

SCHEDULE 4

COVENANTS

"Helenslee Subdivision"

1. Intent of Scheme

1.1 The Grantee acknowledges and accepts that:

The lots are or will be subject to a building scheme which will run with the land, applicable to and for the benefit of all the lots; and so that the owners and occupiers for the time being of each of the Covenanted Lots will be bound by the stipulations and restrictions contained in the covenants set out in this schedule.

2. Grantee's Covenants

2.1 The Grantee, for itself and its successors in title, covenants with and for the benefit of Helenslee and all and any of:

- (a) The Grantor and its successors in title; and
- (b) The registered proprietors for the time being of the Benefiting Lots, as set out in this document.

2.2 Helenslee reserves the right at any time to waive or vary any of these covenants and if called upon to do so the Grantee will sign any documentation required to give effect to this waiver and/or variation.

3. No Subdivision or Amalgamation

3.1 The Grantee will not subdivide the Lot further in order to create any additional Lot or lots whether by fee simple titles, unit titles, cross leases or otherwise.

3.2 In the event of the Grantee amalgamating the Lot with any other Lot then for the purposes of these covenants the amalgamated property will be deemed to be comprise one single lot. Thereafter the Grantee will not be entitled to subdivide the amalgamated property into a greater number of lots than those which made up the amalgamated property. On any such Subdivision each of the new lots will be subject to these covenants.

4. Buildings

4.1 **House size:** the minimum dwellinghouse including any closed in lock up garage but excluding any verandas, patios and other attached structures must have a closed in floor area of no less than 150m², provided that the house size excluding garage shall comprise no less than 110m².

4.2 **Other structures:** no building which is ancillary to any dwellinghouse is to be constructed unless the ancillary building is built in a manner consistent with the

design and construction of such dwellinghouse and using the same or similar materials.

4.3 Temporary buildings: the Grantee shall not erect on the Lot any temporary building or structure whether purpose built or previously erected on other land except as may be necessary during the construction of the permanent buildings provided that all temporary buildings or structures will be removed from the Lot upon completion of the permanent buildings. The Grantee shall not permit or suffer on the Lot any bus, caravan, trailer or similar that is parked on anything other than a hard stand area.

4.4 Consent required: the Grantee shall not erect (or permit or suffer) on the lot:

- (a) Any dwelling, building, structure or fence or landscaping that has **not first received prior written approval from Helenslee or its appointed agent** prior to submission of final plans, specifications and finish. Helenslee reserves the right to refuse consent to any plans which, in Helenslee's sole discretion, do not satisfy minimum standards of design and quality;
- (b) Any dwelling that has the same plan, building shape and materials as any other dwelling within 150 metres of the lot, unless the final plans, specifications and finish have been approved by Helenslee or its appointed agent;
- (c) Any dwelling or other building which does not satisfy the construction and material requirements set out in clause 4.2 and clause 4.5;
- (d) Any building that does not comply with the district plan side yard setback rules or any other Territorial Authority;
- (e)
 - (i) Unpainted sheds or unpainted garages;
 - (ii) Any garden shed that is visible from any road, jointly owned access way Lot or reserve;
 - (iii) Any building in the course of construction to be left without substantial work being carried out on it for a period of two or more months;
 - (iv) Any rubbish including garden or household waste to accumulate or be placed upon the Lot or permit any excessive growth of grass so that it exceeds 100mm in height or otherwise becomes unsightly.
 - (v) Any removal of soil from the Lot except as shall be necessary for the construction of the dwelling and ancillary buildings.
 - (vi) The erection of any fence and/or wall on the lot;
 - (aa) On or within three metres of a road boundary;
 - (bb) On the balance of the Lot unless that fence or wall is a retaining wall, is on a side boundary and does not exceed 1.8 metres measured from the original ground level of the land, does not exceed 1.5 metres where it is within five metres of a road boundary, or is approved by the Grantor.

- (f) Any sign larger than 900mm x 600mm where such sign is visible from any road or jointly owned access way Lot or reserve unless Helenslee in its sole and unfettered discretion shall consent in writing to such larger sign being erected.
- (g) Any satellite dish on the Lot which is over 100cm in diameter that is visible from any road or jointly owned access way Lot or reserve.
- (h) Any second-hand or relocated dwelling or building structure whatsoever.

4.5 Building Materials: unless Helenslee in its sole and unfettered written discretion permits a variation or waiver of this clause 4, the Grantee shall not erect or place on the Lot any building, dwelling, carport, garage or other structure:

- (a) Unless all roofs are sheathed in either pre-coated metal tiles, chip-coated metal tiles, concrete tiles, clay tiles, asphalt shingles or glass fibre shingles, provided that if concrete tiles are used they may not be red or orange in colour;
- (b) Unless exterior walls are sheathed in brick or textured plaster or stone or glass or timber weatherboards or linear board or any combination of those materials;
- (c) Having fibrous cement products used for exterior finish other than for soffit lining or backing for textured plaster finish;
- (d) With a flat roof of one single pitch;
- (e) Of a single rectangle or single square shape (after excluding recesses or protrusions for the front and rear entries, verandas, patios, bay windows or other like structures or appurtenances).

