

THE CREST @



STAGE 2 COVENANTS

DEFINITIONS

1. In these Covenants:
 - 1.1 “**Benefited Land**” means all the land contained in 1169582 (Lot 200 DP 599467), Wellington Registry and any subsequent title issued from further subdivision (“head title”).
 - 1.2 “**Building**” means any residential dwelling-house or primary building on the Lot.
 - 1.3 “**Burdened Land**” means all the land contained in part 1169582 (Lot 200 DP 599467), Wellington Registry and any subsequent title issued from further subdivision (“head title”).
 - 1.4 “**Garage**” means any enclosed garage on the Lot.
 - 1.5 “**Divine**” means Divine Developments (2019) Limited or any other person or persons nominated by Divine Developments (2019) Ltd. If Divine has been dissolved or wound up or otherwise gone out of existence, “approval by Divine” will mean approval by any party appointed and/or nominated by Divine for this purpose.
 - 1.6 “**The Crest Development**” means the land being developed and/or subdivided by Divine Developments (2019) Ltd known as The Crest at AOTEA in Porirua, Wellington.
 - 1.7 “**Local Authority**” means the Local Authority or any other entity appointed in its place.
 - 1.8 “**Local Authority Owned Land**” means any road or reserve owned or controlled by the Local Authority in The Crest Development.
 - 1.9 “**Lot**” means the relevant Lot contained within the Burdened Land or any part of it. For avoidance of doubt, any reference to “Lot” in these covenants includes a reference to a Lot created from further subdivision should it be permitted.
 - 1.10 “**Plans and Specifications**” means plans, drawings, specifications and other documents from which the Building, Garage and Landscaping are to be constructed (including details of materials, colours, location and design).
 - 1.11 “**Purchaser**” means the registered owner of the Lot in Stage 2 and includes the Purchaser’s agents, employees, contractors, subcontractors, tenants, licensees and other invitees.
 - 1.12 “**Resource Consent**” means Resource Consent 8223 approved by the Local Authority, and any variations thereof.
 - 1.13 “**Stage 2**” means all the land contained in Record of Title 1169582 (Lot 200 DP 599467), Wellington Registry and any subsequent title issued from further subdivision (“head title”).
 - 1.14 “**Tiny House**” means any secondary building or other object (whether mobile, temporary or permanent) used for residential purposes.
2. Interpretation:
 - 2.1 In these Covenants headings are for reference purposes only and words and expressions denoting the singular shall include the plural.

FENCING COVENANTS

1. Divine shall not be liable to pay for or contribute towards the cost of erection or maintenance of any fence between any Lot in Stage 2 of The Crest Development and any adjoining land owned by Divine but this condition shall not enure for the benefit of any subsequent Purchaser of such adjoining land or any part of that adjoining land.
2. The Purchaser 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 Purchaser will not seek contribution from Divine or the Local Authority.

LAND & BUILDING COVENANTS

1. The Purchaser acknowledges that the Lot is part of The Crest Development which is intended to be established as a modern and well-designed subdivision. In accordance with this intention, Divine will exercise supervision and control in relation to the nature and type of construction permitted in The Crest Development and the standard of surroundings being maintained.
2. The Purchaser will be bound by these Covenants, although Divine may, in writing, at the sole and unfettered discretion of Divine, waive part, any or all of these Covenants, provided that Divine decides in its sole discretion that the amendments or additions are generally in accordance with the aims of The Crest Development on such terms and conditions as Divine may require and shall not be in contradiction to the Resource Consent.
3. In any circumstances where Divine approval is required in respect of any covenant, then any approval shall be at Divine's sole discretion and in no circumstance shall Divine be required to give any reason for its decision.

Any written approval provided by Divine is for subdivision design standard control purposes only and implies no warranty as to the product, design, quality or suitability of the Building, Garage and/or Landscaping on the Lot in any manner whatsoever.

4. The Purchaser covenants:

Plans and Specifications

- 4.1 Prior to the Purchaser applying to the Local Authority for a Building Consent or commencing any works on the Lot (including preparatory work), to have all Specifications for any Building and Garage, and all Plans and Specifications for Landscaping, approved in writing by Divine.

Landscaping plans must encompass (but not be limited to) decks, patios, rubbish bin enclosures, fences, paths, driveways, retaining walls, grassed lawns, letterbox and sufficient plants, trees and shrubs to enhance the street appeal of the said Building and Garage.

