

Form L

Annexure Schedule

Page of Pages

Insert instrument type

--

Schedule, if required

Continue in additional Annexure

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
SCHEDULE A Land Covenants	[TBC]	[TBC]	[TBC]

PART 1: DEFINITIONS AND INTERPRETATION

Definitions

1. In this instrument, unless the context otherwise requires:

“**Building**” means any building on the Lot where the erection or alteration of that building would require a resource management or building consent from the Relevant Authority;

“**Council**” means the Western Bay of Plenty District Council;

“**Durham**” means Durham Property Investments Limited, or its nominee;

“**Grantees**” means the registered proprietors of the Dominant Tenements described in Schedule A; and “**Grantee**” means one of the Grantees;

“**Grantors**” means the registered proprietors of the Servient Tenements described in Schedule A; and “**Grantor**” means one of the Grantors;

“**Height Restriction Areas**” means, in relation to a particular Lot, the area that is specified in the table at clause 20 of this instrument. The Height Restriction Areas in the table are subject to final survey and may be amended at Durham’s discretion;

“**Lots**” means all of the Servient Tenements described in Schedule A; and “**Lot**” means one of the Lots;

“**Maximum Height**” means the height of 1.2 metres measured vertically from the natural ground level;

“**Plans**” means the plans, drawings and specifications for a proposed Building on the Grantor’s Lot including full details of all exterior colour schemes, finishes, materials, fencing and landscaping, and the Grantor’s building consent application to the Relevant Authority for the proposed Building;

“**Relevant Authority**” means any corporation, government, local, statutory or non-statutory authority or body having jurisdiction over the Land or any part thereof;

“**Subdivision**” means the development comprising the Lots.

Interpretation

2. In this instrument:

(a) Where the context permits, the singular includes the plural and vice versa.

(b) References to any “party” means a party to this instrument and includes their successors, executors, administrators and permitted assignees.

(c) References to Covenants are to Covenants in this instrument (unless stated otherwise).

(d) All references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, and re-enactment of, or amendment to, that legislation and all substitute legislation.

Where the context permits, references to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority.

PART 2: AGREEMENT TO COVENANT

To ensure the architectural quality of the Buildings in the Subdivision and protect the investment of all of the Grantors, the Grantor (so as to bind itself and all of the Servient Tenements described in Schedule A) hereby covenants and agrees with the Grantees (and all future proprietors of the Dominant Tenements described in Schedule A) that it will at all times observe and perform the Covenants contained in Part 3 ("Covenants") to the end and intent that each of the Covenants shall be appurtenant to the Dominant Tenements until **1 January 2036** at which date the Covenants shall expire, with the exception of the height restriction covenants contained in clauses 18 and 19 and 20, which shall not expire but shall enure for the benefit of the Dominant Tenements forever.

PART 3: COVENANTS

Covenants by Grantor

The Grantor, subject to the qualifications contained in these Covenants, will:

1. **New Dwelling:** Not erect or permit to be erected or place or permit to be placed on the Lot any Building other than a single new (and not second-hand) dwelling house with a minimum covered floor area (excluding garaging) of 140 square metres.
2. **No Subdivision:** Not subdivide the Lot or create a unit title or cross lease in respect of dwellings on the Lot.
3. **Plans / Specifications:** Not commence any Building work on the Lot until the Grantor has:
 - (a) First provided to Durham a full copy of the Plans proposed to be lodged with the Council for the new dwelling; and
 - (b) Obtained from Durham written approval of those Plans. Durham will not withhold its approval of the Grantor's Plans if the Grantor has complied with all of the terms of these Covenants, and the proposed Building, in Durham's opinion:
 - i. is reasonably sited;
 - ii. meets Durham's design concepts;
 - iii. complements other properties in the Subdivision and is in keeping with the surrounding environment (taking into account the location, elevation, fencing, layout, landscaping, materials, colour and visual impact of the proposed Building); and
 - iv. does not detract from the normal standard of housing in the Subdivision.
4. Not deviate from the Plans approved by Durham without the prior written approval of Durham.
5. **Materials / Specifications:** Satisfy the following criteria in order for their Plans to be approved by Durham:

- (a) A minimum of 85% of the exterior cladding of the Building must consist of any of the following materials:
 - i. glazing;
 - ii. kiln fired or concrete brick;
 - iii. stucco or solid plaster;
 - iv. textured finish stone; timber;
 - v. pre-primed fibre cement weatherboards having a maximum finished width not exceeding 180mm; or
 - vi. pre-finished metal weatherboard bonded to solid timber boards (ie. Lockwood type construction).
 - (b) Weatherboard detailing shall include, as the preferred design, traditional box and scribe treatments to corners and windows in conjunction with appropriate use of colour.
 - (c) Any proposed Building with an exterior finish in the form of flat cladding, concrete block, poured concrete or similar shall have the surface of such materials textured in such a manner as to fully cover the base material.
 - (d) Any proposed Building to be constructed with a basement or sub-floor space shall have the basement or sub-floor area sheathed with cladding complying with Durham's specifications for exterior cladding.
 - (e) Any metal roof cladding must have a pre-finished factory colour.
 - (f) Any proposed Building shall include either an attached or separate fully enclosed garage not less than 36 square metres, and such garaging shall be constructed and completed at the same time as the construction and completion of the Building and in the same materials and architectural design as the proposed Building.
- 6. Completion of Works Before Occupation:** Not permit the Lot to be occupied or used as a residence unless the Building on the Lot has been substantially completed and the Building meets the requirements of the Council.
- 7. Completion of Exterior:** Not leave the exterior of any Building on the Lot incomplete longer than twelve months from the laying down of the foundations for the Building.
- 8. Vehicle Access:** Fully construct the vehicle access to any Building in a permanent surface of concrete, concrete block or brick paving or tarsealing and such surfacing is to be carried out in a proper and tradesman-like manner within twelve months of laying down the foundations of the Building.
- 9. Paths:** Fully construct any paths on the Lot in permanent materials with all unpaved areas to be properly grassed and landscaped within twelve months of laying down the foundations of the Building.
- 10. Clothesline/Letterbox:** Construct any clothesline and letterbox on the Lot within twelve months of laying down the foundations of the Building, such design construction and location to be aesthetically sensitive and the clothesline shall not be highly visible from the access lot or road reserve (as the case may be) serving the Lot.

- 11. Fencing:** Notwithstanding the terms or provisions of the Fencing Act 1978, not erect any fence or fences on the Lot unless such fence or fences comply in full with the following criteria:
- (a) No fence shall be constructed in unframed corrugated iron, post and wire, second hand or demolition materials;
 - (b) Subject to clause 20, no fence shall exceed a maximum height of 1.83 metres measured vertically from the natural ground level at the relevant point in the Lot where the fence is erected. No fence that is located on any part of the Height Restriction Areas shall exceed the Maximum Height.
- “Fence” includes (but is not limited to) any live fence, or any raised ground that serves as a dividing fence.
- 12.** Not call upon Durham to pay for or contribute towards the expense of erection or maintenance of any fence between the Lot and any adjoining land owned by Durham but this covenant shall not enure for the benefit of any subsequent purchaser from Durham of that adjoining land.
- 13. Reinstatement for Damage:** Reinststate, replace and be responsible for all costs arising from damage to the landscape, roading, footpaths, curbs, concrete or other structures in the Subdivision arising from the Grantor’s use of the Lot directly or indirectly through the Grantor’s agents or invitees.
- 14. Construction Buildings/Vehicles:** Once construction of the Building on the Lot has been completed, not bring on to or allow to remain on the Lot any temporary Building, caravan, trade vehicle or other equipment and materials unless garaged or screened so as to preserve the amenities of the Subdivision.
- 15. Advertising:** Not permit or suffer any advertisement, sign or hoarding of a commercial nature to be erected on any part of the Lot without prior consent in writing from Durham.
- 16. Lot To Be Kept Tidy:** Ensure that from the date that possession is taken of the Lot, (including any public road frontage lot vested in any Relevant Authority) while the Lot remains unoccupied, the Lot is kept free of weeds and noxious plants and debris and is mowed regularly and if the Grantor fails to do so Durham shall have the right at any time and from time to time to arrange for the Lot to be cleared of weeds and noxious plants and debris and mowed in which event the Grantor shall pay Durham on demand the costs incurred by Durham together with interest calculated at the rate of 20% per annum on such costs from the date they arise.
- 17. Access and Construction Requirements:** Not use the land adjacent to the Lot for access without written consent of Durham or the owner of that land. The Grantor will ensure that during construction no rubbish or waste concrete or slurry is dumped on the Lot or access ways. In particular the Grantor will:
- (a) Immediately prior to commencing construction of any Building construct an all weather access crossing and on completion of construction of any Building, remove that crossing and restore the surface of the ground to its condition at the outset;
 - (b) Before commencing construction of any Building construct a mud free hard stand loading pad for a distance of 5 metres from the boundary of the Lot with a minimum width of 3.5 metres; and

