



Covenant Instrument to note land covenant

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

Covenantor

OTANE DEVELOPMENTS LIMITED

Covantee

OTANE DEVELOPMENTS LIMITED

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, grants to the Covantee (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 of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant	Restrictive Covenants set out in the attached Annexure Schedule	Lots 1 to 22 DP [to be confirmed]	Lots 1 to 22 DP [to be confirmed]



Land Covenants Definitions

1. In this instrument:-

"Access Lots" means lot 21 and lot 22;

"Developer" means Otane Developments Limited and its successors and assigns and/or its nominated agent;

"Land" means all the land contained in Records of Title HBD4/649 and HBD4/650;

"Land Covenant" means this Covenant Instrument to Note Land Covenant creating the land covenants;

"Local Authority" means the Central Hawke's Bay District Council or any successor;

"Lot" or **"Lots"** means all the land described in Schedule A as the Burdened Land and the Benefited Land;

"Property" means lot or lots described in Schedule A as the Burdened Land and the Benefited Land;

"Plan" means Deposited Plan [*to be confirmed*] (Hawke's Bay Registry);

"Resource Consent" means RM[*to be confirmed*] or any variation;

"Subdivision" means the subdivision and development to be undertaken by the Covenantee on the Land pursuant to the Resource Consent.

Interpretation

1. In this Land Covenant the words and expressions denoting the singular will include the plural.
2. The Covenantor and the Covenantee includes the successors, executors, administrations and permitted assigns (as the case may be) of the Covenantor and Covenantee.

Introduction

- 1) The Covenantor is intending to develop the Land into residential sections. The development is a subdivision in accordance with Resource Consent for the creation of residential sections and access ways.
- 2) It is the Covenantee's intention that the Lots will be subject to the covenants set out in Schedule B to the intent that a high standard of subdivision will be enjoyed by the registered owners of the Lots.
- 3) The owners and occupiers for the time being of the Benefited Lots may enforce the observance of such stipulations against the owners for the time being of the Burdened Lots.



Operative Clause

- 4) The Covenantor for itself, so as to bind each of the Lots, covenants and agrees with the Covenantee, for the benefit of each of the Lots, that the Covenantor will always observe and perform all the covenants set out in Schedule B so that the covenants run with the Burdened Lots for the benefit of the Covenantee and its successors in title.

Schedule A

- 1 The Covenantor covenants with the Covenantee that it shall:

A. Abide by the following building restrictions:

i) Building quality:

- (a) Ensure that the minimum average cost per square metre (material and construction) for the dwelling will not be less than \$2,750 including GST.
- (b) Not use any second-hand materials or place on the property any pre-lived in dwelling
- (c) Obtain all necessary consents and permits for the construction of a house and other improvements (where required);
- (d) Not erect any building other than a house and ancillary buildings in accordance with plans that have been approved in writing by the Developer in its sole discretion, prior to the commencement of construction;
- (e) Pay a fee of \$400.00 (plus GST) for the Developer's approval of the plans and specifications for the house and any other improvements and a further fee of \$75.00 (plus GST) for any subsequent variation in respect of the plans or specifications.
- (f) Not permit the Property to be occupied either prior to the house being completed; or, by the erection of temporary structures; or, by the placing thereon of caravans or vehicles for residential occupation;
- (g) Ensure the cladding of the house and other improvements are in colours that are predominantly "natural" colours with the roof to be dark tones.

ii) Building levels allowed:

- (a) On lots 1 to 4 the Covenantor may construct a single or double storey house.
- (b) On lots 5 to 20 the Covenantor may **only** construct a single storey house.

iii) Transportable houses:

- (a) On lots 3, 5, 7, 10, 15, 17 and 19 new transportable dwellings are permitted provided the house is approved in writing by the Developer prior to being situated on the relevant Lot.
- (b) On lots 1, 2, 4, 6, 8, 9, 11, 12, 13, 14, 16, 18, 20 transportable dwellings are prohibited.

iv) Garages:

- (a) On lots 3, 5, 7, 10, 15, 17 and 19 only integral garaging or a full enclosed detached garage which is of similar materials or appearance to the dwelling are permitted and where a detached garage is chosen, it is to be completed within 6 months of the completion of the house construction.



