

**Easement instrument to grant easement or profit à prendre** **EI 6092053.3 Easement I**  
Sections 90A and 90F, Land Transfer Act 1952

Cpy - 01/01, Pgs - 006, 26/07/04, 08:47



Land registration district

**SOUTH AUCKLAND**

Grantor

Surname(s) must be underlined or in CAPITALS.

**John Maurice KELLY and Robyn Ella KELLY**

Grantee

Surname(s) must be underlined or in CAPITALS.


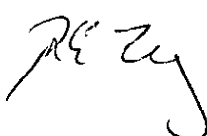

**John Maurice KELLY and Robyn Ella KELLY**

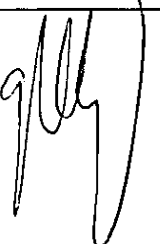
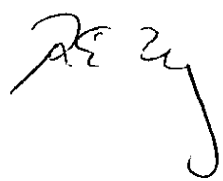

**Grant\* of easement or profit à prendre or creation or covenant**

**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 20th day of May 2004

Attestation

 	<p><b>Signed in my presence by the Grantor</b></p> 
	<p>Signature of witness</p> <p>Witness to complete in BLOCK letters (unless legibly printed)</p> <p><b>Witness name</b> Michael Thomas Bracken</p> <p><b>Occupation</b> Solicitor</p> <p><b>Address</b> Hamilton</p>
<p><b>Signature [common seal] of Grantor</b></p>	

 	<p><b>Signed in my presence by the Grantee</b></p> 
	<p>Signature of witness</p> <p>Witness to complete in BLOCK letters (unless legibly printed)</p> <p><b>Witness name</b> Michael Thomas Bracken</p> <p><b>Occupation</b> Solicitor</p> <p><b>Address</b> Hamilton</p>
<p><b>Signature [common seal] of Grantee</b></p>	

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.

139554  
139555  
139556  
③

EI  
50

**Annexure Schedule 1**



Easement instrument

Dated

[ ]

Page

1

of

5

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)
<b>Land Covenants as specified in Annexure Schedule 2</b>	DP 334060	139554	139555 139556

**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 Ninth Schedule of the Property Law Act 1952.

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**

*Handwritten initials: gl, 1/25*

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated [ ]

Page 2 of 5 Pages

(Continue in additional Annexure Schedule, if required.)

**Annexure Schedule 2**

**1. Covenant**

The Grantor covenants and agrees with the intention to bind itself and future proprietors of the Servient Tenement for the benefit of the Grantee and future proprietors of the Dominant Tenements that the Grantor will at times observe and perform the restrictions contained in the First Schedule in respect of the Covenant Area to the intent that each of the restrictions will be forever appurtenant to the Dominant Tenements.

**2. Limited Liability**

The Grantor and its successors in title will only be liable for breaches of the restrictions which occur while they are registered as proprietor of the Servient Tenement.

**3. Resolution of Disputes**

**3.1 Disputes:** If any dispute, difference or question arises between the parties about:

**3.1.1 Interpretation:** the interpretation of this instrument;

**3.1.2 Matters Arising:** anything contained in or arising out of this instrument;

**3.1.3 Rights, Liabilities or Duties:** the rights, liabilities or duties of the Grantor or the Grantee; or

**3.1.4 Other Matters:** anything else relating to the relationship of the Grantor, and the Grantee under this instrument (including claims in tort as well as in contract);

the parties may refer that matter to informal mediation, if all parties agree, having regard to the nature of the dispute or difference between them and the potential delays and costs which might arise if that matter is referred to arbitration.

**3.2 Appointment of Mediator:** The parties must try to agree on the mediator, who must be a senior solicitor or barrister practising in either Hamilton or the district in which the Dominant Tenements are situated. If they cannot agree, the President of the District Law Society in which the Dominant Tenements are situated (or his or her nominee) will nominate the mediator on any party's application. The mediator's decision will be final and binding on all parties.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated [ ]

Page 3 of 5 Pages

*(Continue in additional Annexure Schedule, if required.)*

**3.3 Arbitration:** If the parties do not agree to refer the dispute, difference or question to mediation under clause 3.2 within seven days of that dispute, difference or question arising, then it will be referred to the arbitration of a single arbitrator under the Arbitration Act 1996.

**3.4 Appointment of Arbitrator:** The parties must try to agree on the arbitrator. If the parties cannot agree, the President of the District Law Society in which the Dominant Tenements are situated (or his or her nominee) will appoint the arbitrator on either party's application.

