



FLETCHER VAUTIER MOORE
LAWYERS

Tasman District Council
Private Bag 4
Richmond
Nelson

Office Richmond
Author Stuart Ritchie
Telephone 03 543 8301
Facsimile 03 543 8302
Email sritchie@fvm.co.nz
Matter No 27321\107

30 November 2011

Attention: Mr J Andrew

Dear Jack

**ADCOCK & DONALDSON PROPERTIES LIMITED - APPLICATION FOR A REGIONAL
MOTORSPORT PARK AT STANLEY BROOK**

1. We have been asked to consider the legal access to land owned by Adcock & Donaldson Properties Limited (**ADPL**) at Stanley Brook described as Lots 1 and 2 DP 17074 (**ADPL land**).
2. ADPL can access its land from the Motueka Valley Highway via Oliver's Road and a right of way over the areas marked H, J, G, F and E on DP 14500, a copy of which is attached. You will see from the plan that areas G, F and E intertwine with road vested in the Council so it is possible that in some places all or part of the access track is situated on legal road. The width of the right of way area varies. It is approximately 20.12 metres at the southern end of area H, and 26.26 metres at the northern end of area J. The right of way is mostly over Crown land, but a small section, being area J, is owned by Joanne and Stuart Bryant.
3. The areas marked E, F, G and H on DP 14500 are on Crown Land, which is subject to a Crown Forestry Licence in favour of Nelson Forests Limited. There is no underlying title for the land on which areas E, F, and G are situated so the terms of the easement are set out in deed of easement 13C/931, a copy of which is attached. Area H is part of the land described in certificates of title NL 72/21 and NL 72/22.
4. The area marked J on DP 14500 is part of the land described in certificate of title NL 41/189, which is owned by Mr and Mrs Bryant (**the Bryant land**).
5. The terms of the right of way over the Crown land are set out in Deed of Easement 13C/931. Under this easement the Crown permits the Grantee and 'secondary users' to drive over areas H, G, F, and E in order to get to the ADPL land. The Grantee is the person owning the ADPL land. Currently that is ADPL. The 'secondary users' are defined in the easement as:

Nelson
Level 1, 126 Trafalgar Street, Nelson 7010.
PO Box 90, Nelson 7040, DX WC 70009.
Tel: (03) 548 1469, Fax: (03) 548 2994

Richmond
265A Queen Street, Richmond 7020.
PO Box 3029, Richmond 7050, DX WC 71017.
Tel: (03) 543 8301, Fax: (03) 543 8302

Motueka
12 Wallace Street, Motueka 7110.
PO Box 23, Motueka 7143, DX WC 72002.
Tel: (03) 528 7030, Fax: (03) 528 9120

'the Grantee's servants, agents, employees, workers and contractors and any licensee, lessee or tenant of the Grantee, but only where (in any case) the Grantee has allowed such person or persons to use the right of way easement conferred by this Deed'.

6. We have been asked whether the right of way over the Crown land could be used by anyone that ADPL permits to carry out, or to watch, motorsport activities on the ADPL land. We have therefore considered whether those persons are secondary users for the purposes of the Crown easement.
7. If ADPL permits a person to do something on the ADPL land then that person is a licensee. A licence can be in writing, or it can be oral, or it can be implied from acceptance of a state of affairs. For example, ADPL could enter into a written agreement with a motorsport club that allows the club and its members to carry out motorsport activities on the ADPL land pursuant to the terms of the agreement. That is a contractual licence. Another example of a contractual licence is if a person buys a ticket from ADPL to come on to the ADPL land to watch motor racing.
8. Even where there is no contract, if ADPL permits people to enter onto the ADPL land in order to watch motorsport then there is a licence. It is sometimes referred to as a bare licence. The people that are allowed onto the ADPL land to carry out these activities are licensees, and provided that ADPL has also allowed them to use the right of way then they are secondary users for the purposes of the easement over the Crown land. That allows them to use the right of way but in doing so they will have to comply with the obligations imposed on secondary users under the Crown easement.
9. The easement over the Bryant land does not refer to secondary users, but the terms of that easement (implied by Schedule 7 Land Transfer Act 1952) permit the use of the right of way over area J by ADPL's servants, tenants, agents, workmen, licensees and invitees. People that ADPL allows to come on to its land to watch or carry out activities will be either licensees or invitees, and therefore entitled to use the right of way over the Bryant land.
10. You have asked us to comment on a letter that McFadden McMeekan Phillips wrote to ADPL on this matter, dated 16 November 2011. The writer of that letter concluded that members of groups or other persons who wish to access the proposed motorsport park could use the right of way in the event that licences were granted to them by ADPL. We agree with that conclusion, although for clarity we would point out that for a person to be a licensee of ADPL, ADPL must permit that person to do something on the ADPL land, not the easement area.
11. We have concluded that people that ADPL allows to carry out, or watch, activities on the ADPL land are licensees and that they can therefore use the right of way over the Crown land and the Bryant land in order to access the ADPL land. However, we cannot rule out the possibility of a dispute arising between ADPL and Nelson Forests Limited, or between ADPL and the Bryants, over compliance with the terms of the easements, or the number of people using the right of way.
12. Nelson Forests or the Bryants may take the view that the right of way is being used excessively, by numbers of people that were never contemplated when the easement was granted. They may consider that the number of people using the right of way to access the ADPL land interferes with their rights, and the rights of other persons that

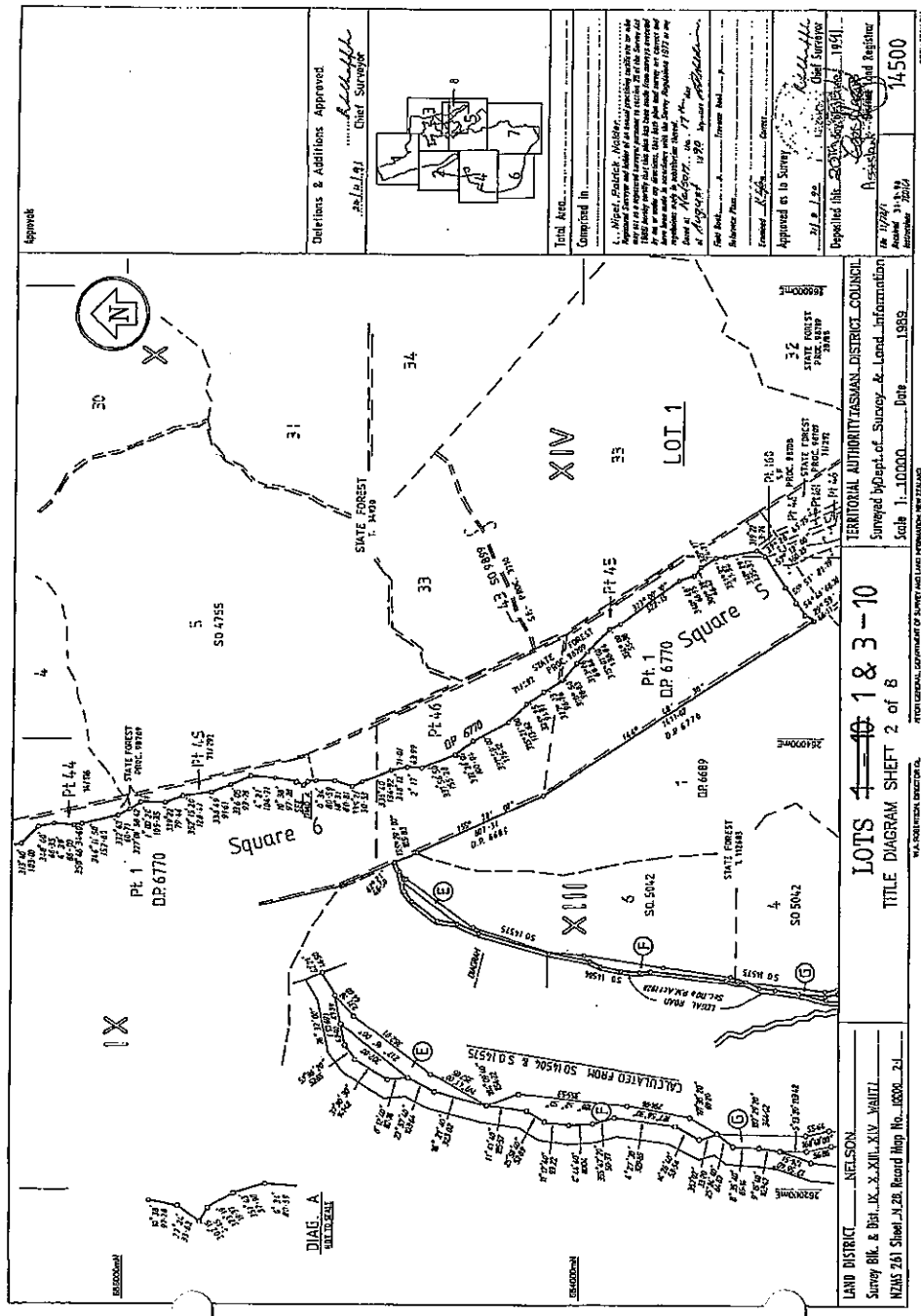
use the right of way. If the matter went to court and the court came to the view that the number of users was excessive then it might issue an order declaring that ADPL cannot use the right of way in such a manner as to cause substantial interference with the use of the right of way by Nelson Forests Limited or to cause a nuisance to Nelson Forest Limited. However, the court would come to a conclusion based on the facts presented to it.

