

Form 26

Covenant Instrument to note land covenant

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

Covenantor

BELMGROVE RANGIORA LIMITED (as to a 1/2 share)
NTP DEVELOPMENT HOLDINGS LIMITED (as to a 1/2 share)

Covenantee

BELMGROVE RANGIORA LIMITED (as to a 1/2 share)
NTP DEVELOPMENT HOLDINGS LIMITED (as to a 1/2 share)

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (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
Restrictive use covenant	Lots 1 – 49, 1400, 2000 – 2002 DP 589492	1134915 – 1134959, 1134961 – 1134968	1134915 – 1134959, 1134961 – 1134968

Covenant rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required.

Continue in additional Annexure Schedule if required.

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number, registered under section 209 of the Land Transfer Act 2017].~~

[Annexure Schedule 1].

Annexure Schedule 1 – Restrictive use covenant

1. Purpose

- 1.1 The purpose of these covenants is to protect the market, character and aesthetic value of all of the lots in the Development, the privacy, peace and security of the occupants of the Development and the quality of the environment for the benefit of all lots in the Development, including the Benefited Land, and its associated community in general. These covenants will be registered on the title for each lot in the Development.

2. Definitions and interpretation

- 2.1 **Definitions:** In this Instrument, unless the context otherwise requires:

Bellgrove means Bellgrove Rangiora Limited, NTP Development Holdings Limited and any successor party or organisation nominated by them or by any successor party or organisation to deal with applications required for approvals by Bellgrove under any of these covenants;

Benefited Land means the land described in Schedule A as the benefited land which has the benefit of the covenants set out in this Instrument;

Building comprises a building as defined by the Building Act 2004 (or latest version);

Burdened Land means the land described in Schedule A as the burdened land which is subject to the covenants set out in this Instrument;

Council means the Waimakariri District Council;

Design Guidelines means the building and fencing design guidelines produced by Bellgrove from time to time in respect of the Development;

Development means Bellgrove's Stage 1 subdivision known as Bellgrove Rangiora, located on the north-west rural fringe of Rangiora, more particularly located on Kippenberger Avenue, of which the Burdened Land forms part, including any open spaces, and associated infrastructure and including any variation to the Development made by Bellgrove in its sole discretion at any time;

Dwelling means and includes a residential dwelling house, or family residence;

Instrument means the front page of this instrument together with all Annexure Schedules attached to it;

Lots means the individual allotments comprising the Burdened Land and **Lot** means any one of them;

Lot Owner means the registered owner of any Lot from time to time;

Relevant Authority means any government, local, statutory or non-statutory authority or body having jurisdiction over the Burdened Land and/or the Development; and

Working Days has the meaning given to that term in the Property Law Act 2007.

- 2.2 **Interpretation:** In the following covenants:

- (a) headings are for ease of reference only and do not form part of any covenant nor affect the meaning of any covenant;

- (b) words imputing the singular include the plural and vice versa;
- (c) a covenant to do something is also a covenant to permit or cause for that thing to be done and a covenant not to do something is also a covenant not to permit or cause for that thing to be done;
- (d) this Instrument binds and benefits the parties, and the heirs, executors, successors and assigns in perpetuity and also any lessee or occupier of the Burdened Land; and
- (e) a reference to a statute includes:
 - (i) all regulations under that statute;
 - (ii) all amendments to that statute; and
 - (iii) any statute substituting for it which incorporates any of its provisions.

2.3 **Exemption from development covenants:** The land comprised in Lot 1400 Deposited Plan 589492 is not subject to the covenants in clauses 3, 4, 5.1 and 5.2 of this Instrument and the registered owner of such land will not be required to comply with clauses 3, 4, 5.1 and 5.2 with respect to this lot.

3. Developer approval covenants

Covenants: Each Lot Owner covenants with Bellgrove:

3.1 **One house per Lot:** To erect only one Dwelling or Dwelling Unit on each Lot.

3.2 **Minimum Dwelling Floor Area:** The minimum floor area of each Dwelling must be:

Stage 1A	
Lot Size	Minimum Dwelling Floor Area
Stand Alone Builds: Lots 1 – 49, 2000, 2001, 2002	
Between 300m ² and 399m ²	90m ²
Between 400m ² and 499m ²	130m ²
Between 500m ² and 599m ²	150m ²
Between 600m ² and 699m ²	175m ²
Between 700m ² and 799m ²	200m ²
800m ² and greater	220m ²

- (a) Site coverage, heights and character features of any Dwelling or other improvement erected on a Lot will be subject to Council planning rules and/or resource consent conditions (including without limitation all consent notices registered against the records of title to each Lot).
- (b) Bellgrove may in its sole, absolute and unfettered discretion approve any plans outside of the above conditions – any approval does not create a precedent for any other Lot or Lot Owner.

- 3.3 **No subdivision:** Not to subdivide any Lot, provided that Bellgrove shall in its sole and absolute discretion, retain the right at all times to further subdivide or approve any other subdivision of any Lot in the Development.
- 3.4 **Design Guidelines:** To fully adhere to the Design Guidelines. It is the responsibility of each Lot Owner to ensure that builders, sub-contractors, workmen and suppliers fully comply with the Design Guidelines.
- 3.5 **Approval of building plans:**
- (a) Prior to:
- (i) applying for a building consent from the Relevant Authority;
 - (ii) undertaking any work to the Lot; or
 - (iii) erecting any improvements on the Lot,
- the Lot Owner must submit the following to Bellgrove for written approval:
- (iv) the proposed floor plan, site plan, schedule of external finishes, colours, materials of any Building proposed to be erected on the Lot;
 - (v) the landscaping plan for the Lot including any trees, plantings, fences, walls, gates, wind breaks, clothes lines, heat pump exterior units, satellite dishes, letterbox, street or house numbering, driveways & paths;
 - (vi) the design of any gates or fences proposed to be installed that will be visible from the road including material choices;
 - (vii) the proposed access from the public roadway and proposed off street car parking.
- (b) In considering such approval, Bellgrove may take into account the following matters relating to the Dwelling and any other accessory buildings as it, in its sole discretion considers appropriate:
- (i) Height;
 - (ii) Siting on the Lot;
 - (iii) External design (including roofs, fences, screens);
 - (iv) The effect of the proposed Dwelling on the natural light, views and privacy of any adjacent or other affected Lot;
 - (v) Architectural design;
 - (vi) External cladding materials;
 - (vii) Colours and colour schemes.
- (c) Any decision on whether or not to approve any design, specification or feature shall be made at the sole and absolute discretion of Bellgrove.
- 3.6 **Building work:** During the construction of the approved building plans:

- (a) To follow strictly the plans approved by Bellgrove and seek Bellgrove's consent to any variation to such plans;
- (b) To ensure the Dwelling is built on site;
- (c) Not to allow re-locatable, kitset homes or second-hand building materials without specific written approval from Bellgrove;
- (d) To commence the construction of the new Dwelling within 24 months of:
 - (i) if a record of title has been issued for the Lot prior to confirmation of the conditions in the Lot Owner's sale and purchase agreement for the Lot, from the date of confirmation of such conditions; or
 - (ii) if a record of title has not been issued for the Lot prior to confirmation of the conditions in the Lot Owner's sale and purchase agreement for the Lot, from the date of issue of a record of title for the Lot;

Bellgrove may in its sole, absolute and unfettered discretion agree to any extension to this condition. Any approval must be made in writing and any such approval does not create a precedent for any other Lot or Lot Owner.

- (e) To complete the building work within 12 months of the date of start of construction;
- (f) To complete all visible (from the road frontage) landscaping, driveways & pathways which are to be sealed or concreted within 12 months of the date of start of construction;
- (g) To complete all road frontage (and/or that which is visible from any road) landscaping, fencing, gates and planting within 3 months of the issue of a code compliance certificate for the Dwelling on the Lot;
- (h) Not to permit any construction workers or contractors to use any part of the Lot or any other Lot in the Development for toileting purposes. Prior to commencing building work the Lot Owner or builder will provide a suitable portable toilet facility;
- (i) Not to permit any building materials to be placed outside the Lot;
- (j) Not to permit the Lot to be occupied or used as a residence prior to:
 - (i) The Dwelling being completed (including driveways, pathways) and;
 - (ii) A code compliance certificate in respect of the Dwelling being issued by the Relevant Authority;
- (k) Prior to building work commencing, the Lot Owner will erect any boundary fences required (excluding road frontage). Such fences are to be constructed in accordance with the Design Guidelines. Side and road frontage fencing must be set back 1.5M from the roadside boundary-line with the exception of corner lots (unless otherwise specified by Council planning rules and/or resource consent conditions). Fencing of any other material or design must be approved in writing by Bellgrove; and
- (l) To partially construct the berm and kerb crossing for the Lot, including road metalling, prior to building construction commencing.

