

View Instrument Details



Instrument No 10476608.1
Status Registered
Date & Time Lodged 23 June 2016 10:44
Lodged By Dahya, Anna Brooks
Instrument Type Covenant (All types except Land covenants)



Affected Computer Registers **Land District**

WN31B/39

Wellington

WN31D/969

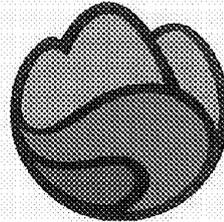
Wellington

Annexure Schedule: Contains 14 Pages.

Signature

Signed by Anna Brooks Dahya as Grantor/Grantee Representative on 23/06/2016 10:32 AM

***** End of Report *****



QEII National Trust
Open Space New Zealand
Ngā Kairauhī Papa

Open Space Covenant

5-07-755

Fletcher Concrete and Infrastructure Limited

Queen Elizabeth the Second National Trust

Parties

Fletcher Concrete and Infrastructure Limited (the Covenantor)

Queen Elizabeth the Second National Trust (the National Trust)

Background

- A The National Trust is established under the Queen Elizabeth the Second National Trust Act 1977.
- B Section 22 of the Queen Elizabeth the Second National Trust Act 1977 authorises the National Trust to agree and enter into open space covenants with private landowners.
- C The Covenantor wishes to protect and preserve certain significant natural environmental values and open space values on the Covenant Area as defined in this deed.
- D The Covenantor and the National Trust now wish to record the agreed objectives, terms and conditions of the open space covenant in this deed.

Operative provisions

Part A—Purpose and objectives

1 Creation of open space covenant

- 1.1 The Covenantor and the National Trust agree to enter into an open space covenant within the meaning of section 22 of the Act in favour of the National Trust on the terms and conditions set out in this deed with the intent that the covenant created by this deed shall run with and bind the Land comprising the Covenant Area in perpetuity.

2 Purpose and objectives

- 2.1 The Covenantor and the National Trust agree that the purpose of this deed is to protect, maintain and enhance the Open Space Values of the Covenant Area and in particular to achieve the following objectives:
 - 2.1.1 Protection and enhancement of the natural character of the Covenant Area with particular regard to the indigenous flora and fauna;
 - 2.1.2 Maintenance and enhancement of the landscape value of the Covenant Area;
 - 2.1.3 Enhance the contribution that the Covenant Area makes to the protection of indigenous biodiversity, by encouraging (where appropriate) the restoration of indigenous vegetation cover on the Covenant Area; and
 - 2.1.4 Prevention of subdivision (within the meaning of the Resource Management Act 1991 or any other equivalent replacement legislation) of the Covenant Area.

Part B—Terms and conditions

3 Disposition of the land comprising the Covenant Area

- 3.1 If the Covenantor wishes to sell or otherwise dispose of all or any part of the Land comprising the Covenant Area the Covenantor must:
 - 3.1.1 Notify the National Trust of such sale or other disposition and provide the National Trust with the name and contact address of the new owner, lessee or licensee; and

