

Approved for ADLS by Registrar-General of Land under No. 2018/6263  
**COVENANT INSTRUMENT TO NOTE LAND COVENANT**  
 Sections 116(1)(a) & (b) Land Transfer Act 2017



**Covenantor**

*Surname(s) must be underlined or in CAPITALS.*

Derek John Slatter, Joanne Mary Slatter and Murray Lewis Mortimer

**Covenantee**

*Surname(s) must be underlined or in CAPITALS.*

Derek John Slatter, Joanne Mary Slatter and Murray Lewis Mortimer

**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  |
|----------------------|------------------------|---|---|
| <b>Land Covenant</b> |                        | <b>Lots 1, 2, 3, 9, 10, 11, 12, 13, 15, and 16 on DP 549876 (Stage 1)<br/>Records of Title 946530, 964531, 946532, 946533, 946534, 946535, 946536, 946537, 946539, 946540</b> | <b>Lots 1, 2, 3, 9, 10, 11, 12, 13, 15, and 16 on DP 549876 (Stage 1)<br/>Records of Title 946530, 964531, 946532, 946533, 946534, 946535, 946536, 946537, 946539, 946540</b> |

**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 \_\_\_\_\_].

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**LAND COVENANTS  
SCHEDULE 1**

**Covenant Provisions**

**1. DEFINITIONS AND INTERPRETATION**

**Definitions**

In this Instrument, unless the context requires otherwise:

"**Company**" means Awanui Ridge Limited or any other such society or Corporate Body as the Developer may incorporate for the purpose of owning and administering the communal facilities, including, but not limited to, Rights of Way, gates, mowing, and footpaths within the Development, in accordance with these Covenants and the Rules.

"**Rules**" refer to the Awanui Ridge Limited Constitution;

"**Covenants**" means any or all of the covenants contained in this Instrument;

"**Deposited Plan**" means the plan so described in Annexure Schedule A of the Instrument;

"**Developer**" means the Trustees for the time being of the Buffalo Trust, or its nominee, successors in title or assigns.

"**Erect**" means place, build, erect, install, attach, situate or construct or permit to be placed, built, erected, installed, attached, situated or constructed;

"**Covenantee**" means, in relation to each Covenant, the registered proprietor of the relevant Lot from time to time and includes, where applicable:

- a. The person executing this Instrument as Covenantee;
- b. All the Covenantees for the time being under this Instrument; and
- c. All respective executors, administrators, successors, assigns and successors in title of each Covenantee, and if more than one jointly and severally;

"**Covenantor**" means, in relation to each Covenant, the registered proprietor of the relevant Lot from time to time and includes, where applicable:

- a. The person executing this Instrument as Covenantor; and

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- b. All the Covenantors for the time being under this Instrument; and
- c. All respective executors, administrators, successors, assigns and successors in title of each Covenantor, and if more than one jointly and severally;

**"Instrument"** means this Instrument and includes all the annexure schedules incorporated within this Instrument;

**"Working Day"** means any day of the week other than:

- a. Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- b. A day in the period commencing on the 24th of December in any year and ending on the 5th of January the following year, both days inclusive; and
- c. The day observed as the anniversary of any province in which the Lot is situated.

#### **INTERPRETATION**

1.2 In this Instrument, unless the context indicates otherwise:

- a. All monetary amounts are stated and are payable in New Zealand dollars;
- b. Singular words include the plural and vice versa and words importing one gender include the other gender;
- c. References to any "party" mean a party to this Instrument and include the successors, executors, administrators and permitted assigns (as the case may be) of that party;
- d. References to clauses are to clauses in this Instrument (unless stated otherwise);
- e. References to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public or local authority, any government, and any agency of any government or of any such authority;
- f. Headings appear as a matter of convenience and do not affect the construction of this Instrument;
- g. A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for them;

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- h. Any obligation on the Covenantor not to do anything shall be deemed also to be an obligation not to suffer, permit and or cause that thing to be done;
- i. In obligation by two or more persons binds those persons jointly and severally.

