

Crown Pastoral Land Tenure Review

Lease name : HAPPY VALLEY

Lease number : PO 361

Preliminary Proposal – Part 1

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

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

PROPOSAL FOR REVIEW OF CROWN LAND
Under Part 2 of the Crown Pastoral Land Act 1998

Date:

Parties

Holder:

Duncan George Henderson and Rae Henderson
Happy Valley
RD2
Cromwell

Commissioner of Crown Lands:

C/- OPUS International Consultants Limited
197 Rattray Street
PO Box 1913
Dunedin 9054

Attention: David Payton

The Land

Lease:	Po 361 Happy Valley
Legal Description:	Run 339C Bannockburn and Nevis Survey Districts
Area:	3,277.9537 hectares
Certificate of Title/Unique Identifier:	OT 338/40

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 10th 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 10th 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 15th 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.

Schedule One: Provisions relating to the Schedule One Land

1 Details of Designation

1.1 Not applicable

2 Schedule One Improvements

2.1 Not applicable

Schedule Two: Provisions relating to the Schedule Two Land

1 Details of designation

- 1.1 Under this Proposal the land shown marked in pink and labelled "CA1" on the Plan, being 1038 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of a grazing concession (shown on the Plan in pink, labelled CA1) substantially as set out in Appendix 4.

2 Information Concerning Proposed Concession

2.1 Grazing Concession over CA1

[Explanatory note: This information is required in the event that the Commissioner accepts the recommendation of the Director-General to designate land as land to be restored to or retained in Crown control subject to the granting of a concession or over which a concession is to be granted. This information must be provided for each concession if more than one is proposed.]

1. Description of proposed activity(s) [s.39(a)1:
 Sheep grazing of the Top Block between 1 February and 31 May each year as a fixed medium term phase out. No more than 363 SU/annum can be grazed.
2. Description of place(s) where proposed activity to be carried out and proposed status [s.39(b):
 The Top Block is proposed for retention in Crown control. It is shown as "CA1" on the Happy Valley Proposed Designations Plan.
3. Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect. [s.39(c)1 noting the requirements of s.51(3Ya) and s.51(2Xd) CPLA:
 The concession is a continuation of an activity that has been carried out on this land for more than 100 years. The continuation of grazing has the maximum number of stock fixed at slightly lower than we have been advised it has traditionally run at 0.35 SU/ha. An incentive to reduce stock numbers is provided, as only the numbers grazed are paid for in the concession.

 We consider that the continued grazing of this land at this altitude is unsustainable in the longer term. Continued stocking will continue to degrade the vegetation and result in the movement of nutrients to stock camps. However changes are slow and agreement to this concession is part of a negotiated outcome. The important issue is to ensure the complete destocking at the end of this period. The grazing concession should not be renewed.
4. Details of the proposed type of concession:
 Grazing concession under section 36 (1) (a) CPLA. The maximum total sheep carrying capacity has been provided at 363 SU/annum. Dry sheep are calculated at 0.8 SU/sheep.
5. Proposed duration of concession and reasons for proposed duration [s.39(e)1:
Proposed duration: 15 years

Reasons for proposed duration: While we would have preferred an earlier cessation of grazing the term is purely a negotiated outcome. The Happy Valley property is of a marginal economic size and any reduction in stocking will render the property a sub economic unit.
6. Relevant information about the proposed grantee including information relevant to the grantee's ability to carry out the proposed activity [s.39(f):
 Has been grazing area for many years.

Proposed grantee: Duncan George and Rae Henderson.

Relevant information: The grantee is currently engaged in farming and is currently using the area for grazing.

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 2240 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 conservation covenant for the purpose of preserving historic values, shown in yellow wash and labelled CC1 on the Plan, and substantially as set out in Appendix 5;
 - (d) the conservation covenant for the purpose of preserving natural values, shown in yellow wash and labelled CC2 on the Plan, and substantially as set out in Appendix 6;
 - (e) the conservation covenant for the purpose of preserving natural, landscape and historic values, shown in yellow wash and labelled CC3 on the Plan, and substantially as set out in Appendix 7;
 - (f) the easement for public access and management purposes marked with a dashed orange line and labelled a-b, d-e, and the easement for management purposes marked with a dashed red line and labelled b-c on the Plan, and substantially as set out in Appendix 8;
 - (h) the continuation in force of an easement in gross in favour of The Carrick Irrigation Company Limited, embodied in Historic Computer Interest Register OT17A/117 (no. 885840), substantially as set out in Appendix 9.

Schedule Four: Conditions

- 1 The Commissioner is under no obligation, and may decide, in its sole discretion, not to proceed further with the Tenure Review unless and until:
- (a) the Commissioner considers that sufficient funds will be obtained in order to complete the Tenure Review;
 - (b) the Director General of Conservation has completed all actions required under Part IVA of the Conservation Act 1987;
 - (c) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 5 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
 - (d) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 6 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
 - (e) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 7 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
 - (f) the Commissioner has reviewed, and is satisfied, in its sole discretion that the easement referred to in Appendix 8 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease.

- 2 The land described in **Schedule Three** will continue to be subject to certain existing interests which are not designations under section 36 of the Crown Pastoral Land Act 1998.

This proposal is conditional upon the following existing interests continuing with the land:

- (a) a registered Certificate pursuant to section 417 of the Resource Management Act 1991 in favour of Kawarau Station, for Water Race Nos, WR1725, BR3330, DR5397, DR6320 and BR8108 registered as 5030234.1, substantially as set out in Appendix 10;
- (b) a registered Certificate pursuant to section 417 of the Resource Management Act 1991 in favour of Edgar Parcell and Ann Christine Parcell, for Water Race Nos, 2841 and 3029 registered as 920179, substantially as set out in Appendix 11;
- (c) an unregistered Deemed Water Permit pursuant to section 413-417 of the Resource Management Act 1991 in favour of Duncan George Henderson and Rae Henderson, in consent 95655, substantially as set out in Appendix 12;
- (d) an unregistered Deemed Permit pursuant to section 413-417 of the Resource Management Act 1991 in favour of Edgar Parcell and Anne Christine Parcell, in consent 96187, substantially as set out in Appendix 13;
- (e) an unregistered Deemed Permit pursuant to section 413-417 of the Resource Management Act 1991 in favour of Edgar Parcell and Anne Christine Parcell, in consent 96587, substantially as set out in Appendix 14;

- (f) an unregistered Deemed Permit pursuant to section 413-417 of the Resource Management Act 1991 in favour of Kawarau Station Ltd, in consent 99308, substantially as set out in Appendix 15.

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: Nil

Type:

Specifications:

Construction

Nil

Appendix 4: Form of Grazing Concession over "CA1" to be Created

Concession number: _____

DATED _____

Between

MINISTER OF CONSERVATION
("the Grantor")

and

DUNCAN GEORGE HEDERSON and RAE HENDERSON
("the Concessionaire")

GRAZING CONCESSION
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made this day of

PARTIES:

1. MINISTER OF CONSERVATION, ("the Grantor")
2. DUNCAN GEORGE HEDERSON and RAE HENDERSON ("the Concessionaire")

BACKGROUND

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

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

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

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

"Background" means the matters referred to under the heading 'Background' on page 1 of this Document.

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

"Concessionaire" includes the Concessionaire's successors, assigns, executors, and administrators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

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

2.0 GRANT OF LICENCE

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

3.0 TERM

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

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

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

4.0 CONCESSION FEE AND ADMINISTRATION FEE

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

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

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

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

5.0 OTHER CHARGES

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

6.0 CONCESSION FEE AND ADMINISTRATION FEE REVIEW

6.1 The Grantor will review the Concession Fee and the Administration Fee on the Concession Fee Review Dates.

6.2 The Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.

6.3 The notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987. The Notice must also specify the Administration Fee which the Grantor intends to impose until the next Concession Fee Review Date.

6.4 If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 18.

6.5 Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee payable immediately before the Concession Fee Review Date. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable notwithstanding anything in this clause, the new Administration Fee will be payable by the Grantor upon receipt of the Notice referred to in clause 6.3.

6.6 If the Concessionaire does not give notice to the Grantor under clause 6.4 the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.

7.0 CONCESSION ACTIVITY

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

8.0 COMPLIANCE

8.1 The Concessionaire will comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under Part 3A of the Conservation Act 1987 together with any amendment or review of the strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the Health and Safety in Employment Act 1992, the Resource Management Act 1991, and any other statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land, or affecting or relating to the Concession Activity.

9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

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

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- 9.2 The Concessionaire must keep and maintain at the Concessionaire's cost any Structures, facilities and alterations to the Land in good repair.
- 9.3 On expiry or early termination of this Document either as to the whole or any part of the Land, the Concessionaire will not be entitled to compensation for any improvements (including pasture) and any Structures or facilities remaining on the Land are to become the property of the Grantor.
- 9.4 If requested by the Grantor, the Concessionaire must, within such time as the Grantor determines, remove all Structures, facilities or other improvements erected or installed by the Concessionaire and make good at the Concessionaire's own expense all damage done by the removal and must leave the Land in a clean and tidy condition to the satisfaction of the Grantor.

10.0 PROTECTION OF THE ENVIRONMENT

- 10.1 Except as approved in writing by the Grantor the Concessionaire will not, whether by act or omission:
- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Land; or
 - (b) bring any plants, or animals (other than farm stock described in Item 2 of Schedule 1, farm dogs and horses for purposes of the Concession Activity) on to the Land; or
 - (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
 - (d) pile or store materials in any place on the Land where they may obstruct the public or create a nuisance; or
 - (e) conduct any noxious, noisome, dangerous or offensive activity on the Land; or
 - (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Land; or
 - (g) disturb or allow stock to disturb any stream or watercourse on the Land; or
 - (h) light any fire on the Land.
- 10.2 The Concessionaire, must at the Concessionaire's expense:
- (a)(i) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Land or any Structure or facility on the Land;
 - (a)(ii) if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor; and
 - (b) comply strictly with the provisions of the Biosecurity Act 1993.
- 10.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 10.
- 10.4 The Concessionaire may bring firearms on to the Land for use in connection with the Concession Activity and pest control operations.
- 10.5 The Concessionaire for purposes of the Concession Activity may take onto or use farm vehicles on the Land on existing formed access tracks only.

11.0 HEALTH AND SAFETY

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

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

12.0 TEMPORARY SUSPENSION

12.1 The Grantor may suspend this Document:

- (a) if, in the opinion of the Grantor the activities of the Concessionaire, its employees, agents, contractors, licensees or invitees are having or may have an adverse effect on the environment and the Grantor considers that the effect can not be avoided, remedied or mitigated to an extent satisfactory to the Grantor;
- (b) while the Grantor investigates any of the circumstances contemplated by this clause and also while the Grantor investigates any potential breach or possible offence by the Concessionaire related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.

12.2 The Grantor is not liable to the Concessionaire for any loss sustained by the Concessionaire by reason of a suspension under clause 12.1 including loss of profits.

12.3 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.

13.0 ASSIGNMENT

13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause.

13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.

13.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.

13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

14.0 TERMINATION

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

- (a) the Concession Fee or the Administration Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
- (b)
 - (i) the Concessionaire breaches any terms of this Document; and
 - (ii) the Grantor has notified the Concessionaire in writing of the breach; and

- (iii) the Concessionaire does not rectify the breach within 28 days of receiving notification; or
- (c) the Concessionaire ceases to conduct the Concession Activity; or
- (d) the Concessionaire is convicted of an offence, related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Resource Management Act 1991; or the Biosecurity Act 1993; or the Health and Safety in Employment Act 1992; or
- (e) the Concessionaire is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire ceases to function or operate.

