

# Grant of Easement pursuant to section 60 of the Land Act 1948

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The Commissioner of Crown Lands under the Land Act 1948

Her Majesty the Queen acting by and through the Minister of Conservation for the purposes of the Conservation Act 1987

Central Hawke's Bay District Council

F T Gordon Holdings Limited, and

Gretchen Mary de Visne Hunter and James Patrick Gallagher

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## PARTIES

The Commissioner of Crown Lands under the Land Act 1948 (the *Grantor*)

Her Majesty the Queen acting by and through the Minister of Conservation for the purposes of the Conservation Act 1987 (HMQ)

Central Hawke's Bay District Council (*CHBDC*)

F T Gordon Holdings Limited (*Gordon*), and

Gretchen Mary de Visne Hunter and James Patrick Gallagher (*Hunter*)

(together, the *Grantee*)

## BACKGROUND

- A The ~~within easement~~ Easement is an easement creating a right of way for the purpose of providing public access to Parimahu Beach, and restricted access from Parimahu Beach to properties in Blackhead township and is being created in conjunction with an easement over adjoining land completing access to Blackhead township, and the vesting of Gordon land in CHBDC as road.
- B The Grantor has agreed to Grant the ~~e~~Easement over the Easement Land on the terms and conditions stated in this Deed.

## OPERATIVE PART

### 1 TERMS AND DEFINITIONS

*Commencement Date* means ~~the date of commencement of this grant of easement, which is~~ the date of publication of a Gazette Notice declaring (inter alia) sections 6 and 8 on SO Plan 437327 to be road.

*Deed* means this Deed of Grant of Easement created under section 60 of the Land Act 1948.

*Easement* means the easement for right of way over the Easement Land created by this Deed.

*Easement Land* means Areas D and G on SO Plan 437327.

*Grantee* is, subject to the proviso below, limited for all Grantees to their respective capacities as owners of land in Blackhead township. The rights granted to the Grantees include agents, employees, workers, ~~and~~ contractors and sub-contractors of the Grantee, and persons authorised or invited by the Grantees in connection with that Grantee's land in Blackhead Township, provided however that the Grantees of the Easement in gross over Area G may extend "invitee" to the general public.

*Grantor's Land* means the land legally described as Crown land no registration adjacent to Part Lot 3 DP 8226 in CFR HBL11409, and in particular section 12 on SO Plan 437327 (of which Area G is part), and section 17 on SO Plan 437327 (of which Area D is part).

*Working Day* means any day of the week excluding Saturday, Sunday, national statutory holidays and the anniversary days commonly observed in Wellington and in the locality in which the Easement Land is situated.

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## 2 RIGHTS GRANTED

- 2.1 Pursuant to section 60 of the Land Act 1948, the Grantor grants to the Grantees in perpetuity from the Commencement Date a right of way over the Easement over the Easement Land which grant includes together with the rights and powers set out in the Fourth Schedule to the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 as are applicable to grants of rights of way, unless otherwise modified in this Deed.
- 2.2 The grants to HMQ and CHBDC are easements in gross. The grants over Area D are limited to each Grantee in their respective capacities as owners of land in Blackhead township, and may be assigned by HMQ and CHBDC to any assignee or transferee of land in Blackhead township currently owned respectively by HMQ and CHBDC. The grants over Area G are intended to include public access.
- 2.3 The grant to Gordon is appurtenant to the land in CFRs HBA2/219, HB91/53, HB91/51, HB91/52 and HBJ3/621 and HBL1/409 (excluding any parts of the land in this CFR which may in future vest as roads or reserves).

2.4 The grant to Hunter is appurtenant to the land in CFR HB46/287 and HB46/288.

~~3.0~~

3.1 In consideration of the Grant of Easement in this Deed:

(a) The Grantee must pay the Grantor \$1.00 plus GST (if demanded).

(b) The Grantee must meet the obligations imposed by this Deed.

