

This is the Schedule referred to in Easement in Gross in Form 9 dated
the day of 200 .

Item 8 Title Reference:

1.0 OBJECTS OF THE GRANT OF EASEMENT

1.1 The objects of this Instrument of Easement include:-

- 1.1.1 allowing the Council to better exercise the jurisdiction of local government within its territorial unit for the provision of services, facilities and activities under or pursuant to a power or requirement of a local government Act; and
- 1.1.2 effectively vesting the grant by the Owner of the Easement in the Council; and
- 1.1.3 defining the purposes for which the Council may use the Easement Area; and
- 1.1.4 defining the rights and obligations of the Owner and the Council in the use of the Land and the Easement Area.

2.0 INTERPRETATION

2.1 In this Instrument of Easement -

'Council' means **LIVINGSTONE SHIRE COUNCIL** as the local government named as Grantee at the date of grant of this Easement and the successors in title of the named local government;

'Easement Area' means the area of land affected by the Easement in the lot burdened by the Easement without limitation as to height or depth;

'facility' includes work;

'jurisdiction of local government' has the same meaning as the term 'jurisdiction of local government' under the Local Government Act 1993.

'Land' means each lot burdened by the Easement;

'Land Title Act' means the Land Title Act 1994;

'local government' has the same meaning as the term 'local government' under the Local Government Act 1993;

'Local Government Act' means the Local Government Act 1993;

'local government Act' has the same meaning as the term 'local government Act' under the Local Government Act 1993;

'Owner' means each registered owner of the interest in the lot burdened by the Easement named as Grantor at the date of grant of this Easement and the successors in title of each registered owner;

'structure' means anything built or constructed, whether or not attached to land;

'territorial unit' has the same meaning as the term 'territorial unit' under the Local Government Act 1993 for a local government;

'Works' means the Council's works at any time constructed, in the course of construction or to be constructed wholly or partly upon, beneath or above the surface of the Easement Area determined by the Council to be necessary for or in connection with the purpose for which this Easement is granted for or in respect of the Easement Area.

- 2.2 If any covenant or its application to the Owner, the Easement Area or circumstances shall be or become invalid or unenforceable, the remaining covenants of this Instrument of Easement are not to be affected and each covenant is to be valid and enforceable to the fullest extent permitted by law.
- 2.3 References to statutes regulations local laws or subordinate local law extend to all statutes regulations local law or subordinate local law amending consolidating or replacing the same.
- 2.4 If the Owner comprises two or more legal entities, their covenants in this Instrument of Easement bind them jointly and each of them severally.

3.0 PURPOSE OF EASEMENT

- 3.1 This Easement is granted by the Owner to the Council for the Council to use the Easement Area for -

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- 3.1.1 The purpose stated at Item 7 of the Instrument of Easement in Form 9 to which this Schedule is attached; and
- 3.1.2 Any service, facility or activity of whatever description which the Council has authority to undertake, directly or indirectly in the exercise by the Council of the jurisdiction of local government within its territorial unit under a local government Act or otherwise directly or indirectly referable to the purpose stated at Item 7 of the Instrument of Easement in Form 9 to which this Schedule is attached.
- 3.2 For the purpose of the Land Title Act -
- 3.2.1 the Council is a public utility provider; and
- 3.2.2 the purpose for which this Easement is granted is a public utility service.

4.0 WHAT THE COUNCIL IS ALLOWED TO DO

- 4.1 To enable the Council to fully use the Easement Area for the purpose of this Easement, the Owner must allow the Council at any time without any interruption from the Owner or any occupier of the Land or any part of the Land to do all things upon, beneath or above the surface of the Easement Area at any time determined by the Council to be necessary for or in respect of the Works.
- 4.2 Without limiting the generality of the Article but by way of example, under Article 4.1 the Owner or any other occupier of any part of the Land must allow the Council -
- 4.2.1 to place the Works wholly or partly upon, beneath or above the surface of the Easement Area;
- 4.2.2 to construct, operate, test, inspect, cleanse, maintain and repair the Works;
- 4.2.3 to alter, add to, augment, replace, extend or deviate the Works;
- 4.2.4 to dig up the surface and sub-surface or the Easement Area and remove any soil from the Easement Area;
- 4.2.5 to enter and remain upon the Easement Area;
- 4.2.6 to take down any fencing on the Easement Area; and
- 4.2.7 to allow right of way, run and pass water, sewage, fluids, stormwater, substances of any description, electric current, electric and gas transmissions,

electronic signals and electronic transmissions through, from, to or about the Works or the Easement Area.

