

## **Crown Pastoral Land Tenure Review**

**Lease name : OBELISK**

**Lease number : PO 264**

### **Substantive Proposal**

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

**EXECUTION  
COPY**

**PROPOSAL FOR REVIEW OF CROWN LAND  
Under Part 2 of the Crown Pastoral Land Act 1998**

**Date:** 30 MARCH 2016

**Parties**

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**Holder:** Earnsclough Station Lands Limited

C/- A J McKenzie & Co Limited  
Level 7, John Wickliffe House  
265 Princes Street  
DUNEDIN 9016

**Commissioner of Crown Lands:**

c/- Ken Taylor  
Tenure Review Manager  
Rural Value  
43 Tarbert Street  
Alexandra 9320

**The Land**

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**Lease:** Obelisk Station

**Legal Description:** Sections 1, 3, 4, 8-19 and Part Section 2 Block II, Cairnhill Survey District

**Area:** 2774.5450 hectares

**Certificate of Title/Unique Identifier:** OTA2/1315

**Summary of Designations**

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Under this Proposal, the Land is designated as follows:

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

**1 The Plan**

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## **2 Conditions**

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

## **3 Settlement**

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

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

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

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

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

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

or

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

(i) has been agreed or determined; and

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

## **4 Holder's Payment**

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- 4.1 By 3.00 p.m. on the Settlement Date, the Holder must pay the Holder's Payment and all other money payable to the Commissioner or the duly appointed agent of the Commissioner by bank cheque without set-off or deduction of any kind in accordance with the settlement requirements of the Commissioner.
- 4.2 If the Holder fails to pay the Holder's Payment or any part of it or any other money to the Commissioner or to the duly appointed agent of the Commissioner on the Settlement Date clause 19 will apply.

## **5 Commissioner's Payment**

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

## **6 Vesting of Crown Land**

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

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

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

## **8 Registration of Documents**

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

## **9 Consents**

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

- 9.4 The Holder will procure the Mortgagee to execute a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder will execute registrable new mortgage documents and forward these to the Commissioner to be registered as set out in clause 8.
- 9.5 If required by the Mortgagee, the Commissioner will provide an undertaking that, subject to the provisions of clause 7 being satisfied, the Commissioner will register the discharge of the Mortgage and register any new mortgage against the certificate of title for Freehold Land at the same time as the certificate of title for the Freehold Land issues.

## **10 Continuation of Lease**

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

## **11 Fencing and Construction Works**

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



the Commissioner may, acting reasonably, elect to do any one or more of the following:

- (iii) erect the Fencing in a position different from that shown on the Plan;
- (iv) erect the Fencing over a shorter distance than that shown on the Plan; or
- (v) erect the Fencing to specifications different from those in Appendix 3.

11.3 If the Commissioner has not completed the Fencing by the Settlement Date, the Holder agrees that the Commissioner may register a covenant, on terms entirely satisfactory to the Commissioner (in the Commissioner's sole discretion), over the Freehold Land to enable the Commissioner to complete the Fencing. The Holder will do all things necessary (including signing any document) to enable the Commissioner to register such a covenant.

11.4 The ongoing maintenance of the Fencing referred to in clauses 11.1 and 11.2 will be subject to the terms of the Fencing Act 1978.

11.5 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, the Commissioner will, subject to clause 11.6, undertake the construction works set out in Appendix 3 on the terms and conditions set out in Appendix 3 ("the Construction Works").

11.6 If any Construction Works for which the Commissioner is liable, or jointly liable with the Holder, require a resource consent or any other consent from any local or territorial authority ("the Works Consent"), the following provisions shall apply:

- (a) The Commissioner shall use reasonable endeavours to obtain the Works Consent within 6 months of this Proposal taking effect pursuant to the Act.
- (b) If the Works Consent:
  - (i) is not obtained within 6 months of this Proposal taking effect pursuant to the Act; and/or
  - (ii) is obtained on terms which are not satisfactory to the Commissioner in all respects;

the Commissioner may, acting reasonably, elect to vary the extent of the Construction Works in question and/or the terms and conditions upon which they are carried out.

## **12 Apportionments**

12.1 Rent payable under the Lease in respect of the Freehold Land shall be apportioned as follows:

- (a) Rent paid or payable will be apportioned on the Settlement Date as at the Settlement Date and either deducted from or added to (as the case may be) the amount required to settle.
- (b) Notwithstanding that the Lease continues in effect until a certificate of title issues for the Freehold Land, the Holder shall not be required to pay any rent under the Lease for the Freehold Land from the Settlement Date.

12.2 Rent paid or payable under the Lease for the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.

12.3 All rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Freehold Land will, unless otherwise agreed by the parties, be apportioned on the Settlement Date as at the Settlement Date.

12.4 All rates, levies and all other incomings and outgoings and other charges receivable from or charged upon the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.

- 12.5 Following the date that a certificate of title issues for the Freehold Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will pay to the Commissioner, any additional amounts due because of any payments made or received by one party on behalf of the other for the period from the Settlement Date to the date on which a new certificate of title issues for the Freehold Land.

### **13 Risk**

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

### **14 Survey**

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

### **15 Holder's Acknowledgements**

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- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) it is obtaining the freehold interest in the Freehold Land:
    - (i) "as is", solely in reliance on its own investigations and judgement; and
    - (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
  - (b) the Holder has carried out all inspections of the Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
  - (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
    - (i) the Resource Management Act 1991 any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
    - (iii) the Building Act 2004; and
- the Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this clause 15;

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

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

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

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**17 Acceptance**

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

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**18 Solicitors Certificate**

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

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**19 Default**

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

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**20 Goods and Services Tax**

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- 20.1 Unless the context otherwise requires, words and phrases used in this clause have the same meaning as in the GST Act.
- 20.2 If the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are taxable supplies under the GST Act, then:



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

## **21 Lowest price**

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

## **22 Costs**

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- 22.1 The Commissioner will meet the costs of the survey (if any) of the Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Freehold Land.

- 22.2 The Holder is responsible for all costs the Holder incurs in respect of and incidental to the Tenure Review. In particular, but without limitation, the Holder shall bear all its costs in relation to the review of all documentation forming part of the Tenure Review (including this Proposal), and all professional advice provided to or sought by the Holder.

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**23 No nomination or assignment**

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

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**24 Recreation Permit**

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

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**25 Consents for Activities**

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

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**26 General**

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



- (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
- (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), on the working day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and
- (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

## 27 Interpretation

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### 27.1 Definitions

In this Proposal unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

- (a) a reference to a certificate of title includes a reference to a computer register;
- (b) words importing a gender include all genders;
- (c) reference to a statute includes reference to all enactments that amend or are passed in substitution for the relevant statute and to all regulations relating to that statute;
- (d) words in the singular include the plural and vice versa;

- (e) reference to a month means a calendar month;
- (f) reference to a person means an individual, a body corporate, an association of persons (whether corporate or not), a trust or a state or agency of a state (in each case, whether or not having separate legal personality);
- (g) references to sections, clauses, sub-clauses, parts, annexures, attachments, appendices, schedules, paragraphs and sub-paragraphs are references to such as they appear in this Proposal and form part of this Proposal;
- (h) headings are included for ease of reference only and will not affect the construction or interpretation of this Proposal;
- (i) all monetary amounts are expressed in New Zealand currency;
- (j) references to obligations includes reference to covenants, undertakings, warranties and, generally, obligations or liabilities of any nature properly arising whether directly or indirectly, under or in respect of the relevant contract, agreement or arrangement;
- (k) all references to times are references to times in New Zealand;
- (l) if the Holder comprises more than one person, each of those person's obligations, as Holder, will be both joint and several.

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

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### **1 Details of Designation**

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- 1.1 Under this Proposal that part of the land shown marked CA1 shaded pink on the Plan, being 906 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.
- 1.2 Under this Proposal that part of the land shown marked SR shaded pink on the Plan, being 341 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as scenic reserve.

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

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### **1 Details of designation**

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- 1.1 Under this Proposal that part of the land shown marked HR and shaded dark pink on the Plan, being 49 hectares (approximately) is designated as land to be restored to or retained in Crown control as a Historic Reserve subject to:
- (a) the granting of the concession for sheep grazing over 34 hectares (shown on the Plan hatched in pink) substantially as set out in Appendix 4;

### **2 Information Concerning Proposed Concession**

---

1. Description of proposed activity(s): Sheep grazing of the Historic Reserve.
2. Description of place(s) where proposed activity to be carried out and proposed status: Part of Historic Reserve shown as 'HR' on the Proposed Designations Plan.
3. Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, noting the requirements of s.51(3)(a) and s.51(2)(d) CPLA: No conditions are provided for except that they cannot have an adverse impact on the values. Grazing of sheep is considered to have a positive impact by keeping the historic sites open and providing for better public access – by keeping the grass down and the stock tracks open.
4. Details of the proposed type of concession: Concession under section 17Q(1) of the Conservation Act 1987.
5. Proposed duration of concession and reasons for proposed duration:  
  
Proposed duration: 10 years with a possible renewal for a further 10 years if conditions have been complied with.  
  
Reasons for proposed duration]: It seems an appropriate timeframe to provide some security and assess impacts between renewals. It is likely that ongoing grazing will be required within this reserve.
6. Relevant information about the proposed grantee including information relevant to the grantee's ability to carry out the proposed activity:  
  
Proposed grantee: Earnsclough Station Lands Limited.  
  
Relevant information: The grantee is currently engaged in farming and has been farming in the district for many years.

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

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#### **1 Details of designation**

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- 1.1 Under this Proposal the land shown marked shaded green and yellow on the Plan, being 1,479 hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:
- (a) Part IVA of the Conservation Act 1987; and
  - (b) Section 11 of the Crown Minerals Act 1991; and
  - (c) the easement marked as "a-b" on the Plan and substantially as set out in Appendix 5; and
  - (d) the covenant (shown on the Plan marked "CC", coloured yellow) substantially as set out in Appendix 6; and
  - (e) the continuation in force of existing easements registered as interests 885763 and 8395719.1 a copy of which is included in Appendix 7 and Appendix 8 respectively.

**Schedule Four: Conditions**

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Nil



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

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

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

Dated:

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

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

Witness Name:  
Occupation:  
Address:

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

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

Dated:

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

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:

Occupation:

Address:

## Appendix 2: Example of Solicitors Certificate

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### Certifications

I [ ] hereby certify as follows:

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

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

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

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

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

Yours faithfully

[signed by principal of law firm]

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

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#### **Fenceline**

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**Length and location:** 2200 metres approximately shown on the Plan as A-B

**Type:** New Seven Wire Fence

#### **Specifications:**

1. Fences to be constructed of seven 4mm mild galvanized steel wires (No. 8), Tie downs and tie-backs will be No. 8 wire.
2. 2.1 metre treated timber strainers with treated stays to be used for gateways and ends of strains.
3. T-Irons may be used for intermediate strains and angles with No. 8 tie-backs and tie-downs.
4. 1.8 x 125mm treated timber posts or T-Irons to be used at no more than 50 metre spaces or at lesser intervals on appropriate high and low points as required.
5. Bottom wire to be no closer than 150mm to the ground.
6. Intermediary steel Y-posts to be spaced no greater than 3 metres.
7. Steel Y-posts to be mostly 1.65m with 1.5m posts permitted on rocky ground.
8. Wires to be attached to Y-posts with "Hunter Chain" in snow drift areas. It is estimated that 10% of this line will require "Hunter Chains"
9. A pipe gate 3.6 metres wide to be placed at each end of the fence.
10. Fence lines to be hand or machine cleared where required. No machine benching of fencelines to be carried out.

**Fenceline**

---

**Length and location:** 600 metres approximately shown on the Plan as C-D

**Type:** New Seven Wire Fence

**Specifications:**

1. Fences to be constructed of six 2.5mm high tensile steel wires, Tie downs and tie-backs will be No. 8 wire. 1 x 2.5mm reverse twist Barbed wire with barbs at a max spacing of 150mm.
2. 2.1 metre treated timber strainers with treated stays to be used for gateways and ends of strains.
3. T-Irons may be used for intermediate strains and angles with No. 8 tie-backs and tie-downs.
4. 1.8 x 125mm treated timber posts or T-Irons to be used at no more than 50 metre spaces or at lesser intervals on appropriate high and low points as required.
5. Bottom wire to be no closer than 150mm to the ground.
6. Intermediary steel Y-posts to be spaced no greater than 3 metres.
7. Steel Y-posts to be mostly 1.65m with 1.5m posts permitted on rocky ground.
8. A pipe gate of 4.2 metres width to be placed at either end.
9. Fence lines to be hand or machine cleared where required. No machine benching of fence lines to be carried out.

### **Fenceline**

---

**Length and location:** 1850 metres approximately shown on the Plan as E-F

**Type:** New Seven Wire Fence

#### ***Specifications:***

1. Fences to be constructed of six 2.5mm galvanized high tensile steel wires. Tie downs and tie-backs will be No. 8 wire. 1 x 2.5mm reverse twist Barbed wire with barbs at a max spacing of 150mm.
2. 2.1 metre treated timber strainers with treated stays to be used for gateways and ends of strains.
3. T-Irons may be used for intermediate strains and angles with No. 8 tie-backs and tie-downs.
4. 1.8 x 125mm treated timber posts or T-Irons to be used at no more than 100 metre spaces or at lesser intervals on appropriate high and low points as required.
5. Bottom wire to be no closer than 100mm to the ground.
6. Rabbit netting required along full length of fence line.
7. Intermediary steel Y-posts to be spaced no greater than 3 metres.
8. Steel Y-posts to be mostly 1.65m with 1.5m posts permitted on rocky ground.
9. 3 gates to be allowed for. Gates to be 4 metres wide to be placed in consultation with the Holder and appropriately rabbit proofed. WP212 (E), WP217, WP218 (F)
10. Fence lines to be hand or machine cleared where required. No machine benching of fence lines to be carried out.

### **Fenceline**

---

**Length and location:** 525 metres approximately shown on the Plan as D-D1

**Type:** Upgrade existing fence

#### ***Specifications:***

1. Intermediary steel Y-posts to be spaced no greater than 3 metres.
2. Steel Y-posts to be mostly 1.65m with 1.5m posts permitted on rocky ground.
3. New top wire of 2.5mm high tensile wire.

**Construction**

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**Nil**



**Appendix 4: Form of grazing concession to be Created**

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Concession number: \_\_\_\_\_

DATED \_\_\_\_\_

Between

MINISTER OF CONSERVATION  
("the Grantor")

and

EARNSCLEUGH STATION LANDS LTD  
("the Concessionaire")

GRAZING CONCESSION  
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation  
*Te Papa Atawhai*

**THIS LICENCE** is made this day of

**PARTIES:**

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **EARNSCLEUGH STATION LANDS LTD** ("the Concessionaire")

**BACKGROUND**

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area or Reserve.
- B. Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.