## **2. GENERAL COVENANTS**

2.1 The Covenantor covenants and agrees:

- (a) To observe and perform all the Covenants at all times; and
- (b) The Covenants shall run and bind the burdened land for the benefit of the benefitted land to the intent that each of the Covenants will be appurtenant to the benefitted land until the expiry date specified herein.
- (c) Other than clause 8 below, these covenants shall expire and cease to have any effect and shall be cancelled as from 1 January 2034.

2.2 The Covenantor covenants and agrees:

- (a) To pay the Covenantee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Covenantee's rights, remedies and powers under this instrument;
- (b) To indemnify the Covenantee against all claims and proceedings arising out of a breach by the Covenantor of any of its obligations set out in this Instrument.

2.3 The lot owners are informed that the development is a staged development, and no owner may object to any subsequent Resource Consent application made by the Developer in respect of the land originally held under Lot 2, DP 311722.

2.4 The lot owner covenants and agrees with the Developer and/or nominee that the lot owner will not at any time lodge any submission against any Planning Proposal to subdivide, develop or use of the land owned by the Developer.

2.5 The lot owner hereby gives written approval for the purposes of the Resource Management Act 1991 to any Planning Proposal or resource consent application related to the development of land owned by the Developer. The lot owner shall provide any necessary further written approval to any such Planning Proposal if requested by the Company and in the event of failing to do so it shall be entitled to provide a copy of this clause to the relevant consent authority as evidence that such written approval is given.

2.6 Provided that and notwithstanding the foregoing, the within covenants shall cease to have any effect on

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any allotments which shall vest or be dedicated as road or reserves in any subsequent stages of the subdivision. Such date of cessation shall be the date of approval of the subdivision plan for the relevant stage by the territorial authority.

2.7 No entity may purchase more than one lot in this subdivision without prior written approval of the developer. For clarity this prevents lots being accumulated by any parent entity or group, under any form of sub-entity, shelf company or nominee.

### 3. MINIMUM BUILDING STANDARDS

3.1 All buildings and associated improvements are to be of a quality and standard expected of a modern well-designed subdivision. Any accessory buildings with a floor area exceeding nine square meters must be of similar design, materials and colours as the dwelling house.

3.2 With the Developers prior written approval, a lot owner may build a show-home. This may only remain a show-home for a period not exceeding 12 months from the date of the issue of the code of compliance certificate.

3.3 Without limiting the above, all buildings shall:-

- (i) Be constructed on site of permanent new materials of good quality;
- (ii) Have a floor area of not less than 165m<sup>2</sup> (excluding verandahs, porches, unattached garages and other accessory buildings) unless first approved in writing by the Developer;
- (iii) Not incorporate any unpainted roofing iron as part of the roof;
- (iv) Not incorporate exterior cladding comprised of flat sheet fibre cement panels, iron or plywood sheeting; unless first approved in writing by the Developer;
- (v) Not exceed a maximum height of 5.75 metres measured from the highest point of the natural ground level of that part of the land on which the building footprint is situated, excepting for:
  - (a) Lots 1 and 12: the maximum height shall not exceed 7.35 metres, unless first approved in writing by the Developer.
  - (b) Lot 3: shall have a maximum roof height of 7.035m, extending for a maximum east to west distance of 3.2m, before reducing to 6.35m, all as measured from the excavated hardfill level at the approximate centre of the building platform.
- (vi) Have finished exterior colours that are in keeping with the natural surroundings, being native bush, stone walls, stony streams, and indigenous local vegetation.
- (vii) Not include any bright or garish colours on a total combined area of exterior cladding or roof of greater than four square meters, unless first approved in writing by the Developer. For the purposes of this clause, "bright or garish" is defined as being any yellow, pink or purple colours, or having a

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Light Reflectance Value (LRV) of greater than 40 (as illustrated within the Resene BS5252 Total Colour Chart), unless in the white spectrum, or in the "Resene Whites & Neutrals" range.

