

Crown Pastoral Land Tenure Review

Lease name: MERIVALE

Lease number: PO 193

Lease name: GEORDIE HILLS

Lease number: PO 053

Lease name: LONGACRE

Lease number: PO 188

Lease name: SHIRLMAR

Lease number: PO 192

Lease name: TIMBURN

Lease number: PO 237

Lease name: NINE MILE

Lease number: PO 365

Substantive Proposal - Part 3

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

November

05

MERIVALE LEASE SCHEDULE

MERIVALE LEASE SCHEDULE

CONTENTS

- Part 1: General Provisions
- Part 2: Conservation Management Easement Merivale
- Part 3: Conservation Management Easement in Gross Merivale
- Part 4: Public Access and Vehicle Parking Easement;
- Part 5: Indicative Specifications for Fencing and Culvert Requirements

PART 1: GENERAL PROVISIONS

INTRODUCTION

This Schedule relates to the Lease described as the Merivale Lease.

1. Interpretation

1.1 In this Schedule, unless the context otherwise requires:

Conservation Management Easement Merivale means an easement to provide access for employees, tenants, agents, contractors and invitees of the Minister on foot, by horses or by motor vehicles, with or without machinery and implements of any kind for conservation management purposes only, over that part of the Lease land marked as route "k-j-i-h" marked on Plan 2, in the proposed form attached as Part 2;

Conservation Management Easement in Gross Merivale means an easement to provide access for employees, tenants, agents, contractors and invitees of the Minister on foot, by horses or by motor vehicles, with or without machinery and implements of any kind and with or without guns or dogs for conservation management purposes only, over that part of the Lease land marked as route "i - p" marked on Plan 2, in the proposed form attached as Part 3;

Easements mean the

- (a) Public Access and Public Parking Easement Merivale;
- (b) Conservation Management Easements Merivale;

Holder for the purposes of this Schedule means the lessee of the Merivale Lease;

Holder's Consideration means the amount payable by the Holder to the Commissioner by equality of exchange for the freehold of the Merivale Schedule Three Land as specified in the relevant Notice;

Lease Land means 2666.6511 hectares more or less being Run 676 being the land comprised and described in folio number OT386/76 (Otago Land Registry) subject to:

- (a) Land Improvement Agreement 829003;
- (b) Mining Permit under Crown Minerals Act 1991; and
- (c) mortgage;

Merivale Lease means the lease comprised and described in folio number OT386/76 (Otago Land Registry) issued under the Land Act 1948, and includes all variations and renewals of that lease;

Merivale Schedule Three Land means 2667 hectares of the Lease Land, as outlined in green on the Plans;

Mortgage means mortgage 875197.5 registered against the Merivale Lease;

Mortgagee means the Holder's mortgagee of the Merivale being Rabobank New Zealand Limited under Mortgage 875197.5;

Public Access and Public Parking Easement Merivale means an easement:

- (a) to provide public access on foot, or by motor-vehicle or by non – motorised vehicle powered by a person or persons, over that part of the Lease land marked as route "j-k", j-m", & "h-i-j" marked on Plan 2, and
- (b) to leave and park motor vehicles on the appropriate part of the easement area marked as "j & h" on Plan 2 and shown as CP1 on Diagram B and CP2 on Diagram I;

in the proposed form attached as Part 4;

Settlement Date means the date specified in paragraph 4 of this schedule;

Substantive Proposal means this substantive proposal that the Commissioner puts to the Holder including this Schedule for the Merivale Lease;

- 1.2 Unless modified by this Schedule the terms defined in the Substantive Proposal have the same meaning when used in this Schedule.

2. Implementation of Substantive Proposal

- 2.1 In addition to the provisions of clauses 1-16 of the Substantive Proposal the following provisions apply to the implementation of the Substantive Proposal in respect of the Merivale Lease
- 2.2 Under sections 65, 66 and 69 of the Act, upon registration of the Final Plan and this Substantive Proposal under section 64 of the Act and subject to paragraph 2.6 below, the Commissioner will dispose of the Merivale Schedule Three Land to the Holder (subject to the encumbrances specified in paragraph 1.1(a) of Schedule Three) under the provisions of the Land Act 1948 by requesting that the Surveyor General issue a certificate under section 116 of the Land Act 1948 to the Registrar and that the Registrar issue a certificate of title for the Merivale Schedule Three Land in the name of the Holder;
- 2.3 The Commissioner will meet the costs for the survey (if any) of the Lease Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Merivale Schedule Three Land.
- 2.4 The Merivale Lease will remain in force until a certificate of title is issued for the Schedule Three Land, and at this time the Merivale Lease will, under section 69(2) of the Act, be deemed to be surrendered in respect of the Lease Land.
- 2.5 Following registration of the Final Plan and this Substantive Proposal, the Commissioner must promptly:
- (a) prepare execution documents for the Easements in the forms attached to this Substantive Proposal and forward the execution documents to the relevant parties to be signed;
 - (b) under section 80 of the Act, agree with the Minister that the Minister should acquire the Conservation Management Easements Merivale and give to the Minister the other Easements on the terms and conditions specified in this Substantive Proposal and the Minister must sign the execution copies of the Easements and return these to the Commissioner;
 - (c) sign the execution documents for the Easements; and
 - (d) lodge the documents for the Easements for registration at the Otago Land Registry once the documents are signed (as the case may be) by the Commissioner, the Holder and the Minister.
- 2.6 Notwithstanding any other provision in this Substantive Proposal, the Commissioner will not request that the Surveyor General issue a certificate under paragraph 2.2.(b) unless and until:

- (a) The Commissioner has received the Holder's Payment from the Holder under clause 11.1 of the Substantive Proposal, and the Commissioner has received all other money payable by the Holder under this Substantive Proposal;
- (b) The Commissioner has received the respective Holder's Payments from the other Holders under the Relevant Schedules and the Commissioner has received all other money payable by the other Holders under the Substantive Proposal;
- (c) the Holder has provided to the Commissioner the duplicate of the Merivale Lease (if the Holder has this document) and has signed and returned to the Commissioner any other documents reasonably required by the Commissioner to be signed by the Holder to give effect to this Substantive Proposal; and
- (d) the Holder has procured the Mortgagee's execution of a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder has executed a registrable new mortgage document (in relation to the Merivale Schedule Three Land only) and if the Mortgagee holds the duplicate of the Lease, the Holder has procured that Mortgagee to allow the Holder to provide the Merivale Lease to the Commissioner and the Holder has provided these documents to the Commissioner.

