

1966/143

**THE ACCESS WAYS AND SERVICE LANES FORMATION
CONTRACTS NOTICE 1966**

PURSUANT to subsection (5) of section 4 of the Public Works Amendment Act 1948 (as enacted by subsection (2) of section 5 of the Public Works Amendment Act 1954), the Minister of Works hereby gives the following notice.

NOTICE

1. This notice may be cited as the Access Ways and Service Lanes Formation Contracts Notice 1966.

2. The deed to be executed in any case where paragraph (b) (i) of the said subsection (5) applies shall be in the form set out in the First Schedule hereto, so far as that form is applicable.

3. The deed to be executed in any case where paragraph (b) (ii) of the said subsection (5) applies shall be in the form set out in the Second Schedule hereto, so far as that form is applicable.

SCHEDULES

FIRST SCHEDULE

**FORM OF DEED WHERE CONTRACT TO FORM ACCESS WAYS AND SERVICE
LANES SECURED BY GUARANTEE**

THIS DEED made this day of 19 between the body corporate called (hereinafter called the controlling authority) of the first part AND (hereinafter with his executors and administrators called the Owner) of the second part AND (hereinafter with its successors and assigns called the Guarantor) of the third part:

Whereas the Owner is the registered proprietor of the land described in the Schedule hereto and intends to subdivide the said land and dedicate the access ways and service lanes as shown on a plan lodged in the Land Registry Office at under number :

And Whereas the controlling authority has approved a plan submitted to it by the Owner showing the position, course, levels, grades, and extent of the proposed access ways and service lanes:

FIRST SCHEDULE—*continued*

And Whereas pursuant to subsection (3) of section 4 of the Public Works Amendment Act 1948 (hereinafter called section 4) the owner is required to form and completely construct the proposed access ways and service lanes in accordance with the approved plan to the satisfaction of the controlling authority and pursuant to that subsection has been required by the controlling authority to carry out and complete to the satisfaction of the controlling authority the works and things set out in and in accordance with the plans and specifications hereto annexed (the said formation and works and things being hereinafter called the said works):

And Whereas the controlling authority has agreed that on the execution of these presents it will without awaiting completion of the said works accept dedication of the proposed access ways and service lanes and will certify for the purpose of subsection (5) of section 4 that the owner has complied with the requirements of paragraph (b) of subsection (5) of section 4:

Now this deed witnesseth that the parties hereto agree and covenant as follows:

1. The controlling authority will on the execution of these presents accept dedication of the proposed access ways and service lanes and will certify for the purposes of subsection (5) of section 4 that the Owner has complied with the requirements of paragraph (b) of subsection (5) of section 4.

2. The Owner will within a period of [*Insert here the controlling authority's estimate of the time required to complete the said works, in no case more than two years*] months from the date of the certificate of the controlling authority under clause 1 hereof (which period may be extended to a maximum of two years by the controlling authority as provided in paragraph (b) of subsection (5) of section 4) carry out and complete the said works in strict accordance with the aforesaid plans and specifications and to the satisfaction of the controlling authority and will maintain the said works until the whole of the said works have been completed to the satisfaction of the controlling authority.

3. If the Owner fails to fulfil any obligation under clause 2 hereof or fails to make such progress with the said works as the controlling authority considers necessary to complete the said works within the prescribed time, then—

(a) The Guarantor shall on demand by the controlling authority pay to the controlling authority [*Insert an amount being one and a quarter times the estimated cost of the said works as determined by the controlling authority*] pounds (£) or such portion thereof as may be demanded by the controlling authority:

Provided that in the latter case the controlling authority may from time to time thereafter demand and the Guarantor shall whenever demand is made pay the balance or any portion of the balance of the said sum of pounds (£) until the full amount thereof if required by the controlling authority has been paid by the Guarantor to the controlling authority:

FIRST SCHEDULE—*continued*

(b) The controlling authority may at any time and from time to time enter on the subdivided land and take such steps and carry out such works as may be necessary to complete the said works.

4. (1) All or any expenses incurred by the controlling authority under clause 3 hereof or arising therefrom shall constitute a debt due to the controlling authority by the Owner, and may be recovered by the controlling authority from the Guarantor or from the Owner, or portion thereof from the Owner and portion from the Guarantor, as the controlling authority may from time to time desire:

Provided that the total liability of the Guarantor under this deed shall be limited to the amount specified in clause 3 hereof.

(2) Any balance of the money paid by the Guarantor under clause 3 hereof remaining in the hands of the controlling authority after all expenses incurred by the controlling authority under that clause have been met shall be paid by the controlling authority to the Guarantor, whose receipt shall be a sufficient discharge to the controlling authority in respect of any claim by the Owner relating to the money.

