



THE WHAREKAUHAU CODE

The complete rules, by-laws,
regulations and covenants
applicable to all Estate Lot Owners
within the Wharekauhau Country
Estate

Revised 2022

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PART A

INTRODUCTION

- i. **THE DESIGN AND GOVERNANCE COMMITTEE (DGC) (formerly known as the Design Team)** – see also **WORDS, TERMS AND ABBREVIATIONS** within **PART B**.
- This is a group of seven individuals, chaired *ex officio* by the General Manager of Wharekauhau Country Estate, and containing three elected representatives of the Estate Lot Owners (who sit on the committee for a two-year term) plus others appointees including an architect or designer.
 - The DGC was originally the “Design Team” established by 1(g) of the Memorandum of Encumbrance and renamed the Design and Governance Committee by resolution of the Design Team in appreciation that its varied roles established within the MoE go far beyond “design”, and are summarised below.
 - The DGC's role is to uphold the covenants of the Estate, to create rules from time to time, to approve and monitor all building works on the Estate, and to ensure a harmonious relationship between Estate Lot Owners and the other two major stakeholders: the Farm and the Lodge.
- ii. **BACKGROUND**
- The regulations, by-laws, rules and covenants pertinent to Estate Lot Owners, and to those wishing to become Estate Lot Owners on the Wharekauhau Country Estate, are contained within two documents: a Memorandum of Encumbrance and a Transfer under the *Land Transfer Act 1952*, both of which are registered instruments on the title of each individual Estate Lot. See Part B under Words and Abbreviations.
 - These are supplemented by rulings from-time-to-time by the DGC under the powers given it by S.9 of the Transfer and may be found in various “living” documents which set out design, construction and landscaping rules, as well as the obligations on both Estate Lot Owners and the Wharekauhau Country Estate.
 - In order to create an easily accessible set of rules and covenants, able to be readily understood, the DGC has embarked on a Codification project.
- iii. **WHAT IS CODIFICATION?**
- The term “Codification” is a portmanteau word created by merging two Latin words *Codex* (book) and *fecere* (the verb to make). A Code is simply a systematic and comprehensive

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compilation of laws, rules, or regulations that are consolidated and classified according to subject matter.

iv. **PRIMACY OF DOCUMENTS**

- In the event of any discrepancy, inconsistency, divergence or abnormality arising between this document and the Memorandum of Encumbrance or Transfer registered on the Title of any Estate Lot, said Memorandum of Encumbrance and Transfer shall be given primacy over the Wharekauhau Code, save where expressly provided to the contrary.

PART B

INTERPRETATIONS AND DEFINITIONS

Changes in legislation and local government by-laws or plans

Where there is a reference to any legislation, regulation, plan or by-law of the New Zealand Government or applicable local government authority it is a reference to all changes to legislation and replacement of legislation that has occurred since the establishment of the Estate..

Genders

Words importing one gender includes all genders.

Headings

Headings within Sections or Sub-sections appear as a matter of convenience and are not to effect the interpretation of this Code.

Meaning of Writing

References to “written” or “in writing” include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form. This includes all forms of visible digital communication such as text or email.

New Zealand Currency

Monetary amounts payable must be in New Zealand currency.

Sections

This means the numbered sections of the Wharekauhau Code.

Singular and Plural

The singular includes the plural and vice versa.

Severability

The illegality, invalidity or unenforceability of any provision in this Code shall not effect the legality, validity or enforceability of any other provisions.

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Corresponding meanings

Where a word or expressions is defined in this Code, other parts of speech and grammatical forms of that word or expression have corresponding meaning.

WORDS, TERMS AND ABBREVIATIONS

“Code”

This means the Wharekauhau Code as amended by the Design and Governance Committee from time to time.

“(the) Conservation Plan”

This means the Conservation Plan referred to in the resource consent obtained from South Wairarapa District Council in respect of the Wharekauhau Country Estate which Plan, as varied from time to time shall be implemented and sustained at the discretion of the DGC.

“Cottages”

This means the cottages established as guest accommodation or to be established as guest accommodation around Wharekauhau Lodge and includes any replacement or new cottages of whatsoever kind.

“Country Club levies”

This means special annual levies payable to permit ELO usage of the special facilities of Wharekauhau Lodge specified from time to time.

“covenants”

This means covenants as set out in the Transfer. *See “Transfer”*.

“Design and Governance Committee” or “DGC”

This means the successor to the Design Team referenced in other documents and which undertakes the all duties and responsibilities of the Design Team as set out within those documents. *Further see Part A.*

It must include:

- one reputable Designer or Architect appointed by WCE;
- two further appointees of WCE to be advised to Estate Lot Owners from time to time;
- the Manager; and
- Three Estate Lot Owners appointed by the Estate Lot Owners from time to time.

“EHO”

This means “Estate Home Owner”: the owner or owners of an Estate Lot with a dwelling.