2.7 Subject to clause 2.6 the Commissioner will lodge the discharge of the Mortgages, the duplicate of the Merivale Lease, and any new mortgage documents at the Otago Land Registry, to be registered against the certificate of title to be issued under the Land Transfer Act 1952 for the Merivale Schedule Three Land, so that the certificate of title for the Merivale Schedule Three Land will issue subject to any new mortgage.

3. Settlement Date

The Settlement Date for the disposal of the Merivale Schedule Three Land to the Holder by freehold disposal will be the day that is five working days following the day that the Final Plan and a copy of this Substantive Proposal are registered at the Otago Land Registry under section 64 of the Act.

4. Lowest price

The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Merivale Schedule Three Land under section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Holder's Consideration.

5. Consents

5.1 Under section 60(4) of the Act the Holder must obtain the written consent to the Holder's acceptance of this Substantive Proposal from all persons having an interest in the Lease Land (other than the Holder), including, but not limited to:

the Mortgagee;

the grantee of Land Improvement Agreement 829003, registered against the Merivale Lease;

the holder of the mining permit 5189044.1 registered against the Merivale Lease; and

any other person that the Commissioner reasonably believes has an interest in the Lease Land or who the Holder reasonably believes has an interest in the Lease Land.

5.2 In addition to obtaining the consents of the persons outlined in paragraph 5.1 of this Schedule, the Holder must also obtain:

all corporate consents; and

if required, consent under the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995, necessary for the Holder to accept this Substantive Proposal.

5.3 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 at the same time as the certificate of title for the Merivale Schedule Three Land issues.

5.4 The Commissioner will provide the Mortgagee with an undertaking that, subject to the provisions in paragraph 2.6 being satisfied, it will register the discharge of the Mortgage and register the new mortgage against the certificate of title for the Merivale Schedule Three Land at the same time as the certificate of title for the Merivale Schedule Three Land issues.

6. Fencing

6.1 If:

each Holder has accepted this Substantive Proposal in accordance with clause 4; and

that acceptance has taken effect pursuant to section 60(4) of the Act,

then the parties will comply with paragraphs 2.2 – 2.4 of this Schedule, where applicable to the Land.

- 6.2 The Commissioner will, at its cost, erect new fencing around the Merivale Carparks at the point marked h on Diagram I and at point marked m on Diagram D. The position of the fenceline has been identified by using satellite positioning technology (GPS) and by pegging.
- 6.3 The Commissioner will erect the fencing referred to in paragraph 6.2 of this Schedule according to the specifications in the Part 5.
- 6.4 The ongoing maintenance of the fencing referred to in paragraph 6.2 of this Schedule will be under the terms of the Fencing Act 1978.

7. Address of Holder

For the purposes of clause 16.4 of the Substantive Proposal, the address of the Holder of the Merivale Lease is:

**Gerald Raymond Goodger
The Trustees Executors & Agency Company of New Zealand Limited and
Mary Josephine Goodger
PO Box 4
Tarras
OTAGO**

Part 2: **PROPOSED FORM for CONSERVATION MANAGEMENT EASEMENT
MERIVALE**

Section 90, Land Transfer Act 1952

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

Land Registration District

[Empty box for Land Registration District]

[Empty box for Land Registration District]

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

[Empty table for Unique Identifier(s) details]

Transferor

Surname(s) must be underlined

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

Transferee

Surname(s) must be underlined

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

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

Management Purposes Easement to conservation area granted under section 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

Operative Clause

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

Dated this day of

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

Signed in my presence by the Transferor

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Signature [common seal] of Transferor

Certified correct for the purposes of the Land Transfer Act 1952

[Empty box for certification]

Annexure Schedule

Transfer Instrument Dated Page of Pages

Definitions

1. In this transfer unless the context otherwise requires:
 - 1.1 "Easement Area" means that part of the Servient Land being [10] metres wide which is marked "[k-j-i-h]" on Deposited Plan/S.O. Plan No [].
 - 1.2 "Dominant Land" means the land administered by the Department of Conservation and contained in Certificate of Title "[]".
 - 1.3 "Management Purposes" means:
 - the protection of a significant inherent value of the Dominant Land;
 - the management of the Dominant Land 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 includes the Transferee's tenants, agents, contractors and invitees; or any employee or contractor of the Director-General of Conservation.
 - 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

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

Exclusion of Implied Rights and Powers

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

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

Annexure Schedule

Transfer Instrument Dated Page of Pages

Term

4. The easement created by this transfer is to be appurtenant to the Dominant Land in perpetuity.

Dispute Resolution

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

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

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

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

Notices

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

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

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

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

**Part 3 PROPOSED FORM for CONSERVATION MANAGEMENT EASEMENT
IN Gross only MERIVALE**

Merivale.
Easement in Gross - Mgmt

TRANSFER GRANT OF EASEMENT IN GROSS

Vehicles for Management Purposes

Land Transfer Act 1952

Section 90, Land Transfer Act 1952

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

Land Registration District

Otago

Grantor

Surname(s) must be underlined

GERALD RAYMOND GOODGER, THE TRUSTEES EXECUTORS & AGENCY COMPANY OF NEW ZEALAND LIMITED AND MARY JOSEPHINE GOODGER by the COMMISSIONER OF CROWN LANDS, the deemed owner pursuant to Section 80 Crown Pastoral Land Act 1998

