

View Instrument Details



Instrument No 12704863.9
Status Registered
Date & Time Lodged 10 July 2023 15:41
Lodged By Ross, Janet Mary
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
1117470	North Auckland
1117471	North Auckland
1117472	North Auckland
1117473	North Auckland

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 Vaughan Bevan Syers as Covenantor Representative on 07/07/2023 03:55 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 Vaughan Bevan Syers as Covenantee Representative on 07/07/2023 03:55 PM

*** End of Report ***

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Covenant Instrument to note land covenant

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

Covenantor

Bernard Wayne HILL, Peter Ralph HILL and BH TRUSTEE COMPANY LIMITED

Covenantee

Bernard Wayne HILL, Peter Ralph HILL and BH TRUSTEE COMPANY 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	Lot 4 DP 588121	Lot 4 DP 588121 (RT 1117470)	Lot 5 DP 588121 (RT 1117471), Lot 6 DP 588121 (RT 1117472), Lot 7 DP 588121 (RT 1117473)
	Lot 5 DP 588121	Lot 5 DP 588121 (RT 1117471)	Lot 4 DP 588121 (RT 1117470), Lot 6 DP 588121 (RT 1117472), Lot 7 DP 588121 (RT 1117473)
	Lot 6 DP 588121	Lot 6 DP 588121 (RT 1117472)	Lot 4 DP 588121 (RT 1117470), Lot 5 DP 588121 (RT 1117471), Lot 7 DP 588121 (RT 1117473)
	Lot 7 DP 588121	Lot 7 DP 588121 (RT 1117473)	Lot 4 DP 588121 (RT 1117470), Lot 5 DP 588121 (RT 1117471), Lot 6 DP 588121 (RT 1117472)

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Insert instrument type

Covenant Instrument to note land covenant

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}.

ANNEXURE SCHEDULE

BACKGROUND

- A.** The Covenantor intends that the Burdened Land be subject to a general scheme applicable to and for the benefit of the Benefited Land ("**Scheme**") for the Term.
- B.** The Covenantor intends this Instrument shall be and remain registered against the record(s) of title to the Burdened Land to give effect to the Scheme so that for the Term:
 - (a) Owners or occupiers for the time being of the Burdened Land shall be bound by the provisions of this Instrument; and
 - (b) Owners or occupiers for the time being of the Benefited Land can enforce the observance of the provisions of this Instrument by the owners or occupiers for the time being of the Burdened Land.

1. DEFINITIONS AND INTERPRETATION

DEFINITIONS

- 1.1 In this Instrument, unless the context requires otherwise:

Benefited Land means those parcels of land so described in Schedule A of this Instrument;

Burdened Land means those parcels of land so described in Schedule A of this Instrument;

Covenantee shall (where applicable) include and bind:

- (a) The person executing this Instrument as Covenantee; and
- (b) All the Covenantees for the time being under this Instrument; and
- (c) All respective executors, administrators, successors, assigns and successors in title of each Covenantee, and if more than one jointly and severally;

Covenantor shall (where applicable) include and bind:

- (a) The person executing this Instrument as Covenantor; and
- (b) All the Covenantors for the time being under this Instrument; and
- (c) All respective executors, administrators, successors, assigns and successors in title of each Covenantor, and if more than one jointly and severally;

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Covenants means all or any of the covenants contained in this Instrument;

Developer means Bernard Wayne Hill, Peter Ralph Hill and BH Trustee Company Limited as trustee of the Wayne Hill Family Trust and includes any assignee and/or successor who is nominated as such in writing by them from time to time;

dwelling house means a single building, limited to a height of 6 metres, designed, used or intended to be used as a independent and separate household unit provided that (subject to Local Authority requirements) the building may, as an integral part, include separate self-contained living accommodation (in the nature of a flat or guest accommodation comprising a floor area of less than 70m²);

Instrument means this Instrument and includes all the annexure schedules incorporated within this Instrument;

Landscaping includes the completion on a Lot of all fences, paths, planting of trees, shrubs and plants and for any unpaved areas viewable from road frontage to be grassed or planted;

Local Authority means Whangarei District Council;

Lot means a particular parcel of land comprised in the Burdened Land;

Term means a period of twenty (20) years commencing on and from the date that this Instrument is registered;

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day; and
- (b) If Waitangi Day or Anzac Day fall on a Saturday or Sunday, the following Monday; and
- (c) A day in the period commencing on the 24th of December in any year and ending on the 5th of January the following year, both days inclusive;
- (d) The day observed as the anniversary Northland province; and
- (e) Matariki (Matariki Observance Day) being the public holiday observed under the Holidays Act 2003.

