

View Instrument Details



Instrument No 10902552.9
Status Registered
Date & Time Lodged 21 December 2017 11:51
Lodged By Tan, Jacintha
Instrument Type Easement Instrument



Affected Computer Registers	Land District
795680	North Auckland
795681	North Auckland
795682	North Auckland
795683	North Auckland
795684	North Auckland
795685	North Auckland
795686	North Auckland
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795688	North Auckland
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795720	North Auckland

Affected Computer Registers	Land District
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Affected Computer Registers	Land District
795766	North Auckland
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795770	North Auckland
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795772	North Auckland
795773	North Auckland
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795775	North Auckland
795776	North Auckland
795777	North Auckland
795778	North Auckland
795779	North Auckland
795780	North Auckland
795781	North Auckland
795782	North 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 ☒

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 Charge Holder under Statutory Land Charge 10902552.2 has consented to this transaction and I hold that consent, or the Statutory Land Charge does not prevent registration ☒

I certify that the Mortgagee under Mortgage 10555945.3 has consented to this transaction and I hold that consent ☒

Signature

Signed by Jacintha Tan as Grantor Representative on 25/01/2018 12:12 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 Jacintha Tan as Grantee Representative on 25/01/2018 12:12 PM

***** End of Report *****

(Sections 90A and 90F Land Transfer Act 1952)

Kahawai Point Developments Limited

Kahawai Point Developments Limited

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)

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		Refer to Annexure Schedule 1	Refer to Annexure Schedule 1

Form B - continued

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 1

ANNEXURE SCHEDULE 1

Continuation of Schedule A

Servient Tenement (Computer Register)	Dominant Tenement (Computer Register)
Each of Lots 6 – 9 DP 513833 in Identifiers 795680 – 795683 (inclusive), Lot 94 DP 513833 in Identifier 795684, Lot 107 DP 513833 in Identifier 795685, Lots 133 – 171 DP 513833 in Identifiers 795686 – 795724 (inclusive), Lots 174 – 214 DP 513833 in Identifiers 795725 – 795765 (inclusive), Lot 215 and ½ share in Lot 900 DP 513833 in Identifier 795766, Lot 216 and ½ share in Lot 900 DP 513833 in Identifier 795767, Lots 217 – 220 DP 513833 in Identifiers 796768 – 795771 (inclusive), Lot 221 and ½ share in Lot 901 DP 513833 in Identifier 795772, Lot 222 and ½ share in Lot 901 DP 513833 in Identifier 795773, and Lots 223 – 231 DP 513833 in Identifiers 795774 – 795782 (inclusive);	In favour of the rest of Lots 6 – 9 DP 513833 in Identifiers 795680 – 795683 (inclusive), Lot 94 DP 513833 in Identifier 795684, Lot 107 DP 513833 in Identifier 795685, Lots 133 – 171 DP 513833 in Identifiers 795686 – 795724 (inclusive), Lots 174 – 214 DP 513833 in Identifiers 795725 – 795765 (inclusive), Lot 215 and ½ share in Lot 900 DP 513833 in Identifier 795766, Lot 216 and ½ share in Lot 900 DP 513833 in Identifier 795767, Lots 217 – 220 DP 513833 in Identifiers 796768 – 795771 (inclusive), Lot 221 and ½ share in Lot 901 DP 513833 in Identifier 795772, Lot 222 and ½ share in Lot 901 DP 513833 in Identifier 795773, and Lots 223 – 231 DP 513833 in Identifiers 795774 – 795782 (inclusive)
By way of example, Lot 6 DP 513833 in Identifier 795680 as servient tenement in favour of Lots 7 – 9 DP 513833 in Identifiers 795681 – 795683 (inclusive), Lot 94 DP 513833 in Identifier 795684, Lot 107 DP 513833 in Identifier 795685, Lots 133 – 171 DP 513833 in Identifiers 795686 – 795724 (inclusive), Lots 174 – 214 DP 513833 in Identifiers 795725 – 795765 (inclusive), Lot 215 and ½ share in Lot 900 DP 513833 in Identifier 795766, Lot 216 and ½ share in Lot 900 DP 513833 in Identifier 795767, Lots 217 – 220 DP 513833 in Identifiers 796768 – 795771 (inclusive), Lot 221 and ½ share in Lot 901 DP 513833 in Identifier 795772, Lot 222 and ½ share in Lot 901 DP 513833 in Identifier 795773, and Lots 223 – 231 DP 513833 in Identifiers 795774 – 795782 (inclusive), as dominant tenement and so on.	