- 4.3 In doing anything allowed in respect of the Easement, the Council is entitled to do those things by its employees, agents and invitees and with or without the use of all necessary motor vehicles, machinery, equipment and implements.
- 4.4 All soil which the Council determines is to be dug up from the Easement Area for or in respect of the Works -
- 4.4.1 becomes the property of the Council without Council being under any liability whatever to pay any amount to the Owner by way of compensation or otherwise; and
- 4.4.2 is to be removed by the Council from the Easement Area at the cost and expense of the Council.
- 4.5 When an employee or agent and invitees of the Council enter onto and remain on the Easement Area under this Easement for or in respect of the Works and with or without the use of all necessary motor vehicles, machinery, equipment and implements -
- 4.5.1 the employee or agent and invitees of the Council are able to do so at any time;
- 4.5.2 the employee or agent and invitee of the Council may do so without any requirement for the Council or the employee or agent and invitee to obtain the further agreement of the Owner and any occupier of the Land whether this Easement or otherwise;
- 4.5.3 consistent with the nature of the activity undertaken for or in respect of the Works, the Council is to reinstate, replace or restore the Easement Area or that part of the Easement Area to a condition determined by the Council to be appropriate in the then prevailing circumstances and the particular situation but neither of the Council nor any employee or agent and invitee of the Council so doing are liable to compensate the Owner and any occupier of the Land for any loss or damage incurred by the Owner and any occupier of the Land whether under this Easement or otherwise. However, if this Article is not effective to relieve the Council and any employee or agent and invitee of the Council from liability to compensate the Owner and any occupier of the Land for any loss or damage incurred, the Owner for the Owner and any occupier of the Land deriving title from the Owner agrees that the total amount of compensation payable in respect of all occurrences of loss or damage shall not exceed Ten Dollars (\$10.00);

- 4.5.4 to the fullest extent permitted by law, the Owner for the Owner and any occupier of the Land deriving title from the Owner irrevocably waives and

forever abandons all and every entitlement to exercise any right or remedy which but for this Article the Owner and any occupier of the Land has or might have at any time against the Council or any employee or agent and invitees of the Council under the Local Government Act.

5.0 WHAT THE OWNER IS ALLOWED TO DO

- 5.1 To enable the Council to fully use the Easement Area for the purpose of the Works, neither the Owner nor any occupier of the Land or part of the Land is to do or permit to be done anything on or in respect of the Works or the Easement Area which could obstruct or interfere with the Works or the proper and effective use of the Works by the Council.

- 5.2 Without limiting the generality of the Article but by way of example, under Article 5.1 the Owner or any other occupier of any part of the Land is not to -

5.2.1 build or erect any structure on, under or over the Easement Area unless specifically permitted, in writing, by Council.

5.2.2 plant trees or shrubs within the Easement Area or immediately adjacent to the Easement Area and, in the latter case, which could obstruct or interfere with the Works or the proper and effective use of the Works by the Council;

5.2.3 pave or concrete all or any part of the surface of the Easement Area;

5.2.4 apart from external boundary fences across or along the Easement Area which are not to be brick or masonry, fence the boundaries of the Easement Area in such a manner that Council's access to the Works could be obstructed or interfered with;

5.2.5 where the Works comprise or include a surface drainage channel or flow path, place or allow to be placed in on or adjacent to the Works material which could lessen the depth or alter the path of the channel.

- 5.3 If the Owner or any occupier of the Land or part of the Land does or permits to be done anything on or in respect of the Works or the Easement Area which could obstruct or interfere with the Works or the proper and effective use of the Works by the Council, the Owner is to do immediately all things at the cost and expense of the Owner as are necessary to cease the obstruction or interference with the Works or the proper and effective use of the Works by the Council.

5.4 If, having failed to comply with Article 5.3, the owner fails to comply with a notice from Council specifying:

5.4.1 what Council requires the owner to do to remove the obstruction or stem the interference;

5.4.2 the period within which Council requires the Owner to take that action (which period is to be determined by Council having regard to the nature and extent of the obstruction for interference)

Council may enter the Easement Area and remove the obstruction or stem the interference or otherwise do such acts or things as may be necessary to enforce the Council's rights hereunder.

5.5 All costs incurred by the Council (including the Council's usual administrative on costs and legal costs calculated on a solicitor and own client basis) in acting under Article 5.4 are a debt due and owing by the Owner to the Council payable by the Owner to the Council on demand.

6.0 WHO IS RESPONSIBLE FOR MAINTAINING THE EASEMENT AREA

6.1 In exercise of the Owner's right to use of the Easement Area (but in a manner not inconsistent with or in any way prejudicing the rights of the Council), the Owner is to

keep and maintain the Easement Area in a condition appropriate for Council to enjoy its entitlement under this Easement.

6.2 Nothing in this Instrument of Easement is to operate or to take effect to relieve or to be deemed to relieve the Owner from the continuing need to comply at all times with the requirements of any local government Act, local law or subordinate local law that may have application to the Land or the Easement Area.

6.3 The Council is under no liability pursuant to the Land Title Act or otherwise to contribute towards the cost of keeping of the Easement Area in a condition appropriate for enjoyment of the easement.

6.4 A provision of the Land Title Act or another Act, entitling the Owner to recover from Council a contribution to the costs of keeping the Easement Area in a condition appropriate for Council to enjoy this Easement, is inapplicable to the Easement.