14.2 If the Grantor terminates the Document under this clause 14 all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or Administration Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.

14.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

15.0 INDEMNITIES AND INSURANCE

15.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, contractors, or invitees or otherwise caused as a result of its use of the Land or the Concessionaire's carrying out of the Concession Activity on the Land.

15.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.

15.3 Without prejudice to or in any way limiting its liability under clause 15.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:

- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
- (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
- (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.

- 15.4 With respect to clause 15.3 the Concessionaire must, before commencing the Concession Activity and on each renewal of insurance provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

16.0 ENVIRONMENTAL MONITORING

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

17.0 FORCE MAJEURE

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

18.0 DISPUTE RESOLUTION AND ARBITRATION

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

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

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

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

- 18.5 Notwithstanding anything 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 Land is situated is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

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

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

19.0 NOTICES

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

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

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;

- (c) in the case of facsimile, on the Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

20.0 RELATIONSHIP OF PARTIES

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

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

21.0 OFFENCES

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

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

22.0 SPECIAL CONDITIONS

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

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

Signed by :

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

Witness _____

Occupation _____

Address _____

Signed by :

as Concessionaire
in the presence of :

Witness _____

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Occupation _____

Address _____

- 11 -

SCHEDULE 1

1. **Land:** The land is shown on Designations Plan as "CA1" and is known as the "Top Block". The estimated size is 1038 ha. *(see definition of Land in clause 1.1)*
2. **Concession Activity:** Grazing of wethers or dry ewes for a period between 1 February and 31 May each year at a stocking rate of not more than 0.35 SU/ hectare per annum (Wethers and dry ewes are to be calculated at a rate of 0.8 SU per sheep = 363 SU maximum).*(see definition of Concession Activity in clause 1.1)*
3. **Term:** 15 years commencing on the first day of February after the date the land becomes conservation land, or the date when the land becomes conservation land if it occurs in the February to May period. *(see clause 3)*
4. (a) **Renewal Date:** Nil *(see clause 3.2)*
(b) **Renewal Period:** None.
5. **Final Expiry Date:** The 15th anniversary of the date of commencement of the concession. *(see clause 3.2)*
6. (a) **Concession Fee:** The concession fee is to be calculated on the basis of \$8/SU/annum, for the stock run on the Land for that year. In order that the grazing fee may be calculated, a return of stock will be made by 30 of June of each year showing the stock carried on the land over the preceding year. If a return is not made by this date, a fee will be charged assuming the maximum stock numbers had been run (363 SU). *(see clause 4)*
(b) **Administration Fee:** \$100 per annum + GST *(see clause 4)*
7. **Concession Fee Payment Date:** *(see clause 4)*
On or before the date specified on the invoice generated by the Grantor
8. **Penalty Interest Rate:** *(see clause 4.2)*
Double the Grantor's bank's current highest 90 day bank bill buy rate
9. **Concession Fee Review Date:** Every three year anniversary from the date of commencement for the term of the Concession. The fee will be reviewed to the market level for summer sheep grazing. *(see clause 6)*
10. **Public Liability General Indemnity Cover:** *(see clause 15.3)*
for \$1,000,000.00
11. **Public Liability Forest & Rural Fire Extension:** *(see clause 15.3)*
for \$500,000.00
12. **Statutory Liability Insurance:** *(see clause 15.3)*
NA
13. **Other Types of Insurance:** *(see clause 15.3)*
Nil
Amounts Insured for Other Types of Insurances: *(see clause 15.3)*
Amount NA
14. **Environmental Monitoring Contribution:** \$ __NA_____ *(see clause 16)*

15. **Address for Notices (including facsimile number):**

(see clause 19)

- (a) Grantor: C/- PO Box 5244, Dunedin. (03) 4778 626
- (b) Concessionaire: Duncan George Henderson and Rae Henderson
Happy Valley
Hawksburn Road
RD2
Cromwell

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SCHEDULE 2

Special Conditions

1. The Concessionaire will take care not to overstock the Land and will ensure that grazing is not having an adverse impact on the indigenous vegetation within the Land.
2. As the Minister considers the stocking of this area to be unsustainable in the long term, the Concessionaire will move to minimize the stocking of the Land.
3. In order to verify that the concession conditions are being met, the Minister may monitor (count) the sheep numbers and grazing duration during the concession period.
4. The Concessionaire will if requested, provide information to the Minister from their business records including dairies as to the numbers run and duration of grazing.

SCHEDULE 3

MANAGEMENT PRESCRIPTION DOCUMENT FOR HAPPY VALLEY TOP BLOCK CONSERVATION
AREA GRAZING CONCESSION

As this concession is for a term exceeding 10 years a management prescription document is required. A management prescription in the concession conditions provides, over the full term:

1. The specific goals of management of the land consistent with the nature of the concession activity (covering vegetation, landscape, historic, public recreation, soil and water).
2. A description of how the goals are to be met.
3. A detailed description of the type and condition of conservation resources at the commencement of the concession.
4. A description of the monitoring programme (of activity effects) to be carried out (for vegetation).
5. A specification concerning grazing systems, including identification of vegetation trends and how that will affect the grazing systems.

This management prescription document shall apply until it is reviewed ten years from the date of commencement of the concession.

1. The goal of the concession is to permit, for a limited time, the continuation of the existing practice of sheep grazing on the top block of Happy Valley.

(a) Vegetation

To manage the vegetation within the concession to minimise grazing and other impacts.

(b) Recreation

To provide the public will have unfettered access to the Land.