“ELO”

This means “Estate Lot Owner”: the owner or owners of any residential Estate Lot who has registered lawful title.

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“Estate Homes”

This means the residential dwellings erected on residential lots established within Wharekauhau Country Estate.

“Estate Lots” or “Estate Home Lots”

This means the residential lots established within Wharekauhau Country Estate.

“Encumbrance”

See “Memorandum of Encumbrance”.

“(the) Land”

This means the Estate Lot for which you are the registered proprietor.

“levies” or “Country Estate levies” or “Estate Home levies” or “Estate Lot levies”

This means those Wharekauhau Country Estate levies set out in Ss.3 and 54 of the Wharekauhau Code.

“Memorandum of Encumbrance”

This means the Encumbrance registered on the Title of each Estate Lot and is one of the “founding documents” of the Estate and contains many of the rule as set out in the Code.

“(the) Manager”

This means the General Manager of Wharekauhau Lodge or any such person having the written delegated authority of and acting on behalf of the General Manager.

“quality”

In relation to Estate Homes refers to the standard of bespoke design, the materials used in construction, the suitability of the construction project within the zone environment, and the overall project impact on the Estate. This will also include appropriateness of landscaping including planting as well as management of potentially scarce resources, such as water. See *Second Schedule*.

“Restrictive Covenants”

See “covenants”.

“relatives”

This means any relative ascribed in Part Y of the Income Tax Act 2007 (as amended).

“rent charge” or “rentcharge”

This is a legal device by which an annual charge may be levied over freehold property.

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“(the) Transfer”

This is one of the Estate's “founding documents” and contains the Land Covenants, Fencing Covenants, rights-of-way, easements, regulation and rules of the Estate as expressed within the Code and is registered as B760129.1 and B760129.3 on the Title of each Estate Lot.

“Wharekauhau Country Estate” or “the Country Estate” or “the Estate” or “WCE”

This means the land owned by the corporate entity known as Wharekauhau Country Estate Ltd (WCE) or its lawful successors and comprises the Farm, the Lodge, its Cottages, roads, pathways and common landscape areas, plus all residential Estate Lots under private individual title or Estate ownership.

“zones” or “Design Zones”

This means the Design Zones established on the Wharekauhau Country Estate by resolution of the Design and Governance Committee and includes the Lowland, Horizon, Terrace, Mountain and Farm and includes any new zones not yet specified.

PART C

GENERAL PROVISIONS

1. **Abide by the Wharekauhau Code:** You shall at all times observe and abide by the Wharekauhau Code and not do or permit anyone in occupation of the Land or anyone visiting the land whether as a guest or otherwise to breach or do any act or thing which may breach or threaten to breach the Code.
2. **Abide by Conservation Plan:** You shall observe and abide by the Conservation Plan or covenants or protocols in place or otherwise adopted by the Design and Governance Committee over the Wharekauhau Country Estate and any rules published from time to time by the Design and Governance Committee which rules compliment the rules within the Encumbrance and otherwise which govern the good management and control of the Wharekauhau Country Estate including the conduct of the Wharekauhau Lodge business, recreational activities, protection of the environment and farming business.
3. **Pay all outgoings:** You shall punctually pay all rates, taxes, charges, assessments, levies, Country Estate levies and insurance premiums payable in respect of the Land and any improvements on the Land and from use of Wharekauhau Country Estate and not allow any charging orders or liens to be registered over the Land provided that if you default in the punctual payment of any such charges WCE may (without being obliged to) pay any such unpaid rates, taxes, assessments, levies or charges. Any amount you so pay shall be a debt; from you to WCE payable upon demand and deemed to be secured by the Memorandum of Encumbrance as if it were part of the rent charge hereby secured. *See also Part G S.55 Wharekauhau Country Estate Levies and Charges.*
4. **Covenants and rules for benefit of all owners:** You shall at all times observe and perform all the covenants contained in the Transfer and all the rules contained in this Code to the intent that each of the covenants and rules will forever enure for the benefit of and be

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appurtenant to each and all of the Estate Lots and each and all of the registered proprietors of the Estate Lots provided that you will be liable only for breaches of the covenants contained in the Transfer or rules contained in this Code whilst you are the registered proprietor of the Land or any part of the Land.

