

## **Crown Pastoral Land Tenure Review**

**Lease name: CLUDEN STATION**

**Lease number: PO 213**

### **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.

**January**

**09**

**Appendix 4: Form of Concession Easement to be Created**

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Concession number: \_\_\_\_\_

DATED \_\_\_\_\_

**Between**

**MINISTER OF CONSERVATION  
("the Grantor")**

**and**

**H.J. ROSS AND P.B. PEDOFSKY  
("the Concessionaire")**

**EASEMENT CONCESSION  
UNDER CROWN PASTORAL LAND ACT 1998**



Department of Conservation  
*Te Papa Atawhai*

THIS DOCUMENT is made this        day of

**PARTIES:**

1.     **MINISTER OF CONSERVATION**, ("the Grantor")
  
2.     **H.J. ROSS AND P.B. PEDOFSKY**        ("the Concessionaire")

**BACKGROUND**

- A.     The land described in Item 1 of Schedule 1 as the Servient Land is a Conservation Area or a Reserve under the management of the Grantor.
  
- B.     The land described in Item 2 of Schedule 1 as the Dominant Land is freehold land of the Concessionaire.
  
- C.     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).
  
- D.     The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Document.
  
- E.     The Grantor has agreed to grant the Concessionaire an Easement appurtenant to the Dominant Land over that part of the Servient Land specified as the Easement Area.

**OPERATIVE PARTS**

**TERMS AND CONDITIONS**

**1.0     DEFINITIONS AND INTERPRETATION**

1.1     In this Document, unless the context otherwise requires:

"**Background**" means the matters referred to under the heading "Background" on page 2 of this Document.

"**Compensation**" means the amount specified in Item 6 of Schedule 1 and required by the Grantor under section 53 of the Crown Pastoral Land Act 1988 and section 17X of the Conservation Act 1987 for the adverse effects of the Concession Activity on the Crown's or public's interest in the Easement Area.

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

"**Concessionaire**" means the registered proprietor for the time being of the Dominant Land and includes the Concessionaire's successors, assigns, executors, and administrators.

"**Concession Activity**" means the use of the Easement Area by the Concessionaire for purposes specified in Item 4 of Schedule 1.

"**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 document and any subsequent amendments and all schedules, annexures, and plans attached to it.

“**Dominant Land**” means the land specified in Item 2 of Schedule 1.

“**Easement**” means the Appurtenant Easement granted under this Document by the Grantor to the Concessionaire under section 17Q of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).

“**Easement Area**” means that part of the Servient Land specified in Item 3 of Schedule 1.

“**Reserve**” has the same meaning as “reserve” in section 59A of the Reserves Act 1977.

“**Servient Land**” means a Conservation Area being the area more particularly described in Item 1 of Schedule 1.

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

“**Term**” means the period of time specified in Item 5 of Schedule 1 during which this Document operates.

“**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 APPURTENANT EASEMENT**

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 an **EASEMENT APPURTENANT** to the Dominant Land 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 Easement Area subject to the terms and conditions contained in this Document.

## **3.0 TERM**

3.1 The Easement is for the Term specified in Item 5 of Schedule 1.



**4.0 COMPENSATION**

4.1 The Concessionaire must pay to the Grantor in the manner specified by the Grantor the Compensation specified in Item 6 of Schedule 1.

4.2 Under section 53 of the Crown Pastoral Land Act 1998 the Grantor waives any requirement for rent on the basis that the costs of setting and collecting the rent would exceed any rent which may be collected.

**5.0 OTHER CHARGES**

5.1 In addition to Compensation, the Concessionaire must pay all rates, levies, taxes, duties, assessments, charges, and other outgoings which may be charged, levied, or reasonably assessed, or which may become payable in relation to the Easement Area and which are attributable to the Concessionaire's use of or activity on the Easement Area.

**6.0 CONCESSION ACTIVITY**

6.1 The Concessionaire is not to use the Easement Area for any purpose other than the Concession Activity.

**7.0 COMPLIANCE**

7.1 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 any 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 Resource Management Act 1991 and the Health and Safety in Employment Act 1992 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Easement Area or affecting or relating to the Concession Activity.

**8.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS**

8.1 The Concessionaire must not erect or bring on to the Easement Area any Structure, install any facility, or alter the Land in any way without the prior written consent of the Grantor.

8.2 The Concessionaire must keep and maintain any Structures, and facilities on and alterations to the Easement Area in good repair.

8.3 On expiry or early termination of this Document either as to the whole or any part of the Easement Area, the Concessionaire will not be entitled to compensation for any improvements and any Structure or facilities remaining on the Easement Area are to become the property of the Grantor.

8.4 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 Easement Area in a clean and tidy condition to the satisfaction of the Grantor.

**9.0 PROTECTION OF THE ENVIRONMENT**

9.1 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 Easement Area; or

- (b) bring any plants, or animals (except those stipulated in Item 4 of Schedule 1) on to the Easement Area; or
- (c) deposit on the Easement Area debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Easement Area; or
- (d) pile or store materials in any place on the Easement Area where they may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Easement Area; or
- (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Easement Area; or
- (g) disturb or allow stock to disturb any stream or watercourse on the Easement Area; or
- (h) light any fire on the Easement Area.

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

- (a) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Easement Area or any Structure or facility on the Easement Area;
- (b) comply strictly with the provisions of the Biosecurity Act 1993.

9.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 9

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

9.5 The Concessionaire may for purposes of the Concession Activity take onto or use vehicles on the Easement Area on existing formed access tracks only.

## **10. TEMPORARY SUSPENSION**

10.1 The Grantor may, at any time in exercise of the Grantor's powers, close all or part of the Easement Area for such period as she/he considers necessary.

## **11.0 TERMINATION**

11.1 The Grantor may terminate this Document by notice in writing to the Concessionaire if:

- (a) the Concessionaire breaches any terms of this Document; and
- (b) the Grantor has notified the Concessionaire in writing of the breach; and
- (c) the Concessionaire does not rectify the breach within 28 days of receiving notification.

11.2 Immediately on termination the Concessionaire must execute a surrender of this Document if the Grantor so requires it.

## **12.0 INDEMNITIES AND INSURANCE**

12.1 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, agents, contractors, licensees or invitees

or otherwise caused as a result of its use of the Easement Area or the Concessionaire's carrying out of the Concession Activity on the Easement Area.

- 12.2 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.
- 12.3 Without prejudice to or in any way limiting its liability under clause 12.1 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 Easement Area and covering:
    - (i) general indemnity for a sum not less than the amount specified in Item 7 of Schedule 1; and
    - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 8 of Schedule 1; and
  - (b) statutory liability insurance for the amount specified in Item 9 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 10 of Schedule 1.
- 12.4 With respect to clause 12.3 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.

### **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 DISPUTE RESOLUTION AND ARBITRATION**

- 14.1 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.
- 14.2 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 the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties.
- 14.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Easement Area is located is to appoint the mediator.



- 14.4 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.
- 14.5 Notwithstanding any provision to the contrary 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 Easement Area is located is to appoint the arbitrator. The arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 14.6 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 14.7 The parties agree that the results of any arbitration are to be binding on the parties.

**15.0 NOTICES**

- 15.1 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 11 of Schedule 1.
- 15.2 A notice given in accordance with clause 15.1 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.

**16.0 RELATIONSHIP OF PARTIES**

- 16.1 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 Easement Area;
  - (b) preventing the Grantor from granting similar concessions to other persons;
  - (c) derogating from the rights of the Grantor and the public to have access across the Easement Area.

**17.0 SPECIAL CONDITIONS**

- 17.1 Special conditions relating to this Document are set out in Schedule 2.
- 17.2 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:

- 7 -

Occupation:  
Address:

Signed by :

---

as Concessionaire  
in the presence of :

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Witness :  
Occupation :  
Address :

**SCHEDULE 1**

1. **Servient Land:** Proposed Conservation Land identified in the tenure review Designations Plan as CA2.  
*(see definition of Servient Land in clause 1.1)*
2. **Dominant Land:** Proposed freehold land identified in the tenure review Designations Plan. *(see definition of Dominant Land in clause 1.1)*
3. **Easement Area:** Shown as dotted blue line and shown as "h-i-k", "i-j", "o-p", "s-r-t", "u-t-v" and "w-x" on Designations Plan, being 10m wide.
4. **Concession Activity:**  
Horse, foot, vehicles, implements, driven stock and dog access over route for farm management purposes.  
*(see definition of Concession Activity in clause 1.1)*
5. **Term:** 30 years *(see clause 3.1)*
6. **Compensation:** 10 cents if requested.  
(payable on date of execution of this Document) *(see clause 4.1)*
7. **Public Liability General Indemnity Cover:** *(see clause 12.3)*  
for \$1,000,000.00
8. **Public Liability Forest & Rural Fire Act Extension:** *(see clause 12.3)*  
for \$1,000,000.00
9. **Statutory Liability Insurance** *(see clause 12.3)*  
for \$20,000.00
10. **Other Types of Insurance:** *(see clauses 12.3)*  
for \$ NA
11. **Address for Notices (including facsimile number):** *(see clause 15)*
  - (a) Grantor: C/- PO Box 5244, Dunedin. Fax (03) 4778 626
  - (b) Concessionaire: C/- P.B. Pedofsky, PO Box 267, Alexandra, 9340.

**SCHEDULE 2**

*Special Conditions*

1. The Concessionaire must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and in particular will avoid using the easement when conditions such as softening during frost thaw, heavy rain or flooding, that would render the Easement Area particularly vulnerable to damage.
2. Clause 4.2 is deleted.
3. Stock must be actively driven through the easement areas and not left to drift through on their own.



**Appendix 5: Form of Easement 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.**

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

[Empty box for Land Registration District]

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

[Table with 3 columns: Certificate of Title No., All or Part?, Area and legal description]

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

Attestation table with columns for Transferor signature, Witness signature, and Witness details.

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

[Empty box for signature]

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 ( being "a-b-c-d-e-g", "b-s", "c-q", "g-h", "f-l" and "e-m-n" "m-o" with carpark areas at or near "a" and "b" of no more than 600 sq m each, shown on the designations plan) and marked [ ] "[ ]" 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);
    - 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, for purposes of clause 2.1, includes 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  
DOCDM-66401 - Cluden Easement Public and Management 12/10/2006



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 Areas to any standard other than that which is necessary for his own purposes, except for easement "a-b" as provided for in 10.7 below.
- 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 when holding a hunting permit for adjoining conservation land.
- 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 create and maintain carparks at or near points "a" and "b".
  - (f) To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 10.4.1.
- 10.5 Clause 2.1 is modified to include public vehicle access from "a-b". This access will be closed to vehicles during winter and at such times as the transferee agrees it is unsuitable for vehicle (or certain classes of vehicle) use.
- 10.6 Route "m-o" provides management access (as per clause 2.2 above only) with no public access.
- 10.7 Excepting those easement areas within "a-b" which may be maintained by the Central Otago District Council as a public road, the Transferor and the Transferee will share the cost of the maintenance of the Easement Area. The share will be agreed between the parties that reflects the use of the Easement Area made by each party.
- 10.8 Clause 3 is amended as follows:  
The Transferor and transferee 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 or transferee.

**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.*

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

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access to Conservation Areas
2. Vehicles for Management Purposes

**Land Transfer Act 1952**

Law Firm Acting

Conservancy Solicitor  
Department of Conservation  
Dunedin

Auckland District Law Society  
REF:4135

**This page is for Land Registry Office use only.**  
*(except for "Law Firm Acting")*



**Appendix 6: Form of Covenant 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:

**I. 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

Areas shaded yellow and labelled "CC1"-"CC6" on the Proposed Designations Plan.

2. Address for Service<sup>1</sup>

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:

Neil Alexander Purvis, Cluden Station, Tarras

## 3. Values of Land to be Preserved

Preserving the natural values of the area.

Natural values:

CC1: The lower slopes within McPhies 1 block are steep and support dense shrubland. While sweet briar dominates, a diversity of native herb and shrub species including mingimingi, *Olearia odorata* and matagouri are present, especially where numerous small bluffs and rock outcrops also occur. A small stream cuts behind a bluff system at the west end, and a fence line delimits the east side.

CC2: Native shrublands are a feature of this steep-sided rocky valley that drains into the Cluden Stream. This dense mixed shrubland was identified as a Recommended Area for Protection (RAP A2; Ward *et al.*, 1994), and is dominated by mingimingi with abundant tree daisy, mountain wineberry (*Aristotelia fruticosa*) and matagouri. Other species include koromiko (*Hebe salicifolia*), native broom, porcupine shrub, the lianes *Muehlenbeckia complexa*, bush lawyer, *Parsonia heterophylla*, threatened broom *Carmichaelia kirkii*, and *Clematis marata*. Less diverse matagouri shrubland with some briar and mingimingi occurs away from the stream, and partially buffers the mixed shrubland.

CC3: The mid and upper parts of the small unnamed gully located in the Blue Slip block support mixed shrubland dominated by matagouri and briar, with *Olearia odorata*, *Coprosma rugosa*, mingimingi, native broom and the climbers *Muehlenbeckia complexa* and clematis also present. During the PNA survey, the threatened native climber *Carmichaelia kirkii* was recorded within the lower-mid part of the catchment where the shrubland is most dense.

CC4: A dense mixed riparian shrubland is located within the Breakneck and west Roughneck blocks, extending down into McPhies 3 block. This shrubland was identified as an RAP (RAP B1) during the PNA survey (Ward *et al.*, 1994). The shrubland is dominated by mingimingi, mountain wineberry, koromiko, matagouri and *Olearia odorata*, and is of greater diversity and stature than the other shrublands. Matagouri, including scattered large plants up to 4m tall dominate shrubland on the lower slopes and side gullies. A small amount of the threatened climbing broom *Carmichaelia kirkii* was recorded beside the main Cluden Stream during the PNA survey. Large (3m tall) *Olearia nummulariifolia* and coral broom were recorded in the upper portion of the RAP area (Ward *et al.*, 1994).

Diverse shrubland lies within McPhies 3 block, where, in addition to the common shrub species, weeping mapou, native broom, clematis and *Muehlenbeckia complexa* grow along the bottom of a small gorge. The threatened cress *Pachycladon cheesmanii* and an unnamed, weeping *Melicytus* species are both found on rock bluffs just above the Cluden Stream opposite the junction where the stream flowing through RAP B1 joins the Cluden Stream.

<sup>1</sup> State street address not Post Office Box number.



CC5: Dense narrow leaved tussockland clothes the upper slopes, while the lower slopes are more exotic. Other native plants associated with the narrow-leaved snow tussocks include false Spaniard, golden Spaniard, *Raoulia subsericea*, rare dwarf broom *Carmichaelia vexillata*, native daphne and blue tussock. Coral broom is also locally present.

CC6: Shaws block, with its mainly steep, east-facing slopes, contains diverse dense shrublands with matagouri, mountain wineberry, native broom, tree daisy, *Olearia cymbifolia*, *Coprosma* species, porcupine shrub, *Melicytus* sp. and briar.

#### Landscape Values:

CC5: The area is part of a largely intact backcountry tussock landscape with the dramatic St Bathans Range towering above on the eastern side. The western side within the Pastoral Lease forms tussock covered slopes. The slopes have been oversown and topdressed, and hawkweed is a significant component. The section immediately above the gorge is steep and rocky. Tall tussock maintains a continuum from valley floor to the ridge though is depleted on lower slopes. The unit is within the transition zone between schist and greywacke and exhibits both schist outcrops and greywacke scree.

Dunstan Creek as a whole is recognised as an area with high visual and scenic values derived from the impressive mountainlands including the Dunstan and St Bathans Ranges. Other factors that contribute to its distinctive character and significance are its location on the schist/greywacke belt, the continuity of tussock cover from valley floor to ridgeline, and valley floor wetlands.

While only a small part of Dunstan Creek is located within Cluden Pastoral Lease, this unit is an important part of the whole Dunstan Creek valley. Though modified by grazing and aerial oversowing and topdressing it retains a tussock continuum in visual terms.

#### Evaluation Summary for Landscape:

Criteria	Value	Comment
Intactness	Medium to High	Snow tussock depleted on lower slopes
Legibility	High	
Aesthetic Factors	High	Part of a striking and distinctive high country landscape
Historic Factors		
Visibility	Low	
Significance	High	Part of the highly significant upper Manuherikia landscape with regional and national significance
Vulnerability	High	Vulnerable to further ecological deterioration

**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 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 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: Sheep and cattle may be grazed in a way that does not, in the opinion of the Minister, adversely affect the values being protected.
4. **Monitoring**
  - 4.1 Photopoint monitoring will be used to record the condition and trends of the shrubland areas.
  - 4.2 The Minister will pay the costs of monitoring.
5. Notwithstanding clause 3.1.5 above, the Owner may oversow and topdress the area in CC5.
6. To enable the maintenance of stock access through the Covenant areas, cleared access may be maintained over strips up to a maximum width of 20m as depicted on the designations plan. This access may be maintained by mechanical or chemical means. Some initial clearance of shrubland may be required adjacent to fences at the northern and southern ends of CC6.
7. It is agreed that the Owner may construct a hut within the bounds of CC5 subject to agreement with the Minister on its location and design.

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

**Execution Section**

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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]