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## 54 COSTS

The Grantee must bear all costs for preparation ~~and~~ registration and enforcement of any provisions of this Deed, (including the Grantor's legal costs of up to \$3,000 plus GST), and for any formation or installation of any structures needed in order to exercise the rights granted within.

**65 OBLIGATIONS ON GRANTEE**

**6.15.1** The Grantee must only use vehicles suitable for the terrain over which the Easement is granted and must at all times in the exercise of their respective rights take all reasonable precautions to guard against danger on the Easement Land.

**6.25.2** The right granted does not include a right to park any vehicle within the Easement Land areas, and the Grantee must not obstruct in any way passage through the Easement Land areas.

**5.3** The Grantee must ensure that as little damage or disturbance is caused to the surface of the Easement Land and/or the Grantor's Land and that the surface is restored as nearly as possible to its former condition prior to the Grantee's use pursuant to this Easement and any other damage done by reason of the activities permitted on the Easement Land by this Deed is similarly restored.

**5.4** The Grantee except HMO is responsible equally for the repair and maintenance of the easement facility, and for the associated costs, so as to keep the surface of the Easement Land in good order and to prevent it from becoming a danger or nuisance. Clause 11(2) of Schedule 4 to the Land Transfer Regulations 2002 does not apply to the Easement.

**6.35.5** Each Grantee must, at its cost, repair any damage to the Grantor's Land, including the tracks, fences, gates, drains, buildings or other structures, or any of the Grantor's fences or other structures which is damaged directly or indirectly by the Grantee, in the course of exercising the rights granted herein.

**6.45.6** No Grantee may obstruct the Grantor or any of the Grantor's agents, employees or contactors carrying out any activities on the Grantor's Land including the Easement Land.

**5.7** Each Grantee must at all times comply with all statutes and regulations, and any rules in the Central Hawke's Bay District Council's District Plan or any of that Council's bylaws which affect the exercise of the rights granted herein. The Grantee covenants to obtain all approvals, consents and authorisations at its own cost as are necessary for the Grantee to lawfully conduct the activities permitted by this Deed, including compliance by the Grantee's servants, employees and invitees entering upon the Easement Land from time to time.

**5.8** The Grantee shall at all times use its best endeavours to keep the Easement Land clear of noxious weeds, pests, disease and contaminants resulting from the Grantee's exercise or attempted exercise of its rights under the Easement.

**5.9** The Grantee will comply with all obligations imposed on the Grantee at law as the person in charge of a place of work and will be responsible for

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the health and safety of any person who enters on any part of the Easement Land and/or the Grantor's Land at the request of the Grantee.

5.10 The Grantee shall take all practicable steps (as far as is legally possible) to ensure that any obligations imposed on an owner of land under the Health and Safety in Employment Act 1992 are complied with at all times and shall comply with any reasonable obligations imposed by the Grantor regarding the mitigation of hazards and the health and safety of persons on the Grantor's Land and/or the Easement Land.

~~7.0~~

~~It is the responsibility of the The Grantee~~ except HMQ is responsible for the repair and maintenance of to maintain at their expense any access road or roads required for the exercise of the rights granted in this Deed herein, and for the associated costs.

**7 NO GRANTOR WARRANTY**

7.1 The Grantee acknowledges that it has entered into this Deed in reliance upon its own judgement and not in reliance upon any representations or warranties made by or on behalf of the Grantor as to the suitability of the Easement Land for any purpose or otherwise.

**98 INDEMNITY**

8.1 Each Grantee except HMQ hereby indemnifies the Grantor or any lessee of the Grantor of the Grantor's Land against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor or lessee in connection with this Deed or as a direct result of the exercise of rights by that Grantee or any breach by that Grantee of their obligations, undertakings or warranties contained or implied in this Deed.

8.2 The Grantee acknowledges that this Deed is granted on the basis that the Grantee and any of its invitees when they enter and/or use the Easement Land by virtue of this Easement, do so strictly at their own risk and the Grantee shall indemnify the Grantor from and against any action or claim made by any person the Grantee permits to enter into and upon the Easement Land.

**109 EXCLUSION OF GRANTOR'S LIABILITY**

The Grantor holds no liability in contract, tort or otherwise in relation to any aspect of this Deed. This exclusion of liability extends to consequential loss, anything arising directly or indirectly from the Deed, and any activity of the Grantor on the Grantor's Land.

**1110 TERMINATION**

While it is intended by the parties that this easement is granted in perpetuity, the Grantor reserves the right to terminate the easement in

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the event of any continued breach by any Grantee of the terms and conditions of this easement, subject to the Grantor giving that Grantee reasonable notice of the breach, reasonable time to remedy that breach, and reasonable notice of a subsequent intention to terminate this easement for continued unremedied breach.

**11 DEFAULT**

If the Grantor or the Grantee does not meet its obligations specified in this Deed (Defaulting Party):

- (a) the party not in default (Non-defaulting Party) may give the Defaulting Party written notice (Default Notice) advising the Defaulting Party of the default and requiring the Defaulting Party to meet the obligation within 10 Working Days after service of the Default Notice;
- (b) if the Defaulting Party has not met the obligation within 10 Working Days after service of the Default Notice, the Non-defaulting Party may:
  - (i) meet the obligation; and
  - (ii) for that purpose, enter the Grantor’s and/or Easement Land;
- (c) the Defaulting Party is liable to pay the Non-defaulting Party the cost of preparing and serving the Default Notice and the costs incurred in meeting the obligation; and
- (d) the Non-defaulting Party may recover from the Defaulting Party any money payable under this clause as a debt.

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**12 REGISTRATION**

This Deed may be registered pursuant to section 60 of the Land Act 1948 and the parties will do all things necessary to enable registration (but at the cost of the Grantee).

**13 GRANTOR’S RIGHTS OF DELEGATION**

The Grantor may delegate all or any rights, benefits or obligations conferred by this Deed; provided that the exercise of any such rights, benefits or obligations by that person shall not limit the liability of the Grantor in the performance or observance of the provisions of this Deed.

**14 DISPUTES**

In the event of any dispute between the Grantor and any of the Grantees, the disputing parties must endeavour to resolve that dispute by mediation or alternative dispute resolution. If any Grantee remains aggrieved by any decision by the Grantor, that Grantee may apply for a re-hearing of

the Grantor's decision pursuant to section 17 of the Land Act 1948 and must observe the notice provisions therein.

15 **NOTICES**

Any notices required to be given by any of the parties may be given to the party on whom or which notice is to be served by letter, facsimile transmission, or email addressed to the party being notified. Concurrent with the signing of this Deed, all Grantees must supply the Grantor with the relevant details to enable notices to be served.

16 **SEVERABILITY OF CLAUSES**

If any part of this Deed is held to be illegal, void or unenforceable, that holding will not impair the enforceability of the remaining parts of this Deed which remain in full force.

17 **NO WAIVER**

17.1 A waiver of any provision of this Deed shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.

17.2 A failure, delay or indulgence by one party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

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**EXECUTION**

**Signed** for and on behalf of **The Commissioner of Crown Lands** under the Land Act 1948 by .....

in the presence of

.....  
Witness signature

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Full name (please print)

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Occupation (please print)

.....  
Address (please print)

**Signed** for and on behalf of **Her Majesty the Queen** by .....

in the presence of

.....  
Witness signature

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Full name (please print)

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Occupation (please print)

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Address (please print)



**Signed** for and on behalf of **Central  
Hawke's Bay District Council** by

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in the presence of

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Witness signature

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Full name (please print)

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Occupation (please print)

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**Signed** for and on behalf of  
**F T Gordon Holdings Limited** by:

.....  
Director

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Director

.....  
PLEASE PRINT NAME

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**Signed by Gretchen Mary de Visne  
Hunter** in the presence of

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Gretchen Mary De Visne Hunter

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Witness signature

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Full name (please print)

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Occupation (please print)

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Address (please print)

**Signed by James Patrick Gallagher** in  
the presence of

.....  
James Patrick Gallagher

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Witness signature

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Full name (please print)

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