

# Lake Hood Covenants

## SCHEDULE A- RESTRICTIVE COVENANTS - STAGE 14

### INTERPRETATION

1.1 In this document the following terms have the following meanings unless the context requires otherwise:

- (a) "Aquatic Park Trust" means the Ashburton Aquatic Park Charitable Trust (932008) and/or Lake Extension Trust Limited or their successors and assigns.
- (b) The "Development" means all stages of the subdivision and development being completed by Lake Extension Trust Limited on the land owned by Lake Extension Trust Limited at Lake Hood.
- (c) The "Land" or "Lot" means any Lot having the benefit and/or burden of these covenants.
- (d) The "Grantee" means the Registered Proprietor of the Benefited Land in Schedule A
- (e) The "Grantor" means the Registered Proprietor of the Burdened Land in Schedule A.
- (f) "Building" shall include, but not be limited to, any construction over four (4) square metres in area or one and a half (1 ½) metres in height.

1.2 In this document unless the context requires otherwise:

- (a) The singular includes the plural and the plural includes the singular.
- (b) Where a clause is referred to in a schedule, it is a reference to a clause in that schedule unless stated otherwise.
- (c) Where two or more persons are obliged to perform an obligation, their liability is joint and several.
- (d) A reference to a person includes its successors in title, assigns and personal representatives.

### RESTRICTIVE COVENANTS

#### A. THE Grantee,

for a period of twenty one (21) years from 1 June 2012 or the date of settlement of the sale of the last section in the Development whichever is the later, shall not:

1. Subdivide any of the allotments on the plan of subdivision unless prior written approval from the Aquatic Park Trust is obtained. For the purposes of this clause "subdivide" shall have the meaning given to the expression "subdivision of land" set out in Section 218 of the Resource Management Act 1991 **PROVIDED HOWEVER** that any boundary adjustment that does not create a separate certificate of title shall not be in breach of this condition. For the avoidance of doubt, none of the conditions in this clause A 1 shall apply to the Aquatic Park Trust or Lake Extension Trust Limited.
2. Erect or permit to be erected upon any of the Lots:-
  - (i) More than one dwelling unless the Aquatic Park Trust's approval in writing is first obtained.
  - (ii) Any dwelling with an internal ground floor area of less than 180 m<sup>2</sup> excluding any garaging and outbuildings.
  - (iii) Any dwelling that is not built on site from an individual design.
  - (iv) Any dwelling, building, fences, retaining structures or jetties that have not first received the Aquatic Park Trust's approval of the detailed concept plans (see clause B.1. below).
  - (v) Any dwelling, building, fences, retaining structures or jetties otherwise than in accordance with the detailed concept plans as approved by the Aquatic Park Trust (see clause B.1. below).
  - (vi) Any building on a Lot of a kitset, 'A' frame or prefabricated style or form of manufacture without the express written approval of the Aquatic Park Trust.



