

View Instrument Details



Instrument No 9226934.10
Status Registered
Date & Time Lodged 30 January 2013 15:13
Lodged By Martin, Gregory Eric
Instrument Type Easement Instrument



Affected Computer Registers	Land District
584956	Canterbury
584960	Canterbury
584961	Canterbury

Annexure Schedule: Contains 8 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

Signature

Signed by Gregory Eric Martin as Grantor Representative on 03/12/2012 09:06 AM

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 Gregory Eric Martin as Grantee Representative on 03/12/2012 09:06 AM

*** End of Report ***

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
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Grantor

MACKENZIE DISTRICT COUNCIL

Grantee

MACKENZIE DISTRICT COUNCIL

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 <i>profit(s) à prendre</i> 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 Covenant	n/a	584956	584960, 584961

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 1]~~

Annexure Schedule 1

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Insert instrument type

Land Covenant

*Continue in additional Annexure Schedule, if required***1. Land Covenants ("Covenants")**

- 1.1 The Grantor and the Grantee wish to protect the visual concept and the integrated appearance of the Lake Tekapo campground environs and ensure that an area of land is retained in Tekapo Township for the operation of a camp ground. To achieve this, the Grantor hereby Covenants with the Grantee as registered proprietor as set out below and hereby requests that such Covenants be noted against the titles having the benefit and those having the burden of these Covenants.
- 1.2 The Covenants set out in this Schedule shall run with certificate of title 584956 (the "**Camping Ground Land**") and shall be enforceable against the registered proprietors for the time being of the Camping Ground Land.
- 1.3 The covenants are enforceable only against the registered proprietor for time being of the relevant land and its successors in title, but without prejudice to any persons liability for breach of the covenants or any argument arising before that person ceased to be the registered proprietor of the land.

2. Interpretation

- 2.1 For the purposes of these Covenants:

"allow" includes do, facilitating, permitting and suffering;

"building" includes all structures and construction, including (but not limited to) dwelling houses, flats, units and garages;

"camp ground" means an area that is used predominantly for the purpose of camping in tents or staying in caravans, motor homes, dormitories, cabins, baches or cribs for the purposes of a holiday or accommodation which is other than long term or permanent;

"camp ground buildings" means all structures and construction commonly used for the purpose of operating a camp ground and includes (but is not limited to) communal cooking and cleaning facilities, communal ablution facilities, communal activities rooms, accommodation buildings for the purpose of providing overnight accommodation in dormitories, cabins or other types of accommodation;

"construct" and "construction" includes to install, erect, relocate, repair, renovate, replace or place on the land, lot or in any building and also includes allow to construct.

"Grantee" means Mackenzie District Council or its nominee;

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Continue in additional Annexure Schedule, if required

"land" and "lot" means any lot having the burden of these Covenants as described in Clause 1.2 above;

"subdivision" means the lots created by the deposit of plan DP 455053;

"working day" means any day on which registered banks are open for general business in Timaru other than a Saturday, Sunday or statutory holiday.

2.2 The following provisions shall apply in the construction and interpretation of this instrument (unless the context otherwise requires):

- (a) the headings are for convenience only and shall not affect the interpretation of this instrument;
- (b) words importing the singular number include the plural and vice-versa and the masculine gender includes the feminine and neuter genders and vice-versa.

3. **Approvals**

3.1 All approvals or consents required by these Covenants shall be in writing from Mackenzie District Council (or its appointed nominee) and shall be:

- (a) obtained by the Grantor prior to any work being carried out on the land; and
- (b) shall not be withheld on unreasonable grounds or given subject to unreasonable conditions.

3.2 When Mackenzie District Council exercises its discretion (as referred to in Clause 3.1 above), it may also take into account its own assessment of the effects on any land, building, the visual concept, or integrated appearance of any lot comprised within the land subject to the Land Covenants.

3.3 The Grantor acknowledges that Mackenzie District Council may at any time:

- (a) grant or decline such approval or consent (subject to clause 3.1);
- (b) grant approval or consent on such reasonable terms and conditions as Mackenzie District Council requires; or
- (c) grant a waiver of any of the Covenants.

