

View Instrument Details



Instrument No 12826360.9
Status Registered
Date & Time Lodged 18 July 2024 16:28
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
1145493	Westland
1145494	Westland
1145495	Westland
1145496	Westland
1145497	Westland
1145498	Westland
1145499	Westland
1145500	Westland
1145501	Westland

Annexure Schedule Contains 12 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 Christopher William David Boivin as Covenantor Representative on 18/07/2024 01:15 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 Christopher William David Boivin as Covenantee Representative on 18/07/2024 01:15 PM

*** End of Report ***

COVENANT INSTRUMENT TO NOTE LAND COVENANT

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

Covenantor**Ball Developments Limited****Covenantee****Ball Developments 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) or in gross
Land Covenant	DP 594276	1145493-1145501 (inclusive) (Lots 1-9 DP 594276 inclusive)	1145493-1145501 (inclusive) (Lots 1-9 DP 594276 inclusive)

Covenant rights and powers (including terms, covenants and conditions)

*Delete phrases in [] and insert Memorandum number as require; 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 – Restrictive Covenants

1. Purpose

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

2. Definitions and Interpretation

2.1 Interpretation

- 2.1.1 Words importing one gender include the other gender.
- 2.1.2 Words importing the singular or plural include the plural and singular respectively.
- 2.1.3 Headings are inserted for the sake of convenience and ease of reference only. They do not form part of the text and will not affect the construction or interpretation of these Covenants.

2.2 Definitions

In these Covenants, unless the context otherwise requires:

“Ball Developments” means Ball Developments Limited (company number 1037751) and any successor party or entity nominated by it or by any encompassing party or entity nominated to deal with applications required for approvals by the Lot Owner under any of these Covenants;

“Building” comprises a Building as defined by the Building Act 2004 and includes a Dwelling;

“Developer” means Ball Developments Limited;

“Dwelling” means and includes a residential dwelling, or family

	residence;
"Landscape Feature"	means any visible structure or landscape design or enhancement feature or utility to be provided on any Lot;
"Lot"	means any Lot that is subject to these Covenants;
"Lot Owner"	means the owner of any Lot;
"Property"	means a Lot together with any Dwelling and Buildings situated thereon, and:
	(a) 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
	(b) in relation to any proprietor or occupier means the property owned or occupied by that proprietor or occupier (as the case may be);
"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 such specifications will include full details of all exterior colour schemes and finishes and details of fences, driveways and front yard landscaping.
- 3.2 The consent of the Developer required under clause 3.1 will not be unreasonably withheld 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 Ball Developments in accordance with clause 3.1.
- 3.4 The Lot Owner will complete construction of the Building in accordance with the plans and specifications approved by the Developer.
- 3.5 All Buildings must be constructed on-site from new or high quality recycled materials.
- 3.6 Exterior cladding for all Buildings on any Lot is to be one of the following materials:
 - 3.6.1 brick; or
 - 3.6.2 stone; or
 - 3.6.3 concrete block stucco; or
 - 3.6.4 cement or plaster finish or similar type of finish; or
 - 3.6.5 plastered textured finish; or
 - 3.6.6 stained or painted timber weatherboards or linear boards which have the appearance of timber weatherboards; or
 - 3.6.7 solid plaster or glazing; or
 - 3.6.8 such other materials as may be approved by the Developer.
- 3.7 All roofing materials on any Buildings are to be one of the following:
 - 3.7.1 tiles (including clay, ceramic, concrete, pre-coated or pressed steel); or
 - 3.7.2 steel (comprising pre-painted, long-run pressed or rolled steel); or
 - 3.7.3 shingles; or
 - 3.7.4 slate; or
 - 3.7.5 membrane roofing; or
 - 3.7.6 such other roofing material as may be approved by the Developer.

