



THE ROAD AND STREET FORMATION CONTRACTS NOTICE 1954

PURSUANT to subsection (5A) of section 125 of the Public Works Act 1928 (as enacted by section 2 of the Public Works Amendment Act 1953), the Minister of Works hereby gives the following notice.

NOTICE

1. This notice may be cited as the Road and Street Formation Contracts Notice 1954.

2. The deed to be executed in any case where paragraph (a) of the said subsection (5A) 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) of the said subsection (5A) 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 ROAD OR STREET SECURED BY GUARANTEE

THIS DEED made this day of 19 between the body corporate called (hereinafter called the local 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 street (road) as shown on a plan lodged in the Land Registry Office at under number

AND WHEREAS pursuant to subsection (5) of section 125 of the Public Works Act 1928 (hereinafter called section 125) the local authority has approved a plan submitted to it by the Owner showing the position course levels grades and extent of the proposed street (road) and of the proposed carriage way and footpaths within the limits thereof

AND WHEREAS by the said subsection (5) the Owner is required to form the proposed street (road) and the said carriage way and footpaths in accordance with the approved plan to the satisfaction of the local authority and pursuant to that subsection has been required by the local authority to carry out and complete to the satisfaction of the local 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 local authority under the powers conferred by subsection (5A) of section 125 has agreed that on the execution of these presents it will without awaiting completion of the said works accept dedication of the proposed street (road) and will certify for the purposes of subsection (7) of section 125 that the Owner has complied with the requirements of section 125

NOW THIS DEED WITNESSETH that the parties hereto agree and covenant as follows:

1. THE local authority will on the execution of these presents accept dedication of the proposed street (road) and will certify for the purposes of subsection (7) of section 125 that the Owner has complied with the requirements of section 125.

2. THE Owner will within a period of [*Insert here the local 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 local authority under clause one hereof (which period may be extended to a maximum of two years by the local authority as provided in subsection (5A) of section 125) carry out and complete the said works in strict accordance with the aforesaid plans and specifications and to the satisfaction of the local authority and will maintain the said works until the whole of the said works have been completed to the satisfaction of the local authority.

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

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

(b) The local 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 local authority under the last preceding clause or arising therefrom shall constitute a debt due to the local authority by the Owner and may be recovered by the local authority from the Guarantor or from the Owner or portion thereof from the Owner and portion from the Guarantor as the local authority may from time to time desire provided that the liability of the Guarantor shall be limited to the amount specified in the last preceding clause.

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

5. THE Owner and the Guarantor DO AND EACH OF THEM DOTH HEREBY COVENANT with the local authority that they will jointly and severally well and sufficiently indemnify and keep indemnified the local authority against all actions suits proceedings claims demands costs and expenses whatsoever which may be taken or made against the local authority or incurred or become payable by the local authority by reason of or arising out of any fault neglect or surffrance of the Owner his servants agents and contractors in respect of the said works or of any fault neglect or surffrance of the local authority its servants agents and employees in carrying out any portion of the works under clause three hereof and for which the local authority would not be liable if dedication of the said proposed street (road) had been delayed until completion of the said works.

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 local authority and the Owner against all claims and liabilities whether under any statute or at common 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 local 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.

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 local authority or by any delay failure or neglect of the local authority to enforce these presents or any obligation of the Owner or the Guarantor hereunder.

8. THE powers and remedies hereby given to the local authority are in addition to all other powers and remedies conferred on it by the Public Works Act 1928 and by any other Act and the exercise by the local 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 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.

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 ROAD OR STREET SECURED BY
DEPOSIT OF MONEY OR NEGOTIABLE SECURITIES

THIS DEED made this day of 19 **BETWEEN** the body corporate called (hereinafter called the local 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 street (road) as shown on a plan lodged in the Land Registry Office at under number

AND WHEREAS pursuant to subsection (5) of section 125 of the Public Works Act 1928 (hereinafter called section 125) the local authority has approved a plan submitted to it by the Owner showing the position course levels grades and extent of the proposed street (road) and of the proposed carriage way and footpaths within the limits thereof

AND WHEREAS by the said subsection (5) the Owner is required to form the proposed street (road) and the said carriage way and footpaths in accordance with the approved plan to the satisfaction of the local authority and pursuant to that subsection has been required by the local authority to carry out and complete to the satisfaction of the local 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 local authority under the powers conferred by subsection (5A) of section 125 has agreed that on the execution of these presents and compliance by the Owner with clause one hereof it will without awaiting completion of the said works accept dedication of the proposed street (road) and will certify for the purposes of subsection (7) of section 125 that the Owner has complied with the requirements of section 125

NOW THIS DEED WITNESSETH that the parties hereto agree and covenant as follows:

1. THE Owner shall deposit with the local 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 local authority*] pounds (£) to be held by the local authority for the purposes of these presents.

(Or 1. THE Owner shall deposit with the local 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 local authority*] pounds (£) to be held by the local authority for the purposes of these presents. No negotiable security shall be deemed deposited within the meaning of these presents unless—

(a) The local authority has been supplied with all certificates transfers and other documents and been given all power to enable the local authority while that negotiable security is held by it to forthwith 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 local authority it is not possible for the Owner or any other person to sell mortgage or otherwise deal with the negotiable security.)

2. THE local authority will on the execution of these presents and compliance by the Owner with clause one hereof accept dedication of the proposed street (road) and will certify for the purposes of subsection (7) of section 125 that the Owner has complied with the requirements of section 125.

3. THE Owner will within a period of [*Insert here the local 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 local authority under clause two hereof (which period may be extended to a maximum of two years by the local authority as provided in subsection (5A) of section 125) carry out and complete the said works in strict accordance with the aforesaid plans and specifications and to the satisfaction of the local authority and will maintain the said works until the whole of the said works have been completed to the satisfaction of the local authority.

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

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

(Or (1) ON the exercise by the local authority of any power under the last preceding clause it shall be lawful for the local authority to sell (by private contract or otherwise) the negotiable securities deposited by the Owner under clause one 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 local authority under the last preceding clause and any balance of those expenses not so met may be recovered by the local authority from the Owner as a debt due to the local authority.)

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

6. THE Owner HEREBY COVENANTS with the local authority that he will well and sufficiently indemnify and keep indemnified the local authority against all actions suits proceedings claims demands costs and expenses whatsoever which may be taken or made against the local authority or incurred or become payable by the local 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 local authority its servants agents and employees in carrying out any portion of the works under clause four hereof and for which the local authority would not be liable if dedication of the said proposed street (road) 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 of insurance fully assuring the local authority and the Owner against all claims and liabilities whether under any statute or at common 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 local 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 local authority or by any delay failure or neglect of the local authority to enforce these presents or any obligations of the Owner hereunder.

9. The powers and remedies hereby given to the local authority are in addition to all other powers and remedies conferred on it by the Public Works Act 1928 or by any other Act and the exercise by the local 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 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 9th day of April 1954.

W. S. GOOSMAN,
Minister of Works.

EXPLANATORY NOTE

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

Under section 125 (5A) of the Public Works Act 1928 (as enacted by section 2 of the Public Works Amendment Act 1953) the local authority may accept dedication of roads or streets 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.

This notice prescribes the form of deed for the purposes of that subsection. The form in the First Schedule is to be used where performance by the owner is secured by guarantee, and the form in the Second Schedule is to be used where performance is secured by the deposit of money or negotiable securities.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 14 April 1954.
These regulations are administered in the Ministry of Works.