

# View Instrument Details



**Instrument No** 10822006.3  
**Status** Registered  
**Date & Time Lodged** 15 June 2017 14:19  
**Lodged By** McDonald, Rachael Jane  
**Instrument Type** Easement Instrument



**Toitū Te Whenua**  
**Land Information**  
**New Zealand**

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Affected Computer Registers	Land District
740012	South Auckland
740013	South Auckland

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**Annexure Schedule:** Contains 14 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 ☒
- Mortgage 8548080.3 is being discharged/extinguished in a prior dealing or in the same dealing ☒
- I certify that the Encumbrancee under Encumbrance 10583850.6 has consented to this transaction and I hold that consent ☒
- I certify that the Encumbrancee under Encumbrance 10583850.5 has consented to this transaction and I hold that consent ☒

## Signature

Signed by Nicholas James Wilson as Grantor Representative on 15/06/2017 01:20 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 Nicholas James Wilson as Grantee Representative on 15/06/2017 01:20 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

HELEN ELIZABETH SIMPSON AND ROSS PETER SIMPSON

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

Schedule, if required

Continue in additional Annexure

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 Covenants		740012	740013

**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**

Approved by Registrar-General of Land under No. 2002/5032  
**Annexure Schedule 2**

Insert type of instrument "Mortgage",  
"Transfer", "Lease" etc

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**Continuation of "Easement or Profit a Prendre Rights and Powers (including terms, covenants and conditions)":**

1. Land Covenants
- 1.1 The Grantee is registered proprietor of various parcels of land that now and in the future will comprise the Fairview Estate including the Country Club and Country Club Facilities and intends to continue to subdivide the same in order to complete the Development. To achieve this, the Grantor hereby covenants with the Grantee, as registered proprietors, as set out below and hereby requests that such covenants be noted against the title having the burden of these Covenants.
- 1.2 These Covenants shall:

(a) be for the benefit of and appurtenant to each of the Lots of the Subdivision that are in future subdivided off the Benefitting Lot; and

(b) the owner for the time being of the Benefitting Lot may enforce the observance of the Covenants against the owner for the time being of the Covenanting Lot.
2. Definitions
- 2.1 For the purposes of these Covenants:

"Approved Plans and Specifications"

the plans and specifications for the Building Works approved by the Grantee pursuant to clause 10.

"Benefitting Lot"

Lot 100 DP 498984 Identifier 740013.

"Building Area"

Area WC on DP 498984

"Building Works"

the carrying out and completion of the construction of the dwelling and ancillary buildings (if any) on the Property together with all fencing and landscaping and the issue of a code completion certificate under the Building Act 2004 for the Building Works.

"Country Club"

the Fairview Estate County Club as operated by the Society

**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.**

REF: 7025-AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032  
**Annexure Schedule 2**

**Insert type of instrument "Mortgage",  
"Transfer", "Lease" etc**

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"Country Club Facilities"	the Country Club Facilities available for the use and enjoyment of the Society and its members from time to time pursuant to the Agreement for Use of the Facilities including exclusive use of tennis courts, barbeque area, petanque court, health studio, pool house and the non-exclusive use of the café/restaurant, members bar, golf shop, changing rooms, outdoor fireplace, children's playground and all other parts of the clubhouse building located on the Clubhouse Land, but excluding the kitchen and service areas and the clubroom/manager's office.
"Covenanting Lot"	Lot 1 DP 498984 Identifier 740012
"Development"	the Fairview Estate development off Sharp Road, Katikati being the residential areas, golf course and Country Club Facilities.
"Fairview Estate"	the land described on Deposited Plans 328729 and 498984 (South Auckland Land Registration District) and any further subdivisions of such land
"No Build Area"	Area WA, WB, AX, CO, CP and YA on DP DP 498984
"Pet"	any domestic cat or dog other than those dogs not permitted by the terms of these Covenants and excluding animals such as (but not limited to) chickens, lambs, pigs or other non-domestic animals including mustelids and rabbits.
Relevant Authority"	any Government, local, statutory or non-statutory authority or body having jurisdiction over the Subdivision.

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The following provisions shall apply in the construction and interpretation of this instrument (unless the context otherwise requires):

- (a) the headings are for convenience only and shall not affect the interpretations of this instrument;
- (b) words importing the singular number include the plural and vice versa and the masculine gender includes the feminine and neuter genders and vice versa.

**3. Land Covenants to Enure**

The Grantor for itself and its successors in title to the Covenantee Lot covenants and agrees with the Grantee for the benefit of the Benefitting Lot and also separately with the registered proprietors from time to time of the Benefitting Lot and in respect of residential lots subsequently subdivided from the Benefitting Lot to always observe and perform all the agreements, stipulations and restrictions set out in the Covenants to the intent that they shall forever enure to benefit the Benefitting Lot and residential lots subdivided from the Benefitting Lot.

