

# RE: AS 3348 Closure of Part Opawe Road Manawatu

**From:** Wendy Thompson <Wendy.Thompson@mdc.govt.nz>  
**Received** Friday 13 May, 2022 02:35 pm  
**To:** Kevin Ross <Kevin.Ross@walkingaccess.govt.nz>  
**Subject:** RE: AS 3348 Closure of Part Opawe Road Manawatu  
**Attachments:** Proposed Easement Terms\_Opawe Road.pdf  
**Associations:** 4195 - Access to Ruahine Forest Park. Alternative access to Opawe Road [3348]

Hi Kevin

Proposed Easement terms as requested.

Thanks

Wendy

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**WENDY THOMPSON | Strategic Infrastructure Planner**  
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**From:** Kevin Ross  
**Sent:** Thursday, 12 May 2022 12:59 pm  
**To:** Wendy Thompson  
**Subject:** AS 3348 Closure of Part Opawe Road Manawatu

Hi Wendy,

I'm very sorry to be bothering you at present, but I have been unable to talk to anyone else at the Council regarding the closure of Opawe Road. I have spoken to both the Roding and Parks Managers, who have advised me to email you in preference to contacting The Property Group Ltd, who have done the work on the Road closure procedure.

Firstly, thanks for notifying the Commission directly of the road closure. It is much appreciated.

As you will be aware, the closure of part of Opawe Road has been a highly controversial proposal that has been around for a considerable period of time. The NZ Walking Access Commission has been approached a number of times, in the past, regarding the possibility. Despite approaches to the Council, the Commission has been continually advised that the proposal was not under consideration. It may be that this request for closure has only recently been received.

The Commission is required, by our legislation, to ensure enduring access in this location, to the Ruahine Forest Park, is retained, with as few restrictions as possible. Access to the Ruahines is also a priority for the Department of Conservation. Obviously, a legal road provides the ultimate in access rights, but we accept that this is not always possible or practical.

Access to the Forest Park is becoming more and more difficult which makes retaining the existing legal access points even more critical. I understand that the current road alignment runs close to buildings on the adjacent property and an alternative easement, or right-of-way, has been negotiated with the owner of the property that adjoins the Road.

However, the Commission is currently unaware as to the conditions applying to the easement/right-of-way. Before we can consider the proposed replacement access, or give advice to any other party, the Commission is keen to be advised of the conditions applying to the proposed access, and keen to understand the obligations or responsibilities that will apply to the Manawatu District Council as Grantee. Can you please provide the conditions to the Commission as soon as practical so that we can better evaluate the closure proposal.

Unless the Commission is sure that alternative appropriate public access to the Ruahine Forest Park is secured by the proposed easement, we must oppose the proposed road stopping.

Also, can you please advise the Commission as to the parties that you have consulted with prior to this notification. Knowing which parties have been involved will help the Commission to understand the rationale behind the current proposals. Should you wish to discuss this matter you can contact me on 0212 466 306.

Thanks again

Kind Regards

Kevin Ross

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## APPENDIX 1 TO DEED

### 1. Interpretation

- (a) In this Easement Instrument unless the context otherwise requires:
  - (i) "Right of Way Area" is that part of the Servient Tenement subject to the right of way easement described in Schedule A herein.
  - (ii) "this Easement Instrument" means the within instrument.
  - (ii) "Working Day" means any day when registered banks in New Zealand are open for business in Wellington however does not include Saturday or Sunday.
- (b) References to clauses are references to clauses in this Instrument.
- (c) Expressions defined in the main body of this Instrument have the defined meaning in the whole of this Instrument including the background.
- (d) Clause and other headings are for ease of reference only and do not affect the interpretation of the Instrument.
- (e) References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.
- (f) Singular words include the plural and vice versa.
- (g) Obligations and covenants to be complied with by more than one person shall bind those persons jointly and severally.
- (h) All references to legislation are references to New Zealand legislation and include also subordinate legislation, and re-enactment of, or agreement to, that legislation and all legislation passed in substitution for that legislation.

### OPERATIVE PARTS

- 2. The Grantor hereby grants by way of a perpetual right of way easement in gross for the benefit of the Grantee the easement rights as outlined below which shall be utilised for the purpose of a public walkway and access to the Ruahine Forest Park.
- 3. The following persons shall have the right to pass and repass and perform any activity that is reasonably incidental to that passing and repassing over the Right of Way Area;
  - (a) The Grantee together with the Grantee's employees, agents, contractors, licensees, invitees; and
  - (b) Any member of the general Public.
- 4. The Right of Way Area will be a grassed area, fenced to the point shown as Schedule B attached to this Easement Instrument, and with no more than two gates entering onto the

Right of Way Area and a stile to facilitate the crossing of any fences. The fencing, stiles and gates will be provided and maintained at the sole cost of the Grantor. There shall otherwise be no obligation on the Grantor and Grantee to fence the Right of Way Area.

5. The following acts are prohibited on the Right of Way Area:
  - (a) Wilfully damaging or interfering with any structure adjoining or on the Servient Tenement including any building, fence, gate, stile, marker, bridge or notice.
  - (b) Wilfully damaging or interfering with any machinery, equipment or vehicle situated on or adjoining the Servient Tenement.
  - (c) Wilfully interfering with or disturbing any lawfully permitted livestock adjoining or on the Servient Tenement.
  - (d) The lighting of any fire.
  - (e) Discharging any firearm.
  - (f) Camping.
  - (g) Wilfully damaging or removing a tree or plant (unless in accordance with the Noxious Plants Act 1978, Biosecurity Act 1993) or arising by way of the Grantee exercising its rights pursuant to this Easement Instrument.
  - (h) The passing over the Right of Way Area with any dog, horse, motorbike or vehicle including any electric bike or vehicle.
  - (i) Wilfully endangering, disturbing, or annoying a user of the Right of Way Area.
6. The Grantee will take all reasonable steps to ensure that members of the public are notified of the extent of the Grantee's obligations under clause 5 by way of signage. The Grantor acknowledges that this is the extent of the Grantee's obligations under clause 5 with respect to use of the Right of Way Area by the public and agrees to the erection and maintenance of such signage by the Grantee.
7. The Grantor and the Grantee will not be responsible for any breach of the Easement Instrument caused by a member of the public.
8. The Grantee may, at the Grantee's entire discretion:
  - (a) Erect any stiles, fences, signage and/or markers on the Right of Way Area including for the purpose of identifying the line of the walkway.
  - (b) Carry out physical works to improve the surface of the Right of Way Area.
  - (c) Carry out repair and maintenance to the Right of Way Area.
9. This Easement Instrument shall not prevent the Grantor taking access over the Right of Way Area, including allowing sheep (but not cattle) to de-pasture on the Right of Way Area and including the driving of cattle through the gate accessing the unformed road at the end of the right of way, as shown in Schedule B attached to this Easement Instrument.

10. The Grantor will be responsible for fencing the Right of Way Area in accordance with clause 4, managing pasture growth and weed control through grazing of the Right of Way Area with sheep (but not cattle), and maintaining the Right of Way Area, including keeping the Right of Way Area clear of obstructions. Where maintenance of the Right of Way Area:
- (a) Is attributable to the Grantor and the Grantee determines to carry out the maintenance then this shall be at the sole cost and responsibility of the Grantor;
  - (b) Is partly attributable to the Grantor and the Grantee determines to carry out the maintenance then this shall be met by the Grantor to the extent that the maintenance is attributable to any act of the Grantor.
11. Notwithstanding clause 5 above the Grantor and Grantee may bring machinery onto the Right of Way Area for the purposes of carrying out any works, repair and maintenance.
12. The Grantee may close the Right of Way Area if it is satisfied on reasonable grounds that the Right of Way Area should be closed for safety reasons, during an emergency, for maintenance or development work on the Right of Way Area or at the request of the landholder of land adjoining the Right Of Way Area. The Right of Way Area must not be closed for any longer than the Grantee considers necessary. The Grantee must:
- (a) notify the Grantor in advance of the closure (if advance notice is reasonably practicable) or immediately after the closure (if advance notice is not reasonably practicable); and
  - (b) notify members of the public of a closure by signs erected at all points at which the Right of Way Area could be entered and by public notice in a local newspaper.
13. All signs and notices provided under clause 12 must specify the name of the Right of Way Area, the period during which the Right of Way Area will be closed, and the reason for the closure. A closure will not be invalid because a notice did not include this information, or if the notice required under clause 12(b) was not published or was published late.
14. The Grantee may surrender this Easement Instrument at any time determined by the Grantee following public notice and a period of consultation by registering an appropriate Surrender instrument with Land Information New Zealand. On doing so the Grantee will notify the Grantor of the same in which case the Grantee will remove any signage and notices located on the Right of Way Area by the Grantee. The Grantee shall not be required to remove any further works or reinstate the Right of Way Area whatsoever including removing any fences, gates or works undertaken to the surface of the Right of Way Area.
15. The Grantor shall not take any proceedings, make a claim, join any proceedings or claim, or charge, account for, or seek payment or set-off of any kind, against the Grantee, whether in respect of any costs, charges or expenses incurred, or losses or damages suffered, for compensation or other relief whatsoever, directly or indirectly arising from:
- (a) The exercise by the Grantee of any rights, remedies or powers under this Easement Instrument, or as Territorial Authority for the District within which the Land is situated; or
  - (b) The actions of, or any harm to, any member or the general public taking access over the Right of Way; or

