

View Instrument Details



Instrument No 12884414.16
Status Registered
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Lodged By Prescott, Alan William
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
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1151325	Canterbury
1151326	Canterbury
1151327	Canterbury
1151328	Canterbury
1151329	Canterbury
1151330	Canterbury
1151331	Canterbury
1151332	Canterbury
1151333	Canterbury
1151334	Canterbury
1151335	Canterbury
1151336	Canterbury
1151337	Canterbury
1151338	Canterbury
1151339	Canterbury
1151340	Canterbury
1151341	Canterbury
1151342	Canterbury
1151343	Canterbury
1151344	Canterbury

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 Alan William Prescott as Covenantor Representative on 30/11/2023 04:05 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 Alan William Prescott as Covenantee Representative on 30/11/2023 04:05 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

Kersey Park Limited

Covenantee

Kersey Park 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 596077	Lots 16-35 (inclusive) DP 596077 (RTs 1151325 – 1151344 (inclusive))	Lots 16-35 (inclusive) DP 596077 (RTs 1151325 – 1151344 (inclusive))

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 1 _____].

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Annexure Schedule 1

SCOPE AND DEFINITIONS

1. The Covenantor covenants and agrees with the Covenantee in the manner set out below so that such covenants shall:
 - (a) Burden and run with each of the burdened lands; and
 - (b) Be for the benefit of and appurtenant to each of the benefited lands.
2. For the purposes of this instrument, the following terms have the following meaning (unless the context otherwise requires):
 - (a) **Accessory Building:** means any garage, shed, deck or other utility building forming part of the Dwelling, whether such Accessory Building is separate from or attached to the Dwelling but does not include an integrated internal access garage incorporated into the house.
 - (b) **Developer** means Kersey Park Limited or its nominee;
 - (c) **Dwelling:** means one self contained building (or group of buildings) to be used for residential purposes solely by one or more persons who form a single household unit and may include:
 - (i) An attached residential flat contained within such a building; and
 - (ii) Accessory Building not exceeding 60m² in size
 - (d) **Fence:** means any structure which may or may not be erected on any boundary of the Lots with the intent of dividing or creating a barrier between the Lot and any adjoining Lot, Legal Road, or other property;
 - (e) **Hedge:** means any row of bushes, shrubs or small trees;
 - (f) **Land** means each of the burdened lands;
 - (g) **Land Covenants:** means the covenants contained in this instrument;
 - (h) **Legal Road:** means all parts of any road vested in the Selwyn District Council as a legal road and includes the carriageway, footpaths, kerbing and any landscaped areas within the Legal Road;
 - (i) **Lot:** means any of those Lots numbered 16 to 35 (inclusive) on the Subdivision Plan;
 - (j) **Lot Owner:** means the owner of the Lot;
 - (k) **Right of Way Lot:** means those Lots that have a boundary adjoining a private right of way.
 - (l) **Street Lots:** means all Lots that have a boundary adjoining a public road;
 - (m) **Subdivision Plan:** means the plan of subdivision incorporating all the Lots being Deposited Plan 596077; and

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- (n) **Works:** means the building, construction or erection of any Dwelling on the Lot and includes any laying out, compacting, excavation, filling, levelling or other works preparatory to the commencement of such building, construction or erection.

RESTRICTIONS ON DEVELOPMENT AND USE OF THE LAND

3. The Covenantor shall not, in relation to any land owned by the Covenantor without first obtaining the prior written approval of the developer:

Dwelling Size and Garaging

- (a) Erect or permit to be erected on the land any dwelling with a minimum floor area of less than 150 square metres, excluding garaging, verandahs, patios and Accessory Buildings. The developer specifically gives no warranties in respect of the Selwyn District Council District Plan requirements.
- (b) The owner of any lots being 1500 m² or larger in size, shall be permitted to erect one additional Accessory Building on the lot with such Accessory Building not to exceed 75 m² in size. The plans for any such Accessory Building must first be approved in writing by the Covenantor or its nominee and must comply with all the local authority land use the resource consent requirements.

