

Form 26

Covenant Instrument to note land covenant

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

Covenantor

Linton Land Limited

Covenantee

Linton Land 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

Continue in additional Annexure Schedule, if required

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant	[tbc]	Record of Title [tbc]	Record of Title [tbc]

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 Schedule].

Annexure Schedule

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2009/5043EF
APPROVED
Registrar-General of
Land

Insert instrument type

Land Covenant

Continue in additional Annexure Schedule, if required

The Covenants created are as follows:

The Covenantee wishes to establish restrictive covenants over Lots 1 to 10 on DP [tbc] being the land comprised and described in the Records of Title previously detailed in Schedule A to the intent that the respective registered proprietors or occupiers of the Burdened Land and their successors in title (unless otherwise expressly stated in this document) shall be bound by the stipulations and restrictions set out in Schedule B hereto for the benefit of the Benefited Land and their successors in title (unless otherwise expressly stated in this document) and that the respective registered proprietors and occupiers of the Benefited Land may be able to enforce the observance of these stipulations and restrictions at any time throughout the duration of the covenants.

Schedule B

Definitions and Interpretation

A. Definitions: In this covenant, unless the context requires otherwise, terms defined in the introduction have the defined meaning throughout this covenant, and:

“**Developer**” means Linton Land Limited or its nominee.

“**Development**” means the development of the Benefited Land to result in the “Linton” subdivision, including any future stages of that development.

“**Covenantee**” means the registered proprietors of the Benefited Land as set out in Schedule A and includes their successors in title (or any part thereof).

“**Covenantor**” means the registered proprietors of the Burdened Land as set out in Schedule A and includes their successors in title (or any part thereof).

“**Lot**” means any of Lots 1 to 10 (inclusive) on deposited plan [tbc] comprising the Burdened Land as set out in Schedule A.

B. Interpretation:

Joint and Several Obligations: Where two or more persons are bound by a provision in this covenant that provision will bind those persons jointly and each of them severally.

1. Approval Process for Buildings and Site Development

The Covenantor **SHALL**:

- 1.1 Not erect on any Lot any dwelling house or other building or undertake any alterations or additions to any dwelling house or other building unless the plans (including site plans and fencing plans) and specifications have first been submitted to and have been approved in writing by the Developer **prior** to obtaining any necessary consent from the local authority. In considering such approval, the Developer, may take into account such of the following matters relating to the dwelling house and accessory buildings and other buildings as they, in their sole discretion, consider appropriate;

- 1.1.1 Height;
- 1.1.2 Siting on the Lot;
- 1.1.3 External design (including cladding);
- 1.1.4 The relevance of the aforementioned height, siting and external design to the natural light, view and privacy for adjacent properties;
- 1.1.5 Architectural design;
- 1.1.6 Exterior lighting;
- 1.1.7 Letterbox design;
- 1.1.8 Fencing design;
- 1.1.9 Landscaping design;
- 1.1.10 Driveway (as to design and location); and
- 1.1.11 The keeping of any design with the ethos of the wider Development.

Any decision regarding approval or non-approval of any plans and specifications shall be made at the sole and absolute discretion of the Developer.

- 1.2 Ensure that a dwelling house built on any Lot shall have a minimum floor area of no less than 180m² (inclusive of any garage under the same roof structure) unless otherwise approved in writing by the Developer.
- 1.3 Complete all construction works required to complete the dwelling house on any Lot, including any required painting or staining of exterior surfaces within a period of eighteen (18) months from the date a Building Consent from the local authority is obtained for the dwelling house in respect of the Lot, unless the prior written approval of the Developer is obtained.

2. Fencing Provisions

The Covenantor **SHALL NOT**:

- 2.1 Construct any fence on or within the boundary of any Lot using corrugated iron, zincalume, plywood sheeting or any untextured flat fibre cement sheeting or untextured product known as or similar to fibrolite, hardiflex or hardiplank, without first obtaining the prior written approval of the Developer.
- 2.2 Construct a paling fence on or within the boundary of the Lot that exceeds 1800mm in height (excluding any hedgerows existing at the date of registration of these Covenants).
- 2.3 The Developer shall not be liable to pay for or contribute towards the construction or maintenance of any fence between any Lot and any contiguous land owned by the Developer, but this covenant shall not endure for the benefit of any subsequent owner of the contiguous land or any part thereof.

