

Before the Hearing Commissioner  
Appointed by Ashburton District  
Council

Under the Resource Management Act 1991

In the matter of an application by GDT and JR Osborne at 798  
Longbeach Road to renovate and convert a former Scout  
Hall to a dwelling within the Rural B zone (LUC23/0033)

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**Legal submissions in reply on behalf of the Applicants**

26 September 2024

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**Applicant's solicitors:**

Sarah Eveleigh | Samantha Gardner

Anderson Lloyd

Floor 2, The Regent Building, 33 Cathedral Square, Christchurch 8011

PO Box 13831, Armagh, Christchurch 8141

DX Box WX10009

p + 64 3 379 0037

sarah.eveleigh@al.nz | samantha.gardner@al.nz

**anderson  
lloyd.**

**May it please the Commissioner:**

- 1 The purpose of these submissions is to reply to matters raised during the hearing on Friday, 13 September 2024 for land use consent to renovate and convert a former scout hall to a dwelling in the Rural B Zone, at 798 Longbeach Road, Eiffelton (the **Site**).
- 2 A reply is provided in relation to the following matters raised throughout the hearing:
  - (a) Reverse sensitivity;
  - (b) Regional Council Consent;
  - (c) Efficacy of Conditions; and
  - (d) Questions to Counsel.

**Reverse sensitivity**

- 3 The main focus of the hearing was on the potential for reverse sensitivity effects, and the efficacy of conditions to control these potential effects on the Site from the surrounding farming activities.
- 4 Mr Mackenzie discussed the potential reverse sensitivity effects on his farm, which surrounds the Site. He raised the following concerns:
  - (a) Dogs worrying stock;
  - (b) Bee Keeping;
  - (c) Fire risk to crops; and
  - (d) Poor maintenance of property.
- 5 The Applicant reemphasises that it is not their intention to restrict Mr Mackenzie's farming operations by having a residential dwelling on their Site.

*Dogs*

- 6 The Applicant notes Mr Mackenzie's concerns regarding dogs entering his Site and worrying his stock. The Ashburton District Council Dog Control Bylaw 2016 (**Dog Control Bylaw**) has a broad purpose which includes:
  - (a) set standards of control which must be observed by dog owners. It covers matters such as dogs in public places, wandering dogs, ownership of three or more dogs and nuisances caused by dogs;

- (b) minimise the potential for dogs to cause harm, distress or nuisance to the community, animals or wildlife;
- (c) regulate dog-related matters to enable the enforcement of the Ashburton District Council Dog Control Policy; and
- (d) support the intent of the Dog Control Act 1996.

7 It is submitted that the Dog Control Bylaw is the appropriate mechanism to control any issues that may arise regarding dogs. In addition, the Court has previously found the Dog Control Act 1996 requires dogs to be kept under control and that you cannot assume that consent holders would not comply with the law regarding dogs.<sup>1</sup> However, in the interest of providing Mr Mackenzie with greater certainty the Applicants are willing to offer a condition that provides that no dogs will be kept on Site, unless the Site is fully fenced to 1.8m high, if it is considered necessary.

#### *Bees*

8 Mr Mackenzie explained that he keeps bees on his property near the Site. The Applicants are not concerned with the bees on his property, as Ms Wright explained any concerns with the bees are appropriately dealt with under the Ashburton District Council Keeping of Animals, Bees and Poultry Bylaw 2016 (**Bees Bylaw**).

9 In particular, clause 10 of the Bees Bylaw addresses Beekeeping as follows:

10.1 Persons keeping bees or suffering or permitting bees to be kept on their property shall ensure that no nuisance is caused to other persons by those bees.

10.2 Where Council considers a hive to be dangerous, offensive or likely to be injurious to people it shall require removal of such hive.

#### *Poor Maintenance of Property*

10 The Applicant does not agree that poor maintenance of the property will increase the fire risk. This position is not supported by any evidence, and both the planning experts consider that the conversion of the Scout Hall will result in a better maintained property on the Site.