**GRANTOR'S COVENANTS****4. No Commercial Use**

- 4.1 The Grantor will not use any part of the Covenantee Lot, or permit the same to be used, for any trading or commercial purpose, 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**

- 5.1 The Grantor will not subdivide the Covenantee Lot 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**

- 6.1 The Grantor will not erect or place or permit to be erected or placed on the Covenantee Lot any dwelling other than a single dwelling house with a minimum closed-in floor area of 250 square metres (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 and in accordance with the terms of these Covenants.
- 6.2 The Grantor will not erect or place on the No Build Area any dwelling or associated works whatsoever. For the avoidance of doubt the Grantor is permitted to form a driveway and to landscape in the No Build Area.

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**Continuation of "Easement or Profit a Prendre Rights and Powers (including terms, covenants and conditions)":****7. No Temporary or Relocated Buildings**

- 7.1 The Grantor will not erect or place or permit to be erected or placed on the Covenanted Lot 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**

- 8.1 The Grantor will not erect or place or permit to be erected or placed on the Covenanted Lot any detached, semi-detached or open garaging or carport for passenger vehicles. Such structures may be erected or placed for motorhomes, caravans, boats, trailers or golf carts provided that such vehicles must still be fully screened so they are not visible from other areas of the Development.
- 8.2 The Grantor will not park or permit any invitee, visitor or other occupier of the Covenanted Lot to park any vehicle on any driveway, front lawn, footpath or road within the Development. For the avoidance of doubt, this provision shall not restrict any short-term parking on any driveway or road within the Development by a visitor or invitee of the Grantor for short periods of time.

**9. Mechanical Repairs**

- 9.1 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 law, footpath or road.

**10. Construction Period**

- 10.1 The Grantor warrants and agrees that:
- (a) They will commence construction of the Building Works within 18 months of the date of registration of the Covenants ("Construction Commencement Date");
  - (b) They will complete construction of the Building Works within 9 months of the Construction Commencement Date ("Completion Date");
  - (c) If the Building Works have not commenced by the Construction Commencement Date and/or have not been completed by the Completion Date then liquidated damages will be due and payable on demand by the Grantee.
  - (d) The pre-agreed estimated liquidated damages that will be payable by the Grantor pursuant to clause (c) above will be \$100 per day for each and every day for the period from:

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**Continuation of "Easement or Profit a Prendre Rights and Powers (including terms, covenants and conditions)":**

- (i) the Construction Commencement Date until the Building Works have commenced; and
- (ii) the Completion Date until the date the actual Building Works have been completed.

**11. Approved Plans and Specifications**

- 11.1 Prior to commencing construction of any Building Works or any addition or modification to the exterior of any dwelling or building or the replacement of any materials or the redecoration of the exterior of any dwelling or building on the Covenanted Lot, the Grantor shall submit full plans and specifications (including a landscaping plan) to the Grantee for approval which approval shall not be unreasonably withheld provided that the proposed Building Works or addition, modification, replacement of materials or redecoration is in keeping with the overall quality and appearance of the Development and otherwise with the Covenants. In giving any approval, the Grantee may impose conditions relating to the Building Works or other works including, but not limited to, imposing restrictions on working hours, noise levels, rubbish accumulation, delivery and carparking restrictions and ensuring that all Building Works are appropriate and adequately insured.

**12. Approved Contractors**

- 12.1 The Grantor shall ensure that any contractors, sub-contractors or tradesmen employed in the construction, replacement, renovation or other significant improvement of or to any dwelling or building on the Covenanted Lot are suitably qualified for the Building Work being undertaken and are made aware of and shall abide by any conditions associated with the Benefitting Lot set out by the Grantee pursuant to clause 11.1.

**13. Construction**

- 13.1 The Grantor will not erect or place or permit to be erected or placed on the Covenanted Lot any Building Works which:
- (a) does not comply with all applicable requirements of the Relevant Authority and have appropriate consents issued;
  - (b) is less than 1.5 metres from any boundary (excluding the roadside boundary) of the Covenanted Lot;
  - (c) is less than 3 metres from the roadside boundary of the Covenanted Lot;

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(d) exceeds the height to boundary ratio, which is calculated by reference to lines starting at the points 2 metres above ground level at each boundary of the Covenanted Lot and continuing upwards at a 45 degree angle, provided that the maximum height of any part of the dwelling shall not be more than 5 metres; and

(e) does not comply with the terms of the Covenants.

