

View Instrument Details



Instrument No 11680186.6
Status Registered
Date & Time Lodged 02 April 2020 17:14
Lodged By Taylor, Renee
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
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920127	Otago
920128	Otago
920129	Otago
920130	Otago
920131	Otago
920132	Otago
920133	Otago
920134	Otago
920135	Otago
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920140	Otago
920141	Otago
920142	Otago
920143	Otago
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920146	Otago
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920150	Otago
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920154	Otago
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920156	Otago
920157	Otago
920158	Otago
920159	Otago
920160	Otago
920161	Otago

Annexure Schedule Contains 7 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 Nathan Albert Adams as Covenantor Representative on 02/04/2020 05:08 PM

Covantee Certifications

I certify that I have the authority to act for the Covantee 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 Nathan Albert Adams as Covantee Representative on 02/04/2020 05:08 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

FORMBY HOLDINGS NZ LIMITED

Covenantee

FORMBY HOLDINGS NZ 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

Continue in additional Annexure Schedule, if required

Purpose of Covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Protective Covenant		Lots 1 – 35 (RTs 920127, 920128, 920129, 920130, 920131, 920132, 920133, 920134, 920135, 920136, 920137, 920138, 920139, 920140, 920141, 920142, 920143, 920127, 920144, 920161, 920145, 920146, 920147, 920148, 920149, 920150, 920151, 920152, 920153, 920154, 920155, 920156, 920157, 920158, 920159, 920160, 920161)	Lots 1 – 35 (RTs 920127, 920128, 920129, 920130, 920131, 920132, 920133, 920134, 920135, 920136, 920137, 920138, 920139, 920140, 920141, 920142, 920143, 920127, 920144, 920161, 920145, 920146, 920147, 920148, 920149, 920150, 920151, 920152, 920153, 920154, 920155, 920156, 920157, 920158, 920159, 920160, 920161)

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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

ANNEXURE SCHEDULE 1

PROTECTIVE COVENANT

Preliminary

1. **Definitions**
Covenants means the Protective Land Covenants in their entirety which are set out in 1 to 30 below.

Developer means Formby Holdings NZ Limited (but not its successors in title) as Grantee and delegate of the Grantee.

Development means the residential subdivision development of the Developer's land situated at Formby Street, Outram to be undertaken by the Developer pursuant to Resource Consent SUB-2014-69A

House means the building described in paragraph 10 comprising the dwelling and garage.

Land means the land to be recorded in Schedule A of the instrument to be registered, and so much of the land comprised in the Development which, following subdivision into residential lots in accordance with the general scheme set out in Resource Consent SUB-2014-69A is wholly owned by the Developer and, where the context requires, includes any access allotment partly owned by the Grantee or over which the Grantee has any easement.

Lot means a lot within the Development.

Works means the House, Landscaping and Associated Works described in paragraphs 10 through 13.
2. **Intention**
 - 2.1. It is the Grantors intention that the Burdened Land shall until their expiry under paragraph 30 below be bound by and be subject to the Covenants as a general scheme applicable to and for the benefit of the land.

3. Covenants subject to Discretion

- 3.1. Where the Grantee is named as “the Developer” then Formby Holdings NZ Limited only and its agents delegates and attorneys shall be entitled to decide to approve or decline to approve or otherwise act as the Covenants specify or allow and such decisions shall bind the Grantor and Grantee.

4. Covenants binding on successive owners and employees etc.

- 4.1. The Covenants are granted for the purpose of enhancing the value and security of the Land for all owners within the Development and enhancing their enjoyment of the same, and the Grantor, as owner of one or more lots in the subdivision and the executors and administrators successors and assigns of the Grantor and all who take rights from them (employees, contractors, lessees, tenants, licensees and invitees of the Grantor) shall with respect to the burdened Lots be bound by the stipulations and restrictions set out in the Covenants. Where there is more than one Lot owner or person who takes rights from the owner, the Covenants shall bind each jointly and severally.

5. Covenants to benefit successive owners

- 5.1. The owners and occupiers for the time being of the benefitted Lots including successors in title and the Developer shall enjoy the benefit of the Covenants and each may enforce the observance of the same in relation to each owner of each burdened Lot, subject to the exclusive rights of and delegated to the Developer.

