

# **Covenants for Ferndale Development in Ngarara Road, Waikanae**

## **INTRODUCTION**

The Grantor has agreed to create certain land covenants between the various lots comprised in the Grantor's land ("the servient lots") set out in Schedule "A", to the intent that each lot shall have both the burden and benefit of the land covenants.

The Grantor, being the registered proprietor of the servient lots set out in Schedule "A", covenants with itself as Grantee, that all the servient lots shall be forever subject to and bound by the stipulations and restrictions set out in Annexure Schedule 2 which shall be land covenants that run with each of the servient lots and forever bind the registered proprietor for the time being of each lot.

## **DEFINITIONS**

In these covenants the following definitions shall apply:

**Ancillary Building** means shed, garage, pergolas or any other structure associated with a dwelling.

**Design Review Panel** means those persons making up the approval body acting on behalf of the Grantor, with the function of approving dwelling plans and specifications for all dwellings including ancillary buildings and landscaping and also with the function of monitoring compliance with the Ferndale Design Guide.

**Development** means the creation of 62 individual lots, and construction of the common facilities in and around those lots.

**Dwelling** means one household unit or principal residence which may include any garage or other ancillary building, for the provision of domestic accommodation.

**Ferndale Design Guide** means the document made available by the Grantor setting out the overall vision for the Ferndale development.

**Grantor** means John Robert O'Sullivan and Rosanne Mary O'Sullivan as trustees of the Ferndale Trust.

**Grantee** means John Robert O'Sullivan and Rosanne Mary O'Sullivan as trustees of the Ferndale Trust.

**Land** means and includes Lots 1 - 62 on Deposited Plan 20118 being the land currently in Certificate of Title WN48B/879.

**Resource Consent** means consent no. RM070273 granted by the Kapiti Coast District Council on 12 October 2007 and includes each and every condition of that resource consent.

**Servient Lots** means each of the lots listed as servient lots in Schedule "A".

**Works** means the works associated with the construction of a dwelling and any ancillary buildings on any lot.

## **INTERPRETATION**

In this document:

- (a) where the context refers to the singular it includes the plural and vice versa.
- (b) references to clauses are to clauses in this document.
- (c) where obligations and covenants are to be complied with by more than one person, they shall bind those persons jointly and severally.

## **LAND COVENANTS**

### **1. Approval of Design Review Panel.**

- 1.1 All plans and specifications proposed for any dwelling, ancillary building, hard/soft landscaping, fence or structure of any nature to be erected on any servient lot of this development must first be approved by the Design Review Panel.

- 1.2 The endorsement of those plans and specifications must be provided in writing by the Design Review Panel, before a resource consent and/or building consent is sought from the Territorial Local Authority.
- 1.3 The Design Review Panel may refuse to approve any plans or specifications for reasons which shall be communicated to the registered proprietor, but any such refusal is at the sole discretion of the Design Review Panel.
- 1.4 The Design Review Panel will make available the Ferndale Design Guide and in addition to the approval function will have the ongoing role following approval, to monitor compliance with those guidelines throughout the works.
- 1.5 In the event the registered proprietor of a servient lot wishes to construct further ancillary buildings separately from the works associated with constructing the dwelling, or wishes to make external alterations to the dwelling post-construction, then the same approval process required in clause 1.1 above shall apply in respect of those ancillary buildings and/or alterations for as long as the Design Review Panel remains in operation. In the event the Design Review Panel is no longer in operation, the registered proprietor of the servient lot shall still conform with the Ferndale Design Guide in relation to any further ancillary buildings to be constructed or in relation to any dwelling or ancillary building or alterations.
- 1.6 The Design Review Panel reserves the right to grant any exemption from provisions within the Ferndale Design Guide, or to grant extensions to any timeframes or other conditions imposed simultaneously with approval to works on any servient lot, provided any such exemption or waiver shall be recorded in writing. Any approval, exemption, or waiver shall be binding on all registered proprietors of all servient lots from time to time.
- 1.7 No registered proprietor of any servient lot may bring any action, claim, or proceedings against the Grantor or against any person making up the Design Review Panel in respect of any exemption, extension, variation or waiver granted by the Grantor or the Design Review Panel to any registered proprietor of a servient lot.

