

Approved by Registrar-General of Land under No. 2007/6225  
**Easement instrument to grant easement or *profit à prendre*, or create land covenant**  
*Sections 90A and 90F, Land Transfer Act 1952*

Land registration district

WELLINGTON



BARCODE

Grantor

*Surname(s) must be underlined or in CAPITALS.*

MARTINBOROUGH COASTAL DEVELOPMENTS LIMITED

Grantee

*Surname(s) must be underlined or in CAPITALS.*

MARTINBOROUGH COASTAL DEVELOPMENTS LIMITED

**Grant\* of easement or *profit à prendre* or creation or 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).

Dated this                      day of

**Attestation**

J McKearney/Director	Signed in my presence by the Grantor
	_____ <i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name
I Redshaw/Director	Occupation
Signature [common seal] of Grantor	Address
J McKearney/Director	Signed in my presence by the Grantee
	_____ <i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name
I Redshaw/Director	Occupation
Signature [common seal] of Grantee	Address

Certified correct for the purposes of the Land Transfer Act 1952.

\_\_\_\_\_

[Solicitor for] the Grantee

\*If the consent of any person is required for the grant, the specified consent form must be used.

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**Annexure Schedule 1**



Easement instrument Dated  Page 1 of 1 pages

Schedule A (Continue in additional Annexure Schedule if required.)

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Land Covenants	DP 409532	454012-454035 (inclusive)	454012 - 454035 (inclusive)

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 specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.

The implied rights and powers are ~~[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 2].

**Covenant provisions**  
*Delete phrases in [ ] and insert memorandum number as required.  
 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].

All signing parties and either their witnesses or solicitors must sign or initial in this box

The Grantor acknowledges MCDL desires to preserve the existing environment and create a high quality development (including shared use and maintenance of Common Areas and facilities) and therefore shall refrain from using materials, finishes and architectural styles which detract from that goal.

The key objectives for the development are as follows:

- Minimise the visual impact of dwellings on the wider landscape.
- Optimise "private" sea views and sun exposure for dwellings.
- Ensure privacy as far as practicable between adjacent Lots/dwellings.
- Minimise the impact on views and increase sun exposure between adjacent dwellings.
- Minimise the number of access points and length of driveways on the Lots.
- Minimise the amount of earthworks on the Lots.

the above objectives are to be achieved through careful consideration of the following key matters:

- building scale, form and location
- building design and appearance (including external materials and colour)
- landscape (planting, fencing, driveways) within and around each lot

These Development Rules do not substitute District Plan requirements, but rather should be read as supplementary to them. Where there is a conflict with District Plan rules, the more restrictive shall apply except in relation to setbacks and the 40 metre contour line, where these Development Rules shall apply.

**The Grantor covenants not to:**

**1. Construction and Design**

- 1.1. apply to the relevant local authority for a building consent; nor to
- 1.2. proceed with the erection or construction on the Lot of any building

until the prior written approval for preliminary plans to scale of MCDL has been obtained , showing:

- 1.2.1. the siting of the dwelling
- 1.2.2. elevations
- 1.2.3. materials
- 1.2.4. location of driveways and grassed areas
- 1.2.5. the position of the water storage tanks and soakage pits

- 1.2.6. a planting plan
- 1.2.7. a fencing plan

provided however the final approval of MCDL shall not be deemed to be granted upon the issue of a building consent from the relevant local authority but only when subsequently given in writing by MCDL. Approval will be not be withheld by MCDL if the Grantor complies with clauses 1.3 to 1.13 in their entirety.

### **Building Platform**

- 1.3. erect any building watertank structure or deck higher than 1.2 metres on the Lot other than within the designated building platform which is defined by a single side yard of 3 metres down one side of the Lot to maximize sunlight exposure on a front yard (area along the road/seaside boundary of each Lot). To ensure neighbouring dwellings do not inhibit views, the sideyard and front yard areas are as follows:
  - 1.3.1 **Lots 1 to 12.** A side yard of 3 metres along the eastern boundary of each Lot except Lot 12 where the side yard is on the western boundary. All front yard setbacks from the road are 12 metres except Lots 1, 8, 9, 10, 11, and 12 whose setback is 10 metres.
  - 1.3.2 **Lots 13 to 19.** A side yard of 3 metres along the eastern boundary of each Lot except Lot 19 which has a side yard on the western boundary. All front yard setbacks from the road are 10 metres.
  - 1.3.3 **Lots 20 to 24.** A side yard of 3 metres along the south eastern boundary of each Lot. All front yard set backs from the road are 8 metres.

### **Single Dwelling**

- 1.4. erect other than a single residential dwelling and together with a single ancillary dwelling for garaging provided however any separate garage shall be located to the rear of any dwelling except where the garage is an integral part of the dwelling. All buildings must be designed by a professional architect or professional designer and be no higher than 6 metres in height from the average ground level.

