

Schedule 2

Restrictive Covenants affecting all lots
Clause 28

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

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

Grantor

SPINNAKER BAY LIMITED

Grantee

SPINNAKER BAY 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 Covenant | - | Lots 1 – 31 (inclusive) & Lots 33 & 34 | Lots 1 – 31 (inclusive) & Lots 33 & 34 |

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

ANNEXURE SCHEDULE 2

BACKGROUND

- A. The Grantor is registered as proprietor of the estate described in the First Schedule ("Servient Land").
- B. The Grantee is registered as proprietor of the estates described in the Second Schedule ("Dominant Land").
- C. The Grantor has agreed with the Grantee to accept restrictions upon the Servient Land for the benefit of the Dominant Land.

COVENANTS

- 1. The Grantor for itself and its successors in title to the Servient Land hereby covenants and agrees with the Grantee and its successors in title to the Dominant Land, that the Grantor will henceforth and at all times hereafter observe and perform the stipulations and restrictions contained in the Third Schedule to the end and intent that each of the stipulations and restrictions shall, in the manner and to the extent prescribed, enure for the benefit of, and be appurtenant to, the whole of the Dominant Land and every part thereof until 31 December 2165.
- 2. This Instrument shall be registered against the estate described in the First Schedule by the Grantor forthwith following execution, and the provisions of this Instrument shall run forever in favour of the registered proprietor of the Dominant Land or any part thereof from time to time.

DEFINITION AND INTERPRETATION

- "Lots" means each of the Lots contained within each of the Certificates of Title referred to in the First Schedule.
- "Relevant Authority" means any Government, local, statutory or non-statutory authority or body having jurisdiction over the subdivision.
- "SBL" means Spinnaker Bay Limited as developer of the Subdivision.
- "Subdivision" means the development of the Lots.

FIRST SCHEDULE (Servient Land)

| Certificate of Title | Lot and Deposited Plan Number |
|----------------------|-------------------------------|
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**SECOND SCHEDULE
(Dominant Land)**

| Certificate of Title | Lot and Deposited Plan Number |
|----------------------|-------------------------------|
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THIRD SCHEDULE

The Grantor shall:

1. Not use the Lot or permit the same to be used other than for residential purposes and shall not use the Lot or permit the same to be used for any trading, industrial or commercial purposes provided however it is acknowledged that use of any dwelling constructed on the Lot for a home enterprise use as is permitted by the district plan of the Relevant Authority will not be a breach of this covenant.
2. Not erect on the Lot any building other than a new private dwelling house together with a garage and/or other domestic outbuildings customarily associated with a private dwelling house ("Dwelling House").
3. Not erect any Dwelling House or make any alteration or addition thereto **without SBL having first approved in writing the plans** (including site plans) and specifications for the same which approval shall not be withheld in the case of plans and specifications which provide for one Dwelling House which:
 - (a) is to be reasonably sited having regard to the neighbouring residences; and
 - (b) is of a high standard and will not detract from the standard of surrounding housing development in the Subdivision.
4. Ensure that the Dwelling House comprises all exterior sheathing and finishing including exterior painting before it is occupied as a residence.
5. Ensure that the erection of the Dwelling House is completed within 12 months of commencement of site preparation for such building.
6. Prevent the growth on the Lot of weeds and plants defined as noxious plants under the Noxious Plants Act 1978 or any legislation passed in substitution for that Act.
7. Not erect or place or permit to be erected or placed upon the Lot any temporary structure, caravan, vehicle, tent, hut or shed to be used for human habitation whether temporarily or otherwise except that which may be used in conjunction with the construction of the Dwelling House and which will be removed from the Lot upon completion of the Dwelling House provided however that once the Dwelling House on the Lot has been completed, caravans and tents may be used for temporary holiday accommodation.
8. Not to permit the parking of trucks or any large commercial vehicles on or adjoining the Lot other than for delivery purposes.
9. Ensure that any power and telephone reticulation is located underground.

10. Not erect any advertising sign or hoarding of a commercial nature provided that for so long as SBL retains an interest in any Lot SBL may erect and maintain within the Subdivision signage and other forms of display including a show home and/or sales office for the purposes of promoting the Subdivision provided that SBL does not cause unreasonable interference to the use and enjoyment of any other Lot by the registered proprietor of that Lot.
11. Not amalgamate a Lot with any other Lot where such amalgamation will result in:
 - (a) a fewer number of allotments being created than the number of allotments comprised in the Subdivision as at the date of this Instrument; and
 - (b) a greater number of dwelling houses being able to be erected on the Lots that have been amalgamated than permitted in terms of clause 2 of this Instrument for those Lots prior to amalgamation.

For the purposes of this clause the term "allotment" shall have the meaning defined in the Resource Management Act 1991.

12. Not cut up or subdivide the Lot in accordance with the Resource Management Act 1991 or the Unit Titles Act 1972 or otherwise howsoever.
13. Not do any act or thing which is a breach of any other stipulation restriction or covenant that the Grantee or SBL may require or impose in respect of the Subdivision or any Lot for the purposes of the covenants contained in this Instrument provided that such other stipulation restriction or covenant shall not prejudice any prior approval already granted by the Grantee or SBL.
14. Not call upon the Grantee to pay for or contribute towards the cost or erection or maintenance of any boundary fence between the Lot and any adjoining land owned by the Grantee but this covenant shall not enure for the benefit of any subsequent registered proprietor of such adjoining land.

REMEDY ON BREACH

15. If there should be any breach of any of the covenants contained in this Instrument and without prejudice to any other liability which the Grantor may have to the Grantee and any person or persons having the benefit of such covenants the Grantor will upon written demand being made by SBL or the Grantee or any registered proprietor(s) of any other Lot:
 - (a) pay to the person making such demand as liquidated damages the sum of \$100 (One Hundred Dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made; and
 - (b) do or cause to be done anything necessary to remedy any such breach.

In the event that the Grantor does not comply with paragraph (b) of this clause within a reasonable period of time after demand has been made then the Grantor hereby irrevocably authorises SBL or the Grantee or the registered proprietor making demand together with their employees and agents to enter and remain upon the Lot to do anything necessary to remedy any breach at the Grantor's cost and without being liable for any damage or deterioration occasioned to the Lot in exercising these powers.

PROVIDED HOWEVER that the Grantee shall not be required to or be obliged to enforce all or any of the covenants stipulations and restrictions contained in this Instrument nor be liable to the Grantor for any breach thereof by any registered proprietor of any other Lot.

Schedule 3

Further Restrictive Covenants affecting all lots
Clause 25.5

COVENANT RESTRICTING RIGHTS AND COMPLAINTS

Recitals

- A [], (*the Grantor*), of [] is registered as proprietor of an estate in fee simple in all that parcel of land described in the Certificate of Title [] (*the Servient Land*).
- B [] Council, (*the Grantee*) is registered as the proprietor of an estate in fee simple in all those parcels of land described in the following Certificates of Title:
- Part Allotment 37, Parish of Maraetai (area 83.6814 ha) as shown on CT NA17D/276 and any contiguous areas of Waikopua Road;
 - Part Allotment 37, Parish of Maraetai (area 2.0234 ha) as shown on CT NA872/5;
 - Part Allotment 37, Parish of Maraetai (area 0.0860 ha) as shown on CT NA932/255;
 - Lot 1 DP 41567 (area 1012m²) as shown on CT NA1366/97;
 - Lot 1 DP 212075 (area 0.4047 ha) as shown on CT NA137D/340;
 - Part Allotment 35, Parish of Maraetai (area 2.5748 ha SO 9373;
 - Part Allotment 35, Parish of Maraetai (area 1305m²) as shown on CT 211072;
 - Part Allotment 35, DP15031 (area 31.8829 ha) as shown on CT NA778/186;
 - Sections 1, 2, 3 and 4 SO 339588 (formerly Waikopua Rd — now stopped);
 - Part Allotment 37, Parish of Maraetai (area 16.2466 ha) as shown on CT 778/22;
 - Lot 2 DP60323 (area 23.755 ha) as shown on CT 15C/84;
 - Lot 1 DP 64164 (area 4047m²)
- (*the Dominant Land*).

Covenant

- 1 The Grantor for itself and its successors in title so as to bind the Servient Land hereby agrees and covenants with the Grantee and its successors in title to the Dominant Land for the benefit of the Dominant Land with the intent that the Grantor, its successors in title and any person deriving title from them, shall at all times whilst they have an interest in the Servient Land be bound by this covenant as follows:
- (a) This covenant applies to any *application* for resource consent made by any person to the relevant consent authority under the Resource Management Act 1991 (*RMA*) (including any subsequent legislation in whole or in part) after the date hereof relating to the continued development, operation, and post-closure aftercare of a Landfill and/or a Quarry on the Dominant Land. For the avoidance of doubt, this covenant shall also apply to:

- (i) any *application* for change or cancellation of consent conditions under the RMA, or any *review* of consent conditions by the consent authorities under the RMA;
- (ii) any *requirement* for a designation, any *outline* plan submitted, any requirement to *alter* a designation, and any *notice* requiring a designation to be included in a proposed plan under the RMA; and
- (iii) any request for a change to the relevant district plan or regional plan, any variation to the relevant district plan or regional plan, or any review of the relevant district plan or regional plan in respect of provisions contained within such plan change, variation or review relating to, connected with or bearing upon the continued development, operation and post-closure aftercare of a Landfill and/or Quarry on the Dominant Land

or any similar or related application process under the RMA or any subsequent legislation, (hereinafter referred to together as an "*application*").

- (b) The Grantor shall and does hereby surrender with immediate effect the right as a person who may be directly affected by an *application* to receive notice of the application (whether by way of full or limited notification), and shall not request that the relevant consent authority serve on it notice of an *application*, under the RMA. The Grantor shall for the avoidance of doubt, be deemed to have granted written approval to the application, and shall, if requested by any person, execute such documentation as may be required to evidence its written approval.
- (c) The Grantor shall and does hereby surrender with immediate effect the right to make submissions about an application under the RMA, and shall not make a submission about an application.
- (d) The Grantor shall and does hereby surrender with immediate effect the right to appeal to the Environment Court against the whole or any part of a decision by the relevant consent authority or local authority or requiring authority (as the case may be) on an *application* under the RMA (including any rights of further appeal on a question of law, additional appeals on points of law, or to the Court of Appeal, and shall not exercise any right of appeal against the decision of the relevant authority on an *application*).
- (e) The Grantor shall and does hereby surrender with immediate effect the right to become a party to proceedings under the RMA, and the right to appear and be heard on appeal, and shall not exercise any such rights in relation to an appeal against the decision of the relevant consent authority or local authority or requiring authority (as the case may be) on an *application*.

In addition,

- (f) This covenant shall also apply to any right of *complaint* or *application* under sections 17, 35, 311, 316, 322, 326, 338, 343A of the RMA (or any subsequent legislation) relating to the continued development, operation, and post-closure aftercare of the Dominant Land for the purposes of a Landfill and/or a Quarry.

- (g) In particular (but without limitation), the Grantor shall and does hereby surrender with immediate effect the right to make a complaint to the relevant local authority or the Environment Court:
- (i) About any emission of noise or emission or discharge of contaminants from the Dominant Land (including odour and dust) into air (the emission or discharge of which is provided for by an Easement created at or about the date of this Covenant) which is expressly allowed by a rule in a regional or district plan, a resource consent, a designation, or regulations made under the RMA, and seeking that a declaration or enforcement order be made by the Environment Court, an abatement or infringement notice be served by a duly authorised enforcement officer, or that criminal proceedings be commenced in the District Court by the relevant consent authority under the RMA.
 - (ii) Alleging that any emission of noise or emission or discharge of contaminants from the Dominant Land (including odour and dust) into air (the emission or discharge of which is provided for by an Easement created at or about the date of this Covenant) is not expressly allowed by a rule in a regional or district plan, a resource consent, a designation, or regulations made under the RMA, and seeking that a declaration or enforcement order be made by the Environment Court, an abatement or infringement notice be served by a duly authorised enforcement officer, or that criminal proceedings be commenced in the District Court by the relevant consent authority under the RMA, in circumstances where (pending final determination of an *application*) an *application* has been made which would following the grant of consent, confirmation of a designation (or alteration of designation), or change, variation or review of the relevant district plan or regional plan expressly allow the activity which forms the subject matter of the complaint to be carried on by the Grantee and/or its agents, managers, employees, licensees, and invitees.
- (h) For the avoidance of doubt, the Grantor also covenants and agrees that it shall:
- (i) not at any time after the date hereof encourage, aid, abet, counsel, or procure any other person to exercise any of the rights under the RMA referred to in this Deed of Covenant (either on behalf of the Grantors or otherwise) in relation to the continued development, operation and post-closure aftercare of the Dominant Land as a Landfill and/or a Quarry and any actual or potential adverse environmental effects such activities may have on the environment including on the Grantor (and any person deriving title from them), and the Servient Land; and
 - (ii) hereby surrender with immediate effect any right of action the Grantor may have independent of the provisions of the RMA under any other Act, regulation, bylaw, or rule of law (including without limitation any right of action in trespass or *nuisance*) applicable to the continued development, operation, and post-closure aftercare of a Landfill and/or a Quarry on the Dominant Land and any actual or potential adverse effects such activities may have on the environment including on the Grantor (and any person deriving title from them), and the Servient Land.

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GRANT OF RIGHT TO EMIT NOISE AND EMIT OR DISCHARGE CONTAMINANTS FROM THE LANDFILL AND/OR QUARRY INTO AIR (INCLUDING ODOUR AND DUST)

Recitals

- A [] (the Grantor) of [] Is registered as proprietor of an estate in fee simple in all that parcel of land described in Certificate of Title [] (*the Servient Land*).
- B [] Council, (*the Grantee*) is registered as the proprietor of an estate in fee simple in all those parcels of land described in the following Certificates of Title:
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 - Sections 1, 2, 3 and 4 SO339588 (formerly Waikopua Rd — now stopped);
 - Part Allotment 37, Parish of Maraetai (area 16.2466 ha) as shown on CT 778/22;
 - Lot 2 DP60323 (area 23.755ha) as shown on CT 15C/84;
 - Lot 1 DP64164 (area 4047m²)

(the Dominant Land).

Grant Of Easement

- 1 The Grantor transfers and grants to the Grantee to be appurtenant to the Dominant Land until such time as the operational life and post-closure aftercare periods in relation to the Landfill and/or a Quarry operated on any part or parts of the Dominant Land have expired, an Easement for the right to emit noise and emit or discharge contaminants into air (including odour and dust) from the Dominant Land at all times, where those emissions or discharges arise from the use of the Dominant Land for the purposes of the development, operation, and post-closure aftercare of the Landfill and/or Quarry operated thereon (notwithstanding the fact that such emission or discharge may not (absent this Easement) be expressly allowed by law), on to, or over, the Servient Land.

Dated the _____ day of _____ 2007

Signed by the parties:
Correct for the purposes of the Land Transfer Act 1952

Solicitor for the Grantee

Dated the day of 2007

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