

Kei Mua I Te Aroaro O Te Rōpū Whakamana
I Te Tiriti O Waitangi

Before the Waitangi Tribunal

WAI 2180

In the matter of the Treaty of Waitangi Act 1975

And

In the matter of The Taihape: Rangitikei Ki Rangipō
District Inquiry

Affidavit of William Alexander Glazebrook

20 March 2019



Sainsbury Logan & Williams
Solicitors
Cnr Tennyson Street & Cathedral Lane
PO Box 41
DX MP70039
Napier
Phone: 06 835 3069
Fax: 06 835 6746
Ref: Magnus Macfarlane

I, William Alexander Glazebrook, director, of Hastings, swear:

- 1 I am a director of Big Hill Station Limited and have been associated with the Big Hill Station property since at least 1987, when I was the first of our family, and office holder in the company (and indirectly an owner), to occupy the property.
- 2 The situation as I inherited it at that time, and over the next couple of years in respect of use of the Big Hill Station gravel farm road through to the DoC boundary, was as follows:
 - 2.1 Access was not being managed by DoC at all. A few people who had been used to going through the road at their pleasure kept on doing that.
 - 2.2 The access was largely used for a holiday retreat by those few people/families with some associated deer stalking.
 - 2.3 There were no permits issued for access at the time, there was no prior notice given to us as the farmers, and people would just turn up unannounced at any time of the day, and even into the late evening expecting immediate access.
- 3 The other problem for me and perhaps other land owners was that some users were shooting deer on land on which they should not be. There were even occasions when these people were shooting deer on Big Hill Station itself. It was necessary to tighten up control of decision making about who could enter, and to establish something that was more respectful of landowner interests, and that was the background to my letter to Terry Pallet (BF Supp-13 in Mr Fleury's affidavit). I **attach** that letter (there are two pages together – not separated as in Mr Fleury's affidavit) marked "A": That letter highlights the reasons for the different approach to access-decision making and control, pertinent to the conditions of the arrangements that permittees enjoy today.



- 4 It needs to be understood that Big Hill Station is in a relatively remote location, it is a large working farm, the central access way to all parts of it being primarily along the farm road. It is not easy country, and the single lane road itself has many sharp bends, blind corners, and in some cases is challenged by erosion and significant rain events. While I know where our farm workers are and who should be on the property for farming purposes, and so health and safety risks can be managed on that account, it is much harder to take into account the activities of the permittees who may be coming or going on that roadway at different times during the day without our prior knowledge (apart from first entry).
- 5 We also graze our stock alongside the driveway from place to place, and as well it is used for stock movements from paddocks to paddocks, and to yarding and other facilities (shearing, loading etc). That raises its own health and safety issues.
- 6 Those are the kinds of factors that have fed into the need for appropriate conditions, one recent example of which is the reduction in the speed limit on the road to 15km per hour, which I observe was a DoC initiative, not in the first place my own.
- 7 I also believe it is important for the Tribunal to have the right flavour of the agreement made in respect of the right of way. Mr Fleury's affidavit tends to refer to emphasise the legal right established by the registered document without reference to the underlying agreement. That agreement can be seen in part by reference to the correspondence that took place preceding its signature (I **attach** the copies I have marked "B.1 to B.4"), but also in the summary provided by Big Hill Station's lawyers as to access in their letter dated 9 August 1999 (**attached** marked "C" I waive privilege in regard to that letter), as it contains a good summary of the history and addresses issues to do with how the access might properly be used.



8 I do not wish to comment on matters raised in Mr Fleury's affidavit about the Maori Land owners and their landlocked access issues. They have over many years attempted to find ways of getting through Big Hill Station to their land, and I believe have tried to do the same thing with other private land owners, but in none of these has there been any sufficient practicality, or money (for road construction and ongoing maintenance and control) to see any of them home. The default has usually been to try and get Big Hill Station to agree that there could be free unrestricted access use of the farm road. Those matters have been in front of the Maori Land Court on more than one occasion, and that Court is probably the right place for those matters to be dealt with (or the High Court if needed). I say all that as an introduction to a simple point which does not appear to have been given (so far) much attention. It is this – a short way up from Big Hill Station Limited on Mangleton Road access can be had to the Maori landlocked as follows:

8.1 From a roadside style, there is a DoC walkway which leads to a track which comes out onto DoC land beside Te Kouau A.

8.2 There is also Crown land down the road a little further north with similar access.

8.3 I do not believe there is any need to cross private land to gain access. If there is, it is for a very short distance.

