

Form B

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

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

Grantor

SH 16 LIMITED

Grantee

SH 16 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 **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 as set out in Clause 3 of the attached Annexure Schedule A	See First Schedule Annexure Schedule A		

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 A

Insert instrument type

Land Covenant

BACKGROUND

- A. The Grantor is the registered proprietor of the Covenanting Lots and the Benefiting Lots.
- B. The Covenanting Lots and the Benefiting Lots are part of a rural residential estate ("the rural estate").
- C. The Grantor has agreed to create the covenants as set out herein in favour of the Grantee in order to ensure that the character of the rural estate is maintained, preserved and enhanced.

DEFINITIONS AND INTERPRETATION

1.1 Definitions

"the Developer" means SH 16 Limited or any person or entity appointed or nominated in writing by them to be the Developer. Where the Developer has been dissolved, wound up, deregistered or otherwise passed out of existence any approval or consent required from the Developer shall mean approval or consent by any party previously appointed and/or nominated in writing by the Developer for this purpose.

"Covenanting Lots" means the Lots shown as Covenanting Lots set out in the First Schedule.

"Benefiting Lots" means the Lots shown as Benefiting Lots set out in the First Schedule.

"the Lots" means Lots 5, 6 and 8 Deposited Plan 487280 and Lots 1, 2 and 3 Deposited Plan 419730.

"the Grantee" means the owners for the time being of the Benefiting Lots and includes their respective successors transferees and assigns.

"the Grantor" means the owners for the time being of the Covenanting Lots and includes their respective successors transferees and assigns.

1.2 Interpretation

- (a) words and expressions denoting the singular shall where the context so requires include the plural and vice versa.
- (b) headings have been inserted for guidance only, and shall not be deemed to form part of the context of this instrument.

COVENANTS

2. Agreement

- 2.1 The Grantor, for itself so as to bind the Covenanting Lots in the First Schedule ("Covenanting Lots" and each one of them a "Covenanting Lot"), covenants and agrees with the Grantee (for the benefit of the Grantee and the registered proprietor from time to time of the Benefiting Lots) that the Grantor shall always observe and perform all of the covenants set out in Clause 3.0 of this instrument until the 31st of December 2030 at which time the covenants shall cease to apply to the end and intent that each of the covenants shall enure for the benefit of the registered proprietor from time to time of the Benefiting Lots until the 31st of December 2030.

- 2.2 The covenants in this instrument shall be enforceable by the Grantee (and the Grantee's assigns, transferees or successors) against the Grantor as owner of the Covenanting Lots and his, her or its successors in title, transferees, assigns and occupiers for the time being of the Covenanting Lots.
- 2.3 No delay or failure by the Grantee to enforce performance of any covenants set out in this instrument and no indulgence granted to the Grantor by the Grantee shall prejudice the right of the Grantee to enforce any of the covenants or provisions of this instrument.
- 2.4 The Grantor shall bear any costs which may be incurred by the Grantee as a result of any default by the Grantor under this instrument.
- 2.5 The Grantee shall not be required to nor obliged to enforce all or any of the covenants and the Grantor shall be liable only in respect of breaches of the covenants which occur while the Grantor is registered as proprietor of the Covenanting Lot.
- 2.6 If there is any breach or non observance of the covenants set out in this Instrument then the Grantor must (without prejudice to any other liability the Grantor may have to any person having the benefit of the covenants):
- (a) cease any activity in breach or non-observance of the covenants;
 - (b) otherwise remedy any breach or non-observance of the covenants.

3.0 The Grantor shall:

- (i) not permit or suffer the use of the Covenanting Lot for any purpose other than predominantly residential use nor use the Covenanting Lot for commercial farming which includes any horticulture, agriculture, animal boarding facilities, market gardening activities or the keeping of poultry, pigs or goats, unless approved in writing by the Developer.
- (ii) not permit or suffer any rubbish to accumulate or to be placed upon the Covenanting Lot, and at all times to maintain the Covenanting Lot including keeping the grass mowed or grazed so the grass does not exceed 150mm in height.
- (iii) not permit any immobile/unroadworthy vehicles to be stored on the Covenanting Lot unless those vehicles are stored within an enclosed shed or garage.
- (iv) not permit weeds to grow upon the Covenanting Lot.
- (v) not carry on or permit the aerial spraying over the Covenanting Lot of any noxious or toxic substances for weed control or any other purposes.
- (vi) not construct on the Covenanting Lot:
 - a. a principal dwelling with a floor area less than 130 square metres (excluding garage, carports and decking) or a minor dwelling with a floor area less than 75 square metres (excluding garage, carports and decking) without gaining the prior written consent of the Developer;
 - b. any dwelling or building on the property that has a "mono-cladding" appearance.
- (vii) construct roofing of any building on the Covenanting Lot only of tile, shingle, glass or any pre-painted iron material.
- (viii) complete the exterior construction of any dwelling, or accessory building on the Covenanting Lot within twelve months of the date of commencement of the building.
- (ix) construct no more than two buildings on the Covenanting Lot (one of which must be a dwelling) on the property the size of the secondary building to be no greater than that of the dwelling.
- (x) not locate on the Covenanting Lot a dwelling which is "second hand" unless such dwelling is approved in writing by the Developer.

