

# View Instrument Details



**Instrument No** 11343334.23  
**Status** Registered  
**Date & Time Lodged** 29 January 2019 11:32  
**Lodged By** Ecclestone, Rosalind Sarah  
**Instrument Type** Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



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Affected Records of Title	Land District
863378	Canterbury
863379	Canterbury
863380	Canterbury
863381	Canterbury
863382	Canterbury
863383	Canterbury
863384	Canterbury
863385	Canterbury
863386	Canterbury
863387	Canterbury
863388	Canterbury
863389	Canterbury
863390	Canterbury
863391	Canterbury
863392	Canterbury
863393	Canterbury
863394	Canterbury
863395	Canterbury

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**Annexure Schedule:** Contains 10 Pages.

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## 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 Clark Pirie as Covenantor Representative on 10/01/2019 10:30 AM

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## 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

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**Covenantee Certifications**

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 Clark Pirie as Covenantee Representative on 10/01/2019 10:30 AM

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

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

**Form 26**

**Covenant Instrument to note land covenant**

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

**Covenantor**

**Adrian Tony Faulks and Susan Mary Faulks**

**Covenantee**

**Adrian Tony Faulks and Susan Mary Faulks**

**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**  
*required*

*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	DP 530510	Lots 38 to 52 and Lots 54 to 56 DP 530510 RT 863378 to 863395	Lots 38 to 52 and Lots 54 to 56 DP 530510 RT 863378 to 863395

**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 B ].

Form L

Annexure Schedule B

Page of Pages

Insert instrument type

Land Covenant

*Continue in additional Annexure Schedule, if required***1. Interpretation**

In this instrument unless the context requires otherwise:

"BHL Trust" means the BHL Trust formed by the BHL Deed of Trust dated 17 May 2004 and any decisions to be made or consents to be issued by BHL Trust under this Covenant will be made by the Trustees of the BHL Trust, whoever they may be, at the time the decision is to be made or the consent is to be issued or such other agent as nominated by the BHL Trust;

"Covenantee" means the Registered Proprietor for the time being of the Benefited Land;

"Covenantor" means the Registered Proprietor for the time being of the Burdened Land;

"Covenantee's Land" means each of the Lots described as the Benefited Land as set out in Schedule A;

"Covenantor's Land" means each of the Lots described as the Burdened Land as set out in Schedule A; and

"Retaining Walls and Associated Fences" means :

Firstly, those structures created as at the date of this Covenant as retaining walls for support and retention of lateral soil mass on Lots 38 to 45 and Lot 56 in close proximity with and adjacent to each of the boundaries of those respective Lots with Lot 303 and 304 all on DP 530510; and

Secondly post and rail fences constructed as at the date of this Covenant on or in close proximity to the retaining walls firstly described above on the respective boundaries of Lots 38 to 45 and Lot 56 with Lot 303 and 304 all on DP 530510; and

Thirdly, those post and rail fences constructed as at the date of this Covenant on the boundaries of Lots 46 to 49 with Lot 78 (Alfie Lane) all on DP 530510

"Subdivision Area" means all the land legally described as Lot 100 DP 509937 contained within Record of Title 779263

**2. Covenants**

The Covenantor shall:

- (a) Not permit the Covenantor's Land to be occupied or used as a residence either prior to the dwelling being completed (including the construction of driveways, pathways, and the completion of all side and rear fences in accordance with Clause 2(g) below) or by the erection of temporary structures or by the placing thereon of caravans and/or vehicles for human occupation.

