



**Land Information
New Zealand**
Toitū te whenua

Crown Pastoral Land Tenure Review

Lease name : MT CREIGHTON

Lease number : PO 107

Preliminary Proposal- Part 5

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

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

May

14

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

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

7. OBLIGATIONS ON SALE OF LAND

- 7.1 If the Owner sells, leases, or parts with possession of the Land, or hands over control of the Land to any other person, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, assignee or manager to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, assignee or manager to ensure that on any subsequent sale, lease, assignment, or change in control of the Land, any subsequent purchaser, lessee, assignee or manager must also comply with the terms of this Covenant including this clause.
- 7.2 A Transferee of the land will at law be bound by the registered Covenant. Such transfer is deemed to provide the agreement to comply with the terms of this covenant required by Clause 7.1

8. MISCELLANEOUS MATTERS**8.1 Rights**

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

8.2 Trespass Act:

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

8.3 Reserves Act

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

8.4 Titles

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

8.5 Acceptance of Covenant

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

8.6 Fire

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

9. NOTICES

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, by facsimile, or by email 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 or email, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next working day after the date of dispatch.
- 9.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

10. DEFAULT

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

11. DISPUTE RESOLUTION PROCESSES

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

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

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

12. JOINT OBLIGATIONS

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

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

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

Witness: _____

Address : _____

Occupation: _____

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

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

The Land has an area of approx 590 ha and shaded yellow and labelled CC2 on the Designations Plan.

2. Address for Service¹

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

C/- Box 5244
DUNEDIN

Fax (03) 477 8626

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

Mount Creighton Station Limited
c/- Kensington Swan,
Level 9,
89 The Terrace,
Wellington.

Fax: (04) 472 2291

email: gerald.fitzgerald@kensingtonswan.com

Enquiries.External@kensingtonswan.com

3. Values of Land to be Preserved

Landscape Amenity:

Dukes Tarn and Lake Luna are nestled within a small montane valley beneath Twenty-five Mile Range and Ben More. The lake is at 810 metres and set within a predominantly tussock landscape but includes expanding pockets of beech, manuka shrubland, and sub alpine shrubland. The landform around Luna is characteristically lumpy and rippled – the result of both glaciation and mass movement. North of Lake Luna is a small alluvial and bouldery valley floor consisting of fans and alluvial deposits. Tussock within the Luna catchment is generally in very good condition. The visual effects of pastoralism on tussock cover are very localised. Tall tussock is depleted on knobs and many lower sunny faces, toe slopes and the valley floor. The character of this montane valley in landscape terms remains distinctly natural.

The high basins above Luna appear to be highly natural. Rock outcrops, bluffs and rock buttresses occur at all altitudes. The vegetation mix includes a diverse range of tussock, manuka, beech, sub alpine shrubland, matagouri and exotic grasses and herbs. Manuka is dominant on steep very rocky slopes and gullies.

Other common characteristics within Luna Creek and tributaries include massive slips and slumping, boulders and schist slabs. The whole of the Luna unit contains remote backcountry characteristics.

Visual & Scenic Values:

The Luna catchment is visually highly impressive derived from the inherent natural character of the landscape. The characteristics, which contribute to these high visual values, include:

- The present of waterbodies (Lake Luna and Dukes Tarn) set within a sub alpine montane basin.
- The impressive array of landforms derived from glacial, fluvial, and mass movement processes including ice sculptured lumpy landform, fans and ripply slump topography.
- Impressive views to rugged ranges and peaks including Mount Larkins, Major Peak and Ben More.
- The diverse range of vegetation types from tussock to subalpine and alpine shrubland, and montane beech forest.

The wild and rugged landform of steep slopes, rocky bluffs, and gorges also contribute to the high scenic values.

Significance Evaluation Summary:

Criteria	Values	Comment
Intactness	High	Overall high. Snow tussock depleted in localised areas.
Legibility	High	Landform processes very legible.
Aesthetic Factors	High	High level of coherence. Lake Luna and Dukes Tarn in their montane tussock setting are highly distinctive and memorable.
Historic Factors		Cultural values associated with mustering and recreation.
Visibility	Low	Viewed most frequently from the air being close to Queenstown.

