

# Covenant Instrument to note land covenant

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

## Covenantor

**DANIEL JAMES CLEARY**

## Covenantee

**DANIEL JAMES CLEARY**

## 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<br>(Record of Title)   | Benefited Land<br>(Record of Title) or in gross  |
|---------------------|------------------------|--|--|
| Land covenant       |                        | Lots 7-13 and Lots 100 and 101 DP 546644<br>(Records of Title 930918, 930919, 930920, 930921, 930922, 930923 and 930924) | Lots 7-13 and Lots 100 and 101 DP 546644<br>(Records of Title 930918, 930919, 930920, 930921, 930922, 930923 and 930924) |

## 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 A].

## Annexure Schedule A

Insert instrument type

Land Covenant

*Continue in additional Annexure Schedule, if required*

### BACKGROUND

The Covenantor is registered as proprietor of the land contained in Lots 7-13 and Lots 100 and 101 DP 546644 (Records of Title 930918, 930919, 930920, 930921, 930922, 930923 and 930924) (“the burdened land”). It is the intention of the Covenantor to create for the benefit of the land contained in Lots 7-13 and Lots 100 and 101 DP 546644 (Records of Title 930918, 930919, 930920, 930921, 930922, 930923 and 930924) (“the benefited land”) the land covenants set out in Schedule B below to the intent that the Covenantor being the registered proprietor of the burdened land shall be bound by the stipulations and restrictions set out in Schedule B and that the Covenantee will enforce the observance of such stipulations against the owner and occupiers for the time being of the burdened land for the benefit of the benefited land and the Covenantor covenants and agrees in the manner set out in Schedule B so that the covenants run with the burdened land for the benefit of the benefited land in perpetuity.

### SCHEDULE B

#### 1. THE COVENANTOR AND COVENANTEE ACKNOWLEDGE AND AGREE THAT:

##### 1.1 In these covenants:

- (a) The **Covenantee** means the registered owner of the benefited land and includes the Covenantee’s successors in title and its servants, tenants, agents and licensees, contractors, employees and invitees.
- (b) The **Covenantor** means the registered owner of the burdened land and includes the Covenantor’s successors in title and its servants, tenants, agents and licensees, contractors, employees and invitees.
- (c) **Day-to-Day Maintenance and Care** means the regular day-to-day overseeing and care of the new Private Stormwater and Wastewater Infrastructure including:
  - (i) Identifying needs or requirements for maintenance, repair, modification and/or replacement or such other needs or requirements that may be necessary for compliance with these covenants and the Far North District Council’s Resource Consent Number 2200170-RMASUB granted on or about 7 January 2020;
  - (ii) Management and maintenance of the Private Stormwater and Wastewater Infrastructure in accordance with the Owner’s Manual;
  - (iii) In relation to the Private Stormwater and Wastewater Infrastructure on the Lots, reporting or communicating such needs or requirements to the relevant Covenantors and Covenantees for discussion and approval as to proposed way forward; and
  - (iv) carrying out general vegetation control including regularly mowing and maintaining the general amenity of the Private Stormwater and Wastewater Infrastructure;
- (d) **Private Stormwater and Wastewater Infrastructure** means the new stormwater main, new wastewater main, new stormwater sumps and Enviropod and detention tank located on the Lots (as the case may be);

(e) **Lot(s)** means any one or more of Lots 7-13 and Lots 100 and 101 DP 546644;

(f) **Owner's Manual** means the online Enviropod Owner's Manual which can be found here: <https://www.hynds.co.nz/wp-content/uploads/SW16IHEnviropodOMGuidelines.pdf>.

## **2. PRIVATE STORMWATER AND WASTEWATER INFRASTRUCTURE**

- 2.1 The Registered Owner of each Lot shall be responsible for the Day-to-Day Maintenance and Care of the Private Stormwater and Wastewater Infrastructure located on the Lot that they own that is solely used by that particular Registered Owner.
- 2.2 The Registered Owners of the Lots receiving the benefit of the use of any Private Stormwater and Wastewater Infrastructure over another Lot or Lots shall be responsible, with all costs to be shared equally between the Registered Owners of the benefited Lots, for the Day-to-Day Maintenance and Care of the Private Stormwater and Wastewater Infrastructure located on the Lots provided that if any repair or maintenance to the Private Stormwater and Wastewater Infrastructure is attributable solely to an act or omission by any one of the Covenantor or Covenantees, that Covenantor or Covenantee must promptly carry out such repair or maintenance at their sole cost.
- 2.3 Prior to incurring any expense under clause 2.2, the Registered Owners of the Lots shall first consult with the other Lot owners that are required to equally contribute to the costs, and obtain a quote for any work that is proposed. Each Lot owner shall pay for their equal share of the work within 10 working days of receiving an invoice.

## **3. DEFAULT**

- 3.1 If there is any breach or non-observance of the covenants set out in this instrument, then the Covenantee or Covenantor may serve a written notice on the Covenantee or Covenantor ("Default Notice") specifying the breach or non-observance and requiring the Covenantee or Covenantor to remedy the breach or non-observance within three weeks from service of the Default Notice.
- 3.2 If after the expiry of three weeks from service of the Default Notice, the Covenantee or Covenantor has not remedied the breach or non-observance, the Covenantee or Covenantor shall be entitled to charge the Covenantee or Covenantor (and the Covenantee or Covenantor agrees to pay) liquidated damages in the sum of \$250.00 (Two Hundred and Fifty dollars) per day for every day that the breach or non-observance has not been remedied.

## **4. DISPUTE RESOLUTION**

- 4.1 The parties agree that they will first attempt to resolve any dispute through good faith negotiations within 10 working days. If this fails, then the dispute will be referred to mediation (with a mediator agreed by all parties) with a view to resolve the issue. If this fails then the dispute shall be resolved in accordance with the Arbitration Act 1996.

## **5. VESTING WITH COUNCIL**

- 5.1 In the event that any part of the Private Stormwater and Wastewater Infrastructure is vested with Council, this land covenant shall come to an end with respect to that particular part of the Private Stormwater and Wastewater Infrastructure. The land covenant shall continue in full force and effect for the rest of the Private Stormwater and Wastewater Infrastructure until vested with Council.