

**Form 26**

**Covenant Instrument to note land covenant**

(Section 116(1)(a) & (b) Land Transfer Act 2017)

**Covenantor**

**MAHANA RIDGE LIMITED**

**Covenantee**

**MAHANA RIDGE LIMITED**

**Grant of Covenant**

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

**Schedule A**

*Continue in additional Annexure*

*Schedule, if required*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenants as set out in Annexure Schedule B	Lots XX on DP XX	XXXXXX – XXXXXX (inclusive)	XXXXXX – XXXXXX (inclusive)

## Covenant rights and powers (including terms, covenants and conditions)

Delete phrases in [ ] and insert memorandum number as required.

Continue in additional Annexure Schedule if required.

The provisions applying to the specified covenants are those set out in:

[Memorandum number \_\_\_\_\_, registered under section 209 of the Land Transfer Act 2017].

[Annexure Schedule B ].

## Continuation of Schedule A

### Covenant provisions

To the intent that the covenants herein shall run with the burdened lands referred to in Schedule A hereof forever for the benefit of the benefited lands referred to in the said Schedule A hereof.

**“Covenantee”** in relation to this instrument means the registered proprietor of the benefited land and includes the agents, employees, contractors, tenants, licensees and other invitees of the Covenantee.

**“Covenantor”** in relation to this instrument means the registered proprietor of the burdened land and includes the agents, employees, contractors, tenants, licensees and other invitees of the Covenantor.

Mahana Ridge Limited shall only be liable in respect of the stipulations and restrictions which occur while it is the registered proprietor of the Burdened Land and will not be liable because of any action it takes or fails to take or for any default in any building erected on any of the Lots or at all as a result of these restrictions or otherwise and the registered proprietors for the time being of the Burdened and Benefited Lands shall indemnify and keep indemnified Mahana Ridge Limited from any costs claims suits demands or liabilities or otherwise howsoever arising out of or under or by virtue of this instrument in respect of any of the Lots which have been transferred by it to another registered proprietor.

In the event that there is a breach or any non-compliance of any of the following covenants and without prejudice to any other liability which the Covenantor or other Registered Proprietor of the Lot(s) may have to any person having the benefit of these covenants, the Covenantor will, upon written demand being made by the Registered Proprietor of a Lot(s) with the benefit of these covenants:

- (a) Remove or cause to be removed from any land any dwelling house garage, building, out-building, fence or other structure erected on it or placed on the land in breach or non-observance of the following covenants;
- (b) To replace any building with materials used in breach or non-observance of the following covenant so as to comply with the covenants;

Where any breach or non-compliance of the following covenants continues for thirty (30) days after demand has been made to remedy the non-compliance the Covenantor shall pay to the person making demand as liquidated damages the sum of \$250.00 per day for each and every day that such breach or non-compliance continues.

The provisions applying to the specified covenants are those set out in Annexure Schedule B.

## **ANNEXURE SCHEDULE B**

### **Schedule of Covenants**

#### **1. Interpretation**

- 1.1 Unless the context specifies or requires otherwise, the following words and phrases when used in this Schedule shall have the meanings specified below:

**“Association”** means Mahana Ridge Residents’ Association Incorporated.

**“Board”** means the Board of Directors of the Association.

**“Building”** means any building or structure higher than 1.2 metres above natural ground level, including chimneys and satellite dishes, but excluding aerials.

**“Commercial Activity”** means the use of the Lot and/or buildings erected on the Lot for the display, offering, provision, sale or hire of goods, equipment or services for payment, exchange or other consideration but excludes the management and/or maintenance of any part of the Development and the renting or letting of part or all of a residential dwelling for Visitor Accommodation.

**“Developer”** means Mahana Ridge Limited and its successors or nominee.

**“Development”** means the subdivision of the Land owned by the Developer.

**“Ground level”** has the meaning as set out in the Tasman Resource Management Plan at the time of issue of the Section 224 Certificate pursuant to the Resource Management Act 1991 for the Subdivision Plan that defines the Lot..

**“Height”** in respect of any part of any Building means the height above the ground level of the lot at the time of issue of the Section 224 Certificate pursuant to the Resource Management Act 1991 for the Subdivision Plan that defines the Lot.

**“Home Office”** means no more than two rooms in a dwelling set aside for home office/business/commercial activity but excludes any bed and breakfast and excludes any other form of commercial Visitor Accommodation or Tourist Accommodation activity.