4. Construction and site development

- 4.1 **Construction fencing:** Construction must not commence on any Lot until temporary fencing has been erected on the entire length of all unfenced boundaries. The temporary fence must:
- (a) comprise removable wire or shade cloth (or other see-through material);
 - (b) be a minimum of 1.2 metres in height;
 - (c) have a rigid frame;
 - (d) in all circumstances be acceptable to Bellgrove at its sole discretion; and
 - (e) provide only one vehicle access to the Lot from the road or shared accessway.
- 4.2 **Construction zone areas:**
- (a) Construction must not commence on the Lot until:
 - (i) a vehicle crossing of no more than four (4) metres in width has been installed in a position approved by Bellgrove;
 - (ii) the kerb has been cut down at the crossing; and
 - (iii) the driveway from the road to the Lot has been formed and suitably based.
 - (b) The Lot Owner shall not make any use of the adjoining Lots (whether occupied or not) any berms (except at designated crossings) or footpaths for construction work or for access by vehicles.
- 4.3 **Health and safety:** Construction is not to be permitted on a Lot unless the Lot complies with the requirements pursuant to the Health and Safety at Work Act 2015.
- 4.4 **Delivery of materials:** During the course of construction, the Lot Owner must not carry out any loading, unloading, delivery or storage of building materials other than within the boundaries of the Lot.
- 4.5 **Construction rubbish:**
- (a) Construction must not be carried out unless an adequate rubbish skip is present at all times (and regularly emptied or replaced).
 - (b) The Lot Owner shall ensure that rubbish does not blow outside the boundaries of the Lot.
- 4.6 **Washing of vehicles:** During the course of construction no vehicles are to be washed down other than within the boundaries of the Lot, provided such washing does not contravene any rules, requirements or standards of the Relevant Authority.

5. Use covenants

Covenants: Each Lot Owner covenants with Bellgrove:

5.1 No on-selling prior to construction of a Dwelling:

- (a) No Lot (or part of any Lot) may be sold or otherwise disposed of until a new Dwelling has been constructed on the Lot.

- (b) In exceptional circumstances Bellgrove may grant a dispensation to this requirement. Any dispensation must be applied for in writing to Bellgrove and approved in writing by Bellgrove. If Bellgrove consents to the sale or transfer of the Lot to a third party prior to the construction of a new Dwelling on the Lot, the on-sale purchasers of the Lot will be bound by these covenants.
 - (c) Build Companies are permitted to on-sell Lots that have been purchased by them to clients for which they are constructing the Dwelling on that Lot.
 - (d) Any approval or consent granted by Bellgrove pursuant to clause 5.1(b) does not create a precedent for any other Lot or Lot Owner.
- 5.2 **Use prior to completion:** Not to permit the use of the Lot as a residence before a code compliance certificate has been issued by the Relevant Authority unless section 362V(2) of the Building Act 2004 applies.
- 5.3 **No temporary accommodation:** Not to permit any caravans, RV vehicles, huts, garages, sheds or any other thing (other than a permanent Dwelling constructed in compliance with these covenants) to be used on the Lot for human habitation without first obtaining the consent of Bellgrove.
- 5.4 **Storage and parking of vehicles:** Not to:
- (a) park any trailer, boat, caravan, RV vehicle or any other wheeled vehicle on any road in the Development for a period of more than 7 days;
 - (b) park any vehicle, trailer, or store or place any other object, items or materials on any part of a shared accessway;
 - (c) permit any inoperable vehicles or vehicles which do not have a current warrant of fitness and/or registration to remain on the Lot;
 - (d) permit any vehicles (including boats, trailers, caravans and motor-homes but excluding a motor car that is used on a regular basis) to be left, parked or stored on the Lot in any structure such as a gazebo, lean-to or carport that is not fully enclosed, nor shall such vehicle be left, parked or stored on the Lot where it is visible from any road or shared accessway;
 - (e) park any motor vehicle on the Lot which is visible from any road or shared accessway and which is used on a regular basis except on a formed driveway or dedicated parking space approved by Bellgrove.
- 5.5 **Garden sheds, garden ornamentation, gas bottles, rubbish bins and clothes:** Not to place or allow to be placed on the Lot or Dwelling any garden shed (or similar minor ancillary structure to the Dwelling), brightly painted or decorated ornaments or fixtures, gas bottles, rubbish and/or recycling bins which are reasonably visible by any person standing on the footpath of any legal road or shared accessway, or allow any washing or other articles to be hung for drying or other purpose, either inside or outside of the upstairs part of any two storey Dwelling where it is visible from outside the boundaries of the Lot.
- 5.6 **No commercial or other activity:** Not to use any of the Lot without first obtaining the consent of Bellgrove for:
- (a) any commercial activities;

- (b) the storage or use of commercial vehicles, plant or machinery, storage containers other than of a domestic nature;
- (c) lease or licence to any other party other than a residential tenancy pursuant to the Residential Tenancies Act 1986;
- (d) any signage or advertising hoardings or other signs (except usual sales agency signs for marketing of the Lot for sale in compliance with these covenants).

