

View Instrument Details



Instrument No 8870232.7
Status Registered
Date & Time Lodged 21 September 2011 15:28
Lodged By Liddell, Jacqueline Margaret
Instrument Type Easement Instrument



Affected Computer Registers Land District

| | |
|--------|------------|
| 552375 | Wellington |
| 552376 | Wellington |
| 552377 | Wellington |
| 552378 | Wellington |
| 552380 | Wellington |
| 552374 | Wellington |
| 552379 | Wellington |
| 552381 | Wellington |

Annexure Schedule: Contains 9 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 | <input checked="" type="checkbox"/> |
| I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument | <input checked="" type="checkbox"/> |
| I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply | <input checked="" type="checkbox"/> |
| I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period | <input checked="" type="checkbox"/> |
| I certify that the Mortgagee under Mortgage B349886.5 has consented to this transaction and I hold that consent | <input checked="" type="checkbox"/> |

Signature

Signed by Jacqueline Margaret Liddell as Grantor Representative on 07/09/2011 11:16 AM

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 | <input checked="" type="checkbox"/> |
| I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument | <input checked="" type="checkbox"/> |
| I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply | <input checked="" type="checkbox"/> |
| I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period | <input checked="" type="checkbox"/> |

Signature

Signed by Jacqueline Margaret Liddell as Grantee Representative on 07/09/2011 11:17 AM

*** 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

MAHAKI HOLDINGS LIMITED

Grantee

MAHAKI HOLDINGS 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 Covenant | | Lots 116 to 123 (inclusive) DP 442630 being Certificates of Title 552374 to 552381 (inclusive) | Lots 116 to 123 (inclusive) DP 442630 being Certificates of Title 552374 to 552381 (inclusive) |

Form B - continued

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

Covenant provisions

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

Form L

Annexure Schedule

Page 3 of 9 Pages

Insert instrument type

Land Covenant

1. DEFINITIONS

In this Annexure Schedule, the following definitions shall apply:

Authority means the Kapiti Coast District Council, its successors and any other local or regional council having jurisdiction over the Lots;

Building includes a residential building, garage, shed, carport or any other improvement, erection or structure;

Consent Notice means the consent notice registered on the Certificates of Title of the Lots on the same date the Plan deposits;

District Plan means Kapiti Coast District Plan 1999, as amended from time to time;

Further Subdivision Area means Lot 128 on the Plan;

Low Grow Covenant Areas means the areas shown "BC", "BD", "BE", "BF" and "BG" on the Plan;

Lot means any one of the lots enumerated in the definition of Subdivision;

Lots means two or more or all of the lots enumerated in the definition of Subdivision as the context may require;

Owner means the registered proprietor for the time being of a Lot;

Owners means two or more or all the registered proprietors for the time being of the Lots as the context may require;

Plan means LT plan 442630;

Resource Consent means the resource consent given by the Authority for the Subdivision and includes each and every condition of the Resource Consent.

Subdivision means and includes Lots 116 to 123 (inclusive) on the Plan.

Form L

Annexure Schedule

Page 4 of 9 Pages

Insert instrument type

Land Covenant

AND

- (a) Where the context permits the singular includes the plural and vice versa;
- (b) References to clauses are to clauses in this Easement Instrument;
- (c) Obligations and covenants to be complied with by more than one person shall bind those persons jointly and severally.

2. COVENANTS**Each Owner covenants (in respect of its Lot) with the other Owners as follows:**

- (a) To comply with the provisions of all Consent Notices pertaining to or otherwise affecting the Lot;
- (b) Not to erect any Building other than a new Building on the Lot and not to permit or allow the transportation and delivery onto the Lot of any pre-built transportable or relocatable Building;
- (c) Any residential Building built on the Lot will have a floor area greater than 130m² exclusive of garage, carports, decking and roof overhang;
- (d)
 - (i) To construct any residential Building utilising sympathetic building forms such as stepped structures, irregular rooflines and modulated front elevations;
 - (ii) If the residential Building contains or comprises any separate garage or other outbuilding, such garage or other outbuilding must be complementary to the design and construction of the rest of the residential Building; and
 - (iii) Large areas of glazing should be avoided, and all glazed surfaces are to be of a low-reflective glass material;
- (e) To construct any residential Building on the Lot with more than two hips or gables in the roof line and to construct such residential Building in a shape other than a simple square or rectangle. The provisions of this covenant will be met in the case of a flat roofed residential Building provided that it otherwise meets the terms of this Easement Instrument and has more than one level of roofing;
- (f) Not to plant or allow to grow on the Lot any *Pinus Radiata* or any wood-lots of commercial tree species or carry out or allow to be carried out on the Lot any plantation forestry;

Form L

Annexure Schedule

Page 5 of 9 Pages

*Insert instrument type***Land Covenant**

- (g) Not to erect, or allow to be erected, any fence constructed of any material other than post and wire or post and rail or other transparent fencing material unless the fence is connected to or forms part of a residential Building on the Lot, provided however, but subject to any Authority fencing requirements, any wire fencing, or any fencing that is transparent in nature, that is erected to enclose a tennis court shall not be subject to this covenant 2(g). This includes boundary fencing. For the avoidance of doubt, the Lots will be subject to any and all height and height envelope requirements of the Authority;
- (h) To complete any Building to be erected on the Lot within nine months of commencement of laying down the foundations for such Building and within 15 months of laying down the foundations to complete all ancillary works such as fencing and landscaping on the Lot;
- (i) Once construction of any Building to be erected on the Lot has been substantially completed, not to bring or allow to remain on the Lot or any road or any right of way near the Lot, any temporary Building, caravan, trade vehicle or other equipment or materials or machinery unless garaged or screened so as to preserve the amenities of the Subdivision and to prevent noise likely to cause offence to the Owners for the time being of the Lots. No recreational or commercial vehicles or trailers are to be regularly located on any road or right of way near the Lots nor in front of the building line of the residential Building on the Lots;
- (j) Not to permit the Lot to be occupied or used as a residence unless and until the Buildings on the Lot have been completed in accordance with this Easement Instrument and the building consent issued by the Authority;
- (k) Not to paint or stain all or any part of the front boundary fencing on the Lot (if any) which has been erected by Mahaki Holdings Limited;
- (l) Not to construct any clothesline or letterbox on the Lot except such clothesline or letterbox as may be aesthetically sensitive in terms of design and location, and the Owner shall site any clothesline in such a way as to not be highly visible from any road or right of way near the Lots and the Owner shall site any letterbox adjacent to, but not in, the road reserve;
- (m) To enhance the quality and appearance of attachments to any residential Building on the Lot (including, but not necessarily limited to, television antennae, chimneys and solar hot water panels) and to construct such attachments so that they are discreetly integrated with any residential Building so that they are not highly visible from any road or right of way near the Lots or from any adjacent Lots. Satellite antennae are to be no larger than 1 metre in diameter;

Form L

Annexure Schedule

Page 6 of 9 Pages

Insert instrument type

Land Covenant

- (n) To ensure that in any construction on the Lot, due allowance is made for adequate current and future drainage of all excess stormwater from the Lot, the Owner of each Lot remaining responsible for all costs, claims or demands for any remedial action undertaken for any breach of this covenant;
- (o) To reinstate, replace, or be responsible for all costs arising from, damage to the landscape, roading, fencing or other structures near the Lot arising from the Owner's use of the Lot, or caused directly or indirectly through the Owner's agents, contractors or invitees;
- (p) Not to permit, or to bring onto, or let remain on, the Lot, any unregistered or unwarranted motor vehicles, rubbish or debris. The Owner will keep the Lot in such good tidy and visually pleasing condition as would normally be expected in a high quality rural residential subdivision;
- (q) Not to use the Lot, or any part of the Lot, or any Building erected on the Lot, as a "place of assembly" as defined in the District Plan;
- (r) Any tank or other receptacle on the Lot shall be coloured green and shall be located within nominated building sites (if any) and as far as practicable integrated with or incorporated in other structures so that it or they are screened as far as practicable from other Lots and from any road or right of way;
- (s) Not to plant or grow or allow to grow in the Low Grow Covenant Areas any plant, tree, shrub or any structure that exceeds a height of 4 metres from the ground.

3. BREACH

If there shall be any breach or non-observance of any of the covenants in this Easement Instrument, and without prejudice to any other liability which the Owner of a Lot may have to any person having the benefit of the covenants, the Owner of a Lot shall, on demand by the Owners for the time being of any or all of the Lots:

- (a) pay to the person making such demand as liquidated damages, the sum of \$5,000.00, or a sum equal to one quarter of the cost of any Building used, or erected, or repaired, in breach or non observance of the covenants in this Easement Instrument, or any of them whichever is the greater;
- (b) remove, or cause to be removed, from the Lot any Building used erected or repaired in breach or non-observance of the covenants in this Easement Instrument;

Form L

Annexure Schedule

Page 7 of 9 Pages

Insert instrument type

Land Covenant

- (c) replace any building material used or permitted to be used in breach or non observance of the covenants in this Easement Instrument;
- (d) otherwise take all steps necessary to remedy the breach or non-observance of the covenants in this Easement Instrument if they are capable of a remedy.

4. FURTHER COVENANTS

- (a) Mahaki Holdings Limited shall not be required, nor liable to enforce, nor answerable to the Owners, for the breach or non-observance of any covenants binding the Lots unless Mahaki Holdings Limited is the owner for the time being of the Lot in respect of which there is a breach or non-observance of a covenant in this Easement Instrument.
- (b) Mahaki Holdings Limited (or its successors appointed by deed) may in special circumstances grant such exemptions or waivers from any of the covenants in this Easement Instrument on such terms and subject to such conditions as it deems fit. Any exemption or waiver shall be binding upon all Owners from time to time of the Lots. Nothing in this clause or in clause 3.0 shall be construed to impose any obligation on Mahaki Holdings Limited (or its successors) to enforce, or grant exemptions or waivers from any of the covenants in this Easement Instrument and Mahaki Holdings Limited will not be liable for any decision that it makes or does not make.
- (c) Mahaki Holdings Limited shall not be required to contribute towards the cost or erection or repair of any dividing or boundary fence between a Lot and any adjoining land owned by Mahaki Holdings Limited, but the benefit of this fencing covenant shall not benefit the transferee of such adjoining land

5. DISPUTE RESOLUTION

- (a) Unless an Owner for the time being of any Lot has first complied with clauses 5(b) to 5(d) (inclusive) that Owner (in this clause called a "party") may not commence Court proceedings relating to any dispute arising from this Easement Instrument (except where the party seeks urgent interlocutory relief in which case that party need not comply with this clause before seeking such relief) and where that party fails to so comply with those clauses the other party need not comply with those clauses before commencing Court proceedings relating to that dispute.

Form L

Annexure Schedule

Page 8 of 9 Pages

*Insert instrument type***Land Covenant**

- (b) A party (referred to in this clause as "the first party") claiming that a dispute has arisen under the forgoing covenants between the parties shall give written notice to the other party (referred to in this clause as "the second party") specifying the matter in dispute and designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute. The second party shall, within 10 days after receiving the first party's notice, give written notice to the first party designating as its representative in negotiations relating to the dispute a person with similar authority.
- (c) The parties shall use their reasonable endeavours to procure that the persons designated under clause 5(b) shall within 10 days of the last designation required by clause 5(b) and following whatever investigation each such person deems appropriate seek to resolve the dispute.
- (d) If the dispute is not resolved within the period referred to in clause 5(c) (or within such longer period as their respective representatives agree is appropriate) the parties shall within a further period of 10 days (or such longer period as the representatives may agree is appropriate) use their reasonable endeavours to agree in good faith on a process for resolving the whole or part of the dispute through means other than litigation and on:
- (i) the procedure and timetable for any exchange of documents and other information relating to the dispute;
 - (ii) procedural rules and a timetable for the conduct of the selected mode of proceedings;
 - (iii) a procedure for compensation of any neutral person who may be employed by the parties in dispute; and
 - (iv) whether the parties should seek assistance of a dispute resolution organisation.
- (e) After the expiry of the time established by or agreed under clause 5(d) for agreement on a dispute resolution process, a party which has complied with the provisions of clauses 5(a) to 5(d) (inclusive) may, by written notice to the other party, terminate the dispute resolution process provided for in these clauses and may then commence court proceedings relating to the dispute.

Form L

Annexure Schedule

Page 9 of 9 Pages

Insert instrument type

Land Covenant

6. FURTHER SUBDIVISION

- (a) The Owners acknowledge that it is envisaged that further rural residential subdivision and development will occur in Further Subdivision Area and the Owners agree to consent unconditionally to Mahaki Holdings Limited undertaking such further subdivision and development as Mahaki Holdings Limited considers appropriate and irrevocably appoint Mahaki Holdings Limited and any director or authorised officer of Mahaki Holdings Limited, jointly and severally, as their attorney to execute any and all consents or approvals to the further rural residential subdivision and development and irrevocably agree to ratify and confirm anything done by their attorney pursuant to this clause.