SUBDIVISION PLAN GUIDE

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

VERSION 2.0
3 February 2025

Kāinga Ora
Homes and Communities

Subdivision Plan Guide

A reference guide:

- for surveyors drafting subdivision scheme plans and land transfer plans for Kāinga Ora projects; and
- to assist Development Managers, Project Managers, Planners and others involved in the planning, strategy and decision making for Kāinga Ora projects.

Contents

1 Introduction

This guide is produced by the Kāinga Ora–Homes and Communities Subdivisions team to advise on the preferred approach to a number of common matters related to the design of and execution of Kāinga Ora developments, specifically in relation to matters that have titling implications. This includes scheme plans and land transfer (LT) plans – also known as survey plans.

The Subdivisions team provides guidance on land and title matters and reviews these plans to ensure that Kāinga Ora operational and asset management requirements are provided for on our records of title and that land sold to developers complies with any contractual delivery obligations, where relevant.

This document provides guidance and reasoning on our preferred approach. It should be used by surveyors and/or civil consultants working on Kāinga Ora developments when preparing scheme plans for subdivision consent applications, LT plans for Resource Management Act 1991 (**RMA**) 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 questions when working on a Kāinga Ora project and will also provide context as to when and why the recommended approach is taken.

While developments are generally wholly owned and managed by Kāinga Ora, the titling strategy is one that seeks to future proof properties in terms of set up and management, but is balanced with our needs and objectives in providing social housing.

Icons: The following icons have been used throughout this guide to highlight areas considered particularly relevant to the associated readers, however, it may be that other sections are also relevant to you for a given property:

D	Designer / Architect	DM	Development Manager
PM	Project Manager	SV	Surveyor

Disclaimer

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.

2 Fee simple or unit titles? D PM DM SV

While in most cases it will be obvious, this is the first titling question to be answered for a development. Generally, a dwelling that is not physically situated under or above other dwellings, should have a fee simple title – and all others, essentially apartment blocks, should be part of a unit title development.

At a very basic level, the reasoning behind that split is:

- that the Unit Titles Act 2010 imposes obligations and compliance requirements on owners of units that are simply not necessary where there is no, or limited, physical connection between buildings. Simple matters like party/shared walls for terraced houses can be addressed by easements or covenants; and
- conversely, where dwellings are constructed as an apartment block, the obligations and compliance requirements imposed by the unit titles legislation are considered necessary to provide clarity, systems and procedures for payment of shared costs and decisions about maintenance and repair of shared amenities. The unit titles legislation was passed specifically because apartment buildings share amenities and structural support in a way that is too complex to be addressed appropriately with easements and covenants alone.

Some developments have a mix of fee simple lots and unit title developments (example below). Early discussions with Subdivisions team (subdivisions@kaingaora.govt.nz) and Development Planning team (developmentplanning@kaingaora.govt.nz) should confirm preferred titling arrangement and implications.

Where that occurs:

- the underlying land used for the unit title development should be a fee simple lot, usually this would be created as part of a ‘stage 1’ fee simple subdivision that creates a super lot for the unit title development and the unit plan is subsequently deposited as ‘stage 2’ (even if construction occurs concurrently with construction on the adjacent freehold lots); and
- if there is an access lot that provides access to the unit title development, that access is at the fee simple level, that is, it is not ‘common property’ (as common property all sits within the unit title development).

Example of mixed development (fee simple lots and unit title super lot (lot 7))

3 Fee simple subdivision guide

3.1 Services and utilities D PM DM SV

Services and utilities easements should be shown on the scheme plan (either as existing, mandatory or optional easements, or easements to be surrendered – see below for more detail). After location and ownership of all civil infrastructure and utilities is confirmed, any new assets should be shown on the draft LT plan.

Category	Guidance	Reasoning
Ownership of Existing Civil infrastructure	**Design/planning stage** Review existing plans (or as-builts, if available) to confirm existing infrastructure ownership (establishing what is private and what is public).	To establish what assets could be connected to or surrendered/replaced (and when) during the development.

Category	Guidance	Reasoning
Easements in gross for utilities	**Design/planning stage** Review proposed works and need for utility infrastructure connections (for example, telecommunications, electricity) to be installed as part of the development to determine whether an easement in gross should be provided to the utility provider. **Survey stage**: Check as-builts and any agreements with utility providers to confirm the location of utility assets. If ownership of assets is unclear, the surveyor should confirm easement requirements with the utility provider and the Subdivisions team. **Both stages**: If an easement in gross is required, ensure the name of the utility provider is stated in the scheme plan or survey plan (as applicable) in full and that each easement purpose is separated out in the easement memorandum (that is, table of required easements).	If utility providers are going to own assets on private land, they require easements in gross to be granted to them to give them rights to locate the assets there and to enable them to access and maintain those assets. In addition, a subdivision consent will include a condition that requires those easements in gross to be granted before titles can be issued – identification of the easements in gross will form part of the application for subdivision consent. Identifying where easements in gross are required during design is a basic early step to ensure the relevant providers will make the connections needed. Once identified and included in the subdivision consent, the path to the grant of the easement is well understood and reasonably straight forward.

