

Covenant Instrument to Note Land Covenant

(Sections 116(1)(a) and (b) Land Transfer Act 2017)

Land Registration District

NORTH AUCKLAND

Covenantor

FULTON HOGAN LAND DEVELOPMENT LIMITED

Covenantee

FULTON HOGAN LAND DEVELOPMENT LIMITED

Creation of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule 2A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule 2C, with the rights and powers or provisions set out in the Schedule 2C.

SCHEDULE 1

Purpose (Nature and Extent) of Covenant	Shown (Plan Reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title)
Land Covenant		As set out in Schedule 2A	As set out in Schedule 2B

Covenant Provisions

The provisions and covenants applying are set out in Schedule 2C.

SCHEDULE 2**Restrictive Covenants – Milldale****OPERATIVE PROVISIONS**

The Covenantee has completed a subdivision in the manner shown and defined on Deposited Plan [insert] .

It is the Covenantee's intention to create a high-quality subdivision. To enable this to occur it is the Covenantor's intention to create for the benefit of the land set out in Schedule 2B (the **Benefited Land**) the land covenants set out in Schedule 2C over the land set out in Schedule 2A (the **Burdened Land**).

So as to bind the Burdened Lands and for the benefit of the Benefited Land the Covenantor **DO HEREBY COVENANT AND AGREE** in the manner set out in Schedule 2C hereto so that the covenants run with the Burdened Lands for the benefit of each respective Benefited Land.

The Covenants set out in Schedule 2C shall only apply for a period of fifteen (15) years from the date of registration of this Easement Instrument.

**SCHEDULE 2A
Burdened Lands**

Lot	Record of Title

**SCHEDULE 2B
Benefited Lands**

Lot	Record of Title

**SCHEDULE 2C
Restrictive Covenants**

Interpretation

1. In these covenants, unless the context otherwise requires:

FHLD means Fulton Hogan Land Development Limited or its appointed agent.

JOAL means jointly owned access lot.

Lot or Land means the Burdened Land.

Milldale Subdivision means the subdivision generally bounded by State Highway 1, Wainui Road, Old Pine Valley Road and Cemetery Roads in Wainui.

Registered Owner means Registered Owner of the Burdened Land.

REBW means Reinforced Earth Batter Wall.

Reserve means any public reserve.

Road means a public road or public walkway.

Road Boundary means any boundary of the Lot immediately adjacent to a road.

Subdivision means the subdivision shown on Deposited Plan [insert].

Building Approval

2. The Registered Owner shall not erect on the Burdened Land any dwelling, building, structure or fence or landscaping unless the final plans, specifications, fencing detail, retaining walls, finish and landscaping details have been approved by FHLD.

Side Yards and Setbacks

3. The following setbacks apply to any dwellings constructed on each Lot as noted below:
 - 3.1 for all Lots, the Dwelling setback from any Road or JOAL is 3 metres;
 - 3.2 for all Lots, the garage door setback if the garage door is facing a Road or JOAL is 5.5 metres.

4. The following setbacks and minimum floor area apply to any dwellings constructed on each Lot as noted below:

Lot	Minimum Floor Area (m ²)	Minimum Side Yards and Dwelling Setbacks

Building Prohibitions - Dwelling

5. The Registered Owner shall not erect or place on the Land any building, dwelling, carport, garage or other structure:

- 5.1. unless all roofs are sheathed in either pre-coated metal tiles, chip-coated metal tiles, concrete tiles, clay tiles (provided that the concrete or clay tiles used are not to be red or orange in colour), asphalt shingles or glass fibre shingles, or Colorsteel® long run roofing products;
- 5.2. unless exterior walls are clad in brick, textured plaster, stone, glass or painted/stained timber weatherboards, painted Linea Board or sealed concrete block masonry, Coated Zinalume® or any combination of those materials;
- 5.3. which incorporates roofing material, gutter material, down pipes or exterior cladding material comprising of unpainted, and/or exposed Zinc coated products;
- 5.4. which, within 3 metres of the boundary, has any item that is visible from the road and that in FHLD's sole discretion is obtrusive or unappealing, including but not limited to, air conditioning units, aerials, gas bottles or water tanks;
- 5.5. which incorporates the use of second-hand materials used for exterior finishes for garden sheds, fencing or landscaping;
- 5.6. which has any garage door enabling vehicle access facing directly towards the road not set back from the Road Boundary by a minimum of 5.5 metres;
- 5.7. that has the same plan and building shape as any other dwelling within 100 metres of the Land or that has a single square or single rectangle site plan;
- 5.8. which has a building where the basement (including a basement garage) foundations or pole/pile supports that are not fully enclosed to the reasonable satisfaction of FHLD;
- 5.9. has any part of a building within 3 metres of any Road Boundary except side fences, front fences and/or retaining walls permitted in accordance with these covenants;
- 5.10. which has any satellite dish over 1 metre in diameter that is visible from any Road, JOAL or Reserve;
- 5.11. which has any building, with a combined window area on the sides of the dwelling and facing a Road or JOAL which is less than 2.5 metres square metres without prior written consent from FHLD;
- 5.12. not permit or suffer on the Land unpainted sheds or unpainted garages or any garden shed that is visible from any Road, JOAL or Reserve.

