

Crown Pastoral Land Tenure Review

Lease name: CARRICK STATION

Lease number: PO 357

Preliminary Proposal - Part 2

A Preliminary Proposal is advertised for public submissions as per Section 43 of the Crown Pastoral Land Act 1998.

The report attached is released under the Official Information Act 1982.

February

09

Appendix 7: Form of Grazing Concession One to be Created

Concession number: _____

DATED _____

Between

MINISTER OF CONSERVATION
("the Grantor")

and

DONALD WILLIAM CLARK and MARION ISOBEL CLARK
("the Concessionaire")

GRAZING CONCESSION
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made this day of

PARTIES:

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **DONALD WILLIAM CLARK and MARION ISOBEL CLARK**
("the Concessionaire")

BACKGROUND

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area or Reserve.
- B. Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

“**Access**” means the right, in common with others, to pass and repass over the Land and any roads of the Grantor for ingress to and egress from the Land as is reasonably necessary for the Concessionaire to exercise its rights under this Licence.

“**Administration Fee**” means the amount specified in Item 6(b) of Schedule 1 and is the annual fee for administering the Concession imposed by the Grantor under section 60D of the Conservation Act 1987. It includes any variation in that amount following a Concession Fee Review.

“**Background**” means the matters referred to under the heading ‘Background’ on page 1 of this Document.

“**Concession**” means a concession as defined in section 2 of the Conservation Act 1987.

“**Concessionaire**” includes the Concessionaire’s successors, assigns, executors, and administrators.

“**Concession Activity**” means the use of the Land for purposes of the activity carried out by the Concessionaire and specified in Item 2 of Schedule 1.

“**Concession Fee**” means the amount specified in Item 6(a) of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review. It also includes, where relevant, the amount which the parties agree to be the new Concession Fee on a renewal of the Document.

“**Concession Fee Payment Date**” means the date specified in Item 7 of Schedule 1 on which the Concession Fee falls due for payment.

“**Concession Fee Review**” means a review of the Concession Fee determined in accordance with clause 6 of this Document.

“Concession Fee Review Date” means the date specified in Item 9 of Schedule 1 on which the Concession Fee Review occurs being at 3 year intervals calculated from the date of commencement of the term of this Document; and includes any additional dates inserted into Item 9 of Schedule 1 following a renewal of this Document.

“Conservation Area” has the same meaning as “Conservation area” in section 2 of the Conservation Act 1987.

“Director-General” means the Director-General of Conservation.

“Document” means this Licence and any subsequent amendments and all schedules, annexures, and plans attached to it.

“Final Expiry Date” means the date specified in Item 5 of Schedule 1.

“Land” means a Conservation Area or a Reserve (whichever is relevant in the circumstances) being the area more particularly described in Item 1 of Schedule 1.

“Licence” for purposes of this Document is the Licence granted under this Document by the Grantor to the Concessionaire under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).

“Penalty Interest Rate” means the rate specified in Item 8 of Schedule 1.

“Renewal Date” means the date specified in Item 4(a) of Schedule 1.

“Renewal Period” means the period specified in Item 4(b) of the Schedule 1.

“Reserve” has the same meaning as “reserve” in section 2 of the Reserves Act 1977.

“Structure” includes a bridge, a culvert, and a fence.

“Term” means the period of time specified in Item 3 of Schedule 1 during which this Document operates. It includes, where relevant, any period of renewal of the Term.

“Working Day” means the period between any one midnight and the next excluding Saturdays, Sundays and Statutory holidays in the place where the Concession Activity is being carried out.

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;
- (e) words in a singular number include the plural and vice versa;
- (f) words importing a gender include other genders;
- (g) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (h) where the Grantor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

1.3 Words used in the Background to this Document have the same meaning given to them in clause 1.1.

2.0 GRANT OF LICENCE

2.1 In exercise of the Grantor's powers under either section 66 or section 68 of the Crown Pastoral Land Act 1998 (whichever is relevant in the circumstances) the Grantor **GRANTS** to the Concessionaire a **LICENCE** under either section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances) to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Document.

3.0 TERM

3.1 The Licence is for the Term specified in Item 3 of Schedule 1.

3.2 Unless otherwise specified in Items 4 and 5 of Schedule 1, if the Concessionaire has not been in breach of this Document and has given to the Grantor written notice to renew the Document at least three months before the end of the Term, the Grantor will, at the cost of the Concessionaire, renew the Document from the Renewal Date for the next Renewal Period on the following terms:

- (a) the new Concession Fee is to be agreed upon before the end of the Term or, failing agreement, is to be determined as though it were a Concession Fee Review under clause 6;
- (b) the Concession Fee is to be subject to review during the Renewal Period on each Concession Fee Review Date;
- (c) the renewed Document is otherwise to be in accordance with and subject to the covenants and agreements expressed and implied in this Document except that the Term of the Document and all renewals, if any, end on the Final Expiry Date;
- (d) pending the determination of the new Concession Fee, the Concessionaire is to pay the new Concession Fee proposed by the Grantor. Upon determination an appropriate adjustment is to be made to the Concession Fee.

4.0 CONCESSION FEE AND ADMINISTRATION FEE

4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor on or before the Concession Fee Payment Date specified in Item 7 of Schedule 1:

- (a) the Concession Fee plus GST specified in Item 6(a) of Schedule 1; and
- (b) the Administration Fee plus GST specified in Item 6(b) of Schedule 1.

4.2 If the Concessionaire defaults in payment of the Concession Fee and Administration Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee and Administration Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

4.3 For purposes of clause 6.0, a reference to Concession Fee includes a reference to the Administration Fee.

5.0 OTHER CHARGES

5.1 In addition to the Concession Fee and Administration Fee the Concessionaire must pay all rates, levies, taxes, duties, assessments, charges, and other outgoings which may be charged, levied, or reasonably assessed, or which become payable in relation to the Land as a result of the grant of this Licence.

6.0 CONCESSION FEE AND ADMINISTRATION FEE REVIEW

- 6.1 The Grantor will review the Concession Fee and the Administration Fee on the Concession Fee Review Dates.
- 6.2 The Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
- 6.3 The notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987. The Notice must also specify the Administration Fee which the Grantor intends to impose until the next Concession Fee Review Date.
- 6.4 If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 18.
- 6.5 Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee payable immediately before the Concession Fee Review Date. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable notwithstanding anything in this clause, the new Administration Fee will be payable by the Grantor upon receipt of the Notice referred to in clause 6.3.
- 6.6 If the Concessionaire does not give notice to the Grantor under clause 6.4 the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.

7.0 CONCESSION ACTIVITY

- 7.1 The Concessionaire is not to use the Land for any purpose other than the Concession Activity.

8.0 COMPLIANCE

- 8.1 The Concessionaire will comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan under Part IIIA of the Conservation Act 1987 together with any amendment or review of the strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
 - (b) with the Conservation Act 1987, the Reserves Act 1977, the Health and Safety in Employment Act 1992, the Resource Management Act 1991, and any other statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land, or affecting or relating to the Concession Activity.

9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 9.1 The Concessionaire must not erect or bring on to the Land any Structure, install any facility, or alter the Land in any way without the prior written consent of the Grantor.
- 9.2 The Concessionaire must keep and maintain at the Concessionaire's cost any Structures, facilities and alterations to the Land in good repair.
- 9.3 On expiry or early termination of this Document either as to the whole or any part of the Land, the Concessionaire will not be entitled to compensation for any improvements (including pasture) and any Structures or facilities remaining on the Land are to become the property of the Grantor.
- 9.4 If requested by the Grantor, the Concessionaire must, within such time as the Grantor determines, remove all Structures, facilities or other improvements erected or installed by the Concessionaire and make good at

the Concessionaire's own expense all damage done by the removal and must leave the Land in a clean and tidy condition to the satisfaction of the Grantor.

10.0 PROTECTION OF THE ENVIRONMENT

10.1 Except as approved in writing by the Grantor the Concessionaire will not, whether by act or omission:

- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Land; or
- (b) bring any plants, or animals (other than farm stock described in Item 2 of Schedule 1, farm dogs and horses for purposes of the Concession Activity) on to the Land; or
- (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
- (d) pile or store materials in any place on the Land where they may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Land; or
- (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Land; or
- (g) disturb or allow stock to disturb any stream or watercourse on the Land; or
- (h) light any fire on the Land.

10.2 The Concessionaire, must at the Concessionaire's expense:

- (a)(i) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Land or any Structure or facility on the Land;
- (a)(ii) if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor; and
- (b) comply strictly with the provisions of the Biosecurity Act 1993.

10.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 10.

10.4 The Concessionaire may bring firearms on to the Land for use in connection with the Concession Activity and pest control operations.

10.5 The Concessionaire for purposes of the Concession Activity may take onto or use farm vehicles on the Land on existing formed access tracks only.

11.0 HEALTH AND SAFETY

11.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations.

11.2 The Concessionaire must notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment.

12.0 TEMPORARY SUSPENSION

12.1 The Grantor may suspend this Document:

- (a) if, in the opinion of the Grantor the activities of the Concessionaire, its employees, agents, contractors, licensees or invitees are having or may have an adverse effect on the environment and the Grantor considers that the effect can not be avoided, remedied or mitigated to an extent satisfactory to the Grantor;
 - (b) while the Grantor investigates any of the circumstances contemplated by this clause and also while the Grantor investigates any potential breach or possible offence by the Concessionaire related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.
- 12.2 The Grantor is not liable to the Concessionaire for any loss sustained by the Concessionaire by reason of a suspension under clause 12.1 including loss of profits.
- 12.3 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.

13.0 ASSIGNMENT

- 13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause.
- 13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.
- 13.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

14.0 TERMINATION

- 14.1 The Grantor may terminate this Document by notice in writing to the Concessionaire if:
- (a) the Concession Fee or the Administration Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - (b)(i) the Concessionaire breaches any terms of this Document; and
 - (b)(ii) the Grantor has notified the Concessionaire in writing of the breach; and
 - (b)(iii) the Concessionaire does not rectify the breach within 28 days of receiving notification; or
 - (c) the Concessionaire ceases to conduct the Concession Activity; or
 - (d) the Concessionaire is convicted of an offence, related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Resource Management Act 1991; or the Biosecurity Act 1993; or the Health and Safety in Employment Act 1992; or
 - (e) the Concessionaire is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the

Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire cease to function or operate.

- 14.2 If the Grantor terminates the Document under this clause 14 all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or Administration Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.
- 14.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

15.0 INDEMNITIES AND INSURANCE

- 15.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, contractors, or invitees or otherwise caused as a result of its use of the Land or the Concessionaire's carrying out of the Concession Activity on the Land.
- 15.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.
- 15.3 Without prejudice to or in any way limiting its liability under clause 15.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:
- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
 - (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.
- 15.4 With respect to clause 15.3 the Concessionaire must, before commencing the Concession Activity and on each renewal of insurance provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

16.0 ENVIRONMENTAL MONITORING

16.1 The Concessionaire must, during the Term, if required in writing by the Grantor, pay to the Grantor the annual environmental monitoring contribution specified in Item 14 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's conduct of the Concession Activity on the Land.

17.0 FORCE MAJEURE

17.1 Neither party will be liable to the other party for any delay in performance of, or failure to perform, its obligations (other than a payment of money) under this Document as a result of any cause beyond its reasonable control.

18.0 DISPUTE RESOLUTION AND ARBITRATION

18.1 If any dispute arises between the parties in connection with this Document, the parties must, without prejudice to any other rights they have under this Document, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.

18.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.

18.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

18.4 In the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions of the Arbitration Act 1996 will apply.

18.5 Notwithstanding anything in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the District Law Society in the region in which the Land is situated is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

18.6 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.

18.7 The parties agree that the results of any arbitration are to be binding on the parties.

19.0 NOTICES

19.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 15 of Schedule 1.

19.2 A notice given in accordance with clause 19.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;
- (c) in the case of facsimile, on the Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

20.0 RELATIONSHIP OF PARTIES

20.1 Nothing expressed or implied in this Document shall be construed as:

- (a) conferring on the Concessionaire any right of exclusive occupation or use of the Land;
- (b) derogating from the rights of the Grantor and the public to have access across the Land;
- (c) preventing the Grantor from granting other concessions (except a grazing licence) to other persons.

21.0 OFFENCES

21.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act:

- (a) no waiver or failure to act by the Grantor under this Document is to preclude the Grantor from prosecuting the Concessionaire; and
- (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising the Grantor's remedies under this Document; and
- (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising the Grantor's remedies under this Document.

22.0 SPECIAL CONDITIONS

22.1 Special conditions relating to this Document are set out in Schedule 2.

22.2 The standard conditions contained in this Document must be read subject to any special conditions.

Signed by :

for and on behalf of
the Minister of Conservation
pursuant to a written delegation (or designation as the case may be)
in the presence of :

Witness _____

Occupation _____

Address _____

Signed by :

as Concessionaire
in the presence of :

Witness _____

Occupation _____

Address _____

SCHEDULE 1

1. **Land:** The land is shown on Designations plan as “R”. The Land is fenced into and included in farm blocks known as “Water Wheel” and “Forks” Blocks. *(see definition of Land in clause 1.1)*
2. **Concession Activity:** Grazing of sheep only is permitted on the Land which is part of waterwheel block. Sheep and cattle grazing is permitted on the Land within the Forks Block. *(see definition of Concession Activity in clause 1.1)*
3. **Term:** 20 years commencing on date of surrender of pastoral lease P357 Carrick. Upon surrender of PL 357, consideration will be given to the inclusion of the adjoining existing historic reserve into this concession. *(see clause 3)*
4. (a) **Renewal Date:** At end of term as per (b). *(see clause 3.2)*
 (b) **Renewal Period:** On expiry of this concession, renewal for a further term will be considered.
5. **Final Expiry Date:** NA *(see clause 3.2)*
6. (a) **Concession Fee:** The concession fee is to be \$50/annum. *(see clause 4)*
 (b) **Administration Fee:** \$100 per annum + GST *(see clause 4)*
7. **Concession Fee Payment Date:** *(see clause 4)*
 On or before the date specified on the invoice generated by the Grantor
8. **Penalty Interest Rate:** *(see clause 4.2)*
 Double the Grantor’s bank’s current highest 90 day bank bill buy rate
9. **Concession Fee Review Date:** 3 years after commencement date. *(see clause 6)*
10. **Public Liability General Indemnity Cover:** *(see clause 15.3)*
 for \$1,000,000.00
11. **Public Liability Forest & Rural Fire Extension:** *(see clause 15.3)*
 for \$500,000.00
12. **Statutory Liability Insurance:** *(see clause 15.3)*
 Amount \$250,000.00
13. **Other Types of Insurance:** *(see clause 15.3)*
Amounts Insured for Other Types of Insurances: *(see clause 15.3)*
 Amount NA
14. **Environmental Monitoring Contribution:** \$ NA *(see clause 16)*
15. **Address for Notices (including facsimile number):** *(see clause 19)*
 (a) Grantor: C/- PO Box 5244, Dunedin. (03) 4778 626
 (b) Concessionaire: Donald W. Clark, Bannockburn Road, RD2, Cromwell Fax (03) 445 0917

SCHEDULE 2

Special Conditions

The Land is unfenced from the adjoining land. Grazing is considered beneficial to maintaining the visibility of the historic features within the Land. The indicative stock carrying capacity of the concession area is 35 SU.

1. The Concessionaire will take care not to overstock the Land and will ensure that grazing is not having an adverse impact on the indigenous vegetation within the Land.
2. The Concessionaire will keep rabbits to low levels (below Modified Mclean scale 4) on the Land.
3. The Concessionaire will be responsible for keeping the land free of goats.
4. The reference to topdressing in 10.1 (f) is deleted.
5. Photopoint monitoring will be undertaken by the Minister to ensure that any stock damage to the historic features on the Land can be identified and mitigated.

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Appendix 8: Copy of easement 885721/1 in favour of the Carrick Irrigation Company

Memorandum of Transfer

17C1733

~~(herein called "the Transferor") being registered as proprietor of an estate~~

~~subject however to such encumbrances, liens and interests as are notified by memoranda underwritten
(endorsed hereon in the piece or pieces of land situated in the Land District of
containing more or less being~~

INSTRUMENT OF TRANSFER OF EASEMENTS IN GROSS FOR IRRIGATION WORKS

1.0 BACKGROUND

1.1 The Carrick Irrigation Company Limited at Bannockburn (called "the Irrigation Company") has purchased the Bannockburn Irrigation Scheme pursuant to a Sale and Purchase Agreement between MURRAY THOMAS DENNISON, RICHARD STEVEN CLARK and EDGAR PARCELL all of Bannockburn Farmers as agents for the Irrigation Company then yet to be incorporated and David Francis Caygill, Minister of Finance and James Robert Sutton, Minister of Agriculture on behalf of the Crown, dated 18 December 1989 and 26 October 1990 and subsequently adopted by the Irrigation Company as the Purchaser. The Bannockburn Irrigation Scheme (called "the Irrigation Scheme") is described in the said Sale and Purchase Agreement.

*** 9,250.0534 hectares more or less being Sections 3, 27, 28, 29, 30, 31 and 34 Block III Nevis Survey District, Section 1, Block III and Sections 9, 10, and 11, Block IV Bannockburn Survey District, Run 339E Nevis, Lorn and Lornside Survey Districts and Part Run 330B Nevis and Bannockburn Survey Districts (part of the said land and adjoining Crown land now known as Sections 3, 4, 5 and 6, Block III Bannockburn Survey District and Sections 13, 14 and 15, Block IV Bannockburn Survey District) subject to Pastoral Lease Number P56 comprised in Register Book Volume 338 Folio 81 (Otago Land Registry). (called "the Crown's land").

ISABELLE CLARK his wife (called "the Lessee") is registered as the lessee of the said Pastoral Lease.

1.4 The Minister of Agriculture (called "the Minister") had the right immediately before the date of sale of the Irrigation Scheme to the Irrigation Company, pursuant to Section 223 of the Public Works Act 1981 or the corresponding

M. J. Clark *JOB*
D W Clark

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provisions of any former enactment relating to irrigation, to enter, use, occupy, carry out work on, store water on, or convey water over the Landowner's land and in the manner, detailed in this Instrument, for the purposes of the Irrigation Scheme.

- 1.5 Section 4 of the Irrigation Schemes Act 1990 provides the statutory mechanism to transfer from the Landowners to the Irrigation Company, the same easement rights as the Crown previously had over the Landowner's land, and the Landowner and the Irrigation Company have agreed to the transfer of these easement rights to the Irrigation Company.

2.0 GRANT OF EASEMENT

- 2.1 The Crown pursuant to Section 60 of the Land Act 1948 and Section 4 of the Irrigation Schemes Act 1990 TRANSFERS AND GRANTS to the Irrigation Company as an easement in gross forever the right to convey water over the said Crown's land as marked "A-B", "C-D" and "E-F" on the plan No. 22 and annexed which rights to convey water and of access shall have attached to them the rights, powers and obligations detailed in the following Clause 3.0.

3.0 RIGHTS AND POWERS RELATING TO THE GRANT OF EASEMENT

- 3.1 The Irrigation Company together with any person (as defined in Section 4 of the Acts Interpretation Act 1924) acting with the authority, or on the instructions, of the Irrigation Company and together with all tools, implements, machinery, vehicles, equipment and materials of whatsoever nature shall have the uninterrupted and unrestricted rights:

- (a) To situate and maintain water works and convey water unimpeded along

D. W. Clark
D. W. Clark

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the stipulated course on the Landowner's land shown on the plan attached and for this purpose to have the right to use, occupy, construct, maintain, reconstruct and carry out such works (in this Instrument called "water works") as the Irrigation Company considers necessary or desirable on the Landowner's land along the stipulated course including, but without limitation, structures and works for; intakes, conveying water, water flow control and supply, turnouts, monitoring and discharges.

- (b) To monitor and control its waterflows and the water source flows and to carry out viewing, surveillance and monitoring of its water works on the Landowner's land.
- (c) Generally and without limitation to the stipulated course of access, to enter the Crown's land and to have access across the Crown's land by the most practicable route.
- (d) To erect and maintain such fixtures or markers as may be necessary to indicate the location of any pipeline and associated works provided that such fixtures or markers do not interfere with the reasonable management of the Landowner's land.
- (e) To generally do anything necessary or convenient for the full exercise of the rights under this Instrument and to give full effect to the purposes of this Instrument.

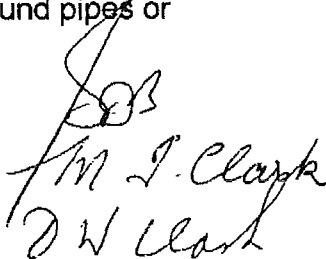
It being acknowledged that the words "convey water" and "conveying water" include "bye-wash water" and "bye-washing water".

3.2 In exercising its rights and powers under this Instrument, the Irrigation Company shall:

[Handwritten signature]
M. J. Clark
D. W. Clark

- 4 -

- (a) Cause as little disruption and disturbance to the occupation and enjoyment by the Landowner of the Landowner's land, as is reasonably possible.
 - (b) Cause as little damage to the Landowner's land and fixtures on it and the surface of it as is reasonably possible.
 - (c) After exercising its rights and powers, restore the Landowner's land and fixtures on it as nearly as is reasonably possible to its former condition but as shall be reasonable in the circumstances having regard to the economic and amenity values to the Landowner of the land and fixtures affected.
- 3.3 (a) When the Irrigation Company requires entry with machinery on the Landowner's land to carry out maintenance or construction works, it shall take reasonable steps to give to the Landowner or occupier of the land not less than 24 hours notice by direct personal contact, ordinary letter, facsimile transmission, or telephone prior to such entry and works being undertaken, unless there is an emergency and in which case no notice shall be required.
- (b) If the Landowner or occupier has received such notice the Landowner or occupier shall notify the Irrigation Company, prior to the entry and work being undertaken, of the presence of pipes or other underground facilities in the Landowner's land and if the Landowner or occupier fails to notify the Irrigation Company then the Irrigation Company will not be liable for any damage it may cause to such underground pipes or underground facilities.

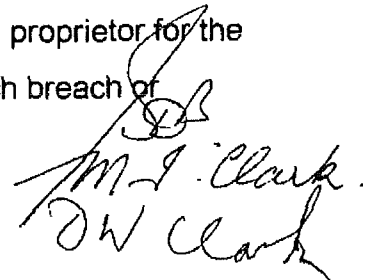

D W Clark

- 5 -

- 3.4 (a) It is acknowledged that the Irrigation Company shall not fence the boundaries of the easements.
- (b) The Landowner shall not do, or permit to be done, anything, including planting trees or constructing works or buildings, which will prevent or interfere with the free passage of water along the stipulated course or prevent or interfere with the Irrigation Company's full rights of access and full use by it of its rights created by this Instrument and shall not interfere, or permit any interference, or allow trees, tree roots or other vegetation growing on or from the landowners land or stock pastured on the landowner's land to interfere with the support, structure or integrity of the Irrigation Company's water works.
- (c) Without limiting the extent of this clause 2.4, the landowner shall not, without the prior written consent of the Company, plant trees or construct works or buildings within 4 metres of the centre line of a pipe or within 3 metres from the edge of a water race or other water works.

3.5 The rights and powers contained in paragraphs 1, 2 and 5 of the Seventh Schedule to the Land Transfer Act 1952 shall apply except insofar as they are varied by this instrument and with the deletion from both paragraphs 2 and 5 of the words "(in common with the grantor, his tenants and any other person lawfully entitled so to do)".

3.6 Any right of action or remedy which shall at any time after the date of this instrument accrue to the Irrigation Company because of any breach or non-observance by or on behalf of the Lessee of any of the covenants expressed or implied in this instrument and to be observed or performed by the Crown, shall be enforced only against the registered proprietor for the time being of the Pastoral Lease in respect of which such breach or


M. I. Clark
D. W. Clark

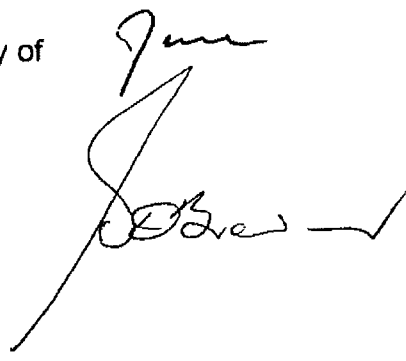
non-observance shall occur or against the lessee of the Pastoral Lease at the time of such occurrence aforesaid but to the intent that any lessee of the Pastoral Lease shall only be liable for acts or defaults occurring while that person is so registered.

3.7 The lessee agrees to the terms of this instrument and is bound by them to the extent that the terms apply to the lessee and the lessee consents, without payment of compensation, to the terms of this instrument.

3.8 A reference to any party to this instrument includes that party and that parties transferees and successors.

Dated the 28th day of June 1995

SIGNED by and on behalf)
of HER MAJESTY THE)
QUEEN by the)
Commissioner of Crown)
Lands as landowner)
in the presence of:)



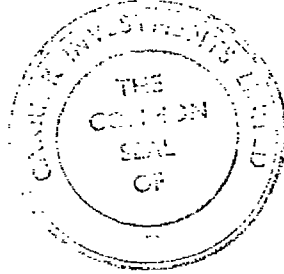
Witness W. H. Hancox.....

Occupation Administration Consultant.....

Address Wellington.....

DW Clark
M. J. Clark

SIGNED by the CARRICK)
IRRIGATION COMPANY)
LIMITED by the affixing of its)
~~common seal~~^{Director} in the presence)
of:)



Director... *R. S. Clark*.....

Director... *M. J. Clark*.....

[Handwritten signature]

SIGNED by DONALD)
WILLIAM CLARK and) *D W Clark*
MARION ISABELLE CLARK) *M I Clark*
as Lessee in the presence of:)

Witness... *[Handwritten signature]*.....

Occupation... *[Handwritten signature]*.....

Address... *[Handwritten signature]*.....

[Handwritten signature]

SCHEDULE OF EASEMENTS

Shown	Purpose	Servient Tenement	Grantee	C T	Owner	Plan N ^o
a-b, c-d, e-f	Right to convey water	Run 330 B Bk III & IV	CARRICK IRR Co. Ltd	388/81	DW & MI Clark	22

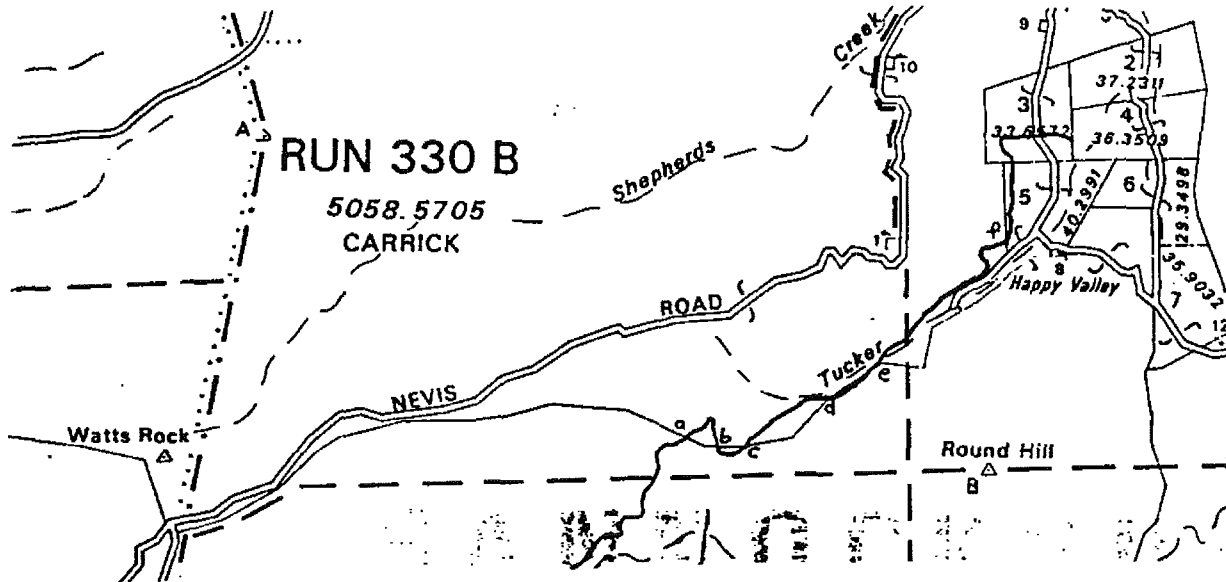


DIAGRAM OF IRRIGATION RIGHT
PREPARED PURSUANT TO THE
IRRIGATION SCHEMES ACT 1990

CARRICK IRRIGATION Co. Ltd

M J Clark
D W Clark

PREPARED BY C. HUGHES & ASSOCIATES
SURVEYING CONSULTANTS
CROMWELL

Scale 1:50 000

Date 5/94

Job N^o 3665

~~In Consideration of the sum of~~

paid to the Transferor by

(herein called "the Transferee") the receipt of which sum is hereby acknowledged **Hereby Transfers** to the Transferee all the Transferor's estate and interest in the said piece or pieces of land

In witness whereof these presents have been executed this day of 19

Signed by the Transferor

(by the affixing of its common seal)

~~in the presence of:~~

MEMORANDUM OF TRANSFER

MENT IN GROSS FOR IRRIGATION WORKS

17C/733
338/81

.....
HARRICK IRRIGATION COMPANY LIMITED **Transferor**

.....
w CLARK **Transferee**

Correct for the purposes of the Land Transfer Act 1952

.....
SOLICITOR FOR THE TRANSFEREE

I hereby certify that this transaction does not contravene the provisions of Part IIA of the Land Settlement Promotion and Land Acquisition Act 1952.

.....
SOLICITOR FOR THE TRANSFEREE

I hereby certify for the purposes of the Stamp and Cheque Duties Act 1971 that no conveyance duty is payable on this instrument by reason of the application of Section 24(1) of the Act and that the provisions of subsection (2) of that section do not apply.

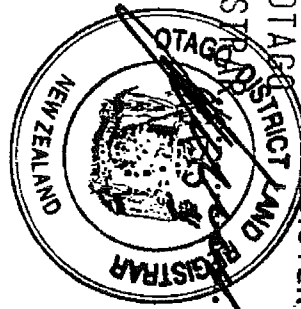
.....
SOLICITOR FOR THE TRANSFEREE

Particulars entered in the Register as shown herein on the date and at the time endorsed below.

.....
Assistant / District Land Registrar of the

District of

12.11 30.JUN 95 885721//
PARTICULARS ENTERED IN REGISTER
LAND REGISTRY OTAGO
ASST. LAND REGISTRAR
338/81



17C/733



Appendix 9: Form of Covenant CC1 to be Created

DATED _____

Between

COMMISSIONER OF CROWN LANDS
Pursuant to Section 80 of the Crown Pastoral Land Act 1998

and

MINISTER OF CONSERVATION
("the Minister")

COVENANT UNDER RESERVES ACT 1977
FOR CROWN PASTORAL LAND ACT 1998 PURPOSES



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

BETWEEN **COMMISSIONER OF CROWN LANDS** acting pursuant to section 80
of the Crown Pastoral Land Act 1998

AND **MINISTER OF CONSERVATION**

BACKGROUND

- A. The Commissioner of Crown Lands is deemed for the purposes of section 77 of the Reserves Act 1977 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land contains certain Values specified in Schedule 1.
- C. The parties agree that the Land should be managed so as to preserve the particular Values specified in Schedule 1, and that such purpose can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.
- D. An approved plan designating the Land as land over which a Covenant under section 77 of the Reserves Act 1977 is to be created has been registered under section 64 of the Crown Pastoral Land Act 1998.
- E. The Commissioner of Crown Lands has agreed to grant the Minister a Covenant over the Land to preserve the particular Values specified in Schedule 1.

OPERATIVE PARTS

In accordance with section 77 of the Reserves Act 1977, and with the intent that the Covenant run with the Land and bind all subsequent Owners of the Land, the Commissioner of Crown Lands and Minister agree as follows:

1. INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

- “**Act**” means the Reserves Act 1977.
- “**Covenant**” means this Deed of Covenant made under section 77 of the Act.
- “**Director-General**” means the Director-General of Conservation.
- “**Fence**” includes a gate.
- “**Fire Authority**” means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
- “**Land**” means the land described in Schedule 1.
- “**Minerals**” means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “**Minister**” means the Minister of Conservation.
- “**Natural Water**” includes water contained in streams the banks of which have, from time to time, been realigned.
- “**Owner**” means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.

- “Party” or “Parties”** means either the Minister or the Owner or both.
- “Values”** means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
- “Working Day”** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 clause and other headings are for ease of reference only and are not to be treated as forming any part of the context or to affect the interpretation of this Covenant;
- 1.2.3 words importing the singular number include the plural and vice versa;
- 1.2.4 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and in determining the issue, the parties must have regard to the matters contained in the Background;
- 1.2.5 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.6 words importing one gender include the other gender;
- 1.2.7 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;
- 1.2.8 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2. OBJECTIVE OF THE COVENANT

- 2.1 The Land must be managed so as to preserve the Values.

3. THE OWNER’S OBLIGATIONS

3.1 Unless agreed in writing by the parties, the Owner must not carry out on or in relation to the Land:

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;

- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
 - 3.1.10 any other activity which might have an adverse effect on the Values.
 - 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must:
- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
 - 3.2.3 keep the Land free from exotic tree species;
 - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
 - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
 - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

4. THE MINISTER'S OBLIGATIONS

- 4.1 The Minister must have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant.
- 4.2 The Minister must repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

5. IMPLEMENTATION OF OBJECTIVES

- 5.1 The Minister may;
 - 5.1.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objectives specified in clause 2.1;
 - 5.1.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

6. DURATION OF COVENANT

- 6.1 This Covenant binds the Minister and Owner in perpetuity to the rights and obligations contained in it.

7. OBLIGATIONS ON SALE OF LAND

- 7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, or assignee to ensure that on any subsequent sale, lease, or assignment, any subsequent purchaser, lessee, or assignee must also comply with the terms of this Covenant including this clause.
- 7.2 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

8. MISCELLANEOUS MATTERS

8.1 Rights

- 8.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

8.2 Trespass Act:

- 8.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 8.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

8.3 Reserves Act

- 8.3.1 Subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

8.4 Titles

- 8.4.1 This Covenant must be signed by the Commissioner of Crown Lands and the Minister and registered against the Certificate of Title to the Land.

8.5 Acceptance of Covenant

- 8.5.1 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

8.6 Fire

- 8.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land;
- 8.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:
- 8.6.2.1 requested to do so; or
- 8.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

9. NOTICES

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.
- 9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of pre-paid post, on the third Working Day after posting;
 - (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 9.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

10. DEFAULT

- 10.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:
- 10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and
 - 10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.
- 10.2 Should either the Minister or the Owner become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 10.2.1 advise the defaulting party of the default.
 - 10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
 - 10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

11. DISPUTE RESOLUTION PROCESSES

- 11.1 If any dispute arises between the Minister and the Owner in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

11.2 Mediation

- 11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;
- 11.2.2 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

11.3 Failure of Mediation

- 11.3.1 in the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;

11.3.2 notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the District Law Society in the region in which the Land is situated;

11.3.3 the parties further agree that the results of arbitration are to be binding upon the parties.

12. JOINT OBLIGATIONS

12.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvements or take any action either jointly or individually to better preserve the Values.

13. SPECIAL CONDITIONS

13.1 Special conditions relating to this Covenant are set out in Schedule 2.

13.2 The standard conditions contained in this Document must be read subject to any special conditions.

Executed as a Deed

Signed by _____ acting under a)
delegation from the Commissioner of Crown Lands)
deemed pursuant to section 80(5) of the Crown Pastoral)
Land Act 1998 to be the Owner of the Land for the)
purposes of section 77 of the Reserves Act 1977)
in the presence of :)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ exercising his/her)
powers under section 117 of the Reserves Act 1977)
as designated Commissioner and acting for and on)
behalf of the Minister of Conservation)
in the presence of :)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

Currently shaded yellow and labelled CC1 on the Proposed Designations Plan (approx 1775ha).

2. Address for Service¹

The address for service (including facsimile number) of the Minister is:

C/- Box 5244
DUNEDIN

Fax (03) 477 8626

The address for service (including facsimile number) of the Owner is:

Donald W. Clark, Bannockburn Road, RD2, Cromwell

Fax (03) 445 0917

3. Values of Land to be Preserved

Preserving the natural, landscape and historical values of the area.

Natural values: The tall tussock vegetation above approximately 1000 metres is thought to represent the pre human vegetation. The regenerating shrublands on lower slopes are thought to be partly induced by fertilizer use and will not be protected. **Threatened plants have been identified on the mining tailings along the Nevis River.**

Landscape values: These values make a contribution to the wider Nevis Valley landscape which is visually impressive. Higher areas have values attributed to the vegetation pattern which is a transition between tall tussock and the more exotic oversown areas.

Historic values: These are represented by the hand stacked stone tailings from ground sluicing, **associated hut sites** and the tailings from dredging.

The area consists of two distinct blocks, the lower called the "Nevis Face" is divided by a fenceline from the upper (above about 1000m) called the "Middle Block".

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions

1. The Minister will pay to the Owner a proportionate share of the following:
 - 1.2 the cost of any work under clause 3.2 if the Minister has first approved the work.
2. The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
 - 2.1 the Minister will bear the cost of work essential for purposes of nature/landscape/historic conservation;
 - 2.2 the Owner will bear the cost of work essential for farming purposes;
 - 2.3 when the expenditure is partly for nature/landscape/historic conservation and partly for farming purposes, the parties will bear the costs equally or in such other proportion as they may agree, and failing agreement, as may be determined under clause 11.
3. Clause 3.1.1 is deleted and replaced with:
 - (i) Stock may be grazed on the Nevis Face Block.
 - (ii) Sheep only may be grazed on the Middle Block at a stocking rate that does not compromise the existing natural values.
4. Clause 3.1.2 is deleted for the Nevis Face Block only.
5. Clause 3.1.5 is deleted for the Nevis Face Block only. Mine tailings and river gravel areas along the Nevis River will not be sprayed without first consulting the Minister.
6. Monitoring
 - 6.1 Photopoint monitoring will be used to record the condition and trends of the tall tussock areas and the historic features.
 - 6.2 The Minister will pay the costs of monitoring.
 - 6.3 Other monitoring methods may be used by the Minister
7. Should monitoring show deterioration in the condition of historic sites, the Minister may meet with the Owner to discuss the results and probable causes. If deterioration is related to farming practices, the Owner will take all necessary steps to avoid future damage. If deterioration is related to other causes, the Minister will take steps to avoid future damage.
8. The Owner and the Minister will comply with the provisions of the management prescription document, contained in **Schedule 3**.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

**CONSERVATION COVENANT UNDER
SECTION 77 OF THE
RESERVES ACT 1977 FOR
CROWN PASTORAL LAND ACT 1998 PURPOSES**

Solicitor for the Minister

**COMMISSIONER OF CROWN
LANDS**

to

MINISTER OF CONSERVATION

**Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH**

SCHEDULE 3**MANAGEMENT PRESCRIPTION DOCUMENT FOR CONSERVATION
COVENANT (Middle and Nevis Blocks) – CARRICK**

This covenant is ongoing and provides for grazing at a level compatible with the values to be preserved. A management prescription in the conservation covenant provides:

1. *The specific goals of management of the land consistent with the nature of the covenant (covering vegetation values, landscape and historic).*
2. *A description of how the goals are to be met.*
3. *A detailed description of the type and condition of natural resources at the commencement of the covenant.*
4. *A description of the monitoring programme to be carried out.*
5. *A specification concerning grazing systems, including identification of vegetation trends and how that will affect the grazing systems.*
6. *The revision of the management prescription document ten years from the date of creation of the covenant and ten years thereafter.*
7. *The covenant conditions between the “Middle Block” and the “Nevis Block” are different so the goals are described in different parts of this document.*

The area consists of two distinct blocks, the lower called the “Nevis Face” is divided by a fenceline from the upper (above about 1000m) called the “Middle Block”. These are to be managed differently to recognise their values.

Middle Block:

The specified goals for the management of the land are to achieve the maintenance and enhancement of existing vegetative cover and to preserve landscape values, whilst providing for ongoing sustainable grazing.

a) **Vegetation:**

Goal: To manage the vegetation within the covenant area by maintaining or enhancing the indigenous plant communities, while minimising the risk of invasion by exotic weeds and trees.

Description

Narrow-leaved snow tussockland is present throughout most of the Middle Block between 1100 m and 1400 m altitude. Narrow-leaved snow tussock is generally below 90 cm tall and between 35% and 60% cover, and is moderately modified below c. 1250 m altitude in this block. Patches of mouse-ear hawkweed are common below 1300 m altitude along with introduced pasture species. Other important species are golden speargrass, fescue tussock and blue tussock.

b) Landscape

Goal: To maintain or enhance the landscape values within the covenant area.

Landscape Values

These values make a contribution to the wider Nevis Valley landscape which is visually impressive. The middle block has values attributed to the vegetation pattern which is a transition between tall tussock and the more exotic oversown areas.

Visual Values

This unit has high visual resource values as an integral part of the Nevis Valley. The side slopes that comprise most of this unit are visible for approximately 17 km along the increasingly popular Nevis Road, particularly when viewed from Schoolhouse Flat.

Potential Vulnerability to Change

Land-use changes and activities, including those listed below, have the potential to affect this landscape unit:

- Hard visual edges being formed, especially between grazing blocks.
- Depletion and loss of tall tussock, particularly within the lower section of the existing broad band of narrow-leaved snow tussockland.
- Further earth disturbance across the highly visible slopes.

Nevis Face Block:

The specified goals for the management of the land are to preserve landscape, some vegetation and historic values, whilst providing for ongoing sustainable grazing.

a) Vegetation:

Goal: To manage the vegetation within the covenant area by maintaining or enhancing and the indigenous plant communities, while minimising the risk of invasion by exotic weeds and trees.

The induced matagouri/mingimingi shrublands will not be protected by this covenant.

The following communities are present within this block:

- *Chionochloa rigida* tussocklands
- Shrublands
- Extensive short tussock grasslands
- Communities associated with rocky tors

The tall tussock vegetation at the top of the Nevis Block is thought to represent the pre human vegetation. Lower altitudes are dominated by highly modified fescue tussockland, silver tussockland and pasture. The lower slopes have been over-sown and top-dressed and a band of mostly low-diversity matagouri-mingimingi shrubland is present between 800 m and 900 m altitude. These shrublands are thought to be partly induced by fertilizer and their continued expansion would be incompatible with stock grazing. Therefore these shrublands will not be protected by this covenant.

Vegetation on several small river terraces and river flats adjacent the Nevis River is fescue tussockland and silver tussockland. Gold mining tailings adjacent to the river

support a typical riverbed flora. These habitats support cryptic nationally-threatened herbs, *Myosotis pygmaea* var. *glauca* and *M. pygmaea* var. *minutiflora*. Patches of *Olearia bullata*, *O. odorata*, and *Coprosma rugosa* are also present, along with the exotics sweet brier and gooseberry. Many of the shrublands along these terraces have been sprayed.

b) Landscape

Goal: To maintain or enhance the landscape values within the covenant area.

Landscape Values

The landscape values make a contribution to the wider Nevis Valley landscape which is visually impressive. Higher areas have values attributed to the vegetation pattern which is a transition between tall tussock and the more exotic oversown areas.

This area has moderately high landscape values which convey a distinctive vegetation pattern and diversity that correlates closely with farming activity. It provides a slightly disjointed impression due to the 'patchy' nature of the vegetation. This area forms part of the natural backdrop to the cultural landscape of the Nevis Valley, especially the earlier gold dredging era.

Visual Values

This unit has high visual resource values as an integral part of the Nevis Valley. The side slopes that comprise most of this unit are visible for approximately 17 km along the increasingly popular Nevis Road, particularly when viewed from Schoolhouse Flat.

Potential Vulnerability to Change

Land-use changes and activities, including those listed below, have the potential to affect this landscape unit:

- Hard visual edges being formed, especially between grazing blocks.
- Further earth disturbance across the highly visible slopes.
- Spread of woody weeds (e.g. sweet brier) through the tussockland.

c) Historic values:

Goal: To manage the historic sites within the area to preserve their integrity.

In the Nevis Block there is an area of dredge tailings adjacent to the musterers hut at the northwest corner of the block. These were probably created by one of the small dredges that operated in the valley around the turn of the century. The tailings are probably the second most extensive area of dredge workings left in Otago after the Earnsclough tailings.

The main areas of ground sluicing are located on river terraces at the southwest corner of the block. These are typical areas of ground sluicing which also include hut site ruins. There are a number of impressive sluice channels with stacked stone walls. The northern area of tailings is the most extensive.

Two small coal mines were located opposite the Lower Nevis Township. Both were worked by sluicing, using water from small water races coming from adjacent streams. The sluicing removed the overburden and exposed the coal seam. There is

some evidence that the southern mine may have also been worked underground. Little remains at the sites beyond the evidence of the sluicing and an exposed coal seam.

Description of a monitoring programme to be established for historic sites, vegetation condition.

Monitoring will comprise a comprehensive set of photo points positioned to provide visual reference points in all key vegetation environments in the Middle Block and significant historic sites in the Nevis Block. Photo points will be set up at prior to commencement of the covenant and re-measured every 10 years.

At selected sites in the middle block where vegetation is considered to be vulnerable to grazing, monitoring sites will be located to enable condition and composition of ground cover to be monitored.

The historic site monitoring will include all significant sites.

Number of stock and duration permitted to be run on the Middle Block within the current term of the management prescription document.

The owner must only use the land for grazing sheep. Not more than 361 stock units (ie: 3000 dry sheep for 55 days) may be grazed on an annual basis. Sheep numbers will be reassessed every year following monitoring. For the purpose of this document: 1 ewe = 1 stock unit; 1 hogget = 0.6 of a stock unit; 1 ram, dry ewe or wether = 0.8 of a stock unit.

Should monitoring show deterioration in vegetation condition, the Minister may require a reduction in stocking rates subject to meeting with the Owner and discussing the results and probable causes. The Minister must be fair and reasonable in applying the monitoring results and must take into account factors unrelated to stock numbers.

Appendix 10: Form of Covenant CC2 to be Created

DATED _____

Between

COMMISSIONER OF CROWN LANDS
Pursuant to Section 80 of the Crown Pastoral Land Act 1998

and

MINISTER OF CONSERVATION
("the Minister")

COVENANT UNDER RESERVES ACT 1977
FOR CROWN PASTORAL LAND ACT 1998 PURPOSES



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

BETWEEN **COMMISSIONER OF CROWN LANDS** acting pursuant to section 80
of the Crown Pastoral Land Act 1998

AND **MINISTER OF CONSERVATION**

BACKGROUND

- A. The Commissioner of Crown Lands is deemed for the purposes of section 77 of the Reserves Act 1977 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land contains certain Values specified in Schedule 1.
- C. The parties agree that the Land should be managed so as to preserve the particular Values specified in Schedule 1, and that such purpose can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.
- D. An approved plan designating the Land as land over which a Covenant under section 77 of the Reserves Act 1977 is to be created has been registered under section 64 of the Crown Pastoral Land Act 1998.
- E. The Commissioner of Crown Lands has agreed to grant the Minister a Covenant over the Land to preserve the particular Values specified in Schedule 1.

OPERATIVE PARTS

In accordance with section 77 of the Reserves Act 1977, and with the intent that the Covenant run with the Land and bind all subsequent Owners of the Land, the Commissioner of Crown Lands and Minister agree as follows:

1. INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

- “**Act**” means the Reserves Act 1977.
- “**Covenant**” means this Deed of Covenant made under section 77 of the Act.
- “**Director-General**” means the Director-General of Conservation.
- “**Fence**” includes a gate.
- “**Fire Authority**” means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
- “**Land**” means the land described in Schedule 1.
- “**Minerals**” means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “**Minister**” means the Minister of Conservation.
- “**Natural Water**” includes water contained in streams the banks of which have, from time to time, been realigned.
- “**Owner**” means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.

- “Party” or “Parties”** means either the Minister or the Owner or both.
- “Values”** means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
- “Working Day”** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 clause and other headings are for ease of reference only and are not to be treated as forming any part of the context or to affect the interpretation of this Covenant;
- 1.2.3 words importing the singular number include the plural and vice versa;
- 1.2.4 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and in determining the issue, the parties must have regard to the matters contained in the Background;
- 1.2.5 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.6 words importing one gender include the other gender;
- 1.2.7 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;
- 1.2.8 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2. OBJECTIVE OF THE COVENANT

- 2.1 The Land must be managed so as to preserve the Values.

3. THE OWNER’S OBLIGATIONS

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;

- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
 - 3.1.10 any other activity which might have an adverse effect on the Values.
 - 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must:
- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
 - 3.2.3 keep the Land free from exotic tree species;
 - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
 - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
 - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

4. THE MINISTER'S OBLIGATIONS

- 4.1 The Minister must have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant.
- 4.2 The Minister must repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

5. IMPLEMENTATION OF OBJECTIVES

- 5.1 The Minister may;
 - 5.1.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objectives specified in clause 2.1;
 - 5.1.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

6. DURATION OF COVENANT

- 6.1 This Covenant binds the Minister and Owner in perpetuity to the rights and obligations contained in it.

7. OBLIGATIONS ON SALE OF LAND

- 7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, or assignee to ensure that on any subsequent sale, lease, or assignment, any subsequent purchaser, lessee, or assignee must also comply with the terms of this Covenant including this clause.
- 7.2 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

8. MISCELLANEOUS MATTERS

8.1 Rights

- 8.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

8.2 Trespass Act:

- 8.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 8.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

8.3 Reserves Act

- 8.3.1 Subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

8.4 Titles

- 8.4.1 This Covenant must be signed by the Commissioner of Crown Lands and the Minister and registered against the Certificate of Title to the Land.

8.5 Acceptance of Covenant

- 8.5.1 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

8.6 Fire

- 8.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land;
- 8.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:
- 8.6.2.1 requested to do so; or
- 8.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

9. NOTICES

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.
- 9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of pre-paid post, on the third Working Day after posting;
 - (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 9.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

10. DEFAULT

- 10.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:
- 10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and
 - 10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.
- 10.2 Should either the Minister or the Owner become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 10.2.1 advise the defaulting party of the default.
 - 10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
 - 10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

11. DISPUTE RESOLUTION PROCESSES

- 11.1 If any dispute arises between the Minister and the Owner in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 11.2 **Mediation**
- 11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;
 - 11.2.2 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.
- 11.3 **Failure of Mediation**
- 11.3.1 in the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;

11.3.2 notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the District Law Society in the region in which the Land is situated;

11.3.3 the parties further agree that the results of arbitration are to be binding upon the parties.

12. JOINT OBLIGATIONS

12.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvements or take any action either jointly or individually to better preserve the Values.

13. SPECIAL CONDITIONS

13.1 Special conditions relating to this Covenant are set out in Schedule 2.

13.2 The standard conditions contained in this Document must be read subject to any special conditions.

Executed as a Deed

Signed by _____ acting under a)
delegation from the Commissioner of Crown Lands)
deemed pursuant to section 80(5) of the Crown Pastoral)
Land Act 1998 to be the Owner of the Land for the)
purposes of section 77 of the Reserves Act 1977)
in the presence of :)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ exercising his/her)
powers under section 117 of the Reserves Act 1977)
as designated Commissioner and acting for and on)
behalf of the Minister of Conservation)
in the presence of :)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

Currently shaded yellow and labelled CC2 (approximately 320ha) on the Proposed Designations Plan.

2. Address for Service¹

The address for service (including facsimile number) of the Minister is:

C/- Box 5244
DUNEDIN

Fax (03) 477 8626

The address for service (including facsimile number) of the Owner is:

Donald W. Clark, Bannockburn Road, RD2, Cromwell

Fax (03) 445 0917

3. Values of Land to be Preserved

Preserving the landscape, historic and recreational values of the area.

Landscape values: These values are due to the homogenous appearance of the vegetation. The area makes an important contribution to the natural landscape.

Recreation values: This area is popular in winter for cross country skiing.

Historic Values: The Carrick water race is an important historical site. It is still used to supply irrigation water.

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions

1. The Minister will pay to the Owner a proportionate share of the following:
 - 1.2 the cost of any work under clause 3.2 if the Minister has first approved the work.
2. The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
 - 2.1 the Minister will bear the cost of work essential for purposes of landscape/historic/recreation conservation;
 - 2.2 the Owner will bear the cost of work essential for farming purposes;
 - 2.3 when the expenditure is partly for landscape/historic/recreation conservation and partly for farming purposes, the parties will bear the costs equally or in such other proportion as they may agree, and failing agreement, as may be determined under clause 11.
3. Clause 3.1.1 is deleted. Sheep only may be grazed at a stocking rate that does not compromise the existing vegetation stature and values.
4. The public have the right of foot access over the Land, but this right does not include the Carrick Water Race.
5. Photopoint monitoring will be established to provide base line information for the area. This will be in the form of broad scale photos or particular vegetation sites as appropriate.
6. Notwithstanding clause 3.1.6, cleaning of the Carrick water race can be carried out by mechanical means so long as the line of the race is not changed.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

**CONSERVATION COVENANT UNDER
SECTION 77 OF THE
RESERVES ACT 1977 FOR
CROWN PASTORAL LAND ACT 1998 PURPOSES**

Solicitor for the Minister

**COMMISSIONER OF CROWN
LANDS**

to

MINISTER OF CONSERVATION

**Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH**

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Appendix 11: Form of Covenant CC3 to be Created

DATED _____

Between

COMMISSIONER OF CROWN LANDS
Pursuant to Section 80 of the Crown Pastoral Land Act 1998

and

MINISTER OF CONSERVATION
(“the Minister”)

COVENANT UNDER RESERVES ACT 1977
FOR CROWN PASTORAL LAND ACT 1998 PURPOSES



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

BETWEEN **COMMISSIONER OF CROWN LANDS** acting pursuant to section 80
of the Crown Pastoral Land Act 1998

AND **MINISTER OF CONSERVATION**

BACKGROUND

- A. The Commissioner of Crown Lands is deemed for the purposes of section 77 of the Reserves Act 1977 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land contains certain Values specified in Schedule 1.
- C. The parties agree that the Land should be managed so as to preserve the particular Values specified in Schedule 1, and that such purpose can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.
- D. An approved plan designating the Land as land over which a Covenant under section 77 of the Reserves Act 1977 is to be created has been registered under section 64 of the Crown Pastoral Land Act 1998.
- E. The Commissioner of Crown Lands has agreed to grant the Minister a Covenant over the Land to preserve the particular Values specified in Schedule 1.

OPERATIVE PARTS

In accordance with section 77 of the Reserves Act 1977, and with the intent that the Covenant run with the Land and bind all subsequent Owners of the Land, the Commissioner of Crown Lands and Minister agree as follows:

1. INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

- “**Act**” means the Reserves Act 1977.
- “**Covenant**” means this Deed of Covenant made under section 77 of the Act.
- “**Director-General**” means the Director-General of Conservation.
- “**Fence**” includes a gate.
- “**Fire Authority**” means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
- “**Land**” means the land described in Schedule 1.
- “**Minerals**” means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “**Minister**” means the Minister of Conservation.
- “**Natural Water**” includes water contained in streams the banks of which have, from time to time, been realigned.
- “**Owner**” means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.

- “Party” or “Parties”** means either the Minister or the Owner or both.
- “Values”** means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
- “Working Day”** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 clause and other headings are for ease of reference only and are not to be treated as forming any part of the context or to affect the interpretation of this Covenant;
- 1.2.3 words importing the singular number include the plural and vice versa;
- 1.2.4 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and in determining the issue, the parties must have regard to the matters contained in the Background;
- 1.2.5 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.6 words importing one gender include the other gender;
- 1.2.7 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;
- 1.2.8 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2. OBJECTIVE OF THE COVENANT

- 2.1 The Land must be managed so as to preserve the Values.

3. THE OWNER’S OBLIGATIONS

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;

- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
 - 3.1.10 any other activity which might have an adverse effect on the Values.
 - 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must:
- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
 - 3.2.3 keep the Land free from exotic tree species;
 - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
 - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
 - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

4. THE MINISTER'S OBLIGATIONS

- 4.1 The Minister must have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant.
- 4.2 The Minister must repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

5. IMPLEMENTATION OF OBJECTIVES

- 5.1 The Minister may;
 - 5.1.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objectives specified in clause 2.1;
 - 5.1.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

6. DURATION OF COVENANT

- 6.1 This Covenant binds the Minister and Owner in perpetuity to the rights and obligations contained in it.

7. OBLIGATIONS ON SALE OF LAND

- 7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, or assignee to ensure that on any subsequent sale, lease, or assignment, any subsequent purchaser, lessee, or assignee must also comply with the terms of this Covenant including this clause.
- 7.2 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

8. MISCELLANEOUS MATTERS

8.1 Rights

- 8.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

8.2 Trespass Act:

- 8.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 8.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

8.3 Reserves Act

- 8.3.1 Subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

8.4 Titles

- 8.4.1 This Covenant must be signed by the Commissioner of Crown Lands and the Minister and registered against the Certificate of Title to the Land.

8.5 Acceptance of Covenant

- 8.5.1 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

8.6 Fire

- 8.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land;
- 8.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:
- 8.6.2.1 requested to do so; or
- 8.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

9. NOTICES

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.
- 9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of pre-paid post, on the third Working Day after posting;
 - (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 9.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

10. DEFAULT

- 10.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:
- 10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and
 - 10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.
- 10.2 Should either the Minister or the Owner become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 10.2.1 advise the defaulting party of the default.
 - 10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
 - 10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

11. DISPUTE RESOLUTION PROCESSES

- 11.1 If any dispute arises between the Minister and the Owner in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 11.2 **Mediation**
- 11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;
 - 11.2.2 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.
- 11.3 **Failure of Mediation**
- 11.3.1 in the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;

11.3.2 notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the District Law Society in the region in which the Land is situated;

11.3.3 the parties further agree that the results of arbitration are to be binding upon the parties.

12. JOINT OBLIGATIONS

12.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvements or take any action either jointly or individually to better preserve the Values.

13. SPECIAL CONDITIONS

13.1 Special conditions relating to this Covenant are set out in Schedule 2.

13.2 The standard conditions contained in this Document must be read subject to any special conditions.

Executed as a Deed

Signed by _____ acting under a)
delegation from the Commissioner of Crown Lands)
deemed pursuant to section 80(5) of the Crown Pastoral)
Land Act 1998 to be the Owner of the Land for the)
purposes of section 77 of the Reserves Act 1977)
in the presence of :)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ exercising his/her)
powers under section 117 of the Reserves Act 1977)
as designated Commissioner and acting for and on)
behalf of the Minister of Conservation)
in the presence of :)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

Currently shaded yellow and labelled CC3 (approximately 137ha) on the Proposed Designations Plan.

2. Address for Service¹

The address for service (including facsimile number) of the Minister is:

C/- Box 5244
DUNEDIN

Fax (03) 477 8626

The address for service (including facsimile number) of the Owner is:

Donald W. Clark, Bannockburn Road, RD2, Cromwell

Fax (03) 445 0917

3. Values of Land to be Preserved

3.1 Preserving the historic values of the area.

Historic Values: This is an important early gold rush site. There are a large number of sites that show a range of mining techniques as well as numerous huts and hut sites.

3.2 Preserving the landscape values of the area.

Landscape Values

This area has moderately high landscape values. The area has previously been recognized as significant due to the uninterrupted altitudinal sequence of native plant communities (Brumley *et al*, 1986). The coherent landscape values of this unit should be viewed along with similar areas on the neighbouring Kawarau Pastoral Lease, which together provide a natural setting for the lower Nevis River. A notable feature is the extent of early gold workings. Although these mining activities have compromised the inherent values of parts of the landscape, they provide tangible evidence of the district's cultural heritage.

3.3 Provide for public horse, foot and bicycle access within the covenant area.

This is a strategic route that will provide for public appreciation of the historic heritage within the covenant area.

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions

1. The Minister will pay to the Owner a proportionate share of the following:
 - 1.2 the cost of any work under clause 3.2 if the Minister has first approved the work.
2. The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
 - 2.1 the Minister will bear the cost of work essential for purposes of historic conservation;
 - 2.2 the Owner will bear the cost of work essential for farming purposes;
 - 2.3 when the expenditure is partly for historic conservation and partly for farming purposes, the parties will bear the costs equally or in such other proportion as they may agree, and failing agreement, as may be determined under clause 11.
3. Clause 3.1.1 is deleted and replaced with the following: Sheep only may be grazed on the Land.
4. Clause 3.1.5 is modified to allow for topdressing and sowing of seed.
5. The historic stonework in the covenant area shall not be removed or disturbed by either the owner, his representatives, contractors or agents or any other person so authorised by the owner. The owner must report any unauthorised disturbance of the historic stonework to the Minister.
6. Any member of the public will have a right, on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons, of access within the Land.
7. If a gate is locked (*at point 'g' on the designations plan*), DOC will make keys available to the public on request, to provide for horse access. Two copies of the key will also be given to the local DOC office for provision to the public, and also for DOC management access.
8. Photo point monitoring of historic sites will be undertaken by the Minister when the covenant has been registered and at intervals thereafter.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

**CONSERVATION COVENANT UNDER
SECTION 77 OF THE
RESERVES ACT 1977 FOR
CROWN PASTORAL LAND ACT 1998 PURPOSES**

Solicitor for the Minister

**COMMISSIONER OF CROWN
LANDS**

to

MINISTER OF CONSERVATION

**Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH**

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Appendix 12: Form of Covenant CC4 to be Created

DATED _____

Between

COMMISSIONER OF CROWN LANDS
Pursuant to Section 80 of the Crown Pastoral Land Act 1998

and

MINISTER OF CONSERVATION
("the Minister")

COVENANT UNDER RESERVES ACT 1977
FOR CROWN PASTORAL LAND ACT 1998 PURPOSES



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

BETWEEN **COMMISSIONER OF CROWN LANDS** acting pursuant to section 80
of the Crown Pastoral Land Act 1998

AND **MINISTER OF CONSERVATION**

BACKGROUND

- A. The Commissioner of Crown Lands is deemed for the purposes of section 77 of the Reserves Act 1977 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land contains certain Values specified in Schedule 1.
- C. The parties agree that the Land should be managed so as to preserve the particular Values specified in Schedule 1, and that such purpose can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.
- D. An approved plan designating the Land as land over which a Covenant under section 77 of the Reserves Act 1977 is to be created has been registered under section 64 of the Crown Pastoral Land Act 1998.
- E. The Commissioner of Crown Lands has agreed to grant the Minister a Covenant over the Land to preserve the particular Values specified in Schedule 1.

