

Covenant Instrument to note land covenant

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

Covenantor

--

Covenantee

Ashburton District Council

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.

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	N/A		In Gross

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

The provisions applying to the specified covenants are those set out in the Annexure Schedule.

- a. The Building Act 2004;
 - b. The Health and Safety at Work Act 2015 (“HSWA”);
 - c. New Zealand Transport Agency Bridge Manual SP/N/002.
- 3.1.3 Maintain the Stock Underpass to the satisfaction of the Covenantee, and immediately undertake any remedial works at the Covenantor’s expense in all respects, which the Covenantee requires for the due maintenance and enhanced performance of the Stock Underpass.
- 3.1.4 Permit the Covenantee and/or the Covenantee’s Invitees from time to time, without hindrance and without the need for notice to inspect the Stock Underpass during and after its construction.
- 3.1.5 Allow the Covenantee to audit the maintenance, operation and the performance of the Stock Underpass by examination of all relevant records of the Covenantor and/or the Covenantor’s Invitees.
- 3.1.6 Provide to the Covenantee, on a 5 year repeating cycle from the issue date of the Code Compliance Certificate, a report from a suitably qualified engineer that is registered with Engineering New Zealand as to the structural integrity of the Stock Underpass and any remedial work, if any, that might be required on the Stock Underpass.
- 3.1.7 Without limiting the Covenantor’s obligations and liabilities under this Covenant, maintain for the duration of the Stock Underpass a policy of public liability insurance of at least \$5 million.
- 3.1.8 Erect and maintain fencing on the entrances to the Stock Underpass to ensure the Road remains stock free at all times. The fencing is to be completed in accordance with best industry practices for fencing in the Mid Canterbury region.
- 3.1.9 If following the engineer’s report referred to in 3.1.6, or at any other time following inspection by the Covenantee, the Stock Underpass is identified as being in a state of disrepair, the Covenantor shall do all things, at the Covenantor’s sole cost, to disestablish the Stock Underpass and make good and safe the Road and area beneath its surface in strict accordance with plans first approved by the Covenantee and to the reasonable satisfaction of the Covenantee and in accordance with all applicable Statutes and Regulations.
- 3.1.10 At all times indemnify the Covenantee in respect of any loss, damage or costs, including indirect and/or consequential loss or damage and legal costs on a solicitor client basis, suffered or incurred by the Covenantee as a direct or indirect result of:
- a. the Covenantee allowing the Stock Underpass to be constructed;
 - b. the Covenantee imposing conditions or requirements on the construction of the Stock Underpass; and
 - c. the Covenantor breaching this Covenant.
- 3.1.11 Pay the Covenantee the costs of undertaking any matters in respect of the Stock Underpass, exercising any of the Covenantee’s powers or satisfying any of these covenants within 7 days of written demand.
- 3.1.12 Within 7 days of written demand, pay the Covenantee’s legal and engineering costs on a professional and client basis in respect of settling the terms and conditions, and the preparation, execution, registration, operation, enforcement, any variation, and the ultimate revocation of this Covenant or any action or proceedings relating to this Covenant.
- 3.1.13 Pay the Covenantee interest from the due date until paid in full by the Covenantor at the rate of 15% per annum (calculated daily) on any amount due and payable by the Covenantor under this Covenant.

- 3.2 The Covenantor shall not:
- 3.2.1 Do, nor permit, anything which might directly or indirectly prejudice the structural integrity or safety of the Stock Underpass and/or the Road.
 - 3.2.2 Take any proceedings, make any claim, join any proceedings or claim, account for, seek payment or set-off of any kind against the Covenantee whether in respect of any costs, charges or expenses incurred, or losses or damages suffered, for compensation or other relief whatsoever directly or indirectly arising from:
 - a. the exercise by the Covenantee of any rights, remedies or powers under this Covenant, or as local authority for the Ashburton District; or
 - b. the Covenantor or any servant, contractor or workman of the Covenantor complying with orders and instructions given by or for the Covenantee in accordance with this Covenant.
 - 3.2.3 Commence use of the Stock Underpass before the Code Compliance Certificate is issued by the Covenantee.
- 3.3 That the Covenantor's liability under this Covenant shall not be released, waived or affected in any way by any delay, extension of time or other indulgence to the Covenantor, or suffered or permitted by the Covenantee or by any failure or neglect of the Covenantee to enforce its rights or powers under these covenants.
- 3.4 Nothing expressed or implied in this Covenant shall constitute either party, agent, employee or officer of, or as a joint venture with the other party, and neither party shall make any contrary representation to the other party.
- 3.5 That if the Records of Title comprising the Burdened Land are at any time owned by different registered owners then all obligations (including costs) of the Covenantor set out in this Covenant shall be the joint and several responsibility of both registered owners of the Burdened Land.

4.0 COMPLETION

The Covenantee shall:

- 4.1 Upon completion of the construction of the Stock Underpass, and the receipt of all necessary documentation and Producer Statement, undertake a final inspection of the Stock Underpass; and
- 4.2 Upon the Covenantee being satisfied with the completion of the Stock Underpass, issue the Covenantor with a Code Compliance Certificate.

5.0 HEALTH AND SAFETY

- 5.1 For the purposes of the HSWA, the Covenantor is the PCBU with respect to the Burdened Land and/or in all respects in relation to the Stock Underpass.
- 5.2 The Covenantor will, before undertaking any construction or maintenance work on the Stock Underpass and/or Burdened Land or permitting any work to be undertaken on the Burdened Land and/or Stock Underpass, identify hazards on the Burdened Land and the Stock Underpass.
- 5.3 The Covenantor will at its cost:
 - a. Take all practical steps to ensure the safety of all persons while they are using or visiting the Stock Underpass and/or the Burdened Land;
 - b. Have (and comply with) an appropriate Health and Safety Plan aimed at ensuring that the Stock Underpass is safe, that the hazards on the Burdened Land and Stock

- Underpass are identified and controlled (by elimination, isolation or monitoring as appropriate), and that harm to any person is prevented;
- c. Ensure that any work carried out on the Stock Underpass and/or the Burdened Land is carried out in a safe manner;
 - d. Immediately notify the Covenantee once the Covenantor is aware that:
 - (i) Any hazard exists, or any situation may arise where any person may not be safe or harm may result to any person on or about the Stock Underpass and/or the Road on or in the vicinity of the Stock Underpass; and/or
 - (ii) Any accident or serious harm to any person has occurred on or about the Stock Underpass, and detail the steps that have been taken or are proposed; and/or
 - (iii) Any improvement or prohibition notice is likely to be or has been issued relating in any way to the Burdened Land and Stock Underpass and/or any work carried out on the Burdened Land and Stock Underpass.
 - e. Cease usage of the Stock Underpass until any hazard is fully and properly addressed.
- 5.4 The Covenantor will comply with the provisions of the HSWA and ensure all significant hazards in or about the Burdened Land and Stock Underpass are eliminated where practical or isolated where elimination is impracticable, or minimised where removal or isolation is impracticable.
- 5.5 The Covenantor will be solely responsible for all costs and expenses associated with complying with its duties and obligations under the HSWA.
- 5.6 The Covenantor agrees that it will provide copies of its HSWA procedures, protocols, plans and rules to the Covenantee when reasonably requested by the Covenantee.

6.0 DISPUTE RESOLUTION

- 6.1 **Process:** If a dispute arises between the parties concerning this Covenant, no party may start proceedings relating to the dispute (unless that party seeks urgent interlocutory relief) without first complying with the process in this Covenant.
- 6.2 **Notice of Dispute:** A party claiming that a dispute has arisen concerning this Covenant must give written notice to the other parties specifying the matter in dispute.
- 6.3 **Persons to be Nominated:** After a party has given a notice under clause 6.2, each party must nominate one person who will have authority to settle the dispute. The nominated persons must try in good faith to resolve the dispute within 10 business days of their nomination.
- 6.4 **Mediation:** If the dispute is not resolved under clause 6.3, then any party may at any time in the next 10 business days invite the chairperson of LEADR NZ Inc to appoint a mediator to enable the parties to mediate and settle the dispute. All discussions in the mediation will be without prejudice and will not be referred to in any later proceedings. The parties will bear their own costs in the mediation and will share equally the mediator's costs. The parties shall use their best endeavours to resolve all disputes through mediation.
- 6.5 **Arbitration:** If the dispute is not resolved under clause 6.4 within a further 10 business days after the appointment of a mediator, any party may then require the dispute to be referred to arbitration. If this clause is invoked:
- 6.5.1 **Arbitration Act:** the dispute will be referred to arbitration by a sole arbitrator in accordance with the Arbitration Act 1996. If the parties cannot agree on the identity of the arbitrator within 10 working days from the date on which the dispute is referred to arbitration, then the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc, upon the application of any party;
 - 6.5.2 **Arbitration in New Zealand:** the arbitration will take place in New Zealand; and
 - 6.5.3 **Award Final:** the award in the arbitration will be final and binding on the parties.

6.6 Nothing in this clause 6 will prevent the Covenantee from taking immediate steps to seek urgent interlocutory relief before a Court with jurisdiction.

7.0 VARIATION

The Covenantee shall be entitled to update or otherwise vary this Covenant at any time in the Covenantee's absolute discretion. The Covenantor will promptly do all things to register any updates or variations on the Burdened Land if called upon to do so by the Covenantee at the Covenantor's expense.