
Covenant Instrument to note land covenant

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

Covenantor

LAKESIDE CHRISTIAN CENTRE

Covenantee

LAKESIDE CHRISTIAN CENTRE

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

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenants		Lot 1 on DP [xx] (Record of Title [xx])	Lot 2 and Lot 3 on DP [xx] (Record of Titles [xx])

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

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

The provisions applying to the specified covenants are those set out in:

Annexure Schedule 1

Annexure Schedule 1 of Land Covenants

PROVISIONS APPLYING TO COVENANTS

Background

- a. The Initial Covenantor is subdividing the Dominant Land and Servient Land as part of a development.
- b. The Initial Covenantor intends that the Servient Land be subject to a general scheme applicable to and for the benefit of the Dominant Land ("Scheme").

Covenant Terms

1. The Covenantor covenants and agrees with the Covenantor:
 - a. To at all times observe and perform the Covenants set out below unless LCC or their nominee has given its written consent authorising non-observance and performance of the Covenants or any one or more of the Covenants;
 - b. That, subject to clause 7.1 below, the Covenants will forever run with and bind the Servient Land for the benefit of the Dominant Land; and
 - c. To ensure that all tenants, occupiers, employees, contractors, invitees and anyone or thing that is present on the Servient Land under the control of, or at the direction or invitation of the Covenantor, observes and performs all relevant and applicable Covenants at all times.
2. In this Instrument the following words have the following meanings:

"Adjoining Land" means the Dominant Land.

"Building" means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels) on the Servient Land other than:

- a. Any conduit, pipes, plant and/or other structures required by utility and/or service providers;
- b. Temporary scaffolding used in the course of the construction process;
- c. Temporary construction sheds and porta-loos used in the course of the construction process;
- d. A fence or wall less than 1.2 metres in height above Ground Level;
- e. Hard landscaping features; or
- f. A driveway.

“Building Platform” means the part of the Servient Land marked [TBC] on Deposited Plan [TBC].

“Covenantee” means and includes all persons executing this Instrument as Covenantee jointly and severally (if more than one) and their executors, administrators, assigns, successors in title and their tenants, licensees and invitees.

“Covenantor” means and includes all persons executing this Instrument as Covenantor jointly and severally (if more than one) and their executors, administrators, successors in title and their tenants, licensees and invitees.

“Covenants” means the covenants set out in this Instrument.

“Dominant Land” means the land described as and shown in Schedule A of this Instrument as the Benefited Land.

“Home Occupation” means an occupation, craft or profession which:

- a. Is carried on by a member of the family residing in the dwelling on the Lot;
- b. Is clearly accessory and secondary to the use of the dwelling on the Lot for residential purposes; and
- c. Conforms to all of the following:
 - i. The occupation, craft or profession shall be carried out either wholly within a principal building on the Lot or within an accessory building on the Lot modified for the purposes;
 - ii. There shall be no exterior display, no exterior sign (except as permitted under the rules for the relevant Territorial Authority zoning for the Lot and the general rules for signs), no exterior storage of materials, no other exterior indication of the home occupation or variation from the residential character of the principal building on the Lot or the neighbourhood;
 - iii. The occupation, craft or profession does not have characteristics that are likely to cause adverse effects in terms of noise, odour, vibration, dust or attracting significant volumes of traffic; and
 - iv. Goods produced or services offered as a part of a home occupation may be sold from the Lot. No other retail activity is authorised in the context of a home occupation.

“Initial Covenantee” means Lakeside Christian Centre.

“Instrument” means this covenant instrument creating a land covenant to be registered on the Servient Land’s record of title and all its schedules, annexures and amendments.

“LCC” means Lakeside Christian Centre and, where the context requires, means any other person, association, or entity nominated by Lakeside Christian Centre to perform or succeed their rights and obligations under this Instrument.

“Lot” means any lot that is recorded as being Burdened Land in this Instrument (and “Lots” shall have a corresponding meaning).

“Lot Owner” means the registered owner(s) of a Lot.

“Servient Land” means the land described as and shown in Schedule A of this Instrument as the Burdened Land.

“Territorial Authority” means the Central Otago District Council or any successor consenting authority to that Council.

- 2.1 In this Instrument, a covenant to do something is also a covenant to permit or cause that thing to be done, and a covenant not to do something is also a covenant not to permit or cause that thing to be done.
- 2.2 A reference to a statute includes all statutes amending, consolidating or replacing the statute referred to.

The Covenants

Use of Lots

- 3.1 Not to use any Lot or permit the same to be used for any use other than for residential purposes and not to use any Lot or permit the same to be used for any trading, industrial or commercial purposes, provided however that it is acknowledged that the use of any residential dwelling for residential letting, as a showhome, or for a Home Occupation use will not be in breach of the provisions of this Instrument.
- 3.2 Not without the consent of LCC, to erect or permit to be erected any Building outside of the Building Platform.
- 3.3 Not to permit any rubbish or waste material to be or remain on any Lot other than within suitable enclosed structures (which for the avoidance of doubt will include Territorial Authority approved rubbish and/or re-cycling bins) or otherwise appropriately screened from view.
- 3.4 Not to allow equipment or machinery to be stored on any Lot other than in a shed or garage or otherwise screened from any legal road and the Dominant Land.

