

# **Crown Pastoral Land Tenure Review**

**Lease name: LAKE HAWEA**

**Lease number: PO 286**

## **Substantive Proposal - Part 2**

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

**August 09**

**Appendix 7: Form of Easement to be Created – Public foot, horse, non motorised vehicle and motorised vehicle access and access for management purposes, Hawea Lake shore**

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## **TRANSFER GRANT OF EASEMENT IN GROSS**

1. Public Access
2. Access for Management Purposes

**Land Transfer Act 1952**

**This page does not form part of the Transfer.**

**TRANSFER**

**Land Transfer Act 1952**

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

Land Registration District

Otago

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

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Transferor Surnames must be underlined

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

Transferee Surnames must be underlined

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

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

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

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

**Operative Clause**

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

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

**Attestation**

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

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

Insert below  
"Mortgage", "Transfer", "Lease", etc

Dated  Page  of  Pages

**Definitions**

1. In this transfer unless the context otherwise requires:
  - 1.1 "Easement Area" means that part of the Servient Land being 10 metres wide which is marked ["aa-z" on the designations plan] "[ ]" on Deposited Plan/S.O. Plan No [ ].
  - 1.2 "Management Purposes" means:
    - the protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the easement area.
    - The management of the land administered by the Transferee (not being a member of the public) in a way that is-ecologically sustainable.
  - 1.3 "Servient Land" means the land owned by the Transferor and described on page 1.
  - 1.4 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee's tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.
  - 1.5 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

**Standard Easement Terms**

Access

2. The Transferee has the right:
  - 2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.
  - 2.2 To pass and re-pass at any time over and along the Easement on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, or with or without guns and dogs, for Management Purposes.
3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Transferor.
4. The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.

Exclusion of Schedules

5. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 are expressly negated.

Term

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

Temporary Suspension

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

Dispute Resolution

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

Notice

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

Special Easement Terms

- 10 The standard easement terms contained above must be read subject to any special easement terms set out below.
- 10.1 Clause 2.1 is modified to include motor vehicles.
- 10.2 The Transferor must install gates no less than 3.6 metres in width on any fenceline crossing the easement area.

- 10.3 Persons are prohibited from camping on the easement area.
- 10.4 The Transferor is under no obligation to maintain the Easement Area to any standard other than that which is necessary for his own purposes.
- 10.5 For following conditions, the transferee is defined as the Director-General of Conservation's tenants, agents, contractors, and invitees; and any employee or contractor, only.
- 10.5.1 The Transferee has the right:
  - (a) To mark the Easement Area as appropriate.
  - (b) To erect and maintain stiles.
  - (c) To erect and maintain signs informing the public
    - (i) of the location of land managed by the Crown and available for public access and recreation; and
    - (ii) of their rights and responsibilities in relation to the Easement Area.
  - (d) To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 10.5.1.
- 10.5.2 The Transferee accepts that if there is a persistent problem with members of the public trespassing off the Easement Area, depositing toilet waste or rubbish, she, acting through the Minister of Conservation, will in consultation with the Transferor develop a strategy to eliminate or ameliorate the problem. Possible remedies include erection of additional signage, strategic placement of fencing, erection of gates and stiles and publicity (including brochures and visitor centre information). The Transferee will meet capital costs associated with the strategy.
- 10.5.3 In doing any of the matters specified in clause 2.2, the Transferee must take reasonable and proper care not to damage any property of the Transferor and must properly repair any such damage.

**Continuation of "Attestation"**

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

\_\_\_\_\_  
Witness (Signature)

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

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

OTACO-37091 - Easement in Gross: Public Access and Management Purposes to Conservation Area 28 July 2004  
DOCDM-25963 - Lake Hawea - public & management easement to Lake DOCDM-25963 - Lake Hawea - public & management easement  
to Lake aa-z 23/7/08  
If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their  
solicitors must put their signatures or initials here.