Existing easements to be removed	Review existing easements or other interests registered on the head titles (for example, party wall, pipeline certificate, consent notices) to determine whether these existing interests can or should be surrendered and update the easement table (as proposed surrenders) accordingly.	To provide clarity for the Subdivisions team, when it comes to titling, as to what interests need to be surrendered and when. If redundant easements remain on title, they may be inconsistent with the built form. For example, a drainage pipe that used to serve a neighbouring property, but no longer will (as a result of the Kāinga Ora development), may be protected by an easement. If the easement is left on the title that neighbouring property will technically still have the right to use that land for a drainage pipe, which can affect the value of the Kāinga Ora land. Early identification of that may make it easier to ensure the old easement is surrendered in conjunction with the new drainage connection. A less important, but still valid, example is a party wall easement for a wall that is to be removed. While the practical impact of the easement remaining on the title will not be significant while Kāinga Ora owns the property, it creates a 'messy' title, and if the property is sold in future, it would be considered a defect (which could affect or prevent the sale).
Easements involving neighbours	Minimise the need for easements that benefit or burden separately owned adjacent property. If essential, record these in the survey plan schedule rather than	On a number of occasions easements involving third parties have caused significant delays to the lodgement of Kāinga Ora subdivision dealings and have

	memorandum of required easements.	risked the lapse of a s223[1] certificate in circumstances where the subdivision consent has also lapsed – this is despite the fact that easements are usually for the benefit of the third party. Easements in a schedule can be easily removed from the plan if the third party does not engage or causes a delay.
Easements for new utility provider assets	Consider, in consultation with utility providers and council, whether these new assets (for example, substations/transformers) could be placed in the legal road reserve (which can sometimes be achieved by adjusting the lot boundary to exclude the relevant area and vest it as road). **Note**: This does not apply to standard utility easements for power, water, sewage connections to and from the road, over driveways to residential lots.	This is to minimise, where possible and acceptable to the provider, new utility assets (normally transformers/substations) being placed above ground and within residential lots. Utility asset owners can use statutory rights to access and maintain assets within the road – rather than having an above ground asset within a residential property boundary (which may need to be fenced off and can make the land unusable for residents).

1 Section 223 of the RMA relates to the approval of a survey plan by the territorial authority. Usually, an approved survey plan must be deposited within 3 years of the issue of a s223, subsequent s223 certificates can be obtained where a new plan is submitted, but only if the subdivision consent has not lapsed. If a s223 certificate expires and the subdivision consent has lapsed a new subdivision consent will be required to complete titling.

Designing for drainage pipes and easements	Drainage easements should not be created for above ground fixtures such as gutters or downpipes. Buildings on freehold lots should be designed in a manner that ensures stormwater reaches the ground before it passes onto another lot. Where it is not possible to avoid shared drains above ground, or where a decision has been made to use shared drains for other reasons, the only real alternative is to use a 'blanket' easement that covers a wide area.	If gutters or downpipes are shared between freehold lots, they cannot be neatly/feasibly identified by survey, so the land area affected by the easement becomes much wider than is necessary, which creates unnecessary restrictions on the use of the land.
	All underground pipes and facilities that will service another lot should be surveyed prior to being backfilled.	If underground pipes and facilities are not surveyed the land area subject to the drainage easement will need to be much wider than is necessary for the drains, which again creates unnecessary restrictions on the use of the land.
Survey plan to show as-built services	Where lots are adjacent to access lots but: • do not include a share of the access lot; and • have direct service connections to the road, utility easements should not be granted over the access lot simply to future proof those lots.	Where such easements are granted, it is often assumed that the utility connections physically use those routes – which causes confusion in situations where they do not. The future proofing is unnecessary and, on balance, is not preferable.

3.2 Access lot versus right of way D PM DM SV

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

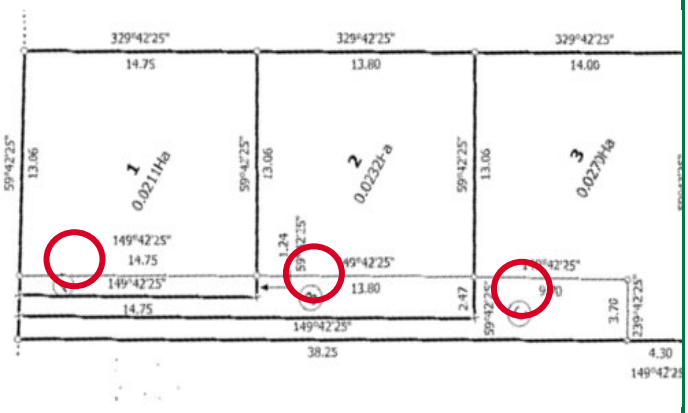
- access lot[2]
- right of way (ROW).

Access lots are held in undivided shares by the owners of lots that require them for vehicle access. Where a development consists of both freehold and unit title lots however, the access lot ownership shares should reflect the total number of dwellings/homes rather than the number of fee simple lots (as the unit title will usually be a freehold super lot).

The preferred approach by Kāinga Ora is as follows, if:

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

The following provides a comparison of these methods.

Access lot	ROW
	
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.	**Overview:** • Each lot is granted a ROW over each burdened property 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.

