

Memo

23 May 2019

To: Phill Reid, Auckland-wide Manager



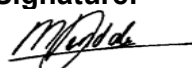

From: **Nicholas Lau – Principal Planner**

Subject: **Plan Modification: Clause 20A Amendment to Chapter K of the Auckland Unitary Plan (AUP) Operative in part (15 November 2016).**

Delegated authority to T4 manager through Schedule 2A of the Auckland Council Combined Chief Executives Delegation Register (Updated May 2017).

This plan modification requires decision-making pursuant to clause 20A of the First Schedule to the Resource Management Act 1991, as corrections are required to the Auckland Unitary Plan (Operative in Part).

Rule or Section of Unitary Plan	Chapter K Designations
Subject Site (if applicable)	George Bolt Memorial Drive, Mangere
Nature of changes	Text corrections are required to Attachment C to Designation 1100 in the Operative in Part version. The text corrections have been necessitated by the Land Transfer Act 2017 which came into force in November 2018 introducing (among other things) a new land covenant instrument as well as various changes to the terminology and references used in registerable instruments. Consequently, text in Auckland Airport's template land covenant form (Attachment C to Designation 1100 in the the Auckland Unitary Plan (Operative in Part)) needs to be corrected so that it's consistent with the Land Transfer Act 2017.
Effect of changes	I consider that the nature of the changes are minor. No person would benefit or be prejudiced by the changes. Mistake is corrected. No additional benefits or potential are imparted. No rights or benefits are removed. No policy issues are raised.
Changes required to be made	Amend Attachment C to Designation 1100 in the Operative in Part version, as per text corrections detailed in Appendix 1 to this memorandum

Prepared by: Nicholas Lau Principal Planner	Text entered by: Sophia Coulter Planning Technican
Signature: 	Signature: 
Reviewed by: Marc Dendale Team Leader – Central/South	Signed off by: Celia Davison Manager - Central/South
Signature: 	Signature: 

Appendix 1 - Text changes with Strike-through and Underlines

Form 26B

Covenant Instrument to note land covenant~~Easement instrument to grant easement or profit à prendre, or create land covenant~~

(Sections 116(1)(a) & (b)~~90A and 90F~~ Land Transfer Act 2017~~1952~~)

GranCovenantor _____ *Surname must be underlined*

GranCovenantee _____ *Surname must be underlined*

Auckland International Airport Limited

Grant of Easement or Profit à prendre or Creation Grant of Covenant

~~The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).~~

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 (Nature and extent) of easement; profit or c Covenant	Shown (plan reference)	Servient Tenement Burdened Land (Computer RegisterRecord of Title)	Dominant Tenement Benefitted Land (Computer RegisterRecord of Title) or in gross
Land Covenant	N/A	The land described in Schedule 1	The land described in Schedule 2

~~Easements or profits à prendre rights and powers (including terms, covenants and conditions)~~

Delete phrases in { } and insert Memorandum number as required; continue in additional Annexure Schedule, if required

~~Unless otherwise provided below, the rights and powers implied in specified classes of easements are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007~~

~~The implied rights and powers are hereby {varied}{negatived}{added to} or {substituted} by:~~

~~{Memorandum number {insert}, registered under section 155A of the Land Transfer Act 1952}{the provisions set out in Annexure Schedule}~~

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

provisions

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 {insert}, registered under section 155A 209 of the Land Transfer Act 19522017}~~

Annexure Schedule.

SCHEDULE 1

(~~Servient Tenement~~Burdened Land)

<i>Legal Description</i>	<i>Area (ha)</i>	<i>Title Reference</i>

SCHEDULE 2

(Dominant Tenement Benefitted Land)

The following parcels of land:

Legal Description	Area (ha)	Record of Title Reference
Part allotment 163 of Parish of Manurewa	19.6196	NA47C/137
Allotment 164 Parish of Manurewa	21.8530	NA47C/82
Lot 3 Deposited Plan 38518	0.9105	NA1675/15
Lot 1 Deposited Plan 28940	38.5463	NA985/62
Lot 15 Deposited Plan 13141	2.0513	NA305/113
Part Allotment 163 Parish of Manurewa	0.6533	NA1691/38
Lot 1 Deposited Plan 144042 and Section 1 Survey Office Plan 67433	20.3965	NA105D/359
Lot 2 Deposited Plan 62092	37.8887	NA24A/830
Part Allotment 179 Parish of Manurewa	2.6133	NA78D/185
Part Allotment 163 Parish of Manurewa	0.3581	NA55A/937
Lot 1 Deposited Plan 111094	0.5094	NA62C/558
Lot 1 Deposited Plan 94420	10.0219	NA58D/290
Lot 1 Deposited Plan 125742	0.53665566	NA73B/518
Allotment 497 Parish of Manurewa	0.4047	NA78D/204
Part Allotment 179 Parish of Manurewa	0.2024	NA78D/183
Lot 1 Deposited Plan 46409	36.6342	NA78D/191
Lot 2 Deposited Plan 46409	36.6089	NA78D/192
Lot 1 Deposited Plan 103178	3.7408	NA56D/993
Part Lot 2 Deposited Plan 12194	24.7847	NA56B/945
Part Lot 1 Deposited Plan 13104	19.6273	NA78D/205
Lot 2 Deposited Plan 421357 and Allotment 561 Parish of Manurewa	20.9102	482062
Part Lot 2 Deposited Plan 32275 and Lot 3 Deposited Plan 421357	12.6388	482063
Lot 1 Deposited Plan 51077	6.0703	NA1B/711
Part Allotment 89 Parish of Manurewa and Lot 2 Deposited Plan 125742	44.9201	NA586/220
Lot 3 Deposited Plan 353776	28.7665	219885
Lot 2 Deposited Plan 417367	1.4246	474467
Lot 1 Deposited Plan 461285	17.7472	606579
Lot 29 Deposited Plan 423042	2.9703	607684
<u>Section 1-2 Survey Office Plan 446054 and Section 3-4 Survey Office Plan 446174</u>	<u>6.1118</u>	<u>682538</u>
Lot 1 Deposited Plan 173452	37.5882	NA106B/643
Lot 1 Deposited Plan 178161	8.1360	NA109D/595
Lot 2 Deposited Plan 178161	2.4980	NA109D/596
Lot 2 Deposited Plan 41238	0.0969	NA1120/171
Lot 4 Deposited Plan 41238	0.1563	NA1121/14
Lot 3 Deposited Plan 41238	0.0943	NA1138/48
Lot 1 Deposited Plan 41238	0.0878	NA1189/51
Lot 1 Deposited Plan 57642	25.8999	NA11C/663
Lot 1 Deposited Plan 196235	0.3233	NA125B/39
Part Allotment 89 Parish of Manurewa and Defined On Deposited Plan 13716	31.6464	NA366/26
Part Allotment 89 Parish of Manurewa	40.4686	NA586/221
Lot 1 Deposited Plan 36039	0.2982	NA78D/182

Legal Description	Area (ha)	Record of Title Reference
Allotment 474 and Allotment 476 Parish of Manurewa	170.0600	NA78D/186
Allotment 484 Parish of Manurewa	13.9400	NA78D/187
Allotment 482-483 Parish of Manurewa	15.4300	NA78D/188
Allotment 477-481 Parish of Manurewa	53.5270	NA78D/189
Allotment 504 Parish of Manurewa	70.4026	NA78D/193
Allotment 492 Parish of Manurewa	0.6085	NA78D/194
Allotment 508 Parish of Manurewa	36.4260	NA78D/195
Allotment 506 Parish of Manurewa	54.6326	NA78D/196
Allotment 328 Parish of Manurewa	0.4426	NA78D/197
Allotment 470 Parish of Manurewa and Defined on Survey Office Plan 49515	313.9000	NA78D/198
Allotment 505 Parish of Manurewa and Defined on Survey Office Plan 52973	0.5975	NA78D/199
Allotment 469 Parish of Manurewa and Defined On Survey Office Plan 49514	40.3600	NA78D/200
Allotment 494 Parish of Manurewa	2.7290	NA78D/201
Allotment 493 Parish of Manurewa and Defined On Survey Office Plan 49184	1.3673	NA78D/202
Allotment 182-185 Parish of Manurewa	60.2981	NA78D/203
Allotment 543 Parish of Manurewa and Defined On Survey Office Plan 53644	0.3792	NA78D/206
Allotment 565 Parish of Manurewa and Defined On Survey Office Plan 60283	54.2300	NA78D/207
Lot 1 Deposited Plan 31279	1.4460	NA798/163
Part Lot 2 Deposited Plan 111094	37.6418	NA82C/672
Lot 7 Deposited Plan 24346	22.3083	NA867/2
Lot 8 Deposited Plan 24346	43.7060	NA902/21
Lot 1 Deposited Plan 162130	0.6984	NA97D/261
Part Allotment 163 Parish of Manurewa	0.8094	NA994/274
Lot 1 Deposited Plan 421357	4.1077	482061

SCHEDULE 3

INTRODUCTION

- A. The Covenantor is registered as proprietor of the land more particularly described in Schedule 1 ("~~Servient Burdened Land~~~~Tenement~~").
- B. ~~The Covenantor~~~~Auckland Airport~~ ("**Auckland Airport**") is registered as proprietor of, or is entitled to use, and owns, the land more particularly described in Schedule 2 ("~~Dominant Tenement~~~~Benefitted Land~~").
- C. Auckland Airport is the owner and operator of Auckland International Airport ("**Airport**") which is situated on the ~~Dominant Tenement~~~~Benefitted Land~~. The ~~Dominant Tenement~~~~Benefitted Land~~ is authorised by current zoning and designations for airport activity and airport development.
- D. The Airport has noise contours around its site which correspond to levels of aircraft noise. These are respectively referred to as the high aircraft noise area ("**HANA**"), moderate aircraft noise area ("**MANA**") and aircraft noise notification area ("**ANNA**") in the Auckland Unitary Plan.
- E. The operation of the Airport results and is likely to result in environmental effects such as noise disturbance associated with aircraft and airport activity, which may have consequences beyond the boundaries of the ~~Dominant Tenement~~~~Benefitted Land~~, including upon the ~~Servient Tenement~~~~Burdened Land~~.
- F. The ~~Servient Tenement~~~~Burdened Land~~ is within the [**HANA/MANA**] and the Covenantor has accepted Auckland Airport's offer to install physical works and equipment in the building(s) on the ~~Servient Tenement~~~~Burdened Land~~, for the purpose of mitigating the effects of such noise, more particularly described in Schedule 5 ("**Aircraft Noise Mitigation Works**").
- G. In consideration of Auckland Airport's offer the Covenantor has agreed with Auckland Airport to accept for itself and its successors in title to the ~~Servient Tenement~~~~Burdened Land~~ and any part or interest in the ~~Servient Tenement~~~~Burdened Land~~, an obligation, in accordance with this Deed, not to lessen the effectiveness of, or remove, the Aircraft Noise Mitigation Works.

COVENANT

The Covenantor for itself and its successors in title, lessees and/or invitees to the ~~Servient Tenement~~~~Burdened Land~~ (or any part of it) (excluding any tenants occupying the ~~Servient Tenement~~~~Burdened Land~~ pursuant to a lease or tenancy vested in the Housing New Zealand Corporation or any statutory or regulatory successor to the Housing New Zealand Corporation), hereby covenants, acknowledges and agrees with Auckland Airport and its successors in title lessees and/or invitees to the ~~Dominant Tenement~~~~Benefitted 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 ~~Dominant Tenement~~~~Benefitted Land~~, that the Covenantor will henceforth and at all times hereafter observe and perform all the stipulations and restrictions contained in Schedule 4 to the end and intent that each of the stipulations and restrictions shall, in the manner and to the extent prescribed, endure until 31 March 2044 for the benefit of, and be appurtenant to, the whole of the ~~Dominant Tenement~~~~Benefitted Land~~, every part thereof and any other land zoned or set aside for airport activity in the Auckland Unitary Plan from time to time.

SCHEDULE 4

(Covenants)

1. The Covenantor will do nothing to lessen the effectiveness of the Aircraft Noise Mitigation Works (“modifications”) and will not remove the Aircraft Noise Mitigation Works (“removal work”) in any building on the Servient TenementBurdened Land unless:
 - (a) The Covenantor has obtained the written approval of the GranteeCovenantee; or
 - (b) The modifications or removal works are being undertaken for the purpose of reconstructing, altering or extending the building or part of the building or removing part of the building, and:
 - (i) the entire building; or
 - (ii) any room directly affected by the modifications or removal works, which is to remain a habitable room,

will meet the requirements of the Auckland Unitary Plan for acoustic treatment measures to mitigate aircraft noise; or
 - (c) The Covenantor is demolishing the entire building or removing it from the Servient TenementBurdened Land.

