

View Instrument Details



Instrument No 10939394.12
Status Registered
Date & Time Lodged 08 February 2018 09:24
Lodged By Murray, Hamish Roderick Craig
Instrument Type Easement Instrument



Affected Computer Registers	Land District
809568	South Auckland
809569	South Auckland
809570	South Auckland
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Affected Computer Registers	Land District
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Affected Computer Registers	Land District
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809654	South Auckland
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809656	South Auckland
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809658	South Auckland

Annexure Schedule: Contains 9 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 Hamish Roderick Craig Murray as Grantor Representative on 07/02/2018 02:52 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 Hamish Roderick Craig Murray as Grantee Representative on 07/02/2018 02:52 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

Zariba Properties Limited

Grantee

Zariba Properties 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 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

Annexure Schedule, if required

Continue in additional

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	DP 515754	Lot 300 DP 515754 to Lot 390 DP 515754 inclusive (CFR's 809568 to 809658 inclusive)	Lot 300 DP 515754 to Lot 390 DP 515754 inclusive (CFR's 809568 to 809658 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] [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]~~

~~[the attached Annexure Schedule _____]~~

Insert instrument type

Easement Instrument

Continue in additional Annexure Schedule, if required

A. Definitions

In this Easement Instrument the following words have the definitions set out below:

Zariba means Zariba Properties Limited, a company incorporated in New Zealand under number 5660948 or any other person or entity nominated in writing by Zariba Properties Limited.

Land means all the land described in Schedule A being both the dominant and servient tenements.

Property means the servient tenement set out in Schedule A and as the context requires each servient lot (also referred to in this Easement Instrument as a 'section' or 'sections')

B. Covenant provisions

The provisions applying to the specified covenants are those set out in this Annexure Schedule.

C. Continuation of "Creation of Covenant"

The Grantor creates the covenants set out in this Easement Instrument over each of the servient lots for the benefit of each of the other lots so that the servient lots will be bound by the land covenants in this Easement Instrument, and Zariba and the registered proprietors and occupiers for the time being of the dominant land may enforce the covenants against the registered proprietor(s) for the time being of the servient land.

The Grantee accordingly covenants and agrees on behalf of the Grantee and the Grantee's successors in title to observe and perform the land covenants set out in this Easement Instrument and that those covenants will run with and bind the Property for the benefit of each dominant lot forming part of the Land.

The Grantee and Grantor agree:

That the Property is part of the Grantor's subdivision which includes the dominant land, and that it is in the interests of all parties and all present or future registered proprietors of any section forming part of the Land ("subdivision") that the subdivision is developed and maintained in accordance with certain standards. In recognition of these objectives, the Grantor for its Property and for the benefit of all of the dominant land agrees and covenants with the Grantee until 1 January 2036 (after which date the covenants in this Easement Instrument shall be of no further effect) as follows:

1. Not to erect any structure other than a new residential dwelling and associated ancillary building. Should the Grantor wish to incorporate an additional self-contained living area within the same roofline, a pre-built transportable or relocatable dwelling, or any other building, then the prior written approval of Zariba must be obtained.

2. Not to apply for a building consent or commence construction on the Property unless Zariba has given written approval to the Grantor's:

(a) site plan for the Property showing driveways, fencing, building layout and location, patios and basic landscaping including positions of trees, shrubs, garden beds and lawn areas;

(b) Floor plans of the dwelling to be constructed on the Property showing floor areas and locations of windows and doors;

(c) A full set of elevations of the dwelling to be constructed on the Property from all sides;

(d) A list of materials indicating all exterior materials, finishes and colours (walls, roof, window and door frames, gutters and driveways) for the dwelling to be constructed on the Property;

Zariba shall be entitled to withhold its consent if the documents described in this clause and presented by the Grantor to Zariba for approval do not comply with Zariba's development guidelines.

