

View Instrument Details



Instrument No 12251235.1
Status Registered
Date & Time Lodged 29 November 2021 08:08
Lodged By Hopkins, Nadine Alice
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
56150	North Auckland
56153	North Auckland
56155	North Auckland
NA92C/38	North Auckland

Annexure Schedule Contains 5 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 Nadine Alice Hopkins as Covenantor Representative on 21/09/2021 08:25 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 Heath David Brunton as Covenantee Representative on 15/09/2021 04:25 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****Modern Merchants 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 1, Lot 4 and Lot 6 DP 314200 (RTs 56150, 56153, 56155) (North Auckland) Lot 4 DP 154785 (RT NA92C/38) (North Auckland)	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**

In this instrument the following definitions apply:

Agreement to Build and Lease means the Agreement to Build and Lease between the Developer as Lessor and the Covenantee as Lessee dated 18 September 2019.

Developer means Mangawhai Central Limited including its successors, transferees and assigns.

Related Entity means any person, company, trust, partnership, joint venture, incorporated society or other entity which is directly or indirectly owned or controlled by, or owns or controls or associated with or related to the Covenantee or Foodstuffs North Island Limited.

Subdivision means the subdivision of the Burdened Land in various stages.

Supermarket Operations means:

- (a) The existing supermarket or retail food warehouse buildings and improvements (or any future buildings or improvements) in the Subdivision pursuant to the Agreement to Build and Lease;
- (b) The Covenantee's activity of operating a supermarket or retail food warehouse and all other ancillary activities pertaining to a supermarket or retail food warehouse carried out in the Subdivision pursuant to the Agreement to Build and Lease which may have consequences beyond the boundaries of its location in the Subdivision;
- (c) The effects relating to the Covenantee's operations in the Subdivision pursuant to the Agreement to Build and Lease including:
 - i. Noise levels, odour, glare or vibration;
 - ii. Use of vehicles;
 - iii. Site coverage and layout;
 - iv. Erection, alteration, extension, removal, reconstruction, demolition or redevelopment of buildings or improvements in the Subdivision pursuant to the Agreement to Build and Lease.

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, 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 Covenantor's lessee or licensee

- 2.1 The Covenantor shall:

- 2.1.1 Provide a copy of this instrument to its lessee, licensee, occupier or user of the Burdened Land;
- 2.1.2 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.

3 No objection

- 3.1 The Covenantor covenants with the Covenantee as follows:

- 3.1.1 Not to, either personally, or by directly or indirectly co-operating with or assisting others, including without limitation, assisting by the provision of financial assistance, object to, or lodge a complaint with, any authority or make or bring any legal action, demand for damages, costs, expenses or allege any liability whatsoever in relation to the Supermarket Operations.
- 3.1.2 Not to, either personally, or by directly or indirectly co-operating with or assisting others, including without limitation, assisting by the provision of financial assistance, as part of any application for resource consent by the Covenantee or any occupier or operator of the Supermarket Operations, or as part of any review or change to the applicable District Plan or Regional Plan, make any submission or objection to such application, review or change, which submission or objection could be construed in any way so as to prevent, limit or reduce the Supermarket Operations.
- 3.1.3 To promptly sign any consent or approval to any application for consent under any legislative requirement including without limitation, pursuant to the Resource Management Act 1991 or Building Act 2004, that is required by the Covenantee for Supermarket Operations.

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 General Provisions

- 5.1 The covenants contained in clauses 1 to 5 (inclusive) are for the purposes of the Contract and Commercial Law Act 2017 intended for the benefit of and are to be enforceable by the Covenantee, Foodstuffs North Island Limited or a Related Entity.
- 5.2 The obligation to observe the covenants contained in this instrument shall terminate when the Covenantee permanently ceases operation of the Supermarket Operations. Following such termination, the Covenantee will at the request and cost of the Covenantor or any of its successors in title of all or part of the Burdened Land do all

	things necessary on the part of the Covenantor to register a discharge of this instrument over all or such part of the Burdened Land.
5.3	If any dispute, difference or question ("dispute") arises between the Covenantor or any of its successors in title and the Covenantor concerning: (a) the interpretation of this instrument; (b) any matter contained in or arising out of this instrument; (c) the rights, liabilities or duties of the Covenantor or the Covenantor; (d) any other issue relating to the relationship between the Covenantor and the Covenantor 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. 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. 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. The parties agree that the arbitrator's award will be final and binding on them.
5.4	Notwithstanding any rights or powers granted or available to or the Covenantor pursuant to the Resource Management Act 1991, the Land Transfer Act 2017 or the Property Law Act 2007, the Covenantor by its execution of this instrument consents to any vesting, or dedication as road or reserve to the Kaipara District Council that is required by the resource consent for the Subdivision provided that in all cases, the Covenantor's rights under this instrument and the Agreement to Build and Lease are not prejudiced and the purpose and intent of this instrument and the Agreement to Build and Lease are preserved. The provisions of this clause shall extend to the Developer and shall be binding on the Covenantor and its successors.