CONSTRUCTION COVENANTS

6. Construction Preliminary

The Grantor will not move soil or change any level of any part of the Land, nor erect or store anything on or near the Land, nor prepare or cause to be prepared any plan for any work on the land except for Works already approved in accordance with paragraphs 7 and 8. Subject to any variation previously approved by the Developer, the Grantor will at all times maintain all the Works and otherwise ensure that the use of, the Land and all things on the Land comply with the terms of the description of Works in these covenants 10 through 13.

7. Approval Applications

- 7.1. The Grantor will not apply for any building consent, and will not contract for any building or Works or other works on the Land, or alteration of any of the same and will not proceed with or allow any construction or other works on or use of the Land until the written approval of the Developer has been first applied for. The Grantor's application for approval shall contain full particulars of the proposed works (in accordance with residential standards for the Development including:1952

- 7.2.
- (a) Floor plans, and roof plans;
 - (b) Elevations showing all exterior materials and colours;
 - (c) Specifications;
 - (d) A site plan showing location of House, landscape and vehicle areas;
 - (e) A landscape plan;
 - (f) The names and contact details of the principal contractor/s and principal responsible person/s; and
 - (g) All proposed alterations to Works previously approved.

8. Approval Process

- 8.1. The Developer will use best endeavours to reply within 5 working days to the Grantor's application. In considering the application, the Developer shall take into account the anticipated finished appearance of the works in relation to the actual or probable finished appearance of other high quality new dwellings in the neighbourhood. Where any part of the proposed Works falls outside the works described in paragraphs 10 through 14 below, the Developer (without limiting its discretion to waive compliance) reserves the absolute right to withhold approval or grant the same subject to conditions.

9. Effect of Consent

- 9.1. The grant of a construction and landscaping approval is transferrable to a new lot owner, but, in the interests of ensuring the quality and timing of the work, the approval shall lapse and require a fresh application in the event that the principal contractor changes.

10. House Description

- 10.1. The Grantor will erect on the Land one only new (not relocatable or relocated) building (the House) which:
- (a) Comprises a single storey dwelling house with a floor area of at least 150 square metres;
 - (b) Incorporates within that area garaging for at least one car; and
 - (c) A building height restriction to 5.5 metres above highest point on the building platform.

11. House Exterior

- 11.1. The Grantor will ensure that:
- (a) The basement of the House is fully enclosed and that the dwelling portion is visible and easily accessed from the road; and
 - (b) The exterior of the House is comprised entirely of new materials, excepting only that:
 - (i) Hardiflex, Hardiplank, ply or fibrolite, is not used unless as base for external plaster finish; and
 - (ii) Second-hand bricks, decorative stone, and high quality recycled materials are used only with the consent of the Developer; and
 - (iii) The roof, if not flat, has at least 3 roof planes and if of steel or other exterior roofing product, is factory pre-painted and that materials suitable for roofs are not used for wall cladding.

12. Landscaping

- 12.1. The Grantor will ensure that the Land not covered by the House is landscaped and maintained:
- (a) So that no tree or plant is chosen or planted for any part to grow beyond 3 metres in height within 2 metres of any side boundary; and
 - (b) So that trees and plants are chosen and located so no part will grow above 8 metres anywhere on the Land.

13. Associated Works

13.1. The Grantor will ensure:

- (a) That solar collectors and exposed rooftop disks and all antennae and equipment and tanks are integrated with the roof design in order to be as unobtrusive as possible and do not exceed normal television antenna height.

14. Permitted Use

14.1. The Grantor will use the House and Land for residential activity only. For the avoidance of doubt during construction the Grantor shall not be permitted to place or allow to remain on the Land any caravan, mobile home or any other temporary accommodation structure nor reside in the same during construction.

BUILDING

15. General

15.1. As soon as the Building Consent is obtained for the Works (but not before) the Grantor will proceed promptly and expeditiously with the completion of the same exactly as approved, complying with every applicable law, by-law and regulation, and with the Covenants.

16. Fencing

16.1. The Grantor will be bound by a Fencing Covenant within the meaning of section 2 of the Fencing Act 1978 as modified by these Covenants.

