

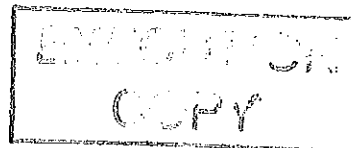
# **Crown Pastoral Land Tenure Review**

**Lease name : LAUDER**

**Lease number : PO 376**

## **Substantive Proposal**

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



**PROPOSAL FOR REVIEW OF CROWN LAND**

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

**Date: 10 October 2012**

**Parties**

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**Holder:** Calder Farming Company Limited

Mackay Bailey Ltd  
109 Blenheim Road  
Riccarton  
CHRISTCHURCH 8041

**Commissioner of Crown Lands:**

C/- The Tenure Review Manager  
Darroch Limited  
43 Tarbert Street  
PO Box 27  
ALEXANDRA 9340

**The Land**

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**Lease:** Lauder

**Legal Description:** Part Run 226B and Section 6, Block IV Blackstone Survey District.

**Area:** 4224.9724 hectares more or less

**Certificate of Title/Unique Identifier:** OT12C/1139

**Summary of Designations**

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Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown edged in pink and labelled CA1 on the Plan) is to be restored to, or retained by, the Crown as set out in Schedules One and Two; and
- (b) The Freehold Land (shown edged in green on the Plan) is to be disposed by freehold disposal to the Holder as set out in Schedule Three.

**1      The Plan**

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## **2 Conditions**

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

## **3 Settlement**

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

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

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

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

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

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

or

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

(i) has been agreed or determined; and

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

## **4 Holder's Payment**

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

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

## **5 Commissioner's Payment**

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

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

## **6 Vesting of Crown Land**

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

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

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

## **8 Registration of Documents**

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

## **9 Consents**

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

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

## **10 Continuation of Lease**

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

## **11 Fencing and Construction Works**

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

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

## **12 Apportionments**

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

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

**13 Risk**

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

**14 Survey**

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

**15 Holder's Acknowledgements**

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

the Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this clause 15;



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

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

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

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**17 Acceptance**

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

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**18 Solicitor's Certificate**

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

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**19 Default**

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

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**20 Goods and Services Tax**

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

- (b) the Commissioner and the Holder confirm that as at the Settlement Date:
    - (i) each is acquiring the goods supplied with the intention of using the goods for making taxable supplies; and
    - (ii) the Commissioner and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Crown Land and the Holder and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Freehold Land as a principal place of residence; and
  - (c) the Commissioner and the Holder agree that the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are to be zero-rated for GST purposes under section 11(1)(mb) of the GST Act.
- 20.3 If any of the circumstances set out in clause 20.2 change between the date of the Holder's acceptance of this Proposal and the Settlement Date, then the relevant party will notify the other of the changed circumstances as soon as practicable and in any event not later than 2 working days before the Settlement Date and such party shall warrant that the changed circumstances are correct as at the Settlement Date. If the GST treatment of the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration changes as a result of the changed circumstances and a party has already provided the other with a GST invoice, then that party will issue a debit note or credit note, as the case may be, for GST purposes.
- 20.4 On the 10<sup>th</sup> working day following the Unconditional Date, the Commissioner will provide to the Holder a GST invoice in respect of the supply evidenced by the Holder's Consideration. The invoice will specify the Commissioner's GST Date.
- 20.5 The Holder will pay GST (if any) on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 20.6 On the 10<sup>th</sup> working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration.
- 20.7 The Commissioner will pay GST (if any) on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.8 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
  - (b) any Default GST.

## **21 Lowest price**

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

## **22 Costs**

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- 22.1 The Commissioner will meet the costs of the survey (if any) of the Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Freehold Land.
- 22.2 The Holder is responsible for all costs the Holder incurs in respect of and incidental to the Tenure Review. In particular, but without limitation, the Holder shall bear all its costs in relation to the review of all documentation forming part of the Tenure Review (including this Proposal), and all professional advice provided to or sought by the Holder.

**23 No nomination or assignment**

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

**24 Recreation Permit**

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

**25 Consents for Activities**

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

**26 General**

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

day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and

(iii) in the case of a letter, on the fifth working day after mailing (postage paid).

## **27 Interpretation**

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### **27.1 Definitions**

In this Proposal unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Works Consent** means any and all consents required under the Resource Management Act 1991 and/or the Building Act 2004 and their respective amendments.

## 27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

- (a) a reference to a certificate of title includes a reference to a computer register;
- (b) words importing a gender include all genders;
- (c) reference to a statute includes reference to all enactments that amend or are passed in substitution for the relevant statute and to all regulations relating to that statute;
- (d) words in the singular include the plural and vice versa;
- (e) reference to a month means a calendar month;
- (f) reference to a person means an individual, a body corporate, an association of persons (whether corporate or not), a trust or a state or agency of a state (in each case, whether or not having separate legal personality);
- (g) references to sections, clauses, sub-clauses, parts, annexures, attachments, appendices, schedules, paragraphs and sub-paragraphs are references to such as they appear in this Proposal and form part of this Proposal;

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

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

---

**1 Details of Designation**

---

- 1.1 Under this Proposal the land shown edged in pink and shown as CA1 on the Plan; being 3000 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

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

---

**1 Details of designation**

---

Nil



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

---

**1 Details of designation**

---

- 1.1 Under this Proposal the land shown marked in green on the Plan, being 1225 hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:
- (a) Part IVA of the Conservation Act 1987; and
  - (b) Section 11 of the Crown Minerals Act 1991; and
  - (c) the easement marked as a-b and shown on the Plan as a dashed orange line and substantially as set out in Appendix 4; and
  - (d) the covenant marked as CC1 and shown on the Plan shaded in yellow and substantially as set out in Appendix 5; and
  - (e) the covenant marked as CC2 and CC3 and shown on the Plan shaded in yellow and substantially as set out in Appendix 6; and
  - (f) the covenant marked as CC4 and shown on the Plan shaded in yellow and substantially as set out in Appendix 7; and
  - (g) the continuation in force of easement registered as 884917.8 substantially as set out in Appendix 8; and
  - (h) the continuation in force of easement registered as 16D/997 substantially as set out in Appendix 9.

**Schedule Four: Conditions**

---

Nil

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

---

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

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

Dated:

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

\_\_\_\_\_

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

Witness Name:  
Occupation:  
Address:

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

---

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

Dated:

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

---

Witness Signature:

---

Witness Name:

Occupation:

Address:

**Appendix 2: Example of Solicitor's Certificate**

---

**Certifications**

I [ ] hereby certify as follows:

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

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

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

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

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

Yours faithfully  
[signed by principal of law firm]

### **Appendix 3: Indicative Fencing and Construction Requirements**

---

#### **Fenceline**

**Length and location:** 1800 metres approximately of new fence shown on the Plan V-W

**Type:** Sheep and Cattle fence

#### **Specifications:**

The new fence (V-W) is to be constructed to the following standard:

1. Fence to be constructed of five HT (2.4mm) wires and two bottom No 8 wires.
2. 2.1 metre (7") treated timber strainers with treated timber stay to be used for gateways.
3. 125 mm (5") treated timber posts to be used where required.
4. All strainers, angle posts and dip posts to be driven or dug in and rammed and footed with acceptable footing material. No 9 wire to be used on foots. All dips and hollows to be tied down to Y standards of a minimum length of 75 cm on rocky ground and 130 cm on soft ground.
5. All strainers and angles are to be mortised, stayed and blocked. Stays are to be one-third of the way up the posts.
6. Tie-backs are permitted on both sides of the fence.
7. All wires are to be securely and neatly tied off and strained evenly. Bottom wire is to be kept 15 cm off the ground.
8. Post staples (*barbed*) to be driven well in but allow the wire to run through.
9. Strains not to exceed 400 metres for HT wire and 250 metres for No 8 wire on easy country.
10. Posts to be driven or dug in to such a depth that 112 cm (44") remains out of the ground.
11. Strainers and angle posts to be dug in to such a depth that 117 cm (46") remains out of the ground.
12. Under no circumstances are any strainers, posts or stays to be shortened either prior to or subsequent to their placement in the ground.
13. Six Y standards per 20 metres to be used. Y standards to be mostly 150 cm (5' long with 135 cm (4'6") standards allowed on rocky ground and 165 cm (5'6") standards on soft ground. Hill fencing to include a post every 9 metres with two Y standards between each post
14. Triplex strainers to be used on all strains.
15. Lightning droppers to be used where required on either side of gateways.
16. Gateways are to be constructed on the new fences on existing tracks and near the corners of blocks. All gates are to be swung and to be steel gates 4.2 metres wide.
17. No mechanical line clearance is to be undertaken during construction of fences

#### **Construction**

---

Nil

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

---

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

1. Public Access
2. Car Parking
3. Access for Management Purposes

**Land Transfer Act 1952**

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



# TRANSFER

Land Transfer Act 1952

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

Land Registration District

Otago

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

	All	
--	-----	--

Transferor Surnames must be underlined

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

Transferee Surnames must be underlined

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

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

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

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

### Operative Clause

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

ated this \_\_\_\_\_ day of \_\_\_\_\_

### Attestation

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

Certified correct for the purposes of the Land Transfer Act 1952.

Otago-37213 Easement in gross template  
Docdm-124482. Lauder "a-b".

[Signature area]

22 July 2011  
Solicitor for the Transferee

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

Standard Easement Terms

Access

2. The Transferee has the right:
  - 2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.
  - 2.2 To pass and re-pass at any time over and along the Easement on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, or with or without guns and dogs, for Management Purposes.
  - 2.3 In common with the Transferor from time to time to park vehicles on the Parking Area.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.  
 Otaco-37213 Easement in gross template  
 Docdm-124482, Lauder "a-b". 22 July 2011

3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles (other than the Parking Area which is usable in common with the Transferee), deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Transferor.
4. The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.

Exclusion of Schedules

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

Term

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

Temporary Suspension

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

Dispute Resolution

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

Notice

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

### Special Easement Terms

- 10 The standard easement terms contained above must be read subject to any special easement terms set out below.
- 11 The Transferee has the right in common with the Transferor to pass and repass over and along the Parking Area on foot, by horse and with motor vehicle or non-motorised vehicle powered by a person or persons at any time and to stop leave and park any such motor vehicle or non-motorised vehicle powered by a person or persons on the Parking Area.
- 12 If the Transferee has a hunting permit issued by the Department of Conservation for land to which the easement provides access, he may carry a gun on the Easement Area for the purpose of gaining access to hunt on that land.
- 13 Dogs are not permitted on the Easement Area unless they are confined inside a motor vehicle and the Easement Area is open for public motor vehicle use pursuant to Clause 14 below.
- 14 In addition to the rights conveyed in Clause 2.1 the Transferee (being a member of the public) may, at the discretion of the Department of Conservation Central Otago Area Manager, use a motor vehicle on the Easement Area between December 1<sup>st</sup> and April 30<sup>th</sup> inclusive (the open period). If weather conditions render the track vulnerable to damage, or factors associated with public motor vehicle use cause undue interference with the Transferor's farming operation, the Department of Conservation Central Otago Area Manager may at his/her discretion cease public motor vehicle use for all or any part of the open period.
- 15 The Transferee will erect a lockable gate at *point "a" on the designations plan*. Keys will be made available to members of the public wishing to exercise their right to take motor vehicles on the Easement Area during the open period from the Department of Conservation Central Otago Area Office in Alexandra. The Transferor must be provided with a key, or may install his own lock. The Transferee will make a key available to those members of the public wishing to exercise their right to ride horses on the Easement Area throughout the year.
- 16 Members of the public will not use any motor vehicles on the Easement Area between 8pm and 7.00am.
- 17 The Department of Conservation Central Otago Area Manager will use her/his best endeavours to notify the Transferor of details of the licence plate number and make and model of motor vehicles belonging to members of the public to whom keys are issued to under clause 15.
- 18 For the purposes of Clauses 13, 14, 15, and 16 the term "motor vehicle" excludes motor cycles and all terrain vehicles.
- 19 The Easement Area is closed to entry by members of the public between 20 September and the Thursday prior to Labour Weekend (both dates inclusive) for lambing and calving purposes. This closure will cease to apply in the event that the Land adjacent to the Easement Area ceases to be utilised for sheep and cattle farming.
- 20 The Transferee will contribute towards the cost of maintaining the Easement Area on a fair and reasonable basis determined by the amount of wear and tear attributable to public motor vehicle use of the Easement Area.
- 21 In the event that the Department of Conservation Central Otago Area Manager uses his discretion to exclude public motor vehicle use of the Easement Area, the Transferee will not be required under clause 20 to contribute towards the cost of track maintenance on the Easement Area. The Transferee's liability for maintenance of the Easement Area will cease until such time as seasonal public motor vehicle access is reinstated.

- 22 The Transferee, not being a member of the public, will make members of the public aware that use of the Easement Area, with the exception of the usual statutory requirements and duties incumbent upon both the Transferor and the Transferee arising out of the Easement Area, will be at the public's own risk.
- 23 The Transferee, not being a member of the public, has the right in relation to the Easement Area:
  - 23.1 To mark the Easement Area as appropriate
  - 23.2 To erect and maintain stiles/gates.
  - 23.3 install cattle stops and adjacent stock gates.
  - 23.4 To erect and maintain signs informing the public
    - (a) of the location of land managed by the Crown and available for public access and recreation; and
    - (b) of their rights and responsibilities in relation to the Easement Area.
  - 23.5 To use whatever machinery and means s/he sees fit to do the works in clauses 23.1 to 23.4.
  - 23.6 To use whatever reasonable means of access he thinks fit over the Easement Area to carry out the works described in clauses 23.1 to 23.4.

**Continuation of "Attestation"**

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

\_\_\_\_\_  
 Witness (Signature)  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Occupation \_\_\_\_\_

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

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

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access 2. Parking. 3. Management Purposes

**Land Transfer Act 1952**

Law Firm Acting

Conservancy Solicitor  
Department of Conservation  
Dunedin

Auckland District Law Society  
REF:4135

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

**Appendix 5: Form of Conservation Covenant to be Created (CC1)**

---

DATED \_\_\_\_\_

Between

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

and

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

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



Department of Conservation  
*Te Papa Atawhai*



**THIS DEED** of **COVENANT** is made the                      day of

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

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

**BACKGROUND**

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

**OPERATIVE PARTS**

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

**1. INTERPRETATION**

1.1 In this Covenant unless the context otherwise requires:

- “Act” means the Reserves Act 1977.
- “Covenant” means this Deed of Covenant made under section 77 of the Act.
- “Director-General” means the Director-General of Conservation.
- “Fence” includes a gate.
- “Fire Authority” means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
- “Land” means the land described in Schedule 1.
- “Minerals” means any mineral that is 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 or allow to be carried out on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;

- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
- 3.1.10 any other activity which might have an adverse effect on the Values.
- 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
- 3.1.12 the erection of utility transmission lines across the Land.

3.2 The Owner must:

- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
- 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
- 3.2.3 keep the Land free from exotic tree species;
- 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
- 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on and to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land or to ascertain whether the provisions of this Covenant are being observed;
- 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

4. **THE MINISTER'S OBLIGATIONS**

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

5. **IMPLEMENTATION OF OBJECTIVES**

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

6. **DURATION OF COVENANT**

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

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

- 7.1 If the Owner sells, leases, or parts with possession of the Land, or hands over control of the Land to any other person, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee,

assignee or manager to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, assignee or manager to ensure that on any subsequent sale, lease, assignment, or change in control of the Land, any subsequent purchaser, lessee, assignee or manager must also comply with the terms of this Covenant including this clause.

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

## 8. MISCELLANEOUS MATTERS

### 8.1 Rights

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

### 8.2 Trespass Act:

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

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

### 8.3 Reserves Act

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

### 8.4 Titles

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

### 8.5 Acceptance of Covenant

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

### 8.6 Fire

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

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

8.6.2.1 requested to do so; or

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

## 9. NOTICES

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

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

(a) in the case of personal delivery, on the date of delivery;

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

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

## 10. DEFAULT

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

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

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

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

10.2.1 advise the defaulting party of the default.

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

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

## 11. DISPUTE RESOLUTION PROCESSES

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

### 11.2 Mediation

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

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

### 11.3 Failure of Mediation

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

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

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

## 12. JOINT OBLIGATIONS

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

**13. SPECIAL CONDITIONS**

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

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

**Executed as a Deed**

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

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

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

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

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

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

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

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

SCHEDULE 1

1. Description of Land

*Area shaded yellow and marked CC1 on the Designations Plan.*

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

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

C/- PO Box 5244  
DUNEDIN

C/- 77 Stuart Street  
DUNEDIN

Fax (03) 477 8626

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

Calder Farming Company Limited  
273 Lauder Station Road Becks Omakau

The term "Owner" does not include the Commissioner of Crown Lands.

3. Values of Land to be Protected

The Land contributes to the natural landscape character of the Dunstan Ecological District and assists with retention of the district's landscape integrity.

The Land supports extensive areas of kanuka dominated shrublands which extend up the sunny faces and spurs. The shadier side of the catchment supports extensive shrublands dominated by matagouri, *C. propinqua* and *O. odorata* with occasional *M. complexa*, *Aristotelia fruticosa*. Good populations of the tree daisy *Olearia lineata* are present on the terraces and feeder streams. *Olearia lineata* is ranked as sparse (New Zealand threat classification system lists 2002. Threatened Species Occasional Publication 23. Department of Conservation, Wellington). Rock outcrops along the lower faces and by the stream harbour many herbs and ferns including *Pellaea calidrupium*, *Asplenium flaccidum*, *Asplenium hookerianum*, *Acaena anserinifolia*, *Acaena juvenca*, *Carex comans* and *Dichondra repens*.

The water spider *Dolomedes aquaticus* is present in the Woolshed Creek bed. *Dolomedes aquaticus* is ranked as data deficient in the New Zealand threat classification listing.

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

**SCHEDULE 2**

**Special Conditions**

- 1 Clause 3.1.1 is deleted and replaced with the following:
  - 3.1.1 grazing of the Land by Livestock other than sheep.
2. The Minister shall establish a series of photo monitoring sites which will be re monitored every four years or at lesser intervals if desired. Grazing levels and management will be adjusted should that be necessary to protect the Values following analysis of photo point monitoring and field observations by the Grantor or Owner.



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

**Appendix 6: Form of Conservation Covenant to be Created (CC2 and CC3)**

---

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*

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

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

Dated

Page

of

Pages

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.

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

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

Dated  Page  of  Pages

- "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 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.