- (c) The Grantee or any employee, agent or contractor of the Grantee complying with orders or instructions given by, or for, the Grantee in accordance with this Easement Instrument.
16. The Grantor acknowledges that to the extent the Right of Way Area is a place of work for the purposes of the Health & Safety at Work Act 2015, the Grantor (and any permitted successors) shall ensure, at all times, that they comply with the provisions of that Act or any successor legislation.
17. To the extent permitted by law the Grantor and, for the purpose of clarification, the Grantor's permitted successors in title agree to unconditionally indemnify the Grantee for any losses, damages, expenses and costs whatsoever incurred by the Grantee arising due to any:
- (a) Breach by the Grantor of any provisions in this Easement Instrument.
- (b) Breach by the Grantor of any statutes, regulations, bylaws, and codes of practice that are applicable to the Right of Way Area and any related works.
18. Where there is any conflict between the provisions of the Fifth Schedule to the Land Transfer Regulations 2018 and the provisions of the Fifth Schedule to the Property Law Act 2007 then the provisions of the Fifth Schedule to the Land Transfer Regulations 2018 shall prevail.
19. Where there is a conflict between the rights, powers, terms, covenants or restrictions herein ("the modifications") and the provisions of Schedule 4 to the Land Transfer Regulations 2002 and/or the provisions of the Fifth Schedule to the Property Law Act 2007 then the modifications shall prevail.
20. Any dispute or difference which may arise between the Grantor and the Grantee concerning the interpretation of the Easement Instrument or relating to any other matter arising under it, will be actively and in good faith negotiated by the Grantor and the Grantee with a view to an expedient resolution of such differences. Further:
- (a) If the Grantor and Grantee cannot resolve the dispute or difference within 7 Working Days of any such dispute or difference arising then, unless otherwise expressly provided herein, they will, without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using mediation.
- (b) If the Grantor and Grantee cannot resolve any dispute or difference between them using mediation then the dispute or difference shall be settled by reference to arbitration in accordance with clause 20 below.
21. Any dispute or difference not able to be resolved by agreement or with reference to mediation in accordance with the foregoing clauses of this Easement Instrument shall be submitted to arbitration. Arbitration will be overseen by a single arbitrator, if the Grantor and Grantee can agree on one, otherwise two arbitrators (one to be appointed by the Grantor and one to be appointed by the Grantee) and their umpire who shall be appointed by the arbitrators prior to them entering upon the arbitration. The appointment(s) and arbitration will be carried out in accordance with the provisions of the Arbitration Act 1996 or any act in substitution thereof.
22. The parties acknowledge that all members of the public are beneficiaries for the purposes of Section 12 of the Contract and Commercial Law Act 2017 and may enforce the rights provided to them in clause 3 of this Easement Instrument. For the avoidance of doubt, this includes

the right to challenge whether any closure of the right of way by the Grantee has been or will be for longer than is necessary.

23. In the event a member of the public exercises the right contained in clause 21 above then:
  - (a) they must initially follow the process contained in clause 19 above as if that person was the Grantee for the purpose of that clause; and
  - (b) notify the Grantee of the dispute raised.
24. On receiving notice pursuant to clause 22, the Grantee, at the Grantee's sole discretion, may elect to join the dispute resolution process as an interested party. In the event the Grantee elects to be party to the dispute resolution process, the Grantee shall meet its own costs and neither the party that raised the dispute, or the Grantor shall have any claim against the Grantee for any additional costs involved as a consequence of the Grantee's involvement.
25. Notwithstanding clause 23, if the dispute raised by a member of the public is whether any closure of the right of way by the Grantee pursuant to clause 12 has been or will be for longer than is necessary:
  - (a) the Grantee must participate in the dispute resolution process; and
  - (b) The Grantor, at the Grantor's sole discretion, may elect to join the dispute resolution process as an interested party.