- 3.8 Exterior colour schemes comprising of beige, cream, brown or orange are not permitted without the prior written approval of the Developer.
- 3.9 Only one Dwelling may be erected on the Lot.
- 3.10 The Lot Owner will not construct, erect or place or permit to be constructed, erected or placed on the Lot:
 - 3.10.1 Any Building other than those designed for residential use and associated garage(s). The Developer and its designated representative(s) and/or builders, as approved by the Developer, may use residential buildings as model homes, show homes or offices, provided such use is in furtherance of the primary purpose of construction and sale of the properties within the Development.
 - 3.10.2 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).
 - 3.10.3 Any Building with an air conditioning unit which is set into or protrudes from the Building(s). Any external air conditioning units must be properly screened and noise proofed to ensure they are not a nuisance to neighbours.
 - 3.10.4 Any caravan, hut, garage or shed for any kind of permanent or temporary residential use, unless it is a once prefabricated (but not pre-used) garden shed which is adequately screened from neighbouring properties may be placed on the Property.
- 3.11 Portable gas cylinders or bottles may be used on any Lot or in any Building for any permanent cooking, water heating or domestic heating purposes, provided they are hidden from view from the road and neighbouring properties at all times.
- 3.12 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.
- 3.13 All construction works including any required painting or staining of exterior surfaces, will be completed within a period of twelve (12) months from the date of commencement of construction work. Earthworks and landscaping works associated with such development,

including lawns, drives, paths and fencing, are to be completed within two (2) months of Building completion.

- 3.14 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.
- 3.15 No Building on any Lot may be occupied as a residence in any way until:
 - 3.15.1 the Code Compliance Certificate(s) has been issued by a building consent authority in accordance with the Building Act 2004;
 - 3.15.2 all Buildings have been completed in accordance with all the terms of these Covenants;
 - 3.15.3 all exterior work, and decoration as approved, are completely installed;
 - 3.15.4 all driveways, paths, fences and other Landscape Features are completed in accordance with these Covenants; and
 - 3.15.5 all unpaved areas viewable from the street are properly grassed and/or landscaped according to the approved plans.
- 3.16 No use may be made of adjacent land, footpaths 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).
- 3.17 The Lot Owner will not reconstruct, alter, add to, renovate or refurbish any Building, structure or other improvement on the Property which results in such Building or structure:
 - 3.16.1 no longer being of a standard commensurate with the exterior appearance and architectural standard of the properties in the development; or
 - 3.16.2 being in breach of these Covenants.
- 3.18 The Lot Owner will not relocate any vehicle crossing on the Property without the written consent of the Developer.

4. **Landscape Features**

- 4.1 Construction of any Landscape Features on any Lot is not to commence until the plans and specifications have been approved by the Developer.
- 4.2 No Landscape Feature may exceed a height of 2 metres above the original subdivision ground level of a Lot without the express written approval of the Developer.
- 4.3 Clotheslines and letter boxes must be unobtrusive and of good quality in terms of design and location. The positioning of any clothesline will be located as specified by the Developer with appropriate screening to ensure it will not be highly visible from the street or the reserve. The positioning of any letterbox will be adjacent to but not on any road reserve.
- 4.4 All attachments to any Buildings or structures on any Lot (including television antenna, solar water heating panels, satellite dish, mast, garden statues, fountains or any other ornamental decoration or similar garden or Landscape Feature) must be approved by the Developer in writing.
- 4.5 The construction of and if approved, the location of swimming pools (including fencing and screening on any Lot) must be approved by the Developer in writing.
- 4.6 No tree, shrub or other plant of any variety whatsoever is to be grown on any Lot so that it unreasonably interferes with the sunlight to or view from any Lot.

5. **Maintenance**

- 5.1 The Lot Owner will not:

- 5.1.1 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.
- 5.1.2 Allow any nuisance or unreasonable disturbance to be caused to any owner or occupier of neighbouring properties.
- 5.1.3 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.

- 5.1.4 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.
- 5.1.5 Except when construction works are in progress, allow any trade vehicle, trade equipment or materials, debris, rubbish or any vehicle of any unsightly nature to be brought onto or remain on the Property unless the same is adequately garaged or screened so as not to be visible to or to cause any offence to neighbouring properties and to preserve the amenity of the development.

