

View Instrument Details



Instrument No 11727575.11
Status Registered
Date & Time Lodged 09 March 2021 16:00
Lodged By Coleman, Irene Anne
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
930918	North Auckland
930919	North Auckland
930920	North Auckland

Annexure Schedule Contains 8 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 Andrew James Golightly as Covenantor Representative on 08/03/2021 09:57 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 Andrew James Golightly as Covenantee Representative on 08/03/2021 09:57 AM

*** End of Report ***

Covenant Instrument to note land covenant

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

Covenantor**DANIEL JAMES CLEARY****Covenantee****DANIEL JAMES CLEARY****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 100 DP 546644 (Records of Title 930918, 930919 and 930920)	Lots 7, 8 and 9 DP 546644 (Records of Title 930918, 930919 and 930920)

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 A].

Annexure Schedule A*Insert instrument type***Land Covenant***Continue in additional Annexure Schedule, if required*

The Covenantor is registered as proprietor of the land contained in Lot 100 DP 546644 (Records of Title 930918, 930919 and 930920) ("the burdened land"). It is the intention of the Covenantor to create for the benefit of the land contained in Lots 7, 8 and 9 DP 546644 (Records of Title 930918, 930919, 930920) ("the benefited land") the land covenants set out in Schedule B below to the intent that the Covenantor being the registered proprietor of the burdened land shall be bound by the stipulations and restrictions set out in Schedule B and that the Covenantee will enforce the observance of such stipulations against the owner and occupiers for the time being of the burdened land for the benefit of the benefited land and the Covenantor covenants and agrees in the manner set out in Schedule B so that the covenants run with the burdened land for the benefit of the benefited land in perpetuity.

SCHEDULE B**1. The Covenantor and Covenantee acknowledge and agree that:**

- 1.1 The Covenantee means the registered owner of the benefited land and includes the Covenantee's successors in title and its servants, tenants, agents and licensees, contractors, employees and invitees.
- 1.2 The Covenantor means the registered owner of the burdened land and includes the Covenantor's successors in title and its servants, tenants, agents and licensees, contractors, employees and invitees.
- 1.3 Easement facility has the same meaning as that given in Schedule Five of the Land Transfer Regulations 2018.
- 1.4 In addition to the provisions regarding any easement facility on the burdened land recorded herein, the rights and powers, express and/or implied, in all easements registered over the burdened land are those contained in each particular Easement Instrument registered on either the burdened land and the benefited land or both. If there is any conflict between the provisions contained in this land covenant and the provisions contained in any registered Easement Instrument, the provisions contained in the registered Easement Instrument(s) shall prevail.
- 1.5 Voting - the property owner(s) of each individual property making up the benefited land shall have one vote for their respective property for any meeting or determination. For the avoidance of doubt, the number of registered owners or people living at each property shall not be taken into account.
- 1.6 The burdened land shall only be used for the purposes of accessing the benefited land and for the conveyance of services across easement facilities.
- 1.7 In this land covenant, unless the context otherwise requires the singular shall include the plural and vice versa and derivatives of any defined term have a corresponding meaning to that of the defined term.

1.8 The provisions of this land covenant do not give rise to a caveatable interest to any of the parties or any of the properties referred to herein in regard to any unregistered right of way/service easement across the burdened land, despite the terms "Easement", "Right of Way" "Easement Facility" and "Easement Area" being used. These terms are solely used for ease of reference.

2. The Covenantor and Covenantee agree that:

2.1 The Covenantor wishes to establish covenants over the burdened land for the benefit of the Covenantee.

2.2 It is the intent of the Covenantor that the covenants will be covenants running for all time to bind the burdened land for the benefit of the Covenantee until such time the land contained in the burdened land is vested as road.

2.3 Upon deposit of a plan vesting the burdened land (or any part of it) as road, these covenants shall immediately cease and shall be surrendered or revoked by registering an instrument in the same dealing (or such registration process being used at the time) that is linked to the plan vesting the burdened land as road.

