

View Instrument Details



Instrument No 8566292.8
Status Registered
Date & Time Lodged 20 August 2010 15:31
Lodged By Wang, Xi-Yu
Instrument Type Easement Instrument



Affected Computer Registers	Land District
515504	North Auckland
515505	North Auckland
515506	North Auckland
515507	North Auckland
515508	North Auckland
515509	North Auckland

Annexure Schedule: Contains 12 Pages.

Grantor Certifications

- I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument
- I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument
- I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply
- I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period
- I certify that the Mortgagee under Mortgage 7997984.2 has consented to this transaction and I hold that consent

Signature

Signed by Deborah June McNab as Grantor Representative on 20/08/2010 12:28 PM

Grantee Certifications

- I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument
- I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument
- I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply
- I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Deborah June McNab as Grantee Representative on 20/08/2010 12:28 PM

*** End of Report ***

Form B

Easement instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

231 Huia Road Developments Limited

Grantee

231 Huia Road Developments Limited

Grant of Easement or *Profit à prendre* or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) 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, or creates the covenant(s) 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 (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Land Covenants	DP 429542	515504 – 515509	515504 – 515509
Fencing Covenants	DP429542	515504 - 515509	515504 - 515509

Form B - continued

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 2002 and/or Schedule Five of the Property Law Act 2007~~

~~The implied rights and powers are hereby [varied] [negated] [added to] or [substituted] by:~~

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

~~[the provisions set out in Annexure Schedule _____]~~

Covenant provisions

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

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

Annexure Schedule Two – as attached

ANNEXURE SCHEDULE TWO

PART 1

INTERPRETATION

Unless the context specifies or requires otherwise, the following words and phrases when used in this Schedule shall have the meanings specified below:

1. "AGM" means the Annual General Meeting of the Lot Owners Association.
2. "Deposited Plan" means Deposited Plan 429542 deposited at the North Auckland Registry.
3. "District Plan" means the partially operative or operative District Plan for the Waitakere City Council or any other substitute body or authority having jurisdiction over the Land.
4. "Easement Instrument" means all of this Easement Instrument including all Schedules.
5. "Electronic Gate" means the electronic gate situated near the entrance to the Grantor's Development and includes all wiring, control panels and other mechanisms.
6. "Grantor's Development" means the residential development arising from the subdivision and development of the land comprised and described in Certificate of Title 425604 such development which is to be completed in two stages.
7. "Land" means the land owned by the Grantor comprised in Certificates of Title 51504-51509 (inclusive).
8. "Lot(s)" means the residential lots being 2-6 inclusive and 200 on the Deposited Plan and within the Grantor's Development and "Lot" means one of those residential lots and includes the Dominant and the Servient Tenements.
9. "Lot Owners Association" means the Association as defined in clause 1 of Part 2.
10. "Procedural Rules" means the procedural rules which govern the operation and management of the Lot Owners Association as set out in Part 3 of this Schedule.
11. "Registered Proprietor(s)" includes any registered proprietor and any tenant, licensee, visitor or invitee of any Registered Proprietor or any other occupier of any Lot. Joint Registered Proprietors of one Lot shall be deemed to be one registered proprietor.
12. "Resource Consents" means the Waitakere City Council Subdivision Consent 2006/1652.
13. "Schedule" means this Annexure Schedule Two.
14. "Water Permits" means the Auckland Regional Council consents/permits 35962 and 35343.

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SCOPE

1. The Grantor hereby covenants with the Grantee to comply with the rights and obligations of the Grantor as set out in this Easement Instrument.
2. The Grantee hereby covenants with the Grantor to comply with the rights and obligations of the Grantee as set out in this Easement Instrument.
3. It is intended that the Covenants and Easements contained in this Easement Instrument be for the benefit and the burden of the Lots and be mutually enforceable inter se by the Registered Proprietors.
4. The Grantor and the Grantee shall not do any act which impedes, interferes with or restricts the rights of any Registered Proprietor in relation to this Easement Instrument.

