

DATED

14th August

2023

**ALISON JANE PAVLOVICH &
GEOFFREY RAYMOND KING**

("Alison & Geoffrey")

and

MARTIN DEREK HUSSEY

("Martin")

EASEMENT AGREEMENT

Sainsbury Logan & Williams
Lawyers Napier New Zealand

THIS AGREEMENT is dated the 14th day of August 2023

PARTIES

1. Alison Jane Pavlovich and Geoffrey Raymond King ("Alison & Geoffrey")
2. Martin Derek Hussey ("Martin")

BACKGROUND

- A. Alison & Geoffrey are the registered proprietors of the land described as Lot 12 DP 26169 and contained in Record of Title HBW1/496 ("Alison & Geoffrey's Land").
- B. Martin is the registered proprietor of the land described as Lot 1 DP 4533 contained in Record of Title HB144/126 and Lot 2 DP 3239 Record of Title HBH3/595 ("Martin's Land").
- C. The Parties have agreed to grant each other mutual right of way easements over their respective properties in accordance with this Agreement.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION:

Definitions

- 1.1 In this Agreement, unless the context otherwise requires:
 - "**Agreement**" means this agreement and includes all attached schedules and plans.
 - "**Draft Easement Plan**" means the plan attached to this Agreement showing the Easement Land.
 - "**Easement**" means the easement to be registered against Alison & Geoffrey's Land and Martin's Land substantially in the form attached to this Agreement and containing all of the rights set out in that document.
 - "**Easement Land**" means the land marked 'A' and 'B' and 'C' on the Draft Easement Plan. The exact dimensions of the Easement Land are to be determined as set out in clause 3.1.
 - "**Grantee**" means both Parties in accordance with the Easement;
 - "**Grantor**" means both Parties in accordance with the Easement;
 - "**Landonline Workspace**" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
 - "**LINZ**" means Land Information New Zealand.
- Other words or expressions contained in this Agreement have the same meaning as in the Easement.

Interpretation

- 1.2 In this Agreement, unless a contrary intention appears, the rules of interpretation to be applied shall be the same as those in the Easement.

2. RIGHTS OF THE GRANTEE

Rights Pending Registration of Easement

- 2.1 On and from the date of this Agreement and subject to clause 4.2, whether or not the Easement has been executed or registered, the Grantee shall have all the rights and powers (including the rights in respect of entry and maintenance) as are set out in the Easement as if it were in full force and effect but as limited and restricted in this Agreement.

3. GRANT OF EASEMENT

Plan

- 3.1 Martin shall, at his cost, instruct a surveyor to prepare a survey plan to survey the boundaries of the Easement Land as shown on the Draft Easement Plan. The survey plan shall be subject to the approval of both Parties within 7 days of the Parties receiving a copy of the survey plan. Approval shall not be unreasonably withheld or delayed provided the Easement Land as shown on the survey plan substantially reflects the Draft Easement Plan.

Grant

- 3.2 The Grantor hereby grants the Easement to the Grantee.

Registration

- 3.3 Martin's solicitor will:
- (a) create a Landonline Workspace for the registration of the Easement Instrument and deposit of the survey plan;
 - (b) prepare the Easement Instrument in such Landonline Workspace; and
 - (c) provide to Allison and Geoffrey's solicitor the dealing number allocated by LINZ.
- 3.4 Allison and Geoffrey's solicitor will:
- (a) prepare in the Landonline Workspace all other details (if any) required to fulfill Allison and Geoffrey's obligations under this Agreement; and
 - (b) certify and sign the Easement Instrument in the Landonline Workspace,
 - (c) release the Easement Instrument once certified and signed so that Martin's solicitor can submit the dealing to LINZ for registration.
- 3.5 Martin Shall pay the registration costs associated with the registration of the Easement instrument and survey plan.

Costs

- 3.6 Martin agrees to pay Alison & Geoffrey's reasonable solicitor's costs of and incidental to finalising this Agreement and registering the Easement.

4. CONSENTS

- 4.1 Martin will be responsible, at his cost, for obtaining any resource consents or other consents required from any local authority in relation to the Easement.

Consent of Third Parties

- 4.2 This Agreement is conditional upon both parties obtaining the consent of the mortgagee of their respective Land to the registration of the Easement. Upon approval of the survey plan each Party shall promptly request such consent. In the unlikely event that a mortgagee does not consent to registration of the Easement then either Party shall be entitled to terminate this Agreement by giving written notice to the other.

