

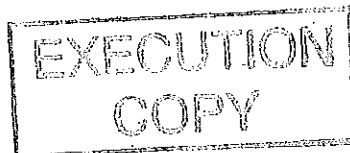
# **Crown Pastoral Land Tenure Review**

**Lease name : CLUDEN**

**Lease number : PO 213**

## **Substantive Proposal**

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



**PROPOSAL FOR REVIEW OF CROWN LAND**

**Under Part 2 of the Crown Pastoral Land Act 1998**

**Date:** 16 October 2012.

---

**Holder:**

Philip Blair Pedofsky (3/8 Share), Philip Blair Pedofsky, Warwick Deuchrass and Peter Austin Gowing (5/8 Share)

**Commissioner of Crown Lands:**

C/- Tenure Review Project Manager  
Darroch Limited  
43 Tarbert Street  
PO Box 27  
Alexandra

---

**The Land**

**Lease:** Po213, Cluden

**Legal Description:** Part Run 236M and Run 237F, situated in Cluden and St Bathans Survey Districts and Sections 1,2,3 & 4, SO 20010.

**Area:** 12390.6452ha

**Certificate of Title/Unique Identifier:** OT 386/106

---

**Summary of Designations**

Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown edged in pink on the Plan) is to be restored to, or retained by, the Crown as set out in Schedules One and Two; and
  - (b) The Freehold Land (shown edged in green on the Plan) is to be disposed by freehold disposal to the Holder as set out in Schedule Three.
-

**1      The Plan**

---

---

**2 Conditions**

- 2.1 This Proposal, and any agreement arising therefrom, is subject to the conditions contained in Schedule Four (if any).

---

**3 Settlement**

- 3.1 Unless otherwise agreed by the parties, the Settlement Date for the disposal of the Freehold Land to the Holder by freehold disposal will be the day that is TEN (10) working days following the day on which Land Information New Zealand notifies the Commissioner that the Final Plan and a copy of this Proposal are registered in accordance with the Act.

- 3.2 The Freehold Land will be disposed of to the Holder under the Land Act 1948.

- 3.3 Notwithstanding anything to the contrary, if, as at the Settlement Date (as determined pursuant to clause 3.1), the rent payable under the Lease is subject to a Rent Review, then the Commissioner may elect to:

(a) settle on the Settlement Date on the basis that the Commissioner may retain from the Commissioner's Payment an amount which the Commissioner, acting reasonably, estimates will be payable by the Holder to the Commissioner following agreement or determination of the Rent Review ("the Retention"). The Retention shall be held by the Crown Law Office in an on-call, interest-bearing trust account in the joint names of the parties for their respective rights and interests. Upon agreement or determination of the Rent Review, the Commissioner shall calculate the rent shortfall payable by the Holder to the Commissioner in respect of the period from the effective date of the Rent Review to the Settlement Date, both dates inclusive ("the Shortfall"). If:

(i) the Shortfall is less than the Retention and the net interest earned thereon, the balance shall be paid by the Commissioner to the Holder within TEN (10) working days; or

(ii) the Shortfall is more than the Retention and the net interest earned thereon, the balance shall be paid by the Holder to the Commissioner within TEN (10) working days;

or

(b) defer the Settlement Date until TEN (10) working days after the rent payable as a consequence of the Rent Review:

(i) has been agreed or determined; and

(ii) is not and will not be subject to any appeal, rehearing or other proceedings.

---

**4 Holder's Payment**

- 4.1 By 3.00 p.m. on the Settlement Date, the Holder must pay the Holder's Payment and all other money payable to the Commissioner or the duly appointed agent of the Commissioner by bank cheque without set-off or deduction of any kind in accordance with the settlement requirements of the Commissioner.

- 4.2 If the Holder fails to pay the Holder's Payment or any part of it or any other money to the Commissioner or to the duly appointed agent of the Commissioner on the Settlement Date clause 19 will apply.

---

**5 Commissioner's Payment**

- 5.1 The Commissioner shall pay the Commissioner's Payment to the Holder on the Settlement Date.
-

- 5.2 No interest shall be payable to the Holder by the Commissioner in respect of the Commissioner's Payment, including (without limitation) for the period from the Vesting Date to the Settlement Date.

## **6 Vesting of Crown Land**

---

- 6.1 The Crown Land will vest in the Crown on the Vesting Date.

## **7 Issue of Certificate of Title**

---

- 7.1 Notwithstanding any other provision in this Proposal, the Commissioner will not request that the Surveyor-General issue a certificate to the Registrar pursuant to section 116 of the Land Act 1948 (to enable a certificate of title to issue for the Freehold Land) unless and until:
- (a) the Commissioner has received the Holder's Payment from the Holder under clause 4, and all other money payable by the Holder under this Proposal and the Notice;
  - (b) the Holder has provided to the Commissioner duplicate copies of the certificate of title relating to the Lease (if any) and/or the Lease if requested by the Commissioner;
  - (c) the Holder has signed and returned to the Commissioner all documents required by the Commissioner to be signed by the Holder to give effect to this Proposal (including, without limitation, any permit, covenant, easement and/or any other document); and
  - (d) the Holder has procured a registrable discharge of any Mortgage and provided this to the Commissioner together with any new mortgage documents to be registered against the Freehold Land.

## **8 Registration of Documents**

---

- 8.1 Subject to clause 7, the Commissioner will lodge all documents necessary to give effect to this Proposal (including, without limitation any easement, covenant, discharge of mortgage, and/or duplicate copy of the Lease) and any new mortgage documents to be registered against the certificate of title to be issued for the Freehold Land so that the certificate of title for the Freehold Land will issue subject to the encumbrances provided in this Proposal. Any new mortgage will be registered after any other encumbrances such as any easements and/or covenants are registered.

## **9 Consents**

---

- 9.1 The Holder must obtain the written consent to the Holder's acceptance of this Proposal from all persons having an interest in the Land (other than the Holder), including, but not limited to:
- (a) any Mortgagee(s);
  - (b) any party entitled to the benefit of a land improvement agreement registered against the Lease and/or the Land; and
  - (c) any other person that the Commissioner reasonably believes has an interest in the Land or who the Holder reasonably believes has an interest in the Land, whether registered or not.
- 9.2 The consents required under clause 9.1 must be in a form acceptable to the Commissioner in all respects and be returned to the Commissioner with this Proposal on its acceptance by the Holder. Examples of the form of consents required under clause 9.1 are set out in Appendix 1.
- 9.3 The Holder must also obtain, and provide to the Commissioner if requested, all consents necessary for the Holder to accept this Proposal including (without limitation) any:
- (a) corporate and/or trustee consents; and
  - (b) consent required under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005.
- 9.4 The Holder will procure the Mortgagee to execute a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder will execute registrable new mortgage documents and forward these to the Commissioner to be registered as set out in clause 8.
-

- 9.5 If required by the Mortgagee, the Commissioner will provide an undertaking that, subject to the provisions of clause 7 being satisfied, the Commissioner will register the discharge of the Mortgage and register any new mortgage against the certificate of title for Freehold Land at the same time as the certificate of title for the Freehold Land issues.

#### **10 Continuation of Lease**

---

- 10.1 The Lease will remain in full force and effect until a certificate of title issues for the Freehold Land. Notwithstanding when Settlement Date occurs, until a certificate of title issues for the Freehold Land the Holder will duly and punctually comply with all obligations on its part under the Lease (other than as set out at clause 12.1 (b)) and the Lease will remain in full force and effect.
- 10.2 From the date that a certificate of title is issued for the Freehold Land the Lease is deemed to be surrendered and, subject to clause 10.3, the Commissioner releases and discharges the Holder from the performance and observance of all covenants, conditions and obligations under the Lease.
- 10.3 The release and discharge in clause 10.2:
- (a) is without prejudice to the rights, remedies and powers of the Commissioner contained in the Lease (except as varied in accordance with clause 12.1(b)); and
  - (b) will not release or discharge the Holder from any liability under the Lease, arising prior to the date that the certificate of title for the Freehold Land is issued, under any statute or by any reason where such liability is due to the fault of the Holder.
- 10.4 As from the Vesting Date, the Holder will not have any estate, right or claim against any of the land, improvements, fencing, buildings, structures, fixtures, fittings or chattels on the Crown Land (subject to the provisions of any permit, easement, concession, other encumbrance or document provided under this Proposal). The Holder will not be entitled to any compensation for any of its improvements, fencing, buildings, structures, fixtures, fittings or chattels which are on the Crown Land as at the Vesting Date.

#### **11 Fencing and Construction Works**

---

- 11.1 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, the Commissioner will, subject to clauses 11.2 and 14.4, erect at the Commissioner's cost new fencing:
- (a) approximately along the line marked "New Fencing Line" on the Plan; and
  - (b) to the specifications in Appendix 3;
- ("the Fencing").
- 11.2 If the Fencing requires a resource consent or any other consent from any local or territorial authority ("the Fencing Consent"), the following provisions shall apply:
- (a) The Commissioner shall use reasonable endeavours to obtain the Fencing Consent within 6 months of this Proposal taking effect pursuant to the Act.
  - (b) If the Fencing Consent:
    - (i) is not obtained within 6 months of this Proposal taking effect pursuant to the Act; and/or
    - (ii) is obtained on terms which are not satisfactory to the Commissioner in all respects;the Commissioner may, acting reasonably, elect to do any one or more of the following:
    - (iii) erect the Fencing in a position different from that shown on the Plan;
-

- (iv) erect the Fencing over a shorter distance than that shown on the Plan; or
- (v) erect the Fencing to specifications different from those in Appendix 3.

- 11.3 If the Commissioner has not completed the Fencing by the Settlement Date, the Holder agrees that the Commissioner may register a covenant, on terms entirely satisfactory to the Commissioner (in the Commissioner's sole discretion), over the Freehold Land to enable the Commissioner to complete the Fencing. The Holder will do all things necessary (including signing any document) to enable the Commissioner to register such a covenant.
- 11.4 The ongoing maintenance of the Fencing referred to in clauses 11.1 and 11.2 will be subject to the terms of the Fencing Act 1978.
- 11.5 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, [the Commissioner] [the Holder] [both parties] will, subject to clause 11.6, undertake the construction works set out in Appendix 3 on the terms and conditions set out in Appendix 3 ("the Construction Works").
- 11.6 If any Construction Works for which the Commissioner is liable, or jointly liable with the Holder, require a resource consent or any other consent from any local or territorial authority ("the Works Consent"), the following provisions shall apply:
- (a) The Commissioner shall use reasonable endeavours to obtain the Works Consent within 6 months of this Proposal taking effect pursuant to the Act.
  - (b) If the Works Consent:
    - (i) is not obtained within 6 months of this Proposal taking effect pursuant to the Act; and/or
    - (ii) is obtained on terms which are not satisfactory to the Commissioner in all respects;
- the Commissioner may, acting reasonably, elect to vary the extent of the Construction Works in question and/or the terms and conditions upon which they are carried out.

## 12 Apportionments

---

- 12.1 Rent payable under the Lease in respect of the Freehold Land shall be apportioned as follows:
- (a) Rent paid or payable will be apportioned on the Settlement Date as at the Settlement Date and either deducted from or added to (as the case may be) the amount required to settle.
  - (b) Notwithstanding that the Lease continues in effect until a certificate of title issues for the Freehold Land, the Holder shall not be required to pay any rent under the Lease for the Freehold Land from the Settlement Date.
- 12.2 Rent paid or payable under the Lease for the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.
- 12.3 All rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Freehold Land will, unless otherwise agreed by the parties, be apportioned on the Settlement Date as at the Settlement Date.
- 12.4 All rates, levies and all other incomings and outgoings and other charges receivable from or charged upon the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.
- 12.5 Following the date that a certificate of title issues for the Freehold Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will pay to the Commissioner, any additional amounts due because of any payments
-

made or received by one party on behalf of the other for the period from the Settlement Date to the date on which a new certificate of title issues for the Freehold Land.

---

**13 Risk**

- 13.1 On and with effect from the Unconditional Date all risk of any nature in respect of the Freehold Land will pass from the Commissioner to the Holder. For the avoidance of doubt, the Holder's current risk in respect of matters arising under the Lease, including, without limitation, the Holder's risk in respect of all improvements, buildings, fencing, fixtures, fittings and chattels, will continue to remain with the Holder until the Lease is deemed to be surrendered under clause 10.2.
- 13.2 The Holder will be required to comply with its settlement obligations under this Proposal irrespective of any damage to, or destruction of, the Freehold Land prior to the Settlement Date.

