

View Instrument Details



Instrument No 12539177.17
Status Registered
Date & Time Lodged 18 July 2023 17:32
Lodged By Waterhouse, Tracie Jane
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
1076567	North Auckland
1119995	North Auckland
1119996	North Auckland
1119997	North Auckland
1119998	North Auckland
1119999	North Auckland
1120000	North Auckland
1120002	North Auckland
1120003	North Auckland
1120004	North Auckland
1120005	North Auckland
1120006	North Auckland
1120014	North Auckland

Annexure Schedule Contains 3 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 Tracie Jane Waterhouse as Covenantor Representative on 18/07/2023 05:01 PM

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 Tracie Jane Waterhouse as Covenantee Representative on 18/07/2023 05:01 PM

*** End of Report ***

Form 26

Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

Covenantor

Mangawhai Central Limited

Covenantee

Mangawhai Central Limited

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, grants to the Covenantee (and, if so stated, in gross) 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 of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant		Lot 2, DP 579625 (RT 1076567) Lot 3, DP 579625 (RT 1119995) Lot 4, DP 579625 (RT 1119996) Lot 5 DP 579625 (RT 1119997) Lot 6, DP 579625 (RT 1119998) Lot 7, DP 579625 (RT 1119999) Lot 8, DP 579625 (RT 1120000) Lot 10, DP 579625 (RT 1120002) Lot 11, DP 579625 (RT 1120003) Lot 12, DP 579625 (RT 1120004) Lot 13, DP 579625 (RT 1120005) Lot 14, DP 579625 (RT 1120006) Lot 15, DP 579625, (RT 1120014)	In Gross

Covenant rights and powers (including terms, covenants and conditions)

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 209 of the Land Transfer Act 2017].

Annexure Schedule.

Form L

Annexure Schedule*Insert instrument type***Covenant Instrument to note land covenant****Annexure Schedule****Interpretation**

In this instrument the following definitions apply:

Burdened Land means Lots 2 – 8 (inclusive) and 10 – 15 (inclusive), DP 579625 and any subsequent lot derived from the Burdened Land.

Developer means Mangawhai Central Limited

Restricted Activity means the operation of a Childcare Business.

Childcare Business means a business which provides Early Childhood Education for the teaching and care of babies, toddlers, and young children at a facility that includes: kindergarten, childcare, daycare, creche, kohanga reo, language nest, Aoga Amata, playcentre, educare, early learning centre, nursery school, Montessori, Rudolf-Steiner, preschool and/or any ancillary services relating to early childhood education businesses.

In this instrument unless a contrary intention is expressed:

- (a) A reference in this instrument to any statute or Act or regulation shall be deemed to be references to New Zealand statutes, regulations and Acts and shall include all amendments to such Act and also any statute passed in substitution;
- (b) A covenant or agreement on the part of two or more persons binds them jointly and severally.
- (c) Each provision of this instrument is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this instrument in the relevant jurisdiction, but the rest of this instrument will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Covenants**1 Covenants in perpetuity**

- 1.1 The Covenantor, for itself and its successors in title being the registered owner for the time being of the Burdened Land, covenants and agrees with and for the benefit of the Covenantee and its successors in title from time to time being the registered owner for the time being of the Benefited Land, that the Covenantor will from the date of registration of this instrument be bound by, and observe the restrictions and obligations set out in this instrument in perpetuity.

2 Not to Engage in Restricted Activity

- 2.1 From the date of registration of this instrument until 20 June 2028, the Covenantor covenants with the Covenantee that it will not, for itself, nor permit any occupier of the Burdened Land, to operate or permit to be operated on all or any part of the Burdened Land the Restricted Activity.

3 Covenantor's lessee or licensee

- 3.1 The Covenantor shall:
 - 3.1.1 Provide a copy of this instrument to its lessee, licensee, occupier or user of the Burdened Land; and

- 3.1.2 Take all necessary steps to procure its lessee, licensee, occupier or user of the Burdened Land, to comply with the covenants of the Covenantee under this instrument, without limiting the Covenantor's obligation to comply.

4 Indemnity

- 4.1 The Covenantor will indemnify and keep indemnified the Covenantee from and against all proceedings, actions, costs, expenses, damages, claims and demands whatsoever arising or resulting from, either directly or indirectly, a breach or breaches by the Covenantor of the covenants and restrictions contained and implied on behalf of the Covenantor in this instrument, which occurred while the Covenantor was the registered owner of the Burdened Land or any part of the Burdened Land.

5. Breach of Covenant

- 5.1 The Covenantor acknowledges that a breach of the covenants herein shall have a material impact on the Covenantee. In the event of a breach of any of the covenants contained herein and without prejudice to any other liability which the Covenantor may have to the Covenantee and any person having the benefit of the covenant, the Covenantor will upon written demand being made by the Covenantee or by any of the registered proprietors of the Benefited Land pay to the person making such demand as liquidated damages the sum of \$5,000.00 per day from the date of breach until the breach is remedied by the Covenantor to the satisfaction of the Covenantee.

6 Disputes

- 6.1 If any dispute, difference or question ("dispute") arises between the Covenantor or any of its successors in title and the Covenantee concerning:

- 6.1.1 the interpretation of this instrument;
- 6.1.2 any matter contained in or arising out of this instrument;
- 6.1.3 the rights, liabilities or duties of the Covenantor or the Covenantee;
- 6.1.4 any other issue relating to the relationship between the Covenantor and the Covenantee under this instrument

(including claims in tort as well as in contract);

the parties will endeavour to settle the dispute by mediation before resorting to arbitration. Either party may initiate mediation by giving written notice to the other party. The mediator will be agreed on by the parties, but if the parties cannot agree on a mediator within 7 days after the mediation has been initiated, then the mediator will be appointed by the President for the time being of the Auckland branch of the New Zealand Law Society whose decision as to the appointment of the mediator will be final and binding on the parties.

- 6.2 If the dispute has not been settled within 14 days after the appointment of the mediator, or within any longer period agreed on in writing by the parties, then the parties agree that resolution of the dispute will be determined by arbitration under the Arbitration Act 1996. Either party may commence the arbitration by giving written notice to the other party stating the subject matter and details of the dispute and that party's requirement to have the dispute determined by arbitration.
- 6.3 The arbitration will be conducted by a single arbitrator. If the parties cannot agree upon a single arbitrator within 14 days of a party receiving notice under the immediately preceding clause, then the arbitrator will be appointed by the President for the time being of the Auckland branch of the New Zealand Law Society whose decision will be final and binding on the parties.
- 6.4 The parties agree that the arbitrator's award will be final and binding on them.