**“Land”** means 60.3298ha more or less and being Lots 1-3 DP 448599 and originally comprised in records of title 567581 and 567582 (Nelson Land Registration District).

**“Landscape Planting Plan”** means any landscaping planting plan prepared by a qualified landscape architect and provided to Tasman District Council by the Covenantee to obtain the Section 224 Certificate under the Resource Management Act 1993 in respect of the Deposited Plan 548213.

**“Landscape Planting Works”** means any landscaping and planting carried out by the Covenantee pursuant to the Landscape Planting Plan and which is required by the Tasman District Council to obtain a Section 224 Certificate under the Resource Management Act 1993 pursuant to any resource consent which gave approval to the Development.

**“Lots”** means all of the lots within the Development and described in separate record of title shown on each Subdivision Plan for each stage of the Development and **“Lot”** means a Lot or Lots by number or numbers as shown on the appropriate Subdivision Plan.

**“Mahana Ridge”** means the subdivision of the Land into lots as shown on a Subdivision Plan.

**“Member”** means a member of the Association.

**“Owner”** means a Registered Proprietor.

**“Proprietor”** means Registered Proprietor.

**“Registered Proprietor”** includes any registered owner of a Lot and any tenant, licensee, visitor or invitee of a Registered Proprietor and any other occupier of a Lot. Joint Registered Proprietors of one Lot shall be deemed to be one Registered Proprietor.

**“Subdivision Plan”** means the subdivision plans showing Lot boundaries and building location areas.

**“Visitor Accommodation”** means the use of Lot and/or buildings erected on a Lot for fee paying living accommodation.

**“Walkway Plan”** means a plan of Mahana Ridge held by the Association and showing the location of the walkways across parts of the Burdened Lands within Mahana Ridge.

**“Weed Management Plan”** means the *Weed Management Plan – Bronte West/Old Coach Road* and prepared by Rory Langbridge, Landscape Architect, dated 6 December 2010.

## 2. Mahana Ridge Resident’s Association

- 2.1 The Registered Proprietor for the time being of each of the Burdened Lands shall become a Member of the Association and shall be bound by the Rules of the Association and shall perform the obligations required of a member of the Association.
- 2.2 Each Registered Proprietor shall, immediately upon becoming an Owner, provide the Association with the necessary details for maintaining the Register of Owners referred to in clause 11 of the Rules of the Association.
- 2.3 No Registered Proprietor shall transfer a Burdened Land without ensuring that their transferee becomes a member of the Association and be bound by the Rules of the Association to perform the obligations required of a member of the Association.
- 2.4 Each Registered Proprietor shall resign and be deemed to have resigned from the Association on transfer of a Burdened Land, provided that such resignation shall not relieve a Registered Proprietor of any obligation or liability arising before such transfer.

## 3. General Design Objectives

- 3.1 Mahana Ridge has been designed as a regenerative environment having a low impact on the environment both visually and energy wise. To enhance the character of Mahana Ridge, the intention is that property boundaries will blend seamlessly, and buildings will be understated in design and with a New Zealand feel. The use of natural materials including timber, local stone and concrete are encouraged and earthworks for building platforms for driveways are to be kept to a minimum.
- 3.2 In assessing whether any building design plans reflect the design ideals in the preceding clause, consideration shall be given to the following:
  - 3.2.1 Whether the Building design reflects the contours of the land. Substantial pole foundation structures are to be avoided;
  - 3.2.2 The form of the Building shall reflect current New Zealand architectural form at the time a building consent is issued by the Tasman District Council;
  - 3.2.3 roof overhangs and covered outdoor areas are encouraged as a positive response to the Tasman climate;

3.2.4 Roof forms shall reflect the background landforms and on elevated Lots, roof slopes shall follow the natural slope of the land;

3.2.5 Any other factor considered relevant.

#### **4. Recovery of Costs – Indemnity and Enforcement**

4.1 The Developer may recover from any prior or existing Registered Proprietor of any Lot, as a liquidated debt, any sum payable to the Developer by that Registered Proprietor by way of levy, reimbursement for costs incurred, or otherwise howsoever pursuant to the provisions of this Annexure Schedule B.

#### **5. Notices**

5.1 The address for service of the Association for the purposes of any notice or document to be served or delivered pursuant to the provisions of this Schedule shall be the address for service set out in the rules of the Association and until the Board determines, shall be 6 Brooks View Heights, Upper Moutere.