2.4 When the burdened land (or any part of it) is to be vested as road, the Covenantor and Covenantee agree to:

- (a) Co-operate with each other at all times; and
- (b) Obtain any required consents and/or signed documentation from their mortgagee(s), encumbrancee(s), third party Covenantee(s) (easement in gross), etc; and
- (c) Sign all documentation required to vest the burdened land as road, including surrendering/revoking these land covenants and any other easements affecting the burdened land, when required.

3. Use of Land

3.1 Easements

3.1.1 In addition to the easement facilities contained in any Easement Instruments registered over the titles to the burdened land and benefited land, the Covenantee shall be entitled to connect to the services on the burdened land, whether or not a private easement (made between the Covenantor and Covenantee) has been registered on the titles to the burdened land and benefited land. The Covenantees shall also be entitled to run any required services through the burdened land, whether with or without a registered easement for such services (including easements in gross with a third party), without any impediment from the Covenantor or any of the other Covenantees.

3.1.2 If an easement facility is required to be registered at any time over the burdened land for the benefit of any of the Covenantees, the Covenantor and other Covenantees shall:

- (a) Co-operate with each other at all times; and
- (b) Obtain any required consents and/or signed documentation from their mortgagee(s), encumbrancee(s), third party Covenantee(s) (easement in gross), etc; and

(c) Sign all documentation required to register such easements, when required.

3.1.3 For any unregistered easement facilities/service connections referred to in clause 3.1.1 herein or any new easement facilities referred to in clause 3.1.2 herein, the provisions of Schedule Five of the Land Transfer Regulations 2018 (rights and powers implied in easements) (or subsequent similar legislation) shall apply as if those rights and powers had been set out in this land covenant in full. Neither the Covenantor nor Covenantees can impede, stop or disconnect any services on the burdened land at any time, whether or not an easement has been registered (including easements in gross with a third party).

3.1.4 If at any time, either all or part of the burdened land is vested as road, any registered or unregistered easement facilities shall immediately cease and the provisions of clause 2.4 herein shall apply.

3.2 Access

3.2.1 The burdened land currently contained in Lot 100 DP 546644 ("the Access Lot") shall only be used as common road in accordance with the following clauses herein.

3.2.2 In addition to provisions already provided for access strips/lots under New Zealand legislation, the Covenantees shall have the right to use the Access Lot to access their respective properties on the same terms and conditions as a right of way easement facility, whether or not such right of way easement facility has been registered over the burdened land and benefited land.

3.2.3 Section 298 of the Property Law Act 2007 (access lots) and the implied rights and powers contained in Schedule Five of the Land Transfer Regulations 2018 and Schedule Five of the Property Law Act 2007 (or subsequent similar legislation) shall apply to the Access Lot (whether or not a right of way easement has been registered) as if those rights and powers had been set out in this land covenant in full.

3.2.4 In addition to the rights and powers contained in Schedule Five of the Land Transfer Regulations 2018 and Schedule Five of the Property Law Act 2007, the Covenantor and Covenantee shall:

(a) Ensure that all vehicles shall be driven in a safe and responsible manner with consideration for the safety of others and their enjoyment of the Access Lot. The Covenantee shall be responsible for ensuring that their invitees comply with the requirements of this provision. If the Covenantee or its invitees fail to comply with this provision then that is a breach of this land covenant and the person may also be banned from driving or riding a vehicle within the Access Lot.

(b) Ensure the safety of the Access Lot for the use of vehicles.

(c) Ensure the upkeep of paved or sealed surfaces and the mowing of grass berms and other grassed areas on the Access Lot to a neat and tidy standard.

(d) Ensure that no nuisance is caused by unreasonable use of the Access Lot nor from the disposal of surface waters from it. In this regard the Covenantors shall co-operate as necessary to allow the disposal of surface water into any suitable water course on any adjoining land on condition that associated works are undertaken to minimize injurious affection to such adjoining land and in accordance with any requirements of the local authority.