2. A description of how the goals are to be met.

The management of the concession can be considered in light of the conditions outlined below:

A condition of the concession provides that the Concessionaire will take care not to overstock the Land and will ensure that grazing is not having an adverse impact on the indigenous vegetation within the Land. While this condition in itself is rather general, it does allow for any unforeseen impacts to be addressed, particularly if there is a significant deterioration of the vegetation observed.

It also recognises in the special conditions that the Minister considers this grazing unsustainable and the Concessionaire will when possible minimize the stocking of the Land. We do not expect any significant recovery of the vegetation until the Land is destocked, but the numbers of sheep permitted are, according to the Concessionaire, less than has been grazed in the past.

The grazing of the Land will be minimized by having the fee payable only on the number of sheep Stock Units grazed, rather than a set amount each year. In that way less grazing might take place when feed supplies or farm management practices allow.

This area will be managed for public access in the same manner as adjoining conservation land.

3. Description and condition of conservation resources present.

Landscape values:

Above the 1100m asl contour the unit contains high inherent landscape values attributable to the overall naturalness and intactness of the ground cover, with various plant communities found on the landform. The harsh climate is reflected in natural processes such as the ripply terrain formed by frost heave and the tundra-like vegetation. In aesthetic terms, the upper sections convey an overall sense of coherence attributable to the limited and subtle palette of colours that range from the yellow hues of the tussock to the tawny browns of the tundra country. From a wider perspective, it is important that the upper segment of this unit is not perceived as a single entity, but as an integral component of the district's high country landscape that encompasses the Old Woman Range and the Garvie Mountains further to the south.

Besides its high inherent landscape values, this sub unit would make an ideal setting for backcountry pursuits such as cross-country skiing with these recreational activities being enhanced due to the lack of "built" elements.

Vegetation Values:Bannock Burn central tributaries

Above c.1400 m a low cushion-like shrubland of *Dracophyllum muscoides* and lichen predominates on patterned ground. A wide range of associated sub-shrubs, herbs and grasses include *Raoulia subsericea*, *R. grandiflora*, *Abrotanella inconspicua*, *Hectorella caespitosa*, *Chionohebe densifolia*, *Anisotome imbricata*, *Leptinella goyenii*, *Poa lindsayi*, *Rytidosperma pumilum* and *Craspedia lanata*.

The base of lichen encrusted rock tors provide sheltered, slightly damper sites, which favour little hard fern (*Blechnum penna-marina*), *Ourisia glandulosa*, *Geum leiospermum*, *Myosotis lyallii*, *Pachycladon novae-zelandiae* and *Ranunculus enysii* ("R. berggrenii" type).

At lower altitude this community continues to occupy small areas on very exposed ridge crests, but elsewhere on colluvial slopes it is replaced by extensive areas of short tussockland and cushionfield. Alpine fescue tussock (*Festuca mathewsii*) and blue tussock (*Poa colensoi*) are very common along with golden speargrass and *Raoulia subsericea*. Other common species include *Leucopogon fraseri*, *Luzula pumilum*, *Scleranthus uniflorus*, *Acaena caesiiglauca*, *Carex wakatipu*, *Gaultheria depressa*, *Raoulia grandiflora*, and *Kelleria villosa*. Small ablation pavements within this community have *Neopaxia sessiliflorum*, *Anisotome flexuosa* and *Brachyscome* sp. Few weed species are present, at least down to c. 1300 m. Species encountered include mouse-ear hawkweed, tussock hawkweed and sheep's sorrel (*Rumex acetosella*). Below 1300 m the cover of mouse-ear hawkweed increases sharply towards the snowline fence with a consequent decrease in native short tussock and herbs. Mouse-ear hawkweed is the dominant vegetation cover immediately on the upslope side of the snowline fence.

Narrow-leaved tussock has a patchy distribution and is mostly confined to sheltered gullies and riparian zones, particularly in the northwestern sector. In these areas it often forms a mosaic with short tussocklands and golden speargrass.

Small herb seepages and snowbanks are present where the slopes steepen towards the various Bannock Burn tributaries. These areas of high plant diversity have many recognisable communities separated by subtle changes in micro-topography, hydrology and fertility. Common species include *Psychrophila obtusa*, *Plantago triandra*, *Viola cunninghamii*, *Carex guadichaudiana*, *Gaultheria parvula*, *Abrotanella caespitosa*, *Phyllachne colensoi*, comb sedge (*Oreobolus pectinatus*) and *Euchiton traversii*. Wetter channels are dominated by moss with blinks (*Montia fontana*), *Ranunculus maculatus*, *Colobanthus apetalus* and *Epilobium komarovianum*. Small patches of heavily browsed slim snow tussock (*Chionocholea macra*) occur around the margins. At lower altitude (c. 1200 m) similar herb seepages contain *Pratia angulata*, *Mazus radicans* and *Ranunculus royi*.

Bannock Burn main stem

Slim snow tussock on the lip of the periglacial summit area (c. 1300 – 1400 m) soon gives way to dense narrow-leaved tussockland on slumped valley flanks. The tall statured and generally dense tussock cover on the shady faces of the true left, contrasts with the somewhat patchy and discontinuous tall tussock cover on the true right. The generally damp conditions amongst the dense tussock supports a small range of shrubs and herbs including *Ozothamnus vauvilliersii*, *Dracophyllum pronum*, *Olearia bullata*, *Oreomyrrhis ramosa* and *Dolichoglottis lyallii*.

Small stream channels with damp herbaceous margins intersect the tussock slopes. Common wetland plants and those tolerant of periodic inundation include bog rush (*Schoenus pauciflorus*), *Hydrocotyle "montana"*, Maori onion, *Coprosma atropurpurea*, native dock (*Rumex flexuosus*) and cresses (*Cardamine* spp.).

