

View Instrument Details



Instrument No 11735405.8
Status Registered
Date & Time Lodged 20 April 2020 08:54
Lodged By Reed, Brooke Renee
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
914930	South Auckland
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Annexure Schedule Contains 10 Pages.

Covenantor Certifications

I certify that I have the authority to act for the Covenantor and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Hyung-Hwa Chang as Covenantor Representative on 20/04/2020 08:07 AM

Covenantee Certifications

I certify that I have the authority to act for the Covenantee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Hyung-Hwa Chang as Covenantee Representative on 20/04/2020 08:07 AM

***** End of Report *****

Covenant in Gross

(Section 307F of the Property Law Act 2007 and section 242 of the Land Transfer Act 2017)

Covenantor

Lakeside Developments 2017 Limited

Covenantee

Lakeside Developments 2017 Limited

Creation of Covenant in Gross

The Covenantor being the registered proprietor of the burdened land set out in Schedule A **creates** the covenant(s) **set out** in Schedule A in favour of the Covenantee, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Burdened Land (Computer Register)	Benefited Land (Computer Register) or in gross
Covenant in gross		Lots 37-54, 266-270, 281-328 and 334-359 on Deposited Plan 542256 (inclusive) (RTs 914930 – 914944 (inclusive) and 914947 – 915028 (inclusive)) (South Auckland Registry)	In gross

Form B - continued

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 209 of the Land Transfer Act 2017}~~

~~{Annexure Schedule 1 }~~

Form L

Annexure Schedule 1

Insert instrument type

Instrument (Covenant in gross)

1. Introduction

- A. The Covenantee is subdividing the Burdened Land as part of the Development.
- B. The Covenantee intends that the Development be subject to a general scheme applicable to the Burdened Land to ensure that the Development is and remains a modern high quality and well-designed residential subdivision (**Scheme**).
- C. The Covenantee intends that this Instrument will be and will remain registered against the titles to the Burdened Land to give effect to the Scheme so that:
 - (a) owners or occupiers for the time being of the Burdened Land will be bound by the provisions of this Instrument;
 - (b) the Covenantee can enforce the observance of the provisions of this Instrument by the owners or occupiers of the Burdened Land in equity or otherwise; and
 - (c) the obligations and covenants of the Covenantor under this Instrument enure for the benefit of the Covenantee (in accordance with Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017).
- D. The Covenantee wishes to utilise the provisions of section 278 of the Property Law Act 2007 to create the Scheme as it relates to the Burdened Land.

It is agreed

2. Defined terms

2.1 Definitions

In this document:

Approved Building Plans means the approved building plans issued for houses to be constructed by the Covenantor on the Lots in accordance with the applicable Design Guidelines from time to time.

Building means any structure (excluding fences and landscaping) on the Burdened Land. For the avoidance of doubt, this includes a Dwelling.

Burdened Land means the land shown at Schedule A on the front page of this Instrument as the burdened land.

Covenantee means the person named as covenantee on the front page of this Instrument and, where the context requires, any other person nominated by the covenantee for the time being to succeed its rights and obligations under this Instrument.

Covenantor means the owner of all or any part or parts of the Burdened Land and includes their occupiers, invitees, executors, administrators, assignees and successors in title from time to time.

Covenants means the covenants set out in this Instrument.

Design Guidelines means the design control guidelines in force at the time as issued by and/or available on request from the Covenantee from time to time.

Development means the integrated residential development known as "Lakeside" undertaken by the Covenantee on the Development Land (which the Burdened Land forms part of) including Dwellings, Improvements and all other associated infrastructure.

Development Land means the land (either currently or formerly) comprised in records of title 881298, 881299, 705543 and SA922/186 (all South Auckland Registry).

District Plan means the then Operative District Plan and/or Proposed District Plan of the Waikato District Council.

Dwelling means a single self-contained household unit, and includes accessory buildings. Where more than one kitchen and / or laundry is provided on any Lot, there will be deemed to be more than one Dwelling.

Improvements means existing improvements constructed by the Covenantee on the Burdened Land and adjoining road or reserves, including roading, footpaths, kerbs, gutters, swale crossings, landscaping, planting, open spaces and walkways.

Instrument means this instrument creating a covenant in gross to be registered on the Burdened Land's record of title and all its Schedules and amendments.