6. **Activity/Use of Property**

- 6.1 The Lot Owner must not use the Property for any primary purpose other than for residential occupation or ancillary purposes as governed by the planning provisions under any regulatory land use controls applicable from time to time.
- 6.2 No Lot is to be used for any form of temporary residential purposes either by construction of temporary Buildings or by the placement of caravans, modular homes, motor homes, house trailers, buses, tractors, huts, tents and/or vehicles able to be used for human habitation.
- 6.3 The Lot Owner must not store, or allow to be stored, any caravan, motor home, trailer, recreational vehicle, trade vehicle or other equipment or machinery in front of the Dwelling or within five (5) metres of the Property boundary or any road, unless the same is garaged or adequately screened so as to preserve the amenities and standard of the development. Short-term parking by its visitors and trade people of vehicles in daily use will not be in breach of this clause.
- 6.4 The Lot Owner must not allow any livestock, animals or beehives to be brought onto or kept on the Property other than normal household domestic pets (and the term 'household domestic pets' does not include livestock such as pigs, goats, horses, sheep, chickens, roosters, pigeons, peacocks or any animal which may cause a nuisance to owners or occupiers of other properties in the development).
- 6.5 The Lot Owner must not carry out nor permit to be carried out on the Property any activity which does not comply with the Grey District Council permitted activities in a Residential Zone.

- 6.6 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.
- 6.7 No Lot may be further subdivided nor will any further easements be agreed to, granted or registered on any Lot, including rights of way unless approved by the Developer.

7. **Fencing**

- 7.1 The Lot Owner will be bound by a fencing covenant within the meaning of section 2 of the Fencing Act 1978 in that neither the Developer nor the Grey District Council is liable to erect or maintain to pay for or contribute towards the costs of any dividing fence or boundary fence or part thereof between the Property and any adjoining land owned by the Developer or the Grey District Council.
- 7.2 Unless the Developer approves or requires otherwise, any fence, will be constructed to a height of 1.8 metres and be made of posts, rails and timber palings stained in the colour black or such other colour or colours and alternative materials as may be approved by the Developer in their sole discretion.
- 7.3 All fences constructed will comply with the following:
 - 7.3.1 The palings side of fences are to face towards to the north side of properties, so that when looking north from inside the Property, the palings will be facing inwards.
 - 7.3.2 The railings side of fences will face towards the south side of properties, so that when looking toward the south side of the Property, the railings will be visible.

8. **General**

- 8.1 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:
 - 8.1.1 The arbitrator is to be jointly agreed upon by the parties.

- 8.1.2 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.
- 8.1.3 The reference is a reference to a single arbitration under the Arbitration Act 1996.
- 8.1.4 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.
- 8.1.5 The parties will not resort to litigation except for the purposes of enforcing this clause.
- 8.2 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. 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.
- 8.3 The Lot Owner acknowledges that different stages of the development by the Developer may include covenants which differ from these Covenants.

9. **Vesting of Roads and Reserves**

- 9.1 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.

9.2 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 9.1 then:

9.2.1 at the request of the Developer, the Lot Owner will immediately give such written consent to the Developer; and

9.2.2 in addition to clause 9.1 and 9.2.1 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 9.2.

10. Creation of Land Covenant

10.1 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 ensure 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.

10.2 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 progressing or completing the Development or the adjoining stages. Such Covenant extends to and includes (without limitation) development planning, zone changes, resource consents for land uses and subdivisions, Consent Authority or Environment Court applications, Territorial Authority Building Consent matters, or any other necessary consent process involving the Developer.

10.3 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:

- 10.3.1 pay to the person making such demand as liquidated damages the sum of \$100.00 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
- 10.3.2 repaint any Dwelling, Building, structure or improvement repaired or completed in breach of these Covenants; or
- 10.3.3 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
- 10.3.4 replace any building materials used in breach of these Covenants.