2 Known as jointly owned access lot (JOAL) or commonly owned access lot (COAL)

• An access lot will not need a typical ROW created over it for use by the access lot owners.	
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 a ROW over easement area C on Lot 3. • Lots 1 and 3 have a ROW over easement area B on Lot 2. • Lots 2 and 3 have a ROW over easement area A on Lot 1.

Access Lot Management Entity D PM DM SV

In some cases where fee simple subdivisions are progressed that would provide for establishment of a jointly owned access or amenity lot, councils may seek to require through the subdivision consent a form of management entity to be established to ensure the ongoing maintenance and repair of common assets within these lots following completion of the subdivision. This may also be the case where private refuse collection is proposed.

Kāinga Ora has preferred methods of providing for these types of arrangements, where necessary, from a maintenance perspective. Where commonly owned lots are proposed containing relatively extensive common assets requiring ongoing maintenance, discussion with the Kāinga Ora Development Planning team (developmentplanning@kaingaora.govt.nz) and the Subdivisions team (subdivisions@kaingaora.govt.nz) prior to lodgement of the subdivision consent application is recommended to ensure an appropriate mechanism can be agreed to manage consenting requirements.

Access Lot General Guidance D PM DM SV

Lots that do not own part of the access lot (for example, because they have separate vehicle access) will not automatically have the right to benefit or use the access lot and won't be responsible for maintenance costs. Because of this, when planning the layout of a subdivision, designers should consider and identify whether any such lots (that won't own part of the access lot) should have any rights over the access lot - for example, to access maintain their lot or a pedestrian right of way to a back gate - see the next section.

Small parts of access lots have at times, in the past, been used to serve as common areas for rubbish collection, storage, bike parking, landscaping, planter boxes and lighting. Because an access lot

includes the right to have the whole area kept clear of obstructions, any such above ground permanent items should be limited (see 3.5 Shared Amenities).

Access Lot Covenants / Easement Terms PM DM SV

Where an access lot is to be created that is to be held with six or more lots, common practice by Kāinga Ora is to register a land covenant or easement against all titles in the development to establish the terms of use for the access lot.[3] Key terms for an access lot covenant include conditions of use (for example, speed limits), rights to create additional service easements when required, maintenance obligations and how lot owners must contribute to costs associated with the access lot.

Letterbox placement in access lot D PM DM SV

Where a lot has its own road frontage and is not an owner of an access lot in the development, its letter box should be on its boundary rather than at the entrance to the access lot. Where grouped letter boxes are included in a shared access lot refer to 3.5 Shared amenities.

3.3 Easements on an access lot D PM DM SV

Easements on an access lot gives the owner the following rights, as per section 298 and Schedule 5 of the Property Law Act 2007. This includes the right to:

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

Therefore, all scheme plans and LT plans will need to include any other easements over the access lot in favour of the benefited lot(s) including but not limited to:

- services and utilities easements
- rights to overhang eaves
- rights of support
- maintenance easements.

The wording for the easement purpose in the easement table must be in accordance with clause 2 Schedule 5 of the Land Transfer Regulations 2018 and/or the current Kāinga Ora Easement Memorandum (attached as Appendix A - Easement Memorandum)

3 While a covenant is unnecessary for as long as Kāinga Ora retains ownership of the lots, in contrast to a resident society, it does not create any active administrative requirements so it can easily be set up in a manner that avoids the need to add controls later.

3.4 Exclusive areas D PM DM SV

For fee simple subdivisions, the carpark / bike park and exclusive bin storage for each lot should be within the boundary of the lot it services (that is, 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 as the lot it services via an amalgamation condition (Figure 1). Parking or other exclusive use areas should not be located within an access lot or ROW.

Visitor car parks should be avoided as it creates difficulties for enforcement and sharing.

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, contact the Kāinga Ora Development Planning team.

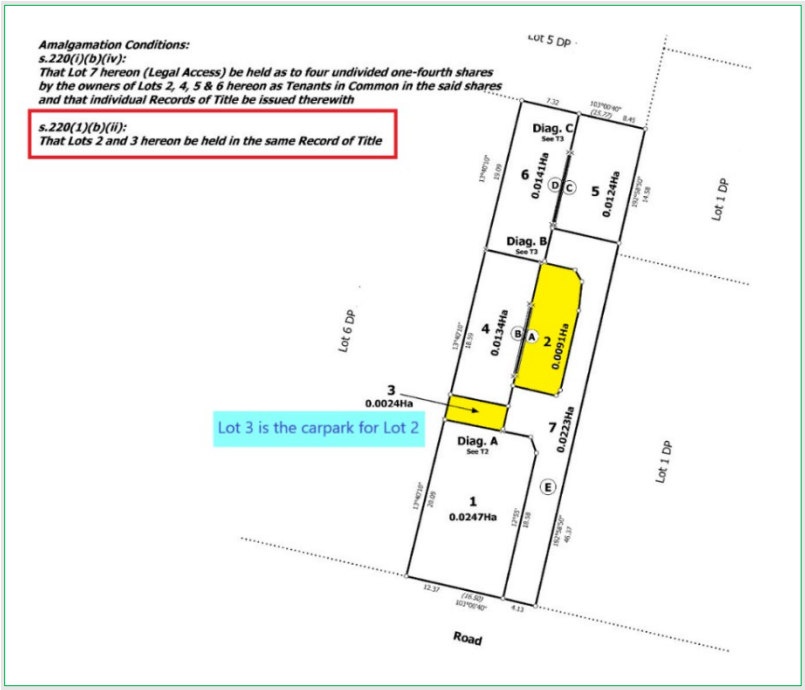


Figure 1: Parking as a separate fee simple lot

3.5 Shared amenities D PM DM SV

Shared amenities within a development are common for a variety of reasons, such as the need to foster a community feel or a lack of amenity space within each lot.

