

Form 26

Covenant instrument to note land covenant

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

Covenantor

Everlasting Developments Limited

Covenantee

Everlasting Developments 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

Schedule, if required

Continue in additional Annexure

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land covenant	DP XXXXX	Lots 1–42 DP [insert on deposit] ([insert RTs on issue])	Lots 1–42 DP [insert on deposit] ([insert RTs on issue])
Land covenant	DP XXXXXXXX	Lots 1–42 DP [insert on deposit] ([insert RTs on issue])	In gross

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

ANNEXURE SCHEDULE 1

Land Covenant

1. General

- 1.1. The Covenantor and the Covenantee have agreed to the creation of land covenants for the benefit of the Totara Subdivision at 115 Amberley Beach Road, Amberley. To achieve this the Covenantor

hereby covenants with the Covenantee, as registered proprietors, as set out below and requests that such covenants be noted against each of the titles having the benefit and those having the burden of these covenants.

- 1.2. These covenants shall:
 - 1.2.1. Burden and run with each of the Records of Title listed as Burdened Land in Schedule A;
 - 1.2.2. Be for the benefit of and appurtenant to each of the Records of Title listed as Benefited Land in Schedule A; and
 - 1.2.3. Be for the benefit of the Covenantee in Gross as referred to in Schedule A.
- 1.3. The covenants in this instrument will immediately cease to apply to any Land (or part thereof) which is intended to vest in the Crown, or any territorial authority, as a road or reserve, upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand.

2. Interpretation

- 2.1. For the purpose of these covenants:
 - 2.1.1. "Allow" includes to do, facilitate, permit and suffer.
 - 2.1.2. "Land" and "Lot" means any Lot having the burden and/or the benefit of these covenants as described in clause 1.2 above.
 - 2.1.3. "Subdivision" means the Totara Subdivision being the lots described in the survey plan deposited for the subdivision of Lot 1 DP 565960 (RT 1011940).
 - 2.1.4. "Developer" means Everlasting Developments Limited, or its nominee or successor appointed in writing.
 - 2.1.5. "Design Guide" means the Totara Subdivision Design Guide prepared by or on behalf of the Developer, as amended from time to time.
 - 2.1.6. "Covenantor" means the registered owner of a Lot from time to time.

3. Land Covenants

- 3.1. This covenant binds each Lot within the Totara Subdivision and benefits all other Lots within the subdivision and the Developer in gross.
- 3.2. The Developer may, in its sole discretion, release or vary this covenant in respect of any one or more Lots without affecting its application to any other Lot. For the avoidance of doubt, any consent, approval, waiver, or dispensation required from or granted by the Developer under this covenant may be given or withheld in the Developer's sole and absolute discretion, without any obligation to give reasons. The Developer may grant different consents or approvals to different Lot owners on different terms, and any approval or waiver granted to one Lot owner shall not create a precedent, obligation, or entitlement in favour of any other Lot owner. discretion to treat Lot owners differently from one another, including in respect of approvals, waivers, dispensations, and enforcement.
- 3.3. No building work (including any new dwelling, addition, alteration, outbuilding, or structure) may commence on any Lot until the Developer has approved in writing:
 - 3.3.1. the site plan, compliant with the Totara Subdivision Design Guide;
 - 3.3.2. floor plans;
 - 3.3.3. landscaping plans;
 - 3.3.4. elevations;
 - 3.3.5. external materials and colours; and
 - 3.3.6. all required statutory consents and building consents have been obtained. No building consents shall be applied for prior to the Developer's approval being obtained.
- 3.4. Where the boundaries of Lots 17, 20, 29 and 30 adjoin the walkway (part Lot 101) and the local purpose reserve (Lot 100), open pool style fencing, with a maximum height of 1.2 meters is to be

