

## **Crown Pastoral Land Tenure Review**

**Lease name: LAKE HAWEA**

**Lease number: PO 286**

### **Preliminary Proposal - Part 2**

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

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

**July**

**05**

Appendix 7: Form of conservation covenant to be created – Area CC1 on the plan

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DATED \_\_\_\_\_

Between

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

and

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

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



Department of Conservation  
*Te Papa Atawhai*

**RELEASED UNDER THE OFFICIAL INFORMATION ACT**

THIS DEED of COVENANT is made the                      day of

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

**AND**    **MINISTER OF CONSERVATION**

**BACKGROUND**

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

**OPERATIVE PARTS**

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

**1. INTERPRETATION**

1.1 In this Covenant unless the context otherwise requires:

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

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

1.2 For avoidance of doubt:

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

**2. OBJECTIVE OF THE COVENANT**

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

**3. THE OWNER’S OBLIGATIONS**

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

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

#### **4. THE MINISTER'S OBLIGATIONS**

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

#### **5. IMPLEMENTATION OF OBJECTIVES**

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

#### **6. DURATION OF COVENANT**

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

**7. OBLIGATIONS ON SALE OF LAND**

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

**8. MISCELLANEOUS MATTERS**

**8.1 Rights**

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

**8.2 Trespass Act:**

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

**8.3 Reserves Act**

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

**8.4 Titles**

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

**8.5 Acceptance of Covenant**

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

**8.6 Fire**

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

**9. NOTICES**

9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.

9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:

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

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

**10. DEFAULT**

10.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:

10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

10.2 Should either the Minister or the Owner become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

10.2.1 advise the defaulting party of the default.

10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**11. DISPUTE RESOLUTION PROCESSES**

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

**11.2 Mediation**

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

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

**11.3 Failure of Mediation**

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



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

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

**12. JOINT OBLIGATIONS**

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

**13. SPECIAL CONDITIONS**

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

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

Executed as a Deed

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

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

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

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

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

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

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

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

SCHEDULE 1

1. Description of Land

*Currently shaded yellow and labelled "CC" on the Designations Plan.*

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

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

C/- Box 5244  
DUNEDIN

C/- 77 Stuart Street  
DUNEDIN

Fax (03) 477 8626

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

Lake Hawea Station Limited, RD2, Wanaka

Fax (03) 443-1977

3. Values of Land to be Preserved

Timaru River faces contain native shrublands and pockets of beech forest that need protection from grazing and fire. The shrublands also have a nursery role for the return of beech forest onto the slopes.

These faces have high landscape values with their wild, rugged and steep character and together with the extensive shrublands, are important to the gorge landscape.

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

SCHEDULE 2

Special Conditions

1. The Minister will pay to the Owner a proportionate share of the following:
  - 1.2 the cost of any work under clause 3.2 if the Minister has first approved the work.
2. The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
  - 2.1 the Minister will bear the cost of work essential for purposes of nature/landscape conservation;
  - 2.2 the Owner will bear the cost of work essential for farming purposes;
  - 2.3 when the expenditure is partly for nature/landscape conservation and partly for farming purposes, the parties will bear the costs equally or in such other proportion as they may agree, and failing agreement, as may be determined under clause 11.
3. Clause 3.1.1 is deleted in recognition that the area is not fenced and there may be some stock movement onto grasslands within the covenant area.

GRANT of

Correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister

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

COMMISSIONER OF CROWN  
LANDS

to

MINISTER OF CONSERVATION

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Solicitor  
Department of Conservation  
DUNEDIN/CHRISTCHURCH

Appendix 8: Form of conservation covenant to be created – Area CC2 on the plan.

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DATED \_\_\_\_\_

Between

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

and

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

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



Department of Conservation  
*Te Papa Atawhai*

THIS DEED of COVENANT is made the                      day of

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

AND    MINISTER OF CONSERVATION

**BACKGROUND**

- A. The Commissioner of Crown Lands is deemed for the purposes of section 77 of the Reserves Act 1977 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
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**OPERATIVE PARTS**

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- 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;
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- 1.2.6 words importing one gender include the other gender;
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- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;



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

#### **4. THE MINISTER'S OBLIGATIONS**

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

#### **5. IMPLEMENTATION OF OBJECTIVES**

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

#### **6. DURATION OF COVENANT**

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

**7. OBLIGATIONS ON SALE OF LAND**

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

**8. MISCELLANEOUS MATTERS**

**8.1 Rights**

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

**8.2 Trespass Act:**

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

**8.3 Reserves Act**

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

**8.4 Titles**

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

**8.5 Acceptance of Covenant**

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

**8.6 Fire**

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

**9. NOTICES**

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

**10. DEFAULT**

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

**11. DISPUTE RESOLUTION PROCESSES**

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

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

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

**12. JOINT OBLIGATIONS**

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

**13. SPECIAL CONDITIONS**

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

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

Executed as a Deed

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

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

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

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

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

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

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

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



SCHEDULE 2

Special Conditions

1. The Minister will pay to the Owner a proportionate share of the following:
  - 1.2 the cost of any work under clause 3.2 if the Minister has first approved the work.
2. The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
  - 2.1 the Minister will bear the cost of work essential for purposes of nature conservation;
  - 2.2 the Owner will bear the cost of work essential for farming purposes;
  - 2.3 when the expenditure is partly for nature conservation and partly for farming purposes, the parties will bear the costs equally or in such other proportion as they may agree, and failing agreement, as may be determined under clause 11.
3. Clause 3.1.1 is deleted for any unfenced parts of the covenant area. There may be some stock movement onto grasslands within the unfenced covenant area.

GRANT of

Correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister

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

COMMISSIONER OF CROWN  
LANDS

to

MINISTER OF CONSERVATION

---

Solicitor  
Department of Conservation  
DUNEDIN/CHRISTCHURCH

Appendix 9: Form of sustainable management covenant to be created – Areas SMC/A, SMC/B and SMC/C on the plan.

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# **Sustainable Management Covenant**

**Commissioner of Crown Lands acting under  
the Crown Pastoral Land Act 1998**

**and**

**Lake Hawea Station Limited**

**Date**

© **Commissioner of Crown Lands, 2001.**

**NOTE : This document (including any part of it) is not  
to be copied or reproduced by any means without the  
prior written consent of the Commissioner of Crown  
Lands**

This Deed is made on

2005

between (1) **Commissioner of Crown Lands** (together with its successors and assigns "the Commissioner")  
and (2) **Lake Hawea Station Limited** (the Grantor).

### Introduction

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

### Interpretation

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In this deed:

- (a) "**the Act**" means the Crown Pastoral Land Act 1998;
- (b) "**Area A**" means that part of the Land shown SMC/A on the plan attached hereto;
- (c) "**Area B**" means that part of the Land shown SMC/B on the plan attached hereto;
- (d) "**Area C**" means that part of the Land shown SMC/C on the plan attached hereto;
- (e) "**deed**" means this deed, including all schedules and attachments, and includes any variation of this deed;
- (f) "**the Land**" means the land more particularly described in the First Schedule.

In this deed, unless the context otherwise requires:

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

The parties agree as follows:

**Covenant**

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

**Default**

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- 2.1 If more than the permitted number of the Grantor's sheep enters onto the Land or stock not permitted to be grazed on the Land enters onto the Land, the Grantor must:
- (a) immediately notify the Commissioner, providing details of the type and numbers of stock on the Land; and
  - (b) remove the stock from the Land within five calendar days of the date that the Grantor first became aware that the stock had entered the Land or the date specified in any notice that may be given to the Grantor by the Commissioner (or its authorised agent) requiring the stock to be removed (whichever is the earlier date).
- 2.2 In the event that the Grantor fails to remove the sheep from the Land within five calendar days of the date referred to in clause 2.1(a), the Commissioner may remove the stock and will be entitled to recover from the Grantor on demand, as a debt due by the Grantor to the Commissioner, all costs incurred by the Commissioner or its agents in removing that stock from the Land.
- 2.4 To better secure the performance of the covenants contained in this deed by the Grantor and the payment of the annual rent charge set out below, the Grantor hereby encumbers the Land for the benefit of the Commissioner.
- 2.5 A rent charge of \$5,000.00 shall be paid annually by the Grantor to the Commissioner in accordance with this clause.
- 2.6 The first rent charge payment shall be due on the date 12 months from the date of this deed subject to clause 2.7 below.
- 2.7 If, during the 12 months preceding any day upon which the annual rent charge is payable, there has been no breach of any of the covenants contained in this deed, then the annual rent charge payable on that day shall be waived and shall not be payable.

- 2.8 Due to the continuing nature of the covenants contained in this deed, any repayment of the rent charge shall not discharge this deed or release the Grantor from, nor constitute the satisfaction of, the Grantor's obligations under this deed during the subsistence of this deed. To that end, section 81 of the Property Law Act 1952 shall not apply.

### Notices

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

### General

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- 4.1 This deed is a sustainable management covenant under section 97 of the Act. The covenant runs with the Land and is an interest in land for the purposes of the Land Transfer Act 1952.
- 4.2 The Commissioner intends to apply, under section 97(3) of the Act, to the Registrar-General of Land for registration of this deed. This deed will bind the registered proprietor, for the time being, of the Land and any successor in title, transferee or lessee of the registered proprietor.
- 4.3 A person will not be liable as the Grantor under this deed for any breach of the provisions of this deed which occurs after that person has parted with its entire interest in the Land.

### Dispute Resolution

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

### Severance

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

**Assignment**

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

**Execution**

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**Executed as a deed**

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

\_\_\_\_\_

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

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**First Schedule**

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All that land comprised in two parcels containing 2255 hectares more or less being (those areas shown marked SMC/A, SMC/B and SMC/C on the designations plan) Lot [ ] Deposited Plan [ ] as the same is comprised and described in Computer Freehold Register/Computer Leasehold Register [ ].

**Second Schedule**

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***Stocking Limitations:***

1. The Grantor shall exercise due care in stocking the Land and shall at all times graze the Land diligently and in a manner according to the rules of good husbandry and the Grantor shall not in any way commit waste.
2. The Grantor shall use reasonable endeavours through mustering, salt blocks or other management techniques to prevent sheep from over grazing any area within the Land.
3. The Grantor agrees not to permit or allow stock other than sheep to graze the Land.
4. The Grantor shall only permit or allow a maximum number and period of sheep grazing on the Land
  - 700 Sheep within Area A provided such sheep are within Area A for no longer than 3 weeks each year.
  - 700 Sheep within Area B provided such sheep are within Area B for no longer than 4 weeks each year.
  - 2000 Sheep within Area C provided such sheep are within Area C for no longer than 6 weeks each year.
5. Notwithstanding clause 4 the Grantor may, with the prior written consent of the Commissioner, having regard to the programme of soil and vegetation monitoring to be undertaken pursuant to clause [ ], carry such additional number of sheep on the Land on such terms and conditions as may be specified in the Commissioner's consent and subject to the Commissioner's right to revoke or vary such consent at any time.
6. Notwithstanding clauses 4 and 5 the Commissioner may, having regard the programme of soil and vegetation monitoring to be undertaken pursuant to clause 18, by notice in writing reduce the number of sheep allowed on the Land on such terms and conditions as may be specified in the Commissioner's Notice and subject to the Commissioner's right to revoke or vary such notice at any time.
7. The Grantor shall at all times graze the Land in a manner to promote soil conservation and prevent erosion and shall at all times comply with the Soil Conservation and Rivers Control Act 1941.

***Weed/Pest Control:***

8. The Grantor shall maintain all fences on the Land.
9. The Grantor shall keep the Land clear from all rabbits and other vermin and all noxious weeds and wilding conifers and shall comply strictly with the provisions of the Biosecurity Act 1993.
10. Pursuant to the provisions of the Wild Animal Control Act 1977 warranted officers and employees of the Department of Conservation or other authorised persons shall at all times have a right to enter upon the Land for the purposes of determining whether the Land or any adjoining land is infested with deer, wild goats, wild pigs, opossums or other animals which the Department is charged with the duty of exterminating or controlling, or for the purpose of destroying any such animals, provided that such officers and employees in the performance of the said duties shall at all times avoid undue disturbance of the Grantor's stock.

***Other conditions:***

11. The Grantor shall not cut, fell, harm or destroy any tree or shrubs on the Land.
12. The Grantor shall not burn or permit to be burned any tussock, scrub or grass on the Land.
13. The Grantor shall not use or remove soil, gravel or sand on or from the Land or otherwise injure the surface of the Land.

15. The Grantor shall not divert or alter the channel or course of any stream.

***Agreement as to Soil and Vegetation Monitoring :***

16. The Grantor shall undertake a programme of soil and vegetation monitoring as follows:

a. The Grantor shall engage a suitably qualified ecologist to establish and carry out a system of vegetation and soil monitoring as described in clause "b. Methodology" below.

b. Methodology:

The monitoring programme is to be undertaken as follows:

- (i) Six photo points (2 in each block) are to be established by the Commissioner or agent to establish a baseline.
- (ii) Six transects (2 in each block) are to be established by the Commissioner or agent to establish a baseline and these are to be reassessed five yearly by the Commissioner or agent, the cost of which shall be met by the Grantor.
- (iii) The Grantor shall provide photos of the six photo points on an annual basis to the Commissioner or agent, the cost of which shall be met by the Grantor

17. Except as otherwise stated below, the cost of the vegetation monitoring programme and field observations is to be met by the Grantor.

18. The Commissioner shall review the results of such programme of soil and vegetation monitoring at the end of every 5 year period for the purposes of determining whether stock limitations affecting the Land ought to be varied.

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

18 If, in his sole discretion, the Commissioner determines that the soil and vegetation monitoring discloses that there has been general deterioration in the ecological health of the soil or vegetation on the Land due to the grazing of the Land, the Commissioner may require that this deed be varied from time to time in respect of (without limitation):

- (a) restricting the numbers, ages or types of sheep permitted to graze on the Land; and
- (b) restricting the periods of time or times of the year during which sheep may be permitted to graze on the Land.

19 The Grantor must sign all documents and do all things necessary to register any variation of this deed under clause 13, at the Grantor's cost.





**Execution Section**

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

**SIGNED** for and on behalf of the  
**Commissioner of Crown Lands**  
by Paul Alexander Jackson acting  
pursuant to a delegated authority in  
the presence of:

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Witness

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Occupation

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Address

**SIGNED** for and on behalf of Lake Hawea  
Station Limited by two of its directors:

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[name of director]

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[name of director]