

# Land and Building Covenants

4 November 2019

**the**Fields

# Land and Building Covenants

## Interpretation

1. In these Covenants headings are for reference purposes only.
  - 1.1. Explanations (in italics) are provided to assist in interpretation and to understand the intent and desired outcome of the Covenants, but do not form part of the legal Covenants.

## Definitions

2. In these Covenants:
  - 2.1. **Ancillary Building** or **Ancillary Buildings** means any building or structure associated with the Dwelling(s) on the Lot which requires Local Authority consent.
  - 2.2. **Carport** means any carport on the Lot.
  - 2.3. **Dwelling** or **Dwellings** means any residential dwelling-house on the Lot.
  - 2.4. **Garage** means any garage on the Lot.
  - 2.5. **Local Authority** means Christchurch City Council.
  - 2.6. **Local Authority Owned Land** means any road or reserve owned or controlled (or to be owned and controlled) by the Local Authority in The Fields development.
  - 2.7. **Owner** means the registered owner of a Lot in The Fields development at Halswell Junction Road, Halswell, Christchurch.
  - 2.8. **Plans and Specifications** means plans, drawings, specifications and other documents from which a Dwelling, Ancillary Building and/or Garage are to be constructed (including details of materials, location and design).
  - 2.9. **The Fields** means the land being developed and/or subdivided by Carston Developments Limited known as "The Fields" at 308 – 322 Halswell Junction Road, Halswell, Christchurch.
  - 2.10. **Covenantor** means Carston Developments Limited, the developer of The Fields subdivision at Halswell Junction Road, Halswell, Christchurch.
  - 2.11. **The Developer** means Carston Developments Limited.

## Continuation of “Estate Or Interest or Easement to be Created”

WHEREAS the Covenantor and the Covenantee are desirous of creating land covenants so that each of the lots in the First Schedule shall have the burden and the land in the Second Schedule the benefit of the stipulations and restrictions set out in the Third Schedule (“covenants”).

AND AS INCIDENTAL to the transfer of the fee simple so as to provide such mutual covenants and in order to bind those lots subject to the covenants for those lots taking the benefit of the same, the Covenantor and the Covenantee **HEREBY COVENANT AND AGREE** with each other that each of the lots in the First Schedule (“the burdened lots”) shall bear the burden of the stipulations and restrictions set out in the Third Schedule and that each of the other lots in the Second Schedule (“the benefited lots”) shall have the benefit of the said stipulations and restrictions TO THE END AND INTENT that the burdened lots shall be bound by the respective stipulations and restrictions set out in the Third Schedule and that any of the owners or occupiers for the time being of the other benefited lots may enforce the observance of such stipulations and restrictions against any of the owners or occupiers for the time being of the burdened lots; and

PROVIDED ALWAYS that the owners or occupiers of the burdened lots as the case may be, shall as regards such applicable stipulations and restrictions be personally liable only in respect of breaches thereof which shall occur while they are registered as owners of the said lots in respect of which such breach shall occur (or is alleged to occur).

### FIRST SCHEDULE

Lots 56 - 78

### SECOND SCHEDULE

Lots 56 - 78

### THIRD SCHEDULE

## Plans and Specifications

1. To have all Plans and Specifications for Dwellings, Ancillary Buildings, Garages, fences, retaining walls, other structures and development works approved in writing by the Developer prior to the Owner applying for a Building Consent or commencing any works on the Lot. In determining whether or not to approve the Plans and Specifications the Developer will consider the compliance of the design with the Covenants and whether the structures and other development works proposed on any Lot have been designed in a coordinated and complimentary manner. The assessment of any Plans and Specifications will also include consideration of the appearance of other buildings, existing and proposed in the development. The intention is that there should be a range of styles, designs and appearance of buildings within the development.
2. To construct any Dwellings, Ancillary Buildings and Garages in accordance with the Plans and Specifications approved in writing by the Developer. Any modification or variation to the approved Plans and Specifications will require further written approval by the Developer prior to such work commencing.
3. Notwithstanding the other terms of these Building Covenants; the Developer shall be entitled to give written consent to an Owner for a minor non-compliance with the Covenants which relate to the design of buildings, at the discretion of the Developer, provided that the non-compliance is minor and will not in the opinion of the Developer significantly undermine the objectives of these Covenants, and provided the non-compliance is required because the shape, orientation and/or gradient of the relevant Lot would make it difficult and/or unreasonably expensive for the Owner to fully comply with these Covenants. Any Owner wishing to seek the consent of the Developer to a minor non-compliance with these Covenants must make written application to the Developer for such consent, and such consent must be obtained from the Developer in writing prior to the Owner commencing to construct any buildings which do not comply with these Covenants.