Construction Controls

- 3.5 Not without the consent of LCC, construct or place on any Lot any pre-used or second-hand Building, containers (other than for the temporary unloading of materials or furniture), or a Building that has been relocated.
- 3.6 Not without the consent of LCC, allow a Building to be erected on any Lot other than using new materials except for stonework, and feature timber beams.
- 3.7 To keep the Lots, road frontages and accessway frontages to the Lots neat and tidy and free of broom, gorse, lupins, weeds, dried or rank grass or other noxious plants and that all grass is regularly clipped and maintained at a height not exceeding 150mm.

Fencing

- 3.8 LCC will not be liable to contribute to the cost of, or assist in the erection or maintenance of any boundary or dividing fence between the Lot and any part of the Adjoining Land or any other land owned or occupied by LCC.
- 3.9 Clause 3.8 is intended for the benefit of LCC only and shall not enure for the benefit of any other person or persons.

Enforcement

- 4.1 The Covenantor and Covenantee acknowledge and agree that LCC may (without being obliged to do so) take all necessary steps to enforce observance of this Instrument on behalf of any Covenantee.
- 4.2 The parties acknowledge that the Covenantee, LCC, and any nominee of LCC will not be liable for any losses, damages, claims or expenses which arise from performing any function pursuant to this Instrument, the failure to enforce the Covenants set out in this Instrument or (in the case of LCC or its nominee) authorising non-observance of the Covenants or any one or more of the Covenants
- 4.3 The Covenantor shall provide reasonable access to LCC, its nominee, its designated employees and contractors to inspect the Lots and any Building on the Lots to check compliance with the applicable Covenants.
- 4.4 In the event that the Covenantor fails to observe and perform the Covenants set out in this Instrument, any Covenantee and/or LCC shall have a right (but not an obligation) to do whatever may be reasonably required to remedy such failure on the part of the Covenantor, and the costs incurred by the Covenantee and/or LCC in remedying the default shall be refunded by the Covenantor to that Covenantee and/or LCC, as the case may be, on demand.

Covenantee Consent and Acknowledgments

- 5.1 The Covenantor and the Covenantee agree and acknowledge that LCC is under no obligation to impose any land covenants and/or other interests on any other lots other than by this Instrument on the Servient Land and, if LCC elects to impose any such land covenants and/or other interests, then the form and content of those covenants and/or interests will be at the sole discretion of LCC.

Liability

- 6.1 Without prejudice to the Covenantor's and Covenantee's other rights, this Instrument binds the Covenantor's and Covenantee's successors in title so that contemporaneously with the acquisition of any interest in the Servient Land all such successors in title become bound to comply with this Instrument. However, the liability of any Covenantor under this Instrument is limited to obligations and liabilities that accrue during that Covenantor's time as registered owner of the Servient Land and only in respect of that part of the Servient Land owned by that Covenantor. A Covenantor will not be liable for any breach of this Instrument which occurs during any period prior to or after its term as registered owner of the Servient Land (however, for the avoidance of doubt, any Covenantor will remain liable for any such antecedent breach following the transfer of its interest in the Servient Land).

Expiry of Covenants

- 7.1 The Covenants contained in the Instrument shall expire on and not be enforceable after the date falling thirty (30) years from the date of this Instrument.

Nomination

- 8.1 LCC may at any time nominate in writing any person, association, or entity to perform or succeed to part or all of its rights and obligations under this Instrument

Costs

- 9.1 The Covenantor will pay all costs directly or indirectly attributable to the enforcement of this Instrument.

- 9.2 If the Covenantor applies to LCC or its nominee for approval pursuant to any provision of this Instrument or to authorise non-observance and performance of the Covenants or any one or more of the Covenants, then the Covenantor will pay LCC or its nominee a fee for considering that application together with LCC's or its nominee's costs and expenses should LCC or its nominee decide that it requires professional advice in order to consider such an application.

Implied terms

- 10.1 No covenants by the Covenantor or by the Covenantor's successors in title are implied in this Instrument other than the covenants for further assurance implied by section 208 of the Land Transfer Act 2017.

Arbitration

- 11.1 The parties agree to use their best efforts to resolve any dispute that may arise under this Instrument through good faith negotiations.
- 11.2 Neither party shall commence any arbitration in relation to this Instrument unless it has notified the other party in writing that there is a dispute (setting out the details of the dispute) and inviting the other party to meet for the purpose of endeavouring to resolve the dispute.
- 11.3 A party may, upon commencing the above negotiation process or receiving notice of a dispute, give notice to the other party requesting that the dispute be resolved by way of mediation. If a request for mediation is made, then the parties shall try to agree upon a mediator. If the parties fail to agree on a mediator within 14 days of the request for mediation the mediator shall be appointed by the then president of the New Zealand Law Society or their nominee.
- 11.4 Any dispute arising under this Instrument which cannot be settled by negotiation or mediation within 28 days of the notice of dispute or mediation (as applicable) being served shall be submitted to arbitration in accordance with the Arbitration Act 1996. In the absence of agreement to the contrary, the arbitration shall be heard by a single arbitrator being a person agreed between the parties or, if they cannot agree within 7 days of commencing discussions on the proposed arbitrator, a person nominated by the President of the New Zealand Law Society or their nominee. The decision of the arbitrator shall be final.
- 11.5 Nothing in this clause 11 shall prevent any party seeking urgent or interim injunctive relief.

