

Form 26

Covenant Instrument to note land covenant

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

Covenantor

NJ & TM Manning Limited

Covenantee

NJ & TM Manning 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
required

Continue in additional Annexure Schedule, if

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant	DP 600960	Lot 1 DP 600960 (RT 1171625)	Lot 2 DP 600960 (RT 1171626)

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

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].

Schedule 1

OPERATIVE PART:

The Covenantor hereby creates for the benefit of the Benefited Land (Benefiting Lots) the following land covenants over the Burdened Land (Covenanting Lots) to the intent that:

- A. The registered proprietors for the time being of the Covenanting Lots shall be bound by the stipulations and restrictions set out in the Covenants in relation to each of the Covenanting Lots to the extent described in the Covenants; and
- B. The Covenantee and the registered proprietors and occupiers for the time being of the Benefiting Lots may, to the extent described in the Covenants, enforce the observance of the Covenants against the registered proprietors for the time being of the Covenanting Lots.

AND AS INCIDENTAL to the creation of the Covenants, so as to bind each of the Covenanting Lots, and for the benefit of the Covenantee and the respective registered proprietors of each of the other Benefiting Lots, the Covenantor does hereby covenant and agree in the manner set out in the Covenants herein so that the Covenants run with the Covenanting Lots for the benefit of the Covenantee and the respective registered proprietors for the time being of each of the Benefiting Lots **PROVIDED HOWEVER** that:

- C. The Covenantee shall not be required or obliged to enforce all or any of the stipulations and restrictions contained in the covenants; and
- D. The Covenantee may with absolute discretion amend, suspend, waive, vary, cancel, or substitute all or any of the covenants or any part thereof in respect of any other of the titles that have the benefit or the obligations of these covenants.
- E. The Covenantor shall as regards the stipulations and restrictions contained in the Covenants be liable only in respect of breaches which occur while the Covenantor is the registered proprietor of any of the Covenanting Lots in respect of which any breach occurs.

COVENANTS:

- 1. Not to keep or allow pigs on the Covenanting Lots or use the Covenanting Lots for animal boarding kennels or for factory farming.
- 2. Not to object to any further subdivision by the registered proprietors for the time being of any of the Benefiting Lots.
- 3. Not to erect a fence constructed of corrugated iron or other solid metal products, or exceeding 1.8 metres above the natural ground level. The fence must be eight-wire stock proof fence along the boundary of the Covenanting Lots and shall be responsible for the maintenance and upkeep of the fence.
- 4. Not plant any tree or plant on the boundary of the Covenanting Lots which is noxious to animals on the Benefitting Lots.
- 5. Not to allow the Covenanting Lots to be used as a premise for commercial or industrial business. However, a small business such as a hair salon, Bed & Breakfast, Naturopath, or business of a similar nature is permitted.
- 6. Not to place or permit or suffer to be upon the Covenanting Lots any rubbish, debris, building materials, used cars, tyres, junk, unsightly material and such like, nor permit excessive growth of grass so that the same becomes long or unsightly, that the same becomes long or unsightly or a nuisance to the owners of adjoining lots including but not limited to Benefiting Lots. In the event the Covenantor fails to comply with this clause, the Covenantee may (but without having any obligation to do so) carryout such work as shall be necessary to remedy any default (including without limitation,

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mowing the grass and/or the removal of any material to a refuse centre). The Covenantor hereby agrees to grant the Covenantee, and its agents access to the Covenanting Lots for the purpose of conducting such work and to reimburse and indemnify the Covenantee for all costs and expenses incurred in connection with these actions.

7. The Covenantor and Covenantee acknowledge and agree that this clause 7 shall apply solely to any future construction undertaken after the registration of this Covenant Instrument, as there is an existing house and garage already situated on the Covenanting Lot. The Covenantor covenants that:
 - (a) The Covenantor shall be entitled to shift onto the Covenanting Lots any existing pre-built transportable or relocatable buildings or buses however such buildings have first been approved in writing by the Benefitting Lots.
 - (b) The Covenantor shall not be permitted to move any garage, or similar structure (together referred to as "structures") onto the Covenanting Lots other than for the purposes of constructing permitted buildings. The Covenantor shall remove such structures from the Covenanting Lots upon completion of the construction of the permitted buildings.
 - (c) For the avoidance of doubt, the Covenantor shall not use such structures for the purposes of any permanent or temporary accommodation.
8. Not to keep or allow any pigs, donkeys or poultry on the land, nor to use the land for animal boarding facilities **PROVIDED THAT** that the keeping of not more than six (6) domestic hens shall not be a breach of this covenant, but hens must be raised in the confined area. For the purpose of this clause the expression "hens" shall not include "roosters".
9. Not to keep or permit to be kept on the property more than two (2) dogs, four (4) cats, or their litters of a greater age than three (3) months.
10. Not to permit or allow any recreational motorcycling or any other noisy or noisome activity on the property other than for horticultural or agrarian purposes.
11. Separate detached garaging and a workshop is allowed so long as its floor area does not exceed 200 metres squared, and it complies with the Covenants and the local authority requirements in all other respects. Additionally, one caravan, one garden shed, one shipping container and/or one boat shed are also permitted. For the avoidance of doubt, buses are not permitted on the Covenanting Lots for any purpose, including, without limitation, residential use.