### **Size**

- 1.5. erect a dwelling unit of a floor area less than 100m<sup>2</sup> (excluding garages, verandahs, decks, porches and any other accessory buildings and appurtenances) nor greater than 200m<sup>2</sup> along with a garage of more than 50m<sup>2</sup>.

### **Materials**

- 1.6. build in materials that have other than a low degree of reflectivity and in colours of a hue reflected in the surrounding landscape with all colours to be visually muted and recessive in accordance with BS5252 colour codes; walls B17 to B25, roofs A11 to 14, B25 to 29 and C39 to 40. The roof colour should be darker than the walls. Preferential materials include natural stone and timber.
- 1.7. use any non-permanent or secondhand materials on the roof or exterior walls or allow the proposed dwelling to have corrugated products which, excluding the roof, forms more than a third of the external covering of any dwelling.
- 1.8. erect or cause to be erected or transported onto the Lot at any time any secondhand dwelling or building.

### **Fences**

- 1.9. erect any fence other than post and wire (including wind cloth) or rural style wooden fence. Fence heights shall not exceed a height of 1.2 metres above the natural ground level of the Lot. The Lot owner cannot call upon MCDL to share in the cost of fencing of any common boundary.

### **Driveways**

- 1.10. erect or form road crossings, driveways or parking areas other than using permeable materials.

### **Planting**

- 1.11. plant other than indigenous species found in the Tora Coastline area including Taupata, Flax, Harakere, Mingi Mingi, Coprosma virens, Cabbage Trees, Karaka, Ngaio, Akeraho and Prostrate Kowhai.
- 1.12. allow any planting in the front yard of the Lot to exceed 1.5 metres in height without the permission of any affected neighbour.
- 1.13. planting shall be located along the fence line between Lots to enhance the privacy.

### **General**

#### **Derelict Vehicles**

- 1.14. allow any derelict vehicles (being vehicles with no current registration or warrant of fitness), caravans, trucks or other machinery to be parked or stored on or adjacent to the Servient Tenement other than in the course of construction.

**Animals**

- 1.15. keep any cats, mustelids, rodents or other similar animals.
- 1.16. keep any farm yard animals other than dogs (which shall be tethered or securely fenced in) on the Servient Tenement other than as permitted on the Common Areas.

**Common Areas**

- 1.17. The Grantors covenant to not object to farming or any existing activity to being maintained on the Common Areas.

**Delay**

- 1.18. permit or allow any building in the course of construction to be left without substantial work being carried out for a period exceeding three months and to complete construction of any such building within fifteen months from the date of commencement of building.

**Temporary Structure**

- 1.19. place any temporary structures site sheds or containers on the Servient Tenement except those required for the erection of approved permanent buildings which structures shall be removed immediately upon completion of those permanent buildings.

**Occupation**

- 1.20. occupy the dwelling until the approved plans have been complied with and a Code of Compliance Certificate has issued.

**Rubbish**

- 1.21. allow any rubbish to accumulate or be placed on the Servient Tenement

**The Owner of each Servient Tenement shall:**

**2. Sewage Treatment Plant and Common Areas**

- 2.1. pay a 1/24 share of the cost of the operation and maintenance of the plant (including plant replacement) within 30 days of the maintenance charge being struck in each calendar year irrespective of whether the Servient Tenement is connected to Sewage Treatment plant.
- 2.2. pay a 1/24 share of any special levy required for maintenance of the Sewage Treatment plant which may be levied by MCDL from time to time (including the maintenance of a capital fund for plant maintenance and/or replacement) irrespective of whether the Servient lot is connected to the Sewage Treatment plant.

- 2.3. pay a 1/24 share of any repairs maintenance or replacement of the Common area improvements which may be levied by MCDL from time to time.
- 2.4. pay such connection charge as is determined by MCDL from time to time following the erection of a dwelling on any Servient Tenement.
- 2.5. pay for the cost of any works and maintenance in respect of pipes within the Servient Tenement to the boundary of the Servient Tenement and shall keep any pipes or other plant equipment or appliances in good order and condition at his own cost and shall if required to do so install a valve or meter on the boundary of the Servient Tenement at the connection to any common plant or pipes.
- 2.6. promptly notify MCDL of any failure or fault in the plant or equipment they become aware of .
- 2.7. permit any person authorized by MCDL to enter on to the Servient Tenement to inspect any pipes or equipment and to check any leakage and repair any pipes.
- 2.8. acknowledge that MCDL shall not be responsible for any interruption to the use of the plant provided however MCDL shall cause all machinery owned or administered by it from time to time forming part of the Sewage Treatment plant to be maintained in a good working order and condition.

