

Approved for ADLS by Registrar-General of Land under No. 2018/6263
COVENANT INSTRUMENT TO NOTE LAND COVENANT
 Sections 116(1)(a) & (b) Land Transfer Act 2017



Covenantor

Surname(s) must be underlined or in CAPITALS.

R & B Mulligan Limited

Covenantee

Surname(s) must be underlined or in CAPITALS.

R & B Mulligan 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		882928, 882929, 882930, 882931, 882932, 882933, 882934, 882935, 882936, 882937, 882938, 882939, 882940, 882941, 882942, 882943, 882944, 882945, 882946, 882947	882928, 882929, 882930, 882931, 882932, 882933, 882934, 882935, 882936, 882937, 882938, 882939, 882940, 882941, 882942, 882943, 882944, 882945, 882946, 882947

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 _____].~~

SCHEDULE 1

Covenant Provisions

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument, unless the context requires otherwise:

"Covenants" means any or all of the covenants contained in this Instrument;

"Deposited Plan" means the plan so described in Annexure Schedule A of the Instrument;

"Developer" means R & B Mulligan Limited, or its successor in title or assigns

"Erect" means place, build, erect, install, attach, situate or construct or permit to be placed, built, erected, installed, attached, situated or constructed;

"Covenantee" means, in relation to each Covenant, the registered proprietor of the relevant Lot from time to time and includes, where applicable:

- (a) The person executing this Instrument as Covenantee;
- (b) All the Covenantees for the time being under this Instrument; and
- (c) All respective executors, administrators, successors, assigns and successors in title of each Covenantee, and if more than one jointly and severally;

"Covenantor" means, in relation to each Covenant, the registered proprietor of the relevant Lot from time to time and includes, where applicable:

- (a) The person executing this Instrument as Covenantor; and
- (b) All the Covenantors for the time being under this Instrument; and
- (c) All respective executors, administrators, successors, assigns and successors in title of each Covenantor, and if more than one jointly and severally;

"Instrument" means this Instrument and includes all the annexure schedules incorporated within this Instrument;

"Working Day" means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- (b) A day in the period commencing on the 24th of December in any year and ending on the 5th of January the following year, both days inclusive; and
- (c) The day observed as the anniversary of any province in which the Lot is situated.

INTERPRETATION

- 1.2 In this Instrument, unless the context indicates otherwise:
- (a) All monetary amounts are stated and are payable in New Zealand dollars;
 - (b) Singular words include the plural and vice versa and words importing one gender include the other gender;
 - (c) References to any "party" mean a party to this Instrument and include the successors, executors, administrators and permitted assigns (as the case may be) of that party;
 - (d) References to clauses are to clauses in this Instrument (unless stated otherwise);
 - (e) References to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public or local authority, any government, and any agency of any government or of any such authority;
 - (f) Headings appear as a matter of convenience and do not affect the construction of this Instrument;
 - (g) A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for them;
 - (h) Any obligation on the Covenantor not to do anything shall be deemed also to be an obligation not to suffer, permit and or cause that thing to be done;
 - (i) In obligation by two or more persons binds those persons jointly and severally.

2. GENERAL COVENANTS

- 2.1 The Covenantor covenants and agrees:
- (a) To observe and perform all the Covenants at all times; and
 - (b) The Covenants shall run and bind the burdened land for the benefit of the benefitted land to the intent that each of the Covenants will be forever appurtenant to the benefitted land.
- (i)....2. The Covenantor covenants and agrees:
- (a) To pay the Covenantee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Covenantee's rights, remedies and powers under this instrument;
 - (b) To indemnify the Covenantee against all claims and proceedings arising out of a breach by the Covenantor of any of its obligations set out in this Instrument.

3. MINIMUM BUILDING STANDARDS

- 3.1 All buildings and associated improvements are to be of a quality and standard expected of a modern well-designed subdivision. Any accessory buildings must be of a similar design and be constructed in the same materials and colours as the dwelling house.
- 3.2 No buildings are to be erected or placed on the land without first obtaining written approval of the Developer to the colour scheme and plans of such structure which

approval shall not be unreasonably or arbitrarily withheld provided that the exterior design is aesthetically compatible with other dwellings on the subdivision.

- 3.3 Without limiting the above, all buildings shall:-
- (i) be constructed on site of permanent new materials of good quality;
 - (ii) have a floor area of not less than 200m² (excluding verandahs, porches, unattached garages and other accessory buildings) unless approved in writing by the Developer;
 - (iii) not incorporate any unpainted roofing iron as part of the roof;
 - (iv) not incorporate exterior cladding comprised of flat sheet fibre cement panels, iron or plywood sheeting; unless approved in writing by the Developer;
 - (v) be single story only and not exceed a maximum height of 5 metres measured from the highest point of the natural ground level of that part of the land on which the building footprint is situated; (this does not apply to Lots 8 to 12 along the southern boundary which shall not exceed 8 metres)
- 3.4 An owner shall not use corrugated iron, sheet aluminium or other metal in the construction of fences on or on the boundaries of the property unless the metal is of a "see through design" such that at least 60% shall be airspace.
- 3.5 Fences shall only be constructed from the centre line of the house towards the rear of the Lot and shall not exceed a height of 1.5 metres without the written consent of the Developer.
- 3.6 Once commenced, all building work shall be carried out continuously until completion and issue of a Code Compliance Certificate from the Whangarei District Council. All building work must be completed within twelve months of the commencement date of building.
- 3.7 Animal shelters or accommodation may not be placed closer than 5 metres from any property boundary.