5. TRANSFER OF RIGHTS AND OBLIGATIONS BY THE PARTIES

Disposal by Grantor

- 5.1 Until such time as the Easement is registered or this Agreement is terminated, a Grantor will notify any party acquiring or intending to acquire an interest in any part of the Easement Land (including any potential mortgagee) of the terms and conditions of this Agreement.

Deed of Covenant

- 5.2 Until such time as the Easement is registered or this Agreement is terminated, a Grantor will not assign this Agreement or transfer or in any way dispose of the whole or any part of that Grantor's estate or interest in the Easement Land (including granting any mortgage or other encumbrance) except with the prior written consent of the Grantee which will not be withheld where the party acquiring the estate or interest enters into a Deed of Covenant pursuant to which that party undertakes and agrees:
- (a) That it will be bound by and comply with the terms of this Agreement.

- (b) That it will not assign transfer or in any way dispose of the whole or any part of its estate or interest in the Easement Land without first obtaining a like Deed of Covenant from any party acquiring the estate or interest.
- (c) To execute all plans, deeds, transfers, consents and other documents and all things necessary to give effect to the terms of this Agreement and to enable the registration of the Easement over the Easement Land.
- (d) That it is not entitled to any payment from the Grantee,

such Deed of Covenant to be prepared by the Grantee's solicitor and, at the Grantee's expense.

6. NOTICES

- 6.1 A notice to be given under this Agreement shall be in writing and delivered or transmitted to the addresses shown below or to such other addresses either party may notify to the other in writing, and in any event shall be sufficiently given or served if actually received by the party;

7. WORKS

- 7.1 Following the execution of this Agreement, Martin shall be entitled to carry out works required to form a vehicular driveway over the Easement Land in accordance with Napier City Council requirement including a retaining wall on the boundary between Area B and C (the Retaining Wall), all at Martin's cost (the Works).
- 7.2 Martin will carry out landscaping/planting above the Retaining Wall on Area C in consultation with Alison and Geoffrey, at Martin's cost. For the avoidance of doubt, no landscaping or planting shall be carried out without Alison and Geoff's prior approval.
- 7.3 The Works will be carried out by Martin in such a way as to minimise any disruption to Alison and Geoffrey's Land and any damage caused will be remedied by Martin in a timely manner. For the avoidance of doubt, no works shall be carried out outside of the Easement Land and in particular, the pillar on the adjacent property near Brewster Street, shall not be damaged or moved.

Alison Jane Pavlovich and Geoffrey Raymond King

Name	Teresa Mee
Address	C/- Carlile Dowling, 67 Raffles Street, Napier
Facsimile	(06) 835 1338
Email	teresa@carliledowling.co.nz

Martin Hussey

Name	Lincoln Reid
Address	C/- Sainsbury Logan & Williams, 61 Tennyson Street, Napier
Phone	(06) 835 6746
Email	lbr@slw.co.nz

8. MISCELLANEOUS

Severability

- 8.1 In the event that any part of this Agreement or the Easement becomes void, invalid or unenforceable at any time, that will not affect the validity of the rest of this Agreement or the Easement.

Further Assurance

- 8.2 The Grantor will from time to time sign, execute and procure all such further documents, and shall undertake all such acts, matters and things as shall be required to effect the provisions of this Agreement.

Entire Agreement

- 8.3 This Agreement constitutes the entire agreement between the parties and no earlier representation, warranty or agreement in relation to any matter dealt with in this Agreement has any force or effect from the date of this Agreement.

No Obligation

- 8.4 Nothing herein contained or implied shall compel the Grantee to exercise all or any of its rights or to use the Easement Land.

Disputes

- 8.5 If any dispute arises between the parties in respect of this Agreement, the matter shall be referred to mediation. Mediation may be initiated by either party writing to the other and identifying the dispute, whereupon the parties will agree on a mediator. If they cannot agree upon a mediator either party shall ask the Arbitrators and Mediators Institute of New Zealand to appoint a mediator in accordance with the mediation protocol of the Institute.
- 8.6 Any dispute that is not resolved by mediation, shall, unless specifically agreed otherwise in writing by the parties, be referred to an arbitration conducted in accordance with the provisions of the Arbitration Act 1996 of New Zealand or any statutory modification or re-enactment of that Act which may at the time of the dispute be in force.

