

View Instrument Details



Instrument No	10707473.1
Status	Registered
Date & Time Lodged	01 August 2017 10:08
Lodged By	Wang, Jun
Instrument Type	Covenant (All types except Land covenants)



Affected Computer Registers	Land District
NA1352/3	North Auckland

Annexure Schedule: Contains 9 Pages.

Signature

Signed by Boon Boo Toh as Grantor/Grantee Representative on 01/08/2017 09:56 AM

*** End of Report ***

Statement of Passing over Information:

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Between

JOLANDA SHERYLL O'NEILL AND KYLE BROWN

Covenantors

and

AUCKLAND COUNCIL

the Council

**COVENANT UNDER SECTION 108 RESOURCE
MANAGEMENT ACT 1991**

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IN THE MATTER of the Resource Management
Act 1991

A N D

IN THE MATTER of the Land Transfer Act 1952

COVENANT UNDER SECTION 108 RESOURCE MANAGEMENT ACT 1991

BETWEEN JOLANDA SHERYLL O'NEILL and KYLE BROWN (the "Covenantors")

A N D AUCKLAND COUNCIL (the "Council")

BACKGROUND

- A. The Covenantors are registered as proprietor of the Land.
- B. Council has granted Consent to the Covenantors to construct a dwelling (including driveway) on the Land.
- C. The Consent contained the condition for a covenant under section 108 of the Resource Management Act 1991 as stated in the Schedule.
- D. The Covenantors and the Council have agreed to enter into this covenant pursuant to Section 108 of the Resource Management Act 1991 in fulfilment of the condition of the Consent.

COVENANTS

1. INTERPRETATION

In this covenant, unless the context indicates otherwise:

1.1 Definitions

"**Consent**" means the land use consent numbered LUC-2014-1865 granted on 6 March 2015;

"**Council**" means the Auckland Council and includes its predecessors and successors as territorial authority of the district where the Land is situated and includes its officers and agents;

"**Covenantors**" means the persons named as the Covenantors in this covenant and includes the persons for the time being registered as proprietors of the Land but only for as long as those persons are registered proprietors of the Land;

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"**Flood Report**" means the Flood Report entitled Overland Flow Path (sheet no. 700, rev: A) prepared by Envivo dated 2 February 2013, a copy of which is held by Council under the reference of the above Building Consent;

"**Land**" means the Covenantors' land comprised in Computer Freehold Register NA1352/3 (North Auckland Registry).

- 1.2 **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background.
- 1.3 **Headings:** section, clause and other headings are for ease of reference only and do not affect this deed's interpretation.
- 1.4 **Joint and Several Liability:** an obligation by two or more persons binds those persons jointly and severally.
- 1.5 **Negative Obligations:** any obligation not to do anything including an obligation not to suffer, permit or cause that thing to be done.
- 1.6 **Parties:** references to parties are references to parties to this deed.
- 1.7 **Persons:** references to persons including references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.
- 1.8 **Plural and Singular:** words importing the singular number include the plural and vice versa.
- 1.9 **Schedules:** the schedules to this deed and the provisions and conditions contained in these schedules will have the same effect as if set out in the body of this deed.
- 1.10 **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this deed's sections, clauses and schedules; and
- 1.11 **Statutes and Regulations:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. EXPRESS COVENANTS

- 2.1 The Covenantors covenant with the Council to perform the obligations as set out in the Schedule hereto and imposed pursuant to section 108 of the Resource Management Act 1991 and the Consent.
- 2.2 The Covenantors acknowledge that this covenant shall bind and run with the Land in accordance with section 109 of the Resource Management Act.
- 2.3 The Covenantors covenant with the Council that the registration of this covenant is intended to confer a benefit upon the Council for the purposes of section 4 of the Contracts (Privity) Act 1982, which benefit shall be enforceable at the suit of the Council as to each and any person from time to time registered as proprietor of the Land or any part thereof.

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3. CHANGE IN USE

- 3.1 Any change in use will require assessment in terms of the provisions of the District Plan in force for the time being.
- 3.2 The Covenantors may apply to the Council for a release of this covenant where the Covenantors are able to demonstrate to the Council that the condition of the Consent secured by the covenant has become obsolete and in such circumstances the Council shall, at the Covenantors' cost, provide the Covenantors with a release of this covenant.

4. COSTS

- 4.1 The Covenantors shall pay the costs of preparation, stamping and registration of this covenant and any other costs incurred by the Council in relation to this covenant.

5. POWERS NOT AFFECTED

- 5.1 Nothing in this deed is to be treated as limiting any other rights or powers which the Council may have under statute, bylaw or regulation except as expressly provided in this deed.
- 5.2 The Covenantors' liability under this deed will not be affected by any delay, extension of time, forbearance or waiver by the Council, or by failure or neglect by the Council to enforce any of the covenants.

IN WITNESS of this covenant has been executed on the 31 day of July 2017 ~~2018~~

EXECUTED as a DEED by
JOLANDA SHERYLL O'NEILL
in the presence of



Signature

Witness signature

Full name

Jun Wang
Legal Executive
Auckland

Address

Occupation

Note: The signature must be witnessed by an independent person

KP yp

EXECUTED as a DEED by
KYLE BROWN
in the presence of

Witness signature

Signature

Full name
Jun Wang
Address
Legal Executive
Auckland
Occupation

1/10 2/10

SCHEDULE

The Covenantors covenant with the Council on an ongoing basis that:

1. In order to mitigate against adverse effects on the environment, increased downstream flooding, increased stream channel erosion, or adverse effects on public infrastructure systems they will construct an on-site stormwater management system (the "**System**") on the Land.
2. Without limiting the above, the Covenantors will meet the following specific requirements:
 - (a) Maintain stormwater runoff flows, volumes, and timing to pre-development levels for the 1 in 2 and 1 in 10 year storm event(s).
 - (b) Construction of private drainage requires a building consent. Provide a private drainage As-Built plan for the Land, prepared by a Registered Drainlayer, prepared by a certifying Drainlayer, signed as sighted and approved by a Council Inspector.
 - (c) Operate, monitor and maintain the System in accordance with the conditions below:
 - (i) Carry out regular maintenance (as specified in the Operation and Maintenance Manual) of the System to ensure efficient operation.
 - (ii) Following receipt of written notice by the Council, allow the Council's officers, employees, agents or contractors to enter the Land to inspect or test the System and to inspect the Covenantors' records in relation to the operation, monitoring and maintenance of the System.
 - (iii) Carry out any actions or works in relation to the operation, monitoring and maintenance of the System that the Council instructs by notice in writing. If the Covenantors fail to carry out those actions or works within 7 working days of receiving the Council's notice, the Covenantors will allow the Council to carry out said work itself and enter the Land to execute the work. The Council may recover all costs of carrying out the work from the Covenantors.
 - (iv) The Covenantors must not modify or remove the System without express written permission of the Council.
3. All buildings shall have a finished floor level of 500mm above the 1 in 100 year flood plain level in terms of LINZ Datum.
4. To ensure the unobstructed flow of the flood waters during the 1 in 100 year storm event, the Covenantor will:
 - (a) not change the ground levels within the flood plain as shown on the Flood Report;
 - (b) not obstruct the free flow of flood water through the Land with any fencing, object, impermeable landscaping, building, or structure; and
 - (c) maintain open boarded fencing, or similar, within the extent of the overland flowpath with a ground clearance of 200mm

LB 30

Annexure Schedule - Consent Form
Land Transfer Act 1952 section 238(2)

Insert type of instrument
"Caveat", "Mortgage" etc

2015/6250
APPROVED
Registrar-General of Land

Page of pages

Consentor

Surname must be underlined or in CAPITALS

Capacity and Interest of Consentor

(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

ANZ Bank New Zealand Limited

Mortgagee under Mortgage No. 10554805.2

Consent

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act

Delete words in [] if inconsistent with the consent

State full details of the matter for which consent is required.

Pursuant to [Section of the Land Transfer Act 1952]

Pursuant to ~~[Section 3224(b)(i) of the Resource Management Act 1991]~~

Pursuant to [Section 108 of the Resource Management Act 1991 Act]

Without prejudice to the rights and powers existing under the interest of the Consentor

The Consentor hereby consents to:

1. Registration of the Covenant under Section 108 Resource Management Act 1991 as a condition of the
2. Land Use Consent LUC-2014-1865.
- 3.
- 4.
- 5.

Dated this 13th day of March 2017

Attestation

Justin Anthony Betteridge
ANZ Bank New Zealand
by its Attorney

Signature of Consentor

Signed in my presence by the Consentor

[Signature]

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Ramota Ofisa-Palelesio
Bank Officer
Auckland

Occupation

Address

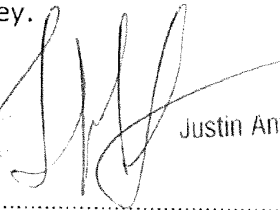
An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.

**CERTIFICATE OF NON-REVOCATION OF
POWER OF ATTORNEY**

I, Justin Anthony Betteridge of Auckland, New Zealand, currently holding the position of Lending Services Team Leader of ANZ Bank New Zealand Limited, certify –

1. That by deed dated 29 October 2012, ANZ Bank New Zealand Limited of Wellington, New Zealand appointed me its attorney.
2. That I have not received notice of any event revoking the power of attorney.

ANZ Bank New Zealand Limited
by its Attorney



Justin Anthony Betteridge

Signed this Monday, 13 March 2017.