- (b) Within two months of occupying the residence on the Covenantor's Land the erection of a letterbox and the landscaping and seeding of lawns visible from the road boundary are to be completed;
- (c) Complete any buildings on the Covenantor's Land within 9 months of laying down the foundations for such buildings, and, within 12 months of laying down such foundations the Covenantor shall complete ancillary works such as fencing and landscaping;
- (d) Not erect any building or structure on the Covenantor's Land other than a dwelling house or ancillary building, fence or driveway (including site plan, landscape plan and external colour scheme) that have not been approved by the BHL Trust, or BHL Trust's nominated agent, in its sole discretion prior to the commencement of any building or constructions on the Covenantor's Land;
- (e) Pay to BHL Trust a performance bond of \$2,000.00 on the terms set out in Schedule A of this Covenant;
- (f) Reinstate, replace and be responsible for all costs arising from any damage to landscaping, fencing, roading, footpaths, kerbs, retaining walls, concrete or other structures within the Subdivision Area arising directly or indirectly from the use of the Subdivision Area or the Covenantor's Land by the Covenantor or its occupiers, agents or invitees;
- (g) Not transport or allow to be placed on the said land any pre-lived in or pre-built dwelling, nor, without BHL Trust's prior written consent, use or permit to be used any second-hand materials for the construction of any building or ancillary structure on the Covenantor's Land;
- (h) In respect of the Retaining Walls And Associated Fences:
  - (i) Not remove, add to, alter or damage the same;
  - (ii) Maintain, keep, repair and replace the same as necessary to the same or similar condition (fair wear and tear accepted) that exists as at the date of the first transfer of the Covenantor's Land;
- (i) Subject to the provision of paragraph 2(j) herein, not erect or permit to be erected on the Covenantor's Land any fence or boundary wall of any material containing cement board sheets or panels, corrugated iron or metal sheeting;
- (j) Not erect or permit to be erected on the Covenantor's Land (save for any Retaining Wall and Associated Fence as further defined herein) any fence or boundary wall or any structure on or in close proximity to the boundary of the Covenantor's Land which purports to be a boundary or perimeter fence (hereafter described as "Fence") in breach of the following items:

(i) Fence constructed –

- on the internal adjoining boundaries, of Lots 38 to 56; or
- on the boundary that adjoins of each of Lots 50 to 56 with Lot 201 DP 522024 –

shall not exceed 1.8 metres in height.

(ii) any Fence constructed –

- on the boundary adjoining Lot 38 with Lot 1003 – Veuve Drive;
- on Lot 42 adjoining easement areas A and D;
- on the boundary adjoining Lot 45 and easement areas C and F;
- on the boundaries of Lots 46 to 49 adjoining Lot 1005 - Biggles Place -

shall not exceed 1 metre in height.

(iii) any Fence constructed

- on the boundary adjoining Lots 38 to 41 with Lot 78 – Alfie Lane
- on the boundary adjoining Lot 45 with Lot 78 - Alfie Lane -

shall not –

1. exceed 1 metre in height; and
2. be located within the Landscape Covenant areas Q, R, S, T, U

(iv) any Fence located within 3 metres of any road, private right of way or shared access way (over which the Property has legal access) shall not exceed 1 metre in height.

(v) that does not comply with the requirements of the Selwyn District Plan unless expressly authorised by Selwyn District Council.

(all references herein are references to lot numbers and covenant or easement areas on DP530510 and shall be interpreted accordingly)

(k) Not construct any fence, garage or any other item on Lots 38 to 41 and Lot 45 DP 530510 within two metres of the property boundary with Lot 78 DP530510 (Alfie Lane) so as to create a no-build landscape strip on the borders of Lots 38, 39, 40, 41 and 45 with Lot 78 (Alfie Lane).

(all references herein are references to lot numbers and covenant or easement areas on DP 530510 and shall be interpreted accordingly)

- (l) Not construct any fence, garage or any other item on Lots 38 to 41 and Lot 45 DP 530510 within two metres of the property boundary with Lot 78 DP530510 (Alfie Lane) so as to create a no-build landscape strip on the borders of Lots 38, 39, 40, 41 and 45 with Lot 78 (Alfie Lane).
- (m) Not require Selwyn District Council to pay for or contribute towards building, erecting or maintaining any boundary fence between the Covenantor's Land and any adjoining Reserve or other land owned by Selwyn District Council. For the purposes of this clause "Reserve" has the same meaning as defined in the Reserves Act 1977.
- (n) Not require BHL Trust to pay for or contribute towards building, erecting or maintaining any boundary fence between the Covenantor's Land and any adjoining land owned by the BHL Trust. This covenant does not endure for the benefit of any subsequent registered proprietor of any such adjoining land.
- (o) Not, without BHL Trust's prior written consent, erect or permit to be erected on the Covenantor's Land any dwelling house having a floor area:
  - (i) less than 220 square metres if the total area of the Covenantor's Land exceeds 664 square metres; or
  - (ii) less than 30% of the total area of the Covenantor's Land if the Covenantor's Land is smaller than or equal to 664 square metres.

For the purpose of this clause the floor area of a dwelling house excludes garaging and ancillary buildings (such "ancillary buildings" include but are not limited to garden sheds and carports). In considering whether or not to grant consent for a smaller dwelling house, BHL Trust shall consider whether the dwelling house includes quality design features commonly found in larger dwellings.

