

# COVENANT INSTRUMENT TO NOTE LAND COVENANT

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

Approval  
2018/6263  
Registrar-General of Land

## Covenantor

WFH PROPERTIES LIMITED

## Covantee

WFH PROPERTIES LIMITED

## Grant of Covenant

**The Covenantor** being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covantee** (and, if so stated, in gross) the covenants(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
Land Covenant	See attached Annexure Schedule	See attached Annexure Schedule	See attached Annexure Schedule
Land Covenant	See attached Annexure Schedule	See attached Annexure Schedule	In gross

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

Delete phrases in [ ] and insert Memorandum number as require; 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 2 ]

## ANNEXURE SCHEDULE 2

The Covenantee when registered owner of the land formerly contained in Record of Title \_\_\_\_\_ subdivided the land into lots in the manner shown and defined on Deposited Plan \_\_\_\_\_ (hereinafter referred to as the "the Plan").

**WHEREAS** it is the Covenantee's intention to create a high quality subdivision. To enable this to occur it is the Covenantor's intention to create for the benefit of the land set out in Schedule 2C (hereinafter referred to as the "Benefited Land") and for the benefit of the Covenantee in gross referred to in Schedule A, the land covenant set out in Schedule 2B over the land set out in Schedule 2A (hereinafter referred to as the "Burdened Land"). The Covenantee's intention is to create a land covenant that is reciprocal that shall not be over and in favour of the Burdened Land and the Benefited Land at the same time.

**AND** so as to bind the Burdened Land and for the benefit of the respective Benefited Land and the Covenantee in gross, the Covenantor **DOETH HEREBY COVENANT AND AGREE** in the manner set out in the Schedule 2B hereto so that the covenant runs with the Burdened Land set out in Schedule 2A for the benefit of each of the respective registered owners of the Benefited Land as described in Schedule 2C") and for the benefit of the Covenantee in gross.

### SCHEDULE "2A"

<b>Lot No.</b>	<b>Record of Title</b>	<b>Lot No</b>	<b>Record of Title</b>
292	TBA	293	TBA
294	TBA	295	TBA
296	TBA	297	TBA
298	TBA	299	TBA
300	TBA	301	TBA
302	TBA	303	TBA
304	TBA	305	TBA
306	TBA	307	TBA
308	TBA	309	TBA
310	TBA	311	TBA
312	TBA	313	TBA
314	TBA	315	TBA
336	TBA	337	TBA
340	TBA	341	TBA
466	TBA		

### SCHEDULE "2B"

"Developer" means WFH Properties Limited or their duly appointed agent.

"Developer consent" means written consent which may or may not be provided by the Developer at its sole discretion and upon such terms and conditions (if any) that the Developer deems necessary.

1. The Covenantor shall not erect on the land any dwelling, building, structure or fence or landscaping unless the plans (including site plan, landscape plan, finish and external colour scheme) have received Developer consent. Developer consent shall be deemed to have been given to such plans in respect of any building which has been erected and occupied for a period of five (5) years or more without the Covenantee objecting to same.
2. The Covenantor shall not erect on the land any temporary building or structure whether purpose built or previously erected on other land except as may be necessary during the

construction of the permanent buildings provided that all temporary buildings or structures will be removed from the land upon completion of the permanent buildings.

3. The Covenantor shall not permit or suffer on the land:
  - 3.1. Any works to be carried out (including site preparation) prior to the erection and completion of all side, front and rear boundary fences (complying with clause 3.4 below) or, where permanent fencing is not being erected, temporary fencing shall be installed and removed prior to the occupation of the dwelling;
  - 3.2. The use or occupation of the dwelling as a residence prior to the dwelling being completed (including the construction of the driveway, pathways, the erection of a letterbox, the landscaping and seeding of lawns visible from the road boundary, and the completion of all side and rear fences in accordance with Clause 3.4 below) or by the erection of temporary structures or by the placing thereon of caravans and/or vehicles for human occupation;
  - 3.3. The use or occupation of any dwelling before a Code Compliance Certificate has been issued by the Whangarei District Council in respect of that dwelling.
  - 3.4. Any fence or boundary wall:
    - (i) Of any material containing cement board sheets or panels, corrugated iron or metal sheeting;
    - (ii) On the internal boundaries of a height greater than 1.8m above the surrounding finished ground level;Subject to clause 3.4(iv):
    - (iii) Within 3 metres of the road boundary or boundaries fronting a right-of-way to a height greater than 1.2m above the surrounding finished ground level unless Developer consent is obtained. Approval of fences may be declined at the Developer's sole discretion if the planned fencing is seen to potentially cause detriment to the subdivision or neighbouring amenities; and
    - (iv) On lots which have road frontage on two boundaries, fencing on the secondary road frontage, i.e. the road frontage that does not have vehicular access, of a height greater than 1.8m above the surrounding finished ground level.
  - 3.5. Without the Developer's consent the erection of any dwelling house having a floor area less than 160m<sup>2</sup> including garage. In considering whether or not to grant consent for a smaller dwelling house, the Developer shall consider whether the dwelling house includes quality design features commonly found in larger dwellings.
  - 3.6. The use as a roofing material anything of other than tiles (clay, ceramic, decromastic, pre-coated pressed steel), cedar, slate or bitumen shingles or painted long-run pressed steel;
  - 3.7. The use as exterior cladding of any material other than clay brick, recycled brick (but only with the Developer consent), stained or painted weatherboard, linear board, painted or sealed concrete block masonry, natural stone, stucco, plaster, coated zincalume, glazing or any combination of the above;
  - 3.8. The use as guttering, down pipe or exterior cladding material comprising unpainted and/or exposed zinc coated products on any building;

- 3.9. The attachment, protrusion or establishment from the front of the dwelling house, garage or other structure within 6m of the road boundary of the Property any fixture or allow any storage that is visible from the road and in the Developer's sole discretion is obtrusive including, but not limited to, air-conditioning units, clotheslines, television or radio aerials and gas bottles;
  - 3.10. Any rubbish, including builder's waste materials to accumulate or to be placed upon the land or any adjoining land or permit grass or weeds to grow to a height exceeding 100mm or otherwise leave the land in a condition that, in the Developer's sole discretion may be detrimental to the Developer's subdivision. The Developer shall have the right to remove any building materials from the land or adjoining land, or maintain the land in a reasonable condition to avoid the land being or becoming detrimental to the subdivision, with reasonable costs to be met by the Covenantor and payable on demand;
  - 3.11. The removal or relocation of any fence, tree or shrub constructed, installed or planted by the Developer without Developer consent;
  - 3.12. The keeping or raising of any livestock, poultry, reptiles or animals of any kind or size on the land or in any building other than domesticated household pets and in particular, without otherwise limiting this restriction, shall not keep on or about the land any dog which in whole or part appears to be a Pitbull Terrier, Rottweiler, Japanese Akita, Japanese Toza, Dogo Argentino or Brazilian Fila. The keeping of pigeons is expressly prohibited;
  - 3.13. The erection of any sign on the land other than:
    - (i) A professionally sign written and installed sign marketing the dwelling or section for sale;
    - (ii) With the Developer consent, signage indicating a business. The Developer shall have the right to remove any sign, which in its sole discretion is unacceptable without prior warning; and
    - (iii) Unless Developer consent is obtained, any sign larger than 900mm by 600mm where such sign is visible from any road or jointly owned accessway lot or Reserve.
  - 3.14. The dwelling to be used as a show home without Developer consent. The Developer shall retain sole discretion over the number of dwellings to be used for show home purposes.
  - 3.15. Unpainted sheds or unpainted garages.
  - 3.16. Any garden shed that is visible from any road, jointly owned accessway lot or Reserve.
  - 3.17. Any buildings in the course of construction to be left without substantial work being carried out on them for a period of two or more months.
  - 3.18. Any removal of soil from the land except as shall be necessary for the construction of the dwelling and ancillary buildings.
  - 3.19. Any bus, caravan, trailer or similar that is parked on anything other than a hardstand area.
4. The Covenantor shall:
- 4.1. Complete the vehicle access from the road to the land (including berm and kerb crossing) up to and including metaling (with sealing to completed once

- construction is completed) or sealing prior to construction of the dwelling in accordance with the plans approved by the Developer.
- 4.2. Only have vehicle access to the land over the area allocated for vehicle access (including the berm and kerb crossing) in accordance with access point noted on the plans approved by the Developer.
  - 4.3. Complete any buildings within 9 months of laying down the foundations for such buildings, and, within 12 months of laying down such foundations complete all ancillary works such as fencing (if not previously completed) and landscaping.
  - 4.4. Reinstate, replace and be responsible for all costs arising from any damage to landscaping, roading, footpaths, kerbs, concrete or other structures in the subdivision arising directly or indirectly from the use of the land by the Covenantor or its occupiers, agents or invitees prior to the Developer returning the Damage Remediation Bond to the Covenantor.
  - 4.5. At the time of completing landscaping on the land re-seed and water the berm in front of the land with a seed of a similar variety.
  - 4.6. At all times comply with any plans, conditions, consents or similar imposed on it by any local or regional authority.
5. The Covenantor shall not subdivide the land. Subdivide shall have the meaning "subdivide land" set out in Section 218 of the Resource Management Act 1991.
  6. The Developer shall, in respect of any other Lots and subsequent stages, have in its absolute discretion the right to impose additional restrictions or stipulations in any restrictive covenant relating to land in subsequent stages or to omit or vary in its absolute discretion any restrictive covenant.
  7. The Developer reserves the right at any time to waive or vary any of these covenants and if called upon to do so the Covenantor will sign any documentation required to give effect to this waiver and/or variation.
  8. The Covenantor shall not oppose, frustrate, object to, nor take any action or encourage others to oppose, frustrate, object or take any action that might, in any way, prevent or hinder the Developer and/or the Local Authority from progressing or completing the One Tree Point subdivision. This covenant extends to and includes (but is not limited to) development planning, zone changes, resource consents, Consent Authority or Environment Court Applications, Building Consent matters, any other consents, earthworks, developments and general works. The benefit of this covenant applies to any adjoining or neighbouring properties now or hereafter owned by the Developer.
  9. If there be any breach or non-observance of any of these covenants:
    - (a) there shall be no obligation on the Developer to take any steps to enforce these covenants.
    - (b) if there is more than one Covenantor for any Burdened Land the liability of the Covenantors for the Burdened Land shall be joint and several.
    - (c) the Covenantor in breach shall rectify any breach.
  10. If there should be any breach or any non observance of any of the foregoing 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 the Developer or any of the registered proprietors of the lots having the benefit of the Covenants:

- (a) Remove or cause to be removed from the Burdened Land any dwelling house, garage, building, fence or other structure erected or placed on the Burdened Land in breach or non-observance of the foregoing Covenants.
  - (b) Replace any building materials used in breach or non-observance of the foregoing Covenants so as to comply with these Covenants.
  - (c) Be liable upon demand by the Developer or any of the registered proprietors of the Lots having the benefit of the covenants to pay the sum of \$500 per day from the date of notification of such non-compliance to the Developer or any of the registered proprietors of the Lots having the benefit of the covenants until the non-compliance is satisfied in terms of these Covenants.
11. The Covenantor and their successors in title shall indemnify the Developer from any liability whatsoever from any party breaching any of these Covenants.
  12. Should any proposed or completed dwelling house, building, structure, fence or landscaping not comply with these covenants, the Developer may, in its sole discretion, give written approval where in the sole opinion of the Developer such approval would not detract from the overall quality and appearance of the subdivision. Such approval may be given at any time and is subject to such terms as the Developer in its sole discretion thinks fit.
  13. In the event of any dispute which cannot be resolved by agreement between the Covenantor and the Covenantee as to any matter relating to the abovementioned restrictive covenants, the same shall be resolved by arbitration under the provisions of the Arbitration Act 1996 or any Act passed in substitution or amendment thereof by a single arbitrator appointed for that purpose by the nominee of the President of the New Zealand Law Society and the decision of that arbitrator shall be final and binding on the Parties.
  14. The covenants in this instrument will cease to apply to any land that is intended to vest in the Crown or any territorial authority as a road or reserve, upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand.
  15. The Provisions of this Covenant (except clauses 5 to 14) shall expire five years from the issue of a separate Record of Title for the Property.

**SCHEDULE "2C"**

Lot No.	Record of Title	Lot No	Record of Title
292	TBA	293	TBA
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