

**Form 26**

**Covenant Instrument to note land covenant**

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

**Covenantor**

**JESSIE TRUST HOLDINGS LIMITED and C R JESSIE TRUSTEE LIMITED**

**Covenantee**

**JESSIE TRUST HOLDINGS LIMITED and C R JESSIE TRUSTEE 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**  
*required*

*Continue in additional Annexure Schedule, if*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
See Annexure Schedules		See Annexure Schedules	See Annexure Schedules

**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 Schedules attached

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

**Annexure Schedule**

*Insert instrument type*

**Covenant Instrument**

## BACKGROUND

- A. The Covenantor is registered as proprietor of the estate described in the First Schedule ("Burdened Land").
- B. The Covenantee is registered as proprietor of the estates described in the Second Schedule ("Benefited Land").
- C. The Covenantor has agreed with the Covenantee to accept restrictions upon the Burdened Land for the benefit of the Benefited Land.

## COVENANTS

- 1. The Covenantor for itself and its successors in title to the Burdened Land hereby covenants and agrees with the Covenantee and its successors in title to the Benefited Land, that the Covenantor will henceforth and at all times hereafter observe and perform the stipulations and restrictions contained in the Third Schedule to the end and intent that each of the stipulations and restrictions other than clauses A5 and A7 of the Third Schedule shall, in the manner and to the extent prescribed, ensure for the benefit of, and be appurtenant to, the whole of the Benefited Land and every part thereof until 31 December 2035.
- 2. The provisions of clauses A5 and A7 of the Third Schedule shall expire at the end of the time periods set out therein.
- 3. This Instrument shall be registered against the estate described in the First Schedule by the Covenantor forthwith following execution, and the provisions of this Instrument shall run in favour of the registered proprietor of the Benefited Land or any part thereof from time to time until 31 December 2031 or as otherwise set out in the Third Schedule.

## DEFINITION AND INTERPRETATION

"Architectural Panel"	A panel comprising architects, landscapers and builders will be created for the approval of designs for landscaping and building. The panel will provide non-binding advice to the Approver and such approval must be obtained before building consent is obtained. A separate guidelines document has been created to assist buyers in creating compliant designs.
"Approver"	<b>Jessie Trust</b> as developer of the Subdivision and includes any party appointed by the Approver by deed or otherwise to carry out any approval process as required by the provisions of the Third Schedule of this Instrument.
"Brothel"	Brothel, Business of Prostitution, Commercial Sexual Services, Prostitution, and Small Owner Operated Brothel all have the meanings as ascribed in the Prostitution Reform Act;
"Building Envelope"	The 3D space within which the house must be built as defined by Consent Notices with the Relevant Authority. A link to the model will be provided by Approver.
"Covenants"	the terms conditions and covenants set out in Parts A and B of the Third Schedule of this Instrument
"Dwelling House"	a new single private dwelling house together with a garage and for the avoidance of doubt: <ul style="list-style-type: none"><li>(a) a Dwelling House may include a minor residential unit as that term is defined by the District Plan of the Relevant Authority provided that the minor residential unit is confined within the overall roof line of the Dwelling House and does not give the external appearance of comprising a separate unit or living accommodation; and</li><li>(b) a Dwelling House may include an area for home occupation as that term is defined by the District Plan of the Relevant Authority.</li><li>(c) the garage is to be attached to house for lots 1 to 12, 54 to 59 and 73 to 97.</li></ul>