Rubblefield amongst the tussock have a highly diverse flora from tall shrubs to tiny herbs. Taller shrubs are *Coprosma dumosa* and porcupine shrub. Sub-shrubs and herbs include *Leucopogon fraseri*, *Acaena caesiiglauca*, *A. saccaticupula*, *Geranium sessiliflorum*, *Stellaria gracilentia*, *Celmisia brevifolia* and *Helichrysum filicaule*. Ferns are also common and include little hard fern, prickly shield fern, bladder fern (*Cystopteris tasmanica*), alpine shield fern (*Polystichum cystostegia*) and thousand-leaved fern (*Hypolepis millefolium*).

4. Description of a monitoring programme that may be established at the Ministers discretion for vegetation condition and soil and water values:

Photopoint monitoring will be established to track changes in the Land over time. It is recognised that this type of monitoring may not pick up subtle changes resulting from grazing during the concession's 15 year duration in time to effect meaningful change. However it should pick up any gross changes attributable to either overstocking or seasonal fluctuation. Photopoint monitoring will be useful in recording the start condition.

Monitoring will include periodic inspections by staff, consultation with the concessionaires and reports from the public.

Monitoring of the numbers of sheep run and the duration they are grazed during the concession period may also be undertaken if considered necessary.

5. Number of stock and duration permitted to be run on the concession area within the current term of the management prescription document.

Grazing of wethers or dry ewes for a period between 1 February and 31 May each year at a stocking rate of not more than 0.35 SU/ hectare per annum (Wethers and dry ewes are to be calculated at a rate of 0.8 SU per sheep = 363 SU through the grazing period maximum).

Appendix 5: Form of Conservation Covenant CC1 to be Created

DATED _____

Between

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

and

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

**COVENANT UNDER THE CONSERVATION ACT 1987
AND THE RESERVES ACT 1977
FOR CROWN PASTORAL LAND ACT 1998 PURPOSES**

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 THE MINISTER OF CONSERVATION

BACKGROUND

- A. The Commissioner of Crown Lands is deemed for the purposes of section 27 of the Conservation Act 1987 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. Section 27 of the Conservation Act 1987 provides that a covenant for conservation purposes may be granted or reserved over any land in favour of the Minister; and section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of the lands' Reserve Values.
- C. The Land contains Conservation Values and Reserve Values worthy of protection.
- D. The parties agree that the Land should be managed:
 - (i) for Conservation Purposes in order to protect the Conservation Values; and
 - (ii) so as to preserve the Reserve Values

which purposes 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 27 of the Conservation Act 1987 and 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:
 - (i) for Conservation Purposes; and
 - (ii) to preserve the Reserve Values.

OPERATIVE PARTS

In accordance with section 27 of the Conservation Act 1987 and 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 the Minister agree as follows.

1 INTERPRETATION

- 1.1 In this Covenant unless the context otherwise requires:

“Conservation Purposes”	means the preservation and protection of natural and historic resources including Conservation Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.
“Conservation Values”	means the conservation values specified in Schedule 1.
“Covenant”	means this Deed of Covenant made under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977.
“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 re-aligned.
“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.
“Reserve 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 Days”	means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

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 references to clauses are references to clauses in 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 seek to determine 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 OBJECTIVES OF THE COVENANT

- 2.1 The Land must be managed:
 - 2.1.1 for Conservation Purposes;
 - 2.1.2 so as to preserve the Reserves Values;
 - 2.1.3 to provide, subject to this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

3 IMPLEMENTATION OF OBJECTIVE

- 3.1 Unless agreed in writing by the parties the Owner must not carry out or permit 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 the 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 Conservation Values or Reserve Values of the Land;
 - 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, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;
 - 3.2.7 comply with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
 - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.
- 3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister will pay the Owner a proportionate share of:
- (a) the repair or maintenance of fences on the Land if the work has first been approved by the Minister (which approval must not be withheld unreasonably);

- (b) the eradication or control of all animal and plant pests, and the removal of exotic tree species if:
 - (i) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
 - (ii) the Minister has first approved the work (which approval is not to be withheld unreasonably).

3.5 The proportionate share payable by the Minister under clause 3.4 is to be calculated having regard to the purpose of any expenditure with the intent that:

- (a) expenditure essentially for conservation purposes only will be borne by the Minister;
- (b) expenditure essentially for farming purposes only will be borne by the Owner;
- (c) where the expenditure is partly for conservation purposes and partly for farming purposes then the expenditure will be borne by the parties equally or in such other proportion as they may agree and failing agreement as may be determined by the process set out in clause 12.

4 PUBLIC ACCESS

4.1 The Owner must, subject to this Covenant, allow the public to enter upon the Land and no specific permission or authority is required from the Owner for such entry.

5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS

5.1 The Minister must

- 5.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant.
- 5.1.2 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, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

5.2 The Minister may:

- 5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;
- 5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.

6 JOINT OBLIGATIONS

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.

7 DURATION OF COVENANT

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

8 OBLIGATIONS ON SALE OF LAND

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

9 MISCELLANEOUS MATTERS

9.1 Rights

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

9.2 Trespass Act:

- 9.2.1 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;
- 9.2.2 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.

9.3 Reserves Act

- 9.3.1 In accordance with section 77(3) of the Reserves Act 1977 but 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.

9.4 Titles

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

9.5 Acceptance of Covenant

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

9.6 Fire

- 9.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land;

- 9.6.2 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:

10.6.2.1 requested to do so; or

10.6.2.2 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;

10 DEFAULT

- 10.1 Where either the Owner or the Minister 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 Owner or the Minister 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 Owner and the Minister 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 them;

11.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.

11.3 **Failure of Mediation**

11.3.1 In the event that the matter 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 New Zealand Law Society;

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

12 **NOTICES**

12.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent 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 2.