Grantee

Surname(s) must be underlined

HER MAJESTY THE QUEEN, acting by and through the MINISTER OF CONSERVATION

"Grant" of easement or profit(s) à prendre or creation of covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this _____ day of _____

Attestation

Signed by acting under written delegation from the COMMISSIONER OF CROWN LANDS	Signed in my presence by the Grantor _____ <i>Signature of witness</i> Witness to complete in BLOCK letters (unless legibly printed) Witness name Occupation Address
Signature [common seal] signed for and on behalf of HER MAJESTY THE QUEEN by under a written delegation	Signed in my presence by the Grantee _____ <i>Signature of witness</i> Witness to complete in BLOCK letters (unless legibly printed) Witness name Occupation Address
Signature [common seal]	Address

Certified correct for the purposes of the Land Transfer Act 1952

[Solicitor for] the Grantee

Annexure Schedule 1

Easement Instrument

Dated

Page

of

Pages

Schedule A

Continue in additional Annexure Schedule if required

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT in gross)
Right of Way		[To be inserted]	In Gross

Easements or profits à prendre rights and powers (including terms, covenants, and conditions)

Delete phrases in [] and insert memorandum number as required.
Continue in additional Annexure Schedule if required

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Ninth Schedule of the Property Law Act 1952.

The implied rights and powers are [varied] [negated] [added to] or [substituted] by:

[Memorandum number _____ registered under section 155A of the Land Transfer Act 1952]

[the provisions set out in Annexure Schedule 2].

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

Annexure Schedule 2

Easement Instrument Dated Page of Pages

Continuation of Estate or Interest or Easement to be created

Easement in gross under section 7(2) Conservation Act 1987 for:

- (1) Motor vehicles and machinery access;
- (2) Foot, horse and non motorised vehicle access

Definitions

1. In this Easement Instrument unless the context otherwise requires:
 - 1.1 "Easement Area" means that part of the Servient Land being 10 metres wide which is marked (*currently marked as "i-p" on the Designations Plan*) on S.O. Plan No. [].
 - 1.2 "Conservation Land" means the land in the vicinity of the Servient Land which is owned and/or managed by the Department of Conservation.
 - 1.3 "Servient Land" means the land owned by the Grantor and described in Schedule A.
 - 1.4 "Management Purposes" means:
 - the protection of a significant inherent value of the Conservation Land;
 - the management of the Conservation Land in a way that is ecologically sustainable.
 - 1.5 "Grantee" means Her Majesty the Queen, acting by and through, the Minister of Conservation and includes the Grantee's employees, tenants, agents, workmen and invitees.
 - 1.6 "Grantor" means the owner of the Servient Land and includes the Grantor's tenants and invitees.

Standard Easement Terms

Access

2. The Grantee has the right:
 - 2.1.1 To pass and re-pass over and along the Easement Area on foot, or on or accompanied by horses, or by motor vehicles, with or without machinery and implements of any kind, and with or without guns or dogs for Management Purposes only.
 - 2.1.2 The Grantor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use of the Easement Area.

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

Annexure Schedule 2

Easement Instrument Dated Page of Pages

Exclusion of Schedules

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

Term

4. The easement created by this Easement Instrument is to continue in perpetuity.

Dispute

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

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

Annexure Schedule 2

Easement Instrument Dated Page of Pages

Notice

6.1 A notice to be given under this easement 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.

6.2 If clause 7.1(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.

Special Terms

- 7. The standard easement terms contained above must be read subject to any special easement terms set out below.
- 8. The Grantee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and in particular will avoid using the easement when conditions such as softening during frost thaw render the Easement Area particularly vulnerable to damage.
- 9. Prior to using the Easement Area the Grantee shall give at least 24 hours notice by telephone to the or and shall have regard to reasonable requests by the Grantor relating to farm management issues. This clause does not apply in an emergency or if the Grantor is unable to be contacted by telephone. For the avoidance of doubt, clause 6 does not apply to this clause.

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

**Part 4 PROPOSED FORM for PUBLIC ACCESS and VEHICLE PARKING
EASEMENT MERIVALE**

Merivale.
Easement in Gross - Public

TRANSFER GRANT OF EASEMENT IN GROSS

Public Foot Motorised Vehicle and Non
Motorised Vehicle Access

Public Vehicle Parking

Land Transfer Act 1952

Section 90, Land Transfer Act 1952

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

Land Registration District

Otago

Grantor

Surname(s) must be underlined

GERALD RAYMOND GOODGER, THE TRUSTEES EXECUTORS & AGENCY COMPANY OF NEW ZEALAND LIMITED AND MARY JOSEPHINE GOODGER by the COMMISSIONER OF CROWN LANDS, the deemed owner pursuant to Section 80 Crown Pastoral Land Act 1998

Grantee

Surname(s) must be underlined

HER MAJESTY THE QUEEN, acting by and through the MINISTER OF CONSERVATION

"Grant" of easement or profit(s) à prendre or creation of covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with rights and powers or provisions set out in the Annexure Schedule(s).

Dated this _____ day of _____

Attestation

Signed by

acting under written delegation from the COMMISSIONER OF CROWN LANDS

Signature [common seal]

Signed in my presence by the Grantor

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Signed for and on behalf of HER MAJESTY THE QUEEN by

under a written delegation

Signature [common seal]

Signed in my presence by the Grantee

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Certified correct for the purposes of the Land Transfer Act 1952

[Solicitor for] the Grantee

Annexure Schedule 1

Easement Instrument Dated Page of Pages

Schedule A

Continue in additional Annexure Schedule if required

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT in gross)
Right of Way		[To be inserted]	In Gross

Easements or profits à prendre rights and powers (including terms, covenants, and conditions)

Delete phrases in [] and insert memorandum number as required.
Continue in additional Annexure Schedule if required

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Ninth Schedule of the Property Law Act 1952.