INTERPRETATION

1.2 In this Instrument, unless the context indicates otherwise:

- (a) All monetary amounts are stated and are payable in New Zealand dollars;
- (b) Singular words include the plural and vice versa and words importing one gender include the other gender;
- (c) References to any "**party**" mean a party to this Instrument and include the successors, executors, administrators and permitted assigns (as the case may be) of that party;
- (d) References to clauses means a clause in this Instrument (unless stated otherwise);
- (e) References to a "**person**" include an individual, firm, company, corporation or unincorporated body of persons, any public, local authority, any government and any agency of any government or of any such authority;
- (f) Headings appear as a matter of convenience and do not affect the construction of this Instrument;
- (g) A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for them;
- (h) Any obligation on the Covenantor not to do anything shall be deemed also to be an obligation not to suffer, permit and or cause that thing to be done;

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- (i) An obligation by two or more persons binds those persons jointly and severally.

2. GENERAL COVENANTS

2.1 The Covenantor covenants and agrees:

- (a) To observe and perform all the Covenants at all times during the Term; and
- (b) The Covenants shall run and bind the Burdened Land for the benefit of the Benefited Land to the intent that each of the Covenants will be appurtenant to the Benefited Land for the Term.

2.2 The Covenantor covenants and agrees to pay the Covenantee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Covenantee's rights, remedies and powers under this Instrument in relation to any breach by the Covenantor of any of its obligations set out in this Instrument.

3. COVENANTS

Building

3.1 The Covenantor covenants and agrees:

- (a) The Covenantor shall not erect, or permit to be erected or placed on the Lot:
- (i) more than one dwelling house;
 - (ii) any relocated dwelling house or any dwelling house other than one constructed on site from new, unused materials;
 - (iii) any dwelling house, which has a floor area of less than 150m² (excluding garages, decking and carports);
 - (iv) any garage or carport which is not incorporated as an integral part of the dwelling house;
 - (vi) any building other than a dwelling house provided that the Covenantor is entitled to erect, construct or place on the Lot any separate free standing garden shed or similar outbuilding constructed and completed in new materials and appropriately painted or finished so as to blend in with the dwelling house;
 - (vii) Any building within 8 metres from any road boundary or within 3 metres from any other boundaries; and
 - (viii) Any water tanks higher than 1.5 metres above the ground (including risers) and such water tanks must be planted to screen them from the views of any other Lots.
- (b) The Covenantor shall not:
- (i) use any less than two different exterior claddings (or one cladding with a gable) of any material for any dwelling house other than brick, colour steel, natural stone, textured plaster, stained timber plywood or stained timber weatherboard, surface coated concrete block, stucco, linear weatherboards, solid plaster or glazing or a combination of the above;
 - (ii) leave the outside of any dwelling house unfinished, or any exterior walls or doors unpainted or unstained except where cedar cladding or decorative brick/stone are used;
 - (iii) use as a roofing material on any dwelling house any material other than tiles, (including clay, ceramic concrete, decramastic, pre-coated or pressed steel), colour steel (including pre-painted, long-run pressed or rolled steel), wooden shingles, slate, membrane roofing or copper.
- (c) Despite the provisions of clause 3.1(b), the Developer may approve in writing the use of alternative exterior cladding and/or roof materials provided the Developer considers, in its absolute discretion, that such materials are consistent with the Developer's requirements to maintain minimum standards for a modern, well-designed residential subdivision. Any use of alternative exterior cladding or roof materials so approved shall not be in breach of clause 3.1(b).

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- (d) The Covenantor shall construct and complete:
 - (i) the dwelling house within twelve (12) months of laying down the foundations; and
 - (ii) the Landscaping within twelve (12) months of laying the foundations for the dwelling house; and
 - (iii) the driveway comprising permanent continuous surface in concrete, concrete block, tar sealing or similar within fifteen (15) months of laying down the foundations for the dwelling house.
- (e) The Covenantor shall not permit or cause the Lot to be occupied or used unless:
 - (i) the dwelling house has been substantially completed in accordance with the terms of these Covenants, and
 - (ii) the dwelling house meets the requirements of the Local Authority.