4. USE OF LAND

- 4.1 No owner shall erect more than one dwelling on the land and no dwelling may be occupied until fully completed.
- 4.2 No camping is permitted on the property prior to the erection of a dwelling, and no non-permitted accommodation to be occupied on a permanent basis.
- 4.3 No lot shall be used for any commercial use which would interfere with the residential nature of the neighbourhood. This includes the breeding and operating of "kennels" for dogs or aviaries.
- 4.4 Pets
- 4.4.1 No more than two pets may be kept on the property at any one time and all pets must be neutered.
 - 4.4.2 When not on an owner's own lot, all pets must be restrained.
 - 4.4.3 No pets are allowed in the adjacent bush area.
 - 4.4.4 No dogs of a savage or menacing nature, such as (but not limited to) Pit Bull Terriers and Pit Bull crossbreeds, Brazilian Fila, Japanese Tosa or the like may be kept on the property.
 - 4.4.5 No owner shall keep any dogs that bark excessively or otherwise cause a nuisance.
- 4.5 No cattle, goats, horses, pigs, roosters or beehives may be kept on the property.
- 4.6 No advertising signs or hoardings shall be placed on the land except for conventional

signs advertising the property is for sale.

- 4.7 No building or repair work on vehicles or boats may be carried out unless the boat or vehicle is under cover and inside a permanent building. An owner may not bring in or allow to remain on the property any vehicle body, equipment or machinery which is unsightly or which is or is likely to become a nuisance to other residents in the subdivision.
- 4.8 No owner may park or operate heavy vehicles, equipment or machinery on any lot or road berms unless required as part of a building consent or other permitted activity.

5 VEHICLE CROSSINGS

- 5.1 Vehicle crossings for access to Lots 1,2,3,4,5,6,7,9,10,11,13,15,16,17,19, 20, and 21 must be constructed in accordance with Reyburn and Bryant plan reference E 4063 as attached, using ACO Channel Product K200 with 200 mm internal width and 260 external width. Gratings shall be Type 676D longitudinal ductile iron grate (ADA).

6. MAINTENANCE OF THE PROPERTY

- 6.1 All owners must all times keep the land tidy and free of rubbish and the grass mown and must keep the road berms, drains, crossings and plantings in a tidy condition.
- 6.2 No hedge may exceed 1.8 metres in height.
- 6.3 The lot owner must reinstate, replace and otherwise be fully responsible for all costs arising from damage to the landscaping, roading, footpaths, kerbs, concrete or any other structures in the subdivision arising from the lot owners use of the lot whether directly or indirectly through the lot owners agent, tenants, invitees or servants.

7. NO FURTHER SUBDIVISION

- 7.1 No owner may subdivide any Lot, whether by way of cross-lease, unit title, subdivision into separate lots or in any other way PROVIDED HOWEVER that this restriction will not apply to a subdivision that has the effect only of adjusting the boundaries between two adjoining lots.

8. DISPUTE RESOLUTION

- 8.1 If there should be any breach or non-observance of any of the foregoing covenants the registered proprietors for the time being of the relevant lot shall take all steps necessary remedy the breach or non-observance of the covenants if it is capable of a remedy.
- 8.2 If any dispute or difference shall arise between any of the owners of the lots as to the meaning or application of any of the foregoing covenants then the respective parties shall meet to endeavour to reach an agreement to resolve the issue. If they are unable to resolve the issue then:
- (a) They shall within 14 days of the original meeting appoint a mediator to mediate the issue;
 - (b) If the parties are unable to agree upon a person to be appointed as a mediator, then the president of (the Auckland District Law Society or his or her nominee shall be asked to appoint a mediator;

- (c) The mediation shall be held within one month from the date of the meeting;
and
- (d) Each party shall attend and participate in the mediation in good faith to negotiate towards achieving a settlement of the issue.

8.3 If at the mediation the issue is not resolved the issue shall then be determined by arbitration under the Arbitration Act 1996. The arbitration shall be conducted by one arbitrator, if the parties can agree on one, or failing agreement, by an arbitrator to be appointed by the President of the Auckland District Law Society or his or her nominee.

9. These covenants shall cease to have any effect and shall be cancelled as from 1 January 2039.

10. BREACH OF COVENANTS

10.1 The Covenantor and Covenantee covenant and agree that if the Covenantor breaches or fails to observe part of or any of the Covenants, then without prejudice to any other liability which the Covenantor may have to the Covenantee or any person or persons having the benefit of the Covenants, the Covenantor, upon written demand being made by the Covenantee or any person or persons having the benefit of the Covenants will:

- (a) Remove or cause to be removed from the Lot any building or appurtenances, structures or improvements in breach or non-observance of the Covenants;
- (b) Cease any activity which is in breach or non observance of the Covenants and otherwise rectify the breach or non-observance;
- (c) Pay the person making such demand as liquidated damages the sum of \$250.00 (two hundred and fifty dollars) (adjusted annually by movements in the Consumer Price Index (All Groups) published by Statistics New Zealand (" the Index") from 1 January 2019) per day for every day that such breach or non-observance continues after the date upon which written demand has been made, provided however that the Covenantor will only be liable for breaches of the Covenants which occur while the Covenantor is the registered proprietor of the Lot in respect of which a breach or non-observance occurs.

10.2 If Statistics New Zealand ceases to calculate or publish the Index, or if it materially changes the basis of assessment for the Index, an alternative index that in the opinion of an expert most clearly reflects changes in the cost of living must be substituted for the Index. Such expert is to be appointed by the President for the time being of the New Zealand Law Society.

11.0 GENERAL

Waiver

11.1 No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.

Partial Invalidity

- 11.2 If any provision of this Instrument or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Instrument and its application shall not be affected and shall remain enforceable to the greatest extent permitted by law.

Notices

- 11.3 Any notice required to be served on any party under this Instrument shall be served in the manner prescribed in Part 7 of the Property Law Act 2007 for the type of notice being served.

Governing Law

- 11.4 This Instrument shall be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.