

View Instrument Details



Instrument No 11970158.5
Status Registered
Date & Time Lodged 08 March 2021 12:00
Lodged By Jarden, Tania Dale
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
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972289	Canterbury
972290	Canterbury
972291	Canterbury
972292	Canterbury
972293	Canterbury
972294	Canterbury
972295	Canterbury
972296	Canterbury
972297	Canterbury
972298	Canterbury
972299	Canterbury
972300	Canterbury
972301	Canterbury
972302	Canterbury
972303	Canterbury
972304	Canterbury
972305	Canterbury
972306	Canterbury
972307	Canterbury
972308	Canterbury
972309	Canterbury
972310	Canterbury
972311	Canterbury
972312	Canterbury
972313	Canterbury
972314	Canterbury
972315	Canterbury
972316	Canterbury
972317	Canterbury
972318	Canterbury
972319	Canterbury
972320	Canterbury
972321	Canterbury
972322	Canterbury

Annexure Schedule Contains 10 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 John Gordon Neverman as Covenantor Representative on 05/03/2021 10:02 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 John Gordon Neverman as Covenantee Representative on 05/03/2021 10:02 AM

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

Form 26**Covenant Instrument to note land covenant**

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

Covenantor**Awatea Park Limited****Covantee****Awatea Park Limited****Creation of Covenant**

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covantee** (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

Purpose (Nature and extent) of covenant	Shown (plan reference)	Burdened Land (Legal Description and Record of Title)	Benefited Land (Legal Description and Record of Title or In gross)
Land Covenants	N/A	Lots 1-34 DP 556537 (RsT 972289-972322)	Lots 1-34 DP 556537 (RsT 972289-972322) Awatea Park Limited (in gross)

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

The provisions applying to the specified covenants are those set out in the Annexure Schedule.

Annexure Schedule**Background**

The intention of these land covenants is to establish and maintain an attractive, high quality and well-designed residential development, while providing for appropriate flexibility in the design and architecture of the Houses and other buildings and structures to allow for creativity and individuality within the development.

Interpretation

1. In these land covenants, the following terms have the corresponding meanings provided below:
 - a. **'Developer'** means Awatea Park Limited and/or nominee.
 - b. **'House'** or **'Houses'** mean any residential building or house, or part of a residential building or house, which is intended to be used as a separate residence.
 - c. **'Owner'** means any registered owner of any Lot referred to as the Burdened Land in Schedule A.
 - d. **'Property'** or **'Properties'** mean any Lot referred to as the Burdened Land in Schedule A.

Further Subdivision

2. The Owner must not subdivide the Property. For the purposes of this clause, subdivision means any subdivision, including a fee simple, unit title, or cross lease subdivision, without approval of the Developer.
3. The Owner must not:
 - a. Grant to any party any easement, right or thing over the Lot for the purpose of providing any service;
 - i. To any adjoining property; or
 - ii. For the benefit of any party.
 - b. Vest any part or all of the Lot in Council for any purpose or grant to Council or any other party any consent or easement (whether registered or unregistered).
 - c. a and b above may be waived by obtaining the prior written approval of the Developer.

House

4. The Owner must not build or cause to be built on the Property any buildings other than one House approved in writing by the Developer.
5. The House must be newly constructed on the Property and not be a relocated or a second hand House.
6. All materials used in construction of the House must be first grade new materials, unless otherwise approved by the Developer.
7. The minimum floor area of the House (excluding any garage, carport, deck, veranda, patio, pergola, or covered area) must be:

- a. 100 m² if the Property has an area of up to 460 m²; or
- b. 120 m² if the Property has an area of 461 m² or more.

For the purposes of this clause:

- a. the floor area will be calculated 'over framing', and will exclude:
 - i. the thickness of wall claddings, unless those wall claddings form a significant part of the structural integrity of the wall (for example masonry block walls); and
 - ii. any area outside the insulated building envelope of the House. For the avoidance of doubt, any insulated or un-insulated internal garaging will not be considered floor area; and
 - b. the Developer may waive the minimum floor area requirement if it is satisfied in its sole discretion that it will not detract significantly from the overall nature of the development and that the House is otherwise in accordance with all other land covenants; and
 - c. any House of more than one level must be approved in writing by the Developer.
8. The exterior cladding of the House must be constructed from one or more of the following types of materials:
- a. Wall cladding:
 - i. brick (kiln fired clay, or concrete)
 - ii. masonry block;
 - iii. stone;
 - iv. weatherboard ('linea' or 'cedar');
 - v. textured plaster finish (provided that it is on a solid substrate such as brick or block) or;
 - vi. a type approved by the Developer, provided that in the Developer's opinion it is not of lesser visual appeal and or quality than the materials provided above;
- Provided that:
- i. any brick or block selection used as wall cladding must first be approved by the Developer; and
 - ii. any exterior paint colour used in finishing any exterior wall cladding must also first be approved by the Developer.