- used. These boundaries should also include a mowing strip where the boundary adjoins a grassed reserve area.
- 3.5. Any fencing on the boundary of Lots 1-2, 27-30 and 39 with Double Corner Road shall be open style timber post and rail fencing with a maximum height of 1.2 metres.
 - 3.6. Any fencing on the boundary of Lots 20, 24, 26, 27, 40 and 42 with Amberley Beach Road shall be open style timber post and rail fencing with a maximum height of 1.2 metres.
 - 3.7. No dwelling shall be smaller than 100m² gross floor area including garages, decks, porches or similar areas.
 - 3.8. All dwellings must:
 - 3.8.1. be new construction (no relocated or second-hand dwellings unless approved in writing by the Developer);
 - 3.8.2. be completed in a proper and workmanlike manner;
 - 3.8.3. comply with the Building Act 2004 and all applicable legislation; and
 - 3.8.4. obtain a Code Compliance Certificate prior to occupation.
 - 3.9. All construction works shall proceed in accordance with the construction noise standard NZS 6803:1999 "Acoustics- Construction Noise". Hours of operation for construction activities shall be limited to 7am to 7pm Monday to Saturday (excluding public holidays).
 - 3.10. Each Lot may only be used for residential purposes.
 - 3.11. No temporary dwelling, caravan, motorhome, container home, or similar structure may be used for residential occupation on any Lot unless expressly approved in writing by the Developer.
 - 3.12. The Covenantor must not:
 - 3.12.1. conduct any commercial or industrial activity visible from the road or from any other Lot;
 - 3.12.2. allow the dwelling or land to fall into visible disrepair; or
 - 3.12.3. permit uncontrolled stormwater discharge onto any other Lot or road.
 - 3.13. Boats, caravans, trailers, motorhomes, commercial vehicles, and similar items must not be stored forward of the front building line unless screened from view and approved in writing by the Developer. Everyday passenger vehicles are permitted.
 - 3.14. Each Lot must be kept tidy and free from:
 - 3.14.1. accumulated rubbish;
 - 3.14.2. noxious weeds;
 - 3.14.3. offensive materials; and
 - 3.14.4. anything likely to cause nuisance to neighbouring owners.
 - 3.15. Grass and landscaping must be maintained to a reasonable residential standard.
 - 3.16. Trees planted by any person other than the Developer shall not exceed a height of 1.8 meters.
 - 3.17. No livestock may be kept on any Lot. The covenantor may keep up to two domestic pets (cats or dogs) provided that they do not cause a nuisance to other owners within the development. No aggressive or dangerous dog breeds may be kept on the Lot. This includes Japanese Tosa, American Pit Bull Terrier and Brazilian Fila, and any other dog breed classified as dangerous or menacing by the Hurunui District Council.
 - 3.18. No commercial signage may be displayed on any Lot or attached to any fence without prior written approval from the Developer. The Developer may approve such signage on a case-by-case basis, in their sole discretion.
 - 3.19. The covenantor, shall not, without previous written approval from the Developer, alter or damage the existing stormwater connections and services located either on the lot, or within the development. Where damage is solely caused by one registered proprietor, that registered proprietor will be liable for all costs incurred to remedy the damage.

3.20. Lots 1-14 will be subject to a 'no complaints' covenant as it relates to reverse sensitivity effects from the Proseed business located at 177 Amberley Beach Road. The specific wording for this will be provided by the Council prior to the titles issuing.

3.21. Lots 17, 20, 29 and 30 will be subject to a fencing covenant in favour of the Hurunui District Council outlining that the Council will not be liable for any fencing costs (including maintenance costs) for fences where they adjoin the walkway (part Lot 101) and local purpose (drainage) reserve (Lot 100). The specific wording for this will be provided by the Council subject to the titles issuing.

4. Enforcement

4.1. The Developer may enforce these covenants in the same manner as a Covenantor and in particular where a Covenantor does not comply with any covenant, the Developer may request such Covenantor in writing to remedy such non-compliance within a specified time (not to be less than 14 days from the date of such request). At the end of the specified time and, where the Covenantor remains in default in remedying such non-compliance, the Developer may employ a suitably qualified or experienced person to enter such Lot and carry out work necessary to achieve compliance with the covenant(s) involved and may recover as a debt due from the defaulting Covenantor with all costs incurred by the Developer in such remedial work.

4.2. The Developer shall not be liable for any breaches of the covenants nor shall the Developer be required or obliged to enforce all or any of the covenants, stipulations and restrictions contained in these covenants nor be liable for any breach by any of the Covenantors from time to time. The Developer shall not have any legal responsibility or liability for any lack of enforcement or enforceability or application of any of these covenants. The Developer will not be required to monitor compliance with these covenants on an ongoing basis. The Lot owners agree to keep the Developer fully indemnified from any claim, liability, loss or action arising against it or its agents in respect of these covenants, having regard to their intent to provide for the interests of Lot owners inter se and their individual obligations of observance and rights of enforcement of the covenants.

5. Disputes

5.1. If any dispute arises between or among the parties concerning these covenants and if the dispute is not resolved by negotiation within 20 working days, then the parties shall submit the dispute to arbitration by an independent arbitrator appointed jointly by the parties or in the absence of agreement appointed by the Branch President for the time being of the Canterbury Branch of the New Zealand Law Society.

5.2. Nothing in clause 5.1 prevents Everlasting Developments Limited from seeking urgent injunctive or other equitable relief from a court at any time.

6. Breach

6.1. If there shall be any breach or non-observance on the Covenantor's part of any of the covenants herein, the Covenantor will upon written demand being made by the Covenantant:

6.1.1. Remove from the Burdened Land any such thing, or cease any activity on the Burdened Land, that is causing the breach or non-observance of these covenants or do any other such act that is required to remedy the breach or non-observance of these covenants within 10 working days; and

6.1.2. Pay to the Covenantant making such demand as liquidated damages the sum of \$150.00 per day for every day that such breach or non-observance of these covenants continues after the date upon which written demand is made.

7. Expiry

7.1. These covenants will remain in force for twenty (20) years from the date of registration.