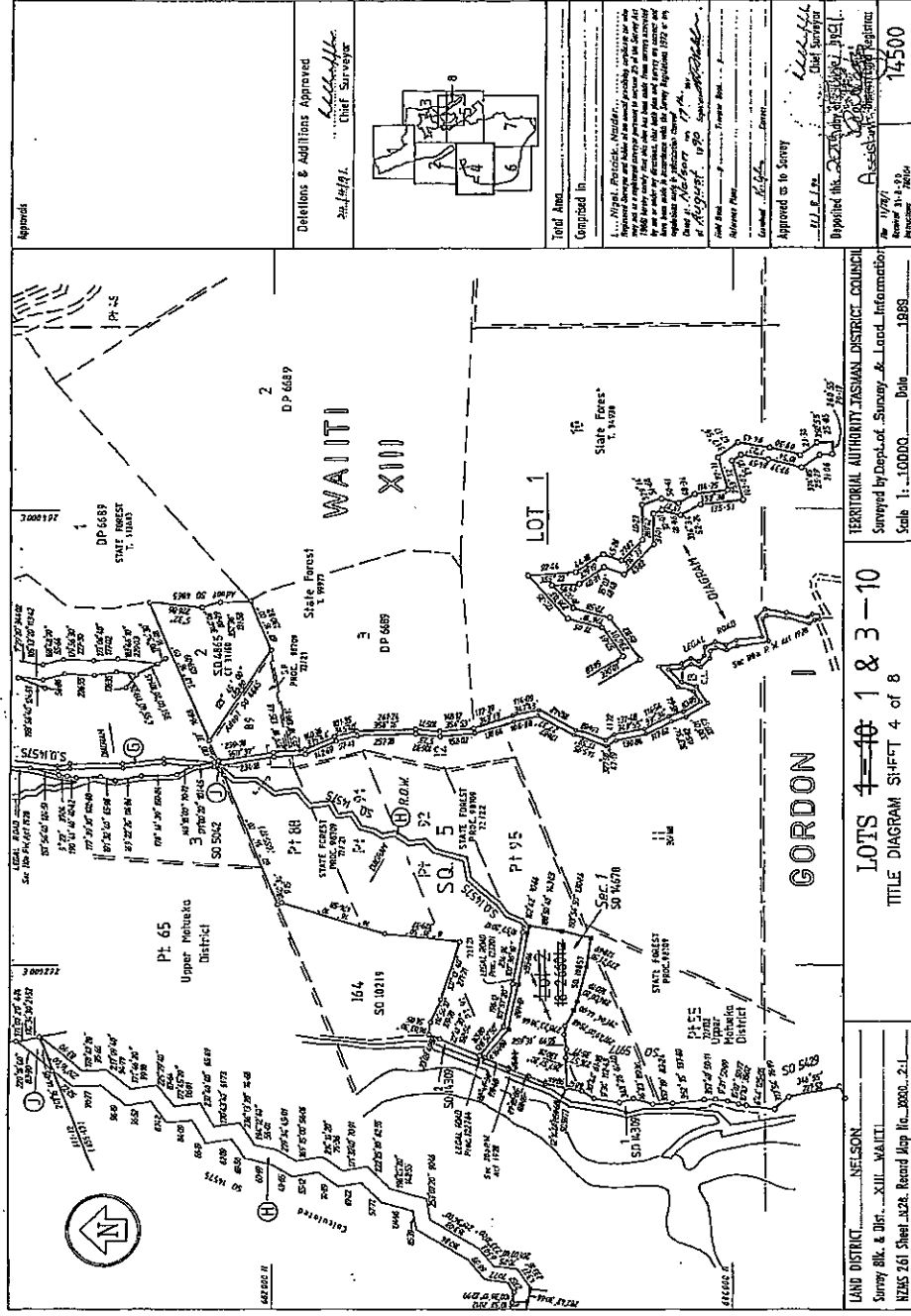
13. Nelson Forests, or the Bryants, might also apply to a court to modify, or to wholly or partially extinguish, the right of way easement because of a change in the nature or extent of the use of the ADPL land, or because the continuation of the easement would impede the reasonable use of the Crown forest land or the Bryant land from that contemplated when the easement was granted.
14. We mention these matters because they may arise if there is a substantial increase in the number of users of the right of way. However, these are matters that Nelson Forests, the Bryants, and ADPL can seek advice on from their own lawyers and we do not consider that it is the Council's role to provide that advice.

