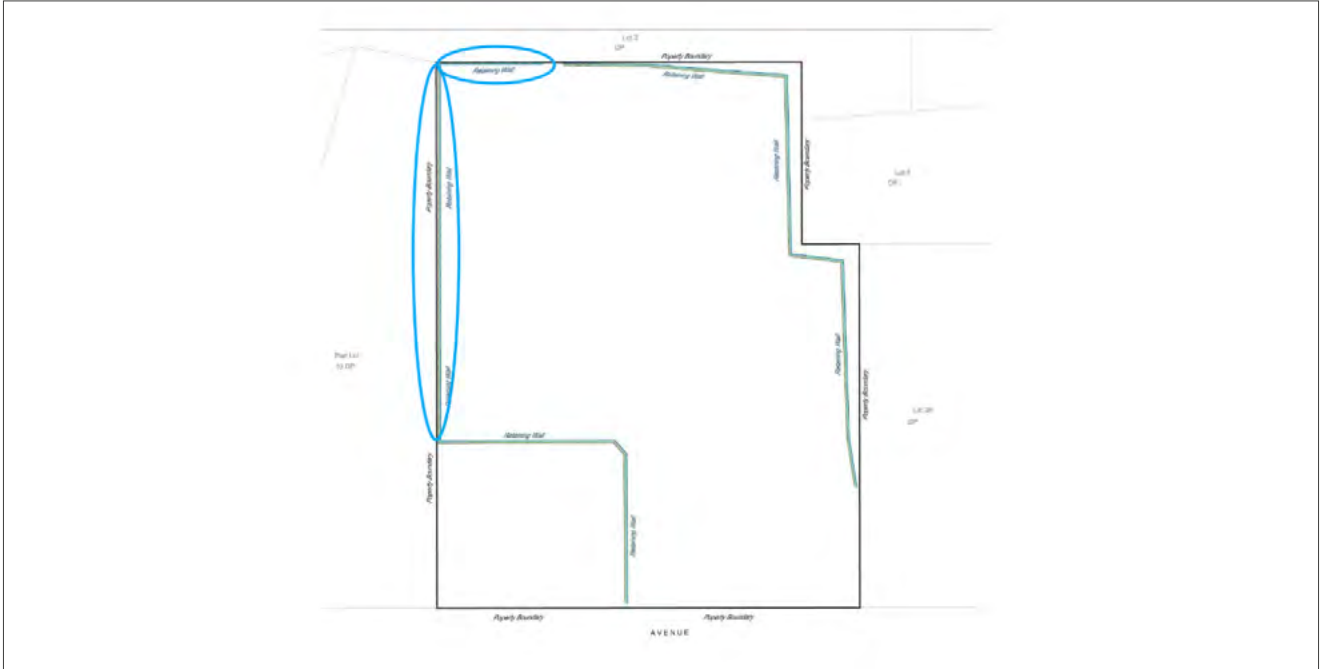
If the above solution is not possible and retaining walls will be built on the boundary (for example, if there is no space to adjust the boundary):

- the Kāinga Ora development manager or programme manager will need to obtain neighbour consent if the retaining walls are on the boundaries shared with the adjoining landowner
- a right to support and/or maintenance easement for retaining walls must be provided on the LT plans and registered on the affected Records of Title.

Figure 4: Retaining walls on the boundary within Kāinga Ora development (red circles)



Figure 5: Retaining walls on the boundary shared with adjoining properties (blue circles)



UNIT TITLE SUBDIVISION GUIDE

UNIT TITLE ALLOCATIONS

The following is an indicative guide on how different assets should be allocated on the unit title scheme plan and LT plan.

Principal units, accessory units and common property	
Principal units (PU)	Internal units; exclusive use areas such as decks, balconies, patios or outdoor yard areas
Accessory units (AU)	Carparks; storage units
Common property	Foyers, roofs, lifts, stairwells or accessways; common areas; shared facilities (including community rooms < 50m ²); shared driveways

CARETAKER STUDIOS AND COMMUNITY ROOMS

Caretaker studios and community rooms are sometimes depicted on the scheme plan and LT plan and can be shown as either a PU or common property depending on the size, features of the space and resource consent conditions. When deciding on whether to show the caretaker studio/ community room as a PU or common property, please consult both the Land Advisory team and the Development Planning team. In principle, the following guidance is provided.