### 3. Committee

After MCDL ceases to be the registered proprietor of any of the Servient Tenements (or at such earlier time as it shall determine in its absolute discretion) it will establish in conjunction with the proprietors of the other Servient Tenements a Committee which shall thereafter have all the rights vested in MCDL by the Grantors pursuant to this Deed and shall be responsible for:

- 3.1. The enforcement of any of the rights and obligation by the Grantees and the Grantors contained herein and in particular but not limited to making and enforcing rules in relation to the management, operation and maintenance of the Common Areas the Servient Tenements and the Common Areas (including roads and walkways as the case may be).
- 3.2. The setting and collecting of any periodic or special levy from the Grantors of the Servient Tenements (including a proportional share in respect of any Common Areas) sufficient to cover maintenance, operating expenses and replacement of the sewage treatment plant in Common Areas including but without limitation general maintenance and an

appropriate sinking fund to be set aside for capital works and upgrades to the Sewage Treatment Plant and improvements contained in the Common Areas.

- 3.3. Organising and holding an annual meeting.
  - 3.4. Doing or arranging to be done anything in relation to the relevant improvements which, in the reasonable opinion of the Committee, is necessary to ensure the proper and orderly management, operation and maintenance of the Common Areas or equipment contained therein and enforcement of resource consent and restrictive covenants.
  - 3.5. Setting an annual fee at the start of each year for all the Serviant Tenement owners to pay either manually or on a monthly basis by automatic payment on the first day of each month in advance. This annual fee will be based on a projected and approved budget presented at the Serviant Tenements owners annual meeting and is assessed for the operation and maintenance of the Sewage Treatment Plant, the Common Area including any roads and walkways or other common facilities (as the case may be) on time and without set-off or deduction to the Committee or its duly appointed representative.
  - 3.6. Setting aside a suitable sinking fund for the repair or replacement of any improvements to the Common Areas.
  - 3.7. Engaging and letting an annual contract to maintain the Sewage Treatment Plant and the maintenance of any Common Area improvements such estimates are to be presented for approval at the annual general meeting for approval by the Serviant Tenement owners or to the Committee prior to letting such contracts.
- 3. Meeting and Committee Proceedings**
- 3.1. Each Serviant Tenement shall carry one vote and the members of the Committee shall be elected by a simple majority.
  - 3.2. A quorum at any special or general meeting held following not less than 2 weeks notice in writing by MCDL or the Committee or a majority of Serviant Tenement owners (as the case may be) which (notice shall set out the venue time and date of the proposed meeting) shall consist of the majority of Serviant Tenement owners provided that if no quorum exists at that meeting a further notice shall be given by those attending that meeting giving not less than 2 weeks notice in writing setting out the time date and venue of such further meeting at which meeting a quorum shall consist of those present.



- 3.3. The Committee shall be elected each year in accordance with clause 3 or at any such meeting.
- 3.4. The term of the Committee shall be one year or until the next annual general meeting unless a new Committee is elected at a special meeting.
- 3.5. The Committee shall be responsible for administration of this Deed and shall have vested in it all the rights and powers given to MCDL after MCDL exercises the election referred to in this Deed.
- 3.6. The Committee shall consist of not fewer than 3 nor more than 8 Servient Tenement owners.
- 3.7. A majority of Servient Tenement owners may call for a special general meeting by giving not less than 2 weeks notice setting out the time date and venue which notice shall be signed by each Servient Tenement owner calling the meeting,
- 3.8. The quorum necessary for the transaction of business of the Committee shall be two and if the number of Committee members is reduced below three, the remaining member may act for the sole purpose of increasing the number of members to that number. The Committee shall meet for the conduct of its business and otherwise regulate its meetings and affairs in the Committee's reasonable discretion all decisions being made by a simple majority.
- 3.9. The Committee may appoint a property manager to ensure proper and orderly management of all Common Areas and facilities.
- 3.10. Committee members shall not be entitled to be remunerated for their services provided however any duly appointed property manager shall be entitled to be remunerated.
- 3.11. Where the Committee does not have sufficient formal structure pursuant to this Deed to regulate its affairs or undertake its duties, then the Committee shall rely on the provisions contained in the second schedule (mutatis mutandis) of the Unit Titles Act 1979 (as amended, re-enacted or substituted from time to time.). The provisions of this Act shall be implied into and read together with the terms of this Deed to the extent that they are required to give full effect to these covenants. Provided however the terms of this document shall take precedent over the Act where there is any inconsistencies.