Lodge any Submission means (without limitation) personally or through any agent or servant (including by being a member of any group or society, whether incorporated or not), directly or indirectly, lodge or support in any way any objection or submission to any Planning Proposal and includes (without limitation) taking part in any planning hearing, or appeal or reference arising in respect of a Planning Proposal whether as a party or otherwise.

Lots mean each and all of the lots (including each Lot) shown at Schedule A as the burdened land, and **Lot** will have a corresponding meaning.

Planning Proposal means any designation application, resource consent application, or change or variation to the District Plan for any comprehensive land development consent, comprehensive subdivision consents, retirement village, community activity, travellers' accommodation, community activity, commercial activities, commercial services or residential activity as those terms are defined in District Plan as at the date of this agreement in respect of, or which affects, the Te Kauwhata Lakeside Precinct.

Scheme has the meaning given to it in the introduction at clause 1(B) above.

Subdivide and Subdivision has the meaning ascribed to subdivision of land in Section 218(1) of the Resource Management Act 1991.

2.2 Interpretation

In this document, unless the context requires otherwise or it is expressly stated otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a reference to "including" is deemed to be followed by "without limitation";
- (c) any reference to any statute, regulation, ordinance or bylaw will be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same; and
- (d) words denoting a person will include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, estate, agency of state, municipal authority, government or any statutory body in each case whether or not having a separate legal identity.

3. General Covenants

3.1 The Covenantor covenants and agrees:

- (a) to observe and perform all Covenants at all times;
- (b) to ensure that all occupiers, employees, contractors, invitees and anyone or thing that is present on the Burdened Land under the control of, or at the direction or invitation of the Covenantor, observes and performs all relevant and applicable Covenants at all times; and
- (c) that the Covenants will run with and bind the Burdened Land for the benefit of the Covenantee.

4. Scheme Covenants

4.1 The Covenantor covenants with the Covenantee:

Design Guidelines

- (a) to comply with the applicable Design Guidelines applicable to the relevant Lot in all regards including fencing, landscaping and building;
- (b) to the extent the Design Guidelines may be inconsistent with, or more specific than, this Instrument, the Design Guidelines will prevail;

Building

- (c) not to occupy any Building without a current code compliance certificate issued under the Building Act 2004;
- (d) not to commence construction of any Building without having first obtained the written consent of the Covenantee to the plans and specifications, exterior design, fencing, landscape and appearance of the proposed Building at the Covenantor's cost;

- (e) not to make any changes to the plans and specifications for the exterior design, fencing, landscaping or appearance of any Building once consent has been obtained from the Covenantee;
- (f) not to make any external additions or alterations to any Building, fencing or landscaping without the prior written consent of the Covenantee; and
- (g) for 15 years from the date that this Instrument is registered, to only construct a Dwelling, fences and landscaping in accordance with Approved Building Plans applicable to the relevant Lot.

4.2 Once a code compliance certificate has been obtained for a Dwelling on a Lot:

- (a) the Covenantor will provide reasonable access to the Covenantee, its designated employees and contractors to inspect the Dwelling, fences and landscaping on the Lot to check for compliance with the applicable Design Guidelines and Covenants;
- (b) should the Covenantee (acting reasonably) determine that there has been any non-compliance with the applicable Design Guidelines or Covenants it will advise the Covenantor in writing and the Covenantor must, as soon as practicable and in any event within 60 days, remedy the specified non-compliance at the Covenantor's cost; and
- (c) where the non-compliance matters are not rectified by the Covenantor within 60 days of the receipt of notice from the Covenantee, then the Covenantor acknowledges that the Covenantee will have the right to enter the Burdened Land to remedy such non-compliance in accordance with its rights under clause 7.3 of this Instrument.

4.3 The Covenantor will not be required to obtain approval or consent of the Covenantee under this clause 4, if the Covenantee is a company and ceases to exist, and did not assign:

- (a) the benefit of this Instrument; or
- (b) its rights of approval and consent under this clause 4.

4.4 For as long as any Lot is owned by the Covenantee, the Covenantor agrees that the Covenantee will not be liable to contribute towards the cost of, or assist in the erection or maintenance of, any boundary or dividing fence between that Lot owned by the Covenantee and any contiguous Lot.