Typically, examples of shared amenities are:

- communal green space, gardens or pocket parks

- lighting
- play equipment
- communal seating
- letter boxes.

Other examples of potential shared amenities are:

- shared (common) rubbish bin storage
- bike parks where charging ports are provided.

Where shared amenities are included as part of the design, depending on their nature and space requirements, they are either:

- physically constructed within part of a residential lot large enough to accommodate the shared amenity in addition to the area allocated to a Kāinga Ora customer (without creating any specific legal rights that would continue beyond ownership by Kāinga Ora) and by limiting the exclusive use area for the residential tenancy to an area smaller than the whole lot (this would mean the amenity would need to be removed if the lot was ever sold); or
- created as a separate lot, jointly owned in undivided shares by the owners of the lots designed to use the amenity (not within an access lot); or
- created within an access lot.

In most cases it is preferable to avoid creating shared amenities within an access lot because all owners of the access lot are required to keep the access lot free from obstructions as it is technically a right of way[4].

Management and maintenance PM DM SV

When Kāinga Ora is the sole owner, in almost all cases, asset management can internally address the management and maintenance of the shared amenities. However, it is good practice for titles to be set up in a way that accommodates separate ownership in the long term to avoid the cost of changes or disputes in future.

Management and maintenance of shared amenities can be addressed by registering a covenant or a common facilities easement against the amenity lot or access lot, if applicable. See commentary at 3.2 above under the heading ‘Access Lot Management Entity’ as there can be some overlap where amenities may also be in an access lot.

Where Kāinga Ora is required to create a resident’s society for an access lot (see above under ‘Access Lot Management’), that entity could also be used to manage shared amenity areas in the same

4 See section 298 of the Property Law Act 2007

development. Generally, our preferred approach is to avoid a resident's society for an access lot and the same should apply to shared amenities.

Where shared amenities are within a single residential lot (described above), Kāinga Ora can internally manage and maintain them, and meanwhile, the residential tenancy agreements should provide for the customer's shared use of the amenity area.

Solar panels PM DM SV

If a proposed fee simple development includes solar panels, then consideration needs to be given to which lot(s) will host the physical solar panels and batteries and which lots will benefit from them (that is, the panels would usually provide electricity for multiple lots).

Our preferred approach is to use easements to provide rights to benefitting lots for maintenance and use of the power, and to deal with allocation of costs.

The easement for solar panels could be a bespoke easement or it could be included in a Shared Facilities Easement. Contact the Kāinga Ora Subdivisions team for guidance as we have a preferred template.

The Kāinga Ora Subdivisions team can guide you if you are considering whether additional easements or covenants are required, such as a Light and Air easement or a covenant adding a height restriction.

Arrangements for unit title developments would be different to those for fee simple developments (that is, body corporate) as the solar panels and batteries would all be on common property and belong to the body corporate. Rules governing use and maintenance would be included in the body corporate rules.

If solar panels have been installed which feed power back to the grid, then you should seek advice from the Tax team for any implications.

Resource consent/building consent conditions and/or terms may also apply for the installation of a solar panel system, or where the solar panel system is installed for water heating purposes.

Communal green space (also known as 'pocket parks'): Communal green spaces are areas of green/outdoor space that are exclusive to a subdivision's residents where the park does not vest in council. A pocket park should be held as a separate lot to be owned in undivided shares by all owners (not part of an access lot).

Bin storage areas D PM DM

Where bin storage areas are shared (that is, they are not contained within the lots that the bins relate to), from an asset and tenancy management perspective, it is important to Kāinga Ora to ensure that the bin areas are adequately designed and fenced off in a manner and size that accommodates the

relevant number of bins and also accounts for the need to access each bin on a regular basis without removing others. Designers should ensure they take this into account when preparing plans and Project Managers should ensure that built form follows the design plans.

3.6 Vesting land as public parks D PM DM SV

Note:
Consult the Development Planning team before pursuing this option.

An alternative to a resident-owned communal green space (see 3.5 Shared Amenities) is to vest green space in council – provided a council is prepared to accept such a vesting. This is usually only an option for parks part of large scale developments. This removes responsibility of management and maintenance of the green space from the residents, however, any member of the public is entitled to use and enjoy the green space. When vesting green space in a council, it can vest as a reserve[5] or in lieu of reserve[6], or be transferred as a fee simple lot (less common[7]).

If vested as a reserve, it will be subject to the Reserves Act 1977 which is more restrictive for the council than if the space is simply vested in lieu of a reserve (where the Local Government Act 2002 applies).

