

View Instrument Details



Instrument No 12447859.5
Status Registered
Date & Time Lodged 06 July 2023 09:18
Lodged By Stack, Caitlin Anne
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
1055293	Canterbury
1055294	Canterbury

Annexure Schedule Contains 6 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 Caitlin Anne Stack as Covenantor Representative on 03/07/2023 11:41 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 Caitlin Anne Stack as Covenantee Representative on 03/07/2023 11:41 AM

*** End of Report ***

Annexure Schedule

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ANNEXURE SCHEDULE 1

It is the Covenantor's intention to create for the benefit of each of the lots shown in Schedule A as the Benefited Land the land covenants set out in Schedule B over each of the other lots shown in Schedule A as the Burdened Land TO THE INTENT that each of the lots shown in Schedule A as the Burdened Land shall be bound by the stipulations and restrictions set out in Schedule B and that the owners and occupiers for the time being of each of the lots shown in Schedule A as the Benefited Land may enforce the observance of such stipulations against the owners for the time being of each of the other lots shown in Schedule A as the Burdened Land. The covenants in Schedule B shall be covenants running with each of the lots shown in Schedule A as the Burdened Land for the benefit of and forever appurtenant to all of the other lots shown in Schedule A as the Benefited Land.

Schedule B

1. Creation of Land Covenants

- 1.1 The Covenantor for itself and its successors in title covenants and agrees with the Covenantee and its successors in title that the Covenantor will at all times observe and perform the covenants contained in this Covenant Instrument to the intent that each of the covenants will forever enure for the benefit of and be appurtenant to each and all of the Benefited Lands and each and all of the registered proprietors of the Benefited Lands provided that the Covenantor will be liable only for breaches of the covenants contained in this Covenant Instrument which occur whilst the Covenantor is the registered proprietor of the Burdened Lands or any part of the Burdened Lands and provided further that Jeremy Charles Tod and Nicola Anne Tod will not be liable for breaches of the covenants contained in this Covenant Instrument whilst they (or their estates, or any related party) remain the registered proprietor of the Burdened Lands or any part of the Burdened Lands.
- 1.2 The Covenantee will at all times indemnify and keep the Covenantor indemnified from all losses, costs, claims and demands in respect of any breach or non-observance by the Covenantor of these covenants.
- 1.3 The Covenantee will not call on Jeremy Charles Tod and Nicola Anne Tod to pay for or contribute towards the cost of erection or maintenance of any boundary fence between any property and adjoining property of the Covenantee provided that this covenant will not ensure for the benefit of any subsequent registered proprietor of any adjoining property.

2. Interpretation

- 2.1 Unless the context specifies or requires otherwise, the following words and phrases in these covenants shall have the meanings specified below:

Developer means Jeremy Charles Tod and Nicola Anne Tod or its nominee or any developer who acquires the Development from Jeremy Charles Tod and Nicola Anne Tod will for the purposes of completing the Development.

Development means the development at 79 Iris Taylor Avenue, West Melton.

Land Covenants means these covenants.

Working Days means a day which is not a Saturday, Sunday or public holiday in Canterbury.

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3. Land Use Covenants

- 3.1 The Covenantor for itself and its successors in title hereby covenants and agrees with the Covenantee and its successors in title for the benefit of the Benefited Land that the Covenantor shall not:
- 3.1.1 Erect (or permit or suffer to be erected) on the Burdened Land:
- a) Any re-locatable, pre-built or kit-set building or any building containing second-hand materials (other than second-hand recycled bricks for exterior cladding);
 - b) Any fence or boundary wall containing cement board sheets or panels, corrugated iron or metal sheeting;
 - c) Any building, structure or improvement which would constitute a breach of the minimum height requirements for fencing, or maximum height requirements for buildings pursuant to the Selwyn District Council Resource Consent or the District Plan;
 - d) Any building, structure, or improvement which would constitute a breach of any land covenant for the time binding the Burdened Land (including but not limited to Land Covenant in Easement Instrument 9308025.7.
- 3.1.2 Further subdivide or build more than one dwelling unit on any allotment however the Covenantee retains the right at all times to further subdivide or approve any other subdivision of any lot or any future stage.
- 3.1.3 Use as a roofing material anything other than tiles (clay, ceramic, concrete, decromastic, pre-coated pressed steel), cedar, slate or bitumen shingles, or painted long-run pressed steel with a less than a 28-degree roof pitch.
- 3.1.4 Use as exterior cladding material other than clay brick, recycled brick, stained or painted weatherboard, painted or sealed concrete block masonry, natural stone, stucco, plaster, coated zincalume, glazing or any combination of the above.
- 3.1.5 Erect any building other than a dwelling house or ancillary buildings in accordance with plans (including site plan, landscape plan and external colour scheme) that have been approved by the Covenantee in its sole discretion prior to the commencement of building. In considering plans for approval the Covenantee shall take into account Architectural merit, colours, and visual appearance.
- 3.1.6 Where the Covenantee has constructed a sealed driveway to the Lot, this access point must be used by the Covenantor as the primary driveway entry. This entry point may not be removed or relocated without the prior written consent of the Covenantee.
- 3.1.7 Erect any fencing which is not compliant with the Selwyn District Council zoning requirements, and / or which has not received specific design approval of the Covenantee.
- 3.1.8 Permit the dwelling to be used as a show home, without the written consent of the Covenantee.