2. Auckland Airport shall not unreasonably withhold its approval under clause 1(a); and in considering a request for approval it shall take into account the reason(s) why approval is sought and in particular whether:
 - (a) the owner intends to upgrade or improve the acoustic insulation in the building or relevant parts of the building;
 - (b) whether the proposed modifications or removal works will affect in any material way the mitigation of the effects of aircraft noise in any habitable room in the building;
 - (c) the owner wishes to change the use of a habitable room to a non-habitable room;
 - (d) the use of the building for an ASAN has or is intended to cease, on more than a temporary basis.

3. Auckland Airport shall deal promptly with any request for approval under clause 1(a) and shall as soon as is practicable:
 - (a) serve the Covenantor with written notice of the Auckland Airport's decision under clause 1(a);
 - (b) include as part of that written notice its reasons for any refusal to give its approval; and
 - (c) where approval is refused, forward a copy of that written notice to the ANCCG.

4. The parties agree that if Auckland Airport determines (in Auckland Airport's sole and unfettered discretion) at any stage that any part or parts of the Dominant TenementBenefitted Land should no longer receive the benefit of the terms of this Covenant:

- (a) Auckland Airport shall provide written notice to the Covenantor setting out the relevant certificate(s) of title for the ~~Dominant Tenement~~Benefitted Land from which this Covenant is to be surrendered, and such notice is to be accompanied by a surrender instrument in registrable form in respect of the same ("Surrender Instrument") and an Authority and Instruction form ("A & I Form") authorising Auckland Airport's solicitor to effect registration of the Surrender Instrument on behalf of the Covenantor;
 - (b) the Covenantor shall execute the Surrender Instrument, A & I Form, and procure the consent to the registration of, the Surrender Instrument by any mortgagees, chargeholders, lessees or encumbranceholders required to enable registration of the Surrender Instrument against the ~~Servient Tenement~~Burdened Land and the relevant ~~Dominant Tenement~~Benefitted Land;
 - (c) the Covenantor shall hand to Auckland Airport the Surrender Instrument, A & I Form, and any other documents (duly executed as aforesaid) required to enable Auckland Airport to register the Surrender Instrument against the ~~Servient Tenement~~Burdened Land and the relevant ~~Dominant Tenement~~Benefitted Land within 14 days after receiving written notice from Auckland Airport in accordance with clause 4(a) of this Covenant; and
 - (d) Auckland Airport shall arrange for the registration of the Surrender Instrument at Land Information New Zealand. All costs in respect of the execution of the Surrender Instrument, the procurement of any consents pursuant to clause 4(b) of this Covenant and the registration of the Surrender Instrument shall be met by Auckland Airport.
5. If the Covenantor refuses to or fails to execute and return to Auckland Airport the Surrender Instrument within the 14 day period referred to in clause 4(c), then for the sole purpose of giving effect to clause 4, the Covenantor hereby grants to Auckland Airport an irrevocable power of attorney to Auckland Airport to do all things necessary, and sign all documents necessary to register the Surrender Instrument against the ~~Servient Tenement~~Burdened Land and the relevant ~~Dominant Tenement~~Benefitted Land.
6. For the avoidance of doubt, in giving effect to clause 5, Auckland Airport shall be entitled to (but shall not be limited to):
- (a) sign the A & I Form on the Covenantor's behalf;
 - (b) if the consent of any mortgagees, chargeholders, lessees or encumbranceholders is required to enable registration of the Surrender Instrument, request consent to the registration of the Surrender Instrument on behalf of the Covenantor. Any such request shall be deemed to be from the Covenantor and shall be binding on the Covenantor; and
 - (c) register the Surrender Instrument.
7. For the purpose of clause 4 of this Covenant, the term "the Covenantor" is deemed to refer to the Covenantor and its successors in title to the ~~Servient Tenement~~Burdened Land, or any part of it.
8. For the purpose of this Covenant:
- (a) "designation" is as defined under the Resource Management Act 1991, or any equivalent subsequent legislation, and references to any sections or parts of the Resource Management Act 1991 are deemed to refer to any equivalent provisions of subsequent legislation also; and

- (b) ASAN and ANCCG are as defined in Condition 1 of Designation 1100 in Chapter K of the Auckland Unitary Plan.

SCHEDULE 5
(Aircraft Noise Mitigation Works)