3.7 Zero-lot boundaries D PM DM SV

In fee simple subdivisions, sometimes part of a lot's dwelling is proposed to be on the boundary with another fee simple lot or the access lot - see Figure 2.

Where dwellings are built adjacent to the boundary of another lot, an easement will be required to allow the owner to access and maintain the external walls of the dwelling. Where a dwelling is built adjacent to the boundary of an access lot, an easement will not be required (provided that the lot owner is also a part owner of the access lot).

5 Resource Management Act 1991 (s239(a)) and subject to the Reserves Act 1977
6 Resource Management Act 1991 (s239(b)) - Auckland Council prefers this option
7 A request for the transfer of a fee simple title is more common where a subdivision consent requires the applicant to enter into an agreement with the Council for the transfer of the land.

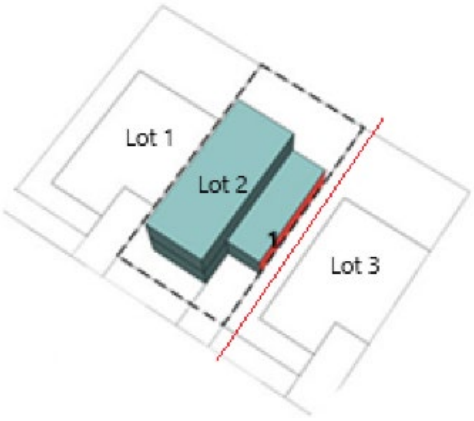


Figure 2: Zero-lot boundary

In this example, part of Lot 2's dwelling (shaded red) is on the boundary with Lot 3. This can be either overhanging eaves or a dwelling wall.

In this situation, the preferred approach is to **adjust the boundary between Lots 2 and Lot 3** (for example by moving it to the red line) so that this portion will be completely within Lot 2 and there is room within Lot 2 to access the eave or external face of the wall without needing access to Lot 3. The wall will still need to be fire rated where the distance between wall and boundary is less than 1 metre.

If this is not possible, **an easement** (a right to overhang eaves or a maintenance easement using the Kāinga Ora Easement Memorandum, depending on what it is) in favour of Lot 2 over Lot 3 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 dwelling.

Conversely, where the relevant eaves / external walls are adjacent to a boundary between the lot and an access lot, neither an easement nor a boundary adjustment is required (provided the title to the lot includes a share of the access lot). In the example in Figure 3, the owner of Lot 2 would be able to access the part of the building that is adjacent to the access lot (Lot 4) for maintenance, without an easement because they own an undivided share in Lot 4.

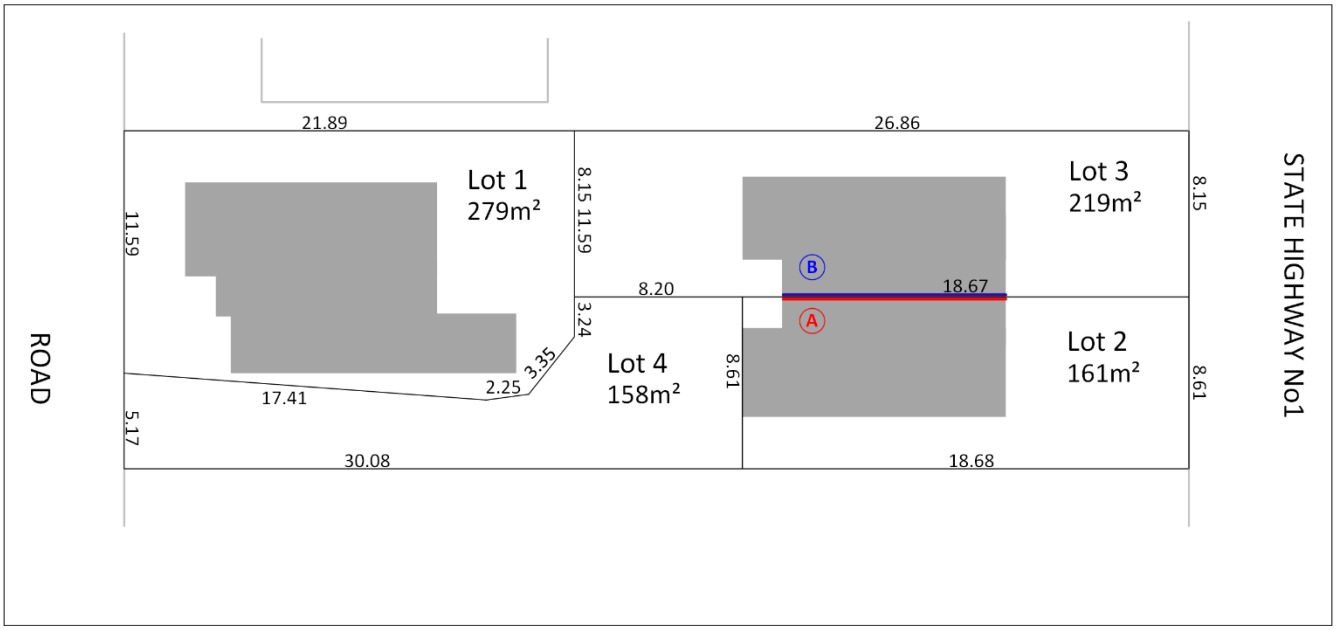


Figure 3: Zero-lot boundary against an access lot

3.8 Retaining walls D PM DM SV

Where retaining walls are required, the following guidelines should be observed to ensure that:

- for boundaries **located within Kāinga Ora development** (see Figure 4) – the structure of retaining walls should be located within only one of the lots (rather than on the boundary line) and it is preferable to have the wall on the lower lot with the upper lot holding easement rights (that is, a right of support and a right to access the lower lot for maintenance);
- for boundaries **shared with adjoining landowners** (see Figure 5) – these are located within the Kāinga Ora development/lot unless the neighbouring lot is located at a lower level and the owner agrees to grant easement rights.

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

Easements for retaining walls D PM DM SV

Ultimately, where retaining walls are constructed can vary greatly. Advice specific to the relevant property and design should be sought from the Subdivisions team before scheme plans are finalised. This is to ensure that boundaries are in the most appropriate place for the correct easements to be granted.

Easements for retaining walls should include a right to support and/or maintenance easement (to be differentiated from a party wall easement). The Kāinga Ora Easement Memorandum (Appendix A) sets out our standard terms for such easements. Party wall easements should not be used for retaining walls.

There may be circumstances for an easement that creates a shared maintenance responsibility and obligation, which can be expressed as a specific percentage value attributed to each property (that is, Lot 1 -30% and Lot 2 - 70% responsibility for maintenance and costs). This is based on the percentage value that the retaining wall also supports or benefits the adjacent property. Contact us for advice in identifying and preparing an easement in such circumstances.

Where an easement for a retaining wall is to be granted by a neighbour, the Kāinga Ora Development Manager or Project Manager will need to obtain the neighbour's agreement in writing (this must be from the owner and not simply a tenant of the property). An agreement should be made before a subdivision consent application is submitted to ensure that the easement does not become a mandatory requirement without the neighbour being bound.

Note:

Retaining walls are not covered under the Fencing Act 1978.

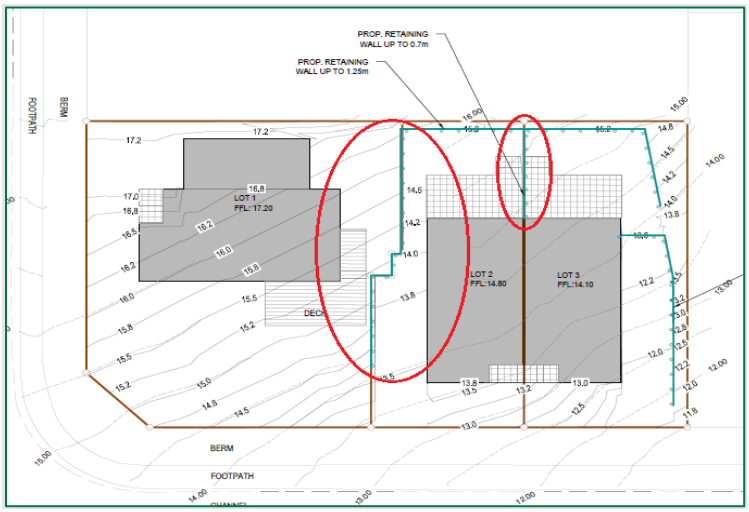


Figure 4: Retaining walls on the boundary within Kāinga Ora development (red circles)

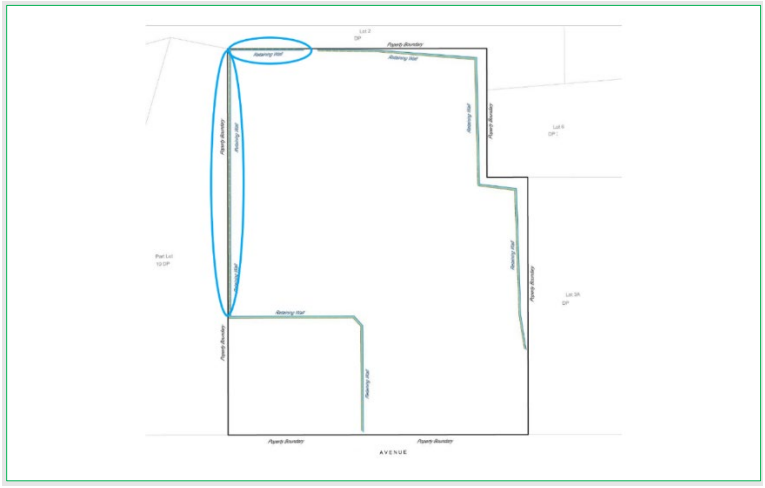


Figure 5: Retaining walls on the boundary shared with adjoining properties (blue circles)

Road vesting PM DM SV

Where land is to be vested as road, the titles must be checked for interests benefitting third parties (usually easements or covenants). All interests will be extinguished upon the plan being deposited and the land being vested as road. Land Information New Zealand (LINZ) requires all parties benefitting from those interests to sign a consent form.

