

**QEII National Trust**  
Open Space New Zealand  
Ngā Kairauhī Papa

**[Covenant Name]**

**Open Space Covenant**

**[Covenant number]**

**[Covenantor name]**

**Queen Elizabeth the Second National Trust**

DISCLAIMER: This is a sample document and is intended only as a generic guide. Covenant terms and conditions will depend on the parties' requirements. Please talk to your local QEII Regional Representative if you wish to covenant your property. ....  
Version September 2017

## Parties

[covenantor name] (the Covenantor)

**Queen Elizabeth the Second National Trust** (the National Trust)

## Background

- A The National Trust is established under the Queen Elizabeth the Second National Trust Act 1977 (the Act).
- B Section 22 of the Act authorises the National Trust to agree and enter into Open Space covenants with private landowners.
- C The Covenantor wishes to protect and preserve certain significant natural environmental values and Open Space Values in the Covenant Area as defined in this deed.
- D The Covenantor and the National Trust now wish to record the agreed objectives, terms and conditions of the Open Space covenant in this deed.

## Operative provisions

### Part A—Purpose and objectives

#### 1 Creating an Open Space covenant

- 1.1 The Covenantor and the National Trust agree to enter into an Open Space covenant within the meaning of section 22 of the Act in favour of the National Trust on the terms and conditions set out in this deed. The intent is that the covenant created by this deed shall run with and bind the land comprising the Covenant Area in perpetuity.

#### 2 Purpose and objectives

- 2.1 The Covenantor and the National Trust agree that the purpose of this deed is to protect Open Space, maintain, and enhance the Open Space Values of the Covenant Area and, in particular, to achieve the following objectives:
- 2.1.1 Protect and enhance the natural character of the Covenant Area with particular regard to native flora and fauna
- 2.1.2 Maintain and enhance the landscape value of the Covenant Area
- 2.1.3 Enhance the contribution that the Covenant Area makes to protecting indigenous biodiversity by restoring indigenous vegetation cover in the Covenant Area (where appropriate)
- 2.1.4 Prevent subdivision (within the meaning of the Resource Management Act 1991 or any other equivalent replacement legislation) of the Covenant Area.

### Part B—Terms and conditions

#### 3 Selling, leasing, or licensing the Covenant Area

- 3.1 If the Covenantor is selling, leasing, licensing or otherwise disposing of land which includes all or any part of the Covenant Area they must:
- notify the National Trust of the sale, lease, licence or other disposition
  - provide the National Trust with the name and contact details of the new owner, lessee or licensee

- 3.2 If any sale, lease, licence or other disposition of land which includes the Covenant Area occurs before this deed is registered with Land Information New Zealand (LINZ), the Covenantor must:
- 3.2.1 Ensure the sale, lease, licence or other disposition is made expressly subject to the objectives, terms and conditions of this deed
  - 3.2.2 Obtain the agreement of the purchaser, lessee, licensee or other party to comply with and be bound by the objectives, terms and conditions of this deed.
- 3.3 If the Covenantor sells or otherwise disposes of all or any part of the Covenant Area to a company, the covenants contained in this deed will bind a mortgagee in possession, receiver, the official assignee, liquidator, statutory manager or statutory receiver to the fullest extent permitted by law.

