

Form 26

Covenant Instrument to note land covenant

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

Covenantor

CARRACK CAPITAL LIMITED

Covenantee

CARRACK CAPITAL LIMITED

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

Purpose covenant	of	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land covenant		DP TBC	Lot numbers TBC R/T's TBC	Lot numbers TBC R/T's TBC

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].

FORM OF BUILDING ENHANCEMENT COVENANT

BACKGROUND

Pursuant to the intentions expressed in this instrument, the Covenantor for themselves and their successors in title, hereby covenants with the Covenantee in respect of the Burdened Land that the Covenantor will observe and perform in perpetuity each of the land covenants described in this instrument to the intent that each of the land covenants shall be for the benefit of the Benefited Land from the date of registration of this instrument.

2. DEFINITIONS AND INTERPRETATIONS

Definitions

- 1.1 In this covenant, unless the context otherwise requires:

"Design Panel" means Carrack Capital or such other design panel as is appointed by time to time by Carrack Capital Limited.

"Development" means the subdivision of Section 1 Survey Office Plan 453850 and Lot 2 and 6 and part of Lot 5 on DP19157 comprised in record of title 628370 and NA689/282.

"Lot" means any Lot that is subject to these Covenants;

"Lot Owner" means the owner of any Lot;

"Plans" means consented building plans for the construction of any dwelling (or part of a dwelling) intended to be constructed on a Lot and shall include landscaping and fencing plans.

"Resource Consent" means all resource consents in relation to the development including without limitation which and any other or any variations thereof.

"Relevant Authority" means (as applicable) the local or regional council, local authority, water or other infrastructure provider including any provider of water, drainage, gas or electricity;

"Residential Lot" means any Lot that contains a Dwelling or is intended to contain a Dwelling.

"Vendor" means Carrack Capital Limited.

3. DESIGN CONTROLS

- 3.1 If, at any time within the 10 years from the date of registration of this land covenant, the Lot Owner proposes to construct a dwelling on a Residential Lot, the Lot Owner must first comply with this clause 3.
- 3.2 Prior to commencement of the construction, the Lot Owner must provide the Design Panel with copies of the Plans for any dwelling the Lot Owner intends to construct on the Residential Lot, including a landscape and fencing plan.
- 3.3 The Lot Owner must not commence construction without first obtaining the Design Panel's approval of the Plans which approval shall not be unreasonably withheld where the Plans materially comply with the Design Controls. The Lot Owner must ensure that any construction undertaken is completed in accordance with the approval given pursuant to this clause.
- 3.4 The Lot Owner must pay a design approval application fee to the Design Panel as set out in or determined in accordance with the Design Controls.

4. COVENANTS

4.1 The Lot Owner shall not:

- (a) Object to any of the operations or viticultural practices for the Babich Winery currently operating on the neighbouring property being the land in Section 2 on SO 453850.
- (b) Use or occupy any building as a residence until such time as construction has been completed, all the exterior sheeting and finishing including exterior painting has been completed and a Code Compliance Certificate has issued for the building.
- (c) Erect or permit to be erected any second-hand, relocated or temporary buildings to be placed on the land:
- (d) Fail to maintain or keep fences and gates in good repair.
- (e) Erect or allow to be erected or changed any fence on the property or permit any fence or boundary wall or living fence including any hedge, shrub or tree other than as permitted by the Resource Consent and approved by the Design Panel.
- (f) Call upon the Vendor to pay or contribute towards the cost of erection or maintenance of any boundary fence between the property and any adjoining Lot owned by the Vendor, provided that this covenant shall not endure for the benefit of the subsequent transferee of such adjoining land.
- (g) Permit any rubbish to accumulate and/or to be placed upon the land or permit grass or weeds to grow in excess of 100mm in height or to become unsightly, or allow any waste, soil or other matter to foul the road way, footpaths or berms. If the Lot Owner fails to perform its obligations under this sub-clause, the owner of a Benefited Lot shall be entitled (but not obliged) to mow the sections, but the Lot Owner accepts and acknowledges that this does not absolve the Lot Owner from its obligations under this clause. The Lot Owner

will be liable for any costs incurred by the Benefited Lot due to the default of the Lot Owner under this clause.

- (h) Permit or allow rubbish, junk, car bodies, unregistered or immobile or broken down vehicles, equipment including trailers, litter or other similar unsightly items to accumulate or be placed upon the Lot or otherwise allow the Lot to become unsightly.
- (i) Permit or allow any vehicles to be parked on the property in a location other than the driveway or the designated parking bays.
- (j) Store, erect or permit to be stored or erected upon the Lot any caravan, bus, shed except such caravan, bus or shed as will be used as a builder's shed in conjunction with the construction of the permanent dwelling which will be placed on the Lot at the commencement of construction of the permanent dwelling and removed immediately on completion of the construction of the permanent Dwelling.
- (k) Use or permit the Lot to be used for any trading or commercial purposes except for the display of the land and buildings for resale purposes or show home display.
- (l) Construct a vehicle crossing and driveway unless they are completed to the Territorial Authority's standard and specifications prior to occupation of the residence.
- (m) Install or allow to be installed any of the following: -
 - (i) External alarm. For the avoidance of doubt, internal alarms (including monitored internal alarms) are permitted; or
 - (ii) External heat pump, air condition units or gas bottles which are visible from the street, any right of way or pathway unless adequately screened; or
 - (iii) Television aerial or satellite dish which is visible from the road or above the apex of the roof; or
 - (iv) Permanent or temporary washing line which is visible from the street, any right of way or pathway; or
 - (v) Signage on the property other than "for sale" or "for rent" signs.
- (n) Fail to remove or repair any graffiti or vandalism within 48 hours or as soon as is reasonably practicable.

5. FENCING

- 5.1 Any Lot which shares a boundary with the land in Record of Title 628371 being Section 2 on SO 453850 (currently owned by Babich Wines Limited) shall be responsible for the costs of erecting a boundary fence between the Lot and Section 2 on SO 453850. The boundary fence must be constructed in accordance with plans and specifications required by the owner of Section 2 SO 453850 "Fence Design" which have been provided to the Vendor. The Fence Design is to form of the design approval process in clause 3. Details of the required Fence Design will be provided to any Lot Owner by the Design Panel.

6. NO OBJECTION

6.1 The Lot Owner covenants with the Vendor as follows:

- (a) That the Lot Owner shall neither submit in opposition nor permit nor suffer any agent or employee or any other representative to submit in opposition nor support any submission in opposition to:
 - (i) Any present or future application for any resource consent made by the Vendor or made on behalf of the Vendor or supported in part or in full by the Vendor to subdivide develop or rezone any of the Vendor's land.
 - (ii) Any change or variation to or review of any provision of any Auckland district plan in respect of any land owned by the Vendor.
 - (iii) Any dispensation or consent required in connection with any application for a resource consent or approval made by the Vendor or on its behalf in connection with the Vendor's proposal to subdivide or develop any of its land.
 - (iv) Any change to or variation or review of any district plan or regional plan which would allow the Vendor's proposal to subdivide or develop any of the Vendor's land.
 - (v) Not to oppose the Vendor's interest in any appeals arising from any of the matters contained, mentioned or referred to in paragraph (a) of this clause.
- (b) This clause shall cease to be of any effect when the Vendor disposes of the last of the lots owned by the Vendor in the subdivision.

6.2 The Vendor has the right at its absolute discretion to assign to any person, persons or organisations the Vendor's powers of approval and rights of enforcement in respect of this Building Enhancement Covenant. The decision of such person, persons or organisations shall be binding on the Purchaser as if made by the Vendor.

7. BREACH BY LOT OWNER

7.1 The Lot Owner for itself and its successors in title covenants and agree with the Developer and the Benefiting Lots that the Lot Owner will at all times observe and perform all these Covenants to the intent that each of the Covenants will enure for the benefit of and be appurtenant to both the Developer and to each and all of the Benefiting Lots provided that the Lot Owner will be liable only for breaches of these Covenants which occur whilst the Lot Owner is the registered proprietor of the Property or any part of the Property.

7.2 If there should be any breach or non-observance on the Lot Owner's part of any of these Covenants and without prejudice to any other liability which the Lot Owner may have to the Developer and any person or persons having the benefit of those Covenants, the Lot Owner will, upon written demand be made by the Developer or any of the Lot Owners on behalf of all the Benefiting Lots:

- (a) Remove or cause to be removed from the property any building, structure or other item used, erected commenced or repaired in breach or non-observance of covenants and conditions;
- (b) Replace any building material used or permitted to be used in breach or non-observance of the covenants and conditions with building materials which comply with the Vendor's requirements under these covenants and with any approval of any proposal submitted by the Purchaser; and
- (c) Pay to the person making such demand as liquidated damages the sum of \$500 per day for each day that such breach or non-observance continues after the date upon which written demand has been received. The said amount of \$500 shall be increased annually by reference to the Consumer Price Index (CPI) (All Groups) or equivalent replacement index.