

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

EI 7729132.11 Easeme

Cpy - 01/01, Pgs - 014, 26/02/08, 14:13



DocID: 313069672

Land registration district

SOUTH AUCKLAND



Grantor

Surname(s) must be underlined or in CAPITALS.

GIBSON & DAY LIMITED

Grantee

Surname(s) must be underlined or in CAPITALS.

GIBSON & DAY LIMITED

Grant* of easement or profit à prendre or creation or 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).

Dated this

11

day of

February 2008

Attestation

Signed by Gibson & Day Limited by its directors

R J Overington

L Bowman

Signature [common seal] of Grantor

Signed in my presence by the Grantor

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Signed by Gibson & Day Limited by its directors

R J Overington

L Bowman

Signature [common seal] of Grantee

Signed in my presence by the Grantee

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Certified correct for the purposes of the Land Transfer Act 1952.

[Signature]

[Solicitor for] the Grantee

*If the consent of any person is required for the grant, the specified consent form must be used.



Easement instrument

Dated

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pages

Schedule A

(Continue in additional Annexure Schedule if required.)

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Land Covenants	Lots 4 to 13 (inclusive) DP 381509	326494 to 326503 (inclusive)	326494 to 326503 (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 specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.

The implied rights and powers are ~~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 2].~~

Covenant provisions

Delete phrases in [] and insert memorandum number as required.

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].

All signing parties and either their witnesses or solicitors must sign or initial in this box

Annexure Schedule



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

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(Continue in additional Annexure Schedule, if required.)

Annexure Schedule 2

The Grantor for itself and its successors in title in Certificates of Title 326494 to 326503 (inclusive) (South Auckland Registry) hereby covenants and agrees with itself as Grantee for itself and its successors in title that the following covenants will bind all the land currently contained in Certificates of Title 326494 to 326503 (inclusive) and that those covenants may be enforced by all or any of the owners of the land currently contained in Certificates of Title 326494 to 326503 (inclusive) or Certificate of Title 326504 or Certificate of Title 258756 or any future subdivision of Certificate of Title 258756.

Covenants:

1. Definitions and Interpretation

1.1 In this Instrument

"**Access Lot**" means Lot 15 on Deposited Plan 381509.

"**Business**" means the business of the Company as set out in the Constitution of the Company.

"**Company**" and "**Management Company**" means **PACIFIC HERITAGE PARK LIMITED**.

"**Company Rules**" means any rules made by the Company pursuant to the Constitution.

"**Constitution**" means the constitution of the Company.

"**Contribution**" and "**Contributions**" means any contributions to be made in accordance with the Constitution.

"**Development**" means the subdivision comprising Lots 4 to 13, Lot 15 and Lot 16 being a subdivision of Lot 19 Deposited Plan 363632.

"**Consent Notice**" means a notice to be registered against all or some of the Lots pursuant to Section 221 of the Resource Management Act 1991 in terms of the Resource Consent.

"**Lot 19**" means Lot 19 Deposited Plan 363632 Certificate of Title 258757 or any title created from a subdivision of that title.

"**Lot**" and "**Lots**" means all or any of Lots 4 to 13 on Deposited Plan 381509.

"**Resource Consent**" means the Resource Consent granted by the Whakatane District Council for the Development referenced 24.3.04.30 dated 7 October 2004 as amended by consent dated 7 July 2006 and as may be further amended or varied in the future.

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.

Annexure Schedule



Insert type of instrument
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(Continue in additional Annexure Schedule, if required.)

"Share" and "Shares" means the shares in the company.

"Shareholder" means the owner of a Share in the Company.

"Shareholders" means the owners of all Shares in the Company.

1.2 Interpretation

- (a) clause headings appear as a matter of convenience and shall not affect the construction of this instrument.
- (b) In this instrument where the context requires or permits:-
 - (i) The plural number includes the singular number and vice versa.
 - (ii) The masculine gender includes the feminine gender and vice versa.
 - (iii) Reference to a person shall include a company and vice versa.
- (c) The Grantor and the Grantee include the successors and assigns of the Grantor and Grantee.
- (d) The covenants set out in this Instrument shall cease to bind the Grantor when it ceases to hold a fee simple estate in the Land, but without prejudice to its liability for any breach of covenant under this Instrument arising before it ceases to hold that estate.
- (e) The Grantee shall not be required to or obliged to enforce all or any of the covenants contained in this Instrument, nor be liable to the Grantor for any breach.