- (c) Ensure that no damage is caused to any existing berms curb and channel footpaths or roading and the Grantor hereby indemnifies the Durham from any liability in respect of such damage.

The Grantor shall notify any contractor, subcontractor or employee working on the Lot of the requirements of this Covenant.

18. Height Restriction Covenants: It is the Grantor's intention to create the height restriction covenants contained in clauses 19 and 20 over the Servient Tenements, to the intent that the height restrictions will not expire, but will enure for the benefit of the Dominant Tenements forever.

19. The Grantor will not (except with the prior written consent of Durham):

- (a) Erect or permit the erection of any Building, structure, or improvement on the whole or any part of the Lot; or
- (b) Plant or grow, or permit on the Lot or any part of the Lot, any tree, shrub, or plant of any kind,

that exceeds, or may exceed in due course, the Maximum Reduced Level Height specified for each Lot in the table below. For the purpose of this Covenant 19, the Origin of Levels shall be "IB 34 DP 412452 – RL 22.94".

LOT NUMBER	MAXIMUM REDUCED LEVEL HEIGHT
801	27.85
802	28.15
803	27.35
804	26.40
805	25.55
806	24.90
807	23.90
808	23.10
812	22.50
814	22.10
815	21.85
816	21.60
817	21.30
818	20.95

20. The Grantor will not:

- (a) Except with the prior written consent of Durham, erect or permit the erection of any Building, structure, or improvement on any part of the Height Restriction Areas that exceeds, or may exceed in due course, the Maximum Height. When determining whether to grant consent, Durham may consider (but is not limited to considering) whether a proposed Building, structure or improvement meets the criteria in clause 3(b);
- (b) Plant or grow, or permit on any part of the Height Restriction Areas, any tree, shrub, or plant of any kind that exceeds, or may exceed in due course, the Maximum Height; or

- (c) Allow any item that exceeds the Maximum Height (including but not limited to a satellite dish, clothes line, vehicle, trailer, caravan, boat or play equipment) to be placed, kept, stored or located on the Height Restriction Areas.

This clause 20 shall not prevent the Grantor from erecting shade protection in the Height Restriction Areas, provided that the shade protection is an overhead protector without sides.

LOT NUMBER	HEIGHT RESTRICTION AREAS
801	GA2
802	GB2
803	GC2
804	GD2
805	GE2
806	GF2
807	GH2
808	GJ
811 (To be transferred to Council)	To be confirmed
812	GK2
814	GL2
815	GM2
816	GO2
817	GP2
818	GR2
820	GT2
821	GU2
822	GW2
823	GX2
824	GY2
825	GZ2
826	GAA2
827	GAB2
828	GAC2

- 21. Default:** If there is any breach or non-observance by the Grantor of any of these Covenants then without prejudice to the other liability which the Grantor may have to the Grantees or any other persons having benefit of the Covenants, the Grantor will, upon written demand being made by any Grantee:
- (a) Pay to the Grantee or any subsequent owner of any lot in Schedule A as liquidated damages the sum of \$500 per day for every day that such breach or non-observance or non-compliance continues, calculated from the date that is five working days from the date that such written notice was served on the Grantor (to the intent that no liquidated damages shall be payable if the breach or non-observance or non-compliance is remedied within five working days of the demand being served). The amount of \$500 shall be increased annually by reference to the Consumer Price Index (All Groups) or an equivalent replacement index;
- (b) Obtain from the Relevant Authority any building consents required under the Building Act 2004 (or any legislation in replacement of that Act) for the removal of the non-complying Building, structure or materials (as the case may be);