Covenants by Registered Proprietor(s)

5. Subject to the rights of the Lot Owners Association set out in this Schedule the covenants contained herein shall bind all the Registered Proprietors and successors in title until the 30th of June 2035 at which time these covenants shall expire.
6. The Registered Proprietor(s) will not use any Lot comprising the said Land or permit the same to be used other than for residential purposes and will not use the same or permit the same to be used for any trading, industrial or commercial purposes provided however it is acknowledged that use of the dwelling for a home enterprise use as is permitted by the District Plan will not be a breach of this covenant subject however to compliance with the obligations as set out in clause 8 below and generally so as not to cause a nuisance to others.
7. The Registered Proprietor(s) will not bring on to or permit to remain on any Lot any livestock including but not limited to horses, pigs, sheep and goats. This shall not prevent the Registered Proprietor(s) from keeping domestic animals as is permitted by the District Plan provided such domestic animals do not cause a nuisance to others.
8. The Registered Proprietor(s) will not erect or permit to be erected or placed on any Lot:
 - (a) a building other than a new single dwelling house and any such dwelling house shall not be less than 220 square metres (including any internal garage) in gross floor area excluding decks, verandahs, patios, carports, garages or other freestanding out buildings or structures; or
 - (b) a building as described in (a) above and a minor dwelling as defined and permitted by the District Plan.

For the avoidance of doubt:

- (i) the size of the minor dwelling shall not be included in the 220 square metre requirement for the main building;

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- (ii) no secondhand buildings or building materials are permitted; and
 - (iii) The Registered Proprietor of Lot 200 ("Lot 200") on the Deposited Plan shall be entitled to subdivide Lot 200 into two Lots and shall be entitled to erect one new single dwelling house or one single new dwelling house and a minor dwelling as defined in the District Plan and permitted by the relevant territorial authority on each such Lot.
9. The Registered Proprietor(s) will not permit the parking of trucks or any large commercial vehicles on or adjoining any Lot other than for delivery purposes.
 10. The Registered Proprietor(s) will not store or permit to be stored any building materials on any adjoining Lot or on any communal area (including but not limited to the access road) in the Grantor's Development.
 11. The Registered Proprietor(s) will not place or allow to be placed a letterbox on any Lot and will utilize the letterbox erected by the Grantor at the entrance to the Grantor's Development.
 12. The Registered Proprietor(s) will not paint the exterior of any dwelling or other permitted outbuildings except in a colour which blends in with the landscape and character of the Grantor's Development. For the avoidance of doubt colours in a pastel palette will generally not be acceptable and the Registered Proprietor(s) shall ensure that the provisions of the District Plan must be complied with in this regard.
 13. The Registered Proprietor(s) shall be liable to the Grantor for any cost incurred by the Grantor in repairing, replacing or reinstating any damage caused by the Registered Proprietor(s) and/or the Registered Proprietor(s) agents, employees or workmen or other person on behalf of the Registered Proprietor(s) to any vehicle crossing, footpath or any other public area or amenity during the course of construction of the dwelling house on their Lot and the Registered Proprietor(s) shall pay to the Grantor within 7 days of demand being made the cost of any such repair, replacement or reinstatement.
 14. The Registered Proprietor(s) will not erect or permit to be erected a fence, wall or hedge (whether man-made or of natural grown vegetation) without the Grantor having first approved the fence, wall or hedge, the intent being that all fences, walls or hedges are sympathetic to each other and all fencing, walls or hedges blends in with the landscape.
 15. The Registered Proprietor(s) will complete the erection of a new dwelling house within 24 months of commencement of site preparation for such building and will within a further 24 months of completion of such building complete the driveway in a permanent hard surface material and complete general landscaping of any Lot comprising the said land to a standard commensurate to that of a high standard residential development. For the avoidance of doubt, dirt, metal and low quality aggregate or loose metal is not an acceptable driveway surface.
 16. The Registered Proprietor(s) will not erect or place or permit to be erected or placed on any Lot comprising the said land any caravan, hut, shipping container or shed for permanent or temporary use (except as is necessary for construction purposes only provided the same shall not be used for accommodation purposes) and will not permit to be erected or placed on any Lot comprising the said land any freestanding carport, garage or other ancillary domestic structure. A Registered Proprietor(s) may

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place on any Lot not more than two garden sheds, the placement of such shed(s) to be such that the shed(s) are unobtrusive. For the avoidance of doubt a Registered Proprietor(s) may park a campervan, caravan or other recreational vehicle on a Lot where such vehicle is utilized for the purposes of holidaying and where:

- (a) such vehicle is not utilized on the Lot as permanent accommodation; and
 - (b) the vehicle is kept in good order, repair and working order and has a current registration and Warrant of Fitness.
17. The Registered Proprietor(s) will not permit any rubbish or waste material to be or remain on any Lot, nor permit any grass thereon to grow to a height of more than 100mm, nor allow gardens or any part of the Lot to become overgrown and in the event of the Registered Proprietor(s) failing to observe this clause the Grantor may elect to do whatever may be required to remedy such failure and the cost of so doing shall be refunded by the Registered Proprietor(s) to the Grantor upon demand.
18. The Registered Proprietor(s) will not undertake or allow anything to be undertaken that contravenes the weed control provision in the Resource Consents.
19. The Registered Proprietor(s) will not call upon the Grantor to pay for or contribute towards the expense of construction or maintenance of any fence between any of the Lots or any contiguous land of the Grantor but this covenant shall not enure for the benefit of any subsequent purchaser from the Registered Proprietor(s) or proprietor of the contiguous land or any part thereof.
20. If there should be any breach or non observance of any of the covenants and conditions set out in clauses 1-19 hereof which remains un-remedied for a period of 30 days following notice in writing to the Registered Proprietor of such breach or non-observance, and without prejudice to any other rights of the Grantor:
- (a) the Registered Proprietor(s) will upon demand pay to the Grantor as liquidated damages the sum of \$5,000.00; and
 - (b) the Registered Proprietor(s) acknowledges that if such breach or non-observance is not remedied within 60 days of the date of notice with respect to such breach or non-observance that the Grantor shall (together with its agents, employees or contractors) be entitled to enter upon the said land to arrange for rectification of the Registered Proprietor(s) default at the cost of the Registered Proprietor(s).

PART 2

LOT OWNERS ASSOCIATION

1. The Registered Proprietors for the time being of the Lots shall comprise the Lot Owners Association. Any person ceasing to be a registered proprietor of a Lot shall cease to be a member of the Lot Owners Association.
2. The affairs of the Lot Owners Association shall be carried out in accordance with the Procedural Rules. The first AGM of the Lot Owners Association shall be held during the first November following the issue of Identifiers for the Lots.

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3. The Lot Owners Association shall be responsible for the following in the Grantor's Development:
 - (a) maintenance, repair and replacement of the Electronic Gates; and
 - (b) inspections, maintenance and any works required by the Auckland Regional Council or any substitute body, in accordance with the Water Permits.
4. The Lot Owners Association may, but shall not be required to, take action to ensure compliance with any or all stipulations, restrictions and covenants contained in this Easement Instrument.
5.
 - (a) The Lot Owners Association shall determine any questions arising in respect of the interpretation of this Instrument and shall resolve any disputes between Registered Proprietors in relation to any matters covered by this Instrument.
 - (b) Any such dispute between Registered Proprietors shall if necessary be resolved by means of the procedures detailed in the Arbitration Act 1996, and in particular Part V of the First Schedule of that Act, with the Lot Owners Association as arbitrator.
 - (c) In resolving any interpretation question, or dispute the Lot Owners Association shall:
 - (i) implement and be bound by the terms and provisions of this Easement Instrument.
 - (ii) subject to subclause (i) above, use its best endeavours to arrive at a decision appropriate to the circumstances.
 - (d) Any costs incurred by the Lot Owners Association in carrying out its obligations and rights under this clause shall be payable as determined by the Lot Owners Association.
6. Any reference to the Grantor named herein, shall, after all the Lots comprising the Grantor's Development have been sold by the Grantor named herein, be deemed to be a reference to the Lot Owners Association.
7. All costs incurred in obtaining any consent required pursuant to this covenant shall be borne by the Registered Proprietor.

Costs

8. All costs incurred by the Lot Owners Association in respect of the following matters shall be communal costs to be apportioned amongst and paid by the Registered Proprietors of the Lots:
 - (a) cost incurred by the Lot Owners Association in complying with the obligations detailed in clause 3(a) and (b) of Part 2 of this Schedule.
 - (b) costs incurred by the Lot Owners Association in taking any action under clause 5 of Part 2 of this Schedule to the extent that such costs are not able to be recovered by the Lot Owners Association from the person(s) or body against whom that action is taken.