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

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

Dated  Page  of  Pages

**2. OBJECTIVE OF THE COVENANT**

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

**3. THE OWNER'S OBLIGATIONS**

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

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;
- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
- 3.1.10 any other activity which might have an adverse effect on the Values.
- 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
- 3.1.12 the erection of utility transmission lines across the Land.

3.2 The Owner must:

- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
- 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;

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

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

Dated  Page  of  Pages

- 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:

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

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

Dated  Page  of  Pages

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

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

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

Dated  Page  of  Pages

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.

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

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

Dated  Page  of  Pages

**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: \_\_\_\_\_

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

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

Dated  Page  of  Pages

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: \_\_\_\_\_

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

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

Dated Page  of  Pages

**SCHEDULE 1**

**1. Description of Land**

*Areas shaded yellow and marked CC2 and CC3 on the Designations Plan.*

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

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

C/- PO Box 5244  
DUNEDIN

C/- 77 Stuart Street  
DUNEDIN

Fax (03) 477 8626

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

Calder Farming Company Limited  
273 Lauder Station Road Becks Omakau

The term "Owner" does not include the Commissioner of Crown Lands.

**3. Values of Land to be Protected.**

**CC2. (H41/131)**

A large pond used by duck shooters defines the location of an historic coal pit. Head races lead down into the pit from a nearby water race, while tail races lead away. Also remaining are the high pit walls, winch and pumping machinery remains, a possible dray track, and an old house platform.

Nineteenth century coal mining on Lauder is confirmed by an 1890 survey map (SO 4888) showing the "W. McArthur's Coal Lease Application" for coal mining on the lease at the location of the pit seen today. Coal was an essential fuel locally for the mining communities with the other local coal source being nearby at the Cambrians diggings. This coal mine could possibly date as early as the 1870s considering that coal/lignite deposits were often also sought by miners while prospecting for gold.

**CC3. (H41/129-130)**

This area contains the sluicing remains, sluice faces, head and tail races and the remains of a sod or turf walled hut (site H41/130). The area of sluicing is well defined with the grazing of sheep aiding in the site not being overgrown. These remains are difficult to age and may date as early as the 1870s or as late as 1904.

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

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

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

Dated  Page  of  Pages

**SCHEDULE 2**

**Special Conditions**

1. Clause 3.1.1 is deleted.
2. Clause 3.15 is deleted.
3. Clause 3.1.6 is amended to read: any cultivation, earth works or other soil disturbances excepting that grassed areas may be direct drilled with seed and fertiliser and existing tracks maintained to their current width.
4. The Minister shall establish a series of photo monitoring sites which will be re monitored every four years or at lesser intervals if desired.
5. Notwithstanding clause 3.1.6 the Owner may install an underground irrigation pipe across the Land provided that the Minister is satisfied that earth disturbances will be kept to a minimum and do not interfere or in anyway damage historic gold mining features on the Land.

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

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

Dated  Page  of  Pages

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

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

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

Dated

Page

of

Pages

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Solicitor  
Department of Conservation  
DUNEDIN

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 7: Form of Conservation Covenant to be Created (CC4)**

---



DATED \_\_\_\_\_

Between

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

and

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

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



Department of Conservation  
*Te Papa Atawhai*

**THIS DEED OF COVENANT** is made the                day of

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

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

**BACKGROUND**

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

**OPERATIVE PARTS**

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

**1. INTERPRETATION**

1.1 In this Covenant unless the context otherwise requires:

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

- “Party” or “Parties”** means either the Minister or the Owner or both.
- “Values”** means any or all of the Land’s cultural or amenity 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 any earth works or other soil disturbances;
- 3.1.2 any archaeological or other scientific research involving disturbance of the soil or buildings;
- 3.1.3 deliberately damage or demolish or permit the deliberate damage or demolition of any building or associated structure or undertake any action which in the opinion of the Minister may be detrimental to the Values or their preservation;
- 3.1.4 permit anything to be done, or undertake or permit any activity to be carried out on the Land that in the opinion of the Minister may be detrimental to the Values associated with the farmstead complex within the context of their setting;
- 3.1.5 effect a subdivision within the meaning of the Resource Management Act 1991 of the Land, irrespective of whether or not such a subdivision fully complies with relevant provisions of that Act;

- 3.1.6 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land or allow other persons access to the Land for these purposes;
- 3.1.7 the erection of utility transmission lines across the Land;
- 3.1.8 any other activity which might have an adverse effect on the Values.

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 rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
- 3.2.3 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 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.

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 fire threatening the Land.

**9. NOTICES**

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.
- 9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:

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

9.3 The Owner must notify 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

The building footprints of the following historic buildings within the Lauder farmstead complex, being the Stables, Woolshed and Smithy/Cookshop and the curtilage associated with each of these buildings to a distance of 5 metres from and surrounding the exterior of each building. The Land excludes the 5 metre curtilage buffer along the western wall of the wool shed as this building is connected to a modern covered yard complex (see diagram in Schedule 3).

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

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

C/- PO Box 5244  
DUNEDIN

C/- 77 Stuart Street  
DUNEDIN

Fax (03) 477 8626

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

CALDER FARMING LTD  
Lauder Station  
Becks, RD2 OMAKAU

Fax (03) 447 3374

### 3. Values of Land to be Protected

#### Historical Context

Up until 1871, the Lauder run used the Matakanui woolshed but after this date the run built its own twelve-stand woolshed. A survey map (SO 3363) from 1873 of a section of the run confirms that a woolshed and hut (possibly the smithy/cook shop) were built on Lauder by this time (see plan below). Both still stand. This map does not show the stables or homestead which indicates these structures may have been built after this time.

#### The Farm Building Complex

The physical evidence of the pastoral history of the lease in particular is of key significance to the history of pastoralism in Otago and New Zealand. The establishment of these farm buildings, which are still in use, probably began in 1872. The farm buildings are a very early example of 19<sup>th</sup> century pastoral structures in Otago. They are also an integral part of a working farm. Rather than the buildings having become dilapidated and replaced by modern farm buildings as has happened to many of these structures in Otago, these structures have been well maintained and preserved.

The available architectural information on the farm buildings is extensive due to Hamel's (1990) and Cochran's (1993) report on this farming complex.

Hamel (1990) provided the following description for the farmstead complex:

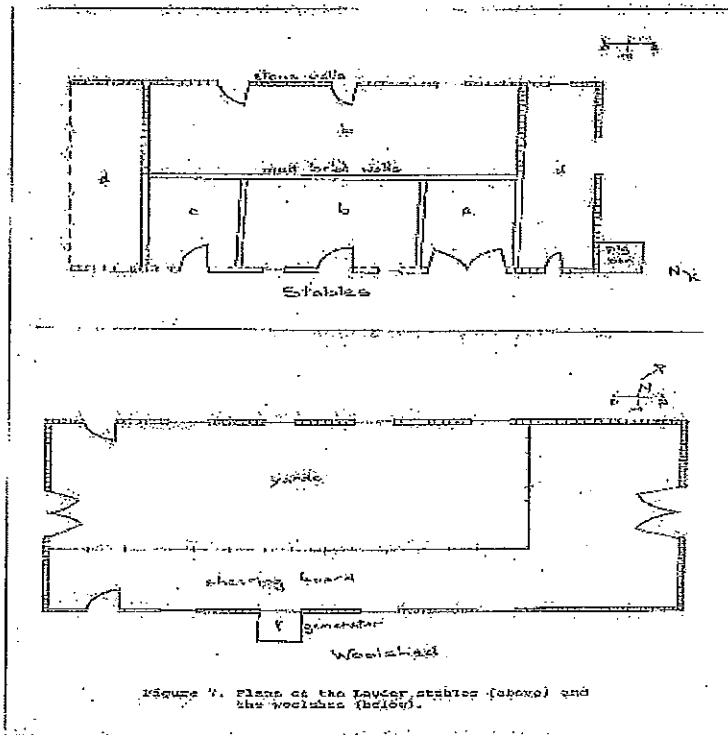
<sup>1</sup> State street address not Post Office Box number.

"As with so many nineteenth century farmsteads, the woolshed is one of the closest buildings to the public road, with the homestead tucked well back and to the south of the dust and smell of the yards. The old buildings protected under this Covenant comprise a smithy/cookshop/wooden shed, old woolshed and stables. The smithy/cookshop, 11 x 8 m, is a two gabled building with mortared stone walls, corrugated iron roof and retains its double hung windows on the cookshop side (see diagram below). The smithy still has its forge but the bellows have gone to a local museum. The smithy may have originally been a dining room for the cookshop, since there is a serving hatch between the two. There are two rooms at the south end of the building. Behind the smithy is a store, presumably for iron bars and tools. Beside the massive cookhouse chimney is a stoutly-built, square, stone bread oven. It is built of unusually large schist slabs with a flat top covered now with rubbish. There may originally have been a brick dome and chimney over the oven, but now there is just a gap leading straight into the oven flue. The oven has iron frames inset for two doors, one behind the other, with a flue leading up between them. To the right of the oven, an ash pit leads down in a curve from the oven so that it can be emptied from the front. There is no obvious sign of how the ash pit was sealed off from the oven after the bread was put in to bake. The fireplace for general cooking beside the oven is unusual in that it is an open hearth with an oven underneath it. The oven has very long narrow iron door opening sideways at shin level.