OPERATIVE PARTS

In accordance with section 77 of the Reserves Act 1977, and with the intent that the Covenant run with the Land and bind all subsequent Owners of the Land, the Commissioner of Crown Lands and Minister agree as follows:

1. INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

- “**Act**” means the Reserves Act 1977.
- “**Covenant**” means this Deed of Covenant made under section 77 of the Act.
- “**Director-General**” means the Director-General of Conservation.
- “**Fence**” includes a gate.
- “**Fire Authority**” means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
- “**Land**” means the land described in Schedule 1.
- “**Minerals**” means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “**Minister**” means the Minister of Conservation.
- “**Natural Water**” includes water contained in streams the banks of which have, from time to time, been realigned.
- “**Owner**” means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.

- “Party” or “Parties”** means either the Minister or the Owner or both.
- “Values”** means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
- “Working Day”** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 clause and other headings are for ease of reference only and are not to be treated as forming any part of the context or to affect the interpretation of this Covenant;
- 1.2.3 words importing the singular number include the plural and vice versa;
- 1.2.4 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and in determining the issue, the parties must have regard to the matters contained in the Background;
- 1.2.5 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.6 words importing one gender include the other gender;
- 1.2.7 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;
- 1.2.8 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2. OBJECTIVE OF THE COVENANT

- 2.1 The Land must be managed so as to preserve the Values.

3. THE OWNER’S OBLIGATIONS

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;

- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
 - 3.1.10 any other activity which might have an adverse effect on the Values.
 - 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must:
- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
 - 3.2.3 keep the Land free from exotic tree species;
 - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
 - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
 - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

4. THE MINISTER'S OBLIGATIONS

- 4.1 The Minister must have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant.
- 4.2 The Minister must repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

5. IMPLEMENTATION OF OBJECTIVES

- 5.1 The Minister may;
 - 5.1.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objectives specified in clause 2.1;
 - 5.1.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

6. DURATION OF COVENANT

- 6.1 This Covenant binds the Minister and Owner in perpetuity to the rights and obligations contained in it.

7. OBLIGATIONS ON SALE OF LAND

- 7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, or assignee to ensure that on any subsequent sale, lease, or assignment, any subsequent purchaser, lessee, or assignee must also comply with the terms of this Covenant including this clause.
- 7.2 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

8. MISCELLANEOUS MATTERS

8.1 Rights

- 8.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

8.2 Trespass Act:

- 8.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 8.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

8.3 Reserves Act

- 8.3.1 Subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

8.4 Titles

- 8.4.1 This Covenant must be signed by the Commissioner of Crown Lands and the Minister and registered against the Certificate of Title to the Land.

8.5 Acceptance of Covenant

- 8.5.1 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

8.6 Fire

- 8.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land;
- 8.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:
- 8.6.2.1 requested to do so; or
- 8.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

9. NOTICES

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.
- 9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of pre-paid post, on the third Working Day after posting;
 - (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 9.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

10. DEFAULT

- 10.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:
- 10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and
 - 10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.
- 10.2 Should either the Minister or the Owner become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 10.2.1 advise the defaulting party of the default.
 - 10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
 - 10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

11. DISPUTE RESOLUTION PROCESSES

- 11.1 If any dispute arises between the Minister and the Owner in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 11.2 **Mediation**
- 11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;
 - 11.2.2 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.
- 11.3 **Failure of Mediation**
- 11.3.1 in the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;

11.3.2 notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the District Law Society in the region in which the Land is situated;

11.3.3 the parties further agree that the results of arbitration are to be binding upon the parties.

12. JOINT OBLIGATIONS

12.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvements or take any action either jointly or individually to better preserve the Values.

13. SPECIAL CONDITIONS

13.1 Special conditions relating to this Covenant are set out in Schedule 2.

13.2 The standard conditions contained in this Document must be read subject to any special conditions.

Executed as a Deed

Signed by _____ acting under a)
delegation from the Commissioner of Crown Lands)
deemed pursuant to section 80(5) of the Crown Pastoral)
Land Act 1998 to be the Owner of the Land for the)
purposes of section 77 of the Reserves Act 1977)
in the presence of :)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ exercising his/her)
powers under section 117 of the Reserves Act 1977)
as designated Commissioner and acting for and on)
behalf of the Minister of Conservation)
in the presence of :)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

Currently shaded yellow and labelled CC4 (approximately 1578ha) on the Proposed Designations Plan.

2. Address for Service¹

The address for service (including facsimile number) of the Minister is:

C/- Box 5244
DUNEDIN

Fax (03) 477 8626

The address for service (including facsimile number) of the Owner is:

Donald W. Clark, Bannockburn Road, RD2, Cromwell

Fax (03) 445 0917

3. Values of Land to be Preserved

Preserving the landscape values of the area. The values are described as follows:

Landscape Values

This area has moderately high landscape values. The area has previously been recognized as significant due to the uninterrupted altitudinal sequence of native plant communities (Brumley *et al*, 1986). The coherent landscape values of this unit should be viewed along with similar areas on the neighbouring Kawarau Pastoral Lease, which together provide a natural setting for the lower Nevis River. A notable feature is the extent of early gold workings. Although these mining activities have compromised the inherent values of parts of the landscape, they provide tangible evidence of the district's cultural heritage.

Visual Values

The unit has moderate visual resource values as it is only visible from a small section of the Nevis Road. However, the lower section of the catchment has semi-remoteness qualities and provides the Nevis River with its wild and scenic character.

Potential Vulnerability to Change

Land-use changes and activities, including those listed below, have the potential to affect this landscape unit:

- Periodic burning to remove woody species.
- Further subdivision that would fragment the existing coherent tall tussocklands.
- Spread of wilding pines.
- Any "built" elements that would compromise the wild and scenic characteristics of the Nevis River gorge.

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions

1. The Minister will pay to the Owner a proportionate share of the following:
 - 1.2 the cost of any work under clause 3.2 if the Minister has first approved the work.
2. The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
 - 2.1 the Minister will bear the cost of work essential for purposes of landscape/historic/recreation conservation;
 - 2.2 the Owner will bear the cost of work essential for farming purposes;
 - 2.3 when the expenditure is partly for landscape conservation and partly for farming purposes, the parties will bear the costs equally or in such other proportion as they may agree, and failing agreement, as may be determined under clause 11.
3. Clause 3.1.1 is deleted. Sheep only may be grazed at a stocking rate that does not compromise the existing vegetation stature and values.
4. Photopoint monitoring will be established to provide base line information for the area. This will be in the form of broad scale photos or particular vegetation sites as appropriate.
5. Notwithstanding clauses within 3.1, the Minister will not unreasonably withhold consent for hydro electricity development activities within the lower covenant area.
6. Reference to topdressing and sowing of seed in clause 3.1.5 is deleted.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

**CONSERVATION COVENANT UNDER
SECTION 77 OF THE
RESERVES ACT 1977 FOR
CROWN PASTORAL LAND ACT 1998 PURPOSES**

Solicitor for the Minister

**COMMISSIONER OF CROWN
LANDS**

to

MINISTER OF CONSERVATION

**Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH**

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Appendix 13: Form of Public and Management Purposes Easement a-b-c, b-d, f-g, h-i-j, i-k, l-m to be Created

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Access for Management Purposes

Land Transfer Act 1952

This page does not form part of the Transfer.

TRANSFER
RELEASED UNDER THE OFFICIAL INFORMATION ACT
Land Transfer Act 1952

If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.

Land Registration District

--

Certificate of Title No. All or Part? Area and legal description – *Insert only when part or Stratum, CT*

--	--	--	--

Transferor *Surnames must be underlined*

COMMISSIONER OF CROWN LANDS, acting pursuant to section 80 of the Crown Pastoral Land Act 1998

Transferee *Surnames must be underlined*

HER MAJESTY THE QUEEN, acting by and through the Minister of Conservation

Estate or Interest or Easement to be created: *Insert e.g. Fee simple; Leasehold in Lease No.; Right of way etc.*

Public Access and Management Purposes Easement in Gross under section 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

The various considerations set out in a substantive proposal accepted under the Crown Pastoral Land Act 1998 on the _____ day of _____

Operative Clause

For the above consideration (receipt of which is acknowledged) the TRANSFEROR TRANSFERS to the TRANSFEEE all the transferor's estate and interest in the land in the above Certificate(s) of Title and if an easement is described above such is granted or created.

Dated this _____ day of _____

Attestation

Signed by acting under written delegation from the Commissioner of Crown Lands	Signed in my presence by the Transferor Signature of Witness _____ Witness to complete in BLOCK letters <i>(unless typewritten or legibly stamped)</i> Witness name Occupation Address
Signature, or common seal of Transferor	(continued on page 4 of Annexure Schedule)

Certified correct for the purposes of the Land Transfer Act 1952 Certified that Part IIA of the Land Settlement Promotion and Land Acquisition Act 1952 does not apply

Approved by Register-General of Land under No. 1995/5003

Annexure Schedule

Insert below

“Mortgage”, “Transfer”, “Lease”, etc

Dated

Page

of

Pages

Definitions

1. In this transfer unless the context otherwise requires:

1.1 “Easement Area” means that part of the Servient Land being 10 metres wide which is marked [a-b-c, b-d, f-g, h-i-j, i-k, l-m on proposed designations plan] “[]” on Deposited Plan/S.O. Plan No [].

1.2 “Management Purposes” means:

- the protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the easement area.
- The management of the land administered by the Transferee (not being a member of the public) in a way that is-ecologically sustainable.

