

## Easement instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

**Grantor**

**CLUTHA DISTRICT COUNCIL**

**Grantee**

**CLUTHA DISTRICT COUNCIL**

**Grant of Easement or *Profit à prendre* or Creation of Covenant**

**The Grantor** being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** 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 (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Land Covenant		Lots 1 – 52 DP 505670 CFR 763979, 763980, 763981, 763982, 763983, 763984, 763985, 763986, 763987, 763988, 763989, 763990, 763991, 763992, 763993, 763994, 763995, 763996, 763997, 763998, 763999, 764000, 764001, 764002, 764003, 764004, 764005, 764006, 764007, 764008, 764009, 764010, 764011, 764012, 764013, 764014, 764015, 764016, 764017, 764018, 764019, 764020, 764021, 764022, 764023, 764024, 764025, 764026, 764027, 764028, 764029, 764030, 764039, 764040, 764041, 764042, 764043, 764044	Lots 1 – 52 DP 505670 CFR 763979, 763980, 763981, 763982, 763983, 763984, 763985, 763986, 763987, 763988, 763989, 763990, 763991, 763992, 763993, 763994, 763995, 763996, 763997, 763998, 763999, 764000, 764001, 764002, 764003, 764004, 764005, 764006, 764007, 764008, 764009, 764010, 764011, 764012, 764013, 764014, 764015, 764016, 764017, 764018, 764019, 764020, 764021, 764022, 764023, 764024, 764025, 764026, 764027, 764028, 764029, 764030, 764039, 764040, 764041, 764042, 764043, 764044

**Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)**

*Delete phrases in [ ] and insert memorandum number as required; continue in additional Annexure Schedule, if required*

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby **[varied]** **[negatived]** **[added to]** or **[substituted]** by:

~~[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952]~~

[the provisions set out in Annexure Schedule ]

**Covenant provisions**

*Delete phrases in [ ] and insert Memorandum number as require; continue in additional Annexure Schedule, if required*

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952]~~

[Annexure Schedule ]

*Insert instrument type*

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*Continuation of “Covenant Provisions”*

The servient tenement shall be bound by the restriction set out below (“the Restriction”) and any registered proprietor for the time being of the dominant tenement may enforce the observance of the Restriction against the registered proprietor for the time being of the servient tenement WITH THE INTENT that the Restriction shall forever run with the servient tenement for the benefit of the dominant tenement.

**Restrictions**

**1. Definitions**

1.1 For the purpose of this Land covenant the following terms have the following meanings:

“Building” means any structure other than:

- (a) a fence or wall less than 1 metre in height above Ground Level; or
- (b) any other structure less than 5 square metres in area and less than 1 metre in height above Ground Level.

“Dwelling” means a building or group of buildings designed and occupied as a self-contained household unit and includes normal accessory structures such as a garage, garden shed, glasshouse etc

“Ground Level” means the finished ground level of a Lot as at the date of deposit of the plan of subdivision creating that Lot.

“Lot” means a residential Lot created by the subdivision of Certificate of Title 50756 as detailed in Deposited Plan 505670 (excluding Lots 53-60)

“Lot Owner” means the registered proprietor(s) of a Lot and any tenant, lessee, licensee, visitor or invitee or a Lot Owner as well as any successor in Title

“Visual Permeability” means a structure or vegetation which will not obscure vision or light penetration beyond the percentage identified. For example visual permeability of 60% means that the structure has gaps that are transparent and the gaps cover at least 60% of the vertical surface of the structure.

1.2 For the purpose of this Land Covenant a covenant to do something is also a covenant to permit or cause that thing to be done, and a covenant not to do something is also a covenant not to permit or cause that thing to be done

**2. Scope**

2.1 The following covenants shall apply to Lot Owners and all Lots.

**3. Approval of Plan Specifications**

3.1 The Lot Owner will not commence any work unless the Lot Owner has;

- (a) First provided to the Grantor a good copy of the plans and specifications proposed to be lodged with the Council for the new dwelling including proposed drainage and sewage plans and

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(b) Obtained from the Grantor written approval of the plans and specifications.