**3.5 Action at Law:** The parties must go to arbitration under this clause before they can begin any action at law (other than an application for injunctive relief).

**4. Notices**

**4.1 Service of Notices:** Any notice of document required or authorised to be given under this instrument may be delivered or sent as follows:

**4.1.1 Property Law Act:** in any manner mentioned in section 152 of the Property Law Act 1952; or

**4.1.2 Registered Post:** by registered post addressed to the last known postal address of the party intended to be served.

**4.2 Time of Service:** Any notice or other document will be treated as given or served and received by the other party:

**4.2.1 Delivery:** when delivered by hand to that other party; or

**4.2.2 Registered Post:** three days after being posted by registered post with postage prepaid to the last known postal address of the party intended to be served.

**4.3 Signature of Notices:** Any notice or document to be served or given may be signed by any attorney, officer, employee or solicitor for the party serving or giving the notice or by any other person authorised by that party.

**4.4 Addresses for Notices:** For the purposes of this clause, and subject to subsequent amendment by any party by written notice to the other parties, the address for service of notices of each party is the residential address of each of the respective Dominant Tenements.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 4 of 5 Pages

(Continue in additional Annexure Schedule, if required.)

**FIRST SCHEDULE**

1. The Grantor will not:
  - 1.1 Erect any building other than one Dwelling House and Accessory Buildings which Dwelling House shall have a floor area of not less than 120 square metres (excluding garaging, carports, decking, roof overhang and Accessory Buildings) and shall have not less than 90% of the exterior cladding consisting of any of the following materials:
    - a) Kiln-fired or concrete brick;
    - b) Stucco textured finish;
    - c) Stone;
    - d) Timber;
    - e) Pre-finished metal weatherboard bonded to solid timber boards.
  - 1.2 Without the consent of the Transferor, erect or permit to be erected any building other than a new residential home and ancillary buildings; nor to permit or allow the removal onto the property of any pre-built transportable or relocatable house or existing house which has previously been lived in.
  - 1.3 Use any metal clad roof that has not been factory pre-painted.
  - 1.4 Construct any garage, carport or other out building in any other materials than those specified in clause 1.1.
  - 1.5 Permit or suffer the erection of any temporary building or structure upon the land except as may be used in conjunction with the construction of permanent buildings and which will be removed from the land upon completion of the work.
  - 1.6 Permit any building or associated works in the course of construction to be left without substantial work being carried out for a period exceeding three (3) months and will complete construction of any such building within twelve (12) months of commencement of work.
  - 1.7 Permit or suffer any rubbish to accumulate or be placed on the land nor permit any excessive growth of grass so that the same becomes long, unsightly or a fire hazard.
  - 1.8 Use or permit the land to be used for any purpose other than residential or residential/office and in particular not to permit the land to be used for the following activities:
    - (a) commercial horticulture including mono species plantations/forestry;
    - (b) the keeping of poultry PROVIDED THAT the keeping of not more than six (6) domestic hens or ducks shall not be a breach of this requirement;

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 5 of 5 Pages

(Continue in additional Annexure Schedule, if required.)

- (c) motorcycle recreation or other noisome activity PROVIDED THAT the use of a motorcycle for normal farming use shall not be a breach of this covenant;
  - (d) shooting, gun or rifle sports or other noisome recreation activities involving firearms;
  - (e) noisy or odoriferous manufacturing or processing activities;
  - (f) the keeping or pasturing of pigs, goats, deer, ostriches, emu, ferrets or fitches.
- 1.9 Install any water tanks on the land which are exposed above natural ground level by more than 400 millimetres.
- 1.10 Allow the Council owned road frontage of the land to become untidy or unsightly; nor permit any excessive growth of grass so that the same becomes long or a fire hazard.
- 1.11 Remove or trim the 5 mature oak trees on the roadside boundary of the land unless:
- (a) the trees become a danger to housing or life; and
  - (b) the trees are trimmed or removed by a qualified arborist.
- 1.12 Object to any other subdivision of the Grantees land, and if called upon to do so, issue any necessary "affected party" consents to enable the Grantee to obtain the necessary resource consent for such further subdivision.

To: Land Information New Zealand

1) See Prior Easement Instrument for consent of Mortgagee under Mortgage B170085.3.

2) Please note the benefit of the Land Covenants created herein against the titles for the dominant tenements too, being 139555 & 139556

*[Signature]* LandInfo.net Ltd  
for Solicitor  
for Owner.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.