

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

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

Grantor

Jessie Trust

Grantee

Jessie Trust

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	-	See Annexure	See Annexure

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 other than clauses A6 and A8 of the Third Schedule shall, in the manner and to the extent prescribed, ensure for the benefit of, and be appurtenant to, the whole of the Dominant Land and every part thereof until 31 December 2035.
- 2. The provisions of clauses A6 and A8 of the Third Schedule shall expire at the end of the time periods set out therein.
- 3. 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 in favour of the registered proprietor of the Dominant Land or any part thereof from time to time until 31 December 2035 or as otherwise set out in the Third Schedule.

DEFINITION AND INTERPRETATION

- "Approver" **Jessie Trust** as developer of the Subdivision and includes any party appointed by the Approver by deed or otherwise to carry out any approval process as required by the provisions of the Third Schedule of this Instrument.
- "Brothel" Brothel, Business of Prostitution, Commercial Sexual Services, Prostitution, and Small Owner Operated Brothel all have the meanings as ascribed in the Prostitution Reform Act;
- "Covenants" the terms conditions and covenants set out in Parts A and B of the Third Schedule of this Instrument.
- "Dwelling House" a new single private dwelling house and for the avoidance of doubt:
 - (a) a Dwelling House may include a minor residential unit as that term is defined by the District Plan of the Relevant Authority; and
 - (b) a Dwelling House may include an area for home occupation as that term is defined by the District Plan of the Relevant Authority.
- "Front Yard" that part of the Lot which is in front of the Dwelling House and;

- (a) in the case of a Lot with frontage to a road, between the front of the Dwelling House and the front boundary of the Lot with the road; and
- (b) in the case of a Lot with frontage to a common owned access way, between the front of the Dwelling House and the front boundary of the Lot with the common owned access way.

"Lots" each of the Lots contained within each of the unique identifiers referred to in the First Schedule.

;

"Minimum Size" for all Lots a Dwelling House of not less than 100m² in gross floor area but excluding any internal garage, minor residential unit, decks, verandas, patios, pergolas or other freestanding structures.

"Prohibited Building Materials" any:
 (a) second hand or recycled building materials without prior consent from Approver;
 (b) corrugated iron roofing;
 (c) unfinished or flat fibrolite or other similar cladding materials; and
 (d) zincalume or other corrugated iron or similar metal materials as part of the exterior walls of the Dwelling House however, for the avoidance of doubt pre factory coated long run roofing materials such as, but by way of example only, colour-steel, are not Prohibited Building Materials when used as roofing.

"Prohibited Animals" :
 (a) roosters;

"Prostitution Reform Act" the Prostitution Reform Act 2003 including any statutory modification or re-enactment of it.

"Relevant Authority" Whangarei Council and any government, local, statutory or non-statutory authority or body having jurisdiction over the Subdivision.

"Retaining Wall" any retaining wall constructed and installed that is situated between Lots, or between a Lot and a common owned access way, or between a Lot and a road.

"Subdivision" the development of the Lots

**FIRST SCHEDULE
(Servient Land)**

Certificate of Title/CFR	Lot and Deposited Plan Number
	Lot 1 Deposited Plan []
	Lot 2 Deposited Plan []
	Lot 3 Deposited Plan []
	Lot 4 Deposited Plan []
	Lot 5 Deposited Plan []
	Lot 6 Deposited Plan []
	Lot 7 Deposited Plan []
	Lot 8 Deposited Plan []

**SECOND SCHEDULE
(Dominant Land)**

Certificate of Title/CFR	Lot and Deposited Plan Number
	Lot 1 Deposited Plan []
	Lot 2 Deposited Plan []
	Lot 3 Deposited Plan []
	Lot 4 Deposited Plan []
	Lot 5 Deposited Plan []
	Lot 6 Deposited Plan []
	Lot 7 Deposited Plan []
	Lot 8 Deposited Plan []

THIRD SCHEDULE

Part A

The Grantor shall not:

1. 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:
 - (a) the use of any Dwelling House constructed on the Lot for a home occupation as is permitted by the District Plan of the Relevant Authority (excluding a Small Owner-Operated Brothel which is prohibited by these Covenants); and
 - (b) the use of any Dwelling House constructed on the Lot by a building company as a display or show home in accordance with the terms of Part B of these Covenants,will not be a breach of this Covenant.
2. Erect on the Lot any building other than a Dwelling House that complies with the provisions of these Covenants without prior consent of the Approver.
3. Erect a Dwelling House on the Lot that is smaller than the Minimum Size.
5. Use any Prohibited Materials in the construction of a Dwelling House on the Lot or incorporate any Prohibited Materials in any structure erected on or incorporated in or on the Lot.
6. Erect any Dwelling House and undertake any landscaping (including fencing), or make any alteration or addition to the Dwelling House or landscaping (including fencing and Retaining Walls) without first having obtained the approval in writing of the Approver of the plans (including site, fencing and landscaping plans) and specifications for the same which approval shall not be withheld in the case of plans and specifications which provide for a Dwelling House which:

- (a) is to be reasonably sited; and
- (b) does not include any Prohibited Building Materials; and
- (c) is equal to or greater than the Minimum Size; and
- (d) complies with and conforms to the Relevant Authority's land use consent, as the same may be amended or varied for the development of the Lot.

The provisions of this clause A 6 shall cease to have effect after the expiration of five years after the date of the deposit of the land transfer plan of subdivision for the stage in the Subdivision of which the Lot forms part.

- 7. Erect or place on the Lot any second hand home or transportable of any type or description whatsoever without prior consent from Approver such consent may be given or withheld at the Approver's sole discretion.
- 8. Carry out (or permit to be carried out) any earthworks (either cutting or filling) or the construction of any Retaining Wall in respect of the same on a Lot in excess of 1 metre in height or depth within 0.5 metre of any:

- (a) adjoining Lot boundary;
- (b) boundary between the Lot and a road; or
- (c) boundary between the Lot and any adjoining common owned access lot

unless it first obtains consent for such earthworks and Retaining Wall from the Approver, which consent may be given or withheld at the Approver's sole discretion.

The provisions of this clause A 8 shall cease to have effect after the expiration of five years after the date of the deposit of the land transfer plan of subdivision for the stage in the Subdivision of which the Lot forms part.

- 9. Erect or place (or permit to be erected or placed) on or in the Front Yard of any Lot any:

- (a) clothesline;
- (b) building or other structure; or

provided however nothing in this clause shall prevent:

- (c) either the construction of a transformer or substation ("utility structure") for any utility supply organisation where such utility structure is required for the purposes of the Subdivision and is subject to an easement or other interest.

- 10. Bring on to the Lot or keep or retain on the Lot any Prohibited Animal.
- 11. Permit any rubbish or waste material to accumulate or remain on the Lot or allow any old vehicles or containers to be placed or retained on the Lot.
- 12. Erect or place or permit to be erected or placed on 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 by visitors.

14. Permit the parking of any vehicle on the road berms or ROW or permit them to cross the road berms in such a manner as they may cause damage to the berms or the kerbing and channelling.
15. Erect any advertising sign or hoarding of a commercial nature on the Lot provided that for so long as the Approver retains an interest in any Lot, the Approver may erect and maintain within the Subdivision signage and other forms of display or promotion hoardings or materials.
16. Amalgamate a Lot with any other Lot where such amalgamation will result in:
 - (a) a greater 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.

17. Cut up or subdivide the Lot in accordance with the Resource Management Act 1991 or the Unit Titles Act 2010 or otherwise howsoever.
18. Do any act or thing which is a breach of any other stipulation restriction or Covenant that the Grantee or the Approver may require or impose in respect of the Subdivision or any Lot for the purposes of the Covenants provided that such other stipulation restriction or Covenant shall not prejudice any prior approval already granted by the Grantee or the Approver.
19. Use a Dwelling House as a Brothel, a Small Owner Operated Brothel or permit the Business of Prostitution or the provision of Commercial Sexual Services to be carried out in or from the Dwelling House or on or from the Lot.
20. Erect or place any fence on the top of a Retaining Wall other than in accordance with the provisions of Part B of these Covenants.
21. 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 ensue for the benefit of any subsequent registered proprietor of such adjoining land.

Part B

The Grantor shall:

1. Ensure that the Dwelling House is fully completed including exterior painting and a code compliance certificate is obtained from the Relevant Authority before it is occupied as a residence.