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<sup>1</sup> *Blueskin Bay Forest Heights Ltd v Dunedin City Council* [2010] NZEnvC 177

### *Fire risk*

- 11 The concerns raised by Mr Mackenzie regarding the potential fire risk to his crops from the Site are noted. The Applicants endeavour to regularly mow and control the vegetation on Site to reduce this risk. However, the Applicants are willing to offer a condition that would address this risk. It is proposed that a condition could be included that provides:

Areas of grass on the site shall be regularly mowed, and all weeds controlled to avoid the risk of fire spreading to adjacent properties.

### *Intensive Farming Setbacks*

- 12 Mr Mackenzie indicated that any change to the current farming operation would likely be to intensive cropping/vegetables. Ms Wright confirmed at the hearing, that Mr Mackenzie's potential future plans, would not fall within the definition of intensive farming, so the 400m setback from the proposed residential dwelling would not apply to those permitted activities.

- 13 At the hearing, the Commissioner was interested to understand and ascertain how a setback of 400m from intensive farming (from any residential dwelling) would impact surrounding farming activities. It is noted that intensive farming is not undertaken on the surrounding farmland currently. Mr Mackenzie indicated that this was not the intention for his property, and that it was his view, that both the Government and the Regional Council were moving away from this farming approach and in some cases, actively discouraging it.

- 14 Following the hearing, Ms Wright provided a diagram that helpfully demonstrates the impact of the 400m setback for intensive farming from existing residential activities, at 778 Longbeach Road and 12 Bells Road. This demonstrates that the setback required from the existing residential activities already covers a significant portion of the property farmed by Mr Mackenzie and his son.

- 15 In addition, whilst it is recognised that the residential dwelling at 832 Longbeach Road, is owned by Mr and Mrs Mackenzie, Rural Zone Standard 3.10.3 – Setback of Buildings from Residential Units provides that:

(a) The following activities shall be setback at least 400m from existing residential units on a site held in a separate title:

- Feedpads;
- Dairy/milking sheds;
- Buildings (over 100m<sup>2</sup> in area) designed and/or used for the housing and/or shelter of stock;

- Buildings designed and/or used for any intensive farming activity;
- Areas used for farm – related effluent storage or disposal.

- 16 The dwelling at 832 Longbeach Road is held in a separate title<sup>2</sup> to the 20ha block surrounding the Site<sup>3</sup>. Accordingly, the 400m setback under Rural Zone Standard 3.10.3 would also apply from this residential dwelling. Whilst Mr and Mrs Mackenzie, as owners of both properties, could consent to any intensive farming activity on the 20ha block, this does not change the applicable activity status.
- 17 Consequently, in my submission the no complaints covenant is not required to extend to cover any future intensive farming activities surrounding the Site.

### **Regional Council Consent**

- 18 The Applicants have obtained CRC212067 from Canterbury Regional Council (**CRC**) which authorises discharge contaminants to land from an onsite wastewater system.
- 19 At the hearing, Mr Mackenzie advised that he had spoken to CRC staff who he alleges advised, in the course of their discussions, that they have concerns with the ability of the Applicants to implement CRC212067. He indicated that representatives of CRC were going to be writing to the Applicants.
- 20 The Applicants have followed up with CRC through their consultant earlier this week and CRC advised on 26 September 2024 that:

Richard Purdon, one of our principal consent planners advised that this consent was investigated earlier this year due to concerns raised that it was close to the bore you have mentioned. Our groundwater scientists concluded that due to the bore being very deep, and provided that the correct wellhead protection was installed, the consent would likely not impact the bore.

As far as our consenting team is concerned, the system can be installed per the conditions granted. He further advised that the system is carefully installed to ensure that it meets the conditions and in particular due to the size of the property, condition 13. The only way we would be able to confirm compliance is with a site inspection, however, regardless these are the conditions of the consent and the compliance would be the consent holder's responsibility.

- 21 A copy of this email is provided as **Appendix 1**.

