

Form 22

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

(Section 109 Land Transfer Act 2017)

Grantor

WHAKATIWAI PLANTATIONS LIMITED

Grantee

WHAKATIWAI PLANTATIONS LIMITED

Grant of Easement or *Profit à prendre*

The Grantor being the registered owner of the burdened land 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, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Annexure Schedule, if required

Continue in additional

Purpose of Easement, or <i>profit</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land covenants	Lots 1, 2 and 10, DP518586	Lot 1 DP 518586 (CT: 812622) and Lot 2 DP 518586 (CT: 815623)	Lot 1 DP 518586 (CT: 812622) and Lot 2 DP 518586 (CT: 815623) Lot 10 DP518586 (CT:812624)

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 2018 and/or Schedule 5 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 209 of the Land Transfer Act 2017]

[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 A

Form L

Annexure Schedule A

Page 1 of 4 Pages

Insert instrument type

Land Covenant

BACKGROUND

- A. The Grantor is the registered proprietor of the Covenanting Lots and the Benefiting Lots.
- B. The Covenanting Lots and the Benefiting Lots are part of a rural residential estate (“the rural estate”)
- C. The Grantor has agreed to create the covenants as set out herein in favour of the Grantee in order to ensure that the character of the rural estate is maintained, preserved and enhanced.

DEFINITIONS AND INTERPRETATION

1.1 Definitions

“the Developer” means Whakatiwai Plantations Limited or any person or entity appointed or nominated in writing by them to be the Developer. Where the Developer has been dissolved, wound up, deregistered or otherwise passed out of existence any approval or consent required from the Developer shall mean approval or consent by any party previously appointed and/or nominated in writing by the Developer for this purpose.

“Benefiting Lots” means the Lots shown as Benefiting Lots in the First Schedule for the purposes of the covenants set out in clause 3; and the Lots shown as Benefiting Lots in the Second Schedule for the purposes of the covenants set out in clause 4.

“Covenanting Lots” means the Lots shown as Covenanting Lots set out in the First and Second Schedule.

“the Grantee” means the owners for the time being of the Benefiting Lots and includes their respective successors transferees and assigns.

“the Grantor” means the owners for the time being of the Covenanting Lots and includes their respective successors transferees and assigns.

“Relevant Authority” means the local or regional authorities with jurisdiction over the Development

1.2 Interpretation

- (a) words and expressions denoting the singular shall where the context so requires include the plural and vice versa.
- (b) headings have been inserted for guidance only and shall not be deemed to form part of the context of this instrument.

COVENANTS

2.0 Agreement

- 2.1 The Grantor, for itself so as to bind the Covenanting Lots in the First Schedule (“Covenanting Lots” and each one of them a “Covenanting Lot”), covenants and agrees with the Grantee that the Grantor shall always observe and perform all of the covenants set out in Clause 3.0 of this instrument until the Developer ceases to be registered as proprietor of all of the Benefiting Lots at which time the covenants shall cease to apply to the end and intent that each of the covenants shall enure for the benefit of the Benefiting Lots for so long as the Developer is the registered proprietor of any one or more of the Benefiting Lots.

- 2.2 The Grantor, for itself so as to bind the Covenanting Lots in the Second Schedule ("Covenanting Lots" and each one of them a "Covenanting Lot"), covenants and agrees with the Grantee that the Grantor shall for all times observe and perform all of the covenants set out in Clause 3.0 of this instrument.
- 2.3 The covenants in this instrument shall be enforceable by the Grantee against the Grantor as owner of the Covenanting Lots and his, her or its successors in title, transferees, assigns and occupiers for the time being of the Covenanting Lots.
- 2.4 No delay or failure by the Grantee to enforce performance of any covenants set out in this instrument and no indulgence granted to the Grantor by the Grantee shall prejudice the right of the Grantee to enforce any of the covenants or provisions of this instrument.
- 2.5 The Grantor shall bear any costs which may be incurred by the Grantee as a result of any default by the Grantor under this instrument.
- 2.6 The Grantee shall not be required to nor obliged to enforce all or any of the covenants and may waive compliance with any covenant and the Grantor shall be liable only in respect of breaches of the covenants which occur while the Grantor is registered as proprietor of the Covenanting Lot.