- (vii) Any building on a Lot with an external wall cladding, of greater than forty per cent (40%)
    - (a) of James Hardie Weatherboard, (but excluding that Company's "Linea" or subsequent products) smooth type or similar smooth product or any plank wider than 180 mm; or
    - (b) of corrugated iron, Coloursteel or other metallic cladding whether or not they shall be unpainted or painted and/or coated during or subsequent to manufacture. [By way of explanation, the wall cladding of the dwelling and outbuilding are to have a consistent quality and may be brick, stone, or plaster (whether cement or coating over polystyrene block or sheathing)].
  - (viii) Any building on a Lot forming any external wall elevation without articulation of at least one (1) linear metre off the main plane in any length over fifteen (15) linear metres (the intent of which, without limitation to the foregoing, is to prevent the erection of long walls which are unsightly because they do not contain visual breaks either by way of windows or material deviations from the line of the wall).
  - (ix) Any pre-used building on a Lot.
  - (x) A building on a Lot with roof cladding of corrugated iron whether unpainted or painted **PROVIDED THAT** Decramastic and Coloursteel (other than corrugated iron) products or products of similar construction precoated in the manufacturing process shall not be in breach of this restriction.
  - (xi) A building or other structure with an exterior cladding comprising second hand building materials (excluding recycled bricks) unless prior written approval from the Aquatic Park Trust is obtained.
  - (xii) Any garage outbuilding or fence except in permanent materials or live hedging where appropriate.
  - (xiii) Any garage outbuilding or fence that has not received the Aquatic Park Trust's approval of the detailed construction plans (see clause 81, below).
  - (xiv) Any building within four and a half metres (4 ½) metres of a road boundary on a Lot, two and a half (2 ½) metres from a northern boundary on a Lot, one and a half (1 ½) metres from a southern boundary on a Lot.
  - (xv) Any building [not including a jetty] eight (8) metres from the lakeside boundary except for Lots 100, 109, 119 and 120 which shall be six (6) metres from the lakeside boundary. For the avoidance of doubt, set backs from a lakeside frontage are to be measured from the lakeside boundary of a Lot.
  - (xvi) Any boundary fence or fence within a Lot built of galvanized iron, polite, cement board panels and no live hedge shall be permitted to exceed two (2) metres in height from mean ground level and no fence within the front yard adjacent to a waterway and no boundary fence in front of a dwelling within four and a half (4 ½) metres from a road or waterway frontage boundary shall exceed one and a half metres (1 ½) metres in height without the prior written approval of the Aquatic Park Trust.
  - (xvii) Permit any diseased or dead trees to remain on a Lot.
  - (xviii) Any garden shed, clothesline or letterbox except such as may be aesthetically sensitive in terms of design and location, and any garden shed or clothesline shall be sited in such a way as not to be visible from the street, waterway or reserve, and not higher than two (2) metres from ground level.
3. Permit any construction unless the building site complies with the requirements of the Health and Safety at Work Act 2015 at all times.
  4. Undertake or permit during the course of construction the loading, unloading, delivery, or storage of building materials other than within the boundaries of the Lot.
  5. Carry out any construction unless an adequate rubbish skip is present at all times (and regularly emptied or replaced), nor allow during the course of construction and rubbish to blow outside the boundaries of the Lot.
  6. Permit the Grantor's construction workers or contractors to use any other area in the Development for toileting purposes. Prior to construction commencing, the Grantor shall provide a suitable portable toilet facility for use by the Grantor's construction workers and contractors.
  7. Permit the Granters construction worker or contractor to have any dogs on the Lot.
  8. Live on site in temporary accommodation on a Lot whilst the principal dwelling is in the course of construction.
  9. Permit recreational or commercial vehicles or trailers to be regularly located on the street or footpath or in front of the building line of the dwelling on a Lot.
  10. Permit or suffer to be upon a Lot any hoardings, caravans, derelict vehicles, huts or sheds used as dwellings or temporary dwellings.



11. Carry out landscaping within five (5) metres of the road frontage of a Lot, lakeside frontage, waterways frontage and any reserve frontage except in accordance with the general overall landscaping of the subdivision and without the prior written approval by the Aquatic Park Trust. The Grantee shall use his best endeavours to water and maintain any plantings and frontages to the standard reasonably required by the Aquatic Park Trust.
12. Carry out landscaping on the road frontage of the Local Authority owned land except in accordance with the general overall landscaping of the road reserve by the Aquatic Park Trust and without prior written approval by the Aquatic Park Trust. The Grantee shall use his best endeavours to water and maintain any plantings and frontages to the standard reasonably required by the Aquatic Park Trust.
13. Bring on to, raise, breed or keep any animals or livestock on a Lot or in the buildings on a Lot except to keep a maximum of two (2) family domestic animals limited to dogs or cats unless prior written approval is given by the Aquatic Park Trust.
14. Allow any animal (including dogs and other domestic pets) to be kept in or about a Lot and buildings thereon which is likely to cause a nuisance or annoyance to other occupiers in the subdivision or to detract from the subdivision as a whole. In particular and regardless of the foregoing the Grantee shall not keep on a Lot or in any on site building or structure any dog which in whole or part resembles the Pit Bull Terrier, Rottweiler or Doberman Pinscher breeds.
15. Use or permit the use of any Lot or any building on any Lot for trading or commercial purposes. For the avoidance of doubt, this restriction does not apply to a home office.
16. Use or permit the use of any Lot or any building on any Lot for institutional residential purposes. For the purposes of this clause "institutional residential purposes" shall include but not be limited to the use of the property for housing purposes by central or local government agencies or public or private health sector agencies.
17. Use adjacent or abutting land and footpaths for access or dumping of rubbish.
18. Remove or permit to be removed any boundary pegs from any Lots in the Development. If the Grantee removes any boundary peg(s) then the Grantee shall immediately upon demand pay to the Aquatic Park Trust all costs incurred by the Aquatic Park Trust in reinstating the removed peg(s), plus a premium of \$1,000.00.
19. Withhold consent to any application for planning approval for any commercial or other activity approved by the Aquatic Park Trust [including, but not by way of limitation the raising or lowering of the water level in the lake] or a Special Liquor Licence relating to any specific activity which is to take place on any land that is owned or leased by the Granter and which activity is approved by the Aquatic Park Trust.