8.4 If DoC spent the money I believe a track suitable for a 4 Wheeler and trailer could be established without the need to interfere with private land.

9 If I can be of any further assistance to the Tribunal, I would be happy to attend a hearing to expand on and address the matters raised on this



affidavit.

Sworn at Napier by William)
Alexander Glazebrook on)



March 2019 before me:


A Solicitor of the High Court of New Zealand

BRUCE JOHN DAVID FARQUHAR
SOLICITOR: NOTARY PUBLIC
BISSON MOSS
54 TENNYSON STREET
NAPIER
NEW ZEALAND

This is the exhibit marked A referred to in the affidavit of William Alexander Glazebrook sworn at Napier on 20 March 2019 before me:

Big Hill Station,
R.D.1.,
Hastings.

A Solicitor of the High Court of New Zealand

7 January 1991.

Dept. of Conservation,
Napier.

BRUCE JOHN DAVID FARQUHAR
SOLICITOR: NOTARY PUBLIC
BISSON MOSS
54 TENNYSON STREET
NAPIER
NEW ZEALAND



Dear Mr Pallet,

I have received your letter and correspondence with the K.M.C. I find your mention of renegotiation for access through Big Hill distastfull in the light of recent events. Further more the mention of such, to an outside party, without prior notice to Big Hill is particularly offensive. It shows a distinct lack of respect for our side of the agreement, without which, goodwill between D.O.C. and Big Hill will be difficult.

Regarding the letter from the K.M.C., day trips are available on a Saturday, and 7.30 am would seem an appropriate time for key collection for such a tramp.

Their letter states that the writer understands D.O.C. inherited the current agreement, it did not, the agreement was made in good faith with the appropriate D.O.C. personnel and Big Hill Stn.

Big Hill Stn. has done nothing to breach or abuse this agreement and I see no basis for renegotiation, as conditions do not seem to have varied from when the agreement was implemented, i.e. still having trouble with permittees even under a more secure system.

If there is to be any element of goodwill, you must appreciate these following points, as it is not the shooting of deer alone, that formed the basis of the present agreement.

- 1). Endless telephone calls at all times of the day and night demanding access at any time.
- 2). People arriving unannounced expecting access.
- 3). The abuse received if this access was denied, especially for my wife, who is often alone to receive it. This was a major concern and frightening in some cases,
- 4). If we could not be here to give a key out and said so, it would seem an open invitation to burglars. Understand that, in the main, we are dealing with people we have no knowledge of.
- 5). Gates left open and stock mixed.

Big Hill Stn. appreciates that permittees have an opportunity in the use of the track under the present agreement, but I doubt that the access should be classed as "guaranteed", as you state in your letter to K.M.C., unless D.O.C. can offer Big Hill Stn. such a guarantee over the behaviour of the permittees using the right of way granted to the D.O.C.

It is a measure of goodwill to continue access under the present agreement even though D.O.C. can obviously not provide this guarantee.

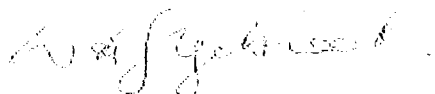
The access times were decided on so as to benefit most permittees, as well as the movement of stock and station staff. Big Hill Stn. has always had the right to choose a time of their convenience for permittees to gain access through its property.

I appreciate the working relationship that has developed between myself and Pat Bonis. I would like to think that the relationship extended to John Cheyne, with whom the agreement was made.

The agreement was given proper thought and consideration by both parties, and was not entered into lightly.

I hope this makes our position clearer and look forward to hearing of some action in the prosecution of the D.O.C. permittee for his abuse of Big Hill Station's rights and property.

Your's faithfully



W. A. Glazebrook
Big Hill Station.



New Zealand Forest Service

Telegrams "Forestry" - Telex

- P.O. Box 647, PALMERSTON NORTH

F.S. 9/3/269

26 September 1980

Mr G. Glazebrook
Washpool Station
HASTINGS

Dear Garry

EXCHANGE WITH BIG HILL STATION

I am sorry that I was not able to see you this morning. I am leaving with this note three copies of the Exchange Agreement for your signature. When you have signed all three copies I would be pleased if you would return them to me for completion and I shall then return a completed copy to you.

I enclose also a photo map showing the proposed common boundary as it has been agreed between us and is to be surveyed.