5. **Right of entry to utility operators:** You shall permit the Estate or any utility operator who retains rights under any easement over the Land or by statute at all reasonable hours except in the case of emergencies to enter into and upon the Land for any of the the following purposes (directly associated with their respective rights whether arising under the Encumbrance or the Land Covenants or their easement rights):
 - (i.) viewing the condition of any Estate Home and associated buildings and the Land; and/or
 - (ii.) maintaining, repairing and renewing any pipes, conduits, wires, cables or ducts for the time being under, upon or passing through the Land and used in connection with the enjoyment of any other land being part of the Wharekauhau Country Estate; and/or
 - (iii.) ensuring that the restrictive covenants in the Land Covenants and the stipulations and restrictions set out in the Encumbrance are observed by you, and if not permit the Estate (without having any lawful obligation to do so) to carry out any work necessary to remedy any breach by you with any charges, costs and expenses arising being payable on demand and being secured by the Encumbrance as if they were part of the rent charge hereby secured.
6. **Compliance with Health and Safety:** You shall comply with any health and safety management plan adopted by the Wharekauhau Country Estate from time to time and otherwise comply in all respects with all statutes, Regional and District Plans, by-laws and regulations and conditions of any resource and building consents held relevant to the use and occupation of the Land and any improvement on the Land.
7. **Security:** You shall observe all security requirements imposed within or adopted by Wharekauhau Country Estate from time to time and in particular securely fasten all doors and windows to the Estate Home or other improvements on the Land left unoccupied and granting to the Manager the right to enter and fasten the same if left insecurely fastened.
8. **Effluent disposal:** You shall comply with the requirements and conditions of any resource consent held from any Authority governing the disposal of effluent, including the need to provide appropriate approved septic tanks.
9. **Not cause breach of resource consents:** You shall comply with and not cause or bring about a breach of the conditions set out in any resource consent held by Wharekauhau Country Estate or cause or bring about the cause of any breach of any Section 221 Resource Management Act 1991 consent notices registered against any land within the Wharekauhau Country Estate.

PART D

BUILDING OR RENOVATING AN ESTATE HOME

10. **Prior Approval of the Design and Governance Committee required:** You shall not carry out any external or internal structural alteration or addition to any existing Estate Home, building structure or other improvement without obtaining consent of the DGC, nor shall you erect or permit to be erected any building, fence, structure, telecommunication apparatus or other improvement nor undertake any significant landscaping without permission of the DGC.
11. **Design and Governance Committee compliance:** Any building works shall require prior written approval from the DGC before any construction is commenced and in any event shall at all times comply with the following minimum requirements:
- 11.1 comply with the guidelines issued from time to time by the DGC on architectural design, dimensions, and shape and orientation of building structures in relation to Wharekahu Lodge and the DGC preferred Estate Home locations through the Wharekahu Country Estate;
 - 11.2 utilise forms, materials and colours appropriate to the landscape of the applicable Wharekahu Estate residential zone and in harmony with all other building structures developed or proposed for development in accordance with zone specific design guidelines issued from time to time by the DGC;
 - 11.3 only use quality products and materials first approved by the DGC and appropriate to the residential zone in which the Estate Home will be built in any approved design of construction;
 - 11.4 must adopt design features in relation to energy efficiency, privacy, shelter, raised floors and the use of tall wall stand heights promoted by the DGC or otherwise as set out in the Combined Wairarapa District Plan from time to time.
 - 11.5 produce to the DGC for approval landscape plans unless written consent and specifications of the home dwelling and improvements to be constructed containing adequate and proper detail not less than 60 days prior to commencement of any construction and in any event not commence construction unless written consent of the DGC and a building consent and resource consent if applicable is obtained from South Wairarapa District Council.
12. **Landscape plan to be approved:** You shall submit to the DGC a landscape design for the Land prior to approval by the DGC whose written consent must be obtained before any landscaping works commence and such landscaping design must conform to the design guidelines produced by the DGC from time to time and in particular but without limitation:
- 12.1 not permit or allow any tree, shrub or plant exceeding any specified height limit imposed by either the DGC or through the Wairarapa Combined District Plan

