

**Covenant Instrument to note land covenant**

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

**Covenantor****CLEVEDON PROPERTIES LIMITED****Covenantee****CLEVEDON PROPERITES 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 of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land covenant	DP 606369	Lots 1-2 on DP 606369 (RT 1192948–11928949) Lots 3-11 on DP 606369 (RT 1192888–1192896) Lots 12-21 on DP 606369 (RT's 1192938 – 1192947) Lots 22-36 on DP 606369 RT's 1192873-1192887 Lots 37- 49 on DP 606369 (RT's 1192898-1192910) Lots 50-51 on DP 606369 (RT's 1192859-1192860) Lots 52-55 on DP 606369 (RT's 1192867-1192870) Lots 56- 61 on DP 606369 (RT's 1192861-1192866) Lots 62-67 on DP 606369 (RT's 1192853-1192858) Lots 68- 83 on DP 606369 (RT's 1192911-1192926) Lots 84-93 on DP 606369 (RT's 1192833- 1192841) Lots 94-101 on DP 606369 (RT's 1192927 - 1192934) Lots 102-106 on DP 606369 (RT's 1192828 – 1192832) Lots 107-117 on DP 606369 (RT's 1192842 –1192852)	Lots 1-2 on DP 606369 (RT 1192948–11928949) Lots 3-11 on DP 606369 (RT 1192888–1192896) Lots 12-21 on DP 606369 (RT's 1192938 – 1192947) Lots 22-36 on DP 606369 RT's 1192873-1192887 Lots 37- 49 on DP 606369 (RT's 1192898-1192910) Lots 50-51 on DP 606369 (RT's 1192859-1192860) Lots 52-55 on DP 606369 (RT's 1192867-1192870) Lots 56- 61 on DP 606369 (RT's 1192861-1192866) Lots 62-67 on DP 606369 (RT's 1192853-1192858) Lots 68- 83 on DP 606369 (RT's 1192911-1192926) Lots 84-93 on DP 606369 (RT's 1192833- 1192841) Lots 94-101 on DP 606369 (RT's 1192927 - 1192934) Lots 102-106 on DP 606369 (RT's 1192828 – 1192832) Lots 107-117 on DP 606369 (RT's 1192842 –1192852)

		Lot 229 on DP 606369 (RT 1192871)	Lot 229 on DP 606369 (RT 1192871) RT 1192936 (Lot 1000 on DP 606369) RT1192937 (Lot 8000 on DP 606369)
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**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].

## **ANNEXURE SCHEDULE**

### **RESTRICTIVE COVENANT - DESIGN GUIDELINES**

#### **BACKGROUND**

- A. 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 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.
- B. The purpose of these covenants is to protect the market and aesthetic value of the Benefitting Lots, the privacy, peace and security of the occupants of the benefitting Lots and the quality of the environment touching and concerning the Benefitting Lots.
- C. These covenants expire on 1 December 2042, unless these covenants expressly provide for their earlier expiry.
- D. Where there is at any time more than one registered owner of a Benefitting Lot, these covenants will be binding upon each and every owner jointly and severally.
- E. In these covenants, the Covenantor also agrees to comply with the Resource Consent, which as at the date of registration of this Covenant, includes without limitation fencing requirements for the Lots at condition 55.

#### **1. DEFINITIONS AND INTERPRETATION**

##### **Definitions**

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

“Access Lot” means any jointly owned access lot within the Development;

“Building” means a “building” as defined by the Building Act 2004 and includes a Dwelling;

“Covenants” means these covenants contained in Annexure Schedule 1.

“Developer” means Clevedon Properties Limited;

“Developer’s Land” means the land at 62-80 Papakura Clevedon Road, Clevedon previously described as Lot 1 DP 36345, Part Lot 1 DP72559 and Lot 2 DP 192001.

“Development” means the subdivision and development on the Developer’s Land which may be staged as the Developer determines and which Development includes all lots that derive from the Developer’s Land however created and whenever created, including without limitation any superlots or lots derived from superlots;

“Dwelling” means and includes a residential dwelling, or family residence;

“Landscape Feature” means any visible structure or landscape design or enhancement feature or utility to be provided on any Lot (including without limitation a fountain, garden statue or other ornamental feature or utility but excludes any planting including a tree, shrub or other plant of any variety);

“Lot” means any Lot that is subject to these Covenants;

“Lot Owner” means the registered owner of any Lot (as defined in the Land Transfer Act 2017);

“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;

“Resource Consent” means all resource consents in relation to the Development including without limitation BUN60399307 and LUC60399309 and any variations thereof and to the extent any consent notice registered against a Lot pursuant to section 221 of the Resource Management Act 1991 amends or clarifies a condition contained in the Resource Consent, then that amended or clarified requirement contained in the consent notice prevails.