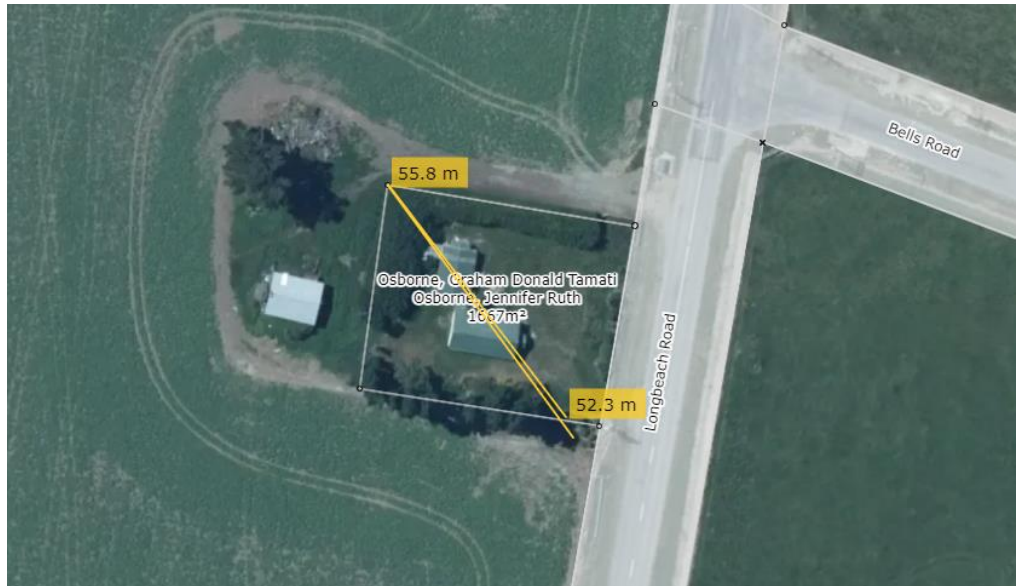
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<sup>2</sup> Legally described as Lot 5 DP 955, and held in Certificate of Title CB23B/135.

<sup>3</sup> Legally described as Part Lot 4 DP 955, and held in Certificate of Title CB3D/711.

22 The Applicant considers that CRC212067 can be implemented in accordance with condition 13, as shown on the diagram below. The yellow lines demonstrate:

- (a) the distance diagonally across the Site within the property boundaries, being 52.3m; and
- (b) the distance from the north-western corner of the Site to the approximate location of Mr. Mackenzie's bore being 55.8m.



23 It is submitted that even with a 2m setback from the boundary line at the north-western corner, the 20m<sup>2</sup> land application system can still be located within the discharge envelope<sup>4</sup> in compliance with CRC212067, as shown on Plan CRC212067B below:



<sup>4</sup> Noting that the purple box indicating the LASE envelope is larger than 20m<sup>2</sup>, to provide some flexibility with the location of the land application system.

- 24 There is no substantiated evidence before you that CRC212067 cannot be implemented. Any issue of non-compliance is appropriately a matter for the regional council. What is relevant to your considerations, is that the Applicants have consent to service the proposed residential dwelling.
- 25 In any event, the Applicants advise that there are other ways to service the Site, such as having the wastewater tanks on the Site, that are pumped out when full. It is recorded that Mr Mackenzie also conceded at the hearing that the Site could be serviced in other ways. If it transpires that an alternative method of servicing the Site is required, the Applicants will implement an alternative method and obtain any necessary consents.
- 26 It is submitted that you can be confident that the Applicant's hold consent CRC212067 to service the Site, and this can be implemented. Your attention is also drawn to the CRC comments that there are no concerns regarding any impact on Mr Mackenzie's bore as a result of exercising CRC212067.

