

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

2009/6229EF
 APPROVED
 Registrar-General of Land

Grantor

PAENUI LIMITED

Grantee

PAENUI 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	Not Applicable	432673 to 432687 (inclusive)	432673 to 432687 (inclusive)

Easements or profits à prendre rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied]~~ ~~[negated]~~ ~~[added to]~~ or ~~[substituted]~~ by:

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

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

Covenant provisions

Delete phrases in [] and insert Memorandum number as require; continue in additional Annexure Schedule, if required

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

~~[Annexure Schedule _____]~~



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Annexure Schedule
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Recital

The within servient and dominant tenements comprise all of the lots contained in a certain subdivision of land defined on Deposited Plan 401011 which it is intended should be established as a modern and well designed rural subdivision and, for that purpose, it is desirable that supervision and control of the development of the subdivision be exercised by the Grantor for the protection of and in the best interests of the Grantee in relation to the nature and type of construction to be permitted within the subdivision.

Covenants

In recognition of these objects, the Grantor so as to bind each of the servient tenements, covenants and agrees with the Grantee for the benefit of each of the other dominant tenements in the manner set out in the Schedule following and that the owners and occupiers for the time being of each of the other dominant tenements may enforce the observance of such stipulations against the owners for the time being of the relevant servient tenement.

Schedule**1. Land Covenants**

- 1.1 Not to further subdivide, realign the boundary, cross lease or register the property under the Unit Titles Act 1972.
- 1.2 Not to permit any rubbish, old motor vehicles, machinery or any used chattel to accumulate.
- 1.3 Not to permit any excessive growth of grass so that the same becomes long and unsightly including frontage to the public road and any adjoining right-of-way.
- 1.4 Except as provided in clause 2.5 not to allow any large vehicles to be parked or temporary buildings to be located or sited on the servient tenements.
- 1.5 To store boats and caravans in such a way to ensure that they are not in view from the road or from any right-of-way.
- 1.6 Not to interfere with or remove any survey pegs or markers on any of the Lots and in the event of the Grantee or the Grantee's agents, workmen, contractors, guests or invitees doing so, the Grantee will reimburse the Grantor for all costs and expenses in having such pegs or markers replaced by a registered surveyor.
- 1.7 Not to operate a business from a servient tenement.
- 1.8 Not to allow any trees, shrubs, hedges or growth to exceed a height of 3 metres from ground level.

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.

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- 1.9 Not to permit any pig, goat, rooster, ferret, fitch or any other animal that may cause a nuisance or adversely affect the enjoyment of other Lot owners to be kept at any time. The Grantee shall be permitted to keep other pets or domestic animals provided that they do not cause interference with the quiet enjoyment by any other owner receiving the benefit of these restrictive covenants.
- 1.10 To repair and maintain any fence and letterbox erected by the Grantor in a proper and workmanlike manner.
- 1.11 If necessary, to erect a stockproof fence which does not detract from the original fence's style and design, and ensure that the original fence is not dismantled.
- 1.12 Not to call on the Grantor for or contribute to the cost of erection or maintenance of any boundary fence between the subdivision land and any adjoining land owned by the Grantor provided that this covenant will not enure for the benefit of any subsequent owners of such adjoining land.
- 1.13 Not to prevent the Grantor, any employees of the Grantor, or agents of the Grantor from entering onto the servient tenement at all reasonable times for the purpose of ensuring compliance with the covenants herein and remedying any breaches thereof. The Grantee shall pay immediately upon demand the amount of any costs or expenses incurred by the Grantor in remedying or enforcing any breach by the Grantee of these covenants.
- 1.14 Not to object to any Resource Consent application by the Grantor to the Whakatane District Council for the further residential subdivision of Lot 16 DP 373595 (including any related application to the Bay of Plenty Regional Council) provided that the Grantor shall ensure that such subdivision shall provide for:
 - (a) The Lots to be of a similar size as those contained within this development; and
 - (b) The restrictive covenants to be generally similar to the covenants contained within this Schedule; and
 - (c) Any future residential development is established as a modern, well designed, well maintained and high quality subdivision at a standard not less than the standard of this development.
- 1.15 To comply with the terms of a Management Agreement for Shared Firefighting System which agreement is available for inspection at the offices of the Whakatane District Council.

