

View Instrument Details



Instrument No 12958651.11
Status Registered
Date & Time Lodged 08 April 2024 14:52
Lodged By Stevenson, Jane Maree
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
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1146375	Wellington
1146376	Wellington
1146377	Wellington
1146378	Wellington
1146379	Wellington
1146380	Wellington
1146381	Wellington
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1146400	Wellington
1146401	Wellington
1146402	Wellington
1146403	Wellington
1146404	Wellington
1146405	Wellington
1146406	Wellington
1146407	Wellington
1146408	Wellington
1146409	Wellington
1146410	Wellington
1146411	Wellington
1146412	Wellington
1146413	Wellington
1146414	Wellington
1146415	Wellington
1146416	Wellington

1146417 Wellington
1146418 Wellington
1146419 Wellington

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 Jane Maree Stevenson as Covenantor Representative on 08/04/2024 09:27 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 Thomas Geoffrey McGarry as Covenantee Representative on 05/04/2024 04:15 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

Anderson Park Estates Limited

Covenantee

Spark New Zealand Trading 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 covenants	Shown (plan reference) 592074	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Non-objection covenant	Lots 1 to 45 inclusive on DP 592074	Records of Title 1146375 to 1146419 inclusive	Spark New Zealand Trading Limited (in gross)

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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 pages 1-5].

ANNEXURE SCHEDULE 1

Insert instrument type

Restrictive Covenant

*Continue in additional Annexure Schedule, if required***1. DEFINITIONS AND INTERPRETATION****1.1 Definitions:** In this covenant, unless the context indicates otherwise:

Authority means any local body government or other authority having jurisdiction over or authority for the Benefitted Land or its use or occupation together with utilities service providers and 'council controlled organisations';

Burdened Land means the land described in Schedule A;

Covenantee means Spark New Zealand Trading Limited and includes its successors, transferees and assigns, and where the context allows, the contractors, consultants, employees, agents, tenants, licensees and invitees of the Covenantee;

Covenantor means the registered owner(s) of the Burdened Land (or part thereof) from time to time;

District Plan means the Kapiti Coast District Plan;

Equipment means any equipment or materials required or intended to be used by the Covenantee from time to time, including but not limited to any structure, equipment container, aerials, antenna mast and/or tower, earth mat, poles, anchors and fixings, shelters, buildings, dishes, cabinets, and any lines and works owned and/or operated by the Covenantee;

Leased Land means that part of the freehold land currently comprised in Record of Title 921363 (Wellington Registry) being described as Lot 1 on Deposited Plan 80320;

Lodge any Submission means (without limitation) personally or through any agent or servant, directly or indirectly, lodge or support in any way any objection or submission to any Planning Proposal and includes (without limitation) taking part in any planning hearing, or appeal or reference arising in respect of a Planning Proposal whether as a party or otherwise;

Network Operator has the meaning given to it in section 5 of the Telecommunications Act 2001;

Planning Proposal includes (without limitation) any application for resource consent and / or plan change or rezoning / special housing area and / or variation of any nature under the relevant District Plan and/or proposed District Plan;

Telecommunication means the conveyance, transmission, emission or reception of signs, signals, impulses, writing, images, sounds, instructions, information or intelligence of any nature whether by electromagnetic waves or not at any frequency and whether for the information of any person or not, and includes any utility supply whether underground or over ground incidental to telecommunication, together with any ancillary uses, purposes and activities;

Telecommunications Network Site means means a network facility used for the purposes of carrying out Telecommunication activities and operations, including

constructing, operating, testing, erecting, placing, installing, maintaining, renewing, upgrading, altering, replacing, redeveloping, expanding, relocating, accessing, storing and using the Equipment; and

Working Day has the meaning given to that term in the Property Law Act 2007.

1.2 **Interpretation:** In this covenant, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this covenant have the defined meaning throughout this covenant, including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this covenant's interpretation;
- (c) **Parties:** references to any party include that party's executors, administrators, successors and assigns;
- (d) **Persons:** references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (g) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (h) **Inclusive Expressions:** the term includes or including (or any similar expression) is deemed to be followed by the words without limitation; and
- (i) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

BACKGROUND

- A. The Covenantor is registered as owner of the Burdened Land.
- B. The Covenantee is a Network Operator and operates a Telecommunications Network Site from the Leased Land and the Easement Areas.
- C. The Covenantor acknowledges that the Burdened Land is in close proximity to the Telecommunications Network Site and that the operation of the Telecommunications Network Site may involve noise, traffic and other effects which inhabitants of a residential dwelling may find inconvenient.

COVENANTS

- 1. **Operative clause:** The Covenantor for itself and its successors in title to the Burdened Land (or any part of it) hereby covenants and agrees with the Covenantee for the benefit

of the Covenantee that it will at all times hereafter observe and perform all the restrictions and stipulations contained in this Instrument to the end and intent that each of the stipulations and restrictions shall, in the manner and to the extent prescribed, forever enure for the benefit of the Covenantee.