Annexure Schedule

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*Insert instrument type***Easement Instrument***Continue in additional Annexure Schedule, if required*

3. Not to erect or allow to be erected a dwelling of a floor area less than 100 square metres unless otherwise approved in writing by Zariba (the floor area measurement to be exclusive of garage, carports, decking, breezeways, entry porches, verandas and roof overhang). All dwelling plans and siting of the dwelling house/primary building and associated landscaping are to be approved in writing by Zariba prior to application for a building consent, and/or commencing site works, pegging out or preparatory work on site for the erection of such a dwelling house/primary building. In determining whether or not to approve the plans and specifications, Zariba will take into account both the appearance of the proposed dwelling and the appearance of other dwellings in close vicinity to the dwelling to the intent there should be a range of style, design and appearance of dwellings within the subdivision. The written approval by Zariba is for subdivision standard control purposes only and implies no warranty as to the product, design, quality or suitability of the dwelling on the section in any manner whatsoever. The Grantor shall construct the dwelling in accordance with the plans approved in writing, however any modification or variation to the plans already approved by Zariba for the dwelling shall require further written approval by Zariba prior to such modifications or variations commencing.
4. To construct any dwelling with more than one hip or one gable in the roofline and to construct such dwelling to a shape other than a simple square or rectangle. Flat roofed dwellings are acceptable provided that they comply with the following covenants and are approved in writing by Zariba.
5. The elevations of any dwelling predominantly facing any road frontages shall be finished in subdued, non-vibrant colours unless otherwise approved in writing by Zariba.
6. To construct any dwelling with a minimum of 60% of the non-glazed exterior cladding of the dwelling consisting of any of the following materials: kiln fired or concrete brick, stucco textured 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 Zariba' consent in writing. Any other weatherboard, vinyl, metal or plastic products will require the prior written approval of Zariba. The approval by Zariba is for subdivision standard control purposes only and implies no warranty to the quality or products used or their suitability to the dwelling in any manner whatsoever.
7. Any dwelling with an exterior finish in the form of flat cladding, concrete block, poured concrete or similar shall have the surface textured at the time of construction in such a manner as to fully cover that exterior finish unless otherwise approved in writing by Zariba. All exterior surfaces which are not pre-colour coated or finished shall be painted or stained prior to the dwelling being occupied.
8. Where a dwelling 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 dwelling.
9. Any dwelling or garage wall predominantly facing a road frontage must include at least one window or feature unless approved otherwise in writing by Zariba.
10. The final colour of the exterior cladding of those areas of the dwelling predominantly facing all road frontages is to be of subdued or non-vibrant colours unless otherwise approved in writing by Zariba.
11. To construct a minimum of one garage which is to be attached to the dwelling unless approved otherwise in writing by Zariba. The garage must be constructed in the same architectural style with the same cladding materials as the dwelling.
12. Unless approved otherwise in writing by Zariba, all other sheds or buildings are not to be located beyond the front building alignment of the dwelling and are to have their exterior cladding colours in keeping with the main dwelling.