**14. Removal of Soil**

14.1 The Grantor will not remove, or cause to be removed, any soil from the Covenanted Lot except as may be necessary to complete construction of a dwelling on the Covenanted Lot. Any soil removed during construction shall be appropriately taken away from the Covenanted Lot and any roads and footpaths cleaned up afterwards.

**15. Building Materials and Controls****15.1 Roofs**

- (a) Roofs to be of a 'hip' type or 'gable' type construction with a pitch between 20° – 40°;
- (b) Roof claddings are limited to one finish selected from – metal roof tiles, or traditional type concrete roof tiles in either a terracotta or grey colour;
- (c) Flat roofs are permitted but shall not exceed 20% of the total roof area. The flat roofs are to generally sit below the gutter line of the main roof and shall be covered in an approved membrane of a colour consistent with the main roof colour;
- (d) Lean-to-structures are permitted at the discretion of the Grantee and shall have a minimum roof pitch of 15° and a maximum pitch of 40°;
- (e) All down pipes and gutters are to be copper or powder coated galvanised steel in a colour matching either the roof or the external wall cladding;
- (f) All roof flashing and penetrations shall be in a colour and material consistent with the roof. Penetrations are to be avoided where possible (i.e. vented out walls instead);
- (g) No plant or equipment is permitted to be positioned on the roof except for TV aerial and sky dishes which are to be placed as discretely as possible from the road and/or golf course;

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- (h) Solar panels are permitted at the discretion of the Grantee. They must be designed and integrated into the structure to be as flush and unobtrusive as possible, in colours that match the roof, and on a roof slope(s) that has minimal views and glare from neighbouring properties and the golf course;
- (i) Where skylights are contemplated the architect shall ensure that the flashing kits do not protrude above the roof plane unnecessarily.

#### 15.2 Single Level

Notwithstanding anything else in the Covenants, any dwelling, building or ancillary structure constructed on the Covenanting Lot is to be single level only but for the avoidance of doubt may be constructed to a maximum height of 6 metres above formed ground level on the Covenanting Lot.

#### 15.3 External Walls

- (a) All external above ground cladding materials shall be limited to painted plaster on brick in an approved colour;
- (b) Timber/linea weatherboards painted in an approved colour can be used but shall be limited to above and/or below windows;
- (c) Bargeboards and fascia's are to be painted in an approved colour.

#### 15.4 Doors, Joinery and Windows

- (a) Joinery finishes shall be in painted timber, powder coated aluminium or anodised aluminium in an approved colour;
- (b) All windows are to be double-glazed and any windows in line with the golf course must be in toughened glass;
- (c) Only clear glass is permitted except where bathroom windows are required to be in opaque or frosted glass. No tinted or mirrored glass is permitted;
- (d) Garage doors shall be in colour steel, timber and in either paint or cedar finished to complement the dwelling colour scheme.

#### 15.5 Driveways, Access Ways, Patios and Paving

All driveways, access ways, patios and paving shall be constructed with permanent surfacing materials such as, concrete, asphalt or similar.

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**Continuation of "Easement or Profit a Prendre Rights and Powers (including terms, covenants and conditions)":****15.6 Exterior Lighting**

Exterior lighting shall be restricted to down lighting and for the purpose of lighting private areas.

**15.7 Projections**

- (a) All roof projections including chimneys, flues and vents shall be compatible in height and material with the structure from which they project. Chimneys, where they are deemed to be a strong design feature, may exceed the height control by up to maximum of 1.5 metres.
- (b) Chimneys are to be square or rectangular in profile. Protruding flues are to be capped and or screened.
- (c) All structures are to be designed as integral parts or extensions of the main building in terms of materials and colours, even if physically separated from it.
- (d) Pergolas are to be of a scale and proportioned to suit the dwelling.

**15.8 Air Conditioning**

Air-conditioning units must be designed as an integral part of the building and screened acoustically and visually.

**15.9 Outdoor Fires**

Outdoor fires and open fires shall be permitted at the discretion of the Grantee and subject to any relevant local authority rules or by-laws

**15.10 Landscaping**

The Grantor will, on completion of the dwelling house, landscape the Covenanted Lot substantially in accordance with the landscaping plan approved by the Grantee as part of the Approved Plans and Specifications

**15.11 Fencing**

The Grantor will not erect or place, or permit to be erected or placed, any fencing or boundary wall:

- (a) Comprised of materials other than:

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- (b) Plastered concrete, lightweight concrete or blocks; or
- (c) hedging, which must be maintained in accordance with the Covenants.  
  
timber screens provided that when placed or erected on the boundary they shall be no longer than 4m in length and not exceed more than 25% in total of the length of the boundary. The timber screens shall be in an approved pattern and style and be stained.
- (d) exceeding 1.8 metres in height.