#### **4 Appearance and condition of the Covenant Area**

- 4.1 No act or thing may be done, placed, or allowed to be done or remain in the Covenant Area if, in the reasonable opinion of the National Trust, the act or thing materially alters the appearance or condition of the Covenant Area, or is prejudicial to the Covenant Area as Open Space as defined in the Act.
- 4.2 In particular, the Covenantor must not do, or allow others to do, any of the following activities on or in the Covenant Area without the prior written consent of the National Trust:
- 4.2.1 Fell, remove, burn or take any native trees, shrubs, plants or other organism of any kind or in any state whatsoever
  - 4.2.2 Plant any trees, shrubs or plants or scatter or sow any seed of any trees, shrubs or plants, other than local native species sourced from the ecological district of the Covenant Area
  - 4.2.3 Introduce any substance that is noxious or otherwise injurious to any organism, except in the control of pest plants and animals
  - 4.2.4 Move or remove any rock or stone, blast, mark, paint, deface or otherwise disturb the ground
  - 4.2.5 Construct or erect any building or structure or undertake any exterior alterations to any existing building or structure
  - 4.2.6 Erect or display any sign, notice, hoarding, or advertising material of any kind, except for signs identifying the Covenant Area or indicating walking tracks
  - 4.2.7 Carry out any prospecting or exploration, mining or quarrying of any minerals, petroleum or other substance or deposit
  - 4.2.8 Deposit any rubbish, debris, or other materials, except in the course of maintenance or undertaking approved construction, provided that on completion of any such maintenance or construction all rubbish, debris and other materials are removed as promptly as possible and the Covenant Area is left clean and tidy
  - 4.2.9 Allow any livestock in the Covenant Area
  - 4.2.10 Affect the movement, distribution, or quality of water that affects the Covenant Area. This includes affecting water in a dryland, groundwater, river, stream, lake, pond, marsh, and wetland.

- 4.3 The National Trust consent will not be unreasonably withheld, and may include reasonable conditions, if the National Trust is satisfied that such activity does not conflict with the purpose and objectives of this deed.

## **5 Third party access to the Covenant Area**

- 5.1 If the Covenantor is notified by any person or authority of an intention to erect any structure or infrastructure, or carry out any other works in the Covenant Area, the Covenantor must as soon as reasonably possible:
- 5.1.1 Inform the person or authority of the existence of this deed
- 5.1.2 Inform the National Trust of the proposed intentions of any such person or authority
- 5.1.3 Not consent to or otherwise allow the undertaking of the proposed works or any other works by such person or authority without the prior written consent of the National Trust.
- 5.2 Any such person or authority will be the responsibility of the Covenantor during the course of any approved works being carried out within the Covenant Area.

## **6 Managing the Covenant Area**

- 6.1 The National Trust may provide technical advice or assistance to the Covenantor as is appropriate and practical to help meet the purpose and objectives of this deed.
- 6.2 The Covenantor and the National Trust may agree on a Management Plan for the Covenant Area. The Covenantor and the National Trust may revise the Management Plan from time to time and will do so if reasonably required by the other party.
- 6.3 If any question arises in relation to managing the Covenant Area or any other matter concerning this deed then the Covenantor and the National Trust will use their best endeavours and act in good faith to promptly resolve the question amicably by conference and negotiation, provided that any resolution does not in any way diminish the purpose and objectives of this deed.
- 6.4 If the Covenantor is in default of their obligations under this deed (including any agreed Management Plan), the following will apply:
- 6.4.1 The National Trust may give notice (Default Notice) to the Covenantor stating:
- the nature of the Covenantor's default
  - the reasonable actions required to remedy the default
  - a reasonable timeframe within which the Covenantor must remedy the default.
- 6.4.2 If, on expiry of the Default Notice timeframe, the default has not been remedied, the National Trust will give further notice to the Covenantor
- requiring the remedial work to be done
  - specifying a further reasonable timeframe
  - explaining that if the default has not been remedied within further timeframe the National Trust may arrange for the remedial work to be done and may recover full costs from the Covenantor as a debt payable on demand.

- 6.4.3 If, on the expiry of the further timeframe the default has not been remedied, the National Trust may arrange for the remedial work to be done and may recover full costs from the Covenantor as a debt payable on demand.

## **7 Pest plants and animals**

- 7.1 It is the Covenantor's responsibility to control all pest plants and animals in the Covenant Area as required by any statute and, in particular, to comply with the provisions of, and any notices given under, the Biosecurity Act 1993 and the Wild Animal Control Act 1977.
- 7.2 The Covenantor must keep the Covenant Area free from any exotic species specified in any agreed Management Plan for the Covenant Area.

## **8 Fire**

- 8.1 If fire threatens the Covenant Area the Covenantor must, as soon as practical, notify the appropriate fire authority.

