

View Instrument Details



Instrument No 12590309.5
Status Registered
Date & Time Lodged 28 October 2022 16:08
Lodged By Young, Daniel Martin
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
1013554	South Auckland
1013547	South Auckland
1013548	South Auckland
1013549	South Auckland
1013550	South Auckland
1013551	South Auckland
1013552	South Auckland
1013553	South Auckland
1013555	South Auckland
1013556	South Auckland
1013557	South Auckland

Annexure Schedule Contains 3 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 ☒

I certify that the Caveator under Caveat 11967390.1 has consented to this transaction, which is subject to the Caveat, and I hold that consent ☒

Signature

Signed by Hamish Roderick Craig Murray as Covenantor Representative on 07/09/2022 12:17 PM

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 Hamish Roderick Craig Murray as Covenantee Representative on 07/09/2022 12:17 PM

*** End of Report ***

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Form 26

Covenant Instrument to note land covenant

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

Covenantor

Apata Group Limited

Covenantee

Apata Group 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 566435	Lot 2 DP 566435 (RT 1013548) and Lot 9 DP 566435 RT 1013554)	1013547, 1013549, 1013550, 1013551, 1013552, 1013553, 1013555, 1013556, 1013557 (Lots 1, 3 -7 and 10 - 12 on DP 566435)

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.

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Annexure Schedule

1.0 Creation of Land Covenants

- 1.1 The Covenantor for itself and its successors in title covenants and agrees with the Covenantee and its successors in title for the benefit of the Benefited Land that the Covenantor will at all times observe and perform all the covenants contained in this instrument to the intent that each of the covenants will forever enure for the benefit of and be appurtenant to the Benefited Land and each and all of the registered proprietors of the Benefited Land **provided that** the Covenantor will be liable only for breaches of the covenants contained in this instrument which occur whilst the Covenantor is the registered proprietor of the Burdened Land or any part of the Burdened Land.

2.0 Interpretation

- 2.1 For the purposes of these Covenants:

- a) "Benefited land" means Lots 1, 3 to 7 (inclusive) and 10 to 12 (inclusive) on Deposited Plan 566435.
- b) "Burdened land" means Lots 2 and 9 on Deposited Plan 566435.
- c) "Covenantor" and "Covenantee" include the registered proprietor(s) for the time being of the Burdened Land and the Benefited Land respectively.
- d) The headings used in this document are for convenience only and do not form part of the Covenants nor are they to be used in interpretation of the Covenants.

3.0 Covenants

- 3.1 The Covenantor expressly acknowledges that the Benefited Land will be used for horticultural operations and any associated viticultural and agricultural activities including but not limited to spraying, frost protection, use of wind fans, bird guns, helicopters, picking and transport, cropping, pest control, application of fertilizer, bird netting, rain covers, shelter (natural and artificial), worker accommodation, workshop, storage of machinery and all other activities generally associated with horticultural operations in the Bay of Plenty region ("**Horticultural Operations**").
- 3.2 The Covenantor and its successors and assigns covenant:
- (a) Not to take any steps to prevent the Covenantee from carrying out the Horticultural Operations on the Benefited Land.
 - (b) Not to bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the Horticultural Operations.
 - (c) Not to make nor lodge; nor be party to; nor finance; nor contribute to the cost of any submission, application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the commencement of the Covenantee's Horticultural Operations, or the continuation and expansion of the Covenantee's Horticultural Operations including without limitation any action to require the Covenantee to modify the Horticultural Operations carried out.
 - (d) To promptly sign all consents, including executing and delivering any documents, and doing all acts and things, as may reasonably be required by the Covenantee relating to an application pursuant to the Resource Management Act 1991 (or any replacement legislation) for any consent or approval for the Covenantee's Horticultural Operations, or the continuation and expansion of the Covenantee's Horticultural Operations.

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4.0 Enforcement

- 4.1 If there is any breach or non-observance of any of the foregoing covenants, (and without prejudice to any other liability which the Covenantor may have to any other person having the benefit of these Covenants), the Covenantee may serve notice on the Covenantor notifying them of the breach and require that the Covenantor immediately remedies any breach or non-observance and withdraws any proceedings, submission, applications or appeals against the Covenantee's Horticultural Operations, and demand the Covenantor pay to the Covenantee \$100 per day for each day that the breach continues from the date the notice is served.

5.0 Dispute Resolution

- 5.1 Without prejudice to the rights of the Covenantee under clause 4 of this instrument, if any dispute arises between or among the parties concerning the covenants set out herein, then the parties shall enter into negotiations in good faith to resolve their dispute.
- 5.2 If the dispute is not resolved within twenty (20) working days from the date on which the parties begin their negotiations, then the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties agree, that person appointed may act as an expert and not an arbitrator.
- 5.3 If an independent arbitrator cannot be agreed on within a further ten (10) working days of the date in clause 5.2, then an independent arbitrator must be appointed by the President for the time being of the New Zealand Law Society.
- 5.4 Such arbitration will be determined in accordance with the Arbitration Act 1996 (and its Amendments) or any enactment passed in its substitution.