Background

- A. The Grantor is registered as proprietor of the servient tenement.
- B. The Grantee is registered as proprietor of the dominant tenement.
- C. The Grantee has subdivided or intends to subdivide the land comprised in Identifiers 210814, 210815, NA56A/323 and NA56A/324 ("**Original Land**") into various lots including the lots comprising the servient tenement with the intention of establishing a regime of supervision and control in relation to the nature and type of construction that may be undertaken on the servient tenement ("**Lots**").
- D. In relation to the Lots, the Auckland Council ("**Council**") has imposed as a conditions of the resource consent (for subdivision) R/SUB/2015/4046 (and any variations thereof) (together "**Resource Consent**") certain requirements as regards dwellings, fences and other buildings or structures (as the case may be) ("**Buildings**"), such conditions being recorded by way of the Consent Notices lodged for registration in the same dealing as this Easement Instrument against the affected titles ("**Consent Notices**") and/or in the Resource Consent.
- E. For valuable consideration, the Grantor has agreed to covenant for itself and its successors in title as the registered proprietor for the time being and from time to time of the Lots as servient tenement as provided in this Easement Instrument.

Covenants

- 1. The Grantor covenants for itself and its successors in title as the registered proprietor for the time being and from time to time of the Lots as servient tenement for the benefit of the Grantee as registered proprietor of the dominant tenement as follows:

1.1 Compliance with Consent Notices

The Grantor shall perform and observe the terms of the Consent Notices (where applicable to and registered against the servient tenement).

1.2 No further subdivision

The Grantor shall not subdivide any Lot in order to create any additional lot or lots or entitlement for any other party to occupy part of any Lot (otherwise than by residential tenancy of the whole of the Lot), whether by fee simple titles, unit titles, cross leases, leases, occupation licence, shares in a body corporate owning a Lot or otherwise. In the event of the Grantor amalgamating a Lot with any other lot then for the purposes of this Easement Instrument the amalgamated property will be deemed to comprise one single Lot and thereafter the Grantor will not be entitled to subdivide the amalgamated property into a greater number of lots.

1.3 Maintenance of Lots

1.3.1 The Grantor will at all times keep the Lots (including all buildings, fixtures, fittings, equipment and amenities thereon) in a neat and tidy condition and will ensure that grass and weeds will not exceed 150mm in height or otherwise become unsightly.

1.3.2 The Grantor will not bring or permit to be brought on or remain upon the front yard of a Lot (except as may be necessary in the course of construction of the Building) any materials, debris, rubbish, unregistered vehicles, vehicle body parts or any items of an unsightly nature.

1.4 Type of Construction:

1.4.1 Except where specifically approved in writing by the Grantee, the Grantor shall not erect, place or permit to be erected or placed on any Lot any more than one single dwelling. Such dwelling,

- (a) in the case of Lot 107 DP 513833 in Identifier 795685, must have a closed-in floor area, excluding garaging, of not less than 200 square metres;
- (b) in the case of each of Lots 6 – 9 (inclusive), 94, 133 – 137 (inclusive), 140 – 153 (inclusive), 156 – 171 (inclusive), 174 – 180 (inclusive), 183 – 187 (inclusive), 189, 192, 193, 196 – 203 (inclusive), 205 – 218 (inclusive), and 221 – 231 (inclusive) on DP 513833 in Identifiers 795680 – 795683 (inclusive), 795684, 795686 – 795690 (inclusive), 795693 – 795706 (inclusive), 795709 – 795724 (inclusive), 795725 – 795731 (inclusive), 795734 – 795738 (inclusive), 795740, 795743, 795744, 795747 – 795754 (inclusive), 795756 – 795769 (inclusive), and 795772 – 795782 (inclusive), after including any closed-in lock-up garage but excluding verandahs, patios or other attached structures, must have a closed-in floor area of not less than 150 square metres;
- (c) in the case of each of the Affordable Lots 138, 139, 154, 155, 181, 182, 188, 190, 191, 194, 195, 204, 219 and 220 on DP 513833 in Identifiers 795691, 795692, 795707, 795708, 795732, 795733, 795739, 795741, 795742, 795745, 795746, 795755, 795770 and 795771, after including any closed-in lock-up garage but excluding verandahs, patios or other attached structures, must have a closed-in floor area of not less than 80 square metres.

1.4.2 The Grantor will not construct a dwelling:

- (a) With less than three (3) roof planes (other than a flat roof); and
- (b) Of a single rectangle or single square shape (after excluding recesses or protrusions for the front and rear entries, verandahs, patios, bay windows or other like structures or appurtenances)

except where specifically approved in writing by the Grantee.

1.4.3 The Grantor will not erect or permit to be erected on any Lot any dwelling or other building or structure that:

- (a) Is constructed in part or in full with external second-hand materials (other than painted bricks, decorative stone or hardwood timber); or
- (b) Has a basement that is not fully enclosed with exterior cladding and internally lined complying in all respects with the other provisions of this clause; or
- (c) Incorporates or has corrugated iron, Fibrolite, Hardiflex, Hardiplank or like products or flat ply as wall cladding (soffits excepted), unless such cladding are coated externally with a plastered or rendered finish; or
- (d) Incorporates the use of natural bricks unless specifically approved by the Grantee; or
- (e) Uses steel or roofing material, or uses any other exterior product roofing material which is not factory painted.

- 1.4.4 The Grantor will not allow any garage doors to be obtrusive or to dominate any aspect of the dwelling on a Lot.
- 1.4.5 The Grantor will not leave the exterior of a dwelling unfinished or any joinery or exterior wall or door unpainted or unstained except where cedar cladding or decorative stone is used. The Grantor will ensure that the painting or other finishing of the exterior of any dwelling must be completed within the time frames for completing the dwelling set out in clause 1(e).
- 1.4.6 In respect of any dwelling including the roof thereof, the Grantor shall not use any bright, garish or excessively contrasting colours (such as red or orange or variations thereof), or reflective glass that are not sympathetic or harmonious with or do not blend in with the landscaping and surrounds of the balance of the Land. The Grantor shall seek the consent in writing of the Grantee to any proposed colour scheme or change in colour scheme.
- 1.4.7 Notwithstanding the terms of the Fencing Act 1978 or any amending legislation, the Grantor will not erect any fence or fences on a Lot out of corrugated iron, cement fibreboard, fibrolite, hardiflex, hardiplank or like products or flat ply or similar flat sheet products (unless such materials are coated externally whether plastered, painted or rendered finish), second-hand or demolition materials.
- 1.4.8 The Grantor shall not erect or place or permit to be erected or placed on any part of a Lot, adjacent land or street any advertisement, sign or hoarding of a commercial nature except that:
- (a) During the course of construction of a dwelling on a Lot a builder's sign not exceeding 2.9 square metres in area may be displayed;
 - (b) In the case of a completed dwelling a single "for sale" sign not exceeding 1.2 square metres in area is permitted;
 - (c) The signs designed for the sales office are specifically excluded from the restrictions contained in this covenant.
- 1.4.9 All vehicle crossings shall be constructed using plain concrete only and the Grantor is not permitted to use any coloured concrete or exposed aggregate. The Grantor shall maintain berm and footpath areas directly in front of a Lot and keep such areas free of weeds, rubbish and other unsightly material, and will ensure that any damage caused is promptly repaired.

1.5 Completion of Buildings:

- 1.5.1 The Grantor shall comply with the terms of the Consent Notices (where applicable to and registered against the servient tenement) and the Resource Consent in relation to the construction of any Buildings on the Lots.
- 1.5.2 The parties acknowledge that the Consent Notices (where applicable to and registered against the servient tenement) and/or the Resource Consent requires the Grantor to construct the Buildings of the dimensions and elevations as approved for the Resource Consent.
- 1.5.3 Once construction of the Buildings has commenced, the Grantor will ensure that the exterior of the Buildings is fully closed in and finished within six (6) months from the date of commencement and ensure the construction of the Buildings is fully completed within twelve (12) months of the date of

commencement, except where specifically approved in writing by the Grantee.

1.5.4 In carrying out the construction of the Buildings and in undertaking any other works on a Lot:

- (a) the Grantor shall use the best industry practices in the construction of the Buildings and in the management of that Lot and shall ensure that minimum damage, disturbance and inconvenience is caused to the owners and/or occupiers of any other Lot. Without limiting the foregoing, the Grantee may promulgate operational guidelines or rules (including a construction management plan) to regulate and control conduct during construction of the Buildings and the Grantor shall comply with and shall procure that every contractor and subcontractor working on a Lot complies with these guidelines or rules. The Grantor shall ensure that every contractor and subcontractor working on a Lot is aware of its obligations under this Easement Instrument and the Grantor shall immediately upon receipt of a complaint by the Grantee remedy a breach of this Easement Instrument (including by eviction of a contractor or subcontractor who fails to remedy a breach);
- (b) the Grantor shall keep the Lot as tidy and neat as is practicable and shall regularly remove all rubbish and debris and unwanted materials or materials not to be incorporated in the construction; and
- (c) without limiting any other obligations of the Grantor, the Grantor shall immediately make good any damage caused to any vehicle crossings, shared access and roadways ("road"), services, amenities and other property on the Land or any adjoining land.

1.6 **Completion of Landscaping**

The Grantor will within six (6) months of completion of a Building on a Lot complete the landscaping of that Lot with lawns and shrubs in accordance with the terms of the Consent Notices (where applicable to and registered against the servient tenement) and/or the Resource Consent.

1.7 **Restriction on vehicles, etc**

1.7.1 The Grantor will not park or allow any person residing in or in occupation of a Lot to park any caravan, mobile home, boat or trailer on the road to which that Lot has frontage (including parking bays) nor on any part of a Lot or any jointly owned access lot. The Grantor will not permit parking of trucks, vans or large commercial vehicles on or adjoining a Lot other than for delivery purposes.

1.7.2 The Grantor shall not hang any laundry on any part of the Lot that is visible from the road.

1.7.3 The Grantor shall not:

- (a) permit to be placed any satellite dishes, antennas, television antennas, gas infrastructure, solar collectors and/or hot water tanks or other mechanical equipment, any heating and air-conditioning equipment or any rubbish bins or receptacle that is visible from the road frontage of the Building, or

- (b) permit to be placed any satellite dishes, antennas, television antennas larger than one square metre in area and any mechanical equipment, heating and airconditioning equipment that is closer than four metres to any boundary; or
- (c) erect or place any other accommodation, hut, shed, freestanding or ancillary building or structure on the Lot other than a small shed for the storage of gardening and general maintenance tools and equipment for use on general maintenance and upkeep of the Lot.

1.8 Continued Development by Grantee

- 1.8.1 The Grantor acknowledges and accepts that the Grantee (or any person or entity nominated in writing by the Grantee) may undertake development and subdivision of further stages or sub-stages of the balance or parts of the balance of the Original Land not including the Land (**Further Subdivision**) and that this Further Subdivision may result in inconvenience to the Grantor due to movement and noise of machinery required to undertake the Further Subdivision. Neither the Grantor nor any person claiming by or through the Grantor (directly or indirectly) may object to any of those operations being undertaken on the balance or parts of the balance of the Original Land not including the Land during daylight hours provided that the Grantee (or any person or entity nominated in writing by the Grantee to undertake the Further Subdivision) will use reasonable endeavours to keep all inconvenience caused by the movement of earth, machinery, plant and equipment to a reasonable level, having regard to the nature of the work being undertaken.
- 1.8.2 The Grantor will not object to any methods, terms, or conditions employed by the Grantee (or any person or entity nominated in writing by the Grantee to undertake the Further Subdivision) in an endeavour to sell lots forming part of the Further Subdivision, including the use of signs, maintenance of a sales office, construction of a parade of homes **PROVIDED** that following completion of the Further Subdivision the Grantee (or any person or entity nominated in writing by the Grantee to undertake the Further Subdivision) does not cause unreasonable interference to comfort and convenience of the Grantor in its right to use and enjoy a Lot.
- 1.8.3 The Grantor also acknowledges that the balance or parts of the balance of the Original Land not including the Land may be used for residential purposes and/or other uses than residential use, and that the conduct of those uses may result in noise, lights and other environmental and other effects not generally present in a predominantly residential area. The Grantor will not complain, object to, make a submission objecting to, frustrate, hinder or prevent, or procure any one to complain, object to, make a submission objecting to, frustrate, hinder or prevent, the conduct of such uses or any application for a resource consent, building consent or a plan change by the Grantee or any third party.

1.9 Fencing Covenant

The Grantor shall not require the Grantee to pay for or contribute towards the cost of construction or maintenance of any fence between any part of the Land or any Lot and any contiguous land of the Grantee's.

1.10 Maintenance

The Grantor must keep and maintain to a high standard and quality the exterior appearance of any fixture, fitting and improvement on a Lot and in particular must:

- 1.10.1 keep and maintain the exterior appearance of any fixture, fitting and improvement situated on a Lot in good and substantial tenable repair and condition; and
- 1.10.2 regularly clean and paint (where the same has previously been painted) the exterior of any fixture, fitting and improvements as and when the same requires to ensure the continued high standards of visual amenity within the development on the Land are maintained; and
- 1.10.3 keep and maintain in good and proper working order any low pressure water pump and valve system as required by the Consent Notices (where applicable to and registered against the servient tenement) or the Resource Consent.

1.11 Animals

- 1.11.1 The Grantor must not keep any animals or pets which is likely to cause a nuisance or annoyance to neighbouring Lots. Without limitation, the Grantor must not keep any dog which appears to be a pit-bull terrier, Bull Mastiff, Rottweiler or Doberman, and must not keep any pigeons.
- 1.11.2 The Grantor must keep all cats indoors during the hours of darkness to preserve native birdlife within the Original Land.

- 2. The Grantor acknowledges and agrees that damages are not an adequate remedy in the event of a breach by the Grantor of the covenants contained in this Easement Instrument, and without limiting any other rights at law or in equity available to the Grantee, a breach of any of the covenants in this Easement Instrument shall entitle the Grantee and the Grantee's successors in title to immediate injunctive relief.
- 3. The Grantor shall at all times keep safe and harmless, and indemnify the Grantee from all costs, claims and demands in respect of any breach by the Grantor of any of the covenants contained in this Easement Instrument.
- 4. Notwithstanding any rule of law or equity to the contrary,
 - 4.1 the covenants contained in this Easement Instrument have been made by the parties for themselves and their respective successors in title and any persons deriving title under them and shall have effect as if those successors and other persons were expressed. Accordingly, the rights accruing to the Grantee under this Easement Instrument shall be enforceable at the suit of the Grantee for so long as the Grantee shall remain a registered proprietor of the dominant tenement, and upon transfer of the dominant tenement to any third party, the rights of the Grantee shall be enforceable by any of its successors in title **PROVIDED HOWEVER THAT** the parties agree, notwithstanding any other term of this Easement Instrument:
 - 4.1.1 that this Easement Instrument shall not be enforceable against Kahawai Point Developments Limited, whether as Grantee or Grantor; and
 - 4.1.2 for so long as Kahawai Point Developments Limited is registered as proprietor of any part of the Original Land, the rights of enforcing this Easement Instrument by any Grantee other than the said Kahawai Point

Developments Limited shall be suspended but nothing in this Easement Instrument shall oblige the said Kahawai Point Developments Limited to enforce this Easement Instrument.

- 4.2 the covenants contained in this Easement Instrument shall be forever binding upon the Grantor and its successors in title as registered proprietor of the servient tenement, and shall enure forever for the benefit of the Grantee and its successors in title;
 - 4.3 the parties and their successors and persons deriving title under them shall be deemed to include the owners, tenants, occupiers and users for the time being of the relevant tenement; and
 - 4.4 sections 23(2), 275 to 279, and 301 to 306 of the Property Law Act 2007 shall apply.
5. The Grantor shall have liability under this Easement Instrument only in respect of breaches that occur while the Grantor is registered proprietor of the servient tenement. Notwithstanding that the Grantor may have granted a lease or licence or other right to occupy the servient tenement to any other party, the Grantor shall be liable to the Grantee for and in respect of any breaches that shall be occasioned by any such lessee, licensee or occupier of the servient tenement. Should any part of the servient tenement be subdivided, then the liability of the registered proprietor of any subdivided lot shall be limited only to any breaches occurring on that subdivided lot only and not for any breach occurring on any other part of the servient tenement. Where there is more than one person registered as proprietor of a Lot, the liability of those persons shall be joint and several.
 6. Terms appearing in this Easement Instrument that are not defined in this Easement Instrument but are defined in the Consent Notices or the Resource Consent shall have the meaning given to them in the Consent Notices or the Resource Consent (as the case may be).
 7. This Easement Instrument is governed by and shall be construed in accordance with the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.
 8. If any provision of this Easement Instrument is, or becomes, unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this Easement Instrument without affecting the validity of the remainder of this Easement Instrument and shall not affect the enforceability, legality, validity or application of any other provision of this Easement Instrument.

ANNEXURE SCHEDULE - CONSENT FORM¹

Land Transfer Act 1952 section 238(2)

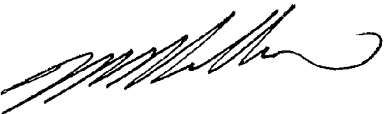
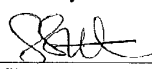
Person giving consent <i>Surname must be underlined</i>	Capacity and Interest of Person giving consent <i>(eg. Mortgagee under Mortgage no.)</i>
New Zealand Mortgages and Securities Limited	Mortgagee under Mortgage 10555945.3 of the land in Identifiers 795680 - 795782 (inclusive) (North Auckland Registry).

Consent
Delete words in [] if inconsistent with the consent
State full details of the matter for which consent is required

[Without prejudice to the rights and powers existing under the interest of the person giving consent,]
the **Person giving consent hereby consents to**
the within Easement Instrument.

Dated this 13th day of December 2017

Attestation

	Signed in my presence by the Person giving consent 
	Signature of Witness Witness to complete in BLOCK letters (unless legibly printed): Witness name Sarah Sutcliffe Occupation Property Finance Manager Address Auckland
Signature [Common seal] of Person giving consent	

¹ An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.