

# STATEMENT OF PASSING OVER INFORMATION

This information has been supplied by the vendor or the vendor's agents. Accordingly, Ownly (REAA 2008) and Sold On Kapiti Limited is merely passing over the information as supplied to us by the vendor of the vendor's agents.

We cannot guarantee its accuracy and reliability as we have not checked, audited, or reviewed the information and all the intending purchasers are advised to conduct their own due diligence investigation into the same.

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# View Instrument Details



**Instrument No** 9676249.11  
**Status** Registered  
**Date & Time Lodged** 28 May 2014 08:37  
**Lodged By** Cope, Hannah Marie  
**Instrument Type** Easement Instrument



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Affected Computer Registers	Land District
648386	Wellington
648387	Wellington
648388	Wellington
648389	Wellington
648390	Wellington
648391	Wellington

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**Annexure Schedule:** Contains 8 Pages.

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## 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 B472482.2 has consented to this transaction and I hold that consent

## Signature

Signed by Douglas Rowan as Grantor Representative on 20/05/2014 12:11 PM

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## 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 Douglas Rowan as Grantee Representative on 20/05/2014 12:11 PM

\*\*\* End of Report \*\*\*

**Easement instrument to ~~grant easement or profit à prendre,~~ or create land covenant**  
 (Sections 90A and 90F Land Transfer Act 1952)

2009/6229EF  
 APPROVED  
 Registrar-General of Land

**Grantor**

Alistair Alexander Fyfe Robertson and David John Laurenson

**Grantee**

Alistair Alexander Fyfe Robertson and David John Laurenson

**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, <del>profit</del> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Restrictive Land Covenants		Lots 1-6 DP 473745 being all the land contained in CTs 648386, 648387, 648388, 648389, 648390 and 648391	Lots 1-6 DP 473745 being all the land contained in CTs 648386, 648387, 648388, 648389, 648390 and 648391

~~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 B ]~~

## SCHEDULE B: ANNEXURE TO LAND COVENANTS

### 1. Definitions and Interpretations:

- 1.1. "Building" means any dwelling, garage, outbuilding or other permanent or temporary construction erected on a Lot.
- 1.2. "Common Property" means those areas marked "A", "B", "C", "D", "E", "F", "G", "H", "I", "J" and "K" on deposited plan 473745 and includes all common amenities located on those areas including the Right of Way, entrance gate, sewage pump, common garden areas and lighting.
- 1.3. "Default Interest Rate" means 5% above the rate charged by ANZ Bank Limited or any bank that is a successor of the ANZ Bank Limited, on commercial overdrafts.
- 1.4. "Dwelling" means a household unit or residence and includes garages, outbuildings and other similar structures.
- 1.5. "Land Area" means those parts of the Lots that are described in Schedule A.
- 1.6. "Local Authority" means Kapiti Coast District Council or the Local Authority for the time being having jurisdiction over the Land and includes any other local or territorial authority that has jurisdiction over the Land and any employee or agent of a Local Authority.
- 1.7. "Lot" means one of the Lots described in Schedule A.
- 1.8. "Lots" means all of the Lots described in Schedule A.
- 1.9. "Maintenance" means keeping the common property in good condition at all times and includes carrying out repairs to ensure the common property is a state of good repair at all times.
- 1.10. "Owner" means the registered proprietor for the time being of a Lot.
- 1.11. "Owners" means all the registered proprietors for the time being of the Lots.
- 1.12. "Pedestrian Right of Way" means that Pedestrian Right of Way created by easement instrument 9676249.9 over areas marked "G" and "H".
- 1.13. "Resource Consent" means the resource consent given by the Local Authority for the subdivision of the land into the Lots and includes each and every condition of the Resource Consent.
- 1.14. "Right of Way" means that Right of Way created by easement instrument 9676249.9 over areas marked "A", "B", "C", "D", "E" and "F" on deposited plan 473745.
- 1.15. "Rules" means the rights and duties of an Owner and the Owners as set out in this Schedule.
- 1.16. "Trust" means the Shetland Trust and its Trustees who owned the Land subdivided into the Lots and continue to own Lot 1.
- 1.17. Any statutory reference includes references to any amendments or replacement

statutes.

1.18. In this easement instrument creating land covenant where the context permits the singular includes the plural and vice versa.

**2. Each Owner covenants with the other Owners:**

- 2.1. Any building must be constructed of high quality new buildings materials with the roof having a pre-painted finish or be constructed from permanent materials and not be less than 200 m<sup>2</sup>.
- 2.2. Any Building must be closed in and weatherproof within twelve months of the laying of the building's foundations.
- 2.3. Any Building shall not be occupied or used as a residence until it has been substantially completed.
- 2.4. The Owner shall not erect or place nor permit to be placed upon the Lot any relocatable or second-hand building of a kind whether a dwelling house, flat, carport, or any other structure unless the prior written consent of the Trust has been given. The Trust shall have complete discretion in granting or declining approval and its primary objective in reviewing applications will be to ensure that the overall high standard of buildings is retained within the subdivision. The obligations of the Trust under this clause will transfer to the Society on the later of either the sale of Lot 1 deposited plan 473745 by the Trust or once all Lots have been built upon.
- 2.5. Except when building operations are in progress, no trade vehicle, trade equipment or materials, debris, rubbish or vehicle of any unsightly nature shall be allowed to remain on the lot unless the same is adequately garaged or screened to prevent offence to any adjoining Lot and to preserve the amenities of the neighbourhood.
- 2.6. No buildings may be constructed or used for commercial or industrial use.
- 2.7. No Lot shall be kept in an unmown or untidy state and no noxious weeds shall be allowed to develop on the Lot while vacant.
- 2.8. No boundary fence shall be constructed in a material other than permanent materials of wood, concrete, stone or brick.
- 2.9. The Trust shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the Trusts property and any other Lot.
- 2.10. No Owner shall subdivide their property further without the written consent of the Society.

**3. Bressay Way Society – Obligations in Relation to Common Property**

- 3.1. The Owners acknowledge that there are common amenities located on the Common Property which are for the benefit of all the Owners and for the purposes of maintaining the services these amenities provide and paying for the utilities to operate these services, the Owners agree to the provisions set out below.

- 3.2. In default of the Owners determining otherwise they shall act as an unincorporated society for these purposes. The society will be known as the Bressay Way Society ("the Society"). Nothing in this clause will prohibit the Owners from establishing a corporate body to carry out the obligations of the Owners in respect of the Common Property and to otherwise ensure compliance by the Owners with the rules. If the Owners establish a corporate body all the Owners hereby agree that such corporate body has the power to ensure compliance with and to enforce the Rules.
  - 3.3. The Owners may determine from time to time the manner of making decisions and taking action whether direct or indirect to ensure compliance with these rules.
  - 3.4. The Owners of each Lot shall be jointly entitled to one vote per Lot in meetings of the Society and may from time to time appoint one of them to vote on behalf of their Lot. Decisions of the Society require a two thirds majority vote to be passed.
  - 3.5. Decisions shall be made reasonably.
  - 3.6. Decisions of the Society so made shall be complied with by all Owners.
  - 3.7. Written notices to Owners will be deemed received 3 days after posting addressed to the Owner's property for which purpose each Owner shall maintain a facility for received mail at the Owner's property or otherwise as the Owners agree.
  - 3.8. Each Owner must be a member of the Society and perform the duties and obligations as set out in this document.
  - 3.9. The Owners will open a bank account in the name of the Society for the maintenance and repair of the Common Property as required by this easement instrument creating these land covenants.
  - 3.10. All the Owners may become signatories to the Society's bank account and the account may be operated by any two of the signatories acting together provided they are authorised by the Society to do so and further provided that the two signatories are not Owners of the same Lot.
  - 3.11. The Society to the extent they are able and permitted by law will obtain and maintain insurance for all the Common Property.
  - 3.12. An Owner ceases to be a member of the Society once they are no longer the registered proprietor of a Lot. The new registered proprietor of that Lot shall become a member of the Society and shall be bound by this easement instrument creating land covenants.
- 4. Each Owner covenants with the other Owners:**
- 4.1. Not to obstruct the Common Property in any way;
  - 4.2. To permit other Owners and their invitees to use the Common Property;
  - 4.3. To permit and authorise the Society to maintain the Common Property in the condition that it is now in, including (but not limited to):

- 4.3.1. Maintenance of the Right of Way;
- 4.3.2. Ensuring power to the gate is maintained;
- 4.3.3. Maintaining the lighting along the Right of Way;
- 4.3.4. Ensuring power to the sewage pump is maintained;
- 4.3.5. Maintaining the sewage pump, all sewage pipes and the reserve tank for emergency sewage overflow storage located on the Common Property and comply with the operations and management plan approved by the Kapiti Coast District Council;
- 4.3.6. Maintaining the common garden areas;
- 4.3.7. Maintaining the gate, gate motor and gate intercom;
- 4.3.8. Maintaining the storm water system including sumps and pipes situated on the Common Property;
- 4.3.9. Maintaining computer media and telecommunication lines located on the Common Property;
- 4.3.10. Erect and maintain a fence along the boundary of the Pedestrian Right of Way and contribute to half the costs of erection and maintenance of such fences as if the fences were boundary fences under the Fencing Act 1978 but only to the standard required in that Act; and
- 4.3.11. Maintenance of the Pedestrian Right of Way.
- 4.4. To permit and authorise the Society to pay for the utilities required to provide the common amenities including electricity.
- 4.5. That an Owner or the Owner's invitees will not create any nuisance or annoyance to any other persons entitled to use the Common Property.
- 4.6. To promptly replace, restore, reinstate and repair at the Owner's cost all damage to the Common Property arising from the acts of the Owner or any invitee of the Owner.
- 4.7. Not to permit or allow any waste material or rubbish to be left on or to accumulate on the Common Property.
- 4.8. These obligations are in addition to and not in substitution of the Owners obligations under easement instrument 9676249.9.

**5. Consents**

- 5.1. Each Owner covenants with the Owners that an Owner will in addition to the covenants set out above comply with the Consent Notice and with all relevant consents and requirements of the Local Authority and any other regulatory authorities attaching to the Resource Consent.

**6. Financial Contributions**

- 6.1. Financial contributions are to be made by the Owners to the Society to meet the costs of maintenance of the Common Property and any other obligations of the Society as described in clause 4 and as approved by the Society from time to

time.

- 6.2. The Owners shall each pay an equal share of the financial contributions on or before the date specified by the Society for payments.
- 6.3. The Society may make a levy on the Owners for all or part of the financial contributions to be paid or anticipated and any such levy will be paid by an Owner on or before the date or dates specified by the Society for payment.
- 6.4. Any financial contributions (including levies) made but not expended will cease to be the property of the Owner who made the financial contributions (or levy). All financial contributions will be applied only for the purposes set out in clause 6.1 or for such other purposes as the Society decides from time to time.
- 6.5. Any Owner who fails to pay any financial contribution under clause 6.2 or any levy shall pay interest thereon at the Default Interest Rate from the due date for payment to the date of payment.
- 6.6. Any financial contribution and default interest thereon at the Default Interest Rate may be recovered from an Owner by the Society, any other Owner or the Owners' agent as a debt due.
- 6.7. Any Owner who fails to pay a financial contribution (including levies) within 14 working days of the receipt of notice of demand or fails to pay default interest at the Default Interest Rate on any financial contribution (including a levy) not paid on the due date (a "Defaulting Owner") agrees to grant in favour of the Society a charge as security for payment of the sum (including all costs incurred by the Society including legal costs as between solicitor and client) so demanded such charge to be over the Lot of the Defaulting Owner and such Defaulting Owner will at the request of the Society sign such documents and do all such acts, matters and things as the Society may request to give effect to the provisions of this clause and for such purpose the Defaulting Owners appoint the Society as their Attorney.

## **7. Breach of Covenants**

- 7.1. If there should be any breach or non-observance of any of these covenants and conditions contained in this easement instrument creating land covenant, and without prejudice to any other liability which an Owner may have to a Local Authority or any person having the benefit of such covenants and conditions and without in any way restricting the remedies available to any Owner or any person having the benefit of such covenants and conditions (including the Society):
  - 7.1.1. The Owner shall on demand by the Society or any Owner or any person having the benefit of such covenants promptly remedy any defaults or breach of the covenants and conditions contained in this easement instrument creating land covenants.
  - 7.1.2. Should the breach not be remedied within 15 days of written demand being made by the Society or Owner or any person having the benefit of such covenants and conditions, then the Owner shall pay to the Society, Owner or person making demand, as liquidated damages the sum of

\$500.00 per day for every day that such breach or non-observance continues together with any costs and expenses (including legal costs as between solicitor and client) incurred by the Society or any other person making demand in serving the notice to remedy the breach or non-observance.

**8. Dispute Resolution**

- 8.1. Any dispute or difference arising out of or in connection with this easement instrument creating land covenants, or the subject matter of this easement instrument creating land covenants, ("the Dispute") will first be referred to mediation.
- 8.2. Upon the Dispute being referred to mediation, the Society will appoint a suitable person to act as mediator. In the event the members of the Society fail to agree on a mediator within 10 working days from the date upon which the Dispute is referred to mediation, then the mediator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc., upon the application of the Society.
- 8.3. The mediation will be conducted in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. in force at the time the Dispute is referred to mediation.
- 8.4. If the Dispute is not resolved by mediation in accordance with the above provisions, the Dispute will be referred to and finally resolved by arbitration.
- 8.5. The arbitration will be conducted in accordance with the Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. in force at the time the Dispute is referred to arbitration.
- 8.6. The arbitral tribunal will consist of one arbitrator to be agreed upon by the Society. If the Society fails to agree on the identity of the arbitrator within 10 business days from the date upon which the Dispute is referred to arbitration, then the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc., upon the application of the Society.
- 8.7. The place of the arbitration will be Waikanae or such other place as determined by the arbitrator.
- 8.8. Clauses 4 and 5 of the Second Schedule to the Arbitration Act 1996 (concerning determination by the High Court of preliminary points of law, and appeals to the High Court on questions of law) are excluded by the Owners.
- 8.9. Any appeal against the award on a question of law shall not be determined by the High Court but instead determined by the AMINZ Arbitration Appeal Tribunal.
- 8.10. If at the time of the dispute the Arbitrators' and Mediators' Institute of New Zealand Inc. no longer exists then the President of the New Zealand Law Society shall appoint the Mediator or Arbitrator as the case may be and the Mediator or Arbitrator shall determine the rules of the mediation or arbitration.