



WESTHAVEN

Rolleston

Westhaven
Protective Covenants

WESTHAVEN – PROTECTIVE COVENANTS

1. Protective Covenants (“Covenants”)

- 1.1 Westhaven wishes to preserve the character and integrity of the Westhaven Subdivision and the Rolleston area in general.
- 1.2 To facilitate this the Covenantor agrees to the following Covenants which are to be registered against each separate Record of Title to the Burdened Land.

2. Interpretation

- 2.1 For the purposes of the Covenants the following words shall have the following meaning:

Allow means and includes do, use, facilitating, permitting and suffering;

Approval or Approved means an approval obtained in accordance with clause 3 below;

Approval Certificate means a certificate issued by **Westhaven** which provides confirmation that all Building and Landscaping have been completed in accordance with the terms of these Covenants and the Westhaven Residential Design Guide;

Building means all structures, constructions and improvements, including (but not limited to) dwelling houses, flats, units, garages, glass-houses and sheds;

Burdened Land means land, lot, Low Density Lot, Standard Lot and Corner Lots;

Construct and **Construction** means to install, erect, plant, complete relocate, repair, renovate, replace or place on the Burdened Land or in any Building and also includes **Allow** to construct;

Corner Lot means any Burdened Land having two street fronting boundaries, provided that, unless specifically referenced as such in the Covenants, a Corner Lot shall be regarded as either a **Low Density or Standard Lot**;

Landscaping means and includes (but is not limited to) driveways, driveway crossings, concrete areas, entranceways, footpaths, kerbs, road frontages, planting, satellite dishes, fencing, walls, wind-breaks, washing lines, street and house numbering including design;

Low Density Lot means any Burdened Land between 500m² and 700m² in area;

Primary Road Boundary means, in relation to a Corner Lot, the street facing boundary upon which the driveway has been or is still to be constructed;

Secondary Road Boundary means, in respect of a Corner Lot, the street facing boundary upon which no driveway has been constructed or is to be constructed;

Standard Lot means any Burdened Land between 275m² and 499m² in area;

Subdivision means **Westhaven’s** subdivision in Rolleston known as Westhaven.

Westhaven means Westhaven Rolleston Limited or its agent;

Westhaven Residential Design Guide means the residential design guidelines published by Westhaven and available on the Westhaven website and which generally set out the following:

- (i) The general compliance standards for the design, building specifications and layout of the Buildings;
- (ii) The design and specification for fencing and Landscaping constructed either by Westhaven or the Covenantor and situated on the Burdened Land;
- (iii) The general use of the Burdened Land throughout the period of construction; and
- (iv) The general maintenance and upkeep of the Burdened Land.

Westhaven may at its unfettered discretion make any amendments to the **Westhaven Residential Design Guide** that it deems appropriate from time to time.

The following provisions shall apply in the construction and interpretation of these Covenants (unless the context otherwise requires):

- (a) The headings are for convenience only and shall not affect the interpretation of these Covenants; and
- (b) Words importing the singular include the plural and vice versa.

3. **Westhaven Approval**

3.1 All Approvals required in accordance with these Covenants must be in writing from Westhaven. All Approvals must also be:

- (a) Obtained by the Covenantor prior to any work being carried out on the Burdened Land; and
- (b) May be given or denied at the sole and absolute discretion of Westhaven.

3.2 The Covenantor acknowledges that providing Approval for one party in no way creates a precedent for Approval for another party and Westhaven may refuse approval for an identical request from another party and shall not be required to provide any reason for such lack of Approval. Further, and without limiting its absolute discretion, Westhaven may refuse to provide Approval to the Covenantor, if what is being proposed by the Covenantor is determined as being detrimental to the Subdivision either now or at any stage in the future.

3.3 In exercising its discretion for Approval in accordance with clause 3.1 above Westhaven may take into account the architectural merit, visual appearance as well as its own assessment of the general effects on the Burdened Land and the Subdivision in general.

3.4 In considering a request made by the Covenantor for an Approval Certificate, Westhaven shall assess whether the Building and Landscaping on the Burdened Land has been completed in observance with:

- (a) The terms of the Westhaven Residential Design Guide; and
- (b) Any plans previously approved by Westhaven.

3.5 The address for Westhaven (or its agent) for approvals is C/- Carter Group, Level 2, ASB House, The Crossing, 166 Cashel Street, Christchurch 8011, Info@westhavenrolleston.co.nz

3.6 A construction bond of \$4,000 is payable by the Covenantor to Westhaven on settlement of the Burdened Land.

4. **Covenants**

Landscape and Building Plans

4.1 The Covenantor shall not commence construction of any Building on the Burdened Land, or use any site plans, specifications which have not first received approval from Westhaven.

4.2 The Covenantor shall not commence construction of any Landscaping on the Burdened Land or use any landscape plans which have not received Approval from Westhaven.

4.3 Without limiting the provisions of clause 4.2 above, landscape plans shall:

- (a) Specify all landscape design matters included in the Westhaven Residential Design Guide;
- (b) Be prepared in electronic form by a landscape architect or landscape designer;
- (c) Provide sufficient and adequate detail to accurately identify plant quantities, varieties and grade, locations as well as driveway specifications, fencing heights and including colour, letterbox design and any other relevant Landscaping as determined by Westhaven; and
- (d) Be submitted to Westhaven for Approval within three (3) months following submission of any building plans for any Building in accordance with clause 4.1 above.

Occupation

4.4 The Covenantor shall not allow any Building on the Burdened Land to be occupied as a residence prior to:

- (a) A Code Compliance Certificate having been issued by the Territorial Authority;
- (b) All driveways, paths, fencing and Landscaping being completed in accordance with the Covenants and in accordance with the Westhaven Residential Design Guide; and
- (c) The Covenantor requesting and having received the Approval Certificate from Westhaven.

Building and Construction

4.5 The Covenantor shall not without first having received Approval from Westhaven:

- (a) Construct on the Burdened Land any prefabricated, relocated or transportable Building or Landscaping other than one constructed on site from new materials.
- (b) Construct on the Burdened Land any Building or Landscaping which fails to adhere to the Westhaven Residential Design Guidelines throughout the course of construction.
- (c) Leave any Landscaping or the outside of any Building unfinished.

- (d) Allow the Burdened Land to be used for temporary residential purposes including through the erection of temporary structures or by the placing thereon of caravans and/or vehicles for human habitation.
- 4.6 The Covenantor shall not permit any rubbish, including builder's waste materials to accumulate or to be placed upon the Burdened Land, the berm in front of the Burdened Land or any adjoining land or permit grass or weeds to grow to a height exceeding 75mm or otherwise leave the Burdened Land or the berm in front of the Burdened Land in a condition that, in Westhaven's sole discretion, may be detrimental to the Subdivision. Westhaven shall have the right to remove any building materials from the Burdened Land, the berm in front of the Burdened Land or adjoining land, or to maintain the Burdened Land and the berm in front of the Burdened Land in a reasonable condition to avoid the Burdened Land becoming detrimental to the Subdivision, with the reasonable costs to be met by the Covenantor and payable on demand.

Site Coverage, Street Frontage, Front Façade and Fencing

- 4.8 The Covenantor shall comply in all respects with the requirements as detailed in the Westhaven Residential Design Guide in relation to site coverage, street frontage and the front façade of the Building to be constructed on the Burdened Land.
- 4.9 The Covenantor shall not construct any fencing on the Burdened Land without first receiving Approval from Westhaven.

Landscaping

- 4.10 The Covenantor shall be solely responsible for the ongoing maintenance of all Landscaping (including fences and planting) constructed by Westhaven in accordance with the Westhaven Residential Design Guide on or adjacent to the Burdened Land and shall keep such Landscaping neat, tidy and to a high standard of presentation and repair to the satisfaction of Westhaven.
- 4.11 The Covenantor shall not alter the location, design, exterior coating/sealer, materials, colour or structure of any boundary fencing, feature wall or alter they layout of plantings without the prior written approval of Westhaven.
- 4.12 The Covenantor shall comply with the Westhaven Residential Design Guide in relation to all Landscaping required to be constructed by the Covenantor (including but not limited to) landscape planting, specimen grade trees, privacy fencing and hedging and shall be solely responsible for the ongoing maintenance of such Landscaping.
- 4.13 The Covenantor shall not construct a driveway crossing other than as specified in the Westhaven Residential Guide without first receiving Approval from Westhaven.

5. General Covenants

- 5.1 The Covenantor shall not without first receiving the prior Approval of Westhaven:
- (a) Allow any satellite dish, garden statues, fountains or any other exterior ornamental decoration or similar Landscaping on the Burdened Land to be reasonably visible by any other registered owner in the Subdivision standing on any kerb, street or road in the Subdivision;
 - (b) Allow Buildings, grass, weeds, rubbish, noxious substances or other matter on the Burdened Land which is likely to become unsightly or a nuisance or annoyance to the other registered owners in the Subdivision;

- (c) Allow any advertisement, sign or hording of any kind to be erected on any part of the Burdened Land or any Building (except for compulsory statutory signage, real estate signage pending sale and builder's signage during construction and pending sale) and all such signage must first be approved by Westhaven;
- (d) Allow maintenance of any Building or Landscaping to deteriorate to a level which is less than that presented in the Subdivision or unreasonable taking into account fair wear and tear and the original condition at the time the Building on the Burdened Land was occupied as a residence;
- (e) Allow construction, maintenance or repair of footpaths, driveways, driveway crossings, entranceways and any concrete areas on the Burdened Land;
- (f) Erect any letterbox on the Burdened Land;
- (g) Locate any heatpump or gas cylinder, bin storage, washing line or utility service area within view from any kerb, street or road within the Subdivision;
- (h) Fail to complete all Landscaping within two (2) months of completion of the exterior of the dwelling on the Burdened Land;
- (i) Keep any boat, motorhome, caravan, trailer, bus or similar on the Burdened Land unless it is housed in an enclosed garage or otherwise screened from being visible from the road or street;
- (j) Allow the parking of any vehicle on the Burdened Land other than within the garage or upon the driveway;
- (k) Allow any animal to be kept in or about the Burdened Land that is, or may cause, a nuisance or annoyance to the other registered owners in the Subdivision or detract from the Subdivision in any way. In particular, not allow on or about the Burdened Land any dog which resembles any of the Pit Bull Terrier, Rottweiler or Doberman Pinscher breeds.

6. Enforcement

- 6.1 In the event there is any breach or non-observance of any of the Covenants the Covenantor in breach agrees to and shall at their cost:
 - (a) Remove or cause to be removed from the Burdened Land any Building or Landscaping or other item erected on the Burdened Land in breach or in non-observance of the Covenants;
 - (b) Replace any such building materials or other non-conforming item used in breach or non-observance of the Covenants with approved materials; and
 - (c) Complete any remedial work required to remedy any breach or non-performance of the Covenants.
- 6.2 Upon written notice being given by Westhaven to the Covenantor in breach, pay liquidated damages in the sum of two-hundred and fifty dollars (\$250.00) per day for every day that such breach or non-observance continues after the date which is thirty (30) days after the date upon which written notice is given.
- 6.3 Notwithstanding the provisions contained in clauses 6.1 and 6.2 above Westhaven shall not be required nor liable nor have any legal responsibility or liability to enforce any of the Covenants or any non-conformance of the Covenants.

7. General

- 7.1 The Covenantor covenants with Westhaven that it will not oppose, object to, frustrate, or take any action, or encourage or cause others to oppose, object to, frustrate or take any action, that might in any way prevent or hinder Westhaven from progressing and completing the Subdivision or land use consents needed to give effect to the Subdivision. The benefit of this Covenant also applies to any adjoining or neighbouring property Westhaven (or any entity associated with Westhaven) owns or may subsequently purchase to progress the Subdivision or any subdivision by any entity associated with Westhaven.
- 7.2 The Covenantor shall not subdivide the Burdened Land. Subdivide shall have the meaning given to the expression "subdivision of land" set out in Section 218 of the Resource Management Act 1991.
- 7.4 Notwithstanding the foregoing, the Covenants shall cease to have any effect on any allotments which shall vest or be dedicated as road and/or reserve in any subsequent stages of the Subdivision. Such date of cessation shall be the date of approval of the subdivision plan by the Territorial Authority.
- 7.5 The provisions of these Covenants (except clause 7.1) shall expire twenty-five (25) years from the issue of a separate Record of title to the Burdened Land.

8. Dispute Resolution

- 8.1 With the exception of anything which relates to the exercise of any discretion, opinion or Approval requested of Westhaven, and without prejudice to the Enforcement provisions contained in clause 6 above, if any dispute arises between the parties, then the parties shall enter into negotiations in good faith to resolve such dispute.
- 8.2 If the parties fail to resolve such dispute within twenty (20) working days from the commencement of negotiations, then the parties shall submit to the arbitration of an independent arbitrator appointed by Westhaven.
- 8.3 Such arbitration will be determined in accordance with the Arbitration Act 1996 (and its amendments) or any enactment passed in its substitution.

9. Severability

- 9.1 If any of these Covenants are held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of these Covenants, and such remaining parts shall remain in full force and effect.