5. Property Use

5.1 The Grantee shall:

- (a) Only use any buildings on the Lot as a residence or other permitted activity authorised under the district plan after buildings have been substantially completed in accordance with the terms of this covenant including a final signoff by Helenslee or its appointed agent and the requirements of the Territorial Authority;
- (b) Complete the landscaping of the Lot in accordance with plans preapproved by Helenslee prior to using any buildings on the land as a residence or other permitted activity by providing lawns and/or paving, trees, shrubs and flowers;
- (c) Ensure that upon completion of any building on the Lot and prior to use of any building as a residence or other permitted activity:
 - (i) Any concrete on the footpath, kerb or driveway is reinstated to the same standard specification required by Helenslee of all lots within the subdivision;

- (ii) Ensure that any kerb entrance crossing shall be reinstated to the original saw cuts and kerb details as per the Territorial Authority's specifications;
- (iii) At all times comply with any plans, conditions, consents or similar imposed on it by any Territorial Authority.
- (d) Not permit the Lot to be directly or indirectly leased or sold or possession otherwise given to Housing New Zealand Limited, the New Zealand Government or any similar institution or entity responsible for providing public 'state housing' services. This covenant shall not prevent private property investors leasing their Lot to private tenants.

6. No Opposition

- 6.1 The Grantee 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 Helenslee and/or the Territorial Authority from progressing or completing the Helenslee 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 work. The benefit of this covenant applies to any adjoining or neighbouring properties now or hereafter owned by Helenslee.
- 6.2 The Grantee will at the request of Helenslee provide written consents to any of the applications or matters referred to above, and to dispensations or consents required therewith or to progress and complete the Helenslee subdivision.
- 6.3 Notwithstanding any rights or powers granted or available to either the Grantor or the Grantee pursuant to the Resource Management Act 1991, the Land Transfer Act 1952 or the Property Law Act 2007, each of the Grantor and the Grantee (to the extent permitted by law) irrevocably waive in favour of Helenslee any rights of objection, requisition or requirement to provide consent in relation to the Helenslee Subdivision and by their execution of this Instrument irrevocably consent to any vesting, dedication, disposition or other dealing in relation to the Helenslee Subdivision. The provisions of this clause shall extend solely to Helenslee and shall be binding on the Grantor's and the Grantee's successors in title.

7. Fencing

- 7.1 Helenslee shall not be liable to pay for or contribute towards the expense of construction or maintenance of any fence between the Lot and any adjacent land of Helenslee but this provision shall not enure for the benefit of any subsequent purchaser or proprietor of the adjacent land.

8. Breach

- 8.1 If there is any breach or non-observance by the Grantee of any of the stipulations or restrictions contained in these covenants, then without prejudice to any other liability which the Grantee may have to Helenslee or any other person or persons having the benefit of these covenants, the Grantee will upon written demand made by all or any of Helenslee or any of the owners of the Benefiting Lots:

- (a) Immediately remedy the breach or non-observance; and
- (b) Pay to the person making such demand as liquidated damages the sum of \$250.00 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 provided that, where the Grantee is in breach of more than one provision of this covenant, the Grantee will not be liable under this provision to pay in the aggregate an amount in excess of \$250.00 per day during the continuance of the breach (or non-observance). The Grantor and Grantee agree that the sum of \$250.00 per day represents a genuine and realistic pre-estimation by them of the actual loss suffered by the person making demand.
- 8.2** In the event of any dispute which cannot be resolved by Agreement between Helenslee (or other owner of a Dominant Lot) and the Grantee 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.
- 8.3** There shall be no obligation on Helenslee or any other person or persons having the benefit of these covenants to take any steps to enforce these covenants.
- 8.4** If there is more than one Grantee for any servient Lot the liability of the Grantees for the servient Lot shall be joint and several.
- 9. Definitions**
- 9.1** In this covenant unless the context otherwise requires:
- "Helenslee"** means Helenslee Investments Limited or its successors or nominated assigns;
- "Helenslee Subdivision"** means the Subdivision of Helenslee's property into a residential development comprising the Lots and further lots to be subdivided in staged development phases.;
- "Lot"** or **"Lots"** means any or all of the Lots referred to in Schedules A;
- "Territorial Authority"** means the Waikato Regional Council or any other authority having jurisdiction over the land.

SCHEDULE A

Lot Numbers
451 - 496 inclusive