“Residential Lot means any Lot that contains a Dwelling or is intended to contain a Dwelling but excludes any Access Lot.

## **Interpretation**

- 1.2 Words importing one gender include the other gender.
- 1.3 Words importing the singular or plural include the plural and singular respectively.
- 1.4 Headings are inserted for the sake of convenience and ease of reference only. They do not form part of the text, and will not affect the construction or interpretation of these Covenants.

## **2. COVENANTS – RESIDENTIAL LOTS**

- 2.1 All Buildings on a Lot must comply with the Resource Consent and if there is any conflict between these Covenants and the Resource Consent, then the Resource Consent requirements will prevail only in relation to such conflicted item.
- 2.2 The Lot Owner of a Residential Lot must:
  - (a) Construct any Dwelling with a floor area of at least 155m<sup>2</sup> and must include fully integrated garaging (with a least a single garage) constructed on-site from new or high quality recycled materials.
  - (b) Commence construction of a Dwelling on a Residential Lot no later than 12 months after taking a transfer of title to a Lot and must complete construction of that Dwelling within 18 months of commencing construction.
  - (c) Ensure that all exterior cladding for all Buildings on any Residential Lot must include at least one of the following materials: brick, stone, concrete block stucco, cement or solid plaster finish or similar type of finish, plastered textured finish; stained or painted timber weatherboards or linear boards which have the appearance of timber weatherboards; glazing, or such other materials as may be approved by the Developer.
  - (d) Ensure that roofing materials on any Building must be one of the following: tiles (including clay, ceramic, concrete, decramastic, pre-coated or pressed steel), pre-coated steel (comprising pre-finished, long-run pressed or rolled steel); shingles, slate, membrane roofing, or such other roofing material as may be approved by the Developer.
  - (e) Not use reflective or visually obtrusive roof, wall or joinery materials, coloured or mirror glass for any Building.
  - (f) Ensure the colours used for the exterior of a Building must complement the surroundings and natural landscape, and recessive colours must be used for a Building.
- 2.3 The Lot Owner will not construct, erect or permit to be constructed, erected or placed on a Residential Lot:

- (a) Any Building other than those designed for or ancillary to residential use provided that the Developer and its designated representative(s) and/or builders (as approved by the Developer), may use Dwellings on a Residential Lot as model homes, show homes or offices, provided such use is in furtherance of the primary purpose of construction and sale of Residential Lots and Dwellings within the Development, and such use has been first approved by the Developer.
  - (b) Any driveways, driveway crossings and entranceway locations which do not comply with the Resource Consent. For the avoidance of doubt, it is the responsibility of the Lot Owner to construct driveways, drop kerbs driveway crossings and entranceways. The new crossings must maintain an at grade (level) pedestrian footpath across the length of the crossing, using the same materials, kerbing, pavings, patterns and finish as the footpath on each side of the crossing.
  - (c) Any Building which uses concrete or treated wooden piles without providing a solid and durable skirting board or other enclosure around the exterior of the Building from ground height to the underside of the wall cladding.
  - (d) Any Building which has an installed open fireplace or dry wood or pellet or similar solid fuel burner (except for clean air approved fires or burners complying with relevant and current environmental standards set by a Relevant Authority on the installation date).
  - (e) Any Building with an air conditioning unit which is set into or protrudes from the Building and is visible from a neighbouring Lot. Any external air conditioning units must be hidden from view or screened from the road or reserves and neighbouring Lots at all times and noise proofed to ensure they comply with noise requirements set by a Relevant Authority.
  - (f) Any Building that has windows, doors or skylights so placed that the privacy of any neighbouring Building is unreasonably affected.
  - (g) Any caravan, hut, garage for any kind of permanent or temporary residential use, unless it is a builder's shed or other similar building required during the construction of any Dwelling. The builders shed or other similar building may be placed on the Lot during such construction, but must be removed on completion of such construction.
  - (h) Gas cylinders or bottles for any permanent cooking, water heating or domestic heating purposes unless they are a minimum of 15kg hidden from view or screened from the road or reserves and neighbouring Lots at all times.
  - (i) Diesel, petrol, oil or gas tanks which have a capacity of over 100 litres unless approved by the Developer.
- 2.4 Each Residential Lot must have no more than one Dwelling and one minor Dwelling (as that is defined from time to time by the planning rules set by the Relevant Authority applicable to the Residential Lot).
- 2.5 The Lot Owner of a Residential Lot (and its contractors) must reinstate, replace and be responsible for all costs arising from damage to the landscaping, roads, footpaths, kerbing, berms, concrete or other structures or things on another Lot caused by or contributed to by the Lot Owner (and its contractors) or otherwise arising directly or indirectly from any access or use by or on behalf of the Lot Owner.
- 3. LANDSCAPE FEATURES, FENCING AND PLANTING**
- 3.1 All fencing, planting and Landscaping Features on a Lot must comply with the Resource Consent and if there is any conflict between these Covenants and the Resource Consent, then the Resource Consent requirements will prevail only in relation to such conflicted item.

- 3.2 No tree, shrub or other plant of any variety whatsoever is to be grown on any Lot so that it unreasonably interferes with the sunlight to or view from any other Lot.
- 3.3 No Landscape Feature may exceed a height of 2 metres above the original subdivision ground level of a Lot without the written approval of the Developer.
- 3.4 Clotheslines and letter boxes on a Lot must be unobtrusive and of good quality in terms of design and location. Clothesline must be located and if necessary screened in such a way to ensure the clothesline is not visible from any road, reserve or neighbouring Lot. The positioning of any letterbox must be adjacent to but not on any road reserve.
- 3.5 The Lot Owner must not install or attach an accessory (including television antenna, solar water heating panels, satellite dish, mast, or a Landscaping Feature) on the Lot, unless they are constructed in such a way as to be discreetly integrated with the design of the Buildings on the Lot and so that they are not visible from any road, reserve or neighbouring lots.
- 3.6 The location and design of any swimming pools (including fencing and screening on any Lot) must be approved by the Developer in writing prior to construction commencing.
- 3.7 The Lot Owner will be bound by a fencing covenant within the meaning of section 2 of the Fencing Act 1978 in that neither the Developer nor a Relevant Authority is liable to erect or maintain to pay for or contribute towards the costs of any dividing fence or boundary fence or part thereof between the Lot and any adjoining land owned by the Developer or the Relevant Authority.
- 3.8 Any boundary fence situated on a Residential Lot within five (5) metres of a legal road boundary will be limited to a maximum height of one (1) metre and of a style and use materials approved by the Developer and in compliance with the Resource Consent.
- 3.9 Any other boundary fence situated on a Residential Lot but not within five (5) metres of a legal road boundary will be of a height and style and use materials as required by the Resource Consent or any alternative approved by the Developer.
- 3.10 Any Lot which has the use of a right of way over another Lot or that shares the use of an Access Lot will be required to contribute towards the cost of a boundary fence along the right of way or Access Lot in equal shares with other Lot Owners who are the benefitting or burdened land of such right of way or joint owners of the Access Lot.

#### **4. DEVELOPER APPROVAL**

- 4.1 The consent of the Developer required under these covenants will not be unreasonably withheld unless the planned Building, Dwelling, fencing, planting or Landscape Features are contrary to the terms of the Resource Consent or this Covenant.
- 4.2 The Covenantor will not apply for building consent nor construct any Building, Dwelling, fencing, swimming pool, Landscape Features or Landscape planting (including trees) on a Lot unless the Covenantor has first obtained the consent of the Developer. Notice from a Covenantor seeking the Developer's consent under this clause must be accompanied by the building and landscaping plans showing those matters that are the subject of the Covenants in reasonable detail to enable the Developer to assess if the Covenants are met. If the Developer does not respond to a notice from a Covenantor within 10 working days of receipt either consenting or requesting any further information or changes that the Developer is entitled to make, then the Developer's consent will be deemed to have been given.
- 4.3 The Developer may at any time without reference to any other Lot Owner by notice in writing to a Lot Owner waive its right of consent for any or all Lots.
- 4.4 The Lot Owner must not make a change to any approved Building, Dwelling, fencing, planting or Landscape Features other than a minor change which does not breach this Covenant, unless the change to the Building, Dwelling, fencing, planting or Landscape Features has first been

re-submitted to the Developer for consent. Clause 4.1-4.3 together with clauses 4.8 and 4.9 apply to any re-approval request under this clause 4.4.