Dwelling Construction

- (c) Use, or permit to be used, any second hand materials on the exterior of the dwelling including roofing or cladding.
- (d) Leave the outside of any dwelling or building unfinished, or any exterior walls or doors unpainted or unstained for any period longer than 18 months from the date of commencement of construction, except where cladding or decorative brick/stone are used.

Improvements Allowed

- (e) Without limiting any other covenant, permit any building to be erected on the land other than:
 - (i) A new dwelling;
 - (ii) A building normally appurtenant to a residential dwelling, provided that any walls of the building visible from the road frontage of the land are the same material as the walls of the dwelling.

Approval of Design

- (f) Do any work or permit any work for the erection of buildings, accessory buildings, fences, driveways or other improvements unless the plans and specifications and all other details of construction and finish as the developer in the developer's absolute discretion may require, have first been submitted to the developer and received the developer's written approval. Without limiting the above, the developer shall take account the following criteria:
 - (i) Dwellings shall not exceed 8.5 metres in height above the average ground level of the Lot;
 - (ii) External design and appearance;
 - (iii) The influence of the Dwelling, Accessory Building, siting and external design on natural light, view and privacy for adjacent properties;

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- (iv) Materials to be used in construction; and
- (v) The views of the Registered Proprietors of the Lots adjoining the Lot for which consideration is being given, at the time consideration is being given.
- (vi) In the exercise of its unfettered discretion, the Developer shall be entitled to disapprove (by way of example but not limited to):
 - i. Any multi-coloured brick or tile wall cladding and/or roof tile combination.
 - ii. Any Dwelling or Accessory Building having exterior cladding of colour steel or any similar quality colour corrugated iron product which exceeds 35% of the solid exterior wall areas
 - iii. Any Dwelling which is a kitset, "A" frame or prefabricated nature or a relocatable dwelling house
 - iv. Any Dwelling utilising second hand or pre-used materials for exterior cladding or roofing other than slate
 - v. Any Dwelling having external cladding of unrelieved or non-detailed flat sheet fibrolite, hardiflex, galvanised steel, metal sheeting or similar material provided that this restriction shall not apply to the cladding or soffits or gable ends
 - vi. Any Dwelling using poles for a foundation unless the poles are not visible from a Legal Road or adjoining properties
 - vii. Any electric or gas meters, gas and/or hot water units, vent and sewer pipes visible from the Legal Road.
 - viii. Any garden shed, clothesline or letterbox unless it is aesthetically acceptable in terms of its design and location. No car ports are to be visible from the Legal Road.
 - ix. Any Dwelling or Accessory Building whose colour is not in keeping with the natural environment, fluorescent, vivid or highly conspicuous colours will be prohibited

Fencing

- (g) Without prejudice to clause 3(e), erect or permit to be erected on the land a fence:
 - (i) Which contains cement boards, sheets or panels, corrugated iron or metal sheeting;
 - (ii) Which contains prominent colours which are inconsistent with the colour scheme approved for the dwelling by the developer pursuant to clause 3(e);
 - (iii) Within 4.5 metres of the road boundary, without the prior written consent of the developer;
 - (iv) That exceeds 1.2 metres in height within 1 metre of the boundary of a Right of Way Lot which adjoins the Right of Way unless the written consent of the Developer has been obtained and placed on the property file at the Council prior to construction;

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- (v) Which is higher than 1.8 metres above natural ground level at any point;
 - (vi) Which, if the land adjoins a Council Reserve, any fence must be a single fence erected within 5 metres of the Council reserve and where such fence exceeds 1.2 metres in height, it must be at least 50% visually transparent and such requirements shall extend to the fence in its entirety;
 - (vii) Which, if it is a fence on a corner section, is erected on a road boundary without the prior written approval of the developer.
- (h) Call upon the developer to pay for or contribute towards the cost of erection or maintenance of any boundary fence between the land and any adjoining land owned by the developer, provided that this covenant will not enure for the benefit of any subsequent registered proprietor of such adjoining land.

