

View Instrument Details



Instrument No 11589318.9
Status Registered
Date & Time Lodged 15 January 2020 16:26
Lodged By Hema, Jacqueline Kaya
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
912100	South Auckland
912101	South Auckland
912102	South Auckland
912103	South Auckland
912104	South Auckland
912105	South Auckland
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912107	South Auckland
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912132	South Auckland
912133	South Auckland
912134	South Auckland
912135	South Auckland
912136	South Auckland

Annexure Schedule Contains 7 Pages.

Covenantor Certifications

I certify that I have the authority to act for the Covenantor 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 Peter Ian Attewell as Covenantor Representative on 27/01/2020 09:52 AM

Covenantee Certifications

I certify that I have the authority to act for the Covenantee 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 Peter Ian Attewell as Covenantee Representative on 27/01/2020 09:52 AM

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

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

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Grantor

Pag Enterprises Limited

Grantee

Pag Enterprises Limited

Grant of Easement or *Profit à prendre* or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Land Covenants	N/A	Lot 6 DP 542066 (RT 912100) Lot 12 DP 542066 (RT 912101) Lots 17 & 18 DP 542066 (RT 912102 & 912103) Lots 20 - 24 DP 542066 (RT 912104, 912105, 912106, 912107 & 912108) Lots 37 - 64 DP 542066 (RT 912109, 912110, 912111, 912112, 912113, 912114, 912115, 912116, 912117, 912118, 912119, 912120, 912121, 912122, 912123, 912124, 912125, 912126, 912127, 912128, 912129, 912130, 912131, 912132, 912133, 912134, 912135 & 912136)	Lot 6 DP 542066 (RT 912100) Lot 12 DP 542066 (RT 912101) Lots 17 & 18 DP 542066 (RT 912102 & 912103) Lots 20 - 24 DP 542066 (RT 912104, 912105, 912106, 912107 & 912108) Lots 37 - 64 DP 542066 (RT 912109, 912110, 912111, 912112, 912113, 912114, 912115, 912116, 912117, 912118, 912119, 912120, 912121, 912122, 912123, 912124, 912125, 912126, 912127, 912128, 912129, 912130, 912131, 912132, 912133, 912134, 912135 & 912136)

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

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

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

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

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

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

Covenant provisions

Delete phrases in [] and insert Memorandum number as 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 _____]~~

Annexure Schedule

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Insert instrument type

Continue in additional Annexure Schedule, if required

BACKGROUND

- A. The Grantee is the registered proprietor of all the Dominant Tenements.
- B. It is the Grantee's intention to create for the benefit of the Dominant Tenements, the land covenants set out in Annexure Schedule over the Servient Tenements.
- C. The Grantor for itself, it's respective heirs, executors, administrators and assigns and the registered proprietor or proprietors for the time being of the Servient Tenements HEREBY COVENANTS with the Grantee for the benefit of each and any other registered proprietor or proprietors for the time being of each of the Dominant Tenements to observe and perform the covenants contained in this document.
- D. The Grantor and its respective heirs, executors, administrators and assignees shall only be liable for breaches of the covenants which occur whilst they are a registered proprietor of a Servient Tenement.

1.1 The Grantor further agrees for the purposes of formation of a building scheme to benefit the Grantee that it:

(a) Shall not construct any dwelling with a gross floor area including garages of less than 150 square metres except if the Lot is 540 square metres or less then shall not construct any dwelling including garage of less than 140 square metres.

(b) Shall not construct any building on the land with an external wall cladding (except for soffits, basement and/or in association with textured finishes) of unrelieved flat sheet fibrolite, Hardiflex, galvanised steel, plywood sheeting, metal sheeting, Hardiplank, board and batten or similar materials.

(c) Shall not construct any garage, carport or other outbuilding that is not an integrated architectural design with the dwelling. All metal clad outbuildings will be pre-painted in the factory to manufacture specifications.

(d) Shall not use or occupy as a residence any building on the servient tenement until such time as construction has been completed and all the exterior sheeting and finishing including exterior painting has been completed.

(e) Shall not use as a roofing material any material other than pre-painted colour steel, concrete or metal tiles, other tiles, or rubber waterproof membrane system.

(f) Shall not erect or permit to be erected fencing constructed of steel or panel steel, untextured flat fibrolite, Hardiflex, plywood sheeting or other similar materials.

(g) Shall not erect or permit second-hand, relocated or temporary buildings to be placed on the servient tenement.

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

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Continue in additional Annexure Schedule, if required

(h) Shall not erect or permit to be erected any fence or boundary wall nor permit any hedge shrubs or trees to be planted or grown as a living fence at any time within three metres of the road boundary (provided that this shall not apply to the road boundary of Shaw Road), in order to maintain an open environment.

(i) Shall not construct or permit to be erected any fence or boundary wall nor permit any hedge shrubs or trees to be planted or grown as a living fence unless it is no more than 1.8 metres in height elsewhere on the Lot.

(j) Shall not call upon PAG ENTERPRISES LIMITED ("Pag") to pay or contribute towards the cost of erection or maintenance of any boundary fence between the servient tenement and any adjoining Lot owned by Pag, provided that this covenant shall not endure for the benefit of the subsequent transferee of such adjoining land.

(k) Shall not allow any building to be constructed with a basement or subfloor space that does not have exterior walls of the basement subfloor sheeted with cladding in accordance with the provisions of subclauses 1(b) and 1(c) above.

(l) Shall not permit any rubbish to accumulate and/or to be placed upon the servient tenement or permit grass or weeds to grow in excess of 100mm in height or to become unsightly, but notwithstanding the obligations of the Grantor under this sub—clause, PAG shall be entitled at any time during the period of 12 months from the date of this easement instrument to mow the grass on the servient tenement but the Grantor accepts and acknowledges that this does not absolve the Grantor from liability to keep the servient tenement in a clean and tidy condition at all times. PAG shall be entitled to charge the Grantor for any costs it incurs due to the default of the Grantor under this clause.

(m) Shall not permit or allow rubbish, junk, car bodies, litter or other similar unsightly items to accumulate or be placed upon the servient tenement and otherwise allow the servient tenement to become unsightly.

(n) Shall not erect or permit to be erected or placed upon the servient tenement any caravan, bus, mobile home, hut or shed to be used as a dwelling house or temporary dwelling on the servient tenement except such caravan, bus, hut or shed as will be used in conjunction with the construction of the permanent dwelling which will be placed on the servient tenement at the commencement of construction of the permanent dwelling and removed immediately on completion of the construction of the permanent dwelling.

(o) Once construction of the dwelling has been completed shall not bring onto the servient tenement or allowed to remain on the servient tenement any caravan, mobile home or trade vehicle or other equipment or material unless garaged or screened so as to preserve the amenities of the neighbourhood.

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Annexure Schedule

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Continue in additional Annexure Schedule, if required

(p) Shall not use or permit the servient tenement to be used for any trading or commercial purposes except for the display of the land and buildings for resale purposes and show home display or as provided in clauses 1.2 or 1.5.

(q) Shall not construct a vehicle crossing and driveway unless they are completed to the Territorial Authority's standard and specifications prior to occupation of the residence.

(r) Shall not further subdivide the servient tenement except for minor boundary adjustments of the servient tenement.

(s) The Grantor shall not allow to be kept on the servient tenement any animals other than domestic pets which without restricting the generality of such term shall exclude goats, sheep, horses, pigs, poultry and beehives.

(t) The Grantor will not allow to be kept on the servient tenement more than 2 dogs or 2 cats of a greater age than 3 months.

(u) The Grantor shall reinstate, replace or be responsible for all costs arising from damage to the landscape, roading, footpaths, kerbs, concrete or other structures arising from the Grantor's use of the servient tenement directly or indirectly through the Grantor or his or her agents or invitees.

(v) The Grantor shall keep and maintain the Council owned Road frontage of the servient tenement in a neat and tidy condition.

1.2 Notwithstanding the provisions of clause 1(p) subject to the criteria set out below the Grantor may amalgamate several servient tenements together to form one larger Lot for the purposes of developing a day care centre, play school, retirement village, retail shops or such similar uses provided that the following criteria are met:

(a) Resource consent being granted by the Territorial Authority at the cost of the Grantor; and

(b) The development must comply in all respects with the general terms of this building enhancement covenant.

The Grantor is responsible to make its own enquiries at its own cost as to the ability to amalgamate the servient tenements or to use the servient tenement for any particular purpose.

1.3 The Grantor shall complete construction of any dwelling (i.e. ready for occupation including drives, paths, fences, letterbox, landscaping and rotary hoe) within eighteen months of commencing construction.

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Annexure Schedule

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1.4 The Grantor agrees to erect on the servient tenement a single dwelling house, except for development of servient tenements as set out in clause 1.2 and 1.5.

1.5 Notwithstanding clause 1.4 Pag may at its discretion entirely approve a home and income dwelling within the 1 single dwelling provided:

- (a) Prior written consent is obtained from Pag which will be granted entirely at its discretion; and
- (b) The home and income dwelling otherwise complies in all respects with the building enhancement covenant.

1.6 Pag may in its absolute discretion allow any building or structure to be erected notwithstanding that the structure of building may not comply with the provisions of 1.1(a), 1.1(b), 1.1(c), 1.1(e) or 1.1(k) of the covenants provided that Pag considers that the building or structure is of an appearance or standard with regard to design and materials which is consistent with Pag's intention to create a modern and well-designed residential subdivision.

1.7 Shall not lodge a submission or appeal objecting to, frustrate, hinder or prevent any application for resource consent, building consent or plan change or variation by Pag, or any such application supported by Pag to undertake any subdivision or development of the dominant tenement or any other land acquired or to be acquired by Pag.

1.8 If there should be any breach or non-observance of any of the covenants and conditions contained in the above clauses and without prejudice to any other liability which a Grantor may have to any Authority or any person having the benefit of such covenants and conditions and without in any way restricting the remedies available to any Grantor or any person having the benefit of such covenants and conditions, the Grantor will upon Written demand made by any Grantor:

- (a) Remove or cause to be removed from the servient tenement any building used, erected, commenced or repaired in breach of non-observance of covenants and conditions;
- (b) On demand by the Grantee replace any building material used or permitted to be used in breach or non-observance of the covenants and conditions with building materials which comply with the Grantee's requirements under this clause or of any approval of any proposal submitted by the Grantor;
- (c) Pay to the person making such demand as liquidated damages the sum of \$500.00 per day for each day that such breach or non-observance continues after the date upon which written demand has been received. The said amount of \$500 shall be increased annually by reference to the Consumer Price Index (CPI) (All Groups) or equivalent replacement index.

1.9 (a) If a dispute arises in connection with these covenants, the parties will endeavour to settle the dispute by mediation before resorting to arbitration. Either party may initiate mediation by giving written

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Annexure Schedule

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notice to the other party. The mediator will be agreed on by the parties, but if the parties cannot agree on a mediator within 7 working days after the mediation has been initiated, then the mediator will be appointed by the President for the time being of the Waikato/Bay of Plenty branch of the New Zealand Law Society whose decision as to the appointment of the mediator will be finding and binding on the parties.

(b) If the dispute has not been settled within 14 working days after the appointment of the mediator, or with any longer period agreed on in writing by the parties then the parties agree that resolution of the dispute will be determined by arbitration under the Arbitration Act 1996. Either party may commence the arbitration by giving a written notice to the other party stating the subject matter and details of the dispute and the parties requirement to have the dispute determined by arbitration.

(c) The arbitration will be conducted by a single arbitrator. If the parties cannot agree upon a single arbitrator within 14 working days of the party receiving notice under this clause, then the arbitrator will be appointed by the President for the time being of the Waikato/Bay of Plenty branch of the New Zealand Law Society and his/her decision will be final and binding on the parties as to the appointment of the arbitrator.

(d) The parties agree that the arbitrator's award will be final and binding on them.

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