5. The Owner and the Guarantor DO AND EACH OF THEM DO TH HEREBY COVENANT with the controlling authority that they will jointly and severally well and sufficiently indemnify and keep indemnified the controlling authority against all actions, suits, proceedings, claims, demands, costs, and expenses whatsoever which may be taken or made against the controlling authority or incurred or become payable by the controlling authority by reason of or arising out of any fault, neglect, or sufferance of the Owner, his servants, agents, and contractors in respect of the said works or of any fault, neglect, or sufferance of the controlling authority its servants, agents, and employees in carrying out any portion of the works under clause 3 hereof and for which the controlling authority would not be liable if dedication of the said proposed access ways and service lanes had been delayed until completion of the said works:

Provided that the total liability of the Guarantor under this deed shall be limited to the amount specified in clause 3 hereof.

6. Without limiting his obligations or liabilities hereunder the Owner will at his own cost effect and keep on foot policies of insurance fully assuring the controlling authority and the Owner against all claims and liabilities, whether under any enactment or rule of law, in respect of death, accident, or injury of any person arising out of or in the course of or caused by the execution of the said works (the total amount payable under such insurance as aforesaid in respect of any one claim to be pounds and also fully assuring the controlling authority and the Owner against all claims or liabilities arising by reason of damage or loss of any real or personal property of any description whatsoever arising or caused aforesaid.

7. The liability of the Owner or the Guarantor hereunder shall not be released, varied, or affected in any way by any delay, extension of time, or other indulgence granted to the Owner or the Guarantor or suffered or permitted by the controlling authority or by any delay, failure, or neglect of the controlling authority to enforce these presents or any obligations of the Owner or the Guarantor hereunder.

FIRST SCHEDULE—*continued*

8. The powers and remedies hereby given to the controlling authority are in addition to all other powers and remedies conferred on it by the Public Works Amendment Act 1948 and by any other Act and the exercise by the controlling authority of any power or remedy under these presents or any such Act shall not prejudice its authority to exercise any other such power or remedy.

SCHEDULE

[*Here set out description of land*]

IN Witness Whereof these presents have been executed the day and year first above written.

The common seal of the body corporate called _____ was, }
pursuant to a resolution of the _____, passed on the }
day of 19 _____, hereunto affixed in the presence of: }

Signed by the above named _____ in the presence of:

.....Witness.
.....Occupation.
.....Address.

The common seal of the above named _____ Limited was, }
by authority of a resolution of the board of directors }
thereof, hereunto affixed in the presence of: }



SECOND SCHEDULE

FORM OF DEED WHERE CONTRACT TO FORM ACCESS WAYS AND SERVICE LANES SECURED BY DEPOSIT OF MONEY OR NEGOTIABLE SECURITIES

THIS Deed made this _____ day of _____ 19 _____ BETWEEN the body corporate called _____ (hereinafter called the controlling authority) of the one part AND _____ (hereinafter with his executors and administrators called the Owner) of the other part:

Whereas the Owner is the registered proprietor of the land described in the Schedule hereto and intends to subdivide the said land and dedicate access ways and service lanes as shown on a plan lodged in the Land Registry Office at _____ under number _____:

And whereas the controlling authority has approved a plan submitted to it by the Owner showing the position, course, levels, grades, and extent of the proposed access ways and service lanes:

And whereas pursuant to subsection (3) of section 4 of the Public Works Amendment Act 1948 (hereinafter called section 4) the Owner is required to form and completely construct the proposed access ways and service lanes in accordance with the approved plan to the satisfaction of the controlling authority and pursuant to that subsection has been required by the controlling authority to carry out and complete to the satisfaction of the controlling authority the works and things set out in and in accordance with the plans and specifications hereto annexed (the said formation and works and things being hereinafter called the said works):

SECOND SCHEDULE—*continued*

And Whereas the controlling authority has agreed that on the execution of these presents and compliance by the Owner with clause 1 hereof it will, without awaiting completion of the said works, accept dedication of the proposed access ways and service lanes and will certify for the purposes of subsection (5) of section 4 that the Owner has complied with the requirements of paragraph (b) of subsection (5) of section 4:

Now this deed witnesseth that the parties hereto agree and covenant as follows:

1. The Owner shall deposit with the controlling authority the sum of [*Insert here an amount, being one and a quarter times the estimated cost of the said works as determined by the controlling authority*] pounds (£) to be held by the controlling authority for the purposes of these presents.

(*Or* 1. The Owner shall deposit with the controlling authority negotiable securities having a current market value of [*Insert here an amount, being one and a quarter times the estimated cost of the said works as determined by the controlling authority*] pounds (£) to be held by the controlling authority for the purposes of these presents. No negotiable security shall be deemed deposited within the meaning of these presents unless—

- (a) The controlling authority has been supplied with all certificates, transfers, and other documents and been given all power to enable the controlling authority, while that negotiable security is held by it, forthwith to sell or otherwise dispose of the negotiable security without reference to the Owner or any other person; and
- (b) While that negotiable security is held by the controlling authority, it is not possible for the Owner or any other person to sell, mortgage, or otherwise deal with the negotiable security.)