**OPERATIVE PARTS**

**TERMS AND CONDITIONS**

**1.0 DEFINITIONS AND INTERPRETATION**

1.1 In this Document, unless the context otherwise requires:

"**Access**" means the right, in common with others, to pass and repass over the Land and any roads of the Grantor for ingress to and egress from the Land as is reasonably necessary for the Concessionaire to exercise its rights under this Licence.

"**Administration Fee**" means the amount specified in Item 6(b) of Schedule 1 and is the annual fee for administering the Concession imposed by the Grantor under section 60D of the Conservation Act 1987. It includes any variation in that amount following a Concession Fee Review.

"**Background**" means the matters referred to under the heading 'Background' on page 1 of this Document.

"**Concession**" means a concession as defined in section 2 of the Conservation Act 1987.

"**Concessionaire**" includes the Concessionaire's successors, assigns, executors, and administrators.

"**Concession Activity**" means the use of the Land for purposes of the activity carried out by the Concessionaire and specified in Item 2 of Schedule 1.

"**Concession Fee**" means the amount specified in Item 6(a) of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review. It also includes, where relevant, the amount which the parties agree to be the new Concession Fee on a renewal of the Document.

"**Concession Fee Payment Date**" means the date specified in Item 7 of Schedule 1 on which the Concession Fee falls due for payment.

"**Concession Fee Review**" means a review of the Concession Fee determined in accordance with clause 6 of this Document.

**"Concession Fee Review Date"** means the date specified in Item 9 of Schedule 1 on which the Concession Fee Review occurs being at 3 year intervals calculated from the date of commencement of the term of this Document; and includes any additional dates inserted into Item 9 of Schedule 1 following a renewal of this Document.

**"Conservation Area"** has the same meaning as "Conservation area" in section 2 of the Conservation Act 1987.

**"Director-General"** means the Director-General of Conservation.

**"Document"** means this Licence and any subsequent amendments and all schedules, annexures, and plans attached to it.

**"Final Expiry Date"** means the date specified in Item 5 of Schedule 1.

**"Land"** means a Conservation Area or a Reserve (whichever is relevant in the circumstances) being the area more particularly described in Item 1 of Schedule 1.

**"Licence"** for purposes of this Document is the Licence granted under this Document by the Grantor to the Concessionaire under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).

**"Penalty Interest Rate"** means the rate specified in Item 8 of Schedule 1.

**"Renewal Date"** means the date specified in Item 4(a) of Schedule 1.

**"Renewal Period"** means the period specified in Item 4(b) of the Schedule 1.

**"Reserve"** has the same meaning as "reserve" in section 2 of the Reserves Act 1977.

**"Structure"** includes a bridge, a culvert, and a fence.

**"Term"** means the period of time specified in Item 3 of Schedule 1 during which this Document operates. It includes, where relevant, any period of renewal of the Term.

**"Working Day"** means the period between any one midnight and the next excluding Saturdays, Sundays and Statutory holidays in the place where the Concession Activity is being carried out.

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;
- (e) words in a singular number include the plural and vice versa;
- (f) words importing a gender include other genders;
- (g) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (h) where the Grantor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

1.3 Words used in the Background to this Document have the same meaning given to them in clause 1.1.

## 2.0 GRANT OF LICENCE



2.1 In exercise of the Grantor's powers under either section 66 or section 68 of the Crown Pastoral Land Act 1998 (whichever is relevant in the circumstances) the Grantor **GRANTS** to the Concessionaire a **LICENCE** under either section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances) to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Document.

### 3.0 TERM

3.1 The Licence is for the Term specified in Item 3 of Schedule 1.

3.2 Unless otherwise specified in Items 4 and 5 of Schedule 1, if the Concessionaire has not been in breach of this Document and has given to the Grantor written notice to renew the Document at least three months before the end of the Term, the Grantor will, at the cost of the Concessionaire, renew the Document from the Renewal Date for the next Renewal Period on the following terms:

- (a) the new Concession Fee is to be agreed upon before the end of the Term or, failing agreement, is to be determined as though it were a Concession Fee Review under clause 6;
- (b) the Concession Fee is to be subject to review during the Renewal Period on each Concession Fee Review Date;
- (c) the renewed Document is otherwise to be in accordance with and subject to the covenants and agreements expressed and implied in this Document except that the Term of the Document and all renewals, if any, end on the Final Expiry Date;
- (d) pending the determination of the new Concession Fee, the Concessionaire is to pay the new Concession Fee proposed by the Grantor. Upon determination an appropriate adjustment is to be made to the Concession Fee.

### 4.0 CONCESSION FEE AND ADMINISTRATION FEE

4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor on or before the Concession Fee Payment Date specified in Item 7 of Schedule 1:

- (a) the Concession Fee plus GST specified in Item 6(a) of Schedule 1; and
- (b) the Administration Fee plus GST specified in Item 6(b) of Schedule 1.

4.2 If the Concessionaire defaults in payment of the Concession Fee and Administration Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee and Administration Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

4.3 For purposes of clause 6.0, a reference to Concession Fee includes a reference to the Administration Fee.

### 5.0 OTHER CHARGES

5.1 In addition to the Concession Fee and Administration Fee the Concessionaire must pay all rates, levies, taxes, duties, assessments, charges, and other outgoings which may be charged, levied, or reasonably assessed, or which become payable in relation to the Land as a result of the grant of this Licence.

### 6.0 CONCESSION FEE AND ADMINISTRATION FEE REVIEW

6.1 The Grantor will review the Concession Fee and the Administration Fee on the Concession Fee Review Dates.

- 6.2 The Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
- 6.3 The notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987. The Notice must also specify the Administration Fee which the Grantor intends to impose until the next Concession Fee Review Date.
- 6.4 If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 18.
- 6.5 Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee payable immediately before the Concession Fee Review Date. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable notwithstanding anything in this clause, the new Administration Fee will be payable by the Grantor upon receipt of the Notice referred to in clause 6.3.
- 6.6 If the Concessionaire does not give notice to the Grantor under clause 6.4 the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.

## **7.0 CONCESSION ACTIVITY**

- 7.1 The Concessionaire is not to use the Land for any purpose other than the Concession Activity.

## **8.0 COMPLIANCE**

- 8.1 The Concessionaire will comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan under Part 3A of the Conservation Act 1987 together with any amendment or review of the strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
  - (b) with the Conservation Act 1987, the Reserves Act 1977, the Health and Safety in Employment Act 1992, the Resource Management Act 1991, and any other statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land, or affecting or relating to the Concession Activity.

## **9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS**

- 9.1 The Concessionaire must not erect or bring on to the Land any Structure, install any facility, or alter the Land in any way without the prior written consent of the Grantor.
- 9.2 The Concessionaire must keep and maintain at the Concessionaire's cost any Structures, facilities and alterations to the Land in good repair.
- 9.3 On expiry or early termination of this Document either as to the whole or any part of the Land, the Concessionaire will not be entitled to compensation for any improvements (including pasture) and any Structures or facilities remaining on the Land are to become the property of the Grantor.
- 9.4 If requested by the Grantor, the Concessionaire must, within such time as the Grantor determines, remove all Structures, facilities or other improvements erected or installed by the Concessionaire and make good at the Concessionaire's own expense all damage done by the removal and must leave the Land in a clean and tidy condition to the satisfaction of the Grantor.

## **10.0 PROTECTION OF THE ENVIRONMENT**



- 10.1 Except as approved in writing by the Grantor the Concessionaire will not, whether by act or omission:
- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Land; or
  - (b) bring any plants, or animals (other than farm stock described in Item 2 of Schedule 1, farm dogs and horses for purposes of the Concession Activity) on to the Land; or
  - (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
  - (d) pile or store materials in any place on the Land where they may obstruct the public or create a nuisance; or
  - (e) conduct any noxious, noisome, dangerous or offensive activity on the Land; or
  - (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Land; or
  - (g) disturb or allow stock to disturb any stream or watercourse on the Land; or
  - (h) light any fire on the Land.
- 10.2 The Concessionaire, must at the Concessionaire's expense:
- (a)(i) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Land or any Structure or facility on the Land;
  - (a)(ii) if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor; and
  - (b) comply strictly with the provisions of the Biosecurity Act 1993.
- 10.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 10.
- 10.4 The Concessionaire may bring firearms on to the Land for use in connection with the Concession Activity and pest control operations.
- 10.5 The Concessionaire for purposes of the Concession Activity may take onto or use farm vehicles on the Land on existing formed access tracks only.
- 11.0 HEALTH AND SAFETY**
- 11.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations.
- 11.2 The Concessionaire must notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment.
- 12.0 TEMPORARY SUSPENSION**
- 12.1 The Grantor may suspend this Document:
- (a) if, in the opinion of the Grantor the activities of the Concessionaire, its employees, agents, contractors, licensees or invitees are having or may have an adverse effect on the environment and the Grantor considers that the effect can not be avoided, remedied or mitigated to an extent satisfactory to the Grantor;



- (b) while the Grantor investigates any of the circumstances contemplated by this clause and also while the Grantor investigates any potential breach or possible offence by the Concessionaire related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.

12.2 The Grantor is not liable to the Concessionaire for any loss sustained by the Concessionaire by reason of a suspension under clause 12.1 including loss of profits.

12.3 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.

### 13.0 ASSIGNMENT

13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause.

13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.

13.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.

13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will require the approval of the Grantor.

### 14.0 TERMINATION

14.1 The Grantor may terminate this Document by notice in writing to the Concessionaire if:

(a) the Concession Fee or the Administration Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or

(b) (i) the Concessionaire breaches any terms of this Document; and

(ii) the Grantor has notified the Concessionaire in writing of the breach; and

(iii) the Concessionaire does not rectify the breach within 28 days of receiving notification; or

(c) the Concessionaire ceases to conduct the Concession Activity; or

(d) the Concessionaire is convicted of an offence, related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Resource Management Act 1991; or the Biosecurity Act 1993; or the Health and Safety in Employment Act 1992; or

(e) the Concessionaire is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire ceases to function or operate.

14.2 If the Grantor terminates the Document under this clause 14 all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or

Administration Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.

- 14.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

#### **15.0 INDEMNITIES AND INSURANCE**

- 15.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, contractors, or invitees or otherwise caused as a result of its use of the Land or the Concessionaire's carrying out of the Concession Activity on the Land.

- 15.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.

- 15.3 Without prejudice to or in any way limiting its liability under clause 15.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:

(a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:

(i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and

(ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and

(b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and

(c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.

- 15.4 With respect to clause 15.3 the Concessionaire must, before commencing the Concession Activity and on each renewal of insurance provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

#### **16.0 ENVIRONMENTAL MONITORING**

- 16.1 The Concessionaire must, during the Term, if required in writing by the Grantor, pay to the Grantor the annual environmental monitoring contribution specified in Item 14 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's conduct of the Concession Activity on the Land.

#### **17.0 FORCE MAJEURE**

- 17.1 Neither party will be liable to the other party for any delay in performance of, or failure to perform, its obligations (other than a payment of money) under this Document as a result of any cause beyond its reasonable control.

#### **18.0 DISPUTE RESOLUTION AND ARBITRATION**

- 18.1 If any dispute arises between the parties in connection with this Document, the parties must, without prejudice to any other rights they have under this Document, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.

- 18.2 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.
- 18.3 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.
- 18.4 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 of the Arbitration Act 1996 will apply.
- 18.5 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator 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 arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 18.6 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 18.7 The parties agree that the results of any arbitration are to be binding on the parties.

#### **19.0 NOTICES**

- 19.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by email addressed to the receiving party at the address or facsimile number set out in Item 15 of Schedule 1.
- 19.2 A notice given in accordance with clause 19.1 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 email, on the Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

#### **20.0 RELATIONSHIP OF PARTIES**

- 20.1 Nothing expressed or implied in this Document shall be construed as:
- (a) conferring on the Concessionaire any right of exclusive occupation or use of the Land;
  - (b) derogating from the rights of the Grantor and the public to have access across the Land;
  - (c) preventing the Grantor from granting other concessions (except a grazing licence) to other persons.

#### **21.0 OFFENCES**

- 21.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act:
- (a) no waiver or failure to act by the Grantor under this Document is to preclude the Grantor from prosecuting the Concessionaire; and
  - (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising the Grantor's remedies under this Document; and
  - (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising the Grantor's remedies under this Document.



**22.0 SPECIAL CONDITIONS**

22.1 Special conditions relating to this Document are set out in Schedule 3.

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

Signed by:

\_\_\_\_\_  
for and on behalf of  
the Minister of Conservation  
pursuant to a written delegation (or designation as the case may be)  
in the presence of:

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

Signed by:  
Earnsclough Station Lands Limited by its Director [insert name]:

\_\_\_\_\_

in the presence of:

Witness Signature: \_\_\_\_\_  
Witness Name: \_\_\_\_\_  
Witness Occupation: \_\_\_\_\_  
Witness Address: \_\_\_\_\_

## SCHEDULE 1

1. **Land:** The land is shown on the Designations Plan as "HR". The estimated size is 38 ha.  
(see definition of Land in clause 1.1)
2. **Concession Activity:** Grazing of sheep at a rate of 3 SU/ha or such other stocking rate as the Grantor may agree to in writing from time to time.  
(see definition of Concession Activity in clause 1.1)
3. **Term:** 30 years commencing on the date an approved plan is registered vesting the Land in the Crown as a historic reserve (the commencement date).  
(see clause 3)
4. (a) **Renewal Date:** Not Applicable. (see clause 3.2)
- (b) **Renewal Period:** Not Applicable
5. **Final Expiry Date:** The 30<sup>th</sup> anniversary of the commencement date, (see clause 3.2)
6. (a) **Concession Fee:** The initial concession fee is to be calculated on the basis of \$8 per SU per annum plus GST. The carrying capacity is calculated on the basis that 3 SU/ha can be run. The concession fee is discounted by up to 50% due to limitations created by public access to the Land, and management activities within the Land creating potential disturbances to stock. Therefore the initial discounted fee will be 50% resulting in a fee of \$4 per SU per annum plus GST. This fee is subject to special condition 7 in Schedule 3.(see clause 4)
- (b) **Administration Fee:** \$100 per annum + GST (see clause 4)
7. **Concession Fee Payment Date:** (see clause 4)  
On or before the date specified on the invoice generated by the Grantor
8. **Penalty Interest Rate:** (see clause 4.2)  
Double the Grantor's bank's current highest 90 day bank bill buy rate
9. **Concession Fee Review Date:** Every three year anniversary from the commencement date.  
(see clause 6)
10. **Public Liability General Indemnity Cover:** (see clause 15.3)  
for \$1,000,000.00
11. **Public Liability Forest & Rural Fire Extension:** (see clause 15.3)  
for \$500,000.00
12. **Statutory Liability Insurance:** (see clause 15.3)  
NA
13. **Other Types of Insurance:** (see clause 15.3)  
Nil
- Amounts Insured for Other Types of Insurances:** (see clause 15.3)  
Amount NA
14. **Environmental Monitoring Contribution:** \$Not Applicable – no contribution required. (see clause 16)
15. **Address for Notices (including email address):** (see clause 19)
  - (a) Grantor:  
Minister of Conservation  
C/- Director Conservation Partnerships  
Southern and Eastern South Island Region  
Department of Conservation  
Conservation House

77 Stuart Street  
P O Box 5244  
**DUNEDIN 9058**  
Phone: (03) 477 0677  
Email: [permissionsdunedin@doc.govt.nz](mailto:permissionsdunedin@doc.govt.nz)

- (b) Concessionaire:  
Earnsclough Station Lands Ltd  
Earnsclough Road  
RD 1  
**ALEXANDRA 9391**  
Email: [ecgenetics@farmside.co.nz](mailto:ecgenetics@farmside.co.nz)

## SCHEDULE 2

*Description of the Historic and Other Values of the Land*

The Land is a Historic Reserve and contains historic and archaeological sites, objects and structures which it is appropriate to protect and preserve in perpetuity. The following extract from the Obelisk Conservation Resources Report<sup>1</sup> (including plans) more fully describes the historic and other values of the Land:

White's Reef Company (G42/294)

White's Reef is located close to Symes Road and White's Hut stands alone a few hundred metres from Symes Road. It is in good order, having been built with much skill by Andrew Mitchell in the same manner as Mitchells Cottage further down Symes Road.

