

ANNEX 16

TEMPLATE NO COMPLAINT COVENANT

Plan modification annotations - key



Indicates where content is affected by proposed plan modification x.
Refer to plan modification folder or website for details.



Indicates where the content is part of plan modification x, which is
subject to appeal.

Underlined content to be inserted.

~~Struck through~~ content to be deleted.



DEED OF LAND COVENANT

between

[]

and

[]



THIS DEED dated the _____ day of _____ []

BETWEEN [] (Covenantor)

AND [] (Beneficiary)

BACKGROUND

- A. The Covenantor is registered as proprietor of an estate in [] in the land more particularly described in the First Schedule (**First Land**).
- B. The Beneficiary is registered as proprietor of, or is entitled to occupy and use the land more particularly described in the Second Schedule (**Second Land**).
- C. The Beneficiary carries out Marine Industry and/or Fishing Industry and /or Industry activities from the Second Land, which results or is likely to result in adverse effects being experienced by people in the vicinity of the Second Land. These adverse effects may be generated by noise, vibration, bright lights, traffic congestion, reduced air quality, odour and other usual incidences of Industry, Marine Industry and Fishing Industry, which may have consequences beyond the boundaries of the Second Land, including on the First Land.
- D. The current zoning of the Second Land provides for Marine Industry and/or Fishing Industry and/or Industry activities.
- E. Residential activity is provided for on the First Land pursuant to the current zoning of the First Land. The development of residential activity on the First Land in a manner that provides an acceptable level of amenity to the residents may require the adoption of special management techniques, operational features or design elements in order to mitigate adverse effects from the Beneficiary's Marine Industry and/or Fishing Industry and /or Industry activities carried out on the Second Land.
- F. The Covenantor has agreed with the Beneficiary:
 - (a) to accept for itself and its successors in title to the First Land and any part of or interest in the First Land a restriction (in accordance with the terms of this deed) on any ability to object to any Marine Industry and/or Fishing Industry and/or Industry activities carried out on the Second Land.
 - (b) to enter into this deed on the terms and covenants contained herein; and
 - (c) to register this deed against the computer freehold register(s) and computer interest register(s) to the First Land.



IT IS AGREED:

1. INTERPRETATION

In this deed unless the context indicates otherwise:

1.1 Definitions:

Central Area Plan means the Auckland City District Plan (Central Area Section) 2004 as amended by Plan Change 4;

Fishing Industry has the meaning set out in clause 14.9.15 of the Central Area Plan;

Marine Industry has the meaning set out in clause 14.9.15 of the Central Area Plan;

Noise Area 2 has the meaning set out in clause 14.9.12.8 and Quarter Plan J of the Central Area Plan;

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 Gender: words indicating one gender include the other genders;

1.4 Headings: section, clause and other headings are for ease of reference only and will not affect this deed's interpretation;

1.5 Negative Obligations: an obligation not to do anything includes an obligation not to allow that thing to be done;

1.6 Parties: references to parties are references to parties to this deed;

1.7 Persons: references to persons include 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 indicating the singular number include the plural and vice versa;

1.9 Schedules: the schedules to this deed and the provisions and conditions contained in the schedules have the same effect as if set out in the body of this deed;

1.10 No Limitation: references to anything of a particular nature either before or after a general statement do not limit the general statement unless the context requires;

1.11 Sections, Clauses and Schedules: references to sections, clauses and schedules are references to this deed's sections, clauses and schedules;

1.12 Statutes and Regulations: references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it; and

1.13 District Plans: references to any District Plan include any instrument that amends or replaces it.



2. **Acknowledgement of effects:** The Covenantor acknowledges that the First Land is in close proximity to the Second Land on which the Beneficiary undertakes Marine Industry and/or Fishing Industry activities. The Covenantor also acknowledges that the carrying on of the Beneficiary's Marine Industry and/or Fishing Industry activities may occur on a 24 hour per day basis and may involve noise, vibration, light spill, glare, traffic congestion, reduced air quality and odour which may generate adverse environmental effects, which residents of the First Land may find disturbing and inconvenient.
3. **Entitlement to carry out activity:** The Covenantor acknowledges that the Beneficiary is entitled to carry out its Marine Industry and/or Fishing Industry activities on the Second Land.
4. **Noise levels:** The Covenantor acknowledges that the Beneficiary's Marine Industry and/or Fishing Industry activities operate and may continue to operate at night at the noise levels set out in rule 14.9.12.8.2 of the Central Area Plan, any existing resource consents for those activities or under existing use rights when measured 1 metre from the façade of any building located in Noise Area 2. These noise levels are set out in Annexure 1.
5. The Covenantor for itself and its successors in title to the First Land (or any part of it) hereby covenants, acknowledges and agrees with the Beneficiary and its successors in title to the Second Land or any part of it as a positive covenant for the benefit of the registered proprietors and users from time to time of the Second Land, that the Covenantor will henceforth and at all times hereafter observe and perform all the stipulations and restrictions contained in the Third Schedule and this deed to the end and intent that each of the stipulations and restrictions shall, in the manner and to the extent prescribed, forever enure for the benefit of, and be appurtenant to, the whole of the Second Land and every part thereof.
6. The Covenantor acknowledges that the terms and covenants contained in this deed shall bind and run with the First Land and the Covenantor shall do all things necessary to effect registration of this deed against the computer freehold register(s) and computer interest register(s) to the First Land.
7. **Separate interests:** Where the Covenantor is the registered proprietor or proprietor of an estate in leasehold which is of a separate and definable interest in the First Land in respect of which a separate instrument of title has issued (separate interest), the obligations of the Covenantor set out in this deed will relate only to the Covenantor's separate interest and not a separate interest of any other registered proprietor of the First Land or any part of or interest in the First Land.
8. **Indemnity:** The Covenantor agrees that it will at all times indemnify the Beneficiary from all proceedings, costs, claims and demands in respect of breaches by the Covenantor of the terms and covenants contained herein and implied on behalf of the Covenantor which occurred while the Covenantor was the registered proprietor of the First Land.
9. **Conduct of Marine Industry and/or Fishing Industry Activities:** The Beneficiary must conduct its Industry, Marine Industry and/or Fishing Industry activities in accordance with the provisions of any relevant plan and/or resource consent granted to it, and/or any existing use rights, in relation to Industry, Marine Industry and/or Fishing Industry activities.



Executed as a deed.

SIGNED by [] as Covenantor:

Full name of director/authorised signatory

Signature of director/authorised signatory

Full name of director/authorised signatory

Signature of director/authorised signatory

Witness:
(if other than two directors sign)

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SIGNED by [] as the Beneficiary

Full name of director/authorised signatory

Signature of director/authorised signatory

Full name of director/authorised signatory

Signature of director/authorised signatory

Witness:
(if other than two directors sign)

Signature of witness

Full name of witness

Occupation of witness

Address of witness



**FIRST SCHEDULE
(Land)**

The [] interest(s) in computer freehold register/computer interest register [] being [].



**SECOND SCHEDULE
(Second Land)**

Describe the Second Land



THIRD SCHEDULE (Covenants)

The Covenantor agrees that it shall not lodge or permit to be lodged with the Environment Court, the High Court, Auckland City Council or the Auckland Regional Council or any other territorial or other authority having jurisdiction, any objection to the Beneficiary carrying out its Marine Industry and/or Fishing Industry and/or Industry activities from the Second Land. In that regard the Covenantor agrees it shall not:

1. Lodge, permit to be lodged or encourage any other party to lodge with the Auckland City Council, the Auckland Regional Council or any other territorial or other authority having jurisdiction any submission in opposition to any application by or on behalf of the Beneficiary for resource consent to carry out Marine and / or Fishing Industry and/or Industry activity on or in connection with the Second Land or for a change to the terms and conditions of any such resource consent.
2. Lodge, permit to be lodged or support or encourage any other party to lodge or support any complaint with the Auckland City Council, the Auckland Regional Council or any other territorial or other authority having jurisdiction regarding the carrying out by the Beneficiary, its servants or its invitees of Marine and / or Fishing Industry and/or Industry activity on or in connection with the Second Land.
3. Make, support, permit to be made or encourage any other party to make or support any application to the Environment Court for a declaration or enforcement order regarding the carrying out by the Beneficiary, its servants or its invitees of Marine and / or Fishing Industry and/or Industry activity on or in connection with the Second Land.
4. Make, support, permit to be made or encourage any other party to make or support any application to the High Court or any other judicial body for an injunction, declaration or other order concerning the carrying out by the Beneficiary, its servants or its invitees of Marine and / or Fishing Industry and/or Industry activity on or in connection with the Second Land.



Annexure 1

Noise Source Location	Noise Limit		Noise Receiver Location
	Day 7am-11pm	Night 11pm-7am	
Noise Areas 1, 2	L ₁₀ 60dBA	L ₁₀ 55dBA L ₁₀ 66dB @ 63Hz L ₁₀ 62dB @ 125Hz L _{max} 90dBA	Noise Area 2

