

View Instrument Details



Instrument No 12902346.5
Status Registered
Date & Time Lodged 15 February 2024 13:12
Lodged By Charles-McCormick, Jessica Mary-Alice
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
1072814	Canterbury
1072815	Canterbury
1072816	Canterbury
1072817	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 Nicholas John Dashwood Strettell as Covenantor Representative on 15/02/2024 11:13 AM

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 Nicholas John Dashwood Strettell as Covenantee Representative on 15/02/2024 11:15 AM

*** End of Report ***

Form 26

Covenant Instrument to note land covenant

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

Covenantor

MICHAEL GERARD RYAN

Covantee

MICHAEL GERARD RYAN

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covantee** (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 required

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Restrictive Covenants	DP 578797	Lots 2, 3 and 8 Deposited Plan 578797 (RT's 1072815-1072817)	Lots 1-3 and 8 Deposited Plan 578797 (RT's 1072814-1072817)

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].

The Annexure Schedule.

Annexure Schedule

1. Purpose

- 1.1 The purpose of these Covenants is to protect the market and aesthetic value of the Benefiting Lots, the privacy, peace and security of the occupants of the Benefiting Lots and the quality of the environment touching and concerning the Benefiting Lots.
- 1.2 Where there is at any time more than one owner of a Lot, these covenants will be binding upon each and every owner jointly and severally.

2. Definitions and Interpretation

2.1 Interpretation

- (a) Words importing one gender include the other gender.
- (b) Words importing the singular or plural include the plural and singular respectively.
- (c) Headings are inserted for the sake of convenience and ease of reference only. They do not form part of the test, and will not affect the construction or interpretation of these Covenants.

2.2 Definitions

In these Covenants, unless the context otherwise requires:

- (a) "Benefiting Lots" means the Lots which receive the benefit of these Covenants as set out in Schedule A.
- (b) "Building" comprises a Building as defined by the Building Act 2004 and includes a Dwelling.
- (c) "Covenants" means the covenants as set out in this document.
- (d) "Developer" means Michael Gerard Ryan and any successor party or entity nominated by him or by any encompassing party or entity nominated to deal with applications required for approvals by the Lot Owner under any of these Covenants.
- (e) "Development" means the subdivision and development of:
 - (i) the Developer's land at 668 Weedons Road, Rolleston, which includes any Lot owned by the Developer; and
 - (ii) any adjoining owned by the Developer.
- (f) "Dwelling" means and includes a residential dwelling, or family residence.
- (g) "Landscape Feature" means any visible structure or landscape design or enhancement feature or utility to be provided on any Lot.
- (h) "Lot" means any Lot that is subject to these Covenants.
- (i) "Lot Owner" means the owner of any Lot.
- (j) "Property" means a Lot together with any Dwelling and Buildings situated on such Lot; and

- (i) unless the context otherwise requires, includes any part of such Dwelling which is subject to a party wall easement and all Buildings (if any) situated on such lot; and
- (ii) in relation to any proprietor or occupier means the property owned or occupied by that proprietor or occupier (as the case may be).
- (k) "Territorial Authority" means a territorial authority within the meaning of the Local Government Act 2002.

3. Building Covenants

- 3.1 Prior to construction of any Building, structure or improvements the Lot Owner must first obtain the written approval of the Developer to the final Building plans and specifications (and where appropriate, in the same form as intended to be submitted to the Territorial Authority for a building consent) and the intended use of the Property by the Lot Owner, and such specifications will include full details of all exterior colour schemes and finishes and details of fences, driveways.
- 3.2 The consent of the Developer required under clause 3.1 will not be unreasonably withheld in respect of Buildings that are designed by a registered architect or architectural designer that are appropriate for a rural design, and unless the planned Building, structure or improvements are contrary to the terms of this Covenant including clause 1.1.
- 3.3 The Developer will be entitled to serve an injunction notice on the Lot Owner to cease all work if the Lot Owner commences any construction work without first having obtained the approval of the Developer in accordance with clause 3.1.
- 3.4 The obligation to obtain the approval of the Developer pursuant to clause 3.1 will expire five (5) years after the date of registration of the transfer of the Property by the Developer to the Lot Owner but this will not release the Lot Owner from its obligations to comply with these Covenants.
- 3.5 All Buildings must be constructed on-site from new or high-quality recycled materials.
- 3.6 Only the following materials are to be used for exterior cladding on any buildings on a Lot:
 - (a) brick; or
 - (b) stone; or
 - (c) concrete block stucco; or
 - (d) cement or plaster finish or similar type of finish; or
 - (e) plastered textured finish; or
 - (f) stained or painted timber weatherboards or linear boards which have the appearance of timber weatherboards; or
 - (g) solid plaster or glazing; or
 - (h) such other materials as may be approved by the Developer.
- 3.7 All roofing materials on any Building are to be one of the following:

- (a) tiles (including clay, ceramic, concrete, decramastic, pre-coated or pressed steel); or
 - (b) steel (comprising pre-painted, long-run pressed or rolled steel); or
 - (c) shingles; or
 - (d) slate; or
 - (e) membrane roofing; or
 - (f) such other roofing material as may be approved by the Developer.
- 3.8 Any Dwelling constructed on a Lot must have a minimum floor area of 180m² (excluding garage) unless prior written approval from the Developer has been obtained in accordance with clause 3.1.
- 3.9 The Lot Owner will not construct, erect or place or permit to be constructed, erected or placed on the Lot any Building which has an installed open fireplace or dry wood or pellet or similar solid fuel burner (except for clean air approved fires or burners complying with relevant and current environmental standards).
- 3.10 Diesel, petrol, oil or gas tanks which have a capacity of over 100 litres are prohibited on any Lot or within any Building unless approved by the Developer.
- 3.11 All construction works including any required painting or staining of exterior surfaces, will be completed within a period of eighteen (18) months from the date of commencement of the construction work. All landscaping surrounding the Dwelling must be completed within twelve (12) months of issue of a Code Compliance Certificate for the Dwelling.
- 3.12 During construction the Lot Owner will not allow a period of more than three (3) months to elapse without substantial work being carried out once such work has commenced.
- 3.13 No Building on any Lot may be occupied as a residence in any way until the Code Compliance Certificate(s) has been issued by a building consent authority in accordance with the Building Act 2004, and all Buildings have been completed in accordance with all the terms of these Covenants.
- 3.14 No use may be made of adjacent land, road verges or recreation areas abutting any Lot for access (other than the access approved by the Developer) or for dumping of rubbish. The Lot Owner will reinstate, replace and be responsible for all costs arising from damage to the landscaping, roads, footpaths, kerbing, berms, concrete or other structures arising directly or indirectly from any access or use (including their contractors).
- 3.15 The Lot Owner will not relocate any vehicle crossing on the Property without the written consent of the Developer.
- 4. Maintenance**
- 4.1 The Lot Owner will not:
- (a) Allow any Building or structure on the Property to become dilapidated or to fall into disrepair or to cause any damage or harm to any other neighbouring properties.
 - (b) Allow any nuisance or unreasonable disturbance to be caused to any owner or occupier of neighbouring properties.

- (c) Move, damage or remove any survey pegs or markers on the Property and in the event of any breach of this restriction, the Lot Owner will, at their own cost, have such pegs or markers replaced by a registered surveyor.
- (d) Allow the Property to become littered, overgrown or unsightly to the intent that the Property is to be maintained in a neat and tidy condition, nor allow any noxious weeds (including gorse, blackberry or ragwort) to grow on the Property.

4.2 The Lot Owner will:

- (a) Maintain the Property including grass verges, fence lines in a tidy manner in keeping with a rural lifestyle subdivision.
- (b) Keep any shelterbelt trees on or near the boundaries in good order and condition (or replace them wherever it is necessary or desirable to do so) to the intent that:
 - (i) Should any shelterbelt tree be destroyed or die it shall be replaced by a tree of similar species and be maintained at a similar height on maturity.
 - (ii) All shelterbelt trees are healthy and provide effective screening at all times.
 - (iii) All shelterbelt trees are regularly topped to a maximum height of 5.00 metres. This restriction shall not apply to any existing shelterbelt trees as at the date of registration of this covenant.
 - (iv) The costs be shared equally between the owners of the Lots sharing the boundary.
- (c) Keep any drains clean, in good order and condition and clear of obstructions.
- (d) Keep gateways and entranceways in good order and condition.
- (e) Keep its right of way and grass and other plants and structure on or under it in good order and condition.

4.3 The costs of maintaining any trees along the Right of Way are to be shared in equal proportions by all of the Lot Owners who have the benefit of using the Right of Way.

5. Activity/Use of Property

5.1 The Lot Owner shall not:

- (a) Use its land for pig farming, poultry farming, commercial dog kennels or a commercial pet centre, contracting, trucking or freight business or for anything which causes nuisance or annoyance to any of the other Lot Owners.
- (b) Keep pigeons, peacocks, roosters or any other animal which may cause a nuisance to other Lot Owners.
- (c) Use any part of the Property for any type of factory farming. Factory farming means a farm or unit of production in which the process is carried out largely indoors or in a restricted space and which is not dependent on the sole characteristics of the site on which it is situated, and includes for example (but without limitation) poultry farms, pig farms, rabbit farms, fitch farms, mushroom farms, opossum farms and feedlots for commercial livestock such as cattle.