The implied rights and powers are [varied] [negated] [added to] or [substituted] by:

[Memorandum number _____ registered under section 155A of the Land Transfer Act 1952]

[the provisions set out in Annexure Schedule 2].

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

Annexure Schedule 2

Easement Instrument Dated Page of Pages

Continuation of Estate or Interest or Easement to be created

Easement in gross under section 7(2) Conservation Act 1987 for:

- (1) Foot access
- (2) Non motorised vehicle powered by a person or persons access.
- (3) Motorised access in respect of the Parking Area and Easement Area.

Definitions

- 1. In this Easement Instrument unless the context otherwise requires:
 - 1.1 "Easement Area" means those parts of the Servient Land being 10 metres wide which are marked (*currently marked as "k-j, j-m & h-i-j" on the Designations Plan*) [] on Deposited Plan/S.O. Plan No. []
 - 1.2 "Parking Area" means those parts of the Servient Land which are marked (*currently marked as "j & h" on the Designations Plan*) on Deposited Plan/SO Plan No. []
 - 1.3 "Servient Land" means the land owned by the Grantor and described in Schedule A.
 - 1.4 "Grantee" means Her Majesty the Queen acting by and through the Minister of Conservation and includes the Grantee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public.
 - 1.4 "Grantor" means the owner of the Servient Land and includes the Grantor's tenants and invitees.

Standard Easement Terms

Access

- 2.1.1 The Grantee has the right in common with the Grantor to pass and re-pass at any time over and along the Easement Area on foot, by motorised vehicle or by non motorised vehicle powered by a person or persons.
- 2.1.2 The Grantee has the right in common with the Grantor, to use, stop and park any motor vehicle on the Parking Area only.
- 2.1.3 The Grantor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use of the Easement Area.

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

Annexure Schedule 2

Easement Instrument **Dated** **Page** **of** **Pages**

Exclusion of Schedules

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

Term

4. The easement created by this Easement Instrument is to continue in perpetuity.

Temporary Suspension

5. The Grantee (not being a member of the public) may close all or part of the Easement Area and suspend public access to it if reasons of public safety or emergency require closure, or otherwise in accordance with the provisions of section 13 of the Conservation Act 1987.

Dispute

- 6.1 If a dispute arises between the Grantor and Grantee (not being a member of the public) concerning the rights created by this Easement Instrument the parties are to enter into negotiations in good faith to resolve it.
- 6.2 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.
- 6.3 If the dispute is not resolved within 21 days or such other period, as agreed to in writing between the parties, after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated.
- 6.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

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

Annexure Schedule 2

Easement Instrument Dated Page of Pages

Notice

- 7.1 A notice to be given under this easement 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.
- 7.2 If clause 7.1(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.

Special Terms

8. The standard easement terms contained above must be read subject to any special easement terms set out below. The Grantee (not being a member of the public) has the right:
- 8.1 To mark the Easement Area as appropriate.
 - 8.2 To erect and maintain stiles.
 - 8.3 To erect and maintain signs informing the public of their rights and responsibilities in relation to the Easement Area.
 - 8.4 To erect and maintain fencing around Parking Areas.
 - 8.5 To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 8.1 to 8.4
- 9 In doing any of the matters specified in clause 8, the Grantee (not being a member of the public):
- 9.1 Must take reasonable and proper care not to damage any property of the Grantor and must properly repair any such damage;
 - 9.2 Must, upon completion of any work on or over or immediately adjacent to the Easement Area, restore the surface as nearly as possible to its former condition.
10. The Grantor must install gates no less than four metres in width where fence lines cross the Easement Area and keep the gates unlocked at all times unless otherwise agreed with the Grantee (not being a member of the public).
11. The Grantee will not deposit rubbish on the Easement Area.
12. No dogs or firearms are permitted on the Easement Area.

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

Annexure Schedule 2

Easement Instrument	Dated	Page	of	Pages
---------------------	-------	------	----	-------

13	The Easement Area between points "h-i-j" is closed between 10 October and 5 December (both dates inclusive). The balance of the Easement Area is not subject to a closure period.			
----	---	--	--	--

14	The Grantee will not deposit rubbish on the Easement Area.			
----	--	--	--	--

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

TIMBURN LEASE SCHEDULE

TIMBURN LEASE SCHEDULE

CONTENTS

- Part 1 General Provisions
- Part 2: Public Access Foot Easement
- Part 3: Public Access Foot and Mountain Bike Easement in Gross
- Part 4: Conservation Management Easement Timburn
- Part 5: Covenant
- Part 6: Indicative Specifications for Fencing, Benching, Stock water Holes and Track

PART 1: GENERAL PROVISIONS

INTRODUCTION

This Schedule relates to the Lease described as the Timburn Lease.

