

**Form 26**

**Covenant Instrument to note land covenant**

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

**Covenantor**

**WAIPU GREEN ESTATE LIMITED**

**Covenantee**

**WAIPU GREEN ESTATE LIMITED**

**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**  
*required*

*Continue in additional Annexure Schedule, if*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Developer Land Covenants		Lots 1-7 inclusive, 13, 14, 17 and 27-35 inclusive DP 528056 (852279 to 852285 inclusive, 852286, 852287, 854454, 854455 to 854463 inclusive)	Lots 1-7 inclusive, 13, 14, 17 and 27-35 inclusive DP 528056 (852279 to 852285 inclusive, 852286, 852287, 854454, 854455 to 854463 inclusive)
Entrance Structures - Feature Wall & Fence Protection	Q DP 528056 R DP 528056 T DP 528056 U DP 528056	Lot 1 (852279) Lot 35 (854463) Lot 35 (854463) Lot 5 (852283)	Lots 1-7 inclusive, 13, 14, 17 and 27-35 inclusive DP 528056 (852279 to 852285 inclusive, 852286, 852287, 854454, 854455 to 854463 inclusive)

**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 A.

## **ANNEXURE SCHEDULE A**

The Covenantor when registered owner of the land formerly contained in record of title NA91D/26 subdivided the land into Lots in the manner shown and defined on Deposited Plan 528056 (hereinafter referred to as the "Plan").

**WHEREAS** it is the Covenantor'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 described in Schedule A as the Benefited Land, the land covenants set out herein over the land described in Schedule A as the Burdened Land.

**AND** so as to bind the Burdened Land for the benefit of the Benefited Land, the Covenantor **DOTH HEREBY COVENANT AND AGREE** in the manner set out the Schedule hereto so that the covenant runs with the Burdened Land as set out in Schedule A for the benefit of the Benefited Land.

**"Developer"** means Waipu Green Estate Limited or its duly appointed agent, assignee or associated person or entity.

**"Dwelling"** or **"Dwelling House"** means and includes a residential house or family residence.

**"Entry Feature"** means the entrance feature wall located within areas Q, R and T on DP 528056 and the decorative macrocarpa fence post located within area U on DP 528056.

**"Landscape Feature"** means any visible structure or landscape design or enhancement feature or utility to be provided on any Lot, hard or soft surface and excludes trees and/or plantings.

**"Lot"** or **"Lots"** means any one or more of the respective Lots described in Schedule A as the Burdened Land as the context requires.

**"may be approved"** means approval (or not) in writing by the Developer in its sole discretion and subject to conditions (if any). The Developer may ask for any documentation it reasonably requires before making its decision.

**"Resource Consent"** means the Developer's resource consent/consents for the Subdivision.

**"Subdivision"** means the Developer's subdivision known as Waipu Green Estate of which the Burdened Land forms part.

**“Vehicle Access”** means such crossing feature as may be approved:

- (i) On Lots with a swale (as advised from time to time by the Developer), a crossing feature as shown on the Developer’s website including the concrete being 5kg black oxide per m<sup>3</sup>, MPA 30 with beach shell mixed in and exposed aggregate; and
- (ii) On Lots without a swale, a crossing feature which is in keeping with the Subdivision.

1. The Covenantor shall not:

1.1. erect or place or permit to be erected or placed on the Lot any building, Dwelling House, garage, structure, fence or landscaping unless such building, Dwelling House, garage, fence or landscaping in all respects:

- (a) is entirely consistent with the final plans and specifications (including landscaping plans) that have first been submitted to and approved in writing by the Developer in its sole discretion;
- (b) complies with the Resource Consent, including any variation of the Resource Consent at the request of the Covenantor provided that any such requests must first be approved.

1.2. erect on the Lot:

- (a) any Dwelling other than a single private dwelling house (including a double garage) with ancillary buildings/structures having a gross floor area, exclusive of verandas, patios and outbuildings of less than 120 square metres (inclusive of any garage under the same roof structure);
- (b) any Dwelling or other building which does not satisfy the construction and material requirements set out herein;
- (c) or permit or suffer to be erected, any relocatable, prebuilt or kitset building or any building containing second-hand materials (other than high quality recycled materials) as may be approved.
- (d) any Dwelling or other building with an exterior cladding other than brick, natural stone, river rock, textured plaster over brick or polystyrene or other suitable sub-base floor plaster approved materials, stained or painted timber weatherboard, wooden shingles, timber board and batten, surface coated concrete block, solid plaster or glazing or any combination thereof, or any material different to that permitted by the Resource Consent or such other materials as may be approved.

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- (e) any roof using any material other than tiles (including clay, ceramic, concrete, decramastic, pre-coated or press steel) or steel (comprising pre-painted, long run pressed or rolled steel) or shingle or slate or membrane roofing approved 2015 or any material different to that permitted by the Resource Consent or such other material as from time to time may be approved;
- 1.3. permit to be erected or used on any building on any Lot any:
- (a) reflective or visually obstructive roof, wall or joinery materials, colours or mirror glass.
  - (b) galvanised, unpainted zincalume or other unpainted metal or roof material, gutters, downpipes or exterior cladding;
  - (c) concrete or wooden piles without providing a solid durable skirting board or other enclosure around the exterior of the buildings from ground height to the underside of the wall cladding;
  - (d) garage or ancillary buildings except in conjunction with the construction of the main Dwelling as may be approved.
- 1.4. permit any form of temporary residential home or Dwelling on any Lot by way of construction or temporary building or the placement of caravans, modular homes, mobile homes, motor homes, house trailers, buses, tractors, huts, tents and/or vehicles which are used for human habitation. A builder's shed may be placed on the Lot at the commencement of the construction and shall be removed as soon as the construction is completed and prior to any occupation of the Dwelling.
- 1.5. permit any construction on the Lot unless the building site at all times complies with the requirements of the Health & Safety At Work Act 2015 or any legislation in substitution thereof.
- 1.6. undertake or permit during the course of construction the storage of building materials other than within the boundaries of the Lot.
- 1.7. carry out any construction unless an adequate rubbish skip is present at all times (and regularly emptied or replaced) nor allow during the course of construction any rubbish outside the boundaries of the Lot.
- 1.8. during the course of construction allow any vehicles to be washed down other than within the boundaries of the Lot.
- 1.9. allow the Lot to become untidy or unsightly and in particular without limitation, shall not allow any ground cover/grass on the Lot to grow to a height of more than 120mm and shall, if the Developer requests, immediately comply with any request to mow such grass or remove such groundcover to

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017 ensure that at no time or times is any grass or groundcover on any of the Lots more than 120mm in height.

- 1.10. permit any works to be carried out on the Lot (including site preparation) prior to the erection and completion of all side, front and rear boundary fences (which must comply with the requirements set out herein) or, where permanent fencing is not being erected, temporary fencing shall be installed and removed prior to occupation of the Dwelling.
- 1.11. erect or permit to be erected on the Lot any fence or boundary wall:
  - (a) Containing metal sheeting except if this is used in any existing fencing at the time of registration of this covenant;
  - (b) greater in height than 1.8 metres except within 4 metres of the road boundary where the maximum fence height is 1.2 metres For lots 1, 5, 6 and 14 the road boundary shall be deemed to be the main public road running through the Subdivision;
  - (c) which borders a reserve or pond, greater in height than 1.2 metres and shall ensure such fence or boundary wall has a minimum visual permanent openness of 50% unless such fence is for the purposes of screening bin storage areas as may be approved.
- 1.12. commence construction of a Dwelling on the Lot until such time as vehicle access from the road to the Lot has been completed (including berm and curb crossing) up to and including metalling and sealing;
- 1.13. access the Lot over any area not allocated for vehicle access. Any damage caused by any vehicle over any area that is not the vehicle access shall be rectified by the Covenantor prior to occupation of the Dwelling unless earlier rectification is required by the Developer;
- 1.14. use any Lot for any purpose other than a residential Dwelling unless as may be approved;
- 1.15. permit or suffer on the Lot any use by any governmental agency or territorial authority for the purposes of public or institutional housing unless as may be approved;
- 1.16. permit inflammable, explosive or noxious materials to be stored or used on any Lot, with the exception of diesel, petrol, oil or gas tanks which have a capacity of less than 100 litres. Tanks with a capacity of over 100 litres may be approved;
- 1.17. permit any offensive activity to be carried on, on the Lot and/or any activity which may become an annoyance or private or public nuisance, including loud sounds, noises or offensive smells and the carrying on of any business whether or not permitted by the Whangarei District Council.