- (viii) By way of guidance and example, any colours within the following ranges of the BS5252 Total Colour Chart would be unlikely to be acceptable:
  1. Columns E49 to E56 - within rows 02 to 24.
  2. Columns C31 to D45, within rows 02 and 04.
- (ix) For clarity - all of the colours in the "Resene Whites and Neutrals" range are acceptable.
- (x) The Developer acknowledges that colour preferences change over time. For that reason, clauses (vii), (viii) and (ix) above cease to be of any effect after 30 June 2030.

3.4 Fences shall be constructed, and hedges shall be planted, grown and maintained in accordance with the following requirements, notwithstanding the terms or provisions of the Fencing Act:

- 3.4.1 Post and rail fence: A post and rail fence, of substantial material, firmly erected, with not less than 2 rails, and the posts to be not more than 2.75 metres apart.
- 3.4.2 Close boarded fence: A close boarded fence with posts and 2 rails, and having split or sawn timber placed upright, and well nailed to both rails, there being no openings between upright pieces of timber, and with two sides of the posts exposed. The fence must be stained or painted on all external faces in colours to suit the natural local environment within eight weeks of construction. The colour choice is per clause 3.3, as an alternative to black or natural stains.
- 3.4.3 Paling fence: Any paling fence, with posts and 2 rails, and having split or sawn timber placed upright, and well nailed to both rails, there being no more than 100 mm of opening between upright pieces of timber. The fence must be stained or painted on all external faces in colours to suit the natural local environment within eight weeks of construction. The colour choice is per clause 3.3, as an alternative to black or natural stains.
- 3.4.4 Panel fence: A panel fence with posts spaced not more than 2.7 metres apart and having two or more rails with in fill panels securely screwed to the rails. The fence must be stained or painted on all external faces in colours to suit the natural local environment within eight weeks of construction. The colour choice is to use to black or natural stains, or as an alternative, the requirements of clause 3.3 can be applied.
- 3.4.5 Masonry walls: Walls of brickwork, blockwork, or stonework adequately supported.
- 3.4.6 An owner shall not use corrugated iron, sheet aluminium or other metal in the construction of fences on or near the boundaries of the property unless the metal is of a "see through design" such that at least 50% shall be airspace for any part of the fence exceeding 1.2 metres above ground level.

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- 3.4.7 For any Lot boundary on, fronting, or within four metres of a road reserve, access strip or right of way, no fence or hedge may exceed 1 metre in height, all measured vertically from the natural ground level excepting the stone walls and retaining walls existing as at 1 September 2020. For guidance these boundaries are marked on the plan annexed.
- 3.4.8 No other fence or hedge may exceed 1.8 metres in height measured vertically from the natural ground level subject to clause 3.4.9.
- 3.4.9 The maximum combined lineal length of all and any fence or hedge greater than 1.5 metres in height measured vertically from the natural ground level is 40 metres.
- 3.4.10 Nothing herein shall prevent the building of a fence or barrier that is required by law or regulation to be a different height or construction than set out in these clauses, but their intent shall be preserved to whatever extent is reasonable.
- 3.5 No existing fences or walls may be removed or modified without the Developers permission in writing.
- 3.6 Once commenced, all building work shall be carried out continuously until completion and issue of a Code Compliance Certificate from the Whangarei District Council.
- 3.7 All building work must be completed within twelve months of the physical commencement date of building. This includes driveways which must not be of dirt, metal or low quality aggregate.
- 3.8 No more than 60% of the exterior cladding of any dwelling may be constructed of unplastered brick or block.
- 3.9 No owner shall plant or allow to grow any of the following, without first obtaining the Developers written consent:
- i. Pinus species,
  - ii. any eucalypts other than small ornamental varieties,
  - iii. any Poplars, Japanese Cedars, Cryptomeria Japonica, Macrocarpa, Casuarina, Douglas Fir, Wattles, or gorse.
- 3.10 Any concrete concrete driveways, paths, patios or any other exterior visible concrete surface shall have a minimum of 4kg of black oxide or 6kg of brown oxide per cubic meter (pro rata) added at the time of mixing.
- 4. DEVELOPERS CONSENT TO PLANS**
- 4.1 Prior to submitting the dwelling plans to the Whangarei District Council for consent, the plans detailed below shall be submitted to the Developer by the Owner for approval, which will not be unreasonably withheld, and which will be undertaken within 7 working days of submission.