If third parties have the benefit of an interest in the proposed road land, then contact must be made with the place-based community engagement and legal teams, as early as possible, to obtain a signed

consent form. This is because the plan in its current state cannot be deposited without the consent, so the part being vested might have to be reconsidered if those parties refuse to consent[8].

4 Unit title subdivision guide

4.1 Unit title allocations

The following is an indicative guide on how 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**)	Car parks, storage units
Common property	Foyers, roofs, lifts, stairwells or accessways; common areas, shared facilities (including community rooms < 50m²); shared driveways

4.2 Caretaker studios and community rooms PM DM SV

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, consult both the Subdivisions team and the Development Planning team as there may be resource consenting implications. 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 should 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 re-survey of the complex and issuing new records of title and unit entitlements.

8 On several occasions consents have not been obtained in a timely manner and this has resulted in delays to titling. Similar to the comments above (see 'Easements involving neighbours' under 'Utilities and services') this can risk the lapse of a s223 approval and result in the need for a replacement subdivision consent. It is possible to make an application to the High Court to extinguish redundant easements (in whole or part) to enable the vesting of land as road under s316-317 of the Property Law Act 2007, however that can be costly and time consuming.

Note:
Allocating a caretaker studio or community room as a PU needs to be addressed in the associated resource consent application to ensure that relevant fire rating requirements are identified at an early stage. This informs the building consent and ensures flexibility in the future use of that space.

4.3 Easements PM DM SV

- **Easements affecting the freehold interest**: Where there are easements affecting the freehold interest:
  - these are usually dealt with at the freehold stage of subdivision (for example, when combining the freehold titles) rather than at the unit title stage; or
  - if there is no freehold subdivision stage, a separate easement plan should be prepared for lodging prior to the unit plan (unless they are not intended to remain in the event the subsequent unit plan is cancelled).
- **Easements within the unit title development**
  - Easements registered at the unit plan stage, whether over the underlying freehold land, a principal unit, accessory unit or common property, which should exclusively relate to the unit title development, will be extinguished if the unit plan is ever cancelled.
  - When easements affecting the underlying freehold land are to be registered at the unit plan stage, the surveyor should include a plan page showing the easement area on the underlying freehold land, rather than on the common property.

4.4 Carparks PM DM SV

AUs v Common Property

All car parks should be shown as an AU on the scheme plan and subsequently confirmed and allocated at LT plan stage to allow flexibility should changes arise.

Car parks are shown as AUs rather than as common property because:

- it simplifies car park management
- it improves the value and rental income of the PU
- there is less provision or management required in the body corporate's rules as it's not common property
- car parks can be transferred/sold to be held with another PU within the same development which may be beneficial when decisions are made in the future about the transfer of apartments and/or carparks.

Allocation

Prioritisation will be given to:

- accessible units and Fully Universal Design (FUD)
- larger units (with two or more bedrooms)
- lower-level units.

Upper and lower limits

Our preferred upper and lower limits of AU carparks are:

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

Terraced and/or standalone house PU:

In some cases, terrace and standalone houses are part of a unit title complex. For car parks in those cases:

- if physically adjacent to the house, it can be included within the dwelling PU boundary
- If not physically adjacent to the house, their upper and lower limits can be the same as other AU carparks (for apartment PUs).

4.5 Valuer's certificates PM DM SV

Before the application for new titles can be lodged at LINZ, a valuer must be engaged to prepare a certificate of ownership interests under Section 32(2)(b) of the Unit Titles Act 2010 (Form 5 of the Unit Titles Regulations 2011). The valuer must be provided with the latest survey plan, preferably, once LINZ has approved it, which shows the allocation of AU to PU.

4.6 Principal unit boundaries PM DM SV

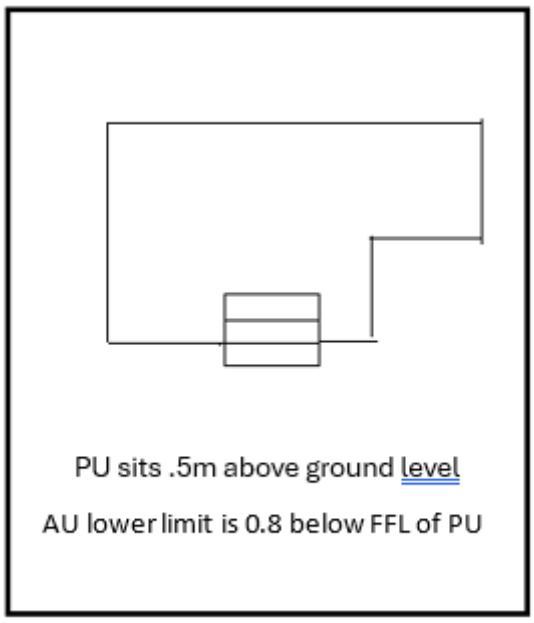
The horizontal and vertical extent of PU boundaries should be shown as follows:

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 PU or AU 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 located 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.

Treatment of outdoor areas: Where the PU sits above ground level and there are steps down to the outdoor area, the outdoor area can be an AU from the veranda:



4.7 Roof ownership PM DM SV

Apartment buildings: In apartment unit title developments roofs must be held as common property - see Figure 6. This reduces the potential damage to the roof by top-level unit owners when they install equipment inside the roof and to prevent the use of roof-space as storage.