- b. Roof cladding:
 - i. Prefinished longrun roofing;
 - ii. Roof tiles (clay, pressed metal or concrete only);
 - iii. Roof shingles (Bitumen or asphalt) on a suitable substrate; or
 - iv. a type approved by the Developer, provided that in the Developer's opinion it is not of lesser visual appeal and or quality than the materials provided above.

- 9. The roof of the House must have:
 - a. three or more hips or gables, or a combination of three or more hips and gables; and
 - b. a roof pitch with a minimum angle of 20 degrees; or
 - c. a flat roof or mono-pitched roof with two or more levels of roofing provided that it has first been approved by the Developer; or
 - d. have otherwise been specifically designed as an architectural feature and first approved by the Developer.
- 10. All foundations and subfloor areas of the House must be fully enclosed and finished using one of the materials referred to in clause 8(a) and in a manner that compliments the other materials used for the House, provided that any exposed concrete or masonry block must have a plastered and painted finish, unless first approved by the Developer.
- 11. Construction of the House must be completed within six months from the commencement of construction of the House.

Driveways & Parking

- 12. All Properties must have a driveway that is constructed as a permanent solid running course, from one of the following materials:
 - a. concrete with exposed aggregate finish;
 - b. clay or concrete paving bricks or cobblestones;
 - c. plain or colour tinted concrete provided it has first been approved by the Developer; or
 - d. a type approved by the Developer provided that in the Developer's opinion it is not of lesser visual appeal and or quality than the materials provided above.

13. All driveways, parking and manoeuvring areas on the Property must be completed within three months of completion of the House.
14. All vehicle crossings to the Property are to be located a minimum of two metres from any tree or lamp post located within the road reserve, and no trees or lamps are to be repositioned to accommodate any such vehicle crossing, unless first approved by the Developer.
15. Any motor homes, caravans, boats or similar objects parked on the Property must not be used for accommodation whilst on the Property and parked in a garage or otherwise appropriately screened so that they are not visible from any road.
16. No vehicles are to be parked on the Property, unless parked on a driveway or formed parking or manoeuvring area.

Fencing & Retaining Walls

17. No fences and / or retaining walls on the Property are to be located within five metres from the road boundary, unless first approved by the Developer.
18. The height of any fence on the Property must:
 - a. be 1.83 metres or less from the natural ground level or may be higher with the approval of the Developer in writing; or
 - b. if the fence is located on a retaining wall or any retained material, constructed or retained by the Developer, not be higher than 1.2 metres above the top of the retaining wall or retained material, as it was at the time it was constructed or retained by the Developer, unless first approved by the Developer.

Other buildings or Structures

19. One garden shed is permitted on the Property, provided that it is:
 - a. not visible from any road;
 - b. constructed from new materials and appropriately painted or prefinished, or if it is a factory built shed, is of a colour that will compliment the House; and
 - c. 2.4 metres or less in height, and 10 m² or less in area such that it complies with the requirements of an 'exempt building' in Schedule 1 of the Building Act 2004.
20. Clotheslines on the Property must be located away from any road and appropriately screened so that they are not visible from any road.

Landscaping

21. An Owner must keep the Property in a neat and tidy condition, including by ensuring that:
- a. Grass is maintained so that it does not exceed a height of 100mm;
 - b. Rubbish does not accumulate on the Property; and
 - c. The Property does not otherwise look untidy.
22. If in the Developer's opinion the Owner is at any time in breach of clause 21, the Developer may cut the grass, remove the rubbish, or undertake any other work reasonably required to bring the Property into compliance with clause 21. Any costs for this work may be levied against the Owner, and the Owner must pay any such costs within 10 working days of receiving an invoice from the Developer. If the costs are not paid within time, the Owner must also pay 20% per annum interest on such costs until paid.

Animals

23. An Owner must not allow to be kept on the Property any animals other than domestic pets, which without restricting the generality of such term shall exclude, goats, sheep, horses, pigs, poultry, and beehives.
24. Further, an owner will not allow to be kept on the Property more than two dogs or two cats of a greater age than three months.

Use of Property

25. The Property must not be used for commercial or trading purposes, without first obtaining the approval of the Developer.
26. The Property must not be used as a residence or occupied in any other manner whatsoever, unless the House;
- a. has first been constructed and is substantially completed;
 - b. complies with these land covenants; and
 - c. has been granted a code compliance certificate by the territorial authority.

Damage outside of Property

27. Any damage to improvements outside of the Property or within the road reserve caused by the Owner, its agents, or invitees, including but not limited to damage caused to footpaths, roads or streetlamps must be repaired by the Owner immediately following completion of the House and Driveway.

Signage

28. An Owner must not erect, place, or allow to be erected or placed, any sign or hoarding of a commercial nature on the Property, excluding building or real estate related signs.