## Building Requirements

4. To construct only new Dwellings, new Ancillary Buildings and new Garages on the Lot.
5. To construct a Dwelling with a floor area of not less than 100m<sup>2</sup>, with the floor area measurement to be exclusive of any Garage, decking, breezeways, entry porches, verandas or roof overhang. Where a Dwelling has frontage to a road, the front door of the Dwelling is to face and be visible from the road.
6. To construct a minimum of one double (side by side), internal access Garage on the Lot which is to be attached to the Dwelling. The Garage must be constructed in the same architectural style as and with cladding materials complimentary to the Dwelling; except that this requirement shall not apply to development on lots of 400m<sup>2</sup> or less.
7. Where a Garage door or Carport vehicle opening predominantly faces a road frontage or right of way, the Garage door or Carport vehicle opening shall be set back at least 1.5m from the front face of the Dwelling when measured parallel to the road or right of way boundary.

*Explanation: Garage doors or Carport vehicle openings can result in a large blank face or void, therefore setting the Garage door or Carport vehicle opening back from the front face of the dwelling minimises the potential that the Garage door or Carport vehicle opening will dominate the view of the Dwelling from the road or right away.*

8. Where the walls of any Dwellings, Ancillary Buildings and Garages predominantly face an adjoining road frontage these walls must contain at least one gable end, unless the roof style is mono-pitch.
9. Where the walls of any Dwellings, Ancillary Buildings and Garages predominantly face an adjoining reserve area these walls must contain at least one gable end, unless the roof style is mono-pitch,
10. Where the walls of any Dwellings, Ancillary Buildings and Garages predominantly face an adjoining road frontage these walls must include at least one window or feature, with glazing to make up a combined area of at least 10% of the total surface area of the walls of any Dwellings, Ancillary Buildings and Garages that predominantly face the road frontage.
11. Where the walls of any Dwellings, Ancillary Buildings and Garages predominantly face an adjoining reserve area there must be at least one transparent sliding door and/or large transparent window at least 2m in length x 1.2m in height set within one of the walls of the Dwellings, Ancillary Buildings and Garages that predominantly face the reserve.

*Explanation: This design element is included in the covenants as a means by which to ensure that houses do not present a blank back to the adjacent reserve space.*

12. To construct any Ancillary Buildings so that:
  - a) where an Ancillary Building faces the road frontage or right of way, the Ancillary Building shall be set back at least 1.5m from the front face of the Dwelling when measured parallel to the road or right of way boundary;
  - b) the Ancillary Building shall be constructed in the same architectural style with the same cladding material or a complimentary cladding material to that used on the Dwelling;
13. To locate any attachments (including but not limited to television antenna, solar hot water panels, air-conditioning units, gas cylinders, gas hot water systems) around or on the Dwellings, Ancillary Buildings and Garages so they are not highly visible from any road or reserve boundaries and neighbouring properties.
14. To construct in a proper and tradesman like manner a driveway and vehicle access in accordance with the requirements of the Local Authority and in a permanent continuous surfacing of concrete, concrete block, brick paving, or sealing. Specifically, the driveway concrete from the kerb to the Lot boundary shall be constructed in materials consistent with the footpaths in that stage of the development.

