

ANNEXURE SCHEDULE 2
DRAFT LAND COVENANTS
"FAIRBAIRN"

1. Purpose

- 1.1. The intention of these land covenants is to establish and maintain an attractive, well designed and high quality residential development while providing for appropriate flexibility in the design and architecture of the Houses and other structures to allow for individual creativity within the Development.

2. Definitions

- 2.1. In these land covenants, the following terms have the corresponding meanings provided below:
- 2.1.1. Headings are for ease of reference only and do not form part of any covenant nor affect the meaning of any covenant.
 - 2.1.2. Words imputing the singular include the plural and vice versa.
 - 2.1.3. **Building** comprises a building as defined by the Building Act 2004 (or latest version).
 - 2.1.4. **Council** means the Selwyn District Council.
 - 2.1.5. **Developer** means Urban Estates Limited and any successor party or organisation nominated by it to deal with applications required for approvals by the Developer under any of these covenants.
 - 2.1.6. **Development** means the development being carried out at 650 East Maddisons Road, Rolleston by the Developer.
 - 2.1.7. **Benefitted Land** means the land listed as the benefitted.
 - 2.1.8. **House** or **Houses** means any residential dwelling house or building, or part of a residential house or building, which is intended to be used as a separate residence.
 - 2.1.9. **Lot** means any Lot that is subject to these covenants.
 - 2.1.10. **Owner** means any registered owner of any Lot.
 - 2.1.11. **Survey Plan** means any survey plan relating to future subdivision of Lot 1 DP 528962 (should the Development be carried out in stages).

3. Covenants

Developer approval

- 3.1. Prior to submitting House plans and building consent applications to the Council, or other relevant territorial authority, for any necessary approvals and prior to the commencement of any construction on the Lot, the Owner shall obtain the written approval of the Developer in respect of:
 - 3.1.1. Site plan (location of the House on the Lot) showing proposed access from the street or right of way;
 - 3.1.2. Floor plan of the interior of the House (with dimensions and elevations);
 - 3.1.3. Specifications of the exterior finishes to be used;
 - 3.1.4. A landscaping plan for the Lot;
 - 3.1.5. Proposed fencing for the Lot, including details of the staining, painting or other finishing that is proposed for the fencing.
- 3.2. The Developer will use its best endeavours to respond to each Owner's application no later than 10 working days after receipt of items 3.1.1 – 3.1.5 above. The Developer may (at the Developer's election) nominate such approval to another suitably qualified party who will be advised to the Owner.
- 3.3. Any approval required from the Developer under these covenants means written approval and shall be:
 - 3.3.1. obtained by the Owner prior to any work being carried out on the Lot; and
 - 3.3.2. shall be given or refused in the sole, absolute and unfettered discretion of the Developer; and
 - 3.3.3. subject to the Developer reserving its right to approve requests for one party without creating any form of precedent for another party.
- 3.4. The Developer's right to grant or decline any request for approval under the covenants is an unfettered right and does not allow any person to challenge for any reason the giving or the declining of any such approval. For the avoidance of doubt, no person will have any claim against the Developer in respect of any decision that the Developer or their assignee or delegate makes in respect to any approvals sought.
- 3.5. Any approval under this clause shall be deemed to have been provided by the Developer where any House or other building which has been constructed on the Lot and occupied for a period of two years or more without the Developer objecting to the same and providing notice of that objection to the Owner.

Construction and development

- 3.6. No Lot may be further subdivided.

- 3.7. No more than one House may be constructed on each Lot.
- 3.8. No House or Building on any Lot may be occupied as a residence until:
- 3.8.1. The House is completed in accordance with these covenants (including completion of driveways, paths and external fencing); and
- 3.8.2. The Certificate of Code of Compliance has been issued by the Council
- on the basis that within 60 days of occupation all landscaping visible from the road boundary frontage and seeding of lawns will be completed in full.
- 3.9. No Owner shall occupy or permit to be occupied any temporary structure(s) or caravans and/or vehicles placed on the Lot.
- 3.10. No re-locatable Houses may be brought onto any Lot nor any other previously used House be transported or re-erected on any Lot.
- 3.11. All Houses must be constructed on-site from new materials unless previously agreed in writing by the Developer.
- 3.12. No Owner will erect or permit to be erected or placed on the land any House greater than one storey.
- 3.13. All Houses must have a minimum floor area (excluding garage, carport, or covered area) of:
- 3.13.1. 120m² if the Lot area is 460 m² or less; or
- 3.13.2. 140m² if the Lot area is 461m² or greater,
- unless the Developer approves otherwise.
- 3.14. All Houses must include a double garage.
- 3.15. No House shall be used as a show home unless the owner has obtained the written approval of the Developer. The Developer shall have sole discretion over the number of Houses in the Development to be used for show home purposes.
- 3.16. All Houses, garages or other Building must be set back a minimum of 3 metres from any street boundary.

Materials and cladding

- 3.17. Any fire flues present as part of any House must match the House's roof colour.
- 3.18. The roof of the House must have 3 or more hips or gables or a combination of both.
- 3.19. Roofing material for all Houses on any Lot shall only include tiles (clay, ceramic, concrete, decomastick, pre-coated pressed steel, cedar, slate or bitumen shingles) or painted long run pressed steel with minimum 25 degree roof pitch and maximum 30 degree roof pitch or as otherwise approved by the Developer in writing. The use of unpainted galvanised sheet materials or copper building materials is prohibited.

- 3.20. There must be no plastic downpipes present on a House nor any roofing material, guttering, down pipe, or exterior cladding material comprising of unpainted and/or exposed zinc or copper building materials.
- 3.21. Exterior cladding for all Houses on any Lot shall include any of the following materials:
- 3.21.1. clay bricks, stained or painted weather boards, recycled bricks, painted or sealed concrete masonry, natural stone, rockcote, plaster, glazing or any combination of the above.

Construction time

- 3.22. Construction of the House on any Lot must be completed within 9 months of commencement of construction of the House.
- 3.23. During construction of the House, all sites must be kept tidy and have full perimeter fencing before construction commences. Temporary toilets and rubbish skips must be well secured and contained.

4. Fencing

- 4.1. An Owner must not erect or permit to be erected on the Lot any fence or boundary wall (or replacement):
- 4.1.1. On the internal boundaries (being boundaries not fronting a road or right of way) of a height greater than 1.8m above the finished ground level or of materials other than new timber/colour steel panels.
- 4.2. All internal boundary fences shall :
- 4.2.1. unless already constructed by the Developer, be constructed by the Owner in the form of a paling fence and timber capping. Other forms of fencing may be approved at the sole discretion of the Developer;
- 4.2.2. be stained, painted or finished in the manner approved by the Developer within two (2) months of the date that is the earlier of (a) a Code Compliance Certificate is issued by the Council for the House on the Lot, or (b) the House is occupied.
- 4.3. All fences fronting a road or right of way or shared access or a reserve shall:
- 4.3.1. be constructed by the Owner in the form approved by the Developer;
- 4.3.2. be stained, painted or finished in the manner approved by the Developer within two (2) months of the date that is the earlier of (a) a Code Compliance Certificate is issued by the Council for the House on the Lot, or (b) the House is occupied.
- 4.4. An Owner will not call upon the Developer to pay for or contribute towards the expense of construction or maintenance of any fence between the Lot and any

contiguous land of the Developer provided however that this covenant shall not enure for the benefit of any subsequent owner of the contiguous land.

- 4.5. Notwithstanding anything else in these covenants all fences on the Lot must comply with the Council bylaws. Where these covenants conflict with any Council bylaw and/or consent notice registered on the record of title to the Lot the Council bylaw and/or the consent notice will prevail.
- 4.6. The Owner shall not remove or relocate from the Lot any fence, tree or shrub constructed or installed by the Developer that is within 3 metres of the road without the prior written consent of the Developer.
- 4.7. The Owner will be bound by a Fencing Covenant within the meaning of Section 2 of the Fencing Act 1978.

5. Other buildings or structures

- 5.1. One garden shed is permitted on the Lot, provided that it is:
 - 5.1.1. Not visible from the road; and
 - 5.1.2. Constructed from new materials and appropriately painted or prefinished, or if it is a factory built shed it is of a colour that will complement the House; and
 - 5.1.3. 2.4 metres or less in height, and 10m² or less in an area such that it complies with the requirements of an "example building" in Schedule 1 of the Building Act 2004;
- 5.2. Clotheslines on the Lot must be located away from any road and appropriately screened so that they are not visible from the road.

6. Driveways and parking

- 6.1. All vehicle crossings and driveways must be in accordance with Council bylaws. All Lots must have a driveway that is constructed as a permanent solid course from one of the following materials:
 - 6.1.1. Concrete with exposed aggregate finish; or
 - 6.1.2. Clay or concrete paving bricks or cobblestones; or
 - 6.1.3. Plain or colour tinted concrete provided the Owner has prior written approval from the Developer; and
 - 6.1.4. Widths must be 4.8m from the kerb to boundary and 0.6m from side boundary to allow for landscaping; or
 - 6.1.5. In all respects a type approved by the Developer provided that in the Developer's opinion it is not of lesser visual appeal and/or quality than materials approved above.

- 6.2. All vehicle crossings to the property are to be located a minimum of two metres from any tree or lamp post located within the road reserve, and no trees or lamps, are to be positioned to accommodate any such vehicle crossing unless first approved by the Developer but in all respects in compliance with Council requirements.
- 6.3. Any motor homes, caravans, boats, or similar objects parked on the Lot must not be used for accommodation whilst on the Lot and parked in a garage or otherwise appropriately screened so that they are not visible from the road.
- 6.4. No vehicles are to be parked on the lot, unless parked on the driveway or formed parking or manoeuvring area.

