

View Instrument Details



Instrument No 12763967.13
Status Registered
Date & Time Lodged 11 October 2023 16:05
Lodged By Gilling, Marianne Rose
Instrument Type Easement Instrument



Affected Records of Title	Land District
1098140	North Auckland
1098141	North Auckland
1098142	North Auckland
1098144	North Auckland

Annexure Schedule Contains 6 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 Marianne Rose Gilling as Grantor Representative on 18/08/2023 11:29 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 ☒

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 Michael Alastair John Wood as Grantee Representative on 22/08/2023 05:33 PM

*** End of Report ***

Form 22

Easement Instrument to grant easement or *profit à prendre*

(Section 109 Land Transfer Act 2017)

Grantor

URUMARAKI RESIDENTIAL LIMITED

Grantee

AUCKLAND COUNCIL

Grant of Easement or *Profit à prendre*

The Grantor, being the registered owner of the Burdened Land 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, 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, or <i>Profit</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Right to Drain Water (Overland Flow Path)	H on Deposited Plan 584226	Lot 98 Deposited Plan 584226 (1098140)	In Gross
	I on Deposited Plan 584226	Lot 99 Deposited Plan 584226 (1098141)	In Gross
	J on Deposited Plan 584226	Lot 100 Deposited Plan 584226 (1098142)	In Gross
	K on Deposited Plan 584226	Lot 411 Deposited Plan 584226 (1098144)	In Gross

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

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2018

The implied rights and powers are hereby ~~varied~~ ~~negated~~ ~~added to~~ or ~~substituted~~ by the provisions set out in the Annexure Schedule.

Insert instrument type

Easement Instrument to grant easement or profit à prendre

Continue in additional Annexure Schedule, if required

1. DEFINITIONS AND INTERPRETATION 1.1 Definitions: In this instrument, capitalised words have the meanings given to them, as follows: Drain means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution. Easement Area means the areas that are shown as H, I, J and K on Deposited Plan 584226. Easement Facility means: (a) the surface of the Easement Area; and (b) Drains. Grantee means Auckland Council and includes Auckland Council's agents, officers, workers and contractors. Grantor: (a) means the registered owner of the burdened land; and (b) includes the agents, employees, contractors, tenants, licensees, and other invitees of the Grantor.
2. RIGHT TO DRAIN WATER (OVERLAND FLOWPATH) 2.1 A right to drain water (overland flowpath) includes the right for the Grantee in common with the Grantor and other persons to whom the Grantor may grant similar rights to drain, discharge and convey water (whether sourced from rain, springs, soakage, or seepage, and whether accumulated on other land or from any other public street) in any quantity over the surface of the Easement Facility or through Drains forming part of the Easement Facility. 2.2 The Easement Facility referred to in clause 2.1 is the Easement Facility that exists or that may be constructed along the Easement Area as the Grantee determines from time to time. 2.3 The Grantee is not obliged by this easement to drain water through the Easement Facility. The Grantee is entitled at its discretion to discontinue and thereafter recommence the drainage of water through the same at any time and from time to time.

Annexure Schedule

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*Insert instrument type***Easement Instrument to grant easement or profit à prendre****3. GENERAL RIGHTS**

3.1 All the easements referred to in this schedule include:

- (a) the right to use any Easement Facility already situated on the Easement Area for the purpose of the easement granted;
- (b) if no suitable Easement Facility exists, the right to lay, install, and construct an Easement facility reasonably required by the Grantee (including the right to excavate land for the purpose of that construction); and
- (c) the right to enter upon the burdened land by any reasonable route and with all necessary tools, vehicles and equipment, to inspect the Easement Facility.

3.2 The Grantor must not do and must not allow to be done on the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement Facility.

3.3 Without limiting clause 3.2, the Grantor must not alter the surface of the Easement Area and must ensure the Easement Area is unobstructed by buildings, earthworks, solid walls, vegetation, fences, or any other impediments to prevent the free flow of water over the surface of the Easement Area.