## **2. Buildings on each lot**

- 2.1 Works to be carried out on any servient lot shall be restricted to the erection of one dwelling together with any approved ancillary buildings embodied in the plans and designed to conform aesthetically with the dwelling.
- 2.2 Any ancillary buildings shall conform in design and cladding with the dwelling on that servient lot and shall be no closer to the street frontage than the front line of the dwelling constructed on any servient lot, unless the topography of the servient lot requires the location of any ancillary building to be in front of the dwelling.
- 2.3 In no case shall any second hand dwelling, relocatable, or prebuilt home or caravan, hut or shed be used as a dwelling or temporary dwelling or be constructed from non approved second hand building materials.

## **3. Timeframes**

- 3.1 A registered proprietor of a servient lot shall commence works to construct a dwelling and any approved ancillary buildings on their lot within 18 months of purchasing the lot, and shall complete those works within 12 months from commencement of laying down the foundations.

## **4. No further subdivision**

- 4.1 A registered proprietor of a servient lot shall not subdivide that lot with the effect of creating one or more additional lots, either by way of freehold subdivision, unit title subdivision or crosslease subdivision.
- 4.2 Nothing in this covenant shall prevent registered proprietors of adjacent servient lots from carrying out a boundary adjustment to alter the boundaries between adjacent lots, subject to such boundary adjustments complying with any Territorial Authority conditions.

## 5. **Fencing**

The following restrictions apply to fencing on the servient lots:

- 5.1 The Grantee shall be bound by a fencing covenant as defined in Section 2 of the Fencing Act 1978 in favour of the Grantor.
- 5.2 Where any servient lot is adjacent to land vested in Kapiti Coast District Council as Local Purpose Recreation Reserve, "Reserve", Kapiti Coast District Council shall not be liable for, or be called upon to erect or maintain or contribute towards the costs of erection or maintenance, of any boundary fence along the Reserve boundaries. Kapiti Coast District Council require the registered proprietor of land adjacent to a reserve to enter into a Deed or Fencing Covenant recording this. The benefit of this covenant shall not enure for the benefit of any subsequent purchaser for value of the Reserve.
- 5.3 The registered proprietor of any servient lot shall not erect, or allow to be erected upon the lot, any fence in front of the building line of the dwelling on the servient lot, or closer than five (5) metres to the street frontage boundary, whichever is the nearest to the front boundary.
- 5.4 Any fences erected on a servient lot by a registered proprietor shall comply with the specific design in the Ferndale Design Guide being Isthmus drawing number LD110.
- 5.5 Where the Grantor has already erected fencing on any servient lot, the registered proprietor of that servient lot shall not remove that fencing, other than to replace it with similar style fencing when it requires replacement.
- 5.6 A registered proprietor of a servient lot may supplement boundary fencing with plantings in accordance with the permitted vegetation provisions set out in clause 6 of these covenants.

## 6. **Vegetation**

- 6.1 All plantings on a servient lot are to be in accordance with the Ferndale Design Guide and are to be planted and maintained in such a way that they do not shade the dwelling or living areas on adjacent lots.

6.2 Addition of, or removal of any vegetation located within a residential (no-build) zone; Council reserve area; or road reserve, is prohibited.

## 7. **Services**

The following provisions shall apply to services installed on any servient lot:

7.1 Each servient lot shall have a proprietary greywater dispersal device, both approved by Council and by the Design Review Panel, installed as part of the works and which shall be maintained in good operating order in accordance with the manufacturer's requirements.

7.2 The registered proprietor of each servient lot shall provide a design for a stormwater disposal system, both approved by the Design Review Panel, and in accordance with clause 24 of the Resource Consent RM070273, requiring as a minimum, a stormwater attenuation device and on-site soakage system, capable of dealing with the 1 in 10 year event where there is a secondary overflow path, or the 1 in 100 year event where there is no secondary overflow path.

7.3 The registered proprietor of each servient lot shall arrange to have a 20,000 litre rainwater collection and storage tank, or tanks, which must be either buried or discreetly located and screened, so as not to be visible from the public road or from neighbouring dwellings. This requirement is in addition to the greywater device required under clause 7.1 above.

