

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.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 DP 366070 as in CT 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.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 DP 366070 as in CT 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

The vision for this Subdivision is to provide a living environment within an ecological reserve.

INTERPRETATION

“CPI” means the New Zealand Consumers Price Index (all groups as published by Statistics New Zealand (“the Index”)) or its agreed successor.

“The Easement Instrument” means the Easement Instrument dated the and referred to in Schedules 1, 2, 3 and 6 of D.P. 414390 and registered under Easement Instrument number

“The Grantor” in respect to each Lot means the “Owner”

“The Grantee” in respect of each Lot means “each of the other Owners”

“KERA” means the “Kinnoull Ecological Reserve Association”

“The property” means the “Servient tenement” or Dominant tenement land as applicable.

“Proportionate share of costs” means the method of calculating such proportionate share as detailed in the Easement instrument.

1. Each Owner of the any of the land in the servient and dominant tenements must:

- 1.1 Become a member of KERA.
- 1.2 Comply in all respects with the rules of KERA including and in particular paying to KERA the annual levy amount which is required to pay their proportionate share as defined in the Easement Instrument.
 - 1.2.1 The costs of maintenance, upgrading etc details of which are provided in the Easement Instrument.
 - 1.2.2 The costs associated with complying with their obligations under this Land Covenant including the costs detailed in Clause 6.
 - 1.2.3 The costs associated with complying and to comply in all respects with the requirements of the Pest Management Plan and Fire Management Plan details of which will be provided pursuant to the provisions of clause 2 of this Land Covenant.
- 1.3 Permit Contractors authorised by KERA to enter onto your property for the purposes of implementing the Pest Management Plan provided reasonable notice has first been given to the owner of the property as to the dates of entry on to such property, the duration of such Contractors remaining on such property, and the control methods used on such property.
- 1.4 Not permit or cause any rubbish to accumulate or be placed upon the property.
- 1.5 Not permit or cause any advertisement sign or hoarding of a commercial nature to be erected on any part of the property without the prior written consent of KERA or nominee.

- 1.6 Prune any trees on the property that block sea views from the house of another member of KERA.
- 1.7 Not erect a letterbox on the property apart from the uniform type in the designated place at the entrance to the land in the servient and dominant tenements.
- 1.8 Not erect construct or place on the property nor allow to be erected constructed or placed on the property any dwelling that is not a new residential dwelling house.
- 1.9 Not use or allow to be used any firearm on the property without the written permission of KERA or nominee.
- 1.10 Ensure that they and their visitors, invitees adhere to the vehicle speed limits within the servient and dominant tenements.
- 1.11 Clauses 1.4, 1.5, 1.6, 1.7 and 1.8 do not apply to Lot 13.

2. KERA or their nominee will be responsible for providing each servient tenement owner from time to time with:
 - 2.1 Updated and current copies of KERA's Rules
 - 2.2 Updated and current copies of the Pest Management Plan and Fire Management Plan referred to in clause 1.2.3 and elsewhere in this Land Covenant and the Easement Instrument.
 - 2.3 KERA's Annual Budget for implementing the Pest and Fire Management Plans, maintenance costs for the rights of way and bridge areas as defined in the Easement Instrument.

3. **Damages**
 - 3.1 Each owner of the servient tenement acknowledges that the value of the servient tenement and the value of the dominant tenements will be effected by the standard of buildings erected on the servient tenement and by failure to comply with the covenants contained in the preceding clauses and sub clauses.
 - 3.2 The servient tenement owner covenants for the servient tenement owner personally and the servient tenement owner's executors, administrators and assigns that should the servient tenement owner fail to comply with, observe, perform or complete any of the special conditions and/or covenants and restriction contained in this land covenant then without prejudice to any other liability the servient tenement owner may have to any member of KERA or to any of the other servient/dominant tenement owners of the property including New Zealand Forestry Group Limited the servient tenement owner will:
 - a) Pay to KERA as liquidated damages a sum equal to 25 per centum (25%) of the value of the servient tenement ("the sum"). The value of the servient tenement shall be current market value as determined by a Registered Valuer arranged by KERA. Upon KERA advising the servient tenement owner of the value of the sum and the servient tenement owner still being in default the value of the sum will be immediately due and payable upon KERA having issued a written demand for payment, and

- b) Permanently remove or cause to be permanently removed from the servient tenement any improvement or structure which has been erected or repaired in breach of any of the covenants contained in this land covenant.

PROVIDED and it is further agreed and acknowledged that:

- c) The servient tenement owner will only have any liability hereunder while such owner is a registered proprietor of the servient tenement but a Transfer of the property by them will not however relieve them from any liability which has arisen before the date of the Transfer.
- d) In any instance of default under this land covenant and the remedying of such default within one month of notice in writing and the payment by the defaulting party of all reasonable legal and valuation costs and other expenses incurred by the party enforcing the said covenants then the defaulting party shall avoid the payment of the sum described in clause 3.2(a) provided that this waiver shall not apply in respect of any subsequent default of a similar nature.

4. **Remedy**

Monetary damages may not on their own be sufficient to remedy for the breach of any of the obligations detailed in this land covenant and particularly for a breach of clause 3.2 by the servient tenement owner or its agents, representatives or employees. In addition to all other remedies KERA will be entitled to enter upon the servient tenement including entry with their necessary agents, representatives or employees for the purposes of enforcing any of the provisions contained in this land covenant and in particular any breach of clause 3.2 including the removal of any unauthorised structure.

5. **Disputes**

If a dispute arises in relation to any covenant or obligation between KERA, and/or any owner of the servient tenement and/or any owner of the dominant tenements then the following procedure shall be adopted:

- 5.1.1 The party/parties initiating the dispute must provide full written particulars of the dispute to the other party/parties; and
- 5.1.2 The parties 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
- 5.1.3 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.

6. **Annual Fees payable to KERA pursuant to clause 1 and 2 of this Land Covenant and the Easement Instrument for year ending 31 March 2010**

6.1 Annual fees detailed below are plus GST and are to be adjusted annually according to the CPI.

Lot no.	Pest Management	Road and Bridge Maintenance
1	300	500
2	300	500
13	300	2000
16	300	250
21	3,000	10,000

6.2 The Secretary is to invoice members in April each year. Payment must be received by 30 May. Late payment can be charged penalty interest at 10%.

6.3 When Lot 21 as in C.T. 453966 is subdivided into 10 lots then each lot will pay \$1,000 for Road and Bridge Maintenance and \$300 for Pest Management (both adjusted according to the CPI).

6.4 If in the future a new CT is obtained from one of the above lots, then that new CT owner will be required to contribute to KERA the same amount for both Pest, Road and Bridge Maintenance as the original lot contributed.

6.5 The above fees include provision for Secretary's fee as provided for in the Rules of KERA.