- (p) Not use as a roofing material on any dwelling house anything other than tiles (clay, ceramic, decromastic, pre-coated pressed steel), cedar, slate or bitumen shingles or painted long-run pressed steel;
- (q) Not use as exterior cladding on any dwelling house any material other than clay brick, recycled brick, stained or painted weatherboard, linear board, painted or sealed concrete block masonry, natural stone, stucco, plaster, coated zincalume, glazing or any combination of the above;

- (r) Not use a roofing material, guttering, down pipe or exterior cladding on any dwelling house any material comprising unpainted and/or exposed zinc coated products on any building;
  - (s) Not attach to or protrude from the front of any dwelling house, garage or other structure or establish within 6 metres of a road boundary of the Covenantor's Land any fixture that is visible from the road and that in BHL Trust's sole discretion is obtrusive including, but not limited to, air-conditioning units, television or radio aerials and gas bottles;
  - (t) Not permit any rubbish, including builder's waste materials to accumulate or to be placed upon the Covenantor's Land or any adjoining land or permit grass or weeds to grow to a height exceeding 75mm or otherwise leave the Covenantor's Land in a condition that, in BHL Trust's sole discretion may be detrimental to BHL Trust's subdivision. BHL Trust shall have the right to remove any building materials from the Covenantor's Land or adjoining land, or to maintain the Covenantor's Land in a reasonable condition to avoid the Covenantor's Land being or becoming detrimental to the subdivision, with reasonable costs to be met by the Covenantor and payable on demand;
  - (u) Not remove or relocate from the Covenantor's Land any fence, tree or shrub constructed, installed or planted by BHL Trust without the written consent of the BHL Trust;
  - (v) Not keep or raise any livestock, poultry, reptiles or animals of any kind or size on the Covenantor's Land or in any building on the Covenantor's Land other than domesticated household pets. The keeping of pigeons is expressly prohibited;
  - (w) Not permit the erection of any sign on the Covenantor's Land other than a professionally sign written and installed sign marketing the dwelling or section for sale. BHL Trust will only permit the erection of signage indicating a business if such signage is acceptable in the sole discretion of BHL Trust and prior written consent is obtained. BHL Trust shall have the right to remove any sign, which in its sole discretion is unacceptable without prior warning; and
  - (x) Not permit the dwelling to be used as a show home without written consent of the BHL Trust. BHL Trust shall retain sole discretion over the number of dwellings to be used for show home purposes.
- 3 In the event that the Covenantor disagrees with the exercise of the discretion by BHL Trust under clause 2(d) above, the matter shall be referred to a registered building/design professional mutually agreed between the Covenantor and BHL Trust. The consent of BHL Trust shall be deemed to be given if such professional certifies that the proposed building(s) and improvements on the Covenantor's Land are appropriate and suitable for a high quality residential subdivision and will not have an adverse effect on other lots (existing or proposed) within the Subdivision Area.

- 4 BHL Trust shall neither be required nor be liable to enforce the above covenants or any non-conformance of the above covenants.
- 5
- a. For the purposes of this clause 5, the following phrases have the following meanings:
- |                               |                                                                                                                                                                                                                                                                                                              |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>"Lodge any Submission"</i> | includes personally or through any agent or servant directly or indirectly lodge or support in any way any objection or submission to a planning proposal and includes taking any part in a planning hearing, appeal or reference arising in respect of a planning proposal whether as a party or otherwise. |
| <i>"Planning Proposal"</i>    | includes any application for resource consent and/or plan change and/or variation of any nature to the relevant Selwyn District Council District Plan.                                                                                                                                                       |
| <i>"Land"</i>                 | Lots 500 DP 530510 and Lot 201 DP 522024 of the Canterbury Registry.                                                                                                                                                                                                                                         |
- b. The Covenantor covenants with BHL Trust that the Covenantor shall not at any time Lodge any Submission against any Planning Proposal by BHL Trust to subdivide, develop or use any of the Land for any commercial, residential or recreational activity and shall be deemed to have given written approval to any such Planning Proposal for the purposes of the Resource Management Act 1991.
- 6 The Provisions of this Covenant (except Clause 5) shall expire ten years from the issue of a separate certificate of title for the Covenantor's Land.
7. The Covenantor acknowledges that this Land Covenant constitutes a Deed in accordance with the *Contracts (Privity) Act 1982* and this Land Covenant shall be enforceable by BHL Trust in accordance with the provisions of that Act.