7.4 Accessories, such as electricity and gas meters, telecommunication aerials and solar panels must be integrated into the roof form or be placed in a visually discreet location, where they are screened from the public road and from neighbouring dwellings. Gas supply bottles and power and/or meter boxes, must likewise be in a visually discreet location, where they are screened from the public road and from neighbouring dwellings. No washing/clothes lines will be permitted between the front line of a dwelling and a public road.

7.5 Where there is a formed (designated) vehicle crossing from the public road to a servient lot, it may only be repositioned with the approval of the Design Review Panel and the Territorial Authority and it may only be constructed to an approved design and using approved materials. Where there is no formed (designated) vehicle crossing from the public road to a servient lot, the location, design, and materials of the vehicle crossing are to be approved by the Design Review Panel and are to comply with Territorial Authority requirements.

## 8. **No commercial operations or vehicles**

8.1 The registered proprietor of a servient lot will not permit their servient lot, or their dwelling or any ancillary buildings to their dwelling, to be used on an commercial or industrial basis or as a boarding house.

8.2 No recreational or commercial vehicles or trailers are to be regularly located on the street or footpaths, or in that area between the front boundary of the servient lot and the dwelling.

8.3 Any recreational or commercial vehicle or trailer including a caravan or motor home may only be stored on a servient lot if it is permanently garaged or screened from the public road and from neighbouring dwellings.

## 9. **Signs**

9.1 The registered proprietor of a servient lot shall be permitted to display a small sign attached to a dwelling or ancillary building, provided such signage is not constructed with neon lighting.

9.2 During the period where a servient lot is marketed for sale, the registered proprietor shall not allow the display of more than one sign on the servient lot and such sign shall be limited to one metre x one metre square, in size.

## 10. **Lighting**

10.1 Any exterior lighting forming part of a dwelling or ancillary buildings shall adopt the “dark sky” lighting approach in accordance with the Ferndale Design Guide.

## 11. **Grounds Maintenance**

- 11.1 The registered proprietor of a servient lot shall at all times ensure that their grounds are kept in a neat and tidy condition, including the road reserve in front of the servient lot.
- 11.2 In the event a registered proprietor of a servient lot damages the landscaping, roading, road drainage, footpaths, curbs or other structures vested in the local authority, by their use of their servient lot directly or indirectly, or by the actions of any of their agents or invitees, that registered proprietor shall at its own cost, immediately reinstate any such damage so as to return the structures to their state prior to such damage occurring.

## 12. **Animals**

- 12.1 The registered proprietor of a servient lot shall not bring onto the land or keep on the land any domestic cat.
- 12.2 The registered proprietor of a servient lot shall not raise, breed or keep any livestock on the land or in any buildings on the land.

## 13. **Breach**

- 13.1 Should any Grantee (or the guests, employees, agents, invitees, tenants or licensees of any Grantee) be in breach of any of these covenants, then the Grantor or any other party having the benefit of these covenants will be entitled, in addition to any other remedies available to them, to any of the following:
- (a) to serve written notice on the Grantee in breach requiring them to remedy the breach within seven days of receipt of the notice and upon the expiry of seven days in the event the breach is not remedied, the sum of \$50 per day in liquidated damages shall accrue and be payable by the Grantee in breach to each party who has given such notice until such time as the breach is remedied.

- (b) recover any amounts expended in establishing and proving a breach of covenant, and in making good any damage or loss caused by the breach of covenant, as a debt in any action in any Court, and such sum may include all costs incurred including legal costs.
- (c) recover damages from the Grantee in breach for any and all losses sustained by any party as a result of the breach of covenant which may include, but not be limited to, any reduction in value of any lot in the subdivision and any interference to privacy and enjoyment of any lot in the subdivision.

13.2 Any dispute arising as to whether or not a breach of these covenants has occurred shall be submitted at the request of any party to the dispute, to arbitration under the Arbitration Act 1996 where the Arbitrator's decision shall be final and binding and may include an order for costs, an order for enforcement, and interest on any monies payable.

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KAPITI LAW  
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