17. Access and Workspace

17.1. The Grantor will access the Land only across the approved kerb crossing and will not cross, drive on, or park on, or use or allow any vehicle or thing to be put on or stored on the grass or footpath or on any verge, berm, or adjacent or neighbouring land. During construction all work and all loading and unloading and washing of vehicles will be carried out on the Land behind a windproof fence.

18. Working Hours and Noise

18.1. The Grantor will ensure that all work that is unavoidably noisy is conducted with minimum noise. The Grantor will ensure that no such activity that is audible outside the House is conducted before 7:00am or after 6:30pm Monday through Saturday, or before 9:00am or after 3:00pm Sundays and public holidays. The Grantor will ensure that no building work is conducted before 7:00am or after 8:00 pm on any day.

19. Facilities

19.1. The Grantor will at all times during the construction process have installed and regularly emptied a port-a-loo type toilet for the use of work people.

20. Rubbish Removal

20.1. The Grantor will have regularly installed and emptied a rubbish skip of suitable size, located within the Grantors land. The Grantor will ensure that all work people clean up and remove vehicles, plant and materials not in immediate use, sweep footpaths and remove excess materials and rubbish each day without fires or burning for any reason.

21. Damage

- 21.1. The Grantor will make good any damage to any fence, or any road, kerb, crossing, berm, or footpath fronting the Land, or grassed area between the Land and the nearest kerb.

22. Chattels and Rubbish

- 22.1. The Grantor will not bring or suffer to remain on the Land, or on any road, access allotment or reserve, any damaged, immobile, broken down, or unmaintained vehicle whether registered or not, any unregistered vehicle (except where garaged), any shipping container, or any other industrial container or drum, or any machinery, industrial or recycling items or any rubbish (whether organic or inorganic).

23. Grantor to Keep Property Tidy

- 23.1 The Grantor shall prevent the growth of long grass and weeds and plants and pests, if the Grantor fails to do so the Developer may but shall not be obliged to enter the Land for the purposes of remedying such default and the Grantor shall indemnify the Developer against the cost of the Developer remedying the default to get and keep the Land in neat and tidy condition.

24. Land Contour and Surface Water

- 24.1. The Grantor will not allow any collected surface water to drain across any land of the Grantee or any reserve or access allotment in the Development, except through proper storm water pipes, across the street or access allotment.

25. Animals

- 25.1. Subject to full compliance with local authority by-laws, the Grantor may keep domestic household pets where not kept for commercial purposes and not dangerous, noisy, or annoying to any Grantee. The Grantor will not otherwise keep on the Land any farm or other animal, bird, or reptile of any kind.

26. Access Allotments

- 26.1. Whether or not the Grantee is the part owner and Grantor of any access allotment in the Development, the Grantee will not use or allow the use of such access allotment except strictly in accordance with the easements which affects the same.

27. Further Development

- 27.1. The Grantor shall not oppose or object to, or take any step to frustrate, or take any action to do anything, or encourage any person to object to, or frustrate, or take any action or do anything that might in any way stop or delay or hinder Formby Holdings NZ Limited or its assignees from completing the whole or any part of the Development or from its marketing of lots within the Development.

28. Grantee's Responsibility Limited

- 28.1. The Grantee agrees that the Developer does not have any responsibility or liability for the enforcement, enforceability, applicability or lack of action with respect to enforcement or applicability of any of these Covenants; and that apart from the exercise of its discretion with respect to consents, approvals or disapprovals of matters referred to in these Covenants, the Developer does not undertake to enforce or monitor compliance of these Covenants; and further agrees to keep the Developer indemnified, free and harmless from any claim, liability, loss or action arising against it or its agents in this regard.

29. Delegation and Assignment by Developer

- 29.1. The Developer may involve or delegate its discretion under these Covenants to one or more responsible professional firms and may assign the same to a responsible assignee.

30. Expiry

- 30.1 The term of the Covenants shall end 5 years following the issue of titles for the Development, but shall continue for a further 5 years with respect to Covenants alleged to have been breached and in respect of which notice has been given or enforcement proceedings have been commenced prior to the 5 year period.