3.2 The Grantor's approval will not be withheld if the Lot Owner has complied with all covenants

3.3 The Lot Owner shall not deviate from the plans and specifications approved by the Grantor without the Grantor's approval.

#### **4. Building Controls**

4.1 A Lot Owner must not:

(a) Erect, construct or place any second hand relocated Building on a Lot.

(b) Erect, construct or place a re-locatable Building on a Lot or have transported on to a Lot any re-locatable Building in substantially built up form unless that re-locatable Building is new and will be used as a Dwelling.

4.2 The cladding and exterior finish on all buildings including the dwelling shall be of a natural colour. The Grantor does not maintain a palette of acceptable colours. The guiding principle is that the colour should blend with the surrounding architecture, including neighbouring homes, and the natural landscape. A range of pastel colours is acceptable, with preference given to earth tones, off-whites, greys, and various shades of brown. All colours should be muted and sharp contrasts avoided.

4.3 When a lot owner elects to build a dwelling on a lot the following formula shall be adhered to:

(a) a minimum build cost of \$1,600 per square metre

#### **5. Fencing**

5.1 The Grantor shall not be liable to contribute towards the cost of or assist in the erection or maintenance of any boundary or dividing fence between any Lot sold and any adjoining Lot owned or occupied by the Grantor but this proviso is intended for the benefit of the Grantor only and shall not endure for the benefit of any other person or persons and that all Lot Owners agree to be bound by the terms of a fencing covenant as described in Section 2 of the Fencing Act 1979 as though such a covenant was registered against each Lot.

5.2 No fence shall be constructed over 1.2 metres high on the street boundary or within the first 3 metres from the street boundary .

5.3 Subject to clause 5.4 where applicable, the northern boundary fences of Lots 11 and 33 and the southern boundary fences of Lots 12 and 32 if higher than 1.2 metres must have 60% or greater visual permeability for that part of the fences higher than 1.2 metres. The Lot Owner is prohibited from creating a gateway into a reserve or public track.

5.4 Boundary fences for residential Lots bounding the gully (north western boundary of Lot 33, and the boundaries of Lots 35, and 36,) shall have fences no higher than 1.6 metres.

#### **6. Landscaping**

6.1 When developing the garden or plantings on the Lot the Lot Owner shall be forbidden from planting any tree or other plant inside the first three (3) metres from the road boundary where the trees and plantings grow higher than 1.2 metres and the total visual permeability of the trees and plantings above 1.2 metres once mature has a visual permeability of less than 60%.

6.2 Notwithstanding any other provision of this covenant Lot Owners may plant a Kowhai tree within 3 metres of the road boundary.

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6.3 The owners of Lot 61 shall permit access to their Lot in order for the agents of the Clutha District Council to plant out the area affected by the Land Management Plan. After the area is planted it shall be the Lot owner’s responsibility to maintain these plantings to a reasonable standard in the context of the roading streetscape as laid out by the aforementioned Landscape Management Plan. For the avoidance of doubt the Clutha District Council shall have the right to enforce this clause against the affected Lot owner.

**7. Other Covenants**

- 7.1 The Lot Owner shall be prohibited from using the first three (3) metres of the Lot to store material other than a registered vehicle, visible from the road, aside from during the construction of the dwelling itself.
- 7.2 Those parts of Lots 61, 62, 65 and 66 that front Johnston Road are excluded from Clauses 5.2, 6.1 and 7.1.
- 7.3 Lots 61 and 62 are adjacent to Johnston Road which is an unsealed road. As such the Grantor covenants not to issue complaints or legal challenges of any kind whatsoever relating to the usage of Johnston Road such as, but in no way limited to:
  - a. Noise
  - b. Creation of Dust

**To Registrar General of Land**

**Please note this Covenant against the Certificate of Title for the Dominant Tenement**

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Solicitor for the Grantor