Significance	High	Important lake within subalpine tussock basin.
Vulnerability	High	Existing character vulnerable to any physical or land use changes.

Nature Conservation:**Natural Environment - Vegetation**

The vegetation on the east faces above Lake Luna has beech forest filling parts of the lower gullies and along the lake shore above Luna hut. Manuka is scattered across the slopes and *Olearia bullata*, *Hebe salicifolia* and *Coprosma rugosa* are found in the wetter grassland or in gullies, while *Phormium cookianum* and *Coriaria sarmentosa* occur around bluffs. *Aristotelia fruticosa* and wild gooseberry (*Ribes uva-crispa*) are found near Luna hut along with the only sweet brier (*Rosa rubiginosa*) noticed in the western half of the property.

Around Lake Luna are sedges including *Carex coriacea*, *C. kaloides* and *C. petriei* and *Eleocharis acuta* with a wetland herb *Hydrocotyle sulcata*. Browntop and sweet vernal with Yorkshire fog (*Holcus lanatus*) are the main cover at the north end of the lake and on the terrace top above the hut and as far as the fence. Above, there is good narrow-leaved tussock and hard tussock with *Dracophyllum uniflorum*, *Raoulia subsericea*, browntop, blue tussock, *Gaultheria depressa* and small herbs with scattered shrubs of *Dracophyllum longifolium*, *Hebe anomala*, mountain beech and cottonwood. The terrace riser has a range of more than 25 species of mainly native plants including mountain beech seedlings, *Coprosma* aff. *parviflora*, and manuka. The beech forest edge just above Luna hut shows a contrast between the heavily grazed and seldom grazed vegetation. Young beech are spreading out into the tussock above the fence and up slope.

North faces of the Twenty-Five Mile Range are very steep with numerous, more or less vertical rock ribs. Shrubland of manuka etc is returning along the lower slopes with narrow-leaved tussock grassland covering most of the upper slopes except the exposed rock ribs. *Dracophyllum uniflorum* is prominent on south faces especially where rocky.

At 1300 m on a 30° southwest face the cover is narrow-leaved tussock 60-75%, bare ground and litter 15%, *Dracophyllum uniflorum* 10%, *Celmisia lyallii* to 15%, *Leucopogon fraseri*, *Epilobium alsinoides*, *Rytidosperma pumilum*, *Poa colensoi*, *Luzula rufa*, *Agrostis petriei*, *Pimelea oreophila*, *Hebe hectorii*, *Lycopodium fastigiatum*, *Raoulia subsericea*, *Aciphylla* "lomon", lichens and moss. The steeper, rockier northeast face is more open and *Pentachondra pumila*, *Gaultheria depressa* and *Rytidosperma setifolium* can be common. The small shrub *Leucopogon suaveolens* and cottonwood (*Ozothamnus vauvilliersi*) occur as scattered plants. Occasional sheep's sorrel on open ridge tops is the only introduced species recorded above about 1100 m.

Similar vegetative cover occurs down to and generally below 1000 m on these slopes. A periodically wet hollow at 1169 m has an edge of dead tussock, killed by persistent high water level. The central area is moss (*Polytrichum* sp.) with *Carex gaudichaudiana*, *Juncus gregiflorus*, *Poa breviculmis*, *Rytidosperma pumilum*, browntop and sweet vernal.

Below about 1000 m narrow-leaved tussock varies from dense to scattered plants with sweet vernal common. Manuka patches appear with *Hebe anomala*, *Coriaria plumosa*, *C. sarmentosa* and in gullies, *Coprosma rugosa*, *Olearia bullata*, *Hebe salicifolia* and *Phormium cookianum*. The most open vegetation occurs on the steep, rocky and sunny north faces and spurs below 1000 m with narrow-leaved tussock 20%, *Raoulia subsericea* 20%, *Celmisia lyallii* 5%, *Pentachondra pumila* 15%, *Leucopogon fraseri* 10%, hard tussock 10%, *Rytidosperma pumilum* 5%, *Gaultheria depressa* 5%, lichens 10%, *Luzula rufa*, *Dichelachne crinita*, blue tussock and moss. *Oreobolus pectinatus* occurs on damp sites. Other plants of the lower tussock slopes are *Elymus solandri*, *Euchiton audax*, *Acaena caesiiglauca*, *Blechnum penna-marina*, *Holcus lanatus* and *Linum catharticum*. A steep west face at 870 m has a cover of narrow-leaved tussock of 60%, hard tussock 10%, sweet vernal 10%, *Raoulia subsericea* 20%, litter 10% with *Leucopogon fraseri*, *Epilobium atriplicifolium*, *E. chlorifolium*, *Gaultheria depressa*, *Linum catharticum*, cats ear, manuka and a few *Dracophyllum uniflorum*.