Two other well built stone huts are located within 160m of each other adjacent to the old road alignment below White's Reef. One is a two roomed hut and the other a single roomed hut. Both huts are mostly intact but without roof coverings. One of these may have been a mining office.

The surrounding slopes show numerous *in situ* tracks, dams, races, stamper battery sites, sluicings and artefacts.

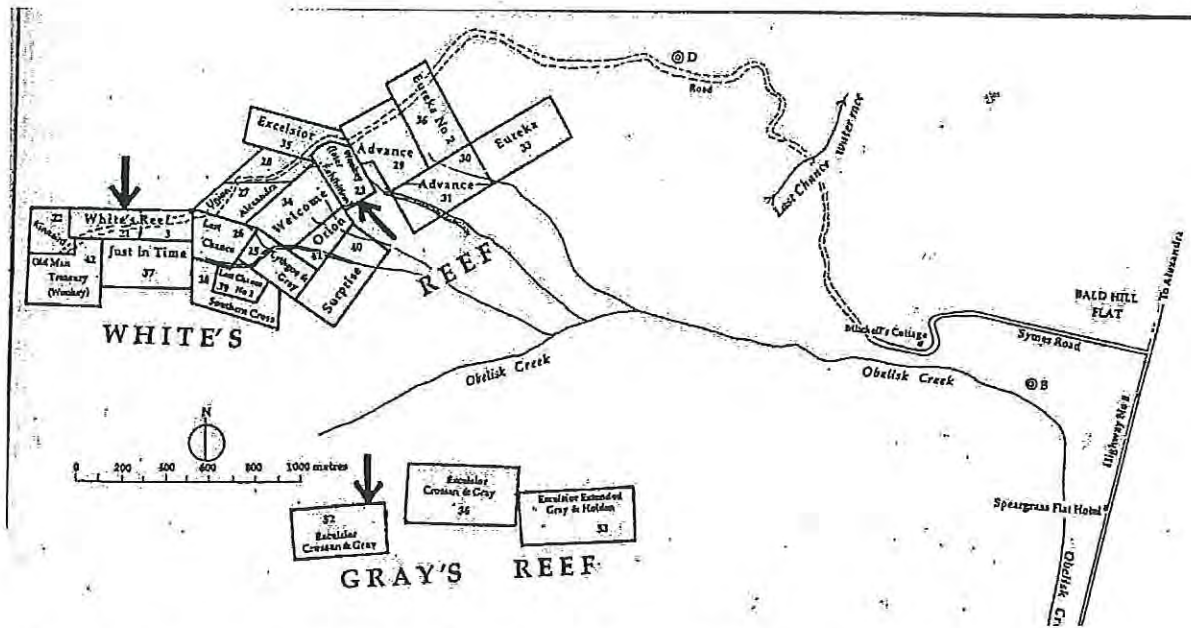
In November 1883, James White and Andrew Mitchell formed a company to work the quartz reef found by White while alluvial sluicing. Sixteen other leases were also granted (AJHR 1884: H-9 page 37, AJHR 1888: C-6 page 30). Andrew Mitchell found the quartz reef in the early 1880's and formed the White's Reef Gold Mining Company with John Mitchell, James White and George White (Hamel 1989: 1). Various companies were formed to work the three main quartz reefs, White's, Exhibition, and Gray's, all in the vicinity of Obelisk Creek (Galvin ed. 1906: 160, Moore 1953: 32-33, Otago Witness 1883: 12). Survey Office (SO) Plan 3502 (dated November 1883: QuickMap Landonline) shows some of the company claims granted around White's Reef, White's Co., Lythgoe and Gray, Last Chance Co., Wookey's, and Advance Co. SO 3507 (dated February 1884) shows other claims being taken up, Just in Time Co., Southern Cross Co., Last Chance No.2, Orion Co., and Surprise Co. A plan of these claims is shown in McCraw (2003: 101, Figure 6.5).

A water race was constructed bringing water from Gorge Creek over six miles in length to White's Reef (AJHR 1884: H-9 pages 37-38). A five head crushing battery driven by a Whitelaw turbine was erected near the mouth of the adit entrance (AJHR 1887: C-5 page 41, McCraw 2005b: 63-66). James White formed a rough dray track from the main highway to within a few chain of his claim. A separate bridle track from the dray road was the recommended means of visiting the reefs. This dray track may be that shown on SO 268 (dated June 1879) running from J. Mc Cambridge's freehold Section 59.

W. Wookey and James Gavin worked the Exhibition Reef until 1888 when it passed to Robert and Henry Symes along with the White's Reef claim. Robert Symes was mine manager of White's Reef prior to the change of ownership. The claim came with a five head stamper battery, a chilian mill, a McQueen's patent grinder and amalgamators, water rights, mining tools, and buildings. White's Reef was worked through to the early 1920's (AJHR 1891: C-4 page 181, AJHR 1892: C-3 page 59, Moore 1953: 33). Henry Symes was town clerk in Alexandra from 1893-1899 and served as Mayor from 1900-1901 (McGraw 2000: 161). Some of the machinery used at this site is still present much of it stamped to identify Crown ownership. Unfortunately the Whites Reef stamper battery was removed some years ago, but the site it was taken from is clearly evident with timbers still present.

<sup>1</sup> See full Conservation Resources Report available on LINZ website at:





This plan of the claims shows White's Reef which is predominantly within the historic reserve.

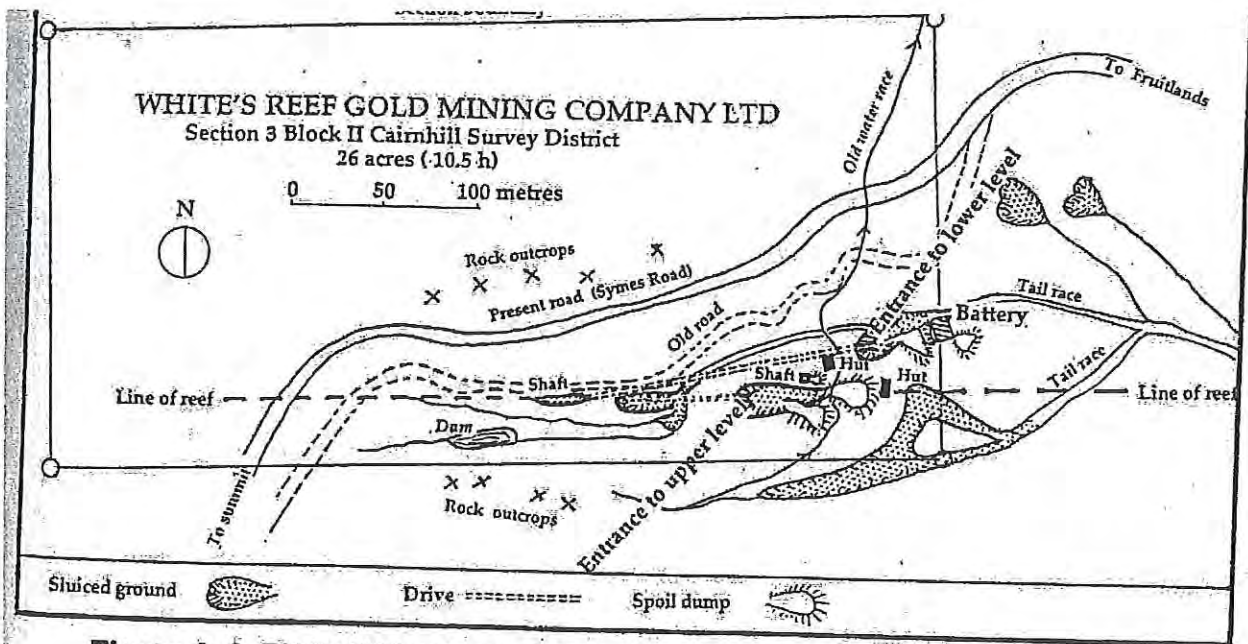


Figure 6. 6. Plan of White's reef drawn from air photographs, field sketches and descriptions.



**SCHEDULE 3*****Special Conditions***

1. The Land is a historic reserve and contains historic sites and resources as described in Schedule 2. The Concessionaire will take care not to overstock the Land and will ensure that grazing is not having an adverse effect on the historic sites within the Land including those shown in the plans in Schedule 2.
2. Notwithstanding the provisions of Clause 9.2, maintenance of the tracks within the Land will be shared between the Grantor and the Concessionaire relative to their respective use. Work required including consent under Clause 10.1(f) and cost sharing shall be agreed annually.
3. Notwithstanding clause 9.2, in relation to maintenance of fences on the Land those which are internal fencing shall be maintained solely at the cost of the concessionaire. However boundary fencing shall be maintained on a 50:50 basis with a 50% cost being met by the adjoining landowner, including the Grantor where the Grantor is the adjoining landowner.
4. Notwithstanding the provisions of Clause 10.5, the Concessionaire may use suitable vehicles off the formed tracks on the Land for the purposes of fence maintenance and mustering stock.
5. Clause 15.4 is amended by prefixing this Clause with the words "If requested by the Grantor and ...".
6. The Land may be monitored from time to time by the Grantor at its cost to assess effects of grazing on the historic sites. If in the opinion of the Grantor the concession activity is having an adverse effect on the Land's historic sites and resources, the Grantor may impose restrictions on the concession activity which may include reducing numbers of stock grazed, fencing (whether temporary or otherwise) or other actions as considered appropriate.
7. The Concessionaire acknowledges the public will have unrestricted access to the Land. As stated in Schedule 1, item 6 Concession Fee, the Concessionaire pays a discounted concession fee to make allowance for public access and management activities on the Land. The initial discount will be 50% of the concession fee, applying for the first nine years of the term. Subsequent discount levels must be agreed between the parties every three years of the term at the same time as the concession fee review is undertaken. In agreeing on the discount level, which may be no more than 50% of the concession fee then applying, the parties must have regard to the public use of the Land at that time and the disturbance, if any, the public use has on the sheep on the Land.
8. The Concessionaire acknowledges the Grantor may mark tracks and erect signs to facilitate public use of the Land.
9. The Concessionaire must provide an annual return (as attached in Schedule 4) of stocking rates on the Land to the Grantor by 30 June in each year of the term to enable the concession fee to be calculated. Should the Concessionaire not provide a return, the Grantor shall calculate the concession fee based on the maximum stocking rate on the Land.
10. The Grantor acknowledges the intent of the Concessionaire to transfer and assign this concession to Earnsclough Station Limited pursuant to clause 13 of this concession. The Grantor has been provided with details of how Earnsclough Station Limited will conduct the concession activity pursuant to this concession. Upon the basis that the transfer and assignment to Earnsclough Station Limited takes place within six months of the commencement date then the Grantor consents herein to such transfer and assignment. If the

transfer and assignment is not completed within the six month period then the Grnator's consent to any proposal to transfer and assign this concession will be determined pursuant to the provisions of clause 13 of this concession.



SCHEDULE 4

Annual Return Form

Activity Return

Stock type (if more than one type available)	Numbers	Date stock placed on Land	Date stock removed from land	Total weeks Land grazed (not exceeding xx)	Price per stock unit per annum	Total annual activity fee

**Appendix 5: Form of Easement to be Created**

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

1. Public Access
2. Access for Management Purposes

**Land Transfer Act 1952**

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



**TRANSFER**

**Land Transfer Act 1952**

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

**Land Registration District**

Otago

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

--	--	--	--

**Transferor Surnames must be underlined**

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

**Transferee Surnames must be underlined**

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

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

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

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

**Operative Clause**

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

Dated this      day of

**Attestation**

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

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

\_\_\_\_\_

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

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

Dated  Page  of  Pages

**Definitions**

1. In this transfer unless the context otherwise requires:
  - 1.1 "Easement Area" means that part of the Servient Land being 20 metres wide which is marked [a-b on proposed designations plan] "[ ]" on Deposited Plan/S.O. Plan No [ ].
  - 1.2 "Management Purposes" means:
    - The protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the Easement Area.
    - The management of the land administered by the Transferee (not being a member of the public) in a way that is-ecologically sustainable.
  - 1.3 "Servient Land" means the land owned by the Transferor and described on page 1.
  - 1.4 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee's tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.
  - 1.5 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

**Standard Easement Terms**

Access

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

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.  
OTACO-37213 - Easement in Gross Templ  
Obelisk Easement Symes Road - DOCDM-1228795

June 2015



Exclusion of Schedules

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

Term

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

Temporary Suspension

- 7.1. 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 to the public for such period as she/he considers necessary.
- 7.2. For the avoidance of doubt, it is stated that any such temporary closure by the Transferee of all or part of the Easement Area to the public in accordance with clause 7.1 does not affect the rights of the Transferor to continue to access and use the Easement Area.