(e) Maintain any services and utilities above and below the carriageway level or the Access Lot including the maintenance, repair and replacement of any pipes, drains, conduits or similar.

(f) Ensure that no noxious or illegal plants or weeds grow on the Access Lot.

3.2.5 If there is any conflict between the provisions contained in clause 3.2 herein and the rights and powers contained in Schedule Five of the Land Transfer Regulations 2018 and Schedule Five of the Property Law Act 2007 with regard to the Access Lot, the provisions of clause 3.2 herein shall prevail.

3.2.6 If at any time, either all or part of the burdened land is vested as road, any registered or unregistered right of way rights and easement facilities shall immediately cease and the provisions of clause 2.4 herein shall apply.

3.3 Subdivision or cross-lease

3.3.1 If any Covenantee wishes to subdivide or cross-lease their respective property, they must first obtain the prior written consent of the Covenantor for the proposed subdivision or cross-lease. Such consent from the Covenantor may not be unreasonably withheld.

3.3.2 If any Covenantees wish to carry out a boundary adjustment between themselves then consent is not required from the Covenantor nor the other Covenantee(s).

3.3.3 Should a Covenantee wish to carry out a boundary adjustment with a neighbour who is not a Covenantee, the subdividing Covenantee must obtain the prior written consent from the Covenantor if it is intended that the neighbour is to be granted an undivided share of the Access Lot as part of the boundary adjustment. If the neighbour is to be granted an undivided share of the Access Lot then the provisions of clause 3.3.4 shall apply.

3.3.4 Once the subdividing Covenantee has received written consent from the Covenantor for their subdivision, cross-lease or boundary adjustment, the Covenantee must carry out the subdivision, boundary adjustment or cross-lease solely at their own cost, including updating the shares in the Access Lot resulting in each benefited land having an equal undivided share in the Access Lot (including the new Lots being created as part of the subdivision and cross-lease). To clarify, the existing undivided shares cannot simply be halved, divided or apportioned between the new Lots/titles created from the subdivision, cross-lease or boundary adjustment, the new Lots/titles and the existing Lots must remain at equal undivided shares in the Access Lot at all times. For the avoidance of doubt, the subdividing Covenantee is responsible for all costs relating to the subdivision, including but not limited to, surveyor's costs, Council costs, their own legal fees and the Covenantors/other Covenantees' legal fees and mortgagee costs.

4. Maintenance of the burdened land

4.1 The provisions of Schedule Five of the Land Transfer Regulations 2018 and Schedule Five of the Property Law Act 2007 (or subsequent similar legislation) apply for the maintenance, repair and/or replacement of the easement facilities on the burdened land and access over the burdened land (the Access Lot). These provisions apply whether or not an easement instrument has been recorded on the respective titles for the benefited land and the burdened land for the service connection(s) between the burdened land and the benefited land and/or access across the burdened land to the benefited land.