5. Use Covenants

5.1 Subject to clause 5.2 below, the Covenantor covenants with the Covenantee, where the Covenantor is either:

- (a) the first purchaser of a bare Lot from the Covenantee (a **First Purchaser**); or
- (b) the owner of a bare Lot (a **Bare Lot Owner**) other than the Covenantee,

not to sell its Lot (a **Bare Lot Sale**) until a residential dwelling has been constructed on the Lot and a code compliance certificate under the Building Act 2004 for that residential dwelling has been issued, unless the written consent of the Covenantee to

the Bare Lot Sale has first been obtained, which the Covenantee may give or withhold in its sole discretion.

- 5.2 Nothing in clause 5.1 shall apply to any Bare Lot Sale completed by any mortgagee of that Lot in exercise of its power of sale.
- 5.3 The Covenantor covenants with the Covenantee:
- (a) not to use any Lot or permit the same to be used for any use other than residential purposes and not to use any Lot or permit the same to be used for any trading, industrial or commercial purposes, provided however that it is acknowledged that the use of a residential dwelling for a home enterprise use as permitted by the District Plan, use as a bed and breakfast, or the use of a Lot as a sales office by the Covenantee will not be in breach of the provisions of this Instrument;
 - (b) that once construction of a Dwelling on a Lot has commenced, it shall:
 - (i) complete construction of that Dwelling (including all exterior cladding and painting) to a standard commensurate with the standard of a new single residential dwelling within 12 months of the commencement of construction; and
 - (ii) complete the landscaping (in accordance with and as required by the Design Guidelines or approval under the Design Guidelines) of the Lot within three months after the date of completion of construction of the Dwelling;
 - (c) that all Buildings, fences and landscaped areas on the Burdened Land must be constructed and finished in a good and workmanlike fashion;
 - (d) not to erect more than one Dwelling on any Lot;
 - (e) not to erect or place, or permit to be erected or placed any caravan, mobile home, hut, boat or any structure capable of providing temporary accommodation or other vehicles on the Lot, provided that the storage of mobile homes, caravans, cars, tractors, boats and other such items is permitted on a Lot once a Dwelling has been constructed and completed on that Lot;
 - (f) not to keep or allow to be kept any substances that are hazardous, noxious or likely to cause nuisance on any of the Lots which are inconsistent with normal household use and are stored in normal household quantities;
 - (g) to ensure that all services and utilities are located below ground on Lots;
 - (h) to keep the Lots neat and tidy and free of significant noxious weeds and overgrowth, including (but not limited to) keeping all grass and vegetation below 30cm in length;
 - (i) to cause as little interference as reasonably possible with any Improvements and to promptly make good any damage caused by the Covenantor to the Improvements at the sole cost of the Covenantor;
 - (j) not to permit any rubbish or waste material to be or remain on any Lot other than within suitable enclosed structures or otherwise appropriately screened from view;

- (k) not to permit odours to emit from the Lot so as to render any Lot or any portion of a Lot to be deemed unsanitary, offensive or detrimental to the occupiers of any other Lot;
- (l) not to permit any Lot to be used (without limitation) for purposes involving a cattery, piggery or boarding kennels for dogs or other animals. The keeping of ordinary household pets (such as dogs, cats and birds) shall be permitted provided that no breeding, raising or boarding of such pets shall be for a commercial purpose;
- (m) not to permit the parking of trucks or any large commercial vehicles on or adjoining any Lot or on any thoroughfare or road, other than for temporary delivery purposes;
- (n) not to permit the parking of any vehicles which do not have a current warrant of fitness and / or registration, in view of any Dwelling on any neighbouring Lot, or in view of any thoroughfare or road within or adjacent to the Development;
- (o) not to construct or place on any Lot any pre-used or second-hand Building or a Building that is capable of relocation; and
- (p) to ensure all gas cylinders and washing lines are suitably screened from the road and/or access lot frontage of any Lot.

6. No-Objection Covenants

6.1 The Covenantor further covenants that:

- (a) in relation to any Planning Proposal lodged by (or with the written approval of) the Covenantee or its nominee in respect of any of the land comprised in the Development, it will not at any time:
 - (i) Lodge any Submission (or cause to be made or lodged); nor
 - (ii) be a party to or otherwise encourage or support in any way (or agree to do any of the foregoing); nor
 - (iii) finance or contribute to the cost of (or agree to do any of the foregoing);
- (b) if requested by the Covenantee, the Covenantor will (at the Covenantor's own cost and expense) promptly provide its unqualified affected person's approval under section 95E of the Resource Management Act 1991 (**APA**) (or such equivalent approval as may be apply if the Resource Management Act 1991 is repealed, amended or replaced) in respect of any such Planning Proposal and will not withdraw that approval;
- (c) it will not at any time:
 - (i) obtain an order, injunction or any other remedy or make any complaint against any contractor or any consultant which relates to the Development or any Subdivision relating to the Development Land or the Scheme; or
 - (ii) object to marketing methods employed by the Covenantee in an endeavour to sell other lots forming part of the Development, including

the use of signs, the placement of signs and the maintenance of display units and/or a sales office on the Development (but not on any Burdened Land), provided that the Covenantee does not cause unreasonable interference to the comfort and convenience of the Covenantor in the use and enjoyment of the Burdened Land; and