Dispute Resolution

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

Notice

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

**Special Easement Terms**

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

- 10. The Transferee is under no obligation to maintain the Easement Area to any standard other than that which is necessary for his own purposes.
- 11. The public have the right to pass and re-pass on the Easement Area with guns and accompanied by dogs, provided any guns and/or dogs are kept confined in a motor vehicle while on the Easement Area.
- 12. For the following conditions under this clause 12, the Transferee is defined as the Director-General of Conservation and his tenants, agents, contractors, and invitees; and any employee or contractor, only:
  - 12.1 The Transferee has the right:
    - (a) To mark the Easement Area as appropriate
    - (b) To erect and maintain stiles
    - (c) To erect and maintain signs informing the public
      - (i) of the location of land managed by the Crown and available for public access and recreation; and
      - (ii) of their rights and responsibilities in relation to the Easement Area
- 13. In doing any of the matters specified in clause 2.2, the Transferee must take reasonable and proper care not to damage any property of the Transferor and must properly repair any such damage.

**Continuation of "Attestation"**

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

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

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

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

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

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Management Purposes

**Land Transfer Act 1952**

Law Firm Acting
Conservancy Solicitor Department of Conservation Dunedin

Auckland District Law Society  
REF:4135

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



**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;

**2. OBJECTIVE OF THE COVENANT**

- 2.1 The objective is for the Land to 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 the observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on and to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

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

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

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

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

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

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



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

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

**8. MISCELLANEOUS MATTERS**

**8.1 Rights**

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

**8.2 Trespass Act:**

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

**8.3 Reserves Act**

- 8.3.1 Subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve, notwithstanding that the Land may from time to time be sold or otherwise disposed of.

**8.4 Titles**

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

**8.5 Acceptance of Covenant**

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

**8.6 Fire**

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



**9. NOTICES**

9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by email addressed to the receiving party at the address, facsimile number or email address 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 email, on the day on which it is dispatched if that is a Working day 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. FURTHER AGREEMENT**

13.1 Where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**14. SPECIAL CONDITIONS**

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

14.2 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 is labelled "CC" being 487 ha, being made up of 2 areas "A" and "B" shown on the Designations Plan attached and more fully described below .

Area A being the fenced area of the Land of approximately 62 ha shown shaded in yellow (fenceline E-F bordering scenic reserve).

Area B being that part of the Land outside "A" of approximately 425 ha shown shaded in yellow .

### 2. Address for Service

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

**Minister of Conservation**  
C/- Director Conservation Partnerships  
South and Eastern South Island Region  
Department of Conservation  
Conservation House  
77 Stuart Street  
P O Box 5244  
**DUNEDIN 9058**  
Phone: (03) 477 0677  
Email: [dunedinvc@doc.govt.nz](mailto:dunedinvc@doc.govt.nz)

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

**Earnsclough Station Limited**  
Earnsclough Road  
R D 1  
Alexandra  
New Zealand

Email: [ecgenetics@farmside.co.nz](mailto:ecgenetics@farmside.co.nz)

### 3. Values of Land to be Protected – Natural Environment and Landscape Amenity

- (a) *To protect and enhance the natural character of the Land with particular regard to the indigenous flora and fauna*

**Vegetation:**

The vegetation of the broad and gently sloping range crest is a mosaic of hard and silver tussock interspersed with dry-tolerant pasture grasses and pastoral weeds. Shallowly-incised gully heads extend into the crest and much of the surface is dotted with tors and rock outcrops. Occasional shrubs such as *Olearia lineata*, porcupine shrub, kanuka (*Kunzea ericoides*), *Pimelea aridula*, desert broom and *Hebe pimeleoides* subsp. *faucicola* are present on or around rock outcrops.

A series of small, ephemerally wet shallow depressions, are scattered over the plateau-like range crest. These support a flora of predominantly annual herbaceous plants in silty substrate overlying basement schist. Community composition varies between depressions but common native species include mousetail (*Myosurus minimus* subsp. *novaezelandiae*), *Myosotis brevis*, *Crassula multicaulis* C. *sinclairii*, *C. mataikona*, *C. peduncularis* and *C. colligata*. These are often in association with exotic herbs such as *Sedum acre*, sheep's sorrel (*Rumex acetosella*), and whitlow grass (*Erophila verna*).

The tiny buttercup *Ranunculus brevis* also extends into surrounding dry habitats which it shares with the exotic *Trifolium arvense*, white clover (*T. repens*) and *Erodium cicutarium*.

**Threatened and At Risk Species:**

*Crassula multicaulis*, *Crassula peduncularis*, *Myosurus minimus* subsp. *novae-zelandiae*, *Carex inopinata* and *Myosotis brevis* are threatened species with the first three ranked “nationally critical”.

*Anisotome caucicola*, *Carmichaelia compacta*, *Colobanthus brevisepelaus*, *Crassula mataikona*, *Hebe pimeleoides* subsp. *faucicola*, *Olearia lineata*, *Pimelea aridula*, and *Raoulia beauverdii* are “at risk” species.

(b) *To protect the landscape amenity of the Land*

**Landscape:**

Flat Top Hill is a distinctive local landmark.

The rock tor landscape is an iconic and striking Central Otago landscape. The rock outcrops and tors are by far the dominant feature and are visually highly impressive.

The shallow ephemeral wetlands are also a significant landscape feature.



## SCHEDULE 2

### Special Conditions

#### Special Conditions applying to both parts of the Land marked "A" and B"

1. Clause 3.1.1 is deleted and replaced with: Sheep may graze the Land.
2. The Owner must not stock the Land in such a way as to cause damage to the values (for example by creating a feed pad).
3. Notwithstanding clause 3.2.1, the Owner must control wilding pines, exotic broom and gorse on the Land and must use his best endeavours to prevent them seeding (This may include chemical spot spraying).
4. Clause 3.1.4 is modified by removing the reference to fencing.
5. Management of the Land may be adapted over time by agreement between the Owner and the Minister to better protect the Values, in accordance with the Management Prescription Document, attached in Schedule 3.
6. Monitoring of landscape amenity attributes and threatened plants on the Land will be undertaken to record compliance with covenant conditions, plant community trends and to inform adaptive management in accordance with monitoring requirements attached in Schedule 4.
7. For the avoidance of doubt, it is confirmed that notwithstanding clause 8.3, the Owner does not require the Minister's permission to have possession of and use firearms, weapons, traps, nets and other like objects on the Land, where this is undertaken otherwise in accordance with the law.

#### The following special conditions apply to Area "A" only (Fenced area of approximately 62 ha)

8. The Owner must not feed out hay or other feed supplements on this part of the Land.

#### The following special conditions apply to Area "B" only (that part of the Land outside "A" of approximately 425 ha)

9. If the Owner wishes to graze cattle on this part of the Land, the Owner must first consult the Minister, who may impose reasonable conditions as part of any authorisation for this use.
10. Notwithstanding clause 3.1.4, having consulted the Minister in advance, the Owner may construct a fertilizer bin on this part of the Land in a position authorised by the Minister and that in the Minister's opinion will minimise impact on the landscape amenity values.
11. Clause 3.1.5 is modified by removing reference to chemical spraying, topdressing and sowing of seed on this part of the Land.
12. Notwithstanding 3.1.6, the Owner may direct drill on this part of the Land.
13. Notwithstanding clause 3.1.6, having consulted the Minister in advance the Owner may construct a dam/reservoir for the purpose of a stock water supply on this part of the Land at a location authorised by the Minister.



### SCHEDULE 3

#### MANAGEMENT PRESCRIPTION DOCUMENT FOR OBELISK STATION – FLAT TOP HILL COVENANT

This outlines:

1. The specific Objective of management of the Land consistent with the nature of the Values of the Land.
2. A description of how the Objective is to be met.
3. A description of the Values on the Land at the commencement of the Covenant.
4. A description and purpose of the monitoring programme.
5. Details of grazing systems, including identification of vegetation trends and how that will affect the land management systems.
6. When this management prescription will be reviewed.

#### Management Prescription:

1. **The Objective of the Covenant is to Manage the Land so as to protect the Values, in particular to:**
  - 1.1 Protect, maintain and enhance the landscape amenity attributes and indigenous plant communities of the Land, whilst providing for ongoing sustainable grazing.
  - 1.2 Maintain Area "A" of the Land in an undeveloped state while providing for some ongoing grazing to maintain the plant community of spring annuals in ephemeral tarns.
2. **A description of how the Objective is to be met:**
  - 2.1 Landscape amenity attributes are to be protected by the standard and special conditions of the Covenant limiting earthworks, buildings and other disturbances.
  - 2.2 Natural Environment – Indigenous plant communities:
    - 2.2.1 Plants of rock outcrops and threatened dryland herbs in the entrenched gullies and around rock tors are a significant value. Species such as *Olearia lineata*, porcupine shrub, kanuka, *Pimelea aridula*, desert broom and *Hebe pimeleoides* subsp. *faucicola* can be protected by ensuring that management practices are not having a detrimental impact. These values will be monitored as part of the landscape amenity of the Land.
    - 2.2.2 Plants characteristic of ephemeral tarns and dry stressed areas are significant values on the Land. They survive with and probably require a high disturbance environment that could be provided by continued sheep grazing. Although now invaded by introduced grasses and rushes, sheep grazing appears to reduce the competition these exotics would otherwise exert.
    - 2.2.3 Cattle are known to cause pugging of wet areas and may destroy the Values of the Land, so conditions imposed as part of an agreement to cattle grazing in accordance with Schedule 2 special condition 8 need careful consideration.
    - 2.2.4 The Owner wishes to sow seed and fertilize Area "B" of the Land. This has unknown outcomes for the threatened herbs, most of which are in ephemeral wet tarns on the Land.
    - 2.2.5 In order to monitor the outcome of ongoing management practices, developed and undeveloped areas will be monitored; Area "A" of the Land will not be seeded, fertilized or otherwise developed.

2.2.6 The plant communities under the two different treatments (Areas "A" and "B") will be monitored over time to ensure the populations continue to thrive, at least in Area "A" and assist with knowledge of their management under pastoral use. Adaptive management can be applied to better meet the objects of the covenant.

**3. A description of the Values on the Land at the commencement of the Covenant.**

3.1 See Schedule 1, Item 3 – Values

**4. A description of the monitoring programme (of activity effects) to be carried out (for vegetation).**

4.1 See Schedule 4 – Monitoring Programme

**5. Details of grazing systems, including identification of vegetation trends and how that will affect the grazing systems.**

5.1 In accordance with Schedule 2 special condition 1, Sheep may graze the Land.

5.2 The Owner will keep records of grazing rates, time and stock type, development and fertiliser application on the Land, and share this information with the Minister on request. This information and rainfall data will be analysed collaboratively between the parties with a view to adaptive management of the Land to achieve the Objective of the Covenant as further outlined in Schedule 4, clause 6.

**6. Review of management prescription document**

6.1 The Owner and the Minister will review this part of the Covenant from time to time in accordance with knowledge gained over the course of the Covenant by monitoring and otherwise, and may by mutual agreement make changes to better achieve the Objective. The first such review shall occur on or before the 10<sup>th</sup> anniversary of the commencement of the Covenant, with subsequent reviews to occur at intervals not greater than every ten years thereafter.



## SCHEDULE 4

### DESCRIPTION OF THE MONITORING PROGRAMME TO BE ESTABLISHED.

#### 1. Aim:

- 1.1 To monitor changes to the landscape amenity attributes including the grey shrublands.
- 1.2 To monitor vegetation changes in particular to the "threatened" herbs.

#### 2. Monitoring Proposal:

- 2.1 Landscape amenity attributes will be monitored with photopoint monitoring.
- 2.2 Vegetation monitoring will be used in developed and undeveloped areas to understand the outcomes from sowing seed and fertilizing of areas with threatened herbs, in ephemeral wet tarns on the Land.

The fenced area of some 62 ha being the part of the Land shown as Area "A" on the Designations Plan will not be seeded or fertilized by the Owner. This area will be compared to that part of the Land shown as Area "B" which will be subject to ongoing pastoral inputs such as seed and fertilizer.

The monitoring is designed to assist the Owner in managing the Land to achieve the Objective by:

- tracking the plant communities in tarns
- ensuring the management of Area "A" is appropriate
- detecting any differences in the vegetation communities in Areas "A" and "B" over time

#### 3. Responsibilities:

The monitoring programme will be established at the commencement of the Covenant by the Minister and the Owner. Subsequent re-monitoring will occur every 5 years (it could be more frequent for a start to understand seasonal differences /or possibly one year in 5 when conditions suit) and is to be organised by the Minister with the assistance of the Owner. It may be decided that Landscape amenity and vegetation changes can be monitored at different intervals.

The Owner will be party to the monitoring by providing one person with appropriate monitoring skills to assist with the physical monitoring. The Minister will complete the report write up. The Owner will be given a copy of the monitoring report.

#### 4. Costs:

The Minister and the Owner will cover their own staff (including that party's contractors if any) costs for monitoring. The Minister will cover the cost of the monitoring report write up for the initial and repeat monitoring.

#### 5. Monitoring Methods:

**The design of the monitoring is to be finalised when the monitoring is established using guidelines as follows:**

- 5.1 The landscape will be monitored with a (small) number of repeatable photopoints that will show changes in the landscape amenity over time.
- 5.2 The monitoring of threatened herbs is likely to include monitoring of a number of ephemeral tarns within both Areas "A" and "B" to determine if there are any long term differences in the number and distribution of plant species attributable to the different management regimes.

5.3 Quantitative monitoring to be applied - quadrat, transect type approach (assessing cover abundance within plots). The habitat of ephemeral tarns is to be included in the areas monitored.

**6. Monitoring Results:**

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

The results will be used to inform mutually agreed changes in management of the Land.

The Minister may decide on appropriate changes to the management of Area "A" to better protect the values.

It is acknowledged the Owner's use of Area "B" may in time lead to greater invasion of exotic plants into ephemeral tarn habitat in Area "A". The Minister may advocate with the Owner for changes by mutual agreement to the management of Area "B" to protect the values.



GRANT of

Correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister

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

COMMISSIONER OF CROWN  
LANDS

to

MINISTER OF CONSERVATION

---

Solicitor  
Department of Conservation  
DUNEDIN/CHRISTCHURCH

**Appendix 6: Form of Covenant to be Created**

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DATED \_\_\_\_\_

Between

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

and

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

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



Department of Conservation  
*Te Papa Atawhai*

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

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

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

**BACKGROUND**

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

**2. OBJECTIVE OF THE COVENANT**

- 2.1 The objective is for the Land to 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 the observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on and to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

**4. THE MINISTER'S OBLIGATIONS**

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

**5. IMPLEMENTATION OF OBJECTIVES**

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

**6. DURATION OF COVENANT**

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



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

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

**8. MISCELLANEOUS MATTERS**

**8.1 Rights**

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

**8.2 Trespass Act:**

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

**8.3 Reserves Act**

- 8.3.1 Subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve, notwithstanding that the Land may from time to time be sold or otherwise disposed of.