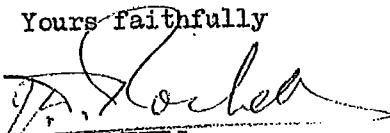
I enclose also the text of a Notice which I would like to have erected at the start of the right-of-way which would reinforce the notice to accompany permits.

I enclose also the notice which I propose to attach to all permits issued for people wanting to pass along the right-of-way through Big Hill Station. It is almost the same as that which I suggested to you in District Ranger Benjamin's letter of 15 April.

I also enclose three photographs I took when we were looking at the Ngaruroro River early in the year. It was an enjoyable day and I hope that our co-operation can continue in the same spirit as on that day.

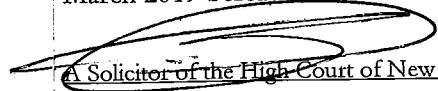
With kind regards.

Yours faithfully


J.D. ROCKELL
Conservator of Forests

- Enclosures:
1. Photo map.
 2. Text of Notice for Erection
 3. Notice for attachment to permits
 4. Three(3) photographs.

This is the exhibit marked B.1 referred to in the affidavit of William Alexander Glazebrook sworn at Napier on 20 March 2019 before me:


A Solicitor of the High Court of New Zealand

BRUCE JOHN DAVID FARQUHA
SOLICITOR: NOTARY PUBLIC
BISSON MOSS
54 TENNYSON STREET
NAPIER
NEW ZEALAND

TEXT OF NOTICE PROPOSED FOR ERECTION AT BEGINNING OF RIGHT-OF-WAY

ACCESS THROUGH BIG HILL STATION TO RUAHINE STATE FOREST PARK
AT BROOM HUT IS BY PERMIT ONLY

PERMITS MAY BE OBTAINED FROM N.Z. FOREST SERVICE, P.O. BOX 348, NAPIER
'PHONE 53-129 NAPIER.

PEOPLE USING THIS ACCESS MUST -

1. POSSESS A CURRENT N.Z.F.S. PERMIT TO CROSS BIG HILL STATION OR TO ENTER RUAHINE STATE FOREST PARK AND PRODUCE IT TO BIG HILL STATION STAFF IF REQUESTED.
2. CONTACT STATION MANAGEMENT TELEPHONE MKK 427 HASTINGS EXCHANGE PRIOR TO THE DAY THE TRIP IS TO BE UNDERTAKEN SO THAT ADVICE CAN BE GIVEN AS TO WHERE AND WHEN THE KEY TO ACCESS GATE MAY BE OBTAINED AND OF ANY ACCESS RESTRICTIONS AT THE TIME.
3. BE PREPARED TO RECOGNISE THAT OCCASIONALLY ACCESS MAY BE DENIED OR DEFERRED TO CONFORM WITH STOCK MOVEMENTS OR OTHER STATION ACTIVITIES.
4. KEEP VEHICLE SPEED BELOW 20 km/p/h AT ALL TIMES AND RECOGNISE THAT STOCK AND VEHICLES BELONGING TO THE STATION HAVE PRIOR USE OF THE ROAD.
5. PAY A DEPOSIT OF \$5.00 FOR THE GATE KEY. THIS WILL BE REFUNDED WHEN KEY IS RETURNED TO STATION STAFF.
6. UNDERSTAND THAT PERMIT IS FOR THROUGH ACCESS ONLY, WITH NO STOPPING OR SHOOTING ON BIG HILL PROPERTY.
7. LEAVE ALL GATES AS FOUND.

This is the exhibit marked B.2 referred to in the affidavit of William Alexander Glazebrook sworn at Napier on 20 March 2019 before me:

LUNN

A Solicitor of the High Court of New Zealand

8 October 1980

Mr J D Rockell
Conservator of Forests
New Zealand Forest Service
P O Box 647
PALMERSTON NORTH

BRUCE JOHN DAVID FARQUH
SOLICITOR: NOTARY PUBLIC
BISBON MOSS
54 TENNYSON STREET
NAPIER
NEW ZEALAND

Dear Sir,

Re: Forest Service Exchange Big Hill Station Limited

We refer to your letter to Mr G M Glazebrook dated 26th September 1980.

There are some matters which we would like to raise relative to this. The first is, what type of right of way is going to be used for this access of the Forest Service to the back country. Is this to be a normal easement of right of way and if so what are the terms and conditions envisaged by you. Or, is it to be an easement in gross.

A text of proposed notice for erection at the beginning of the right of way was forwarded to Mr Glazebrook also. Is it envisaged that these conditions form part of the actual right of way document or not? If it is not, then we feel some reference to these conditions ought to be contained in the right of way document.