7. Landscaping

- 7.1. An Owner must ensure that all street fronting landscaping that is visible from any street frontage is completed and any unpaved areas are properly grassed or landscaped within two (2) months of the date that is the earlier of (a) a Code Compliance Certificate is issued by the Council for the House on the Lot, or (b) the House is occupied.
- 7.2. An Owner must keep the Lot in a neat and tidy condition, including but not limited to ensuring that:
 - 7.2.1. Grass is maintained so that it does not exceed a height of 100mm;
 - 7.2.2. Rubbish does not accumulate on the Lot; and
 - 7.2.3. The Lot does not otherwise look untidy.
- 7.3. If in the Developer's opinion the Owner is at any time in breach of the above covenants, the Developer may cut the grass, remove the rubbish, and/or undertake any other work reasonably required to bring the Lot into compliance with this clause. Any costs for this work may be levied against the Owner and the Owner must pay any such costs within 10 working days of receiving an invoice from the Developer. If the costs are not paid within the timeframe, the Owner must also pay 20% per annum interest on such costs until paid.

8. Animals

- 8.1. An Owner must not allow to be kept on the Lot any animals other than domestic pets, which without restricting the generality of such term shall exclude goats, sheep, horse, pigs, poultry and beehives.

9. Signage

- 9.1. An Owner must not erect, place or allow to be erected or placed, any sign or hoarding of a commercial nature on the Lot, excluding building or real estate related signs or show home advertising approved in advance by the Developer.

10. Expiration

- 10.1. These covenants shall all apply for a period of fifteen (15) years from the date of deposit of plan [] (Canterbury Land Registration District).

11. Breach

- 11.1. Acknowledging that the value of the Benefitted Land may be affected by the standard of House erected on any Lot and by failure to comply with these land covenants, the Owner covenants for the Owner/s of the Benefitted Lots personally and their executors, administrators and assigns that should any Owner fail to comply with, observe, perform, or complete any of the covenants contained in the clauses and without prejudice to any other liability the Owner may have to the Developer or any other person, the Owner will:

- 11.1.1. 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 \$200.00 per day for each day the default continues unremedied;
- 11.1.2. 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 Lot any House, Building or other structure so erected or repaired or other cause of any breach or non-observance of these covenants;
- 11.1.3. 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 limited to legal costs on a solicitor client basis; and
- 11.1.4. Pay interest at the rate of 20% on any money which may be demanded and not paid, such interest to accrue from the date of the demand until it is finally received by the Developer;

Provided that:

- 11.2. Except for those defaults notified to the Owner when it is a registered owner of the Lot, the Owner shall only be liable while the owner is a registered owner of the Lot.
- 11.3. If a default is completely and finally remedied within one month of notice in writing requiring the removal or remedy of such cause or default and the payment by the defaulting party of all reasonable legal costs and other expenses by the party enforcing the said covenants the sum payable under clause 11.1 shall abate to \$1.00 per day provided that this abatement shall not apply in respect of any subsequent default of a similar nature; and
- 11.4. The right of the Developer to enforce these covenants and by this clause shall continue for twelve calendar months from the date on which it ceases to be an Owner provided however that the Developer is under no liability whatsoever to enforce these covenants.

12. Vesting of roads and reserves

- 12.1. All Owners consent to the deposit of any Survey Plan which has the effect of vesting any land in any local authority, territorial authority or the Crown. The Owners agree that the covenants in this Instrument shall cease to apply in respect of the land to vest upon the date of lodgement with Land Information New Zealand (or any such replacement entity) of the required documents to deposit the Survey Plan. The Owners covenant that this clause will be deemed to be the consent of the Lot Owner to the deposit of the Survey Plan (including under section 224(b)(i) Resource Management Act 1991 (or any like or similar provision in any variation, consolidation or replacement Act)).
- 12.2. If it is determined by the Developer that additional written consent is required from the Lot Owner to the deposit of any Survey Plan under clause 12.1 then:
- 12.2.1. At the request of the Developer, the Owner will immediately give such written consent to the Developer; and
- 12.2.2. In addition to clause 12.1 and 12.2.1 the Owner irrevocably appoints the Developer or its successor in title as its attorney to sign any consent necessary in the required form to deposit any Survey Plan. No person dealing with the Owner as the attorney in this capacity need inquire if the Developer is validly exercising its powers as attorney under this clause 12.2.

13. Disputes

- 13.1. Should any dispute arise concerning any aspects of these covenants that cannot be resolved by agreement between the parties involved, the Lot Owners are bound to resolve the same by arbitration in accordance with the Arbitration Act 1996 (the **Act**), and the following provisions shall apply:
- 13.1.1. There shall be a single arbitrator who shall be appointed by the President for the time being of the Canterbury branch of the New Zealand Law Society (or any successor organisation) as a sole arbitrator.
- 13.1.2. The arbitrator shall determine all questions in issue between the parties including questions as to the scope of the dispute and as to procedure.
- 13.1.3. The arbitrator's award shall be binding on all parties to the dispute.
- 13.1.4. Any party to a dispute may initiate arbitration in accordance with the provisions of the Act.