2. Ensure that the erection of the Dwelling House is completed within 18 months of commencement of site preparation for such building on the Lot, and within a further 4 months of completion of such Dwelling House complete the driveway and general landscaping of the Lot (including any fencing) to a standard commensurate to that of a high standard residential development.
3. Permit the use of a Lot as a display or show home by any building company undertaking residential development in the Subdivision provided that the building company complies with the following restrictions:
 - (a) the Lot may be used as a display or show home for a maximum period of 18 months;
 - (b) the Lot may only be used for display or show home purposes between the hours of 10 am and 4pm Monday to Saturday inclusive, and 10 am and 3pm on a Sunday; and
4. Keep the Lot in a neat and tidy condition.
5. Ensure all water tanks on the Lot are either:
 - (a) buried and do not protrude above natural ground level; or
 - (b) are erected or installed in the rear living court of the Lot and are screened with acceptable fencing or planting in such a manner that they are not visible from the road or from any adjoining common owned access lot.
6. Ensure that any fence or Retaining Wall erected or placed on the Lot complies with the following provisions:
 - (a) where the fence is erected in the rear living court of the Lot between the Lot and any adjoining Lot between the Lot and any common owned access way it is erected no higher than 1.8 metres above the formed ground level other than where such fence is erected above a Retaining Wall in which case the fence shall not exceed 1.2 metres in height above the Retaining Wall;
 - (b) where the fence is erected in the front yard prior approval by the approver must be obtained and ensure that any fences erected or placed in the Front Yard of the Lot shall be no higher than 1.2 metres above the formed ground level and is a minimum of 50% visually permeable.
 - (c) no fence shall be erected immediately on the top of a Retaining Wall, it shall be set back a sufficient distance from the top of a Retaining Wall so as to ensure that any penetrations for the posts do not cause damage to the Retaining Wall or the drainage systems associated with it;
 - (d) it is erected of permanent and durable materials; and
 - (e) where the fence is erected on the side boundary and placed any nearer to the road than the front of the Dwelling House the fence should be no higher than 1.2m.

the intention being that the Subdivision shall be maintained with an open Front Yard environment provided however:

- (f) if a Lot is a corner Lot or otherwise has more than one frontage to a street and or common owned access lot, or otherwise has characteristics in shape or location that effect the ability to create a living court in the rear yard, the

Approver may grant dispensation for the provision of fencing in part of the Front Yard so as to ensure that there is a suitable private living court area on the Lot.

7. Maintain and keep protected any Retaining Wall erected on the Lot by the Approver as part of the development of the Subdivision.
8. When undertaking construction works on the Lot, at all times comply with the following provisions:
 - (a) keep the Lot tidy, orderly and in a safe condition, ensuring that the provisions of the Health and Safety Act are complied with at all times;
 - (b) remove all construction, rubbish and waste from the Lot on a regular basis;
 - (c) before undertaking any significant site works on the Lot, ensure that a vehicle crossing and/or access drive for construction vehicles has been formed in metal aggregate or other alternative materials as may be approved by the Approver at its sole discretion;
 - (d) ensure that no rubbish, excess earth or construction materials are stored or dumped or permitted to encroach upon any adjoining Lot or onto the road or any common owned access lot unless it has first obtained the consent in writing of the Approver or the consent of the adjoining Lot owner for the storage of such materials, earth or debris;
 - (e) ensure that any silt generated during construction on the Lot is contained and dealt with in accordance with all requirements of the Relevant Authority; and
 - (f) immediately on completion of construction of the Dwelling House on the Lot, reinstate all landscaping, grass berms, driveways, road, public lighting, footpaths, berms, curbs, walls or any other structure or improvements within the Subdivision that may have been damaged either directly or indirectly through the undertaking of the construction on the Lot by either the Grantor or any employee or contractor of the Grantor.
9. Ensure that any power and telephone reticulation is located underground.
10. Prevent the growth on the Lot of weeds and plants defined as noxious plants under the Biosecurity Act 1993 or any legislation passed in substitution for that Act.
11. Keep the Lot free of vermin, mustelids, possums, rodents and other noxious pests.
12. Dispose of all rubbish and recycling material promptly, hygienically and tidily and ensure that such disposal does not adversely affect the health, hygiene or comfort of the owners or occupiers of other Lots in the Subdivision.

Part C

REMEDY ON BREACH

1. 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 the Approver 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 \$300 (Three 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
 - (c) In the event that the Grantor does not comply with paragraph 1(b) above within a reasonable period of time after demand has been made then the Grantor hereby irrevocably authorises the Approver 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.