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9. Costs incurred by the Lot Owners Association under clause 3(a) and (b) of Part 2 of this Schedule may include:
- (a) costs incurred in employing or engaging any person or body to provide any service or carry out any function.
 - (b) reasonable administration costs.
 - (c) professional costs such as legal services, accountancy services, etc.
 - (d) any other costs reasonably incurred by the Lot Owners Association in carrying out its responsibilities and taking any action authorised to be taken by the Lot Owners Association.
10. (a) Prior to each AGM the Lot Owners Association shall prepare a budget detailing the expenditure which the Lot Owners Association anticipates will be incurred by the Lot Owners Association during the year following the AGM. The Lot Owners Association will forward a copy of that budget to the Registered Proprietor of each Lot along with a notice advising the time, date and place of the AGM so that the budget can be considered prior to the AGM and confirmed at the AGM.
- (b) Once confirmed at the AGM, and subject to subclause (c) below, the budget shall apply for the year following the AGM. The Lot Owners Association shall then levy each Registered Proprietor their appropriate share of that expenditure. The Registered Proprietor shall pay the annual levy, in advance, either by a lump sum paid to the Lot Owners Association within one month after receipt of the notice advising the levy or alternatively by quarterly payments by bank automatic payment authority to the Lot Owners Association's bank account or otherwise as directed by the Lot Owners Association.
 - (c) The Lot Owners Association may, during the course of any year, issue a special levy to cover any unexpected expenditure incurred by the Lot Owners Association, in which case such levy shall be paid as directed by the Lot Owners Association.
 - (d) Expenditure incurred or to be incurred by the Lot Owners Association shall be apportioned as to a 1/7th share for each Lots 2, 3, 4, 5 and 6 on the Deposited Plan and a 2/7th share for Lot 200 on the Deposited Plan. Upon completion of the subdivision of Lot 200 on the Deposited Plan into two separate Lots, then each new Lot shall be liable for a 1/7th share of expenditure incurred or to be incurred.
 - (e) A Registered Proprietor of a Lot shall be liable for any outstanding costs or levies payable in respect of any period prior to the date that Registered Proprietor becomes as Registered Proprietor of their particular Lot. This subclause shall not apply where a registered Proprietor has obtained a written advice from the Lot Owners Association prior to becoming a Registered Proprietor of a Lot that no outstanding cost or levy is payable in respect of that Lot. This subclause shall also not apply to a Registered Proprietor purchasing from the Grantor.

7.

- (f) The registration of a transfer of a Registered Proprietor's interest in any Lot shall not relieve a Registered Proprietor from any liability arising pursuant to this Schedule prior to the date of registration of such transfer.

Recovery of Costs – Indemnity – Enforcement

- 11. The Lot Owners Association may recover from a Registered Proprietor, as a liquidated debt, any sum payable to the Lot Owners Association by way of levy, reimbursement for costs incurred, or otherwise payable pursuant to the provisions of this Easement Instrument.
- 12. A Registered Proprietor will indemnify and hold indemnified the Lot Owners Association against all or any liability against all or any actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may arise through the Lot Owners Association enforcing or requiring compliance with any of the provisions of this Easement Instrument.
- 13. If all or part of any sum payable to the Lot Owners Association by a Registered Proprietor is not paid within 30 days after the date payment is due to be made the Lot Owners Association may charge interest on that outstanding balance from the date payment was due until the date payment is made at such interest rate, which the Lot Owners Association considers is an appropriate penalty interest rate.

The Liability of Lot Owners Association

- 14. The Lot Owners Association shall not be liable in any way for any action taken in good faith or for any failure to take any action or for any other matter, consequence, damage, or liability whatsoever arising in any way in respect of or related to the Grantor's Development.

Notices

- 15. The address for services of the Lot Owners Association for the purposes of any notice or documents to be served or delivered pursuant to the provisions of this Easement Instrument shall be:
 - (a) The address for services of the Lot Owners Association by notice in writing to all Registered Proprietors.
 - (b) If no address for service has been advised the address for service shall be:
 - (i) The postal or residential address of the chairman for the time being of the Lot Owners Association committee if a chairman has been appointed;
 - (ii) If no such chairman has been appointed, the postal or residential address of any member of the Lot Owners Association committee;
 - (iii) If no committee has been appointed, each and every address for service of the Registered Proprietors of all Lots.
- 16. The address for service of any Registered Proprietor for any notice or document under the provisions of the Schedule shall be:

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- (a) While there is no building on the Lot, the rating address for that Lot as recorded in the rating records of the Waitakere City Council or any authority in substitution thereof;
17. Once a building has been erected on a Lot, either the rating address referred to in subclause (a) above or the building situated on that Lot if somebody is residing in that building.

