

STOCK UNDERPASS USE AGREEMENT AND SUBSOIL LEASE AGREEMENT

This agreement is made on the.....day of.....20.....

BETWEEN

- 1) **Hurunui District Council**, a statutory authority under the Local Government Act 1974 (herein after referred to as "the Council")

AND

- 2)of.....
..... (herein after referred to as "the Grantee")

BACKGROUND

- A. The Council having the statutory responsibility and control of all matters in relation to the road network in the Hurunui District has authority to agree to the use of a stock underpass.
- B. Ownership of the stock underpass will be vested in the Council.
- C. The Council and the Grantee have agreed to the construction of a stock underpass on
.....Road at or near route position.....and as shown on Plan No.....
- D. The parties have agreed to enter a separate agreement in conjunction with this agreement for the stock underpass construction and cost sharing (if any) in relation to the construction, to formalise the rights of the parties concerning the stock underpass construction.

Now therefore in consideration of the above the parties wish to record the terms and conditions relating to the agreement as follows:

1.0 Defined Terms

- 1.1 In this agreement, unless the context requires otherwise:

Stock underpass means a stock access structure together with associated fencing, drainage and safety facilities, over or under a public road under the Council's control, connecting two parts of a property or properties.

Grantee means the property owner, whose property or properties is/are bisected by the road, or whose property is afforded access across the road, at the position where the stock underpass is proposed or is constructed, who is party to this agreement or any other document.

Parties means Hurunui District Council and the Grantee, their personal representatives/successors and permitted assigns.

Words of the singular are deemed to include the plural and vice versa.

Words in the masculine gender are deemed to include the feminine and vice-versa

2.0 The parties mutually

- 2.1 Confirm the basis of this agreement as being contained in Clauses A to D inclusive of "Background" above.
- 2.2 Agree that they shall each carry out and fulfil all their respective obligations set out in this document.

3.0 The Grantee

3.1 The Grantee agrees and confirms that:

- 3.1.1 The Grantee shall have the right to use the stock underpass in consideration of the payment to the Council of an annual fee of one dollar (\$1.00) if demanded.
 - 3.1.2 The Grantee shall not do anything or allow anything to be done that will affect the structural integrity of the stock underpass.
 - 3.1.3 The Grantee shall maintain, at the Grantee's cost, the stock underpass, including associated fencing, drainage and safety facilities, in good order and condition at all times, and immediately make safe and repair damage to the stock underpass caused through direct or indirect use or activity, and in any event shall carry out such maintenance or repair as may be reasonably be required, in writing, by the Council.
 - 3.1.4 The Grantee shall advise the Council when any maintenance or repair, other than that of a routine nature, is required. The Grantee shall effect such maintenance or repair in accordance with the instructions of and to the satisfaction of the Council.
 - 3.1.5 The Grantee shall be responsible for the cost of maintenance of the access through or over the structure.
 - 3.1.6 The Grantee shall obtain the consent of the Council before entering onto the road to effect maintenance or repairs to the stock underpass.
 - 3.1.7 The Grantee shall immediately made good any damage caused by the Grantee, his servants, agents or visitors, to the carriageway or legal road reserve.
- 3.2 On receipt of advice under Clause 4.1.4, or as determined through its own inspection, the Council may elect to carry out all or part of any maintenance or repairs at the Grantee's cost or otherwise. The Council will, in such case, notify the Grantee accordingly within 14 days of receipt of advice or inspection.
- 3.3 The Grantee shall indemnify the Council against all costs, actions, demands, suits, damages and proceedings of any kind for any loss or damage that might result to any property of any person or any agency of the Crown directly or indirectly by reason of the exercise of the rights under this agreement.

4.0 The Council

- 4.1 Notwithstanding the provisions of Clause 4.0, the Council shall meet the cost of repairs of any structural defect in the stock bypass where the Council is satisfied such defect is not directly or indirectly attributable to the use of the stock underpass by the Grantee.

5.0 Removal of Stock Underpass

- 5.1 The Grantee shall have the right to have the stock underpass removed at any time subject to the following conditions:
- 5.1.1 Two months written notice to the Council of the Grantee's exercise of right.
 - 5.1.2 The Council shall undertake removal of the stock underpass and reinstate the road to its satisfaction. The Council will ensure that its contractors take all reasonable care in removal of the stock underpass but the Council will not be responsible for any damage that may occur to the stock underpass as a result of its removal.
 - 5.1.3 The Grantee shall reimburse the Council for the costs of such removal and reinstatement. Upon receipt of notice under Clause 6.1.1, the Council will provide the Grantee with an estimate of cost of such removal. The estimated amount shall be paid to the Council, pending completion of the removal and reinstatement, and then applied to the cost of removal and reinstatement.
 - 5.1.4 Ownership of the stock underpass structure shall pass to the Grantee upon removal and reinstatement.

5.1.5 Consent will not be given to the grantee, upon removal of the stock underpass to allow access to any stock to traverse the road at or near the stock underpass location.

6.0 Termination

6.1 The Council may terminate this agreement and may remove the stock underpass:

6.1.1 at the expiration of three months written notice of intention to terminate if the land under which the stock underpass is constructed ceases to form part of the road or is otherwise removed from the Council control; or

6.1.2 without notice if the Grantee fails, within twenty eight (28) days of receiving notice requiring the Grantee to remedy any default on the Grantee's part under this agreement; or

6.1.3 Immediately without notice if any default on the Grantee's part under the terms of this agreement in the opinion of the Council interferes or may interfere with the safe and/or efficient operation of the road.

6.2 The Grantee shall not be liable for any compensation on termination of this agreement.

7.0 Assignment

7.1 The rights of the Grantee shall not be assigned under this agreement without prior written consent of the Council, which shall not unreasonably be withheld.

8.0 Notices

8.1 All notices under this agreement shall be sent to the following addresses by hand, post or facsimile or to such other addresses as are from time to time nominated in writing by the parties:

The Council: Hurunui District Council
PO Box 13
Amberley

Facsimile: 03 314-9181

Phone: 03 314-8816

Grantee:
.....
Facsimile:
Phone:

8.2 It will be sufficient in cases where notice is to be given by the Council that some person acting under the Council's express or implied authority sign such notice.

SIGNED for and on behalf of the Hurunui District Council

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..... }

In the presence of:

Witness' Signature

Name
Occupation
Address

SIGNED by the Grantee

..... }
..... }

In the presence of:

Witness' Signature
Name
Occupation
Address

The Common seal of

.....

was hereto affixed in the presence of:

.....