3.0 The Grantor shall:

- 3.1 for so long as the Developer is the registered proprietor of the Benefiting Lots, not make any objection to any application by the Developer for a resource consent for the subdivision of the Benefiting Lots into the number and configuration of lots that the Developer may in its absolute discretion stipulate and the Grantor shall when requested by the Developer execute any document, submission, land title consent in support of that application and any document required to be executed to enable the Developer to complete the subdivision and enable the plan of subdivision to deposit.
- 3.2 not permit or suffer the use of a Covenanting Lot for any purposes other than predominantly residential and life style farming use nor to use the land for animal boarding facilities or commercial farming of poultry, pigs or fitches or for any commercial uses including day-care centres, transport depots, motor vehicle repairs or panel-beating.
- 3.3 not locate on a Covenanting Lot a dwelling which is second hand or is pre-constructed or which is relocated onto the Covenanting Lot.
- 3.4 not permit or suffer any rubbish to accumulate or to be placed upon the Covenanting Lot, and at all times to maintain the house and curtilage on a Covenanting Lot in a neat and tidy condition including keeping the grass mowed or grazed so the grass does not exceed 200mm in height.
- 3.5 not permit weeds to grow on the property exceeding 200mm in height.
- 3.6 ensure that pasture areas are regularly grazed or mown.
- 3.7 not permit any immobile/unroadworthy vehicles to be stored on the Covenanting Lot unless those vehicles are stored within an enclosed shed or garage.
- 3.8 not subdivide or permit any subdivision of the Covenanting Lot including subdivisions by way of cross-leases and subdivisions under the Unit Titles Act 1972 provided that this covenant shall not apply while the covenanting Lot is owned by the Developer.
- 3.9 not allow any temporary building or structure to be erected on the Covenanting Lot except that which may be used in conjunction with the construction of permanent buildings and which will be removed from the Covenanting Lot upon completion of the said construction.
- 3.10 not permit any water tank, telecom or electricity services to be provided by "overhead" means to the dwelling (and any other structures/buildings to be erected on the Covenanting Lot). All other utilities and services must be by underground means from the road to the dwelling and other structures/buildings to be erected on the Covenanting Lot.
- 3.11 not affix or permit to be affixed any advertising hoardings or signs, including but not limited to real estate signs, construction company signs and subcontractor signs, to the fence of a Covenanting Lot.
- 3.12 not construct a dwelling:
 - (a) with a floor area less than 160 square metres (excluding garage, carports and decking); and

- (b) in the shape of a simple rectangle without at least one roof break or full valley in the roof.
- 3.13 ensure that the dwelling, garage and/or carport is predominantly clad in the following materials (of neutral colours):
- (a) Kiln fired or concrete brick; and/or
 - (b) Concrete block or solid concrete; and/or
 - (c) Stone; and/or
 - (d) Timber; and/or
 - (e) Painted "weatherboards" (such as "Linear™"); and/or
 - (f) Glass
- 3.14 avoid constructing any dwelling or building on the property that has a "mono-cladding" appearance (other than a coloursteel shed).
- 3.15 construct roofing only of tile, shingle, glass or any pre-painted iron material.
- 3.16 complete the exterior construction of any dwelling, or accessory building within 12 months of the date of commencement of the building.
- 3.17 construct no more than two dwellings and one shed on the property.
- 3.18 not commence the construction or erection of improvements whether buildings, accessory buildings, or fences (and this shall also include exterior finishes and excavation of foundations upon the property) unless plans and specifications and all other details of construction, finish and exterior colour as the Developer at the Developer's absolute discretion may require have been submitted to the Developer and have received the Developer's written approval which approval shall not be unreasonably withheld where the Developer is satisfied that the proposed dwelling and/or shed is reasonably sited, complements adjoining properties and does not detract from the standard of housing in the subdivision and the neighbouring properties.
- 3.19 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:
- (a) keep and maintain the exterior appearance of any fixture, fitting and improvement situated on a Lot in good and substantial tenantable repair and condition; and
 - (b) 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.
- 3.20 not erect a fence constructed of materials other than brick, wood, plastered concrete block, or minimum five-wire post and/or battens and no fence shall exceed 1.83 metres in height above natural ground level.
- 3.21 not own, house, care for or feed any domesticated cats or any pets listed in table 10.1a of the Auckland Regional Pest Strategy 2007-2012 (ARPS) or any successive ARMPS on these sites, while residing on the property. Any domesticated dog(s) shall be kept on a lead and under the supervision of the owner, whilst outside the boundary of any Lot and main accessway and shall be excluded from all covenant areas. If Kiwi has been recorded on the parent property, dogs shall be excluded from all properties.
- 3.22 not permitted to own, house, care for or feed any livestock (i.e., all grazing animals) within the boundaries of their property unless an alternative stock proof fencing plan is provided to and approved by the Team Leader, Northern Monitoring. The fencing plan will need to demonstrate that stock cannot access any covenanted area including the landscape mitigation/restoration planting areas. Stock crossings may be required to ensure that stock cannot access any road.
- 3.23 The owners and their successors in title for the time being, of Lots []
- (a) shall preserve the native/exotic vegetation, wildlife habitats and the natural landscape within the protected bush, riparian and/or wetland areas; and
 - (b) maintain stock crossings and/or fish passage(s) in accordance with any easement(s) through the covenant areas; and
 - (c) shall not (without the prior consent of the Council and then only in strict compliance with any conditions imposed by the Council), cut down, damage or destroy, or permit the cutting

