



Victoria Government Gazette

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Major Transport Projects Facilitation Act 2009

APPROVED FORM UNDER SECTION 113A

Notice of Acquisition

Compulsory Acquisition of Interest in Land

The Secretary to the Department of Transport, as the project authority for the approved project known as North East Link Project, declares that by this notice it acquires the following interest in part of the land described as Plan of Consolidation 351514W, contained in Certificate of Title Volume 10167 Folio 046.

- a) An easement for sewerage purposes (Yarra Valley Water) over the land shown as Easement 3 (E-3), Easement 4 (E-4), Easement 5 (E-5) and Easement 6 (E-6) on Survey Plan 24287, the terms of the easement to be acquired are set out in Schedule One below.
- b) An easement for sewerage purposes (Melbourne Water) over the land shown as Easement 1 (E-1), Easement 2 (E-2), Easement 3 (E-3) and Easement 6 (E-6) on Survey Plan 24287, the terms of the easement to be acquired are set out in Schedule Two below.

The acquisition is made pursuant to section 112 of the **Major Transport Projects Facilitation Act 2009** for the purpose of the North East Link Project.

A notice of intention to acquire the interest in the land was served on 29 April 2022.

The Secretary to the Department of Transport further declares, for the purposes of section 114(1) of the **Major Transport Projects Facilitation Act 2009**, that the land acquired by this Notice is to vest in the project authority.

For and on behalf of the Secretary to the Department of Transport:

Signed: BRYAN YEOW
Name: Bryan Yeow
Director, Land Acquisition
Department of Transport

Date: 10 June 2022

Schedule One

TERMS OF EASEMENT

Yarra Valley Water (Sewerage)

1. Interpretation

1.1 References to Statutes

A reference to a statute, ordinance, code or other law includes any regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the date of the date of acquisition of the easement.

1.2 Joint and Several Obligations

An agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally and an agreement, representation or warranty on the part of two or more persons binds them jointly and severally.

SPECIAL

1.3 Persons

Unless the contrary intention appears, the word person includes a firm, a body corporate, an unincorporated association or an authority.

1.4 Definitions and Interpretation

In these Terms of Easement unless the context requires otherwise:

- (a) a gender includes the other genders;
- (b) the singular includes the plural and vice versa;
- (c) the Grantor includes the Grantor's administrators, successors, transferees, assigns, licensees, employees, agents, contractors and sub-contractors;
- (d) the Grantee includes the Grantee's administrators, successors, transferees, assigns, licensees, employees, agents, contractors and sub-contractors, each of whom may exercise the rights granted under this easement;
- (e) where any form of the word 'include' is used it is to be read as if followed by the words 'without limitation';
- (f) words defined in **A New Tax System (Goods and Services Tax) Act 1999** (Cth) have the same meaning in clauses about GST;
- (g) references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled;
- (h) **Water** means water, whether or not it contains impurities, and includes recycled water; and
- (i) **Assets** means any one or more of the following:
 - (i) water storage basins and ponds and associated works;
 - (ii) pipeline works;
 - (iii) roads or access tracks;
 - (iv) channel and/or drainage works;
 - (v) fences and gateways;
 - (vi) sewerage, water supply and drainage facilities; and
 - (vii) all other equipment, installations and appurtenances whether or not similar to the foregoing as may be useful or convenient in connection therewith.

2. Permitted Purposes

The registered proprietor of the land the subject of this easement (Grantor) grants to the Secretary to the Department of Transport (Grantee) the full and free right at all times to:

- (a) enter and remain upon the servient land and obtain ingress to and egress from and pass over the servient land with or without plant, equipment, vehicles and materials;
- (b) construct and maintain gates in fences crossing the servient land;
- (c) construct, lay, place, erect and install assets in, on and under the servient land;
- (d) patrol, inspect (including by aircraft and helicopter), maintain, repair, alter, remove, replace and destroy the assets;
- (e) use, operate and maintain the assets, including by the storage of or passage through the assets of sewerage;
- (f) temporarily locate and store plant, equipment, vehicles and materials in connection with any of the purposes described in paragraphs (c) – (e) above;
- (g) clear and keep free the servient land of anything whether above or below ground which is or may be an obstruction to the exercise of the rights granted by this document, including all improvements, buildings, trees, plants, soil, fill, works or structures whatsoever;

- (h) maintain or change the present grades and contours of the servient land;
- (i) carry out in, on or under any part of the servient land such digging, cutting and excavating as may be reasonably necessary in relation to the assets or in relation to the exercise of any rights under the easement;
- (j) upon reasonable notice, exclude third parties to carry out maintenance and other works on or in relation to the assets; and
- (k) without limiting any other power or right granted under this document, exercise the rights, powers, duties and functions of the Grantee under the **Water Act 1989** or any other legislation from time to time relating to the distribution, sale or supply of water, sewerage or similar services or under any licence granted to the Grantee under that legislation or any other such legislation.

3. **Obligations of the Grantee**

The Grantee must:

- (a) when exercising the rights conferred by the easement:
 - (i) do as little damage to the servient land as is reasonably practicable; and
 - (ii) cause as little interference to the operations of the Grantor on the servient land as is reasonably practicable; and
- (b) cover in any excavation works on the servient land as soon as reasonably practicable after completion of those works.

4. **No Obstruction by the Grantor**

- (a) The Grantor acknowledges and agrees that the Grantee must at all times, have uninterrupted control and access to the servient land.
- (b) The Grantor must not do or permit to be done on the servient land or on any land in the proximity of the servient land any act, matter or thing which interferes or is likely to interfere with the rights of the Grantee under the instrument or with the assets including by planting any vegetation, erecting any structures or any excavating or digging.