- (c) Remove or cause to be removed from the Lot any Building, structure or materials used in the construction of the Building or structure that is in breach or non-observance of the Covenants; and
 - (d) Obtain from the Relevant Authority all building consents required under the Building Act 2004 (or any legislation in replacement of that Act) for the reinstatement and/or replacement of a complying Building, structure or materials;
 - (e) Reinststate and/or replace the non-complying Building, structure and/or materials in accordance with the building consent and so that the Building and structures constructed on the Lot comply fully with these Covenants; and
 - (f) Allow the person making such demand the right to lodge a caveat against the Lot in breach to protect the sum of any unpaid debt owing by the Grantor on the basis that any unpaid debt shall be deemed to constitute a contractual charge over the Lot owing to the Grantees until such time that any debt is fully discharged or otherwise satisfied.
22. If the Grantor fails to remedy the breach within a reasonable time of receipt of such notice, the Grantee may take whatever action they consider necessary to remedy the breach (including entering the Lot).
23. All expenses and costs incurred in enforcing the Covenants will constitute a debt due that shall be a charge against the Lot in breach and shall be recoverable as liquidated damages.

General Provisions

24. **Expiry:** These Covenants shall bind the Grantor and the successors in title of the Lots until 1 January 2036 at which time these Covenants shall expire, with the exception of the height restriction covenants contained in clauses 18 and 19 and 20, which shall not expire but shall enure for the benefit of the Dominant Tenements forever.
25. **Liability of Grantor:** The Grantor will be liable only in respect of breaches or non-observance of these Covenants which occur while the Grantor is the registered proprietor of the particular Lot. The Grantor indemnifies the Grantees from all proceedings, losses, claims, liabilities, costs and demands in respect of any breach or non-observance of these Covenants by the Grantor.
26. **No requirement to enforce:** Neither the Grantees nor Durham will be required to enforce these Covenants against any Grantor and neither the Grantees nor Durham will be liable for any breach of these Covenants by the registered proprietor of any Lot which the Grantees or Durham (as applicable) are not the registered proprietor.
27. Without limiting the express terms of these Covenants, should any proposed Building, structure, fencing or landscaping on a Lot not comply with these Covenants, Durham may in its entire discretion give written approval to the Plans where in the sole opinion of Durham such approval would not detract from the overall quality and appearance of the Subdivision. Such approval may be given subject to such terms as Durham in its sole and absolute discretion thinks fit.
28. **No waiver:** No waiver of any breach or failure to enforce any provision of these Covenants at any time shall in any way limit or waive the right of the Grantees to subsequently require strict compliance with these Covenants.

- 29. Disputes:** The parties shall meet and discuss in good faith any dispute between them arising out of this instrument. If the discussions fail to resolve the relevant dispute, any party may (by written notice to the other parties) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the New Zealand Law Society. In the event of any such submission to mediation:
- (a) The mediator shall be deemed to be not acting as an expert or as an arbitrator;
 - (b) The mediator shall determine the procedure and timetable for the mediation;
and
- the cost of the mediation shall be shared equally between the parties.
- 30. Partial Invalidity:** If any Covenant is or becomes invalid or unenforceable, that Covenant shall be deemed deleted from this instrument and such invalidity or unenforceability shall not affect the other provisions of this instrument, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
- 31. Durham has the benefit of Covenants:** The Covenants are intended to be for the benefit, and enforceable at the suit, of Durham (together with the Grantees) in terms of section 4 of the Contract (Privity) Act 1982.
- 32. Surrender:** If at any time any part of a Servient Tenement or the Dominant Tenement is to vest in Council or any other Relevant Authority these Covenants shall be deemed to have been surrendered on the date of the deposit of the plan identifying the land that is to so vest (or such replacement process as is required to enable registration of the vesting of the land) in respect of that part of the Servient Tenement or Dominant Tenement (as the case may be) that is to vest. No further consents of either the Grantor or the Grantee shall be required in order to effect the surrender and any such consents that would otherwise have been required shall be deemed to have been given.
- 33. New Zealand Law:** This Easement Instrument is governed by and shall be construed in accordance with the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.