2. Communal Scheme

The Grantor covenants as follows:

- (a) To be a shareholder of the Management Company formed to operate, maintain and administer all matters associated with the communal water system, the communal stormwater control system for stormwater runoff from all roading proposed for the Development (including the stormwater detention ponds), the maintenance of the roading within the Development and the maintenance of the registered conservation covenant areas of existing native bush and proposed future revegetation planting on the Development and to oversee ongoing maintenance of the individual on-site septic tanks and effluent disposal systems.

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Annexure Schedule



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

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(Continue in additional Annexure Schedule, if required.)

- (b) Not to install on each Lot septic tanks or plumbing fixtures which are not in accordance with the standards defined by the Management Company and Whakatane District Council.
- (c) To enter into an ongoing contract for the maintenance of the septic tanks with an organisation to the approval of the Management Company.

2.8 Default

- (a) No power is implied in respect of any covenant contained herein for any party to determine the covenant for any breach of any provisions in this Instrument (whether expressed or implied) or for any other cause, it being the intention of the parties that the covenants in this instrument shall subsist for all time until surrendered.
- (b) If any party ("the defaulting party") neglects or refuses to perform or join with any other party in performing any obligation pursuant to this instrument the following provisions shall apply:
 - (i) Any other party ("the affected party") may serve upon the defaulting party a written notice ("default notice") requiring the defaulting party to perform or to join in performing such obligation and stating that after the expiry of not less than fourteen days from service of the default notice the provisions of this default clause shall apply.
 - (ii) If at the expiry of the period stated in the default notice the defaulting party still neglects or refuses to perform or join in performing the obligation the affected party may do any or all of the following:
 - (i) Perform such obligation.
 - (ii) Enter on to the land owned by the defaulting party or any other land subject to these Covenants and carry out all work required to perform such obligation and/or disconnect the septic tank of the defaulting party if the default relates to the operation or maintenance of the defaulting party's septic tank.
 - (iii) The defaulting party shall be liable to pay to the affected party:
 - (i) All costs of and incidental to the preparation and service of the default notice.
 - (ii) All costs of and incidental to any such disconnection.

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- (iii) The proportion of all costs incurred in performing such obligation as is properly payable by the defaulting party pursuant to this instrument.
- (iv) The affected party may recover from the defaulting party as a liquidated debt any moneys payable pursuant to this clause.
- (iv) If the septic tank on the land owned by the defaulting party is disconnected pursuant to this clause, the defaulting party may not reconnect until the defaulting party has performed all outstanding obligations and has paid in full any moneys payable pursuant to this clause.

3. Building Covenants

3.1 To conserve and enhance the character quality and amenity values of the Servient Lots, the Grantor covenants as follows:

- (a) Not to commence erection construction or permit or attempt to erect any buildings or improvements to the property, including fences without having obtained first the written approval of the Grantee and the Whakatane District Council to the Grantor's plans and specification and exterior design and appearance of the Grantor's proposed new dwelling or other improvements to the land including landscaping in accordance with the terms and conditions of any Resource Consent issued by the Whakatane District Council.
- (b) The Grantor shall:
 - (i) Not erect or place or permit to be erected or placed on the Lots any more than one dwelling house on each Lot, such dwelling house
 - (ii) to contain a minimum of 125 square metres of inhabitable area exclusive of decks, porches, garages and carports;
 - (iii) which has an associated garage, shed or accessory building having an area greater than 75 square metres;
 - (iv) to be no more than two conventional storeys in height or a maximum of 8.0 metres above the building platform on the designated house site and which will blend into the profile of the surrounding bush and other natural topography.
- (c) not use the Lots for any purpose other than residential;
- (d) without prejudice to the generality of the foregoing, not to place or erect on the Lots any building other than a new building excepting temporary structures required in connection with the

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- erection of approved permanent buildings and which will be removed upon completion of those permanent buildings;
- (e) use only roof claddings made of steel (corrugated or tray), cedar shingles, slate, tiles or other such materials which are consistent with the restriction on roof colours referred to in the following clause;
 - (f) use only wall materials of natural timber or natural stone or other material painted or finished in visually muted recessive colours generally in accordance with the following B55252 colour codes:

for Walls – B17 to B25

for Roofs – A11 to A14, B25 to B29 and C40, or a combination of the above previously approved by the Whakatane District Council;
 - (g) use the same external material on all buildings and structures within any Lot so that all ancillary buildings shall have the same external materials and colours as the dwelling house on that Lot;
 - (h) place all dwellings within the designated building platforms;
 - (i) not remove any vegetation within the designated vegetation protection areas unless such vegetation is within 20 metres of the foundations of an approved building on the designated building platform;
 - (j) not place any relocatable buildings on the Lots without the prior written approval of Gibson & Day.
 - (k) not permit or suffer any building in the course of erection to be left without substantial work being carried out thereon for a period exceeding three months and not delay or permit the delaying of completion or construction of any such building longer than nine months from the date of commencement of work;
 - (l) not to erect any improvements on any area on the Lots designated for an easement;
 - (m) not permit or suffer any rubbish to accumulate or be placed upon the Lots derelict vehicles, building materials and inorganic items or allow any excessive growth of grass so that the same shall become odorous or unsightly;
 - (n) not after receipt of written notice from the Grantee, or the Management Company proceed further with nor permit to remain on the Lots any building structure or improvement erected or repaired or completed in breach or non observance of the covenants hereinbefore set out;

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(Continue in additional Annexure Schedule, if required.)

