

Crown Pastoral Land Tenure Review

Lease name : SHAG VALLEY

Lease number : PO 331

Substantive Proposal

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

May

15

**EXECUTION
COPY**

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

Date: 11 February 2015

20 MAR 2015

Parties

Holder: Jonathan Dillon Bell, Tanya Elms Bell and HGW Trustees Limited (51/200 share) and Jonathan Dillon Bell (149/200 share)
c/- Mr J D Bell and Mrs T E Bell
Shag Valley Station
2353 Dunback/Morrisons Road
RD 3
Palmerston 9483

Commissioner of Crown Lands:

C/- The Manager Tenure Review
Quotable Value Ltd (Rural Value)
ASB House
Level 2, 248 Cumberland Street
P O Box 215
Dunedin 9054

The Land

Lease: Shag Valley
Legal Description: Run 781
Area: 1821.0854 hectares more or less
Certificate of Title/Unique Identifier: OT4C/705 (Otago Registry)

Summary of Designations

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

2 Conditions

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

3 Settlement

- 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

- 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

- 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

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

7 Issue of Certificate of Title

- 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

- 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

- 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

- 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

- 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 fencing:
- (a) approximately along the line marked "New fenceline" 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

- 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

- 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

- 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; andthe 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.

16 No Representations or Warranties by the Commissioner

- 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.

17 Acceptance

- 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.

18 Solicitors Certificate

- 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.

19 Default

- 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.

20 Goods and Services Tax

- 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 10th 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 10th 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

- 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

- 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.

23 No nomination or assignment

- 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.

24 Recreation Permit

- 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.

25 Consents for Activities

- 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.

26 General

- 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

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 15th 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

1 Details of Designation

- 1.1 Under this Proposal part of the land shown shaded in pink and labelled "R1(Scenic)" on the Plan, being 353 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as scenic reserve.

2 Schedule One Improvements

n/a

Schedule Two: Provisions relating to the Schedule Two Land

1 Details of designation

1.1 n/a

2 Information Concerning Proposed Concession

2.1 n/a

Schedule Three: Provisions relating to the Schedule Three Land

1 Details of designation

- 1.1 Under this Proposal the land shown shaded in green and yellow on the Plan, being **1468** 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;
 - (b) Section 11 of the Crown Minerals Act 1991
 - (c) the covenant shown on the Plan shaded in yellow (**CC1**) and shaded in yellow and hatched(CC1A, CC1B, CC1C and CC1D) substantially as set out in Appendix 4.

Schedule Four: Conditions

1 Nil

Appendix 1: Consents – Example of Mortgagee Consent

[] 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

[], 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

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

Length and location: New fence is to be erected along the lines marked as follows on the plan.

- (a) New fence shown marked A-B between R1(Scenic) and proposed conservation covenant, length approximately 5,500 metres
- (b) New fence shown marked C-D between conservation covenant (CC1D) and unencumbered freehold, length approximately 950 metres.

Type:

The fencing specification calls for the erection of a wooden post and seven wire fence with steel Y stakes between posts, to the indicative requirements set out in 1(a) and (b).

Specifications:

1.0 New fencelines

(a) *Reserve Fence A-B*

- 1.1 5 x 3.15mm galvanized medium tensile wires, a bottom wire being 4.00mm galvanized and a top wire being a 2 x 2.5mm reverse twist Barbed wire with barbs at a max spacing of 150mm.
- 1.2 Top wire firmly laced on with 3.55mm wire.
- 1.3 2.1m x 200mm treated timber strainer posts with 2.4m x 125mm treated timber stay posts.
- 1.4 1.8m x 125mm treated timber intermediate posts on all high spots at max spacing of 21m.
- 1.5 1.65m T-Irons instead of posts and intermediate strainers acceptable in rocky ground conditions.
- 1.6 Tiebacks acceptable on both sides of fenceline. All tiebacks to consist of 2 x 4.00mm wire to have at least 2 anchor points.
- 1.7 All tie downs to be 4.00mm wire.
- 1.8 6 x 1.65mm y-posts with a minimum weight of 2.00kg/m at 3 m spacings between each post. 1.5m y-posts acceptable when it is necessary to drill them in.
- 1.9 Wires strained to manufacturers recommendations, at a max length of 300m.
- 1.10 All end strainers stayed and intermediate strainers either tied back or stayed depending on location.
- 1.11 Taranaki style gates constructed of 8 wire x 150mm netting with a top barbed wire. Gateways to be 3m wide, with 3 x either wooden or steel vertical uprights.
- 1.12 Gates required at WP's 207, 221, 233, 25201
- 1.13 Creek crossings: Sheep netting with vertical wooden batons at 300mm spacings, suspended of 3 x 4.00mm twisted wires which are securely anchored either side of crossing above high water level. The floodgate is to be constructed and to operate independent to fence.

