



View Instrument Details

Instrument No. 10924000.13
Status Registered
Date & Time Lodged 28 Nov 2017 14:14
Lodged By Rendall, Stephen Michael
Instrument Type Easement Instrument



Affected Computer Registers	Land District
806837	North Auckland
806839	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 Mortgagee under Mortgage 10175778.2 has consented to this transaction and I hold that consent ✓
- I certify that the Mortgagee under Mortgage 10684326.8 has consented to this transaction and I hold that consent ✓
- I certify that the Mortgagee under Mortgage 10684326.5 has consented to this transaction and I hold that consent ✓
- I certify that the Mortgagee under Mortgage 10684326.7 has consented to this transaction and I hold that consent ✓
- I certify that the Encumbrancee under Encumbrance 10175778.3 has consented to this transaction and I hold that consent ✓
- I certify that the Encumbrancee under Encumbrance 10684326.9 has consented to this transaction and I hold that consent ✓

Signature

Signed by Stephen Michael Rendall as Grantor Representative on 24/11/2017 02:59 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 Stephen Michael Rendall as Grantee Representative on 24/11/2017 02:59 PM

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

Form B

**Easement instrument to grant easement or *profit à prendre*, or create
land covenant**

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

Grantor

GREEN & MCCAHERILL HOLDINGS LIMITED

Grantee

WEITI BAY RESIDENTS ASSOCIATION INCORPORATED

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	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way (Landscape Maintenance)	F, DF, DG, DO on deposited plan 513840	806837 (Lot 170 on deposited plan 513840)	In Gross
Right of Way (Landscape Maintenance)	DE on deposited plan 513840	806839 (Lot 172 on deposited plan 513840)	In Gross

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

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

The implied rights and powers are hereby varied by the provisions set out in the Annexure Schedule.

Covenant provisions

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

Form L

Annexure Schedule

Page of Pages

Insert instrument type

Easement

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions**

Unless the context otherwise requires, in this Instrument the following words have the following meanings:

Arbitration means the reference of the relevant matter or issue in dispute to arbitration in accordance with and subject to the Arbitration Act 1996.

Authority means any statutory or regulatory authority having jurisdiction in respect of the Land.

Building Code means the building code as prescribed pursuant to Part V of the Building Act 2004.

Commencement Date means the date of registration of this Instrument.

Consent Notice means the consent notice registered pursuant to Subdivision Consent R52447 granted by Auckland Council in favour of Weiti Development LP.

Default Interest means interest accruing at a rate equivalent to that which is 5% above the Grantor's bank's overdraft rate applicable during the continuance of the default.

Default Notice means a notice issued in the circumstances referred to in clause 2.7:

- (a) specifying reasonable details of the relevant default and remedial action required to remedy that default; and
- (b) notifying the defaulting party that the other party will undertake the relevant remedial action if the defaulting party fails to do so within such period as is reasonable in the circumstances having regard to the nature and effects (including potential effects) of the relevant default.

Developer means Weiti Development LP and its successors and assigns.

Dispute Notice means a notice in writing issued by a person wishing to resolve a dispute or difference concerning rights or obligations under this Instrument or to have any matter or issue concerning rights or obligations under this Instrument determined, resolved or remedied and:

- (a) specifying reasonable details of the nature of the dispute, difference or issue to be resolved;

- (b) designating the person with authority to negotiate and settle the matters specified in the notice given by or on behalf of the issuer of the notice; and
- (c) requiring the recipient of the notice to review the relevant matters specified in the issuer's notice in accordance with the dispute resolution procedures specified in subclause 2.8(c) with a view to resolving the relevant difference or dispute and for that purpose to appoint a representative with authority to negotiate a resolution of that dispute or difference.

Easement means the easement recorded by this Instrument.

Estate means the development from time to time located on the Land.

Facility means that part of the surface of the land described as the Right of Way (Landscape Maintenance) Area, as the same may be repaired, maintained, altered or developed from time to time.

Grantee means the party listed as such on the first page of this Instrument.

Grantee's Authorised Persons means, except where otherwise stated, the Grantee and the agents, employees, contractors, tenants, licensees and invitees of the Grantee and all other persons authorised or invited by the Grantee to use and enjoy the Right of Way (Landscape Maintenance) Area and, where the context so admits, means any of such persons.

Grantor means the registered proprietor for the time being of the Servient Tenement which is subject to the Easement.

Grantor's Authorised Persons means, except where otherwise stated, the Grantor and the agents, employees, contractors, tenants, licensees and invitees of the Grantor and all other persons authorised or invited by the Grantor to use and enjoy the Right of Way (Landscape Maintenance) Area and, where the context so admits, means any of such persons.

Improvements means any improvements erected or to be erected on the Land, including (without limitation) any roads, culverts, footpaths, tracks, access routes landscaping, streetscaping, pipes, pumps, dams, infrastructure, building structures and structural components incorporated into or associated with such improvements, as repaired, maintained, extended, renovated or rebuilt from time to time.

Instrument means this easement instrument (including these conditions) as it may be varied from time to time.

Land means the land comprised and described in Computer Freehold Registers 806837 and 806839.

Landscape Maintenance Purposes means those purposes set out in clause 3.1.

Right of Way (Landscape Maintenance) Area means that part of the Land described in Schedule A as being subject to a Right of Way (Landscape Maintenance) Easement.

Right of Way (Landscape Maintenance) Easement means the rights recorded by this Instrument in relation to each Right of Way (Landscape Maintenance) Area.

Servient Tenement in relation to the Easement means the land described as such in Schedule A and being the land which is subject to the Easement.

WeitiBay Subdivision means the 150 lot subdivision permitted pursuant to the WeitiBay Subdivision Consent together with common land and infrastructure associated with and/or providing services to the common land and lots.

WeitiBay Subdivision Consent means the subdivision resource consent RMA 52447 issued under the Resource Management Act 1991, as varied from time to time.

Working Day means a day which is not a Saturday or Sunday or a public holiday in Auckland, New Zealand or a day within the period commencing on 24 December in any year and ending on 5 January in the following year.

1.2 Interpretation

Unless the context otherwise requires the following provisions are applicable to the construction and interpretation of this Instrument.

(a) General

- (i) words denoting the singular shall include the plural and vice versa;
- (ii) one gender shall include the other gender;
- (iii) references to sections, clauses and schedules are references to sections, clauses and schedules in this Instrument;
- (iv) section headings and clause headings used in this Instrument have been inserted for convenience and a quick guide to the provisions of this Instrument, and are not to be used in interpreting the provisions of this Instrument;
- (v) words denoting persons shall include any individual, company, corporation, firm, corporation sole, trust, partnership, joint venture, syndicate or other entity or association of persons either incorporated or unincorporated being or purporting to be a legal entity and any body corporate coming into existence on the deposit of a unit plan;
- (vi) references to the Grantee include its successors and references to the Grantor include its successors in title to the Servient Tenement and references to the Grantor and Grantee include all persons deriving title under each of them respectively;
- (vii) a reference to this Instrument includes all modifications and amendments to this Instrument from time to time;
- (viii) references to enactments, statutes, statutory requirements and regulatory controls include regulations made under any applicable statutes, and also notices under applicable statutes and regulations having an effect in law, and any amendments to such statutes and regulations, and shall be deemed to include and also refer to any statutes and regulations (and any amendments to statutes and regulations) passed in substitution;
- (ix) where pursuant to any provision of this Instrument a written notice or notice in writing (including a Default Notice) is given by one person to another person which is to take effect from a specified date, or which requires any action to be performed by, or any breach, default or failure to be remedied within, a specified period (being, where a minimum period is specified in this Instrument, not shorter than the relevant specified period),

such period is to be calculated from but exclusive of the date the notice is given;

- (x) the term "positive covenant" is not limited to the meaning defined in the Property Law Act 2007, but means any positive covenant in this Instrument; and
- (xi) notwithstanding any other provision of this Instrument, neither the Grantor nor the Grantee shall be required or obliged to do anything which may be a breach of any statute, regulation or requirement of any Authority.

(b) Obligations

A covenant specified in this Instrument whereby:

- (i) the Grantee or Grantor undertakes to do something includes obligations to ensure that the relevant obligation is properly performed by suitably qualified, competent and responsible persons with the requisite skills, qualifications and experience necessary and appropriate in the circumstances, and not to suffer, permit or cause a breach of that obligation to occur; and
- (ii) the Grantee or Grantor undertakes not to do something includes obligations not to authorise, permit or suffer a breach of that obligation, and to take all reasonable steps to prevent, restrain and, if necessary, to remedy the consequences of a breach of that obligation.

2. GENERAL PROVISIONS

2.1 Application

Unless otherwise specified in this Instrument, the provisions of this clause 2 apply to all rights and to the performance of all obligations specified in or arising under this Instrument on and from the Commencement Date.

2.2 Instrument an instrument

This Instrument is intended to be and to have effect as an instrument attaching to the Land and running with title for the purposes of the Land Transfer Act 1952 and the Property Law Act 2007 relating, in particular, to easements taking effect from the date the Easement specified in this Instrument is deemed to be created in accordance with section 90A(6) of the Land Transfer Act 1952, and binding every person who is for the time being bound by the provisions of this Instrument in accordance with the Land Transfer Act 1952 or the Property Law Act 2007 (as applicable in the circumstances).

2.3 Breach of easements

No power is implied in this Instrument to determine the Easement for breach of any provision in this Instrument, it being the intention that the Easement shall subsist unless it is surrendered, but without derogating from any other right or remedy available in the event of any such breach.

2.4 Terms implied by statute

The provisions of this Instrument, including rights, powers, terms, conditions, covenants and restrictions specified in this Instrument are in substitution for those implied by statute including the Land Transfer Act 1952 and the Property Law Act 2007, and

unless any statute expressly or by necessary implication prohibits exclusion of provisions implied by statute, no provisions implied by statute will apply to the easements specified in this Instrument.

2.5 Powers incidental to rights and obligations

Unless otherwise specified, the Easement rights and the obligations to undertake performance of positive covenants and other obligations specified in this Instrument include all rights and powers reasonably required in the circumstances for the reasonable and proper exercise of the relevant Easement rights and performance of the relevant positive covenants and other obligations.

2.6 Exercise of rights and performance of obligations

The following provisions shall apply on each occasion an Easement right is exercised and also to each covenant or obligation specified in this Instrument:

(a) Entry

Entry upon any part of the Land, including the relevant part of any Servient Tenement, in the exercise of an Easement right or in the performance of a positive covenant or other obligation specified in this Instrument shall be made only for proper purposes in the reasonable and proper exercise of a right or in the performance of an obligation specified in this Instrument.

(b) Protection of Land

All materials and equipment required for or incidental to undertaking an activity in the exercise of an Easement right or performance of a positive covenant or other obligation under this Instrument must be of such a nature so as to avoid any damage or deterioration to any parts of the Land and Improvements through which or within which such material and/or equipment passes or remains, and all work in relation to the activities must be undertaken in a manner which avoids damage or deterioration to any part of the Land and Improvements (including that part within which the relevant activities are undertaken).

(c) Undertaking work

Where any work (including any building work) is undertaken, such work must be carried out:

- (i) in a proper and competent manner by appropriately experienced, qualified and responsible persons;
- (ii) in accordance with, and in compliance with, applicable statutory requirements and regulatory controls (including the Resource Management Act 1991, the operative and proposed district plans of Auckland Council, the Building Act 2004 and the Building Code);
- (iii) with all reasonable speed; and
- (iv) if any consents are required in respect of the relevant work, in compliance with the conditions attaching to the applicable consents,

and the person undertaking the relevant work, or on whose behalf the relevant work is undertaken must leave the relevant area clean and tidy, restored to its

former state and condition, and with all equipment, excess materials, debris and rubbish removed.

2.7 Failure to perform obligation

- (a) If either party fails, refuses or neglects to perform an obligation specified in this Instrument or does not perform the relevant obligation in a manner which is prudent, reasonable and responsible in the circumstances, the other party may serve a Default Notice on the defaulting party. If, following receipt of a Default Notice, the defaulting party has not performed the relevant obligation by the date or within the period specified in the Default Notice, then the other party:
- (i) may perform the relevant obligation and undertake any works required to ensure compliance with the relevant obligation; and
 - (ii) may recover from the defaulting party as a liquidated debt:
 - (A) any costs and expenses properly and reasonably incurred in serving a Default Notice;
 - (B) any costs and expenses properly and reasonably incurred arising from or incidental to remedying the relevant default; and
 - (C) the Default Interest on all such costs incurred by it for the period from the date of the Default Notice until the debt is paid in full.
- (b) Notwithstanding that a party has not served a Default Notice in accordance with the procedure in clause 2.7(a), that party may perform the relevant obligation and undertake any works required to ensure compliance with the relevant obligation where such performance is required (at the discretion of the remedying party) as a matter of:
- (i) urgency;
 - (ii) emergency; or
 - (iii) such other matter relating to the unobstructed use of the Easement,
- and the rights under sub-clause 2.7(a)(ii) shall continue to apply.
- (c) The exercise of rights under sub-clauses 2.7(a) and 2.7(b) are without prejudice to, and do not derogate from, any other rights or remedies available to either party.

2.8 Disputes

The following provisions shall apply to disputes or differences concerning rights or obligations specified in this Instrument.

(a) Notice of dispute

If any dispute or difference arises between persons concerning rights or obligations under this Instrument, or if any matter or issue arises which a person exercising or affected by rights or obligations under this Instrument wishes to have determined, resolved or remedied, either of such persons or that person may serve a Dispute Notice on the other person.

(b) Negotiations

The issuer and the recipient of a Dispute Notice must use reasonable endeavours to resolve the relevant dispute or difference in good faith by negotiation and, if required, by reference to the dispute resolution procedures referred to in clause 2.8(c).

(c) Dispute resolution procedures

The following procedures will apply following the giving of a Dispute Notice:

- (i) The recipient of the Dispute Notice shall within 2 Working Days of receipt of that Dispute Notice give notice in writing to the issuer of the Dispute Notice of the person having authority on behalf of the recipient of the Dispute Notice to negotiate and settle the matter or issue specified in the relevant Dispute Notice.
- (ii) The representatives ("**Representatives**") designated respectively by the issuer and the recipient of the applicable Dispute Notice shall, following whatever investigations the Representatives each deems appropriate, seek to resolve the dispute within 5 Working Days of the date the notice referred to in subclause 2.8(c)(i) is received by the issuer of the relevant Dispute Notice.
- (iii) If the dispute or difference is not resolved within 5 Working Days (or such longer period as the Representatives may agree in writing is appropriate), the Representatives shall seek to agree on a process for resolving the dispute through means other than litigation or Arbitration by such further negotiations, mediation, conciliation or determination by an independent expert or professional mediator (including a person appointed for that purpose by the President for the time being of the New Zealand Law Society) as may be appropriate in the circumstances.
- (iv) If appropriate, the Representatives may also agree on:
 - (A) the procedures and a timetable for any exchange of documents or other information relating to the dispute;
 - (B) procedural rules and a timetable for the conduct of the selected mode of proceeding;
 - (C) a procedure for selection and compensation of any neutral person who may be engaged to assist in the resolution of the dispute; and
 - (D) whether the parties should obtain the assistance of a recognised dispute resolution organisation.
- (v) Either the recipient or the issuer of the relevant Dispute Notice may, so long as:
 - (A) that person has acted in good faith in attempting to resolve the relevant matter in dispute in accordance with the foregoing procedures;
 - (B) a period of 25 Working Days (or such longer period as the Representatives may have agreed is appropriate for the dispute

resolution process agreed between them) has elapsed since the service of the relevant Dispute Notice; and

- (C) written notice terminating the dispute resolution process has been served on the other person,

exercise any rights available at law or reserved by this Instrument (including reference of the relevant matter or issue in dispute to Arbitration (where the recipient and issuer have agreed to refer the dispute or difference to Arbitration), or commencement of court proceedings in relation to the matter or issue in dispute, as may be appropriate).

(d) **Confidentiality**

Where the dispute resolution procedures referred to in subclause 2.8(c) apply, the persons in dispute may not use any information (whether oral, in writing or produced or stored by electronic means or otherwise) or documents obtained in connection with the dispute resolution for any purpose other than an attempt to settle the dispute between those persons.

(e) **Savings**

The procedures specified in subclause 2.8(c) do not apply to court proceedings for:

- (i) an injunction to restrain any action taken or threatened which the person seeking to restrain the relevant action believes in good faith and on proper, justifiable grounds:
- (A) exceeds the rights or powers granted under this Instrument; or
 - (B) is in breach of a term, condition, covenant or restriction attaching to the relevant easement or right; or
 - (C) is in breach of a positive covenant or other obligation under this Instrument; or
 - (D) is otherwise unauthorised, inappropriate or unlawful; or
- (ii) specific performance requiring a Grantee to perform an obligation specified in this Instrument.

2.9 Benefit of Covenants

The covenants of the Grantee in clause 4 of this Instrument are, for the purposes of the Contract and Commercial Law Act 2017, also for the benefit of the Developer.

3. RIGHT OF WAY (LANDSCAPE MAINTENANCE) EASEMENT

3.1 Grant

For the Right of Way (Landscape Maintenance) Easement, the Grantee and the Grantee's Authorised Persons shall have the right (in common with the Grantor and the Grantor's Authorised Persons) to pass and repass on foot and with appropriate vehicles where required, and with or without equipment, machinery, tools and materials, over, on and across the Right of Way (Landscape Maintenance) Area at the

times, on the terms and in the manner set out in this Instrument, for the purposes of the Grantee complying with those conditions of the Consent Notice that require care, maintenance, preservation, repair, conservation or other works in relation to the landscaped areas and improvements within the Right of Way (Landscape Maintenance) Area.

- 3.2 On each occasion that the Grantee exercise rights under this Instrument, it shall ensure that as little disturbance as is reasonably possible is caused to the surface of the Right of Way (Landscape Maintenance) Area, and shall ensure that the surface is restored to its original condition and any other damage done by reason of the aforesaid access and work is repaired save where otherwise required by the relevant requirements of the Consent Notice.

4. Ongoing Development of WeitiBay Subdivision

The Grantee acknowledges that, as at the date of registration of this Instrument, the WeitiBay Subdivision is being progressed and will be completed in stages. The Grantee acknowledges and agrees that it shall, promptly on request by the Grantor or the Developer on behalf of the Grantor, sign all such documents, consents and authorisations (including, without limitation, so as to vary or surrender this Instrument, in whole or in part, or so as to provide consent to the vesting or transfer of any interest in land or improvements) and obtain any written consents and authorisations required from any mortgagee or encumbrancee of the Grantee, as may reasonably be required by the Grantor or the Developer in order to complete the WeitiBay Subdivision, the settlement of the sale and purchase of lots within the WeitiBay Subdivision, and/or the surrender, transfer or grant of interests in land associated with those purposes.