5.7 Survey pegs or markers on the lot: Not to interfere with, remove or damage any survey pegs or markers on the Lot or Development and if such pegs are interfered with, removed or damaged then the Lot Owner will reimburse Bellgrove for all costs and expenses in having such pegs or markers replaced by a registered surveyor. If such reimbursement is requested of any Lot Owner and not made within 10 Working Days of such reimbursement request Bellgrove shall be entitled to deduct that amount from any Compliance and Damage Remediation Bond paid to Bellgrove.

5.8 No noxious items and dangerous or offensive activities:

- (a) Not to permit any part of the Lot to be used for
 - (i) any noxious, dangerous or offensive activities
 - (ii) any activity that is prohibited or not permitted by a Relevant Authority; or
 - (iii) any activity which may be or become an annoyance or private or public nuisance, where an annoyance or private or public nuisance includes loud sounds, noises or offensive smells; or
- (b) Not to allow the accumulation or housing of any rubbish (including abandoned or unsightly vehicles), inflammable, explosive or noxious substances, noxious birds or animals which may be likely to cause nuisance or annoyance to neighbouring Lot Owners, or permit grass or weeds to grow to such a height as to become unsightly.

5.9 Maintenance: To:

- (a) maintain the improvements made to the Lot to a standard in keeping with the Development as a premium residential subdivision;
- (b) keep the Lot tidy, rubbish free and grass mown (including the grass road berm) to under 100mm in height. If the grass on any vacant Lot exceeds 100mm, Bellgrove may, after giving the Lot Owner at least 5 Working Days' prior notice, enter onto the Lot and carry out any mowing of grass, removal of rubbish and weeds to ensure the Lot is kept tidy and to recover the cost of this from the Lot Owner;
- (c) remove all weeds and rubbish promptly and maintain all plants in accordance with good horticulture practices; and
- (d) maintain all trees in the road frontage berm outside the Lot in accordance with good arboriculture practices.

5.10 Animals: Not to:

- (a) Keep pigs, chickens or noisy or smelly animals of an odorous nature on the Lot, nor operate any commercial activity by the keeping of such animals. The keeping of pigeons is expressly prohibited; or

- (b) keep any dog or other pet on the Lot which is likely to cause nuisance or annoyance to other neighbouring occupiers, or detract from the Development and, in particular, the Lot Owner shall not keep on the Lot any dog which in whole or part appears to be a Pit-Bull, Rottweiler or Doberman Pinscher or any vicious or dangerous dog and / or any dog that has been classified as a dangerous dog under the Dog Control Act 1996.

5.11 **Satellite dishes:** Not to place or allow to be placed on the Lot or Dwelling any aerials or satellite dishes unless the same comply with the following requirements:

- (a) Have a maximum diameter of one metre;
- (b) Are situated at least four metres from the front façade of the Dwelling; and
- (c) Are mounted below the ridgeline of the roof of the Dwelling.

5.12 **Interests on the record of title for the Lot:** To adhere strictly with the requirements in any consent notice, encumbrance, order or other interest registered on the record of title for the Lot.

5.13 **Boundary Fencing:**

- (a) Where:
 - (i) the owner of an adjoining Lot erects a boundary fence;
 - (ii) such fence is approved by Bellgrove or adheres to the Design Guidelines; and
 - (iii) the Lot Owner is the owner of the adjoining Lot where the fence is erected,then the Lot Owner (but not Bellgrove where it owns such adjoining Lot) must, within 5 Working Days of demand of such adjoining lot owner, pay half the cost of such boundary fence.
- (b) The owner who erects the fence is a designated person for the purposes of Section 12 of the Contract and Commercial Law Act 2017 and the provisions of this clause of this covenant is deemed a contract for the purposes of the Contract and Commercial Law Act 2017.

6. Approvals

- 6.1 All approvals or consents required by these covenants must be in writing from Bellgrove and may be given, given subject to such conditions or refused in the sole, absolute and unfettered discretion of Bellgrove. Any approval given does not create a precedent for any other Lot or Lot Owner.
- 6.2 Bellgrove may appoint any person it considers suitably qualified to carry out any of its functions under this Instrument.
- 6.3 Bellgrove or its appointee is not responsible or liable to any person for any action it takes or fails to take under this Instrument.
- 6.4 Bellgrove may charge a fee for its reasonable costs and time in considering any application under this Instrument or taking any enforcement action in respect of any breach of the provisions of this Instrument by the Lot Owner.

7. Enforcement

- 7.1 If there should be any breach or non-observance of any of these covenants and without prejudice to any other liability which the Covenantor may have to any person having the benefit of this covenant, the Covenantor will upon written demand being made by Bellgrove or any Covenantee:
- (a) pay to the person making such demand as liquidated damages the sum of \$100.00 (One Hundred Dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made.
 - (b) remove or cause to be removed from the Lot any Dwelling, vehicle, garage, building, fence or other structure erected or placed on the Lot in breach or non-observance of the above covenants.
 - (c) replace any building materials used in breach or non-observance of the above covenants.
 - (d) reimburse the costs Bellgrove and/or any Covenantee directly incurs on a dollar for dollar basis as a result of a breach or non-observance, including (but not limited to), those associated with correcting such breach or non-observance.
- 7.2 Any demand made by a Covenantee will be deemed to have been served to the Covenantor if sent to the Covenantor's postal address of the Lot or, where the Lot is a vacant section, the demand will be deemed to have been properly served if sent to the e-mail address of the lawyer or law firm that signed and certified the transfer of the Lot to the Covenantor.

8. Dispute resolution

- 8.1 Except as it relates to the exercise of any discretion, opinion, approval or consent requested of Bellgrove under these covenants, if any dispute arises between the parties concerning the covenants, then the parties shall enter into negotiations in good faith to resolve their dispute.
- 8.2 If the dispute is not resolved within 20 Working Days of the date on which the parties began 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.
- 8.3 If an arbitrator cannot be agreed upon within 10 Working Days of notice of arbitration by either party, then an independent arbitrator will be appointed by the AMINZ Appointments Panel.
- 8.4 Such arbitration will be determined in accordance with the Arbitration Act 1996 and will be binding on the parties.

9. Enforcement by Bellgrove

- 9.1 Bellgrove may enforce these covenants in the same manner as the Covenantee and may exercise the rights of the Covenantee under clause 7 as if Bellgrove was the Covenantee.
- 9.2 Bellgrove may take steps to ensure the observance of the covenants in this Instrument but shall not have any legal responsibility or liability for any lack of enforcement or enforceability or application or waiver of any of these covenants or any consents or approvals given by Bellgrove under these covenants.
- 9.3 The Covenantee will keep Bellgrove fully indemnified from any claim, liability, loss or action arising against it or its agents in respect of these covenants having regard to their intent to

provide for the interests of the Covenantee and its individual obligations of observance and rights of enforcement of the covenants.

10. Expiry

- 10.1 The covenants contained in clauses 3 and 4 of this Instrument more generally will remain in force until the date that a code compliance certificate has issued for the first Dwelling constructed on the Lot, but only if such code compliance certificate relates to a Dwelling approved of by Bellgrove. Upon expiry of the covenants in clauses 3 and 4, the covenants contained in those clauses will have no further force or effect. All other covenants noted in this Instrument will remain in force.

11. Notices

- 11.1 Any notice required to be made or served under this Instrument is to be in writing signed by the party giving the notice or by any officer or solicitor of that party and served in accordance with the provisions of section 353 of the Property Law Act 2007 or sent by e-mail (in which case it is delivered when a read receipt is received by the sender of the e-mail).

12. Vesting

- 12.1 The Covenantee consents to the deposit of any survey plan by the Covenantor in respect of the Development which has the effect of vesting any land in any local authority, territorial authority or the Crown (**Land to Vest**), or where land is to be transferred for utilities or road (**Land for Utilities**). The Covenantee agrees that the covenants in this Instrument will cease to apply in respect of any Land to Vest or Land for Utilities upon the date of lodgement with Land Information New Zealand (or any such replacement entity) of the required documents to deposit the relevant survey plan.
- 12.2 The Covenantee agrees that this clause 12 will be deemed to be the consent of the Covenantee to the deposit of the relevant survey plan (including under section 224(b)(i) of the Resource Management Act 1991) and for the removal of the covenants in this Instrument from any Land for Utilities.
- 12.3 If it is determined by the Covenantor or Land Information New Zealand that additional written consent is required from the Covenantee to the deposit of any survey plan or for the removal of the covenants in this Instrument from any Land for Utilities, under clause 12.2, then:
- (a) at the request of the Covenantor, the Covenantee will, at its cost, immediately give such written consent to the Covenantor; and
 - (b) in addition to clause 12.2 and 12.3(a), the Covenantee irrevocably appoints the Covenantor as its attorney to sign any consent necessary in the required form to deposit any survey plan or to remove the covenants in this Instrument from any Land for Utilities. No person dealing with the Covenantor as the attorney in this capacity need inquire if the Covenantor is validly exercising its powers as attorney under this clause.