Building Requirement

- (i) Delay the commencement of construction of a dwelling on the land for more than 24 months from the date of issue of the Certificate of Title.

Maintenance of Appearance

- (j) Permit any caravan, temporary building, hut or other structure other than a new house to be erected on the land for any kind of permanent or temporary residential use, except any building that may be used in conjunction with the construction of permanent buildings and which will be removed from the land upon completion of the work.
- (k) Permit or suffer any rubbish or noxious substance on the land and keep the land in a neat and tidy condition so that grass height shall not exceed 20 centimetres in length.
- (l) Cut, trim, damage, remove or relocate any tree, shrub or plant on the road reserve.
- (m) Permit or allow any rubbish, including builders' waste material, to accumulate or to be placed upon the Lot, any adjoining land or reserve land. The Developer shall have the right to remove any building materials from the Lot, any adjoining Lot or any reserve land with reasonable costs plus a margin of 25% (GST exclusive) to be met by the defaulting Lot Owner.
- (n) Permit or suffer any advertising sign or hoarding of a commercial nature (excluding real estate signage pending sale and builder's signage during construction) without the prior consent in writing of the Developer. All signage shall be professional manufactured and installed and shall not exceed 2.88m² in aggregate area per Lot.
- (o) Suffer any dog or other pet to be kept in or above the Lot, which dog or other pet is likely to cause a nuisance or annoyance to neighbouring occupiers or detract from the Development and, in particular, without otherwise limiting this restriction, to keep on or above the property any dog which in whole or in part appears to be a Pit Bull Terrier, Rottweiler, Doberman Pincher, Dogo Argentino, Brazilian Fila and Japanese Tosa. The keeping of pigs, battery chickens and pigeons is expressly prohibited.
- (p) Permit or suffer any activity of a commercial nature without prior developer consent in or above the Lot including, by way of example, but not limited to:
 - (i) Dog kennels and/or catteries;
 - (ii) A construction company operating from the Lot;

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- (iii) Vehicle or boat storage facilities of any kind.

Satellite Dishes and Aerials

- (q) Erect or allow to be erected any tower, radio, television, communication aerial or satellite dish on the land other than the standard broadcast radio or TV reception aerials or dishes. Any attachment to the dwelling and/or garage including, but not limited to, TV aerials, solar hot water panels and masts shall be constructed in such a way as to be discretely integrated with the design of such buildings so that they are not highly visible from any road.

LAND AND PRE-CONSTRUCTIONS CONTROLS

4. The Lot Owner shall not:

- (a) For a period of 10 years further subdivide any Lot into separate lots or parcels whether by way of freehold subdivision, cross lease, unit title or in any other way.
- (b) Commence the construction of any Dwelling on the Lot without first constructing a dedicated suitable street crossing to the satisfaction of the Developer across any berm, footpath or swale to afford protection against damage by vehicular traffic accessing the Lot in the course of undertaking any Works. Any damage caused by the Lot Owner to the street crossing shall be reinstated by the Lot Owner and a permanent crossing created prior to occupation.
- (c) Reside on or in any Lot in a temporary structure including but not limited to any caravan, container, hut or shed whilst the Dwelling is in the course of construction.
- (d) Permit commercial vehicles or trailers to be regularly located on the street or footpath or in front of the Lot unless reasonably required during the course of construction of a Dwelling.
- (e) Permit or suffer to be stored on a Lot any freight containers, hut or shed unless required for storage or materials required during the course of construction of the Works.
- (f) Permit the land to be occupied or used as a residence prior to the dwelling being completed (including driveways, pathways, letterboxes, landscaping and seeding of lawns visible from the surrounding Lots or any road), and a Code Compliance Certificate has been issued within six months of dwelling.

Landscaping and Driveway

- (g) Construct a driveway constructed of materials other than permanent, dust free solid materials such as coloured stamped/stencilled or exposed aggregate concrete, asphaltic concrete, decorative stones, cobblestones, interlocking pavers or similar.
- (h) Plant or allow to grow on the Lot any:
 - (1) Tree or shrub or other vegetation listed on the Schedule of Pest Plants maintained by Environment Canterbury for the Selwyn District Council nor any tree which is included in the list of prohibited trees specified in clause 9 of these covenants.
 - (2) Any row of trees or hedge which is located on or adjacent to a boundary to a height in excess of two metres above ground level.
- (i) Permit or allow any part of any tree, hedge or other vegetation to grow to a height which, were such tree, hedge or other vegetation part of a dwelling would cause it to protrude

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through the recession plan applicable for building under the Selwyn District Council building rules for the Lot. In the event that any tree, hedge or other vegetation shall exceed this restriction then it shall be reduced in height to the specified limit.

- (j) Permit any area lying between the front boundary of the Lot and the Legal Road to remain in an unkempt and untidy state nor permit grass or weeds to grow to a height exceeding 20 centimetres on that area.

ENFORCEMENT

5. The developer shall not be required or obligated to enforce all or any of the foregoing covenants, stipulations and restrictions, nor will the developer be liable to any other party for any breach thereof by any Covenantor.
6. If there should be any breach or non-observance of any of the foregoing covenants, then, without prejudice to any other liability which the Covenantor may have to any Covenantant, the Covenantor will, upon written demand being made by any Covenantant:
 - (a) Pay to any Covenantant, making such demand as liquidated damages, the sum of two hundred and fifty dollars (\$250.00) per day for every day that such breach or non-observance continues after the date upon which written demand has been made, provided that if more than one person is making such demand, then such sum shall be shared between those persons;
 - (b) If applicable, remove or cause to be removed from the Covenantor's land any second hand or used dwelling, garage, carport, building or other structure erected on the Covenantor's land in breach or non-observance of the foregoing covenants; and
 - (c) If applicable, replace any building materials used or permitted to be used in breach or non-observance of the foregoing covenants.
7. The Covenantor covenants that the Covenantor will, at all times, indemnify the Covenantant from all proceedings, costs, claims and demands in respect of breaches by the Covenantor of any of the stipulations, restrictions and covenants in this instrument.

GENERAL

8. Any requirement in this instrument to submit plans and specifications to the developer, or obtain the developer's approval, will cease to apply 10 years after the date of this instrument (but without prejudice to the liability of any party for any breaches which have already occurred).
9. List of Prohibited Trees

Botanical Name	Common Name
Acacia species	Wattle
Agonis species	Myrtle
Acer pseudoplatanus	Sycamore
Araucaria species	Araucaria
Banksia integrifolia	Banksia
Cupressus	Cypress
Eucalyptus species	Eucalyptus
Lagunaria patersonii	Norfolk Island hibiscus
Maytenus boaria	Mayten tree
Pinus species	Pine
Populus species	Poplar
Rascosperma species	Wattle
Salix species	Willow

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10. Despite any other provision of this instrument, if the written consent of the developer is obtained to any act or omission, that action or omission will be deemed not to constitute a breach of any covenant within this instrument.
11. These covenants shall expire on the date that is 10 years from the date this covenant is registered and will be void for all purposes from that date.
12. Without prejudice to clause 11, the covenants in this instrument will immediately cease to apply to any land (or part thereof) which:
 - (a) is intended to vest in the Crown or any territorial authority as a road or reserve; or
 - (b) is transferred to a network utility provider for the primary purpose of a utility lot,upon any survey plan relating to such vesting or utility lot being approved as to survey and being accepted for deposit by Land Information New Zealand.