Use

3.2 The Covenantor covenants and agrees:

- (a) Not to permit the Lot to be used for any purpose other than residential purposes or as a home office, provided that use of a Lot:
 - (i) as a sales office by the Developer; or
 - (ii) as a show home by a building company with the Developer's consent, shall not be a breach of this provision;
- (b) Not to erect or place, or permit to be erected or placed on the Lot any caravan, mobile home, hut, boat or any structure (other than a dwelling house) capable of providing temporary accommodation or other vehicles provided that the storage of mobile homes, caravans, cars, boats and other such items is permitted on the Lot once the dwelling house has been constructed and completed on the Lot;
- (c) To ensure that all services and utilities are located below ground on the Lot;
- (d) To keep the Lot and the road berms, vehicle crossings, drains, swales, fences and plantings outside but adjacent to the Lot maintained to a good standard neat and tidy and free of significant noxious weeds and overgrowth, including (but not limited to) keeping all grass below 10cm in length;
- (e) Not to permit any rubbish or waste material to be or remain on the Lot other than within suitable enclosed structures or otherwise appropriately screened from view;
- (f) Not to permit the parking of trucks or any large commercial or agricultural vehicles on or adjoining the Lot or on any thoroughfare or road near the Lot, other than for temporary delivery purposes;
- (g) Not to permit parking of any vehicles which do not have a current warrant of fitness and/or registration, in view of any dwelling house on any neighbouring Lot, or in view of any thoroughfare or road near the Lot;
- (h) To ensure all heat pumps, gas cylinders and washing lines are suitably screened from the road frontage of the Lot;
- (i) Not to subdivide the Lot;
- (j) Any fencing erected on a Lot shall:
 - (i) Where the fence is within ten (10) metres of a roadside boundary be less than one (1) metre in height;
 - (ii) Where the fence is more than ten (10) metres from a roadside boundary be less than 1.2 metres in height.

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4. BREACH OF COVENANTS

- 4.1 If the Covenantor breaches or fails to observe part of or any of the Covenants, then without prejudice to any other liability which the Covenantor may have to the Covenantee or any person or persons having the benefit of the Covenants, the Covenantor, upon written demand being made by the Covenantee or any person or persons having the benefit of the Covenants will cease any activity which is in breach or non-observance of the Covenants and otherwise rectify the breach or non-observance.
- 4.2 The Covenantor will indemnify and keep indemnified the Covenantee and the Developer from and against any loss, damage, cost, expense or charge incurred or sustained at any time by the Covenantee or the Developer as a result of any failure or breach by the Covenantor in complying with any obligation imposed on the Covenantor pursuant to this Instrument.
- 4.3 Despite any other provisions of this Instrument, the Covenantor will only be liable for breaches of the Covenants which occur or exist while the Covenantor is the owner or occupier of the Lot in respect of which a breach or non-observance occurs (and will only be liable to indemnify the Covenantee accordingly) but without prejudice to any antecedent breach.

5. ENFORCEMENT

- 5.1 The Covenantor and Covenantee acknowledge and agree that:
- (a) The Covenants are intended to create obligations on the Covenantor, for the benefit of the Developer (as well as the Covenantee);
 - (b) The Developer may (but is not obliged to) facilitate the observance of this instrument by the Covenantor by taking all necessary steps to enforce its observance on behalf of any Covenantee;
 - (c) The Covenantee irrevocably appoints the Developer to be its attorney and in its name to do anything which the Developer considers necessary to enforce or attempt to enforce the Covenantee's rights or powers under this Instrument, provided that the Developer shall not be obliged to do so;
 - (d) Without limiting the appointment made in clause 5.1(c) that appointment may specifically extend to the Developer issuing proceedings in the name of any Covenantee, provided that in doing so the Developer indemnifies such Covenantee against all costs arising from or incidental to those proceedings.
- 5.2 In the event that the Covenantor breaches or fails to observe and perform part of or any of the Covenants, the Covenantee and/or the Developer 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 cost incurred by the Covenantee or the Developer in remedying the default shall be refunded by the Covenantor to that Covenantee or the Developer as the case may be upon demand.
- 5.3 The Covenantor acknowledges that neither the Covenantee nor the Developer shall be liable to the Covenantor for any loss, damage, claim or expense arising in relation to any matters under this Instrument (including without limitation where such loss, damage, claim or expense arises from any approval or non-approval by the Developer of an application under clause 3.1(c) or from any failure on the part of the Covenantee or the Developer to remedy a breach of the Covenants by the Covenantor or to enforce the Covenants).
- 5.4 The Developer's right to exercise any of its rights or remedies under this Instrument shall cease three (3) years after the date the Developer has subdivided and sold the last of the Lots on DP 588121 (or any subsequent plan or plans).

6. OPERATION OF COVENANTS

- 6.1 The Covenants shall expire and be of no further effect on expiry of the Term.

7. GENERAL

Waiver

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- 7.1 No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.

Partial Invalidity

- 7.2 If any provision of this Instrument or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Instrument and its application shall not be affected and shall remain enforceable to this greatest extent permitted by law.

Notices

- 7.3 Any notice required to be served on any party under this Instrument shall be served in the manner prescribed in Part 7 of the Property Law Act 2007 for the type of notice being served.

Governing Law

- 7.4 This Instrument shall be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.