## Annexure Schedule

**Covenant Instrument**

*Continue in additional Annexure Schedule, if required*

"Front Yard"	that part of the Lot which is in front of the Dwelling House and; (a) in the case of a Lot with frontage to a road, between the front of the Dwelling House and the front boundary of the Lot with the road; and (b) in the case of a Lot with frontage to a common park or reserve, between the front of the Dwelling House and the front boundary of the Lot with the park or reserve. Lots with mews (JOAW) lanes have back yard adjacent to the mews lane.
"Lots"	each of the Lots contained within each of the unique identifiers referred to in the First Schedule.
"Minimum Size"	there is no set minimum size for dwellings as all dwellings must be approved by Approver
"Prohibited Building Materials"	any: (a) second hand or recycled building materials without prior consent from Approver; (b) corrugated iron roofing however, for the avoidance of doubt pre factory coated long run roofing materials such as, but by way of example only, colour-steel, are not Prohibited Building Materials; ; (c) unfinished or flat fibrolite or other similar cladding materials; and
"Prohibited Animals"	roosters;
"Prostitution Reform Act"	the Prostitution Reform Act 2003 including any statutory modification or re-enactment of it.
"Relevant Authority"	Whangarei Council and any government, local, statutory or non-statutory authority or body having jurisdiction over the Subdivision.
"Retaining Wall"	any retaining wall constructed and installed that is situated between Lots, or between a Lot and a common owned access way, or between a Lot and a road.
"Satellite Dish"	Sky satellite dishes or other dishes, antennas, aerials or devices of any description whatsoever designed to receive and/or transmit signals, sound waves, images or data in any form whatsoever.
"Subdivision"	the development of the Lots and, where the context admits, the development of the balance of the Approver's subdivision of property at Sands Rd, Glenbervie with Identifier; NA64A/274

**Annexure Schedule**

*Insert instrument type*

**Covenant Instrument**

*Continue in additional Annexure Schedule, if required*

**FIRST SCHEDULE**

**(Burdened Land)**

<b>Record of Title</b>	<b>Lot and Deposited Plan Number</b>
	Lot 1 Deposited Plan
	Lot 2 Deposited Plan
	Lot 3 Deposited Plan
	Lot 4 Deposited Plan
	Lot 5 Deposited Plan
	Lot 6 Deposited Plan
	Lot 7 Deposited Plan
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	Lot 49 Deposited Plan
	Lot 50 Deposited Plan
	Lot 51 Deposited Plan

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	Lot 52 Deposited Plan
	Lot 53 Deposited Plan
	Lot 54 Deposited Plan
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	Lot 97 Deposited Plan

**SECOND SCHEDULE  
(Benefited Land)**

<b>Record of Title</b>	<b>Lot and Deposited Plan Number</b>
	Lot 1 Deposited Plan
	Lot 2 Deposited Plan
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	Lot 96 Deposited Plan
	Lot 97 Deposited Plan

**Covenant Instrument**

**THIRD SCHEDULE**

**Part A**

The Covenantor shall not:

1. Use the Lot or permit the same to be used other than for residential purposes and shall not use the Lot or permit the same to be used for any trading, industrial or commercial purposes provided however it is acknowledged that:
  - (a) the use of the Dwelling House as a home office for the occupants; and
  - (b) the use of any Dwelling House constructed on the Lot for a home occupation as is permitted by the District Plan of the Relevant Authority (excluding a Small Owner-Operated Brothel which is prohibited by these Covenants); and
  - (c) the use of any Dwelling House constructed on the Lot by a building company as a display or show home in accordance with the terms of Part B of these Covenants,

will not be a breach of this Covenant.
2. Erect a Dwelling House or other building on the Lot that does not have approval from Approver or does not comply with the provisions of these Covenants without prior approval of Approver.
3. Erect a Dwelling House on the Lot outside the Building Envelope.

4. Use any Prohibited Materials in the construction of a Dwelling House on the Lot or incorporate any Prohibited Materials in any structure erected on or incorporated in or on the Lot. Unless approved in writing by the Architectural Panel.
5. Erect any Dwelling House and undertake any landscaping (including fencing), or make any alteration or addition to the Dwelling House or landscaping (including fencing and Retaining Walls) without first having obtained the approval in writing of the Approver of the plans (including site, fencing and landscaping plans) and specifications for the same which approval shall not be withheld in the case of plans and specifications which provide for a Dwelling House which:
- (a) is to be reasonably sited having regard to the design concepts of the Subdivision; and
  - (b) will not detract from the amenity and character of the housing development in the Subdivision; and
  - (c) includes more than one cladding type in the front face of the house; and
  - (d) driveways are finished in a way compatible with footpaths and road crossing;
  - (e) does not include any Prohibited Building Materials; and
  - (f) is located within the Building Envelope; and
  - (g) includes an approved landscaping plan; and
  - (h) complies with and conforms to the Relevant Authority's land use consent, as the same may be amended or varied for the development of the Lot; and
  - (i) is constructed in accordance with the approved plans and specifications.

Approval of plans by Approver must be obtained before applying for Building Consent from the Relevant Authorities.

The provisions of this clause A 5 shall cease to have effect after the expiration of five years after the date of the deposit of the land transfer plan of subdivision for the stage in the Subdivision of which the Lot forms part.

6. Erect or place on the Lot any second-hand home or transportable of any type or description whatsoever without prior consent from Approver such consent may be given or withheld at the Approver's sole discretion.
7. Carry out (or permit to be carried out) any earthworks (either cutting or filling) or the construction of any Retaining Wall in respect of the same on a Lot in excess of 1 metre in height or depth within 0.5 metre of any:
- a) adjoining Lot boundary.
  - b) boundary between the Lot and a road; or
  - c) boundary between the Lot and any adjoining common owned access lot

unless it first obtains consent for such earthworks and Retaining Wall from the Approver, which consent may be given or withheld at the Approver's sole discretion.

The provisions of this clause A7 shall cease to have effect after the expiration of five years after the date of the deposit of the land transfer plan of subdivision for the stage in the Subdivision of which the Lot forms part.

8. Erect or place (or permit to be erected or placed) on or in the Front Yard of any Lot any:
- (a) Satellite Dish
  - (b) clothesline;
  - (c) building or other structure; or
  - (d) fence or Retaining Wall, unless such Retaining Wall complies with the provisions set out in Part B of these Covenants,

provided however nothing in this clause shall prevent:

- (e) either the construction of a transformer or substation ("utility structure") for any utility supply organisation where such utility structure is required for the purposes of the Subdivision and is subject to an easement or other interest.
- (f) the installation of a letterbox where such letterbox is designed and installed in a manner consistent with the development of the Dwelling House on the Lot; or
- (g) the construction and installation of a Retaining Wall where such Retaining Wall was installed by the Approver as part of the completion of the Subdivision.

9. Bring on to the Lot or keep or retain on the Lot any Prohibited Animal.
10. Permit any rubbish or waste material to accumulate or remain on the Lot or allow any derelict vehicles or containers to be placed or retained on the Lot.
11. Erect or place or permit to be erected or placed on the Lot any temporary structure, caravan, vehicle, tent, hut or shed to be used for human habitation whether temporarily or otherwise except that which may be used in conjunction with the construction of the Dwelling House and which will be removed from the Lot upon completion of the Dwelling House provided however that once the Dwelling House on the Lot has been completed, caravans and tents may be used for temporary holiday accommodation by visitors. Long term storage of caravans, motorhomes or boats will only be permitted inside structures or positioned such that it is not visible to street or neighbours and must be approved by the Approver.  
  
Erect or place or permit to be erected or placed upon the Lot any freestanding carport, garage or other ancillary domestic structure (except a pool house or cabana which must be constructed to a design complementary to the Dwelling House and constructed of the same or like materials) without prior consent of the Approver...
12. Permit the parking of trucks larger than 4 tonne or any other large commercial vehicles on or adjoining the Lot other than for short periods for delivery purposes.
13. Permit the parking of any vehicle on the road berms or ROW or permit them to cross the road berms in such a manner as they may cause damage to the berms or the kerbing and channelling
14. Erect any advertising sign or hoarding of a commercial nature on the Lot provided that for so long as the Approver retains an interest in any Lot, the Approver may erect and maintain within the Subdivision signage and other forms of display or promotion hoardings or materials.
15. Amalgamate a Lot with any other Lot where such amalgamation will result in:
  - (a) a greater number of allotments being created than the number of allotments comprised in the Subdivision as at the date of this Instrument; and
  - (b) a greater number of Dwelling Houses being able to be erected on the Lots that have been amalgamated than permitted in terms of clause 2 of this Instrument for those Lots prior to amalgamation.  
For the purposes of this clause the term "allotment" shall have the meaning defined in the Resource Management Act 1991.
16. Cut up or subdivide the Lot in accordance with the Resource Management Act 1991 or the Unit Titles Act 2010 or otherwise howsoever.
17. Do any act or thing which is a breach of any other stipulation restriction or Covenant that the Covenantee or the Approver may require or impose in respect of the Subdivision or any Lot for the purposes of the Covenants provided that such other stipulation restriction or Covenant shall not prejudice any prior approval already granted by the Covenantee or the Approver.
18. Use a Dwelling House as a Brothel, a Small Owner Operated Brothel or permit the Business of Prostitution or the provision of Commercial Sexual Services to be carried out in or from the Dwelling House or on or from the Lot.
19. Erect or place any fence on the top of a Retaining Wall other than in accordance with the provisions of Part B of these Covenants.
20. Call upon the Covenantee to pay for or contribute towards the cost or erection or maintenance of any boundary fence between the Lot and any adjoining land owned by the Covenantee but this Covenant shall not ensue for the benefit of any subsequent registered proprietor of such adjoining land.
21. Remove or decrease height of any tree existing at the time of purchase greater than 5m in height including the Redwoods on Lots 93 and 94.
22. Object to, or lodge or make any objection or submission in opposition to (or cause any objection or submission in opposition to be lodged or made) in respect to any application that the Approver (or any other party authorised by the Approver) may make to the Relevant Authority for the redesign and change to the size and number of allotments comprising the balance of the Subdivision.