- **Common property:** If the room is too small to be converted into a residential unit (that is less than 50m² and does not have all facilities to support being self-contained), it should be recorded as common property.

- **Principal unit:** If the room is large enough to be converted to at least a one-bedroom residential unit (that is approximately 50m² and includes facilities such as a kitchen and bathroom), it can be shown as a PU on the scheme plan and LT plan. This ensures the space could be converted into a residential unit and sold separately without requiring a complete resurvey of the whole complex and issuing new Records of Title and unit entitlements.
 - **Note:** Allocating a caretaker studio or community room as a PU needs to be addressed in the associated resource consent application.

CARPARKS

All carparks must be marked as AUs and allocated to an individual PU.

Carparks are marked as AUs rather than as common property because:

- it simplifies carpark management
- it improves the value and rental income of PUs
- there is less provision in the relevant body corporate's rules
- car parks (as AUs) can only be sold with a PU if they are legally held together.

The Kāinga Ora Land Advisory team will allocate the carparks and prioritisation will be given to:

- accessible units
- larger units (with two or more bedrooms)
- lower-level units.

Our preferred upper and lower limits of AU carparks are:

- upper limit – 4m above finished concrete surface
- lower limit – finished concrete surface.

PRINCIPAL UNIT BOUNDARIES

The horizontal and vertical extent of PU boundaries should be shown as follows:

Horizontal extent: PU boundaries are the centrelines of walls and the extension of the centrelines through doors and windows. Unless otherwise shown on the LT plan, this includes common walls (adjoining PUs or AUs and common property) and external walls. This may also include the centreline of balcony balustrades or fences.

Vertical extent: These boundaries need to define the upper and lower limits of each PU and should be shown as follows:

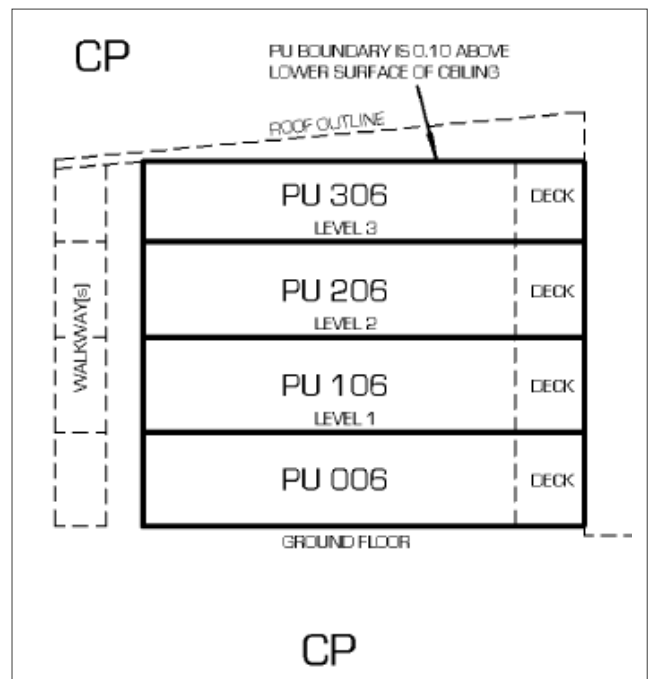
- The upper limit of top-floor units is 0.1m above the ceiling.
- The lower limit of ground-floor units (at ground level) is 0.1m below the finished floor level.
- Other upper and lower limits of units are the centrelines of shared floor slabs between levels.

ROOF OWNERSHIP

Roofs must be held as common property (Figure 6) to reduce the potential damage to the roof by top-level unit owners when they install equipment inside the roof and to prevent the potential use of roof-space as storage.

This also allows the body corporate to grant rights allowing infrastructure such as aerials to be placed on the roof for the benefit of lower-level unit owners.

Figure 6: Roof being held as common property



PRIVACY SCREENS

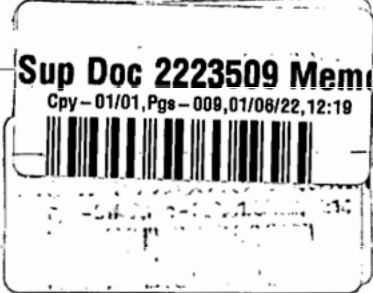
In some unit title subdivisions, there are privacy screens attached to balcony balustrades, which can be located on the inside or the outside (Figure 7).

Privacy screens located on the inside need to be held as common property. To achieve this and to exclude the space where the interior privacy screens would be located, the outer boundary of all balconies needs to be defined at an offset of approximately 0.15m from the inside of the balustrade.

Figure 7: Privacy screens located on the inside and the outside of a balcony



APPENDIX A – EASEMENT MEMORANDUM

<p>Form of Registrable Memorandum</p> <p>Section 209, Land Transfer Act 2017</p> <p>Class of instrument in which provisions intended to be included</p> <p>Easement</p> <p>Person executing memorandum</p> <p>Housing New Zealand Limited</p> <p>The following provisions are intended for inclusion in instruments of the above class:</p> <p>Easement rights and powers (including terms, covenants and conditions)</p> <p>1 Interpretation</p> <p>1.1 In this instrument:</p> <p>(a) easement facility means, for a:</p> <ul style="list-style-type: none"> (i) party wall easement, the wall, associated structures and supporting foundations located on the easement area and on a corresponding adjacent part of the benefited land, and anything constructed, erected or installed in replacement or substitution; (ii) right to overhang eaves, the eaves, guttering, downpipes and related elements of a building located on the benefited land, and anything constructed or installed in replacement or substitution; (iii) maintenance easement, the surface of the easement area, including any steps, landings, ramps, paths or driveways necessary or desirable for the purposes of accessing the benefited land for the purposes of maintenance and repair; (iv) pedestrian right of way, the surface of the easement area, including any steps, landings, ramps, paths or driveways necessary or desirable for the purposes of access to the benefited land; (v) right to parking, the surface of the easement area and includes any driveways, any equipment or structure designed and installed for the purposes of parking or charging vehicles including but not limited to motor vehicles, scooters and electronic bikes; (vi) right to support, the land/ embankment/ anchors, pillars, columns, walls and other structures and equipment required to structurally support the benefited land and anything constructed, erected or installed on the benefited land, and anything constructed erected or installed in replacement or substitution thereof. <p>(b) implied terms means the rights and powers set out in Schedule 5 of the Land Transfer Regulations 2018 or as may be set out in any regulations adopted in replacement thereof under the Land Transfer Act 2017.</p>	
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2 Provisions applying to all easements

- 2.1 Clause 1 and clauses 10 to 14 of the implied terms apply to the easements created by this instrument:
- (a) as if set out in full in this instrument;
 - (b) with any necessary modifications; and
 - (c) to the extent that they are not inconsistent with the express terms of this instrument.
- 2.2 The grantee must give the grantor five working days' notice (or such longer period as is required to enable the grantor to comply with its obligations under the Residential Tenancies Act 1986) that the grantee intends to enter the burdened land, except:
- (a) for inspecting or cleaning the easement facility in which case no prior notice is required; or
 - (b) in circumstances where there is or is likely to be injury to people or damage to property in which case no prior notice is required but notice must be given as soon as possible afterwards.

3 Party wall easement

- 3.1 A party wall easement is the right for the grantee, in common with the grantor, at all times, to:
- (a) use the easement facility as a party wall forming part of the buildings located on the benefited land and the burdened land;
 - (b) inspect, alter, repair, maintain, replace, upgrade and add to the easement facility; and
 - (c) undertake tests and investigations of the easement facility, the easement area and adjacent parts of the burdened land.
- 3.2 The grantee must not use the easement facility to support a building on the benefited land which is beyond the strength or engineering capacity of the easement facility.
- 3.3 The grantee must hold sufficient insurance to meet the costs of repairing or replacing the easement facility if it is damaged or destroyed.
- 3.4 The grantee must give the grantor at least three months' notice (or such longer period as is required to enable the grantor to comply with its obligations under the Residential Tenancies Act 1986) before entering the burdened land except:
- (a) for inspecting the easement facility in which case the grantee must give the grantor five working days' notice (or such longer period as is required to enable the grantor to comply with its obligations under the Residential Tenancies Act 1986); or
 - (b) in circumstances where there is or is likely to be injury to people or damage to property in which case no prior notice is required but notice must be given as soon as possible afterwards.
- 3.5 Clause 3.4 prevails over clause 2.2.

- 3.6 In addition to the obligations in the implied terms, the grantee must, when undertaking any works on or to the easement facility:
- (a) comply with all relevant laws;
 - (b) hold adequate insurance for all potential risks resulting from the works; and
 - (c) provide all required temporary support to any building supported by the easement facility.

4 Right to overhang eaves

- 4.1 A right to overhang eaves is the right for the grantee, at all times to:
- (a) project the easement facility into the airspace of the easement area; and
 - (b) inspect, clean, alter, repair, maintain, replace, upgrade and add to the easement facility.
- 4.2 In addition to the obligations in the implied terms, the grantee must, when undertaking any works on or to the easement facility:
- (a) comply with all relevant laws; and
 - (b) hold adequate insurance for all potential risks resulting from the works.

5 Maintenance easement

- 5.1 A maintenance easement is 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 enter the easement area, with or without tools, scaffolding, equipment, machinery or implements, to inspect, clean, alter, repair, maintain, replace, upgrade or add to the buildings and other structures, and to trim or remove vegetation on the benefited land.
- 5.2 In addition to the grantee's rights under the implied terms, the grantee may:
- (a) temporarily remain on the easement facility for the duration of any works;
 - (b) alter the easement facility to the extent necessary; and
 - (c) trim or remove any vegetation from the easement facility provided that where appropriate the relevant consents for the removal have been obtained from the territorial authority having jurisdiction in respect of the burdened and benefited land and the work is carried out by an appropriately qualified arborist if so required by the territorial authority.
- 5.3 In addition to the obligations in the implied terms, the grantee must, when exercising its rights under this easement:
- (a) comply with all relevant laws; and
 - (b) hold adequate insurance for all potential risks resulting from the works.
- 5.4 A maintenance easement includes the right 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.
- 5.5 The right to go over and along the easement facility, and to have the easement facility kept clear of obstructions, is limited to the extent required by any period of necessary repair or maintenance of the easement facility.

6 Pedestrian right of way

- 6.1 A pedestrian right of way is 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 easement facility:
- (a) on foot;
 - (b) with the use of a wheelchair, mobility scooter or similar mobility device; or
 - (c) with the use of a disability assist dog or other service animal.
- 6.2 In addition to the grantee's rights under the implied terms, the grantee may:
- (a) temporarily remain on the easement facility for the duration of any works necessary to maintain safe passage along the easement facility;
 - (b) alter the surface of the easement facility to the extent necessary; and
 - (c) trim or remove any vegetation from the easement area that impedes the right to pass over the easement facility.
- 6.3 In addition to the obligations in the implied terms, the grantee must, when undertaking any works on or to the easement facility:
- (a) comply with all relevant laws; and
 - (b) hold adequate insurance for all potential risks resulting from the works.
- 6.4 A pedestrian right of way includes the right 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.
- 6.5 The right to go over and along the easement facility, and to have the easement facility kept clear of obstructions, is limited to the extent required by any period of necessary repair or maintenance of the easement facility.

7 Right to parking

- 7.1 A right to parking is 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:
- (a) temporarily park and stop vehicles on the easement facility;
 - (b) go over and along the easement facility with or without vehicles; and
 - (c) charge any electrically powered vehicles including without limitation scooters and e-bikes.
- 7.2 In addition to the obligations in the implied terms, the grantee must, when undertaking any works on or to the easement facility:
- (a) comply with all relevant laws; and
 - (b) hold adequate insurance for all potential risks resulting from the works.
- 7.3 A right to parking includes the right 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.
- 7.4 The rights under clause 7.1 and the right to have the easement facility kept clear of obstructions is limited to the extent required by any period of necessary repair or maintenance of the easement facility or access routes (as the case may be).

- 7.5 The grantor must not vary the layout of any vehicle parks marked on the easement facility or any identified access routes except with the consent of the grantee, which must not be unreasonably withheld.
- 7.6 Where any vehicle parks on the easement facility are allocated by the grantor for the grantee's exclusive use or used solely by the grantee:
- (a) the grantee may install signs or markings identifying the grantee as the sole user of those parks; and
 - (b) the grantee must not block or park any vehicles in any other vehicle parks on the easement facility.
- 7.7 The right to parking includes a right to convey electricity necessary to operate any vehicle charger that is required to charge any electric vehicle provided that the grantee is responsible for all costs associated with the electricity supply for such purposes.

8 Right to support

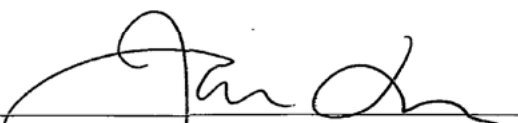
- 8.1 A right to support is the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to:
- (a) use the easement facility to support the benefited land and anything on the benefited land;
 - (b) form, inspect, alter, repair, maintain, replace and add to the easement facility (including to drill into and excavate land for that purpose); and
 - (c) undertake tests and investigations of the easement facility, the easement area and adjacent parts of the burdened land.
- 8.2 The grantee must not use the easement facility to support a building or other structures on the benefited land which is beyond the strength or engineering capacity of the easement facility and for which the grantee has not obtained relevant resource consents and building consents from the territorial authority having jurisdiction over the burdened and benefited land.
- 8.3 The grantee must hold sufficient insurance to meet the costs of repairing or replacing the easement facility if it is damaged or destroyed.
- 8.4 The grantee must give the grantor at least three months' notice (or such longer period as is required to enable the grantor to comply with its obligations under the Residential Tenancies Act 1986) before entering the burdened land except:
- (a) for inspecting the easement facility in which case the grantee must give the grantor five working days' notice (or such longer period as is required to enable the grantor to comply with its obligations under the Residential Tenancies Act 1986); or
 - (b) in circumstances where there is or is likely to be injury to people or damage to property in which case no prior notice is required but notice must be given as soon as possible afterwards.
- 8.5 Clause 8.4 prevails over clause 2.2.
- 8.6 In addition to the obligations in the implied terms, the grantee must, when undertaking any works on or to the easement facility:
- (a) comply with all relevant laws;

- (b) provide required temporary support to the burdened land and the benefited land and to all buildings and other structures on that land; and
- (c) hold adequate insurance for all potential risks resulting from the works.

Dated 24th May 2022

Execution

Signed for and on behalf of Housing New Zealand Limited by its duly authorised attorney:


Joann Hill

Memorandum 2022/4364

Land Transfer Act 2017

Easement



Registered pursuant to
Section 209
Land Transfer Act 2017

**Registrar-General of Land
Land Registry**

Abstract number 12473913.1

Date 01/06/2022

“Particulars Entered in Register
Southland, Otago, Canterbury, Westland,
Marlborough, Nelson, Wellington, Hawkes
Bay, Gisborne, Taranaki, South Auckland and
North Auckland Land Registries.

For Registrar-General of Land”

CONTACT

If you have any questions regarding any aspect of this guide, have any other related questions or have suggestions for how this resource could be improved, please contact the Land Advisory team at LandTitleQueries@kaingaora.govt.nz. For any project-related decision making, please contact the development manager or project manager.

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