2. The Covenantor may not occupy the Dwelling in any way until such time as:
  - 2.1 a Code Compliance Certificate has issued and the Dwelling has been completed in accordance with the plans and specifications as submitted to the Developer and approved in writing and in accordance with the terms of these covenants herein;
  - 2.2 all exterior work, decoration and final interior window coverings are completely installed;
  - 2.3 all areas viewable from the street are in a tidy state.
3. The Covenantor shall ensure that any Dwelling is constructed, including the issue of a Code Compliance Certificate within twelve (12) months of the commencement of the works and shall ensure they have completed the landscaping within three (3) months of completion of the construction of the Dwelling and the issue of the Code Compliance Certificate. If there is any dispute as to whether or not the landscaping has been completed, it shall be at the Developer's sole discretion (acting reasonably) as to whether or not the landscaping has been completed, including all lawns, drives, paths and fencing (visible from the street).
4. The Covenantor shall not allow any tree, shrub or other vegetation to protrude beyond:
  - 4.1 3 metres in height within 2 metres of any Lot boundary;
  - 4.2 5 metres in height within the area of any Lot between 2 metres and 5 metres on the east most and southern most boundary of any Lot;
  - 4.3 7 metres in height anywhere else within the Lot.
5. The Covenantor shall not permit or suffer on a Lot any Landscape Feature exceeding 2 metres in height without the approval of the Developer.
6. All heights as they relate to this land covenant shall be taken from the original ground level of the Lot.
7. The registered owner for the time being of a lot containing an Entry Feature shall in relation to such Entry Feature (being those located within areas Q, R, T and U respectively on Deposited Plan 528056):
  - 7.1 ensure that at all times the Entry Feature is maintained and will at such owners sole cost, when required, replace and/or repair any part of the entry feature that requires the same so that it appears as it did when erected (subject to fair wear and tear);
  - 7.2 not allow any planting which the owner controls to block the view of the Entry Feature from the public road or footpath;
  - 7.3 not change the colour or design of the Entry Feature.