## Construction Materials, Cladding and Finishing

15. To construct any Dwellings, Ancillary Buildings and Garages so that:
  - a) a minimum of 60% of the non-glazed exterior cladding of any Dwelling consists of any of the following materials: kiln fired or concrete brick, plaster or cement texture finish, stone, Linea or timber weatherboard (with a maximum erected width not exceeding 150 mm), or any other exterior cladding material for which the Owner has first obtained the Developer's consent in writing;
  - b) where a Dwelling has a basement, exposed subfloors, framing and/or decks, the exposed areas shall be clad in permanent materials that complement the main parts of the residence;
  - c) in combination, the walls of any Dwellings, Ancillary Buildings and Garages that predominantly face the road frontage, must include at least two of the cladding types detailed in Clause 15(a) of these Covenants;
  - d) front doors shall be set in an overall frame with windows on one or both sides;
  - e) any garage door shall be a sectional garage door and must not be a roller door or tilt-a-door;
  - f) any guttering is to be colour matched to the roofing or fascia board and no plastic guttering is allowed. Plastic downpipes are allowed, but only where these are painted the same colour as the exterior cladding. The exception to this requirement is where matching copper guttering and down pipes, or colour bonded metal guttering and down pipes are approved for use as an architectural design feature on the Dwellings, Ancillary Buildings or Garages on the Lot.
16. To construct all fences in compliance with the Local Authority requirements and:
  - a) for fences within 3m of the boundary of the Lot and any adjoining Local Authority Owned Land, reserve, road or right-of-way, those fences must not exceed 1.2m in height, measured from the finished ground level of the Lot (taken from where the fence is to be built); except that where a lot is a corner lot, having frontage to two roads or a combination of a road, right of way and/or reserve, the design and placement of any fencing within 3m of the road boundary will be determined by the Developer on a case-by-case basis to balance the need to provide privacy and on-site amenity for the lot owner and to avoid large/long, tall fences facing the adjoining road, right-of-way and/or reserve that detract from the overall amenity of the development.
  - b) for areas not identified in Clause 16(a) of these Covenants, fences must not exceed 1.8m in height measured from the finished ground level of the Lot (taken from where the fence is to be built);
  - c) where a fence is on a road or right of way frontage it shall be constructed as a combination of fencing and/or landscape planting, or if no planting is proposed shall be constructed of two different, complimentary materials.
17. The Developer shall not be liable to pay for or contribute toward the cost of erection or maintenance of any fence between any lot in the development and any adjoining land owned by the Developer or any other party, but this condition shall not endure for the benefit of any subsequent purchaser of such adjoining land or any part of that adjoining land.
18. The Owner agrees to meet the total cost of construction of any fence to be constructed on the boundary of adjoining land if that land is owned by the Local Authority and the Owner will not seek contribution from the Developer or the Local Authority.
19. Except during the time of construction, not to erect any fence constructed of shade cloth, netting, plastic, steel of any profile, long-run or corrugated iron, un-textured wood-fibre cement panels, plywood, fibrolite or post and wire, unless the material has been approved by the Developer for use as part of the permanent fencing of the Lot.
20. Any modification or variation to any approved fence will require further written approval by the Developer prior to such work commencing.

## Planting

21. Where a lot has direct frontage to a road, 20% of the area measured 5m from the road boundary (remaining once the area of buildings, driveways or paths is subtracted) shall be planted in trees, hedges, shrubs and/or flowerbeds. For the purposes of measuring the area of any tree(s) proposed as part of the required landscaping, the area of any tree shall be considered to be 50% of that tree's canopy area at maturity.

*Explanation: Planting (more than grass) within the front yard of a site that has direct frontage to a road is a means by which to soften the appearance of the dwelling, provide a mixture of visual interest and amenity and privacy for the dwelling occupants.*

## Letterboxes

22. The letterbox must be aesthetically sensitive in terms of quality, design and location and not be sited on Local Authority Owned Land.
23. All letterboxes shall either be integrated into the front fence of the Lot where that Lot has direct frontage to a road, or shall be of a standalone, pillar type letterbox or some other substantial structure.

*Explanation: Letterboxes need to be integrated with the fencing and landscaping provided at the road frontage of a Lot. Poorly chosen letterboxes have the potential to negatively detract from the streetscape and the overall feeling of quality within the development and therefore must be avoided.*

## Service Court, Clothesline and Garden Sheds

24. A screened service court shall be provided on each Lot, with screening provided in accordance with the fencing requirements.
25. The service court shall provide space for keeping of rubbish and recycling bins and should also provide space for a clothesline and the location of air conditioning units/heat pumps, gas bottles and similar.
26. If the clothesline is not to be located within the screened service court it should be located in such a way as not to be highly visible from the road, right of ways or reserves,
27. A detached garden shed can be located on the Lot independent of the requirements related to Dwellings, Ancillary Buildings and Garages, where that garden shed has a floor area of no more than 9m<sup>2</sup> and a maximum height of 1.8m. The garden shed shall not be located forward of the front/road building setback, or within 3m of a reserve boundary.