Wildlife Habitat - Birds

Present in the middle part of the property around Lake Luna are NZ falcon, kea, bellbird, brown creeper, fantail, grey warbler, harrier hawk, paradise shelduck, NZ pipit, rifleman and tomtit.

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The presence of the endemic and threatened yellow-crowned parakeet which is ranked as gradual decline is also significant (Heather and Robertson 1996; Hitchmough in press). Although only recorded in the western part of the property yellow-crowned parakeets can be expected to be present and breeding throughout forest areas of the property.

SCHEDULE 2

Special Conditions

- 1 Clause 3.1.1 is deleted and replaced with:
Sheep only may graze the Land at a stocking rate that does not, in the sole opinion of the Minister, adversely impact on the Values.
- 2 Notwithstanding clause 3.2.1, the Owner must control wilding pines, hawthorn, willows, exotic broom and gorse including taking reasonable steps to prevent these species from seeding on the Land. The Owner will bear the cost of this work. Should the Owner fail to undertake this work the Minister may arrange to have this work undertaken and the Owner will be liable to meet the costs, which may include the reasonable costs of the Minister. Where weed problems are significant, the Owner will submit to the Minister for approval a plan for the control of weeds.
- 3 The Land will be monitored to ensure that the conditions of the covenant have been adhered to. The details of monitoring including timing, methods, results and consequential actions are set out in Schedule 3.
- 4 Feral and wild animals including rabbits, possums, deer, goats and pigs will be controlled by the Owner to low levels to avoid damage to the Land.

SCHEDULE 3**Description of the monitoring programme to be established****1 Responsibilities**

A vegetation monitoring programme will be established at the commencement of the covenant term by the Minister. A monitoring report will be produced to describe the programme, methods and results and to enable successful re-monitoring. This report will be provided to the Owner. Subsequent re-monitoring is to be organised by the Owner with the assistance of the Minister.

The Minister will be party to the re-monitoring by providing one staff member to assist with the physical monitoring. The Minister will be consulted as to the selection of a suitably qualified monitoring provider. The Minister will be given a copy to the monitoring report.

2 Costs

The Minister is responsible for the cost of establishing the monitoring and the initial report. The Owner will be responsible for the cost of repeat monitoring and the repeat report write up. The Minister will cover her or his own staff cost for re-monitoring.

3 Monitoring Methods

A series of general repeatable photo point sites will be established. The purpose of these photopoints is to detect deterioration of the tussock, shrublands and forest being recorded as a consequence of grazing impacts and other management practices.

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

Within the Covenant area photopoints will consist of a series photos to ensure that conditions of the covenant are complied with.

- general monitoring: a series of general landscape photos.
- within shrubland areas will include: obvious fragmentation, tracking, gaps and canopy breakdown.
- within forest areas will include: observations of stock damage to the understory and regeneration of the forest

The Minister will have the discretion to require additional methods of monitoring to be used if results from photopoints or observations are found to be unsuitable for measuring the values being protected.

4 Monitoring Frequency

The forest will be re monitored every 5 years or at some other interval agreed between the parties.

5 Monitoring Results

Following monitoring, results will be discussed between the Owner and the Minister.

Should it be noted as a result of monitoring that grazing or other pastoral practices are having a detrimental impact on the Values then the Owner in consultation with the Minister, will take positive action to prevent this continuing, which may include such measures as fencing, reducing stock or pest numbers or changing stock types.

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SCHEDULE 4

PLAN

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

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

Solicitor for the Minister

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH