

Easement instrument to grant easement or *profit à prendre*, or create land covenant
(Sections 90A and 90F Land Transfer Act 1952)

2009/6229EF
APPROVED
Registrar-General of Land

Grantor

ARATAKI MEWS LIMITED

Grantee

ARATAKI MEWS 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*Continue in additional Annexure Schedule, if required*

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	DP 458122	Lots 23 - 26 and Lot 29 DP 458122 CR 595364 - 595368	Lots 23 - 26 and Lot 29 DP 458122 CR 595364 - 595368

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 2002 and/or Schedule Five 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 155A of the Land Transfer Act 1952]~~

~~[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 _____]~~

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Annexure Schedule

Insert type of instrument

"Mortgage", "Transfer", "Lease" etc



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(Continue in additional Annexure Schedule, if required.)

Covenant**1. DEFINITIONS AND INTERPRETATION****1.1 In this instrument:**

"Building line" means a line parallel to all access lots, rights of way and/or road frontage at a depth of 3 metres from such frontage. The area shown A Lot 42 on the plan is an access Lot for the purpose of this definition.

"Fence" as defined in the Fencing Act 1978 but also includes solid walls, retaining walls and courtyard partitions whether detached from or attached to any residential dwelling.

"Grantee" means Arataki Mews Limited at Hastings.

"Grantor" means Arataki Mews Limited at Hastings.

"Instrument" means this easement instrument creating land covenant.

"Land" means all the land described in Schedule A as dominant or servient tenement.

"Lot" means each of the lots described in Schedule A as dominant or servient tenement.

"Plan" means Deposited Plan No. 458122 (Hawke's Bay Registry)

"Side boundary" means all Lot boundaries not fronting a road, right of way or access lot.

"Single storey residential house" means a residence (including all accessory buildings) restricted to and consisting of a single storey building(s) of no more than 6.1 metres above the ground level of the Lot at its highest point immediately prior to commencement of preparation for works.

"Works" means residential dwelling, accessory buildings and all fencing (boundary and internal) and any earthworks of any nature whatsoever.

Interpretation

- 1.2 (a) In this instrument words and expressions denoting the singular shall include the plural.
- (b) The Grantor and the Grantee includes the successors and assigns of the Grantor and the Grantee.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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2. INTRODUCTION

- 2.1 The Grantor is the registered proprietor of the Land.
- 2.2 It is the Grantor's and Grantee's intention that the Lots shall be subject to a general scheme applicable to and for the benefit of each of the Lots, to the intent that a high standard and fully integrated residential subdivision shall be enjoyed by the registered proprietors of the Lots, and that the owner/occupier for the time being of each of the Lots shall be bound by the covenants set out in this instrument as far as they affect each Lot, and that the owner/occupier for the time being of any Lot may be able to enforce the observance of such covenants by the owners or occupiers for the time being of any of the other Lots in equity otherwise and the Grantor shall ensure each of the Lots are subject to like covenants.

3. RESTRICTIVE COVENANTS**Binding Covenants**

- 3.1 The Grantor for itself so as to bind each of the Lots covenants and agrees with itself as Grantee for the benefit of each of the Lots and each registered proprietor of the Lots from time to time that the Grantor shall always observe and perform all of the covenants set out in this instrument to the end that each of the covenants shall forever enure for the benefit of the Lots.

- 3.2 The Grantor shall:

Plans and Specification Consultation

- (a) In respect of development of any Lot, consult with the Grantee before commissioning any plans or specifications for any development to be erected on the Lot or any part thereof and not commence to erect or place or permit to be erected or placed on the Lot or any part thereof any works without first obtaining the Grantee's approval:
- (i) to the plans and specifications for the works (including residential dwelling, accessory buildings and all fencing and any other proposed structures) to be prepared by a registered architect or member of Architectural Designers New Zealand (Inc) or the Design Association of New Zealand who must be substantially experienced in the design of the proposed works (such approval not to be unreasonably withheld or delayed) provided that within the land no two or more houses shall be of the same or significantly similar design (in the opinion of the Grantee) for which the Grantee shall be entitled, at its sole discretion, to withhold its approval required in accordance with this clause; and
 - (ii) to the materials, finishes and exterior colours to be used in the construction of the works. The Grantee's approval may be withheld at the discretion of the Grantee for:
 - (aa) a residential dwelling inclusive of garage having:
 - * a floor area of less than 160 square metres, excluding carport, decking, cloisters or roof overhang.

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- * a minimum cost per square metre of less than \$1,100.00 (including GST) together with costs of construction as may be required by the Grantee prior to such approval being given.
- (bb) a style or standard of development which is not consistent with the style or standard intended by the Grantee for the subdivision.
- (iii) the Grantor shall pay a \$250.00 (including GST) fee for the Grantee's approval of the plans and specifications for the works and a further fee of \$75.00 (including GST) for any subsequent variation to or further submissions in respect of such plans or specifications.

Single Storey

- (b) Not at any time construct or erect anything on the Lot other than a new single storey residential house and accessory buildings.

Access and Loading Pad

Prior to commencing the construction of any residence on the Lot to construct:

- (c) An all weather access crossing for the purpose of avoiding unsightly mud and rubbish being deposited on to the roads. The access crossing pad shall consist of not less than 100 millimetres thick reinforced concrete where it crosses the berms (if any) and shall be not less than 3.5 metres wide and shall be laid from the kerb of the road to the berms (if any). Except where the access crossing is to be used as part of the driveway to the Lot the access crossing shall, on completion of the construction of any residence on the Lot, be removed by the purchaser and the surface of the ground shall be restored to its condition immediately prior to the laying of the access crossing.
- (d) A mud free hard stand loading pad for a distance of 5 metres from the boundary of the Lot into the Lot, and of a minimum width of 3.5 metres.
- (e)
 - (i) In constructing the access crossing and loading pad the Grantor shall ensure that no damage is caused to any existing berms or footpaths.
 - (ii) During construction the Grantor shall only occupy the property the Grantor owns and shall not use any adjoining land for storage, access, car parking, or earthworks. Prior to construction the Grantor shall erect a temporary red netting construction fence around the perimeter of the lot.

Building Line

- (f)
 - (i) No dwelling or accessory building shall be built between the building line and any road, right of way or access lot frontage.
 - (ii) Notwithstanding (f)(i) Lots 23, 24, 25, 26 and 29 shall have further building line restrictions:
 - within 1m from the common boundary each of the said Lots share in common with those parts of Lot 42 access lot shown as A DP 458122 "the common boundary" no fencing, structures or vegetation other than grass shall be erected or planted within this restricted area;
 - within 1 - 3m of the common boundary no vegetation greater than 1m in height shall be permitted.

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Exterior Cladding

- (g) Not erect a house on the Lot with less than a minimum 75% of the exterior cladding consisting of any of the following materials:
- (i) kiln fired brick;
 - (ii) solid plaster or a textured plaster finish;
 - (iii) stone or timber; or
 - (iv) any other exterior cladding material for which the Grantor has first obtained the Grantee's consent in writing.

Any exterior finish in the form of flat cladding, concrete block, poured concrete or similar shall have the surface coated in solid plaster to fully cover the base material except any foundation block of no more than 300 mm above ground level.

- (h) Not use any metal clad roof that has not been factory pre-painted.

Transportable and Relocatable Buildings and Secondhand Materials

- (i) Not place on any of the Lots any relocated or transportable building or structure whether new, used, or recycled **PROVIDED THAT** builders sheds or such other buildings that are required during the course of the construction and erection of any residence may be placed on any of the Lots but must be removed on completion of construction.
- (j) Not use any second hand material in the construction or exterior finish of the house without the prior written consent of the Grantee.
- (k) Once construction of the house has been substantially completed, any caravan (including campervan) owned for recreational purposes may be kept on the property provided it is stored at the rear of the house behind the building line and concealed from view from the rest of the subdivision by a fence or enclosure of the quality required in terms of sub-clause (x) and shall not bring onto or allow to remain on the Lot or any internal road of the subdivision any caravan, trade vehicle or other equipment or materials or machinery that in the opinion of the Grantee detrimentally affects the amenities of the neighbourhood.

Occupation

- (l) Not permit the house on the Lot to be used as a residence until it has been substantially completed and all local authority completion certificates obtained but in any event all external works must be completed.

Completion of Works

- (m) Complete any building and paint and decorate the same within nine months of commencement of laying down the foundations for such building and prior to occupation of the residence to complete all exterior claddings to the buildings comprised in the residence and fully decorated, all ancillary work such as fencing and landscaping, lawns sown and not less than three shrubs of 1.2 metres high planted, clothesline and letterboxes installed, driveways or vehicle access in a permanent continuous surfacing of concrete, concrete block brick paving or sealing.

Signage

- (n) Not display more than one advertising sign on the Lot or on the road frontage of the Lot.

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Use

- (o) Not use the lot in any way (other than residential) which in the opinion of the Grantee (whose decision shall be final) would detrimentally affect the amenities of the neighbourhood.

Hedges and Trees

- (p) Not allow the road frontage of the Lot to become untidy.
- (q) Not:
- (aa) Plant pinus radiata or macrocarpa trees on the Lot.
- (bb) Permit trees to grown on the Lot of a height exceeding 8.5 metres above the highest point of the natural level of the respective Lot. However if such tree unreasonably obstructs the view of any other Lot within the subdivision then at the request of the affected neighbouring Lot to cause the tree to be trimmed to a height of five metres.
- (cc) Subject to sub-clause (x) grow a line hedge along any boundary of not more than 1.8 metres in height above the ground level or grow a line hedge of more than 0.5 metres in height within the building line road, right of way/access frontage area.

Subdivision

- (r) Not further subdivide the lot without the prior written consent of the Grantee.
- (s) Not build any multi flat complexes on the lot.

Section Maintenance

- (t) Pay the Grantee by automatic payment from the date of possession until commencement of construction of the residential dwelling (being a date accepted by the Grantee) the sum of \$20.00 per week (including GST) contribution for the mowing of the Grantor's section by servants, agents or contractors employed by the Grantee. This automatic payment will be set up at settlement and will continue until the plans are approved and building commenced.

Complaints

- (u) Not object to any construction, noise, dust or activity on the balance subdivision land.

Graffiti

- (v) Not allow to remain on any wall, fence, structure or building on the property any graffiti or similar disfiguring for more than five working days, from the date that such occurred or was brought to the notice of the purchaser.

Fencing

- (w) Not require any contribution from:
- * Arataki Mews Limited; nor
 - * the Hastings District Council;
- towards the cost of fencing any common boundary between the Lot and land owned by these parties.
- (x) Not erect any boundary fence of quality not less than that equal to a specimen type of fence 1-5 (inclusive) described in the Second Schedule to the Fencing Act 1978 provided that:
- (i) Any side boundary fence shall not be greater than 1.8 metres in height or within the 3 metre building line then .5 metres in height.

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(ii) Subject to (i) above no fence shall be erected within the 3 metre building line unless the fence is architecturally designed but in any event such fence shall not be greater in height than 1 metre and constructed of similar materials to that of the exterior cladding of the residence shown at the time the purchaser obtains the Grantee's plan acceptance in terms of sub-clause (a).

(iii) All fencing shall have a concrete footing on both sides of the fence that is within the ground and not above the existing natural ground level as defined by the as built contour data.

Animals

(y) Not keep any poultry or farm animals and not breed for commercial purposes any animals or birds on the lot.

Satellite Dish

(z) Shall not install a satellite dish on any side of the residence or building fronting a street.

Damages for Breach

(aa) Where the Grantee or the Grantor's agent or any other party to these covenants is required to expend money to make good any damage or loss caused by a breach of these covenants by the Grantor (or the guests, servants, employees, agents, invitees, tenants or licensee of the Grantor) the Grantee or its agent shall be entitled to recover the amounts they expended as a debt in any action in any Court of competent jurisdiction and such sum may include all costs howsoever incurred including the professional and legal costs calculated on a solicitor/client basis.

(bb) Should the Grantor be in breach of these covenants, they may be served written notice by the Grantor or any other party to these covenants requiring them to remedy the breach of the covenants with seven (7) days of receipt of the notice in writing and upon the expiry of seven (7) days a sum of \$1,000.00 per day (including GST) shall be payable by the Grantor until such time as the breach is remedied and the Grantee or other party serving the notice will in addition be entitled to recover all costs incurred including all professional and legal costs calculated on a solicitor/client basis and to exercise any other remedies available.

4. GENERAL COVENANTS**4.1 The Grantor shall:**

- (a) Be responsible for all costs of repairing any damage caused to the landscape, roading, kerbs or other parts of the subdivision arising from its use of the Lot directly or indirectly or by any visitor or invitee;
- (b) Install power and telephone connections from the point of supply by the Grantee to the development by way of underground cabling;
- (c) Ensure that all stormwater run off shall be properly channelled in compliance with local authority and engineering standards;
- (d) Subject to clause 3.2(t) maintain the Lot prior to building on it in a clean and tidy condition with grass mown and free of weeds.

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- (e) Ensure all driveways, paths or hardstand parking areas are constructed of dust free permanent materials and placed where shown in accordance with the Grantee's accepted plans. Any shared driveway not in permanent materials shall be landscaped and property maintained.

5. GENERAL

- 5.1 If any dispute arises between the parties of matters arising from this Instrument the matter shall be referred to mediation. Mediation may be initiated by either party writing to the other and identifying the dispute whereupon the parties will agree on a mediator. If they cannot agree upon a mediator they must ask the Arbitrators and Mediators Institute of New Zealand to appoint a mediator in accordance with the Mediation Protocol of the Institute;
- 5.2 Any dispute in respect of matters arising from this Instrument which is not resolved by mediation shall be referred to arbitration under the Arbitration Act 1996. The arbitration shall be by one arbitrator if the parties can agree upon one but failing agreement, an arbitrator shall be appointed by the President of the Arbitrators & Mediators Institute of New Zealand.

6. WAIVER OF CONDITIONS

- 6.1 Notwithstanding these covenants the Grantee shall be entitled to waive strict compliance with these covenants provided that the Grantee decides in its sole discretion that the proposed amendments are generally in accordance with the aims expressed in clause 2.3 and in accordance with the continued harmony of the property within the subdivision generally and for avoidance of doubt the decision as to this waiver by the Managing Director of Arataki Mews Limited shall be final and not subject to any review whatsoever.

To: The Land Registrar
WELLINGTON

Please note the covenants contained in this Memorandum of Instrument pursuant to Section 126A of the Property Law Act 1952.

.....
Solicitor for the Grantor and Grantee

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