## **9 Fences and gates**

- 9.1 The Covenantor and the National Trust will agree from time to time on fencing requirements on the boundary of the Covenant Area as reasonably required to protect the Covenant Area from stock.
- 9.2 The fence on the boundary of the Covenant Area must protect the Covenant Area from stock types and/or stock levels on land adjacent to any boundary of the Covenant Area. If the adjacent land use has, or is likely to have, a detrimental effect on the Covenant Area, then the Covenantor must, at their own cost, erect and maintain appropriate stock-proof fencing on the affected boundary of the Covenant Area.
- 9.3 It is the Covenantor's responsibility to keep and maintain all covenant boundary fences and gates in good order, repair, and condition, including replacement, when reasonably required. The provisions of the Fencing Act 1978 apply on title boundaries.

## **10 Entry and access**

### **Trust access**

- 10.1 On giving reasonable notice to the Covenantor, the National Trust may through its officers, employees, contractors or agents enter the Covenant Area for the purposes of:
- 10.1.1 Viewing the state and condition of the Covenant Area
- 10.1.2 Ascertaining Covenantor's compliance with the objectives, terms and conditions of this deed and any approved Management Plan
- 10.1.3 Remediating any default by the Covenantor pursuant to clause 6.4.

### **Public access**

- 10.2 The Covenantor may, in their sole discretion, permit members of the public to enter and access the Covenant Area provided that in giving any such permission the Covenantor:
- 10.2.1 Gives due consideration to any specific management issues relating to the Covenant Area
- 10.2.2 Ensures that regard is had to the purpose and objectives of this deed during such access
- 10.2.3 In particular, ensures that the prohibitions set out in clause 4.2 are complied with during such access.

**11 Survey of the Covenant Area**

- 11.1 The Covenantor and the National Trust agree that the Covenant Area will be defined by survey and this deed will be registered on the title to the land. The Covenantor authorises the National Trust to attach the survey plan approved by the Covenantor to this deed and to update the Schedule of Land with survey details after signing of this deed.
- 11.2 The Covenantor and the National Trust may agree to make amendments to the surveyed boundaries of the Covenant Area from time to time. This clause is subject to clause 12—any amendment to a survey of the Covenant Area shall be a variation to a term of this deed.

**Part C—General provisions****12 Variations**

- 12.1 The National Trust and the Covenantor may vary the terms of this deed provided that any variation is in accordance with section 22A of the Act, which states that a variation cannot be contrary to the purpose and objectives of this deed.
- 12.2 No variation to the terms of this deed will have any force or effect unless it is in writing, signed by the National Trust and the Covenantor, and registered with LINZ.
- 12.3 The Covenantor and the National Trust agree that a variation to the terms and conditions of this deed under section 22A(1)(a) of the Act includes a variation to any term and condition in the deed, any schedule, and any term or condition in any schedule attached to this deed.

**13 Privacy**

- 13.1 The National Trust recognises the Covenantor's privacy rights and the close relationship of trust, co-operation, and partnership existing between the Covenantor and the National Trust.
- 13.2 The National Trust will keep confidential all information in its possession relating to:
- the Covenantor
  - the Covenantor's activities in the Covenant Area
  - management of the Covenant Area by the Covenantor
  - National Trust monitoring of the Covenant Area.
- 13.3 The National Trust will not disclose any private information without the prior written approval of the Covenantor except:
- 13.3.1 Where that is necessary to carry out the National Trust's obligations and enforce its rights under this deed
- 13.3.2 To the extent required by law or the order of any court of competent jurisdiction.
- 13.4 If the National Trust is required by law or court order to disclose any information referred to in clause 13.2, the National Trust shall seek to avoid or limit disclosure on whatever grounds are available to fully protect the Covenantor's rights to privacy.

**14 Costs**

- 14.1 If there is a need for the National Trust Board to enforce its duties or powers as the trustee of this covenant, the National Trust may require the Covenantor to pay for the National Trust's legal costs (as between solicitor and client).
- 14.2 The National Trust may require the Covenantor to pay the National Trust's costs associated with any variation to this deed requested by the Covenantor, including registration and administration costs.

**15 Notices**

- 15.1 Any consent, approval, authorisation or notice given by the National Trust or its Board may be given in writing, signed by the Chief Executive, and delivered or sent by ordinary post to the last known residential or postal address of the Covenantor, or to the solicitor acting on behalf of the Covenantor.