3. Landscaping Provisions

The Covenantor **SHALL**:

- 3.1 At all times keep the Lot well maintained and in a neat and tidy condition, including the grounds, lawns, gardens and frontage to the Lot; and
- 3.2 In relation to any existing or new hedgerows, or shelterbelts, not allow the highest point of such hedges, or, shelterbelts to grow to a height exceeding ten (10) metres above natural ground level, unless otherwise approved in writing by the Developer.

- 3.3 Have all landscaping on its Lot completed within 18 months from the date the Code Compliance Certificate issues for a dwelling on its Lot.

4. General Covenants

The Covenantor **SHALL NOT**:

- 4.1 Use any Lot for any primary purpose other than for residential occupation.
- 4.2 Erect, transport or place upon any Lot any second-hand kitset home, second hand home or second-hand relocatable building (other than builder's sheds, which may remain on the Lot only during construction of the dwelling house on the Lot).
- 4.3 Construct or place on any Lot or permit to be on any Lot any caravan, hut, mobile home (e.g. tiny home) or other structure for any kind of permanent or temporary residential use, without first obtaining the prior written approval of the Developer. If and only if the prior written approval of the Developer is obtained, the Covenantor may use a caravan, shed, motorhome or other mobile vehicle for temporary residential use while the Covenantor constructs a dwelling, provided that such temporary use does not to exceed a period of 18 months following the date of commencement of the construction of the principal dwelling house on the Lot.
- 4.4 Permit or suffer any rubbish, noxious substances, noxious weeds, and/or birds or animals likely to cause nuisance or annoyance to the neighbouring occupiers, to accumulate and/or be placed upon the Lot, or permit grass and/or weeds to grow to such height so as to become unsightly on the Lot (as determined by the Developer);
- 4.5 Permit or suffer any birds or animals likely to cause nuisance or annoyance to the neighbouring occupiers, to be kept on the Lot for any duration.
- 4.6 Further subdivide any Lot or agree to grant or register on any Lot further easements, including rights of way, without the prior written approval of the Developer.
- 4.7 Use any part of the Lot as a hostel, boarding house, lodge or brothel.
- 4.8 Use any part of the Lot as a commercial kennel or cattery.
- 4.9 Use any part of the Lot for the purposes of a contractor's depot, junk yard, metal or scrap metal yard (including storage of car bodies). The storage of trucks and diggers or similar equipment for small business owners may be permitted, but only where the Developer has given its prior written approval of the same.
- 4.10 Use any part of the Lot for any type of factory farming. For the purpose of this clause, "factory farming" means a farm unit of production in which the process is carried out largely indoors or in a restricted space and which is not dependent on the soil characteristics of the site on which it is situated and includes (but without limitation) poultry farms, pig farms, rabbit farms, mushroom farms and feed lots for commercial livestock such as cattle (however, glasshouses and nurseries for pot plants or other grown plants or shrubs are specifically excluded from the definition of "factory farming").
- 4.11 Operate or use vehicles or machinery or operate any activities that are likely to cause excessive noise and / or otherwise be a nuisance to neighbouring properties.
- 4.12 Construct or establish a motocross or motorcycle track or racetrack on the Lot, but this shall not restrict or limit normal farm motorcycle use or restrict children from the use of a motocross or motorcycle track for purely recreational purposes.
- 4.13 Allow any contractor's equipment to be stored anywhere on the Lot unless it is stored inside a garage, shed, carport or screened so as to not be visible from any neighbouring properties. However, this clause shall not apply to work vehicle(s) (e.g. work ute) owned or operated by the Covenantor or occupiers of any dwelling on the Lot or their tenants, invitees and agents which may be parked outside.