We assume that because the Crown is involved, the stamp duty question will not be relevant. Would you be good enough to confirm your understanding of this.

We should look forward to receiving your reply and once we have this we can arrange to have the documents executed by Big Hill Station Limited.

Yours faithfully,
SAINSBURY LOGAN & WILLIAMS

S P LUNN



New Zealand Forest Service

Telegrams "Forestry" - Telex 3913

- P.O. Box 647, PALMERSTON NORTH

9/3/269 OMP:BMD

13 October 1980

Messrs Sainsbury, Logan & Williams
Barristers & Solicitors
P.O. Box 41
NAPIER

This is the exhibit marked B.3 referred to in the affidavit of William Alexander Glazebrook sworn at Napier on 20 March 2019 before me:

[Signature]
Solicitor of the High Court of New Zealand

16 OCT 1980
BRUCE JOHN DAVID FARQUHAR
SOLICITOR: NOTARY PUBLIC
BISSON MOSS
54 TENNYSON STREET
NAPIER
NEW ZEALAND

Attention: Mr Lunn

Dear Sir

LAND EXCHANGE : BIG HILL STATION LTD - RUAHINE STATE FOREST

Thank you for your letter of 8 October 1980. The points you raise are commented on as follows:

1. Right of Way as per Clause 12.

The Lands and Survey Department will be attending to the legal matters pertaining to the Right of Way on my behalf as they will for the exchange of land once it is fenced and surveyed.

I understood from Lands and Survey that the requirements to register the ROW had been discussed with you and Mr Glazebrook about June/July of this year. So much so, that I believe the bulk of the survey of this route has been completed.

2. Whether or not the conditions of access via the ROW to be recorded on a notice board at the beginning of the road should be recorded in the actual ROW agreement I will leave to Lands and Survey but I will advise them of your opinion.

3. I am unable to advise you on the question of stamp duty but will advise you as soon as I get a decision.

Yours faithfully

[Signature]

O.M. Pearson
for J.D. Rockell
Conservator of Forests

Big Hill.



New Zealand Forest Service

Telegrams "Forestry" - Telex 3913

- P.O. Box 647, PALMERSTON NORTH

FS 9/3/269 JDR:MB

23 December 1980

Mr G. Glazebrook
Washpool Station
HASTINGS

Dear Garry

EXCHANGE WITH BIG HILL STATION LTD

Further to my letter of 26 September 1980 and to consequent discussions with Messrs G. Glazebrook and S. Lunn I propose that the formal agreement between the Crown and Big Hill Station Ltd be amended by the addition of new clause 15:

"15. The Crown will erect a sign at the beginning of the right-of-way (referred to in clause 12 above) which will contain wording relative to the use of the said right-of-way such wording to be agreed to from time to time between the parties."

Further, I propose that the texts of the notice proposed for erection at the beginning of the right-of-way and of the notice to accompany all permits issued by the Forest Service do not form part of the formal agreement between the Crown and Big Hill Station Ltd.

The Crown will retain the full right to control the use of the right-of-way by the Crown's permittees but in doing so will recognise the spirit of the discussions which have been held between Mr G. Glazebrook and Mr J.D. Rockell, Conservator of Forests.

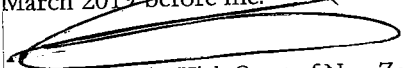
Accordingly, after confirmation of the formal agreement the Crown will apply conditions to its permits as set out in the attachments to my letter of 26 September.

In amplification of the third condition of the notice "People using this access must - ...

3. be prepared to recognise that occasionally access may be denied or deferred to conform with stock movements or other station activities"

the Crown will retain this right to permit, deny or defer access but recognises the need of Big Hill Station to undertake some stock movement and station management without interruption or hindrance. Therefore the conservator will either have regard to requests from station management to restrict entry temporarily or will allow station management to exercise this restriction for him.

This is the exhibit marked B.4 referred to in the affidavit of William Alexander Glazebrook sworn at Napier on 20 March 2019 before me:


A Solicitor of the High Court of New Zealand

BRUCE JOHN DAVID FARQUHAR
SOLICITOR: NOTARY PUBLIC
BISSON MOSS
54 TENNYSON STREET
NAPIER
NEW ZEALAND

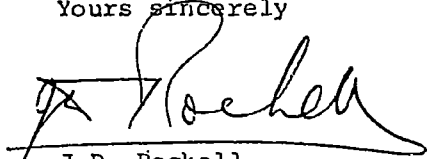
Access will not be withheld from permittees unnecessarily.

