

Form B

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

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

Grantor

NEW ZEALAND FORESTRY GROUP LIMITED

Grantee

NEW ZEALAND FORESTRY GROUP 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

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	D.P. 366070 D.P. 414390	Lot 1 D.P. 414390 Lot 20 D.P. 414390 Lot 14 D.P. 366070 Lot 17 D.P. 366070 Lot 18 D.P. 366070 the five abovementioned Lots comprised in C.T. 453963 Lot 2 D.F.P. 414390 as in C.T. 453964 Lot 16 D.P. 414390 Lot 15 D.P. 366070 Lot 19 D.P. 366070 the three abovementioned Lots all being comprised in C.T, 453965 Lot 21 D.P. 414390 as in C.T. 453966 Lot 13 D.P. 366070 as in C.T. 267889	Lot 1 D.P. 414390 Lot 20 D.P. 414390 Lot 14 D.P. 366070 Lot 17 D.P. 366070 Lot 18 D.P. 366070 the five abovementioned Lots comprised in C.T. 453963 Lot 2 D.F.P. 414390 as in C.T. 453964 Lot 16 D.P. 414390 Lot 15 D.P. 366070 Lot 19 D.P. 366070 the three abovementioned Lots all being comprised in C.T, 453965 Lot 21 D.P. 414390 as in C.T. 453966 Lot 13 D.P. 366070 as in C.T. 267889

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 [**added to**] by:

[the provisions set out in Annexure Schedule B]

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:

[Annexure Schedule B]

ANNEXURE SCHEDULE B

BACKGROUND

- A. The land contained in the Servient and Dominant tenements is part of a subdivision which is to provide a living environment within an ecological reserve.
- B. Such reserve has the capability of sustaining a greater number of Lots than has been created for the land at present in the Servient and Dominant tenements including a greater use of the right of way area which provides access rights for the subdivision.
- C. It is the vision for the subdivision that a greater number of Lots will be created in those areas of the land which have been deemed suitable for building purposes and defined as sub-divisible land thereby enabling an increased number of owners to utilise the benefits of the ecological reserve in those specified sub-divisible areas of land.
- D. The Council have been actively involved in ensuring that the subdivision proceeds upon the basis that it provides a living environment within an ecological reserve.
- E. If any owner of the land wishes to further subdivide the sub-divisible land (and that includes being further subdivision of already sub-divisible land) and the Council as one of the Regulatory Authorities whose consent is required to such subdivision agrees in principle to that subdivision of the sub-divisible land then each owner of the land agrees to the subdivision of the sub-divisible land proceeding and will not exercise any rights to object to such subdivision of sub-divisible land.

DEFINITIONS AND INTERPRETATION

"affected owner" means any owner who wishes to complete or has already or is in the process of undertaking a subdivision of that owners land.

"Council" means the Wellington City Council or its successor.

"defaulting owner" means any owner who has failed to comply with his/her/their/its obligations under this Land Covenant.

"Owner" means and includes the following:

- a) The registered proprietor of any of the land
- b) The successors, executors, personal representatives, assigns, lessee and occupiers of the land.
- c) Any individual Company, Corporation, Firm, Partnership, Joint Venture, Association, Organisation and Trustees in each case whether or not having separate legal personality.

"Subdivision" means subdivision of land as defined in Section 218 of the Resource Management Act 1991 or its successor including but not limited to a subdivision pursuant to the provisions of the Unit Titles Act, a proportionate Title subdivision, and the issue of a separate legal Title for existing Lots of the land.

"the land" means any of the land comprised in the Servient and Dominant tenements including any land which issues as a result of a subdivision of the land initially comprised in the Servient and Dominant tenements but also includes any further subdivision or subdivisions of the subdivided land.

"the subdivided land" means any land which was originally comprised in the Servient and Dominant tenements but which now may be comprised in a separate legal Title following a number of subdivisions of the land.

"the sub-divisible land" means:

- a) firstly those areas of land being defined as suitable for building sites and marked on Plan 414390 as areas 2A, 2B, 16A and H; and
- b) secondly those areas marked as 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B, 10A, 10B, 11A, 11B, 12A and 12B on Plan 425554 (which at the date of this Land Covenant is still awaiting deposit); and
- c) any additional adjoining land which will be added to all or part of those building site areas referred to in a) and b) above; and
- d) thirdly the land in C.T. 453963; and
- e) fourthly Lot 13 D.P. 366070 as in C.T. 267889.

Such sub-divisible land will also include any further subdivision of sub-divisible land.

GENERAL COVENANTS

1. Each Owner of the land hereby jointly and severally covenant and agree that they:

- 1.1 Will not oppose or lodge any submission in opposition to any affected owner undertaking in any way a subdivision of the sub-divisible land including the potentially greater use of the rights of way which provide access through the land.
- 1.2 Will not complain about, raise objection, lodge a submission in opposition, lodge an Appeal or legal proceedings or take any other action relating to any regulatory or legal process including Resource Consents against any affected owner creating any further subdivision of any of the sub-divisible land.
- 1.3 Will not participate in or support any objection, submission in objection, appeal or issue legal proceedings or any other action which may have the effect of preventing, prohibiting, restricting, restraining or limiting any proposal by any affected owner of the land for a subdivision of such sub-divisible land.
- 1.4 If requested by the affected owner who wishes to proceed with a subdivision of the sub-divisible land each other owner will (without delay) do all things necessary to assist such affected owner to obtain any consents necessary to proceed with the subdivision of that affected owner's sub-divisible land including signing any consent or approval required by any competent or regulatory authority.

2. Damages

- 2.1 Each owner acknowledges that the value of the land will be detrimentally affected if a subdivision of any of the sub-divisible land is declined or not permitted and if a factor in such decline is the failure by any one of the owners of the land to comply with the covenants contained in this land covenant.
- 2.2 If any owner fails to comply with any of the provisions contained in this Land Covenant then without prejudice to any other liability which the defaulting owner may incur as a result of the breach of the provisions of this Land Covenant such defaulting owner will pay to the affected owner as liquidated damages a sum equal to 60% of the value of the land of the affected owner ("the sum"). The value of the affected owner's land shall be current market value as determined by a Registered Valuer as agreed between the defaulting owner and

the affected owner or failing agreement as determined in accordance with the provisions of the Arbitration Act 1996 and:

- a) Upon the value of the sum being agreed or determined the sum will immediately become due and payable after seven (7) days written demand by the affected owner.
- b) From that due date of payment interest will accrue at a daily default interest rate equivalent to the Bank of New Zealand Prime Commercial Lending Rate from time to time plus 2%.
- c) On a Solicitor/Client basis the defaulting owner will pay all the affected owners reasonable costs and expenses incurred in proceeding with the subdivision of the subdivisible land including but not limited to Regulatory Planning, Resource Management, Hearing and legal costs as calculated on a Solicitor/Client basis.

3. Disputes

3.1 If a dispute arises in relation to any covenant or obligation contained in this Land Covenant then the following procedure shall be adopted:

- 3.1.1 The owner initiating the dispute must provide full written particulars of the dispute to the other owner; and
- 3.1.2 The owners involved in the dispute must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- 3.1.3 If the dispute is not resolved within 14 working days of the written parties being given (or any longer period agreed by the parties):
 - a) The dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - b) The arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the Wellington District Law Society or its successor.

3.2 No dispute arising shall give cause to either party to suspend their obligation under the terms of this Land Covenant.

4. Severability

4.1 If at any time any provision of this Land Covenant is or becomes invalid, illegal or enforceable in any respect whatsoever the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired and in any event the parties shall enter into an appropriate substitute provision or registrable instrument to give full and proper effect to the agreement and the understandings in this Land Covenant.