#### **Efficacy of conditions**

- 27 A number of questions were raised with all parties regarding the efficacy of the proposed conditions of consent. In particular, how you could be assured that the conditions would address any effects and achieve the desired outcome. As a result, attached as **Appendix 2** is a revised set of conditions.<sup>5</sup> This set of conditions have been provided to Ms Wright who has indicated her support for the amendments.
- 28 A number of refinements have been made to the conditions, including the provision of specificity regarding the timing of the implementation of conditions to ensure amenity on Site, and specific actions that need to be undertaken. It is submitted that these amendments are sufficient to ensure the efficacy of these conditions.
- 29 I was asked a question regarding whether or not the advice note regarding the acoustic fence was ultra vires. Given the amendments made to the conditions, and that this advice note is now included as a condition, I have not addressed this any further. I note in relation to this condition; the Applicants have volunteered to erect the acoustic fence without the requirement for an acoustic report.
- 30 As requested at the hearing, proposed wording for the covenant that is to give effect to consent condition 3 has been prepared. A copy of the draft covenant is

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<sup>5</sup> It is noted that the suggested conditions regarding dogs and fire risk at [7] and [11] above have not been included in Appendix 2, as these were suggested by the Applicant at a later stage and therefore have not had an opportunity to be provided to Ms. Wright. However, the Applicant is happy for these to be included in the condition set, if the Commissioner considers necessary.

attached as **Appendix 3**. It has been drafted with the Ashburton District Council as the covenantee, which means that the Council can enforce the covenant. It is noted that this wording is subject to approval by the Council's lawyers.

### **Questions to Counsel**

31 A number of questions were asked of Counsel at the hearing, and I indicated that, where appropriate, I would like to respond in a more fulsome manner in my written reply. Accordingly, where it is considered that a more fulsome response is still required (and has not been addressed elsewhere in this reply), I have provided a response below.

*In terms of managing effects, how much consideration should be given to a no-complaints covenant?*

32 No-complaints covenants are often used in the case of reverse sensitivity effects. Section 108 of the RMA makes it possible for a condition of a resource consent, to become the subject of a covenant by the land owner in favour of the Council. Section 109 of the RMA enables a covenant to be registered on the title and when it becomes a covenant it runs with the land binding subsequent owners, providing certainty.

33 In this case, the effects from the surrounding farmland in terms of noise are appropriately managed by other conditions of consent, through the implementation of double glazing and the erection of an acoustic fence along a portion of the southern boundary of the Site. The other relevant effects, for example dust, are expected to be of limited duration and are not expected to be experienced within the dwelling.

34 Accordingly, a no-complaints covenant is an appropriate mechanism to ensure that all owners and occupiers are aware of and do not complain about the surrounding farming activities, particularly once the resource consent has been given effect to. The no-complaints covenant is consented to by the Applicants, is supported by the Ms Wright and Mr Mountfort, and is a recognised mechanism to manage the potential reverse sensitivity effects of the residential dwelling on the surrounding farmland.



**Conclusion**

- 35 The Applicant considers that the matters raised by the Submitter, the Council<sup>6</sup> and by the Commissioner's questions, have been appropriately considered and responded to in legal submissions and through the technical evidence.
- 36 Is it submitted that the application, with the revised proposed conditions of consent, should be granted consent.

Dated this 27<sup>th</sup> day of September 2024



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**Samantha Gardner**

Counsel for the Applicant

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<sup>6</sup> Such as the inclusion of contamination protocol conditions.

## Appendix 1 – Correspondence from Canterbury Regional Council

**From:** Beth Roche <[Beth@austinbluewater.co.nz](mailto:Beth@austinbluewater.co.nz)>  
**Date:** 26 September 2024 at 11:13:38 AM NZST  
**To:** Jenny Osborne <[jenny.osborne11@gmail.com](mailto:jenny.osborne11@gmail.com)>  
**Subject:** FW: CRC212067 Wastewater Discharge Wells Email-070100892

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**From:** Max Hamilton <[Max.Hamilton@ecan.govt.nz](mailto:Max.Hamilton@ecan.govt.nz)>  
**Sent:** Thursday, 26 September 2024 10:58 AM  
**To:** Beth Roche <[Beth@austinbluewater.co.nz](mailto:Beth@austinbluewater.co.nz)>  
**Subject:** CRC212067 Wastewater Discharge Wells Email-070100892

Kia ora Beth.

Thank you for your call regarding CRC212067 and the concerns that were expressed to you by the consent holders.

Richard Purdon, one of our principal consent planners advised that this consent was investigated earlier this year due to concerns raised that it was close to the bore you have mentioned. Our groundwater scientists concluded that due to the bore being very deep, and provided that the correct wellhead protection was installed, the consent would likely not impact the bore.

As far as our consenting team is concerned, the system can be installed per the conditions granted. He further advised that the system is carefully installed to ensure that it meets the conditions and in particular due to the size of the property, condition 13. The only way we would be able to confirm compliance is with a site inspection, however, regardless these are the conditions of the consent and the compliance would be the consent holder's responsibility.

As you are not the consultant for the consent holders now, I was hoping you would be able to pass this information back to them as I do not have their contact details.

If you have any further enquiries, please reply to this email or call Customer Services (details below).

How did we do today?  
Give us your [feedback here](#).

Ngā mihi

Max Hamilton

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## **Appendix 2 – Proposed conditions of consent**

### **General**

1. Except to the extent provided for by these conditions the activity shall be conducted in accordance with the plans and all information submitted with the application being:
  - Application Form and Assessment of Effects prepared by David Mountfort, Mountfort Planning Ltd. on behalf of Jenny and Graham Osborne, dated 19/04/23.
  - Further Information received from David Mountfort dated 20/10/23 and 01/11/23.
  - The Plans submitted with the application and referenced by Council as “LUC23/0033 Approved Plans Sheets 1-2”.

### **Reverse Sensitivity**

2. All windows and any glazed doors on the residential unit shall be double-glazed to mitigate noise disturbance, prior to residential occupation
3. The owners and occupiers of the site must not complain to the Ashburton District Council, the Canterbury Regional Council or any other authority regarding adverse effects arising from grazing, cropping, cultivation, crop spraying, harvesting, burning of crop residues, irrigation operations or any other land based primary production activity as defined by the National Policy Statement for Highly Productive Land on nearby farmland. Pursuant to Section 108(2)(d) of the Resource Management Act 1991, a land covenant shall be registered on the record of title of Lot 1 DP 23186 in perpetuity to secure performance of this condition. Such covenant shall be prepared by the applicant's solicitor on terms and conditions acceptable to the Council, acting reasonably and registered prior to the first occupation of the dwelling.
4. All occupants of the property should be made aware of Condition 3 above, and the no-complaints covenant, in any letting or leasing arrangements entered into by the owners.

### **Vehicle Access**

5. Prior to first occupation of the residential unit, the existing vehicle crossing to Lot 1 DP 23186 shall be upgraded and sealed for the full width of the crossing from the edge of the road seal to the boundary to the satisfaction of Council's Roading Team.

### **Landscaping**

6. All vegetation currently serving as a shelterbelt located within the Application Site shall be retained, and any trees which die are to be replaced with similar trees at the next planting season.

### **Contaminated Material Discovery Protocol**

7. A refurbishment survey (sometimes referred to as an intrusive survey) shall be carried out to identify asbestos and lead containing materials that would be affected by this project prior to building works commencing. It should identify asbestos containing materials over and above those that would be discovered in a management survey by means of destructive access where necessary to locate asbestos that would normally remain hidden behind other building materials. It is important that the scope of the works to be undertaken is defined and discussed with Council prior to the survey to ensure that the survey covers all areas that will be disturbed by the planned works. The consent holders are to undertake any of the recommended actions within the refurbishment survey, which may include appropriate removal and disposal techniques.

8. If evidence of unidentified contamination is discovered during earthworks or building alteration such as stained or odorous soil, ash or charcoal, rubbish or hardfill, or asbestos containing material, then the following steps shall be implemented:
  - Excavation, earthworks and/or building works to cease immediately, the area to be secured to stop people entering where potential contamination was encountered;
  - Contact a contaminated land specialist for further advice on how to proceed, including whether any additional authorisations under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health for are required before continuing with works.
9. Prior to residential occupation of the dwelling an acoustic fence shall be erected as close to the southern boundary of the site as practical, extending from the road boundary to the rear wall, to mitigate the effects of noise from the adjacent pumping station on Part Lot 4 DP 955. The following minimum specifications should be applied:
  - Minimum Height: 2 metres
  - Surface Mass: at least 10 kg/m<sup>2</sup> (20mm pine or 18mm plywood) with no gaps between or below component boards or panels or between the fence and the ground.

**Advice Notes:**

- 1) Please read the conditions of this resource consent carefully and make sure that you understand all the conditions that have been imposed before commencing the development.
- 2) This allotment is located within the Rural B Zone. Farming activities are provided for by the Ashburton District Plan and may occur on adjoining or nearby properties. The usual incidence of these activities may have amenity impacts beyond the boundaries of those properties.
- 3) As the water supply is not sourced from Council reticulation, the proposed dwelling must be provided with an adequate potable and wholesome drinking water supply. This shall be in accordance with Council minimum water quality standards and as identified in the Long-Term Community Plan (Drinking Water Standards 2008 levels). A certification in this regard is to be submitted to Council prior to first occupation of the Site.
- 4) This application has been assessed in terms of long-term residential use. Commercial Visitor Accommodation is not permitted in this zone (Section 3.8.6c, Ashburton District Plan) and would require a separate resource consent application.
- 5) Pursuant to section 125 of the Resource Management Act 1991, if not given effect to, this resource consent shall lapse five years after the date of this decision unless a longer period is specified by the Council upon application under Section 125 of the Act.
- 6) This consent does not constitute authority to build or undertake private drainage works and it may be necessary for you to apply for a Project Information Memorandum and Building Consent if you have not already done so.
- 7) A copy of this consent and the associated approved drawings should accompany your application for a Project Information Memorandum and Building Consent. If not supplied unnecessary delay may occur in the processing of your application.
- 8) If you disagree with any of the above conditions, or disagree with the additional charges relating to the processing of the application you have the right of objection under sections 357A or 357B of the Resource Management Act 1991. Any objection must be made in writing to Council within 15 working days of notification of the decision.

- 9) The consent holder is requested to notify Council, in writing, of their intention to begin works, a minimum of seven days prior to commencement. Such notification should be sent to [info@adc.govt.nz](mailto:info@adc.govt.nz) and include the following details:
- i Name and telephone number of the project manager and the site owner;
  - ii Site address to which the consent relates;
  - iii Activity to which the consent relates; and
  - iv Expected duration of works
- 10) The consent holder is requested to notify Council, in writing, once they have completed the works authorised by this resource consent. Such notification should be sent to [info@adc.govt.nz](mailto:info@adc.govt.nz) including the following details:
- i Resource consent number
  - ii Site address to which the consent relates
  - iii Statement outlining how the applicant has complied with each of the conditions

### **Appendix 3 – Proposed no-complaints covenant**

**Form 26**

**Covenant Instrument to note land covenant**

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

**Covenantor**

**Graham Donald Tamati OSBORNE and Jennifer Ruth OSBORNE**

**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(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
No complaints covenant		Lot 1 DP 23186 (CB3D/465)	In gross

**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].



# Annexure Schedule 1

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## 1. Definitions and interpretation

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1.1 **Definitions:** In this Instrument unless the context otherwise requires:

**Activities** means grazing, cropping, cultivation, crop spraying, harvesting, burning of crop residues, irrigation operations or any other land based primary production activity as defined by the National Policy Statement for Highly Productive Land 2022 (August 2024);

**Burdened Land** means the land described in Schedule A as the burdened land which is subject to the covenants set out in this Instrument;

**Covenantee** means the Ashburton District Council;

**Covenantor** means the registered owner of the Burdened Land from time to time;

**Instrument** means the front page of this instrument together with all Annexure Schedules attached to it;

**Nearby Farmland** means any allotment (as that term is defined in the RMA) which is partially or fully located within 500 metres of any boundary of the Burdened Land;

**Relevant Authorities** means the government, local, regional, statutory or non-statutory authorities and bodies having jurisdiction over the Burdened Land and **Relevant Authority** means any one of them;

**RMA** means the Resource Management Act 1991.

1.2 **Interpretation:** For the avoidance of doubt:

- (a) words importing the singular number include the plural and vice versa;
- (b) a covenant to do something is also a covenant to permit or cause for that thing to be done and a covenant not to do something is also a covenant not to permit or cause for that thing to be done;
- (c) this Instrument binds and benefits the parties, and the heirs, executors, successors and assigns in perpetuity and also any lessee or occupier of the Burdened Land; and
- (d) a reference to a statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute.

## 2. General covenants

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2.1 The Covenantor covenants and agrees:

- (a) to observe and perform all the covenants set out in this Instrument at all times;
- (b) that such covenants shall run with and bind the Burdened Land for the benefit of the Covenantee;

- (c) to do all things necessary to ensure that any invitees of the Covenantor on the Burdened Land and any mortgagees, lessees or occupiers of the Burdened Land comply with the provisions of this Instrument; and
- (d) 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.

### **3. No complaints**

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- 3.1 From the date of registration of this Instrument, the Covenantor shall not either directly or indirectly complain to any Relevant Authority regarding adverse effects arising from the Activities on the Nearby Farmland.
- 3.2 Production of this Instrument to the Relevant Authority (or any other concerned party) from time to time shall, without further requirement or reference to the Covenantor, evidence the Covenantor's withdrawal of any complaint which breaches clause 3.1.
- 3.3 Clauses 3.1 to 3.2 also apply to occupiers and/or tenants of the Burdened Land to the extent that the Covenantor will in any lease or occupancy agreement in respect of the Burdened Land, include terms requiring compliance with this Instrument and will do all things reasonably possible to enforce compliance by the tenants and/or occupiers of the Burdened Land with the terms of their lease provided that the Covenantor shall not be obliged to terminate any lease solely because of breach by the tenants and/or occupiers of the terms of their lease as they relate to this Instrument.

### **4. Notice**

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- 4.1 Any notice required to be served on any party shall be in writing and in accordance with the Property Law Act 2007.

### **5. Liability**

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- 5.1 Without prejudicing the Covenantee's other rights, this Instrument binds the Covenantor's successors in title so that contemporaneously with the acquisition of any interest in the Burdened Land all such successors in title become bound to comply with this Instrument.
- 5.2 A Covenantor shall, on ceasing to be a registered owner of the Burdened Land, remain liable only in respect of any breach of the covenants in this Instrument arising or continuing before that Covenantor ceased to be a registered owner.

### **6. Injunctive relief**

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- 6.1 The Covenantor acknowledges that the Covenantee shall be entitled to an injunction or other equitable relief for any threatened or actual breach of the provisions of this Instrument, and that damages alone may not be an adequate remedy for any such breach.

### **7. Revocation**

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- 7.1 Upon application in writing by the Covenantor to the Covenantee, the Covenantee will provide a revocation of this Instrument where the Covenantor is satisfied in its absolute and sole discretion that the provisions of this Instrument have become obsolete.

- 7.2 Where the Covenantor forms the view for any reason that this Instrument should be revoked, the Covenantor will promptly do and sign all things reasonably required by the Covenantor to revoke this Instrument.

## 8. Costs

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- 8.1 The Covenantor shall meet the reasonable legal fees, disbursements and other expenses incurred by the Covenantor of and incidental to:
- (a) the enforcement or attempted enforcement of this Instrument by the Covenantor; and
  - (b) the recovery of any monies and interest payable to the Covenantor under this Instrument.

## 9. General matters

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- 9.1 **Further assurances:** The Covenantor shall ensure that it is at all times in a position to comply with all of its obligations under the provisions of this Instrument.
- 9.2 **Non-waiver:** No failure or delay by the Covenantor to exercise any right under this Instrument shall constitute a waiver of any right or restrict any further exercise of any right. No single or partial exercise of a right shall preclude or restrict the further exercise of any right.
- 9.3 **Exercise of powers:** Nothing in this Instrument shall be construed so as to remove or limit any rights, powers or remedies vested in the Covenantor by law, or to compel the Covenantor to exercise all or any rights, powers or remedies granted by this Instrument.
- 9.4 **Severance:** If any provision of this Instrument is or becomes illegal or unenforceable in any respect, that provision shall be read down to the extent necessary to make it legal and enforceable or, if it cannot be read down, severed from this Instrument, without affecting the legality and enforceability of any other provision.