---

**14 Survey**

- 14.1 All areas of the Land forming part of this Proposal and delineated on the Plan are approximate and subject to preparation of the Final Plan. The measurements of the areas may therefore alter on the Final Plan.
- 14.2 No error, misdescription or amendment of any part of the Land will annul, vary, or derogate from this Proposal, or the Holder's acceptance of this Proposal.
- 14.3 For the avoidance of doubt, the Holder will not be entitled to cancel or withdraw its acceptance of this Proposal, nor will the Holder, or any successor in title of the Holder or any party with an interest in the Land, be entitled to payment of any compensation, should any area of the Land on the Final Plan have a different measurement to the area specified in this Proposal.
- 14.4 The Commissioner does not warrant that any existing fence is erected on, or that any new fence to be erected will be on, any boundaries of the Land or any part of the Land as outlined on the Plan or the Final Plan.

---

**15 Holder's Acknowledgements**

- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) it is obtaining the freehold interest in the Freehold Land:
    - (i) "as is", solely in reliance on its own investigations and judgement; and
    - (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
  - (b) the Holder has carried out all inspections of the Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
  - (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
    - (i) the Resource Management Act 1991 and the Resource Management Amendment Act 2005; and
    - (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
    - (iii) the Building Act 2004 and the Building Amendment Act 2009; and
- the Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this clause 15;
-



- (d) nothing in this Proposal is affected by, and the Commissioner has no liability of any nature in respect of, the existence or terms of any leases, licences or other occupation rights of any nature (if any) granted by the Holder in respect of the Land; and
- (e) the Holder has no claim (and will not have any claim) whatsoever against the Crown and/or Commissioner in relation to the Tenure Review and/or this Proposal, including (without limitation) any claim for any misrepresentation or for any loss or damage suffered whether in contract, tort (including negligence) or otherwise.

---

**16 No Representations or Warranties by the Commissioner**

---

- 16.1 The Commissioner gives no representations or warranties of any nature in respect of the Freehold Land. Without limitation, the Commissioner does not warrant:
- (a) the accuracy of any matter in the Notice or this Proposal or in any notice, or any correspondence or other information provided to the Holder by the Commissioner or by any agent, contractor or employee of the Commissioner; or
  - (b) that the Freehold Land is or will remain suitable for the Holder's use; or
  - (c) that the Freehold Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Freehold Land.

---

**17 Acceptance**

---

- 17.1 The Holder's acceptance of this Proposal is irrevocable and constitutes a binding agreement between the Commissioner and the Holder.
- 17.2 If the Commissioner does not receive an acceptance to this Proposal from the Holder within three (3) months of putting it (in its substantive form) to the Holder, the Holder is deemed to have rejected this Proposal.

---

**18 Solicitors Certificate**

---

- 18.1 The Holder must procure the Holder's solicitors to provide the Commissioner with a solicitor's certificate (in a form satisfactory to the Commissioner, in its reasonable opinion) relating to such matters as the Holder's execution of this Proposal and the Holder's execution of any documents required to give effect to this Proposal (including, without limitation any easement, protective mechanism and/or concession). An example of the form of solicitors certificate required is set out at Appendix 2.
- 18.2 The Holder must return the completed solicitor's certificate to the Commissioner with this Proposal on its acceptance by the Holder.

---

**19 Default**

---

- 19.1 If from any cause whatever (except the default of the Commissioner) all or any part of the Holder's Payment or any other money payable by the Holder to the Commissioner is not paid on the due date the Holder will pay to the Commissioner interest at the Default Rate on the part of the Holder's Payment or any other money payable by the Holder to the Commissioner so unpaid from the due date until the date of actual payment in full.
- 19.2 The Commissioner's rights under this clause 19 are without prejudice to any other rights or remedies available to the Commissioner at law or in equity.

---

**20 Goods and Services Tax**

---

- 20.1 Unless the context otherwise requires, words and phrases used in this clause have the same meaning as in the GST Act.
- 20.2 If the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are taxable supplies under the GST Act, then:
- (a) the Commissioner and the Holder warrant to each other that they are registered for GST purposes as at the Holder's acceptance of this Proposal and that they will be so registered on the Settlement Date;
-

- (b) the Commissioner and the Holder confirm that as at the Settlement Date:
  - (i) each is acquiring the goods supplied with the intention of using the goods for making taxable supplies; and
  - (ii) the Commissioner and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Crown Land and the Holder and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Freehold Land as a principal place of residence; and
- (c) the Commissioner and the Holder agree that the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are to be zero-rated for GST purposes under section 11(1)(mb) of the GST Act.

- 20.3 If any of the circumstances set out in clause 20.2 change between the date of the Holder's acceptance of this Proposal and the Settlement Date, then the relevant party will notify the other of the changed circumstances as soon as practicable and in any event not later than 2 working days before the Settlement Date and such party shall warrant that the changed circumstances are correct as at the Settlement Date. If the GST treatment of the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration changes as a result of the changed circumstances and a party has already provided the other with a GST invoice, then that party will issue a debit note or credit note, as the case may be, for GST purposes.
- 20.4 On the 10<sup>th</sup> working day following the Unconditional Date, the Commissioner will provide to the Holder a GST invoice in respect of the supply evidenced by the Holder's Consideration. The invoice will specify the Commissioner's GST Date.
- 20.5 The Holder will pay GST (if any) on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 20.6 On the 10<sup>th</sup> working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration.
- 20.7 The Commissioner will pay GST (if any) on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.8 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
  - (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
  - (b) any Default GST.

**21 Lowest price**

---

- 21.1 The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Freehold Land under section EW 32(3) of the Income Tax Act 2007 is equal to the Holder's Consideration.
- 21.2 The Commissioner's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Crown Land under section EW 32(3) of the Income Tax Act 2007 is equal to the Commissioner's Consideration.

**22 Costs**

---

- 22.1 The Commissioner will meet the costs of the survey (if any) of the Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Freehold Land.
  - 22.2 The Holder is responsible for all costs the Holder incurs in respect of and incidental to the Tenure Review. In particular, but without limitation, the Holder shall bear all its costs in
-

relation to the review of all documentation forming part of the Tenure Review (including this Proposal), and all professional advice provided to or sought by the Holder.

---

**23 No nomination or assignment**

---

- 23.1 The Holder is not entitled to, and is expressly prohibited from, nominating another person to perform the Holder's obligations under this Proposal or assigning to another person the Holder's interest (or any part) under this Proposal.

---

**24 Recreation Permit**

---

- 24.1 Immediately on the registration of the Final Plan and a copy of the proposal to which it relates over the Land and pursuant to s64 of the Act, any recreation permit granted over the Land shall be determined.

---

**25 Consents for Activities**

---

- 25.1 If the Holder has been granted a consent by the Commissioner to do an activity on the land under sections 15 or 16 of the Act, and the area over which the consent is exercised is designated in the proposal as Crown Land then the Holder agrees to act in good faith whilst exercising the terms of consent and not damage or destroy the Crown Land or anything thereon.

---

**26 General**

---

- 26.1 This Proposal and the Notice:
- (a) constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and
  - (b) supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and the Holder relating to the Tenure Review.
- 26.2 Each provision of this Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.
- 26.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 26.4 The Commissioner and the Holder will sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the other to effectively carry out and give effect to the terms and intentions of this Proposal.
- 26.5 This Proposal is governed by, and must be construed under, the laws of New Zealand and the Commissioner and the Holder irrevocably submit to the jurisdiction of the New Zealand courts or other New Zealand system of dispute resolution.
- 26.6 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 26.7 In relation to notices and other communications under this Proposal:
- (a) each notice or other communication is to be in writing, and sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for that purpose by the addressee to the other party. Other than the address to which the Holder is to send its acceptance of this Proposal (which the Commissioner will specifically notify the Holder of) the address, person or office holder (if any) for each party is shown on the front page of this Proposal;
  - (b) no communication is to be effective until received. A communication will be deemed to be received by the addressee:
    - (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
-

- (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), on the working day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and
- (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

## 27 Interpretation

---

### 27.1 Definitions

In this Proposal unless the context otherwise requires:

**Act** means the Crown Pastoral Land Act 1998;

**Commissioner** means the Commissioner of Crown Lands appointed under section 24AA of the Land Act 1948;

**Commissioner's Consideration** means the amount payable by the Commissioner to the Holder by equality of exchange for the surrender of the leasehold interest in the Lease in relation to the Crown Land, as specified in the Notice;

**Commissioner's GST Date** means the earlier of Settlement Date or the fifth working day before the day on which the Commissioner is due to pay to the Inland Revenue Department all GST payable by the Commissioner in respect of the supply made under this Proposal;

**Commissioner's Payment** means the balance of the Commissioner's Consideration payable by the Commissioner to the Holder by equality of exchange for the Crown Land, as specified in the Notice (if any);

**Crown Land** means the land (including any improvements) set out in Schedule One and the land (including any improvements) set out in Schedule Two (if any);

**Default GST** means any additional GST, penalty or other sum levied against either the Commissioner or the Holder under the Goods and Services Tax Act 1985 or the Tax Administration Act 1994 by reason of either the Commissioner or the Holder failing to pay GST as required by this Proposal. It does not include any sum levied against the Commissioner or the Holder by reason of a default by the Commissioner after payment of GST to the Commissioner by the Holder or by reason of a default by the Holder after payment of GST to the Holder by the Commissioner;

**Default Rate** means the rate of 11 per cent per annum;

**Fencing** means any stock proof farm fence.

**Fencing Consent** means any and all consents required for fencing under the Resource Management Act 1991.

**Final Plan** means the final plan for the Land prepared and submitted by the Commissioner to the Surveyor-General under sections 62(4)(c) and (d) of the Act;

**Freehold Land** means the land set out in Schedule Three;

**GST** means all goods and services tax payable by the Commissioner or the Holder under the Goods and Services Tax Act 1985 in respect of their respective supplies evidenced by this Proposal;

**GST Act** means the Goods and Services Tax Act 1985;

**Holder** means holder shown on the front page of this Proposal (being the lessee under the Lease);

**Holder's Consideration** means the amount payable by the Holder to the Commissioner by equality of exchange for the freehold of the Freehold Land, as specified in the Notice;

**Holder's Payment** means the balance of the Holder's Consideration payable by the Holder to the Commissioner by equality of exchange for the freehold of the Freehold Land, as specified in the Notice (if any);

---

**Land** means the land subject to the Tenure Review identified on the front page of this Proposal;

**Lease** means the lease described on the front page of this Proposal;

**Mortgage** means any mortgage (registered or unregistered) over the Land;

**Mortgagee** means the holder of any Mortgage;

**Notice** means the notice to the Holder setting out:

- (a) the Holder's Consideration;
- (b) the Commissioner's Consideration; and
- (c) the Holder's Payment or the Commissioner's Payment (as the case may be);

which includes amounts proposed to be paid by way of equality of exchange and accompanies this Proposal, but is not part of this Proposal;

**Plan** means the plan of the Land showing all designations on page 2 of this Proposal;

**Registrar** means the Registrar-General of Lands appointed pursuant to section 4 of the Land Transfer Act 1952;

**Rent Review** means the process for determination of the rent payable under the Lease as set out in sections 6 - 8 of the Act;

**Settlement Date** means the settlement date defined in clause 3.1;

**Surveyor-General** means the Surveyor-General appointed under section 5 of the Cadastral Survey Act 2002;

**Tenure Review** means the tenure review of the Land being undertaken by the Commissioner under the Act;

**Unconditional Date** means the date that the Commissioner receives from the Holder an executed copy of this Proposal signed by the Holder containing the signed consents of all persons having an interest in the Land to the Holder's acceptance of this Proposal which results in the acceptance taking effect under the Act;

**Vesting Date** means the date on which the Crown Land vests in the Crown pursuant to the Act;

**Working day** means a day that is not a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, or a day during the period commencing on any Christmas Day and ending with the 15<sup>th</sup> day of the following January or a day which is a provincial holiday in the place where the obligation is to be performed.

**Works Consent** means any and all consents required under the Resource Management Act 1991 and the Resource Management Amendment Act 2005; and/or the Building Act 2004.

