

Form 26

Covenant Instrument to note land covenant

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

Covenantor

TMB DEVELOPMENTS LIMITED

Covenantee

TMB DEVELOPMENTS 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
Land Covenant		Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 24, 25 DP 549619 (RT 945655, 945656, 945657, 945658, 945659, 945660, 945661, 945662, 945663, 945664, 945665, 945666, 945667, 945668, 945669, 945670 & 945671)	Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 24, 25, 100, 102, 200 DP 549619 (RT 945655, 945656, 945657, 945658, 945659, 945660, 945661, 945662, 945663, 945664, 945665, 945666, 945667, 945668, 945669, 945670, 945671 & 945672)

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

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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Annexure Schedule 1

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Land Covenant

Continue in additional Annexure Schedule, if required

Definitions and Interpretation

For the purposes of this land covenant:

- “Covenantee”** means the registered Owners of the Benefited Land in Schedule A
- “Covenantor”** means the registered Owners of the Burdened Land in Schedule A
- “Developer”** TMB Developments Limited or such other entity or person(s) as it may appoint in writing
- “Development”** means the Developer’s development at 422 Three Mile Bush Road, Kamo named “Stoney Hill” to be completed in accordance with Resource Consent SL1900010/P110236 (including any variations) as issued by the Whangarei District Council.

RESTRICTIVE COVENANTS

The Covenantor has agreed to create land covenants in favour of the Covenantee to regulate the future buildings, amenities, plantings and use of the lots within the Development to create an architecturally appealing development and preserve as much as possible the ambience of the special landscape of the land in the Development and surrounding area, where stone walls and native forest areas are the predominant features. To this effect, the Covenantor covenants and agrees with the intention to bind itself and future owners of the Burdened Land for the benefit of the Covenantee and future owners of the Benefited Land that the following covenants shall be forever appurtenant to the Benefited Land:

1. Buildings and fences to be approved by the Developer

1.1 The Covenantor shall not:

- (a) commence construction of any dwelling or building on the property, any accessory building or fence without first submitting and obtaining the written approval of the Developer to the plans of such dwelling, building or fence (which are intended to be submitted for building consent). Such plans shall include full details of the materials, finish and exterior colour schemes to be used. Any variation to or derivation from the approved plans not approved by the Developer will be a breach of this clause. As a guide to construction and design the Developer will provide Design Guidelines.
- (b) remove any of the plantings or fences established on the property by the Developer.

1.2 The covenants in the above clause 1 shall expire on the date being 10 years from the date of initial registration of these land covenants on the original owners Record of Title, but expiry will not affect the right of any parties which have arisen before that date.

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Continue in additional Annexure Schedule, if required

OTHER LAND COVENANTS

Unless otherwise authorised in writing by the Developer or all Covenantees, the Covenantor shall:

2. Buildings, vehicle crossings, tanks and aerials

- 2.1 Not permit any building to remain incomplete any later than 12 months after laying down of foundations of such building. During construction container bins must be kept on the property and kept neat and tidy and all rubbish must be kept contained in the bins.
- 2.2 Not permit the property to be used as a residence until a dwelling house has been constructed on it which has been granted a final code compliance certificate.
- 2.3 Ensure that the vehicle crossing and the driveway serving the land is completed within 4 months from completion of the dwelling and sealed and finished using exposed aggregate tinted concrete with a minimum of 5kgs of black oxide per 1m³ added at the time of mixing
- 2.4 Bury all water storage tanks completely.
- 2.5 Not require the Developer to repair or contribute towards the cost of erection or repair of any dividing or boundary fence between the Property and any adjoining property owned by the Developer but the benefit of this fencing covenant shall not benefit any subsequent purchaser of such adjoining lot.
- 2.6 Not place or allow to be placed on the land or buildings any aerials or satellite dishes unless the same comply with the following requirements:
 - (a) Have a maximum diameter of one metre; and
 - (b) Are situated at least four metres from the front façade of the dwelling; and
 - (c) Are mounted below the ridgeline of the roof.

3. Plantings and landscaping

- 3.1 Not plant any exotic conifers or exotic palms which will grow to a height greater than 3 metres.
- 3.2 Not permit or allow row plantings such as hedges to exceed a height of 1.8 metres.
- 3.3 Not allow any trees, plants or shrubs on the land (with the exception of existing native vegetation) to exceed a height of 3.5 metres except for 1 specimen tree every 250m² on the property.
- 3.4 Not cut down, remove or kill (either by ringbarking or poisoning) any mature trees on the Property.
- 3.5 Not permit hedges intersecting a stone wall to exceed the height of the stone wall.
- 3.6 Not plant or permit to grow on the Property any exotic plant species known to be invasive.
- 3.7 Maintain hedges on both sides of the boundary line of any boundaries shared with any Lot in the Development larger than 2 hectares in area.
- 3.8 On Lots 16, 18 & 19, any hedges or fences within 10 metres of the stone wall located on the northern boundary of the property must be kept below 1.2 metres.