- (xi) not subdivide, or permit any subdivision of the Covenanting Lot including subdivisions by way of cross-leases and subdivisions under the Unit Titles Act 1972.
- (xii) not allow any temporary building or structure to be erected on the Covenanting Lot except that which may be used in conjunction with the construction of permanent buildings and which will be removed from the Covenanting Lot upon completion of the said construction.
- (xiii) not commence the construction or erection of improvements on the Covenanting Lot whether buildings, accessory buildings, or fences (and this shall also include exterior finishes and excavation of foundations upon the Covenanting Lot) unless plans and specifications and all other details of construction and finish as the Developer at the Developer's absolute discretion may require have been submitted to the Developer and have received the Developer's written approval.
- (xiv) not erect a fence on the Covenanting Lot constructed of materials other than brick, wood, plastered concrete block, or minimum five-wire post and/or battens and no fence shall exceed 1.83 metres in height above natural ground level, and not allow any advertisement, sign or hoarding of a commercial nature to be erected on any part of the Covenanting Lot.
- (xv) not permit any telecom or electricity services to be provided by "overhead" means to the dwelling (and any other structures/buildings to be erected on the Covenanting Lot). All other utilities and services must be by underground means from the road to the dwelling and other structures/buildings to be erected on the Covenanting Lot.

4. Fencing

- 4.1 The Developer shall not be required nor shall it be called upon to repair or contribute towards the cost of erection or repair of any dividing or boundary fence between any of the Lots and any contiguous land owned by the Developer, but this proviso shall not enure for the benefit of any subsequent registered proprietor of such contiguous land.

5. Indemnity and Consequences of Breach

- 5.1 The Grantor covenants with the Grantee that it will at all times save harmless and keep indemnified the Grantee from all proceedings, costs, claims and demands in respect of breaches by the Grantor of the covenants on its part contained or implied herein, and also the enforcement of such covenants by the Grantee.
- 5.2 The Grantor acknowledges that the value of the Benefiting Lots will be affected by any non-compliance with or breach of any of the covenants contained or implied herein and the Grantor covenants for the benefit of the Benefiting Lots and of each registered proprietor of the Benefiting Lots from time to time that should the Grantor fail to comply with, observe, perform or complete any of the covenants contained or implied herein then without prejudice to any other liability the Grantor may have to the Grantee (which includes any other person or body having the benefit of such covenants) the Grantor shall:
 - (a) immediately permanently remove or cause to be permanently removed from the Lot upon which the breach or failure has occurred any offending improvements or structure or other cause of any breach or non-observance of such covenants; and otherwise forthwith remedy the breach or non-observance thereof; and
 - (b) if the breach or failure is not remedied within 60 days of the date of notice of such breach or failure then the Grantee (together with its agents, employees or contractors) shall be entitled to enter onto the Covenanting Lot to arrange for rectification of the Grantor's breach or failure at the cost of the Grantor.

6.0 General

- 6.1 The covenants set out in clause 3.0 of this Instrument shall run with each Covenanting Lot set out in the First Schedule for the benefit of the Benefiting Lots described in the First Schedule TO THE INTENT that the Grantor and Grantee shall continue to be bound until the earlier of the 31st of December 2030 or the date upon which they respectively cease to hold a fee simple estate in a Covenanting Lot as the case may be but without prejudice to any liability for any breach of covenant under this Instrument arising before such date.

FIRST SCHEDULE

Covenantee Lots

Benefiting Lots

Lot 5 DP 487280	All Lots other than Lot 5 DP 487280
Lot 6 DP 487280	All Lots other than Lot 6 DP 487280
Lot 8 DP 487280	All Lots other than Lot 8 DP 487280
Lot 1 DP 419730	All Lots other than Lot 1 DP 419730
Lot 2 DP 419730	All Lots other than Lot 2 DP 419730
Lot 3 DP 419730	All Lots other than Lot 3 DP 419730