

**FULL CONSERVATION COVENANT
PURSUANT TO SECTION 77 RESERVES ACT 1977**

**CANTERBURY CLUB INCORPORATED
THE OWNER**

**CHRISTCHURCH CITY COUNCIL
THE COUNCIL**

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Christchurch
City Council 

AGREEMENT dated this _____ day of _____ 2009

BETWEEN CHRISTCHURCH CITY COUNCIL (the "Council")

AND CANTERBURY CLUB INCORPORATED ("the Owner")

THE PARTIES AGREE AS FOLLOWS:

1. BACKGROUND

1.1 The Owner is the registered proprietor of the land described in the First schedule ("the Property").

1.2 The Council and the Owners have agreed that this Covenant shall apply only to that part of the Property shown as Areas Marked E, F, G, H, I and K on Deposited Plan 382629 ("the Covenant Area").

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~~1.21.3~~ As a result of the circumstances shown in the Second schedule, it has been agreed:

- (a) that the Owner will enter into the covenants in the Council's favour as set out in the Third schedule;
- (b) that the Owner will be bound by the general terms and acknowledgements as set out in the Fourth schedule;
- (c) that, notwithstanding anything else, the items or structures listed or recorded (if any) in the Fifth schedule shall not be subject to the terms of this Covenant.

2. NOW THIS DEED WITNESSES that

2.1 The Owner covenants with the Council as set out in the Third schedule and Fourth schedule.

2.2 Notwithstanding anything else, the parties agree that the items or structures listed or recorded (if any) in the Fifth schedule shall not be subject to the terms of this Covenant.

THE COMMON SEAL of the)
CHRISTCHURCH CITY COUNCIL)
was hereto affixed in the presence of:)

_____ Mayor/Councillor

_____ Authorised Officer

SIGNED by the said)
CANTERBURY CLUB)
INCORPORATED)
in the presence of:) _____

Signature of Witness: _____

Full Name of Witness: _____

Occupation of Witness: _____

Address of Witness: _____

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FIRST SCHEDULE

The Property

1. The Owner is registered as proprietor of an estate in fee simple in the property known as The Canterbury Club located at 129 Cambridge Terrace, Christchurch and comprised in [Computer Freehold Register 330157 \(Canterbury Registry\)](#) ("the Property"). (In this Covenant that land, together with the buildings on the land, are jointly and severally referred to as "the Property").
2. [The Council and the Owners have agreed that this Covenant shall apply only to that part of the Property shown as Areas Marked E, F, G, H, I and K on Deposited Plan 382629 \("the Covenant Area"\).](#)

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SECOND SCHEDULE

Circumstances

1. Section 77 of the Reserves Act 1977 provides that the Council may enter into a covenant with the owner of any property to provide for its management so as to preserve the heritage value of that property.
2. The Property is listed in Group 2 of the list of protected buildings places and objects in the Christchurch City Plan. The Property also has a Category 2 registration under the New Zealand Historic Places Act 1993 (In this covenant references to the "Christchurch City Plan" means the proposed plan notified in 1995 (as amended after that date) and any plan under the Resource Management Act 1991 for Christchurch City which supersedes the plan notified in 1995).
3. In consideration of the payment of a heritage grant of \$217,350.00 ~~exclusive~~-inclusive of GST ([if any](#)) ("the Grant") by the Council to the Owner the Owner has agreed to enter into this Covenant.

THIRD SCHEDULE

Covenants

AGREED SCOPE OF CONSERVATION AND MAINTENANCE WORKS / PREPARATION OF CONSERVATION PLAN

1. The Owner and the Council agree that they will, with all due diligence, consult and negotiate in good faith with a view to agreeing upon a conservation plan for the Property-Covenant Area ("the Conservation Plan").
2. In addition to the works provided for in the Conservation Plan the Owner and the Council have agreed to the conservation and maintenance works to be undertaken by the Owner in respect of the Property-Covenant Area as specified in the sixth schedule hereto ("the Agreed Scope of Conservation and Maintenance Works").

