

# View Instrument Details



**Instrument No** 12704577.9  
**Status** Registered  
**Date & Time Lodged** 13 May 2024 13:48  
**Lodged By** Perkins, Natalie Louise  
**Instrument Type** Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Affected Records of Title	Land District
1122789	Otago
1122790	Otago
1122791	Otago
1122792	Otago
1122793	Otago
1122794	Otago
1122795	Otago
1122796	Otago
1122797	Otago
1122801	Otago
1122802	Otago
1122803	Otago
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1122825	Otago
1122826	Otago
1122827	Otago
1122828	Otago

**Annexure Schedule** Contains 6 Pages.

## Covenantor Certifications

I certify that I have the authority to act for the Covenantor and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

**Signature**

Signed by Jeremy Charles Callander as Covenantor Representative on 13/05/2024 10:22 AM

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**Covantee Certifications**

I certify that I have the authority to act for the Covantee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

**Signature**

Signed by Jeremy Charles Callander as Covantee Representative on 13/05/2024 10:23 AM

**\*\*\* End of Report \*\*\***

Form 26

**Covenant instrument to note land covenant**

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

**Covenantor**

THISWAYUP DEVELOPMENT LIMITED

**Covenantee**

THISWAYUP DEVELOPMENT 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**

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant		Record of Title 1122801 to 1122811 (inclusive) & 1122814 to 1122828 (inclusive) & 1122789 to 1122797 (inclusive)	Record of Title 1122801 to 1122811 (inclusive) & 1122814 to 1122828 (inclusive) & 1122789 to 1122797 (inclusive)

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

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

**Schedule B**

**SPRINGWELL RISE DEVELOPMENT LAND COVENANTS**

**1. Introduction**

- a. The Developer is subdividing the Subdivision Land, in a development known as ‘Springwell Rise’.
- b. To ensure the newly created Lots remain a modern, high-quality subdivision, the Developer intends all owners of the Lots to be subject to the Covenants set out in this instrument.

**2. Definitions**

In this document:

- a. “Accessory Building” means a building within a Lot other than a Dwelling, which is ancillary or subordinate to a Dwelling or to an intended Dwelling.
- b. “Balance Land” means the land, if any, remaining from time to time in the name of the Developer that forms part of Lot 2 Deposited Plan 506894 (originally within Record of Title 768807), other than the Subdivision Land.

- c. "Benefited Land" means the land shown on Schedule A on the front page of this instrument as the Benefited Land.
- d. "Burdened Land" means the land shown on Schedule A on the front page of this instrument as the Burdened Land.
- e. "Construction Commencement Date" means the date on which construction of a Dwelling and/or Accessory Buildings started for the purposes of the construction timelines mandated in clause 4 hereof.
- f. "Council" means the Clutha District Council or its successor.
- g. "Covenantee" means the owner of all or any part or parts of the Benefited Land from time to time, and also includes the Developer and its assigns.
- h. "Covenantor" means the owner or owners of all or any part or parts of the Burdened Land from time to time, and each of the Lot Owners. The expression "Covenantor's Lot" means the Lot or Lots owned by any particular Covenantor from time to time. If any lot is owned by more than one owner, then the liability of the said owners as a Covenantor shall be joint and several.
- i. "Covenants" means the covenants set out in this instrument.
- j. "The Developer" means ThisWayUp Development Limited, or any other company or person to which the Developer may delegate or assign its rights and powers (in gross) under this instrument.
- k. "Developer's Consent" means the consent of the Developer in writing to do something on or in relation to a Lot which would otherwise be prohibited by these Covenants. Where the Developer's Consent is provided for in this instrument, it is intended that the Developer will have an unfettered discretion to give or withhold consent, and the Developer's decision will be final.
- l. "Dwelling" means a single self-contained household unit comprising a house with a kitchen, and including any garage or carport connected to the house. Where there is more than one kitchen on any one Lot, there shall be deemed to be more than one Dwelling on the Lot, unless both kitchens are contained within or under the roofline of the same house and the additional kitchen is permitted by Council and the District Plan.
- m. "Fence" includes a row planting such as a hedge which performs the same purpose.
- n. "Front Fence" means, in relation to a Lot, a Fence on the Front Yard of the Lot and/or that acts as a barrier between the Lot and a road.
- o. "Front Yard" means in relation to a Lot which is bounded by a road, the area within a Lot between the road and a line extending across the full width of the Lot (from side boundary to side boundary) along the elevation of the Dwelling erected on the Lot, and where a Lot is a corner Lot and bounded on more than one side by a road, then the 'Front Yard' of such Lot means the sum total of all areas within the Lot that would be captured by the definition.
- p. "Ground Level" means the ground level of the relevant land as at the date of registration of this instrument.
- q. "Lot" means an individual parcel of land within the Subdivision Land, and each of the parcels listed by reference to their respective Records of Title in Schedule A on the front page of this instrument as 'Burdened Land' and/or 'Benefited Land' comprise separate Lots.
- r. "Lot Owner" means, in relation to a Lot, the owner of that Lot.
- s. "Improvements" means and includes, in relation to any Lot, any Dwelling and/or Accessory Building on the Lot, any fencing on or surrounding the Lot, and also includes (without limitation) any paths, landscaping, and plantings on the Lot.
- t. "Permitted Roof Colours" means, per Coloursteel – 'Ebony', 'Flaxpod', or 'Windsor Grey', and per Diamond – 'Black' or 'Windsor Grey'
- u. a "Purchaser" means a Lot Owner, whether the Lot Owner acquires the Lot from the Developer or from any other owner, and the 'Purchaser's covenants' in clauses 4 to 5 herein relate specifically to the obligations imposed on Lot Owners in respect of the initial construction and/or completion of a Dwelling.
- v. "Side Fence" means, in relation to a Lot, a Fence that runs along the side or rear boundary of the Lot, but excludes a Front Fence.