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- 3.1.9 Use or allow the Lot to be used for any purpose other than in accordance with the requirements of the Selwyn District Council in all respects and in particular the rules applicable to the zone for the Lot.
- 3.1.10 Use or allow the Lot to be used for any illegal, offensive or noisy activities.
- 3.1.11 Keep any livestock or animals on the Lot (other than household domestic pets for household domestic purposes) which may cause a nuisance or annoyance to registered proprietors of any neighbouring Lots or detract from the Development including but not limited to pigs, deer, goats, horses, sheep, fowl, pigeons, or any dog which in whole or in part, resembles any of the Pit Bull Terrier, Japanese Tosa, Dogo Argentine or Fila Brasileiro, breeds or any other large, potentially aggressive or noisy breed of animal or allow the Lot to be used for any commercial kennel or cattery.
- 3.1.12 Place, permit or park any temporary storage unit, storage container, shipping container, tiny house, trailer sleep-out or portable cabin where it is visible from the street frontage of the Lot.
- 3.1.13 Permit the state of repair and condition of any improvements on the Lot to deteriorate, to the intent that the Covenantor shall regularly maintain all improvements and in particular the exterior surface materials.
- 3.1.14 Oppose or object to any application for a resource consent or building consent or any other approval made by the Developer and will on request being made by the Developer sign any documentation required to give effect to any such consent or approval.

4. Default

- 4.1 If there shall be any breach or non-observance on the Covenantor's part of the Land Covenants contained in this Covenant Instrument (and without prejudice to any other liability which the Covenantor may have to the Covenantor or any other person having the benefit of these Land Covenants) the Covenantor will upon written demand being made by the Developer or any of the registered proprietors of the Benefited Land(s):
 - 4.1.1 Pay to the Covenantor (or other person having the benefit of these Land Covenants) making such demand as liquidated damages the sum of \$150.00 per day (up to a maximum of \$500.00 per day) for every day or part day that such breach or non-observance of the Land Covenants contained in this Covenant Instrument continues after the date upon which written demand has been made;
 - 4.1.2 Remove or cause to be removed any structure or fence erected or placed on the Burdened Land in breach or non-observance of these Land Covenants;
 - 4.1.3 Replace any building materials so as to comply with these Land Covenants; and
 - 4.1.4 Reimburse the costs the Covenantor directly incurs on a dollar for dollar basis as a result of a breach or non-observance, including (but not limited to), those associated with correcting such breach or non-observance of these covenants.

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- 4.2 While the Developer is the registered proprietor of any Benefited Land all breaches or non-observance on the Covenantor's part of the Land Covenants whether actual or alleged must first be referred to the Developer so that no Covenantee other than the Developer may take any action against a Covenantor in respect of a breach or non-observance of the Land Covenants. In addition to the remedies set out in clause 4.1 the Developer will have complete discretion to deal with the default in such way as it thinks fit and the Covenantor will not have any claim in damages against the Developer or right to compensation in respect of any action by the Developer in dealing with the default.

5. Disputes

- 5.1 If a dispute arises in relation to this Covenant Instrument:

5.1.1 the party initiating the dispute must provide full written particulars of the dispute to the other party;

5.1.2 the parties must promptly meet and in good faith try to resolve the dispute;

5.1.3 subject to clause 5.2 if the dispute is not resolved within ten (10) days of the written particulars being given (or any longer period agreed by the parties) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996 to be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the Canterbury and Westland Branch of the New Zealand Law Society

- 5.2 Notwithstanding clause 5.1.3 if any dispute arises in relation to this Covenant Instrument including as to what may constitute a breach or as to matters of interpretation of this Covenant Instrument while the Developer is the registered proprietor of any Benefited Land then the same shall be referred to the Developer for resolution whose decision shall be final.

6. No Termination

- 6.1 The Covenantor may not determine this Covenant Instrument for breach of any provision in this instrument (whether express or implied) or for any other cause, it being the intention of the parties that the Land Covenants created herein shall subsist until they expire in accordance with clause 7.1, become obsolete or are surrendered.

7. Expiry of Land Covenants

- 7.1 These Land Covenants shall expire and cease to have any effect on the date 10 years following the date of registration of this Covenant Instrument such expiry being without prejudice to any claim under these Land Covenants made prior to the expiry date.

- 7.2 The covenants in this instrument will immediately cease to apply to any Lot (or part thereof) which is intended to vest in the Crown or any territorial authority as a road or reserve, upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand.

8 Conflict

- 8.1 Where there is a conflict between the terms of the Land Covenant in Easement Instrument 9308025.7 and this covenant, the Land Covenant in Easement Instrument 9308025.7 will prevail.

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- 8.2

Where there is a conflict between the terms of the Property Law Act 2007 and the Land Transfer Act 2017 the Property Law Act 2007 will prevail.
- 8.3

Where there is a conflict between the Property Law Act 2007 and this covenant, the terms of this covenant will prevail.
- 8.4

Where there is a conflict between the Land Transfer Act 2017 and this covenant, the terms of this covenant will prevail.