- 3.1.2 If any such sale or other disposition occurs before registration of this deed by the Registrar-General of Land:
- (a) Ensure such sale or other disposition is made expressly subject to the objectives, terms and conditions of this deed; and
 - (b) Obtain the agreement of the party to whom such sale or other disposition is made to comply with and be bound by the objectives, terms and conditions of this deed.
- 3.2 If the Covenantor sells or otherwise disposes of all or any part of the land comprising the Covenant Area to a company, the covenants contained in this deed will bind a mortgagee in possession, receiver, the Official Assignee, liquidator, statutory manager or statutory receiver to the fullest extent permitted by law.
- 4 Appearance and condition of the Covenant Area**
- 4.1 No act or thing may be done or placed or permitted to be done or remain on the Covenant Area which in the reasonable opinion of the Board materially alters the appearance or condition of the Covenant Area or is prejudicial to the Covenant Area as an area of open space as defined in the Act.
- 4.2 In particular, the Covenantor must not do nor permit others to do any of the following activities on and in respect of the Covenant Area without the prior written consent of the National Trust, which consent will not be unreasonably withheld (and if given may be given with reasonable conditions imposed to any consent) if the National Trust is satisfied that such activity does not conflict with the purpose and objectives of this deed:
- 4.2.1 Fell, remove, burn or take any native trees, shrubs or plants of any kind or in any state whatsoever;
 - 4.2.2 Plant any trees, shrubs or plants or scatter or sow any seed of any trees, shrubs or plants, other than local native species sourced from the ecological district within which the Covenant Area is situated;
 - 4.2.3 Introduce any noxious substance or substance otherwise injurious to plant life except in the control of pests;
 - 4.2.4 Move or remove any rock or stone, blast, mark, paint, deface or otherwise disturb the ground;
 - 4.2.5 Construct or erect any building or structure or undertake any exterior alterations to any existing building or structure;
 - 4.2.6 Erect or display any sign, notice, hoarding or advertising material of any kind except for signs identifying the Covenant Area or indicating walking tracks that are or may be established on the Covenant Area;
 - 4.2.7 Carry out any prospecting or exploration, mining or quarrying of any minerals, petroleum or other substance or deposit;
 - 4.2.8 Deposit any rubbish, debris or other materials, except in the course of undertaking maintenance or approved construction works, provided that on completion of any such maintenance or construction works all rubbish, debris and other materials not required for the time being are removed as promptly as possible and the Covenant Area left in a clean and tidy condition;
 - 4.2.9 Allow any livestock on the Covenant Area; or
 - 4.2.10 Cause deterioration in the natural flow, supply, quantity or quality of water of any river, stream, lake, wetland, pond, marsh or any other water resource affecting the Covenant Area.

5 Third party access to the Covenant Area

- 5.1 If the Covenantor is notified by any person or authority of an intention to erect any structure or infrastructure, or carry out any other works on the Covenant Area, the Covenantor must as soon as reasonably possible:
- 5.1.1 Inform the person or authority of the existence of this deed;
 - 5.1.2 Inform the National Trust of the proposed intentions of any such person or authority; and
 - 5.1.3 Not consent to or otherwise allow the undertaking of the proposed works or any other works by such person or authority without the prior written consent of the National Trust.
- 5.2 Any such person or authority will be the responsibility of the Covenantor during the course of any approved works being carried out within the Covenant Area.

6 Management of the Covenant Area

- 6.1 The National Trust may provide technical advice or assistance to the Covenantor as is appropriate and practical to assist in meeting the purpose and objectives set out in this deed.
- 6.2 The Covenantor and the National Trust may agree on a Management Plan for the Covenant Area. The Covenantor and the National Trust may revise the Management Plan from time to time and will do so if reasonably required by the other party.
- 6.3 If any question arises in relation to the management of the Covenant Area or any other matter touching or concerning this deed then the Covenantor and the National Trust will use their best endeavours in good faith to promptly resolve the question amicably by conference and negotiation between the Covenantor and the Chief Executive of the National Trust, provided that any resolution does not in any way diminish the purpose and objectives of this deed.
- 6.4 If the Covenantor is in default of the Covenantor's obligations under this deed (including any agreed Management Plan, if any), the following will apply:
- 6.4.1 The National Trust may give notice to the Covenantor stating the nature of the Covenantor's default, the reasonable actions required to remedy the default and providing a reasonable timeframe within which the Covenantor must remedy the default (Default Notice);
 - 6.4.2 If, on expiry of the timeframe specified in any Default Notice, the Covenantor's default has not been remedied the National Trust will give further notice to the Covenantor advising that if the default advised of in the Default Notice is not remedied within a further reasonable timeframe specified by the National Trust then the National Trust will be entitled to arrange for the undertaking of any works required to remedy such default and may recover the cost in all things of doing so from the Covenantor as a debt payable on demand; and
 - 6.4.3 If, on expiry of the further reasonable timeframe specified in clause 6.4.2, the Covenantor's default has not been remedied the National Trust may arrange for the undertaking of any works required to remedy such default and may recover the cost in all things of doing so from the Covenantor as a debt payable on demand.

7 Pest plants and animals

- 7.1 It is the Covenantor's responsibility to control all weeds and pests in the Covenant Area to the extent required by any statute and in particular to comply with the provisions of, and any notices given under the Biosecurity Act 1993 and the Wild Animal Control Act 1977.
- 7.2 In particular, the Covenantor must keep the Covenant Area free from any exotic species specified from time to time in any agreed Management Plan for the Covenant Area.

8 Fire

- 8.1 If fire threatens the Covenant Area the Covenantor must, as soon as practical, notify the appropriate fire authority.