## SCHEDULE A

### Terms of Performance Bond

1. The Covenantor shall lodge with the BHL Trust a performance bond of \$2,000.00 ("the Bond") with the Covenantor's plans for approval by the BHL Trust as contemplated in paragraph 2(d) of this Covenant;
2. The purpose of the Bond is to secure the Covenantor's performance of the Land Covenants herein during the Covenantor's site development and construction of a residence on the Property;
3. Upon the BHL Trust granting its approval to the Covenantor's building plans, the Bond shall be paid to the BHL Trust's Solicitors trust account and the parties acknowledge that:
  - (a) The Bond will be held by the BHL Trusts solicitors as stakeholders in the joint names of the BHL Trust and Covenantor; and
  - (b) The Bond will not be held on interest bearing deposit by the stakeholder – the parties acknowledge that when compared with the costs of administration, the interest to be earned on the Bond if it were placed on interest bearing deposit is uneconomical.
4. Within one calendar month of the Covenantor (or its successors and assignees) taking up residence of the Property, the Covenantor shall supply the BHL Trust with the Code Compliance Certificate for the dwelling and a written request for the return of the Bond ("Covenantor's Notice");
5. Upon receipt of the Covenantor's Notice the BHL Trust and Covenantor shall arrange a time suitable for the BHL Trust's inspection of the Property;
6. Following the BHL Trust's property inspection, should the BHL Trust consider (in the BHL Trust's sole discretion acting reasonably) that the Covenantor is in breach of any of covenants 2(a) – (x) herein, then the BHL Trust shall give notice to the Covenantor of any alleged breach of Covenant within seven working days of the Property inspection recording:
  - (a) The alleged breach of Covenant;
  - (b) The action that the BHL Trust considers must be taken by the Covenantor to remedy the alleged breach;
  - (c) The date upon which the BHL Trust intends to re-inspect the property and the remedied work ("the Notice of Breach").

7. The BHL Trust shall return the Bond to the Covenantor within seven days of the BHL Trusts satisfactory inspection (or re-inspection following a Notice of Breach) of the property;
8. The BHL Trust will at all times act reasonably when:
  - (a) Carrying out inspections of the Property; and
  - (b) Arranging meeting times for the inspection of the Property; and
  - (c) Considering breaches of the Covenant; and
  - (d) Considering remedial works carried out by the Covenantor.
9. If the Covenantor fails to comply with item 4 herein and the BHL Trust reasonably believes that the Property has been occupied for at least a calendar month, then the BHL Trust may give notice to the Covenantor of the BHL Trusts intention to complete an inspection of the Property and/or issue a Notice of Breach. For the purposes of this provision, it shall not be necessary for the BHL Trust to have completed a Property Inspection prior to the issue of a Notice of Breach;
10. Subject to clauses 11 and 12 should the Covenantor fail to comply with any Notice of Breach, the BHL Trust may exercise its right to retain the Bond and the BHL Trust shall not be obliged to:
  - (a) Carry out any remedial work referred to in the Notice of Breach;
  - (b) Pay the Bond towards any remedial works carried out at the Property;
  - (c) Account to the Covenantor for the application of the Bond, it being the intention of the parties that the Bond will be forfeited as penalty (but without prejudice to the BHL Trust or any other party's rights, powers or remedies against the Covenantor).
11. Where the Covenantor disputes the alleged breach of Covenant detailed in the Notice of Breach, then the Covenantor shall have 10 working days following receipt of the Notice of Breach to issue a written notice to the BHL Trust requesting a determination by the Adjudicator.
12. Where determination by the Adjudicator is sought by either party, after inspecting the Property and considering the BHL Trust's Notice of Breach and the Covenantor's response to that Notice of Breach, the Adjudicator shall issue a short written decision to the BHL Trust and Covenantor whereupon the Bond (less any costs of the Adjudication) shall be paid as set out in the Adjudicator's decision.

13 The Covenantor will at all times act reasonably when applying for the BHL Trusts approval, or requesting inspection, or requesting information or any other item of the BHL Trust. The BHL Trust may in its sole discretion give notice in writing to the Covenantor advising that any professional costs incurred by the BHL Trust in respect of the Covenantor's requests will be costs for the account of the Covenantor and deductible as against the Bond. Examples of circumstances where the BHL Trust's notice in this respect will be given include, but are not limited to:

- Requesting consent of the BHL Trust but failing to supply complete information following the items laid out in the covenants; and
- Requesting copies of titles, dimensions of the section or location of the council infrastructure;
- Requests for the contact details of another owner within Barton Fields.

For the purposes of this clause, the Covenantor acknowledges that the BHL Trusts retain its legal advisors to manage and administer those covenants, and the Bond.

14. For the purposes of this Covenant, "Adjudicator" means: Any building inspector or compliance officer of the Selwyn District Council.