## B. THE Grantee shall:-

1. Submit for the Aquatic Park Trust's approval detailed concept plans for any dwelling, building, fences, retaining structure, wall or jetties to be erected on a Lot. Those detailed concept plans must comply with the design guidelines of the Aquatic Park Trust in effect from time to time (copies of which may be obtained from the Secretary of the Aquatic Park Trust) and must be submitted to the Secretary of the Aquatic Park Trust thirty (30) days prior to the lodgement of applications for all necessary building and resource consents or, where neither building nor resource consents are required, thirty (30) days prior to the commencement of construction.

If the Aquatic Park Trust fails to communicate approval or disapproval of the detailed concept plans to the Grantee within thirty (30) days of receipt of the plans, then approval of the plans shall be deemed to have been given.

The Aquatic Park Trust has sole discretion (to be exercised reasonably) to approve or reject detailed concept plans and the grant of approval shall not in any way bind the Aquatic Park Trust in its consideration of further applications for approval.

The Aquatic Park Trust shall have the right to appoint an agent to act on its behalf in processing plan approval requests.

All applications to the Aquatic Park Trust for approval of concept plans must be accompanied by a declaration by the applicant that the plans comply with the restrictive covenants attaching to the Lot in question, that the plans comply with any applicable rules of the Huntington Park Property Owners Association, and that the plans comply with any relevant regulations of the Ashburton District Council. Failure to provide such a declaration, or should the declaration prove to be incorrect, approval will not be given, or if approval has already been given, this approval will be deemed to have been revoked and the applicant will be in breach of this covenant.

If a waiver of a restrictive covenant or deviation from any local or territorial authority rules is sought, this will only be given if requested in writing as part of the said declaration. No waiver of variation is to be implied by the approval of any plans where a waiver or variation is not specifically sought.



This clause shall also apply to any changes to detailed concept plans already approved or disapproved by the Aquatic Park Trust except that:

- (a) Where such changes are compulsory (i.e. required by the local or territorial authority) the period for the submission and approval of the plans shall be fifteen (15) days (excluding the period from 24 December to 5 January of the following year);
  - (b) Where such changes are optional the Aquatic Park Trust shall be entitled to recover its reasonable costs of review of the changed plans.
2. Maintain the section to an acceptable standard (in the reasonable opinion of the Aquatic Park Trust's) and shall not allow it to become unsightly or a fire hazard. In the event that untended grass or weeds are allowed to exceed 350 mm in height the Aquatic Park Trust reserves the right to have the section mowed and the Grantee agrees to accept liability for such cost plus a premium of 50% of such costs payable to the Aquatic Park Trust.
  3. Ensure that the exterior of the dwelling building or other structures visible to the public will not remain in an unfinished state for more than six (6) months from commencement of the erection of such dwelling, building, or other structure. All drives and pathways shall be fully constructed in a permanent dust free surface such as concrete, decorative stones, cobblestone interlocking paving and/or bitumen sealing from the road carriageway to the property boundary. Such work will be completed in a proper tradesman-like manner within twelve (12) months of the commencement of the construction of the dwelling. If such works are not completed in the times specified then the Aquatic Park Trust may have the works completed by its employees or agents and the Aquatic Park Trust shall be entitled to recover the costs of such completion works plus a premium of fifty (50) percent of such costs from the Grantee.