Counterparts

9. This Agreement may be signed in any number of counterparts each of which is to be deemed an original, but all of which together will constitute a single instrument. A party may enter into this Agreement by executing any counterpart. This Agreement may be signed on the basis of an exchange of facsimile or scanned emailed copies and signing of this Agreement by such means it is to be a valid and sufficient execution.

EXECUTED AS AN AGREEMENT

SIGNED by
ALISON JANE PAVLOVICH in the presence
of:

)
)
)

Al Pavlovich

Leslie Brown
Signature of witness

Leslie Brown
Name of witness

University Lecturer
Witness occupation

60 Salamanca Road, Kelburn, Wellington
Witness address

SIGNED by
GEOFFREY RAYMOND KING
In the presence of:

)
)
)

G.R.K.

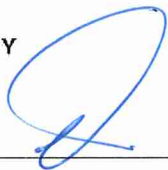
Megan Fitzpatrick
Signature of witness

Megan Fitzpatrick
Name of witness

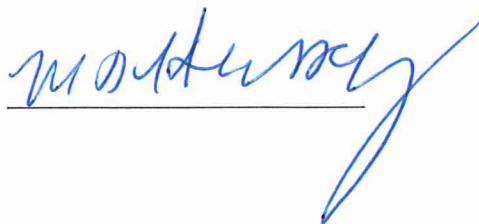
Economist
Witness occupation

138 Puketawa Rd Peka Peka
Witness address

SIGNED by
MARTIN DEREK HUSSEY
in the presence of:



)
)
)