- (b) On lots 1, 2, 4, 6, 8, 9, 11, 12, 13, 14, 16, 18, 20 only integral garaging that is to be constructed at the same time as the house is permitted.
- v) Minimum floor areas:
- (a) The gross floor area measurements shall include integral garaging (where appropriate). Other improvements (including detached garages) are excluded.
- (b) The following minimum floor areas to be adhered to:
- (i) On lots 3, 5, 7, 10, 15, 17 and 19 the minimum gross floor area shall be 95 square metres.
- (ii) On lots 1, 2, 4, 6, 8, 9, 11, 12, 13, 14, 16, 18, 20 the minimum gross floor area shall be 150 square metres.
- vi) Exterior cladding and roofing:
- (a) Exterior cladding **must** only be of material comprising brick, stained or painted weatherboard, linear board, painted or sealed concrete block, masonry, natural stone, stucco, plaster, coated zincalume, glazing or a combination of the above. Coated zincalume may be used for no more than 30% of the exterior cladding material;
- (b) Roofing material, guttering, downpipe or exterior cladding material must **not** comprise of unpainted and/or exposed zinc coated products;
- B. Abide by the following fencing restrictions:
- i) Prohibited fencing materials not to be used are corrugated iron and metal sheet;
- ii) Permitted fencing materials include factory colour coated steel, plaster, timber, brick or an equivalent product, or other product with the Developers written approval;
- iii) Fences or plantings/hedges are not to be permitted to exceed 1 metre in height within 1 metre of a boundary adjoining the road or an Access Lot, except for 1/4 of such boundary where that fence or plantings/hedges may not exceed 1.8 metres in height;
- iv) The construction of fences or permitting of plantings/hedges to exceed 1.8 metres in height on any other boundary are prohibited;
- v) The Developer shall not be required to pay for or contribute towards building, erecting, or maintaining a boundary fence between the Property and any adjoining land while the Developer is the registered owner of that adjoining land. This covenant does not endure for the benefit of any subsequent registered proprietor of any such adjoining land;
- C. Abide by the following restrictions relating to animals:
- i) Not keep or raise animals of any kind or size on the Property or in any building other than a maximum of 2 domesticated household pets.
- ii) The keeping of pigeons, pigs, goats, sheep, or dogs classified as dangerous or menacing under Sections 31, 33A and 33C Dog Control Act 1996 (or any other dog which exhibits noisy, aggressive or dangerous behaviour) is expressly prohibited;
- D. Not permit the erection of any sign on the Property other than a professionally sign-written and installed sign marketing the dwelling or section for sale. The Developer will only permit the erection of signage indicating a business if such signage is acceptable in the sole discretion of the Developer and prior written consent is obtained. The Developer shall have



the right to remove any sign which, in its sole discretion, is unacceptable without prior warning;

- E. Not;
- i) Plant Pinus Radiata or Macrocarpa trees on the Property;
 - ii) Permit trees to grow on the Property to a height exceeding 7 metres above ground provided always that if any such tree unreasonably obstructs the view or sun of any other Lot (to be determined in the sole discretion of the Developer), then at the written request of the affected Lot, the Covenantor shall be required to trim the tree to a height that does not exceed 5 metres;
 - iii) Allow the road frontage of the Property or Access Lot adjoining the Property, or grass berms to become untidy.
- F. To ensure any exterior lighting will be designed to minimise interference or nuisance to other Lots.
- G. Not use the Property in any way which in the reasonable opinion of the Covenantee detrimentally affects the amenities of the neighbourhood including permitting noise to escape from the Property which is likely to cause offence or a nuisance to the occupiers of the other Lots.
- H. Reinststate, replace and be responsible for all costs arising from any damage to landscaping, roading, kerbs, concrete or other structures in the subdivision arising directly or indirectly from the use or development of the Property by the Covenantor or its occupiers, agents or invitees;
- I. During construction, only occupy the Property the Covenantor owns, and shall not use any adjoining land for storage, access, car parking or earthworks.
- J. Not permit any rubbish, including builder's waste materials, to accumulate upon the Property, or permit grass or weeds to grow to a height exceeding 75mm or otherwise leave the Property in a condition that, in the Developer's sole discretion, may be detrimental to the Subdivision. The Developer shall have the right to remove any building materials from the Property or adjoining land, or to maintain the Property in a reasonable condition to avoid the Property being or becoming detrimental to the subdivision, with reasonable costs to be met by the Covenantor and payable on demand;
- K. Not to bring on to, or allow to remain on the Property any motor vehicles with a gross weight in excess of 2.5 tonnes (whether mobile or immobile), caravans, boats, trailers, recreational vehicles, machinery, firewood apparatus or any such other similar thing in any place other than a shed, garage or carport, unless properly screened from the road and/or Access Lots.
- 2 Neither the Developer or a Covenantee shall not be required, nor be liable to enforce the land covenants or any non-compliance of the land covenants, nor shall the Developer or a Covenantee be liable to any party for any breach of the land covenants recorded in this Land Covenant, by any Covenantor.



