

View Instrument Details



Instrument No 11816330.6
Status Registered
Date & Time Lodged 06 August 2020 09:32
Lodged By Elder, Alexander Lloyd
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
911817	South Auckland
911818	South Auckland
911822	South Auckland
911823	South Auckland
911824	South Auckland
911825	South Auckland
911826	South Auckland

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 Georgina Brettargh Smith as Covenantor Representative on 25/05/2020 03:28 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 Georgina Brettargh Smith as Covenantee Representative on 25/05/2020 03:29 PM

*** End of Report ***

1.1 Form 26

Covenant Instrument to note land covenant

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

Covenantor

KINGSON CONSTRUCTION LIMITED

Covenantee

KINGSON CONSTRUCTION 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)
Land covenants	DP 541996	Lot 1 DP 541996 - Lot 10 DP 541996 (RT 911817- RT 911818 inclusive and RT 911822- RT 911826 inclusive)	Lot 1 DP 541996 - Lot 10 DP 541996 (RT 911817 - RT 911818 inclusive and RT 911822- RT 911826 inclusive)

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].

*Insert instrument type***Instrument to Note Land Covenant***Continue in additional Annexure Schedule, if required***Definitions:**

Developer means Kingson Construction Limited or that company's successor or nominee.

Developer's Subdivision means the land being developed and/or subdivided in stages by the Developer, including the land currently contained in the Benefited Land.

Land means the Burdened Land or any part of it.

1. Covenants and Conditions

1.1 Consent prior to building

The Covenantor will not carry out on the Land any site works, building works, or improvements unless the plans and specifications for such works or improvements (including fencing) have been approved in writing by the Developer prior to commencement of any such works on the Land provided that:

- (a) in approving any plans and specifications the Developer may take into account the appearance of the proposed building in relation to other buildings which have been constructed or for which plans have already been approved to the intent that there should be a range of styles, designs and appearances of buildings within the Developer's Subdivision;
- (b) such approval may properly be withheld in the event that in the opinion of the Developer, whose decision in this respect will be final and binding, the building or structure to be erected on the Land is not or is not likely to be of an appearance or standard with regard to design, materials and colour which is consistent with the Developer's intention to create and maintain a modern and well-designed residential subdivision. In giving approval the Developer does not accept any liability for the quality or workmanship of the construction or the materials used;
- (c) in providing its approval the Developer may, in its absolute discretion, allow or not allow any building or fence to be erected, notwithstanding the structure may or may not comply with all the covenants in this instrument;
- (d) the Developer may, in its sole discretion and without being required to consult with the owners for the time being of the Land or of any of the Lots in the Developer's Subdivision, two years from the sale of the Land by the Developer, give notice that it will no longer require compliance with the covenants in this instrument;
- (e) the Covenantor's obligation to obtain approval from the Developer and the Covenantor's right to seek the Developer's approval shall cease on the date a liquidator of the Developer is appointed under section 241(2) of the Companies Act 1993 or the date the Developer is removed from the New Zealand register, whichever is the sooner.

1.2 Type, Size, Shape and Use of Buildings

- (a) The Covenantor will not erect more than one dwelling on the Land and will not make or permit to be made any subdivision, boundary realignment, cross leasing or registration under the Unit Titles Act 2010 which affects the Land **PROVIDED THAT** the Developer may carry out further subdivision or boundary realignment of the Land in its sole discretion in order to complete the Developer's Subdivision if necessary due to staging requirements.
- (b) The dwelling to be erected on the Land will:
 - (i) have a minimum ground floor area of 180m² (including the area of any garage);

- (ii) be constructed so that it has an attached garage or a garage integrated within the dwelling which is capable of garaging at least one motor car and has a floor area of not less than 20m² (for both single or two storey dwellings);
 - (iii) be no higher than one storey except for Lots 3 and 4 on DP 541996 (contained in part Record of Title 911818) which shall be no higher than two storeys;
 - (iv) be constructed to a shape other than a simple rectangle (after excluding recess or protrusions for the front and rear entries, verandas, patios, bay windows or other like structures or appurtenances); and will contain a minimum of one gable end on that part of the dwelling having road frontage and one valley in the roof line; a hip or valley to qualify needs to run from roof gutter to the prominent roof ridge. Full hip roofs are not allowed unless used in combination with other architectural features e.g. front verandas, pillars, dormer windows;
 - (v) be constructed wholly of new materials; and
 - (vi) not be a relocatable dwelling.
- (c) Any accessory building will be constructed of the same materials and to the same standards as the dwelling **PROVIDED THAT** subject to compliance with Clause 1 herein an accessory building having a maximum floor area of 9m² may be constructed using pre-finished colour steel for its exterior cladding and roofing.
- (d) The Covenantor will not permit the Land or any building on the Land to be used for any trading or commercial purpose, unless:
- (i) that purpose is a permitted activity under the relevant District Plan and complies in all respects with the District Plan and the requirements of the territorial authority/local authority/council in which area the Land is situated; and
 - (ii) is ancillary and subordinate to the principal use of the Land as a residence.

