



Crown Pastoral Land Tenure Review

Lease name : DEEP CREEK

Lease number : Po 036

Substantive Proposal - Part 3

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

July 13

Appendix 7: Form of Conservation Covenant to be created "CC(Fishery)"

DATED: _____

Between

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

and

OTAGO FISH AND GAME COUNCIL
("the Council")

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

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 (the Owner)

AND **OTAGO FISH AND GAME COUNCIL** (the Council)

BACKGROUND

- A. Section 77 of the Reserves Act 1977 (the Act) provides that:
- (i) any body, with approval of the Minister of Conservation (**Minister**), may agree with any owner or lessee of land, that all or part of the land should be managed so as to preserve the natural environment or landscape amenity or wildlife or freshwater life or marine-life habitat or historical value of the land; and.
 - (ii) the terms of such agreement may be recorded in a conservation covenant which is registered against the title to the land or the lease so as to bind the land or the lease and its owner or lessee to the performance of the terms of the agreement, in perpetuity or for such other period as the parties may agree.
- B. The Minister has approved the Council as a body authorised to enter into conservation covenants under section 77 of the Act.
- C
- (i) An approved plan designating the land in the Schedule (**Land**) as land over part of which a conservation covenant under section 77 of the Act shall apply, has been registered under section 64 of the Crown Pastoral Land Act 1998;
 - (ii) The Owner is deemed to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998; and
 - (iii) The area of the Land to be managed under the terms of this deed (**Site**) is described in the Schedule.
- D. The Owner and the Council are concerned to preserve the fishery value in the West Coast Gully Creek being an important spawning and juvenile rearing habitat for brown and rainbow trout that feed into the Lindis River. The Lindis River itself has recreational fishery values. There is concern to prevent damage to the stream berms and stream bed and modification of the stream or other activities that may change the character of the Site or adversely affect the vegetation, the fresh water life and habitat of the Site.
- E. The Owner and the Council have agreed that the Site is to be managed with the following conservation purposes and objectives (**Purposes and Objectives**):
- (i) to preserve and maintain the spawning and juvenile rearing grounds for brown and rainbow trout at the Site;
 - (ii) to protect and enhance the natural and fishery values of the Site including protecting the stream bed from physical disturbance or modification; and
 - (iii) to permit access to the Site by the Council for fishery management purposes.

Agreed

1. Covenant

In accordance with section 77 of the Act, the Owner and the Council covenant from the date of this deed and in perpetuity, that the Site shall be managed so as to meet the Purposes and Objectives.

2. Owner's Obligations

- 2.1 The Owner may graze the Site to an extent consistent, in the opinion of the Council, with the Purposes and Objectives.
- 2.2 The Owner shall, so far as is practicable keep the Site free from:
- (a) gorse, broom, sweet briar, nodding thistle and all other noxious plants and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - (b) rabbits and vermin and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993, and
 - (c) rubbish or other unsightly or offensive material arising from the Owner's use of the Site.
- 2.3 The Owner shall not carry out, nor allow to be carried out, without the Council's prior approval, such approval not to be unreasonably withheld, the following:
- (a) the erection of any fence, building, structure or other improvements on the Site whether for the Owner's purpose or for the other private or public purposes;
 - (b) any prospecting or mining for minerals, coal, or other deposit on or under the Site;
 - (c) any cultivation, earthworks, drainage or other soil disturbance on the Site;
 - (d) any subdivision of the Site;
 - (e) any tree planting on the Site;
 - (f) any removal of native plants shrubs or trees or other exotic trees from the Site; or
 - (g) any depositing or discharge of any waste or rubbish on, or any contamination of, the Site.
- and the Council shall have regard to the Purposes and Objectives when considering any request for approval under this clause.
- 2.4 The Owner shall not carry out nor allow to be carried out the modification of the berms or bed of any waterway on the Site, the construction of any dam on the Site or the diversion of taking of the natural water on or from the Site.

3. Council's Obligations

The Council may provide to the Owner from time to time, and at any time upon request by the Owner, such technical advice or assistance as may be necessary or desirable to assist in meeting the Purposes and Objectives.

4. Access

The Owner grants to the Council, and any officer or duly authorised agent of the Council, a right of access on to the Site for the purposes of examining and recording the condition of the Site or for carrying out fisheries management, protection or maintenance work on the Site consistent with the Purposes and Objectives. The right of access is at the convenience of the Owner and will not be unreasonably withheld.

5. Fires

The Owner will notify the appropriate Fire Authority (District Council or the Minister as the case may be, see section 2 of the Forest and Rural Fires Act 1977) in the event of wildfire threatening the Site.

6. Notice

6.1 Each notice or other communication under this deed is to be in writing, is to be sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address provided by each party from time to time, and is to be 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. The initial address, facsimile number and contact person in respect of each party is set out under their respective names in the Schedule.