RESTORATION MAINTENANCE AND CONSERVATION

3. The Owner covenants with the Council:
 - 3.1 to within 3 years undertake the conservation and maintenance works specified in the Agreed Scope of Conservation and Maintenance Works; Formatted: Justified
 - 3.2 to, subject to clause 4 hereof, restore, maintain, not demolish and conserve the Property-Covenant Area in accordance with the Conservation Plan agreed pursuant to clause 1 of the third schedule;
 - 3.3 that the Owner will within 3 years of the date of this Covenant expend not less than the sum of the Grant in and towards the restoration maintenance or conservation of the Property-Covenant Area and will use the Grant solely for these purposes. The Owner shall provide the Council with written evidence of such expenditure upon demand; Formatted: Justified
 - 3.4 the Owner shall be entitled to draw against the Grant to meet the obligations with respect to the costs associated with the works referred to in 3.3 on:
 - (a) approval of an invoice for the same by the Council, such approval to be not unreasonably withheld; and
 - (b) the inspection and approval of the Works to which the above invoice relates on behalf of the Council; and
 - (c) registration of this Covenant against the title of the Property;
 - 3.5 if the Owner is in breach of its obligations under clause 3.3, the Council may by written notice suspend all future payments of the Grant unpaid under this Covenant until evidence of such expenditure has been provided to the satisfaction of the Council.

ALTERNATIVE PROVISIONS WHERE CONSERVATION PLAN DOES NOT APPLY

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4. The parties agree that:

4.1 where pursuant to Clause 1 of this Third schedule the parties are required to agree upon a Conservation Plan for the PropertyCovenant Area, in the event that:

- (a) the parties have not yet agreed or are unable to agree the terms of the Conservation Plan; or
- (b) the terms of the Conservation Plan have been agreed but are silent on the point then in issue; or
- (c) the parties are unable to agree upon the interpretation of the Conservation Plan and that disagreement has not been able to be resolved by mediation as provided in clauses 21 to 24 of the fourth schedule to this Deed (inclusive);

then, the provisions of this clause 4 of this Third schedule shall apply in lieu of clause 3 of this Third schedule.

4.2 In the event that this clause 4 shall apply:

(a) subject to Clause 3.4(b), the Owner covenants to maintain and conserve the Property-Covenant Area and without limiting the generality of the foregoing the Owner will not damage, demolish, alter, remove or add to, or permit to be damaged, altered demolished, removed or added to, in whole or in part any buildings or any setting of any buildings on the PropertyCovenant Area;

(b) the Owner agrees that:

- (i) any proposed demolition, modification, alteration of or addition to the exterior or interior of the buildings on the PropertyCovenant Area; or
- (ii) any proposed construction of additional buildings on the PropertyCovenant Area; or
- (iii) any proposed demolition, modification, alteration or addition to the setting of any buildings on the Covenant AreaProperty;

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will require the prior written consent of the Council (in addition to any resource consent required under the Christchurch City Plan and/or any Building consent required under the Building Act 2004). The Council shall have full discretion whether to grant that consent and may impose such reasonable conditions to its consent as the Council thinks fit.

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(c) when exercising its discretion under clause 4.2 the Council may have regard to, without limitation, all or any of the following matters:

- (i) the extent to which the proposed works could potentially compromise heritage values (as those words are understood by reference to the relevant policies and rules contained in the Christchurch City Plan);
- (ii) the degree of the proposed loss of Heritage Fabric, including the incremental affect of any previously approved works. For these purposes "Heritage Fabric" shall have the same meaning given to those words by the Christchurch City Plan;
- (iii) the likely impact of any proposed changes to the setting of the buildings on the Covenant Area Property on the heritage values of the Covenant Area Property;
- (iv) the ability of the proposed works to be reversed at a subsequent date;
- (v) the likely effect of the proposed works on visual appearance;
- (vi) the necessity or otherwise of the proposed works as a means of ensuring that the Covenant Area Property may continue to have an economic use;
- (vii) the extent to which the proposed works are deemed necessary to assist in the long term conservation of the Covenant Area Property;
- (viii) the likely effect of the proposed works on structural integrity and earthquake resistance, including the incremental effect of any previously approved works;
- (ix) the relevant provisions of the ICOMOS New Zealand Charter for the conservation of places of cultural heritage value applicable from time to time ("the Charter");
- (x) any other matter that may appear relevant to the Council in the circumstances.

4.3 The Owner acknowledges that, for the purposes of clauses 4.1 and 4.2 above that:

- (a) "buildings" means not only the physical structure but also extends to include those fixtures, fittings, light fittings and electrical switches and sockets which form part of the Heritage Fabric and are identified in the Conservation Plan. Any chattels, plant, fixtures, fittings and equipment owned by any tenants of the Covenant Area Property are excluded from the definition of "buildings" for the purposes of clauses 4.2(b) and 4.2(c); and
- (b) "setting" shall have the same meaning given to those words by the Christchurch City Plan. The maintenance of any landscaping on the Covenant Area Property including the replacement of plant species with

similar plant material is not considered to be a matter requiring consent in terms of Clause 4.2 of this Covenant.

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FOURTH SCHEDULE

General Terms and Acknowledgements

OWNER'S USE OF THE PROPERTY COVENANT AREA

1. The Council agrees that, subject to the covenants in the Third schedule, the Owner may use the Covenant Area Property for any purpose which:
 - 1.1 is a compatible use not resulting in any change to the heritage values of the Covenant Area Property, or involves changes which are substantially reversible or changes which will have only a minimum impact on those values; and
 - 1.2 complies with the relevant provisions of the Resource Management Act 1991, the Building Act 2004 and any other relevant legislation.
2. The Owner acknowledges that, because the Covenant Area Property is listed in Group 2 of the Christchurch City Plan and the Covenant Area Property also has a Category 2 registration under the New Zealand Historic Places Act 1991, the Covenant Area Property may be an archaeological site in terms of section 2 of the Historic Places Act 1993 and the Owner will comply with the provisions of that Act.

MAINTENANCE

3. The Owner will at its own expense maintain the Covenant Area Property in good and substantial repair and condition, having regard to its heritage values. The Owner further agrees that all maintenance and conservation work undertaken on Heritage Fabric will be executed in a manner consistent with the provisions of the Charter, the Christchurch City Plan and the Agreed Scope of Conservation and Maintenance Works or the Conservation Plan agreed to pursuant to the Third schedule. All maintenance and conservation work undertaken by the Owner in respect of the Covenant Area Property will be subject to an application for a resource consent where any such maintenance and/or conservation work is deemed to fall within the definition of "alteration" contained within the Christchurch City Plan.

INSURANCE

4. The Owner agrees to maintain a comprehensive policy of insurance on the Covenant Area Property to its full replacement value, including demolition fees and architects fees. The Owner shall not do or allow anything to be done which would prejudice that insurance policy or cause it to lapse. If the Owner is unable to arrange insurance to full replacement value because of the age or state of the property the Owner will not be in breach of its obligations under this clause while maintaining a comprehensive insurance policy on a full indemnity basis.

DAMAGE TO OR DESTRUCTION OF PROPERTY COVENANT AREA

5. In the event the Covenant Area Property or any part thereof is damaged or destroyed from any cause whatsoever, the Owner agrees to notify the Council immediately.
6. Should the Council in its own discretion determine that the Covenant Area Property has been completely destroyed or damaged, then the obligations of the Owner (save the Owner's obligations under Clauses 18 and 19 of this Fourth schedule) and the Council under this Covenant in respect of that part of the Covenant Area Property so damaged or destroyed shall immediately cease. Any termination pursuant to this clause shall be without prejudice to the rights of either party against the other.
7. Should the Council in its own discretion determine that the Property Covenant Area has been partially destroyed or damaged but the heritage values of the Property Covenant Area have not been lost, or the Heritage Fabric has been damaged and it is practicable or desirable to repair, restore or reinstate the Heritage Fabric, and:
 - 7.1 the Owner's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequences of some act or default of the Owner; and
 - 7.2 all the necessary permits and consents (including any resource consent required under the Christchurch City Plan and/or building consent required under the Building Act 2004) shall be obtainable;

THEN the Owner shall with all reasonable speed expend all the insurance moneys received by the Owner in respect of such damage towards repairing such damage or reinstating the Covenant Area Property but the Owner shall not be liable to expend any sum of money greater than the amount of the insurance money received. Any repair or reinstatement shall be subject to the provisions of clause 4.2 of the Third schedule to this Deed.

