

## Easement Instrument

Interpretation: In these Covenants the following definitions apply:

“Ashley Trust” shall mean the trustees for the time being of the Ashley Trust established by Deed of Trust dated 26 February 2004

“Building Design Concept Plan” is a preliminary plan showing the general location and concept of the buildings

“Building Consent Plan” is a plan in general accordance with the Building Design Concept Plan

“The Lot” shall mean the Servient tenement

“Panel” shall mean the Design Review Panel appointed from time to time by Marsden Park Limited

“Landscape Design Feature” does not include buildings or vegetation (other than lawns) but does include paths, fences, driveway and any other man made construction and lawns shown on the Landscape Design Plan under Covenant 1

“Landscape Design Plan” is a plan showing the landscaping design of the Lot including all Landscape Design Features

“Proprietor” or “owner” means the registered proprietor of the Servient tenement

“Fence” includes walls and live hedges

Covenant  
Number

1	<p>(1) No building consent is to be sought from the Nelson City Council without the Proprietor first submitting to the Panel a Building Design Concept Plan and Landscape Design Plan in sufficient detail and obtaining the Panel’s written approval.</p> <p>(2) The Building Design Concept Plan, Building Consent Plan and Landscape Design Plan shall comply with the Marsden Park Design and Construction Code approved by the Panel.</p> <p>(3) Final Building Consent Plans are to be submitted to the Panel prior to the proprietor applying to the Nelson City Council for Building Consent. A final Landscape Design Plan must be approved by the Panel before construction of a dwelling commences.</p> <p>(4) Any Variations to the Building Design Concept Plan, the Building Consent Plan or the Landscape Design Plan must be approved by the Panel before being implemented.</p>
2	<p>The Proprietor will ensure that the Proprietor, builders, contractors, subcontractors, workers and suppliers comply with:</p> <p>(a) these Covenants regarding work by them on the Servient tenement</p> <p>(b) with the Building Consent Plan and Landscape Design Plan approved by the Panel and</p> <p>(c) the Marsden Park Design and Construction Code approved by the Panel.</p>
3	No more than 1 dwelling may be constructed on each Servient tenement.
4	Each dwelling must be 185m <sup>2</sup> in floor area inclusive of any garage under the same roof structure.
5	No building may exceed 5.5 metres in height above natural ground level except Lots 1, 4, 21, 62, 63, 129 and 130 on which the dwelling may not exceed 7.5 metres in height but only if the dwelling is set back 3 metres from all boundaries.
6	The Proprietor will not erect or retain any dwelling or other structure outside the envelope defined by the Nelson City Council Resource Management Plan rules relating to boundary setbacks, daylight controls and maximum heights, notwithstanding that the Nelson City Council may have granted a dispensation from adherence to this envelope.
7	The Proprietor will not erect or retain any dwelling or other structure that does not comply with the concept in Nelson City Council building code current at the date hereof known as

	“daylight controls over” except that the concept known as “daylight controls around” shall be permitted in respect of Lots 1, 4, 21, 62, 63, 129 and 130.
8	The Proprietor will not erect or retain on the Servient tenement: <ul style="list-style-type: none"> <li>- a relocatable building</li> <li>- a Kitset building</li> <li>- a previously used building</li> </ul>
9	Dwelling and other buildings on the Servient tenement shall – <ol style="list-style-type: none"> <li>(1) be constructed on-site from new or high quality recycled materials as approved by the Panel</li> <li>(2) have exterior cladding of a type approved by the Panel</li> <li>(3) have roofing material of a type approved by the Panel</li> <li>(4) (for any dwelling) be commenced within 8 months of settlement of purchase (or such extended times as the Vendor may on application allow) and be complete within 18 months of settlement of purchase (or such extended time as the Vendor may on application allow)</li> <li>(5) have only exterior lighting which casts light downwards and which complies with “dark sky” standards (as required by Dundee City, UK)</li> <li>(6) comply with the Marsden Park Design and Construction Code</li> <li>(7) have only Category 6 electrical wiring (compatible with fibre optic broadband cabling).</li> </ol>
10	Dwellings and/or other buildings on the Servient tenement shall not – <ol style="list-style-type: none"> <li>(1) be composed partly or fully of reflective or visually obtrusive material or colour for its roof, exterior walls or windows exterior joinery.</li> <li>(2) have unpainted or exposed zinc coated products (other than solid zinc sheets) comprising all or part of the exterior cladding, roofing, guttering or downpipes.</li> <li>(3) be erected, altered or permitted to remain on the Lot without the prior written approval of the Panel.</li> <li>(4) be occupied as a residence until: <ol style="list-style-type: none"> <li>(i) a Code Compliance Certificate has been issued by the Nelson City Council.</li> <li>(ii) the buildings/dwelling have been completed in compliance with these Covenants and the plans approved by the Panel.</li> <li>(iii) all exterior work, decoration and final interior window coverings (blinds or curtains) are completed and installed.</li> <li>(iv) all driveways, paths, fences and other Landscape Design Features are completed in compliance with these Covenants and the plans approved by the Panel.</li> <li>(v) all unpaved areas within sight of the street are properly grassed and/or landscaped according to the plans approved by the Panel.</li> </ol> </li> </ol>
11	<ol style="list-style-type: none"> <li>(a) The Landscape Design Plan must be fully implemented within 3 months of dwelling completion.</li> <li>(b) Driveways, crossings and entranceway cannot be relocated without the written consent of the Panel.</li> <li>(c) Landscape Design Features may not exceed 2 metres above original ground level in height.</li> <li>(d) Clotheslines and letterboxes shall be unobtrusive to neighbours and from the street and of good quality materials, design and location. Clotheslines shall be in the rear yard and shall be screened from sight of the street. Letterboxes shall be located on the lot, adjacent to the street.</li> <li>(e) The Proprietor must not alter the original land surface contour of the Lot without the consent of the Local Authority.</li> <li>(f) No tree, shrub or other vegetation shall: <ol style="list-style-type: none"> <li>(i) Exceed 3 metres in height within two metres of any Lot boundary.</li> <li>(ii) Exceed 5 metres in height within that area which is between 2 metres and 5 metres of the easternmost and southernmost boundary of any Lot.</li> <li>(iii) Exceed a height of 20 metres elsewhere on the lot.</li> </ol> </li> </ol> <p>“Height” is to be taken from the original subdivisional ground level of the Lot.</p>

12	<p><u>Exterior Air conditioning Units</u> must:</p> <p>(i) be screened from adjoining properties and the street.</p> <p>(ii) be noise proofed to the degree necessary to avoid nuisance to neighbours.</p> <p>(iii) not protrude from or be set into buildings.</p>
13	<p><u>Aerials</u> on any Servient tenement must not be visible from the street.</p>
14	<p><u>Water Protection</u></p> <p>No Discharge which is detrimental to water quality into stormwater systems or water courses shall occur from or within any Servient tenement. Such Discharges shall include soluble and insoluble materials or liquids.</p> <p>The Servient tenement proprietor shall take at that proprietor's cost all action required to prevent and/or remedy the damage or threat of damage and shall pay all costs for action undertaken by others for such purposes.</p>
15	<p><u>Use of areas outside the Servient Tenement</u></p> <p>The Servient tenement proprietor shall not use for vehicular access to the Lot or parking for the Lot any:-</p> <ul style="list-style-type: none"> <li>- adjacent land (other than road)</li> <li>- footpath</li> <li>- accessway or right of way.</li> </ul> <p>The lot proprietor shall use recreational areas only for recreation.</p>
16	<p><u>Damage to areas outside the Servient Tenement</u></p> <p>(i) The proprietor shall be responsible for and meet the costs of damage to landscaping, roads, footpaths, kerbing, berms, concrete works or any other structure arising directly or indirectly from any actions by the proprietor, its invitees or licensees or their employees. Lot proprietors shall reinstate or if necessary replace at their cost such damaged items forthwith.</p> <p>(ii) A Construction Bond of \$3,000 will be paid to the Vendor's Solicitors Trust Account by each Proprietor before construction commences to be used towards rectification of any damage as set out in 16(i) above and held until completion of the dwelling and landscaping works even if by a subsequent purchaser from the payer of the Bond and so on. The Construction Bond less any amounts deducted for rectification of damage shall be repaid to the Lot owner as at the date of repayment.</p>
17	<p>No Lot Proprietor shall 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, hinder or interfere with the Vendor progressing or completing the Marsden Park development or any future development by Ashley Trust, Marsden Park Limited, J D M &amp; W A McLaughlin or B G McLaughlin on land they or any of their related parties may own now or hereafter in Marsden Valley. Such covenant extends to and includes 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 Ashley Trust, Marsden Park Limited and their related parties.</p>
18	<p><u>Advertising</u></p> <p>No Proprietor shall display or permit on any Lot any advertisement, hoarding or sign except for compulsory statutory signage, real estate signing pending sale and builder's construction or show home signage first approved by the Panel.</p>
19	<p><u>Animals</u></p> <p>No livestock, poultry, reptiles or animals of any kind or size shall be raised, bred or kept on any Servient tenement or in any building thereon; provided however that up to two dogs and one cat or other household pets that are not dangerous or annoying to neighbours may be kept, providing they are not kept for any commercial breeding purposes. Any dog which resembles any of the pit bull terrier, Japanese tosa, dogo argentino or the fila brasierio breed or any other potentially aggressive or noisy breed is not permitted. No pet shall be permitted which makes a noise in a manner or of such volume as to annoy or disturb others. Keeping</p>