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8. Where a boundary fence has already been constructed on a Lot by the registered owner of any adjoining land within the Subdivision, the Covenantor shall be liable to reimburse each such registered owner for one-half share of the actual costs of that boundary fence. Such cost shall not exceed \$90.00 (plus GST) per linear metre for existing fences, such rate to be annually adjusted based on any change to the Consumer Price Index effective from 1 January 2018.
9. The Covenantor will be bound by a fencing covenant within the meaning of section 2 of the Fencing Act 1978 in that neither the Developer nor the Whangarei District Council shall be liable to pay for or contribute towards the cost of construction or maintenance of any boundary fence between any Lot and any adjoining land owned by the Developer or the Whangarei District Council.
10. The Covenantor shall not display or permit to be displayed on any Lot or building any advertisement, sign or hoarding (except for compulsory statutory signage, real estate signage pending sale and builder's signage during construction and delivery signage during construction). All such signage (including construction signage and location) must comply with the relevant Whangarei District Council requirements and be no larger than one square metre in size.
11. The Covenantor shall not permit the keeping of livestock, poultry or animals which may be likely to cause a nuisance to any other resident of the Subdivision. The keeping of pigeons is specifically prohibited. Dogs and cats or other common domesticated household pets that are not dangerous or annoying may be raised and kept within the Lot. Such permitted pets shall be kept on the Lot and any dog shall be kept within the confines of the Lot and under strict controlled supervision. Any dog outside the confines of the Lot shall be on a lead and under strict controlled supervision. Any dog which in whole or in part resembles any of the Pitbull Terrier, the Japanese Tosa, the Dogo Argentino or the Fila Brasileiro breeds and other any other potentially aggressive or noisy breed of animal is prohibited. No permitted pet shall be allowed to make noise in a manner or of such volume as to annoy or disturb any other residents of the Subdivision. Any Covenantor who allows or keeps a pet on their Lot is responsible for any loss or liability of any kind arising from the keeping of such animal. The keeping of animals by a Covenantor shall be subject to any other restrictions required by the Developer from time to time in the terms of maintaining a good residential environment.
12. The Covenantor shall not permit any part of the Lot to be used for the purpose of long term vehicle parking, repair or maintenance, unless:
  - 12.1 the Dwelling is complete and a code of compliance certificate issued;
  - 12.2 the vehicle is stored under cover in an approved building or is adequately and sufficiently screened to the Developer's sole satisfaction from any road, right of way or reserve.



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13. No unregistered, non-licenced or expired licence or inoperable vehicles of any kind shall be permitted to remain on any Lot (unless stored under cover in an approved building). No recreational or commercial vehicles, boats or trailers are to be regularly located on the road or in front of the building line of any Dwelling.
14. The Covenantor shall not permit any Lot to be further subdivided. Boundary adjustments are permitted where no extra Lots are created.
15. 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 Whangarei District Council from progressing or completing the Subdivision. This covenant extends to and includes (but 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 and/or the parent company.
16. If there is any breach or non-observance of any of these covenants:
  - 16.1 There shall be no obligation on the Developer to take any steps to enforce these covenants;
  - 16.2 If there is more than one Covenantor of a Lot, liability of the Covenantors shall be joint and several;
  - 16.3 The Covenantor in breach shall rectify any breach;
  - 16.4 The Developer may enforce these covenants in the same manner as any Covenantor;
  - 16.5 Any such request to remedy non-compliance shall be made in writing by a Covenantee and/or the Developer to any Covenantor with a timeframe specified in such notice (not to be less than 14 days from the date of such request). Should the Covenantor not remedy such notice the Covenantee and/or the Developer may employ a suitably qualified or experienced person to enter on such lot and carry out work necessary to achieve compliance and may recover the costs of compliance resulting from the default and non-compliance to complete such remedial work from the relevant Covenantor.
  - 16.6 The Developer will use its best endeavours to ensure observance of these covenants but shall not have any legal responsibility or liability for any lack of enforcement or enforceability or application of any of these covenants. The Covenantor agrees to keep the Developer fully indemnified from any claim, liability, loss or action arising against it or its agents in respect of these covenants, having regard to the intent to provide for the interest of the Covenantor and the Covenantor's individual obligations of observance and rights of enforcement of those covenants.

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- 16.7 In the event of any dispute which cannot be resolved by agreement between the Covenantor and the Covenantee and/or the Developer 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 ("the Act") or any act passed in substitution or amendment thereof by a single arbitrator appointed for that purpose by the President for the time being of the Auckland District Law Society (or any successor organisation) as a sole arbitrator. The decision of the arbitrator shall be final and binding on the parties.
17. 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.
18. The covenants in this instrument will be fully binding on all transferees, successors in title, owners and occupiers of any estate or interest in respect of the Burdened Land at any relevant time with the exception of any mortgagee under a mortgage registered against the record of title to the Burdened Land, whereby such mortgagee shall only be bound by the terms of these covenants when in possession of the Burdened Land.
19. The covenants in this instrument will cease to apply and expire on 31 December 2028 with the exception of clause 9 (fencing covenant) which will exist for the maximum statutory period.