6. Other Prohibitions and Construction Requirements

The Registered Owner shall:

- 6.1. not permit or suffer on the Land the keep or raising of any livestock, poultry, reptiles or animals of any kind or size on the Lot or in any building on the Lot other than domesticated household pets. Keeping pigeons on the Lot is prohibited;
- 6.2. not permit or suffer on the Land any motorhome, bus, caravan, trailer or similar that is parked on anything other than a hardstand area. Such vehicles, trailers or similar are not permitted to be used as a residence for human occupation on the Land.
- 6.3. not permit or suffer any recreational, commercial vehicles, boats or trailers to be regularly parked on the Road, footpath or JOAL.
- 6.4. only use any buildings on the Land as a residence or other permitted activity authorised under the Auckland Council District Plan and only after the building is substantially completed in accordance with these covenants;
- 6.5. only have vehicle access to the Land over the area shown as vehicle access (including berm and kerb crossing) on plans approved by FHLD;
- 6.6. ensure any rain or water tank is screened by fencing or planting, or buried to ensure it is not visible from any Road, JOAL or Reserve;
- 6.7. not erect, transport to, permit to erect or allow to be placed on the Land any temporary building, structure, pre-built, relocated dwelling, deconstructed house, whether purpose built or previously erected on other land without FHLD's prior written approval **PROVIDED THAT** temporary buildings or structures used during construction of permanent buildings which are removed from the land upon completion of the permanent buildings shall not be in breach of this clause;
- 6.8. not allow any graffiti or similar disfiguring to remain on any wall, fence, structure or building on the Land for more than five (5) days from the date such graffiti or disfiguring occurred;
- 6.9. ensure that upon completion of any dwelling on the Land and prior to occupation as a dwelling or other permitted activity:
 - (a) complete the landscaping of the Land in accordance with plans pre-approved by FHLD including driveways, paths, lawns and/or paving, plantings, letterbox, completion of side and rear fences (including painting or staining any fence, if the fencing material is not pre-finished);
 - (b) complete or reinstate any concrete on the footpath, kerb or driveway to the Auckland Council standards and specifications;
 - (c) maintain grass, trees and shrubs planted on any berms adjacent to the Land.
- 6.10. ensure any building construction is completed within nine (9) months of laying down the foundation for such building;
- 6.11. ensure that in the course of construction no building is left without substantial work being carried out on it for a period of two (2) months or more;
- 6.12. ensure that no building works are carried out on the Land, including site preparation, prior to the erection and completion of fencing (such fences to be constructed in accordance with these covenants) **PROVIDED THAT** where permanent fencing is not erected, temporary fencing shall be installed for the purposes of construction only, such construction fencing is to be removed prior to occupation of any dwelling on the Land;
- 6.13. at all times comply with Auckland Council district plans, conditions, consents or similar imposed by Auckland Council.

No Subdivision

7. The Registered Owner shall not subdivide the land. Subdivide shall have the meaning “*subdivide land*” set out in Section 218 of the Resource Management Act 1991.

Fencing

8. For all Lots, the fencing style, height and set back rules for fences facing a Road must not exceed 1.1 metre in height and must be a permeable, stained, painted or powder coated fence on the boundary, or a 1.8 metre high stained or painted timber or powder coated fence, setback a minimum of 3 metres from the front or rear boundary.
9. The Registered Owner will not erect or permit the erection of a fence on the Land that is:
- 9.1. on or within 3 metres of a Road Boundary that is greater than 1.2 metres in height. Landscape planting may be implemented on either side of the existing pool fencing, but must be maintained to ensure 50% visual permeability;
 - 9.2. greater than 1.8 metres measured from the original ground level of the Land;
 - 9.3. constructed of second-hand materials, used corrugated iron or cement board sheets or panels;
 - 9.4. not painted, stained, pre-coated, pre-finished, plastered or a honed finished, or otherwise;
 - 9.5. on any boundary which bounds on a Reserve or constructed on a REBW or on top of a retaining wall unless that fence is 50% visually permeable and is not higher than 1.2 metres, or such other fence which FHLD has approved, in its sole discretion.