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- adopted by South Wairarapa District Council or any successor to such district plan or to such Council;
- 12.2 you shall not allow or permit any tree deemed by the DGC or by the South Wairarapa District Council to be removed without written permission of the body with which jurisdiction lies;
- 12.3 not permit or allow any areas of base clay or earth to be permanently exposed;
- 12.4 only install paving and fencing which complies with design guidelines issued from time to time by the DGC;
- 12.5 ensure that any retaining walls and exposed banks will be planted in grass or shrubs.
13. **External colours to be compatible:** You shall only adopt external colour schemes which have been first approved by the DGC and which at all times are compatible with the surrounding landscape and with Wharekauhau Lodge, Estate Homes, Cottages and structures situated in the appropriate Wharekauhau Country Estate Design Zone and in situations where Estate Homes are allowed to be used by guests for the purpose of complementing the Wharekauhau Lodge business then the DGC shall be permitted the right to approve and recommend internal design features as a pre-condition to approve any Estate Home for Wharekauhau Lodge guest use.
14. **Insurance cover:** You shall insure and keep insured all building and other improvements on the Land for full replacement value or for the a value for which the Estate Home may be rebuilt to its existing state (including demolition costs, and architect's fees) against fire, flood, explosion, wind, storm, hail, fire caused by earthquake, snow, aircraft and other aerial devices dropped there from, impact, riot and civil commotion, malicious caused by burglars, and earthquake in excess of indemnity value. If required by the Design and Governance Committee you must provide proof of current insurance.
15. **Rebuild to same quality:** You shall immediately apply insurance money you and any mortgagee (subject to subrogation rights) over the Land you receive in respect of damage to any building or improvements in rebuilding or reinstating to the same quality and integrity existing prior to any destruction or damage being caused.
16. **Quality of building works:** You shall maintain, repair and renew Estate Homes and other building structures or improvements on the Land to a high quality standard of repair, maintenance and renewal consistent with maintaining the integrity of the Wharekauhau Country Estate development.
17. **One Estate Home only:** You shall be entitled to construct one Estate Home dwelling together with one accessory building which may be a detached garage on the Land but site coverage within the Land shall not exceed 35% for such dwelling and accessory building.
18. **Floor area size of Estate Homes:** No Estate Home on the Land shall be less than 138 square metres in floor area size of living space excluding any accessory building and car parking or garage.
19. **No water tanks above the surface:** You shall not install any water tank above the surface of the Land unless such tank is constructed and concealed within the Estate Home or associated building or within an enclosure approved by the DGC which permits no view of the tank from other Estate Lots, common ground or roadways.
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20. **No carports:** You shall not construct or be permitted to construct a carport of whatsoever kind but must construct a garage which holds at least one vehicle or ensure if there is no garage that any parked vehicle is concealed from site.
21. **No free standing clothes lines:** You shall not install or erect any free standing clothes line nor hang or display on or from windows, dormers, balconies, or other parts of your Estate Home or accessory building or other improvements on the Land in such a way to be visible from other Estate Lots, common areas or roadways, any laundry, towels, clothing, bedding, or other articles and then only with the approval of the Design and Governance Committee.
22. **No contribution to fencing:** You will not call upon the Estate to pay for or contribute towards the cost of erection or maintenance of any boundary fence between the Land and any adjoining land of the Estate and provided further that this covenant will enure for the benefit of any subsequent registered proprietor of any adjoining land.
23. **Supervision of work:** You shall not employ or use any consultant, contractor or workperson to undertake the following works:
 - 23.1 for the purpose of carrying out any structural additions or alterations or repairing or making good any part of an Estate Home or other improvements on the Land or any fittings and fixtures in the Estate Home or such other improvements or any services rendered to the cottage or such improvements other than contractors or workpersons duly appointed by the DGC or approved in writing by the DGC,
 - 23.2 to perform any building work in connection with your use of the Land except under the supervision (if required) and to the satisfaction of the DGC which may specify conditions as to how and under whose supervision the work shall be done.
24. **Architectural Designers and Building Contractors to be approved:** No registered Architect, Architectural Designer or prime Building Contractor shall be permitted to work on any Estate Lot project on the Wharekahu Country Estate without written approval of the DGC.

PART E

OWNING AN ESTATE HOME OR LIVING ON THE ESTATE

25. **No illegal purpose:** You shall not use or permit the Land or any improvements on the Land to be used for any purpose which is illegal or which may be injurious to the reputation of the Wharekahu Country Estate.
 26. **No noise:** You shall not make undue noise or create any nuisance in or about the Land or the Wharekahu Country Estate including the Wharekahu Lodge and any of its recreational components.
 27. **Pets not to cause nuisance:** You shall not allow any animal, bird or pet (collectively called "Pet") to cause nuisance and otherwise:
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- 27.1 ensure at all times that any Pet outside the Land is kept under strict control and supervision;
 - 27.2 any laws pertaining to Pets are adhered to at all times;
 - 27.3 ensure at all times that dogs are inoculated in accordance with the wishes of the Farm Manager;
 - 27.4 not allow pit bull terriers or similar breeds onto Wharekauhau Country Estate without written approval of the Manager;
 - 27.5 at all times ensure that any farm animals and birdlife in or about the surrounding farm and conservation areas are not put under any threat or stress by any Pet.
28. **Not use land to cause a disturbance:** You shall not use the Land or any improvements on the Land in a manner for such purpose as to cause a nuisance or disturbance to any other occupier or guests of the Wharekauhau Country Estate.
 29. **Quiet enjoyment:** You shall not obstruct or interfere with or disturb or trespass upon the rights of quiet enjoyment of any other property owner or occupier or their guests of the Wharekauhau County Estate.
 30. **No offensive language:** You shall when upon Wharekauhau Lodge and in its immediate surrounds be adequately clothed and not use language or behave in a manner likely to cause offence or embarrassment to any other person lawfully occupying Wharekauhau Lodge.
 31. **Guests to respect quiet enjoyment:** You shall take all reasonable steps to ensure that your guests and invitees do not behave in a manner likely to interfere with the quiet enjoyment of the occupiers of any Estate Home or of any person lawfully the Wharekauhau Country Estate.
 32. **No loud music:** You shall not play or have in use any musical instrument, stereo, radio, television, clothes dryer, waste disposal unit or any other machine at any time day or night in such a manner as to disturb, irritate or annoy any occupant within the Wharekauhau Country Estate and shall immediately cease to operate same if requested to do so by the Manager.
 33. **Keep clean:** You shall keep clean all internal and external surfaces of all windows and glass which form part of the exterior windows of the Estate Home and any improvements on the Land.
 34. **Cause no obstruction:** You shall not permit to be done anything whereby any obstruction, interference, restriction or hindrance may be caused or brought about to any Wharekauhau Country Estate facilities or to the roads, pathways or common landscape areas within the Wharekauhau Country Estate.
 35. **Cause no obstruction to the heliport area:** You shall not cause or bring about the cause of any disruption or interference of any kind whatsoever or permit or allow any person under your control or at your invitation to so cause or bring about such obstruction or interference with the heliport area designated within the Wharekauhau Country Estate.
 36. **Infectious illness:** Should any notifiable infectious illness transpire in or about the Land you shall give immediate notice of such illness to the Manager and will if necessary thoroughly fumigate any any improvements on the Land at your expense and to the satisfaction of the