This needs to be considered at planning stage due to ceiling fire rating requirements.

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.

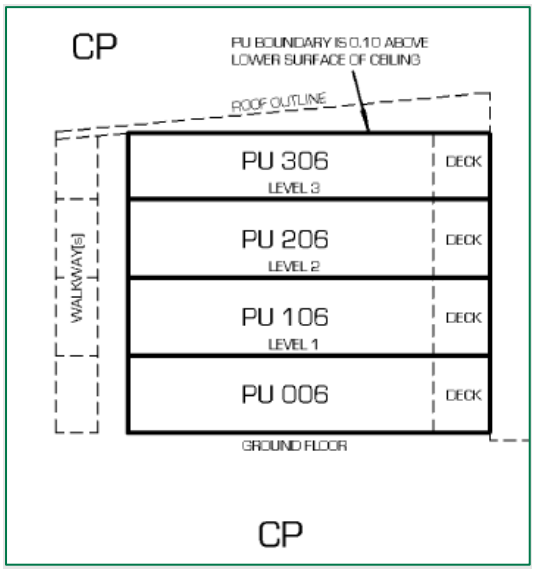


Figure 6: Roof being held as common property

Terraces/duplex/standalone houses: Where a unit title development is comprised of terraces, duplex or standalone houses (whether included as part of an apartment development or not) their upper and lower limits should be different to those for apartment buildings – so that the roof is **within** the PU boundaries and the owner is liable for the repair and maintenance of their own roof.

Where PU is built at ground level		
	Lower limit	**Upper limit**
PU	0.1m below Finished Floor Level (FFL)	Top of roof
AU (Outdoor areas)	0.3m below FFL of PU	

Where PU is built above ground level (The example below refers to a PU where the FFL of .5m above ground level)		
	Lower limit	**Upper limit**
PU	0.5 below FFL	Top of roof
AU (Outdoor areas)	0.8m below FFL of PU	

4.8 Privacy screens PM DM SV

In some unit title subdivisions, there are privacy screens attached to balcony balustrades, which can be located on the inside or the outside – see 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

4.9 Storage lockers PM DM SV

Storage lockers must be marked as an AU and allocated to a PU.

Storage lockers are an AU, rather than Common Property, because:

- they simplify storage management
- they improve the value and rental income of a PU
- storage lockers can only be sold with a PU if they are legally held together.

Our preferred upper and lower limits of AU storage lockers are as below:

- Upper Limit: top of locker ceiling; and
- Lower Limit: top of floor slab.

This is to prevent items to be put on top of the storage lockers which can cause a health and safety hazard. For example, it could be a fire hazard if cardboard is placed on top of the lockers, or safety issue if the items are unsecured.

5 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, contact the Subdivisions team at subdivisions@kaingaora.govt.nz. For any project-related decision making, contact the Development Manager or Project Manager.

6 Document control

Version release

Current and previous versions of this document are stored in our document management system, and are managed by the Technical Writing team. For any queries, contact busdoc@kaingaora.govt.nz

Version	Reason for change
2	Updates to document

SME review

Name	Designation	Date
Kristine Ducey	Team Leader - Transactional Unit	26 November 2024

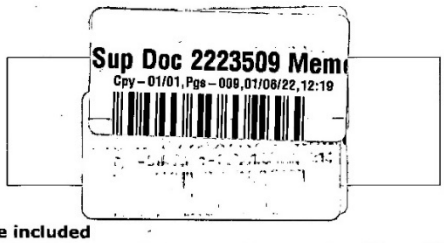
Endorsers

Legal		Date
Mark Dignan	Senior Legal Counsel – Property	26 November 2024
Business Owner		**Date**
Katrina Wilson	Associate General Counsel – Property General Counsel	11 October 2024

Appendix A – Easement Memorandum

Form of Registrable Memorandum

Section 209, Land Transfer Act 2017



Class of instrument in which provisions intended to be included

Easement

Person executing memorandum

Housing New Zealand Limited

The following provisions are intended for inclusion in instruments of the above class:

Easement rights and powers (including terms, covenants and conditions)

1 Interpretation

1.1 In this instrument:

(a) **easement facility** means, for a:

(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.

(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.

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 x he 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

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, **JOANN HILL** of Auckland holding the office of Senior Acquisition Manager, Market Delivery Acquisitions for Kāinga Ora-Homes and Communities

HEREBY CERTIFY:

1. **THAT** by Deed dated 14 October 2021, a copy of which was deposited at Land Information New Zealand under instrument number 12284378.1, each of Kāinga Ora—Homes and Communities, Housing New Zealand Limited, and Housing New Zealand Build Limited appointed me, as the person holding the position of Senior Acquisition Manager, Market Delivery Acquisitions as its attorney on the terms and subject to the conditions set out in the said Deed and the attached document is executed by me under the powers thereby conferred.

2. **THAT** at the date hereof I hold the position of Senior Acquisition Manager, Market Delivery Acquisitions for Kāinga Ora—Homes and Communities.

3. **THAT** I have not received notice of any event revoking the power of attorney.

Dated: 24-5-22

By **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

"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"

Abstract number 12473913.1

Date 01/06/2022