6.2 No communication is to be effective until received. A communication will be deemed to be received by the addressee:

- (a) 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;
- (b) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), when delivered; and
- (c) in the case of a letter, on the fifth working day after mailing.

7. Arbitration

If any dispute or difference arises between the Owner and the Council in any way arising out of, or in connection with, this deed, it is agreed that the dispute or difference must be referred at the request of either the Council or the Owner to arbitration under the Arbitration Act 1996.

8. General

8.1 In the event that the Site, or a part of the Site, is on land designated as land to be freeholded under the Crown Pastoral Land Act 1998 it is intended that this deed will be registered against the fee simple title to issue for that land and shall bind the registered proprietor of that land or any transferee or lessee of the registered proprietor.

8.2 The Owner shall not be personally liable in damages for any breach of covenant under this deed committed after the Owner has parted with all interest in the Site in respect of which such a breach occurs.

8.3 Where there is more than one owner of the leasehold or fee simple title to the Site, the covenants contained in this deed shall bind each owner jointly and severally.

- 8.4 Where the Owner is a company the covenants contained in this deed shall bind a receiver, liquidator, statutory manager or statutory receiver. Where the Owner is a natural person, this deed shall bind an Official Assignee. In either case this deed binds a mortgagee in possession.
- 8.5 The reference to any legislation in this deed extends to and includes any amendments to, or re-enactment of, that legislation.
- 8.6 The Owner and the Council shall take all steps and do all things necessary to register this deed against the Land at the relevant District Land Registry.

9. Severance

If any part of this deed is or becomes legally ineffective, invalid, or unenforceable, the effectiveness, validity, or enforceability of the remainder is not affected.

EXECUTION

Executed as a Deed

The Common Seal of the
Otago Fish and Game Council
was affixed in the presence of:

Witness(es) Signature(s)

Print Name(s)

Occupation

Address(es)

**SIGNED by the Commissioner of
Crown Lands** in the presence of:

Witness Signature

Print Name

Occupation

Address

SCHEDULE

1. Land

All that parcel of land containing approximately 2550 hectares being the land outlined in green on the Plan attached to the Proposal dated 9 September 2011, relating to Deep Creek Pastoral Lease prepared under the Crown Pastoral Land Act 1998.

2. Site

That part of the land, to a width of five metres including the stream bed, generally being shown as a solid yellow line and labelled "CC(Fishery)" on the Plan attached to the Proposal dated 9 September 2011 relating to those parts of the stream within Deep Creek Pastoral Lease prepared under the Crown Pastoral Land Act 1998.

3. Address for Service

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

Otago Fish and Game Council
Cnr Hanover and Harrow Streets
DUNEDIN
Fax: 03 477-0146

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

Commissioner of Crown Lands
Land Information New Zealand
160 Lambton Quay
WELLINGTON
Fax: 04 460-0373

The boundaries shown on the plan are indicative and are for illustrative and discussion purposes only

CC(Fishery)

West Coast Gully



Any person wishing to rely on the information shown on this map must independently verify the information. Topographical and Cadastral map derived from LINZ data. Printed: 3/03/2011 11:40. Scale 1:5000

QuickMap Custom Software Ltd

Big Gully

CC(Fishery)

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Any person wishing to rely on the information shown on this map must independently verify the information. Topographical and Cadastral map derived from LINZ data. Printed: 2/02/2011 11:41. Scale 1:6000

QuickMap Custom Software Ltd

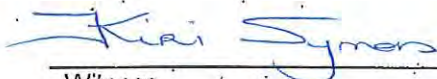
Po 36 DEEP CREEK TENURE REVIEW PROPOSED DESIGNATIONS

- Pastoral lease land to be disposed of by freehold disposal to Bendigo Station Limited, subject to a Fish and Game covenant CC(fishery)
- Pastoral lease land to be disposed of by freehold disposal to Bendigo Station Limited.

Execution Section

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

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


_____

Witness

Solicitor

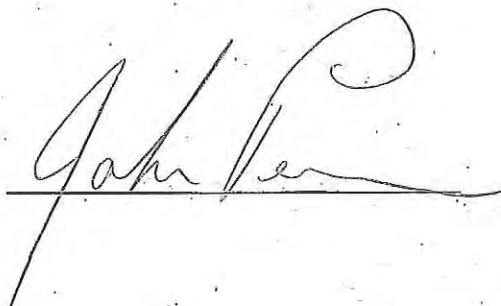
Occupation

63 Wilton Road.

Address

Wellington.

SIGNED for and on behalf of Bendigo Station Limited by its sole director **John Charles Perriam** in the presence of:


_____

Witness

Solicitor

Occupation

Wahake

Address