3.2 In the event of a conflict between the provisions of these building covenants and building covenants in any another Easement Instrument registered against the Lots the provisions of these covenants shall prevail.

3.3 Not to commence erection or construction or permit or suffer to be erected or constructed any buildings or other improvements on the Lot including fences without having first obtained the written approval of the Grantee to the Grantor's plans and specifications and exterior design and appearance of the Grantor's proposed new building or other improvements to property, including landscaping and the written approval of the Grantee to the Grantor's nominated builder(s), and following such approvals, will not make any change to the plans and specifications or to the exterior design or appearance of the new buildings or other improvements, or the builder, without first obtaining a further approval from the Grantor. The consents from the Grantee required herein shall not be unreasonably withheld. The Grantee may delegate (revocably or irrevocably) such power to the Management Company.

3.3.1 Not object or permit or suffer any agent or servant or any other representations howsoever to object nor support any objection to any present or future application made by the Grantee or on the Grantee's behalf or supported in part or in full by the Grantee to subdivide, develop or rezone any of the Grantee's land whether it adjoins the Grantor's subdivision or not.

Not withhold consent to any approval dispensation or consent required in connection with any application for a resource consent or approval made or supported by the Grantee or on its behalf in connection with the Grantee's proposal to further subdivide or develop any of the Grantee's land.

3.3.2 Not to oppose the Grantee's interest in any appeals arising from any of the matters contained, mentioned or referred to in this clause.

4. Management Company

4.1 Pacific Heritage Park Limited (the Management Company) has been incorporated to carry out the obligations of the Management Company as referred to in the Resource Consent including the following purposes:

(a) **Access Lot**

The maintenance and security of the Access Lot.

(b) **Water Supply**

The operation, maintenance and administration of the communal water supply.

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(c) **Wastewater & Stormwater**

The operation, maintenance and administration of the communal stormwater control system for the Development and to oversee ongoing maintenance of the individual septic tanks installed within the Development.

(d) **Conservation covenant**

The maintenance of the registered conservation covenant areas of existing native bush and future re-vegetation planting on the Lots, existing fencing and ongoing obligations in terms of the Resource Consent.

(e) **Rules**

To make such rules as it deems proper to satisfy the conditions of the Resource Consent concerning the use maintenance and security of the Access Lot and the operation, maintenance and administration of the communal water supply.

(f) **Owner's Manual**

To compile and distribute an owner's information pack to the owners of all Lots providing information on the following matters:

- (i) House siting and controls on related earthworks and buildings.
- (ii) Utility services including maintenance of the water supply and waste water disposal systems..
- (iii) Bush areas and noxious plant control.
- (iv) Landscaping including vegetation species suited to the Lots.
- (v) Planting methods and maintenance.
- (vi) Measures to control plant and animal pests.

(g) **Enforcement**

To carry out and enforce all duties of the Management Company as set out in its Constitution and in these Covenants and for this purpose the Management Company is authorised to enter on to the land owned by the defaulting party or any other land subject

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to these Covenants and carry out all work required to perform such obligations of the defaulting party.

(h) **Insurance**

To obtain and maintain in effect policies of insurance that, in the opinion of the Board and the Management Company, are reasonably necessary or appropriate to carry out the Business including comprehensive public liability insurance cover.

(i) **Rules and Bylaws**

To make, establish, promulgate, enforce and in its discretion, to amend or repeal such Company Rules as it deems proper, covering any and all aspects of its Business including the use and maintenance of the lots, improvements and services referred to in Clause 3.1(a) – (b).

(j) **Records**

To keep books and records of the Company's affairs (including a Register of Shareholders) and to make such books and records, together with current copies of the Company Rules available for inspection by the Shareholders, the mortgagees of any Lot and insurers of any improvements or guarantors of any mortgage of any Lot upon request during normal business hours.

(k) **Security**

To provide for and construct and maintain facilities as the Company deems necessary for the security of the Access Lot and the Lots.