Signature of witness

Lincoln B. Reid

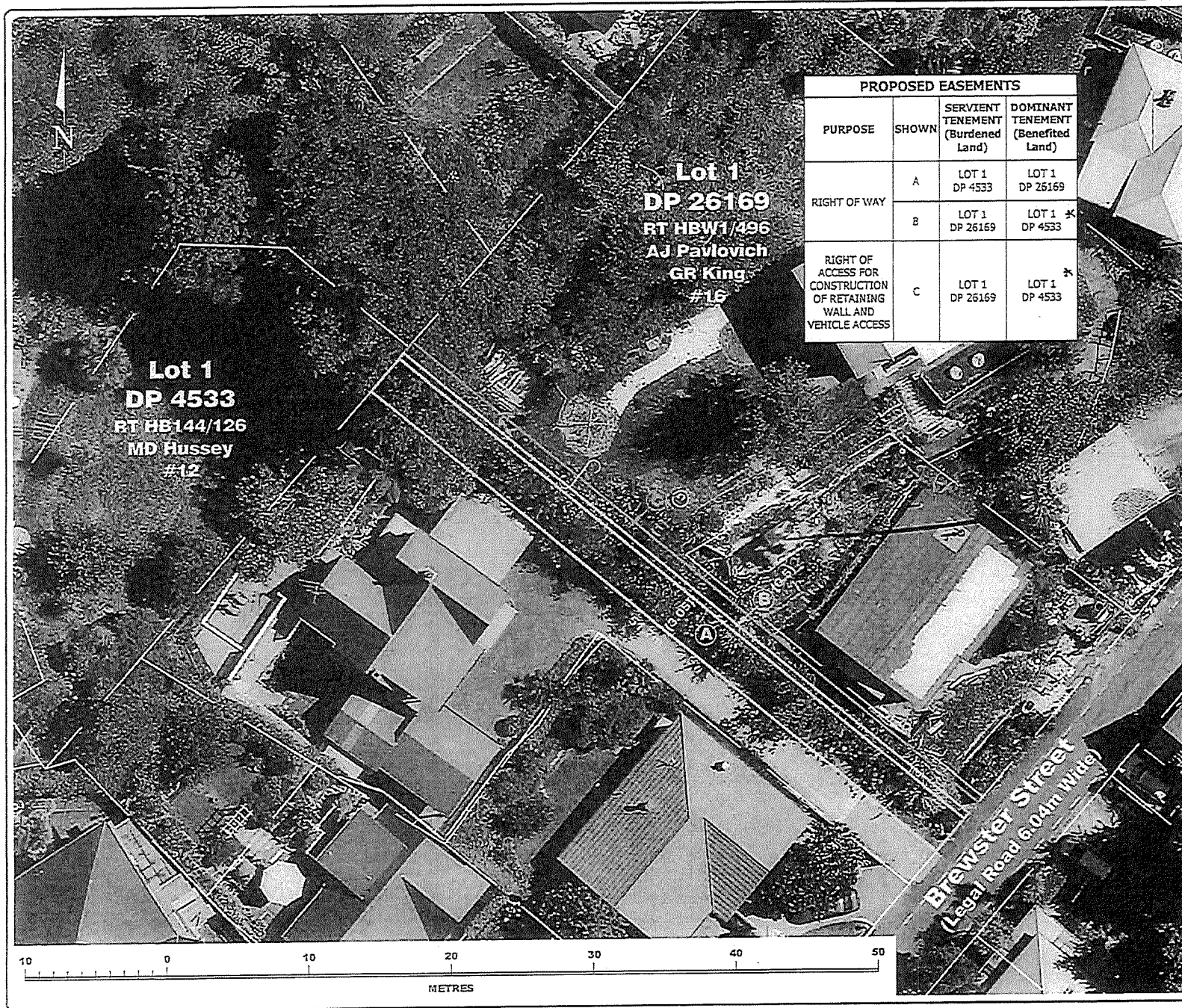
Name of witness

Solicitor

Witness occupation

Napier.

Witness address



PROPOSED EASEMENTS			
PURPOSE	SHOWN	SERVIENT TENEMENT (Burdened Land)	DOMINANT TENEMENT (Benefited Land)
RIGHT OF WAY	A	LOT 1 DP 4533	LOT 1 DP 26169
	B	LOT 1 DP 26169	LOT 1 DP 4533 *
RIGHT OF ACCESS FOR CONSTRUCTION OF RETAINING WALL AND VEHICLE ACCESS	C	LOT 1 DP 26169	LOT 1 DP 4533 *

LOCAL AUTHORITY : NAPIER CITY
ZONING : NAPIER HILL CHARACTER
COMPRISED IN : RT HB144/126
REGISTERED : MD HUSSEY OWNERS
COMPRISED IN : RT HBW1/496
REGISTERED : AJ PAVLOVICH & GR KING OWNERS

NOTE:
AERIAL PHOTO OBTAINED FROM NAPIER CITY COUNCIL GIS AND MAY CONTAIN DISTORTION (FLOWN 2022).

This plan has been prepared for the purpose of obtaining a Resource Consent pursuant to the provisions of the Resource Management Act 1991. Unauthorised copying or use of this plan for any other purpose is not permitted without the prior consent of Surveying The Bay Ltd. Areas and dimensions shown on this plan are approximate, only and are subject to confirmation by survey.

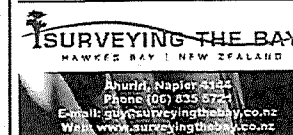
*
and Lot 2 DP 3239

CLIENT:

HUSSEY

PROJECT:

PROPOSED RIGHTS OF WAY OVER
LOT 1 DP 4533 & LOT 1 DP 26169
12 & 16 BREWSTER STREET
BLUFF HILL, NAPIER



TITLE:

EASEMENT PLAN

SCALE: 1: 250 @ A3

DATE: MAY 2023

DRAWN BY: PT LAM

DRAWING NO:
6033-1

REVISION: A
SHEET: 1/1

Easement instrument to grant easement or *profit à prendre*

(Section 109 Land Transfer Act 2017)

Grantor

Alison Jane Pavlovich and Geoffrey Raymond King
Martin Derek Hussey

Grantee

Alison Jane Pavlovich and Geoffrey Raymond King
Martin Derek Hussey

Grant of Easement or *Profit à prendre*

The Grantor being the registered owner of the burdened land set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Continue in additional Annexure Schedule, if required

Purpose of Easement, or <i>profit</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Right of way	A on DP [xxx]	HB144/126	HBW1/496
Right of Way	B on DP [xxx]	HBW1/496	HB144/126 and HBH3/595
Right of way	C on DP [xxx]	HBW1/496	HB144/126 and HBH3/595

Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007

The implied rights and powers are hereby **[varied]** by the following:

The Right of Way shown C on DP [xxx] shall be restricted to access (including vehicle access) for construction of a retaining wall on the boundary of the burdened and benefited land.