- 3 The provisions of clause 1(A) shall expire on 31 December 2029.
- 4 In order to prevent competition with the Developer and speculation by way of the on-sale of the Lots, the Covenantor covenants in favour of the Developer:
 - A. that the Covenantor shall not, within 5 years of purchasing a Lot, sell, gift, transfer, assign or otherwise part possession of the Covenantor's right, title and interest as registered owner of that Lot ("Sale") prior to there being on the Lot a residential house that:
 - i) complies with the building restrictions set out in clause 1(A);
 - ii) has been issued a code of compliance by the Local Authority;

without the prior written consent of the Developer (which the Developer shall have the unfettered right to refuse); and

- B. that in consideration of the Developer giving such consent to the Sale, the Covenantor shall on the completion of the Sale of the Lot (being the settlement date for the Sale) pay to the Developer a sum being the higher of the amount equivalent to 10% of the gross Sale price of the Lot and any other consideration given by the purchaser for the Lot, plus GST or 10% of the market value of the Lot at the time of the Sale, plus GST, as assessed by a registered valuer appointed by the Developer if the Developer decides to appoint a valuer.

Notwithstanding clause 4(A) and (B), the Developer will not unreasonably refuse to provide its written consent under clause 4(A) in the situation where the Sale is made together with an unconditional building contract, between the Covenantor or the Covenantor's related party and the purchase of the Lot, for the construction of a residential house on the applicable Lot that:

- i) complies with the building restrictions set out in clause 1(A); and
 - ii) the building contract is on terms and conditions satisfactory to the Covenantee in all respects.

If the Developer provides such written consent pursuant to this clause then the payment specified in clause 4(B) shall not apply.

- 5 Where the Covenantee or any other party to this Land Covenant is required to expend money to make good any damage or loss caused by a breach of the land covenants contained in this Land Covenant by the Covenantor (or the guests, employees, agents, invitees, or tenants of the Covenantor) the Covenantee or its agent shall be entitled to recover the amounts they expended as a debt in any action in any Court of competent jurisdiction and such sum may include all costs howsoever incurred including the professional and legal costs calculated on a solicitor/client basis.
- 6 Should the Covenantor be in breach of the land covenants contained in this Land Covenant, they may be served written notice by the Covenantee or any other party to the Land Covenant (including the Developer) requiring them to remedy the breach within seven (7) days of receipt of the notice and upon the expiry of seven (7) days a penalty sum of \$100 per day shall be payable by the Covenantor to the Covenantee (or other party) who serves notice, until such time



as the breach is remedied and the Covenantee or other party serving the notice will in addition be entitled to recover all costs incurred including all professional and legal costs calculated on a solicitor/client basis and to exercise any other remedies available.

- 7 If any dispute arises between the parties in connection with this Land Covenant, the matter will be referred to mediation. Mediation may be initiated by either party giving notice in writing to the other and identifying the dispute whereupon the parties will agree on a mediator. If they cannot agree upon a mediator within 10 working days of such notice, then a mediator will be appointed by the President of the Arbitrators and Mediators Institute of New Zealand to act in accordance with the Mediation Protocol of the Institute.
- 8 Any dispute in respect of matters arising from this Land Covenant which is not resolved by mediation will be referred to arbitration under the Arbitration Act 1996. The arbitration will be by one arbitrator if the parties can agree upon one, but failing agreement, an arbitrator will be appointed by the President of the Arbitrators and Mediators Institute of New Zealand.
- 9 Notwithstanding anything to the contrary in this Land Covenant, the Developer shall be entitled to waive strict compliance with these land covenants provided that if the Developer decides, in its sole discretion that the proposed waiver is generally in accordance with the aim expressed in clause 2 and in accordance with the continued harmony of the Subdivision generally (the Developer's decision to be final and not subject to any review whatsoever). Any reasonable fees relating to the request of the Developer to consider a waiver shall be the responsibility of the Covenantor requesting the waiver.
- 10 The Covenantors and Covenantees agree that, for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017, this Land Covenant is made and fully intended to confer a benefit on, and be legally enforceable by the Developer.