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appropriate health authorities or act in such other manner as requested by appropriate health authorities from time to time.

37. **Notify accidents or defects:** You shall promptly notify the Manager of any accidents to or defect in the water pipes, electric installations, fixtures or the Estate Home which comes to your knowledge and the Manager shall have authority by its employees, consultants, contractors or agents in the circumstances having regard to the urgency involved to examine or make such repairs or renovations as they may deem necessary for the health and safety and preservation of the Land and Estate Home or other improvements on the Land as often as may be necessary.
38. **No vermin:** If you permit your Estate Home or other improvements to become infested by vermin or insects and if such infestation threatens your or any other Estate Home or improvements you shall take all immediate and necessary measures to properly and adequately eradicate any such vermin or insects.
39. **No flags etc:** You shall not display or put on any part of the Land including the exterior of your Estate Home or accessory building or other improvements on the Land any hoardings, flags, advertising signs, or any notices, nameboards or name plates except those approved by the Design and Governance Committee.
40. **No Satellite dishes:** You shall not install or erect any satellite dishes or telecommunications apparatus on the Land or on the exterior of the Estate Home or other improvements on the Land without first obtaining the written consent of the Design and Governance Committee as to location and size.
41. **Don't rubbish:** You shall not allow rubbish or litter (including without limitation trees, grass, shrubs, clippings, chemical and plant water, metals or bulk material) to accumulate nor dispose of any other waste anywhere except into bins or receptacles stored in an enclosed structure screened from view for removal nor allow odours to emanate or escape from such bins or receptacles so as to be unsightly, cause offence or create a nuisance.
42. **Contain inflammable liquids:** You shall not store in or upon the Land any inflammable chemical liquid or gas or other inflammable material other than a reasonable amount of liquids gases or other materials used or intended to be used for domestic purposes only or which are stored as fuel in the tank of a motor vehicle or other internal combustion engine.
43. **Don't block drains:** You shall shall not use for any purpose other than for which they were constructed any toilet or other water apparatus or put in such toilet or water apparatus any, sweepings, rubbish bags or other unsuitable substance.
44. **Don't waste water:** You shall not waste any water or fail to ensure that any water taps on the Land are turned off after you use them.
45. **Park only in concealed areas:** You shall not park any car or other vehicle and store or leave any boat, trailer, boating equipment, or the like on the Land or on any part of the Wharekauhau Country Estate unless within a concealed area.
46. **Compatible alarm systems:** You shall not install an private alarm system which shall conflict or interfere with the central alarm system if installed on the Wharekauhau Country Estate.

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47. **No contamination:** You shall not cause any contamination to your Land or any part of the Wharekauhau Country Estate or discharge any noxious dangerous or offensive substances into or about the Land or any part of the Wharekauhau Country Estate.
48. **Fire hazards:** You shall not permit anything to be done or bring or keep anything on the Land or any improvements on the Land which may create a fire hazard.
49. **Farm gates:** You shall leave any farm gate in the same open or closed state you find it in.
50. **Don't disturb stock:** You shall not disturb or create a noise or a nuisance to any stock whether in paddocks or not or to any birds or wildlife.

PART F

RENTING YOUR ESTATE LOT OR ESTATE HOME

51. **Restrictions on renting Estate Homes:** You shall not lease, rent or grant any occupation rights over or in respect of the Land, Estate Home or any improvements on the Land to any person (unless a relative who shall be permitted to stay as of right) at any time without prior written permission of the Design and Governance Committee and then only on the basis that such occupation if approved does not exceed 6 months of continuous rented occupation and does not in any circumstances, in the reasonable opinion of the DGC, compete with the principal business of the Wharekauhau Lodge in encouraging guests to stay at the Wharekauhau Lodge and Cottages and that all restrictions and rules relevant to the Land are made known to such persons who must agree to abide fully by their terms, and the DGC will if required by the Estate arrange all such leasing, renting, tenancies or occupancies through the agency of the Estate upon such a basis as the DGC may reasonably require to ensure security and observance of the rules under this Code, the Encumbrance and the Land Covenants.

PART G

SELLING YOUR ESTATE LOT OR HOME

52. **No open day sales or auctions:** You shall not hold any open day sale (also known as open homes/houses) or auction sale on the Land.
53. **Advise address change:** On completion of any sale or other disposal of the Land to new owners immediately advise the Manager in writing of sufficient information such that the Manager is able to contact such new owners or their nominated legal advisors.

PART H

WHAREKAUHAU COUNTRY ESTATE LEVIES AND CHARGES

54. **Payment of annual Estate levies:** You shall duly and punctually pay all the County Estate levies imposed by Wharekauhau Country Estate at such times and in such manner as WCE may from time to time direct provided that such levies shall be the lesser of actual costs incurred or a maximum of \$500 per month plus GST (which maximum may be adjusted for inflation) as determined at the commencement of each fiscal year by the Design and Government Committee in order to meet and pay to WCE your reasonable share and proportion of Country Estate levies the following costs and expenditures reasonably incurred by the Estate plus any government tax imposed from time to time in respect of:

- garbage collection and disposal and recycling and costs and expenses associated with any effluent disposal regime adopted from time to time;
- administration and management charges which must not exceed at anytime 6% of the total annual levies imposed in any one fiscal year;
- water and sewage connection fees to the boundary of the Land;
- water and sewage catchment and reticulation and provision of facilities;
- road maintenance;
- landscape work and maintenance;
- provision of amenities associated with recreational pursuits.

The amount of such levies for Country Estate levies shall be determined as the Design and Governance Committee considers fair and reasonable in any event the DGC shall use its best efforts to ensure that minimal or no levies accrue to unsold residential lots within the Wharekauhau Country Estate and otherwise levies shall be due for payment to the Estate without deduction or set off on the 20th day of each month throughout each year following the posting of accounts to you or otherwise as the Estate may determine.

55. **Payment of Country Club levies:** Country Club special levies may be determined at the commencement of each fiscal year by the Wharekauhau Lodge in order to meet and pay to the Lodge for your use of Wharekauhau Lodge special recreational facilities such as swimming pool, spa, gymnasium, tennis facilities and other such facilities under payment conditions advised to you from time to time and subject to contract with the Lodge.

PART I

BREACHES AND REMEDIES

56. **Breach of the Code:** Unless the DGC has given written approval in any particular case to the contrary if there should be any breach or non-observance on your part of any of the rules contained in the Code or covenants contained in the Transfer and without prejudice to any other liability you may have to the Estate and any person or persons having the benefit of those covenants will upon written demand being made by the DGC or the Manager on behalf of the Estate and/or any of the registered proprietors of any of the Estate Lots:
- 56.1 pay to the Estate making such demand as liquidated damages the sum of \$100 per day; and/or
 - 56.2 upon receiving reasonable notice from the DGC or the Manager on behalf of the Estate remedy any breach if capable or remedy on terms and conditions imposed by the Estate which may involve being required to remove any structure or building material which breaches the terms of the Code or the covenants; and/or
 - 56.3 allow the Estate the right to lodge a caveat against the Land to protect the sum of any unpaid debt owing to the Estate or any registered proprietors of the Estate Lots claiming the benefit under this section on the basis that any unpaid debt shall be deemed to constitute a contractual charge over the Land owing to the Estate or any named registered proprietors of the Estate Lots until such time that any debt is fully discharged or otherwise satisfied.
57. **Indemnity:** You will at all times indemnify and keep the Estate and the registered proprietors of the Estate Lots indemnified from all losses, costs, claims and demands including from any fines or penalties involved as a result of any statutory breach by the Estate in respect of any breach or non-observance by the Estate of the covenants contained in the Transfer.
58. **Disputes:** Both owners and the Estate shall use your best endeavours to avoid disputes and they will actively, openly and in good faith discuss any dispute of difference arising out of this Code and the Encumbrance and/or the Land Covenants with a view to a speedy resolution. If any dispute remains unresolved then such dispute shall be referred to Expert determination based on the procedures set out in S.59 below. Any party may initiate the Expert determination by giving written notice to the other parties.
59. **Appointment of Expert:** The Expert, who must be a person with relevant experience having regard to the particular subject matter in dispute, shall be a person of agreed on by the disputing parties, but if the disputing parties cannot agree on one within 5 business days of the Expert determination having been initiated then the Expert shall be appointed by the President or his or her nominee from time to time being of the Wellington District Law Society or its successor whose decision shall be final and binding on the disputing parties.