PART 3

PROCEDURAL RULES

Meetings of the Lot Owners Association

1. The AGM shall, in addition to any other meeting, be held at least once in every calendar year and not more than 15 months after the holding of the last preceding AGM. The first AGM shall be held as specified in clause 2 of Part 2 of this Schedule.
2. All meetings other than AGMs shall be called "General Meetings".
3. At least 14 days' notice of every AGM and General Meeting specifying the place, the date, and the hour of the meeting, and the proposed agenda shall give to all Registered Proprietors entitled to exercise a vote in accordance with clause 10 of the Procedural Rules PROVIDED THAT accidental omission to give such notice to any Registered Proprietor so entitled shall not invalidate any proceedings at any such meeting.
4. Any notice required to be given under these Procedural Rules shall be sufficiently given if delivered personally to the Registered Proprietor concerned or if left or sent by registered letter posted to the Registered Proprietor concerned at the last address of that Registered Proprietor notified at the Registered Proprietor address for service pursuant to Part 2, clause 28.
5. At an AGM or General Meeting the Registered Proprietors entitle to exercise the voting power in respect or not less than two thirds of the Lots shall constitute a quorum.
6. Save as otherwise provided in these Procedural Rules, no business shall be transacted at any AGM or General Meeting unless a quorum is present at that time.
7. If within half an hour from the time appointed for an AGM or General Meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the number of persons present and entitled to vote at the expiration of that half hour shall constitute a quorum.
8. At an AGM or General Meeting the chairman shall normally be the chairman elected at the last AGM. If there is no such chairman, or if the chairman is not present or is unwilling to act, a chairman shall be elected at the commencement of the meeting.

9.

9. All matters at an AGM or General Meeting shall be determined by a simple majority of votes. In the case of equality of votes the chairman for the time being of the meeting shall have a casting vote as well as a deliberative vote.
10. At any AGM or General Meeting:
 - (a) 1 vote only shall be exercised in respect of each Lot.
 - (b) if there is more than one Registered Proprietor of any one Lot present, and there is disagreement between those Registered Proprietors as to who should cast the vote for that Lot or how the vote for that Lot should be cast, the Registered Proprietor entitled to cast that vote shall be the Registered Proprietor whose name appears first on the Certificate of Title to that Lot.
11. At any AGM or General Meeting any person present and entitled to vote on the matter that is under consideration may demand a poll thereon, which shall be taken in such manner as the chairman thinks fit.
12. The result of the poll shall be deemed to be the resolution of the matter for which it was demanded. Where a poll is not demanded, a declaration by the chairman that a resolution has been carried shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded for or against the resolution.
13. Any vote to be cast at an AGM or General Meeting may be exercised personally or by proxy. Where two or more Registered Proprietors are jointly entitled to exercise 1 vote and wish to do so by proxy, that proxy shall be jointly appointed by them and may be one of them. A proxy shall be appointed in writing. If only one of those Registered Proprietors is present at a meeting and they have not appointed a proxy as aforesaid, that Registered Proprietor may exercise the vote.
14. A power of voting in respect of a Lot shall not be exercised unless all amounts accrued due and payable to the Lot Owners Association in respect of that Lot have been duly paid PROVIDED THAT no power of voting may be suspended pursuant to this clause unless the Registered Proprietor who holds that power has been given seven days' notice in writing of the amount of arrears due and of the fact that default in payment will result in suspension of voting rights.

Secretary

15. A secretary (who may or may not be a Registered Proprietor) shall be appointed by the Lot Owners Association at its first AGM or General Meeting or at any subsequent AGM or General Meeting for such term, at such remuneration, and upon such conditions as it may approve; and any secretary so appointed may be removed by the Lot Owners Association, either at any AGM or General Meeting.
16. The function of the secretary shall be to keep proper books of account in which shall be kept full, true and complete accounts for the affairs and transactions of the Lot Owners Association and to carry out such other functions as may from time to time be delegated to the secretary by the Lot Owners Association.
17. The secretary shall in each year prepare a balance sheet showing the Lot Owners Association financial dealings during that year, and shall, within two months after each AGM, send a copy of the latest balance sheet to every Registered Proprietor.

10.

18. Notwithstanding anything to the contrary contained in these Procedural Rules, anything that may be done by the Lot Owners Association by resolution passed at an AGM or General Meeting may be done by the Lot Owners Association by resolution passed without an AGM or General Meeting or an previous notice being required by means of an entry in its minute book signed by each Registered Proprietor. It shall not be necessary for the Lot Owners Association to hold an AGM if everything required to be done at that meeting by resolution within the time prescribed for the holding of an AGM meeting is doen by means of an entry in its minute book in accordance with this provision. Any such entry may be signed on behalf of a Registered Proprietor by his agent duly authorised in writing. For the purposes of this rule, a memorandum pasted or otherwise permanently fixed in the minute book and purporting to have been signed for the purposes of becoming an entry herein shall be deemed to be an entry accordingly and any such entry may consist of several documents in like form, each signed by or on behalf of one or more Registered Proprietors.

PART 4

Damage

1. Where any damage to the Electronic Gate or any part of the same is caused by neglect or default of one Registered Proprietor that Registered Proprietor shall bear the costs of remedy thereof and such sum shall be recoverable as set out in clause 11, Part 2 of this Schedule.