Vegetation and Ground Clearance Requirements-

- 1.14 Lines will require mechanical vegetation clearance and in places some earthworks including fenceline benching will be necessary.

(b) Covenant Fence(CC1D) C-D

- 1.15 5 x 3.15mm galvanized medium tensile wires, a bottom wire being 4.00mm galvanized and a top wire being a 2 x 2.5mm reverse twist Barbed wire with barbs at a max spacing of 150mm.
- 1.16 Top wire firmly laced on with 3.55mm wire.
- 1.17 2.1m x 200mm treated timber strainer posts with 2.4m x 125mm treated timber stay posts.
- 1.18 1.8m x 125mm treated timber intermediate posts on all high spots at max spacing of 21m.
- 1.19 1.65m T-Irons instead of posts and intermediate strainers acceptable in rocky ground conditions.
- 1.20 Tiebacks acceptable on both sides of fenceline. All tiebacks to consist of 2 x 4.00mm wire to have at least 2 anchor points.
- 1.21 All tie downs to be 4.00mm wire.
- 1.22 6 x 1.65mm y-posts with a minimum weight of 2.00kg/m at 3 m spacings between each post. 1.5m y-posts acceptable when it is necessary to drill them in.
- 1.23 Wires strained to manufacturers recommendations, at a max length of 300m.
- 1.24 All end strainers stayed and intermediate strainers either tied back or stayed depending on location.
- 1.25 Taranaki style gates constructed of 8 wire x 150mm netting with a top barbed wire. Gateways to be 3m wide, with 3 x either wooden or steel vertical uprights.
- 1.26 Gates required at WP's 118, 120.
- 1.27 Creek crossings: Sheep netting with vertical wooden batons at 300mm spacings, suspended of 3 x 4.00mm twisted wires which are securely anchored either side of crossing above high water level. The floodgate is to be constructed and to operate independent to fence.

Vegetation and Ground Clearance Requirements-

- 1.28 Lines will require mechanical vegetation clearance and in places some earthworks including fenceline benching will be necessary.

2.0 Preliminary and General Matters

- 2.1 New Materials
All materials forming a permanent part of the fence shall be new and shall conform to any relevant New Zealand or international standard.
- 2.2 Standards

Materials forming a permanent part of the specified fence shall conform to the applicable standard. Such materials shall either identify the applicable standard on the label or certificate from the supplier or manufacturer shall be supplied stating the materials have been manufactured in a process that has been tested and which conforms to that standard.

Current standards that apply to fencing materials include but may not be limited to:

- 3471:1974 (NZS) Specifications for galvanized steel fencing wire plain and barbed.
- 3607:1989 (NZS) Specifications for round and part round timber fence posts.
- 3640:1992 (NZMP) Specifications of the minimum requirements of the NZ Timber Preservation Council Inc.
- D360:1986 (NZS/ASTM) Creosote Treatment
- 4534:1998 (AS/NZS) Zinc and zinc/aluminum alloy coating on steel wire.
- 4680:1999 (AS/NZS) Hot dip galvanized (zinc) coating on fabricated ferrous articles.

Where no applicable standard exists then materials shall be of best quality as generally accepted in the New Zealand farming and fencing industries.

Documentation would be required of:

- Manufacturers (or suppliers) warranties and test certificates where applicable.
- Guarantee certificates that transfer to the owners of the completed fences.
- Remedies available under the guarantee.
- Installation instructions for hardware where applicable to the warranty and guarantee.

2.3 Blasting

Any blasting required to loosen or remove rock shall be undertaken using electric detonators to reduce the risk of fire.

2.4 Drilling

Any rock drilling will be undertaken with a rock drill no larger than 40mm diameter.

2.5 Spiking

Where placement of posts requires spiking, the spike shall be 90mm or more diameter.

2.6 Lacing

The top wire is to be laced to the top of the steel Y stake with 3.15 mm (9 gauge) wire.

3.0 **Materials General** – to be used except where these have been specifically modified by the provisions of Clause 1 which shall take precedence.

3.1 Wire

Fence wire will be 3.15mm galvanized medium tensile steel wires and 4 mm galvanized mild steel wire all of which are to be of good quality. Tie-downs and tie-backs will be 4mm galvanized mild steel kept clear of any ground contact.

3.2 Infill Posts

Infill posts will be steel Y stakes or galvanized T irons for use on high spots.

3.3 Strainer, Intermediate and Angle Posts

All timber posts used will be round and ground treated.

3.4 Staples

Staples will be 50mm x 4mm barbed galvanized steel.

3.5 Permanent Wire Strainers

Permanent wire strainers are to be of the yoke and reel type with a sprung loaded locking bar.