1. Interpretation

1.1 In this Schedule, unless the context otherwise requires:

Commissioners Consideration means the amount payable by the Commissioner to the Holder by equality of exchange for the surrender of the leasehold interest in the Timburn Lease in respect of the Timburn Schedule One Land, as specified in the relevant Notice;

Conservation Management Easement Timburn means an easement to provide access for employees, tenants, agents, contractors and invitees of the Minister on foot, by horses or by motor vehicles, with or without machinery and implements of any kind for conservation management purposes, over that part of the Lease land marked as route "f-d-e", and "d-d1" shown on Diagram D and marked on Plan 2, in the proposed form attached as Part 4;

Covenant means the conservation covenant providing for the management of 965 hectares of the Lease Land shaded in yellow on Plan 2 within Timburn for the purposes of preserving the short tussock grasslands, *Chionochloa rigida* grasslands and native shrublands, in the proposed form attached as Part 5;

Easements mean the:

Public Access Foot Easement;

Public Access Foot and Mountain Bike Easement in gross; and

Conservation Management Easement Timburn;

Holder for the purposes of this Schedule means the lessee of the Timburn Lease;

Holder's Consideration means the amount payable by the Holder to the Commissioner by equality of exchange for the freehold of the Timburn Schedule Three Land as specified in the relevant Notice;

Lease Land means 5131.6795 hectares more or less being Part Run 237G and being the land comprised and described in folio number OT386/119 (Otago Land Registry) subject to:

- (a) Land Improvement Agreement 358307;
- (b) Land Improvement Agreement 564185;
- (c) Land Improvement Agreement 829004;
- (d) Mortgage;

Mortgage means mortgage 5753562.3 registered against the Timburn Lease;

Mortgagee means the Holder's mortgagee of the Timburn Lease being Rabobank New Zealand Limited;

Public Access Foot Easement means an easement over that part of the Lease Land marked route "d-d1" shown on Diagram D and marked on Plan 2, in the proposed form as set out in Part 2;

Public Access Foot and Mountain Bike Easement in Gross means an easement in gross over that part of the Lease Land marked routes "c-d-f", "u-x", "u-v" shown on Diagram E and marked on Plan 1, in the proposed form as set out in Part 3;

Settlement Date means the date specified in paragraph 4 of this schedule;

Substantive Proposal means this substantive proposal that the Commissioner puts to the Holder including this Schedule for the Timburn Lease;

Timburn Lease means the lease comprised and described in folio number OT386/119 (Otago Land Registry) issued under the Land Act 1948, and includes all variations and renewals of that lease;

Timburn Schedule One Land means 15 hectares of the Lease Land being either side of the Coal Creek shaded pink and marked as CA2 on Diagram D and marked on Plan2;

Timburn Schedule Three Land means 5117 hectares of the Lease Land, as outlined in green on the Plans;

- 1.2 Unless modified by this Schedule the terms defined in the Substantive Proposal have the same meaning when used in this Schedule.

2. Implementation of Substantive Proposal

- 2.1 In addition to the provisions of clauses 1.16 of the Substantive Proposal the following provisions apply to the implementation of the Substantive Proposal in respect of the Timburn Lease
- 2.2 Under sections 65, 66 and 69 of the Act, upon registration of the Final Plan and this Substantive Proposal under section 64 of the Act:
- (a) the Timburn Schedule One Land will be restored to full Crown ownership and control as conservation area; and
 - (b) subject to paragraph 2.6 below, the Commissioner will dispose of the Timburn Schedule Three Land to the Holder (subject to the encumbrances specified in paragraph 1.1(a) of Schedule Three) under the provisions of the Land Act 1948 by requesting that the Surveyor General issue a certificate under section 116 of the Land Act 1948 to the Registrar and that the Registrar issue a certificate of title for the Timburn Schedule Three Land in the name of the Holder;
- 2.3 The Timburn Schedule One Land will vest in the Crown freed and discharged from all mortgages, charges, claims, estates and interests.
- 2.4 The Commissioner will meet the costs for the survey (if any) of the Lease Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Timburn Schedule Three Land.
- 2.5 The Timburn Lease will remain in force until a certificate of title is issued for the Schedule Three Land, and at this time the Timburn Lease will, under section 69(2) of the Act, be deemed to be surrendered in respect of the Lease Land.
- 2.6 Following registration of the Final Plan and this Substantive Proposal, the Commissioner must promptly:
- (a) prepare execution documents for the Easements and the Covenant in the forms attached to this Substantive Proposal and forward the execution documents to the relevant parties to be signed;
 - (b) under section 80 of the Act, agree with the Minister that the Minister should acquire the Conservation Management Easement Timburn, and give to the Minister the other Easements and create the Covenant on the terms and conditions specified in this Substantive Proposal and the

Minister must sign the execution copies of the Easements and the Covenant and return these to the Commissioner;

- (c) sign the execution documents for the Easements and the Covenant; and
- (d) lodge the documents for the Easements and the Covenant for registration at the Otago Land Registry once the documents are signed (as the case may be) by the Commissioner, the Holder and the Minister.

2.7 Notwithstanding any other provision in this Substantive Proposal, the Commissioner will not request that the Surveyor General issue a certificate under paragraph 2.2.(b) unless and until:

- (a) The Commissioner has received the Holder's Payment from the Holder under clause 11.1 of the Substantive Proposal, and the Commissioner has received all other money payable by the Holder under this Substantive Proposal;
- (b) The Commissioner has received the respective Holder's Payments from the other Holders under the Relevant Schedules and the Commissioner has received all other money payable by the other Holders under the Substantive Proposal;
- (c) the Holder has provided to the Commissioner the duplicate of the Timburn Lease (if the Holder has this document) and has signed and returned to the Commissioner any other documents reasonably required by the Commissioner to be signed by the Holder to give effect to this Substantive Proposal; and
- (d) the Holder has procured the Mortgagee's execution of a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder has executed a registrable new mortgage document (in relation to the Timburn Schedule Three Land only) and if the Mortgagee holds the duplicate of the Lease, the Holder has procured that Mortgagee to allow the Holder to provide the Timburn Lease to the Commissioner and the Holder has provided these documents to the Commissioner.

2.8 The Commissioner will lodge the discharge of the Mortgage, the duplicate of the Timburn Lease, and any new mortgage document at the Otago Land Registry, to be registered against the certificate of title to be issued under the Land Transfer Act 1952 for the Timburn Schedule Three Land, so that the certificate of title for the Timburn Schedule Three Land will issue subject to any new mortgage.