12.2 A notice given in accordance with clause 12.1 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.

12.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land and must supply the Minister with the name and address of the new owner or person in control.

13 **JOINT OBLIGATIONS**

13.1 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 achieve the Conservation Purposes on the Land.

14 **SPECIAL CONDITIONS**

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

14.2 The standard conditions contained in this Covenant 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 27 of the Conservation Act 1987 _____)
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ and _____)
acting under a written delegation from the Minister _____)
of Conservation and exercising his/her powers under _____)
section 117 of the Reserves Act 1977 as designated _____)
Commissioner in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

The Land is an area of approximately 70 ha shaded yellow and labelled CC1 on the Designations Plan.

2. Address for Service¹

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

C/- Box 5244
DUNEDIN

Fax (03) 477 8626

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

Duncan George Henderson and Rae Henderson
Happy Valley
Hawksburn Road
RD2
Cromwell

Fax (03) 445 1019

3. Values of Land to be Preserved

Conservation Values to be protected:

- To foster the use of historic resources for recreation and allow their use for tourism.

Reserve Values to be protected:

Examples are:

- To preserve the historical values of the land.

Duffers Creek and its tributaries have historically been worked for gold. The historic landscape encompasses slucings, tailings, huts, water races and tracks. There are also associated site artefacts present. See description in Management prescription document schedule 3.

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions

1. Clause 3.1.1 is deleted and replaced with:
 - 1.1 Sheep may only be grazed at a stocking rate that does not compromise the values.
 - 1.2 Cattle may be grazed for a limited time only while Duncan and Rae Henderson personally occupy and actively farm the property. Should there be any change in ownership, occupation or management, cattle will no longer be able to be grazed on the covenant area. No more than 50 total cattle plus calves at foot may be grazed at any time.
2. The public will be allowed wander at will access (foot only) over the covenant area to view the historic values.
3. Clause 3.1.2 is deleted and replaced with: Old poplar and willow trees (for so long as they don't create a hazard) are not to be damaged or destroyed as they are important for the historic context.
4. Clause 3.1.5 is modified to allow for chemical spraying and oversowing and topdressing.
5. The Minister has the right to erect signs on the Land to interpret the historic sites, including outlining the public's rights and responsibilities.
6. The Minister has the right to manage the historic values on the Land.
7. Monitoring

Photopoint and other monitoring methods may be used to record the condition of the historic features. The Minister will pay the costs of monitoring.
8. The Management prescription, Schedule 3, will guide the management of the historic values on the Land. Schedule 3 may be reviewed or modified at any time with the agreement of the Owner and the Minister including a review every ten years.

SCHEDULE 3

**MANAGEMENT PRESCRIPTION DOCUMENT FOR HAPPY VALLEY STATION – HISTORIC
SITE COVENANT DUFFERS GULLY**

This document is to be read in conjunction with the covenant document and is to guide the future management of the historic site.

1. The specific goals of management of the land consistent with the nature of the historic values of the Land.
2. A description of how the goals are to be met.
3. A detailed description of the type and condition of historic resources at the commencement of the covenant.
4. A description and purpose of the monitoring programme.
5. A specification concerning cattle numbers, including actions to be taken if stock impacts are recorded.

This management prescription document may be reviewed at ten year intervals.

1. **The specific goals of management of the land consistent with the nature of the historic values of the Land.**

The goal for the site is to manage the historic values in a way that maintains them and avoids damage. The artefacts must be managed so as to avoid them being removed without authorisation.

2. **A description of how the goals are to be met.**

The Minister may:

- Control vegetation that is growing around or within sites where such control is considered beneficial to the historic values.
- Install signage to provide public information.
- Protect artefacts by way of securing them in situ, by marking, by cataloguing and removing to storage or by any other suitable means.
- Control public access to the site and close or modify access if damage or theft is occurring.
- Install fences or structures to discourage stock from damaging historic sites/features.
- Monitor stock and public access for damage to the area.

The Owner Must:

- Not permit access to the site where there is a risk of artefacts being removed (ie: by people with motor vehicles).
- Not feed hay, silage or other supplements or put out salt blocks in the vicinity of the historic features.
- Notify the Minister of any damage to sites or features.

3. **A detailed description of the type and condition of historic resources at the commencement of the covenant.**

Water races

Site F42/223 is a possible water race identified running along the *ca.* 640m contour. This race would have possibly fed the workings of site F42/220 below. Water race F42/224 would have provided water to the sluicings below site F42/221. This race was may have originated in the nearby gully where the creek runs into the 'Ford'. Race F42/225 was recorded above Hut 5 (F42/229). Near the hut was a stone-lined tailrace and tailings implying that this race may have fed water to these workings. The origin of this race was not determined, but may have originated from the creek running into the gully immediately to the south of the hut.

Gold mining

The tailings recorded in Duffers Gully are extensive, large and complex.

Site F42/219 represents tailings produced from the working of gold bearing deposits along the stream immediately running down Duffers Gully proper. The sluice faces and tailings themselves are mainly on the true right of the gully stream. The gold workings have been little disturbed as illustrated by wheel barrow tracks still being present running along the top of various tailings. Huge stacked tailings dominate this gully and illustrate an intense investment in labour. Both the stream margins and ridge line were alluvial mined creating two terraces of mining activity, with water probably supplied by water race F42/222. Lying at the base of these tailings is hut site 2 (site F42/227).

The tailings of site F42/220 stretch *ca.* 500m down a narrow steep tributary which feeds into the main Duffers Gully stream. Stacked tailings are also common in this gully but are becoming over grown by matagouri. Nineteenth century gold mining artefacts and a prospectors pit are also present amongst the mining remains. Damage has occurred to tailings in this gully from the construction of an access track and a fence line.

Site F42/221 covers the length of the lower water catchment originating from the bottom of Duffers Gully and flowing southeast down to the Bannock Burn. The length of this flat bottomed gully contains the scattered remnants of gold mining such as large stacked tailings and sluice faces, a stone wall (F42/230) and Huts 3, 4 and 5 (F42/228 & 229). The main tailings are concentrated along the western side of F42/221 and are similar in form to those recorded at F42/219. Sluice faces and large stacked walls of tailings are prevalent and well preserved, some stacked walls being over 2m high. Gold mining artefacts are also distributed amongst the tailings. As with F42/219, the mining has occurred on two levels with tailings stretching from the low ridge top down to the stream below. Patches of tailings are present as far down as the 'Ford' and near Huts 3, 4 and 5 (F42/228 & 229). The northern side of this gully was not surveyed and so the presence or absence of mining has not been confirmed.

Stone wall

At the south east end of the large western section of the F42/221 tailings where the access track continues down the gully is the remains of a dry stone stacked wall (F42/230). Although difficult to age, this 56m long wall was built from stone sourced from the tailings nearby and may date as early as these tailings and nearby Huts 3 and 4 (F42/228).

Huts

The four stone huts recorded within the covenant area. Hut 2 (F42/227) is a schist stone single room structure with an animal enclosure adjoining its western side and a small unknown function three walled stone structure behind. The hut is large (5.35m x 3.9m), in excellent preservation and was possibly built as early as 1867, when gold mining was first recorded in Duffers Gully. The hut would have had other uses such as for musterers or rabbiters. The hut is still used today and 20th century corrugated iron has been used to replace the original roof. Nineteenth century European artefacts lie next to and near this hut.

Huts 3 and 4 (F42/228) lie side-by-side and are located next to a 40m long 0.45m high stone stacked wall which runs along their east side (Figures 1 & 3, Appendix 2). Tailings are present to the east of this wall. The schist stone remains of Hut 3 constitute a 3.7m high chimney in the southern wall, partially ruined north wall, still with a window opening, and collapsed western wall, the hut originally measuring 4.4m/4m in dimension. Nearby under the vegetation to the southwest of the hut are the remains of two more walls obscured by vegetation. These walls are possibly the remains of another hut. Two meters to the northwest of the hut is another a long three sided stacked stone enclosure 3.7m wide which may be the remains of an animal enclosure. Only 10m southeast of Hut 3 are the remains of Hut 4. The remains of three of the collapsed walls of this hut can be seen with the northern wall hidden under vegetation. This hut measures 4.8m/2.9m with the chimney ruins 2m high. Huts 3 and 4 are most probably related to gold mining in the gully and may date to the 1860s. It is also possible they were occupied at the same time and may represent contemporary gold mining parties or families.

Hut 5 (F42/229) is located on the true right of the stream flowing out of the southeast gully. The wall of this hut are collapsed other than a small piece of the back (east) wall. The notable feature of this hut is the substantial chimney which is of colossal width and breadth (1.85m x 1.85m) considering the size of the hut which originally measured *ca.* 5.1m x 3.1m. The height of the chimney would have been similar

to other huts of this type and size. A pre-1900 age for this hut and its function as possibly originally being a gold-miners residence, as with the other huts in this gully, can be attributed to these remains.

All the archaeological sites recorded on the property most probably date from the mid-to late 19th century other than the stacked wall (F42/230) where this is difficult to determine. The clusters of huts in the south east section of the gully imply a community of gold miners all occupying this area at the same or similar times. One of the huts may well have been the residence of Jacob Crow.

It is the preservation of the remains with intact wheel-barrow tracks and gold mining artefacts distributed amongst the mining debris which makes this gold mining site significant.

4. A description and purpose of the monitoring programme.

Monitoring of sites to be by way of photopoints showing condition of main structures, earthworks, walls and tailings thought to be vulnerable to damage from stock or excessive vegetation.

All significant artefacts may be identified, positioned, photographed and catalogued (if resources permit).

5. A specification concerning cattle numbers, including actions to be taken if stock impacts are recorded.

The presence of cattle is thought to have some incremental negative impacts on the historic resources. Cattle will be permitted within the covenant area at current numbers (no more than 50 total cattle plus calves at foot) for the time that Duncan and Rae Henderson actively manage the property. Cattle damage will be monitored during this time and impacts may be mitigated through fencing or by other means in consultation with the Owner.

Stock movement through the site could have impacts and these may be monitored and mitigated in consultation with the Owner.

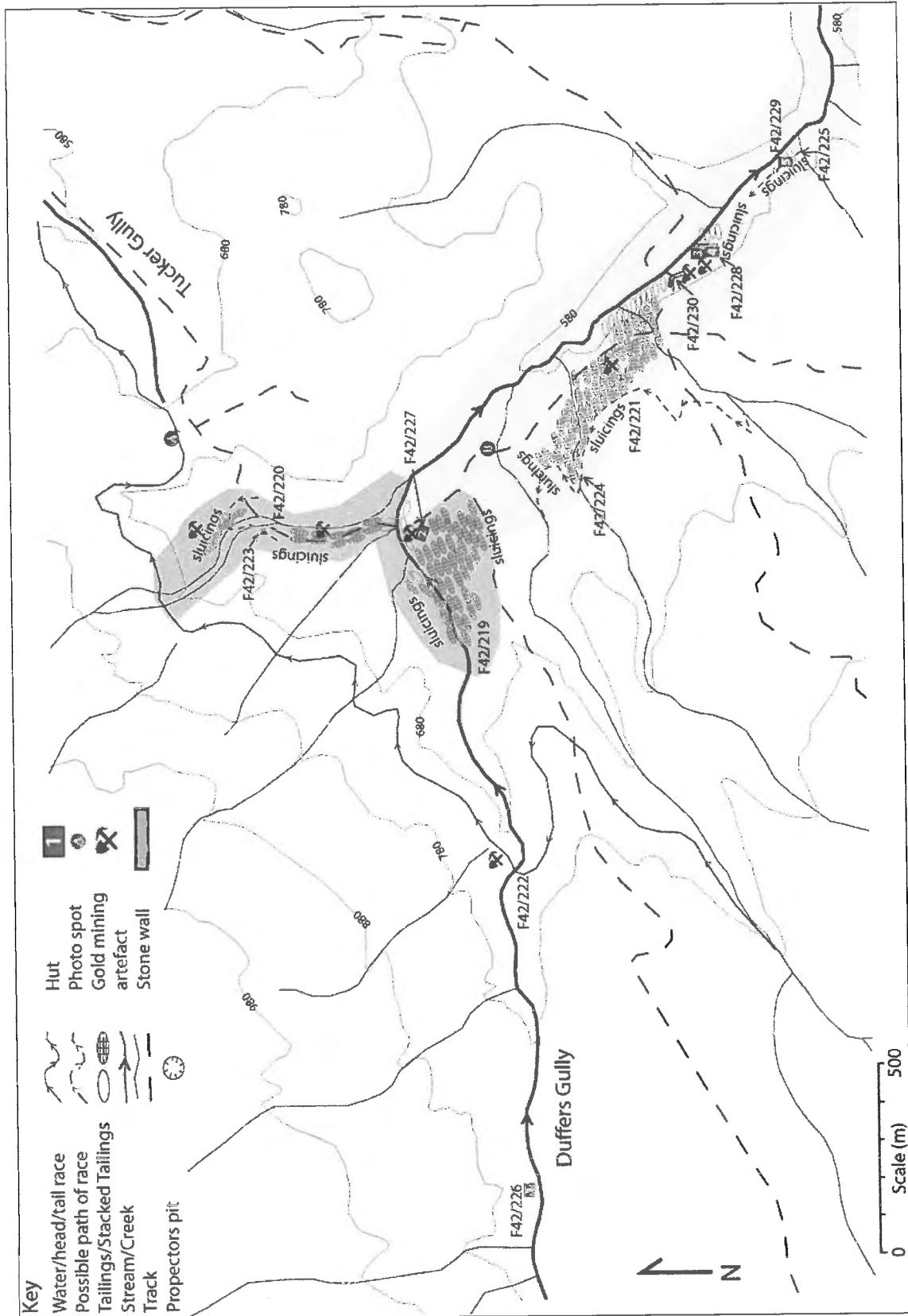


Figure 3. Close view of archaeological sites in Duffers Gully

GRANT of

Certified correct for the purposes
the Land Transfer Act 1952

Solicitor for the Minister of
Conservation

CONSERVATION COVENANT

Under section 27 of the Conservation Act 1987
and section 77 of the Reserves Act 1977
for Crown Pastoral Land Act 1998 purposes

COMMISSIONER OF CROWN LANDS

to

MINISTER OF CONSERVATION

Legal Services
Department of Conservation
Dunedin

Appendix 6: Form of Conservation Covenant CC2 to be Created

DATED _____

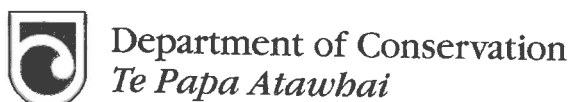
Between

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

and

MINISTER OF CONSERVATION
("the Minister")

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



- “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 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.
- 3.2 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, 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 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

The Land has an area of approx 80 ha and shaded yellow and labelled CC2 on the Designations Plan.

2. Address for Service¹

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

C/- Box 5244
DUNEDIN

Fax (03) 477 8626

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

Duncan George Henderson and Rae Henderson
Happy Valley
Hawksburn Road
RD2
Cromwell

Fax (03) 445 1019

¹ State street address not Post Office Box number.

3. Values of Land to be Preserved

Preserving the natural, values of the area.

Much of this area is dominated by native shrubland which is bisected by numerous small streams.

Within the Land is a dry open shrubland on a north-facing derivative slope, is dominated by *Corokia cotoneaster* inter-mixed with *Coprosma propinqua*, porcupine shrub, mountain wineberry (*Aristotelia fruticosa*) and occasional sweet briar. A range of drought-tolerant herbs and ferns are present including *Senecio quadridentatus*, *Euchiton ruahnicum*, *Raoulia glabra*, *Vittadinia australis*, rock fern (*Cheilanthes sieberi*) and mouse-ear hawkweed. Adjoining shrublands on damper aspects are dominated by matagouri and *Coprosma propinqua*, in association with *Olearia odorata*, *Corokia cotoneaster*, koromiko (*Hebe salicifolia*), porcupine shrub and bush lawyer (*Rubus schmidelioides*).

The streams have a population of the endangered *Galaxias* sp D (Clutha flathead galaxias, current threat classification - nationally vulnerable (2009)).

SCHEDULE 2

Special Conditions

1. Clause 3.1.1 is deleted and replaced with: Sheep may graze the covenant area at a stocking rate that does not, in the opinion of the Minister, adversely impact on the values.
2. The covenant area will be monitored to ensure that the conditions of the covenant have been adhered to. The details of the monitoring including timing, methods, results and consequential actions are detailed in the monitoring description in Schedule 3.

SCHEDULE 3

DESCRIPTION OF THE MONITORING PROGRAMME TO BE ESTABLISHED.

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 (or some other agreed period) 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 and the initial report. The Owner will be responsible for the cost of repeat monitoring and the repeat report write up. 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 shrublands and ensure that they remain in a healthy state, with the expectation the Land will become more woody and dense.

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

Monitoring will identify detrimental impacts over time within shrublands like obvious fragmentation, tracking, gaps and canopy breakdown.

4. 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, 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

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

Solicitor for the Minister

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH