HOLLAND BECKETT
LAW

7 June 2023

David Usmar
Kaipara District Council

BY EMAIL
dusmar@kaipara.govt.nz

Dear David

Request for easement under s48 Reserves Act 1977

1. We act for Gull NZ Limited (**Gull**). The purpose of this letter is to formally request Kaipara District Council (the **Council**) exercise its delegated authority to grant a registered easement over part of a segregation strip situated on Lot 41 Deposited Plan 341981 (the **Segregation Strip**) under s 48 of the Reserves Act 1977 (the **Act**).

2. The easement will be granted in perpetuity and registered on the title to the Segregation Strip. We have **attached** a draft easement instrument as **Annexure One** (the final land description will be subject to survey).

3. By way of background, a resource consent application has been submitted to allow Gull to develop a service station on the corner of Molesworth Drive and Estuary Drive, Kaipara (Lot 1 Deposited Plan 341981) (the **Site**). The main vehicle access for the Site is intended to occur via Molesworth Drive. However, the Segregation Strip is currently located between Molesworth Drive and the Site therefore restricting access.

4. The Segregation Strip is subject to the Act as a local purpose reserve and the Council is its registered owner and the administering body under the Act.

Legal framework

5. Section 48(1)(a) of the Act provides an administering body (in this case the Council) can grant an easement or rights of way with the consent of the Minister of Conservation, and on such conditions as the Minister of Conservation thinks fit, over any part of the reserve for any public purpose.

6. Section 48(2) of the Act requires the administering body to give public notice of the proposed easement in accordance with s 119 and 120 of the Act.

7. However, section 48(3) of the Act provides that public notification of an easement is not required when:

   (a) the reserve is vested in an administering body and is not likely to be materially altered or permanently damaged; and

   (b) the rights of the public in respect of the reserve are not likely to be permanently affected

   by the establishment and lawful exercise of the right of way or other easement.

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Delegation of decision making to local authorities

8. The power to grant easements under s 48 of the Act has been delegated to local authorities by the Minister of Conservation under an Instrument of Delegation (see attached as **Annexure Two**). The Delegation Instrument allows the Council to take on the role of the Minister for this process and can approve the easement, and impose conditions, itself.

The proposed easement is for a public purpose under s 48(1)(a) of the Act

9. The easement will be for a public purpose as:

   (a) The purpose of the easement is to facilitate public access to the Site from Molesworth Drive;

   (b) The easement is the most appropriate access point to the Site as it will ensure safe and efficient traffic movements; and

   (c) The easement will provide benefits to the community by ensuring access to fuel and conveniences.

10. The easement therefore satisfies s 48(1)(a) of the Act.

Public notification is not required under s 48(2) of the Act

11. Public notification of the easement is not required under s 48(2). An assessment under s 48(2) of the Act must look at the reserve as a whole. This is because any easement will have a physical impact on a reserve, whether it be for roading, walkways, transmission lines or other physical infrastructure contemplated by s 48(1).[1] Therefore, the intent of s 48(2) is to allow appropriate easements, while ensuring the reserve is not materially altered or permanently damaged <u>and</u> the public retains rights of access.

12. In our view the easement can be granted without public notification. This is because:

   (a) The easement will not materially alter the reserve as it will only occupy a physically small part of the Segregation Strip;

   (b) Public access was not the original intent of the reserve, rather it was for road safety, therefore is no impact on public rights of access; and

   (c) The Segregation Strip will remain in place with the easement managing the extent of access, meaning the benefit and characteristics of the reserve as a whole will continue.

Appropriateness of the easement

13. Overall, the easement satisfies the requirements of s 48(1) and is consistent with the purposes and principles of the Act.

[1] Section 48(1) allows easements to be granted over reserves for public purposes, accessways, pipelines for gas, petroleum, biofuel or geothermal energy, electrical installation works, provision of water systems and water and drainage supplies for reserves or associated purposes.

Conditions

14. We have provided a draft easement instrument which records the conditions of the easement for your review. These are standard conditions which are commonly imposed on access easements and will be registered on the title to the Segregation Strip. We note that the final description of the easement will be provided once a survey is completed for the accessway to the Site.

Decision sought from Council

15. Gull therefore requests that Council exercise its delegated authority and grant Gull an easement over the Site on the terms contained in the easement instrument **attached** as Annexure One.

Ngā mihi
HOLLAND BECKETT LAW

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encl.

Annexure One

Draft Easement Instrument

Easement instrument to grant easement or *profit à prendre*

(Section 109 Land Transfer Act 2017)

Grantor

Kaipara District Council

Grantee

Gull New Zealand Limited

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 *profit*	**Shown (plan reference)**	**Burdened Land (Record of Title)**	**Benefitted Land (Record of Title) or in gross**
Right of Way	TBA	TBA	TBA

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

Delete phrases in [ ] and insert memorandum number as required; continue in additional Annexure Schedule, if required

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]** ~~**[negatived]**~~ **[added to]** or ~~**[substituted]**~~ by:

~~[Memorandum number , registered under section 209 of the Land Transfer Act 2017]~~

[the provisions set out in Annexure Schedule 1]

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strument type

Easement Instrument

Continue in additional Annexure Schedule, if required.

EASEMENTS

Easements or rights and powers (including terms, covenants and conditions) continued…

1. **GENERAL CONDITIONS**

(a) Any maintenance, repair or replacement of any easement facility in respect of any easement set out herein that is necessary because of any act or omission by the Grantor or the Grantee (as defined in paragraph 1 of Schedule 5 to the Land Transfer Regulations 2018) must be carried out promptly by that Grantor or Grantee at the sole cost of that Grantor or Grantee or in such proportion as relates to the act or omission.

(b) Where practicable, easement facilities in respect of the within easement, other than the easement of right of way, shall be placed under and within the ground comprising the stipulated course.

(c) If, in respect of easements of rights of way, there is conflict between the provisions of Schedule 5 to the Land Transfer Regulations 2018 and the provisions of the Fifth Schedule to the Property Law Act 2007 then the latter shall prevail.

(d) Where there is conflict between the rights, powers, terms, covenants or restrictions herein (the modifications) and the provisions of Schedule 5 to the Land Transfer Regulations 2018 and/or the provisions of the Fifth Schedule to the Property Law Act 2007, then the modifications shall prevail.

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Annexure Two

Instrument of Delegation

RESERVES ACT 1977

INSTRUMENT OF DELEGATION FOR TERRITORIAL AUTHORITIES

1. PURSUANT to section 10 of the Reserves Act 1977 I, NICK SMITH Minister of Conservation, DELEGATE to all territorial authorities (as defined in this Instrument of Delegation) such of my powers, functions and duties under the Reserves Act 1977 as are set out in the following Schedule subject to the Limitation of Powers in the Schedule and to the conditions in paragraph 2 of this Instrument.

2. The delegations in this Instrument apply only where the territorial authority is the administering body of the relevant reserve (i.e. affected by the decision to be made) by virtue of a vesting or an appointment to control and manage.

3 This Instrument replaces the previous Instrument of Delegation dated 10 March 2004, which is hereby revoked.

Definitions:

"Administering body" – means an administering body under the Reserves Act 1977.

"Territorial authority" – means a local authority and a unitary authority as defined in section 5 Local Government Act 2002.

"Vested reserve" – means a reserve vested in a territorial authority (not in the Crown).

SCHEDULE

SECTION	SUMMARY OF POWERS	O	LIMITATION OF POWERS
6(3)	Revoke a Gazette notice and issue a fresh notice or amend the original notice		Only applies to notices in the Gazette given by the territorial authority
14(4)	Gazette resolution to declare vested land to be reserve. Note: it is, therefore, no longer necessary to consult the Commissioner in terms of sec 14(3) of the Act.		

SECTION	SUMMARY OF POWERS	O	LIMITATION OF POWERS
15(1)	Authorise or decline to authorise, by Gazette notice, the exchange of land in any reserve or any part(s) of a reserve for any other land to be held for purposes of that reserve.		Only to be exercised where the territorial authority did not derive title from the Crown, or title would be deemed not to be derived from the Crown if the reserve was going through a revocation process (s.25). The territorial authority must consult with the Crown before making a decision under s.15(1) if the land it proposes to grant in exchange was purchased with funds provided either wholly or partly by the Crown.
15(3)	To do all things necessary to effect any exchange authorised by the local authority under Section 15(1) of the Act, or by the Crown in the case of vested reserves derived from the Crown, including the payment or receipt of any money by way of equality of exchange in the case of non Crown derived reserves.		
16(1)	Classify, by Gazette notice, according to their principal or primary purpose all reserves. [Note this delegation does not affect sections 16(2) and 16(2A) Reserves Act]		
16(4)	To advertise the intention to classify a reserve in accordance with sec 16(1).		
18(2)(e) 19(2)(a) 19(3)(a)	Determine in which cases exceptions can be made to the preservation of flora and fauna and the natural environment.		
24(1)	Change the classification or purpose of a reserve by notice in the Gazette.		Does not apply to the revocation of reserves
24(2)(e)	To consider all objections received to a proposed change of classification or purpose.		
24(3)	To form an opinion that the change of classification or purpose of a scenic, nature or scientific reserve is justified.		

SECTION	SUMMARY OF POWERS	O	LIMITATION OF POWERS
24(5)	To form an opinion that the change in the classification of a historic reserve is justified.		
25(1)	Upon revocation of the reservation of any public reserve (or part of one) pursuant to section 24 Reserves Act, dispose of that land in such manner and for such purpose as the Minister specifies. [Note this is intended to allow Territorial Authorities to decide how and for what purpose the land may be disposed of].		The delegation only applies where the title to the reserve was not derived from the Crown, or is deemed not to be derived from the Crown in terms of s.25(4) or (5).
41(1)	To approve reserve management plans.		
42(1)	Give or decline to give express written consent to the cutting or destruction of trees and bush on any historic, scenic, nature, or scientific reserve. Determine terms and conditions subject to which written consent is given.		
44(1)	To consent to the use of a reserve for temporary or permanent personal accommodation.		
44(2)	To consent to any vehicle caravan, tent or removable structure remaining on a reserve during the period 1 November to 31 March.		
45	Give or decline to give prior approval to administering body to erect, or authorise any voluntary organisation or educational institution to erect shelters, huts, cabins, lodges etc., on any recreation or scenic reserve.		

SECTION	SUMMARY OF POWERS	O	LIMITATION OF POWERS
48(1)	Consent or refuse consent to administering body granting rights of way and other easements over any part of a vested reserve for any of the purposes specified in section 48(1). Impose such conditions as it thinks fit in giving the consent.		
48A(1)	Consent or refuse consent to administering body granting a licence over a vested reserve to any person or department of State - (a) To erect, maintain and use buildings, dwellings, masts and other structures, and plant and machinery; and (b) To construct, maintain, and use tracks and engage in other works - for any of the purposes specified in section 48A(1).		
48A(3)	Approve terms and conditions determined by the administering body.		
49	Grant or decline to grant in writing any qualified person a right to take specified specimens of flora or fauna or rock mineral or soil from a reserve for scientific or educational purposes. Form opinion as to whether qualified person has the necessary credentials. Impose conditions on the grant in writing.		With regard to fauna, the delegation is for exotic fauna which are not protected under the Wildlife Act 1953.
50(1)	Authorise or decline to authorise any person to take and kill any specified kind of fauna that may be found in any scenic, historic, nature or scientific reserve. Authorise or decline to authorise the use of firearms, traps, nets or other like objects within reserve for the foregoing purposes.		The delegation is for non-protected exotic fauna only.

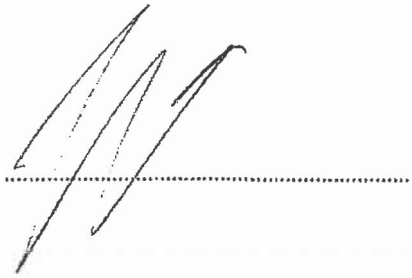
SECTION	SUMMARY OF POWERS	O	LIMITATION OF POWERS
51(1)	Authorise or decline to authorise in writing an administering body to introduce indigenous flora or fauna or exotic flora into any scenic reserve for any of the purposes referred to in section 51(1). Impose conditions on the giving of the authorisation.		
52(1)	Declare by Gazette notice that any 2 or more reserves, or parts of 2 or more reserves, or parts of one or more reserves and the whole of one or more other reserves, are to be united to form one reserve.		All affected reserves or parts of reserves must have the same administering body and must all either be vested in that body or all held under an appointment to control and manage.
53 (1)(d)	To consent to an increase in the number days the public shall not be entitled to have admission to a reserve.		
53 (1)(e)	To approve the fixing of charges generally or with respect to any specified occasion or event.		
54(1)	Give or decline to give prior consent to administering body, in the case of a recreation reserve vested in it, to grant leases for any of the purposes specified in paragraphs (a), (b), (c) and to grant a lease or licence for any of the purposes specified in paragraph (d) and to exercise all powers of the Minister referred to in the First Schedule that pertain to leases under s.54(1)(a), (b), (c) and (d).		

SECTION	SUMMARY OF POWERS	O	LIMITATION OF POWERS
	Give or decline prior consent to administering body permitting, in a lease, the erection of buildings and structures for sports, games or public recreation not directly associated with outdoor recreation. Consent or decline consent to variations or amendments to leases and consent to the carrying out of any other necessary actions arising out of the leases consistent with the First Schedule, Reserves Act.		
55(2)(a) (d), (e) (f) and (g)	In the case of a scenic reserve to give or decline to give consent to :- • the enclosure and grassing or grazing of open parts of the reserve; • the setting apart of areas for other purposes; • the erection of buildings and other structures and amenities; • such things considered necessary for the public to obtain the benefit of the reserve; • the setting apart of sites for residences and other buildings and structures necessary for the management of the reserve.		Must be satisfied that the facilities, amenities, buildings or structures are necessary and cannot readily be provided outside or in close proximity to the reserve.

SECTION	SUMMARY OF POWERS	O	LIMITATION OF POWERS
56(1)	Give or decline prior consent to administering body, in the case of a scenic reserve vested in it, to grant leases or licences for the purposes set out in s.56(1) and to exercise all powers of the Minister referred to in the First Schedule that pertain to leases under s.56(1)(a) and (b). Consent or decline consent to variations or amendments to leases and licences, and consent to the carrying out of any other necessary actions arising out of the leases and licences consistent with the First Schedule, Reserves Act.		
56(2)	Give public notice in accordance with section 119 of the Reserves Act and give full consideration in accordance with section 120 to all objections and submissions.		
58(b)	Set apart and use part of a reserve as a site for residences and other buildings.		
58A(1)	Give or decline prior consent to administering body, in the case of an historic reserve vested in it, to grant leases or licences for any of the purposes specified in that subsection. Consent or decline consent to variations or amendments to leases and licences and consent to the carrying out of any other necessary actions arising out of the leases and licences, consistent with the First Schedule, Reserves Act.		

SECTION	SUMMARY OF POWERS	O	LIMITATION OF POWERS
59A(1)	In accordance with Part IIIB Conservation Act 1987, grant or refuse a concession in respect of any reserve controlled or managed by an administering body under s.28 Reserves Act so that the administering body may apply Part IIIB as if references in that Part to a conservation area were references to such a reserve and references to the Minister of Conservation and to the Director-General of Conservation are references to an administering body.		
67(1)(b)	Consent or decline consent to lease of recreation reserve set apart for race course purposes, to a racing club.		
72(1)	To enter into and agree the terms of a lease or other agreement for the farming of a recreation or local purpose reserve.		Note sec 72(3) applies.
73(1)	Consent or decline prior consent to an administering body granting a lease of recreation reserve in the circumstances specified in s.73(1), where the reserve is vested in the administering body, and consent or decline prior consent to an administering body granting a lease in the circumstances specified in section 73(1) in all other cases. Exercise all powers of the Minister referred to in the First Schedule that pertain to leases under s.73(1).		

SECTION	SUMMARY OF POWERS	O	LIMITATION OF POWERS
73(2)	Consent or decline prior consent to an administering body granting a lease of recreation reserve for afforestation where the reserve is vested in the administering body, and consent or decline prior consent to an administering body granting a lease of recreation reserve for afforestation purposes in all other cases. Exercise all powers of the Minister referred to in the First Schedule that pertain to leases under s.73(2).		
73(3)	Form opinion as to whether recreation reserve is not likely to be used for purposes of a recreation reserve. Consent or decline consent to administering body granting leases of whole or part of reserve vested in administering body. Grant or decline to grant leases of whole or part of a reserve held under an appointment to control and manage. Exercise all powers of the Minister referred to in the First Schedule that pertain to leases under s.73(3).		Note: The provisions of Part IIIB Conservation Act apply (s.73(3A)(b)) Note: s.73(3A) (a) applies.
73(5)	Consent or decline consent in writing to a member of an administering body becoming the lessee of any land under the control of that body.		
73(6)	Consent or decline consent to surrender of lease.		Only exercisable where the original approval for the lease was given by the territorial authority under this delegation.
74(1)(b)(ii) (proviso)	Consent or decline consent to granting of a licence to occupy a historic, scenic or scientific reserve.		

SECTION	SUMMARY OF POWERS	O	LIMITATION OF POWERS
75(1) and (2)	Consent or decline to consent to the afforestation of a recreation or local purpose reserve.		
121	Where under the provisions of the Reserves Act consent or approval is required, give consent or approval subject to such conditions as are thought fit.		Only exercisable in respect of matters delegated under this Instrument of Delegation.

SIGNED at Wellington this)
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10th day of Jul . 2013)
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by NICK SMITH)
Minister of Conservation)