9 Fences and gates

- 9.1 The Covenantor and the National Trust will agree on fencing requirements on the boundary of the Covenant Area from time to time as reasonably required in order to protect the Covenant Area from stock.
- 9.2 If stock types and/or stock levels on land adjacent to any unfenced boundary of the Covenant Area is likely to have a detrimental effect on the Covenant Area, then the Covenantor must at the Covenantor's cost erect appropriate stock-proof fencing on the affected unfenced boundary of the Covenant Area.
- 9.3 It is the Covenantor's responsibility to keep and maintain all fences and gates on the Covenant boundary in good order, repair and condition as reasonably required (including replacement when that is reasonably required). The provisions of the Fencing Act 1978 will apply on title boundaries.

10 Entry and access**Trust access**

- 10.1 On giving reasonable notice to the Covenantor, the National Trust may through its officers, employees, contractors or agents enter the Covenant Area for the purpose of:
- 10.1.1 Viewing the state and condition of the Covenant Area;
- 10.1.2 Ascertaining compliance by the Covenantor with the objectives, terms and conditions of this deed and any approved management plan; and
- 10.1.3 Remedying any default by the Covenantor pursuant to clause 6.3.

Public access

- 10.2 The Covenantor may, in its sole discretion, permit members of the public to have freedom of entry and access to the Covenant Area provided that in giving any such permission the Covenantor must:
- 10.2.1 Give due consideration to any specific management issues relating to the Covenant Area from time to time;
- 10.2.2 Ensure that regard is had to the purpose and objectives of this deed during such access; and
- 10.2.3 In particular, ensure that the prohibitions set out in clause 4.2 are complied with during such access.

Part C—General provisions**11 Variations**

- 11.1 The National Trust and the Covenantor may vary the terms of this deed provided that any such variation is in accordance with section 22A of the Act which states that a variation cannot be contrary to the purpose and objectives of this deed.
- 11.2 No variation to the terms of this deed will have any force or effect unless it is in writing, signed by the National Trust and the Covenantor and registered by the Registrar-General of Land.

12 Confidentiality

- 12.1 In accordance with the National Trust's privacy policy and to recognise the Covenantor's rights as a private person and/or landowner and the close relationship of trust, co-operation and partnership existing between the Covenantor and the National Trust, the National Trust will keep confidential all information in its knowledge and possession relating to the Covenantor, the Covenantor's activities in the Covenant Area, the management of the Covenant Area by the Covenantor and the monitoring of the Covenant Area by the National Trust and will not disclose any such information without the prior written approval of the Covenantor except:

- 12.1.1 Where that is necessary to carry out the National Trust's obligations and enforce the National Trust's rights under this deed;
- 12.1.2 To the extent required by law or the order of any court of competent jurisdiction.

- 12.2 To the extent the National Trust is required by law or court order to disclose any such information referred to in clause 12.1, the National Trust shall seek to avoid or limit disclosure on whatever grounds are available (including, without limitation, the Covenantor's privacy, the existence of an obligation of confidence, the desirability of ensuring continued information flows from the Covenantor and, if relevant, commercial sensitivity), so as to protect the Covenantor's rights to confidentiality to the maximum extent possible.

13 Costs

- 13.1 The Covenantor may be required, at the Board's discretion, to pay the Board's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Board's rights, remedies and powers arising under and from this deed.
- 13.2 The Covenantor may be required, at the Board's discretion, to pay the Board's costs, including administration costs, associated with any variation, requested by the Covenantor, to the registered open space covenant provided for by this deed.

14 Notices

- 14.1 Any consent, approval, authorisation or notice to be given by the Board or the National Trust may be given in writing signed by the Chief Executive and delivered or sent by ordinary post to the last known residential or postal address of the Covenantor or to the solicitor acting on behalf of the Covenantor.

15 Severability

- 15.1 If a clause or part of a clause of this deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause of this deed is

illegal, unenforceable or invalid, that clause or part is to be treated as removed from this deed, but the rest of this deed will not be affected.

16 Governing law

- 16.1 This deed is governed by the law of New Zealand. The Covenantor and the National Trust submit to the non-exclusive jurisdiction of its courts and will not object to the exercise of jurisdiction by those courts on any basis.

17 Waiver

- 17.1 A waiver of any right, power or remedy under this deed must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

- 17.2 The fact that a party fails to do or delays in doing something the party is entitled to do under this deed does not amount to a waiver.

18 Limitation of liability

- 18.1 If any Covenantor is also a trustee of a trust, then that person warrants that:

18.1.1 that person has power to be the Covenantor (as the case may be) under the terms of the trust;

18.1.2 that person has properly signed this deed in accordance with the terms of the trust;

18.1.3 that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this deed;

18.1.4 all of the persons who are trustees of the trust have approved entry into this deed; and

18.1.5 if that person has no right to or interest in any of the assets of the trust except in that person's capacity as trustee of the trust, that person's liability under this deed shall not be personal and unlimited but shall be limited to an amount equal to the value of the assets of the trust that are available to meet that person's liability unless the right of that person to be indemnified from the assets of the trust has been lost and, as a result, the other party to this deed is unable to recover from that person that amount.

19 Counterparts

19.1 This deed may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this deed by executing any counterpart.

20 Electronic communication

20.1 The National Trust and the Covenantor agree that this deed whether signed or unsigned by the parties, or any other document relating to this deed, still has legal effect whether it has been:

20.1.1 received in electronic form or is in an electronic communication; and/or

20.1.2 referred to in an electronic communication that is intended to give rise to that legal effect.

20.2 The paper original of any document provided in electronic form or by electronic communication must be available to the National Trust on request.

20.3 Both parties to this deed agree that an original document is defined as a paper original and electronic copy of the paper original.

21 Definitions and interpretation

21.1 In this deed unless the context requires otherwise, the following definitions apply:

Act means the Queen Elizabeth the Second National Trust Act 1977

Board means the board of directors of the National Trust in terms of section 4 of the Act

Chief Executive means the person appointed under section 18(1)(a) of the Act

Covenant Area means the area or areas of the Land described in Schedule 2 – Land as outlined and indicated on any plan annexed to this deed

Covenantor means the person, persons or other entity that from time to time is registered as the proprietor of the land comprising the Covenant Area

Management Plan means a signed agreement between the Covenantor and the National Trust on the management of the Covenant Area

Open Space has the meaning given to it in section 2 of the Act

Open Space Values are particular values on the Land that are protected and maintained as Open Space.

21.2 In the event of any inconsistency between the general terms and conditions contained in Parts B and C of this deed and the special conditions contained in Schedule 1 annexed to this deed, Schedule 1 will prevail and in the event of any conflict between this deed, Schedule 1, and the Act, the Act will prevail.

21.3 In this deed, unless the context otherwise requires:

21.3.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

21.3.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;

- 21.3.3 A reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;
- 21.3.4 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 21.3.5 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this deed unless otherwise stated; and
- 213.6 All schedules and attachments to this deed form part of this deed.

Open space covenant

Covenant no. 5-07-755

Schedule 1 - Special Conditions

Special conditions relating to the Covenant Area

There are no Special Conditions that apply in respect of the Covenant Area.

Open space covenant

Covenant no. 5-07-755

Schedule of Land

Estate: Fee Simple

Area: Area A being 2.8730 hectares DP 494230
(part Computer Freehold Register WN31B/39)

Area B being 9.4680 hectares DP 494230
(part Computer Freehold Register WN31D/969)

Area C being 0.1364 hectares DP 494230
(part Computer Freehold Register WN31B/39)

Total area being: 12.4774 hectares

Open space covenant

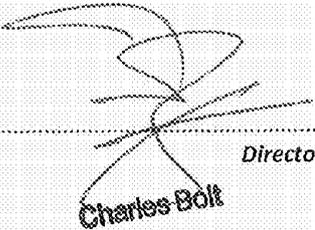
Covenant no. 5-07-755

Execution and date

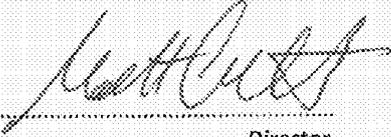
Executed as a deed

Dated this 9 day of November 2015.

Signed by Fletcher Concrete and Infrastructure Limited
as Covenantor

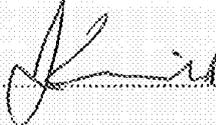
Signature 
Director
Charles Bolt

Name

Signature 
Director

Matthew Victor Crockett
Name

The common seal of Queen Elizabeth the Second National Trust
was affixed in the presence of:

Chairperson..... 

Director..... 

Chief Executive..... 