

Vehicular rights of way

297 Covenants implied in grant of vehicular right of way

(1) Every grant of a vehicular right of way contains the implied covenants in [Schedule 5](#), except in so far as all or any of those implied covenants are negated, varied, or extended as provided in subsection (2).

(2) For a vehicular right of way (whether granted before, on, or after 1 January 2008), those implied covenants may be negated, varied, or extended by—

(a) the instrument, contract, or arrangement creating the vehicular right of way; or

(b) the express terms of any other instrument; or

(c) a written memorandum executed, as the instrument creating the vehicular right of way was required to be executed, by the parties to that instrument; or

(d) an easement instrument registered under [section 108](#) of the Land Transfer Act 2017; or

(e) an easement variation instrument registered under [section 112](#) of the Land Transfer Act 2017.

(3) As between a person (**person A**) entitled to enforce those implied covenants and a person (**person B**) bound by them, a provision to which this subsection applies must be taken as negating, varying, or extending any of those implied covenants only so long as the provision remains enforceable by person A against person B.

(4) Subsection (3) applies to a provision of an instrument, contract, or arrangement coming into operation before 6 November 1986 (which is the date on which [section 126B](#) of the Property Law Act 1952 was substituted by section 4 of the Property Law Amendment Act 1986).

(5) The provisions of this section are in addition to, and not in derogation of, the provisions of—

(a) [section 111](#) of the Land Transfer Act 2017; and

(b) [section 27\(3\)](#) of the Housing Act 1955.

(6) Rights and powers implied under [section 111](#) of the Land Transfer Act 2017 prevail if, and to the extent that, they are inconsistent with any covenants implied by this section.

(7) Subsection (6) does not limit [section 8](#).

Compare: 1952 No 51 s 126B

Section 297(2)(d): amended, on 12 November 2018, by [section 250](#) of the Land Transfer Act 2017 (2017 No 30).

Section 297(2)(e): amended, on 12 November 2018, by [section 250](#) of the Land Transfer Act 2017 (2017 No 30).

Section 297(5)(a): amended, on 12 November 2018, by [section 250](#) of the Land Transfer Act 2017 (2017 No 30).

Schedule 5

Covenants implied in grants of vehicular rights of way

[ss 297, 298](#)

The grantor and the grantee of a vehicular right of way covenant with one another as follows:

1 Right to pass and re-pass

(1) The grantee and the grantor have (in common with one another) the right to go, pass, and re-pass over and along the land over which the right of way is granted.

(2) That right to go, pass, and re-pass is exercisable at all times, by day and by night, and is exercisable with or without vehicles, machinery, and equipment of any kind.

(3) In this clause, the **grantee** and the **grantor** include agents, contractors, employees, invitees, licensees, and tenants of the grantee or the grantor.

Compare: 1952 No 51 [s 126B](#), Schedule 9 [cl 1](#)

2 Right to establish and maintain driveway

The owners and occupiers of the land for the benefit of which, and the land over which, the right of way is granted have the following rights against one another:

(a) the right to establish a driveway on the land over which the right of way is granted, and to make necessary repairs to any existing driveway on it, and to carry out any necessary maintenance or upkeep, altering if necessary the state of that land; and

(b) any necessary rights of entry onto that land, with or without machinery, plant, and equipment; and

(c) the right to have that land at all times kept clear of obstructions, whether caused by parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the driveway; and

(d) the right to a reasonable contribution towards the cost of establishment, maintenance, upkeep, and repair of the driveway to an appropriate standard; and

(e) the right to recover the cost of repairing any damage to the driveway made necessary by any deliberate or negligent act of a person bound by these covenants or that person's agents, contractors, employees, invitees, licensees, or tenants.

Compare: 1952 No 51 [s 126B](#), Schedule 9 [cl 2\(a\)–\(d\)](#)

3 Right to have land restored after completion of work

(1) This clause applies to a person bound by these covenants (**person A**) if a person entitled to enforce these covenants (**person B**) has undertaken work, in accordance with the right conferred by [clause 2\(a\)](#) or with an order of a court, on the land over which a right of way is granted.

(2) Person A has the right, after the completion of the work, to have the land restored as far as possible to its former condition (except for the existence of the driveway).

(3) That right of person A is subject to person B's right, in accordance with [clause 2\(d\)](#), to receive a reasonable contribution towards the cost of the work.

Compare: 1952 No 51 [s 126B](#), Schedule 9 [cl 2\(e\)](#)

Land Transfer Act 2017 (as at 12 April 2022)

111 Rights and powers implied in easements

(1) Regulations may prescribe the rights and powers that are implied in different classes of registered easement.

(2) On registration of an easement of a class prescribed by regulations, the grantee has the rights and powers implied in easements of that class.

(3) Despite subsection (2), an instrument to register an easement may—

- (a) vary implied rights and powers; or
- (b) include other rights and powers; or
- (c) exclude implied rights and powers.

(4) Subsection (3) does not apply to an easement created under [section 110](#).

(5) The rights and powers that apply to an easement under this section bind the grantor and the grantee.

(6) Nothing in this section limits [sections 26\(4\)](#), [27\(3\)](#), and [28\(3\)](#) of the Housing Act 1955.

Compare: 1952 No 52 [s 90D](#)

Land Transfer Regulations 2018 (as at 01 February 2022)

Schedule 5

Rights and powers implied in easements

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1 Interpretation

In this schedule, unless the context otherwise requires,—

benefited land, in relation to an easement that benefits land, means the land that takes the benefit of the easement and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document

burdened land, in relation to an easement,—

(a) means the land over which the easement is registered and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document; and

(b) includes the easement area

easement area, in relation to an easement, means the area that—

(a) is shown on a plan; and

(b) is referred to in the relevant easement instrument, transfer instrument, or deposit document as the area to which the easement applies

easement facility,—

(a) for a right to convey water, means 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:

(b) for a right to convey electricity or a right to convey telecommunications, means wires, cables (containing wire or other media conducting materials), ducts, surface boxes, towers, poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:

(c) for a right of way, means the surface of the land described as the easement area, including any driveway:

(d) for a right to drain water, means pipes, conduits, open drains, 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:

(e) for a right to drain sewage, means pipes, conduits, 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:

(f) for a right to convey gas, means pipes, conduits, valves, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution

grantee and grantor—

(a) have the meanings given by [section 107](#) of the Act; and

(b) in [clauses 3 to 9](#) and [12\(1\)](#), include those persons' agents, employees, contractors, tenants, licensees, and invitees

repair and maintenance, in relation to an easement facility, includes the replacement of the easement facility

telecommunication means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not.

2 Classes of easement

For the purposes of [regulation 21](#), easements are classified by reference to the following rights:

- (a) a right to convey water:
- (b) a right to drain water:
- (c) a right to drain sewage:
- (d) a right of way:
- (e) a right to convey electricity:
- (f) a right to convey telecommunications:
- (g) a right to convey gas.

Rights and powers implied in easements granting certain rights

3 Right to convey water

(1) A right to convey water includes 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 take and convey water in free and unimpeded flow from the source of supply or point of entry through the easement facility and over the easement area and (for an easement that benefits land) to the benefited land.

(2) The right to take and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.

(3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with [clause 10\(1\)](#).

(4) The grantor must not do and must not allow to be done anything on the burdened land that may cause the purity or flow of water in the water supply system to be polluted or diminished.

4 Right to drain water

(1) A right to drain water includes 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 convey water (whether sourced from rain, springs, soakage, or seepage) in any quantity—

- (a) from the benefited land through the easement facility and over the easement area; or
- (b) for an easement in gross, through the easement facility and over the easement area.

(2) The right to drain water is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.

(3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with [clause 10\(1\)](#).

5 Right to drain sewage

(1) A right to drain sewage includes 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 drain, discharge, and convey sewage and other waste material and waste fluids in any quantity—

(a) from the benefited land through the easement facility and over the easement area; or

(b) for an easement in gross, through the easement facility and over the easement area.

(2) The right to drain, discharge, and convey sewage and other waste material and waste fluids is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.

(3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

6 Rights of way

(1) A right of way includes 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.

(2) The right to go over and along the easement facility includes the right to go over and along the easement facility with or without any kind of—

(a) vehicle, machinery, or implement; or

(b) domestic animal or (if the burdened land is rural land) farm animal.

(3) A 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.

(4) The right to go over and along the easement facility, and to have the easement facility kept clear, is limited to the extent required by any period of necessary repair or maintenance of the easement facility.

(5) The easement facility for the relevant easement is the surface of the land described as the easement area, including any easement facility laid or to be laid along the easement area in accordance with [clause 10\(1\)](#).

7 Right to convey electricity

(1) A right to convey electricity includes 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 lead and convey electricity and electrical impulses without interruption or impediment from the point of entry through the easement facility and over the easement area and (for an easement that benefits land) to the benefited land.

(2) The right to convey electricity without interruption or impediment is limited to the extent required by any period of necessary renewal or repair of the easement facility.

(3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with [clause 10\(1\)](#).

8 Right to convey telecommunications

(1) A right to convey telecommunications includes 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 lead and convey telecommunications without interruption or impediment through the easement facility and over the easement area and (for an easement that benefits land) to and from the benefited land.

(2) The right to convey telecommunications without interruption or impediment is limited to the extent required by any period of necessary renewal or repair of the easement facility.

(3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with [clause 10\(1\)](#).

9 Right to convey gas

(1) A right to convey gas includes 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 lead and convey gas without interruption or impediment from the point of entry through the easement facility and over the easement area and (for an easement that benefits land) to the benefited land.

(2) The right to lead and convey gas without interruption or impediment is limited to the extent required by any period of necessary renewal or repair of the easement facility.

(3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with [clause 10\(1\)](#).

Rights and powers implied in all classes of easement

10 General rights

(1) All of the easements referred to in this schedule include—

(a) the right to use any easement facility already situated in the easement area for the purpose of the easement granted; and

(b) if no suitable easement facility exists in the easement area, the right to lay, install, and construct in the easement area (including the right to excavate land for the purpose of that construction) an easement facility that the grantee reasonably requires and for which the grantor has given prior consent; and

(c) the right to repair and maintain the easement facility.

(2) The grantor must not unreasonably withhold consent under subclause (1)(b).

(3) The grantor must not do and must not allow to be done on the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

(4) The grantee must not do and must not allow to be done on the benefited land (if any) or the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

(5) To avoid doubt, all the easements referred to in this schedule (other than for a right to convey electricity) include the right to convey any electricity necessary to operate a pump or other equipment that is part of the easement facility.

11 Repair, maintenance, and costs

- (1) If the 1 or more grantees have exclusive use of the easement facility, each grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.
- (2) If the 1 or more grantees and the grantor share the use of the easement facility, each of them is responsible equally for the repair and maintenance of the easement facility, and for the associated costs, for the purposes set out in subclause (1).
- (3) If the easement is in gross, the grantee bears the cost of all work done outside the burdened land.
- (4) The parties responsible for maintenance under subclause (1), (2), or (5) (as the case may be) must meet any associated requirements of the relevant local authority.
- (5) Any repair or maintenance of the easement facility that is attributable solely to an act or omission by the grantor or the grantee must be promptly carried out by that grantor or grantee at their sole cost.
- (6) However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the grantor or grantee,—
 - (a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and
 - (b) the balance of those costs is payable in accordance with subclause (2).
- (7) The costs of any electricity used for the conveyance of water must be apportioned between users of the water in proportion to their usage of the water.

12 Rights of entry

- (1) The grantee may, for the purpose of exercising any right or power, or performing any related duty, implied in an easement by these regulations,—
 - (a) enter upon the burdened land by a reasonable route and with all necessary tools, vehicles, and equipment; and
 - (b) remain on the burdened land for a reasonable time for the sole purpose of completing the necessary work; and
 - (c) leave any vehicles or equipment on the burdened land for a reasonable time if work is proceeding.
- (2) However, the grantee must first give reasonable notice to the grantor.
- (3) The grantee must ensure that as little damage or disturbance as possible is caused to the burdened land or to the grantor.
- (4) The grantee must ensure that all work is performed properly.
- (5) The grantee must ensure that all work is completed promptly.
- (6) The grantee must immediately make good any damage done to the burdened land by restoring the surface of the land as nearly as possible to its former condition.
- (7) The grantee must compensate the grantor for all damage caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the burdened land.

13 Default

If the grantor or the grantee does not meet the obligations implied or specified in any easement,—

- (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 10 working days from service of the notice of default, the other party may meet the obligation; and
- (b) if, at the expiry of the 10-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 burdened land; and
- (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; and
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

14 Disputes

If a dispute in relation to an easement 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 under the [Arbitration Act 1996](#); and
 - (ii) the arbitration must be conducted by a single arbitrator agreed by the parties or, failing agreement, appointed by the President of the branch of the New Zealand Law Society for the area in which the easement is located.