**8.4 Titles**

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

**8.5 Acceptance of Covenant**

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

**8.6 Fire**

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

**9. NOTICES**

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by email addressed to the receiving party at the address, facsimile number or email address 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 email, on the day on which it is dispatched if that is a Working day 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. FURTHER AGREEMENT**

13.1 Where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**14. SPECIAL CONDITIONS**

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

14.2 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 is labelled "CC" being 487 ha, being made up of 2 areas "A" and "B" shown on the Designations Plan attached and more fully described below .

Area A being the fenced area of the Land of approximately 62 ha shown shaded in yellow (fenceline E-F bordering scenic reserve).

Area B being that part of the Land outside "A" of approximately 425 ha shown shaded in yellow .

### 2. Address for Service

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

**Minister of Conservation**  
C/- Director Conservation Partnerships  
South and Eastern South Island Region  
Department of Conservation  
Conservation House  
77 Stuart Street  
P O Box 5244  
**DUNEDIN 9058**  
Phone: (03) 477 0677  
Email: [dunedinvc@doc.govt.nz](mailto:dunedinvc@doc.govt.nz)

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

**Earnsclough Station Limited**  
Earnsclough Road  
R D 1  
Alexandra  
New Zealand

Email: [ecgenetics@farmside.co.nz](mailto:ecgenetics@farmside.co.nz)

### 3. Values of Land to be Protected – Natural Environment and Landscape Amenity

- (a) *To protect and enhance the natural character of the Land with particular regard to the indigenous flora and fauna*

**Vegetation:**

The vegetation of the broad and gently sloping range crest is a mosaic of hard and silver tussock interspersed with dry-tolerant pasture grasses and pastoral weeds. Shallowly-incised gully heads extend into the crest and much of the surface is dotted with tors and rock outcrops. Occasional shrubs such as *Olearia lineata*, porcupine shrub, kanuka (*Kunzea ericoides*), *Pimelea aridula*, desert broom and *Hebe pimeleoides* subsp. *faucicola* are present on or around rock outcrops.

A series of small, ephemerally wet shallow depressions, are scattered over the plateau-like range crest. These support a flora of predominantly annual herbaceous plants in silty substrate overlying basement schist. Community composition varies between depressions but common native species include mousetail (*Myosurus minimus* subsp. *novaezealandiae*), *Myosotis brevis*, *Crassula multicaulis* C. *sinclairii*, *C. mataikona*, *C. peduncularis* and *C. colligata*. These are often in association with exotic herbs such as *Sedum acre*, sheep's sorrel (*Rumex acetosella*), and whitlow grass (*Erophila verna*).

The tiny buttercup *Ranunculus brevis* also extends into surrounding dry habitats which it shares with the exotic *Trifolium arvense*, white clover (*T. repens*) and *Erodium cicutarium*.

**Threatened and At Risk Species:**

*Crassula multicaulis*, *Crassula peduncularis*, *Myosurus minimus* subsp. *novae-zelandiae*, *Carex inopinata* and *Myosotis brevis* are threatened species with the first three ranked "nationally critical".

*Anisotome caucicola*, *Carmichaelia compacta*, *Colobanthus brevisepelaus*, *Crassula mataikona*, *Hebe pimeleoides* subsp. *faucicola*, *Olearia lineata*, *Pimelea aridula*, and *Raoulia beauverdii* are "at risk" species.

(b) *To protect the landscape amenity of the Land*

**Landscape:**

Flat Top Hill is a distinctive local landmark.

The rock tor landscape is an iconic and striking Central Otago landscape. The rock outcrops and tors are by far the dominant feature and are visually highly impressive.

The shallow ephemeral wetlands are also a significant landscape feature.

## SCHEDULE 2

### Special Conditions

#### Special Conditions applying to both parts of the Land marked "A" and B"

1. Clause 3.1.1 is deleted and replaced with: Sheep may graze the Land.
2. The Owner must not stock the Land in such a way as to cause damage to the values (for example by creating a feed pad).
3. Notwithstanding clause 3.2.1, the Owner must control wilding pines, exotic broom and gorse on the Land and must use his best endeavours to prevent them seeding (This may include chemical spot spraying).
4. Clause 3.1.4 is modified by removing the reference to fencing.
5. Management of the Land may be adapted over time by agreement between the Owner and the Minister to better protect the Values, in accordance with the Management Prescription Document, attached in Schedule 3.
6. Monitoring of landscape amenity attributes and threatened plants on the Land will be undertaken to record compliance with covenant conditions, plant community trends and to inform adaptive management in accordance with monitoring requirements attached in Schedule 4.
7. For the avoidance of doubt, it is confirmed that notwithstanding clause 8.3, the Owner does not require the Minister's permission to have possession of and use firearms, weapons, traps, nets and other like objects on the Land, where this is undertaken otherwise in accordance with the law.

#### The following special conditions apply to Area "A" only (Fenced area of approximately 62 ha)

8. The Owner must not feed out hay or other feed supplements on this part of the Land.

#### The following special conditions apply to Area "B" only (that part of the Land outside "A" of approximately 425 ha)

9. If the Owner wishes to graze cattle on this part of the Land, the Owner must first consult the Minister, who may impose reasonable conditions as part of any authorisation for this use.
10. Notwithstanding clause 3.1.4, having consulted the Minister in advance, the Owner may construct a fertilizer bin on this part of the Land in a position authorised by the Minister and that in the Minister's opinion will minimise impact on the landscape amenity values.
11. Clause 3.1.5 is modified by removing reference to chemical spraying, topdressing and sowing of seed on this part of the Land.
12. Notwithstanding 3.1.6, the Owner may direct drill on this part of the Land.
13. Notwithstanding clause 3.1.6, having consulted the Minister in advance the Owner may construct a dam/reservoir for the purpose of a stock water supply on this part of the Land at a location authorised by the Minister.



### SCHEDULE 3

#### MANAGEMENT PRESCRIPTION DOCUMENT FOR OBELISK STATION – FLAT TOP HILL COVENANT

This outlines:

1. The specific Objective of management of the Land consistent with the nature of the Values of the Land.
2. A description of how the Objective is to be met.
3. A description of the Values on the Land at the commencement of the Covenant.
4. A description and purpose of the monitoring programme.
5. Details of grazing systems, including identification of vegetation trends and how that will affect the land management systems.
6. When this management prescription will be reviewed.

#### Management Prescription:

1. **The Objective of the Covenant is to Manage the Land so as to protect the Values, in particular to:**
  - 1.1 Protect, maintain and enhance the landscape amenity attributes and indigenous plant communities of the Land, whilst providing for ongoing sustainable grazing.
  - 1.2 Maintain Area "A" of the Land in an undeveloped state while providing for some ongoing grazing to maintain the plant community of spring annuals in ephemeral tarns.
2. **A description of how the Objective is to be met:**
  - 2.1 Landscape amenity attributes are to be protected by the standard and special conditions of the Covenant limiting earthworks, buildings and other disturbances.
  - 2.2 **Natural Environment – Indigenous plant communities:**
    - 2.2.1 Plants of rock outcrops and threatened dryland herbs in the entrenched gullies and around rock tors are a significant value. Species such as *Olearia lineata*, porcupine shrub, kanuka, *Pimelea aridula*, desert broom and *Hebe pimeleoides* subsp. *faucicola* can be protected by ensuring that management practices are not having a detrimental impact. These values will be monitored as part of the landscape amenity of the Land.
    - 2.2.2 Plants characteristic of ephemeral tarns and dry stressed areas are significant values on the Land. They survive with and probably require a high disturbance environment that could be provided by continued sheep grazing. Although now invaded by introduced grasses and rushes, sheep grazing appears to reduce the competition these exotics would otherwise exert.
    - 2.2.3 Cattle are known to cause pugging of wet areas and may destroy the Values of the Land, so conditions imposed as part of an agreement to cattle grazing in accordance with Schedule 2 special condition 8 need careful consideration.
    - 2.2.4 The Owner wishes to sow seed and fertilize Area "B" of the Land. This has unknown outcomes for the threatened herbs, most of which are in ephemeral wet tarns on the Land.
    - 2.2.5 In order to monitor the outcome of ongoing management practices, developed and undeveloped areas will be monitored; Area "A" of the Land will not be seeded, fertilized or otherwise developed.

2.2.6 The plant communities under the two different treatments (Areas "A" and "B") will be monitored over time to ensure the populations continue to thrive, at least in Area "A" and assist with knowledge of their management under pastoral use. Adaptive management can be applied to better meet the objects of the covenant.

**3. A description of the Values on the Land at the commencement of the Covenant.**

3.1 See Schedule 1, Item 3 – Values

**4. A description of the monitoring programme (of activity effects) to be carried out (for vegetation).**

4.1 See Schedule 4 – Monitoring Programme

**5. Details of grazing systems, including identification of vegetation trends and how that will affect the grazing systems.**

5.1 In accordance with Schedule 2 special condition 1, Sheep may graze the Land.

5.2 The Owner will keep records of grazing rates, time and stock type, development and fertiliser application on the Land, and share this information with the Minister on request. This information and rainfall data will be analysed collaboratively between the parties with a view to adaptive management of the Land to achieve the Objective of the Covenant as further outlined in Schedule 4, clause 6.

**6. Review of management prescription document**

6.1 The Owner and the Minister will review this part of the Covenant from time to time in accordance with knowledge gained over the course of the Covenant by monitoring and otherwise, and may by mutual agreement make changes to better achieve the Objective. The first such review shall occur on or before the 10<sup>th</sup> anniversary of the commencement of the Covenant, with subsequent reviews to occur at intervals not greater than every ten years thereafter.



## SCHEDULE 4

### DESCRIPTION OF THE MONITORING PROGRAMME TO BE ESTABLISHED.

#### 1. Aim:

- 1.1 To monitor changes to the landscape amenity attributes including the grey shrublands.
- 1.2 To monitor vegetation changes in particular to the "threatened" herbs.

#### 2. Monitoring Proposal:

- 2.1 Landscape amenity attributes will be monitored with photopoint monitoring.
- 2.2 Vegetation monitoring will be used in developed and undeveloped areas to understand the outcomes from sowing seed and fertilizing of areas with threatened herbs, in ephemeral wet tarns on the Land.

The fenced area of some 62 ha being the part of the Land shown as Area "A" on the Designations Plan will not be seeded or fertilized by the Owner. This area will be compared to that part of the Land shown as Area "B" which will be subject to ongoing pastoral inputs such as seed and fertilizer.

The monitoring is designed to assist the Owner in managing the Land to achieve the Objective by:

- tracking the plant communities in tarns
- ensuring the management of Area "A" is appropriate
- detecting any differences in the vegetation communities in Areas "A" and "B" over time

#### 3. Responsibilities:

The monitoring programme will be established at the commencement of the Covenant by the Minister and the Owner. Subsequent re-monitoring will occur every 5 years (it could be more frequent for a start to understand seasonal differences /or possibly one year in 5 when conditions suit) and is to be organised by the Minister with the assistance of the Owner. It may be decided that Landscape amenity and vegetation changes can be monitored at different intervals.

The Owner will be party to the monitoring by providing one person with appropriate monitoring skills to assist with the physical monitoring. The Minister will complete the report write up. The Owner will be given a copy of the monitoring report.

#### 4. Costs:

The Minister and the Owner will cover their own staff (including that party's contractors if any) costs for monitoring. The Minister will cover the cost of the monitoring report write up for the initial and repeat monitoring.

#### 5. Monitoring Methods:

The design of the monitoring is to be finalised when the monitoring is established using guidelines as follows:

- 5.1 The landscape will be monitored with a (small) number of repeatable photopoints that will show changes in the landscape amenity over time.
- 5.2 The monitoring of threatened herbs is likely to include monitoring of a number of ephemeral tarns within both Areas "A" and "B" to determine if there are any long term differences in the number and distribution of plant species attributable to the different management regimes.

5.3 Quantitative monitoring to be applied - quadrat, transect type approach (assessing cover abundance within plots). The habitat of ephemeral tarns is to be included in the areas monitored.

**6. Monitoring Results:**

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

The results will be used to inform mutually agreed changes in management of the Land.

The Minister may decide on appropriate changes to the management of Area "A" to better protect the values.

It is acknowledged the Owner's use of Area "B" may in time lead to greater invasion of exotic plants into ephemeral tarn habitat in Area "A". The Minister may advocate with the Owner for changes by mutual agreement to the management of Area "B" to protect the values.



GRANT of

Correct for the purposes of the  
Land Transfer Act 1952

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

Solicitor for the Minister

COMMISSIONER OF CROWN  
LANDS

to

MINISTER OF CONSERVATION

---

Solicitor  
Department of Conservation  
DUNEDIN/CHRISTCHURCH

**Appendix 7: Copy of Easement 885763 to Continue**

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# Memorandum of Transfer

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~~(herein called "the Transferor") being registered as proprietor of an estate~~

~~subject however to such encumbrances, liens and interests as are notified by memoranda underwritten or endorsed hereon in the piece or pieces of land situated in the Land District of~~

~~containing more or less being~~

## 1.0 BACKGROUND

- 1.1 The Last Chance Irrigation Company Limited, at Alexandra (called "the Irrigation Company") has purchased the Last Chance Irrigation Scheme pursuant to a Sale and Purchase Agreement between John Begg Miller of Shingle Creek, Farmer, Lewis Jackson McGregor of Alexandra Farmer and Charles Watson Harrex of Alexandra, Orchardist as agents for the Irrigation Company then yet to be incorporated and David Francis Caygill, Minister of Finance and Colin James Moyle, Minister of Agriculture on behalf of the Crown, dated 16 November 1989 and subsequently adopted by the Irrigation Company as the Purchaser. The Last Chance Irrigation Scheme (called "the Irrigation Scheme") is defined by notices in the New Zealand Gazette Order dated 24 June 1923 and is described in the said Sale and Purchase Agreement.
- 1.2 HER MAJESTY THE QUEEN acting by and through the Commissioner of Crown Lands (called "the Crown") is the proprietor of that land containing 2774.5450 hectares more or less being Sections 1, 3, 4, 8 to 19 inclusive and Part Section 2, Block II, Cairnhill Survey District subject to Pastoral Lease Number P264 comprised in Register Book Volume A2 Folio 1315 (Otago Land Registry).  
(called "the Crown's land").
- 1.3 ALEXANDRA CHARLES BIRNIE SANDERS of Little Valley, Farmer (as to a  $\frac{1}{2}$  share) the said ALEXANDRA CHARLES BIRNIE SANDERS (as to a  $\frac{1}{4}$  share and BARBARA E'STELLA SANDERS of Little Valley, Married Woman (as to a  $\frac{1}{4}$  share) (called "the Lessee") is registered as the lessee of the said Pastoral Lease.
- 1.4 The Minister of Agriculture (called "the Minister") had the right immediately before the date of sale of the Irrigation Scheme to the Irrigation Company,

*CV A Y/M*

*AB S. H/K*



pursuant to Section 223 of the Public Works Act 1981 or the corresponding provisions of any former enactment relating to irrigation, to enter, use, occupy, carry out work on, store water on, or convey water over the Crown's land and in the manner, detailed in this Instrument, for the purposes of the Irrigation Scheme.