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Easement Instrument			
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13.	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.		
14.	Not to use reflective surfaces or bright colour finishes on any exterior cladding or roofing on the dwelling and any other buildings unless approved otherwise in writing by Zariba.		
15.	Not to erect any more than one dwelling on the land nor subdivide the Property further unless approved in writing by Zariba.		
16.	Not to allow any buildings, structures, driveways, landscaping, signs or fencing to fall into disrepair.		
17.	Not to allow to remain on any walls, fence, signs, structure or building on the Property any graffiti or similar disfiguring for more than five (5) working days from the date that such graffiti or disfiguring occurred or was brought to the notice of the Grantor.		
18.	Not to alter in any way, including but not limited to painting or repainting in any other style or colour any fencing and/or walls installed by Zariba without the written approval of Zariba and in the event of any damage to such fencing or walls whether by the Grantor or otherwise the Grantor shall reinstate such fence or wall in the style and colour as existing before such damage and further that should the Grantor fail to promptly repair or reinstate such fence or wall as aforesaid Zariba shall have the right (but without being obliged so to do) to so repair or reinstate such fence or wall and to recover the cost of so doing as a debt owing from the Grantor to Zariba.		
19.	Not to permit or suffer any rubbish to accumulate or be placed upon the Property nor to permit any excessive growth of grass so that the same becomes long, unsightly or a fire hazard and should such grass become long, unsightly or a fire hazard Zariba may by itself or its agents mow the same and recover the costs of so doing from the Grantor.		
20.	Not to construct any road or access-way on any part of the Property which provides access to any other land adjoining the Property without the prior written approval of Zariba.		
21.	Unless prior written approval from Zariba is sought, to complete any construction of the dwelling (including exterior painting and decorating) within nine (9) months of commencement of excavation of the dwelling site and further within that nine (9) month period 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 section boundary shall be constructed of the same exposed aggregate or plain concrete as the footpaths in that precinct of the subdivision.		
22.	Within six (6) months of the completion of the dwelling, lawns shall be laid, landscaping work encompassing fences, paths, retaining walls and sufficient plants, trees and shrubs to enhance the street appeal of the dwelling, and reinstatement of any land owned by the Tauranga City Council (road reserve) adjoining the Property shall be completed unless prior written approval from Zariba is given. Further, within six (6) months of the completion of the dwelling, interior window furnishings shall be hung, unless prior written approval from Zariba is given.		
23.	Except for driveways, not to carry out landscaping on the road frontage of any land owned by Tauranga City Council (road reserve) except in accordance with the general overall landscaping plan prepared by Zariba and approved by the Tauranga City Council.		
24.	While any dwelling is under construction the Grantor and his contractors and tradesmen shall comply fully and comprehensively with all relevant governmental legislation and local authority bylaws relating to workplace safety including but not limited to the Health and Safety at Work Act 2015.		

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25. To keep and maintain in a neat and tidy condition and prevent from becoming unsightly at all times, the Property and any land adjoining the Property owned by Tauranga City Council (road reserve).
26. Not to bring on to or to allow to remain on the Property (except during the time of construction of the dwelling), or permanently park on any road within the subdivision or any Council owned land, any:
- vehicle (including recreational and trade vehicles) with a gross laden weight exceeding 3,500 kilograms; or
 - temporary building (including sheds); or
 - caravan; or
 - motorhome; or
 - trailer; or
 - or any other equipment, materials or machinery
- unless garaged or adequately screened so as not to be highly visible from the road, or to prevent noise likely to cause offence to residents.
27. No caravan, motorhome, boat, vehicle (including recreational and trade vehicles) with a gross laden weight exceeding 3,500 kilograms, bus, or other equipment or materials or machinery or trailers are to be regularly located or parked on the street or footpath.
28. No caravan, motorhome, boat, vehicle (including recreational and trade vehicles), bus or other equipment or materials or machinery or trailers shall have any maintenance or repair work carried out on the street, footpath or other land owned by Tauranga City Council.
29. Any bus, recreational vehicles and boats shall be adequately screened so as not to be highly visible from the road, or to prevent noise likely to cause offence to residents unless prior written approval of Zariba is given and meets Tauranga City Council's requirements.
30. No vehicle, caravan, bus or motorhome shall be placed on the Property to be used for residential use other than for short term occupation of visitors for a period not exceeding two (2) months in any six (6) month period.
31. Except during construction, not to erect any boundary fence constructed of shade-cloth, netting, iron or steel of any profile, untextured woodfibre cement panels, plywood, fibrolite or post and wire unless prior written approval of Zariba is given.
32. All final and permanent boundary fences that are constructed along, near or within three (3) metres of any road boundary or recreation reserve are to comply with Tauranga City Council requirements and must not exceed 1.2 metres in height above the finished ground level of the Property (at the date Title is issued for the Property).
33. Not to erect or permit to be erected a boundary fence between any of Lots 337, 338, 363, 364 and 390, and Lot 4000, 4001 and 4003, on DP 515754 which exceeds 1.2 metres in height above the finished ground level of the Property (at the date Title is issued for the Property), and to ensure that all fence palings are attached to that side of the fence which faces directly to Lots 4000, 4001 and 4003 on DP 515754, and to further ensure that the fence is repaired and maintained using the same materials and in the same height, dimensions, manner and design including painting or staining as originally constructed by Zariba along Te Okuroa Drive described in clause 36 of this Instrument, in order to maintain visual consistency and uniformity in the fence line along the boundary of Lots 4000, 4001 and 4003.