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- a) site plans showing buildings, paths, fencing, pools, driveways, decks and landscaping detail.
- b) elevations, showing the detail for any building or structure greater than 9 square meters in area.
- c) plans showing the detail of all exterior colours to be used, including for roof, fencing and concrete surfaces.
- 4.2 The Developer does not require any construction or engineering detail, nor any internal layout.
- 4.3 In the event of the Developer deciding in its sole discretion, that the plans should be amended to comply or better comply with the covenants and their intent, the Developer will advise the Owner in writing, including their view on how to remedy the actual or perceived issues. Until Developers approval is obtained in writing the Owner must not action the plans. The Owner must then complete these aspects as approved by the Developer, or seek approval in advance of construction for any changes.
- 5. USE OF LAND**
- 5.1 No dwelling may be occupied until fully completed, no camping is permitted prior to the completion of a dwelling, and no non-permitted accommodation is to be occupied on a permanent or semi-permanent basis.
- 5.2 No lot shall be used for any commercial use which would interfere with the residential nature of the neighbourhood. This includes the breeding and operating of "kennels" for dogs, catteries, or aviaries.
- 5.3 Pets
- 5.3.1 No more than three mammalian pets (of which a maximum of 2 can be either cats or dogs) may be kept on the property at any one time and all pets must be neutered.
- 5.3.2 When not on an owner's own lot, all pets must be restrained.
- 5.3.3 No pets are allowed in the adjacent bush areas.
- 5.3.4 No dogs of a savage or menacing nature, such as (but not limited to) Pit Bull Terriers and Pit Bull crossbreeds, Brazilian Fila, Japanese Tosa or the like may be kept on the property.
- 5.3.5 No owner shall keep any dogs that bark excessively or otherwise cause a nuisance.
- 5.4 No cattle, mustelids, goats, horses, pigs, roosters, peacocks or beehives may be kept on the property.
- 5.5 No advertising signs or hoardings greater than one square meter shall be placed on the land except for conventional signs advertising the property is for sale.
- 5.6 No building or repair work on vehicles or boats may be carried out unless the boat or vehicle is under cover and inside a permanent building. An owner may not bring in or allow to remain on the property any vehicle body, equipment or machinery which is unsightly or which is or is likely to become a nuisance to other residents in the subdivision.
- 5.7 No owner may park or operate heavy vehicles, equipment or machinery on any lot or road berms unless required as part of a building consent or other permitted activity.

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5.8 No owner shall erect on the land more than one dwelling. The land shall not be amalgamated with any other Lot nor may any combination of lots be able to be subdivided including subdivision by cross-lease, Unit title or otherwise.

**6. MAINTENANCE OF THE PROPERTY**

6.1 All owners must all times keep the land tidy and free of rubbish and the grass mown and must keep the road berms, drains, crossings and plantings in a tidy condition.

6.2 No hedge may exceed 1.8 metres in height.

6.3 The lot owner must reinstate, replace and otherwise be fully responsible for all costs arising from damage to the landscaping, roading, footpaths, kerbs, concrete or any other structures in the subdivision arising from the lot owners use of the lot whether directly or indirectly through the lot owners agent, tenants, invitees or servants.