## Construction Works

28. To ensure all agents, employees, contractors, subcontractors, tenants, licensees and other occupiers of the Lot are made aware of the restrictions created by these Covenants and are required to comply with these Covenants.
29. Before commencement of construction, the Owner will erect either a temporary or permanent fence around the perimeter of the Lot to define the construction zone. Any temporary fencing erected for the construction phase of the Dwellings, Ancillary Buildings and Garages shall be removed within 4 weeks of construction being completed. Completion of construction shall be deemed to be the date that the Local Authority has issued the Code Compliance Certificate for the Dwelling.
30. Before the commencement of construction of any Dwellings, Ancillary Buildings and Garages the stockpiling and storage of materials is strictly prohibited on the Lot, unless approval has been obtained from the Developer.
31. Before, during and after construction, the use of adjacent or abutting land and footpaths for access, is strictly prohibited, provided however, the Owner can only have access across any other Lot upon obtaining

prior written approval from that Lot owner. Stockpiling and dumping of rubbish are strictly prohibited. Once construction has commenced the Owner shall ensure container bins are available on the Lot at all times for the accumulation and disposal of all rubbish, when necessary all such rubbish must be removed.

32. The Owner will ensure that all landscaping, berms, roading, footpaths and kerbs are kept clean and free from debris prior, during and after construction. The Owner shall re-instate, replace and be responsible for all costs arising from damage to the landscaping, berms, reading, footpaths, kerbs, streetlights, street signs, concrete or any other structures in the subdivision arising from the Owner's and/or the contractors use of the land directly or indirectly through the Owner's actions.
33. Notwithstanding Clause 30 of these Covenants, during the construction period, a temporary building/container will be allowed on the Lot to be used in conjunction with the construction of the Dwellings, Ancillary Buildings and Garages but must be removed within 2 weeks of the issuance by the Local Authority of the Code Compliance Certificate for the Dwellings, Ancillary Buildings and Garages.
34. During the period of construction, the Owner will ensure that all required erosion and sediment control measures as required by the Local Authority are in place and appropriately maintained and that spoil, detritus and/or debris are not tracked from the site onto adjoining rights of way and/or roads.

## Completion of Works

35. To complete any construction of the Dwellings, Ancillary Buildings, Garages (including the exterior painting and decorating of Dwellings, Ancillary Buildings, Garages), driveway/vehicle access, fencing, landscaping and letter box on the Lot within 12 months of commencement of excavation of the building site, except that all exterior surfaces (which are not pre-colour coated or finished) must be painted or stained prior to the Dwelling being occupied.
36. Works required to be completed under clause 35 above shall include:
  - a) lawn(s) to be laid, landscaping work (encompassing paths, retaining walls and sufficient plants, trees and shrubs to meet the planting requirements of these Covenants) and reinstatement of the Local Authority Owned Land adjoining the Lot must be completed; and
  - b) permanent interior window furnishings must be hung.
37. That except for driveways, not to carry out landscaping on the road frontage of the Local Authority Owned Land except in accordance with any landscaping plan prepared by the Developer and approved by the Local Authority.

## Land Use

38. Not to permit:
  - a) the Lot to be occupied or used as a residence unless the Dwellings have been completed in accordance with the Covenants, and the Local Authority Code Compliance Certificates have been issued for the Dwellings;
  - b) Ancillary Dwellings or Garages on the Lot to be lived in or otherwise used as dwellings.
39. Not to allow any buildings, structures, driveways, landscaping, signs or fencing to fall into disrepair.
40. Not to allow any graffiti (or similar disfiguring) on the Dwellings, Ancillary Buildings, Garages, fences, retaining structures or any other structure on the Lot to remain in place for more than 5 working days from the date the Owner became aware of the graffiti or disfiguring.
41. To, at all times, keep mown and maintained in a neat and tidy condition (and prevent from becoming unsightly) the Lot and adjoining road reserve where the Lot has frontage to a road and the portion of right of way where the lot has frontage to a right of way.