I have discussed the detail of this letter with Mr Lunn who believes it covers the points which were of concern to you.

I hope that it will now be possible for the agreement to be signed for Big Hill Station Ltd so that I can complete it and so that you will then be able to continue with development of the areas Big Hill is to receive.

Finally, my best wishes to you for Christmas and the New Year.

Yours sincerely



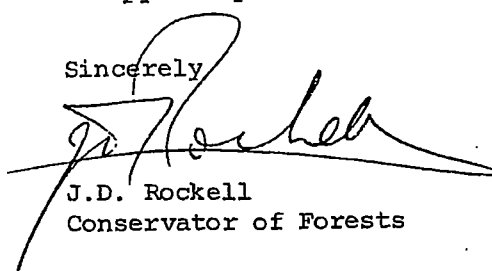
J.D. Rockell
Conservator of Forests

→ c.c. Sainsbury, Logan and Williams
P.O. Box 41
NAPIER

Attention: S. Lunn

A copy of my letter as discussed with you for your information.

Sincerely



J.D. Rockell
Conservator of Forests

Encl.

SAINSBURY, LOGAN & WILLIAMS
BARRISTERS & SOLICITORS

Tennyson Street
P O.Box 41, Napier
New Zealand
DX MP70039
Fax (06) 835-6746
Telephone (06) 835-3069
Email:sag@slw.co.nz

In reply please refer to: S A Greer

9 August 1999

Mr W A Glazebrook
Big Hill Station
R D 1
HASTINGS

FAX: 876 0400

This is the exhibit marked C referred to in the affidavit of William Alexander Glazebrook sworn at Napier on 20 March 2019 before me:

A Solicitor of the High Court of New Zealand

Dear Bill

ACCESS THROUGH BIG HILL STATION

BRUCE JOHN DAVID FARQUHAR
SOLICITOR: NOTARY PUBLIC
BISSEY MOSS
54 TENNYSON STREET
NAPIER
NEW ZEALAND

We refer to the various correspondence and our telephone discussions.

The history of the access appears to be as follows:-

1. On 15 December 1980 Big Hill Station Limited entered into an agreement with the Conservator of Forests (now known as the Department of Conservation or *DOC*) for the exchange of certain lands described in that agreement.
2. As part of the agreement in 1. above, Big Hill Station Limited agreed to grant *DOC* a registrable right of way for sole use by [*DOC*] and its permittees.
3. The full text of clauses 12 and 15 in the agreement of 15 December 1980 being relative to the right of way are as follows:-

“12. The company shall grant to [*DOC*] a registrable right-of-way for sole use by the Crown and its permittees through [Big Hill Station’s] land as shaded yellow on the plan annexed hereto and the Crown shall bear all survey, plan and incidental costs relative to the granting and registration of the said right-of-way”.

“15. The Crown will erect a sign at the beginning of the right of way (referred to in clause 12 above) which will contain wording relative to the use of the said right of way such wording to be agreed to from time to time between the parties.”

4. That right of way shaded yellow on the plan annexed to the agreement was then surveyed by *DOC*. The relevant survey plan was approved as to survey on 14 July 1982 and was deposited at the Land Transfer Office at Napier under No. 16512 on 19 July 1982.
5. The right of way easement depicted on Deposited Plan 16515 was then created by preparation, execution and registration of a Memorandum of Transfer. The Transfer is registered under No. 417471.1 against Certificates of Title F3/861, F3/878 and J2/386.