5.2 The address for service of any Registered Proprietor for any notice or document under the provisions of this Annexure Schedule B shall be the address provided to the Association as set out in clause 11 of the Rules of the Association.

#### **6. Curtilage Area**

6.1 The Registered Proprietor of the Burdened Land shall prior to erecting any Building on the Lot or undertaking any landscaping on the Lot, deliver to the Association a plan identifying the Curtilage Area as required pursuant to the Rules of the Association. Receipt of such plan by the Association shall be deemed to be receipt by the Design Panel referred to in the Rules of the Association.

#### **7. Specific Design Controls**

7.1 All Buildings erected on any Lot, including any additions or extensions to existing Buildings, and all landscaping of the Lot shall be designed and constructed in accordance with the within covenants.

7.2 The Registered Proprietor of a Lot shall comply with the conditions of all resource consents which gave approval to the Development (including but not limited to RM100883, RM160528V1, RM170846V1, RM170847V1, RM191414V1 and RM191415V1) (a copy of which shall be held by the Association and made available upon request) unless any variation from the resource consent is approved by the Developer pursuant to these covenants or is granted by the Tasman District Council.

7.3 The minimum enclosed floor area of each Building shall be 200m<sup>2</sup> including garages and other accessory buildings, unless specifically approved by the Developer.

7.4 The Registered Proprietors of Lots 1 – 9 (Bronte Road West) and Lots 2 -4 (Trafalgar Road) shall not erect or permit to be erected on the Lots any Building exceeding a height of 7.5m above the ground level of the Lot.

7.5 A Registered Proprietor shall not erect or permit to be erected on any Lot:

7.5.1 Any Building, including farm buildings and structures for the express purpose of sheltering stock, which is not wholly located within the Building Location Area for the Lot as such Building Location Area is defined in the resource consent pursuant to which the Lot was created as part of the Development.

- 7.5.2 Any Building with a hipped roof.
- 7.5.3 Any wind turbines(s).
- 7.5.4 Any mast or aerial exceeding a height of 1.0 metre above the finished level of the Building on the Lot.
- 7.5.5 Any Building of an A Frame style of construction.
- 7.5.6 Any Building with an exterior cladding of brick.
- 7.5.7 Any Building or structure incorporating an under-structure that is not fully enclosed.
- 7.5.8 Any Building which is not finished in an external colour that is a recessive colour and which blends with the immediate environment. As a guide, natural materials including unpainted timber, stone (excluding Oamaru stone) and concrete and colours in the range in the table below are considered to be recessive

Colour Group*	Walls	Roof
Group A	A05 to A14 and reflectance value < 50%	A09 to A14 and reflectance < 25%
Group B	B19 to B29 and reflectance value < 50%	B23 to B29 and reflectance < 25%
Group C	C39 to C40 and reflectance value < 50%	C39 to C40 and reflectance value < 50%
Group D	Excluded	Excluded
Group E	Excluded	Excluded
Finish	Matt or Low gloss	Matt or Low gloss

\* Based on BS5252:1976. Where a BS5252 descriptor code is not available the Design Panel will compare the sample chip provided with BS5252 colours to assess compliance.

- 7.6 The driveway on a Lot must be constructed from asphalt, concrete or any other materials that are approved by the Developer.
- 7.7 All water tanks on the Lot are to be concealed either by way of integration into the Building on the Lot or buried underground.

## 8. General Standards

- 8.1 The Registered Proprietor of any Lot shall:
  - 8.1.1 Not erect, construct, or allow to be erected or constructed on the Lot any Building other than a new Building not being a pre-used or second hand Building or relocatable Building.
  - 8.1.2 Not use any caravan or campervan or other similar facility for regular overnight sleeping accommodation on any Lot.
  - 8.1.3 Store all trailers, boats, caravans or campervans in garages or carports on the Lot or immediately adjacent to a building on the Lot.

- 8.1.4 Ensure the discharge of stormwater shall not result in adverse scouring or sedimentation of any water course, adjoining properties or the coastal environment.
  - 8.1.5 Ensure that any discharge of stormwater shall not aggravate flooding on adjoining properties.
  - 8.1.6 Maintain all exterior painting and other exterior surface material to a reasonable standard appropriate to a quality residential neighbourhood.
  - 8.1.7 Complete construction of any Building within 12 months after the formation of the foundations of the Building and complete site landscaping including lawns no later than six (6) months after completion of the Building.
  - 8.1.8 Provide for all stormwater falling off roofs and Buildings to be collected and disposed of by a system designed and constructed to meet Tasman District Council requirements to ensure that the discharge of stormwater shall not cause in the receiving water any of the following:-
    - 8.1.8.1 The production of any visible oil or grease films, scum or loams, or conspicuous floatable or suspended material;
    - 8.1.8.2 Any emissions of objectionable odour;
    - 8.1.8.3 The rendering of freshwater unsuitable for bathing;
    - 8.1.8.4 The rendering of freshwater unsuitable for consumption by farm animals; and
    - 8.1.8.5 Any adverse effect on aquatic life.
  - 8.1.9 Not make or allow the making of any fire on the Lot outside a Building except where such fire is located within an appropriate barbeque area, fire pit or heating fitting.
  - 8.1.10 Not use or allow to be used any chainsaw, motor mower, mechanical weed eater or other noisy mechanical device on the Lot before 8am or after 7pm on any day nor to cause any nuisance by way of noise to other Registered Proprietors at any time.
  - 8.1.11 Not install or allow to be installed on any Lot any outdoor light which shines directly onto any other Lot in or in respect of which the bulb is visible from any other Lot.
  - 8.1.12 Not use any motorbike or motor vehicle, including any three wheeled and four wheeled motorbike in such a manner that constitutes a nuisance.
  - 8.1.13 Not to deposit or to allow to be deposited on any Lot any rubbish, grass, vegetation or any other substance except with the written consent of the Developer.
  - 8.1.14 Not subdivide any of the Lots. For the purposes of these covenants, "subdivide" shall have the same meaning given to the expression "subdivision of land" in Section 218 of the Resource Management Act 1991 provided however that any boundary adjustment that does not create or lead to the creation of a separate building site shall not be in breach of this condition.
- 8.2 The Registered Proprietor of a Lot shall not erect or allow to be erected on the Lot:
- 8.2.1 Any above ground electrical, telephone or other wires.

8.2.2 Any clothesline visible to the road or any neighbouring property.

8.2.3 Any sign visible from outside the Lot other than one standard Real Estate sales sign.

8.2.4 Any satellite dish with the diameter greater than 0.70 metres.

8.3 The Registered Proprietor of a Lot shall not use or permit any part of a Lot or dwelling to be used for Commercial Activity other than for a Home Office and/or Visitor Accommodation and will not make any application at any time (by way of resource consent or plan change or otherwise) for any use of the Lot other than for a dwelling (which may include a Home Office and use as Visitor Accommodation).

8.4 Notwithstanding Clause 8.3, with the prior written consent of the Developer, a Lot may be used for the purposes of a show home and the Developer may impose any conditions it deems appropriate as part of its consent.

8.5 The Registered Proprietor of a Lot will not keep roosters or any other livestock or animals on the Lot unless otherwise approved by the Association provided however that sheep, alpacas, ponies, horses, and/or a maximum of three cats and three dogs for household domestic purposes are permitted. The Registered Proprietor of such Lot is responsible for erecting fencing for the purposes of restricting the movement of the livestock on the Lot. The Registered Proprietor is to ensure that such livestock and/or animals do not:-

8.5.1 cause a nuisance or an annoyance to any other Registered Proprietors in the Development;

8.5.2 have a detrimental effect on the quiet enjoyment of other Registered Proprietors in the Development;

8.5.3 detract from the Development as a whole.

## 9. Construction

9.1 During construction of a Building on a Lot, the Registered Proprietor shall ensure that the Lot is generally kept tidy and that no rubbish is allowed to escape or be deposited onto any adjoining Lot or road and that no damage is done to any part of the roadway and/or footpath and/or landscaping.

9.2 No building activity shall take place outside the hours of 7.30am to 7.00pm on any weekday and 8.00am to 6.00pm on any Saturday and at any time on Sunday or Public Holiday.

## 10. Control of Planting

10.1 The Registered Proprietor will not grow or allow to be grown any trees or other plants on the Lot in such density or to such a height that the views from other Lots within the Development are adversely affected to a material degree as determined by the Association.

Trees or other plants that may grow to any height are acceptable under this covenant if planting is scattered to minimise the detrimental effect on views of other Lots within the Development. For the avoidance of doubt and dispute, it is recorded that this covenant is to assist in protecting the views and outlook for nearby property owners and to minimise the cumulative effect from neighbours and determination of detrimental effects will be solely at the discretion of the Association.



- 10.2 No Registered Proprietor will allow their Lot (excluding that part of a Lot identified as gully/revegetation planting area on the Landscape Management Plan held by the Association) to become untidy and shall not allow any broom, gorse, noxious weeds, undergrowth, dried or rank grass to grow above 300mm or remain on the Lot provided that on those parts of a Lot where the slope of the land makes it unsafe to use a tractor and mower to maintain the Lot, any broom, gorse and noxious weeds and undergrowth on those steep areas may be controlled by spraying at least on an annual basis. The Registered Proprietor shall encourage regeneration of native species on the Lot.
- 10.3 If any Registered Proprietor is in default of any of the covenants above, the Association may give 14 days' notice to that Registered Proprietor requiring such vegetation to be removed failing which the Association shall be free to enter upon the Lot to remove that vegetation and shall be entitled to recover the cost of such removal from that Registered Proprietor as a liquidated debt.
- 10.4 Any areas of existing and replanted riparian vegetation identified in the Weed Management Plan shall not be removed, damaged or cleared by the Registered Proprietor (except as required for the construction and maintenance of walkways, access tracks, driveways or rights of way or the maintenance of fence lines (including control of vegetation within 2.0 metres either side of any fence). In the event that the Registered Proprietor is in breach of this covenant, they will immediately upon receiving notice from the Association or the Developer, carry out any remedial works at their sole cost. The replacement of any plants shall be by way of similar plants.
- 10.5 The Registered Proprietor will not remove, damage or destroy any Landscape Planting Works on the Lot and will ensure that any plantings that form part of the Landscape Planting Works become well established.
- 10.6 The Registered Proprietor hereby grants to the Association and the Developer the right to enter onto the Lot and to carry out any remedial works as may be necessary to replant or repair the replanted riparian vegetation areas or replant or repair the Landscape Planting Works in the event that the Registered Proprietor is in breach of the covenant in clause 10.4 and 10.5 herein. Any costs incurred by the Association and the Developer in undertaking such remedial works are recoverable from the Registered Proprietor by the Association pursuant to the Rules of the Association and by the Developer pursuant to clause 4.1 herein.

## **11. Rubbish Removal**

- 11.1 All refuse shall be kept in refuse containers approved by the Association which shall be put out for collection or emptying on the scheduled collection dates. Biodegradable refuse may be composted for use on a Lot provided the materials for composting are sourced from the land and/or Building on the Lot.
- 11.2 No refuse shall be burned on any Lot and no Registered Proprietor shall maintain or use an incinerator.

## **12. Dispute Resolution**

Any disputes arising under these Covenants shall be dealt with in the manner prescribed in the Rules of the Association.

**13. Walkways**

- 13.1 The Registered Proprietor of each Burdened Land grants to the Registered Proprietor of each of the Benefited Lands access on foot over those parts of the burdened land formed as walkways and identified as walkways on the Walkway Plan held by the Association.
- 13.2 The Registered Proprietor of the Burdened Lands will not do anything on the burdened land that restricts or interferes with the Registered Proprietors of the benefited lands use of the walkways.

**14. No Objection**

- 14.1 The Covenantor is aware that the Developer may in the future apply to the Tasman District Council to vary or obtain resource consents associated with the Development. The Covenantor shall not oppose, object to, frustrate, or take any action, or encourage or cause others to oppose, object to, frustrate or take any action that might in any way prevent or hinder the Developer from preventing or completing the Development including (without limitation) development planning, zone changes, resource consents for land uses and subdivisions, Consent Authority or Environment Court applications, Territorial Authority Building Consent matters, or any other necessary consent process involving land owned by the Developer.

**15. Modifications**

- 15.1 The Developer reserves to itself (with the intent that this right does not inure to its successors in title) to waive or modify compliance with any of the above covenants provided that the granting of such waiver or modification is not contrary to the intent and spirit of the Development. Any such waiver or modification by the Developer is binding on the Registered Owner of the Benefited Land. For clarity, a Registered Owner will not be liable for any breach of a covenant where the Registered Owner has obtained dispensation from the Developer pursuant to this clause.