3. Settlement Date

The Settlement Date for the disposal of the Timburn Schedule Three Land to the Holder by freehold disposal will be the day that is five working days following the day that the Final Plan and a copy of this Substantive Proposal are registered at the Otago Land Registry under section 64 of the Act.

4. Lowest price

4.1 The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Timburn Schedule Three Land under section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Holder's Consideration.

4.2 The Commissioner's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Timburn Schedule One Land under section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Commissioner's Consideration.

5. Consents

5.1 Under section 60(4) of the Act the Holder must obtain the written consent to the Holder's acceptance of this Substantive Proposal from all persons having an interest in the Lease Land (other than the Holder), including, but not limited to:

the Mortgagee;

the grantee of Land Improvement Agreements 358307, 564185, and 829004 registered against the Timburn Lease; and

any other person that the Commissioner reasonably believes has an interest in the Lease Land or who the Holder reasonably believes has an interest in the Lease Land.

5.2 In addition to obtaining the consents of the persons outlined in paragraph 5.1 of this Schedule, the Holder must also obtain:

all corporate consents; and

if required, consent under the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995,

necessary for the Holder to accept this Substantive Proposal.

- 5.3 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 at the same time as the certificate of title for the Timburn Schedule Three Land issues.
- 5.4 The Commissioner will provide the Mortgagee with an undertaking that, subject to the provisions in paragraph 2.6 being satisfied, it will register the discharge of the Mortgage and register the new mortgage against the certificate of title for the Timburn Schedule Three Land at the same time as the certificate of title for the Timburn Schedule Three Land issues.

6. Fencing

- 6.1 If:
- the Holder has accepted this Substantive Proposal in accordance with clause 4; and
- that acceptance has taken effect pursuant to section 60(4) of the Act,
- then the parties will comply with paragraphs 2.2 – 2.4 of this Lease Schedule for Timburn where applicable to the Land.
- 6.2 The Commissioner will, at its cost, erect new or upgraded fencing as applicable in accordance with the fencing specification attached to the Relevant Schedule and as shown on the Plan. The position of the fenceline has been identified by using satellite positioning technology (GPS) and by pegging.
- 6.3 The Commissioner will erect the fencing referred to in paragraph 6.2 of this Schedule Three according to the specifications in the Relevant Schedule.
- 6.4 The ongoing maintenance of the fencing referred to in paragraph 6.2 of this Schedule Three on the Plan will be under the terms of the Fencing Act 1978.
- 6.5 The Commissioner will, at its cost carry out the benchmarking as marked red on the Plan in accordance with the specifications in section 3 of Part 6.
- 6.6 The Commissioner will, at its cost excavate water holes in accordance with the specifications in section 4 of Part 6.
- 6.7 The Commissioner will at its cost construct a track along the route marked "d-e" on Diagram D, in accordance with the specifications in section 5 of Part 6.

7. Address of Holder

For the purposes of clause 16.4 of the Substantive Proposal, the address of the Holder of the Timburn Lease is:

**John Clement Anton Lucas, Elizabeth Ann Lucas and
Lucas Family Trust Limited
Private Bag
Tarras
OTAGO**

**Part 2: PROPOSED FORM for PUBLIC ACCESS FOOT EASEMENT
TIMBURN**

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

Land Registration District

OTAGO

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

Transferor

Surname(s) must be underlined

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

Transferee

Surname(s) must be underlined

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

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

Public Access Easement to conservation area under section 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

Operative Clause

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

Dated this day of

Attestation

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

Signed in my presence by the Transferor

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Signature [common seal] of Transferor

Certified correct for the purposes of the Land Transfer Act 1952

Annexure Schedule

Transfer Instrument Dated Page of Pages

Definitions

1. In this transfer unless the context otherwise requires:
 - 1.1 "Easement Area" means that part of the Servient Land being [10] metres wide which (*is currently marked as "d-d¹" on the Designations Plan*) is marked "[]" on Deposited Plan/S.O. Plan No [].
 - 1.2 "Dominant Land" means the land administered by the Department of Conservation and contained in Certificate of Title "[]".
 - 1.3 "Servient Land" means the land owned by the Transferor and described on page 1.
 - 1.4 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public.
 - 1.5 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

Standard Easement Terms

Access

- 2.1 The Transferee has the right in common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot for the purpose of obtaining access to the Dominant Land.
- 2.2 The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area.

Exclusion of Implied Rights and Powers

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

Term

4. The easement created by this transfer is to be appurtenant to the Dominant Land in perpetuity.

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

Annexure Schedule

Transfer Instrument Dated Page of Pages

Temporary Suspension

5. 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

6.1 If a dispute arises between the Transferor and Transferee (not being a member of the public) concerning the rights created by this transfer the parties are to enter into negotiations in good faith to resolve it.

6.2 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.

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

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

Notice

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

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

7.2 If clause 7.1(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.

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

Annexure Schedule

Transfer Instrument Dated Page of Pages

7.3 If clause 7.1(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

8 The Transferee (not being a member of the public) has the right:

8.1 To mark the Easement Area as appropriate.

8.2 To erect and maintain stiles.

8.3 To erect and maintain signs informing the public of their rights and responsibilities in relation to the Easement Area.

8.4 To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 8.1 to 8.3

9 In doing any of the matters specified in clause 8, the Transferee(not being a member of the public):

9.1 Must take reasonable and proper care not to damage any property of the Transferor and must properly repair any such damage;

9.2 Must, upon completion of any work on or over or immediately adjacent to the Easement Area, restore the surface as nearly as possible to its former condition.

10. The Transferor must install gates no less than four metres in width where fence lines cross the Easement Area and keep the gates unlocked at all times unless otherwise agreed with the Transferee (not being a member of the public).

11. The Transferee will not deposit rubbish on the Easement Area.

12. No dogs or firearms are permitted on the Easement Area.

13 The Easement Area is closed between 10 October and 5 December (both dates inclusive).

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

Annexure Schedule

Transfer Instrument Dated Page of Pages

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 _____

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

**Part 3: PROPOSED FORM for PUBLIC ACCESS FOOT AND MOUNTAIN
BIKE EASEMENT in Gross**

Timburn.
Easement in Gross – Public

TRANSFER GRANT OF EASEMENT IN GROSS

Public Foot and Non Motorised Vehicle Access

Land Transfer Act 1952

RELEASED UNDER THE OFFICIAL INFORMATION ACT
Transfer Instrument

Section 90, Land Transfer Act 1952

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

Land Registration District

Otago

Grantor

Surname(s) must be underlined

JOHN CLEMENT ANTON LUCAS, ELIZABETH ANN LUCAS AND HELEN LESLEY PLEDGER by the
COMMISSIONER OF CROWN LANDS, the deemed owner pursuant to Section 80 Crown Pastoral Land Act 1998

Grantee

Surname(s) must be underlined

HER MAJESTY THE QUEEN, acting by and through the MINISTER OF CONSERVATION

"Grant" of easement or profit(s) à prendre or creation of covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this _____ day of _____

Attestation

Signed by acting under written delegation from the COMMISSIONER OF CROWN LANDS Signature [common seal]	Signed in my presence by the Grantor _____ Signature of witness Witness to complete in BLOCK letters (unless legibly printed) Witness name Occupation Address
	Signed for and on behalf of HER MAJESTY THE QUEEN by under a written delegation Signature [common seal]

Certified correct for the purposes of the Land Transfer Act 1952

[Solicitor for] the Grantee

Annexure Schedule 1

Easement Instrument Dated Page of Pages

Schedule A

Continue in additional Annexure Schedule if required

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT in gross)
Right of Way		[To be inserted]	In Gross

Easements or profits à prendre rights and powers (including terms, covenants, and conditions)

Delete phrases in [] and insert memorandum number as required. Continue in additional Annexure Schedule if required

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Ninth Schedule of the Property Law Act 1952.

The implied rights and powers are [varied] [negated] [added to] or [substituted] by:

[Memorandum number _____ registered under section 155A of the Land Transfer Act 1952]

[the provisions set out in Annexure Schedule 2].

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

Annexure Schedule 2

Easement Instrument Dated Page of Pages

Temporary Suspension

5. The Grantee (not being a member of the public) may close all or part of the Easement Area and suspend public access to it if reasons of public safety or emergency require closure, or otherwise in accordance with the provisions of section 13 of the Conservation Act 1987.

Dispute

- 6.1 If a dispute arises between the Grantor and Grantee (not being a member of the public) concerning the rights created by this Easement Instrument the parties are to enter into negotiations in good faith to resolve it.
- 6.2 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.
- 6.3 If the dispute is not resolved within 21 days or such other period, as agreed to in writing between the parties, after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated.
- 6.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

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

Annexure Schedule 2

Easement Instrument Dated Page of Pages

Notice

7.1 A notice to be given under this easement 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.

7.2 If clause 7.1(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.

Special Terms

The standard easement terms contained above must be read subject to any special easement terms set out below.

8 The Grantee (not being a member of the public) has the right:

8.1 To mark the Easement Area as appropriate.

8.2 To erect and maintain stiles.

8.3 To erect and maintain signs informing the public of their rights and responsibilities in relation to the Easement Area.

8.4 To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 8.1 to 8.3

9 In doing any of the matters specified in clause 8, the Grantee (not being a member of the public):

9.1 Must take reasonable and proper care not to damage any property of the Grantor and must properly repair any such damage;

9.2 Must, upon completion of any work on or over or immediately adjacent to the Easement Area, restore the surface as nearly as possible to its former condition.

10. The Grantor must install gates no less than four metres in width where fence lines cross the Easement Area and keep the gates unlocked at all times unless otherwise agreed with the Grantee (not being a member of the public).

11. The Grantee will not deposit rubbish on the Easement Area.

12. No dogs or firearms are permitted on the Easement Area.

13 The Easement Area is closed between 10 October and 5 December (both dates inclusive).

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

Part 4: PROPOSED FORM for CONSERVATION MANAGEMENT EASEMENT
TIMBURN

DATED _____

Between

COMMISSIONER OF CROWN LANDS
("the Owner")

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

JOHN CLEMENT ANTON LUCAS, ELIZABETH ANN LUCAS AND LUCAS FAMILY TRUST LIMITED by the COMMISSIONER OF CROWN LANDS, the deemed owner pursuant to Section 80 Crown Pastoral Land Act 1998

AND

MINISTER OF CONSERVATION

BACKGROUND

- A. The Commissioner of Crown Lands is deemed to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land contains certain Values.
- 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. Except for purposes of clauses 3, 5, 7, 8.5, 9 and 10 it also includes the Commissioner of Crown Lands.
- "Values"** means any or all of the Land's natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
- "Working Day"** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

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

2. OBJECTIVE OF THE COVENANT

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

3. THE OWNER'S OBLIGATIONS

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

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

3.2 The Owner must:

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

4. THE MINISTER'S OBLIGATIONS

- 4.1 The Minister must have regard to the objective in clause 2.1 specified in Schedule 1 clause 3 when considering any requests for approval under this Covenant.
- 4.2 The Minister must repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

5. IMPLEMENTATION OF OBJECTIVES

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

6. DURATION OF COVENANT

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

7. OBLIGATIONS ON SALE OF LAND

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

8. MISCELLANEOUS MATTERS

8.1 Rights

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

8.2 Trespass Act:

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

8.3 Reserves Act

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

8.4 Titles

- 8.4.1 This Covenant must be signed by both parties and registered against the Certificate of Title to the Land.