- (d) Engage in any activity which detracts from the nature and character of the Lots collectively as a development.
 - (e) Use any second-hand fencing materials on the Property.
 - (f) Allow storage containers to remain on any Property without the consent of the Developer.
 - (g) Use or allow to be placed on the Property any Property any second-hand stock water reticulation (i.e. bathtubs).
 - (h) Leave or allow to be left on the Property any vehicle, caravan, rubbish or other thing that unreasonably detracts from the appearance of the Development.
 - (i) Allow any plants, trees or hedge (excluding ornamental or specimen trees) to grow to a height of more than 5.00 metres from ground level. This restriction shall not apply to any existing plants, trees or hedges as at the date of registration of this covenant.
- 5.2 No inflammable, explosive or noxious materials are to be stored or used on any Lot or in any Building. The Lot Owner must not allow any offensive activity to be conducted or permitted to exist upon any Lot, or in any Building, nor will anything be done or permitted to exist on any Lot, or in any Building that may be or may become an annoyance or private or public nuisance. An annoyance or private or public nuisance includes loud sounds or noises or offensive smells.
- 6. General**
- 6.1 Any difference or dispute between any parties regarding the interpretation of these Covenants or as conferred by such Covenants will be referred at the request of either party to the arbitration of a single arbitrator on the following terms:
- (a) The arbitrator is to be jointly agreed upon the by the parties.
 - (b) If the parties fail to agree upon an arbitrator within seven (7) days of notice from one party to the other, then the arbitrator shall be appointed by the President of the Canterbury-Westland branch of the New Zealand Law Society for the time being and such nomination will bind the parties.
 - (c) The reference is a reference to a single arbitration under the Arbitration Act 1996.
 - (d) The arbitrator's decision will be final and binding on both parties and may include an order for costs, an order for enforcement and interest on moneys payable.
 - (e) The parties will not resort to litigation except for the purposes of enforcing this clause.
- 6.2 The Developer will not be liable because of any action it takes or fails to take or for any default in any Building, structure or improvement erected on any of the Lots or for any breach of these Covenants or otherwise and the Lot Owners will indemnify and keep indemnified the Developer and its legal successors (other than successors in title after registration of a transfer from the Developer to a subsequent owner) from any costs, claims, suits, demands or liabilities arising out of or under these Covenants including non-observance of these Covenants.

- 6.3 If any of the restrictions contained in these Covenants are deemed to be unenforceable or void for any reason, then that particular provision will be deemed to be deleted from the terms of these Covenants to the intent that the balance of the Covenants will remain unaffected and enforceable.

7. Creation of Land Covenant

- 7.1 The Lot Owner for itself and its successors in title covenant and agree with the Developer and the owners from time to time of the Benefiting Land that the Lot Owner will at all times observe and perform all these Covenants to the intent that each of the Covenants will enure for the benefit of and be appurtenant to each and all of the Benefiting Land and each and all of the Lot Owners provided that the Lot Owner will be liable only for breaches of these Covenants which occur whilst the Lot Owner is the registered proprietor of the Property or any part of the Property.

- 7.2 No Lot Owner will oppose, object to, frustrate, or take any action, or encourage or cause others to oppose, object to frustrate or take action that might in any way prevent or hinder the Developer from taking any action necessary to progress or complete the Development, including but not limited to:

- (a) development planning;
- (b) zone changes;
- (c) resource consents for land uses and subdivisions;
- (d) Environment Court applications;
- (e) Territorial Authority building consent matters.

- 7.3 If there should be any breach or non-observance on the Lot Owner's part of any of these Covenants and without prejudice to any other liability which the Lot Owner may have to the Developer and any person or persons having the benefit of those Covenants, the Lot Owner will, at the election of and upon written demand being made by the Developer or any of the Lot Owners:

- (a) pay to the person making such demand as liquidated damages the sum of \$250.00 per day for any such breach or non-observance of these Covenants contained in this Instrument continues after the date upon which written demand has been made; or
- (b) repaint any Dwelling, Building, structure or improvement repaired or completed in breach of these Covenants; or
- (c) remove or cause to be removed from the Property any Dwelling, garage, Building, fence or other structure erected or placed on the Property in breach for non-observance of the above Covenants; or
- (d) replace any building materials used in breach of these Covenants.

8. Vesting of Roads and Reserves

- 8.1 Each Lot Owner consents to the deposit of any Survey Plan which has the effect of vesting any land in any local authority, territorial authority or the Crown ("Land to Vest") or where land is to be transferred for utilities or road ("Land for Utilities"). The Lot Owners agree that

these Covenants will cease to apply in respect of the Land to Vest and any Land for Utilities upon the date of lodgement with Land Information New Zealand (or any such replacement entity) of the required documents to deposit the Survey Plan. The Lot Owners agree that this clause will be deemed to be the consent of the Lot Owner to the deposit of the Survey Plan (including under section 224(b)(i) Resource Management Act 1991 (or any like or similar provision in any variation, consolidation or replacement Act)) and for the removal of these Covenants from any Land for Utilities.

- 8.2 If it is determined by the Developer that additional written consent is required from the Lot Owner to the deposit of a Survey Plan or the removal of covenants in this Instrument from any Land for Utilities under clause 8.1 then:
- (a) at the request of the Developer, the Lot Owner will immediately give such written consent to the Developer; and
 - (b) in addition to clause 8.1 and 8.2(a) the Lot Owner irrevocably appoints the Developer or its successor in title as its attorney to sign any consent necessary in the required form to deposit any Survey Plan. No person dealing with the Developer as the attorney in this capacity need inquire if the Developer is validly exercising its powers as attorney under this clause 8.2.