42. Not to bring on to, or to allow to remain on the Lot anything set out in the applicable categories in this Clause, unless they are garaged or substantially screened from any adjoining road or any adjoining reserve in order to protect the aesthetic qualities of the Development and prevent noise likely to cause offence to residents:
- a) vehicles with a gross laden weight exceeding 3,500kg (including recreational and trade vehicles);
  - b) temporary buildings (including sheds and containers);
  - c) buses, caravans, motorhomes, or pleasure—craft/boats;
  - d) trailers or any other equipment, materials or machinery.
43. If the Owner proposes to locate anything set out in the applicable categories in Clauses 42 (a) to (d) inclusive, beyond the front building alignment of the Dwelling where the lot has direct frontage to a road, or beyond the rear/side (whichever is applicable) building alignment of the Dwelling where the lot has direct frontage to a reserve, then the required screening must be approved in writing by the Developer and the approved screening must be in place prior to that object being brought onto the Lot.
44. The lot owner must not allow any livestock, animals or beehives to be brought onto or kept on the Property other than normal household domestic pets (and the term "household domestic pets" does not include livestock such as pigs, goats, horses, sheep, chickens, roosters, pigeons, peacocks or any animal which may cause a nuisance to owners or occupiers of properties in the Development). In particular, the lot Owner will not keep or allow to be kept on the property any dog which is generally recognised as being an aggressive breed and which may cause a risk to owners or occupiers of other properties in the Development (for example Pit-Bull Terrier, Japanese Tosa, Dogo Argentino, Rottweiler and Doberman Pinscher).

## Signage

45. Each Owner shall be restricted to erecting the following signs only:
- a) One marketing or "for sale sign" within the boundaries of each Lot, such sign to have a maximum size of 1m<sup>2</sup>;
  - b) One temporary "open home" sign or flag within the boundaries of the Lot with a maximum size of 1.8m height and 0.5m width, such sign to be displayed only when an open home is being conducted and when the salesperson is present on site;
  - c) One "open home" sign on the roadside berm provided that such sign is erected only on the day that an open home will take place and only after 7:00am on the relevant day and prior to 7:00pm on the relevant day and with a maximum size of 0.5m x 0.3m; provided that no such signs shall be erected at the entrance to the Development.
  - d) Notwithstanding (a) — (c) above:
    - i. only sign frames approved by the Developer are to be erected on any Lot with Lot details to be contained within the frame;
    - ii. the Developer has sole discretion to allow builders or housing companies, prior to settlement, to have an on-site sign (within a Developer approved sign frame) to market their house and land packages; and
    - iii. no private, real estate agent/company, builder or housing company "for sale" signage shall be permitted on any Lot if the Lot is being on-sold prior to the settlement of the purchase of the Lot from the Developer, unless approved in writing by the Developer.

## Breach of Covenants and Enforcement

46. The Owner will at all times save harm and keep indemnified the Developer from all proceedings, costs, claims and demands in respect of breaches by the Owner of these Covenants.



47. If there is a breach of any of these covenants (and without prejudice to any other liability which the Owner may have to any person having the benefit of this covenant) and the Owner does not rectify the breach within 10 working days of written notice being made by the Developer then the Owner will pay to the Developer:
- a) liquidated damages in the sum of \$250.00 per day for every day that the breach or breaches continue after the date of written demand until the breach or breaches are remedied; and
  - b) any costs and expenses (including legal costs) incurred by the Developer to remedy the breach.
48. The rights of the Developer to enforce the rights and benefits conferred by these covenants will remain in place until the earlier of 31 December 2034; or
- a) 24 calendar months from the date on which the Developer ceases to be a registered owner of any Lot forming part of The Fields Development; or
  - b) The Developer relinquishing these rights in writing to a successor
49. From the applicable date set out in Clause 48 of these Covenants, the right to enforce the rights and benefits so conferred will, in accordance with normal legal principles, vest in the registered owners of any Lot forming part of the Benefited Tenement.
50. In the event that one or more provisions of these Covenants are at any time found to be invalid or otherwise rendered unenforceable, such provision or provisions will be severable from these Covenants, so that the validity or enforceability of the remaining provisions of these Covenants are not affected.

## Dispute Resolution

51. If a dispute in relation to any covenant arises between the parties who have a registered interest under these Covenants:
- a) the party/parties initiating the dispute must provide full written particulars of the dispute to the other party/parties;
  - b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
  - c) if the dispute is not resolved within 20 working days of the written particulars being given (or any longer period agreed by the parties):
    - i. the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
    - ii. the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

## Expiry of Covenants

52. These Covenants will continue in force for the benefit of the registered owners of any Lot forming part of the Benefited Tenement until 31 December 2034 at which time they will expire.