Landscaping and Fencing to be Completed Prior to Occupation of any Dwelling

10. In terms of clause 6.9, landscaping and fencing on the Lot are to be completed prior to occupation of any dwelling on the Land. To encourage adherence by a Registered Owner of clause 6.9, if a Registered Owner occupies a dwelling on the Land prior to completion of the landscaping and fencing as set out herein, FHLD may impose a charge of \$2,000.00 plus GST for breach of clause 6.9, which shall be payable within seven (7) working days of the date of the invoice. The purpose and intention of this provision is to encourage landscaping and painting or staining of fences (where required) in a timely manner to uphold the quality of the Milldale Subdivision.

Retaining Walls

11. The Registered Owner will not erect or permit the erection of a retaining wall on the land that is:
- 11.1. on or within 5 metres of a Road Boundary if the wall is a timber retaining wall unless FHLD has, in its sole discretion, approved the erection of a timber retaining wall within 5 metres of a Road Boundary;
 - 11.2. constructed of second-hand materials or uses corrugated or metal products;
 - 11.3. not painted, stained, plastered or honed finish if it is visible from any Road, JOAL or Reserve.

Maintain Lot in Clean and Tidy Condition

12. The Registered Owner shall maintain the Land in a tidy condition at all times and shall not permit;
- 12.1. any removal of soil from the Land except as shall be necessary for the construction of the dwelling and ancillary buildings;
 - 12.2. any removal or relocation from the Land any fence, tree, shrubs constructed, installed or planted by FHLD without prior written consent from FHLD;
 - 12.3. any excess building materials, rubbish (including garden or household waste) to accumulate or be placed upon the Land or adjacent berm or permit any excessive growth of grass or weeds so that it exceeds 100mm in height or otherwise becomes unsightly, or:

- 12.4. leave the berm adjacent to the Land in a condition that in FHLD's sole discretion may be detrimental to the Milldale Subdivision.
13. FHLD has the right to remove any rubbish (including garden or household waste) building materials from the Lot or adjacent land, or to maintain the Land and adjacent berm(s) in a reasonable condition to avoid the Land becoming detrimental to the Milldale Subdivision with all reasonable costs to be met by the Registered Owner and payable on demand.

Signage

14. The Registered Owner shall not install or permit any sign larger than 900mm by 600mm, visible from any Road, JOAL or Reserve, not professionally sign written and for purposes other than marketing the sale of a section or dwelling/house **PROVIDED THAT** FHLD reserves the right in its sole and unfettered discretion to permit erection of a larger sign or a sign indicating a business without any warranty that such larger sign complies with Auckland Council regulation, rules or plan and the Registered Owner has obtained any approval in writing required for erection of any signage.

Showhomes

15. The Registered Owner shall not permit any use of a dwelling on the Land as a showhome without prior written consent being obtained from FHLD in FHLD's unfettered discretion.

General

16. FHLD reserves the right at any time to, in writing, waive or vary any of these covenants and if called upon to do so the Registered Owner will sign any documentation required to give effect to this waiver and/or variation.
17. The Registered Owner shall not oppose, frustrate, object to, nor take any action or encourage others to oppose, frustrate, object or take any action that might, in any way, prevent or hinder FHLD and/or the Local Authority from progressing or completing its subdivision known and referred to as the Milldale Subdivision. This covenant extends to and includes (but is not limited to) development planning, zone changes, resource consents, Consent Authority or Environment Court Applications, Building Consent matters, any other consents, earthworks, developments and general works. The benefit of this covenant applies to any adjoining or neighbouring properties now or hereafter owned by FHLD.
18. If there be any breach or non-observance of any of these covenants:
 - (a) there is no obligation on FHLD to take any steps to enforce these covenants;
 - (b) if there is more than one Registered Owner of the Land, the liability of the Registered Owners shall be joint and several;
 - (c) the Registered Owner in breach shall immediately rectify any breach.
19. In the event of any dispute which cannot be resolved by agreement between the Registered Owner and the Covenantor as to any matter relating to the abovementioned restrictive covenants, the same shall be resolved by arbitration under the provisions of the Arbitration Act 1996 or any Act passed in substitution or amendment thereof by a single arbitrator appointed for that purpose by the nominee of the President of the New Zealand Law Society and the decision of that arbitrator shall be final and binding on the Parties.