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*Insert instrument type***Easement Instrument***Continue in additional Annexure Schedule, if required*

34. Retaining structures on the boundary between the Property and any public road shall meet Tauranga City Council's requirements but shall not in any event exceed 1.2 metres in height above the finished ground level of the Property (at the date Title is issued for the Property) unless prior written approval from Zariba has been granted. Retaining structures between the front face of the house and the road frontage boundary that are required to exceed 1.2 metres in height shall be stepped and landscaped to soften the visual appearance of the retaining structure. No stepped increment shall exceed 1.2 metres in height.
35. To pay for construction and maintenance of any fence constructed on the boundary of any adjoining land owned by Zariba and/or the Tauranga City Council and not to seek contribution from Zariba or the Tauranga City Council for such construction or maintenance cost.
36. To repair, maintain and replace when necessary that part of the fence on the Property erected by Zariba being the fence along the common boundary between Te Okuroa Drive and Lots 314 to 324 inclusive on DP 515754 with the same materials and in the same height, dimensions, manner and design including painting or staining as originally constructed by Zariba in order to maintain visual consistency and uniformity in the fence line, and to permit Zariba to access the Property on reasonable notice to repair maintain and replace any part of that fence if Zariba, in its sole discretion, chooses to do so but without in any way obligating Zariba to do so.
37. Not to erect, place or permit to be erected or placed including without limitation any fence, wall or man-made structure within three (3) metres behind the boundary fence described in clause 36 of this Instrument.
38. Not to attach, affix, hang, or lean, or permit to be attached, affixed, hung, or leant, anything on the boundary fences described in clause 36 of this Instrument.
39. Not to display or permit to be displayed any advertisement, sign, banner, billboard or hoarding on, over or near the fence described in clause 36 of this Instrument.
40. Not to permit the Property to be occupied or used as a residence unless the dwelling on the Property has been substantially completed in accordance with these covenants and a Code Compliance Certificate has been issued for the dwelling.
41. Not to permit a garage or other outbuildings erected on the Property to be lived in without the prior written approval of Zariba.
42. Not to display more than one advertisement, sign or hoarding of a commercial nature measuring in excess of 1000mm x 1000mm on any part of the Property, dwelling or land owned by Tauranga City Council unless first approved in writing by Zariba and permitted by the Tauranga City Plan and Resource Consent RC25312.
43. Within three (3) months of completion of the dwelling on the Property, to construct a letterbox that is aesthetically sensitive in terms of quality, design and location and not to site any such letterbox on land owned by Tauranga City Council. Not to site any clotheslines in such a way as to be highly visible from the street or neighbouring properties. The final location and design of clotheslines and letterboxes shall be at the sole discretion of Zariba. Should consent be required, it shall be by way of prior written approval from Zariba.

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44. The Grantor shall use best endeavours to locate any attachments around or on to the dwelling and buildings (including but not necessarily limited to television antenna, solar hot water panels and air conditioning units) so they are not highly visible from any road frontages.
45. To ensure due allowance is made for adequate current and future drainage of all storm-water from the Property, such storm-water drainage not to be detrimental to the water quality of the stormwater network. The Grantor shall also ensure that no discharge from the Property 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.
46. Before the commencement of any construction on the Property, the Grantor shall erect either a temporary or permanent fence around the perimeter of the Property to define the construction zone. Any temporary fencing erected for the construction phase of the dwelling shall be removed within eight (8) weeks of construction being completed.
47. Not to allow contractors and subcontractors to commence work on the Property without first informing them of the restrictions created by these covenants and ensuring their compliance therewith.
48. Before construction of the dwelling, stockpiling and storage of materials and dumping and/or accumulating of rubbish is strictly prohibited on the Property. Once construction has commenced the Grantor shall ensure container bins shall be kept on the Property for the accumulation and disposal of all rubbish. When necessary all such rubbish shall be removed from the Property.
49. Before, during and after construction, the use of adjacent or abutting land and footpaths for access, stockpiling and storage of materials and dumping of rubbish is strictly prohibited, provided however, that the Grantor or the Grantor's agents or invitees may only have access across any other site upon obtaining prior written approval from the registered proprietor.
50. The Grantor shall ensure that during any construction, due allowance is made for the protection of the footpaths and the land owned by Tauranga City Council including road reserve by way of placing appropriate material over those areas where vehicular traffic is to run to minimise dirt being carried on to the road and footpaths and kerbs being broken.
51. The Grantor shall ensure that all landscaping, berms, roads, footpaths and kerbs are kept clean and free from debris prior, during and after construction.
52. The Grantor shall re-instate, replace and be responsible for all costs arising from damage to the landscaping, berms, roads, footpaths, kerbs, street lights, street signs, concrete or any other structures arising directly or indirectly from or through the Grantor's actions or omissions or those of the Grantor's agents, consultants, contractors or invitees.
53. Not to bring on to raise, breed or keep any animals, reptiles, poultry or livestock on the Property except to keep a maximum of three animals limited to dogs or cats unless prior written approval is given by Zariba and is in keeping with Tauranga City Council's regulations. Animals shall not be allowed to become a nuisance to others adjoining or near the Property and shall be controlled by the Grantor so as to prevent them from roaming the Land at will.

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54.	If any of Lots 304, 305, 306, 307 and 308 ("Subject Lots") are sold and transferred by Zariba Properties Limited to a registered proprietor that establishes and constructs a child care centre on the Subject Lots on or before the date that is twenty four (24) months after the date of registration of this Instrument, the covenants in this Instrument shall be read and construed so as to permit and allow the construction of a child care centre on the Subject Lots on or before that date, the continued operation of the child care centre, and for the registered proprietor of the Subject Lots to be able to amalgamate the Subject Lots into one or more allotments or construct child care centre buildings and improvements across the boundaries of the Subject Lots (subject to section 75 of the Building Act 2004) in order to do so. If that registered proprietor or its nominee does not establish and construct a child care centre on the Subject Lots by such date or such later date that Zariba shall in its sole discretion (and without reference to any of the other dominant lots) determine then this clause shall be of no effect and the Subject Lots shall be bound by and have the burden and the benefit of the covenants in this Instrument. For clarity, references to 'dwelling' and 'dwelling house' in this Instrument shall include any and all buildings and improvements that are constructed for use as a child care centre under this clause.		
55.	Not to object to, frustrate, hinder or prevent any lawful subdivision and development of the Land and any other land owned or acquired by Zariba or its related or associated parties or subsidiaries, nor lodge any appeal or objection to any application by Zariba for any resource consent, building consent, plan change or variation for the Land or any other land owned or acquired by Zariba, but to provide unconditional consent to any application by Zariba for the development of such land.		
56.	Where Zariba has been dissolved, wound up, removed from the Companies Office register or liquidated, "approval by Zariba" shall mean approval by any party appointed and/or nominated by the directors and/or shareholders of Zariba at the date of its dissolution for this purpose.		
57.	The Grantor covenants that they will at all times save harmless and keep indemnified Zariba from all proceedings, costs, claims and demands in respect of breaches by the Grantor of any of the stipulations, restrictions and covenants contained in the preceding clauses.		
58.	In any circumstances where Zariba approval is required in respect of any covenant, then any approval shall be at Zariba's sole discretion and in no circumstance shall Zariba be required to give any reason for its decision.		
If there should be any breach or non-observance of any of the foregoing covenants and without prejudice to any other liability which the Grantor or Zariba may have to any person having the benefit of this covenant, should the Grantor not rectify the breach or non-observance of any of the foregoing covenants within ten (10) working days of written notice being made by Zariba or any of the registered proprietors of the Land, then the Grantor will pay to Zariba or to the person making such demands as liquidated damages the sum of \$250 per day for every day that such breach or non-observance continues after the date upon which written demand has been made until the date the breach is remedied, together with any costs and expenses incurred by Zariba or any registered proprietor to remedy the breach or non-observance.			