- 1.5 Section 4 of the Irrigation Schemes Act 1990 provides the statutory mechanism to transfer from the Landowners to the Irrigation Company, the same easement rights as the Crown previously had over the Crown's land, and the Crown, lessee and the Irrigation Company have agreed to the transfer of these easement rights to the Irrigation Company.

## 2.0 GRANT OF EASEMENT

- 2.1 The Crown pursuant to section 60 of the Land Act 1948 and section 4 of the Irrigation Schemes Act 1990 TRANSFERS AND GRANTS to the Irrigation Company as an easement in gross forever, the right to convey water over the said Crown's land as marked "\_\_\_\_", and the right to store water as shown "storage", on the plan LC 28/29 annexed which right to convey water and right to store water shall have attached to them the rights, powers and obligations detailed in the following clause 3.0.

## 3.0 RIGHTS AND POWERS RELATING TO THE GRANT OF EASEMENT

- 3.1 The Irrigation Company together with any person (as defined in Section 4 of the Acts Interpretation Act 1924) acting with the authority, or on the instructions, of the Irrigation Company and together with all tools, implements,

*ewab 4/11*

*[Handwritten signatures]*

machinery, vehicles, equipment and materials of whatsoever nature shall have the uninterrupted and unrestricted rights:

- (a) To situate and maintain water works and convey water unimpeded along the stipulated course and the right to store water on the Crown's land shown on the plan attached and for this purpose to have the right to use, occupy, construct, maintain, reconstruct and carry out such works (in this Instrument called "water works") as the Irrigation Company considers necessary or desirable on the Crown's land along the stipulated course and at the stipulated area for storage including, but without limitation, structures and works for; intakes, conveying water, storage of water, water flow control and supply, turnouts, monitoring and discharges.
- (b) To monitor and control its waterflows and the water source flows and to carry out viewing, surveillance and monitoring of its water works on the Crown's land.
- (c) To enter the Crown's land and to have access across the Crown's land by the most practicable route.
- (d) To erect and maintain such fixtures or markers as may be necessary to indicate the location of any pipeline and associated works provided that such fixtures or markers do not interfere with the reasonable management of the Crown's land.
- (e) To generally do anything necessary or convenient for the full exercise of the rights under this Instrument and to give full effect to the purposes of this Instrument.

*Handwritten signature*

*Handwritten signatures and initials*

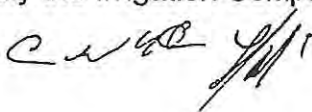
It being acknowledged that the words "convey water" and "conveying water" include "bye-wash water" and "bye-washing water".

3.2 In exercising its rights and powers under this Instrument, the Irrigation Company shall:

- (a) Cause as little disruption and disturbance to the occupation and enjoyment by the Crown and the lessee of the Crown's land, as is reasonably possible.
- (b) Cause as little damage to the Crown's land and the fixtures on it and the surface of it as is reasonably possible.
- (c) After exercising its rights and powers, restore the Crown's land and the fixtures on it as nearly as is reasonably possible to its former condition but as shall be reasonable in the circumstances having regard to the economic and amenity values to the Crown and the lessee of the land and the fixtures affected.

3.3 (a) When the Irrigation Company requires entry with machinery on the Crown's land to carry out maintenance or construction works, it shall take reasonable steps to give to the lessee or occupier of the land not less than 24 hours notice by direct personal contact, ordinary letter, facsimile transmission, or telephone prior to such entry and works being undertaken, unless there is an emergency and in which case no notice shall be required.

(b) If the lessee or occupier has received such notice the lessee or occupier shall notify the Irrigation Company, prior to the entry and work being

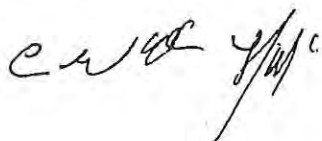




undertaken, of the presence of pipes or other underground facilities in the Crown's land and if the lessee or occupier fails to notify the Irrigation Company then the Irrigation Company will not be liable for any damage it may cause to such underground pipes or underground facilities.

- 3.4 (a) It is acknowledged that the Irrigation Company shall not fence the boundaries of the easements.
- (b) The Crown and lessee shall not do, or permit to be done, anything, including planting trees or constructing works or buildings, which will prevent or interfere with the free passage of water along the stipulated course or prevent or interfere with the Irrigation Company's full rights of access and full use by it of its rights created by this Instrument and shall not interfere, or permit any interference, or allow trees, tree roots or other vegetation growing on or from the landowners land or stock pastured on the crown's land to interfere with the support, structure or integrity of the Irrigation Company's water works.
- (c) Without limiting the extent of this clause 3.4, the Crown and lessee shall not, without the prior written consent of the Company, plant or permit to be planted trees or construct or permit to be constructed works or buildings within 4 metres of the centre line of a pipe or within 3 metres from the edge of a water race or other water works.

3.5 The rights and powers contained in paragraphs 2 and 5 of the Seventh Schedule to the Land Transfer Act 1952 shall apply except insofar as they are varied by this instrument and with the deletion from both paragraphs 2 and 5 of the words "(in common with the grantor, his tenants and any other person lawfully entitled so to do)".





- 3.6 Any right of action or remedy which shall at any time after the date of this instrument accrue to the irrigation company because of any breach or non-observance by or on behalf of the Lessee of any of the covenants expressed or implied in this instrument and to be observed or performed by the Crown, shall be enforced only against the registered proprietor for the time being of the Pastoral Lease in respect of which such breach or non-observance shall occur or against the lessee of the Pastoral Lease at the time of such occurrence aforesaid but to the intent that any lessee of the Pastoral Lease shall only be liable for acts or defaults occurring while that person is so registered.
- 3.7 The lessee agrees to the terms of this instrument and is bound by them to the extent that the terms apply to the lessee and the lessee consents, without payment of compensation, to the terms of this instrument.
- 3.8 A reference to any party to this instrument includes that party and that parties transferees and successors.

*Handwritten signature*

*Handwritten signature*  
*Handwritten signature*  
*Handwritten signature*

Dated the 19 day of May 1995

SIGNED by and on behalf )  
of HER MAJESTY THE )  
QUEEN by the )  
Commissioner of Crown )  
Lands as landowner )  
in the presence of: )



Witness *H. P. [unclear]*  
Occupation *Senior member General Crown Lands Dept. of Survey and Land Information*  
Address *W. [unclear]*

SIGNED by the LAST )  
CHANCE IRRIGATION )  
COMPANY LIMITED by )  
the affixing of its common )  
seal in the presence of: )



Director..... *C. W. [unclear]*

Director..... *H. [unclear]*

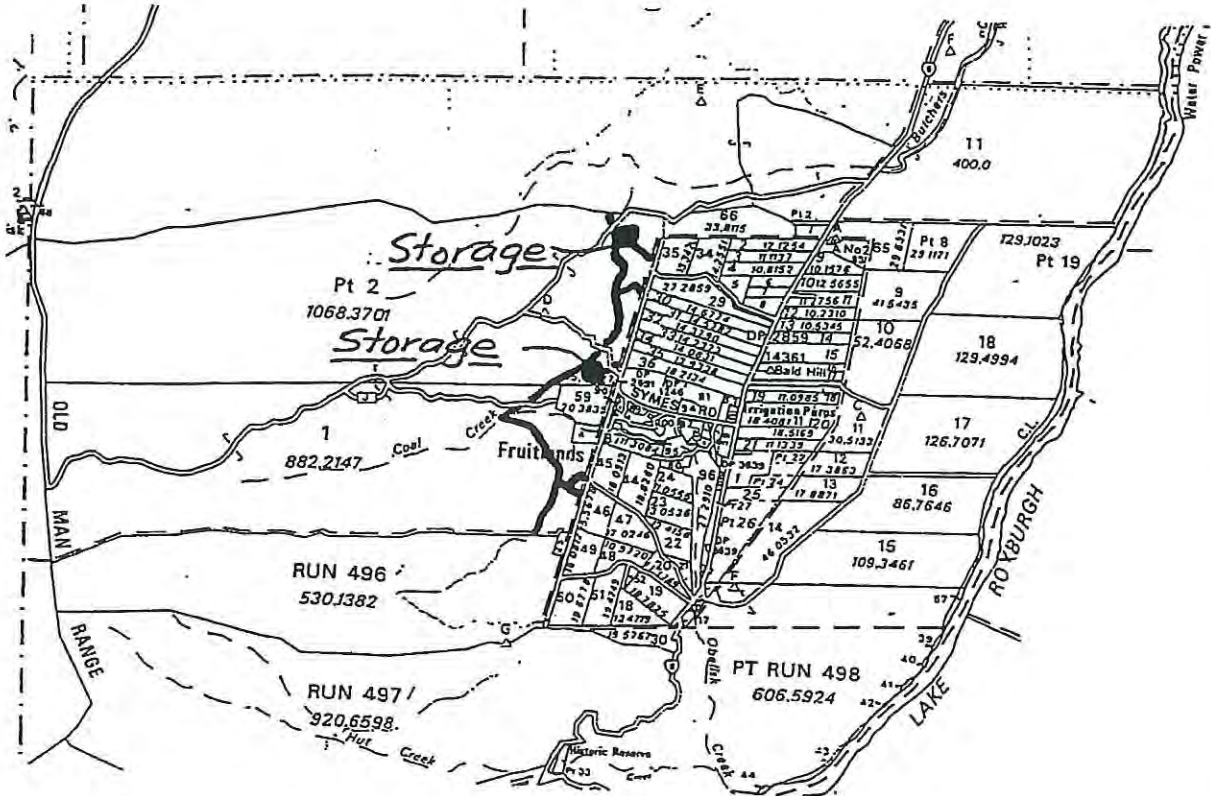


SIGNED by ALEXANDRA )  
CHARLES BIRNIE ) *A. Sanders.*  
SANDERS and BARBARA )  
E' STELLA SANDERS as )  
lessee in the presence of: ) *E. Sanders.*

Witness..... *[Signature]*

Occupation..... **Legal Executive**  
**CHECKETTS McKAY**  
**Solicitors**  
**Alexandra**

Address.....



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 by Last Chance Irrigation Company Ltd  
 in terms of Licence No OT 1994 / 39

**OPTIONAL EASEMENTS IN GROSS**

Purpose	Comprised in	Shown	Servient Tenement	Grantee
Right to store and convey water	CL A2 / 1315		Secs 1,3,4,8 - 19 & Pt Sec 2 Blk II Cairnhill SD	Last Chance Irrigation Company Ltd

**Plan of Easement Over  
 Sections 1, 3, 4, 8 - 19 & Part Section 2  
 Block II Cairnhill S.D.**

OTAGO LAND DISTRICT  
 CENTRAL OTAGO D.C.

SCALE 1 : 75,000  
 DATE: September 1994

Prepared by MCGEORGE & ELDER  
 SURVEYING CONSULTANTS

LC 28/29

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*Handwritten signatures and initials*



**MEMORANDUM OF TRANSFER**

**EASEMENTS IN GROSS FOR IRRIGATION  
WORKS**

LAST CHANCE IRRIGATION ..... Transferor  
COMPANY LIMITED

A C B & B E SANDERS ..... Transferee

Particulars entered in the Register as shown herein on the  
date and at the time endorsed below.

Assistant / District Land Registrar of the

District of OTAGO

CHECKETTS MCKAY  
LAWYERS  
CENTRAL OTAGO

Correct for the purposes of the Land Transfer Act 1952

.....  
SOLICITOR FOR THE TRANSFEREE

I hereby certify that this transaction does not contravene  
the provisions of Part IIA of the Land Settlement  
Promotion and Land Acquisition Act 1952.

.....  
SOLICITOR FOR THE TRANSFEREE

I hereby certify for the purposes of the Stamp and Cheque  
Duties Act 1971 that no conveyance duty is payable on  
this instrument by reason of the application of Section  
24(1) of the Act and that the provisions of subsection (2)  
of that section do not apply.

.....  
SOLICITOR FOR THE TRANSFEREE

Regd  
88 to 105  
30 June 1993

**Appendix 8: Copy of Easement 8395719.1 to Continue**

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# View Instrument Details

Instrument No. 8395719.1  
 Status Registered  
 Date & Time Lodged 18 Feb 2010 15:44  
 Lodged By Lanham, Bernadette Joan  
 Instrument Type Grant of Easement Without Transfer



Affected Computer Registers Land District  
 OTA2/1315 Otago

Annexure Schedule: Contains 8 Pages.

### Grantor Certifications

- I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument
- I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument
- I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply
- I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period
- Mortgage 7968384.4 does not affect the servient tenement, therefore the consent of the Mortgagee is not required

### Signature

Signed by John Alexander Williamson as Grantor Representative on 27/01/2010 08:58 AM

### Grantee Certifications

- I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument
- I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument
- I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply
- I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

### Signature

Signed by John Alexander Williamson as Grantee Representative on 27/01/2010 08:58 AM

\*\*\* End of Report \*\*\*



**DEED OF EASEMENT**

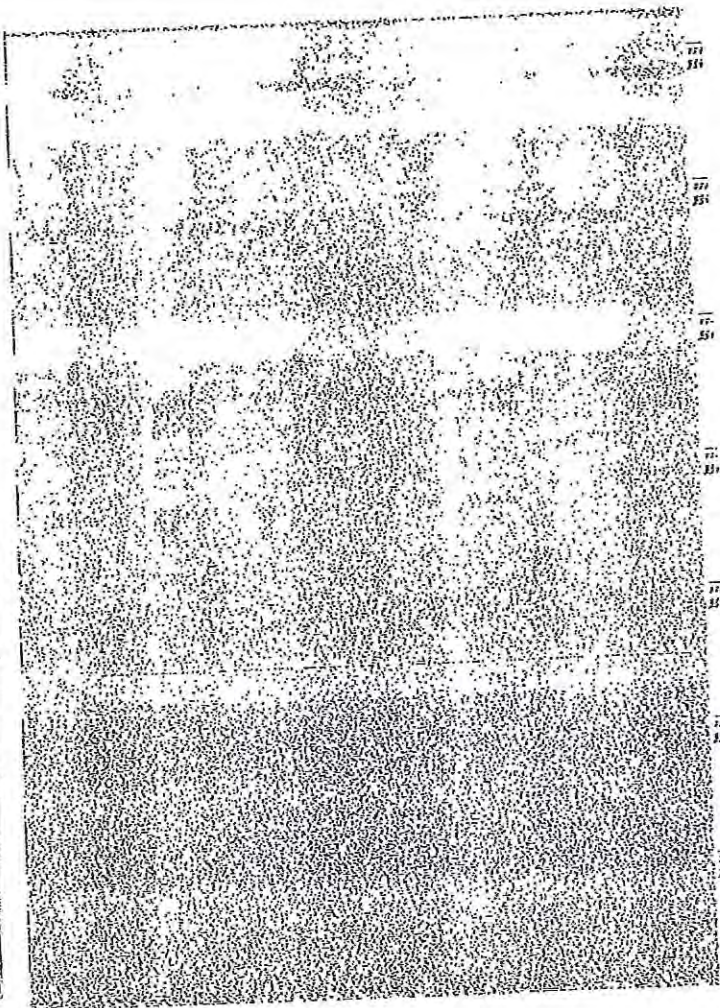
**Parties:**

- 1. Her Majesty the Queen acting by and through the Commissioner of Crown Land.
- 2. Last Chance Irrigation Company Limited
- 3. Eamsdeugh Station Lands Limited

Checkells McKay Law Limited  
Lawyers  
Central Otago

WAMAY LES L'Orange Otago Great South Bay Road 41110005 of Emsdeugh Road 60

*Handwritten signatures and initials*



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DEED OF GRANT OF EASEMENT

Dated 22 September 2009

Parties

- 1. Her Majesty the Queen acting by and through the Commissioner of Crown Lands pursuant to the Land Act 1948 (the Grantor).
- 2. East Chance Irrigation Company Limited (the Grantee).
- 3. Emswath Station Lands Limited (the Lessee).