- (l) Each Lot owner is required to be a shareholder of the Management Company formed to operate, maintain and administer all matters associated with the communal water supply and the communal stormwater control system for stormwater runoff from all roading proposed for the Development (including the stormwater detentions ponds), the maintenance of the roading within the Development, oversee the maintenance of septic tanks and the maintenance of the registered conservation covenant areas of existing native bush and proposed future revegetation planting on the Development.

- (m) The Management Company is required to oversee ongoing maintenance of the individual on-site septic tanks and effluent disposal systems.

- (n) Septic tanks and plumbing fixtures are to be supplied and installed to each Lot in accordance with the standards defined by the Management Company and the Whakatane District Council.

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- (o) Each Lot is required to enter into an ongoing contract for the maintenance of the septic tanks with an organisation to the approval of the Management Company.
- 4.2 The shareholding of the Management Company shall comprise ten (10) shares, all initially to be owned by the Grantor who shall transfer one (1) such share to each Grantee upon settlement of the sale of the individual Lots comprising the Dominant Lots. The number of shares may be increased if further Lots are created so that each Lot will hold one share in the Management Company.
- 4.3 (a) The registered proprietor of each Lot covenants to execute a share transfer form transferring one share in the Management Company to any purchaser of the Lot and deliver the same to the Management Company. Shareholding in the Management Company shall be appurtenant to and shall run with the Lots. Shareholding in the Management Company may not be severed from the ownership of the Lots or in any way transferred pledged mortgaged or alienated except and together with the title to the Lots. If the Company is not or ceases to be incorporated, is liquidated, or is removed from the Register of Companies the registered proprietors of the Lots are jointly and severally liable to carry out the obligations of the Management Company as contained in the Resource Consent, this Instrument and the Consent Notice.
- (b) Any transferee from a registered proprietor shall be bound by the Constitution of the Management Company and shall when conveying title to the Lots concurrently execute a share transfer form of his share in the Management Company. Such transferee must notify any immediate transferee of the Lot of such transferee's obligation to take a transfer of the transferee's share in the Management Company and to be bound by the Constitution of the Management Company.
- (c) That the registered proprietor of a Lot will together with all registered proprietors of the remaining Lots contribute to the establishment, maintenance and management costs of the Company and all other costs incurred by the Company in exercise of its functions including the use, operation, maintenance and security of the Access Lot and access ways, stormwater and wastewater systems and other matters referred to in the Resource Consent.
- (d) The Shareholders will ensure that the Company is not dissolved without the prior written consent of the Whakatane District Council; and
- (e) If the Company is removed from the Register of Companies that each Shareholder will ensure that an application to reinstate the Company is made and pursued without delay.
- 4.4 (a) The Grantor by entering into this instrument shall be deemed to covenant:

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- (i) to pay to the Management Company such amounts as the Management Company may determine from time to time (called Contributions). All such Contributions shall be fixed, established and collected from time to time as determined by the Management Company from time to time
- (ii) to observe the terms of the Constitution of the Management Company and the terms and conditions of the Resource Consent.
- (b) Contributions levied by the Management Company shall be used exclusively for the purposes of ensuring appropriate funding for the Business of the Company.

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Annexure Schedule - Consent Form

Land Transfer Act 1952 section 238(2)



Easement

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Surname must be underlined or in CAPITALS

(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

BANK OF NEW ZEALAND

Mortgagee under Mortgage No. 5554995.2

State full details of the matter for which consent is required.

[section of the

Act

the **Consentor hereby consents to:**

the within Easement.

Cements.

Dated this 7th day of February 2008

Attestation

SIGNED for and on behalf of
BANK OF NEW ZEALAND
by its Attorney:

STANDARD PRICE

Signed in my presence by the Consentor

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name **Lorraine Peri**

Occupation Bank Officer

Address

Signature of Consentor

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.

REF: 7029 – AUCKLAND DISTRICT LAW SOCIETY



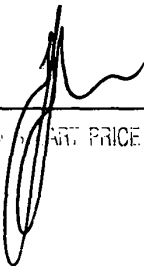
Bank of New Zealand

**CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY**

I, **IAN STUART PRICE**, **Quality Assurance Officer of** Auckland, New Zealand, Bank Officer, certify:

1. That by deed dated 12 July 2005, Bank of New Zealand, of Level 14, BNZ Tower, 125 Queen Street, Auckland, New Zealand, appointed me its attorney.
2. A copy of the deed is deposited in the North Auckland registration district of Land Information New Zealand as dealing No. 6508607.1
3. That I have not received notice of any event revoking the power of attorney.

SIGNED at Auckland 07 February 2008



IAN STUART PRICE