1.3 “Servient Land” means the land owned by the Transferor and described on page 1.

1.4 “Transferee” means Her Majesty the Queen acting by and through the Minister of Conservation and, the Transferee’s tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee’s tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.

1.5 “Transferor” means the owner of the Servient Land described on page 1 and includes the Transferor’s tenants and invitees.

Standard Easement Terms

Access

2. The Transferee has the right:

2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.

2.2 To pass and re-pass at any time over and along the Easement on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, or with or without guns and dogs, for Management Purposes.

3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Transferor.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

OTACO-37091 - Easement in Gross: Public Access and Management Purposes to Conservation Area 28 July 2004
CHCRO-66317 - Easement Document 1 Carrick – August 2005

4. The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.

Exclusion of Schedules

5. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Ninth Schedule of the Property Law Act 1952 are expressly negated.

Term

6. The easement created by this transfer is to be in perpetuity.

Temporary Suspension

7. The Transferee (not being a member of the Public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary.

Dispute Resolution

- 8.1 If a dispute arises between the Transferor and Transferee (not being a member of the Public) concerning the rights, management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 8.2 If the dispute is not resolved within 14 days of written notice by one party to the other it is to be referred to mediation.
- 8.3 If the dispute is not resolved within 21 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated.
- 8.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

- 9.1 A notice to be given under this transfer by one party to the other is to be in writing and must:
 - (a) be hand delivered to the receiving party; or
 - (b) be sent by ordinary post to the receiving party;
 - (c) be sent by facsimile to the receiving party.
- 9.2 If clause 8.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.
- 9.3 If clause 8.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

Special Easement Terms

- 10 The standard easement terms contained above must be read subject to any special easement terms set out below.

- 10.1 The Transferor is under no obligation to maintain the Easement Area to any standard other than that which is necessary for his own purposes.
- 10.2 The Transferee to take all reasonable care to avoid damage to the soil and vegetation of the Easement Area.
- 10.3 The public have the right to use the easement with guns and dogs, subject to holding a hunting permit for the adjoining Conservation Area.
- 10.4 For the following conditions, the transferee is defined as the Director-General of Conservation’s tenants, agents, contractors, and invitees; and any employee or contractor, only.
 - 10.4.1 The Transferee has the right:
 - (a) To mark the Easement Area as appropriate.
 - (b) To erect and maintain stiles.
 - (c) To erect and maintain signs informing the public
 - (i) of the location of land managed by the Crown and available for public access and recreation; and
 - (ii) of their rights and responsibilities in relation to the Easement Area.
 - (d) To clear, form and maintain any track or path.
 - (e) To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 10.4.1.
 - 10.4.2 In doing any of the matters specified in clause 2.2, the Transferee must take reasonable and proper care not to damage any property of the Transferor and must properly repair any such damage.
 - 10.4.3 If gates are locked (*at points ‘g’, ‘h’ and ‘l’ on the designations plan*), DOC will make keys available to the public on request, to provide for horse access. Two copies of the key will also be given to the local DOC office for provision to the public, and also for DOC management access.

Continuation of “Attestation”

Signed for and on behalf of _____)
 Her Majesty the Queen by _____)
 under a written delegation in the _____)
 presence of: _____)

 Witness (Signature)

Name _____

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Address _____

Occupation _____

Footnote: In substitution of the SO Plan (which has yet to be prepared), the proposed easement described in clause 1 is marked on the Plan.

OTACO-37091 - Easement in Gross: Public Access and Management Purposes to Conservation Area 28 July 2004

CHCRO-66317 - Easement Document 1 Carrick – August 2005

Point

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

Approved by Registrar-General
of Land under No. 1995/1004

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Vehicles for Management Purposes

Land Transfer Act 1952

Law Firm Acting

Conservancy Solicitor
Department of Conservation
Dunedin

Auckland District Law Society
REF:4135

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(except for "Law Firm Acting")

OTACO-37091 - Easement in Gross: Public Access and Management Purposes to Conservation Area 28 July 2004
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Appendix 14: Form of Public and Management Purposes Easement e-f to be Created

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Access for Management Purposes

Land Transfer Act 1952

This page does not form part of the Transfer.

TRANSFER
RELEASED UNDER THE OFFICIAL INFORMATION ACT
Land Transfer Act 1952

If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.

Land Registration District

--

Certificate of Title No. All or Part? Area and legal description – *Insert only when part or Stratum, CT*

--	--	--	--

Transferor *Surnames must be underlined*

COMMISSIONER OF CROWN LANDS, acting pursuant to section 80 of the Crown Pastoral Land Act 1998

Transferee *Surnames must be underlined*

HER MAJESTY THE QUEEN, acting by and through the Minister of Conservation

Estate or Interest or Easement to be created: *Insert e.g. Fee simple; Leasehold in Lease No.; Right of way etc.*

Public Access and Management Purposes Easement in Gross under section 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

The various considerations set out in a substantive proposal accepted under the Crown Pastoral Land Act 1998 on the _____ day of _____

Operative Clause

For the above consideration (receipt of which is acknowledged) the TRANSFEROR TRANSFERS to the TRANSFEEE all the transferor's estate and interest in the land in the above Certificate(s) of Title and if an easement is described above such is granted or created.

Dated this _____ day of _____

Attestation

Signed by acting under written delegation from the Commissioner of Crown Lands	Signed in my presence by the Transferor Signature of Witness _____ Witness to complete in BLOCK letters <i>(unless typewritten or legibly stamped)</i> Witness name Occupation Address
Signature, or common seal of Transferor	(continued on page 4 of Annexure Schedule)

Certified correct for the purposes of the Land Transfer Act 1952
Certified that Part IIA of the Land Settlement Promotion and Land Acquisition Act 1952 does not apply

Approved by Register-General of Land under No. 1995/5003

Annexure Schedule

Insert below

“Mortgage”, “Transfer”, “Lease”, etc

Dated

Page

of

Pages

Definitions

1. In this transfer unless the context otherwise requires:
 - 1.1 “Easement Area” means that part of the Servient Land being 20 metres wide which is marked [e-f on proposed designations plan] “[]” on Deposited Plan/S.O. Plan No [].
 - 1.2 “Management Purposes” means:
 - the protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the easement area.
 - The management of the land administered by the Transferee (not being a member of the public) in a way that is-ecologically sustainable.
 - 1.3 “Servient Land” means the land owned by the Transferor and described on page 1.
 - 1.4 “Transferee” means Her Majesty the Queen acting by and through the Minister of Conservation and, the Transferee’s tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee’s tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.
 - 1.5 “Transferor” means the owner of the Servient Land described on page 1 and includes the Transferor’s tenants and invitees.

Standard Easement Terms

Access

2. The Transferee has the right:
 - 2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, on or accompanied by horses, or by motorised or non-motorised vehicle powered by a person or persons.
 - 2.2 To pass and re-pass at any time over and along the Easement on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, or with or without guns and dogs, for Management Purposes.
3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Transferor.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

OTACO-37091 - Easement in Gross: Public Access and Management Purposes to Conservation Area 28 July 2004
CHCRO-66332 - Easement Document 2 Carrick – August 2005

4. The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.

Exclusion of Schedules

5. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Ninth Schedule of the Property Law Act 1952 are expressly negated.

Term

6. The easement created by this transfer is to be in perpetuity.

Temporary Suspension

7. The Transferee (not being a member of the Public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary.

Dispute Resolution

- 8.1 If a dispute arises between the Transferor and Transferee (not being a member of the Public) concerning the rights, management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 8.2 If the dispute is not resolved within 14 days of written notice by one party to the other it is to be referred to mediation.
- 8.3 If the dispute is not resolved within 21 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated.
- 8.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

- 9.1 A notice to be given under this transfer by one party to the other is to be in writing and must:
 - (a) be hand delivered to the receiving party; or
 - (b) be sent by ordinary post to the receiving party;
 - (c) be sent by facsimile to the receiving party.
- 9.2 If clause 8.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.
- 9.3 If clause 8.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

Special Easement Terms

- 10 The standard easement terms contained above must be read subject to any special easement terms set out below.

- 10.1 The transferee is under no obligation to maintain the Easement Area to any standard other than that which is necessary for his own purposes.
- 10.2 The cost of maintenance carried out on the road will be borne by the transferee.
- 10.3 The public have the right to use the easement with guns and dogs, subject to holding a hunting permit for adjoining Conservation Areas or Reserves.
- 10.4 For the following conditions, the transferee is defined as the Director-General of Conservation’s tenants, agents, contractors, and invitees; and any employee or contractor, only.
 - 10.4.1 The Transferee has the right:
 - (a) To mark the Easement Area as appropriate.
 - (b) To erect and maintain stiles.
 - (c) To erect and maintain signs informing the public
 - (i) of the location of land managed by the Crown and available for public access and recreation; and
 - (ii) of their rights and responsibilities in relation to the Easement Area.
 - 10.4.2 In doing any of the matters specified in clause 2.2, the Transferee must take reasonable and proper care not to damage any property of the Transferor and must properly repair any such damage.
 - 10.4.3 The Transferee may close the easement area to public motorised vehicle access, during winter months, or when considered necessary if ground conditions render the easement area prone to damage.
 - 10.4.4 The Transferee to take all reasonable care to avoid damage to the soil and vegetation of the Easement Area.

Continuation of “Attestation”

Signed for and on behalf of _____)
 Her Majesty the Queen by _____)
 under a written delegation in the _____)
 presence of: _____)

 Witness (Signature)
 Name _____
 Address _____
 Occupation _____

Footnote: In substitution of the SO Plan (which has yet to be prepared), the proposed easement described in clause 1 is marked on the Plan.

OTACO-37091 - Easement in Gross: Public Access and Management Purposes to Conservation Area 28 July 2004

CHCRO-66332 - Easement Document 2 Carrick – August 2005

Point

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Approved by Registrar-General
of Land under No. 1995/1004

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Vehicles for Management Purposes

Land Transfer Act 1952

Law Firm Acting

Conservancy Solicitor
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Execution Section

This Proposal (including the schedules and appendices) is signed by the Commissioner and the Holder as a binding agreement.

SIGNED by the **Commissioner of Crown Lands** pursuant to the Crown Pastoral Land Act 1998 in the presence of:

Witness

Occupation

Address

SIGNED by [the Holder] in the presence of:

Witness

Occupation

Address

OR

SIGNED for and on behalf of [the Holder] by two of its directors:

[name of director]

[name of director]
