

# View Instrument Details



**Instrument No** 11020200.13  
**Status** Registered  
**Date & Time Lodged** 21 March 2018 15:57  
**Lodged By** Mackay, Megan Shelley  
**Instrument Type** Easement Instrument



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Affected Computer Registers	Land District
815334	South Auckland
815335	South Auckland
815336	South Auckland
815337	South Auckland
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<b>Affected Computer Registers</b>	<b>Land District</b>
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815380	South Auckland
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815417	South Auckland
815418	South Auckland

**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 Ryan Patrick McFadden as Grantor Representative on 21/03/2018 01:16 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 Ryan Patrick McFadden as Grantee Representative on 21/03/2018 01:16 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)

**Grantor**

THE LAKES (2012) LIMITED

**Grantee**

THE LAKES (2012) 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
Fencing Covenant  and  Land Covenant		Lots 504-588 inclusive DP 519256 CTs 815334-815418 inclusive	Lots 504-588 inclusive DP 519256 CTs 815334-815418 inclusive

*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 the Annexure Schedule].~~

## Covenant Provisions

*Delete phrases in [ ] and insert memorandum number as required; 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]~~

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

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**DEFINITIONS****1. Definitions: In these Covenants:**

- 1.1 **"Building"** or **"Buildings"** means any residential dwelling-house or primary building on the Lot.
- 1.2 **"Ancillary Building"** or **"Ancillary Buildings"** means any building or structure associated with the Buildings on the Lot which requires council consent.
- 1.3 **"Garage"** means any garage or carport on the Lot.
- 1.4 **"The Lakes"** means The Lakes (2012) Limited or any other person or persons nominated by The Lakes (2012) Limited. If The Lakes has been dissolved or wound up or otherwise gone out of existence, "approval by The Lakes" will mean approval by any party appointed and/or nominated by The Lakes for this purpose.
- 1.5 **"The Lakes Development"** means the land being developed and/or subdivided by The Lakes (2012) Limited known as 'The Lakes' in Tauriko, Tauranga.
- 1.6 **"Local Authority"** means Tauranga City Council.
- 1.7 **"Local Authority Owned Land"** means any road or reserve owned or controlled by the Local Authority in The Lakes Development.
- 1.8 **"Lot"** means the Servient Tenement or any part of it.
- 1.9 **"Plans and Specifications"** means plans, drawings, specifications and other documents from which the Buildings, Ancillary Buildings and Garages are to be constructed (including details of materials, location and design).
- 1.10 **"Grantor"** means the Grantor being the registered proprietor of the Lot and includes the Grantor's agents, employees, contractors, subcontractors, tenants, licensees, and other invitees.

**2. Interpretation: In these Covenants headings are for reference purposes only.****FENCING COVENANTS**

- 1. The Lakes shall not be liable to pay for or contribute towards the cost of erection or maintenance of any fence between any lot in Stage 3I (DP 519256) of The Lakes Development and any adjoining land owned by The Lakes but this condition shall not endure for the benefit of any subsequent Grantor of such adjoining land or any part of that adjoining land.
- 2. The registered proprietor agrees to meet the total cost of construction of any fence to be constructed on the boundary of adjoining land if that land is owned by the Local Authority and the Grantor will not seek contribution from The Lakes or the Local Authority.

**LAND & BUILDING COVENANTS**

- 1. The Grantor acknowledges that the Lot is part of The Lakes Development which is intended to be established as a modern and well-designed subdivision. In accordance with this intention The Lakes will exercise supervision and control in relation to the nature and type of construction permitted in The Lakes development and the standard of surroundings being maintained.
- 2. The Grantor will be bound by these Covenants, although The Lakes may, in writing, at the sole and unfettered discretion of The Lakes, waive part, any or all of these Covenants, on such terms and conditions as The Lakes may require.

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3. In any circumstances where The Lakes' approval is required in respect of any covenant, then any approval shall be at The Lakes' sole discretion and in no circumstance shall The Lakes be required to give any reason for its decision.

4. The Grantor covenants:

*Building Requirements*

- 4.1 To construct only new Buildings, new Ancillary Buildings and new Garages on the Lot.
- 4.2 To construct a Building with a floor area of not less than 100 square metres (with the floor area measurement to be exclusive of any Garage, decking, breezeways, entry porches, verandas or roof overhang).
- 4.3 To construct a minimum of one Garage on the Lot which is to be attached to the Building. The Garage must be constructed in the same architectural style with the same cladding materials as the Building.
- 4.4 To construct any Ancillary Buildings so that:
- (a) they do not extend beyond the front building alignment of the Building;
  - (b) they are constructed in the same architectural style with the same cladding materials as the Building;
  - (c) they are screened and not highly visible from the street and neighbouring properties.
- 4.5 To locate any attachments (including but not limited to television antenna, solar hot water panels and air-conditioning units) around or on the Buildings, Ancillary Buildings and Garages so they are not highly visible from any road or boundaries and neighbouring properties.
- 4.6 To construct in a proper and tradesmanlike manner a driveway, or vehicle access in a permanent continuous surfacing of concrete, concrete block, brick paving, or sealing. The driveway concrete from the kerb to the Lot boundary shall be constructed of the same exposed aggregate concrete as the footpaths in that precinct of The Lakes Development.

*Plans and Specifications*

- 4.7 To have all Plans and Specifications for Buildings, Ancillary Buildings and Garages approved in writing by The Lakes prior to the Grantor applying for a Building Consent or commencing any works on the Lot (including preparatory work). In determining whether or not to approve the Plans and Specifications The Lakes will take into account the appearance of the proposed Buildings, Ancillary Buildings and Garages and the appearance of other buildings in The Lakes Development. The intention is that there should be a range of styles, designs and appearance of buildings within The Lakes Development.
- 4.8 To construct any Buildings, Ancillary Buildings and Garages in accordance with the Plans and Specifications approved in writing by The Lakes. Any modification or variation to the approved Plans and Specifications will require further written approval by The Lakes prior to such work commencing.
- 4.9 Written approval provided by The Lakes is for subdivision standard control purposes only and implies no warranty as to the product, design, quality or suitability of the Buildings, Ancillary Buildings and/or Garages on the Lot in any manner whatsoever.

*Construction Materials, Cladding and Finishing*

- 4.10 To construct any Buildings, Ancillary Buildings and Garages so that:

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- (a) a minimum of 60% of the non-glazed exterior cladding of any Building consists of any of the following materials: kiln fired or concrete brick, plaster or cement texture finish, stone, linea or timber weatherboard (with a maximum erected width not exceeding 150mm), or any other exterior cladding material for which the Grantor has first obtained The Lakes' consent in writing;
- (b) all exterior surfaces (which are not pre-colour coated or finished) are painted, or stained prior to the Building being occupied. Where a Building has a basement, exposed subfloors, framing and/or decks, the exposed areas shall be clad in permanent materials in conformity with the main parts of the residence;
- (c) any Buildings, Ancillary Buildings and Garages or other wall predominantly facing the road frontage must include at least one window or feature;
- (d) the finished permanent colour(s) of exterior cladding are subdued and non-vibrant colours;
- (e) there are no reflective surfaces on any exterior cladding or roofing on the Buildings and any other buildings. In order not to create a glare offensive to adjoining property owners, not to use any metal clad roofing that has not been factory pre-painted or use any roofing material which exceeds 20% reflectivity as measured on the British Standard Specification Colour Range BS5252 or equivalent.
- (f) the exterior cladding and colours of the Ancillary Buildings and Garages are in keeping with the main Buildings.

*Construction*

- 4.11 To ensure all agents, employees, contractors, sub-contractors, tenants, licensees and other occupiers of the Lot are made aware of the restrictions created by these Covenants and are required to comply with these Covenants.
- 4.12 Before commencement of construction, the Grantor will erect either a temporary or permanent fence around the perimeter of the Lot to define the construction zone. Any temporary fencing erected for the construction phase of the Buildings shall be removed within 8 weeks of construction being completed.
- 4.13 Before the commencement of construction of any Buildings, Ancillary Buildings and Garages the stockpiling and storage of materials is strictly prohibited on the Lot.
- 4.14 Before, during and after construction, the use of adjacent or abutting land and footpaths for access, is strictly prohibited, provided however, that the Grantor can only have access across any other site upon obtaining prior written approval from the owner. Stockpiling and dumping of rubbish is strictly prohibited. Once construction has commenced the Grantor shall ensure container bins will be kept on the Lot for the accumulation and disposal of all rubbish. When necessary all such rubbish must be removed.
- 4.15 The Grantor will ensure that all landscaping, berms, roading, footpaths and kerbs are kept clean and free from debris prior, during and after construction. The Grantor shall re-instate, replace and be responsible for all costs arising from damage to the landscaping, berms, roading, footpaths, kerbs, streetlights, street signs, concrete or any other structures in the subdivision arising from the Grantor's use of the land directly or indirectly through the Grantor's actions.
- 4.16 Notwithstanding Clause 4.35 of these Covenants, during the construction period, a temporary building/container will be allowed on the Lot to be used in conjunction with the construction of the Buildings, Ancillary Buildings and Garages but must be removed within 8 weeks of practical completion of the Buildings.



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*Completion of Works*

- 4.17 To complete any construction of the Buildings, Ancillary Buildings, Garages (including the exterior painting and decorating of Buildings, Ancillary Buildings, Garages) and the driveway/vehicle access within 9 months of commencement of excavation of the building site.
- 4.18 To complete the construction of a letterbox within 3 months of completion of the Buildings, Ancillary Buildings and Garages. The letter box must be aesthetically sensitive in terms of quality, design and location and not be sited on Local Authority Owned Land.
- 4.19 That within 6 months of the completion of the Buildings, Ancillary Buildings and Garages:
- (a) lawn(s) must be laid, landscaping work (encompassing fences, paths, retaining walls and sufficient plants, trees and shrubs to enhance the street appeal of the Lot) and reinstatement of the Local Authority Owned Land adjoining the Lot must be completed; and
  - (b) permanent interior window furnishings must be hung.
- 4.20 That except for driveways, not to carry out landscaping on the road frontage of the Local Authority Owned Land except in accordance with the general overall landscaping plan prepared by The Lakes and approved by the Local Authority.

*Fencing*

- 4.21 To construct all fences in compliance with the Local Authority requirements and:
- (a) for fences within 3 metres of the boundary of the Lot (where that boundary borders any Local Authority Owned Land, access lot or right-of-way) those fences must be approved in writing by The Lakes prior to construction of the fence. Within this 3 metre area no fence can exceed 1.2 metres in height from The Lakes' finished ground level of the Lot (taken from where the fence is to be built). In determining whether or not to approve the construction of the proposed fence The Lakes will take into account:
    - (i) the appearance of the proposed fence in regards to The Lakes Development. The intention is that there should be a range of styles, designs and the appearance of fences within The Lakes Development;
    - (ii) the use of permeable materials and soft landscaping; and
    - (iii) whether screening is required for the privacy of the Lot.
  - (b) For all other fences (being those outside the 3 metres area) no fence can exceed 1.8 metres in height from the finished ground level of the Lot.
- 4.22 Except during the time of construction, not to erect any fence constructed of shade cloth, netting, plastic, steel of any profile, long-run or corrugated iron, un-textured wood-fibre cement panels, plywood, fibrolite or post and wire.
- 4.23 Not to alter or remove any specifically designed acoustic fencing and landscaping constructed on any land or Lot adjacent to Takitumu Drive.
- 4.24 Any modification or variation to the approved fence will require further written approval by The Lakes prior to such work commencing on the proposed modifications or variations.
- 4.25 That written approval provided by The Lakes is for subdivision standard control purposes only and implies no warranty as to the product, design, quality or suitability of the fences on the Lot in any manner whatsoever.

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*Retaining Structures*

- 4.26 To construct all retaining structures in compliance with the Local Authority requirements and for retaining structures within 3 metres of the boundary of the Lot (where that boundary borders any Local Authority Owned Land or any right-of-way)
- (a) ensure any retaining structures do not exceed 1.5 metres in height above The Lakes finished ground level of the Lot; and
  - (b) for retaining that is required to exceed 1.5 metres in height, retaining structures must be stepped by a minimum of 500mm and landscaped to soften the visual appearance of the retaining structure. No stepped increment shall exceed 1.5 metres in height.

*Land Use*

- 4.27 Not to site any clotheslines in such a way as to be highly visible from the street nor neighbouring properties.
- 4.28 Not to permit:
- (a) the Lot to be occupied or used as a residence unless the Buildings have been completed in accordance with the Covenants and the Local Authority Code of Compliance Certificates have been issued for the Buildings;
  - (b) Ancillary Buildings or Garages on the Lot to be lived in or otherwise used as dwellings.
- 4.29 Not to permit the Lot, Buildings, Ancillary Buildings and Garages to be used on a commercial basis unless the prior written approval of The Lakes has been obtained and all Local Authority requirements have been met.
- 4.30 Following construction of the Buildings not to display more than one advertisement, sign or hoarding of a commercial nature on the Lot. Any advertisement, sign or hoarding:
- (a) must not measure in excess of 1000mm x 1000mm; and
  - (b) must be kept in good condition at all times.
- 4.31 Not to allow on any part of the Lot any buildings, structures, driveways, landscaping, signs or fencing to fall into disrepair.
- 4.32 Not to allow any graffiti (or similar disfiguring) on the Buildings, Ancillary Buildings, Garages, fences, retaining structures or any other structure on the Lot to remain in place for more than 5 working days from the date the Grantor became aware of the graffiti or disfiguring.
- 4.33 Not to construct any road on any part of the Lot to provide access to any adjoining Lot.
- 4.34 To, at all times, keep mown and maintained in a neat and tidy condition (and prevent from becoming unsightly) the Lot and adjoining Local Authority Owned Land.
- 4.35 Not to bring on to the Lot any more than 3 animals limited to fish, reptiles, birds, dogs, cats, guinea pigs or rabbits. Livestock and Roosters are not permitted. Where possible, all animals on the Lot must be controlled:
- (a) so as not to become a nuisance to others within The Lakes Development; and
  - (b) so as to prevent them from roaming The Lakes Development at will.
- 4.36 Not to bring onto, or to allow to remain on the Lot or Local Authority Owned Land, anything set out in the applicable categories in this clause, unless they are garaged or adequately screened from the road and surrounding properties (so as to protect the aesthetic qualities of The Lakes Development and prevent noise likely to cause offence to residents). The applicable categories are:

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- (a) vehicles with a gross laden weight exceeding 3,500kgs (including recreational and trade vehicles);
- (b) temporary buildings (including sheds and containers);
- (c) buses, Caravans, Motorhomes, or Pleasure-craft/Boats;
- (d) trailers or any other equipment, materials or machinery.

4.37 If the Grantor proposes to locate anything set out in the applicable categories in Clauses 4.36(a) to 4.36(d) beyond the front building alignment of the Building, then the required screening must be approved in writing by The Lakes and the approved screening must be in place prior to that object being brought onto the Lot.

4.38 Not to allow anything set out in the applicable categories of Clauses 4.36(a) to 4.36(d) to be maintained, repaired or have any other work carried out on Local Authority Owned Land.

4.39 Not to bring onto, or to allow to remain on the Lot any vehicle, caravan, bus or motorhome which is used for residential use other than for the short term occupation by visitors which must not exceed 2 weeks in any 6 month period.

4.40 To ensure due allowance is made for adequate current and future drainage of all storm-water from the Lot, such storm-water drainage not to be detrimental to the water quality of the storm-water network. The Grantor will also ensure that no discharge from the Lot whether of a soluble or insoluble nature shall occur. The Grantor is responsible for all costs, claims or demands for any remedial action undertaken for any breach thereof.

4.41 That it will at all times save harmless and keep indemnified The Lakes from all proceedings, costs, claims and demands in respect of breaches by the Grantor of these Covenants.

## 5. Breach of Covenants & Enforcement

5.1 If there is a breach of any of these covenants (and without prejudice to any other liability which the Grantor may have to any person having the benefit of this covenant) and the Grantor does not rectify the breach within 10 working days of written notice being made by The Lakes then the Grantor will pay to The Lakes:

- (a) liquidated damages of the sum of \$250.00 per day for every day that the breach or breaches continue after the date of written demand until the breach or breaches are remedied; and
- (b) any costs and expenses (including legal costs) incurred by The Lakes to remedy the breach.

5.2 The rights of The Lakes to enforce the terms of the rights and benefits conferred by these covenants will remain in place until the earlier of 2035 or

- (a) 12 calendar months from the date on which The Lakes ceases to be a registered proprietor of any Lot forming part of The Lakes Development; or
- (b) The Lakes relinquishing these rights in writing to the successor in title.

5.3 From the applicable date set out in clause 5.2 the right to enforce the rights and benefits so conferred will in accordance with normal legal principles vest in the registered proprietors of any lot forming part of the Dominant Tenement.

5.4 In the event that one or more provisions of these Covenants are at any time found to be invalid or otherwise rendered unenforceable, such provision or provisions will be severable from these Covenants, so that the validity or enforceability of the remaining provisions of these Covenants are not affected.

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**6. Expiry of Covenants**

- 6.1 These covenants will continue in force for the benefit of the registered proprietors of any lot forming part of the Dominant Tenement until 31 December 2035 at which time they will expire.

**7. Dispute Resolution**

- 7.1 If a dispute in relation to any covenant arises between the parties who have a registered interest under these covenants:
- (a) the party/parties initiating the dispute must provide full written particulars of the dispute to the other party/parties;
  - (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
  - (c) If the dispute is not resolved within 20 working days of the written particulars being given (or any longer period agreed by the parties):
    - (i) The dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
    - (ii) The arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

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