6. The right of way easement in Transfer 417471.1 is an easement in gross in favour of DOC.
7. The registered easement Transfer 417471.1 between Big Hill Station Limited and DOC contains the following mutual covenants:-
 - i. That the costs of maintenance and upkeep of the said right of way shall be borne in such shares and proportions as the parties hereto shall determine by agreement between them from time to time.
 - ii. The transferee [DOC] is to ensure that the transferor [Big Hill Station Limited] is to be consulted with regard to the use of the said right of way herein granted AND that the transferee [DOC] is to erect a notice at the point on Deposited Plan 16512 where the right of way begins such notice to be clearly visible to the general public and which such notice is to set out the conditions of the use of the said right of way AND the text of such notice is to be arrived at by agreement between the transferor [Big Hill Station Limited] and the transferee [DOC].
 - iii. Any dispute as to any matter or thing whatever hereunder shall be determined by arbitration under the Arbitration Act 1908 or any statutory amendment or re-enactment thereof."
8. In addition to the agreement dated 15 December 1980 and the registered right of way Transfer there exists a text of notice proposed for erection at beginning of right of way. A copy of this is **enclosed**. This was prepared in 1980 by J D Rockell, the Conservator of Forests, and sent to Mr Gary Glazebrook by letter of 26 September 1980 (copy also **enclosed**).
9. The spirit of the agreement reached between DOC and Big Hill Station Limited can be further gleaned from a letter of 23 December 1980 from J D Rockell to Mr Gary Glazebrook. A copy of this letter is **enclosed**.
10. The right of way in gross created by Transfer 417471.1 is simply a right to use the servient tenement owned by Big Hill Station Limited (and in particular those parts marked "A", "B", "C" and "D" on Deposited Plan 16512 affecting Certificates of Title J2/385, F3/878 and F3/861) as a means of access or egress from other land. Being a registered easement it runs with and binds the land over which it is created which means it will bind Big Hill Station's successors in title.
11. The right of way here is not however an unlimited or unrestricted right of way in terms of Section 90D of the Land Transfer Act 1952 and the Seventh Schedule thereto as the right of way easement documents themselves impose various restrictions or limitations.
12. In particular the right of way is for the *sole use of [DOC] and its permittees*. (See clause 12 of the agreement dated 15 December 1980).

13. When looking collectively at the agreement dated 15 December 1980, the registered easement transfer, the text of the notice proposed for erection at the beginning of the right of way and the correspondence from the Conservator of Forests it is abundantly clear that the right of way is for the use of DOC and others who are expressly authorised to use the right of way as a means of access or egress. The use must not be inconsistent with the quality and purpose of the use contemplated by the grant.
14. The use contemplated is for access through that part of Big Hill Station defined on Deposited Plan 16512 to Ruahine State Forest Park at Broom Hut with such access being by permit only with permits to be obtained from DOC (formerly NZ Forest Service).
15. The text of the notice proposed for erection at the beginning of the right of way details seven conditions which apply to people using the access. The first condition expressly requires the person using the access to hold a *current permit* and to produce that current permit to Big Hill Station staff if requested.
16. People using the access must contact Big Hill Station management prior to the day access is undertaken (see condition 2 in the notice).
17. Condition 5 of the notice requires people using it to pay a deposit of \$5 for the gate key and this is to be refunded when the key is returned. Condition 5 implies that the key is to be returned immediately following use. That point however should be expressly stated on the notice erected at the beginning of the right of way.
18. All conditions relative to the use of the right of way should be contained on the notice erected at the beginning of the right of way. It can be seen from clause 15 of the agreement dated 15 December 1980 that those conditions can be varied by agreement from time to time between Big Hill Station and DOC.
19. We repeat our advice that the right of way has been granted to DOC and DOC's permittees. Those persons who are not employed by DOC must obtain a permit from DOC to gain access and Big Hill Station management must be notified of to whom the access is granted and when. We see that as the proper and only consultative process.
20. We are happy to meet with you and the persons at the Department of Conservation who are responsible for administering such access at a time convenient to you.
21. Finally, you asked the question as to what would happen if the Department of Conservation sold Ruahine State Forest. We advise that as the right of way easement in Transfer 417471.1 is an easement in gross it is effectively a right annexed to or issuing out of the land. Such rights are effectively "incorporeal hereditaments" and as such are assignable at law. However, there would have to be an express assignment by DOC of the benefit of the easement. The right of way easement would not pass automatically with a transfer of the land owned by DOC as that land does not constitute a dominant tenement. We therefore recommend that you endeavour to obtain from DOC a written acknowledgement that in the event it disposes of its land it will not assign the benefit of

the right of way to a third party without the full knowledge and written approval of the owners of Big Hill Station.

Please do not hesitate to phone the writer if you require any further information or clarification of any of the issues identified in this letter. Otherwise, we look forward to hearing from you concerning the meeting with the Department of Conservation we suggest you arrange.

As a separate matter, if you are wishing to respond to the correspondence you have received from Mr Wero Karena, we are happy to assist you with your reply. We believe it is important that Mr Karena understands that it is DOC that has the benefit of the right of way and if others wish to use the right of way they must be one of DOC's "permittees" and adhere to the conditions imposed by DOC in consultation with the owners of Big Hill Station. We do not see that there is any more to it than that.

We look forward to hearing from you.

Yours faithfully

SAINSBURY LOGAN & WILLIAMS


S A Greer