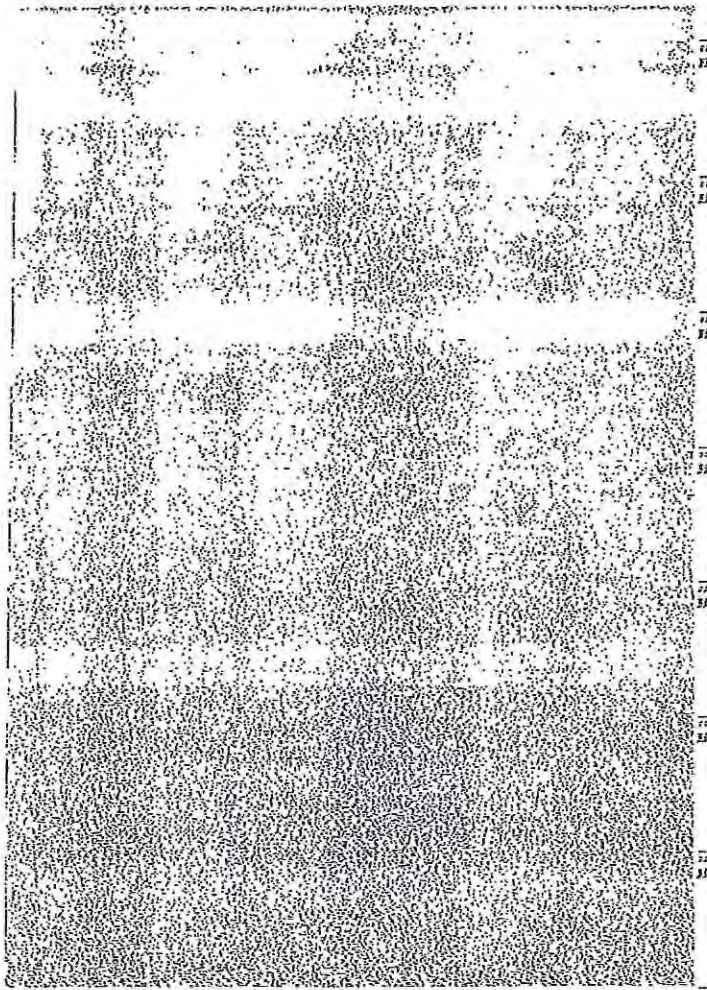
Background

- A. The Grantor is the owner of the Grantor's Land.
- B. The Commissioner of Crown Lands has agreed to grant to the Grantee an easement to convey water on the terms specified in this Deed, pursuant to Section 60 of the Land Act 1948.
- C. The Lessee has consented to the within easement and waives its right to compensation as specified in this Deed.

This Deed Witnesseth

- 1. Interpretation
  - 1.1 In this instrument, unless the context otherwise requires:
    - (a) "Commencement Date" means the date of execution of this Deed.
    - (b) "Deed" means this Deed, the background and the schedules.
    - (c) "Act" and "Regulations" have the meaning given to them in the Interpretation Act 1996.
    - (d) "Easement Land" means the stipulated course or stipulated area over that part of the Grantor's Land as referred to in clause 2.1.
    - (e) "Grantee" includes its respective servants, agents, employees, workers and contractors, any licensee, lessee or tenant of the Grantee, and the Grantee's successors and transferees.
    - (f) "Grantor's Land" means that land being Section 1, Block II Colinhil Survey District being part of the land legally described in Certificate of Title OT A211315.
    - (g) "Lessee" includes the Lessee's transferees.
    - (h) "Easement Facility" means the facility as set out in clause 2.3.

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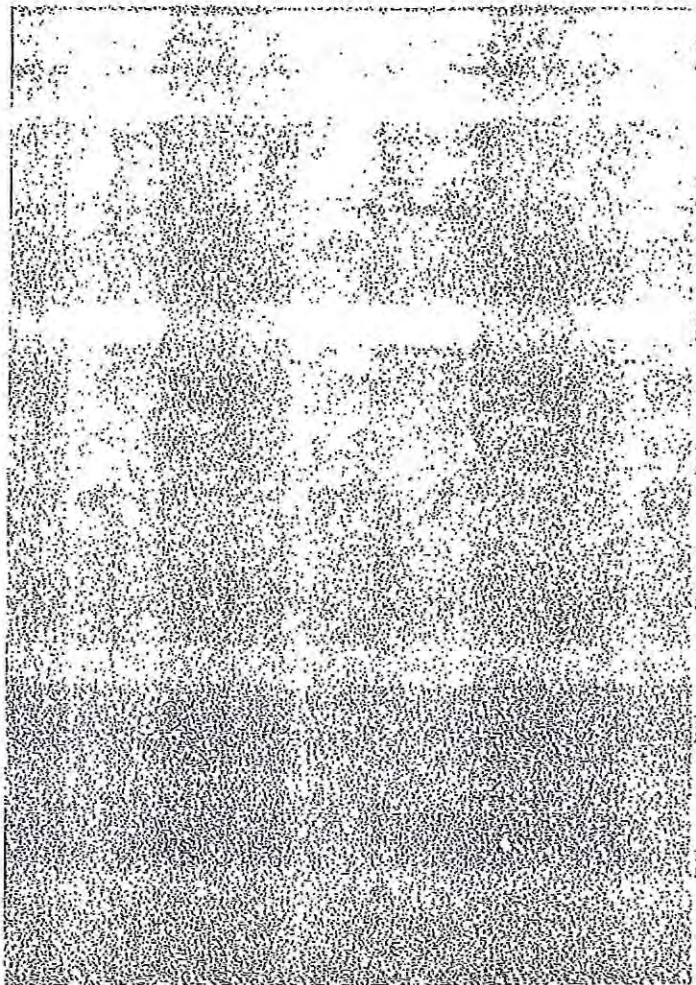
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- (i) "Pastoral Lease" means the Pastoral Lease number P264 recorded in Certificate of Title OTA2/1315.
- 1.2 In the Interpretation of this Deed unless the context otherwise requires:
  - 1.2.1 The headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed.
  - 1.2.2 References to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantively correspond to those referred to; and
  - 1.2.3 The singular includes the plural and vice versa, and words incorporating any gender shall include every gender.
- 2. Grant of Easement
  - 2.1 The Grantor CONVEYS AND GRANTS to the Grantee as an easement in gross for the right to convey water through the Easement Facility and over the Easement Land shown as A, B, C on the attached Digital Survey Plan LT 420310 and contained within certificate of Title OTA2/1315 on the terms specified in this Deed.
  - 2.2 Subject to the variations specified in this Deed, the rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 shall apply to the easement created by this Deed. Where there is any conflict between the express terms of this Deed and the rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002, the express terms of this Deed shall apply.
  - 2.3 The Easement Facility in relation to the right to convey water includes "water race together with ancillary water control and other works to convey and control water by water race".
  - 2.4 The rights created by this Deed commence on the Commencement Date.
  - 2.5 The Grantee shall observe the obligations imposed on it by this Deed.
- 3. Consideration
 

This Deed is entered into by the Grantor in consideration of the sum of \$2,500.00 plus GST paid to the Grantor by the Grantee (the receipt of which is acknowledged).
- 4. Lessee consent
 

The Lessee consents to the within easement and waives its right under section 6C(1) of the Land Act 1948 to any compensation from the Grantor in respect of the grant of easements in this Deed.
- 5. Grantee obligations in exercising Easement Rights
  - 5.1 In exercising the Grantee's rights and obligations under this Deed, the Grantee shall:
    - (a) where practicable, keep vehicles within existing tracks on the easement land and leave the gates as found and if requested by the Lessee locked when not used by the Grantee for passing through;
    - (b) not obstruct the Lessee, the Grantor or agents, employees and contractors of the Grantor;
    - (c) take reasonable precautions to guard against danger or injury to the Lessee and the Grantee on the Grantor's land;
    - (d) at the Grantee's sole expense, keep the Easement Facility, well maintained and in good

*Michael J. O'Connell*





repair so as to prevent them becoming a nuisance or danger; and

(e) comply with all Acts and Regulations.

5.2 The Grantee must comply with the following conditions in relation to the creation, maintenance and repair of the Easement Facility:

(a) That the cuts and fill be battered to ensure stability and shaped to blend into the surrounding terrain.

(b) That the track and all battered faces be oversown and seeded.

(c) Top soil and vegetation removed for race construction be reinstated over the final exposed batters.

(d) Earth disturbance for the road construction across Obetisk Creek be kept to a minimum.

6.3 Without limiting the obligations of the Grantee express or implied to remedy any damage, the Grantee shall make good any damage or loss by the Grantee, to any track, fence, gate, drain, building or other structure or stock on the Grantor's land, caused by the Grantee in exercising its rights and obligations under this Deed or caused by any breach by the Grantee of its rights and obligations under this Deed and if such stock is lost or damaged then forthwith compensate the owner for such loss or damage.

6. Costs  
The Grantee shall meet the following costs:

(a) the costs in preparing and registering this Deed.

(b) All costs charged by the Grantor in consenting to this Deed and its execution of it.

(c) Any future charges lawfully made by the Grantor in relation to the easement which is the subject of this Deed.

(d) All of the costs of the installation, maintenance, replacement, removal and operation of the Easement Facility which are the subject of the easement created by this Deed.

7. Indemnity  
The Grantee indemnifies both the Grantor and the Lessee against any loss, claim, damage, cost, expense, liability or proceeding suffered or incurred at any time by the Grantor and/or the Lessee in connection with this Deed or as a direct result of the exercise by the Grantee of its rights under this Deed, or any breach by the Grantee of its obligations, undertakings or warranties contained or implied in this Deed.

8. Exclusion of Grantor liability  
The Grantor and the Lessee shall have no liability in relation to any aspect of this Deed or the rights of the Grantee created by this Deed including (but without limitation) no liability:

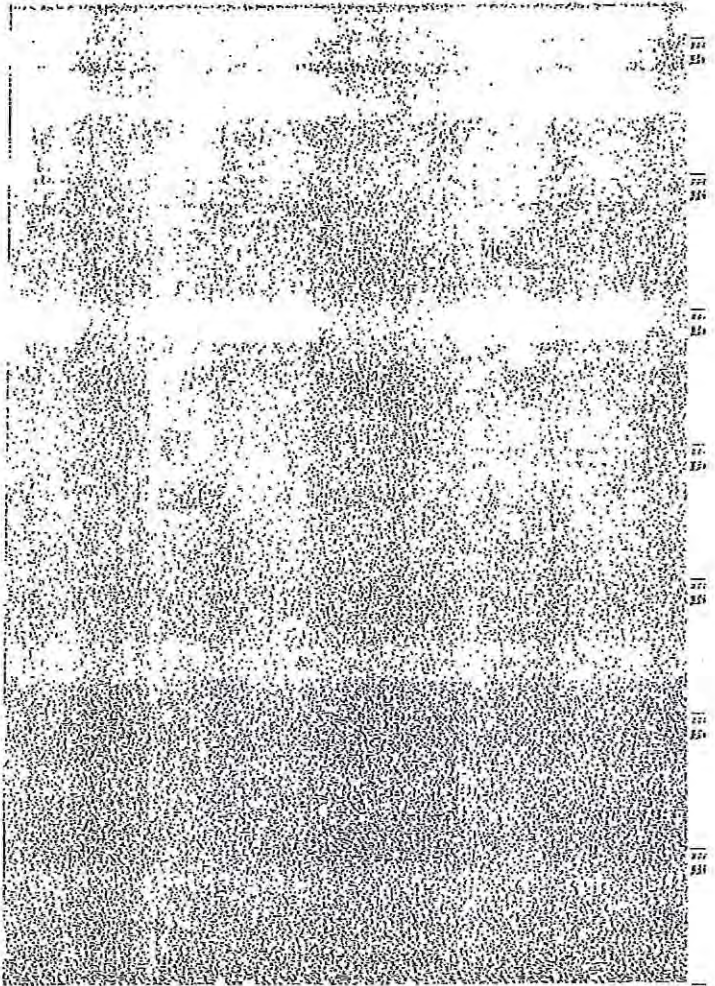
(a) in contract, tort or otherwise;

(b) for consequential loss;

(c) for anything arising directly or indirectly from this Deed;

(d) for any activity, action or inaction by or on behalf of the Grantor, and

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(9) for any activity, action or inaction by or on behalf of the Lessee.

9. Termination or Surrender

9.1 The Grantee shall surrender this easement at such time that this easement is no longer required by the Grantor to convey water through the Easement Facility.

9.2 On termination or surrender of the easement, the Grantee shall remove all of its easement facilities on the Easement Land and restore the Easement Land to the condition of the immediately surrounding land which is unaffected by the easement facilities and their removal.

9.3 If the Grantee fails to remove the easement facilities and restore the Easement Land as provided for in the preceding clause 9.2, the Grantor or Lessee may remove the easement facilities and restore the land in the manner provided in the preceding clause 9.2 and recover the costs in doing so from the Grantee.