5. Management of the burdened land

- 5.1 The Covenantor and Covenantee agree that an incorporated society, residents association, body corporate or similar entity ("Management Entity") may be appointed at any time, on terms and conditions satisfactory to all parties, to manage the burdened land and the provisions set out in this land covenant.
- 5.2 The Management Entity may charge and collect levies from the registered owners of the benefited land for the maintenance, repair and replacement of the registered and unregistered easement facilities and rights of way facilities on the burdened land.
- 5.3 The appointment of the Management Entity shall be made by a majority vote of all Covenantees. Voting is to be carried out in the manner set out in clause 1.5 herein.
- 5.4 Once a Management Entity has been appointed, the Covenantees automatically become members of the Management Entity and shall remain a member while they are a registered owner of the benefited land. The Covenantees agree to fulfil and continue to fulfil the obligations as a member as set out in the Management Entity's rules, including ensuring that any transferee of a benefited land being sold or transferred, if required by the Management Entity, executes a deed of covenant in favour of the Management Entity agreeing to be bound by the rules as a member of the Management Entity ("Deed of Covenant"). The Covenantees also agree to enter into a Deed of Covenant with the Management Entity if such Deed of Covenant is required by the Management Entity at any time.
- 5.5 If a Management Entity has been appointed prior to the sale or transfer of any of the burdened or benefited land then the new owner automatically becomes a member and must enter into a Deed of Covenant with the Management Entity if such Deed of Covenant is required by the Management Entity at any time. For the avoidance of doubt, this includes land that has changed ownership due to a boundary adjustment.
- 5.6 Until such time as a Management Entity has been appointed, the following provisions shall apply for the management and maintenance of the burdened land:
- (a) An amount for costs relating to repair, maintenance and replacement shall be decided annually in January by the Covenantee ("the annual contribution"). The annual contribution is to be determined by a majority vote of the Covenantee. Voting is to be carried out in the manner set out in clause 1.5 herein. The Covenantees comprising such majority shall each sign a memorandum, or a copy of a memorandum, recording the annual contribution agreed upon and shall arrange for a copy of the memorandum to be served on each Covenantee not included in the majority. The Covenantee may so agree, or sign a memorandum, by an attorney properly empowered to do so. To avoid doubt the collection of the annual contribution in this manner is to assist administration and is not a limitation of the provisions contained in Schedule Five of the Land Transfer Regulations 2018.
 - (b) If an expense arises which is not equal sharing as the work or use of the easement facilities is not for the benefit of all Covenantees then only the Covenantees who use or receive benefit from the work or easement facilities shall be liable for any payment and they will not have recourse to the annual contribution.

- (c) The Covenantee by a majority decision shall appoint annually in January each year a representative to be responsible for repair, replacement and maintenance of the easement facilities and hold the annual contribution paid by the Covenantees on trust and attend to payment as required for the repair, replacement and maintenance of the easement facilities. To avoid doubt this clause is not in any way a limitation of the provisions contained in Schedules Five of the Land Transfer Regulations 2018 and Property Law Act 2007 or clause 5.2(b) (or similar subsequent legislation).
- (d) The annual contribution shall be paid into a bank account nominated by the majority of the Covenantee by the 28th day of February each year with time being of the essence. If payment is not made by the 31st day of March each year then the Covenantee in default will be liable for three times the annual contribution.
- (e) Interest of 15% per annum may also be charged for late payment of the annual contribution on so much of the annual contribution as remains owing from time to time after the 28th of February in year and on other money from time to time payable by the Covenantee pursuant to any provision hereof (whether expressed or implied) until full payment is made.

5.7 The Covenantor's and Covenantee's liability under this land covenant ends on the transfer of the burdened and benefited land to another party. Upon the sale or boundary adjustment of any of the benefited land, all moneys must be paid and/or defaults remedied otherwise these liabilities will pass to the new owner on the settlement of the sale of the property. The new owner of the benefited land being bought and sold shall have no recourse or claims in this regard against the other Covenantees, the Covenantor or the Management Entity (if one has been appointed). For the avoidance of doubt, this provision also applies to any mortgagee, local authority (rates) or Court Order sale.

6. Default/Enforcement

6.1 In addition to the provisions contained in clause 5 herein, if a Covenantee does not meet the obligations implied or specified then:

- (a) The party(s) not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 14 working days from service of the notice of default, the other party may meet the obligations.
- (b) If, at the end of the 14 working day period, that party in default has not met the obligation, the other party may:
 - (i) Charge the Covenantor the sum of \$200.00 per day from the date of the notice notifying the breach until such time as the breach is remedied; or
 - (i) Rectify the breach (For that purpose enter the burdened land) and recover from the Covenantor all reasonable costs associated with same, including the cost of preparing and serving the default notice and the costs incurred in meeting the obligation.

- (c) The other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

7. Dispute Resolution

- 7.1 The parties agree that they will first attempt to resolve any dispute through good faith negotiations within 30 days. If this fails, then the dispute will be referred to mediation (with a mediator agreed by all parties) with a view to resolve the issue. If this fails then the dispute shall be resolved in accordance with the Arbitration Act 1996.