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

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Vehicles for Management Purposes

**Land Transfer Act 1952**

<b>Law Firm Acting</b>
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Conservancy Solicitor Department of Conservation Dunedin
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Auckland District Law Society  
REF:4135

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

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## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
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Conservancy Solicitor Department of Conservation Dunedin

Auckland District Law Society  
REF:4135

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(except for "Law Firm Acting")

**Appendix 8: Form of Easement to be Created –access for management purposes only**

Section 90, Land Transfer Act 1952

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

Land Registration District

Otago

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

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Transferor

*Surname(s) must be underlined*

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

Transferee

*Surname(s) must be underlined*

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

Estate or Interest to be transferred, or easement(s) or *profit(s) à prendre* to be created  
State if fencing covenant imposed.

easement of right of way in gross pursuant to section 7(2) Conservation Act 1987 for management purposes  
(continued on pages 2 3 and 4 annexure schedule)

Operative Clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or *profit à prendre* is described above, that easement or *profit à prendre* is granted or created.

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

Attestation

*If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule.*

	<p>Signed in my presence by the Transferor</p> <p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name _____</p> <p>Occupation _____</p> <p>Address _____</p>
<p>Signature [common seal] of Transferor</p>	

Certified correct for the purposes of the Land Transfer Act 1952

## Annexure Schedule

Transfer Instrument                      Dated    Page                      of                      Pages

### Definitions

1. In this transfer unless the context otherwise requires:
  - 1.1 "Easement Area" means those parts of the Servient Land 5 metres either side of the centre line of the track [which are marked "a-b", and "c-d" on the designation plan] on S.O. Plan No. [                      ]
  - 1.2 "Management Purposes" means:
    - The protection of a significant inherent value on land administered by the Department of Conservation in the vicinity of the Easement Area.
    - The management of the land administered by the Transferee in a way that is ecologically sustainable.
  - 1.3 "Servient Land" means the land owned by the Transferor and described on page 1.
  - 1.4 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and includes the Transferee's tenants, agents, contractors and invitees; or any employee or contractor of the Director-General of Conservation.
  - 1.5 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

### Standard Easement Terms

#### Access

- 2.1 The Transferee has the right in common with the Transferor at any time to pass and re-pass over and along the Easement Area on foot, or on or accompanied by horses, or by motor vehicles, with or without machinery and implements of any kind, and with or without guns and dogs for Management Purposes.
- 2.2 The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area.

#### Exclusion of Implied Rights and Powers

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

**Annexure Schedule**

**Transfer Instrument          Dated                                  Page          of          Pages**

Term

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

Dispute Resolution

5.1 If a dispute arises between the Transferor and Transferee concerning the rights created by this transfer the parties are to enter into negotiations in good faith to resolve it.

5.2 If the dispute is not resolved within 14 days of written notice by one party to the other it is to be referred to mediation.

5.3 If the dispute is not resolved within 21 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated.

5.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notices

6.1 A notice to be given under this transfer by one party to the other is to be in writing and must:

- (a) be hand delivered to the receiving party; or
- (b) be sent by ordinary post to the receiving party; or
- (c) be sent by facsimile to the receiving party.

6.2 If clause 6.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.

6.3 If clause 6.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

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

**Annexure Schedule**

**Transfer Instrument**                      **Dated**    **Page**              **of**              **Pages**

**Special Easement Terms**

- 7.1 The standard easement terms contained above must be read subject to any special easement terms set out below.
- 7.2 When using the easement for management purposes, the Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and in particular will avoid using the easement when conditions such as softening during frost thaw render the Easement Area particularly vulnerable to damage.
- 7.3 In doing any of the matters specified in clauses 2.1, the Transferee must take reasonable and proper care not to damage any property of the Transferor and must properly repair any such damage.
- 7.4 The Transferor must install gates no less than 3.6 metres in width and keep the gates unlocked at all times unless otherwise agreed with the Transferee (specify where the gates are to be located).
- 7.5 The Transferor is under no obligation to maintain the Easement Area to any standard other than that for his own purposes.
- 7.6 The Transferee can elect to maintain the easement if it chooses but is not obliged to do so in any circumstances.
- 7.7 Should unforeseen additional management activities, beyond the contemplated management activities such as (but not limited to) fence maintenance, weed control, pest control, recreational management, fire, concession management and ecological monitoring, become necessary. The Transferee agrees that where such unforeseen management activities necessitate frequent use of the easement area, she will contribute to the cost of maintaining the easement area or reach other agreed recompense with the Transferor.