In determining whether or not to approve the Plans and Specifications, Divine will take into account the appearance of the proposed Building and Garage and surrounding Buildings and streetscape in The Crest Development. Divine will pay particular attention to those elevations viewed from any road and/or reserve. The intention is that there should be a range of styles, designs and appearance of Buildings within the Divine Development.

- 4.2 To construct any Building, Garage and retaining walls in compliance with the Resource Consent and in accordance with the Plans and Specifications approved in writing by Divine, and undertake all Landscaping as approved in writing by Divine.

Any modification or variation to the approved Plans and Specifications will require further written approval by Divine (and the Local Authority if required) prior to such work commencing.

Building Requirements

- 4.3 To construct only one new Building and Garage (if applicable) on the Lot as prescribed in the Resource Consent.

- 4.4 To construct any garden shed to a maximum floor size of 9m² and 2m in height so that:
- (a) it does not extend beyond the front building alignment of the Building;
 - (b) it is screened and not highly visible from the street and neighbouring properties.
- 4.5 To locate any attachments (including but not limited to television antenna) away from the front face of the Building where the main entrance to the Building is located.
- 4.6 The location of all solar panels and power systems shall be approved in writing by Divine prior to installation.
- 4.7 All clothes lines, rubbish and garden bins, gas systems/bottles and air conditioning units shall be located on the Lot in such a way as not to be highly visible from any road and/or neighbouring properties. Further, all these items shall be located in the designated area should there be one allocated on the consented plan.
- 4.8 To construct in a proper and tradesmanlike manner a driveway and vehicle access in a permanent continuous surfacing of concrete, concrete block, brick paving or sealing.

The driveway surface from the kerb to the Lot boundary shall be constructed of the same material as the footpaths in the stage of The Crest Development that the Lot forms part of.

Construction Materials, Cladding and Finishing

- 4.9 To construct any Building and Garage so that:
- (a) the exterior cladding and materials of any Building is as prescribed in the Resource Consent, or any other exterior cladding material for which the Purchaser has first obtained Divine's (and Local Authority, if required) consent in writing;
 - (b) all exterior surfaces (which are not pre-colour coated or finished) are painted, or stained, prior to the Building being occupied. Where a Building has a basement, exposed subfloors, framing and/or decks, the exposed areas shall be clad in permanent materials in conformity with the main parts of the residence;
 - (c) there are no reflective surfaces on any exterior cladding or roofing on the Building and any other buildings or garden sheds. In order not to create a glare offensive to adjoining property owners, not to use any metal clad roofing that has not been factory pre-painted or use any roofing material which exceeds 49% light reflective value (LRV);
 - (d) all colours of garden sheds are in keeping with the main Buildings.

Construction

- 4.10 Before commencement of any site-specific earthworks and/or construction on the Lot, the Purchaser 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 earthwork or construction phase shall be removed within 8 weeks of the work being completed.
- 4.11 Before, during and after any earthworks and/or construction, the use of adjacent or abutting land and neighbouring properties for access, is strictly prohibited, provided however, that the Purchaser can only have access across any other site upon obtaining prior written approval from the owner.

Stockpiling and dumping of rubbish in The Crest Development is strictly prohibited.

Once earthworks and/or construction has commenced, the Purchaser shall ensure container bins are kept on the Lot for the accumulation, containment and disposal of all rubbish. When necessary all rubbish must be removed.

- 4.12 The Purchaser will ensure that street landscaping, berms, roading, footpaths and kerbs are kept clean and free from debris prior, during and after construction. The Purchaser shall re-instate,

replace and be responsible for all costs arising from damage to the street landscaping, berms, roading, footpaths, kerbs, streetlights, fencing, street signs, concrete or any other structures in the subdivision arising from the Purchaser's use of the land directly or indirectly through the Purchaser's actions.

- 4.13 Notwithstanding Clause 4.31 of these Covenants, during the construction period, a temporary building/container and any other building equipment can be placed either on the Lot or in Divine's designated area (should there be one) to be used in conjunction with the construction of the Building and Garage, but must be removed within 8 weeks of the practical completion of the Building.

Completion of Works

- 4.14 To complete construction of any Building and Garage (including the exterior painting and decorating) and the driveway/vehicle access within 18 months of commencement of excavation of the building site.

During this 18 month period, not to allow construction of the Building to be delayed so that substantial progress is not made for any period exceeding 3 months.

- 4.15 That within 3 months from the completion of the Buildings and Garages:
- (a) lawn(s) must be laid, all landscaping work (as detailed in the approved plans) and reinstatement of the Local Authority Owned Land adjoining the Lot must be completed; and
 - (b) permanent interior window furnishings must be hung.

Fencing and Retaining

- 4.16 Except during the time of construction, not to erect any fence constructed of shade cloth, netting, plastic, long-run or corrugated iron, un-textured wood-fibre cement panels, plywood, fibrolite or post and wire. Steel profile fencing may be used with the prior written approval of Divine.
- 4.17 To construct all fences and retaining walls in compliance with the approved Plans and Specifications, Resource Consent (if required) and the Local Authority requirements.
- 4.18 Not to alter, interfere with, paint, add to, or otherwise change the fences, entrance walls or subdivision features, or their fittings or attachments including any hedges and other landscaping erected by Divine, apart from the maintenance thereof without the prior written approval of Divine.
- 4.19 Any modification or variation to an approved fence will require further written approval by Divine (and Local Authority if required) prior to such work commencing on the proposed modifications or variations.

Land Use

- 4.20 That except for driveways, not to carry out landscaping on the road frontage of the Local Authority Owned Land except in accordance with the general overall landscaping plan prepared by Divine and approved by the Local Authority.
- 4.21 To ensure all agents, employees, contractors, sub-contractors, tenants, licensees and other occupiers of the Lot are made aware of, and comply with, the restrictions created by these Covenants.
- 4.22 The Purchaser covenants to allow Divine to enter on to the Lot to undertake any repairs and remedial work required to the land to ensure The Crest Development is maintained to a high standard. Prior to entry, Divine will obtain the Purchaser's consent to enter (such consent not to be unreasonably withheld).

- 4.23 Not to permit:
- (a) the Lot to be occupied or used as a residence unless the Building and Landscaping has been completed in accordance with the Covenants and the Local Authority Code of Compliance Certificates have been issued for the Building;
 - (b) a Tiny House to be placed on the Lot;
 - (c) any Garages on the Lot to be lived in or otherwise used as habitable spaces;
 - (d) the Lot, Building and Garage to be used:
 - i on a commercial basis; and
 - ii for any holiday accommodation where a fee is chargedunless the prior written approval of Divine has been obtained and all Local Authority requirements have been met.
- 4.24 Following construction of the Building, not to display more than one advertisement, sign or hoarding of a commercial nature on the Lot. Any advertisement, sign or hoarding must
- (a) not measure in excess of 750mm x 750mm and;
 - (b) be kept in good condition at all times.
- 4.25 Not to allow any Building, Garage, structure, driveway, landscaping, sign or fencing on the Lot to fall into disrepair.
- 4.26 Not to allow any graffiti (or similar disfiguring) on the Building, Garage, fences, retaining structures or any other structure on the Lot to remain in place for more than 5 working days from the date the Purchaser became aware of the graffiti or disfiguring.
- 4.27 Not to construct any road on any part of the Lot to provide access to any adjoining Lot.
- 4.28 Not to park in any Lane Ways, Right of Ways or Access Lots.
- 4.29 To, at all times, keep mown and maintained in a neat and tidy condition (and prevent from becoming unsightly) the Lot and adjoining grassed street berm.
- 4.30 Not to bring on to the Lot any more than 3 animals limited to domestic pets. Livestock, Poultry and Roosters are not permitted. Where possible, all animals on the Lot must be controlled:
- (a) so as not to become a nuisance to others within the Divine Development; and
 - (b) to prevent them from roaming anywhere within the Aotea subdivision at will.
- 4.31 Not to bring on to, or to allow to remain on the Lot or Local Authority Owned Land, anything set out in the applicable categories in this clause, unless they are garaged or adequately screened from the road and surrounding properties (so as to protect the aesthetic qualities of The Crest Development and prevent noise likely to cause offence to residents). All screening shall be approved by Divine. The applicable categories are:
- (a) vehicles with a gross laden weight exceeding 3,500kgs (including recreational and trade vehicles);
 - (b) more than one sign written vehicle;
 - (c) temporary buildings (including sheds and containers);
 - (d) buses, caravans, motorhomes, recreational vehicles and/or pleasure-craft/boats;

- (e) trailers or any other equipment, materials or machinery;
 - (f) trampolines or large play equipment.
- 4.32 Not to allow any vehicle or anything set out in the applicable categories of Clauses 4.31(a) to 4.31(f) to be maintained, repaired or have other work carried out on Local Authority Owned Land. All such work shall be undertaken in the confinement of the Lot and screened from the road and neighbouring properties.
- 4.33 Notwithstanding Clause 4.31, not to bring on to, or to allow to remain on the Lot any vehicle, caravan, bus, motorhome or recreational vehicle to be used for residential habitat on the lot.
- 4.34 To ensure due allowance is made for adequate current and future drainage of all stormwater from the Lot, such stormwater drainage not to be detrimental to the water quality of the stormwater network. The Purchaser will also ensure that no discharge from the Lot whether of a soluble or insoluble nature shall occur. The Purchaser is responsible for all costs, claims or demands for any remedial action undertaken for any breach thereof.
- 4.35 That it will at all times save harmless and keep indemnified Divine from all proceedings, costs, claims and demands in respect of breaches by the Purchaser of these Covenants and
- 4.36 The Purchaser will not hold Divine accountable for any damage caused during any stages of development of Divine.
5. Breach of Covenants & Enforcement
- 5.1 If there is a breach of any of these Covenants (and without prejudice to any other liability which the Purchaser may have to any person having the benefit of this Covenant) and the Purchaser does not rectify the breach within 10 working days of written notification of such breach, then the Purchaser will pay to the party notifying them of such breach ("Notifying Party"):
- (a) liquidated damages of the sum of \$500.00 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 Notifying party to remedy the breach.
- 5.2 The rights of Divine to enforce (should they wish to do so) the terms of the rights and benefits conferred by these covenants will remain in place until the earlier of 31 December 2040 or
- (a) 60 calendar months from the date on which Divine ceases to be a registered owner of any Lot forming part of The Crest Development; or
 - (b) Divine relinquishing these rights in writing and nominating a replacement entity; or
 - (c) Divine relinquishing these rights in writing and confirming the right to enforce the rights and benefits conferred in these Covenants will, in accordance with normal legal principles, vest in the registered proprietors of any Lot forming part of the Benefited Lot.
- 5.3 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.
- 5.4 The burden of these Covenants shall not apply to any land vested or to be vested in the Local Authority as open space, reserve (within the meaning of the Reserves Act 1977) or road (within the meaning of Section 315 of the Local Government Act 1974, as contained by the Local Government Act 2002) so long as it remains open space, reserve or road, and
- (a) Divine reserves the right to waive or consent to the vesting of such land in the Local Authority as open space, reserve or road, free of any such covenants;

- (b) the Purchaser, for itself and any person claiming an interest in the land through or under the Purchaser appoints Divine as its attorney to exercise the powers set out in 5.4 (a);
 - (c) the production of an agreement signed by the Purchaser containing or annexing these Covenants shall be sufficient authority for the exercise of the powers set out in 5.4 (a).
- 5.5 Notwithstanding Clause 5.4 the benefits of these Covenants so far as they are applicable to any land within a distance of 0.5 kilometres from any open space, reserve or road vested in the Local Authority, shall extend to the Local Authority; and the Purchaser agrees that these Covenants confer a benefit on the Local Authority for the purposes of the Contracts (Privity) Act 1982. The rights conferred by this clause are in addition to, and do not exclude, any rights which the Local Authority may have at law.
6. Expiry of Covenants
- 6.1 These covenants will continue in force for the benefit of the registered owners of any Lot forming part of the Benefited Land until 31 December 2040 at which time they will expire.
7. Dispute Resolution
- 7.1 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, 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.
8. No Objection
- 8.1 The Purchaser consents that they will not directly, nor indirectly (nor procure any person to do so):
- (a) object or hinder, or otherwise obstruct, grant confirmation or alteration pursuant to the Resource Management Act 1991 ("RMA") of any authorisations under the RMA which in any way hinders Divine's further subdivision of this land or surrounding land owned directly or indirectly by Divine and will sign all and any authorisations and approvals required by Divine including any variations to these Consents;
 - (b) fund, encourage or otherwise be involved in any act, matter or thing that, if carried out by the Purchaser, would restrict Divine's further subdivision of any surrounding land owned directly or indirectly by Divine;
 - (c) object to any construction, noise, dust or activity on the balance of the subdivision land owned by Divine, or attempt to pursue Divine for remedies, costs or damages as a result of any development related activity by either party.
9. Vesting

- 9.1 Notwithstanding any provision herein contained, the within Covenants shall cease to have effect (and shall automatically surrender) as to any Lot which shall vest or be dedicated as road or reserve at any time (including, by way of example but not limitation, where a Lot vests as road or is dedicated as road in respect of any subsequent stages of the subdivision). Such date of cessation and surrender shall be the date of approval of the Subdivision Plan for the relevant stage by the territorial authority.