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[Handwritten signature]

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2. Building Covenants

- 2.1 Not to erect or permit to be erected or allow work to commence for the erection of any improvements whether for a dwelling, accessory buildings, significant landscaping, fences or development work of any kind ("the improvements") unless and until plans and specifications and all other details of construction, including materials and finish have been first submitted to and have received the written approval of the Grantor (such approval not to be unreasonably withheld considering the standard desirable for development of the subdivision as described in the recital above). The plans and specifications submitted to the Grantor shall without exception be those submitted to the Whakatane District Council including any variation for which a building consent was issued.
- 2.2 To submit to the Grantor for approval a Landscape Plan showing the proposed planting and their location prior to commencement of landscaping (such approval not to be unreasonably withheld considering the standard desirable for the development as described in the recital above).
- 2.3 Not to depart from the plans and specifications approved by the Grantor pursuant to clause 2.1 and 2.2 of this Schedule. The Grantor's reasonable costs for approval of the plans pursuant to clauses 2.1 and 2.2 shall be met by the Grantee.
- 2.4 Not to place or erect or permit to be placed any improvements previously erected on any other land or any pre-built improvements except a temporary building or structure permitted under clause 2.5 below.
- 2.5 Not to erect or permit to be erected any temporary improvements except an improvement or structure which will be used in conjunction with construction of the permanent improvement and which will be removed upon the completion of that work.
- 2.6 To ensure, following commencement of construction of the improvements that:
- (a) No improvement or associated works in the course of construction shall be left without substantial work being carried out for a period exceeding three (3) months; and
 - (b) Completion of construction of such improvements shall not extend beyond 12 months, from the date of commencement of the date of construction.

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2.7 Not to complete any construction or work unless the following conditions are met:

- (a) Any building including accessory buildings must be constructed using good quality new materials and the exterior shall be clad in natural wood or stone or other materials painted or finished on visually muted, recessive colours.
- (b) The driveway or vehicle access from the road frontage or right-of-way is fully constructed in permanent dust-free materials such as concrete, cobblestones, interlocking paving or bitumen sealing and completed in a proper tradesmanlike manner within 12 months of the commencement of the construction of the household unit.
- (c) The approved landscape plan referred to in clause ^{2.1}~~2.3~~ utilised to support the household unit is completed to a good standard by suitable planting of shrubs and grassed area within 18 months of the commencement of the construction of the building.
- (d) The household unit has a floor area of not less than 150m² (exclusive of basement, carport or garage).
- (e) All buildings, including accessory units on the servient tenements not to exceed a height limit of 7 metres above ground level as defined in the current proposed Whakatane District Plan.
- (f) All buildings, including accessory units to be situated within the designated building platforms defined for the Lot on Deposited Plan 401011.

3. Procedures in Respect of Breach of Covenants

3.1 The Grantor covenants that in the event the Grantor, without prejudice to any other liability the Grantor may have to the Grantee or any person having the benefit of the covenants and restriction, breaches any covenants contained herein then the Grantor shall upon written demand being made by the Grantee, the Grantee's solicitor or the majority of owners of the properties taking the benefits of these covenants and restrictions:

- (a) Pay to the Grantee or the person who has made demand acting as the representative of the majority of owners of the properties the sum of \$200.00 per day for every day that such breach or non-observance continues after the date upon which written demand has been made.
- (b) Take all steps as are required to ensure that the non-compliance with these covenants specified in the notice ceases immediately.

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(c) With the intent that the liquidated damages referred to in (a) above are applied in the following manner in the priority shown:

- (i) the legal costs; and
- (ii) the costs of repairing damage or implementing compliance; and
- (iii) equal distribution to the remaining Lot owners as damages for stress, pain and suffering.

4. Mediation

4.1 If any dispute between the parties arises concerning this Easement Instrument, the parties shall first refer the dispute to mediation.

4.2 If the dispute is not settled by mediation between the parties within thirty days of the commencement of the mediation meeting, then either party shall refer the matter to arbitration in accordance with the Arbitration Act 1996.

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