down, damage or destruction of the vegetation or wildlife habitats within the areas of native bush, wetland, riparian margin, restoration and landscape planting to be protected; and

- (d) shall not do anything that would prejudice the health or ecological value of the protected areas of native bush, wetland, riparian margin, restoration and landscape planting to be protected, their long-term viability and/or sustainability; and
- (e) shall control all invasive plants and animal pests within the areas of native bush, wetland, riparian margin and restoration planting to be protected, with particular reference being given to the approved weed and pest control plan.

The owners shall be deemed not to be in breach of this covenant if any of the protected vegetation dies from natural fire and/or natural causes not attributable to any act or default by or on behalf of the owners and for which the owners are not responsible.

- 3.24 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 of the balance or parts of the land adjacent to the property (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 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 work being undertaken.
- 3.25 With respect to Further Subdivision the Grantor hereby covenants and agrees that pursuant to the RMA or any legislation replacing the RMA, it approves of and consent to activities occurring on the Grantor's land and will, if called upon to do so by the Grantee, promptly execute all documents or do all things as may be necessary to evidence that approval and consent in writing to any consent authority when called upon to do so by the Grantee. Without limiting the foregoing, the Grantor agrees and accepts that presentation of a copy of this instrument to anybody having jurisdiction over the land shall be deemed to be sufficient evidence of the Grantor's consent and may be relied upon by anybody having jurisdiction in respect of the land.
- 3.26 not make or lodge, be party to, procure, assist or support finance or contribute to the cost of any submission or proceeding (under RMA or otherwise) designed or intended to or having the effect of limiting, preventing or restricting:
- (a) any rezoning or amendment to the provisions of the Further Subdivision or proposed plan relevant to the Covenanting Land; or
 - (b) any activity being undertaken or proposed to be undertaken on the Covenanting Land which is lawfully authorised including any Further Subdivision.
- 3.27 shall maintain the accessways and roads cleaned of any debris at all times during the construction period. Anyone causing damage shall be liable for all costs associated with the cleaning of debris, reconstruction of the roadway or any other damage.
- 3.28 acknowledges that the balance or parts of the balance of Lot 101/106 is of a functioning forestry activity which may include (but is not limited to) harvesting of plantation trees, maintenance and other related activities and that the conduct of those activity may result in noise, lights and other environmental and other effects not generally present in a predominantly forestry 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.
- 3.29 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.

4.0 Indemnity and Consequences of Breach

- 4.1 The Grantor covenants with the Grantee that it will at all times save harmless and keep indemnified the Grantee from all proceedings, costs, claims and demands in respect of breaches by the Grantor of the covenants on its part contained or implied herein, and also the enforcement of such covenants by the Grantee.

- 4.2 If there should be any breach or non-observance of any of the foregoing covenants and without prejudice to any other liability which the Grantees may have to any person having the benefit of this covenant the Grantees upon written demand being made by the Grantor or any registered proprietors of the lots:
- (a) immediately cease any activity in breach of these covenants; and
 - (b) immediately remedy any breach of the foregoing covenants including where appropriate removing or causing to be removed from the lot any domesticated animals, livestock, building, structure or improvement so erected, repaired, or completed in breach or non-observance of the covenants herein.
 - (c) if the breach or failure is not remedied within 15 working days of the date of written notice of such breach or failure then the Grantor must pay to the person making such demands as liquidated damages the sum of \$200.00 per day for everyday that such breach or non-observance continues after the date upon which written demand has been made together with any costs and expenses incurred by the Developer to remedy the breach or non-observance.