

View Instrument Details



Instrument No 8535689.1
Status Registered
Date & Time Lodged 23 August 2010 16:50
Lodged By Bennett, Taff
Instrument Type Variation of Easement



Affected Computer Registers	Land District
397962	North Auckland
410090	North Auckland
410091	North Auckland
410092	North Auckland
410093	North Auckland
410094	North Auckland
410095	North Auckland
410097	North Auckland
410098	North Auckland
410099	North Auckland

Annexure Schedule: Contains 4 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 7170332.1 has consented to this transaction and I hold that consent
- I certify that the territorial authority has consented to this transaction and I hold that consent, or the affected easement is not the subject of a condition imposed by the territorial authority

Signature

Signed by Taff Bennett as Grantor Representative on 23/08/2010 03:21 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 Taff Bennett as Grantee Representative on 23/08/2010 03:22 PM

*** End of Report ***

Form D

Easement Variation instrument to vary Easement or Profit à prendre or Land Covenant

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

Grantor

Hokianga Stage 1 Limited and Brian Stanley Raphael and Richmond Law Trustees No.5 Limited

Grantee

Hokianga Stage 1 Limited

Variation of Easement, Profit à prendre or Covenant

The terms, covenants or conditions contained in the easement(s), profit(s) à prendre, or covenant(s) set out in Schedule A are hereby varied, negatived or added to, as set out in Schedule B.

Schedule A

Continue in additional Annexure Schedule, if required

Purpose of Easement; Profit or Covenant	Creating Instrument number	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Land Covenant	8309709.3	See Annexure Schedule attached	Lot 1 Deposited Plan 399744

Schedule B

Continue in Annexure Schedule, if required

ANNEXURE SCHEDULE

Shown (plan reference) and Servient Tenement

Principal Unit 1, AU1A, 1B DP 403082

Principal Unit 2, AU2A, 2B DP 403082

Principal Unit 3, AU3A, 3B DP 403082

Principal Unit 4, AU4A, 4B DP 403082

Principal Unit 5, AU5A, 5B DP 403082

Principal Unit 6, AU6A, 6B DP 403082

Principal Unit 8, AU8A, 8B DP 403082

Principal Unit 9, AU9A, 9B DP 403082

Principal Unit 10, AU10A, 10B DP 403082

Land Covenants

IT IS HEREBY agreed and declared that:

1 Definitions

- (a) "Commercial Hotel" means all activities usually associated with the operation of a commercial hotel including but not limited to inside and outside live music and entertainment, inside and outside dining and car parking.
- (b) "Grantee" means the registered proprietor of the Hotel Land and its respective successors and assignees.
- (c) "Grantor" means the registered proprietor of the Land and its respective successors, assignees, tenants, lessees and persons under its control.
- (d) "Hotel Land" means Lot 1 Deposited Plan 399744.
- (e) "Land" means all of the principal and accessory units on Deposited Plan 403082.

2 Background

- (a) The Grantee is the registered proprietor of the Hotel Land on which the Commercial Hotel is operated.
- (b) The Grantor is the registered proprietor of the Land which would be landlocked but for access to State Highway 12 by way of a right of way over the Hotel Land. On the Land are existing traveller's accommodation that have been subdivided into unit titles.

3 Acknowledgement

The Grantor acknowledges and accepts that the Land is situated within a commercial zone and that the Grantor's activities on the Land may be adversely affected by the existing business of the Commercial Hotel.

4 Covenants

The Grantor covenants and agrees:

- (a) Not to do, permit to be done, or omit to do, any act, matter or thing where the act, matter, thing or omission is intended to adversely effect, or has the effect of adversely effecting, the Hotel Land or the business of the Commercial Hotel in any way whatsoever.
- (b) With regard to the business of the Commercial Hotel:
 - i. not to interfere with the business of the Commercial Hotel;
 - ii. not to bring any proceedings against the Grantee for damages, negligence, nuisance, trespass or interference directly or indirectly arising from the business of the Commercial Hotel;
 - iii. not to make, and will not produce, procure, facilitate or advise any third party to make, a complaint or objection in relation to the business of the Commercial Hotel.
- (c) Not to build or erect or permit to be built or erected or placed on any part of the Land any building or structure (including masts and aerials) which is over 4 meters above the ground level of the Land or allow to grow or be planted on the Land any tree, hedge or other living thing which is or will grow to over 4 meters above the ground level of the Land.

5 Breach

- (a) The Grantor acknowledges that the Grantee requires strict compliance with this Land Covenant and any breach may have serious consequences for the Grantee for which damages are not an adequate remedy. Without limiting any other rights at law or in equity available to the Grantee, a breach of this Land Covenant shall entitle the Grantee to immediate injunctive relief.
- (b) If there should be any breach or non-observance of any of the foregoing covenants ("Breach") and without prejudice to any other liability which the Grantor may have to any person having the benefit of these covenants the Grantor in Breach shall on demand by the Grantee pay the Grantee a penalty payment comprising \$10,000 a week from the Breach commencement date until the date that the Breach is remedied provided however that:
 - i. no penalty shall be payable unless the party who is in breach of these covenants has been given not less than 30 days written notice of the breach specifying the nature of that breach; and
 - ii. such breach has not been remedied on the expiration of that 30 day period.
- (c) 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 the Covenants.

6 Exemption

The Grantee (or its agent) may grant such exemptions or waivers from any of the above requirements on such terms and subject to such conditions as it deems fit. Any exemption or waiver shall be binding upon all registered proprietors from time to time of the Land and the Hotel Land.

7 Discharge of Land Covenant

The Grantor shall be entitled to a discharge of this Land Covenant at the request of the Grantor upon it being established to the Grantee's reasonable satisfaction that the covenants of this Land Covenant have become obsolete.

8 Dispute Resolution

All differences and disputes arising between the parties shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.

9 General

- (a) This Land Covenant shall be binding on all transferees, tenants, lessees, mortgagees, charge holders and their respective successors in title and assigns of any estate or interest in the Land. This Land Covenant shall also apply for the benefit of the successors in title of the Hotel Land including where the Hotel Land is further subdivided.
- (b) The Grantor shall ensure that where it grants a lease, tenancy or other occupation rights over the Land (or any part of it) such lessee, tenant, licensee and/or occupier is provided with a copy of this Land Covenant and shall strictly enforce compliance with the same. The Grantor shall ensure that all documentation entered into with any lessee, tenant, licensee or other occupier shall provide that such tenant, licensee and other occupier must comply with the terms of this Land Covenant and, if required by the Grantee, enter into a deed of covenant directly with the Grantee agreeing to be bound by the same. Such deed of covenant is to be prepared by the Grantee's solicitor at the cost of the Grantor.
- (c) The Grantor agrees to pay all legal costs and disbursements in the preparation, execution, registration, enforcement and any ultimate release of this Land Covenant and in respect of the performance and observance by the Grantor of the covenants in this Land Covenant including legal costs on a solicitor/client basis and to otherwise indemnify the Grantee against any claims loss and expense of whatever kind incurred by the Grantee as a consequence of the Grantor failing to comply with the provisions and terms of this Land Covenant.
- (d) The Grantor agrees that the terms and conditions of this Land Covenant may be enforced against the Grantor to ensure compliance with this Land Covenant.
- (e) If at any time any provision or covenant in this Land Covenant is or becomes illegal, invalid, violable or unenforceable in any respect, such illegality, voidability or unenforceability shall not affect the legality, validity or enforceability of the remaining provisions or covenants in this Land Covenant.