#### 4. General Provisions

- 4.1. **Power of Attorney:** The owner of the Servient Tenement irrevocably appoints MCDL or the Committee as their attorney for the purpose of

doing any act, matter or thing, including the issuing of proceedings in the name of the Servient Tenement owner to *recover money* or enforce a covenant contained in this Deed against a defaulting Servient Tenement owner where that covenant is under the control of the Committee.

- 4.2. **Indemnity for Costs:** In the event that the Committee is required to issue proceedings or take any other steps to enforce any covenants contained in this Deed, then the defaulting Servient Tenement owner shall indemnify the Committee for all costs and disbursements incurred (including legal costs on a solicitor/client basis) by the Committee in relation to enforcing these covenants.

4.3. **Mediation**

4.3.1. In the event of any default or dispute surrounding the performance of or breach of a covenant hereunder either the Grantor or the Grantee may require any dispute, which has not been resolved within 14 days to be referred to mediation. The mediator will be appointed by both parties or, where the parties cannot agree within 14 days, appointed by the Chairman of the New Zealand Chapter of Lawyers Engaged in Alternative Dispute Resolution. The mediator will conduct the mediation in accordance with the guidelines agreed between the parties or, if the parties cannot agree within 14 days following appointment of the mediator, in accordance with the guidelines set by the mediator. The costs and expenses of the mediator shall be shared by the parties equally.

4.3.2. If the parties are unable to resolve the dispute by mediation the parties may agree to submit the dispute to be settled by arbitration in accordance with the provisions of the Arbitration Act 1996 (as amended, re-enacted or substituted from time to time).

4.3.3. The provisions of this clause shall not apply to MCDL

4.4. **Breaches and Penalties**

In the event of any breach or non-observance of any of the Restrictive Covenants and written notice being given by MCDL or the Committee (as the case may be) to the Grantor to remedy such breach or non-observance then (without prejudice to any other liability which the Grantor may have to the Grantee or any other person having the benefit of the Restrictive Covenant) the Grantor shall (if such breach has not been remedied in full within one calendar month of the date of such notice) upon written demand being made MCDL by the Grantee:

4.4.1. Pay to the MCDL the sum of \$50.00 per day as liquidated damages for every day that such breach or non-observance continues after the date upon which written demand has been made; and

4.4.2. Take all steps as are required to ensure that the non-compliance with the Restrictive Covenant specified in the notice ceases immediately.

4.4.3. Meet all reasonable costs of enforcement incurred by MCDL.

**4.5. Waiver**

4.5.1. MCDL shall not be under any obligation to enforce any covenant.

4.5.2. Neither MCDL or the Committee shall not be jointly or severally liable for any non-observance or failure by the Committee or MCDL to identify or enforce any covenants contained herein. This includes any approvals given, the actions of any Servient Tenement owners or any other procedural issues contained herein.

**5. Assignment of Rights**

Any power or authority vested in favour of MCDL set out herein shall, upon liquidation of MCDL be automatically vested in the Committee.

**6. Notices**

All notices served pursuant to this Deed shall be served in accordance with the service provisions of the Property Law Act 2007 (as amended, re-enacted or substituted from time to time).

**7. Definitions**

7.1. "Common Area" means Lots 25-28 on DP409532

7.2. "Committee" the Committee of owners appointed pursuant to clause 3 and 4 hereof.

7.3. "Dominant Tenement" means any lot on Deposited Plan 409532 shown in Annexure Schedule 1 as a Dominant Tenement being a lot that has the benefit of an easement or restrictive covenant from a Servient Tenement.

7.4. "Grantor" means the registered proprietor (Owner) for the time being of any Servient Tenement as set out herein in relation to such Servient Tenement.

7.5. "Grantee" means the registered proprietor (Owner) of any Dominant Tenement as set out herein.

7.6. "MCDL" means Martinborough Coastal Developments Limited

7.7. "Owners" means the registered proprietors of any of the lots on Deposited Plan 409532

7.8. "Restrictive Covenant" means each of the covenants set out in clause 1 herein.

- 7.9. "Servient Tenement" means any lot of Deposited Plan 409532 shown in Annexure Schedule 1 as a servient tenement being a lot that is subject to an easement or restrictive covenant in favour a Dominant Tenement.
- 7.10. "Sewage Treatment Plant" means the Sewage Treatment Plant situated on Lot 27 and the associated piping and common facilities to the boundary of the Servient Tenements.

## **8. Interpretation**

In this easement instrument unless the context requires otherwise:

- 8.1. Reference to clauses are reference to clause in this easement instrument.
- 8.2. The headings are used for ease of reference only and are not to be used in interpreting the provisions.
- 8.3. Unless the context otherwise requires, words denoting the singular number shall include the plural and vice versa.
- 8.4. Except as otherwise provided, the terms of this easement instrument bind and benefit the parties and their administrators, successors and assigns in perpetuity.