Future Development

29. Any Owner, including any tenant, occupier, or user, of the Properties will:
- a. Not object to, lodge a submission or appeal objecting to, frustrate, hinder, or prevent any application for resource consent, building consent, or plan change or variation by the Developer or its nominee in relation but not limited to an early childhood centre or a kindergarten; and
 - b. Support and provide its unconditional consent to any subdivision or development to be undertaken by the Developer, or any proposed plan, plan change, or variation providing for such a subdivision or development, under the Resource Management Act 1991, the Building Act 2004, or any other relevant legislation or law, and will upon request from the Developer, execute all documents and do all things necessary to provide such unconditional consent as may be required by the Developer in that regard.
30. In the event any documents are not signed in accordance with clause 29(b) within 10 working days of being provided such documents, the relevant owner (including tenant, occupier or user of the Properties) will be deemed to have consented and this clause will be sufficient evidence of such consent to any relevant authority.
31. These land covenants will automatically expire as to any part of the Burdened Land that is to vest as road, in connection with a road, or reserve as part of developing the Burdened Land (PROVIDED that the Developer's consent has been obtained in accordance with clause 2 of these land covenants). In which case the following provisions will apply in respect of that part that is to vest as road:
- a. The expiry will take effect upon the approval of the survey plan that will give effect to any such vestings under s224(c) of the Resource Management Act 1991;
 - b. The registered owner of the Benefited Land will be deemed to have consented to such vesting in accordance with s224(b)(i) of the Resource Management Act 1991 upon deposit of such survey plan with Land Information New Zealand (LINZ); and
 - c. LINZ will deposit the plan without requiring any further written consent from the registered owner of the Benefited Land or surrender in respect of these land covenants.

Developer's approval

32. The role of the Developer to give approvals under these land covenants will terminate on the Developer providing notice it no longer provides approvals and from that date the right to enforce or waive the rights and benefits so conferred will, in accordance with normal legal principals, vest in the registered proprietors of the Benefited Land.
33. The Developer may assign or delegate its rights, powers and discretions set out in these land covenants.
34. Any approval required from the Developer under these land covenants means written approval.
35. The Developer may approve any request to do something that does not comply with these land covenants.
36. The Developer's right to grant or decline any request for approval under the land covenants is an unfettered right and does not allow any person to challenge for any reason the giving or the declining of any such approval. For the avoidance of doubt, no person will have any claim against the Developer in respect of any decision that the Developer or their assignee or delegate makes in respect of any approval sought.
37. The Developer is under no liability whatsoever to enforce these land covenants.
38. No Covenantor will be liable, and no Covenantee will have any claim or right against the Covenantor, for a breach of these Land Covenants where the Covenantor has obtained the written approval from the Developer to the act that would otherwise be considered a breach.

Breach

39. Acknowledging that the value of the Benefited Land may be affected by the standard of House erected on the Property and by failure to comply with these land covenants, the Owner covenants for the Owner personally and their executors, administrators and assigns that should the Owner fail to comply with, observe, perform, or complete any of the land covenants contained in clauses 1 to 36, and without prejudice to any other liability the Owner may have to the Developer or any other person, the Owner will:
 - a. immediately upon receipt of a written demand for payment from the Developer or the Developer's solicitors pay to the Developer as liquidated damages the sum of ONE THOUSAND DOLLARS (\$1,000.00) per day for each day the default continues unremedied, such liquidated damages to be limited to a maximum value of \$150,000.00;

- b. shall immediately undertake such remedial action as may be required by the Developer including but not limited to permanently removing or causing to be permanently removed from the Property any building or other structure so erected or repaired or other cause of any breach or non-observance of these land covenants;
- c. pay on demand the Developer's costs incurred in respect of the default and any enforcement or attempted enforcement of the Developer's rights such costs to include but not be limited to legal costs on a solicitor client basis; and
- d. Pay interest at the rate of 15% on any money which may be demanded and not paid, such interest to accrue from the date of the demand until the date it is finally received by the Developer;

provided that:

- i. Except for those defaults notified to the Owner when it is a registered owner, the Owner shall only be liable while the Owner is a registered owner of the Property;
- ii. If a default is completely and finally remedied within one month of notice in writing requiring the removal or remedy of such cause of default and the payment by the defaulting party of all reasonable legal costs and other expenses incurred by the party enforcing the said covenants the sum payable under clause 36(a) shall abate to \$1.00 per day provided that this abatement shall not apply in respect of any subsequent default of a similar nature.

Dispute Resolution

- 40. If a dispute in relation to any of these land covenants arises, the following process must be followed:
 - a. The party initiating the dispute must provide full written particulars of the dispute to any other party/(ies);
 - b. The parties must promptly meet in good faith to try and resolve the dispute;
 - c. If the dispute is not resolved within 14 working days of the written particulars being given to the party/(ies), the dispute must be referred to arbitration, in accordance with the Arbitration Act 1996 (or any subsequent Act);
 - d. The arbitration must be conducted by a single arbitrator to be agreed between the parties, or failing agreement, by the President of the New Zealand Law Society; and

e. The decision made by the arbitrator is binding on both parties.

Expiry

41. These land covenants will expire on 31 December 2040.