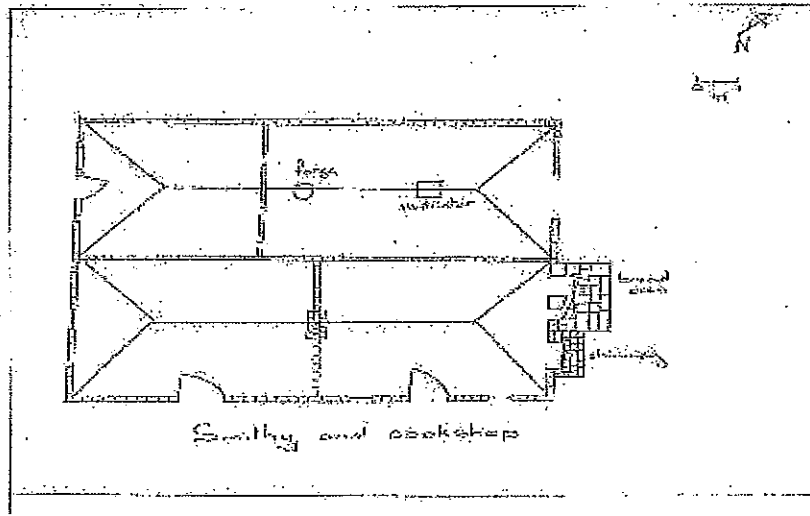
The stable, 21 x 10 m, is an impressive Georgian building with lean-to sections at each end of a hip-roofed central section (see diagram below). It is built of a mixture of mud brick and schist slabs. It would appear from the distribution of the mud brick walls inside that the original stable was a row of three rooms which now form the centre of the front face, and that the back and wings were added in stone. The centrally placed dormer door leads to the hay loft which supplied hay to a continuous manger over four stalls and a loose box.

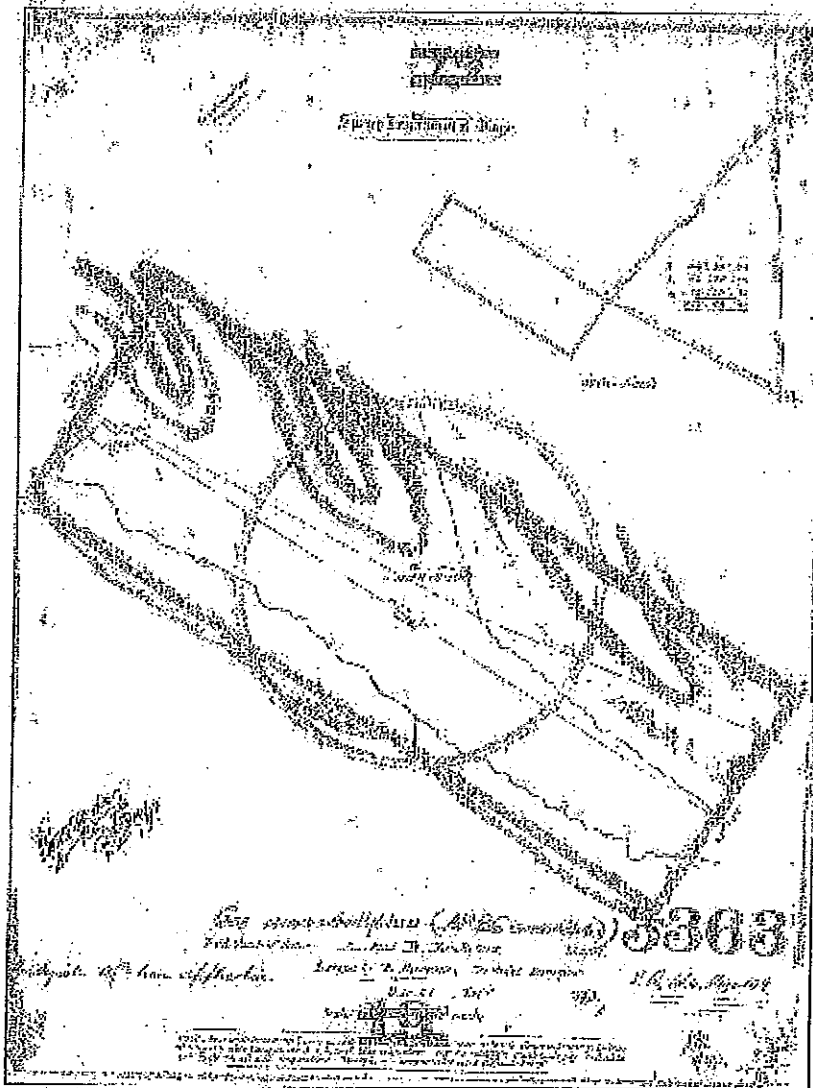
The woolshed, 25 by 10m, is a simple barn shaped building of quarried schist with a sufficient roof pitch for a loading door into the attic above the main end doors. It was a relatively small shed for eight shearers. One of the old ports has had a shed for a generator placed in it. The side walls of this shed are 2.5m high and the stone end gable is about 6m high. A modern section and covered yards have been added.

Plans



Plans of Stables and Woolshed and Yards from Hamel (1990).





Survey map from 1873 showing woolshed and hut on the Lauder Pastoral lease. The woolshed is still present today and used as a working building. The 'hut' maybe the smithy/cook shop also still present today.

## SCHEDULE 2

### Special Conditions

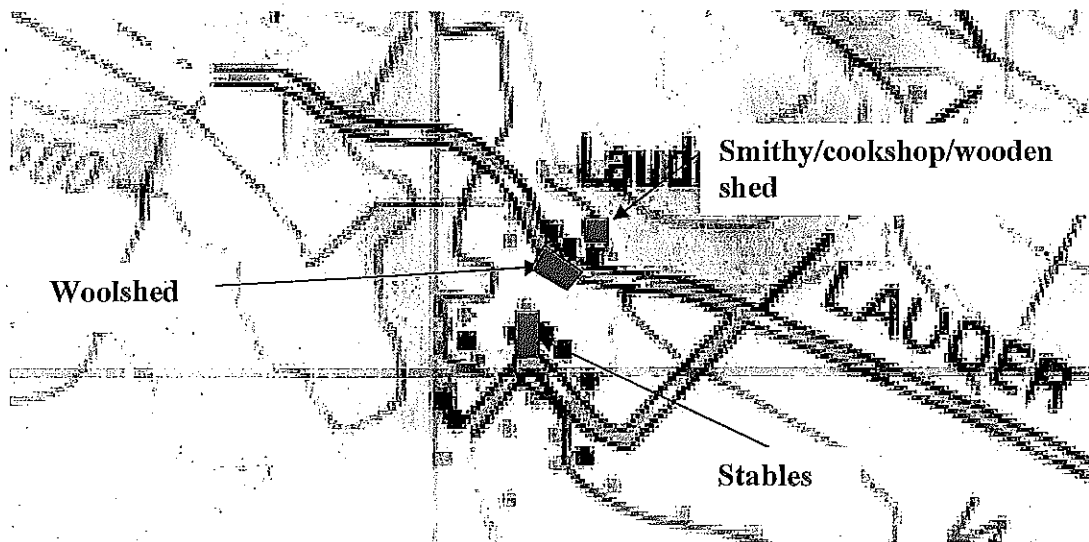
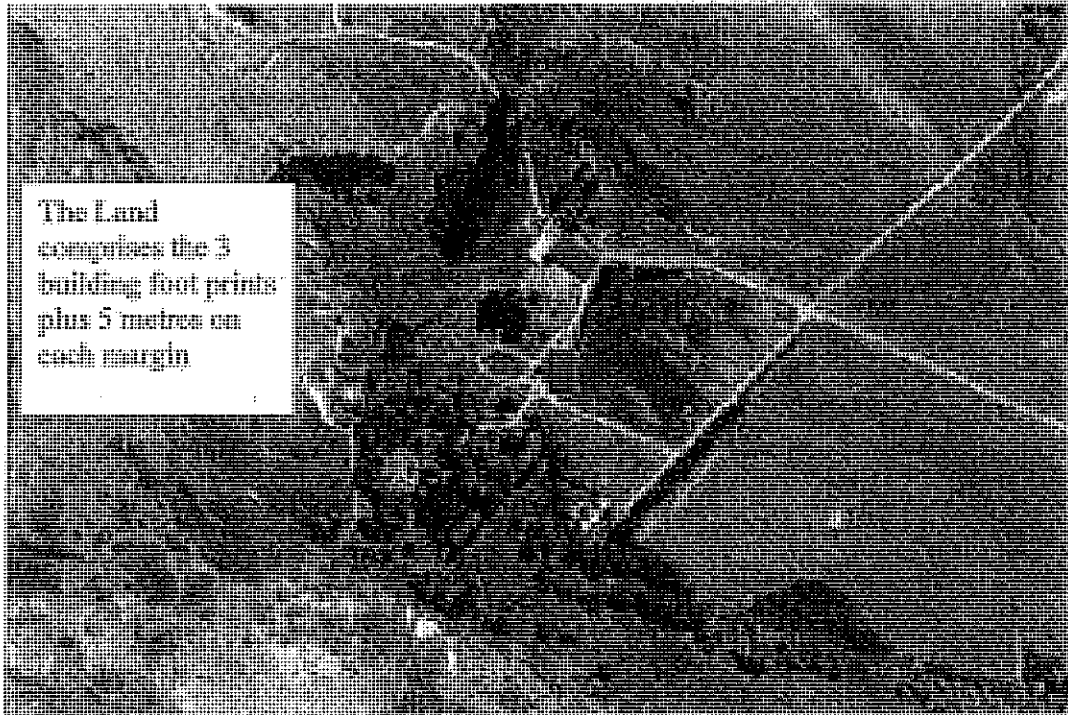
1. The Owners will seek consent from the Minister if they wish to undertake repairs or stabilisation to the site. Consent will be granted provided the Owners have regard to and as far as is practical given financial constraints, comply with the ICOMOS\* New Zealand Charter for the Conservation of Places of Cultural and Heritage Value attached as Schedule 4 (\*International Council on Monuments and Sites).
2. The Owner agrees to manage the Values on the basis that they constitute an Archaeological Site under the Historic Places Act 1993 and consequently that the provisions of that Act and in particular section 10 apply. Section 10 provides:

*"Archaeological sites may not be destroyed, damaged or modified;*

- (1) *Except pursuant to an authority granted under Section 14 of this Act, it shall not be lawful for any person to destroy, damage or modify, or cause to be destroyed, damaged or modified the whole or any part of an archaeological site, knowing or having reasonable cause to suspect that it is an archaeological site.*
  - (2) *Except as provided in Section 15 or in Section 18 of this Act, it shall not be lawful for any person to carry out any archaeological investigation that may destroy damage or modify any archaeological site.*
3. In the event that the Owners wish to substantially renovate (including any structural alterations) any of the buildings on the Land for any purpose, the Owner will enter into a heritage covenant in similar terms in perpetuity with the New Zealand Historic Places Trust pursuant to section 6 of the Historic Places Act 1993 over the Land on which the affected building is located. Upon registration of a New Zealand Historic Places Trust heritage covenant the Minister will discharge this Covenant from the Owner's title and register a new Covenant over the residual Land on the same terms as contained herein.

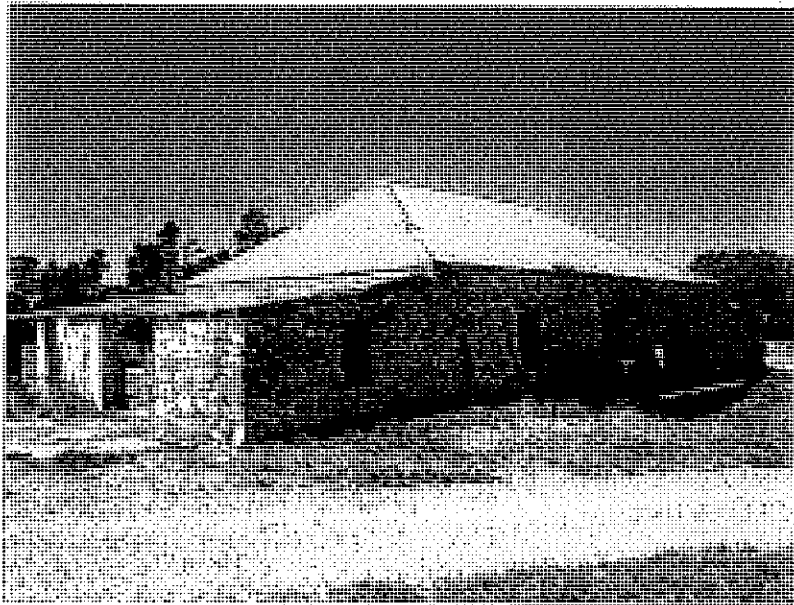
**SCHEDULE 3**

**Buildings Protected Under This Covenant.**

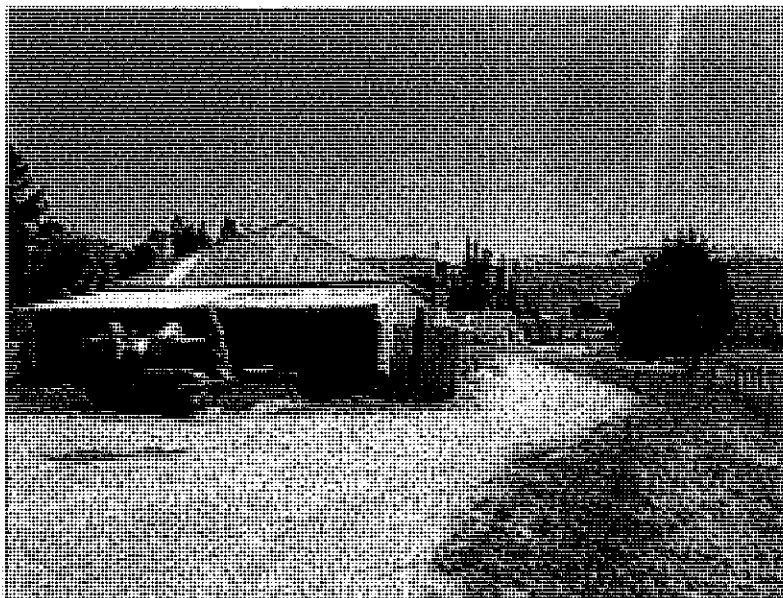


Photos (February 2009)

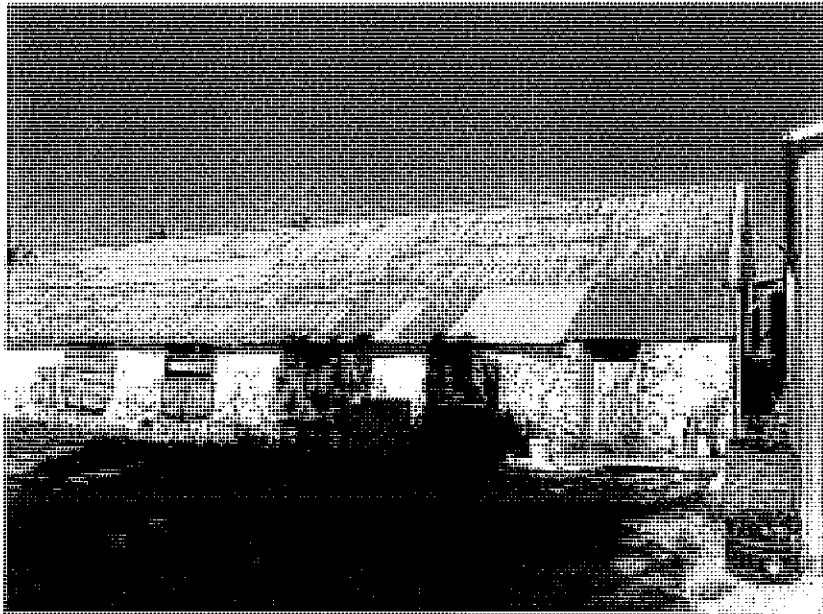
Stables

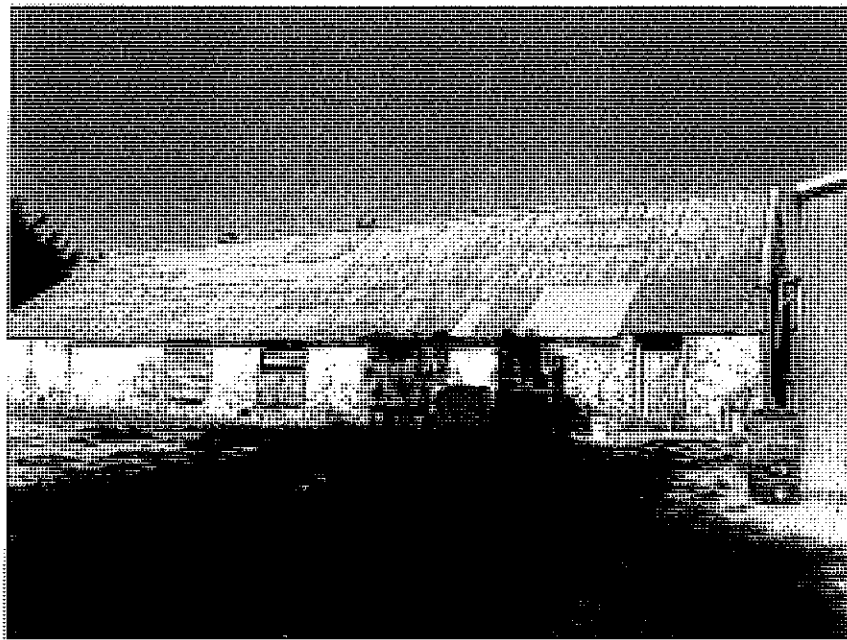




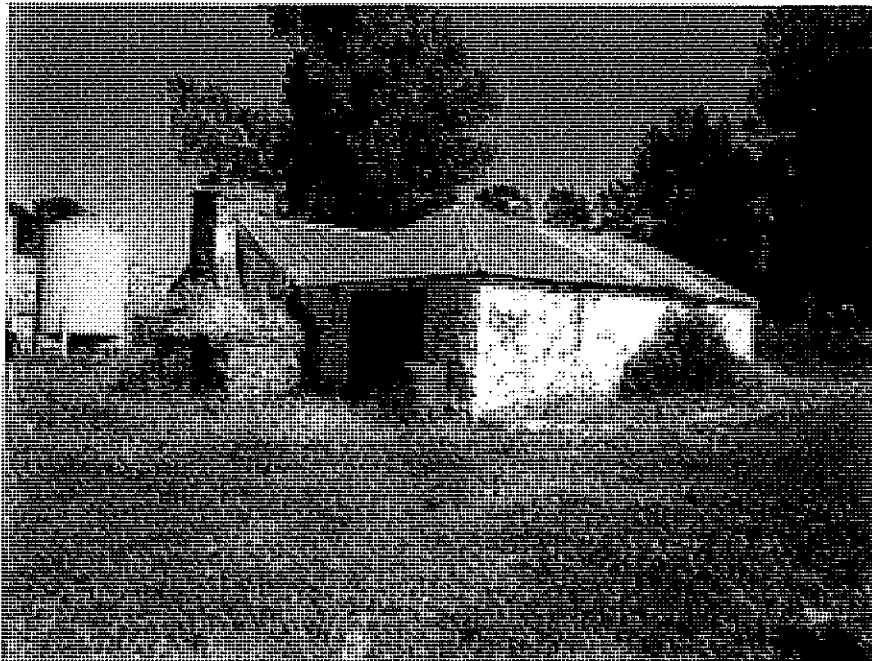
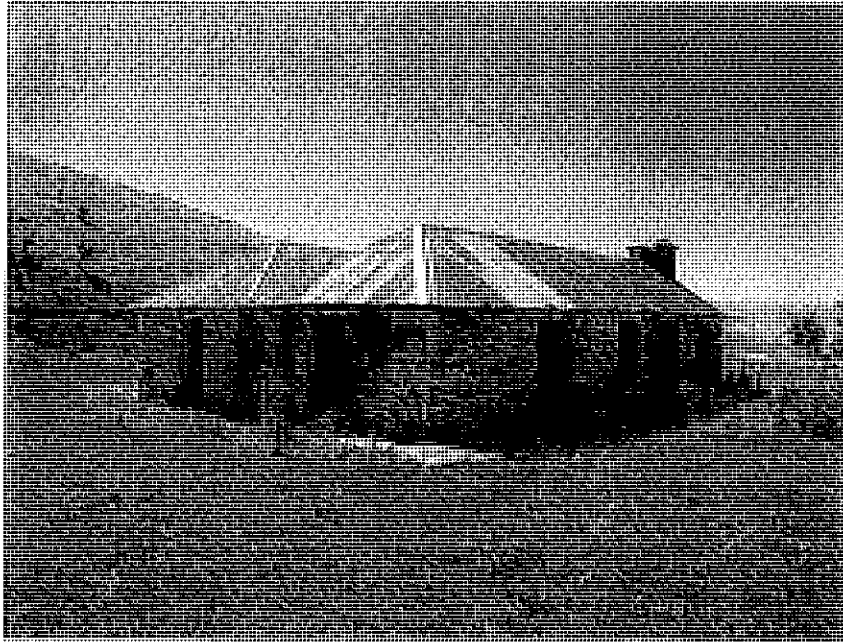


Woolshed





**Smithy/Cookshop**





#### SCHEDULE 4

### **ICOMOS NEW ZEALAND CHARTER FOR THE CONSERVATION OF PLACES OF CULTURAL HERITAGE VALUE**

Conservation projects should include the following:

- (i) definition of the cultural heritage value of the place, which requires prior researching of any documentary and oral history, a detailed examination of the place, and the recording of its physical condition;
- (ii) community consultation, continuing throughout a project as appropriate;
- (iii) preparation of a plan which meets the conservation principles of this charter;
- (iv) the implementation of any planned work; and
- (v) the documentation of any research, recording and conservation work, as it proceeds.

#### **GENERAL PRINCIPLES**

##### **4. CONSERVATION METHOD**

Conservation should:

- (i) make use of all relevant conservation values, knowledge, disciplines, arts and crafts;
- (ii) show the greatest respect for, and involve the least possible loss of, material of cultural heritage value;
- (iii) involve the least degree of intervention consistent with long term care and the principles of this charter;
- (iv) take into account the needs, abilities and resources of the particular communities; and
- (v) be fully documented and recorded.

##### **5. RESPECT FOR EXISTING EVIDENCE**

The evidence of time and the contributions of all periods should be respected in conservation. The material of a particular period may be obscured or removed if assessment shows that this would not diminish the cultural heritage value of the place. In these circumstances such material should be documented before it is obscured or removed.

##### **6. SETTING**

The historical setting of a place should be conserved with the place itself. If the historical setting no longer exists, construction of a setting based on physical and documentary evidence should be the aim. The extent of the appropriate setting may be affected by constraints other than heritage value.

##### **7. RISK MITIGATION**

All places of cultural heritage value should be assessed as to their potential risk from any natural process or event. Where a significant risk is determined, appropriate action to minimise the risk should be undertaken. Where appropriate, a risk mitigation plan should be prepared.

##### **8. RELOCATION**

The site of an historic structure is usually an integral part of its cultural heritage value. Relocation, however, can be a legitimate part of the conservation process where assessment shows that: (i) the site is not of associated value (an exceptional circumstance); or

(ii) relocation is the only means of saving the structure; or

(iii) relocation provides continuity of cultural heritage value. A new site should provide a setting compatible with cultural heritage value.

## **9. INVASIVE INVESTIGATION**

Invasive investigation of a place can provide knowledge that is not likely to be gained from any other source. Archaeological or structural investigation can be justified where such evidence is about to be lost, or where knowledge may be significantly extended, or where it is necessary to establish the existence of material of cultural heritage value, or where it is necessary for conservation work. The examination should be carried out according to accepted scientific standards. Such investigation should leave the maximum amount of material undisturbed for study by future generations.

## **10. CONTENTS**

Where the contents of a place contribute to its cultural heritage value, they should be regarded as an integral part of the place and be conserved with it.

## **11. WORKS OF ART AND SPECIAL FABRIC**

Carving, painting, weaving, stained glass and other arts associated with a place should be considered integral with a place. Where it is necessary to carry out maintenance and repair of any such material, specialist conservation advice appropriate to the material should be sought.

## **12. RECORDS**

Records of the research and conservation of places of cultural heritage value should be placed in an appropriate archive and made available to all affected people. Some knowledge of places of indigenous heritage value is not a matter of public record, but is entrusted to guardians within the indigenous community.

## **CONSERVATION PROCESSES**

### **13. DEGREES OF INTERVENTION**

Conservation may involve, in increasing extent of intervention: non-intervention, maintenance, stabilisation, repair, restoration, reconstruction or adaptation. Where appropriate, conservation processes may be applied to parts or components of a structure or site. Re-creation, meaning the conjectural reconstruction of a place, and replication, meaning to make a copy of an existing place, are outside the scope of this charter.

### **14. NON-INTERVENTION**

In some circumstances, assessment may show that any intervention is undesirable. In particular, undisturbed constancy of spiritual association may be more important than the physical aspects of some places of indigenous heritage value.

#### **15. MAINTENANCE**

A place of cultural heritage value should be maintained regularly and according to a plan, except in circumstances where it is appropriate for places to remain without intervention.

#### **16. STABILISATION**

Places of cultural heritage value should be protected from processes of decay, except where decay is appropriate to their value. Although deterioration cannot be totally prevented, it should be slowed by providing stabilisation or support.

#### **17. REPAIR**

Repair of material or of a site should be with original or similar materials. Repair of a technically higher standard than the original workmanship or materials may be justified where the life expectancy of the site or material is increased, the new material is compatible with the old and the cultural heritage value is not diminished. New material should be identifiable.

#### **18. RESTORATION**

Restoration should be based on respect for existing material and on the logical interpretation of all available evidence, so that the place is consistent with its earlier form and meaning. It should only be carried out if the cultural heritage value of the place is recovered or revealed by the process. The restoration process typically involves reassembly and reinstatement and may involve the removal of accretions.

#### **19. RECONSTRUCTION**

Reconstruction is distinguished from restoration by the introduction of additional materials where loss has occurred. Reconstruction may be appropriate if it is essential to the function or understanding of a place, if sufficient physical and documentary evidence exists to minimise conjecture, and if surviving heritage values are preserved.

Reconstruction should not normally constitute the majority of a place. Generalised representations of typical features or structures should be avoided.

#### **20. ADAPTATION**

The conservation of a place of cultural heritage value is usually facilitated by it serving a socially, culturally or economically useful purpose. In some cases, alterations and additions may be acceptable where they are essential to continued use, or where they are culturally desirable, or where the conservation of the place cannot otherwise be achieved. Any change, however, should be the minimum necessary and should not detract from the cultural heritage value of the place. Any additions and alterations should be compatible with original fabric but should be sufficiently distinct that they can be read as new work.

#### **21. INTERPRETATION**

Interpretation of a place may be appropriate if enhancement of public understanding is required. Relevant protocol should be complied with. Any interpretation should not compromise the values, appearance, structure or materials of a place, or intrude upon the experience of the place.



## 22. DEFINITIONS

For the purposes of this charter:

*adaptation* means modifying a place to suit it to a compatible use, involving the least possible loss of cultural heritage value

*conservation* means the processes of caring for a place so as to safeguard its cultural heritage value

*cultural heritage value* means possessing historical, archaeological, architectural, technological, aesthetic, scientific, spiritual, social, traditional or other special cultural significance, associated with human activity

*maintenance* means the protective care of a place

*material* means physical matter which is the product of human activity or has been modified by human activity

*place* means any land, including land covered by water, and the airspace forming the spatial context to such land, including any landscape, traditional site or sacred place, and anything fixed to the land including any archaeological site, garden, building or structure, and any body of water, whether fresh or seawater, that forms part of the historical and cultural heritage of New Zealand

*preservation* means maintaining a place with as little change as possible

*reassembly* (anastylosis) means putting existing but dismembered parts back together

*reconstruction* means to build again in the original form using old or new material

*reinstatement* means putting components of earlier material back in position

*repair* means making good decayed or damaged material

*restoration* means returning a place as nearly as possible to a known earlier state by reassembly, reinstatement and/or the removal of extraneous additions

*stabilisation* means the arrest of the processes of decay

*structure* means any building, equipment, device or other facility made by people and which is fixed to the land

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

**Appendix 8: Form of easement to continue in force 884917.8**

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YEC 884917.8 Deed of E

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HER MAJESTY THE QUEEN

and

DAVID ALLEN HARLEY

and

DONALD GORDON HARLEY

---

DEED OF GRANT OF RIGHT OF WAY

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ANDERSON LLOYD  
LAWLINK  
SOLICITORS  
DUNEDIN AND QUEENSTOWN  
NEW ZEALAND

Tel: (03) 477 3973  
Fax: (03) 477 3184  
Private Bag 1959  
Dunedin 9020

16D/601

**DEED OF GRANT OF RIGHT OF WAY**

Dated 27 July 1994

**PARTIES:**

1. HER MAJESTY THE QUEEN by her <sup>REG-16</sup> Commissioner of Crown Lands acting under the Land Act 1948 ("the Lessor").
2. DAVID ALLEN HARLEY of Omakau Farmer (as to a 2/3 share) and DONALD GORDON HARLEY of Omakau Farmer (as to a 1/3 share) ("the Lessee").

Received of the Registrar of Land  
 the sum of \$1000.00  
 on the 27th day of July 1994  
 for the purpose of the grant of a right of way  
 over the land described in schedule B of the  
 SO Plan 22850 attached to the Deed of Grant of Right of Way  
 between Her Majesty the Queen and David Allen Harley and  
 Donald Gordon Harley.

**BACKGROUND:**

- A. On 27 July 1988 pursuant to Section 93 of the Land Act 1948 the Lessor granted the Lessees' predecessor in title a pastoral lease of the land described in schedule A ("the Dominant Land").
- B. The Lessor now wishes to grant pursuant to Section 60 of the Land Act 1948 the Lessee a right of way over along the line marked "A" on sheet 1 of 3 of SO Plan 22850 (attached) over the land described in schedule B ("the Servient Land").

**THIS DEED RECORDS:**

1. The Lessor grants to the Lessee to be forever appurtenant to the Dominant Land and any part of it, the right of the Lessee, and the Lessee's employees, tenants, agents, contractors, licensees and invitees (in common with the lessee under the pastoral lease of the Servient Land and any other person lawfully entitled) at all times by day and by night to pass, and re-pass, with or without motor vehicles, animals, machinery and implements of any kind over and along that part of the Servient Land along the line marked "A" on sheet 1 of 3 of SO Plan 22850 (attached) for all purposes connected with the use and enjoyment of the Dominant Land.

[Handwritten signatures and initials]  
 (1994005)2740

*[Handwritten signature]*

Signed by the  
Acg-wa Commissioner of Crown Lands

in the presence of:

Witness: *Bullen*  
Pastoral Administration Officer

Occupation: Department of Survey and Land Information

Address: Wellington

Signed by DAVID ALLEN

*[Handwritten signature]*

HARLEY in the presence of:  
\*as one of the Lessees and as one of the lessees under  
pastoral lease over the Servient land consents to the  
grant of the right of way

Witness: *[Handwritten signature]*

Occupation: Solicitor

Address: Airedin

Signed by DONALD GORDON

*[Handwritten signature]*

HARLEY in the presence of:

Witness: *[Handwritten signature]*

Occupation: Suburban

Address: Alhambra

*[Handwritten signature]*

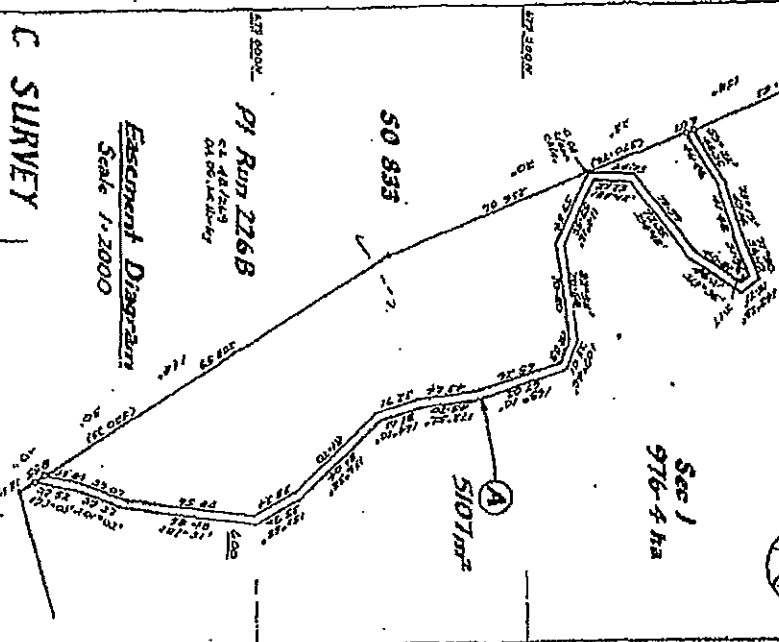
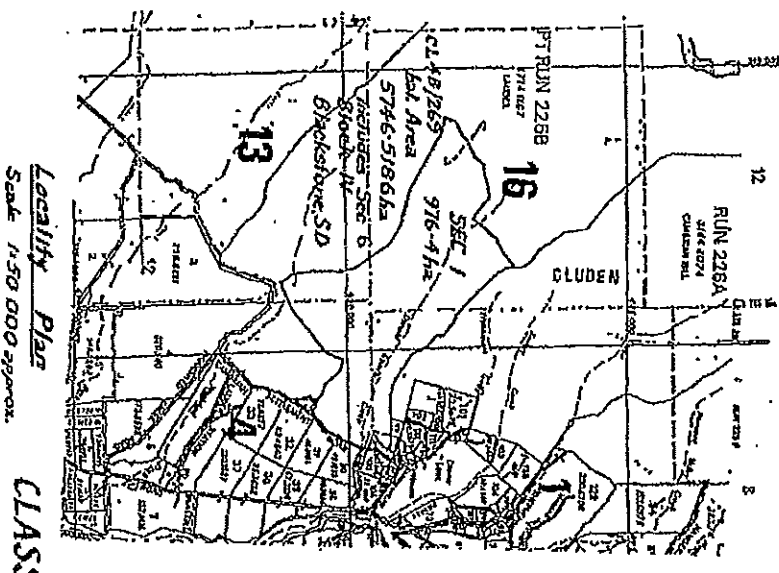
SCHEDULE A

All that parcel of land containing 4224.9724 ha being part Run 226B, Lauder, Cluden and Blackstone Survey Districts and Section 6 Block IV Blackstone Survey District, and subject to and together with the easements covenants restrictions and conditions as set out on the title and contained in Certificate of Title 12C/1139 (Otago Registry).

SCHEDULE B

All that parcel of land containing 981.8455 ha being Section 1 SO Plan 22850 and Section 1 SO Plan 22848 and subject to and together with the easements covenants restrictions and conditions and mortgage 827622/2 and comprised in Certificate of Title 12C/1138 (Otago Registry).  
*pastoral lease 12c/1138.*

*Handwritten signatures and initials*  
hpg/does12740



LAND DISTRICT  
 SURVEY BLK. 3 DIST. 301 LARSEN, W. DISTRICT  
 NZMS 261 SH. 2nd EDITION MAP No. 550/26

SECTION 1

CLASS C SURVEY

REGIONAL AUTHORITY Mackenzie County  
 Surveyed by W.C. Whitting  
 Sold As Shown by Tenancy 1988

Sheet 1 of 3

<p>Approved as to layout  <i>[Signature]</i>                  Surveyor General                  Department of Lands and Survey</p>	
<p>Approved as to description  <i>[Signature]</i>                  District Surveyor</p>	<p>Approved as to survey  <i>[Signature]</i>                  District Surveyor</p>
<p>Deposited this ... day of ... 1988</p>	
<p>Number ...</p>	<p>SO 22850</p>



Sec 1  
 976-4 ha

5101m<sup>2</sup>

50 833

Pt Run 2268

Eastment Diagram  
 Scale 1:2000

Point line 976-4ha  
 (Computed in CL 48/269 (P1))

Original Computer 2007  
 Survey Station 100 880000

1. William Charles Whitting  
 Surveyor General  
 Department of Lands and Survey

2. District Surveyor  
 Department of Lands and Survey

3. Approved as to survey  
 District Surveyor

4. Approved as to layout  
 Surveyor General

5. Approved as to description  
 District Surveyor

6. Approved as to layout  
 Surveyor General

7. Approved as to description  
 District Surveyor

8. Approved as to layout  
 Surveyor General

9. Approved as to description  
 District Surveyor

10. Approved as to layout  
 Surveyor General

11. Approved as to description  
 District Surveyor

12. Approved as to layout  
 Surveyor General

13. Approved as to description  
 District Surveyor

14. Approved as to layout  
 Surveyor General

15. Approved as to description  
 District Surveyor

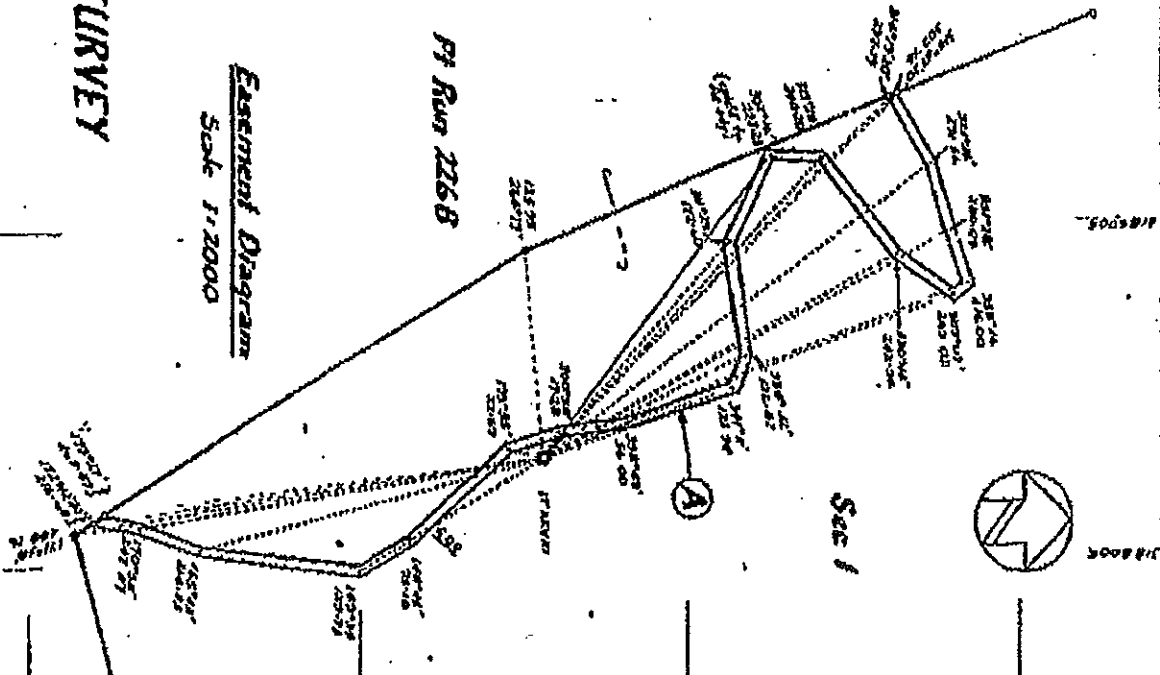
16. Approved as to layout  
 Surveyor General

17. Approved as to description  
 District Surveyor



CLASS C SURVEY

SECTION 1



Design Diagrams

DISTRICT Chicago  
 COUNTY Cook  
 FILE NO. 1111  
 LAUDER, EDWARD  
 1884  
 RECORD MAP No. 101/12

INDIVIDUAL ARCHIBUTIA HANCOCK'S COUNTY  
 Surveyed by W.C. Whiting  
 Date Rec. 3/10/1884

<p>Approved: _____</p> <p>at 17/88</p> <p>Approved as to Survey _____</p> <p>at 17/88</p> <p>at 17/88</p> <p>at 17/88</p>	<p>Surveyed in _____</p> <p>at 17/88</p>	<p>Sold for _____</p> <p>at 17/88</p>	<p>Deputy: _____</p> <p>at 17/88</p>
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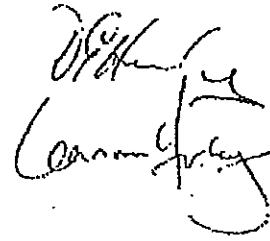
*Handwritten signatures and initials, including 'B' and 'H'.*

**Consent of Lessee, under Pastoral Lease**

and Leanne Ruth Harley  
DONALD GORDON HARLEY, of Omakau, Farmer as lessee under pastoral lease over  
the Servient Land consents to the grant of the foregoing right of way.

Dated 29 June 1994

Signed by DONALD GORDON )  
HARLEY and LEANNE RUTH HARLEY )  
in the presence of:



Witness:  .....

Occupation: Farmer .....

Address: Alexander .....

16D/601

10.07 22 JUN 95 1917 .8  
PARTICULARS ENTERED IN REGISTER  
LAND REGISTRY DEPARTMENT OF  
ASST. LAND REGISTER  
12C/1138, 1139



16D/601

**Appendix 9: Form of easement to continue in force (16D/997)**

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



R. W. Muir  
Registrar-General  
of Land

Identifier **OT16D/997**  
Land Registration District **Otago**  
Date Registered 30 June 1995 12:28 pm

Prior References  
OT12C/1139

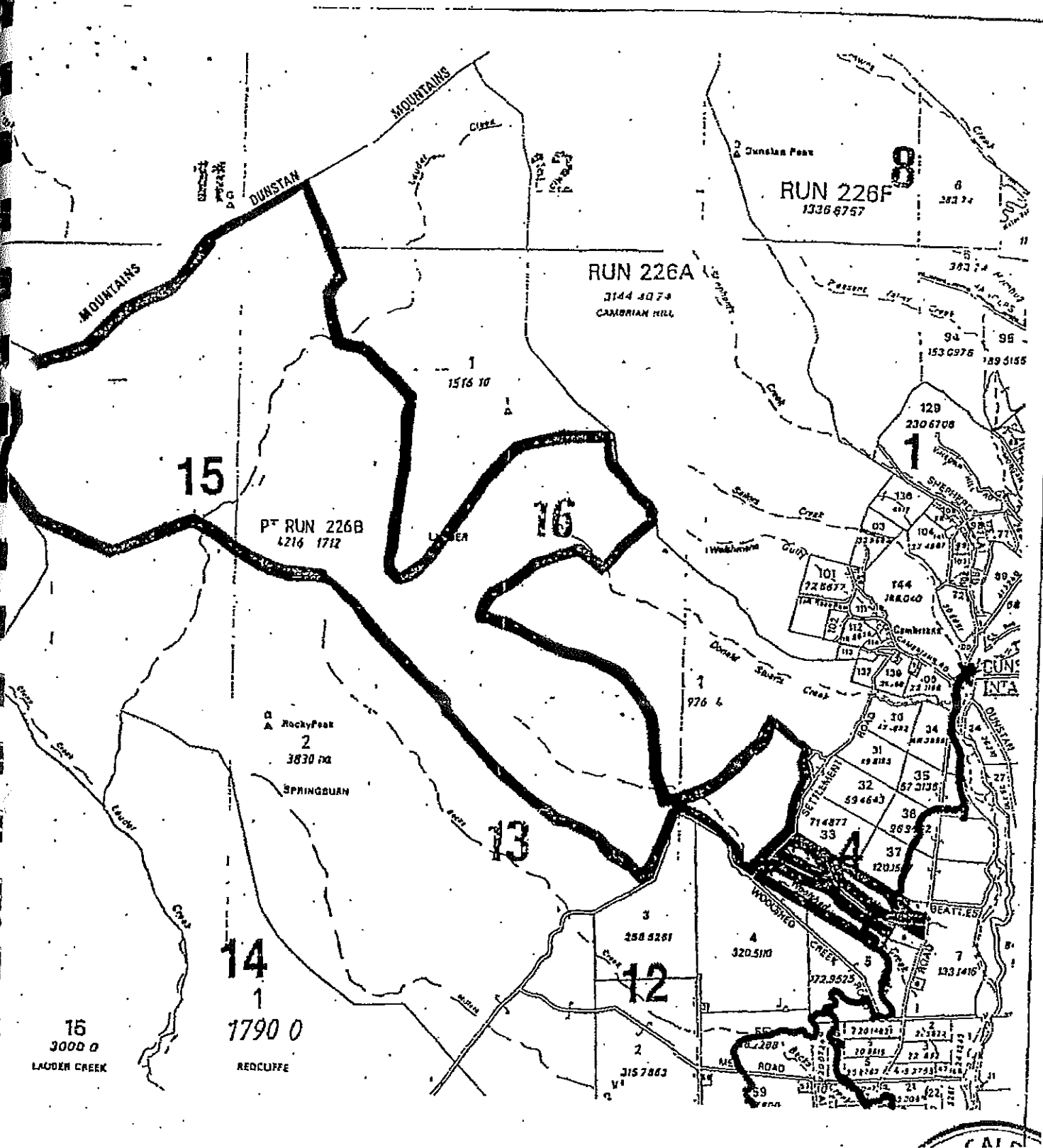
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Type As described in the instrument  
Area 4224.9724 hectares more or less  
Legal Description Part Run 226B and Section 6 Block IV  
Blackstone Survey District

Proprietors  
Her Majesty the Queen

---

Interests




**Execution Section**

---

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

**SIGNED by Brian John Usherwood** pursuant to a delegation from the **Commissioner of Crown Lands** pursuant to the Crown Pastoral Land Act 1998 in the presence of:

---

Anthony Hatch  
Witness

Lawyer  
Occupation

100 Wadestown Rd  
Address Wellington 6012

**SIGNED** for and on behalf of Calder Farming Company Limited by two of its directors:

J. G. Calder  
[name of director]  
James Grant Calder

R. W. Calder  
[name of director]  
Robert William Calder