5. **Ownership of Assets**

Despite any rule of law or equity to the contrary or that the assets may be annexed or affixed to the servient land, the assets will at all times remain the property of the Grantee (or any person to whom the Grantee sells or otherwise disposes of the assets) and may be left on or within the servient land whether in use or not.

6. **No Limitation**

Nothing in these Terms of Easement restricts or limits the rights and obligations of the Grantee under the **Water Industry Act 1994** or any licence under that Act or any rights or obligations of the Grantee under any other legislation for the time being relating to the distribution, sale or supply of water, sewerage or similar services or any licence under any other such legislation.

7. **GST**

A recipient of a taxable supply under these Terms of Easement must:

- (a) pay to the supplier an additional amount equal to any GST on any supply by the supplier under the instrument, without deduction or set-off of any other amount; and
- (b) make that payment in addition to and at the same time as the other consideration, or part of it, must be paid or provided.

The requirement to pay an amount in respect of GST is subject to the party making a taxable supply under this document issuing a tax invoice to the other party.

8. **Successors**

Each of the Terms of Easement are essential terms of the easement and apply to the Grantor, the Grantor's successors and the registered proprietor for the time being of the servient land.

Schedule Two
TERMS OF EASEMENT

Melbourne Water (Sewerage)**1. Interpretation****1.1 References to Statutes**

A reference to a statute, ordinance, code or other law includes any regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the date of the acquisition of easement.

1.2 Joint and Several Obligations

An agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally and an agreement, representation or warranty on the part of two or more persons binds them jointly and severally.

1.3 Persons

Unless the contrary intention appears, the word person includes a firm, a body corporate, an unincorporated association or an authority.

1.4 Grantor

Grantor includes the Grantor's administrators, successors, transferees, assigns, licensees, employees, agents, contractors and subcontractors.

1.5 Grantee

Grantee includes the Grantee's administrators, successors, transferees, assigns, licensees, employees, agents, contractors and subcontractors.

1.6 Works

Works means pipelines and any other works and items in connection with or incidental to the use of the Servient Land for water supply purposes.

2. Easement Description

The Secretary to the Department of Transport (Grantee) may at all times:

- (a) use the Servient Land for sewerage purposes;
- (b) construct, lay, place in, on or under the Servient Land the Works; and
- (c) inspect, maintain, repair, alter, remove, patrol, replace or destroy the Works; and
- (d) use the Works; and
- (e) clear and keep free the Servient Land of anything which is or may be an obstruction to the rights granted under the creation of easement including, without limitation, all improvements, structures, trees, plants and soil fill and to maintain the present grades and contours of the Servient Land; and
- (f) enter upon with or without plant and equipment the Servient Land to exercise the rights granted under these Terms of Easement.

3. Grantee's Covenants**3.1 Grantor's Rights of Use**

The registered proprietor of the servient land (Grantor) may continue to use and enjoy the Servient Land so long as that use and enjoyment does not interfere with the rights of the Grantee under these Terms of Easement.

3.2 Grantor's Further Rights of Use

The Grantor may use the Servient Land in a manner which interferes with the rights of the Grantee (including, without limitation, the planting of any crops, trees or shrubs) only with the prior written consent of the Grantee, which consent may be withheld in the Grantee's absolute discretion.

3.3 Restoration

The Grantee must:

- (a) complete all works undertaken in exercising the rights granted under the easement; and
- (b) do as little damage as possible to the Servient Land and where works are undertaken by the Grantee restore the surface of the Servient Land to as nearly as reasonably possible the condition in which the Servient Land was immediately prior to the commencement of the work.

4. Grantor's Covenants

4.1 Covenants

The Grantor must not:

- (a) plant or permit to be planted any trees or shrubs on the Servient Land; and
- (b) erect any structure, foundation, pavement or other improvements on the Servient Land; and
- (c) use or permit to be used any explosives on or under the Servient Land; and
- (d) alter or permit to be altered (other than by nature) the grade and contours of the Servient Land; and
- (e) interfere with the rights and privileges of the Grantee under the easement;
- (f) unless with the prior written consent of the Grantee (which consent may be withheld in the Grantee's absolute discretion).

4.2. Indemnity

The Grantor indemnifies the Grantee against all suits, actions, claims or demands for any compensation, damages, expenses or costs arising out of a consent given by the Grantee under these Terms of Easement.

5. Administration and Legislation

5.1. Communication

All notices, demands, documents and other communications (Communications) in connection with this easement may be given by prepaid, registered or certified mail at the following addresses:

- (a) for the Grantor – at the latest address shown of the Grantor in the folio of the Register for the Servient Land under the **Transfer of Land Act 1958**; and
- (b) for the Grantee – the latest address notified to the Registrar of Titles under the **Transfer of Land Act 1958**,

or as agreed between the Grantor and the Grantee.

The Communication is taken to be received on the third (seventh, if posted to or from a place outside Australia) day after posting.

5.2 Statutory Provisions

Nothing in these terms of easement affects or limits any functions, powers, duties and objectives of the Grantee under any statute which applies to the Grantee and where necessary this easement must be read down to the extent required to give the relevant clause legal effect.

5.3 Works to Remain the Property of the Grantee

Despite any rule of law or equity, the Works will at all times remain the property of the Grantee and may be left on or within the Servient Land whether in use or not.

6. Successors

Each of the provisions of these terms are essential terms of the easement and apply to the Grantor, the Grantor's successors and the registered proprietor for the time being of the Servient Land.

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