- w. to "Subdivide a Lot" has the same meaning as the term 'subdivide land' under Section 218(1) of the Resource Management Act 1991, with the necessary changes.
- x. "Subdivision Land" means all land shown on Schedule A on the front page of this instrument as the Benefited Land.

### 3. General Covenants

The Covenantor covenants and agrees:

- a. to observe and perform all Covenants in relation to the Covenantor's Lot at all times; and
- b. to ensure that all occupiers, employees, contractors, and invitees of the Covenantor and anyone or thing that is present on the Covenantor's Lot or who is under the control of, or who is present or who acts at the direction or invitation of the Covenantor, observes and performs all relevant and applicable covenants at all times; and
- c. that the Covenants shall run with and bind the Burdened Land for the benefit of the Benefited Land; and
- d. that the Covenants are also intended to be for the benefit of (and enforceable by) the Developer as a right in gross.

### 4. Purchasers' covenants as to construction timeframes:

The Covenantor (being a Purchaser of a Lot) covenants with the Covenantee:

- a. to ensure that construction of a Dwelling and any intended Accessory Buildings on the Lot commences within twelve (12) months of the date on which the Purchaser becomes the owner of the Lot;
- b. to ensure that within 18 (eighteen) months after the date on which construction commences (the Construction Commencement Date), the construction of a Dwelling and any intended Accessory Buildings on the Lot are completed, including (without limitation) the exterior finishing and painting, and the Purchaser will also ensure that the driveway from the front gate into the Lot is formed to Council specifications and tar-sealed or concreted, that all Side Fences have been erected which may have been required by the Developer to be completed by then under clause 9(b) hereof.

For the avoidance of doubt:

- c. construction in respect of a Lot will be deemed to have been commenced when any on-site work starts on that Lot; and
- d. until it has been complied with, this clause 4 applies to each subsequent Purchaser of a Lot; and
- e. notwithstanding the foregoing, where a previous owner has already commenced construction, then the Construction Commencement Date that is applicable in respect of a new Purchaser under this clause will still be the original date on which construction was commenced by the previous owner.

### 5. Purchaser's covenant as to the upkeep of Lots during construction

The Covenantor (being a Purchaser of a Lot) covenants with the Covenantee to ensure at all times after a Lot is first sold to a Purchaser, and including the whole period before and during construction of a Dwelling and any Accessory Buildings or other Improvements, that the grass is regularly mown and kept short, and other plantings and/or vegetation on the Lot are weeded, trimmed and otherwise maintained, and rubbish is removed, so that the Lot appears kempt and tidy.

### 6. Dwellings

The Covenantor covenants with the Covenantee:

- a. not to construct more than one Dwelling on any Lot;
- b. not to construct or have more than 2 (two) kitchens within a Dwelling or on any Lot;
- c. not to construct without the Developer's consent, on any Lot that that has an area of 500 square metres or more a Dwelling that has a floor area less than 130 square metres including any garage or carport or connected to or within the Dwelling but excluding covered decks, porches and verandas;

- d. not to construct without the Developer's consent, on any Lot that that has an area of less than 500 square metres a Dwelling that has a floor area less than 60 square metres including any garage or carport or connected to or within the Dwelling but excluding covered decks, porches and verandas;
- e. not to construct any Dwelling or Accessory Building that exceeds 5.5 metres in height above the Ground Level;
- f. not to shift on to a Lot any pre-built, transportable or relocatable Dwelling or Accessory Building which has previously been lived in and/or used, without the Developer's Consent;
- g. not to construct any Dwelling or Accessory Building on any Lot using second hand materials, without the Developer's Consent, provided that this restriction does not apply to the use of Central Otago schist or high-quality recycled hardwood timbers;
- h. to only construct and/or paint the roof (including any eaves) of the Dwelling and any Accessory Buildings with the Permitted Roof Colours, and not to permit or allow any other colouring to be used without the Developer's Consent;
- i. not to use any Lot as a residence or permit any Lot to be used as a residence until a final Code Compliance Certificate has been granted in respect of the Dwelling on the Lot.

**7. Covenants relating to attachments on buildings, and other things that not to be visible**

- a. The Covenantor covenants with the Covenantee not to install, erect or attach, or permit to be installed, erected or attached:
  - i. on any Dwelling or Accessory Buildings or on any other Improvements or otherwise to place on any Lot any heat pump, air-conditioning unit or other similar electrical appliance would be visible from the road, or from any other Lot;
  - ii. either on the roof or elsewhere on any Dwelling or Accessory Buildings or on any other Improvements or otherwise to place on any Lot, any television aerial, antenna and/or satellite dishes or other similar device that would be visible from the road or which, if on a roof, is not mounted below the ridgeline of that roof;
  - iii. any permanent clothes or washing line or lines on any Lot that would be visible from the road;
  - iv. any overhead power or communication lines on any Lot.
- b. The Covenantor further covenants with the Covenantee not to place or allow to be placed on any Lot any portable gas cylinders or bottles which would be visible from the road.

**8. Covenants relating to trees and vegetation**

The Covenantor covenants with the Covenantee:

- a. not to remove or trim or allow to be removed or trimmed any tree on any Lot which was planted by the Developer, without the Developer's consent;
- b. not to allow any tree or other vegetation (other than any tree planted by the Developer) to grow on any Lot above 5.5 metres or above the height envelope that the Lot Owner would otherwise be able to build a Dwelling up to under the District Plan (and, for the avoidance of doubt, these requirements are cumulative); and
- c. not to plant any tree within 3 metres of any boundary of a type that (when mature) would be likely to grow more than 3 metres in height.

**9. Fencing requirements**

Note: Part of the context for this clause is that it is envisaged that the Developer may (depending on the terms of the sale contracts) at its own expense provide Lot Owners with 1.8m high Wood Plastic Composite palings (or substitute materials) for the purpose of constructing Side Fences. The Developer may also wish to coordinate to some extent between Lot Owners as to when the fences should be erected.

The Covenantor covenants with the Covenantee:

- a. Not to erect either Front or Side Fences bordering the Covenantor's Lot before receiving written notice from the Developer to erect the Side Fences (per clause (9(b) below);
- b. Upon receiving notice from the Developer to do so, to erect at the Covenantor's expense Side Fences bordering the Covenantor's Lot; using (if provided) any materials provided by the Developer; and for the avoidance of doubt neighbouring Lot Owners within the Subdivision Land are to share equally the cost in of erecting Side Fences along common boundaries;
- c. to ensure that all Side Fences are in line with the designated boundary pegs as identified by the Developer;
- d. to ensure that all Side Fences are erected to a professional standard equivalent to that of a Registered Builder;
- e. to ensure that all Side Fences are completed within 3 (three) months of the Developer's notice (per clause (9(b) above);
- f. not to erect any Front Fence that is higher than 1.2 metres above Ground Level;
- g. not to use materials for the construction of any Front Fence that are not the same or similar to those materials provided by the Developer (if any) for the adjoining Side Fences;
- h. to ensure any Front Fence is of a similar and sympathetic style to any adjoining Side Fences;
- i. not to remove or alter any Fence erected by the Developer without the Developer's prior written consent;
- j. to ensure that any Fence originally installed by the Developer is maintained and kept in its original colour.

