

View Instrument Details



Instrument No 9580812.11
Status Registered
Date & Time Lodged 31 January 2014 11:33
Lodged By Shanahan, Foss Michael
Instrument Type Easement Instrument



Affected Computer Registers Land District

548488	Wellington
548489	Wellington
548490	Wellington
548491	Wellington
548492	Wellington
548493	Wellington
548494	Wellington
548495	Wellington
548496	Wellington
548497	Wellington
548498	Wellington
548499	Wellington
548500	Wellington
548501	Wellington
548502	Wellington
548503	Wellington
548504	Wellington
548505	Wellington
548506	Wellington
548507	Wellington
548508	Wellington

Annexure Schedule: Contains 7 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 ☒

Signature

Signed by Foss Michael Shanahan as Grantor Representative on 31/01/2014 11:24 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 ☒

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 ☒

Grantee Certifications

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 Foss Michael Shanahan as Grantee Representative on 31/01/2014 11:24 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**Kotuku Parks Limited****Grantee****Kotuku Parks 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
	440919.		
Land Covenants	Lots 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164 & 165	CT Identifiers 548488, 548489, 548490, 548491, 548492, 548493, 548494, 548495, 548496, 548497, 548498, 548499, 548500, 548501, 548502, 548503, 548504, 548505, 548506, 548507, 548508 &	CT Identifiers 548488, 548489, 548490, 548491, 548492, 548493, 548494, 548495, 548496, 548497, 548498, 548499, 548500, 548501, 548502, 548503, 548504, 548505, 548506, 548507, & 548508

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 2]~~

Annexure Schedule 2

Easement Instrument	Dated	December 2013	page	1	of	5	pages
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* Insert type of instrument

continue in additional annexure schedule, if required.

INTRODUCTION

- A. “Kotuku Parks Stage Seven”** is a prestigious development by Kotuku Parks Limited as Grantor comprising twenty one landscaped residential sections.
- B. “Kotuku Parks Stage Seven”** has two important ecological Reserves on its boundary, “**Waikanae Estuary Scientific Reserve**” which is adjacent to the “**Kapiti Marine Reserve**”, which extends seaward from the Scientific Reserve to “**Kapiti Island**”.
- C. “Waikanae Estuary Scientific Reserve”** is important for a number of reasons. Firstly there are a range of plant habitats and plant species at the Estuary. A number of these plants are rare. The Estuary also supports a large number of bird species including a range of overseas migrants. Several of the birds breed on the sand flats at the mouth of the Estuary. There are few Estuaries such as this, along this part of the coast of the lower North Island of New Zealand.

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following “**definitions**” relate to the “**Land Covenants**”
- “**Covenants**” mean the Land Covenants created by this Easement Instrument;
- “**Servient Tenement**” means the computer freehold Identifiers shown as the Servient Tenement in **Schedule A**;
- “**Dominant Tenement**” means the computer freehold Identifiers shown as the Dominant Tenement in **Schedule A**;
- “**Kotuku Parks Stage Seven “Taranui Way”, Paraparaumu Beach North**” means the twenty one residential sections in Kotuku Parks Limited Subdivision as defined in Deposited Plan No. 440919 Land Registration District of Wellington.
- 1.2 The following “**interpretations**” relate to the “**Land Covenants**”
- References to “**Headings**” are inserted for convenience only and will not in any way affect the interpretation;
- References to a **statute** include all amendments, revisions, substitutions or consolidations made to that statute;
- References to the “**Grantor**” or the “**Grantee**” include the successors and assigns of the “**Grantor**” or the “**Grantee**”.

2. CREATION OF LAND COVENANTS

- 2.1 The Land Covenants shall forever bind and run with the Servient Tenement for the benefit of the Dominant Tenement and the Grantee may enforce the observance of the Land Covenants against the Grantor.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box

Annexure Schedule 2

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* Insert type of instrument
continue in additional annexure schedule, if required.