8. If any necessary permit or consent referred to in clause 7.2 of this Schedule shall not be obtainable, or the insurance monies received by the Owner shall be inadequate for the repair or reinstatement (other than by reason of a failure on the part of the Owner to insure the Covenant Area Property as provided for in clause 4 of this Schedule) then the obligations of the Owner and Council under this Covenant in respect of that part of the Property so affected shall cease but without prejudice to the rights of either party against each other.

SUBDIVISION

9. The Owner will not undertake any subdivision, within the meaning of Section 218 of the Resource Management Act 1991, of the Covenant Area Property without the prior written consent of the Council (in addition to any subdivision consent required under that Act) notwithstanding such subdivision may fully comply with the relevant provisions of the Christchurch City Plan. The Council shall have full discretion whether to grant the consent and may impose such reasonable conditions to its consent as the Council

thinks fit. When exercising its discretion the Council may have regard to, without limitation, all or any of the following matters:

- 9.1 the probable effect of the subdivision proposal, and associated works, on heritage values;
- 9.2 the desirability or otherwise of the subdivision proposal as a means of assisting in the long term conservation of any part of the Covenant Area Property;
- 9.3 the necessity or otherwise of the proposed subdivision as a means of ensuring that the Covenant Area Property may continue to have an economic use; and
- 9.4 any other matter which may appear relevant to the Council in the circumstances.

COUNCIL INSPECTIONS

10. The Owner will allow the Council access to inspect the Covenant Area Property at all reasonable times and upon reasonable notice for the purpose of ensuring compliance with the provisions of this Covenant. In exercising its rights of inspection the Council will cause as little inconvenience as possible to any occupant or tenant of the Covenant Area Property.

COSTS

11. The parties agree that:
 - 12.1 the costs of preparation and registration of this Covenant shall be borne by the Council, but in all other respects each party shall bear their own costs in relation to the negotiation and execution of this Covenant;
 - 12.2 the costs of preparing the conservation plan referred to in clause 1 of the Third schedule shall be borne by the Council.

MISCELLANEOUS

13. The Owner acknowledges that, upon registration, this Covenant shall be binding upon successors in title (Section 77(4) of the Reserves Act 1977).
14. Where there is more than one Owner, this Covenant will bind each owner jointly and severally.
15. Where the Owner is a company this Covenant will bind a receiver, liquidator, statutory manager or statutory receiver and, where the Owner is a natural person, will bind the Official Assignee, and in either case will bind a mortgagee in possession.
16. The reference to any Act or charter in this Covenant extends to include any amendment to or re-enactment of that Act or revision of that charter.
17. In any case where Council is required to give a consent under this Covenant, such consent shall not be binding unless given in writing and signed by two members of the

~~Heritage Subcommittee with the delegated authority of the Council, or by some other~~
person with written delegated authority to bind the Council in that regard.

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BREACH

18. If the Owner shall be in breach of any of the terms of this Covenant then the Owner will immediately repay to the Council the Grant plus an adjustment equal to the increase, expressed as a percentage, in the Consumer Price Index (All Groups) published by Statistics New Zealand or other governmental agency, during the period from the date of this Deed to the date the Council gives the notice referred to in Clause 19 of this Fourth schedule. Provided that the parties acknowledge that repayment of the Grant under this Clause 18 shall not have the effect of terminating this Covenant and the parties' obligations under this Covenant shall continue at the option of the Council save the obligation to make the Grant in terms of the Second schedule and Third schedule.
19. If the Grant is not repaid within 20 working days of receipt of a notice by the Owner from the Council requiring repayment then the Council may charge interest on the amount not so paid at the default interest rate, calculated on a daily basis, from the due date for payment until the date of actual payment. The default interest rate shall be the Bank of New Zealand base rate on the due date of payment plus 5 per cent per annum.

NOTICES

20. Any notice under this Covenant may be given as provided in the Property Law Act [1952](#) [2007](#) and in any event shall be deemed sufficiently served if:
 - 20.1 it is actually received by the addressee or its authorised representative; or
 - 20.2 sent by post or fax to the addressee's last known service address in New Zealand; or
 - 20.3 in the case of a body corporate sent to its registered office.

Any notice sent by post shall be deemed to have been served on the day following the posting.