23. Permit any Plant on any of the Lots to exceed 8 metres in height above the formed ground level of the Lot where such Plant is situated unless such Plant is existing at purchase, subject to a preservation covenant or similar covenant imposed by the Relevant Authority as a condition of the resource consent for the Subdivision ("Preservation Covenant").
24. Burn any rubbish or other material anywhere on the Lot.
25. Plant or permit to grow any tree, plant or shrub ("Plant") immediately on the top of or immediately in front of any Retaining Wall where such Plant may cause damage to the structure of the Retaining Wall it being acknowledged that any Plants planted or growing nearer than one metre to the top of a Retaining Wall or within one metre of the base of a Retaining Wall must be small Plants that do not have deep or extensive root structures and that will not cause damage and that will not draw significant amounts of moisture from the land adjoining a Retaining Wall.

**Part B**

The Covenantor shall:

1. Ensure that the Dwelling House is fully completed including exterior painting and a code compliance certificate is obtained from the Relevant Authority before it is occupied as a residence.
2. Ensure that the erection of the Dwelling House is completed within 18 months of commencement of site preparation for such building on the Lot, and within a further 4 months of completion of such Dwelling House complete the driveway and general landscaping of the Lot (including any fencing) to a standard commensurate to that of a high standard residential development and consistent with the approved plans.
3. Permit the use of a Lot as a display or show home by any building company undertaking residential development in the Subdivision provided that the building company complies with the following restrictions:
  - (a) the Lot may be used as a display or show home for a maximum period of 18 months;
  - (b) the Lot may only be used for display or show home purposes between the hours of 10 am and 4pm Monday to Saturday inclusive, and 10 am and 3pm on a Sunday; and
4. Keep the Lot in a neat and tidy condition and not permit any grass on the Lot to grow to a height of more than 150 mm.
5. Ensure all water tanks on the Lot are either:
  - (a) buried and do not protrude above natural ground level; or
  - (b) are erected or installed in the rear living court of the Lot and are screened with acceptable fencing or planting in such a manner that they are not visible from the road or from any adjoining common owned access lot and are approved by the Approver.
6. Fencing for lots 1 to 4, 54 to 59 and 73 to 96. Ensure that any fence or Retaining Wall erected or placed on the Lot complies with the following provisions:
  - (a) where the fence is erected in the rear living court of the Lot, between the Lot and any adjoining Lot, between the Lot and any common owned access way, it is erected no higher than 1.8 metre above the formed ground level; and
  - (b) any fence erected immediately on the top of a Retaining Wall shall comply with any fencing height rules such that the total combined height of the fence and the retaining wall does not breach any fence or setback covenant or rule;
  - (c) it is erected of permanent and durable materials; and
  - (d) no side boundary fence shall be erected or placed any nearer to the road than the front of the Dwelling House provided however that in the case of side boundary fencing between Lots, the side boundary fence may extend to the front of the further most forward Dwelling House, and  
  
the intention being that this part of the Subdivision (lots 1 to 4, 54 to 59 and 73 to 96) shall be maintained with an open Front Yard environment provided however;
  - (e) if any Lot has a Retaining Wall situated on it as part of the development of the Subdivision, the Retaining Wall shall not be a breach of these Covenants concerning fencing and shall be maintained by the owner of the Lot in accordance with the provisions of these Covenants; and
  - (f) if a Lot is a corner Lot or otherwise has more than one frontage to a street and or common owned

*Continue in additional Annexure Schedule, if required*

access way, or otherwise has characteristics in shape or location that effect the ability to create a living court in the rear yard, the Approver may grant dispensation for the provision of fencing in part of the Front Yard so as to ensure that there is a suitable private living court area on the Lot.

Fencing for lots 5 to 53, 60 to 72 and 97 the fencing proposed will be approved by the Architectural Panel as part of the building design approval.

7. Maintain and keep protected any Retaining Wall erected on the Lot by the Approver as part of the development of the Subdivision.
8. When undertaking construction works on the Lot, at all times comply with the following provisions:
  - (a) keep the Lot tidy, orderly and in a safe condition, ensuring that the provisions of the Health and Safety Act are complied with at all times;
  - (b) remove all construction, rubbish and waste from the Lot on a regular basis;
  - (c) before undertaking any significant site works on the Lot, ensure that a vehicle crossing and/or access drive for construction vehicles has been formed in metal aggregate or other alternative materials as may be approved by the Approver at its sole discretion;
  - (d) ensure that no rubbish, excess earth or construction materials are stored or dumped or permitted to encroach upon any adjoining Lot or onto the road or any common owned access lot unless it has first obtained the consent in writing of the Approver or the consent of the adjoining Lot owner for the storage of such materials, earth or debris;
  - (e) ensure that any silt generated during construction on the Lot is contained and dealt with in accordance with all requirements of the Relevant Authority; and
  - (f) immediately on completion of construction of the Dwelling House on the Lot, reinstate all landscaping, grass berms, driveways, road, public lighting, footpaths, berms, curbs, walls or any other structure or improvements within the Subdivision that may have been damaged either directly or indirectly through the undertaking of the construction on the Lot by either the Covenantor or any employee or contractor of the Covenantor.
9. Ensure that any power and telephone reticulation is located underground.
10. Prevent the growth on the Lot of weeds and plants defined as noxious plants under the Biosecurity Act 1993 or any legislation passed in substitution for that Act.
11. Keep the Lot free of vermin, mustelids, possums, rodents and other noxious pests.
12. Dispose of all rubbish and recycling material promptly, hygienically and tidily and ensure that such disposal does not adversely affect the health, hygiene or comfort of the owners or occupiers of other Lots in the Subdivision.
13. Ensure that any graffiti or similar disfigurement to any building or structure on the Lot is removed, painted over or otherwise appropriately dealt with within 5 days from the date such graffiti occurred.
14. Ensure that where any part of the Lot has been landscaped or planted by the Approver as part of the development of the Subdivision or where Plants are protected and are to be maintained in accordance with any Preservation Covenant:
  - (a) such landscaping and Plants are maintained and nurtured in an appropriate manner; and
  - (b) if any of the Plants forming part of the landscaping or that are subject to Preservation Covenant are damaged or die, they are replaced as soon as is reasonably possible with Plants of a similar type, size and species or as otherwise may be required by the Relevant Authority in terms of the Preservation Covenant.

**Part C**

**REMEDY ON BREACH**

1. If there should be any breach of any of the Covenants contained in this Instrument and without prejudice to any other liability which the Covenantor may have to the Covenantee and any person or persons having the benefit of such Covenants the Covenantor will upon written demand being made by the Approver or the Covenantee or any registered proprietor(s) of any other Lot:-
  - (a) pay to the person making such demand as liquidated damages the sum of \$300 (Three Hundred Dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made; and
  - (b) do or cause to be done anything necessary to remedy any such breach
  - (c) In the event that the Covenantor does not comply with paragraph 1(b) above within a reasonable period of time after demand has been made then the Covenantor hereby irrevocably authorises the Approver or the Covenantee or the registered proprietor making demand together with their employees and agents to enter and remain upon the Lot to do anything necessary to remedy any breach at the Covenantor's cost and without being liable for any damage or deterioration occasioned to the Lot in exercising these powers.

**PROVIDED HOWEVER** that the Covenantee and/or Approver shall not be required to or be obliged to enforce all or any of the Covenants stipulations and restrictions contained in this Instrument nor be liable to the Covenantor for any breach thereof by any registered proprietor of any other Lot.