1.3 Materials to be used

- (a) The exterior cladding on the dwelling, garage and any accessory building will use only new materials consisting of the following materials:
- (i) kiln dried clay bricks or concrete bricks;
 - (ii) stucco textured finish;
 - (iii) stone;
 - (iv) properly stained or painted and finished timber; or
 - (v) linea board, titan panel, axon;
- and no HardiePlank, Shadowclad or similar product will be allowed.
- (b) No dwelling will be constructed where that part of the dwelling having road frontage consists of a single building material which exceeds 70% of the total area of that part of the dwelling having road frontage (excluding glazed areas).
- (c) No dwellings on piles will be permitted to the intent that any flooring of any dwelling, garage or accessory building will be constructed of concrete.
- (d) The roof of the dwelling, garage and any accessory building will use only the following materials:
- (i) colour steel long run;
 - (ii) colour steel tile;
 - (iii) decramastic tile;

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	<ul style="list-style-type: none"> (iv) concrete tile; (v) fibreglass tile; or (vi) clay tile.
	<p>(e) The driveway on the Land will be finished in either:</p> <ul style="list-style-type: none"> (i) Concrete; (ii) Hotmix tarseal; (iii) Cobblestones; or (iv) Bricks; <p>within a full border structure.</p>
	<p>(f) If the Developer (or an associated person or entity of the Developer) as nominated builder determines that a particular material required for construction is not procurable then the Developer may, at its absolute and sole discretion, substitute a suitable non-permitted material referred to above at clause 1.3(a), (d) or (e) in place of the said particular material that would have otherwise been used and this shall not be considered to be a breach of these covenants.</p>
1.4	<p>Completion of Building Work</p> <p>(a) The construction of any building, including fencing, will be completed within 12 months of the commencement of construction of that building.</p> <p>(b) No building or associated work in the course of construction will remain without substantial work being carried out for a period exceeding 3 months.</p> <p>(c) Landscaping of that Land will be completed within 24 months of the commencement of construction of the building of the dwelling on the Land.</p> <p>(d) No building on the Land will be used as a residence unless:</p> <ul style="list-style-type: none"> (i) the dwelling and all other buildings on the Land have been substantially completed in accordance with the terms of these covenants; (ii) buildings which are being constructed on the Land meet the requirements of the territorial authority/local authority/council and for which a Code Compliance Certificate has issued; and (iii) the construction of the driveway has been completed in accordance with Clause 1.3(e) above.
1.5	<p>Fences</p> <p>(a) No fence will be constructed on the boundary of the Land, nor any other part of the Land, which uses in its construction:</p> <ul style="list-style-type: none"> (i) materials of wire, wire netting, corrugated iron or plywood sheeting; or (ii) any untextured flat fibre cement sheeting; (iii) any untextured fibrolite, HardieFlex, HardiePlank or the like; or (iv) long run roofing material, flat iron or the like; <p>PROVIDED THAT consent to use other than new materials (but not corrugated iron) may be given by the Developer if the registered owners of all properties adjoining the boundary on which such fence is to be erected have given written consent.</p> <p>(b) No fence will be constructed within a distance of 4.5 metres from the front boundary (the boundary fronting a public road) of the Land which:</p> <ul style="list-style-type: none"> (i) exceeds 0.9 metres in height above the natural ground level of the Land;

- (ii) is constructed out of solid timber palings; or
- (iii) has less than 30% visual permeability spread evenly across its face.
- (c) No fence will be constructed which exceeds 1.8 metres in height above the natural ground level of the Land elsewhere on the Land.
- (d) The Covenantor grants, in favour of the Developer, a Fencing Covenant as defined in Section 2 of the Fencing Act 1978.

1.6 Temporary Buildings and Avoidance of Damage during Construction

- (a) No temporary building or structure will be erected on the Land except that which may be used in conjunction with the construction of permanent buildings and which is to be removed from the Land immediately upon completion of the permanent buildings.
- (b) During construction of any dwelling or other building works on the Land a timber or sand ramp will be constructed for the purpose of vehicular access:
 - (i) such ramp will be maintained over all kerbing and footpaths adjoining the Land in order to provide adequate protection to the kerbing and footpaths and will be used for all vehicular access to the Land during construction works; and
 - (ii) the Covenantor will remove the ramp and clean the area and will properly repair any damage which may have been caused to the kerbing or footpaths immediately upon completion of the construction works.
- (c) During the course of construction, the Covenantor will ensure that:
 - (i) any soil or materials stored on the Land are appropriately covered and contained and will not cause a nuisance to others; and
 - (ii) all construction and associated matters will be completed in accordance with the requirements of the territorial authority / local authority / council in which area the Land is situated.

1.7 Enhancement of the Land

- (a) The Covenantor will enhance the quality and appearance of all attachments to any buildings on the Land or instalments on the Land (including, but not necessarily limited to, television and radio antennae, solar hot water panels, satellite dishes and clotheslines) by discreetly integrating such attachments within the dwelling or the Land as the case may require.
- (b) No advertising signs or hoardings will be erected or allowed to be placed on the Land provided that:
 - (i) during construction of any dwelling on the Land up to two signs may be erected for the purpose only of advertising builders or building supplies; and
 - (ii) on the sale of the Land up to two signs may be erected for the purpose of advertising the proposed sale.
- (c) The Covenantor will not:
 - (i) allow any immobile or broken-down vehicles to be placed or sited on the Land in a position where they are visible from the road;
 - (ii) place or leave any immobile or broken-down vehicles, recreational vehicles, commercial vehicles or trailers on any part of the Land, footpath, road or reserve in the Developer's Subdivision that the Land is part of;

- (iii) allow to remain on the Land any caravan, boat or commercial vehicle unless it is garaged or screened so as to protect the aesthetic qualities of the Developer's Subdivision;
- (iv) use or allow materials or equipment associated with any business trade to be stored on the Land unless they are stored within one of the buildings lawfully erected on the Land;
- (v) permit any rubbish to accumulate or be placed on the Land except in proper containers which will be emptied regularly; or
- (vi) raise, breed or keep any animal or livestock on the Land or on any building on the Land other than dogs and cats and then no more than a maximum of two animals in total.
- (d) The Covenantor will, prior to and during construction of the building(s) on the Land, keep the Land in a tidy condition and with no topsoil being stored on the Land and will keep the grass properly mown.
- (e) The Covenantor will not keep or permit to be kept or to take or permit to be taken upon or on the Land any vehicle (as that provision is defined by the Land Transport Act 1998) which has a weight of over two tonnes, provided that this will not prevent such vehicles being taken onto the Land for the purposes of building operations being carried out on the Land or for the delivery or collection of goods which are to be or have been used in connection with the residential use of the Land.
- (f) The Covenantor will ensure that any building erected on the Land complies in all respects with the requirements of the territorial authority/local authority/council in which area the Land is situated.

1.8 Further Development

- (a) The Covenantor will not object to, frustrate, hinder or prevent any lawfully authorised subdivision or development undertaken or to be undertaken by the Developer or any person nominated by the Developer on the Benefited Land or any other land acquired or to be acquired by the Developer;
- (b) The Covenantor acknowledges and agrees that damages are not an adequate remedy in the event of a breach by the Covenantor of clause 1.8(a) and without limiting any other rights as set out in clause 1.10, at law or in equity available to the Developer: a breach of clause 1.8(a) shall entitle the Developer to immediate injunctive relief.

1.9 Reinstatement of Damage

The Covenantor will reinstate, replace and otherwise be fully responsible for all costs arising from damage to the landscaping, roading, footpaths, kerbs, concrete or other structures in the Developer's Subdivision arising from the Covenantor's use of the Land whether directly or indirectly or through the Covenantor's agents, contractors, invitees or servants.

1.10 Breach of Covenants/Clauses

Should there be any breach or non-observance of any of the foregoing covenants and without prejudice to any other liability which the Covenantor may have to any person having the benefit of these covenants, should the Covenantor not rectify the breach or non-observance of any of the foregoing covenants within 10 working days of written notice being made of the Covenantor by the Covenantee or such other person having the benefit of these covenants, the Covenantor will pay to the Covenantee or such person making such demand as liquidated damages the sum of \$150 per day for every day that such breach or non-observance continues after the date upon which written demand has been made until the breach is remedied, together with any costs and expenses incurred by the Covenantee or any such person making such demand.

1.11 Dispute Resolution

If a dispute in relation to any covenant arises between the parties having the benefit of these covenants:

- (a) the party/parties initiating the dispute must provide full written particulars of the dispute to the other party/parties; and

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- (b) the parties must promptly meet and, in good faith, try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal or any other dispute resolution technique that may be agreed by the parties.

1.12 **Expiry**

These covenants shall expire and be of no further effect after 31 December 2030.