- (d) it will sign all documents and do all things required by the Covenantee to meet the Covenantor's obligations under this clause 6.

7. Enforcement

- 7.1 The Covenantor and Covenantee acknowledge and agree that this Instrument is subject to Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 and that the covenants contained in this Instrument that are intended to create obligations on the Covenantor, confer benefits on and are enforceable at the suit of the Covenantee. For the avoidance of doubt, the obligations of the Covenantor under clauses 4, 5 and 6 of this Instrument will bind the Covenantor and all successors in title to the Burdened Land.
- 7.2 The Covenantor acknowledges that the Covenantee will not be liable to the Covenantor for any loss, damage, claim or expenses (including where such loss, damage, claim and expense arises from the approval or non-approval of an application under the Design Guidelines, any failure to meet the timeframes stated in the Design Guidelines or performing any function under or in relation to the Design Guidelines) or a failure to enforce the Covenants set out in this Instrument.
- 7.3 In the event that the Covenantor fails to observe and perform any of the requirements of the Design Guidelines or the Covenants (**Covenantor Breach**), the Covenantee will have a right (but not an obligation) to do whatever may be reasonably required to remedy such failure on the part of the Covenantor, and the cost incurred by the Covenantee in remedying the default will be reimbursed by the Covenantor to the Covenantee upon demand.
- 7.4 The Covenantee acknowledges and agrees that in the event of a Covenantor Breach, the Covenantee will suffer loss and, without limiting clause 7.3 and without prejudice to any other liability the Covenantor may have to the Covenantee, the Covenantor will pay on written demand from the Covenantee (or authorised agent of the Covenantee) the sum of \$200.00 per week (or part thereof) that such Covenantor Breach continues as compensation for the loss or cost that the Covenantee is likely to suffer or incur as a result of that Covenantor Breach.
- 7.5 For the avoidance of doubt, the parties acknowledge and agree that while any compensation payable pursuant to clause 7.4 fairly reflects the Covenantee's legitimate interest in the enforcement of the relevant obligations and is a genuine pre-estimate of the Covenantee's general loss due to a Covenantor Breach, it is not the sole remedy available to the Covenantee and in particular is in addition to and without prejudice to the right of the Covenantee to be reimbursed by the Covenantor as contemplated in clause 7.3.
- 7.6 All notices relating to this Instrument are to be served in writing. The address for service of any notice to the Covenantee is the address registered at the companies office as at the date of service for such purpose and the address for service of any notice to a Covenantor is the residential address of the property in the Development purchased by the relevant Covenantor.

8. Liability

Without prejudice to the Covenantant's other rights, this Instrument binds the Covenantant's successors in title so that contemporaneously with the acquisition of any interest in the Burdened Land all such successors in title become bound to comply with this Instrument. However, the liability of any Covenantant under this Instrument is limited to obligations and liabilities that accrue during that Covenantant's time as registered proprietor of the Burdened Land and only in respect of that part of the Burdened Land owned by that Covenantant. A Covenantant will not be liable for any breach of this Instrument which occurs during any period prior to or after its term as registered proprietor of the Burdened Land (however, for the avoidance of doubt, any Covenantant will remain liable for any such antecedent breach following the transfer of its interest in the Burdened Land).

9. Costs

The Covenantant will pay all costs directly or indirectly attributable to the enforcement and discharge of this Instrument.

10. Implied terms

No covenants by the Covenantant or by the Covenantant's successors in title are implied in this Instrument other than the covenants for further assurance implied by section 208 of the Land Transfer Act 2017.

11. Severability

If any provision or part of this Instrument is illegal, unenforceable, or invalid, then such provision or part is deemed to be removed from and not form part of this Instrument, but the rest of this Instrument will not be affected and will continue in full force and effect.