REVERSE SENSITIVITY COVENANT

12. **AND FURTHER** the Covenantor acknowledges and accepts that the Covenanting Lots are located in a working rural environment and that the owners/occupiers of the Covenanting Lots may be adversely affected by the agricultural activities including stock farming business, cropping, machinery, noise and odour effects that arise from the normal operations of the agricultural activities situated on the Benefitting Lots (hereinafter called the "Activity") and accordingly the Covenantor in consideration of having received valuable consideration **COVENANTS AND AGREES** in relation to any such Activity and for the benefit of the Covenantee:
 - (a) That the Covenantor shall not do nor permit to be done, nor omit to do any act matter or thing where that act matter omission or thing is intended to restrict or has the effect of restricting the Activity in any way whatsoever, including taking any civil action and/or enforcement proceedings pursuant to the Resource Management Act 1991 or any other statute or common law.
 - (b) That the Covenantor shall not fund, encourage or in any other way be involved in any act matter or thing that if carried out by the Covenantor would breach paragraph 12 (a) above.

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- (c) That the Covenantor shall include in every Lease, Residential Tenancy Agreement, and any other occupation document relating to the Covenanting Lots an acknowledgement by the occupier that the Activity is undertaken in proximity to the Benefiting Lots and that it is a condition of occupation that the obligations at clauses 12 (a) and (b) above are to be complied with by the occupier and to require compliance with such obligations.

13. **AND** the Covenantor further covenants with the Covenantee for themselves, their executors, administrators and assigns that if there should be any breach of non-observance of any of the foregoing Covenants and without prejudice to any other liability which the Covenantor may have to any person having the benefit of the Covenants the Covenantor will on demand by the Covenantee or any of the registered proprietors of any of the lots on the Plan of which the Benefiting Lots forms part:

- (i) pay to the owners of the Benefitting Lots an amount, determined by the owners of the Benefitting Lots in their sole and absolute discretion, but not exceeding a sum of \$100 (one hundred dollars) ("Liquidated Sum") per day for every day that such breach or non-observance continues after the date upon which written demand has been made **PROVIDED HOWEVER;**
- (ii) should the Liquidated Sum not be sufficient to cover the Covenanting Lots costs and without limiting any other rights at law or in equity available to the Benefitting Lots, a breach of any of these terms in this Covenant Instrument shall entitle the Benefitting Lots to immediate injunctive relief and entitle the Benefitting Lots to recover any shortfall as a debt due from the Covenanting Lots all costs including but not limited legal costs and disbursements incurred by the Benefitting Lots in securing or attempting to secure compliance with the terms of this Covenant Instrument by the Covenanting Lots; and
- (iii) do or cause to be done anything necessary to remedy any such breach.

If the Covenanting Lots fails to comply with clause 13(a)(i)-(iii) within ten (10) working days after a demand has been made, the Covenanting Lots irrevocably authorises the Benefitting Lots, at the Benefitting Lot's sole and absolute discretion, to take any actions deemed necessary or expedient to enforce compliance with the terms of this Covenant Instrument. Any expenses incurred by the Benefitting Lots in taking such actions shall be immediately payable by the Covenanting Lots upon demand.

PROVIDED FURTHER it is covenanted and agreed that:

- (i) The Covenants run with the Covenanting Lots in perpetuity for the benefit of the Benefitting Lots
- (ii) In any instance of default the remedying of such default within one (1) month of notice in writing requiring the removal of such cause or default and the payment by the defaulting party of all reasonable legal and other expenses incurred by the party enforcing the Covenants shall avoid the payment of the penal sum prescribed **PROVIDED THAT** this waiver shall not apply in respect of any subsequent default of a similar nature.
- (iii) The rights and obligations of the original Covenantee to enforce the terms of the rights and benefits conferred by the foregoing covenants and by this clause shall terminate twelve (12) calendar months from the date on which they cease to be an owner of any Lot in the adjoining lots, and from that date the right to enforce the rights and benefits so conferred shall in accordance with normal principles vest in the owners of any lots in the subdivision which obtain benefits from the Covenants.
- (iv) The Covenants contained herein shall be binding on all Transferees, Tenants, Lessees, Mortgagees, Chargeholders and their respective successors in title and assigns of any estate or interest in the Servient Tenement.
- (v) In this Covenant Instrument any reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it, and a regulation or statutory instrument issued under it.

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- (vi) If at any time any provision in this Covenant Instrument is or becomes invalid, void, illegal or unenforceable in any respect whatsoever then:
- (1) That part or provision shall be severed from this Covenant Instrument;
 - (2) Such invalidity and severing shall not in any way affect or impair the validity, legality and enforceability of any other part or provision of this Covenant Instrument; and
 - (3) In any event the parties shall enter into appropriate substitute instrument(s) to give full and proper effect to the agreements and understandings in this Covenant Instrument.
 - (4) The Covenantor acknowledges that this Covenant Instrument has been granted for valuable consideration received in full compensation for the grant of this Covenant Instrument and the Covenants.

14 Non-Waiver of Rights

- (i) The failure or delay by the Benefitting Lots to exercise any right, power, or remedy under the Covenant Instrument, or the partial exercise of any such right, power, or remedy, shall not operate as a waiver of that right, power, or remedy.
- (ii) No act, omission, or forbearance by the Benefitting Lots in enforcing any provision of the Covenant Instrument shall be deemed to constitute a waiver of any rights, powers, or remedies available to the Benefitting Lots under this Covenant Instrument or at law.
- (iii) Any waiver of rights, powers, or remedies by the Benefitting Lots must be in writing. Such waiver shall apply only to the specific instance and purpose for which it is given and shall not be deemed a waiver of any other rights, powers, or remedies. For the avoidance of doubt, any waiver shall not extend to or apply in respect of any subsequent default of a similar nature.

15 Indemnity

The Covenanting Lots shall indemnify and keep indemnified the Benefitting Lots against all proceedings, costs, claims, losses, actions, damages, liabilities, charges, interest, and demands arising from any breach of the terms of this Covenant Instrument by the Covenanting Lots.