

## SCHEDULE 2

### PROPOSED LAND COVENANTS

#### Interpretation

1. For the purposes of these covenants the following expressions shall have the following meanings ascribed to them:
  - (a) **Builder:** means any builder, contractor or sub-contractor (or employee of such).
  - (b) **Council:** means the Napier City Council and any successor body.
  - (c) **Design Confirmation:** means the confirmation received by the Owner from the Parklands Design Review Panel as described in clause 6 below.
  - (d) **Guidelines:** means the design guidelines for Parklands as contained in the latest version of the Parklands Design Guidelines prepared by and available from the Council. The Guidelines may be amended by the Council from time to time provided that any change to the Guidelines will not have retrospective effect on any construction which has previously received Design Confirmation.
  - (e) **Owner:** means the registered proprietor(s) from time to time of any part of the burdened land.
  - (f) **Parklands Design Review Panel:** means the design review panel appointed by the Council for the purpose of ensuring all Residences, fences and other structures erected on the Property comply with the relevant Guidelines for the Precinct in which the Property is situated.
  - (g) **Precinct:** means the area of the Parklands development in which the Property is situated for which specific design guidelines are applicable and which are identified in clause 18 of these covenants.
  - (h) **Property:** means all and any of the parcels of land identified as burdened land in the instrument used for registering these land covenants.
  - (e) **Residence:** means a detached residential building designed for and occupied exclusively as one household unit for residential purposes only; provided that a Residence may be part of a duplex or terraced building in specific Precincts where such buildings are provided for in the Guidelines.

#### SITE DESIGN

##### Construction of a Residence

2. The Owner may not construct or erect on the Property anything other than a Residence and any structure supplementary to such Residence that is permitted in the Guidelines (such as garages and fencing). The Owner must not use the Property for any purpose other than construction and occupation of a Residence.
3. Any development (including, but not limited to, the erection of Residences, garages and fences) undertaken on the Property shall be in accordance with the Guidelines. The Guidelines applicable

to each Property shall be those in place immediately prior to the Owner submitting its application for building consent.

4. It shall be the Owner's ultimate responsibility to establish which version of the Guidelines is applicable to the Property. However, if requested, the Council will make information available to the Owners in respect of which version of the Guidelines is applicable and an Owner may rely on such information.
5. If an Owner requests a specific exemption to the Guidelines in its application for Design Confirmation, the Parklands Design Review Panel:
  - (a) will be under no obligation to grant or consider such a request;
  - (b) shall have no obligation to act reasonably or in accordance with previous decisions if considering such a request;
  - (c) may grant an exemption to any part of the Guidelines, subject to any conditions it deems reasonable. Where an exemption is granted, a Residence or structure will not be in breach of these covenants only for the reason that it does not comply with the relevant Guideline to which an exemption has been granted; and
  - (d) will not be obliged, in the future, to grant or consider any requests for similar exemptions in respect of any other Property and any exemptions granted under this clause 5 shall not set a precedent.
6. No construction works shall commence until Council is in receipt of a Design Confirmation from the Parklands Design Review Panel noting that the design of the Residence and other supplementary structures (including garages, fences and driveways) is in accordance with the Guidelines. Compliance with the Guidelines and receipt of a Design Confirmation does not warrant that such design complies with the district plan for Napier City and compliance with the said district plan remains the ultimate responsibility of the Owner.
7. The number of Residences on a Property shall not exceed those provided for in the Guidelines for the Precinct in which the Property is situated.
8. No granny flat or supplementary unit may be erected on any Property unless expressly provided for in the Guidelines.

#### **Design Confirmation – Services and Roads**

9. The issue of a Design Confirmation by the Parklands Design Review Panel must be based on the plans, specifications and other information supplied by the Owner, including any certificate or information supplied by the Owner's building designer. It shall not imply any warranty by the Council that:
  - (a) The proposed Residence may utilise existing services;
  - (b) The proposed siting of any proposed Residence is not affected by the location of existing services;
  - (c) The location of egress on the building designer's plans is in accordance with the Council's requirements as to public roads.

## **Subdivision**

10. Subject to the further provisions of this clause 10, the Owner must not:
  - (a) Erect any flats or other dwelling units which may be subject to a cross lease or registration under the Unit Titles Act 2010; or
  - (b) Complete any further subdivision of the Property.

Except that further subdivision of a Property may be approved in conjunction with a Design Confirmation relating to duplex or terraced housing typologies within a Precinct for which the Guidelines allows such typologies.

## **Boundary Adjustment**

11. The Owner must not alter the boundaries of the Property whether by amalgamation, boundary adjustment or in any manner whatsoever without first obtaining the consent in writing of the Council.

## **Boundary Fencing**

12. Prior to the Residence on the Property being occupied for residential purposes or being offered for sale the Owner must ensure that all boundary fences around the said Property have been erected in accordance with the Guidelines and any Design Confirmation.
13. No fence already erected in accordance with the Guidelines may be changed without the Council's consent. Such consent shall be at the Council's sole discretion and there shall be no requirement for the Council to act reasonably or to provide a reason for withholding its consent.
14. Where the Council has agreed contractually to take on the responsibility and cost of erecting a boundary fence the Council retains the right to alter the said boundary fence at its sole discretion, including the total fence height or fence material, provided such alteration is undertaken prior to completion of construction of the Residence.

## **Foundations**

15. The foundations for any residence constructed on the Property must comply with the design for foundations for such properties (as recommended by any geotechnical consultant employed or contracted by the Council) current at the time the Owner (or their agent) applies for a building consent. The Owner may request a copy of such design recommendations from the Council.

## **Driveways**

16. Each property is limited to one vehicle crossing.

## **Garages**

17. Where garage doors face the street frontage, the garage must not extend forward of the front façade of the Residence. A garage door facing a street frontage must be no greater than 45 per cent of the width of the front façade of the Residence. In addition to the provisions of this Clause 17, Garages must be constructed in accordance with the Guidelines.

## **Precincts**

18. For the purposes of the Guidelines and these covenants:
  - (a) Lots 11 to 15 (inclusive) shall be deemed to be in the **Prebensen Precinct**;
  - (b) Lots 71 to 82 (inclusive) and Lots 87 to 96 (inclusive) shall be deemed to be in the **Traditional Parklands Precinct**;
  - (c) Lots 83 and 86 shall be deemed to be in the **Parkside Precinct**;
  - (d) Lots 72 and 96 are also classified as marker sites, **Type M1**;
  - (e) Lots 11, 12, 83 and 86 are also classified as marker sites, **Type M2**;

## **SITE ESTABLISHMENT**

### **Construction timeframes**

19. The Owner must commence construction of a Residence on the Property within one (1) year of the date of possession, as specified on the Agreement of Sale and Purchase that first saw possession of the Property pass from the Council (whether possession passed to the Owner or any other interim party). The Owner must not permit any deviation from the Council approved plans and specifications used to obtain the Design Confirmation without the written consent of the Council, and must complete the construction of the Residence within one (1) year from the date of receiving the Design Confirmation.

### **Contractors**

20. The Owner must immediately prior to commencing the construction of any Residence on the Property construct an all weather access crossing for the purpose of avoiding unsightly mud and rubbish being deposited on to the roads. Except where the access crossing is to be used as part of the driveway to the Property, the access crossing shall on completion of the construction of any Residence on the Property, be removed by the Owner and the surface of the ground restored to its condition immediately prior to the laying of the access crossing.
21. The Owner must also before commencing the construction of any Residence on the Property construct a mud free, hard stand loading pad for a distance of 5 metres from the boundary of the Property into the Property, and of a minimum width of 3.5 metres.
22. In constructing the access crossing and loading pad the Owner must ensure that no damage is caused to any existing roads, berms or footpaths and the Owner hereby indemnifies the Council from any ensuing cost or liability suffered by the Council in respect of any such damage.
23. The Owner must ensure that no concrete trucks servicing any construction activities on the Property dump concrete slurry on the land.
24. The Owner must not permit any Builder to commence construction of the Residence without first ensuring that the Builder is familiar with the requirements of clauses 20 to 23 (inclusive) and all other provisions relating to the construction of the Residence. The Owner shall be responsible for ensuring that these provisions are complied with.

## **GENERAL**

### **Access for Further Works**

25. The Council and its agents and employees shall continue, after possession has been given, to have the right to enter upon the Property for the purpose of completing any subdivisional work including surveying, earthworks, constructing drains, roads, footpaths, driveways and the installation or maintenance of services generally.

### **Section Maintenance**

26. The Owner must ensure from the date of possession that the Property is kept in a neat and tidy condition and maintained free from long grass, weeds, rubbish, builder's waste or other substances before, during and after the construction of any Residence thereon. In the event that while the Property remains unoccupied the Owner fails to do so the Council may arrange for the Property to be cleared and the Owner must pay to the Council immediately upon demand the costs incurred by the Council together with interest thereon at a rate of 20 percent per annum on a daily basis from the date that such costs were incurred by the Owner.
27. The use of adjacent or abutting land for access and dumping of rubbish and waste concrete is strictly prohibited; provided however that the Owner or the Owner's Builder may have access across any other land upon obtaining written approval from the Council.
28. The Owner is liable for any damage caused to roads or footpaths or to any adjoining land resulting from the construction of any Residence on the Property, and the Owner hereby indemnifies the Council from any ensuing cost or liability suffered by the Council in respect of any such damage.

### **Occupation of Residence**

29. Any Residence constructed on the Property must not be occupied until all exterior claddings to the Residence are installed and completed; the driveway has been laid; the grounds around the Residence are levelled and prepared for the development of lawn and gardens; and the boundary fences have been erected around the property to the minimum standard set out herein.

### **Relocatable Structures**

30. The Owner must not place on any Property any relocated or transportable building or structure whether new, used, or recycled provided that builder's sheds or such other buildings that are required during the course of the construction and erection of any Residence may be placed on any Property but must be removed on completion of construction.

### **Disrepair of Buildings**

31. The Owner must not allow on any Property any buildings or structures to become dilapidated or to fall into disrepair or allow any nuisance or disturbance to be caused to any owner or occupier of neighbouring residences.

### **Temporary Dwellings**

32. No temporary dwelling, caravan, trade vehicle or other equipment and materials may be brought onto or allowed to remain on the Property following completion of the Residence unless they are garaged or screened so as to preserve the neighbourhood amenity values.

### **Graffiti**

33. The Owner must not allow to remain on any wall, fence, structure or building on the Property any graffiti or similar disfiguring for more than 5 working days from the date that such occurred or was brought to the notice of the Owner.

### **Animals**

34. The Owner must not keep any poultry or farm animals and not breed for commercial purposes any animals or birds on the Property.

### **Trees**

35. The Owner will take measures to ensure that any tree planted on the Property is located a minimum of 1.5 metres away from any underground services (whether those services are on the Property or not).

### **Screens**

36. Clauses 37-39 below shall apply to any motor vehicles with a gross weight in excess of 2.5 tonnes (whether mobile or immobile), caravans, boats, trailers, recreational vehicles, machinery, firewood, apparatus or any such similar thing.
37. The Owner will not bring on or allow to remain on the Property any of the items described in Clause 35 if such items, when parked or stored on the Property, exceed a height of 2.5 metres and/or are longer than 6 metres unless such items are parked or stored entirely within the confines of a shed or garage.
38. The Owner will not bring on or allow to remain on the Property any of the items described in Clause 36 if such items, when parked or stored on the Lot, are under 2.5 metres in height and less than 6 metres in length unless such items are parked or stored in a shed, garage or carport and/or any area that is properly screened from the street.
39. The Owner will not allow any of the items described in Clause 36 to be parked on a street within the Parklands subdivision.

### **Fencing Covenant**

40. The Council is not liable to pay for or contribute towards the expense of erection or maintenance of any fence between the Property and any contiguous land of the Council but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land.

### **Council's Indemnity**

41. The Owner agrees that it will at all times hereafter save harmless and keep indemnified the Council from all proceedings costs claims and demands in respect of any breaches by the Owner of any of the covenants and restrictions hereinbefore on the Owner's part contained or implied.

### **Enforcement of Covenants**

42. The Council shall not be required or obliged to enforce all or any of the covenants (including the requirement to follow the Guidelines), stipulations and restrictions contained herein nor liable to the

Owner for any breach thereof by any of the registered proprietors from time to time of the other properties which are subject to the within covenants.

#### **Damages for Breach**

43. The Council has a legitimate interest in the covenants contained in this document being complied with. Those legitimate interests include, but are not limited to, the effect a breach of such covenants may have on:
- (a) the amenity value of the subdivision; and
  - (b) the value of properties in the subdivision still owned by the Council.
44. In the event of a breach of any covenant the Owner will upon demand by the Council:
- (a) remedy the breach of the relevant covenant at its cost, to the reasonable satisfaction of the Council and within a reasonable time (such time to be no greater than 30 days from the date the Council's demand is received); and
  - (b) if the Owner does not remedy the breach of the covenant in accordance with sub-clause (a) above, the Owner shall pay to the Council a sum equivalent to the sum of \$40,000.00. This sum together with all costs incurred in enforcing the covenant will constitute a debt due to the Council and is recoverable by the Council as liquidated damages. Nothing in this clause 44 shall interfere with any other rights the Council might have in relation to a covenant (including, but not limited to, injunctive relief and enforcing specific performance of the covenant).