3.4 The Grantor releases the Grantee from all liability of any nature for any claims, loss, costs, and damages of any nature whatsoever, arising from the exercise or non-exercise by the Grantee of its rights and obligations under the easements created by this instrument, including by way of example only any damage or loss caused by water that spills outside the Easement Area.

3.5 To avoid doubt, the easement referred to in this instrument includes the right to convey any electricity necessary to operate a pump or other equipment that is part of the Drain.

4. REPAIR, MAINTENANCE AND COSTS

4.1 The Grantor will repair and maintain the surface of the Easement Area in good order and condition to permit the free flow of stormwater through the Easement Area and so that it is and remains an overland flowpath channel through the Easement Area.

4.2 Subject to clause 4.1, if the Drains are not public Drains or are not owned by the Grantee, the Grantor is responsible for arranging the repair and replacement of the Drains so as to keep them in good working order to the satisfaction of the Grantee, and to prevent them from becoming a danger or nuisance.

Annexure Schedule

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*Insert instrument type***Easement Instrument to grant easement or profit à prendre**

4.3 If the Drains are public Drains or are owned by the Grantee, the Grantee is responsible for arranging the repair and replacement of the Drains, so as to keep them in good working order to the satisfaction of the Grantee, and to prevent them from becoming a danger or nuisance.

4.4 In no circumstances will the Grantee be responsible for maintaining the surface of the Easement Area.

5. RIGHTS OF ENTRY

5.1 For the purpose of performing any duty or in the exercise of any rights conferred under this instrument, the Grantee may:

- (a) enter on the burdened land by a reasonable route and with all necessary tools, vehicles, equipment and materials;
- (b) remain on the burdened land for a reasonable time for the sole purpose of completing the necessary work; and
- (c) leave any equipment or materials on the burdened land for a reasonable time if work is proceeding.

5.2 The Grantee must:

- (a) ensure that as little damage or disturbance as possible is caused to the burdened land or to the Grantor;
- (b) ensure that all work carried out in accordance with this clause 5 is performed in a skilful and competent manner and is completed promptly; and
- (c) immediately make good any damage done to the burdened land by restoring the surface of the land as nearly as possible to its former condition.

6. DEFAULT

If the Grantor or the Grantee does not meet any of their obligations under this instrument:

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation;
- (b) if, at the expiry of the 7 working-day period, the party in default has not met the obligation, the other party may:
 - (i) meet the obligation; and

Annexure Schedule

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*Insert instrument type***Easement Instrument to grant easement or profit à prendre**

(ii) for that purpose, enter the burdened land;

- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation; and
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

7. DISPUTES

If a dispute in relation to an easement arises between parties who have a registered interest under the easement:

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (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 14 working days of the written particulars being given (or any longer period agreed by the parties):
- (i) the dispute must be referred to arbitration under the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator agreed by the parties or, failing agreement, appointed by the President of the Auckland District Law Society.

8. REGULATORY

The Grantee has entered into this instrument in its non-regulatory capacity. This instrument does not bind the Grantee in its capacity as a regulatory authority in any way and any consent or agreement the Grantee gives under this instrument is not an agreement or consent in its regulatory capacity and vice versa. When acting in its regulatory capacity, the Grantee is entitled to consider all applications to it without regard to this instrument. The Grantee will not be liable to the Grantor if, in its regulatory capacity, the Grantee declines or imposes conditions on, any consent or permission that the Grantor or anyone else seeks for any purpose associated with this instrument.

Insert instrument type

Easement Instrument to grant easement or profit à prendre

9. MISCELLANEOUS 9.1 The easements created by this instrument are not in substitution for, and their creation is without prejudice to any statutory rights, powers and limitations on liability of the Grantee, from time to time in respect of the burdened land. 9.2 The Grantor must not surrender, merge, modify or extinguish the easements created by this instrument without the prior consent of the Grantee. 10. COSTS The Grantor will pay the Grantee's reasonable legal costs and disbursements in respect of the preparation and registration of this instrument, and any consent or other matters arising in relation to it.