10. Grantor's rights of delegation

All rights, benefits and obligations of the Grantor arising under this Deed may be exercised by any person duly appointed by the Grantor but without incurring the obligations of the Grantor in the performance or observance of the provisions of this Deed.

11. Disputes

If any party requires the resolution of a dispute between them regarding the rights or obligations under this Deed then

(a) the procedure set out in section 17 of the Land Act 1940 shall be followed if that section can be applied; and

(b) if section 17 of the Land Act 1940 cannot be applied to the dispute, then the dispute shall be referred to arbitration under the Arbitration Act 1986 by an arbitrator agreed to by the parties and failing agreement appointed by the then President of the Otago District Law Society.

12. Notices

12.1 A written notice to be sent pursuant to the terms of this Deed shall be:

(a) delivered to that person; or

(b) posted by ordinary mail to that person's address if it is a natural person and if it is a company then to its registered office; or

(c) sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.

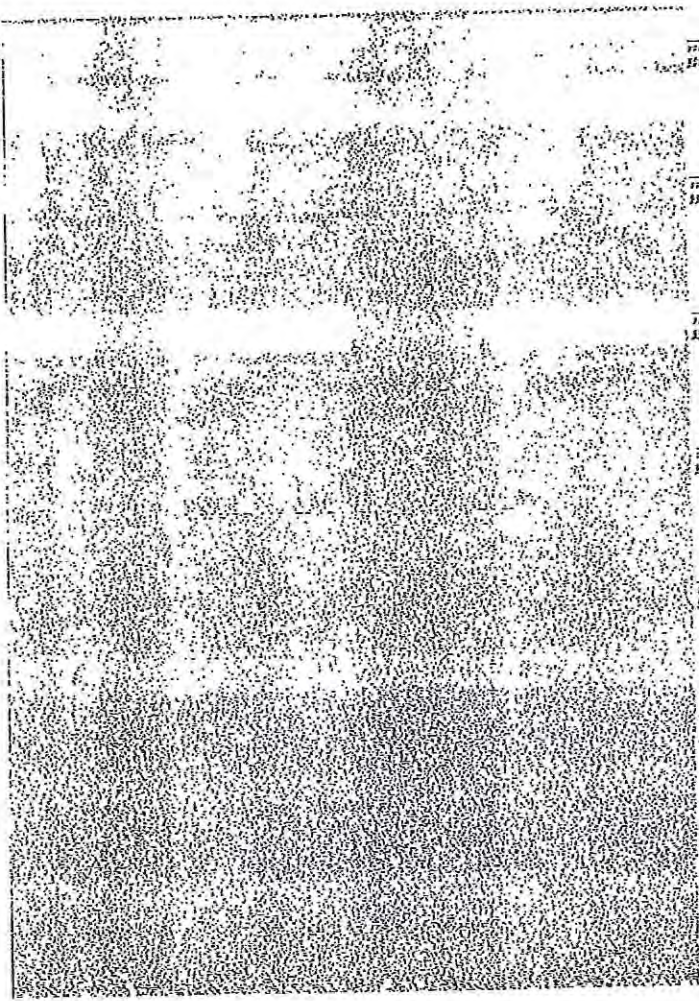
12.2 (a) A notice delivered to a natural person shall be served by handing the notice to that person. If service is to a company then delivery shall be by handing the notice to an officer of the company or to a person working at the registered office of the company.

(b) A posted notice shall be deemed to be received three working days after it is posted.

(c) A notice sent by facsimile machine is deemed to have been received on the working day following the day on which it was properly transmitted.

13. Severability

Where any part of this Deed is held to be illegal, void, or unenforceable, such determination shall



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not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

14. **Registration**  
All parties will do all things necessary to enable registration of the within easements in the Land Registry Office of LINZ against the Grantor's Land and pastoral lease of the Grantor's Land.

SIGNED for and on behalf of Her Majesty the Queen by pursuant to a delegation from the Commissioner of Crown Land in the presence of:




Witness Signature

Diethelm Creek (Manager Pastoral)  
Land Information New Zealand  
Under delegated authority of the  
Commissioner of Crown Land.

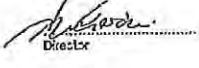
Mrs BARYL HEJLEMANN NIELSEN  
PORTFOLIO MANAGER PASTORAL  
CROWN LAND PROPERTY MANAGEMENT  
C/LINZ, CHRISTCHURCH

Place of residence

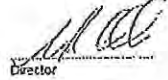
SIGNED by East Chance  
Irrigation Company Limited  
in the presence of:

  
Director

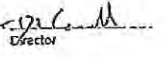
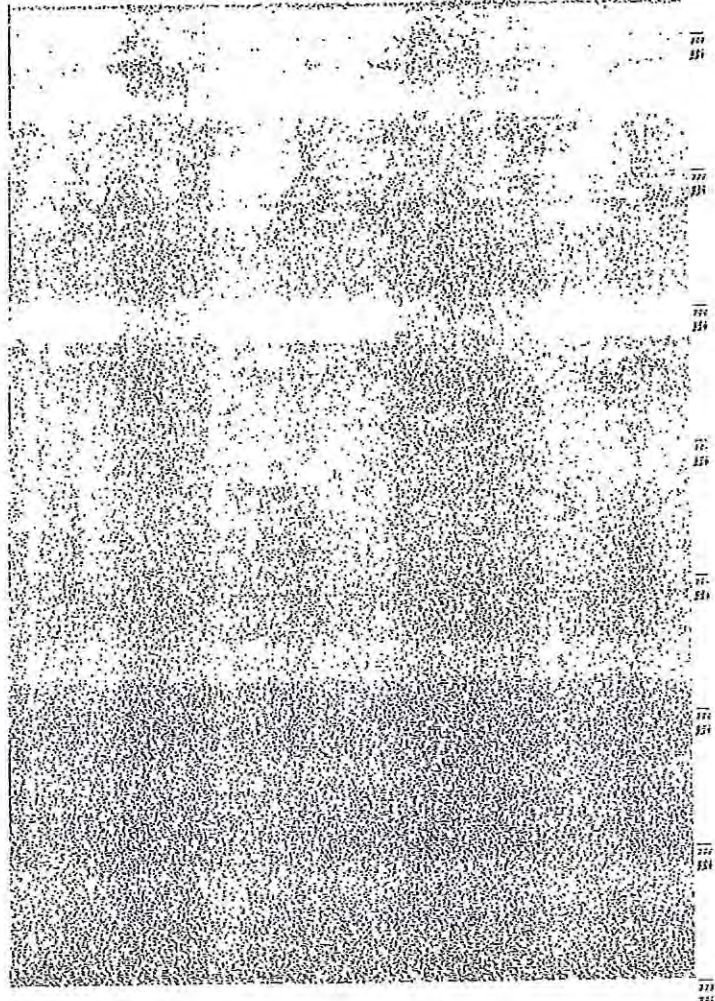
Signature of Witness:  
Witness to complete in BLOCK letters  
Witness Name: Alison Sutton  
Occupation: Admin Director  
Address: Alexandra

  
Director

SIGNED by Eamesclough Station  
Lands Limited  
in the presence of:

  
Director

Signature of Witness:  
Witness to complete in BLOCK letters  
Witness Name: Tracy Peterson  
Occupation: Solicitor  
Address: Omakau

  
Director

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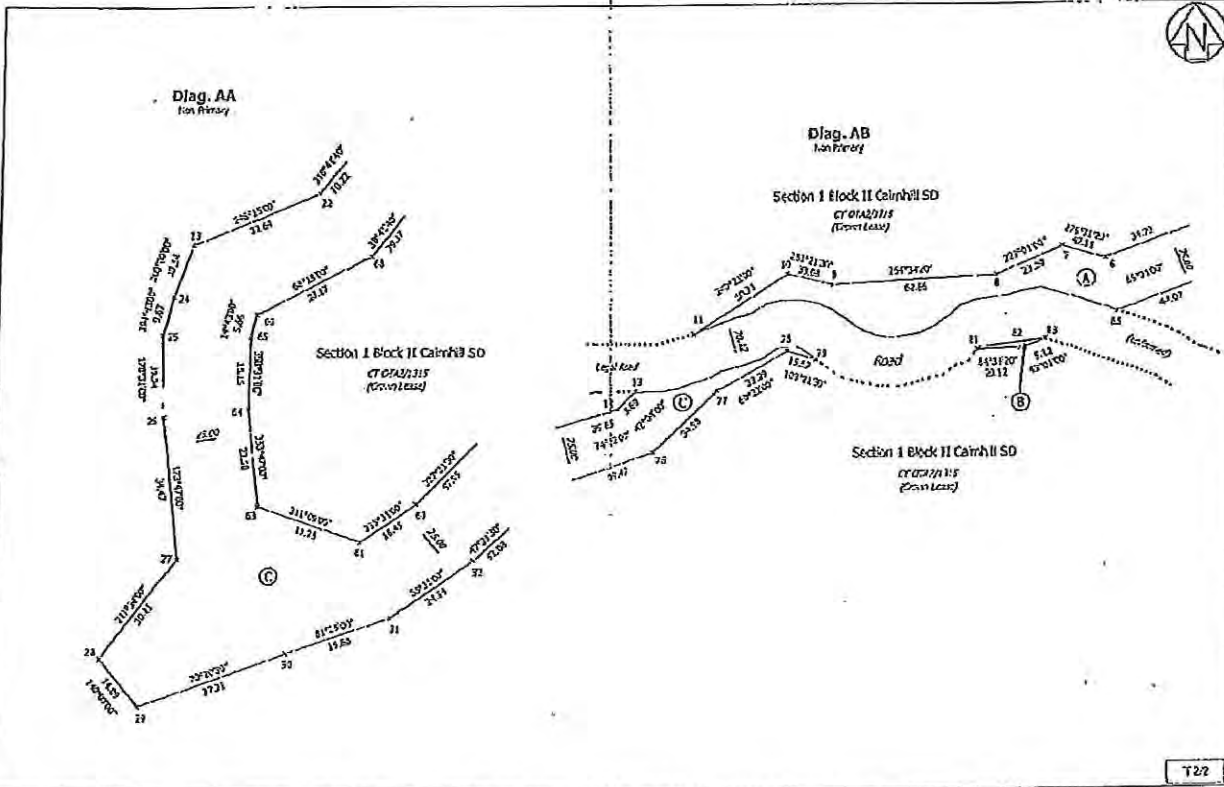
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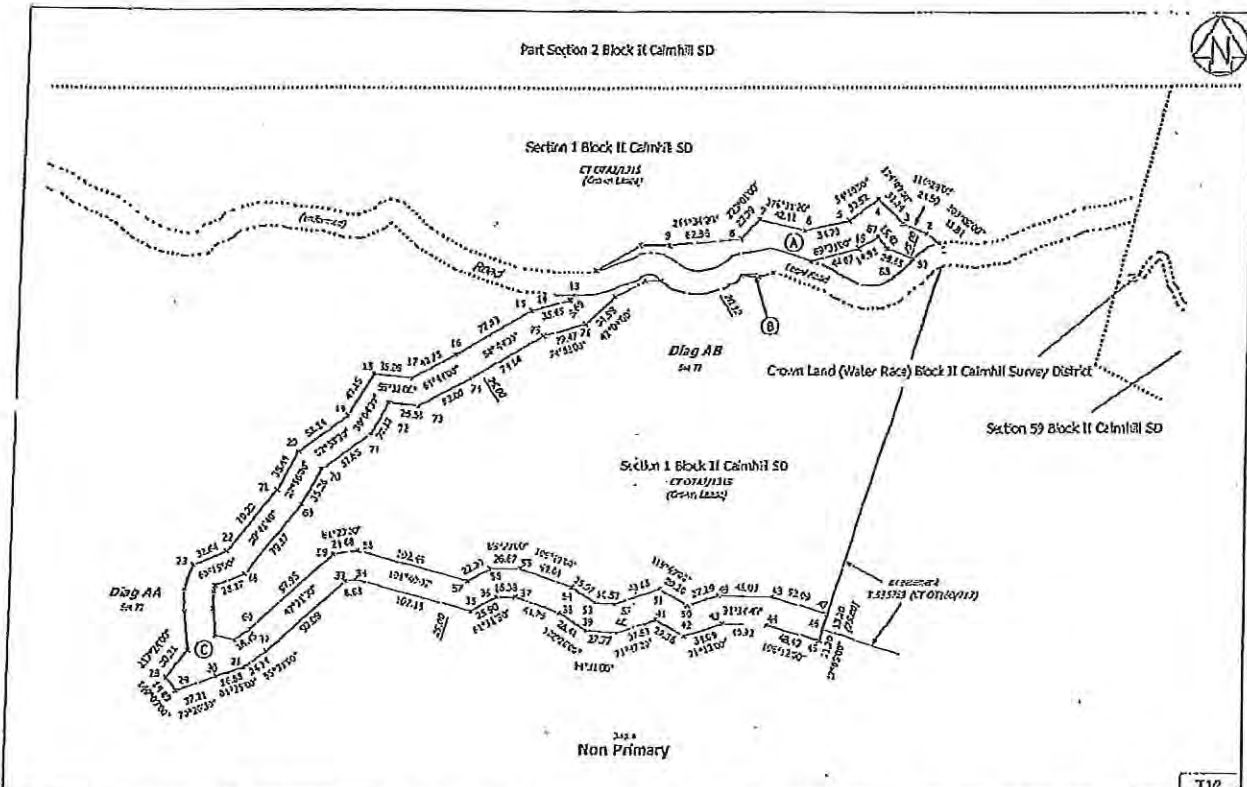
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Lake District Office Dataset Type: Computed Digitally Generated Plan Generated on: 02/07/2009 10:51 AM Page 13 of 13	EASEMENTS OVER SECTION 1 BLOCK II CAIRNHILL SURVEY DISTRICT.	Surveyor Stuart Allan Odette Firm Willet Surveying Limited (P/L) Ltd Survey Date: 19/05/2002	Digital Survey Plan LT 420310 Approved on: 2/07/2009
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Loc: Dist: 033; Dataset Type: Computed Digitally Generated Plan Created on: 20/07/2009 13:51:29 Page 12 of 12	EASEMENTS OVER SECTION 1 BLOCK II CAIRNHILL SURVEY DISTRICT.	Surveyor: Susan Allan Calder Firm: Water Surveying Limited (Whangarei) Survey Date: 15/07/2009	Digital Survey Plan LT 420310 Approved on: 20/07/2009
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*Handwritten signature and initials.*



**Execution Section**

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

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



Brian John Usherwood



Witness

LAWYER

Occupation

412, WELLINGTON

Address

**SIGNED** for and on behalf of **Earnsclough Station Lands Limited** by two of its directors:



Austair Kinnaird Campbell  
[name of director]



[name of director]

Duncan Kinnaird Campbell