8.5 Acceptance of Covenant

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

8.6 Fire

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

9. NOTICES

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

10. DEFAULT

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

11. DISPUTE RESOLUTION PROCESSES

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

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

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

12. JOINT OBLIGATIONS

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

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

Signed by _____ acting under a)
delegation from the Commissioner of Crown Lands)
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

That portion of the land shaded yellow within Timburn on the designations plan.

2. Address for Service

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

C/- Box 5244 Fax (03)477 8626
DUNEDIN

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

Timburn Fax (03) 445 2877
Tarras

3. Values of Land to be Protected

The Land comprises an open landscape devoid of exotic conifers and contains short tussock grasslands, *Chionochloa rigida* grasslands and native shrublands.

The upper reaches of Dunstan Creek have been identified as having high landscape values. The vast open landscape epitomises the South Island pastoral high country. Natural landforms dominate with little in the way of tracking, cleared fence lines, plantations, buildings or wilding trees. The covenant area contributes to the landscape character of the Lindis Ecological District.

SCHEDULE 2

Special Conditions

- 1 Notwithstanding clause 3.1.5 the Owner may aerial oversow and topdress land below 1200 metres above sea level and may use chemical spraying for the control of exotic weeds provided that they are specifically targeted and native vegetation is not affected.
- 2 Notwithstanding clause 3.1.6 the Owner may carry out maintenance of existing tracks, ie. those subject to public access easements, to their original width and standard.
- 3 Notwithstanding Clause 3.2.3 the Minister may undertake control of wildling pines and willows on the Land.
- 4 The Owner may graze the Land with sheep and may also graze up to 56 dry cattle between 1 November and 30 June. Each fenced block within the Land is to be spelled from grazing one year in four.
- 5 Notwithstanding clause 3.1.4, the Owner may maintain or upgrade fences in order to keep them sheep and cattle proof.
- 6 The Owner may request assistance from the Minister in meeting the obligations in clause 3.2.3 and in that part of clause 3.2.1 dealing with compliance with the provisions of, and any notices given under the Biosecurity Act 1993.
- 7 Clause 7.1 and 7.2 are deleted.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

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

Solicitor for the Minister

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH

Part 5: PROPOSED FORM for COVENANT TIMBURN

DATED _____

Between

COMMISSIONER OF CROWN LANDS
("the Owner")

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 JOHN CLEMENT ANTON LUCAS, ELIZABETH ANN LUCAS AND HELEN LESLEY PLEDGER by the COMMISSIONER OF CROWN LANDS, the deemed owner pursuant to Section 80 Crown Pastoral Land Act 1998

AND MINISTER OF CONSERVATION

BACKGROUND

- A. The Commissioner of Crown Lands is deemed to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land contains certain Values.
- 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. Except for purposes of clauses 3, 5, 7, 8.5, 9 and 10 it also includes the Commissioner of Crown Lands.
- “Values” means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
- “Working Day” means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

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

2. OBJECTIVE OF THE COVENANT

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

3. THE OWNER’S OBLIGATIONS

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

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

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

4. THE MINISTER'S OBLIGATIONS

- 4.1 The Minister must have regard to the objective in clause 2.1 specified in Schedule 1 clause 3 when considering any requests for approval under this Covenant.
- 4.2 The Minister must repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

5. IMPLEMENTATION OF OBJECTIVES

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

6. DURATION OF COVENANT

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

7. OBLIGATIONS ON SALE OF LAND

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

8. MISCELLANEOUS MATTERS**8.1 Rights**

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

8.2 Trespass Act:

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

8.3 Reserves Act

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

8.4 Titles

- 8.4.1 This Covenant must be signed by both parties and registered against the Certificate of Title to the Land.

8.5 Acceptance of Covenant

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

8.6 Fire

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

9. NOTICES

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

10. DEFAULT

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

11. DISPUTE RESOLUTION PROCESSES

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

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

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

12. JOINT OBLIGATIONS

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

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

Signed by _____ acting under a)
delegation from the Commissioner of Crown Lands)
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

That portion of the land shaded yellow within Timburn on the designations plan.

2. Address for Service

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

C/- Box 5244 Fax (03)477 8626
DUNEDIN

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

Timburn Fax (03) 445 2877
Tarras

3. Values of Land to be Protected

The Land comprises an open landscape devoid of exotic conifers and contains short tussock grasslands, *Chionochloa rigida* grasslands and native shrublands.

The upper reaches of Dunstan Creek have been identified as having high landscape values. The vast open landscape epitomises the South Island pastoral high country. Natural landforms dominate with little in the way of tracking, cleared fence lines, plantations, buildings or wilding trees. The covenant area contributes to the landscape character of the Lindis Ecological District.

SCHEDULE 2

Special Conditions

- 1 Notwithstanding clause 3.1.5 the Owner may aerial oversow and topdress land below 1200 metres above sea level.
- 2 Notwithstanding clause 3.1.6 the Owner may carry out maintenance of existing tracks, ie. those subject to public access easements, to their original width and standard.
- 3 Notwithstanding Clause 3.2.3 the Minister may undertake control of wildling pines and willows on the Land.
- 4 The Owner may graze the Land with sheep and may also graze up to 56 dry cattle between 1 November and 30 June. Each fenced block within the Land is to be spelled from grazing one year in four.
- 5 Notwithstanding clause 3.1.4, the Owner may maintain or upgrade fences in order to keep them sheep and cattle proof.
- 8 The Owner may request assistance from the Minister in meeting the obligations in clause 3.2.3 and in that part of clause 3.2.1 dealing with compliance with the provisions of, and any notices given under the Biosecurity Act 1993.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

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

Solicitor for the Minister

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH