



# THE PALMS

IN THE HEART OF WHITIANGA

## **SCHEDULE 1 - LAND COVENANTS**

The Vendor as registered proprietor of the land in the Vendor's subdivision has agreed to create land covenants in favour of the Purchasers to the intent that Purchasers will be bound by the conditions described below in perpetuity (or such earlier time as may be specified) and the owners and occupiers for the time being of the Dominant Tenements may enforce such conditions against the owners for the time being of the Servient Tenements and such conditions will run with the Servient Tenements for the benefit of the Dominant Tenements to that intent. The covenants binding on each lot (the land) by Owners are:-

1. An Owner will not erect or place (or permit to be erected or placed) on the land any dwelling house or building without first obtaining the written approval of Eastside Heights Limited or such person as it may appoint in writing ("the Developer"), to the plans of such dwelling house or building, and the materials, finish and exterior colours to be used in the construction of the dwelling house or building. Any variation to or deviation from the approved plans not approved by the Developer will be a breach of this clause. Clauses 1 and 2 of this schedule 1 shall cease to have effect 15 years after the first dwelling house on the land is completed.
2. As a guide to construction and design an Owner shall not erect or place on the land or allow to be erected, constructed or placed on the land any dwelling house which is not a new residential dwelling house. The dwelling house shall have a minimum ground floor area of 125 square metres (excluding garages, carports and decking). When the plans are submitted to the Developer for approval under clause 1 the Developer may (at the Developer's sole discretion) vary the minimum ground floor area (but not increase it) to ensure the building is congruent with the Developer's modern and well-designed residential subdivision. The exterior cladding shall consist entirely of any of the following materials:
  - (a) Kiln fired concrete brick or painted bricks or stone approved by the Developer;
  - (b) Texture finishes of a good quality plaster system;
  - (c) Timber weatherboard, Linea, cedar, Palliside weatherboard, or aluminium pre finished weatherboard;
  - (d) The colour of any paint finish of the exterior of the dwelling must be approved by the Developer.

### **PROVIDED THAT**

- (i) Alternative upper floor exterior cladding may be used if first approved by the Developer;
- (ii) The Developer may waive the minimum floor area if it is satisfied that in all other respects the building complies with all other requirements of the covenants contained in these clauses;

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- (iii) In addition an Owner shall not allow any form of metal roofing on the land unless the same is Colour Steel "Endura" roofing;

notwithstanding anything in the preceding clauses, the Developer in its absolute discretion may approve of an alternative exterior cladding not specified in this instrument if in its opinion any variation does not detract from the value of the adjacent properties.

3. An Owner further covenants:

- (a) Not to permit the construction of the exterior of any dwelling house on the land to take more than a period of six months from the commencement of construction of that dwelling house.
- (b) Not to permit the driveway on the land to remain uncompleted without a solid running course for more than three months after completion of the dwelling house. The driveway is required to be finished with an exposed aggregate finish or tinted concrete to be approved by the Developer. Untinted concrete will not be approved.
- (c) That no work for the erection of improvements, whether the same be for buildings, accessory buildings, fences, exterior finishings and excavation of foundations upon the land shall be commenced unless plans and specifications and all other details of construction and finishings as the Developer at its absolute discretion may require have been first submitted to it or its agents and have received its written approval, which approval shall not be unreasonably withheld where the Developer is satisfied that the dwelling house will comply with the terms of this instrument and an Owner shall not erect or permit to be erected any improvement upon the land not first approved by the Developer in terms of this clause.
- (d) Not to permit or carry out the erection of any temporary building or structure upon the land except such as may be used in conjunction with the construction of permanent buildings and which will be removed from the land upon completion of the work.
- (e) Not to permit or carry out the placing or erection upon the land or any building previously erected on other land excepting temporary structures placed there in conjunction with the construction of a permanent dwelling house.
- (f) Not to subdivide or cross lease the land and not to erect or allow to be erected on the land any buildings other than one family dwelling house with garaging.
- (g) Not to permit or cause the land to be occupied or used unless:

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- (i) A building has been substantially completed in accordance with the terms of these covenants, and
  - (ii) The building meets the requirements of the appropriate Local Authority.
- (i) That no dwelling house shall be constructed to a single rectangle or square shape and it must contain at least two hips or two gables in the roofline. Flat or raked roofed dwellings are acceptable provided they meet all the covenants and have more than one level of roofing. This covenant may be waived at the sole discretion of the Developer.
4. Unless approved by the Developer, not to erect a fence constructed of materials other than brick, plastered concrete block, wrought iron, or timber and:
    - (a) No fence shall exceed 1.83 metres in height above natural ground level or exceed any lower height where Council may so stipulate.
    - (b) No fence shall exceed 1.2 metres above natural ground level on any road front or side boundary closer than 5 metres from the street boundary or closer than the house to the street boundary, whichever is the greater. The top of the fence will in all cases be level.
    - (c) Not to fence the front boundary of the land.
    - (d) No fencing is to protrude beyond the front of any dwelling built on the land.
    - (e) Not to build any retaining walls on the land.
  5. Not to permit or cause the removal of soil from the land except as shall be necessary for the construction of the building thereon.
  6. Not to permit or cause any rubbish to accumulate or be placed upon the land and not to permit any excessive growth of grass so that the same becomes long or unsightly.
  7. Not to permit or cause any advertisement sign or hoarding of a commercial nature to be erected on any part of the land without the prior consent in writing of the Developer ("for sale" signs are permitted).
  8. Not to allow any animals on the land other than quiet domesticated pets which definition shall (without restricting the generality of such term) exclude goats, sheep, horses, pigs, poultry, beehives and any dangerous or aggressive dogs, including (but not limited to) Rottweilers, Pitbull breeds, Doberman Pincer or any other dogs banned in New Zealand).

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9. That all clotheslines and garden sheds are to be away from the road or right of way access and obscured from sight of the road or right of way access. Metal garden sheds are not permitted unless they are Colour Steel "Endura" range.
10. Not to permanently park any vehicle, caravan or boat on or within five metres of any street or right of way unless situated within enclosed garages constructed on the land, provided that this prohibition shall not apply to any invitee of an Owner where such invitees are not residing with an Owner and the vehicles are parked temporarily only.
11. Not without the consent of the Developer erect or permit to be erected any building, structure or other improvement of any kind upon the land, the height of which exceeds 5.0 metres above the finished ground level of the land (that measurement to be taken at the middle point of the land) provided that aerials, satellite dishes, chimneys and other similar appurtenances of a domestic nature will not be a breach of this clause.
12. In the event that an Owner or any contractor, employee or invitee of the Owner causes any damage to the roading, footpath, kerb or other structure in the subdivision or to any Property including the Property of the Owner within the lands described in the plan, the Owner covenants to forthwith make good the damage at their own expense or to pay the cost of the repair of the damage in the event that such repair is effected by the Developer, Council or other like body. To provide support of this clause an Owner will pay an additional \$1,500.00 by way of bond on settlement and such money will be held in trust by the Developer's solicitors to be refunded once the Owner has completed construction of the dwelling and driveway, or 24 months after the date of deposit of the plan, whichever is the earlier. If any damage has been caused under the first part of this clause the \$1,500.00 or such part of it as is necessary will be used to make good such damage.
13. The Developer will mow the land for a period of four (4) months after the issue of title free of charge to the Owner. After the four month period has expired the Owner will from that day keep the land in a neat and tidy condition and will prevent long grass and weeds growing thereon. The Developer may after the four month period has expired in order to preserve the overall appearance of the subdivision continue to mow the land on behalf of the Owner. The cost of so doing shall be paid by the Owner at a rate of \$40.00 plus GST for each mow of the land. The Developer shall not be responsible for any damage to any structure or object, or deterioration occasioned to the land as a result of the reasonable exercise by the Developer or its powers under this clause. The Owner grants the Developer a licence to enter for the purposes of this clause. This clause will continue until the Owner commences construction of a house on the land.
14. Acknowledging that the value of the Dominant Tenements will be affected by the standard of buildings erected on the land and by failure to comply with the covenants contained in the preceding clauses and sub clauses, the Owner covenants for the Owner personally and their executors, administrators and assigns that should the Owner fail to comply with, observe, perform, or complete any of the covenants and

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restrictions contained in clauses 1-13 and without prejudice to any other liability the Owner may have to the Developer or any other person the Owner will:

- (a) Immediately upon receipt of a written demand for payment from the Developer or the Developer's solicitors pay to the Developer as liquidated damages the sum of ONE THOUSAND DOLLARS (\$1,000.00) per day for each day the default continues unremedied, such liquidated damages to be limited to a maximum value of \$150,000.00; and
- (b) Shall immediately undertake such remedial action as may be required by the Developer including but not limited to permanently removing or causing to be permanently removed from the Property any improvement or structure so erected or repaired or other cause of any breach or non-observance of the foregoing covenants;
- (c) Pay on demand the Developer's costs incurred in respect of the default and any enforcement or attempted enforcement of the Developer'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% 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,

PROVIDED THAT:

- (i) Except for those defaults notified to the Owner when it is a registered proprietor the Owner shall only be liable while the Owner is a registered proprietor of the land.
  - (ii) If a default is completely and finally remedied within one month of notice in writing requiring the removal or remedy of such cause of default and the payment by the defaulting party of all reasonable legal costs and other expenses incurred by the party enforcing the said covenants, the sum payable under clause 14 shall abate to \$1.00 per day provided that this abatement shall not apply in respect of any subsequent default of a similar nature.
  - (iii) The right of the Developer to enforce the terms of the rights and benefits conferred by the foregoing covenants and by this clause shall continue for 12 calendar months from the date on which it ceases to be a Registered Proprietor of any of the land comprised in DP \_\_\_\_\_ provided however that the Developer is under no liability whatsoever to enforce these covenants.
15. An Owner acknowledges that the covenants as to the land will include the existing Lot 4 in the subdivision, but that the registered proprietor of Lot 4 in the subdivision will not be bound to perform covenants 1, 2, 3 a, b, c, d, e, g, h, i, 4, 5, 9, 10 11 and 12, but is bound by all land covenants if the existing dwelling house and garage are completely destroyed and/or removed and another building built thereafter.

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NB: The Sale and Purchase Agreements will include a provision allowing the Developer to make variations to the covenants if considered necessary to maintain good management and control of development within the subdivision, except that no variation will require dwellings to be greater than is provided here.

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