**15.12 Washing Lines**

The Grantor will not erect place, or permit to be erected or placed, on the Covenanting Lot any clothes or washing line or lines that would be visible from the road, any right of way, access way, pathway, golf course or other properties in the Development.

**15.13 Signs and Advertising**

The Grantor will not:

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

**15.14 Pets**

The Grantor shall not allow any Pet brought onto or kept on the Covenanting Lot to cause a nuisance to any registered proprietor or occupant of Fairview Estate and the Benefitting Lot. Without limiting the generality of this covenant, the Grantor shall ensure that:

- (a) when a Pet is outside the boundary of the Covenanting Lot, the Pet shall be under proper control and supervision and, for this purpose, all dogs must be on a leash;
- (b) all Pets waste must be immediately picked up and properly disposed of;
- (c) all Pets are to be maintained in a healthy and clean condition and all laws and regulations relating to the keeping of such animals are complied with;
- (d) no dangerous dog which in whole or in part, resembles any of the following types or breeds, Pit Bull Terrier, Rottweiler or Doberman Pinscher shall be kept within the Covenanting Lot or permitted in the Development; and

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- (e) no animal shall be brought onto or kept on the Covenanting Lot other than a Pet.

**16. Completion Prior to Occupation**

- 16.1 The Grantor will not use, occupy or move into the dwelling house or any building erected on the Covenanting Lot until such time as:

- (a) the Building Works have been substantially completed in accordance with the terms of the Approved Plans and Specifications, the requirements of the Relevant Authority and the terms of the Covenants;
- (b) a code of compliance certificate is issued in accordance with Building Act 2004 (or subsequent Act);
- (c) the exterior of the dwelling house or building has been fully completed and (where appropriate) painted or stained; and
- (d) all driveways, access ways and pathways have been completed.

**17. Maintenance**

- 17.1 The Grantor shall keep the Covenanting Lot 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 Covenanting Lot to detract from the general standards of the Development. 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 Covenanting Lot.

**18. Liability for Damage**

- 18.1 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, golf course or other structure or improvement within the Development, 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 in doing so from the Grantor.

**19. Grantee Approval**

- 19.1 The Grantee may, in its absolute and unfettered discretion, give written approval to the plans and specification submitted for the Building Works if in the sole opinion of the Grantee, such approval would not detract from the overall quality and appearance of the Development ("Grantee Approval").

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- 19.2 The Grantor acknowledges and agrees that it shall have no right or claim whatsoever against the Grantee (or nominee or assignee) for the provision of Grantee Approval under the Covenants.
- 19.3 The Grantee may, at any time, nominate any other person or persons to exercise discretion given under this instrument as to whether or not to give Grantee Approval.
- 19.4 Grantee Approval given in any circumstances shall not serve as a precedent, or bind the Grantee, in any manner with respect to any future application for Grantee Approval by the Grantor or any other party.
20. **No Objection**
- 21.1 The Grantor will not:
- (a) make or lodge;
  - (b) be a party to or procure; or
  - (c) 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 or any other aspect of the Development.
21. **Breach of Covenants**
- 21.1 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 Grantee and person or persons having the benefit of the Covenants ("Benefitting Party") the Grantor will upon written demand being made by the Benefitting Party:
- (a) pay to the Benefitting Party as liquidated damages the sum of \$100 for each day that the breach continues; and/or
  - (b) upon receiving reasonable notice from the Benefitting Party remedy any breach if capable of remedy on terms and conditions imposed by the Benefitting Party which may involve being required to remove any structure or building material which breaches the terms of the Covenants; and/or
  - (c) allow the Benefitting Party the right to lodge a caveat against the Covenanting Lot in breach to protect the sum of any unpaid debt owing to the Benefitting Party on the basis that any unpaid debt shall be deemed to constitute a contractual charge over the Covenanting Lot owing to the Benefitting Party until such time that any debt is fully discharged or otherwise satisfied.

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21.2 All expenses and costs incurred in enforcing the Covenants, shall constitute a debt due that all shall be a charge against the Covenanting Lot and shall be recoverable as liquidated damages.

**22. Indemnity**

22.1 The Grantor will at all times indemnify and keep the Grantee and the registered proprietors of the Benefitting Lot 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**

23.1 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 Property and any adjoining land of the Grantee and/or the registered proprietors of the Benefitting Lot and provided further that this covenant will enure for the benefit of the registered proprietor from time to time of the golf course adjoining the Covenanting Lot.

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