NO OBJECTION

2. **Acknowledgement of Telecommunications Network Site:** The Covenantor acknowledges that the Covenantee is entitled to use of the Leased Land and the Easement Areas as a Telecommunications Network Site.
3. **No objection:** The Covenantor, (either personally or through any agent or employee) will:
 - (a) not object to or Lodge any Submission against any Planning Proposal made by the Covenantee which relates to the Covenantees use of the Leased Land and the Easement Areas as a Telecommunications Network Site;
 - (b) not seek to obtain an order, injunction or any other remedy or make any complaint against the Covenantee or any contractor or any consultant which relates to the Covenantees use of the Leased Land and the Easement Areas as a Telecommunications Network Site;
 - (c) not make any demand for damages, costs or expenses, bring any legal action in nuisance or any other action in law or allege any liability arising out of the Covenantees use of the Leased Land and the Easement Areas for the purposes of a Telecommunications Network Site;
 - (d) not do or permit to be done any act, matter or thing intended to restrict or inhibit or which may have the effect of restricting or inhibiting the Covenantees use of the Leased Land and the Easement Areas as a Telecommunications Network Site;
 - (e) not aid, abet, counsel or procure any other person or entity to exercise any of the actions restricted by virtue of clauses 3(a) to (c) (inclusive) above;
4. **Written support:** If requested by the Covenantee, the Covenantor shall promptly give its unqualified:
 - (a) written approval, including any affected party approval under section 95E of the Resource Management Act 1991, to any application made to the Authority for any Planning Proposal in respect of, or which affects the Covenantees use of the Leased Land and the Easement Areas as a Telecommunications Network Site and shall not withdraw that approval; and/or
 - (b) submission in support of any Planning Proposal in respect of, or which affects the Covenantees use of the Leased Land and the Easement Areas as a Telecommunications Network Site and shall not withdraw that submission; and the Covenantor shall sign all documents and do all things required by the Covenantee to meet its obligations under this clause 4; and
 - (j) if the Covenantor fails to meet its obligations under clause 4, the Covenantee may supply a copy of this instrument to any Territorial Authority as evidence of the Covenantor's approval and/or support under 4.

RESOLUTION OF DISPUTES

5. **Negotiation:** If any dispute arises between the parties concerning the interpretation of this instrument or anything contained in or arising out of the covenants in this instrument, the parties will try in good faith to settle the matter by negotiation.

6. **Mediation:** If the parties are unable to resolve the dispute within 10 working days of either party giving notice to the other that the party is invoking this dispute resolution mechanism, then the dispute will be referred to mediation.
7. **Referral to arbitrator:** If the parties are unable to resolve the dispute within 15 working days of the matter being referred to mediation, the dispute will be referred to a sole arbitrator.
8. **Arbitrator:** The parties must try to agree on the arbitrator. If they cannot agree, the president for the time being of the New Zealand Law Society (or his or her nominee) will, on either party's application, nominate the arbitrator.
9. **Award final:** The arbitration will be governed by the Arbitration Act 1996 and the arbitral award will be final and binding on the parties.

INDEMNITY

10. **Indemnity:** The Covenantor shall at all times hereafter keep save harmless and indemnified the Covenantee from all proceedings, costs, claims and demands in respect of any breach by the Covenantor of the covenants and restrictions herein contained and implied on behalf of the Covenantor which occurred while the Covenantor was the registered proprietor of the Burdened Land.
11. **Damages not sufficient:** The Covenantor acknowledges that, in the case of default by the Covenantor in the observance or performance of any of the covenants contained in this instrument, monetary damages would not be a sufficient remedy, and that the Covenantee shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such default.
12. **Third parties:** The Covenantor will ensure that where it grants a lease tenancy and / or occupation rights over the Burdened Land (or any part of it) it shall ensure that such lessee, tenant and / or occupier is provided with this covenant and to keep the Covenantee save harmless and indemnified.

GENERAL

13. **Binds successors:** The parties agree that the Covenant shall be and remain registered against the records of title to each of the Burdened Land and Benefited Land to the effect that:
 - (a) owners or occupiers from time to time of the Burdened Land shall be bound by the provisions of this Covenant;
 - (b) the Covenantee can enforce the observance of the provisions of this Covenant against the owners or occupiers for the time being of the Burdened Land; and
 - (c) the obligations and covenants of the Covenantor under this Covenant are for the benefit of the Covenantee.
14. **Related Company:** The covenants contained in this instrument are, for the purposes of the Contract and Commercial Law Act 2017, intended for the benefit of and are to be enforceable by a Related Company.
15. **No waiver:** Failure by the Covenantee to enforce this instrument shall not be deemed to be a waiver of the right to subsequently do so.
16. **Partial Invalidity:** If any provision of this instrument is or becomes invalid or unenforceable, that provision will be deemed deleted from this instrument. The invalidity

or unenforceability of that provision will not affect the other provisions in this instrument, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.