2. The controlling authority will, on the execution of these presents and compliance by the Owner with clause 1 hereof, accept dedication of the proposed access ways and service lanes and will certify for the purposes of subsection (5) of section 4 that the Owner has complied with the requirements of paragraph (b) of subsection (5) of section 4.

3. The Owner will within a period of [*Insert here the controlling authority's estimate of the time required to complete the said works, in no case more than two years*] months from the date of the certificate of the controlling authority under clause 2 hereof (which period may be extended to a maximum of two years by the controlling authority as provided in paragraph (b) of subsection (5) of section 4) carry out and complete the said works in strict accordance with the aforesaid plans and specifications and to the satisfaction of the controlling authority and will maintain the said works until the whole of the said works have been completed to the satisfaction of the controlling authority.

4. If the Owner fails to fulfil any obligation under clause 3 hereof or fails to make such progress with the said works as the controlling authority considers necessary to complete the said works within the prescribed time, then the controlling authority may at any time and from time to time enter on the subdivided land and take such steps and carry out such works as may be necessary to complete the said works.

SECOND SCHEDULE—*continued*

5. (1) All or any expenses incurred by the controlling authority under clause 4 hereof may be met by the controlling authority out of the money deposited by the Owner under clause 1 hereof so far as that money extends, and any balance of those expenses not so met may be recovered by the controlling authority from the Owner as a debt due to the controlling authority.

(Or (1) On the exercise by the controlling authority of any power under clause 4 hereof it shall be lawful for the controlling authority to sell (by private contract or otherwise) the negotiable securities deposited by the Owner under clause 1 hereof and, after deduction of all commission and expenses thereby incurred, to apply the money so received so far as that money extends in meeting all or any expenses incurred by the controlling authority under clause 4 hereof, and any balance of those expenses not so met may be recovered by the controlling authority from the Owner as a debt due to the controlling authority.)

(2) Any money or negotiable securities still held by the controlling authority after meeting all expenses as aforesaid shall be returned by the controlling authority to the Owner.

6. The Owner Hereby Covenants with the controlling authority that he will well and sufficiently indemnify and keep indemnified the controlling authority against all actions, suits, proceedings, claims, demands, costs, and expenses whatsoever which may be taken or made against the controlling authority or incurred or become payable by the controlling authority by reason of or arising out of any fault, neglect, or sufferance of the Owner, his servants, agents, and contractors in respect of the said works, or of any fault, neglect, or sufferance of the controlling authority, its servants, agents, and employees in carrying out any portion of the works under clause 4 hereof and for which the controlling authority would not be liable if dedication of the said proposed access ways and service lanes had been delayed until completion of the said works.

7. Without limiting his obligations or liabilities hereunder the Owner will, at his own cost, effect and keep on foot policies or insurance fully assuring the controlling authority and the Owner against all claims and liabilities, whether under any enactment or rule of law, in respect of death, accident, or injury of any person arising out of or in the course of or caused by the execution of the said works (the total amount payable under such insurance as aforesaid in respect of any one claim to be pounds (£)) and also fully assuring the controlling authority and the Owner against all claims or liabilities arising by reason of damage or loss of any real or personal property of any description whatsoever arising or caused as aforesaid.

8. The liability of the Owner hereunder shall not be released, varied, or affected in any way by any delay, extension of time, or other indulgence to the Owner or suffered or permitted by the controlling authority or by any delay, failure or neglect of the controlling authority to enforce these presents or any obligations of the Owner hereunder.

9. The powers and remedies hereby given to the controlling authority are in addition to all other powers and remedies conferred on it by the Public Works Amendment Act 1948 or by any other Act, and the exercise by the controlling authority of any power or remedy under these presents or any such Act shall not prejudice its authority to exercise any other such power or remedy.

SECOND SCHEDULE—continued

SCHEDULE

[Here set out description of land]

In witness whereof these presents have been executed the day and the year first above written.

The common seal of the body corporate called _____ was }
pursuant to a resolution of the _____ passed on the _____ }
day of _____ 19 hereunto affixed in the presence of: }

Signed by the above named _____ in the presence of:

.....Witness.

.....Occupation.

.....Address.

Dated at Wellington this 22nd day of August 1966.

PERCY B. ALLEN, Minister of Works.

EXPLANATORY NOTE

This note is not part of the notice, but is intended to indicate its general effect.

Under section 4 of the Public Works Amendment Act 1948 (as amended by section 5 (2) of the Public Works Amendment Act 1954) the Crown or a local authority may accept the transfer of access ways and service lanes if the subdividing owner executes a deed, in a form prescribed by the Minister of Works by notice in the *Gazette* or approved by him in any particular case, binding the owner to carry out the works required from him by the local authority and secured either by the guarantee of a bank or insurance company or by the deposit of money or negotiable securities. The notice prescribes forms of deeds for the purposes of these provisions.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 25 August 1966.

These regulations are administered in the Ministry of Works.