#### **10. Use of the Lots**

The Covenantor covenants with the Covenantee

- a. not to use or occupy, or to allow to be used or occupied, any Lot or any part of a Lot other than as a residence;
- b. not to use or allow the use of any lot for any commercial or industrial purposes;
- c. not to place or allow to be placed on any Lot any vehicle, boat, caravan or motorhome, that is unfinished, unkempt or not roadworthy, unless the same is not visible from the road;
- d. not to park or allow to be parked on the road outside any Lot any vehicle, boat, caravan or motorhome, which, if it had been parked (visibly) on a Lot, would have breached this clause;
- e. not to allow any livestock or other animals to be kept on any Lot that are likely to cause a nuisance or annoyance to any other Lot Owner;
- f. not to use or allow the Front Yard of any Lot to be used for the accumulation or storage of rubbish, or rubbish bins.

#### **11. Dwelling and Front Yard maintenance**

The Covenantor covenants with the Covenantee:

- a. to ensure that at all times the roof and exterior (including the cladding) of any Dwelling or other Accessory Buildings or Improvements on the Lot which are visible either from the road or from any other Lot are kept in a clean and tidy condition, and are properly maintained, which may include (without limitation) repainting, staining or otherwise retreating the same so as to maintain the high standard of appearance of the subdivision;
- b. to properly maintain any fences on or surrounding the Lot;
- c. to keep any paved or sealed areas which are visible from the road in a neat and tidy condition, and properly maintained which may include (without limitation) chemical treatment, water-blasting and repainting;
- d. to keep any lawns and/or garden areas which are visible from the road regularly mown, weeded, trimmed and maintained so that the Front Yard appears kempt and tidy at all times;
- e. to keep the Front Yard free of litter.

**12. No further subdivision**

No Covenantor will further Subdivide any Lot, by any means.

**13. No hinderance or objections to the development of the Balance Land**

The Covenantor will not oppose or object to, or take any step to frustrate, or take any action or do any thing, or encourage any person to object to, or frustrate, or take any action or do any thing that might in any way stop or delay of hinder the Developer or its assigns from subdividing and developing the Balance Land.

**14. Enforcement**

- a. Without limiting any other rights of the Covenantantee (including the Developer's other rights), in the event that the Covenantor fails to observe and/or perform the Covenants set out in this instrument, the Developer shall have the right (but not the obligation) to do what whatever may be reasonably required to remedy such failure on the part of the Covenantor, and any cost incurred by the Developer in remedying the default shall be refunded by the Covenantor to the Developer upon demand.
- b. The Covenantor will pay any reasonable legal costs incurred by the Developer (on a solicitor and client basis) that are directly or indirectly attributable to the enforcement and/or attempted enforcement of this instrument against the Covenantor.
- c. The Covenantantee agrees that the Developer does not have any responsibility or liability for the enforcement, enforceability, applicability or lack of action with respect to the enforcement or applicability of these Covenants; and that apart from the exercise of its discretion with respect to consents, approvals and disapprovals of matters referred to in these Covenants, the Developer does not undertake to enforce or monitor compliance with these Covenants.
- d. The liability of any Covenantor under this instrument is limited to obligations and liabilities that accrue during that Covenantor's time as a Lot Owner; and a Covenantor will only be liable in respect of the Lot comprising that part of the Burdened Land owned by that Covenantor. A Covenantor will not be liable for any breach of this instrument which occurs during any period after its term as a Lot Owner, but shall remain liable for any such antecedent breach prior to the transfer of its interest.
- e. No covenants by the Covenantor or by the Covenantor's successors in title are implied in this instrument other than the covenants for further assurance implied by s 208 of the Land Transfer Act 2017.

**15. Expiry**

The Covenants shall expire 10 (ten) years after the issue of the last title for the Lots comprising the Subdivision Land, provided that the expiry of the Covenants will be without prejudice to any antecedent breach of the same.