6.4 No plant will be allowed to overhang adjoining walkways or the boundary of the property by more than 400mm.

**7. VEHICLE CROSSINGS**

7.1 Vehicle crossings for access to Lots must be constructed in accordance with Reyburn and Bryant plan reference E 14063, available from the Developer, using ACO Channel Product K200 with 200 mm internal width and 260 external width. Gratings shall be Type 676D longitudinal ductile iron grate (ADA).

**8. LOTS 3, 9 & 10 ("the Gated Lots")**

8.1 The owner of these lots will be required to become a shareholder and remain a shareholder of Awanui Ridge Limited for as long as they are the owner of the specified lot.

8.2 No persons, other than the owner of a gated lot shall become a shareholder of Awanui Ridge Limited.

8.3 Expenses of Awanui Ridge Limited will be met by the owners of the specified lots who will share equally all expenses of the company by paying the annual levy set by the company in accordance with the company's Constitution.

**9. DISPUTE RESOLUTION**

9.1 If there should be any breach or non-observance of any of the foregoing covenants the registered proprietors for the time being of the relevant lot shall take all steps necessary remedy the breach or non-observance of the covenants if it is capable of a remedy.

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- 9.2 If any dispute or difference shall arise between any of the owners of the lots as to the meaning or application of any of the foregoing covenants then the respective parties shall meet to endeavour to reach an agreement to resolve the issue. If they are unable to resolve the issue then:
- (a) They shall within 14 days of the original meeting appoint a mediator to mediate the issue;
  - (b) If the parties are unable to agree upon a person to be appointed as a mediator, then the president of the Auckland District Law Society or his or her nominee shall be asked to appoint a mediator;
  - (c) The mediation shall be held within one month from the date of the meeting; and
  - (d) Each party shall attend and participate in the mediation in good faith to negotiate towards achieving a settlement of the issue.

9.3 If at the mediation the issue is not resolved the issue shall then be determined by arbitration under the Arbitration Act 1996. The arbitration shall be conducted by one arbitrator, if the parties can agree on one, or failing agreement, by an arbitrator to be appointed by the President of the Auckland District Law Society or his or her nominee.

**10. BREACH OF COVENANTS**

- 10.1 The Covenantor and Covenantee covenant and agree that if the Covenantor breaches or fails to observe part of or any of the Covenants, then without prejudice to any other liability which the Covenantor may have to the Covenantee or any person or persons having the benefit of the Covenants, the Covenantor, upon written demand being made by the Covenantee or any person or persons having the benefit of the Covenants will:
- a. Remove or cause to be removed from the Lot any building or appurtenances, structures or improvements in breach or non-observance of the Covenants;
  - b. Cease any activity which is in breach or non observance of the Covenants and otherwise rectify the breach or non-observance;
  - c. Pay the person making such demand as liquidated damages the sum of \$250.00 (two hundred and fifty dollars) (adjusted annually by movements in the Consumer Price Index (All Groups) published by Statistics New Zealand (" the Index") from 1 January 2019) per day for every day that such breach or non-observance continues after the date upon which written demand has been made, provided however that the Covenantor will only be liable for breaches of the Covenants which occur while the Covenantor is the registered proprietor of the Lot in respect of which a breach or non-observance occurs.

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10.2 If Statistics New Zealand ceases to calculate or publish the Index, or if it materially changes the basis of assessment for the Index, an alternative index that in the opinion of an expert most clearly reflects changes in the cost of living must be substituted for the Index. Such expert is to be appointed by the President for the time being of the New Zealand Law Society.

10.3 The Developer shall neither be required nor liable to enforce, nor answerable to any owner for any breach or alleged breach of any covenant or obligation herein.

**11. GENERAL**

**Waiver**

11.1 No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.

**Partial Invalidity**

11.2 If any provision of this Instrument or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Instrument and its application shall not be affected and shall remain enforceable to the greatest extent permitted by law.

**Notices**

11.3 Any notice required to be served on any party under this Instrument shall be served in the manner prescribed in Part 7 of the Property Law Act 2007 for the type of notice being served.

**Governing Law**

11.4 This Instrument shall be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

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