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- 59.1 By accepting appointment the Expert confirms that the appointment does not give rise to any conflict which is likely to lead to a presumption of bias and agrees to comply with the requirements placed on an appointee by the section.
- 59.2 If the Expert fails to act , or is or becomes incapable of acting, or dies, then any party may give notice to the others requiring a replacement Expert to be appointed. In such a case the appointment process set out in S.59 is to be used. If necessary, this provision for the appointment of a replacement Expert may be used on more than one occasion.
60. **Written submissions:** Within 30 business days of the Expert's appointment the parties must each provide the Expert with written submissions and with any relevant supporting material. As soon as the Expert has received all of the submissions the parties must exchange submissions and will have a further 15 business days within which to make further written submission. The Expert must then begin their determination promptly.
61. **Expert to act as expert and not as arbitrator:** The Expert is to act as an expert and not as an arbitrator and accordingly the parties expect that the provisions of the Arbitration Act 1996 do not and shall not apply to the process. While being required to consider the written submissions of the parties and take them into account, the Expert may also rely on his or her own knowledge, skill and experience in relation to the matter in dispute, and make his or her own enquiries without reference to the parties.
62. **Procedure:** The Expert may arrange to meet with the parties either together or alone to discuss the dispute, require the parties to provide such evidence as he or she considers necessary to determine the dispute, establish procedures and a timetable for the conduct the determination, impose time constraints on the disputing parties, and determine whether the dispute should take place by telephone or video conference call of with disputing parties physically present in New Zealand at a time and place to be determined by the parties.
63. **The determination:** The Expert must give his or her determination as soon as practicable, and must give his or her determination in writing with reasons unless the parties mutually agree otherwise, and her or she may decide how the reasonable costs, fees and other expenses (including legal/client costs) of the parties in relation to the determination are to be borne. But, if the Expert makes no decision as to costs, the parties are to share them equally.

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FIRST SCHEDULE TO THE CODE

RESPONSIBILITIES OF THE ESTATE TO PROVIDE SERVICES FOR THE PAYMENT OF ESTATE LEVIES BY OWNERS

IN CONSIDERATION of Estate Lot Owners and Estate Home Owners entering into the Encumbrance with Wharekauhau Country Estate the Estate shall undertake to provide the following services and facilities and arrange payment of any reasonable charges incurred in order to protect and otherwise enhance the use and enjoyment of the Wharekauhau Country Estate by owners and their guests and ensure that the quality and integrity of the Wharekauhau Country Estate and the use and enjoyment by the owners and their guests is sustained throughout:

- road infrastructure, drainage and footways;
- common services for the provision of electricity, telephone, internet, sewage and water supply;
- the engaging of competent consultants, contractors, and tradespeople for the purpose of carrying out any works to common services to the Wharekauhau Lodge, the Cottages or other improvements within the Wharekauhau Country Estate;
- common amenities;
- payment of any rates, assessments, charges, or levies imposed on Wharekauhau Country Estate relevant to the use and enjoyment of the Wharekauhau Country Estate imposed on subdivisional lots, Wharekauhau Lodge and the Cottages;
- water and sewage catchment and rubbish collection or recycling of such;
- insurance cover of all improvements used or made available to the owners and their guests or otherwise for the benefit and security of such persons including adequate public liability cover;
- effluent treatment and disposal;
- water supply and reticulation;
- health and safety management programme including provision of fire prevention measures and evacuation procedures;
- general administrative and management necessary to provide the services required to maintain and enhance the objectives of the Wharekauhau Country Estate;
- discounts from discretionary charges by Wharekauhau County Estate from time to time on food services, purchases or other services as advised by the Manager;
- such other services required from time to time in order to maintain the good management and well being of the Wharekauhau Country Estate.

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SECOND SCHEDULE TO THE CODE

A TREATISE ON QUALITY IN DESIGN, MATERIALS, CONSTRUCTION, LANDSCAPING AND SUSTAINABILITY

THE PURPOSE of this Schedule is for the Design and Governance Committee to provide greater definition, clarity and perspective around the use of the word “quality” as it is referenced in the Code with regard to the complete construction process including design, the use of construction materials, physical construction, landscaping and a desire for sustainability within the Wharekauhau Country Estate zone structure.

DESIGN QUALITY

“(There is) widespread agreement that architectural quality is experienced when form, function and building techniques are brought together and implemented in a complete, artistic idea. Architecture of a high quality relates to the surroundings as a co-player or as a challenger. The architecture stresses, strengthens and interprets the cultural character and uniqueness of the surroundings.”

The Danish Architecture policy, *A Nation of Architecture Denmark* (2007)

All “surroundings” have a uniqueness, and in the context of the Wharekauhau County Estate this uniqueness applies to each individual Zone. Residential design must comply with the Design Guidelines appropriate for each Zone, and show relevance to that Zone. It must do so by being bespoke design, referencing the built environment within the Zone without resorting to all-out imitation, and should enhance the landscape and character within its unique Zone. In achieving this the design meets the goal of design quality.

