

View Instrument Details



Instrument No 11172210.7
Status Registered
Date & Time Lodged 29 August 2018 14:37
Lodged By Watson, Marcia Anne
Instrument Type Easement Instrument



Affected Computer Registers	Land District
755086	South Auckland
755087	South Auckland
755088	South Auckland
755089	South Auckland
755090	South Auckland
755091	South Auckland
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755110	South Auckland
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755112	South Auckland
755113	South Auckland
755114	South Auckland
755115	South Auckland
755116	South Auckland
755117	South Auckland
755118	South Auckland
755119	South Auckland
755120	South Auckland

Annexure Schedule: Contains 11 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



Grantor Certifications

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 8548080.3 has consented to this transaction and I hold that consent ☒

Signature

Signed by Nicholas James Wilson as Grantor Representative on 28/08/2018 03:35 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 Nicholas James Wilson as Grantee Representative on 28/08/2018 03:35 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

FAIRVIEW ESTATE LIMITED

Grantee

FAIRVIEW ESTATE 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 1-35 (inclusive) on DP503200	755086-755120 (inclusive) (South Auckland Registry)	755086 – 755120 (inclusive) (South Auckland Registry)

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

BACKGROUND

- A. The Grantor is registered as proprietor of the estate described as Servient Tenement in Schedule A ("Servient Land").
- B. The Grantee is registered as proprietor of the estates described as Dominant Tenement in Schedule A ("Dominant Land").
- C. The Grantor has agreed with the Grantee to accept restrictions upon the Servient Land for the benefit of the Dominant Land.

COVENANTS

The Grantor for itself and its successors in title to the Servient Land hereby covenants and agrees with the Grantee and its successors in title to the Lots, that the Grantor will from now and at all times in the future observe and perform the stipulations and restrictions contained in the First Schedule to the end and intent that each of the stipulations and restrictions shall, in the manner and to the extent prescribed, enure for the benefit of, and be appurtenant to the Lots until 31 December 2038.

DEFINITION AND INTERPRETATION

- "Approval" means the land use and subdivision consent number 9655 dated 23 November 2015 for the Subdivision and construction of dwellings within The Drive at Fairview Estate as varied by decision number RC9655 01 dated 26 August 2016.
- "Covenants" the covenants and obligations on the part of the Grantor set out in the First Schedule of this Instrument.
- "Design Review Committee" means the panel established for the purposes of assessing and approving plans and specifications pursuant to the covenant contained in the First Schedule and Design Guidelines, such panel to comprise at least one representative of FEL, a planner, architect, or one or more urban design/landscape professionals nominated by FEL from time to time.
- "FEL" means Fairview Estate Limited as developer of the Subdivision.
- "Lots" means each of the Lots contained within each of the Identifiers referred to as the Servient Land.
- "Lot 100" means lot 100 DP 503200 being the private access lot serving the Lots.
- "Design Guidelines" means the design guidelines produced by FEL and include any amended guidelines or variations thereto published from time to time by FEL.
- "Relevant Authority" means any Government, local, statutory or non-statutory authority or body having jurisdiction over the Subdivision.
- "Subdivision" means the development comprising the Lots and where the context so requires, it includes Lot 100.

FIRST SCHEDULE

The Grantor covenants with the Grantee:

1. **Design Guidelines**

- (a) To comply with the Design Guidelines.

2. **Construction and Alterations**

- (a) Not to commence any site works, building work or landscaping work on the Servient Land without having first obtained the written consent of the Design Review Committee to the plans and specifications and exterior design, fencing, landscape and appearance of the proposed building and landscaping at the Grantor's cost.
- (b) Not to commence any future additions or external decoration (including re-painting) or alterations to dwellings or substantial landscaping or any other permitted building on the Servient Land without having first obtained the written consent of the Design Review Committee at the Grantor's cost.

3. **Design Review Committee Approval**

- (a) The Design Review Committee may, in its absolute and unfettered discretion, give written approval to the plans and specification submitted if in the sole opinion of the Design Review Committee such approval would not detract from the overall quality and appearance of the Subdivision and are in accordance with the Design Guidelines.
- (b) The Grantor acknowledges and agrees that it shall have no right or claim whatsoever against the Design Review Committee for the grant of the Design Review Committee approval under the Covenants (whether with or without conditions) or in respect of any refusal of the Design Review Committee to grant approval under the Covenants.
- (c) Design Review Committee approval given in any circumstance shall not serve as a precedent, or bind the Design Review Committee, in any manner with respect to any future application for Design Review Committee approval by the Grantor or any other party.

4. **Use**

- (a) The Grantor will not use any part of the Servient Land, or permit the same to be used, for any trading or commercial purpose (other than a home office), unless that purpose is a permitted activity under the relevant district plan and the Grantor complies in all respects with the requirements of any Relevant Authority.

5. **No Subdivision**

- (a) The Grantor will not subdivide the Servient Land further in order to create any additional lot or lots, whether by fee simple title, unit title, cross-lease title or otherwise.

6. Single Dwelling with Minimum Closed-In Floor Area

- (a) The Grantor will not erect or place or permit to be erected or placed on the Servient Land any dwelling other than a single dwelling house with a minimum closed-in floor area of 170 square metres for sites under 700 square metres and a minimum closed-in floor area of 200 square metres for sites 700 square metres or over (including any closed-in lock up garage and any verandah, patio or other decking structure) and such dwelling and associated works shall only be constructed in the building area on the Servient Land.

7. No Temporary or Relocated Buildings

- (a) The Grantor will not erect or place or permit to be erected or placed on the Servient Land a second-hand or relocated building or any motorhome, caravan, transportable home, hut, shed, tent or vehicle to be used as a dwelling or temporary dwelling.

8. Garaging

- (a) The Grantor will not erect or place or permit to be erected or placed on the Servient Land any detached, semi-detached or open garaging or carport for vehicles.
- (b) The Grantor will not park or permit any invitee, visitor or other occupier of the Lot to park any vehicle on any front lawn, footpath or road, (including without limitation Lot 100) within the Subdivision, provided however parking on any driveway within the Lot shall be permitted for short periods of time not exceeding twelve (12) hours and parking on any road (including without limitation Lot 100) within the Subdivision by the Grantor or a visitor or invitee of the Grantor shall be permitted for short periods of time not exceeding two (2) hours.
- (c) The Grantor will not park boats, trailers, caravans or golf carts on the Servient Land unless garaged.

9. Mechanical Repairs

- (a) The Grantor will not carry out nor permit any invitee, visitor or other occupier to undertake any mechanical repairs to any vehicle on any driveway, front lawn, footpath or road (including without limitation Lot 100).

10. Construction Period

10.1 The Grantor warrants and agrees that:

- (a) they will commence construction of the dwelling within 12 months of the initial Settlement Date of the Lot.
- (b) construction will be continuous and they will in any event complete construction within 12 months of the construction commencement date.

11. Removal of Soil

- (a) The Grantor will not remove, or cause to be removed, any soil from the Lot except as may be necessary to complete construction of a dwelling on the Lot. Any soil

removed during construction shall be appropriately taken away from the Lot and any roads and footpaths (including without limitation Lot 100) cleaned up afterwards.

12. Fairway Lots

- (a) Notwithstanding anything else in the Covenants, any dwelling, building or ancillary structure constructed on a Lot which is fronting the golf course (being Lots 1 to 20 inclusive and Lots 31, 32 and 35) is to be single level only.

13. Washing Lines

- 13.1 The Grantor will not erect place, or permit to be erected or placed, on the Servient Land any clothes or washing line or lines that would be visible from the road (including without limitation Lot 100), any right of way, access way, pathway, golf course or other properties in the Subdivision.

14. Signs and Advertising

- 14.1 The Grantor will not:

- (i) permit any sign or hoarding (for advertising, political or otherwise) to be erected on the Lot except temporary signage related to the marketing of the Lot at the time of sale; nor
- (ii) display more than one "For Sale" sign.

15. Pets

- 15.1 The Grantor shall not allow any pet to cause a nuisance to others. Without limiting the generality of this provision, the Grantor shall ensure that:

- (i) when a pet is outside the boundary of the Servient Land, the pet shall be under proper control and supervision and, for this purpose, all dogs must be on a leash;
- (ii) all pets waste must be immediately picked up and properly disposed of;
- (iii) all pets are to be maintained in a healthy and clean condition and all laws and regulations relating to the keeping of such pets are complied with;
- (iv) no dangerous dog which in whole or in part, resembles any of the following types or breeds, Pit Bull Terrier, Rottweiler or Doberman Pinscher breeds shall be kept within the Servient Land or permitted in the Subdivision or elsewhere in the development generally referred to as the Fairview Country Club and Fairview Estate; and
- (v) no animal shall be kept on the Servient Land other than a pet.

16. Completion Prior to Occupation

- (a) The Grantor will not use, occupy or move into the dwelling house or any building erected on the Servient Land until such time as:
 - (i) the dwelling house or building has been substantially completed in accordance with the terms of the Design Guidelines, the requirements of the local territorial authority and the terms of the Covenants;
 - (ii) a code of compliance certificate ("CCC") is issued in accordance with Building Act 2004 (or subsequent Act) requirements;
 - (iii) the exterior of the dwelling house or building has been fully completed and (where appropriate) painted or stained;
 - (iv) all driveways, access ways and pathways have been completed;
 - (v) the landscaping has been completed in accordance with the Design Guidelines; and
 - (vi) they have complied in full with the Design Guidelines and submitted a copy of the Completion Inspection Submission (or such other appropriate form within the Design Guidelines) and the CCC to the Design Review Committee.

17. Maintenance

- (a) The Grantor shall keep the Servient Land and all improvements (including all fences) in a well-maintained and attractive condition, and the Grantor shall not permit the accumulation of unsightly rubbish or materials or in any other way permit the appearance of the Servient Land to detract from the general standards of the Subdivision. Without limiting the generality of the foregoing, the Grantor shall arrange for regular watering, fertilising and cutting of grass areas, watering, fertilising and pruning of all trees, removal of weeds and rubbish, and the repair and maintenance of all buildings, driveways, footpaths and landscaping features, upon or associated with the Servient Land.
- (b) Without limiting the general nature of clause 17.1 the Grantor shall on a regular basis mow and maintain the berm and other areas in Lot 100 in front of their Lot unless they have jointly with the owners of other Lots within the Subdivision engaged a contractor or contractors to mow and maintain the berm and other planting in the road reserve areas of Lot 100.

18. Liability for Damage

- (a) In the event that the Grantor or any contractor, agent, employee or invitee of the Grantor, causes any damage to the road, footpath, access way, kerb (whether within Lot 100 or otherwise), golf course or other structure or improvement within the Subdivision, the Grantor shall make good the damage at its cost. If the Grantor fails to make good the damage within a reasonable time, the Grantee may rectify the damage and recover any costs from the Grantor.

19. Site Management and Construction Controls

- (a) During construction of the dwelling and any alterations or other works on the Servient Land it will be the responsibility of the Grantor to ensure builders, subcontractors, workmen and suppliers comply with the Design Guidelines and minimise disturbance to other residents as follows:
- a) access to construction area must be via the existing roading. At no time shall access be allowed through the golf course. Contractors and owners shall ensure where possible, that smaller delivery trucks are used. Where deliveries are made by larger trucks that require greater turning distances that are available within the residential areas, then contractors shall arrange for goods to be first de-cantered onto smaller trucks and then delivered to site. The Grantor shall be responsible to ensure that the contractor will immediately repair any damage caused by trucks inappropriately brought on to the Subdivision;
 - b) all trade vehicles are to be parked on the Servient Land or in such other positions as agreed by the Design Review Committee or agreed by a neighbouring lot owner. Trade vehicles are not to be parked on the roads, footpaths, grass berms (whether within Lot 100 or otherwise) or the golf course;
 - c) temporary buildings associated with construction are permitted but must be in a tidy condition and located on the Servient Land;
 - d) the dwelling will be constructed on the Lot. No kitset, pre-built transportable or relocatable house, caravan, shed or garage may be erected or permitted for permanent or temporary accommodation;
 - e) only one construction sign is permitted on the Lot – no larger than 900 x 600mm. The sign must be fixed and is permitted only within the Servient Land boundaries;
 - f) hours of work on the Lot are restricted to 7:00am to 7:00pm Monday to Friday and 8:00am to 5:30pm on Saturday, however under no circumstances should there be any construction noise emanating from the Lot after 5.30pm;
 - g) all care is to be taken to keep noise levels to a minimum. Contractors are not permitted to have radios or music playing loudly on the Lot;
 - h) the Grantor shall ensure that all contractors on the Lot have an up to date Health & Safety policy and adhere to site safety standards at all times in accordance with the Health and Safety at Work Act 2015 and all relevant regulations;
 - i) all buildings must be constructed in accordance with the current Building Act 2004 and Building Code and must be built in a good and tradesmen like manner. All construction must be carried out by or under the direct supervision of a licensed building practitioner or such other contractor as approved prior by the Design Review Committee;
 - j) no building material or waste may be placed on any adjoining lot, any other part of the Subdivision or the golf course;
 - k) the building contractor must carry full contract insurance and public liability cover for an amount deemed adequate by the Design Review Committee;

- l) the Design Review Committee reserves the right to enter on to any Lot for the purpose of inspecting the building to ensure that design and building standards and site maintenance requirements are observed;
- m) no builder's waste or rubbish may be allowed to accumulate on the Lot. A refuse skip must be used during construction. Wind-blown material is to be promptly retrieved;
- n) all building materials and equipment brought onto the Lot during construction must be contained within the perimeter of the Lot;
- o) contractors and sub-contractors are not permitted to have dogs or pets on the Lot or within the Subdivision;
- p) contractors or sub-contractors are not permitted to have rubbish fires on the Lot or anywhere else within the Subdivision;
- q) grass and other groundcover on the Lot will be maintained so as not to exceed 100mm in height; and
- r) all owners and/or contractors shall have appropriate and adequate insurance cover in place for the duration of the construction on the Lot. Thereafter owners shall have appropriate and adequate insurance cover for the dwelling and other improvements on the Lot.

20. **No Objection**

- (a) The Grantor will not:

- (i) make or lodge;
- (ii) be a party to or procure; or
- (iii) finance or contribute to the cost of,

any submission, application or proceeding (whether under the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrain subdivision and/or development on the golf course and clubhouse area.

21. **Breach of Covenants**

- (a) If there should be any breach or non-observance on the Grantor's part of any of the Covenants and without prejudice to any other liability which the Grantor may have to the transferor and person or persons having the benefit of the Covenants the Grantor will upon written demand being made by the Grantee:

- (i) pay to the Grantee as liquidated damages an amount equal to 10% of the higher of the purchase price of the Servient Land and the capital value of the Servient Land for each calendar year or part thereof during which there shall be breach or non-observance of any of the covenants; and/or
- (ii) upon receiving reasonable notice from the Grantee remedy any breach if capable of remedy on terms and conditions imposed by the Grantee which may involve being required to remove any structure or building material which breaches the terms of the Covenants; and/or

- (iii) allow the Grantee the right to lodge a caveat against the Servient Land in breach to protect the sum of any unpaid debt owing to the Grantee on the basis that any unpaid debt shall be deemed to constitute a contractual charge over the Servient Land owing to the Grantee until such time that any debt is fully discharged or otherwise satisfied.
- (b) All expenses and costs incurred in enforcing the Covenants, shall constitute a debt due that all shall be a charge against the Lot and shall be recoverable as liquidated damages.

22. Indemnity

- (a) The Grantor will at all times indemnify and keep the Grantee and the registered proprietors of the Dominant Land indemnified from all losses, costs, claims and demands including from any fines or penalties involved as a result of any statutory breach by the Grantor in respect of any breach or non-observance by the Grantor of the Covenants.

23. No Contribution to Fencing

- (a) The Grantor will not call upon the Grantee to pay for or contribute towards the cost of erection or maintenance of any boundary fence between the Servient Land and any adjoining Lot or property for so long as any adjoining Lot or property is owned by FEL and the Grantor will not call upon the Grantee, FEL or the registered owner of the golf course to pay for or contribute towards the cost of erection or maintenance of any boundary fence between the Servient Land and the golf course and provided further that this covenant will enure for the benefit of any subsequent registered proprietor of the golf course.

24. Enforcement

- (a) The Grantor and Grantee acknowledge and agree that:
 - (i) this Instrument is subject to Section 12 Part 2 Subpart 1 of the Contracts and Commercial Law Act 2017 and that the Covenants that are intended to create obligations on the Grantor, confer benefits on FEL and are enforceable at the suit of FEL as well as by the Grantee;
 - (ii) FEL may facilitate the observance of this Instrument by the Grantor by taking all necessary steps to enforce its observance on behalf of any Grantee;
 - (iii) the Grantee irrevocably appoints FEL to be its attorney and in its name and at its expense to do anything which FEL considers necessary to enforce or attempt to enforce the Grantee's rights or powers in terms of the Covenants under this Instrument; and
 - (iv) without limiting the appointment made in Clause 24.1(c) that appointment may specifically extend to FEL issuing proceedings in the name of any Grantee, provided that in doing so FEL indemnifies such Grantee/s against all costs arising from or incidental to those proceedings.

25. The Grantor acknowledges that the Grantee and FEL shall not be liable to the Grantor for any loss, damage, claim or expenses (including where such loss, damage, claim and expense arises from the approval or non-approval of an application under the Design Guidelines, any failure to meet the timeframes stated in the Design Guidelines or performing any function under or in relation to the Design Guidelines) or a failure to enforce the Covenants..
26. In the event that the Grantor fails to observe and perform the Covenants, a Grantee and/or FEL shall have a right (but not an obligation) to do whatever may be reasonably required to remedy such failure on the part of the Grantor, and the cost incurred by a Grantee or FEL in remedying the default shall be refunded by the Grantor to that Grantee or FEL (as the case may be) upon demand.

Liability

27. Without prejudice to the Grantor's and Grantee's other rights, this Instrument binds the Grantor's and Grantee's successors in title so that contemporaneously with the acquisition of any interest in the Servient Land all such successors in title become bound to comply with this Instrument. However, the liability of any Grantor under this Instrument is limited to obligations and liabilities that accrue during that Grantor's time as registered owner of the Servient Land and only in respect of that part of the Servient Land owned by that Grantor. A Grantor will not be liable for any breach of this Instrument which occurs during any period prior to or after its term as registered owner of the Servient Land (however, for the avoidance of doubt, any Grantor shall remain liable for any such antecedent breach following the transfer of its interest in the Servient Land).

Costs

28. The Grantee will pay all costs directly or indirectly attributable to the preparation and registration of this Instrument.
29. The Grantor will pay all costs directly or indirectly attributable to the enforcement and discharge of this Instrument.

Implied terms

30. No covenants by the Grantor or by the Grantor's successors in title are implied in this Instrument other than the covenants for further assurance implied by section 154 of the Land Transfer Act 1952.