**16 Severability**

- 16.1 If a clause or part of a clause of this deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 16.2 If any clause or part of a clause of this deed is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this deed, but the rest of this deed will not be affected.

**17 Governing law**

- 17.1 This deed is governed by the law of New Zealand. The Covenantor and the National Trust submit to the non-exclusive jurisdiction of its courts and will not object to the exercise of jurisdiction by those courts on any basis.

**18 Waiver**

- 18.1 A waiver of any right, power or remedy under this deed must be in writing and signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach for which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 18.2 If a party is entitled to do something under this deed but fails or delays to do so, the entitlement is not waived.

**19 Limitation of liability—trustees**

- 19.1 If any Covenantor is a trust, then the trustees of that trust undertake that
- 19.1.1 The trust has approved entering into this deed
  - 19.1.1 The terms of that trust allow the trustee to enter that trust into this deed
  - 19.1.2 The deed is properly signed in accordance with the terms of that trust
  - 19.1.3 They have the right to be indemnified from the assets of that trust if that right has not been lost or impaired by any action of the trustee entering into this deed
- 19.2 If the trustee of that trust has no right to or interest in any of the assets of that trust except in that trustee's capacity as trustee of that trust, that trustee's liability under this

deed shall not be personal and unlimited but shall be limited to the value of the assets of the trust that are available to meet that trustee's liability.

## 20 Counterpart deeds

20.1 This deed may be signed in any number of counterpart deeds (duplicate deeds). All counterparts, when taken together, will constitute one and the same deed. An approved party may enter into this deed by signing any counterpart.

## 21 Electronic communication

21.1 The National Trust and the Covenantor agree that this deed, or any other document associated with this deed, has legal effect whether it is received in electronic or paper form.

21.2 An electronic communication from the Covenantor allowing final agreed changes to the deed will have legal effect.

21.3 The paper original of any document provided in electronic form or by electronic communication must be made available to the National Trust on request.

21.4 Both parties to this deed agree that an original document is defined as either a paper original or as an electronic copy of the paper original.

## 22 Definitions and interpretation

22.1 In this deed, unless the context requires otherwise, the following definitions apply:

**Act** means the Queen Elizabeth the Second National Trust Act 1977

**Board** means the Board of directors of the National Trust in terms of section 4 of the Act

**Chief Executive** means the person appointed under section 18(1)(a) of the Act

**Covenant area** means the area or areas of the land described in Schedule 2—land as outlined and indicated on any plan in this deed

**Covenantor** means the person, persons, or other entity that from time to time are registered as the proprietor of the land that contains the Covenant Area

**Management plan** means a signed agreement between the Covenantor and the National Trust on managing the Covenant Area

**Open space** has the meaning given to it in section 2 of the Act

**Open space values** are particular values on the land that are protected and maintained as open space.

22.2 In the event of any inconsistency between the general terms and conditions contained in Parts B and C of this deed and the special conditions contained in Schedule 1 annexed to this deed, Schedule 1 will prevail. In the event of any conflict between this deed, the special conditions contained in Schedule 1, and the Act, the Act will prevail.

22.3 In this deed, unless the context otherwise requires:

22.3.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision

22.3.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time



- 22.3.3 A reference to a prohibition against doing anything includes a reference to not permitting, suffering, or causing that thing to be done
- 22.3.4 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency
- 22.3.5 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this deed unless otherwise stated
- 22.3.6 All schedules and attachments to this deed form part of this deed.

SAMPLE DOCUMENT

**Schedule 1—Special conditions**

Special conditions relating to the Covenant Area

The following special conditions will apply in respect of the Covenant Area:

SAMPLE DOCUMENT

**Schedule 2—Land**

Estate: Fee Simple

Area: Area being hectares DP  
(part Computer Freehold Register)

**Total area being        hectares**

SAMPLE DOCUMENT

**Execution and date**

Executed as a deed

Dated this .....day of .....20 .

**Signed by**  
as Covenantor

.....

**In the presence of**

Witness (signed) .....