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

**Annexure Schedule**

**Transfer Instrument**      **Dated**      **Page**      **of**      **Pages**

<b>Continuation of "Attestation"</b>	
Signed for and on behalf of	)
Her Majesty the Queen by	)
under a written delegation in the	)
presence of:	)
_____	
Witness (Signature)	
Name _____	
Address _____	
Occupation _____	

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



**Appendix 9: Form of a Conservation Covenant to be created – Lake faces (CC1)**

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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**

**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 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 landscape amenity values, its natural, scenic, historic, cultural values as well as the preservation of the natural character of the margins of lakes and the protection of those margins from unnecessary subdivision and development, and as further described 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 subject to clauses 3.2.1 and 3.2.2, felling, removal or damage of any tree, shrub or other plant;
- 3.1.2 the planting of any species of tree, shrub or other plant;
- 3.1.3 the erection of any building, structure (other than a sheep/cattle fence) or other improvement for any purpose;
- 3.1.4 any new cultivation, earth works or other soil disturbances unless it is of an insignificant scale that could not be visible from the lake or the public land around it;

- 3.1.5 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 or downstream aquatic ecosystem;
  - 3.1.6 any other activity which might have an adverse effect on the Values.
  - 3.1.7 any moving or removal of rock of any kind on the Land;
  - 3.1.8 the erection of utility transmission lines across the Land.
- 3.2 The Owner must:
- 3.2.1 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
  - 3.2.2 keep the Land free from wilding trees;
  - 3.2.3 keep the Land free from rubbish or other unsightly material arising from the Owner's use of the Land;
  - 3.2.4 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;

#### 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 3.2.4 exercising any of the rights conferred by this Covenant.

#### 5. IMPLEMENTATION OF OBJECTIVES

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

#### 6. DURATION OF COVENANT

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

**7. OBLIGATIONS ON SALE OF LAND**

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

7.2 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

**8. MISCELLANEOUS MATTERS**

**8.1 Rights**

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

**8.2 Trespass Act:**

8.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;

8.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**8.3 Reserves Act**

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

**8.4 Titles**

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

**8.5 Acceptance of Covenant**

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

**8.6 Fire**

8.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land;

8.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

8.6.2.1 requested to do so; or

8.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

**9. NOTICES**

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

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

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

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

**10. DEFAULT**

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

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

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

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

10.2.1 advise the defaulting party of the default.

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

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

**11. DISPUTE RESOLUTION PROCESSES**

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

**11.2 Mediation**

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

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

**11.3 Failure of Mediation**

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

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

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

**12. JOINT OBLIGATIONS**

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

**13. SPECIAL CONDITIONS**

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

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

Executed as a Deed

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

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

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

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

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

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

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

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



**SCHEDULE 1**

**1. Description of Land**

*Shaded yellow and labelled "CC 1" 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

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 Protected**

In relation to the Land the following goals are identified in order to protect the Values:

- Lakeside views being protected.
- No large artificial structures, barriers or subdivision within five kilometres of a lake.
- No modification or development of the lakeshore.
- No pollution or significant interference with the lake's aquatic ecosystem.
- Historically important lakeside structures/foundations are preserved.

The following is a detailed description of what is present on the Land and why it makes a contribution to the Values.

**1. Lakeside views have been identified as:**

The Hawea Front Faces contain high visual and scenic values. The steep and extremely rugged glacial headwall is a dramatic and distinctive feature within the Hawea Lake Basin. Bands of rock bluffs, prominent spurs, sheer rock faces and buttresses shaped by ice action and subsequent down cutting are highly legible in terms of past processes.

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

The remnant beech forests within the mid-tributaries are distinctive and significant landscape features viewed from within the Lake Hawea basin. The Land forms part of the eastern backdrop to Lake Hawea and is highly visible from SH 6 as well as from on the lake and Lake Hawea township. The tussock upper slopes, remnant broadleaf, grey shrublands and kanuka are important aspects of landscape character.

Slumps, sheet wash and gully erosion are features on upper slopes. Colluvial slopes and fans extend from the headwall to the lake edge.

The colluvial slopes and fans have a different landscape character. The terrain is less dramatic, and parts of them have been cultivated or farmed. Notwithstanding, the colluvial slope and fan landforms are largely apparent and this part of the land, overall, has an open rural appearance. The present landscape includes scattered farm buildings and the small crib settlement of Gladstone. These are largely hidden when viewed from a distance and are dwarfed by the mountainscape behind, so that they do not detract from the generally natural character of the wider lake setting.

Vegetation is varied over this wide altitudinal sequence that extends from lake edge to the top of the escarpment and includes:

- Snow tussock and depleted herbfield on the tops.
- Significant areas of beech forest and shrubland within mid tributary catchments e.g. Bushy Creek and adjacent tributaries.
- Large areas of modified kanuka and grey shrubland on mid slopes and spurs.
- Lower and mid slopes are very rocky with scattered bracken and briar, matagouri, kanuka shrubland and oversown and top dressed 'green areas'.
- Kowhai are notable on the rocky ridge south of the Peter Muir Bridge.
- The narrow strip of fan between the range face and the lake consists of pasture, bracken, kanuka shrubland, pine, matagouri and briar. Open areas of pasture and remnant kanuka shrubland occur along the fans at the toe of the head wall.

The indigenous component within individual tributaries varies considerably. Bushy Creek retains a high component whereas Johns Creek has little of its native cover. The Timaru River Road traverses the fan at the foot of the range.

2. Existing structures and barriers are:

There are no existing structures or man made barriers adjacent to the lake. The homestead area is shielded by exotic trees. There is a homestead, woolshed, 3 modest cottages (two cottages and the homestead are used for farm homestays), as well as various sheds and garages located adjacent to Johns Creek approximately 1 km from the lake.

For the avoidance of doubt, this covenant is not intended to prohibit or restrict the continuation of the existing homestay business, as described above, following the date of signing the substantive proposal.

3. Existing alterations to the lake shore are:

There are no existing alterations immediately adjacent to the lakeshore. Farm tracks are located strategically, the main one being up Johns Creek. These are identified as per schedule 2 clause 6.

4. The lake's aquatic ecosystem may be affected by the land in the following manner:

The aquatic ecosystem of Lake Hawea is currently unaffected by the extensive grazing systems on Lake Hawea Station. There is no water abstraction from the creeks flowing into the lake apart from domestic water for domestic and stock use. Risks of aquatic ecosystems being impacted under this regime are very low. Potential future problems are subject to clause 3.1.5.

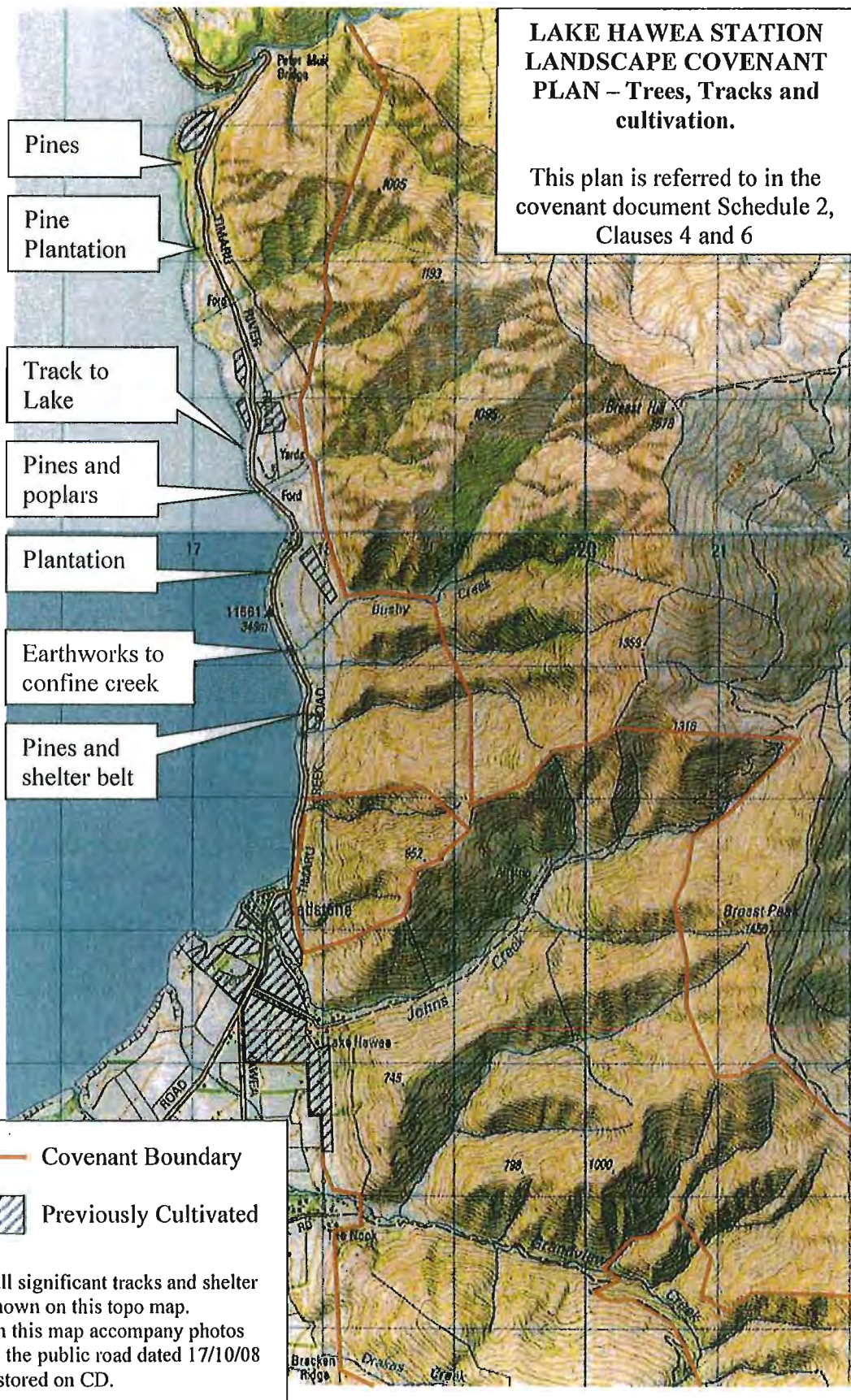
5. Historically important lakeside structures/foundations are:

There are no historically important lakeside structures or foundations.

## SCHEDULE 2

### Special Conditions

1. The Minister will pay to the Owner a proportionate share of the following:
  - 1.2 the cost of any work under clause 3.2 if the Minister has first approved the work.
2. The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
  - 2.1 the Minister will bear the cost of work essential for purposes of landscape protection;
  - 2.2 the Owner will bear the cost of work essential for farming purposes, or for the landscaping referred to in conditions 7 and 9;
  - 2.3 when the expenditure is partly for landscape protection 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. The Owner may not fell, remove or damage native trees or shrubs except as provided for in clause 5 below.
4. Clause 3.1.2 is deleted. The Owner must not plant any species of tree or shrub plant, but may plant local native plants. The owner may plant exotic species around the homestead and buildings and may replace existing exotic shelter belts or woodlots.
5. Notwithstanding clause 3 of the special conditions and 3.1.2 above, the Owner may spray and or burn areas of matagouri (under 1m tall) or bracken fern for the purpose of continued pastoral use. The Owner may also topdress and sow seed.
6. Clause 3.1.4 is modified to allow the cultivation of areas previously cultivated for farming purposes (as identified on the attached plan) and the maintenance of existing tracks.
7. With regard to subdivision:
  - 7.1 This covenant allows the subdivision of the no more than 12 ha of land currently zoned rural residential, being the land adjacent to the existing Gladstone township, into two lots. Each lot has the right to construct one residence only along with associated outbuildings and infrastructure, suitable for use by one household unit. The residences and associated buildings may not be converted for commercial purposes. The siting and design of the buildings will require the prior written agreement of the Minister of Conservation before any work on the ground commences.
  - 7.2 Landscaping and other amenities associated with such buildings will require the prior written agreement of the Minister of Conservation as per clause 3.1 before any work on the ground commences.
  - 7.3 No further subdivision of Land is permitted.
8. Clause 7.2 is deleted.
9. Notwithstanding clause 3.1.3 above, the Owner may carry out renovations and additions to existing buildings and landscaping of the immediate building surrounds.
10. Notwithstanding clause 3.1.3, where the Owner wishes to carry out improvements on the Land (not being renovations or additions to existing buildings or landscaping authorised by clause 9 of the special conditions above), and in the opinion of the Minister the proposed improvements do not have an



adverse effect on the Values, the Minister's consent to the Owner undertaking the proposed improvements shall not be unreasonably withheld.

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

Appendix 10: Form of a Conservation Covenant to be created – branch of Breast Creek (CC)

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*







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

1.2 For avoidance of doubt:

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

**2. OBJECTIVE OF THE COVENANT**

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

**3. THE OWNER’S OBLIGATIONS**

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

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

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

#### 4. THE MINISTER'S OBLIGATIONS

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

#### 5. IMPLEMENTATION OF OBJECTIVES

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

#### 6. DURATION OF COVENANT

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

**7. OBLIGATIONS ON SALE OF LAND**

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

**8. MISCELLANEOUS MATTERS**

**8.1 Rights**

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

**8.2 Trespass Act:**

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

**8.3 Reserves Act**

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

**8.4 Titles**

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

**8.5 Acceptance of Covenant**

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

**8.6 Fire**

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

**9. NOTICES**

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

**10. DEFAULT**

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

**11. DISPUTE RESOLUTION PROCESSES**

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

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

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

12. JOINT OBLIGATIONS

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

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

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

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

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

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

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

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

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

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

SCHEDULE 1

1. Description of Land

*Currently shaded yellow and labelled "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

The purpose of the covenant is to preserve the natural environment and freshwater life in Breast Creek.

The covenant will protect the riparian shrublands within the covenant area and the upper reaches of Breast Creek and also a population of native fish.

A large population of the shrub *Hebe cupressoides* (ranking of 'Nationally Vulnerable') is present in Breast Creek. Taxa in this category are facing a very high risk of extinction in the wild. This plant is the subject of a national recovery plan (Norton 2000) which promotes the formal protection of its habitat.

A healthy population of *Galaxias* sp D was found in small pools, in a small 1m wide tributary of Breast Creek at site location G40: 223192. A substantial waterfall half way up this tributary appears to be a barrier for fish access to the headwaters, as no fish were recorded above it. This population will be exposed to trout predation and competition in the lower section. *Galaxias* sp D is ranked 'Nationally Vulnerable' (Hitchmough, 2002) and is the fourth rarest fish in New Zealand.

This species has yet to be formally classified, but it is included within the draft "New Zealand non-migratory galaxiid recovery plan 2003-13" (DOC recovery plan) which has an objective to "Identify, protect and manage a minimum of 30 habitats".

<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 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.
4. Clause 7.2 is deleted.

GRANT of

Correct for the purposes of the  
Land Transfer Act 1952

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

Solicitor for the Minister

COMMISSIONER OF CROWN  
LANDS

to

MINISTER OF CONSERVATION

---

Solicitor  
Department of Conservation  
DUNEDIN/CHRISTCHURCH

**Appendix 11: Form of a Sustainable Management Covenant to be Created – Areas SMC/A,  
SMC/B and SMC/C**

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

**BARCODE**

Land Registration District  
Otago

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

**Encumbrancer** *Surname(s) must be underlined*  
Lake Hawea Station Limited

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

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

**Encumbrance Memorandum Number**  
Not applicable.

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

**Operative Clause** *Delete words in [ ], as appropriate*

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

Dated this                      day of                      20

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

Certified correct for the purposes of the Land Transfer Act 1952

\_\_\_\_\_  
[Solicitor for] the Encumbrancee

**Annexure Schedule 1**

**Encumbrance  
Instrument**

**Dated**

**Page 1 of 1 Pages**

**Terms**

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

1. Length of term – Continued on Annexure Schedules 2

2. Payment date(s) – Continued on Annexure Schedules 2

3. Rate(s) of interest – Continued on Annexure Schedules 2

4. Event(s) in which the sum, annuity or rentcharge becomes payable – Continued on Annexure Schedules 2

5. Event(s) in which the sum, annuity or rentcharge ceases to be payable – Continued on Annexure Schedules 2

**Covenants and conditions**

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

Continued on Annexure Schedules 2.

**Modification of statutory provisions**

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

Due to the continuing nature of the covenants contained in this deed, any repayment of the annual rentcharge 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. Section 104 of the Property Law Act 1952 applies to the encumbrances created by this deed but the Commissioner shall be entitled to none of the powers and remedies given to encumbrancees by the Property Law Act 1952 and the Land Transfer Act 1952

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

**Annexure Schedule 2**

**Encumbrance  
Instrument**

**Dated**

**Page 1 of 11 Pages**

**Terms**

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

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

**Introduction**

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

**Interpretation**

In this instrument:

- (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 Encumbrance Instrument, including all schedules and attachments, and includes any variation of this Encumbrance Instrument;
- (f) "the Land" means the land more particularly described in the First Schedule;
- (g) "CPI" means the Consumer Price Index (all Groups) published by Statistics New Zealand or any other government agency, or the most nearly-comparable index if that index ceases to exist or not be published;
- (h) "the Commissioner" means the Encumbrancee together with its successors and assigns and includes the Encumbrancee's authorised agent, where applicable;
- (i) "the Grantor" means the Encumbrancer together with its successors and assigns.

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

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

In this deed, unless the context otherwise requires:

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

**The parties agree as follows:**

**Covenant**

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

**Default**

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 stock from the Land within five calendar days of the date referred to in clause 2.1(b), 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.

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

2.3 To better secure the performance of the covenants contained in this deed by the Grantor, the Grantor hereby encumbers the Land for the benefit of the Commissioner with an annual rentcharge to be paid by the Grantor to the Commissioner in accordance with this deed.

2.4 Subject always to clause 2.5, the Grantor shall pay to the Commissioner an annual rentcharge as follows:

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

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

Where:

NRC is the new annual rentcharge payable by the Grantor.

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

B is the most recently published quarterly CPI figure.

A is the CPI figure for the equivalent quarter date 1 year earlier.

- (c) Notwithstanding anything to the contrary, in no circumstances shall the amount of the annual rentcharge payable by the Grantor be less than \$10,000.00.

2.5 If, during the 12 months preceding any day upon which the annual rentcharge is payable, there has been no substantial breach by the Grantor of any of the covenants contained in this deed, then the annual rentcharge payable on that day shall be waived and shall not be payable.

#### Notices

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.

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**General**

- 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 Grantor, for the time being, of the Land and any successor in title, transferee or lessee of the grantor.
- 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.
- 4.4 If a variation of this deed is required by the Commissioner pursuant to clause 20 of the Second Schedule, then the Grantor agrees that it will, at its cost, sign all documents and do all things necessary to register the variation.

**Dispute Resolution**

- 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, then, subject also to application of section 17 of the Land Act 1948 (as the case may be) the following shall apply:
  - (a) the parties shall enter into negotiations in good faith to resolve the dispute;
  - (b) if the dispute is not resolved within one calendar month from the date on which the parties begin their negotiations, submit the dispute to the arbitration of a single arbitrator appointed jointly by the parties;
  - (c) if the parties cannot agree on 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**

- 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**

- 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.

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**First Schedule**

All that land comprised in three parcels containing 2295 hectares more or less being Lot [ ] Deposited Plan [ ] as shown marked SMC/A, SMC/B and SMC/C on the designations plan attached hereto.

**Second Schedule*****Stocking Limitations:***

1. The Grantor shall exercise due care in stocking the Land and shall at all times graze the Land in a manner that provides for the restoration of the vegetation cover and its ability to protect the soil.
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 unless authorised in writing by the Commissioner.
4. The Grantor shall only permit or allow a maximum number and period of sheep grazing on the Land as follows
  - 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 15, 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 to the programme of soil and vegetation monitoring to be undertaken pursuant to clause 15, 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 wild animals and all noxious weeds and exotic wilding trees with the potential to spread and shall comply strictly with the provisions of the Biosecurity Act 1993.

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

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

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

- (a) The Commissioner shall engage a suitably qualified ecologist who is acceptable to the Grantor to establish the transects and photo points described under clause 15 (c) at the Commissioner's cost.
- (b) The Grantor shall engage a suitably qualified ecologist who is acceptable to the Commissioner to carry out at 5 year intervals the system of vegetation and soil monitoring established by the Commissioner and as described in clause "(c) Methodology" below.
- (c) Methodology:

The monitoring programme is to be undertaken as follows:

- (i) Twelve photo points (4 in each block) are to be established by the Commissioner or his ecologist to establish a baseline. Repeat photographs are to be taken at 5 year intervals thereafter by the Grantor or his ecologist.
- (ii) Six 50 metre transects (2 in each block) are to be established by the Commissioner's ecologist to establish a baseline suitable for assessing the ecological condition of the land and these are to be re-measured five yearly by the Grantor's ecologist, the cost of re-measuring shall be met by the Grantor.
- (iii) The following information is to be recorded from the transects at five year intervals:

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

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

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

**Cover Classes**

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

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

**Species Present**

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

**Point Heights**

Point Heights of tussock species will be measured where present every metre up the transects. This gives a measure of relative biomass.

**Photos**

On each transect, photos will be taken with a standard lens (55mm) looking up and down the line.

- (iv) The Grantor shall within a reasonable period following monitoring provide the Commissioner or his agent a copy of the results from the monitoring, photos of the twelve photo points, records of the stock type and numbers and time and duration of stocking for each block and an analysis of the information gathered which leads to an assessment of the condition and trend in the vegetation cover and the effect of the grazing carried out on these, the cost of which shall be met by the Grantor.
16. Except as otherwise stated, the cost of the vegetation monitoring programme and field observations is to be met by the Grantor.
17. The Grantor shall review the results of the monitoring and shall use this information in conjunction with information gained from annual field observations to make adjustments to the management of the land including stock type and numbers and timing and duration of stocking for each block.
18. The Commissioner shall, after consultation with the Grantor, review the results of such a 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 for the purpose of achieving the objects of the covenant and clause 1 of this schedule.
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.
20. 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

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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.
- (c) destocking the land entirely.

21. The Grantor must sign all documents and do all things necessary to register any variation of this deed under clause 21, at the Grantor's cost.

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

**Execution**

**Executed as a deed**

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

\_\_\_\_\_

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

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

All signing parties and either their witnesses or solicitors must sign or initial in this box

**Consent of Mortgagee to Sustainable Management Covenant**

Computer Freehold Register/Computer Leasehold Register [ ]

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

Dated this                                      day of

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

**Modification of statutory provisions**

Due to the continuing nature of the covenants contained in this deed, any repayment of the annual rentcharge 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. Section 104 of the Property Law Act 1952 applies to the encumbrance created by this deed but the Commissioner shall be entitled to none of the powers and remedies given to encumbrancees by the Property Law Act 1952 and the Land Transfer Act 1952

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