	pets shall be subject to any other restrictions required from time to time by Marsden Park Limited in the interest of maintaining a good residential environment.
20	<p><u>Presentation</u></p> <p>(i) Buildings and Landscape Design Features must be maintained and not allowed to deteriorate to a point where the standard of presentation is either:</p> <p>(a) Less than that represented in the rest of Marsden Park residential area, or</p> <p>(b) Inadequate taking into account fair wear and tear, the original condition at the time the residence was occupied, and the condition of neighbouring properties.</p> <p>(ii) The Proprietor shall maintain street frontage plantings between the street or the Lot frontage planted by Marsden Park Ltd. The Proprietor shall replace any plants that die, have serious disease problems or are in poor condition and unsightly.</p> <p>(iii) The Proprietor will keep and maintain the Lot in a neat and tidy condition at all times, including grounds, lawns, gardens and the Local Authority owned road frontage adjoining it. Grass and other ground cover must not exceed a height of 150mm.</p>
21	<p><u>Fencing:</u></p> <p>(i) The Proprietor will contribute one half of the cost of any existing fence on the boundary between the Lot and any adjoining lot where the adjoining lot owner has paid for that fence in full. This covenant shall expire after 5 years.</p> <p>(ii) No construction of any building will commence until the side and rear boundaries are fenced.</p> <p>(iii) No fence shall be located within 5.5 metres of the street frontage boundary.</p> <p>(iv) Fences on side boundaries shall be set back 5.5 metres minimum from the front road boundary and shall not exceed a height of 1.8 metres or such lesser height as the Panel may specify.</p> <p>(v) Lots adjoining a park, reserve, wildlife sanctuary or recreation area shall not be fenced except with an open steel fence of a sort which complies with the Fencing of Swimming Pools Act 1987 up to 1.8m in height.</p> <p>(vi) Lots adjoining a public access/walkway shall not fence the boundary with a solid wooden fence except one to a maximum of 1.2 metres in height which may be extended to a total height of 1.8 metres by an open wooden structure having 50% permeable visibility (for example, trellis).</p> <p>(vii) Types of fence – fences shall be in accordance with the specifications of the Panel as to materials, construction, decoration and appearance.</p> <p>(viii) No street frontage shall be fenced.</p> <p>(ix) All fences must abut fences on adjoining Lots (if they exist).</p>
22	<p><u>Land Use Restrictions</u></p> <p>No Lot shall be:</p> <p>(i) used for temporary residential purposes by the construction of temporary building placement of caravans, modular buildings, sleepouts, mobile homes, motor homes or any other form of temporary accommodation.</p> <p>(ii) transferred, sold, leased to any Government Agency, any Charitable Body or Territorial Authority for the purposes of public or institutional use.</p> <p>(iii) used as to its driveway and front yard for long term parking or for vehicle repair or maintenance. Inoperable vehicles are not permitted unless in a garage.</p> <p>(iv) Vehicles, boats, caravans or anything else stored on the Lot shall be screened from view of neighbours and from the street by a screen approved by the Panel.</p>
23	<p><u>Subdivision</u></p> <p>No further subdivision of any Lot or creation of any easements affecting any Lot is permitted provided than minor boundary adjustments are permitted if no additional titles are created.</p>
24	<p>(i) Marsden Park Limited or Ashley Trust may enforce these covenants in the same manner as a Lot owner. Where a lot owner does not comply with any covenant (“the</p>

	<p>defaulter”) Marsden Park Limited or Ashley Trust may request any such defaulter in writing to remedy such non-compliance within a specific time which shall not be less than 14 days. At the end of this time if the defaulter remains in default Marsden Park Limited or Ashley Trust may employ a suitably qualified person to enter the lot and to carry out the work to achieve compliance with the covenant. The defaulter will bear the cost of all such remedial work and any legal costs (on a solicitor and client basis) associated with this work including recovery of any monies owed to Marsden Park Limited or Ashley Trust as a result of work.</p> <p>(ii) Marsden Park Limited or Ashley Trust and the Design Review Panel will use its best endeavours to ensure compliance of these covenants but shall not have any legal responsibility or liability for any lack of enforcement or enforceability or application of these covenants.</p> <p>(iii) The defaulter agrees to keep Marsden Park Limited and Ashley Trust fully indemnified from any claim, liability, loss or action arising against it or its agents in respect of these covenants having regard to the Vendor’s intent to regulate the interests of Lot owners inter se and their individual obligations to comply with the covenants.</p>	
25	<p><u>Disputes Resolution</u></p> <p>Should any dispute arise concerning any aspect of these covenants that cannot be resolved by agreement between the parties involved the lot owners are bound to resolve the same by arbitration in accordance with the Arbitration Act 1996 and the following provisions shall apply:</p> <p>(i) There shall be a single arbitrator who shall be appointed by the President of the Nelson Branch of the New Zealand Law Society as sole arbitrator.</p> <p>(ii) The arbitrator shall determine all questions in issue between the parties including questions as to the scope of the dispute and as to procedure.</p> <p>(iii) The arbitrator’s award shall be binding on all parties in the dispute.</p> <p>(iv) Any party to a dispute may initiate arbitration in accordance with the provisions of the Act.</p>	
26	<p>Marsden Park Limited, Ashley Trust and the Panel shall have the discretion to give minor dispensations from these Covenants for any Lot provided that before making such dispensation, adjoining Lot owners shall be given notice and may submit before final approval is given and provided further that such dispensation shall not detract from the high quality nature of the subdivision or unduly affect the value of adjoining properties. These Covenants shall be modified for that Lot in accordance with the dispensation.</p>	