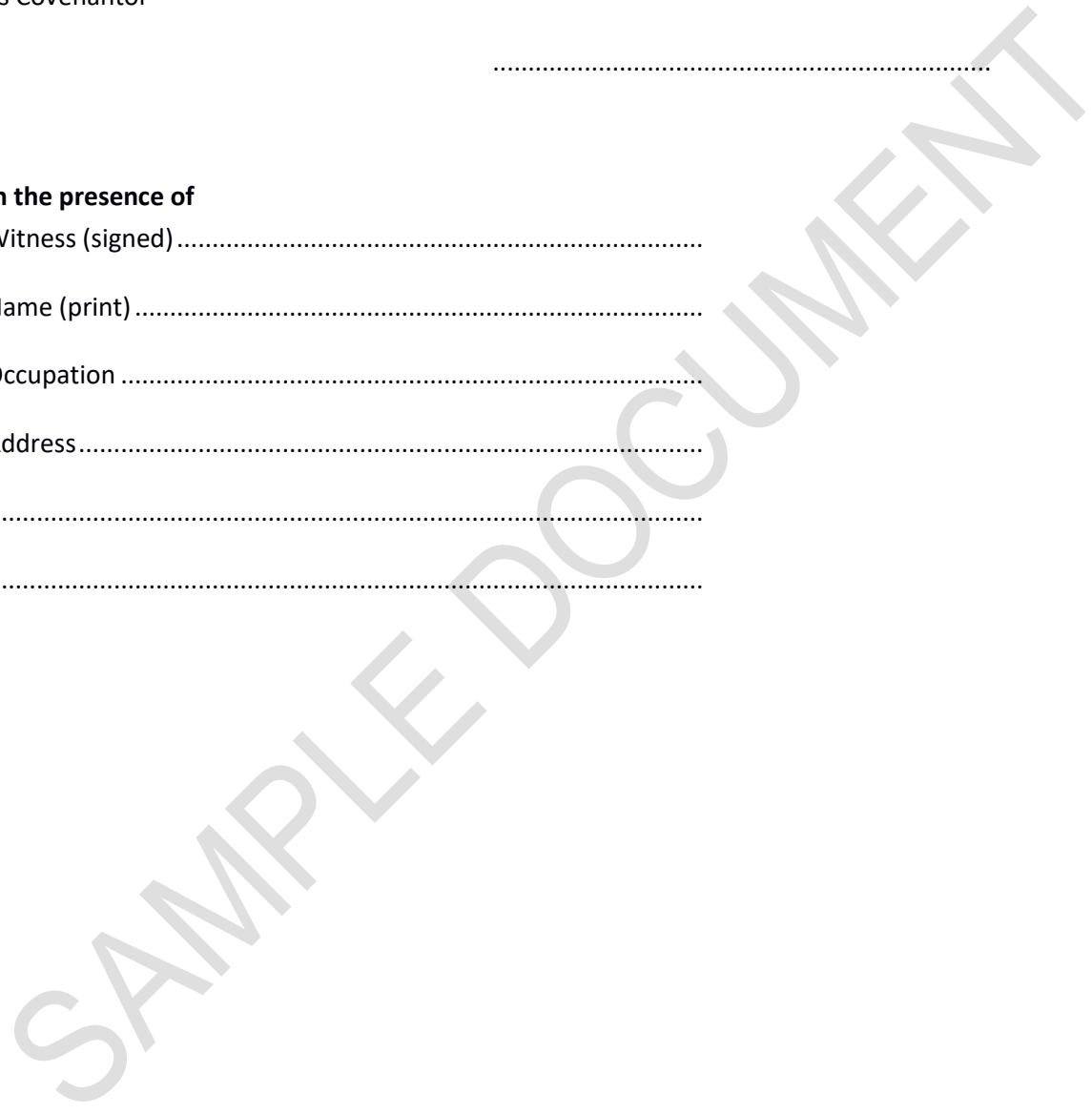
Name (print) .....

Occupation .....

Address.....

.....

.....



**The common seal of Queen Elizabeth the Second National Trust**

was affixed in the presence of:

Chief Executive .....

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