Yours sincerely
Fletcher Vautier Moore



Stuart Ritchie
Partner





LAND DISTRICT.....NELSON
 Survey Blk. & Dist.XIII...WAITI
 NZMS 261 Sheet J24. Record Map No. 2000. 2.1

LOTS 1 & 3-10
 TITLE DIAGRAM SHEET 4 of 8

TERRITORIAL AUTHORITY, TASMAN DISTRICT COUNCIL
 Surveyed by Dept. of Survey & Land Information
 Scale 1:10000 Date 1985

| | |
|---|--|
| Deletions & Additions Approved S. J. H. G. Chief Surveyor | |
| | |
| Total Area Completed In L. Nigel, Patrick, Nicola 1985 This survey was carried out under the provisions of section 22 of the Survey Act 1976. It is a preliminary survey and does not constitute a final survey. The survey was carried out in accordance with the Survey Regulations 1976 & 1978. It is subject to the provisions of the Survey Act 1976 & 1978. | |
| Approved as to Survey J. E. J. Chief Surveyor Applied for by J. E. J. Chief Surveyor 14-500 Date 14-5-85 | |

DEED GRANTING EASEMENT OF RIGHT OF WAY

2

"Grantee's Land" means the land described in paragraph 4 of the First Schedule and includes any part thereof;

"Grantor" also includes the other registered proprietors from time to time of the Grantor's Land;

"Grantor's Land" means the land described in paragraph 1 of the First Schedule and includes any part thereof including the Easement Land;

"Licensee" means the licensee of a Crown Forestry Licence over the Grantor's Land and includes successors and assigns of the Licensee;

"Secondary Users" means the Grantee's servants, agents, employees, workers and contractors and any licensee, lessee or tenant of the Grantee, but only where, (in any case) the Grantee has allowed such person or persons to use the right of way easement conferred by this Deed.

1.2 Construction

In the construction 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 Clauses and the Schedules are to the Clauses and the Schedules of this Deed;

1.2.3 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 substituted provisions that substantially correspond to those referred to; and

1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

2 GRANT OF ACCESS RIGHTS

2.1 The Grantor hereby grants to the Grantee and the Secondary Users a right of way easement over those parts of the Easement Land shown marked "E", "F", "G" and "H" on Deposited Plan 14500 together with the rights and powers implied by virtue of the Seventh Schedule to the Land Transfer Act 1952 except to the extent that they are modified, varied or negatived by the terms and conditions set out in this Deed to the intent that the easement shall be forever appurtenant to the Grantee's Land.

2.2 In consideration of the Grantor agreeing to enter into this Deed the Grantee and the Secondary Users shall duly observe the obligations imposed on them under this Deed.

ADYE

3 OBLIGATIONS OF THE GRANTEE AND SECONDARY USERS

The rights and powers conferred under Clause 2 of this Agreement are granted subject to the following conditions and obligations:

- 3.1 The Grantee and the Secondary Users (if any) shall when passing or repassing over the Grantor's Land:
 - 3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
 - 3.1.2 not use or cause to be used any tracked or heavy vehicle which has been prohibited by the Grantor;
 - 3.1.3 not take or cause to be taken over the Grantor's Land any welding equipment without the prior written permission of the Grantor;
 - 3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;
 - 3.1.5 take all full and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage or disease) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any forest produce on the Grantor's Land, and in particular shall (but without limiting the general obligation to take full and proper precautions pursuant to this Clause 3.1.5):
 - (i) comply strictly with all conditions that may be imposed from time to time by the Grantor or other lawful authority; and
 - (ii) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames;
- 3.2 The Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee or the Secondary Users;
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee and the Secondary Users of such roads or tracks;
- 3.4 Neither the Grantee nor the Secondary Users shall exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor;

Chape

DEED GRANTING EASEMENT OF RIGHT OF WAY

4

- 3.5 The Grantee will, and will ensure that the Secondary Users will at all times in the exercise of the rights set out in this Deed not obstruct or hamper the Grantor or its agents, employees, and contractors in its or their normal or reasonable use of the Grantor's Land;
- 3.6 In the event that the Grantor's roads and tracks are not of sufficient standard for the use to be made of them by the Grantee or the Secondary Users, then any necessary improvements and maintenance shall be at the sole cost of the Grantee;
- 3.7 The Grantee shall not, and shall ensure that the Secondary Users do not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any forest produce on the Grantor's Land nor shall the Grantee or the Secondary Users authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any forest produce without the prior written approval of the Grantor;
- 3.8 Neither the Grantee nor the Secondary Users shall, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee or the Secondary Users authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor;
- 3.9 The Grantee and the Secondary Users shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee and the Secondary Users to conduct the activities permitted by this Deed. Without limiting the generality of the foregoing, the Grantee shall also comply with the obligations set out in the Second Schedule.

4 **GRANTOR'S RIGHTS**

Notwithstanding Clauses 2 and 3 above, the Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

5 **COSTS**

The Grantee shall be liable to the Grantor for any costs or expenses, including reasonable legal costs, incurred by the Grantor, arising from or incidental to, the preparation, registration and enforcement of any provision in this Deed.

6 **INDEMNITY**

The Grantee hereby indemnifies the Grantor against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor in connection with this Deed or as a direct result of the exercise by the Grantee and/or the Secondary Users of its or their rights under this

Copy 2

DEED GRANTING EASEMENT OF RIGHT OF WAY

Deed, or any breach by the Grantee or the Secondary Users of its or their obligations, undertakings or warranties contained or implied in this Deed.

7 GRANTOR'S LIABILITY EXCLUDED

7.1 Under no circumstances will the Grantor be liable in contract, tort, or otherwise to the Grantee for any expense, cost, loss, injury, or damage whether consequential or otherwise, arising directly or indirectly from this Deed or any activity undertaken by the Grantor on the Grantor's Land, or undertaken by the Grantee or the Secondary Users on the Grantee's Land or the Grantor's Land or from the state of the Grantee's Land or the Grantor's Land, whether the expense, cost, loss, injury or damage is the direct or indirect result of negligence or otherwise.

7.2 Notwithstanding Clause 7.1, if for any reason the Grantor is liable to the Grantee in contract, tort (including negligence), or otherwise, the maximum total liability of the Grantor for any and all expense, cost, loss, injury, or damage in any one year shall be \$10,000.

8 SALE OR LICENCE

If the Grantor's Land is, or is to be, included in any Crown Forestry Licence:

- 8.1 the Grantor will ensure that that Crown Forestry Licence is subject to this Deed;
- 8.2 subject to Clause 8.3 and unless the context otherwise requires, all references in Clauses 3 and 4 to the Grantor shall be read as a reference to the Licensee and the Licensee may exercise any rights set out in those clauses without prior reference to the Grantor; and
- 8.3 unless the context otherwise requires, all references to the Grantor in the Second Schedule and Clauses 3.1.5, 5, 6, 7, 10 and (insofar as Clause 11 applies to the Grantor) 11 shall be read as a reference to the Grantor and the Licensee and the Grantor and Licensee may exercise any rights set out in those clauses without prior reference to the other.

9 REGISTRATION

The parties shall take and do all such acts and things necessary to ensure that this Deed (or a Memorandum of Transfer Grant of Right of Way on substantially the same terms) is registered in the appropriate Land Titles Office.

10 DELEGATION

All rights, benefits, and obligations of the Grantor arising under this Deed may be exercised by a person duly appointed by the Grantor **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that person shall not limit the liability of the Grantor in the performance or observance of the provisions of this Deed.

2/13

11 NOTICES

11.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party.

11.1.1 The Grantor's Address as set out in paragraph 3 of the First Schedule.

11.1.2 The Grantee's address as set out at paragraph 5 of the First Schedule.

11.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

12 SEVERABILITY

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

IN WITNESS WHEREOF this Deed has been duly executed on the date first written above.

SIGNED for and on behalf of)
HER MAJESTY THE QUEEN)
by ANDREW DURRAD)
McEWEN pursuant to a delegation)
from the Minister for State Owned)
Enterprises and the Minister of)
Finance under Section 10 of the)
Crown Forest Assets Act 1989)
in the presence of:)

Andrew Durrad

Anthony Michael Pearce
ANTHONY MICHAEL PEARCE
MANAGER
WELLINGTON.

SIGNED for and on behalf of)
ADCOCK & DONALDSON)
PROPERTIES LIMITED)
by)

Gary Robert Adcock
GARY ROBERT ADCOCK

Gary Stephen Donaldson
in the presence of:)
(Director))

Gary Robert Adcock
(Director)

DEED GRANTING EASEMENT OF RIGHT OF WAY

FIRST SCHEDULE

1 GRANTOR'S LAND:

All that parcel of land situated in the Land Registration District of Nelson containing 5044.4800 hectares more or less being Lot 1 on Deposited Plan 14500

Subject to:

Crown Forestry Licence contained in 9D/S1

2 EASEMENT LAND:

That part of the Grantor's Land contained in Transfer 112683 and the balance of the land contained in Certificates of Title 72/22 (limited as to parcels) and 72/21 (limited as to parcels)

Subject to:

Crown Forestry Licence contained in 9D/S1

3 GRANTOR'S ADDRESS:

Crown Forestry Management Limited

PO Box 10-775

WELLINGTON

Attention : The General Manager, Operations

LICENSEE'S ADDRESS

Tasman Forestry (Nelson Limited)

Ngahere House

Vaughans Road

ROTORUA

4 GRANTEE'S LAND:

Firstly:

All that parcel of land containing 87.1433 hectares more or less situated in Blocks IX and XIII Wai-ti Survey District being Lot 2 Deposited Plan 17074 and being all the land comprised and described in Certificate of Title Volume 11A Folio 1223 (Nelson Land Registry)

Subject to:

Section 8 Coal Mines Amendment Act 1950

Right of Way granted by Transfer 225827.1

356976.7 Easement Certificate

363888.3 Transfer Grant of Forestry Right

363888.5 Mortgage

363888.6 Caveat

Secondly:

All that parcel of land containing 116.2443 hectares more or less situated in Blocks IX and XIII Wai-ti Survey District being Lot 1 Deposited Plan 17074 and being all the land comprised and

ADP/E

DEED GRANTING EASEMENT OF RIGHT OF WAY

2

described in Certificate of Title Volume 11A Folio 1222 (Nelson Land Registry)

Subject to:

Section 8 Coal Mines Amendment Act 1950

356976.7 Easement Certificate

Right of Way granted by Transfer 225827.1

363888.5 Mortgage

363888.6 Caveat

5

GRANTEE'S ADDRESS:

Adcock and Donaldson Properties Limited

C/- HUNTER RALFE

Barristers and Solicitors

279 Hardy Street

NELSON

Ralfe

DEED GRANTING EASEMENT OF RIGHT OF WAY

SECOND SCHEDULE

SPECIFIC STATUTORY COMPLIANCE

- 1 **Health and Safety in Employment Act 1992**
 - 1.1 Without limiting the generality of the clauses in the main body of this Deed, the Grantee undertakes that it shall comply at all times, at the Grantee's cost and expense, with the requirements and obligations imposed by the Health and Safety in Employment Act 1992 (including any amendments or any replacement Acts), its regulations, Codes of Practice and Guidelines (together "the Health and Safety Act") and the Grantee shall take all practicable steps (insofar as it is legally permissible) to ensure that any obligations imposed on the Grantor under the Health and Safety Act are at all times complied with.
 - 1.2 In addition, the Grantee shall:
 - (i) immediately notify the Grantor in the event that:
 - any person employed or engaged to perform any activity permitted by this Deed is harmed in any way, or
 - the Grantee and/or Grantor is or is likely to be in breach of the Health and Safety Act;
 - (ii) do all acts and things as directed by the Grantor to ensure that the Grantee and/or the Grantor continue to comply with the Health and Safety Act and/or to remedy any breach of the Health and Safety Act, including, if so directed, carrying out in good faith and with all due diligence, any safety procedures;
 - (iii) if requested by the Grantor, attend meetings on the Grantor's Land to review and monitor the health and safety procedures adopted by the Grantee in respect of any activity permitted by this Deed for the purposes of ensuring that the Grantee is complying with the provisions of this clause.
- 2 **Resource Management Act 1991**
 - 2.1 The Grantee undertakes that it shall:
 - 2.1.1 comply at all times, at the Grantee's cost and expense, with the Resource Management Act 1991 (including any amendments or replacement Acts) (the "Resource Management Act"); and

DATE

DEED GRANTING EASEMENT OF RIGHT OF WAY

2

2.1.2 obtain, maintain and comply with all consents required under the Resource Management Act for, or in connection with, the performance of any activity permitted by this Deed and, upon request, provide the Grantor with copies of such consents.

2.2 In addition, the Grantor may, in its sole discretion direct the Grantee to take steps, at the Grantee's cost and expense (unless otherwise agreed between the Grantee and the Grantor) to:

- (i) avoid, remedy or mitigate any adverse effect on the environment; and/or
- (ii) remedy any breach of the Resource Management Act; and/or
- (iii) otherwise comply with the Resource Management Act.

3 Building Act 1991

3.1 The Grantee undertakes that it shall comply at all times, at the Grantee's cost and expense, with the requirements and obligations of the Building Act 1991 (including any amendments or replacement Act) and any regulations (together the "Building Act") and the terms and conditions of any building consents and shall do all acts and things as may be directed by the Grantor to ensure that the Grantee and/or the Grantor continue to comply with the Building Act or to remedy any breaches of the Building Act.

4 General Obligations

4.1 The Grantee shall indemnify and keep indemnified the Grantor against any loss, liability or claim whatsoever suffered by the Grantor in respect of any breach of the Health and Safety Act, the Resource Management Act or the Building Act caused either directly or indirectly by any act or omission by the Grantee, the Secondary Users or any person under the control of the Grantee.

DFE

Vol. 13C 931

Correct for the purposes of the Land Transfer Act 1952

[Signature]
Solicitor for the Grantee

Particulars entered in the Register on the date and time stamped below

Between: HER MAJESTY THE QUEEN
(Grantor)

And

ADCOCK & DONALDSON PROPERTIES
LIMITED
(Grantee)

District/Assistant _____
Land Registrar

of the District of Nelson

GRANT OF EASEMENT OF RIGHT OF WAY

Andrew Durrad McEwen, pursuant to a delegation from the Minister for State Owned Enterprises and the Minister of Finance under Section 10 of the Crown Forest Assets Act 1989, hereby applies to have this Grant of Easement of Right of Way registered pursuant to Section 8A(1) of the Crown Forest Assets Act 1989

I hereby certify, pursuant to Section 8A(2) of the Crown Forest Assets Act 1989 that the land described in this Grant of Easement of Right of Way is correctly described.

Dated this 17th day of March 1999-2000

Dated this 23 day of MARCH 1992000

[Signature]
Chief Surveyor
Nelson Land District

SIGNED by *[Signature]*

Andrew Durrad McEwen in the presence of:

[Signature]
ANTHONY MICHAEL PEARCE
MANAGER
WELLINGTON.

Vol. 13C 931

REGISTER