DISPUTE RESOLUTION NOTICE

21. In the event of any dispute or difference arising between the parties at any time as to the interpretation of this Covenant, or as to any matter or thing arising out of or in connection with this Covenant, either party may give to the other written notice adequately identifying the subject matter of that dispute or difference. The giving of this notice will be a condition precedent to the commencement by either party of proceedings (whether by way of mediation, arbitration or litigation) in respect of any dispute or difference. This clause does not, however, limit the right of either party to seek urgent interlocutory relief by way of Court proceedings.

MEDIATION

22. Within 14 days from the date of service of the notice referred to in clause 21 of the Fourth schedule either party may give written notice to the other party that it requires the dispute or difference to be referred to mediation. Upon receipt by the other party of that notice the dispute or difference (unless meanwhile settled) will then be referred to mediation pursuant to clause 23 of the Fourth schedule.
23. Within 7 days of service of the notice referred to in clause 21 of the Fourth schedule the parties will agree upon the Mediator to be appointed. If the parties are unable to agree, either party may request the President of the ~~Canterbury District~~New Zealand Law Society to appoint a Mediator:
 - 23.1 the dispute or difference will be the subject of mediation for a period of 28 days (or such longer period as agreed by the parties) from the date upon which the Mediator accepts appointment;
 - 23.2 neither party will be entitled to commence or maintain any action in respect of the dispute without the consent of the Mediator during that period;
 - 23.3 each of the parties will promptly carry out such reasonable steps as may be requested by the Mediator;
 - 23.4 the parties acknowledge that the purpose of any exchange of information or documents or the making of any offer during mediation is to be taken only as an attempt to settle the dispute. No party may use any information or documents obtained during mediation for any purpose other than in an attempt to settle a dispute;
 - 23.5 after the expiration of the time established by or agreed under clause 23.1 of the Fourth schedule, any party which has complied with the provisions of clauses 21 to 23 (inclusive) of the Fourth schedule may in writing terminate the mediation and refer the dispute to arbitration or commence Court proceedings;
 - 23.6 each party shall bear their own costs in relation to any mediation. The costs of the Mediator shall be borne by the parties in equal shares.

ARBITRATION

24. A dispute referred to arbitration shall be referred to the arbitration of a single arbitrator if the parties can agree, or if they cannot agree within 14 days to a single arbitrator appointed by the President for the time being of the ~~Canterbury District~~New Zealand Law Society at the request of either party, and shall be conducted in accordance with the provisions of the Arbitration Act 1996.

THE COUNCIL ACTING AS TERRITORIAL AUTHORITY

25. The Owner acknowledges that:

25.1 the Council, in its capacity as a territorial authority, is required to carry out its statutory consent functions under the Resource Management Act 1991 and the Building Act 2004 in accordance with the provisions of those statutes;

25.2 the granting by the Council of any consent or approval by the Council as territorial authority under either of those Acts shall not of itself be deemed to be a consent or approval by the Council (in its capacity as grantee) under this Covenant;

25.3 the Council is bound by statutory obligations to exercise its powers, including discretionary powers and duties under either of those Acts without regard to any relationship it may have with the Owner under this Covenant.

INDEMNITY

26. The Owner shall pay the Council's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Council's rights, remedies and powers in this Covenant and shall in addition to the Owner's obligations under Clauses 18 and 19 of the Fourth schedule, indemnify the Council against all claims and proceedings arising out of a breach by the Owner of any of its obligations set out in this Covenant.

GOODS AND SERVICES TAX (GST)

27. The parties believe that the Grant is not subject to GST. If however the Inland Revenue Department makes a ruling that the Grant is subject to GST then the GST portion of the Grant shall be payable by the Owner.

FIFTH SCHEDULE

Items or Structures Excluded

The items or structures listed below or shown on the plan attached to this Fifth schedule shall, notwithstanding anything else, not be subject to the terms of this Covenant:

The Wilkie and Brice designed building constructed in 2008 and 2009.

SIXTH SCHEDULE

Agreed Scope of Conservation and Maintenance Works (Clause 2, Third schedule)

COTTAGE

Relocate, build new foundation, re-clad exterior, build chimney, re-roof, repair sliding sash windows, lath and plaster.

MAIN BUILDING

Strengthen building and chimneys, remove asbestos ceiling/linings, re-roof, replace rotten timber, reinstate original billiard room walls, remove the 1970's bar and restore partitions to 1908 plan, redecorate exterior, repair sash windows, floors, internal walls.