MATERIAL QUALITY

There is a nexus between design quality and material quality. If an architect or designer is committed to a quality design, hence a quality project, they will undoubtedly look towards quality materials to be used within the project. Estate Lot Owners prepared to invest in a quality project will likely concur. Hence, it is not unreasonable to accept that a commitment to the use of quality materials will begin at the design phase and carry through to construction.

Material quality may refer to a certain type of material or technological production of a product. The design and hence the products used in a residential project on the Estate must to be connected to positive experiences (i.e good market perception¹) and be seen as valuable in the Zone's environment. Preference will always be given to such quality building materials: those that have a primarily positive market perception. If a material is

¹ The DGC defines without limitation “good/positive market perception” as the use of sustainably produced materials with a lowered carbon footprint over “whole of life”, as well as the use of sustainable plantation timber species.

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predominately used in a mass housing context, it may be inappropriate for widespread use as a primary material on the Estate. An example of this would be the use of fibre-cement cladding, decramastic roofing, or PVC guttering and down-spouting. These are inappropriate in the Wharekauhau context.

The DGC values what may be described as “honesty of materials”. It would permit the use of traditional timber weatherboards, but would not countenance steel or vinyl siding that is designed to look like timber weatherboards. These would be considered contrary to “positive market perception” and its usage would portray the Estate's built environment negatively.

CONSTRUCTION QUALITY

There is an aphorism in the building and construction industry that goes like this: "*Whilst perfection in any project is desirable, it is unattainable because the nearer one gets to perfection, the greater the likely cost to the client.*"

Therefore, within the industry, construction quality is concerned with defining the levels of acceptable imperfection or tolerances and assuring that the maximum standards are achieved within the fiscal constraints of the project.

While this quality/performance formula may suit the industry and an Estate Lot Owner, the Design and Governance Committee is more concerned with other issues that determine quality, from a totally different viewpoint. Quality as it relates to the relationships between the prime contractor and the architect/designer, between the prime contractor and the Estate and its rules, and the prime contractor and the sub-trades involved in the project are all far more important to the execution of what the DGC would deem a quality project than the cost of the project.

The DGC will only approve those prime contractors, to work within the Estate, who have a demonstrable track record of working successfully in the bespoke design environment with architects and designers, in order to ensure that the project proceeds in accordance with the plans, specifications and objective set out by the project design team. This can only be brought about by excellent quality control, quality supervision and project management and commitment to quality at all levels within the prime contractor organisation.

If a project has achieved design quality and quality materials have been used in accordance with manufacturers' specifications then there should be no reason to believe that from a technical perspective quality of the construction outcome will not be achieved if management practices are also based on principles of quality.

At another level, the respect shown by the prime contractor and sub-trades under its supervision towards the Estate's rules and covenants for such as the provision of ablution and waste disposal facilities, creation and maintenance of a tidy site, having respect for operating hours specific to the Estate, understanding the impact of wind on rubbish skips and ensuring they're covered, not burning rubbish on the site, recycling materials where they can, respecting the privacy of neighbours and Lodge guests as well as their right to no nuisance, minimising impact on roads and paths, and being aware of their obligations including that to complete the project on time, contribute to the quality of the project.

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LANDSCAPE QUALITY

While it is not necessary to employ a landscape architect or landscape gardener to undertake hard or soft landscaping on an Estate Lot, it is important that the DGC sees and understands an ELO's landscaping plans, both from a content and structural perspective, and ratifies these plans prior to construction.

In the Wharekahu context, mounds and berms are encouraged, as is mass planting of native plants, especially those endemic to the region. However, non-native plants may be used as they have been used in the wider Estate. The DGC will permit these to be up to 20% (by number) of the overall planting. This may include fruit and nut trees of other edible plantings for non-commercial purposes.

When considering the quality of a landscaping scheme, the DGC will look to how both the hard and soft landscaping relates to the Zone and coastal features, as well as how it compliments the residential design in providing privacy (from both the Lodge and neighbouring properties), and how its physical qualities or characteristics compliment its environment and how they contribute to an appreciation of the environment's pleasantness, aesthetic coherence, and cultural and recreational attributes (i.e. its amenity value).

The DGC encourages landscaping that integrates with neighbouring plantings, and that references adjacent farmland, Wharekahu Lodge plantings, or plantings within common Estate areas such as roadside verges.

SUSTAINABILITY

The DGC fully supports both the building of sustainable Estate Homes, and living sustainably on the Estate

Building Sustainability (from BRANZ)

Sustainability includes environmental, social and economic factors. A sustainable building meets social and cultural needs, ensures resources are equally available and causes no irreversible damage to the environment during its entire life cycle.

Building sustainably is about using practices and systems that lessen impact on the environment, lower running costs and make homes healthy, accessible and comfortable. It includes energy efficiency, the move to a net zero-carbon economy and building resilience against hazards such as earthquakes, storms and flooding.

Other Points of Contact for Sustainable Building

New Zealand Green Building Council – Greenstar and Homestar Ratings.