## 27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

- (a) a reference to a certificate of title includes a reference to a computer register;
  - (b) words importing a gender include all genders;
  - (c) reference to a statute includes reference to all enactments that amend or are passed in substitution for the relevant statute and to all regulations relating to that statute;
  - (d) words in the singular include the plural and vice versa;
  - (e) reference to a month means a calendar month;
  - (f) reference to a person means an individual, a body corporate, an association of persons (whether corporate or not), a trust or a state or agency of a state (in each case, whether or not having separate legal personality);
-

- (g) references to sections, clauses, sub-clauses, parts, annexures, attachments, appendices, schedules, paragraphs and sub-paragraphs are references to such as they appear in this Proposal and form part of this Proposal;
- (h) headings are included for ease of reference only and will not affect the construction or interpretation of this Proposal;
- (i) all monetary amounts are expressed in New Zealand currency;
- (j) references to obligations includes reference to covenants, undertakings, warranties and, generally, obligations or liabilities of any nature properly arising whether directly or indirectly, under or in respect of the relevant contract, agreement or arrangement;
- (k) all references to times are references to times in New Zealand;
- (l) if the Holder comprises more than one person, each of those persons' obligations, as Holder, will be both joint and several.

28. Trustee Limitations

*P.B.*

28.1 The parties agree that Philip Blair Pedofsky (3/8 share) enters this agreement as the sole trustee of the estate of Neil Alexander Purvis ("the Estate") and not in his personal capacity and his liability hereunder shall be limited to the assets of the Estate.

*P.B.*

28.2 The parties agree that Philip Blair Pedofsky, Warwick Deuchrass and Peter Austin Gowing (5/8 share) enter this agreement as Trustees of the Purvis Children's Trust by virtue of Deed of Trust dated 19 October 1982 ("the Trust") and not in their personal capacity and their liability hereunder shall be limited to the assets of the Trust.

**Schedule One: Provisions relating to the Schedule One Land**

---

- 1.1 Under this Proposal part of the land shown marked in pink and labelled CA1<sup>n</sup> on the Plan, being 420 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

## Schedule Two: Provisions relating to the Schedule Two Land

---

### 1 Details of designation

---

- 1.1 Under this Proposal part of the land shown marked in pink and labelled "CA2" on the Plan, being 1770 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of the concession easement shown on the Plan as a broken blue line and labelled "m-n", "o-p", "s-r-t", "u-t-v", and "w-x" substantially as set out in Appendix 4.
- 1.2 Under this Proposal part of the land shown marked in pink and labelled "CA3" on the Plan, being 450 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of the concession easement shown on the Plan as a broken blue line and labelled "h-i-k" and "i-j" substantially as set out in Appendix 4.
- 1.3 Under this Proposal part of the land shown marked in pink and labelled "HR1" on the Plan, being 15 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the continuation in force of the deed of easement registered as document 885911 a copy of which is included in Appendix 5.

### 2 Information Concerning Proposed Concession

---

- 2.1 Description of proposed activity(s) [s.39(a)]: The proposed activity is an easement to provide access for stock mustering between parts of the holders freehold land. The servient land is land that will become conservation land as a result of this review and existing (or newly identified) marginal strips. Specifically the easement is a right of way for: Vehicles, horse, foot, driven stock and dog access over route for farm management purposes.
- 2.2 Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]: The easement area comprises separate routes shown on the designations plan as:
- The easement routes shown as, "o-p", "s-r-t", "u-t-v" and "w-x" are access tracks through the proposed conservation land principally for vehicle access.
  - The easement routes shown as "m-n", "h-i-k" and "i-j" connect between parts of the Concessionaires freehold land.
  - It is proposed that any farm tracks over new marginal strips identified at survey will also attract easements under this document.
- 2.3 Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) CPLA:  
There is unlikely to be any adverse effects from stock driving alone, but conditions have been added to the concession to recognise the potential for damage as follows:
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. Stock must be actively driven through the easement areas and not left to drift through on their own.
  3. No stock will be left to depasture in the easement areas (apart from unfenced marginal strips).
- 2.4 Details of the proposed type of concession: Easement under section 17Q Conservation Act 1987.
-



2.5 Proposed duration of concession and reasons for proposed duration [s.39(e)]:

Proposed duration: The concession is proposed is for 30 years.

Reasons for proposed duration: Access to the freehold land is likely to be required in the long term. Consideration as to land use and ongoing need for this concession can be decided at the end of this period.

2.6 Relevant information about the proposed grantee including information relevant to the grantee's ability to carry out the proposed activity [s.39(f)]:

Proposed grantee: P.B. Pedofsky as to a 3/8 share, and to Phillip Blair Pedofsky, Warwick Deuchrass and Peter Austin Gowing as to a 5/8 share

Relevant information: The grantee is currently engaged in farming and is using the routes to facilitate stock movement.

---

**Schedule Three: Provisions relating to the Schedule Three Land**

---

**1 Details of designation**

---

1.1 Under this Proposal the land shown marked in green on the Plan, being 9735 hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:

- (a) Part IVA of the Conservation Act 1987;
  - (b) Section 11 of the Crown Minerals Act 1991;
  - (c) the easement marked as "ee-ff", "a-b-c-d-e-f-g", "b-s", "c-q", "d-d1", "g-h", "f-l", "e-m", "n-o", "y-z", "aa-r" and "g-bb" on the Plan and substantially as set out in Appendix 6; and
  - (d) the covenant (shown on the Plan in yellow and labelled "CC1", "CC2", "CC3", "CC4", and "CC5") substantially as set out in Appendix 7;
  - (e) the covenant (shown on the Plan in yellow and labelled "CC6") substantially as set out in Appendix 8;
  - (f) the sustainable management covenant (shown on the plan in hatched yellow and labelled as "SMC") substantially as set out in Appendix 9;
  - (g) the continuation in force of the deed of easement registered as document 885911 a copy of which is included in Appendix 5; and
  - (h) memorial 9112605.1 recording notice of access rights pursuant to section 83 Crown Minerals Act 1991.
-

**Schedule Four: Conditions**

---

Nil

---

**Appendix 1: Consents – Example of Mortgagee Consent**

---

[ ] as Mortgagee under Mortgage [ ] ("the Mortgage"), hereby:

- (a) consents to acceptance of the Proposal dated [ ] ("the Proposal") by [the Holder] ("the Holder") pursuant to the Crown Pastoral Land Act 1998 and agrees and consents to the registration of the documents affecting the Freehold Land referenced in the Proposal prior to the registration of any new mortgage to be granted in its favour over the Freehold Land ; and
- (b) agrees to sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the Holder or the Commissioner to register a discharge of the Mortgage and any new mortgage over the Freehold Land.

Dated:

SIGNED by [ ] )  
in the presence of: [ ] )

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:

Occupation:

Address:

---

**Appendix 1: Consents (continued) - Example of "Other" Consent**

---

[ ], being the party entitled to the benefit of [ ] registered against Lease [ ], hereby consents to the acceptance of the Proposal dated [ ] by [the Holder] pursuant to the Crown Pastoral Land Act 1998.

Dated:

SIGNED for and on behalf of [ ] )  
[ ] )  
in the presence of: [ ] )

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:  
Occupation:  
Address:

---

## Appendix 2: Example of Solicitors Certificate

---

### Certifications

I [ ] hereby certify as follows:

1. [[insert name of Holder] ("the Holder") is a duly incorporated company under the Companies Act 1993. The Holder's entry into and performance of its obligations under the Proposal dated [ ] ("the Proposal") have been duly authorised by the directors and, if required, by the shareholders of the Holder. The Holder has executed the Proposal in accordance with its constitution.] OR

The entry into the Proposal dated [ ] ("the Proposal") by [insert name of Holder] ("the Holder") and performance of the Holder's obligations under the Proposal have been duly authorised by the trustees of the [insert name of trust] in accordance with its trust deed OR

[[insert name of Holder] ("the Holder") has delegated responsibility for signing the Proposal on its behalf to an attorney in accordance with its constitution. The attorney of the Holder has properly executed the Proposal in accordance with this power of attorney and in accordance with the Holder's constitution and a certificate of non-revocation is enclosed.]

2. The consent of each person that has an interest (registered or unregistered) in the Land (as that term is defined in the Proposal), to the Holder's acceptance of the Proposal has been obtained and included in the copy of the Proposal, signed by the Holder, that has been provided to the Commissioner.
3. [No consent, licence, approval or authorisation by any court, regulatory authority or governmental agency is required to enable the Holder to accept the Proposal, perform the Holder's obligations under the Proposal and to acquire the freehold interest in the Land (as defined in the Proposal).] OR

[All necessary consents, licences, approvals and authorisations required to enable the Holder to accept the Proposal, perform its obligations under it and to acquire the freehold interest in the Land (as defined in the Proposal) have been obtained. Evidence of the consents, licences, approvals and authorisations are attached to this letter.]

Yours faithfully  
[signed by principal of law firm]

---

### Appendix 3: Indicative Fencing and Construction Requirements

---

#### Fenceline

**Length and location:** Fence to be located along the line marked as "U-V" (approximately 6500 metres) on the Plan.  
Fence to be located along the line marked as "Y-Z" (approximately 500 metres) on the Plan.

**Type:** Seven Wire Sheep and Cattle Fence

#### Specifications:

1. Fence to be constructed of a barbed top wire, four HT (2.4mm) wires and two bottom No 8 wires.
2. 2.1 metre (7') treated timber strainers with treated timber stay to be used for gateways and at the end of strains.
3. 125 mm (5") treated timber posts to be used where required.
4. All strainers, angle posts and dip posts to be driven or dug in and rammed and footed with acceptable footing material. No 9 wire to be used on foots. All dips and hollows to be tied down to Y standards of a minimum length of 75 cm on rocky ground and 130 cm on soft ground.
5. All strainers and angles are to be mortised, stayed and blocked. Stays are to be one-third of the way up the posts.
6. Tie-backs are permitted on both sides of the fence.
7. All wires are to be securely and neatly tied off and strained evenly. Bottom wire is to be kept 15 cm off the ground.
8. Post staples (*barbed*) to be driven well in but allow the wire to run through.
9. Strains not to exceed 400 metres for HT wire and 250 metres for No 8 wire on easy country.
10. Posts to be driven or dug in to such a depth that 112 cm (44") remains out of the ground.
11. Strainers and angle posts to be dug in to such a depth that 117 cm (46") remains out of the ground.
12. Under no circumstances are any strainers, posts or stays to be shortened either prior to or subsequent to their placement in the ground.
13. Six Y standards per 20 metres to be used. Y standards to be mostly 150 cm (5' long with 135 cm (4'6") standards allowed on rocky ground and 165 cm (5'6") standards on soft ground.
14. Triplex strainers to be used on all strains.
15. Lightning droppers to be used where required on either side of gateways.
16. Gate ways are to be constructed on the new fences on existing tracks and near the corners of blocks. All gates are to be swung and to be steel gates 4.2 metres wide.
17. No mechanical line clearance is to be undertaken during construction of fences without separate and specific approval from LINZ.

Limited manual clearance may be required on parts of the line.

#### Fenceline

**Length and location:** Existing fence to be rabbit netted along the line marked as "W-X" (approximately 3000 metres) on the Plan.

Rabbit netting to be affixed on the freehold side of the existing fence with the skirt rock packed.

---

**Construction**

---

Nil

---



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

---

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

DATED \_\_\_\_\_

Between

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

and

**PHILIP BLAIR PEDOFSKY, WARWICK DEUCHRASS and  
PETER AUSTIN GOWING as to a 5/8 share, PHILIP BLAIR  
PEDOFSKY as to a 3/8 share.**

("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.     **PHILIP BLAIR PEDOFSKY, WARWICK DEUCHRASS and PETER AUSTIN GOWING** as to a 5/8 share, **PHILIP BLAIR PEDOFSKY** as to a 3/8 share. ("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 local branch of the New Zealand Law Society in the region in which the Easement Area is situated 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 local branch of the New Zealand 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.

18. See below

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 :

18. Trustee Limitations

18.1 The parties agree that Philip Blair Pedofsky (3/8 share) enters this agreement as the sole trustee of the estate of Neil Alexander Purvis ("the Estate") and not in his personal capacity and his liability hereunder shall be limited to the assets of the Estate.

18.2 The parties agree that Philip Blair Pedofsky, Warwick Deuchrass and Peter Austin Gowing (5/8 share) enter this agreement as Trustees of the Purvis Children's Trust by virtue of Deed of Trust dated 19 October 1982 ("the Trust") and not in their personal capacity and their liability hereunder shall be limited to the assets of the Trust.

**SCHEDULE 1**

1. **Servient Land:** Proposed Conservation Land identified in the tenure review Designations Plan as CA2 and CA3. *(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", both on CA3 and "m-n", "o-p", "s-r-t", "u-t-v" and "w-x" all on CA2, on Designations Plan, all 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:** A one-off fee has (in effect) been accounted for on behalf of the Grantor as part of the substantive proposal put by the Commissioner of Crown Lands and accepted by the Concessionaire on [date] and for which an approved plan has been registered pursuant to section 70 of the Crown Pastoral Land Act 1998.
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: Copy of easement 885911 to continue**

---



**COMPUTER INTEREST REGISTER  
UNDER LAND TRANSFER ACT 1952**



Search Copy

R.W. Muir  
Registrar-General  
of Land

Identifier **OT16D/724**  
Land Registration District **Otago**  
Date Registered **03 July 1995 09:31 am**

---

Type As described in the instrument  
Area 12403.0218 hectares more or less  
Legal Description Run 236M and Run 237F  
Proprietors  
Her Majesty The Queen

---

Interests

Approved by the Registrar-General of Land, Wellington, No. B319989.1/93

# Memorandum of Transfer

160/724

(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 or endorsed hereon in the piece or pieces of land situated in the Land District of  
containing more or less being

160/724

**Checketts McKay**  
Lawyers Central Otago

Agency Office  
Address 34 Taranaki Street, Alexandra  
Post P.O. Box 41, Alexandra, New Zealand  
Phone (03) 448-8959  
Fax (03) 448-8952  
Trust Account BNZ 028918 0007675 50  
G.S. "Trustee" 30-37-935

29 June 1995

Passed to for  
**John Williamson/  
Bernadette Lanham**

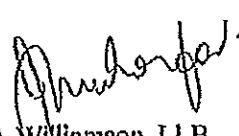
The District Land Registrar  
Private Bag  
DUNEDIN

Dear Sir

**RE: REGISTRATION OF IRRIGATION COMPANY EASEMENTS  
OVER PASTORAL LEASES**

Please register the within easement over the Crown's interest as owner of the land.

Yours faithfully  
**CHECKETTS MCKAY**

  
J A Williamson LLB  
Partner

DJL-29-116-3

1.0 BACKGROUND

- 1.1 Lindis Irrigation Limited, a duly incorporated company having its registered office at Cromwell (called "the Irrigation Company") has purchased the Tarras Ardgour Irrigation Scheme pursuant to a Sale and Purchase Agreement between Noel George Trevathan, Alastair Askin Rutherford and David Mackie Templeton all of Tarras, Farmers as agents for the Irrigation Company then yet to be incorporated and Ruth Margaret Richardson, Minister of Finance and John Howard Falloon, Minister of Agriculture on behalf of the Crown, dated 15 August 1991 and subsequently adopted by the Irrigation Company as the Purchaser. The Tarras Ardgour Irrigation Scheme (called "the Irrigation Scheme") is defined by notices in the New Zealand Gazette Order dated 6 August 1923 Number 62 Page 182 (Tarras portion) and New Zealand Gazette Order dated 24 January 1923 Page 197 (Ardgour portion) and is described in the said Sale and Purchase Agreement.
- 1.2 HER MAJESTY THE QUEEN acting by and through the Commissioner of Crown Lands (called "the Crown") is the proprietor of that land containing 12403.0218 hectares more or less being Runs 236M and 237F, Cluden and St Bathans Survey Districts subject to Pastoral Lease Number P.213 comprised in Register Book Volume 386 Folio 106 (Otago Land Registry). (called "the Crown's land").
- 1.3 NEIL ALEXANDER PURVIS of Tarras Farmer, HUGH JAMES ROSS of Dunedin Solicitor and PHILIP BLAIR PEDOFISKY of Alexandra Chartered Accountant (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 provisions of any former enactment relating to irrigation, to enter, use, occupy, carry out work on, store water on, or convey water over the Crown's land and

NP  
B.S.  
H.M.  
J.S.  
BOST  
S.S.



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 Crown's land, and the Crown, lessee 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 "\_\_\_\_\_" on the plans of the lands annexed which right to convey water shall have attached to it 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 the stipulated course on the Crown's land shown on the plan attached

P.D. NP ml JDB BDES

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 Crown'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 Crown's land.
- (c) 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 Crown'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:

P.S.F. *[Handwritten initials]*

B.P.S.J. *[Handwritten initials]*

- (a) Cause as little disruption and disturbance to the occupation and enjoyment by the Crown and the lessee of the Crown's land, as is reasonably possible.
- (b) Cause as little damage to the Crown's land and the fixtures on it and the surface of it as is reasonably possible.
- (c) Make good any damage caused by it, during the exercise of its rights and powers under this Instrument, to any pasture, cultivation, crop or trees of any kind for the time being sown or growing or in the course of being harvested upon the Crown's land or to any buildings, erections and fences on such land.

3.3 (a) When the Irrigation Company requires entry with machinery on the Crown's land to carry out maintenance or construction works, it shall take reasonable steps to give to the lessee 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 lessee or occupier has received such notice the lessee 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 Crown's land and if the lessee 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.

P.B.P. NP ml J BDSJ  
USI

- 3.4 (a) It is acknowledged that the Irrigation Company shall not fence the boundaries of the easements.
- (b) The Crown and lessee 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 crown'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 3.4, the Crown and lessee shall not, without the prior written consent of the Company, plant or permit to be planted trees or construct or permit to be constructed 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 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

P.S. [Signature] [Signature] [Signature] B.D.S.S. [Signature]

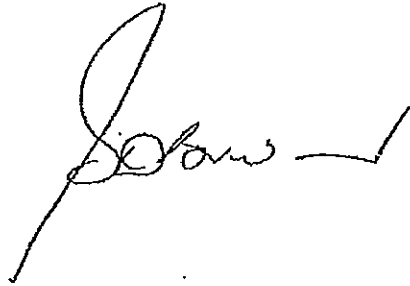
being of the Pastoral Lease in respect of which such breach or non-observance shall occur or against the lessee of the Pastoral Lease at the time of such occurrence aforesaid but to the intent that any lessee of the Pastoral Lease shall only be liable for acts or defaults occurring while that person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

*A.P. W.F. 11/11 J.B. B.D.S.S. 12/11*

Dated the 30th day of May 1995

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



Witness *de Pardo*  
Occupation *Senior member General Services Board*  
Address *Dept. of Survey Land Information*  
*1111 1st St*

SIGNED by the LINDIS )  
IRRIGATION LIMITED by )  
the affixing of its common )  
seal in the presence of: )



Director *[Signature]*

Director *[Signature]*

SIGNED by HUGH JAMES )  
ROSS as lessee )  
in the presence of: )

Witness.....*[Handwritten Signature]*.....

Occupation.....*[Handwritten Signature]*.....

Address.....*[Handwritten Signature]*.....

SIGNED by PHILIP BLAIR )  
PEDOFKY as lessee )  
in the presence of: )

Witness.....*[Handwritten Signature]*.....  
M. W. SNOODEN.

Occupation.....RETIRED.....

Address.....FLYDE.....CENTRAL 07960.

SIGNED by NEIL )

ALEXANDER PURVIS as )

lessee in the presence of: )

*Neil Purvis*

Witness... *B.R. Shaw J.P.*

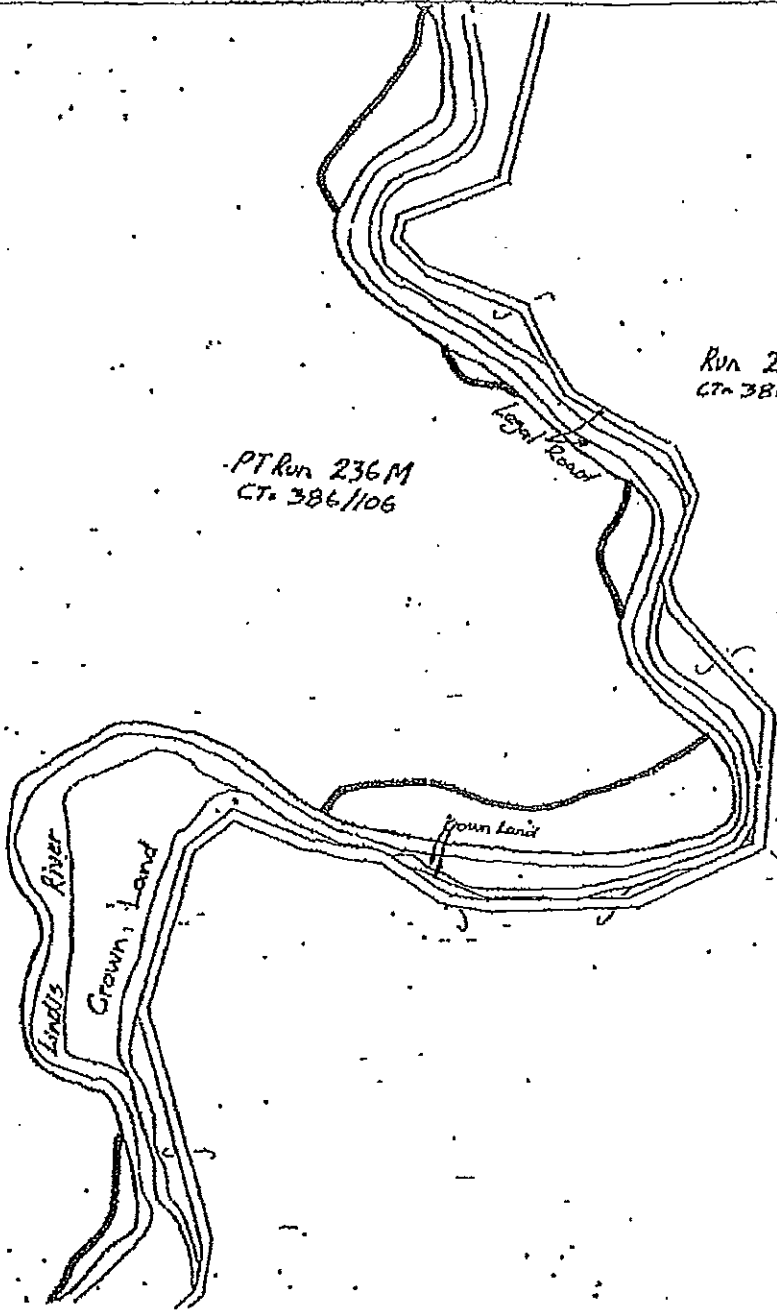
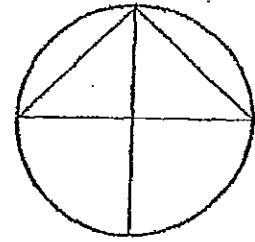
Occupation... *Garage Proprietress*

Address... *Mam Road*  
*Tarras*

GJD-584/25

*JOS*  
*BDST*  
*MS*





**OPTIONAL EASEMENTS IN GROSS**

Purpose	Comprised In	Shown	Servient Tenement	Grantee
Right to Convey Water	CT386/106		Pt Run236M Cluden S.D	Lindis Irrigation Company

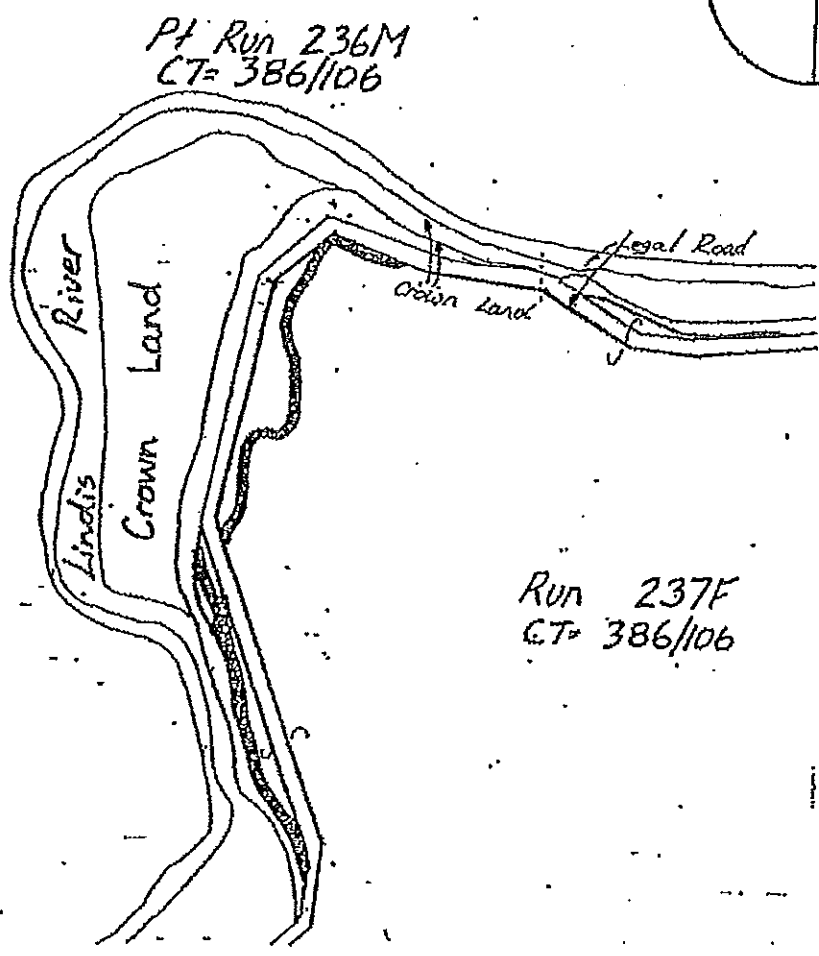
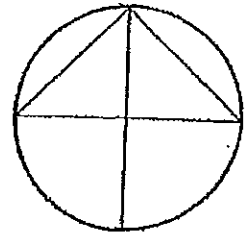
**Plan of Easements Over Pt Run 236M Cluden S.D.**

OTAGO LAND DISTRICT  
CENTRAL OTAGO D.C.

DATE: December 1994

Prepared by PATERSON PITTS PARTNERS LTD  
SURVEYING CONSULTANTS

*P.S.P.* *[Signature]* *[Signature]* *[Signature]* *B.P.S.J.*



**OPTIONAL EASEMENTS IN GROSS**

Purpose	Comprised in	Shown	Servient Tenement	Grantee
Right to Convey Water	CT386/106		Run 237F Cluden S.D and St Bathans S.D.	Lindis Irrigation Company

**Plan of Easements Over Run 237F Cluden S.D. and St Bathans S.D.**

OTAGO LAND DISTRICT  
CENTRAL OTAGO D.C.

DATE: December 1994

Prepared by PATERSON PITTS PARTNERS LTD  
SURVEYING CONSULTANTS

*P.S.P.* *MR* *MA* *DS* *BDS*

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  
EASEMENTS IN GROSS FOR IRRIGATION  
WORKS**

PURVIS NA, ROSS HJ & PEDOFSKY PB ..... Transferor

LINDIS IRRIGATION LIMITED ..... 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 ... OTAGO

Correct for the purposes of the Land Transfer Act 1962

SOLICITOR FOR THE TRANSFEE

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

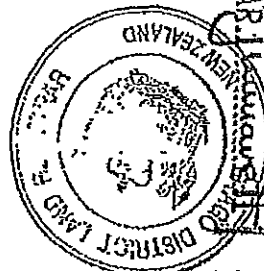
16D/724

SOLICITOR FOR THE TRANSFEE

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 TRANSFEE

9.37.03.JUL.95 885914  
PARTICULARS ENTERED IN REGISTER  
LAND REGISTRY OTAGO  
ASST. LAND REGISTRAR J. MUMFORD  
Index



16D/724

CHECKBTT'S MCKAY  
LAWYERS  
CENTRAL OTAGO

**Appendix 6: 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.**

# TRANSFER

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

Otago

Certificate of Title No.

All or Part?

Area and legal description – *Insert only when part or Stratum, CT*

All

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 TRANSFEREE 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

(continued on page 4 of Annexure Schedule)

Witness to complete in BLOCK letters  
(unless typewritten or legibly stamped)

Witness name

Occupation

Address

Signature, or common seal of Transferor

Certified correct for the purposes of the Land Transfer Act

Certified that no conveyance duty is payable by virtue of Section 24(1) of the Stamp and cheque Duties Act 1971.  
(DELETE INAPPLICABLE CERTIFICATE)

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 ( being "a-b-c-d-e-f-g", "b-s", "c-q", "d-d1", "g-h", "f-l", "e-m", "y-z", "aa-r", "g-bb", "n-o" and "ee-ff" shown on the designations plan) and marked [ ] "[ ]" on Deposited Plan/S.O. Plan No [ ] and includes the Parking Area.
- 1.2 "Parking Area" means that part of the Servient land marked ["Car Park"] on the Designations Plan "[ ]" on S.O. Plan No [ ].
- 1.3 "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.
- 1.4 "Servient Land" means the land owned by the Transferor and described on page 1.
- 1.5 "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.
- 1.6 "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.

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-37213 Easement in gross template

docDM-660612 - Cluden - Public & Mgmt Easement version 2

7/10/11



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.
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 Fifth Schedule of the Property Law Act 2007 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 of the local branch of the New Zealand 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 9.1(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 9.1(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.
- 11 If the Transferee (being a member of the public) has a hunting permit issued by the Director General of Conservation for land to which the easement provides access, he may carry a gun on the Easement Area for the purpose of gaining access to hunt on that land. If the hunting permit allows for dogs, then the Transferee may for the purpose of hunting be accompanied by a dog or dogs on the Easement Area provided that they are kept under control at all times.
- 12 In addition to rights conveyed in Clause 2.1 the Transferee (being a member of the public) may, use a motor vehicle on Easement Area "ee-ff", "a-b", "y-z" and the Parking Area.
- 13 In addition to rights conveyed in Clause 2.1 the Transferee (being a member of the public) may, subject to the discretion of the Department of Conservation Wanaka Area Manager, use a motor vehicle on Easement Area "b-s" between beginning of December and end of April each year. If weather conditions render the track vulnerable to damage, or factors associated with public vehicle use cause undue interference with the Transferors farming operation, the Department of Conservation Wanaka Area Manager may at his/her discretion preclude vehicle use within the open period.
- 14 The Transferee (not being a member of the public) will erect a lockable gate at point "b" as shown on the designations plan. Keys or combination lock code to open the gate will be made available to members of the public from the Department of Conservation during those times when the Easement Area "b-s" is open for public vehicle use. The Transferor must be provided with a key to the gate, or may install his own lock.
- 15 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 and will reflect the use of the Easement Area made by each party.
- 16 The Transferee will make members of the public aware that use of the Easement Area, with the exception of the usual statutory requirements and duties incumbent upon both the Transferor and the Transferee arising out of the easement; will be at the public's own risk.
- 17 Easement "n-o" provides management purposes access (as per clause 2.2 above) only, with no public access.
- 18 Easement "aa-r" and "g-bb" provides public foot access and management purposes access only.
- 19 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. The Transferee has the right:
  - 19.1 To mark the Easement Area as appropriate
  - 19.2 To erect and maintain stiles/gates.
  - 19.3 To erect and maintain signs informing the public
    - (a) of the location of the land managed by the Crown and available for public access and recreation; and
    - (b) of their rights and responsibilities in relation to the Easement Area.
  - 19.4 install cattle stops and adjacent stock gates.
  - 19.5 to clear, form and maintain a track or path and to construct and maintain a carpark on the Parking Area.

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-37213 Easement in gross template  
 docDM-660612 - Cluden - Public & Mgmt Easement version 2

7/10/11

19.6 to use whatever reasonable means of access he thinks fit over the Easement Area to carry out the works in clause 19.1 to 19.5

**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
2. 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 7: Form of Covenant ("CC1", "CC2", "CC3", "CC4" and "CC5") 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 and 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 A Transferee of the Land will at law be bound by the registered Covenant. Such transfer is deemed to provide the agreement to comply with the terms of this Covenant required by clause 7.1.

**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 local branch of the New Zealand 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 local branch of the New Zealand 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"- "CC5" 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:

Lesley Purvis, Cluden Station, Tarras

## 3. Values of Land to be Preserved

Preserving the natural environment and landscape amenity values of the areas.

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.

Further upslope, a prominent tor and boulderfield have acted as fire refugia, resulting in a diversity of native species being present. Species include *Coprosma ciliata*, mountain daisy (*Celmisia densiflora*), Haast's groundsel (*Brachyglottis haastii*), golden Spaniard (*Aciphylla aurea*), *Anisotome flexuosa*, native daphne (*Pimelea oreophila*), narrow-leaved snow tussock (*Chionochloa rigida*) and blue tussock.

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).

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

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.

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.

Landscape Amenity 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 screes.

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. 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.
2. Monitoring will be undertaken as detailed in Schedule 3.
3. Notwithstanding clause 3.1.5 above, the Owner may oversow and topdress the area in CC5.
4. 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 as A-L. This access may be maintained by mechanical or chemical means. Free movement of stock is expected in the higher altitude tussocklands at the top of CC2.
5. 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. When considering consent for the construction of a hut the Minister will look at the impact on landscape values.

**SCHEDULE 3**

**DESCRIPTION OF THE MONITORING PROGRAMME TO BE ESTABLISHED.**

**(DRAFT ONLY)**

**1. Responsibilities:**

A vegetation monitoring programme will be established at the commencement of the covenant term by the Minister. Subsequent re-monitoring will occur every 5 years and is to be organised by the Owner with the assistance of the Minister.

The Minister will be party to the re-monitoring by providing one staff member to assist with the physical monitoring. The Minister will be consulted as to the selection of a suitably qualified monitoring provider (which does not preclude the Owner undertaking this work to an acceptable standard). The Minister will be given a copy to the monitoring report in a format nominated by the Minister.

**2. Costs:**

The Minister is responsible for the cost of establishing the monitoring. The Owner will be responsible for the cost of repeat monitoring. The Minister will cover his own staff cost for re-monitoring.

**3. Monitoring Methods:**

A series of general repeatable photo point sites will be established. The purpose of these photopoints is to detect deterioration of the native vegetation being recorded as a consequence of sheep and cattle impacts and other management practices.

Photopoints will be at .... yet to be decided sites and yet to be decided number:

Photopoints will consist of:

- a series of general landscape photos to ensure that conditions of the covenant are complied with.
- a series of photopoints within tussock grasslands to ensure that grazing and other farm management practices are not having an adverse impact on the health of the grassland.
- a series of photos within shrublands to detect obvious fragmentation, tracking, gaps and canopy breakdown.

The Minister will have the discretion to require additional methods of monitoring to be used if results from photopoints or observations are found to be unsuitable for measuring the values being protected.

**3. Monitoring Results:**

Following monitoring, results will be discussed between the Owner and the Minister.

Should it be noted as a result of monitoring that in the sole opinion of the Minister cattle and/or sheep or other pastoral practices are having a detrimental impact on the values then the Owner will take such steps as agreed with the Minister to prevent this continuing through such measures as fencing, reducing stock numbers or changing stock types.



GRANT of

Correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister

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

COMMISSIONER OF CROWN  
LANDS

to

MINISTER OF CONSERVATION

---

Solicitor  
Department of Conservation  
DUNEDIN/CHRISTCHURCH

**Appendix 8: Form of Covenant ("CC6") to be Created**

---

DATED \_\_\_\_\_

Between

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

and

**TE RŪNANGA O NGĀI TAHU**

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



Department of Conservation  
*Te Papa Atarua*

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    TE RŪNANGA o NGĀI TAHU

**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, of historical value for Ngāi Tahu whānui.
- 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 Te Rūnanga o Ngāi Tahu acquiring a fee simple or leasehold interest in the Land.
- E. The Commissioner of Crown Lands has agreed to grant to a Covenant over the Land to preserve the particular Values specified in Schedule 1.
- F. Te Rūnanga o Ngāi Tahu has been approved by the Minister of Conservation, pursuant to Section 77 of the Reserves Act 1977, as the covenanting body for this covenant

**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 Te Rūnanga o Ngāi Tahu 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.
- “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 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 Te Rūnanga o Ngāi Tahu or the Owner or both.

“Te Rūnanga o Ngāi Tahu” means the body of the corporate established on the 24th April 1996 under Section 6 of Te Rūnanga o Ngāi Tahu Act 1996 as a tribal representative body of Ngāi Tahu whānui.

“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.
- 2.2 To provide access for groups and/or individuals organised by Te Rūnanga o Ngāi Tahu to the land for cultural and management purposes.

3. THE OWNER’S OBLIGATIONS

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out or allow to be carried 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.
  - 3.1.13 any other activity which might have an adverse effect on the Te Rūnanga o Ngāi Tahu association with 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 Te Rūnanga o Ngāi Tahu and observance of any reasonable conditions imposed by the Owner, grant to Te Rūnanga o Ngāi Tahu, or authorised agent of Te Rūnanga o Ngāi Tahu or any employee of Te Rūnanga o Ngāi Tahu, a right of access on and 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. Te Rūnanga o Ngāi Tahu **OBLIGATIONS**
- 4.1 Te Rūnanga o Ngāi Tahu must have regard to the objective specified in clause 2.1 and 2.2 when considering any requests for approval under this Covenant.
  - 4.2 Te Rūnanga o Ngāi Tahu 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 Te Rūnanga o Ngāi Tahu 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 Te Rūnanga o Ngāi Tahu 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 Te Rūnanga o Ngāi Tahu and Owner in perpetuity to the rights and obligations contained in it.

**7. OBLIGATIONS ON SALE, ASSIGNMENT OR OTHER DEPOSAL OF LAND**

- 7.1 If the Owner sells, leases, or parts with possession of the Land, or hands over control of the Land to any other person, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, assignee or manager to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, assignee or manager to ensure that on any subsequent sale, lease, assignment, or change in control of the Land, any subsequent purchaser, lessee, assignee or manager must also comply with the terms of this Covenant including this clause.

- 7.2 A Transferee of the land will at law be bound by the registered Covenant. Such transfer is deemed to provide the agreement to comply with the terms of this covenant required by Clause 7.1

**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 Te Rūnanga o Ngāi Tahu 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 Te Rūnanga o Ngāi Tahu in the event of wild fire threatening the Land;

**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 Te Rūnanga o Ngāi Tahu of any change of ownership or control of all or part of the Land and must supply Te Rūnanga o Ngāi Tahu with the name and address of the new owner or person in control.

## 10. DEFAULT

10.1 Where either Te Rūnanga o Ngāi Tahu 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 Te Rūnanga o Ngāi Tahu 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 Te Rūnanga o Ngāi Tahu 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 local branch of the New Zealand 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 local branch of the New Zealand 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 Te Rūnanga o Ngāi Tahu 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 \_\_\_\_\_ )  
acting for and on \_\_\_\_\_ )  
behalf of the Te Rūnanga o Ngāi Tahu \_\_\_\_\_ )  
in the presence of : \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

SCHEDULE 1

1. Description of Land

*Area shaded yellow and labelled "CC6" on the Proposed Designations Plan.*

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

The address for service (including facsimile number) of Te Rūnanga o Ngāi Tahu is:

Te Rūnanga o Ngāi Tahu,  
50 Corsair Drive,  
Wigram,  
Christchurch 8042.

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

Lesley Purvis, Cluden Station, Tarras

3. Values of Land to be Protected

The Māori rock art at Cluden Stream is highly significant in that it positively identifies subjects well known in the main body of Māori rock art in the limestone, greywacke and sandstone areas of eastern Te Waipounamu, in Central Otago schist. Some of the Cluden Stream art has weathered away, but one subject in black, and three closely grouped figures in red feature Māori designs similar to examples in recorded sites of known Māori origin in north-eastern Otago, and in South and Central Canterbury. This supports the korero that records the movement of coastally based Māori inland to Central Otago and beyond, to obtain resources and visit relatives at inland settlements. The Cluden Stream site also supports the recognition of Māori rock art downstream on the Lindis River (G40/62), where the red figure is associated with archaeological deposit of Māori origin. While the outcrop supporting the Māori rock art at Cluden Stream has been modified by unauthorized quarrying, the rock art remains intact where not affected by natural weathering (pre-quarrying) and slight scuffing from falling debris, and should remain so for the foreseeable future.

---

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

**SCHEDULE 2**

**Special Conditions**

1. Clause 3.1.1 is amended to provide for grazing of sheep and cattle.

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 Te Rūnanga o Ngāi Tahu

COMMISSIONER OF CROWN  
LANDS

to

TE RŪNANGA O NGĀ I TAHU

---

Solicitor  
Department of Conservation  
DUNEDIN/CHRISTCHURCH

**Appendix 9: Form of Sustainable Management Covenant to be Created**

---

---

Form 8  
ENCUMBRANCE INSTRUMENT  
(Land Transfer Act 1952 section 101)

BARCODE

Land Registration District  
OTAGO

Unique Identifier(s) or C/T(s)	All/Part	Area/Description of part or stratum

Encumbrancer (3/8 SHARE) Surname(s) must be underlined  
 Philip Blair Pedofsky, Philip Blair Pedofsky, Warwick Deuchrass and Peter Austin Gowing (5/8 SHARE)

Encumbrancee Surname(s) must be underlined  
 Her Majesty the Queen acting by and through the Commissioner of Crown Lands

Estate or interest to be encumbered Insert eg. Fee simple; Leasehold in Lease No. etc.  
 Fee simple

Encumbrance Memorandum Number

Nature of security State whether sum of money, annuity or rentcharge and amount  
 Rentcharge

Operative Clause Delete words in [], as appropriate  
 The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above certificate(s) of title or computer register(s) with the above sum of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in the [above Encumbrance Memorandum] [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in the [above Encumbrance Memorandum] [and] [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Dated this                      day of                      20

Attestation	Signed in my presence by the Encumbrancer
	Signature of Witness
Signature [Common Seal] of Encumbrancer	Witness to complete in BLOCK letters (unless legibly printed):-
	Witness name
	Occupation
	Address

Certified correct for the purposes of the Land Transfer Act 1952

[Solicitor for] the Encumbrancee

## Annexure Schedule 1

**Encumbrance  
Instrument**

**Dated**

**Page 1 of 1 Pages**

**Terms**

*Continue on additional Annexure Schedule(s), if required*

1. Length of term – Continued on Annexure Schedule 2
2. Payment date(s) – Continued on Annexure Schedule 2
3. Rate(s) of interest – Continued on Annexure Schedule 2
4. Event(s) in which the sum, annuity or rentcharge becomes payable – Continued on Annexure Schedules 2
5. Event(s) in which the sum, annuity or rentcharge ceases to be payable – Continued on Annexure Schedules 2

**Covenants and conditions**

*Continue on additional Annexure Schedule(s), if required*

Continued on Annexure Schedule 2.

## Annexure Schedule 2

**Encumbrance  
Instrument**

**Dated**

**Page 2 of Pages**

**Covenants and conditions** *Continue on additional Annexure Schedule(s), if required*

**"Continuation of "Terms" and Covenants and conditions:""**

**Introduction**

- A. The Land has been reviewed under Part 2 of the Crown Pastoral Land Act 1998 and has been disposed of by the Commissioner to the Grantor in accordance with that Act.
- B. As part of that review, the Land was designated as suitable for such disposal subject to the creation of a sustainable management covenant in favour of the Commissioner under section 97 of the Act providing for the management of the Land, and the monitoring of activities undertaken on the Land and the effects of those activities on that Land.
- C. The parties have agreed to enter into a sustainable management covenant on the terms and conditions set out in this deed.

**Interpretation**

In this deed:

- (a) "the Act" means the Crown Pastoral Land Act 1998;
- (b) "Area" means the Land;
- (c) "CPI" means the Consumer Price Index (All Groups) published by Statistics New Zealand or any other government agency, or the most nearly-comparable index if that index ceases to exist or to be published;
- (d) "deed" means this Encumbrance Instrument, including all schedules and attachments, and includes any variation of this Encumbrance Instrument;
- (e) "the Commissioner" means the Encumbrancee together with its successors and assigns and includes the Encumbrancee's authorised agent, where applicable;
- (f) "the Grantor" means the Encumbrancer together with its successors and assigns;
- (g) "the Land" means the land more particularly described in the First Schedule;
- (h) "the Permitted Number" means the maximum number of sheep and cattle referred to in clauses 3 and 4 of the Second Schedule;
- (i) "Vermin" includes deer, possums, pigs, goats, rabbits, wallabies, and hares.
- (j) "Objectives" means the objectives of this covenant set out in Clause 2.1.

In this deed, unless the context otherwise requires:

- (a) where the Grantor comprises more than one person, the terms and conditions contained in this deed shall bind each such person jointly and severally;
- (b) reference to a person means an individual, a body corporate, an association of persons (whether corporate or not), a trust or a State or any agency of a State (in each case, whether having separate legal personality);
- (c) where the Grantor is a company, the terms and conditions contained in this deed shall bind a receiver, liquidator, statutory manager or statutory receiver. Where the Grantor is a natural person, the terms and conditions contained in this deed shall bind an Official Assignee. In either case, the terms and conditions contained in this deed shall bind a mortgagee in possession;
- (d) words importing a gender include all other genders;
- (e) words in the singular include the plural; and
- (f) a reference to any legislation extends to and includes any amendment to, or re-enactment of, that legislation.
- (g) all monetary figures exclude GST (Goods and Services Tax)

**The parties agree as follows:**



### 1. Covenant

- 1.1 In accordance with section 97 of the Act, the Grantor covenants with the Commissioner, from the date of this deed and in perpetuity, to observe and perform the covenants given on the part of the Grantor set out in the Second Schedule.

### 2. Objectives of the covenant

- 2.1 The objectives of this covenant are to better achieve ecologically sustainable management of the land by the minimization of soil erosion through the improvement of vegetation cover and maintenance thereafter, and any other means of reducing the exposure of the soil to erosion, particularly wind erosion.

A reviewable target towards the achievement of the objectives is an increase of more than 10% ground cover in the protection of the Land from wind erosion within 20 years of the commencement of this covenant, taking into account the general vegetation cover of all of the Land, and the size and nature of any land use changes.

### 3. Default

- 3.1 To better secure the performance of the covenants contained in this deed by the Grantor, the Grantor hereby encumbers the Land for the benefit of the Commissioner with a five yearly rentcharge to be paid by the Grantor to the Commissioner in accordance with this deed.

- 3.2 Subject always to clause 3.3, the Grantor shall pay to the Commissioner a five yearly rentcharge as follows:

- (a) on the fifth anniversary of the date of this deed, the sum of \$10,000.00.
- (b) on each subsequent five yearly anniversary of the date of this deed, the sum equivalent to the amount of the annual rentcharge payable on the preceding anniversary of the date of this deed but adjusted in accordance with any change in the CPI, such adjustment to be calculated as follows:

$$\text{NRC} = \frac{\text{RC} \times \text{B}}{\text{A}}$$

Where:

NRC is the new annual rentcharge payable by the Grantor

RC is the annual rentcharge payable by the Grantor on the preceding five yearly anniversary of the date of this deed

B is the most recently-published quarterly CPI figure

A is the CPI figure for the equivalent quarter date at the end of the preceding five yearly period

- (c) Notwithstanding anything to the contrary, in no circumstances shall the amount of the five yearly rentcharge payable by the Grantor be less than \$10,000.00, except where it is waived in accordance with clause 3.3 below.
- 3.3 If the results of the monitoring and inspection prescribed in clause 5 of the Second Schedule, or any other interim inspection by the Commissioner, indicate that there has been no substantial breach by the Grantor of the covenants contained in this deed, then the rentcharge payable on each subsequent five yearly anniversary date shall be waived and shall not be payable.

### 4. Notices

- 4.1 Each notice or other communication under this deed is to be in writing, is to be sent by facsimile, email, personal delivery or by post to the addressee at the facsimile number or address provided by each party from time to time, and is to be marked for the attention of the person or office Grantor (if any), from time to time designated for that purpose by the addressee to the other party.
- 4.2 No communication is to be effective until received. A communication will be deemed to be received by the addressee:
- (a) in the case of a facsimile or email, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day, or, if despatched on a non-working day, on the next working day after the date of dispatch;
- (b) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), when delivered; and

- (c) in the case of a letter, on the fifth working day after mailing and the sender providing the addressee with confirmation of mailing by telephone or facsimile.

### 5. General

- 5.1 This deed is a sustainable management covenant under section 97 of the Act. The covenant runs with the Land and is an interest in land for the purposes of the Land Transfer Act 1952.
- 5.2 The Commissioner intends to apply, under section 97(3) of the Act, to the Registrar-General of Land for registration of this deed. This deed will bind the registered proprietor, for the time being, of the Land and any successor in title, transferee or lessee of the registered proprietor.
- 5.3 If the Grantor sells, leases, or parts with possession of the Land, the Grantor must ensure that the Grantor obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant. The Commissioner of Crown Lands must be notified prior to any such transaction.
- 5.4 A person will not be liable as the Grantor under this deed for any breach of the provisions of this deed which occurs after that person has parted with its entire interest in the Land.
- 5.5 If a variation of this deed is required by the Commissioner pursuant to clause 9 of the Second Schedule, then the Grantor agrees that it will, at its cost, sign all documents and do all things necessary to register the variation.

### 6. Dispute Resolution

- 6.1 If any dispute or difference arises between the Grantor and the Commissioner in any way arising out of, or in connection with, this deed, then, subject also to the application of section 17 of the Land Act 1948 (as the case may be) the following shall apply:
  - (a) the parties shall enter into negotiations in good faith to resolve the dispute;
  - (b) if the dispute is not resolved within one calendar month from the date on which the parties begin their negotiations, submit the dispute to the arbitration of a single arbitrator appointed jointly by the parties.
  - (c) if the parties cannot agree on the appointment of an arbitrator within 10 working days, then the arbitration shall be carried out by an independent arbitrator appointed by the President of the Wellington District Law Society; and
  - (d) such arbitration shall be determined in accordance with the Arbitration Act 1996.

### 7. Severance

- 7.1 If any part of this deed is or becomes legally ineffective, invalid, or unenforceable, the effectiveness, validity, or enforceability of the remainder is not affected.

### 8. Assignment

- 8.1 The Commissioner may at any time assign or transfer the Commissioner's interest under this deed to a regional or district council as set out in section 97(4) of the Act.

### 9. Alteration or termination

- 9.1 This covenant may be altered or terminated by agreement between the Commissioner and the Grantor.

### 10. Trustee Limitations

- 10.1 The parties agree that Philip Blair Pedofsky (3/8 share) enters this agreement as the sole trustee of the estate of Neil Alexander Purvis ("the Estate") and not in his personal capacity and his liability hereunder shall be limited to the assets of the Estate. P.B.P.
- 10.2 The parties agree that Philip Blair Pedofsky, Warwick Deuchrass and Peter Austin Gowing (5/8 share) enter this agreement as Trustees of the Purvis Children's Trust by virtue of Deed of Trust dated 19 October 1982 ("the Trust") and not in their personal capacity and their liability hereunder shall be limited to the assets of the Trust. 11/17

### First Schedule

All that parcel of land containing 800 ha more or less being "SMC" as shown highlighted in yellow on the designations plan attached hereto.

### Second Schedule

#### **Land management:**

1. The Grantor shall exercise due care in managing the Land and shall at all times manage the Land so as to achieve the Objectives of the covenants contained in this deed. This is not restricted to, nor does it diminish obligations the Grantor may also have with respect to other legislation, such as the Soil Conservation and Rivers Control Act 1941.
2. The Grantor shall manage the land in accordance with the management plan attached hereto.

#### **Weed/Pest Control:**

3. It is recognised that the control of rabbits and other plant and animal pests may be critical to the achievement of the Objectives of this covenant. The Grantor shall undertake pest control as appropriate to achieve the Objectives on the Land. This is not restricted to, nor does it diminish any obligations the Grantor may also have in relation to other legislation, such as the operative Otago Regional Pest Management or successor documents under the Biosecurity Act 1993.

#### **Other conditions:**

4. In relation to earth disturbance or the modification or removal of vegetation, the Grantor will minimize any injury to the surface of the land, and such actions must comply with the covenants contained in this deed. In taking any such actions it is the Grantors responsibility to comply with all statutory requirements in addition to this covenant.

#### **Agreement as to Vegetation Monitoring and inspection:**

5. The Commissioner shall undertake a programme of vegetation monitoring as follows:
  - a. The Commissioner shall engage a suitably qualified ecologist to establish the transects and photo points described under 5c at the Commissioner's cost.
  - b. The Commissioner shall engage a suitably qualified ecologist to carry out at 5 year intervals the programme of vegetation monitoring and inspection described below.
  - c. Methodology:

The monitoring programme is to be undertaken as follows:

- (i) Six 50 metre transects are to be established by the Commissioner's ecologist to establish a baseline suitable for assessing the ecological condition of the land and these are to be re-measured five yearly by the Commissioner's ecologist, the cost of re-measuring shall be met by the Commissioner.
- (ii) The following information is to be recorded from each transect at five yearly intervals:

A 50cm by 50cm quadrat will be placed every two metres along the transects and the following information recorded:

#### **Ground Cover (expressed as a percentage to total 100%)**

- Rock and Rubble
- Bare Ground
- Litter
- Dead Vegetation
- Live Vegetation

#### **Cover Classes**

Each Species present in each quadrant is given a cover class between 1-6 where:

- 1 = <1%
- 2 = 1-5%
- 3 = 6-25%
- 4 = 26-50%
- 5 = 51-75%
- 6 = 76-100%

**Species Present**

All species found in each quadrat will be recorded as present. The frequency of occurrence is the % of quadrats in which the species is present.

- (iii) Twelve photo points are to be established by the Commissioner or his ecologist to establish a baseline. Repeat photographs are to be taken at 5 (five) year intervals thereafter. On each transect, photos will be taken with a standard lens (55mm) looking up and down the line. Photos should be taken at the same time of year (within a 30 day period); a similar time of day; and under similar weather conditions. Photos should be oriented in horizontal (landscape) mode.
- (iv) In association with the quantitative monitoring and photo points, the agency responsible for the monitoring will undertake the following:
  - Make visual observations as to the condition of all of the Land with respect to the Objectives and not just of the transect locations.
  - Identify any relevant developments with respect to the Objectives of this covenant. This could include, but may not be limited to, the development of windbreaks, and changes in land use such as irrigation, cropping, planting for carbon sequestration, bio fuel, timber, or protection. Any significant areas of soil disturbance will also be noted.
  - Gather management information available from the Grantor of relevance to their management relating to the Objectives, such as stock rates, pest control measures, developments such as oversowing and top dressing, and changes in management regimes. The information collected by the Grantor under Item (5) should be made available to the agency writing this report.
  - Provide any information of relevance with respect to the Objectives relating to external environmental conditions, such as the recent climatic conditions and any pest plagues.

**Reporting:**

The agency responsible for the monitoring will provide the Commissioner and the Grantor with a monitoring and inspection report presenting the monitoring results together with the information indicated in (iv) above, to assist in the determination of compliance with the covenants contained in this deed.

The cost of the vegetation monitoring, observations, and reporting listed under item (5) of this schedule is to be met by the Commissioner.

6. The Grantor will undertake a programme of recording and reporting as follows:

- (i) Establish and maintain a set of at least 12 photo points to be photographed annually providing sample coverage of all main areas of the Land.
  - Photo point locations to be permanently located and marked using either readily identifiable existing features, or marked using permanent steel stakes.
  - Each photograph should be taken in landscape mode with a standard lens and should show the vegetation in the foreground and middle distance
  - Photographs should be labelled and stored with photo point number and date of photography.
  - Photos to be taken during the same month each year and preferably at the same time of day.
- (ii) Maintain records of land management using the attached Annual Monitoring and Management Return Form, including the following:
  - Stock type, number, and grazing period in each block included in the covenant Land.
  - Plant and animal pest control measures undertaken
  - Any development inputs, such as top dressing and oversowing, plantings, irrigation etc.
- (iii) Supply the Commissioner with a copy of the photographs and the Annual Monitoring and Management Return Form by each anniversary date of this covenant.
- (iv) The grantor may optionally provide to the Commissioner further interpretation of the results and report indicated under item (5) of this schedule.

The cost of the monitoring, recording, and reporting listed under item (6) of this schedule is to be met by the Grantor.

7. The Grantor shall review the results of the monitoring and inspection and shall use this to make adjustments to the management of the land including stock type and numbers and timing and duration of stocking for each block.

8. The Grantor grants to the Commissioner, and any duly authorised agent of the Commissioner, a right of access onto the Land for the purposes of monitoring the Grantor's compliance with the covenants contained in this deed.

9. If the Commissioner considers that the monitoring and inspection information discloses that the Objectives of the covenant are not adequately being achieved, the management of the land may be altered by agreement between the Commissioner and the Grantor. This could include adjustments to stock rates over all or part of the Land, additional pest control measures, or any other changes in land use considered appropriate.

Where agreement cannot be reached within three months of the commencement of discussions, the Commissioner may require adjustments to the grazing of the land, including destocking of all or part of the land for a defined period or other reasonable management adjustments, taking into account external factors that may have influenced the condition of the land.

10. The Commissioner will use the results of the monitoring and inspection, any decisions reached under item (9) of this schedule, and taking into account any management initiatives by the Grantor, to determine whether the Grantor has complied with the covenants contained in this deed, for the purposes of determining whether the rentcharge will apply or be waived for the next five year period.

**Execution**

Executed as a deed

SIGNED by the Commissioner of  
Crown Lands in the presence of :

)  
)  
)

\_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Consent of Mortgagee to Sustainable Management Covenant**

Computer Freehold Register/Computer Leasehold Register [ ]

[ ] as mortgagee under and by virtue of Memorandum of Mortgage number [ ] hereby consents to the attached Sustainable Management Covenant being registered against computer freehold register/computer leasehold register [ ] subject to and without prejudice to its rights and remedies under the said mortgage.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Signed for and on behalf  
of [ ]  
by its attorneys:

## CLUDEN STATION

### Sustainable Management Covenant 20 Year Management Plan

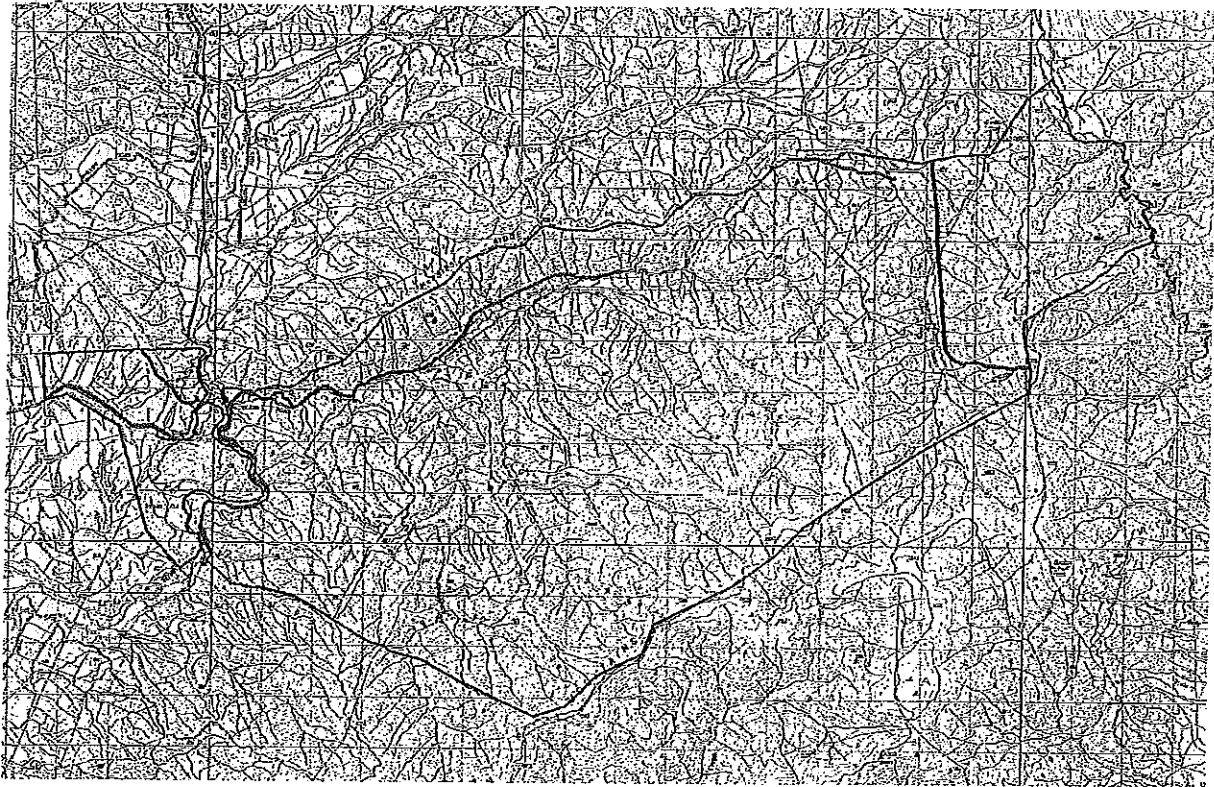
#### Introduction

Cluden Station is a 12,390ha Pastoral Lease located on Cluden Hill Road approximately 11km north of Tarras.

As part of tenure review, an area of approximately 800ha will be given as freehold title with a Sustainable Management Covenant (SMC) placed over it to ensure that the ongoing management of the Station provides for "ecologically sustainable management" of the area (see map 1).

The purpose of this report is to give an outline of the management of Cluden Station in the area of the SMC over the next twenty (20) years commencing at the completion of tenure review. The management is to provide guidance for the SMC area to enable it to be managed in such a way as to provide for improved cover and reduced exposure to erosion while still forming an important part of the ongoing management and economy of Cluden Station.

Map 1. Location of Cluden Station SMC





## **Sustainable Management Covenants**

SMC's are provided for under section 97 of the Crown Pastoral Land Act 1998. This is a type of covenant on the land that is granted in favour of the Commissioner (of Crown Lands) providing for the management of the land and the monitoring of effects from the activities undertaken. A SMC provides an alternative mechanism to ensure the sustainable management of the land, with the Commissioner monitoring the ongoing effects of the management.

In the case of Cluden Station, the objectives of the SMC are to achieve "ecologically sustainable management of the land by the minimisation of soil erosion through the improvement of vegetation cover and maintenance thereafter, and any other means of reducing the exposure of the soil to erosion, particularly wind erosion" and improve productivity. For Cluden Station the reviewable target is the maintenance of good ground cover over the 20 years from the commencement of the covenant.

This report outlines the management of the land to achieve these outcomes.

## **Rabbit Control Operations**

One of the major causes of erosion in parts of Cluden Station is rabbits. With its predominantly north west facing aspect, Cluden Station tends to be very dry and the land prone to rapid depletion of soil moisture. This provides an excellent habitat for rabbits, which can breed prolifically under these conditions. Rabbits will strip the ground of all vegetation and therefore open it up for wind and water erosion. While rabbit numbers are high, it is unlikely that any other form of management will improve the ground cover in the SMC.

Cluden Station carried out poisoning operations on the Station in the winters of 2011 and 2012. These were successful in reducing rabbit numbers to low level and brought the property into compliance levels with the Otago Regional Pest Management Strategy.

Following the rabbit poisoning operation, ongoing control of these pests is continuing with regular aerial shooting of rabbits which is maintaining the low numbers. This will also keep the immunity levels of the rabbit population to the RHD virus low. Should rabbit numbers be seen to increase despite the ongoing maintenance control, further poisoning operations in future years will be implemented to again reduce the population down to manageable levels.

## **Weed Control**

The SMC area is currently free of most well known weed species, in particular gorse and broom. Cluden Station will carry out control of any brush weeds or any other weeds as stipulated in the Otago Regional Pest Management Strategy should they colonise this area.

## **Topdressing and Oversowing**

The establishment and maintenance of good pasture cover is not only important for maintaining healthy stock, but also for the protection of soil from wind and water erosion. The maintenance of a healthy vegetation cover can also have the benefit of gradual improvement of the soil structure through increased carbon input and establishment of better biological and nutrient cycles within the soil itself.

Those parts of Cluden Station that are freeholded through tenure review will be topdressed and oversown with improved pasture grasses at some point during the first four years after freeholding. Ongoing maintenance using appropriate fertilisers will occur over the entire property on a 3-4 year cycle. Therefore, the area of the SMC will be oversown and topdressed within the next 4 years with ongoing topdressing occurring every 3 or 4 years.

The initial topdressing and oversowing is aimed at establishing a healthy sward in the SMC area with the ongoing maintenance fertiliser ensuring that this sward is retained over the long term.

The topdressing will probably result in rapid re-establishment of native shrub species such as matagouri and Spaniard grass. Although these species will not be allowed to become dominant in the SMC area, they can be beneficial as stock shelter during poor weather. Cluden Station will therefore maintain some areas in shrubland.

## **Grazing Restrictions**

It is recognised that the location and altitude of the SMC area is such that careful management of the area need to take place to avoid degradation. Cluden Station will restrict grazing to a maximum of 1,000 wethers at any one time depending on feed levels, between the period of 1 December and 30 April each season.

The number of wethers in any one season will depend on feed levels, and the period they will be pastured on the SMC area will not be continuous. The time envelope will allow flexibility in management based on the properties needs and the amount of feed available.

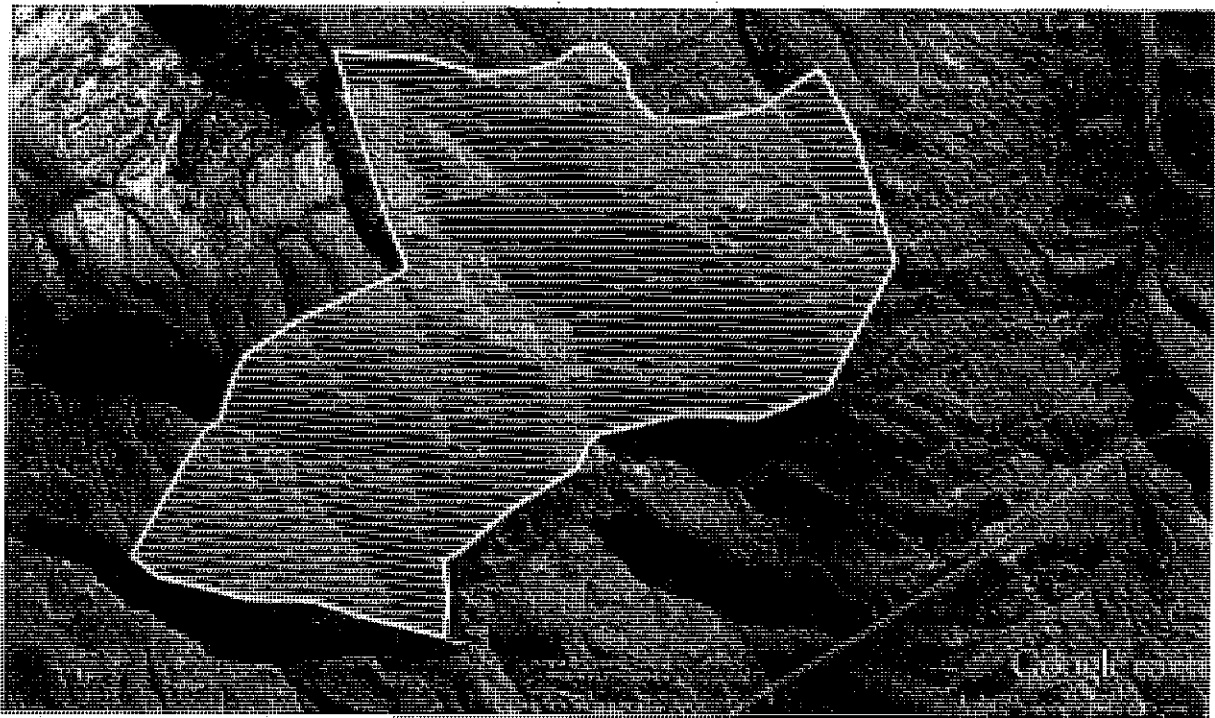
The amount of feed available in the SMC area will be monitored to ensure that appropriate stock numbers are grazed at the appropriate time. Should the amount of feed available be limited, then management of the area will be such that the SMC will not be overgrazed.

### **SMC Monitoring**

The SMC document (second schedule) outlines the standard SMC monitoring and methodology guidelines as provided by the Crown. These are appropriate.

The placement of the 6 transects for the vegetation and ground cover monitoring will be important to ensure the range of current vegetation cover, altitudes and aspects is accurately represented and monitored. Enclosed is a map (map 2) which illustrates where the transects could be located. These are subject to refinement by agreement between the parties.

Map 2. Suggested locations (shown in red) for SMC transects.



## CLUDEN STATION SUSTAINABLE MANAGEMENT COVENANT Annual Monitoring and Management Return Form

To be completed annually in the same month as the month the SMC monitoring programme is commenced, and forwarded with photos to:

Commissioner of Crown Lands – Land Information New Zealand  
Pastoral Land Management  
Private Bag 4721  
Christchurch  
Attention: Sustainable Management Covenant Monitoring

### MONITORING

1. 12 Overview photos in landscape orientation taken from marked and numbered points established in monitoring programme. Photos to be taken at similar time of day, with a standard lens and showing the vegetation in foreground and middle distance. Digital photos to be named with corresponding point number, or photographs to have point number written on reverse.

(tick one) Digital photos emailed  Labelled photos enclosed

2. Comment on climatic conditions experienced over last 12 months in relation to 'normal':  
(eg – dry spring/ more snow than usual in winter/ extremely dry summer etc)

.....  
.....  
.....  
.....  
.....  
.....  
.....

3. Any general observations in relation to soil and vegetation:  
(eg – increased erosion in places/ any changes in vegetation species present etc)

.....  
.....  
.....  
.....  
.....  
.....

4. Any other comments in relation to monitoring:

.....  
.....  
.....  
.....  
.....  
.....



.....  
.....  
.....

7. Pest and weed management:  
*(provide details of pest and weed control, including wilding conifers, undertaken in last 12 months with rabbit/hare numbers if available)*

.....  
.....  
.....  
.....  
.....  
.....  
.....

Comment on status of pest and weed management:  
*(eg - whether satisfactory control is being gained from control measures and if not, identify factors affecting)*

.....  
.....  
.....  
.....  
.....  
.....  
.....

8. Any other comments in relation to management:

.....  
.....  
.....  
.....  
.....

**Signed by Grantor or Grantor's Manager as a True and Accurate Record:**

\_\_\_\_\_

**Date:**


**Name:**

**Execution Section**

---

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

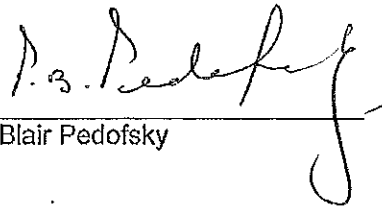
**SIGNED** for and on behalf of the  
**Commissioner of Crown Lands**  
pursuant to the Crown Pastoral  
Land Act 1998 under delegated  
authority in the presence of:

  
\_\_\_\_\_  
Witness

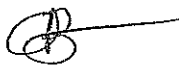
Occupation Simon Mark Espie  
Solicitor  
Wellington

Address \_\_\_\_\_

**SIGNED** by the Holder in the  
presence of:

  
\_\_\_\_\_

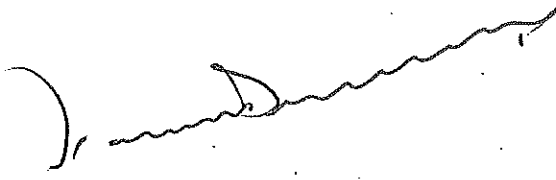
Philip Blair Pedofsky

  
Carlin Ede Budge  
Witness


Accountant  
Occupation

Tairā  
Address

SIGNED by the Holder in the presence of:



Warwick Deuchrass



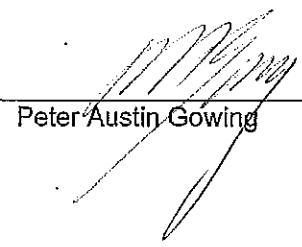
Witness

Laura Michelle Heckler  
Solicitor  
Dunedin

Occupation

Address

SIGNED by the Holder in the presence of:



Peter Austin Gowing



Witness

Tanya Wendy Devis  
Legal Secretary  
Wanaka

Occupation

Address