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- 3.9 On Lots 8 – 18 being the properties that adjoin a right of way access road, no fence or plantings shall be erected or established within 1.5 metres of the road or curbside.
- 3.10 Not plant or permit to grow any trees or vegetation close to any existing stonewall which has the potential to damage or compromise the structural integrity of any stonewall.
- 3.11 Ensure that all clotheslines, garden sheds or utility sheds and raised garden beds are positioned away from the road access and obscured from sight of the road. Metal garden sheds are not permitted unless they are painted in recessive colours.
- 3.12 Ensure all landscaping is to be completed to a standard expected of a professional landscaper.
- 3.13 Not permit or cause the removal of soil from the land except as shall be necessary for the construction of buildings or swimming pools.
- 4. Use of the land**
- 4.1 Not allow the Property to be used or occupied other than as a residence.
- 4.2 Not permit the Property to be used for any trading or commercial purposes.
- 4.3 Not permit any caravan or motorhome to be placed on the land that is not roadworthy or to be used for residential use for a period exceeding two months in any twelve month period.
- 4.4 Not allow on the land for more than two months any unfinished boat or vehicle under repair or anything else of similar nature that is not covered and inside a permanent building.
- 4.5 Keep the Property in a neat and tidy condition and in particular, keep lawns mown and prevent long grass and weeds growing on the land. If the Covenantor fails to keep the Burdened Land in a neat and tidy condition then, in order to maintain the overall appearance of the Development during the sales process, the Developer may mow the land on behalf of the Covenantor in order to preserve the overall appearance of the subdivision. The cost of doing so shall be paid by the Covenantor at a rate of \$120.00 plus GST per mow of the land. The Developer shall not be responsible for any damage to any structure or objects, or deterioration occasioned to the land as a result of the reasonable exercise by the Developer of its powers under this clause. The Covenantor grants the Developer a licence to enter the land for the purposes of this clause. The right of the Developer to mow the land under this clause will continue to have effect until the Covenantor commences construction of a house on the land. During construction the Covenantor will continue to keep the Burdened Land in a neat and tidy condition as far as practicable.
- 4.6 Not permit or suffer any rubbish, noxious substances, livestock, or any domestic birds or animals likely to cause nuisance or annoyance to any neighbour, to be placed on or accumulate on the land. Any owner who has a dog must take all necessary steps to ensure that their dogs are contained within the boundaries of their property when not on a leash.
- 4.7 Keep the roadside berms, drains, vehicle crossings, access culverts and plantings outside but adjacent to the Property mown, clear of rubbish, noxious weeds and rank grass and in a tidy operable condition.
- 4.8 Promptly make good any damage caused to roads, footpaths, berms, services or common areas by any owner or their contractors or agents during the course of construction.

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Continue in additional Annexure Schedule, if required

- 4.9 Not lodge or make any objection or complaint in relation to any farming activities that will take place on any Lot within the Development that is greater than 2 hectares in area, including but not limited to dust, smells and spray drift associated with farming operations and practices on these lots.
- 5. Penalties for non-observance and enforcement**
- 5.1 If there is a breach or non-observation by the Covenantor of any of these covenants, then without prejudice to any other liability the Covenantor may have to the Covenantee and the Developer, or any other person or persons having the benefit of the stipulations and restrictions, the Covenantor will, upon written demand made by the Covenantee or the Developer:
- (a) Immediately take all steps necessary to remedy the breach or non-observance as required by the Developer or Covenantee including but not limited to permanently removing from the land any improvement, structure, object, animal or plant or other cause of any breach on non-observance of the covenants;
 - (b) Immediately upon receipt of a written demand for payment pay to the Developer or Covenantee or person making such demand as liquidated damages the sum of \$500.00 per day for every day or part day that such breach or non-observance continues from and after the date upon which written demand is made; and
 - (c) Pay on demand the Developer or Covenantee's costs incurred in respect of the default and any enforcement or attempted enforcement of the Developer or the Covenantee's rights, such costs to include but not be limited to legal costs on a solicitor client basis;
 - (d) Pay interest at the rate of 15% per annum on any money which may be demanded and not paid, such interest to accrue from the date of the demand until the date it is finally received by the Developer or Covenantee.
- 5.2 The covenants in this instrument will immediately cease to apply to any land which is part of the Development (or part thereof) which is intended to vest or subsequently vests 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 LINZ. Notwithstanding this clause, should LINZ require a partial surrender of this covenant to be registered on any land to vest in the Crown or any territorial authority as a road or reserve, then the Covenantor and Covenantee duly appoint the Developer as their attorney to execute on their behalf any documentation necessary to give effect to the required surrender of these covenants on the land to vest in the Crown or any territorial authority as a road or reserve.
- 5.3 Five years after the Developer has sold all lots in the Development, the right of the Developer to approve any dispensation of the covenants from clause 3 onwards is passed to the owners of the adjoining lots who share a common boundary with the lot owner seeking dispensation.