- 4.5 The Developer will be entitled to serve an injunction notice on a Lot Owner to cease all work if the Lot Owner commences any construction work on a Lot without first having obtained the consent of the Developer in accordance with this clause 4.
- 4.6 The obligation to obtain the consent of the Developer pursuant to this clause 4 will expire on the earlier of:
- (a) the date five (5) years after the date of registration of the transfer of the Lot by the Developer to the Lot Owner; and
  - (b) the date the Developer is no longer the registered owner of a Lot.
- 4.7 The expiry of the obligation to obtain the consent of the Developer pursuant to this clause 4 and/or the consent (or deemed consent) of the Developer under this clause 4 will not release the Lot Owner from its obligations to comply with the Covenants for the benefit of the other Covenantees.
- 4.8 The Developer has no liability for the Lot Owner's design and no consent, approval, comment, request or change requested or made by the Developer will create or vest any such design liability in the Developer.
- 4.9 In this clause 4, the Developer may give notice to a Lot Owner or a Lot Owner may give notice to the Developer:
- (a) By email to an email address provided by that Lot Owner or Developer for that purpose;
  - (b) By email to the Lot Owner's lawyer or conveyancing practitioner that acted for the Lot Owner in registering the transfer of the title to the Lot to the Lot Owner;
  - (c) As otherwise provided from time to time in the Property Law Act 2007.

## **5. DEVELOPER RIGHTS AND OBLIGATIONS**

- 5.1 The Lot Owner must not oppose, object to, frustrate, or take any action, or encourage or cause others to oppose, object to, frustrate or take action that might in any way prevent or hinder the Developer from progressing or completing the Development. Such Covenant extends to and includes (without limitation) development planning, zone changes, resource consents for land uses and subdivisions, consent authority or Environment Court applications, territorial authority building consent matters, or any other necessary consent process including any consent form any Relevant Authority.
- 5.2 Where requested by the Developer the Lot Owner must confirm in writing their support to any current or future applications for subdivision consent relating to the Developer's Land including signing any approval or consent to any resource consent or other consent application for the Development on request by the Developer.
- 5.3 The Lot Owner must not remove or interfere with any survey pegs or markers on the Property or the Developer's Land and, in the event the Lot Owner or their contractors do remove or interfere with any survey pegs or markers the Lot Owner must reimburse the Developer all costs and expenses in having such pegs or markers replaced by a registered surveyor.
- 5.4 The Developer will not be liable because of any action it takes or fails to take or for any default in any Building, structure or improvement erected on any of the properties in the Development or for any breach of these Covenants or otherwise and each Lot Owner hereby indemnifies and will keep indemnified the Developer and its legal successors (other than successors in title after registration of a transfer from the Developer to a subsequent owner) from any costs, claims, suits, demands or liabilities arising out of or under these Covenants including non-observance of these Covenants.



## **6. BREACH BY LOT OWNER**

- 6.1 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 Lot or any part of the Lot.
- 6.2 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) pay to the person making such demand as liquidated damages the sum of \$100.00 per day for any such breach or non-observance of these Covenants contained in this Instrument continues after the date upon which written demand has been made; and
  - (b) remove, replace, rebuild or rectify any Dwelling, Building, Landscape Feature erected or placed on the Property in breach or non-observance of the above Covenants.
- 6.3 Any liquidated damages paid to a Lot Owner are held for the benefit of all Benefitting Lot Owners (except the Lot Owner in breach) or the Developer as the case may be and may be applied to the costs of remedying a breach or the enforcement costs (including legal costs) incurred by the persons issuing notice under this clause further to a breach and thereafter as compensation for any loss sustained or incurred.

## **7. EXPIRY**

Unless otherwise expressly provided, these Covenants will expire on the 1<sup>st</sup> day of December 2042.

## **8. LAND TO VEST OR TRANSFER**

- 8.1 If at any time any part of the Burdened Land or Benefited Land is to vest in or transfer to the territorial authority, the Crown or any other regulatory authority, this land covenant shall be deemed to have been surrendered on the date of the deposit of the plan identifying the land that is to so vest or transfer (or completion of such replacement process as is required to enable registration of the vesting or transfer of the land) in respect of that part of the Burdened Land or Benefited Land (as the case may be) that is to vest or transfer. No further consents of any Lot Owner and/or either the Covenantor or the Covenantee shall be required in order to effect the surrender and any such consents that would otherwise have been required shall be deemed to have been given.