## C. AQUATIC PARK TRUST

**THE** Aquatic Park Trust:

1. Reserves the right to vary, modify or waive any of the forgoing covenants at the Aquatic Park Trust's absolute discretion so that the Ashburton Aquatic Park Charitable Trust's reasonable expectations of standards for the subdivision are met, and without limitation to the forgoing, the Aquatic Park Trust reserves the right to exempt from the restrictions any lot within the covenanted area.
2. Shall not be liable to the Grantee or any third party for any actions it takes or fails to take in respect of the covenants herein and the Grantee agrees, on behalf of the Grantee and any other person claiming an interest through the Grantee's property, not to pursue or make any claim for damages against the Grantor or the Aquatic Park Trust in respect of any actions the Grantor or Aquatic Park Trust takes or fails to take in respect of the within covenants.
3. The Aquatic Park Trust shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between a Lot and any contiguous land of the Aquatic Park Trust.
4. For the avoidance of doubt the rights contained in clause C.1. may only be exercised by the Trustees of the Ashburton Aquatic Park Charitable Trust.

## D. DEFAULT

1. **IN** the event the Grantee is in breach of any of the conditions contained in clauses A or B above then he will at the request of the Grantor or Aquatic Park Trust desist from such breach, and remedy such breach. If such remedy is not completed within a reasonable time then the Aquatic Park Trust or Grantor may have such breach remedied by its employees or agents and the Aquatic Park Trust or Grantor shall be entitled to recover the costs of such remedy plus a premium of fifty percent (50%) of such costs from the Grantee. Without limitation to the foregoing the Aquatic Park Trust or Grantor shall have the right to lodge a caveat over the Grantee's title in respect of which the breach exists and to maintain said caveat until such time as the breach is remedied. For the avoidance of doubt this is acknowledged by the Grantee to give rise to a caveatable interest.



## E. DISPUTE RESOLUTION

1. Except as relates to the exercise of any approval or consent requested of the Grantee under these Covenants, and without prejudice to the enforcement provisions of this document, if any dispute arises between or among the parties concerning the Covenants then the parties shall enter into negotiations in good faith to resolve their dispute.
2. If the dispute is not resolved within twenty working days from the date on which the parties begin their negotiations, then the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties agree, that person appointed may act as an expert and not an arbitrator.
3. If an arbitrator cannot be agreed upon within a further ten (10) days, then an independent arbitrator will be appointed by the President for the time being of the Canterbury-Westland Sub-branch of the New Zealand Law Society (or its successors).
4. Such arbitration will be determined in accordance with the Arbitration Act 1996 (and its Amendments), Second Schedule, or any enactment passed in its substitution.

## F. TERMINATION OF COVENANTS

1. These Covenants will automatically cease to have any effect on any allotment that will vest as road or reserve, in any subsequent stage of the subdivision upon the approval as to Survey by Land Information New Zealand



## ANNEXURE - FORM OF MEMORANDUM OF ENCUMBRANCE

### MEMORANDUM OF ENCUMBRANCE TO SECURE RENT CHARGE SUBJECT TO DEFEASANCE ON PERFORMANCE OF POSITIVE COVENANTS AND RESTRICTIVE COVENANTS IN GROSS

#### WHEREAS

The Encumbrancer **HAS AGREED** do certain things **AND** refrain from doing certain things and to secure the Encumbrancer's performance and observance of that agreement by granting to and making with the Encumbrancee the rent charge and covenants set forth in this Memorandum.

#### NOW THIS MEMORANDUM WITNESSES

1. That the Encumbrancer **ENCUMBERS THE LAND** for the benefit of the Encumbrancee in fee simple with an annual rent charge in each year of a sum equivalent to twenty times the annual charges to be paid by the Encumbrancer to the Encumbrancee under clause 8 of this Memorandum in that year such amount to be paid in one annual sum on 31 December and on 31 December in every year thereafter (but subject to clauses 2 to 4 of this Memorandum)
2. If during the 12 months immediately preceding 31 December and in each year thereafter during the continuance of this Encumbrance for the preceding 12 months there has been no breach of any of the Encumbrancer's covenants following or if any breach has been rectified by the Encumbrancer within 10 working days of the issue of a written warning or if any breach has been rectified by the Encumbrancer immediately upon receipt of a written warning and no further breaches of such covenants are committed by the Encumbrancer, then the annual rent charge payable on that day in each year shall be deemed to have been paid and the Encumbrancers shall be entitled to an acknowledgement to that effect.
3. Section 203 of the Property Law Act 2007 applies (save as modified by the proviso to clause 2 above) to this Memorandum of Encumbrance but otherwise and without prejudice to the Encumbrancee's rights of action in common law as a rent chargee.
  - (a) The Encumbrancee shall be entitled to none of the powers and remedies given to mortgagees and encumbrances by the Land Transfer Act 2017 and the Property Law Act 2007.
  - (b) No covenants on the part of the Encumbrancer and the Encumbrancer's successors in title are implied in this Memorandum other than the covenants for further assurance implied by section 208 of the Land Transfer Act 2017.
4. This rent charge shall immediately determine and the Encumbrancer be entitled to a discharge of this Memorandum of Encumbrance when the secured covenants are fully performed and no longer enforceable and any monies that may have become owing under this security are fully paid.
5. In this Encumbrance
 

**"Property Owners' Levy"** means the charge made and levied under clause 8

**"Huntingdon Park Property Owners Association"** means the organisation established by the owners of all the Lots in the Huntingdon Park Residential Subdivision collectively.

**AND THAT** the Encumbrancer **COVENANTS** with the Encumbrancee (such covenants being called "the secured covenants") as follows:-



**6. THE ENCUMBRANCER WILL:-**

- 6.1 Become a member of the Huntingdon Park Property Owners Association and maintain such membership for so long as the Encumbrancer is the owner of the land.
- 6.2 Duly and punctually pay all sums properly levied in respect of the Encumbrancer's land by the Encumbrancee at such times and in such manner as the Encumbrancee may from time to time direct.
- 6.3 Comply with and observe the provisions of the Restrictive Covenant registered against the title to the land.
- 6.4 Within five working days of the Encumbrancer unconditionally selling the Encumbrancer's land, give notice of the sale to the Encumbrancee and the Huntingdon Park Property Owners Association together with full details of the purchaser's name and address.

**7. THE ENCUMBRANCER WILL NOT:-**

- 7.1 Use the Encumbrancer's dwelling or permit it to be used in such manner or for such purpose as to cause a nuisance or disturbance to other members of the Huntingdon Park Property Owners Association.
- 7.2 Make undue noise in or about the Encumbrancer's dwelling at any time of the day or night in such manner as to disturb, irritate or annoy any other member of the Huntingdon Park Property Owners Association.
- 7.3 Deposit or throw any rubbish dirt dust or other material anywhere except into bins or receptacles provided for this purpose and in accordance with the directions given by the Encumbrancee or the Huntingdon Park Property Owners Association from time to time.

**8. THE Encumbrancer and any other occupier of the dwelling on the Encumbrancer's land shall:-**

- 8.1 Meet and pay to the Encumbrancee or the Huntingdon Park Property Owners Association as directed the Encumbrancer's reasonable share and proportion of the Property Owners' levy as levied annually in advance by the Encumbrancee for the benefit of the Encumbrancer and the Encumbrancer's land in common with other members of the said Association for the following purposes:
  - 8.2 A contribution towards maintenance of the canals and the lake
  - 8.3 Garbage collection and disposal
  - 8.4 Administration
- 8.5 The amount of such levies shall be determined as the Encumbrancee and/or the Huntingdon Park Property Owners Association deems reasonable. Any increase in the levy shall be no greater than the accumulated percentage of rate rises imposed by the Ashburton District Council since the last levy was struck unless the approval of a majority of the Huntingdon Park Property Owners Association has first been obtained. Such levy shall be due for payment on the 20th day of the month following the posting of the account to the Encumbrancer or otherwise as the Encumbrancee may determine.

