

View Instrument Details



Instrument No 9102429.9
Status Registered
Date & Time Lodged 25 June 2012 14:35
Lodged By Marshall, Diane Julie
Instrument Type Easement Instrument



Affected Computer Registers **Land District**

574368	Nelson
574369	Nelson
574370	Nelson
574371	Nelson
574372	Nelson
574373	Nelson
574374	Nelson
574375	Nelson

Annexure Schedule: Contains 8 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 8909955.2 has consented to this transaction and I hold that consent

Signature

Signed by Gary Thomas Stocker as Grantor Representative on 29/05/2012 02:00 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 Gary Thomas Stocker as Grantee Representative on 29/05/2012 02:00 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

DONALD EDWARD PHILLIPS and DARREN KENT BERKETT

Grantee

DONALD EDWARD PHILLIPS and DARREN KENT BERKETT

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 reference (plan)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Land Covenants (Continued on Annexure Schedule II)		Lots 10 & 11 DP 449799 – CR 574368 & 574369 and Lots 12, 13 & 14 DP 449799 – CR (Part) 574370, (Part) 574371 & (Part) 574372 and Lots 15 & 16 DP 449799 – CR 574373 & 574374 and Lot 24 DP 449799 - CR 574375	Lots 10 & 11 DP 449799 – CR 574368 & 574369 and Lots 12, 13 & 14 DP 449799 – CR (Part) 574370, (Part) 574371 & (Part) 574372 and Lots 15 & 16 DP 449799 – CR 574373 & 574374 and Lot 24 DP 449799 - CR 574375

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]~~ ~~[negatived]~~ ~~[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 II]~~

ANNEXURE SCHEDULE II

INTERPRETATION

In these covenants, unless the context otherwise requires:

- Dwelling shall have the meaning set out in the prevailing District Plan at the date of application for a building consent for a dwelling on the land.
- Subdivision shall mean a deposited plan or plans which is or are a subdivision of the land originally comprised in Lot 3 Deposited Plan 304181 being Certificate of Title 16830.
- Subdivide has the same meaning given to the expression "subdivision of land" as is set out in Section 218 of the Resource Management Act 1991.
- The Developers shall mean DONALD EDWARDS PHILLIPS and DARREN KENT BERKETT (or their nominated representatives).

LAND COVENANTS

1. The Grantor will not for a period of 9 years from the date of this easement instrument erect or permit to be erected upon the servient tenement:
 - a) any dwelling, building or other structure without first obtaining the written approval of the Developers to the final building plans and specifications (and where appropriate in the same form as intended to be submitted to the Territorial Authority for a building consent) and such specifications shall include full details of all exterior colour schemes and finishes and details of fences, driveways and front yard landscaping. For the purposes of this clause, the contact postal address for the Developers is C/- P O Box 3314, Richmond.

The Grantor will not during the construction process make any alterations or changes to the approved plans or specifications of the dwelling, building or other structure without first resubmitting such amended plans to the Developers for further written approval.

Approval by the Developers shall be entirely at their discretion in all respects provided however that should the Developers (or their nominated representatives) fail to approve or disapprove such building plans and specifications with fifteen (15) working days of receipt of the same, then their approval shall be deemed to have been given. The Grantor shall not apply for a building consent until such time as the Developers approval, whether deemed or otherwise, has been obtained.

The Developers shall be entitled to serve an injunctive notice on the Grantor to cease all work if the Grantor shall commence any construction work without

having first obtained the approval of the Developers in accordance with this clause.

PROVIDED HOWEVER that the obligation to obtain the Developers approval pursuant to this clause 1 shall not be required after the 1st May 2021.

- (c) The Grantor will not subdivide the servient tenement for a period of nine years from the date of registration of this easement instrument PROVIDED HOWEVER that a boundary adjustment that does not increase the number of titles shall not be a breach of this clause.

2. The Grantor will not erect or permit to be erected on the servient tenement:-

- a) more than one permanent dwelling PROVIDED THAT a second dwelling for dependent relatives shall be permitted provided such second dwelling is incorporated in the same roofing structure as the permanent dwelling and subject to the consent of the Tasman District Council.
- b) any pre-used dwelling, building or other structure.
- c) any kitset dwelling, building or other structure without the express written approval of the Developers.
- d) any dwelling, building or other structure of an "A" frame style or construction.
- e) any dwelling, building or other structure with exposed pole construction or exposed basement areas to the intent that such sub-floor area must be fully enclosed;
- f) any dwelling, building or other structure to a shape, which is a single rectangle, or without containing at least one roof break or full valley in the roof;
- g) any dwelling, building or other structure with a roof cladding of corrugated iron whether unpainted or painted provided that Decramastic and Coloursteel products or products of similar construction pre-coated in the manufacturing process with a non reflective finish shall not be in breach of this restriction.
- h) any dwelling, building or other structure with an external wall cladding of;
 - i. "Hardiplank", "Fibrolite", and "Hardiflex", the area of which exceeds 15% of the total area of the dwelling, building or other structure on each occasion as the case may be whether or not any such cladding is unpainted or painted and/or coated during or subsequent to manufacture PROVIDED THAT this restriction does not apply where that cladding is coated with a proprietary textured finish or traditional sand and cement plaster finish.
 - ii. corrugated iron, Coloursteel or other metallic cladding where the total area of external cladding comprising such material exceeds 30% of

the total area of external cladding, and whether or not such cladding is unpainted or painted and/or coated during or subsequent to manufacture.

- i) any dwelling, building or other structure, incorporating pre-used material (excluding bricks);
- j) any fence (including any road boundary fence), gate or entry structure that is;
 - i. Constructed of "Hardiplank", "Fibrolite", or "Hardiflex", or other flat plywood or flat fibre – cement sheeting or cladding of similar nature, composition or construction which is not coated with a proprietary textured finish or traditional sand and cement plaster finish;
 - ii. constructed of corrugated iron, coloursteel or other metallic cladding material unless it is a proprietary material and is specifically approved by the Developers;
 - iii. constructed of second hand materials, except bricks and "railway sleepers".
- k) any building or other structure that is not of a design, colour or exterior cladding matching the design, colour or exterior cladding in the dwelling to which it relates.
- l) any letterbox not in keeping with the general design standard of the of the dwelling;
- m) any clothesline in the front yard between the dwelling and the road frontage.

3. The Grantor will not on the servient tenement:-

- a) permit any temporary accommodation to be erected or used for a period of longer than 6 months and only during the period of construction of any dwelling.
- b) permit the exterior of any dwelling, building or other structure to remain unfinished after a period of 12 months, which period commences on the date the foundations are first laid for such dwelling, building or other structure.
- c) stop substantial and continuous construction work on any dwelling, building or other structure once commenced for any period longer than three months.
- d) permit the on-site accommodation of heavy vehicles, commercial passenger vehicles, boats, campervans or buses, unless garaged or suitably screened from the road and/or neighbours,

- e) the Grantor will not park heavy vehicles, commercial passenger vehicles, boats, campervans or buses on the adjacent road reserve for an extended and continuous period of time
- f) The Grantor will not park, store or place any boat, trailer, auxiliary vehicle or other such vehicle on the road reserve frontage or between the dwelling and the road boundary for an extended and continuous period of time.
- g) Use any caravan, house truck, tent or similar means of providing supplementary, temporary or permanent accommodation.
- h) erect any dwelling, building or structure, mast or aerial that exceeds the Maximum Heights, specified in the Table below.

Servient Tenement on DP 449799	Maximum Height above Ground Level
Lot 10	5.8m
Lot 11	5.8m
Lot 12	5.8m
Lot 13	5.8m
Lot 14	5.8m
Lot 15	5.8m
Lot 16	7.5m
Lot 24	5.8m

The height in relation to any building, dwelling, structure, mast or aerial, means the vertical distance between the highest point of the dwelling building, mast, aerial or structure and the ground level immediately below that point or the position referred to in the above table. The ground level for purposes of measuring this height shall be the level prior to any excavation of the building platform or any filling of land other than that undertaken at the time of subdivision to prepare the servient tenements.

- 4. Any two-storey dwelling on Lot 16 shall have a minimum building setback of 2 (two) metres from its south western boundary unless the written consent of the owner of the immediately adjoining Lot is obtained. Any dwelling will also need to comply with the bulk and location requirements of the Tasman District Council Resource Management Plan.
- 5. The Grantor will not use or permit the use of the buildings on the servient tenement for any purpose other than private residential purposes to the intent that the servient tenement shall not be used for institutional residential purposes or as a hostel, lodge, or boarding house. For the purposes of this clause "institutional residential purposes" shall include the use of the property for housing purposes by central or government agencies or public or private health or education sector agencies. This clause is further qualified by clause 6.
- 6. The Grantor will not use the servient tenement for any commercial purpose but "home occupations" allowed in the Tasman District Council Resource Management Plan are permitted unless those activities unreasonably detract from the use and enjoyment of a dominant tenement by the owners or occupiers thereof PROVIDED HOWEVER that all

forms of industrial type activities (be they home occupations or hobbies or otherwise) are prohibited.

7. The Grantor will within 12 months of the commencement of the erection of a dwelling, plant no less than 6 trees or shrubs of not less than one metre in height at the date of planting, in such a position as to be reasonably visible from the road frontage of the servient tenement.
8. The Grantor will keep the servient tenement in a neat and tidy state and shall not permit excessive growth (above 100mm) of grass or other weeds, noxious plants or vegetation of any kind.
9. The Grantor will not on the servient tenement keep any animal (including dogs and other domestic pets) which is likely to cause a nuisance or annoyance to other occupiers in the subdivision or to detract from the subdivision as a whole. In particular and regardless of the foregoing the Grantor will not keep on the servient tenement (including in any on-site building or structure located on the servient tenement) any dog which in whole or part resembles the Pitt Bull Terrier, Rottweiler or Doberman Pinscher breeds.
10. The Grantor acknowledges that the servient tenement is part of an ongoing development by the Developers and the Grantor will not object to or be party to any objections to the further development by the Developers.
11. The Grantor will not damage or permit to be damaged by their tenants, agents, contractors, workman or invitees any landscaping, roading, footpaths, kerb and channel, berms or other structures created as part of the subdivision and in the event of any such damage the Grantor shall be responsible for any costs incurred by the other parties in rectifying such damage.
12. The Grantor will not cut, fell or damage any trees planted on the road reserve or any other reserve shown on a deposited plan which is a subdivision of the land in Lot 3 Deposited Plan 304181 or take any action in respect of any such trees to prevent them from growing to their full maturity.
13. The Grantor will not grow or permit to grow upon the servient tenement, any tree shrub or other plant or any variety whatsoever to such extent that it unreasonably interferes with the sunlight to, or view from any dominant tenement.
14. The Grantor will not move soil or other material from the Servient Tenement onto an adjoining property without the written consent of the owner of the relevant adjoining property.
15. The Developers reserve the right to grant dispensation (to be in writing) to any Grantor for the performance of the restrictions in Clauses 1 & 2 and 3 PROVIDED THAT any such dispensation meets the reasonable expectations of the Developers.
16. The Developers shall not be liable for any action they take or fail to take or for any breach of these restrictions or otherwise and the Grantors for the time being of the servient tenements shall indemnify and keep indemnified the Developers and their successors and assigns (other than successors in title after registration of a Transfer) from any costs, claims, suits, demands, liabilities or otherwise howsoever arising out of

or under or by virtue of this Land Covenant in respect of the servient tenements which have been transferred by the Developers to another registered proprietor.

17. In the event of there being any dispute as to the scope, interpretation, implementation or meaning of the covenants aforesaid the same shall be submitted to the arbitration of a single arbitrator if the parties can agree upon one or failing agreement then to the arbitration of two arbitrators one to be appointed by each party to the reference, or their umpire, to be appointed before entering into the business of the reference to arbitration to be carried out under the provisions of the Arbitration Act 1996 or any amendments thereto or any legislation enacted in substitution thereof.