3. LAND COVENANTS

3.1 The Grantor in relation to each Identifier described in Schedule A as the Servient Tenement must:

- (a) **One Single Storey Dwelling: Build on the Servient Tenement one only, single storey dwelling Together With any accessory buildings which must also be single storey.**

The dwelling and any accessory buildings shall be designed to integrate with the landscape and shall include the following:

- (i) Subtle natural colour schemes;
- (ii) No white downpipes;
- (iii) Roof pitch of the Dwelling and any accessory buildings to be no greater than thirty eight (38) degrees;

The Plans and Specifications for the dwelling and any accessory buildings must first be approved in writing by Kotuku Parks Limited as the Grantor in accordance with clause 3.1(b) of this Easement Instrument. Following the written approval of Kotuku Parks Limited as Grantor, a Building Consent for the dwelling and any accessory buildings in accordance with the Plans and Specifications as approved by Kotuku Parks Limited, must be granted by the Kapiti Coast District Council as the Territorial Authority in accordance with the Building Act 2004.

- (b) **Plans & Specifications:** Submit the Plans and Specifications for the dwelling and any accessory buildings **(which must include detail of colour and materials to be used)** for the written approval of Kotuku Parks Limited as the Grantor in accordance with the requirements in **clause 3.1(a)**. The Plans and Specifications for the dwelling and any accessory buildings must be designed to a high standard and conform aesthetically with the Grantor's standards of design and construction for dwellings and accessory buildings for **"Kotuku Parks Stage Seven"**. The written approval by Kotuku Parks Limited as grantor shall not be unreasonably or arbitrarily withheld or delayed.

- (c) **Restriction Other Buildings:** Not erect a second-hand dwelling, relocatable or pre-built dwelling, or any accessory buildings, or any caravan as a dwelling or temporary dwelling.

- (d) **Location of Dwelling and Accessory Buildings:** No dwelling or accessory buildings on land adjoining **Waikanae Estuary Scientific Reserve** shall be located within the following lands defined on Deposited Plan 440919, viz:-

- (i) Those parts of Lot 145 marked E F and G on DP 440919,
- (ii) That part of Lot 146 marked H on DP 440919,
- (iii) That part of Lot 148 marked I on DP 440919,
- (iv) That part of Lot 149 marked J on DP 440919,
- (v) That part of Lot 150 marked K on DP 440919,
- (vi) That part of Lot 152 marked L on DP 440919,
- (vii) That part of Lot 153 marked M on DP 440919,
- (viii) That part of Lot 154 marked n on DP 440919,
- (ix) That part of Lot 155 marked O on DP 440919,
- (x) That part of Lot 156 marked P on DP 440919,
- (xi) That part of Lot 157 marked Q on DP 440919, and
- (xii) That part of Lot 158 marked R on DP 440919.

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Annexure Schedule 2

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continue in additional annexure schedule, if required.

- (e) **Building Materials:** Not use any second-hand building materials of any kind in any dwelling or any accessory buildings.
- (f) **Exterior Cladding:** Not use any tempered hardboard, corrugated iron products or fibrous cement products for the exterior cladding of the dwelling or any accessory buildings.
- (g) **Restriction Other Buildings:** Not erect a second-hand dwelling, relocatable or pre-built dwelling, or any accessory buildings, or any caravan as a dwelling or temporary dwelling.
- (h) **Garages:** Not erect a garage or carport in materials of a lesser quality than those utilized or the dwelling, and no garage or carport shall be erected closer to the street frontage than the front building line of the dwelling erected or to be erected on the Identifier.
- (i) **Driveway:** Not establish a driveway or vehicular access of materials other than permanent surfacing. Construction of the driveway or vehicular access shall not be delayed beyond 18 months after the date of issue of a Code Compliance Certificate for the erection of the dwelling and any accessory buildings by the Kapiti Coast District Council as the Territorial Authority.
- (j) **Vehicles or Equipment:** Not allow any caravans, motor vehicle bodies, trade vehicles or equipment, trucks, tractors, earthmoving machinery, rubbish or debris of any kind to be parked, stored, or left on the Identifier or adjacent to the Identifier, except when building operations are in progress or unless such items are adequately garaged or screened to prevent offence to neighbours.
- (k) **Storage Tank:** Not allow any water storage tank to be installed unless it is fully enclosed with in or under a structure first approved in writing by Kotuku Parks Limited the Grantor and Kapiti Coast District Council as the Territorial Authority. The written approval of Kotuku Parks Limited as Grantor shall not be unreasonably or arbitrarily withheld or delayed.

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Annexure Schedule 2

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continue in additional annexure schedule, if required.

- (l) **Glasshouse:** Not erect a glasshouse exceeding 20 square metres in area.
 - (m) **Clothes Line:** Not erect a clothes line except such as may be aesthetically sensitive in terms of design and location, and sited in such a way as not to be highly visible from the street.
 - (n) **Letter Box:** Not erect a letter box except such as may be aesthetically sensitive in terms of design and location and sited next to but not in any road services.
 - (o) **Signs:** Not erect any signs or advertising billboards.
 - (p) **Road Frontage:** Maintain the Kapiti Coast District Council owned road frontage in a good and tidy condition.
- 3.2 **The restriction in clause 3.1(a) that the Grantor must build on the Servient Tenement only one single storey dwelling together with any accessory buildings which also must be single storey is an essential Land Covenant.**
4. **NO SUBDIVISION**
- 4.1 The Grantor in relation to each Identifier described in **Schedule A** as the Servient Tenement must not subdivide the Identifier with the effect of creating one or more additional Identifiers to the intent that the land of each Identifier must only comprise one single family dwelling.
- 4.2 **The restriction in clause 4.1 not to subdivide each Identifier in “Kotuku Parks Stage Seven Taranui Way” is an essential Land Covenant.**
5. **NO CATS**
- 5.1 As “**Kotuku Parks Stage Four**” has the “**Waikanae Estuary Scientific Reserve**” and the “**Kapiti Marine Reserve**” on its boundary, the Grantor following consultation with the Department of Conservation and in an effort to protect the wildlife within the Reserves has determined that the Grantor in relation to each Identifier described in **Schedule A** as the Servient Tenement must not keep any Cats.
- 5.2 **The prohibition on keeping Cats in clause 5.1 is an essential Land Covenant in “Kotuku Parks Stage Seven Taranui Way”.**

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Annexure Schedule 2

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* Insert type of instrument

continue in additional annexure schedule, if required.

6. BREACH AND REMEDIES

- 6.1 If there should be any breach or non-observance on the Grantor's part of any of the restrictions and stipulations contained in this Easement Instrument and without prejudice to any other liability which the Grantor may have to the Grantee and any person or persons having the benefit of these restrictions and stipulations the Grantor shall upon written demand being made by the grantee giving reasonable notice, remedy any breach if capable of remedy on reasonable terms and conditions imposed by the Grantee which may (without limitation) involve being required to remove any caravan or moveable items, structure or building material which breaches the terms of these restrictions and stipulations.
- 6.2 The provisions of **clause 6.1** relating to "**Breaches and Remedies**" of the Land Covenants shall cease to bind Kotuku Parks Limited as Grantor immediately following the registration of the transfer of the Identifier being part of the Servient Tenement.

7. INDEMNITY

- 7.1 In all other respects the Grantor will at all times indemnify and keep the Grantee indemnified from all losses, costs, claims and demands including from any fines or penalties involved as a result of any statutory breach in respect of non-observance by the Grantor of the restrictions and stipulations contained in this Easement Instrument.
- 7.2 The provisions of **clause 7.1** relating to the "**indemnity**" shall cease to bind Kotuku Parks Limited as Grantor immediately following the registration of the transfer of the Identifier being part of the Servient Tenement.

8. DISPUTE RESOLUTION

- 8.1 If any dispute arises between the Grantor and the Grantee concerning the rights and obligations contained in this Easement Instrument, the parties will enter into negotiations in good faith to resolve the dispute themselves or through any informal dispute process they mutually agree upon. If the dispute is not resolved within 20 Working Days of the date on which notice of the dispute is served on one party by the other, or such extended time as the parties may agree in writing, the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator within a further 10 Working Days the President or his or her nominee for the time being of the New Zealand Law Society will appoint an independent arbitrator experienced in the area of the dispute. In the event that the President of the New Zealand Law Society or his or her nominee fails to or refuses to appoint an arbitrator, either party may request the High Court to make an appointment. The appointment decision of the High Court may not be appealed.
- 8.2 The arbitration proceedings will be conducted in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

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