



View Instrument Details

Instrument No. 9486490.5
 Status Registered
 Date & Time Lodged 28 Aug 2013 12:54
 Lodged By O'Donnell, Kerry Amanda
 Instrument Type Easement Instrument

**Affected Computer Registers Land District**

602575	Otago
602576	Otago
602577	Otago
602578	Otago

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

I certify that the Mortgagee under Mortgage 5529407.1 has consented to this transaction and I hold that consent

I certify that the Mortgagee under Mortgage 6367782.1 has consented to this transaction and I hold that consent

Signature

Signed by Kerry Amanda O'Donnell as Grantor Representative on 28/08/2013 12:37 PM

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 Kerry Amanda O'Donnell as Grantee Representative on 28/08/2013 12:37 PM

*** End of Report ***

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

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

Grantor

Glendhu Holdings Limited

Grantee

Glendhu Holdings 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
*required**Continue in additional Annexure Schedule, if*

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	Lots 1, 3, 4, 5, 6, 7, 8 DP 457489 and Sections 1, 2, 18, 19, 22 & 23 SO 347712 (CFRs 602576, 602577 & 602578)	Lots 1, 3, 4, 5, 6, 7, 8 DP 457489 and Sections 1, 2, 18, 19, 22 & 23 SO 347712 (CFRs 602576, 602577 & 602578)	Lots 2, 9, 10 and 11 DP 457489 (CFR 602575)

Form B**Easement instrument to grant easement or *profit à prendre*, or create land covenant****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] [negatived] [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 2]~~

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ANNEXURE SCHEDULE 2

CONTINUATION OF COVENANT PROVISIONS

1. Interpretation

1.1 In this Annexure Schedule 2, unless the context otherwise requires:

"**Council**" means Queenstown Lakes District Council.

"**Covenants**" means the covenants set out in this Annexure Schedule 2.

"**Dominant Tenement**" means the land described in Schedule A as the dominant tenement.

"**Grantee**" means the registered proprietors of the Dominant Tenement from time to time.

"**Grantor**" means the registered proprietors of the Servient Tenement from time to time.

"**Land Use Consent**" means the land use consent granted by the Environment Court decision [2012] NZEnv 79 and any variation thereof.

"**Sale and Purchase Agreement**" means the agreement for sale and purchase between Glendhu Holdings Limited, Parkins Bay Preserve Limited, the Bob McRae Family Trust and the Pam McRae Family Trust, dated 7 June 2013.

"**Servient Tenement**" means the land described in Annexure Schedule A as the servient tenement.

"**Stage 3**" has the meaning given to it in the Land Use Consent including any variation.

1.2 For the avoidance of doubt:

a. Words importing the singular number include the plural and vice versa.

b. A covenant to do something is also a covenant to permit or cause that thing to be done and a covenant not to do something is also a covenant not to permit or cause that thing to be done.

c. This Instrument binds and benefits the parties and their heirs, executors, successors and assigns in perpetuity and also any lessee or occupier of the Servient Tenement and the Dominant Tenement.

2. Land Use Consent Requirements

2.1 The Grantor covenants in favour of the Grantee that the following restrictions shall apply to those parts of the Servient Tenement as set out below:

a. With respect to Lot 1 DP 457489:

i. For a period that commences on the date of the grant of the Land Use Consent until the date that is ten years from the implementation of Stage 3 there shall be no further development except that this restriction does not prohibit subdivision and the development of the clubhouse with restaurant and café, twelve visitor accommodation units spread over three buildings,

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any part of the jetty, part of the golf course and associated landscaping, earthworks, vehicle access and associated activities.

- ii. Regardless of titling structure and/or ownership, the clubhouse shall at all times be available to cater to, and for use by, users of the golf course as a place for rest, shelter, refreshment and possibly entertainment. If at any time in the future the land containing the proposed or existing clubhouse is subdivided from the land containing the proposed or existing golf course, a consent notice shall be registered against both resulting titles recording this ongoing consent obligation.
 - iii. All activities which are carried out within, and any future allotments which are created from, Lot 1 DP 457489 shall share one access off Mt Aspiring Road.
- b. With respect to Lot 8 DP 457489 and Sections 1 and 2 SO 347712: For a period that commences on the date of the grant of the Land Use Consent until the date that is ten years from the implementation of Stage 3, there shall be no further development which is not associated with usual farming activities.
- c. With respect to Lots 4 and 5 DP 457489: For a period that commences on the date of the grant of the Land Use Consent until the date that is 20 years from the implementation of Stage 3, there shall be no further development which is not associated with usual farming activities, but not prohibiting:
- i. activities for camping purposes;
 - ii. a subdivision which will create a separate certificate of title for an area surrounding the homestead within Lot 4 DP 457489; and
 - iii. any boundary adjustment which does not create additional titles.
- d. With respect to Lot 3 DP 457489: In perpetuity from the date of the grant of the Land Use Consent there shall be no further development, but not prohibiting:
- i. subdivision to separate Lot 3 DP 457489 from the rest of the land currently contained in Certificate of Title 602576 and any boundary adjustment which does not create additional titles;
 - ii. any alterations, repairs or extensions to the existing dwelling located on the Lot 3 DP 457489;
 - iii. the construction of a shed for the purpose of storing farming and landscaping equipment;
 - iv. the erection of any temporary buildings such as marquees and other shelters used for the purpose of conducting weddings and reception functions, for not more than 12 calendar days per year, and a maximum of 6 occasions;
 - v. the construction of a chapel.

The restriction in clause d.iv above relating to the number of calendar days and occasions for the use of temporary buildings for weddings and reception functions shall take effect on and from the date the clubhouse on Lot 1 DP457489 is constructed and operational.

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- e. With respect to areas CH and CI on (respectively) Lots 6 and 7 DP 457489: For a period that commences on the date of the grant of the Land Use Consent until the date that is 35 years from the implementation of Stage 3, there shall be no any further development, but not prohibiting:
 - i. subdivision to separate Areas CH and CI shown on DP 457489 from the rest of the land currently contained in Certificate of Title 602578;
 - ii. subdivision for farming purposes;
 - iii. any boundary adjustment which does not create additional titles;
 - iv. the relocation, repair and replacement of the existing homestead and ancillary buildings;
 - v. the construction, repair and relocation of any improvements or buildings which relate to the farming activities carried out on Lots 6 and 7 DP 457489;
 - vi. the construction of two further residential dwellings on Lots 6 and 7 DP 457489 and any subsequent repairs and alterations to those residential dwellings.
 - f. With respect to area CJ on Lot 7 DP 457489: In perpetuity from the date of the grant of the Land Use Consent there shall be no development not associated with farming activities or regeneration of native forest or other vegetation, but not prohibiting any boundary adjustment which does not create additional titles.
- 2.2 The Grantor grants access to the Grantee from time to time and at any time, to any part of the Servient Tenement for the purposes of:
- a. Designing, preparation, implementation and on-going maintenance of a revegetation strategy ("**Revegetation Strategy**") required or anticipated by the conditions of the Land Use Consent;
 - b. Ongoing management of wilding plants and animal pests in accordance with the Revegetation Strategy;
 - c. Designing, implementation and maintenance of the communal water supply required or anticipated by the conditions of the Land Use Consent;
 - d. Removal of all conifers (including any conifers or firs with wilding potential) as required by Condition 41.r of the Land Use Consent;
 - e. Monitoring of the conditions of the Land Use Consent;
 - f. Fencing required by the Land Use Consent;
 - g. Design, survey and formation of the public access easements for cycle/walking trails required or anticipated by the Land Use Consent;
 - h. Any other purpose connected with, or reasonably necessary to, the Grantee exercising and meeting its obligations under the Land Use Consent.

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For the avoidance of doubt the costs of undertaking the works set out in clause 2.2 shall be for the account of the Grantee that undertakes those works.

- 2.3 In exercising its rights under clause 2.2 the Grantee will:
- a. Exercise reasonable care and to the extent possible cause a minimum amount of damage (which is reasonable in the circumstances). The Grantee will restore the Servient Tenement as near as reasonably possible to its previous condition (but taking into account the nature of the works that has been undertaken) and will make good at the Grantee's expense any damage done by the actions of the Grantee to the buildings and other improvements (including fences) of the Grantor;
 - b. Not, except while work is being carried out upon the Servient Tenement, leave on the Servient Tenement any rubbish, debris or obstruction;
 - c. Give notice (where reasonable) to the affected Grantor detailing when and where it intends to exercise its rights on the Servient Tenement;
 - d. Indemnify the affected Grantor against any liability incurred by that Grantor directly as a result of any works undertaken by the Grantee on the Servient Tenement.
- 2.4 The Grantor has granted various cycle and pedestrian right of way easements ("**Easements**") over the Servient Tenement as shown on DP 457489 and as required by the Land Use Consent.
- 2.5 The Grantor, shall when called upon to do so by the Grantee, from time to time, grant such additional easements ("**Additional Easements**") over the Servient Tenement and/or variations of the Easements and/or any existing easements ("**Variations**") registered over the Servient Tenement where:
- a.
 - i. The Additional Easements or Variations are connected with, or reasonably necessary to, the Grantee exercising and meeting its obligations under the Land Use Consent; and/or
 - ii. The Grantee reasonably considers the Additional Easements and/or the Variations necessary for the implementation and/or operation of the golf course development to be created on the Dominant Tenement as agreed in the Sale and Purchase Agreement.
 - b. (Where applicable) the grantee of any easements to be varied has agreed to the Variations; and
 - c. The Additional Easements and/or Variations do not in the Grantor's reasonable opinion negatively affect good farming practices on the Servient Tenement
- 2.6 In the event that clause 2.5 applies the Grantor will:
- a. Promptly sign all easement instruments and/or easement variation instruments and other documents reasonably required by the Grantee to procure registration of the Additional Easements and Variations;
 - b. Promptly procure any and all mortgagee's, encumbrancee's or other parties' consent where necessary, to effect registration of the Additional Easements and Variations; and

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- c. Do all other things reasonable necessary to assist the Grantee to procure registration of the Additional Easements and Variations.

The terms of the Additional Easements and Variations shall be as determined by the Grantee's and the Grantor's solicitors (acting reasonably).

- 2.7 The Grantee shall meet all costs associated with the preparation, execution and registration of the Additional Easements and Variations including the Grantor's reasonable legal costs.
- 2.8 The Grantor and the Grantee covenant that they will not vary or surrender the terms of these Covenants without the written consent of Council (such consent shall not be unreasonably withheld by Council where the proposed variation or surrender does not affect the owner of the Dominant Tenement's ability to exercise its rights under the Land Use Consent). The parties further agree that this clause 2.8 is inserted for the benefit of the Council in terms of Section 4 of the Contract (Privity) Act 1982, and as such may be enforced by Council.

3. General Covenants

- 3.1 The Grantor covenants and agrees:
- a. To observe and perform the Covenants at all times; and
- b. That the Covenants shall run with and bind the Servient Tenement for the benefit of the Dominant Tenement.

4. Notice

- 4.1 Any notice required to be served on any party shall be in writing and in accordance with the Property Law Act 2007.

5. Liability

- 5.1 Without prejudice to the Grantee's other rights, this Instrument binds the Grantor's successors in title so that contemporaneously with the acquisition of any interest in the Servient Tenement all such successors in title become bound to comply with this Instrument.

6. Arbitration

- 6.1 If a party has any dispute with any other party in connection with this Instrument:
- a. That party will promptly give full written particulars of the dispute to the other.
- b. The parties will promptly meet together and in good faith try and resolve the dispute.
- 6.2 If the dispute is not resolved within 14 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to arbitration.
- 6.3 The arbitration will be conducted by one arbitrator appointed by the parties involved.
- 6.4 If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the President of the New Zealand Law Society or the President's nominee.
- 6.5 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.

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- 6.6 No party will unreasonably delay the dispute resolution procedures in this clause.
- 6.7 This clause does not apply to an application by any party for urgent interlocutory relief.