- 4.14 Carry out or permit to be carried out on the Lot any activity which is not classified as a permitted activity under the then operative Waimakariri District Council district plan.
- 4.15 Either, personally or through any agent or employee:
- 4.15.1 at any time directly or indirectly, lodge or support in any way any objection, submission or application (including, without limitation, taking part in any hearing, appeal or reference) against the Development;
 - 4.15.2 make any demand for damages, costs or expenses, bring any legal action in nuisance or any other action in law or claim any liability arising out of or from the Development, provided that the Development is carried out in compliance with all relevant laws;
 - 4.15.3 do or permit to be done any act, matter or thing intended to restrict or inhibit, or which has the effect or restricting or inhibiting, the Development, provided the Development is being carried out in compliance with all relevant laws; and
 - 4.15.4 aid, abet, counsel or procure any other person or entity to exercise any of the actions or matters which are restricted under this clause 4.15.

5. **Enforcement**

- 5.1 All Covenants set out in clause 1 hereof shall expire on the date that the Developer ceases to be a registered company on the New Zealand Companies Register. Otherwise, all remaining covenants herein shall expire 15 years after the date of registration of these covenants. For the avoidance of doubt, these expiry dates shall not apply to any breach or alleged breach of these covenants that is in existence prior to the applicable expiry date.
- 5.2 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 the Covenantor's Lot and carry out all work necessary to achieve compliance with the covenant(s) in breach and may recover as a debt due from the defaulting Covenantor all costs incurred by the Developer in such remedial work.
- 5.3 The Developer shall not be liable for any breaches of these 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 any alleged breach or non-observance by any Lot owner 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. For the avoidance of doubt, the Developer shall not enforce this indemnity against any Lot owner who is not alleged to be in breach of these covenants.
- 5.4 If there should be any breach or non-observance of any of the foregoing covenants and without prejudice to any other liability which the Covenantor may have to any person having the benefit of these covenants, the Covenantor will upon written demand being made by the Developer or any or all of the Covenantees having the benefit of these covenants:
- 5.4.1 Pay to the person making such demand as liquidated damages the sum of NZ\$200.00 per day for every day that such breach or non-observance continues after the date upon which written demand is made or a sum equal to the cost of rectifying such breach or non-observance whichever is the greater; and

- 5.4.2 Remove or cause to be removed from the Lot any dwelling house, garage, building or other structure erected or placed on or adjacent to the Lot in breach or non-observance of the foregoing covenants; and
- 5.4.3 Replace any building materials used in breach or non-observances of the foregoing covenants; and
- 5.4.4 Cause any activity on the Lot which contravenes the covenants to immediately cease.

6. Dispute Resolution

- 6.1 In relation to any matter concerning these covenants that require the approval of the Developer, any decision taken by the Developer shall be considered to be final and binding. Should any dispute arise that does not require Developer approval, then clauses 6.2 and 6.3 shall apply.
- 6.2 Subject to clause 6.1, should any dispute arise concerning any aspects of these covenants that cannot be resolved by agreement between the parties involved, any party may service written notice on the other parties referring the dispute to mediation, and the following provisions shall apply:
 - 6.2.1 The mediator should be agreed between the parties. However, if the parties cannot agree on a mediator within five (5) working days of the matter being referred to mediation, then a mediator must be appointed by the President of the Arbitrators and Mediators Institute of New Zealand (or any successor organisation).
 - 6.2.2 If no resolution has been reached by mediation within twenty (20) working days after the request for mediation, or within such further time as the parties may agree, then either party may refer the dispute to arbitration in accordance with clause 6.3.
- 6.3 Subject to the processes and timeframes referred to in clause 6.2 having been observed and performed, any party may, by written notice to the other parties, request that the dispute be referred to arbitration in accordance with the Arbitration Act 1996, and the following provisions shall apply:
 - 6.3.1 The arbitrator should be agreed between the parties. However, if the parties cannot agree on the appointment of a single arbitrator within five (5) working days after the matter being referred to arbitration, then an arbitrator shall be appointed by the President for the time being of the Canterbury District Law Society (or any successor organisation) as the sole arbitrator.
 - 6.3.2 The arbitrator shall determine all questions in issue between the parties including questions as to the scope of the dispute and as to procedure.
 - 6.3.3 The arbitrator's award shall be binding on all parties to the dispute.