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- 3.4 The address of Mackenzie District Council for approvals is as follows:
- Main Street, Fairlie
- Facsimile: (03)
- P.O. Box 52 Fairlie
- Attention: Chief Executive Officer
4. **Positive Covenants**
- 4.1 The Grantor shall ensure that the land shall be available to provide accommodation to the public at all times during the year except to the extent it is unreasonable or unsafe to provide accommodation.
- 4.2 The Grantor shall only charge such reasonable amounts as are generally and routinely charged by other camp grounds in New Zealand for providing accommodation and facilities of a like standard to that provided on the land and as may be approved from time to time by Mackenzie District Council.
- 4.3 The Grantor shall at all times maintain all camp ground buildings to a standard approved at all times by Mackenzie District Council acting reasonably.
- 4.4 The Grantor shall at all times keep all camp ground buildings reasonably clean and tidy and to the reasonable hygiene standards required by Mackenzie District Council.
- 4.5 The Grantor shall keep the camp ground land in one certificate of title and not allow a subdivision of land of the lot (within the meaning given to those words by the Resource Management Act 1991) provided this clause shall not prevent the Grantor from subdividing the land associated with the backpackers business into a separate certificate of title in accordance with a plan approved by the Grantee.
5. **Enforcement of Positive Covenants**
- 5.1 If there is any breach or non-observance of any of the foregoing covenants referred to in clause 4 (and without prejudice to any other liability which the Grantor may have to any other person having the benefit of these covenants) the Grantor in breach agrees to and shall at his/her/its cost (with respect to each individual breach):

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Land Covenant

Continue in additional Annexure Schedule, if required

- (a) upon written notice being given by Mackenzie District Council (or its agent or any other party having the benefit of these covenants) to the party in breach, pay to each such notice giver agreed liquidated damages in the sum of five hundred dollars per day plus GST for every day that such breach or non-observance continues after the date thirty days after the date upon which each written notice has been given;
- (b) forthwith upon receipt of such notice allow the land to be used only as a camp ground which shall be available for use by the public on a day to day basis except to the extent it is unreasonable or unsafe to provide such service;
- (c) forthwith upon receipt of such notice ensure that all camp ground buildings which may reasonably be required for the operation of a camp ground are open and made available for use by the public except to the extent it is unreasonable or unsafe to provide such use by the public;
- (d) do all such things as may be reasonably required to ensure that the land shall remain open as a camp ground for day to day use by the public except to the extent it is unreasonable or unsafe to remain open;

provided that no enforcement action may be taken against the Grantor in respect of any act or omission which has been approved by the Grantee.

6 Dispute Resolution

- 6.1 If any dispute arises between or among the parties concerning the covenants including the giving of any approval, the parties shall enter into negotiations in good faith to resolve the dispute.
- 6.2 If the dispute is not resolved within twenty (20) working days from the date on which the parties begin their negotiations, then any party to the dispute may refer the matter in dispute to an umpire.
- 6.3 The term "the umpire" in this covenants schedule means a suitably qualified person to be agreed between the parties or such other person as may be appointed under clause 6.8.
- 6.4 The umpire, within a period of twenty (20) Working Days after being requested by either party to do so, will give written notice of his decision to the parties.
- 6.5 Without limiting the generality of his powers, the umpire will:

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- (a) have power to request either party to provide him with such oral or written statements, documents or information as the umpire may determine but not so as to delay the giving of written notice of his decision;
- (b) have power to consult with persons who, in his opinion, are expert in the matter in dispute;
- (c) be entitled to rely in good faith upon the opinions of any persons or experts so consulted.
- 6.6 In giving a decision under clause 6.4, the umpire will be deemed to be acting as an expert and not as an arbitrator and, the decision of the umpire will be final and binding upon the parties and will be given immediate effect by the parties.
- 6.7 If the umpire fails to give a decision in accordance with provisions of clause 6.4 either party may require appointment of a further umpire. The provisions of this clause will apply in respect of the appointment and procedures of that further umpire.
- 6.8 Failing agreement to the appointment of an umpire within seven (7) working days after either party has given to the other a written request to concur in the appointment of an umpire, a person will be appointed upon the application of either party by the President for the time being of the New Zealand Law Society or his nominee to act as umpire for the purpose of resolving the particular dispute.
- 6.9 The costs of the umpire will be borne equally by the Grantor and the Grantee or in such manner as the umpire shall otherwise determine as part of his decision.
- 7 Force Majeure**
- 7.1 In the event of a major natural disaster, war, terrorist act, embargo, strike, lockout, accident, fire, flood, governmental seizure, control, rationing, change in legislation or any other like incident which is beyond the reasonable control of either party ("force majeure event") which shall make it unreasonable or uneconomic to comply with the terms of the covenants contained in this Covenants Schedule the Grantor shall within five (5) working days of commencement of the force majeure event give notice to the Grantee of such force majeure event and, (subject to clause 7.2) from the date on which the force majeure event takes affect the Grantor shall not be liable for breach of such of the terms of these covenants as are affected by the force majeure event until such time as it shall become reasonable for the Grantor to comply with such covenants.

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7.2 If within 20 working days following the giving of notice by the Grantor pursuant to clause 7.1 the Grantor and the Grantee are unable to resolve their differences as to the existence or effect of a force majeure event either the Grantor or the Grantee may refer the matter in dispute for resolution by an umpire in accordance with clause 6 of this Covenants Schedule.