4.0 Best Practice

4.1 Best fencing practice must be adhered to on all occasions.

4.2 Strains

Length of strains to be determined by the territory but to not exceed 300 metres, to conform to best practice and if applicable the wire manufacturing recommendations. Strain to account for weather conditions at time of strain.

4.3 Placement of timber strainers, posts and stays

Under no circumstances are any strainers, stays or posts to be shortened either prior to or subsequent to their placement in the ground.

All strainers are to be dug in or driven and rammed and footed. No.8 (4 mm) galvanised steel wire is to be used on foots. Strainer, angle and intermediate posts are to have a minimum of 117 cm (46") out of the ground. Stays are to be 1/3 of the way up posts.

4.4 Placement of wires

Wires are to be located on the grazing side of the boundary, except where there is a high risk of snow damage where they shall be placed on leeward side away from the prevailing snow. The bottom wire to be 100 -150 mm above the ground.

Post staples are to be driven well in but allow the wire to run through.

All wires are to be securely and neatly tied off and strained evenly. Figure 8 knots are to be used in all joins.

4.5 Gate

Swung gate must close against a post and be able to fully open back against the fence.

4.6 Netting at creek crossing

Netting to be hung at creek and river crossings and left to swing.

4.7 Tie Downs

Tie downs are to consist of half or full steel Y stakes according to conditions and the tie down is to be with 4mm mild steel galvanised wire (which is to remain above ground). If a post is a tie down, it is to be fixed to the Y stake by a 150mm x 6mm galvanized nail.

Anywhere that there is a 100 mm or more upward pull on the wires is to have a tie down placed.

4.8 Tie backs

Tie backs can be used on angle posts or T irons and are permitted on both sides of the fence.

6.0 Resource Management Consents

The construction of fencing is subject to the Commissioner obtaining any and all consents required pursuant to the Resource Management Act 1991.

Appendix 4: Form of the Conservation Covenant Marked CC1, CC1A, CC1B, CC1C, CC1D on the plan.

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 the 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 habitat, freshwater life habitat, 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 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;
- 1.2.3 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;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 words importing one gender include the other gender;
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 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 Land must be managed so as to preserve the Values.

3. THE OWNER’S OBLIGATIONS

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out or allow to be carried out on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;

- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
 - 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
 - 3.1.6 any cultivation, earth works or other soil disturbances;
 - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
 - 3.1.8 the damming, diverting or taking of Natural Water;
 - 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
 - 3.1.10 any other activity which might have an adverse effect on the Values.
 - 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must:
- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
 - 3.2.3 keep the Land free from exotic tree species;
 - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
 - 3.2.5 grant to the Minister or authorised agent of the Minister or any employee or contractor of the Director-General, a right of access at all times on and to the Land, with or without motor vehicles, machinery, and implements of any kind, for purposes associated with the management of this Covenant;
 - 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 objectives specified in clause 2.1;
- 5.1.3 prepare, in consultation with the Owner, a monitoring plan to assist the parties to meet the objectives 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 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 it is not a Working Day or if it is 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 New Zealand Law Society 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 New Zealand Law Society;

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 AND APPROVAL

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

13.2 Where clauses in this Covenant require the approval of the Minister such approval 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 Covenant 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 made up of "CC1", "CC1A", "CC1B", "CC1C" and "CC1D" as shown on the Designations Plan attached at Schedule 4. The "Landscape Buffer Covenant" area is labelled "CC1" and shaded yellow on the Designations Plan. The "Biodiversity Covenant" areas are labelled "CC1A" – "CC1D" and shaded yellow hatch on the Designations Plan.

2. Address for Service¹

The address for service of the Minister is:

Physical address

77 Lower Stuart Street
Conservation House
Dunedin

Postal address

PO Box 5244
Moray Place
Dunedin 9058

Email: otago@doc.govt.nz

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

Shag Valley Station
C/- Mr J D Bell and Mrs T E Bell
RD 3
PALMERSTON 9483

3. Values of Land to be Protected (Section 77, Reserves Act 1977)

3.1 *To protect the landscape amenity of the Land:*

This area has high inherent landscape values owing to the overall coherent impression of the tall tussocklands. The presence of substantial rock outcropping provides the unit with some natural diversity and points of interest. The factors that make this unit aesthetically distinct include:

- The striking contrast in colour and texture between the tussocklands and rock outcropping.
- The sense of uniformity due to the lack of hard-edged changes in land use.
- Back country image reinforced by the lack of "built" elements.

3.2 *To protect the natural environment and wildlife habitat of the Land by allowing and encouraging the natural regeneration of indigenous species*

- Vegetation Description:

¹ State street address as well as any Post Office Box number.

River terrace

Immediately above the stony flats there are well-vegetated river terraces supporting a mosaic of seepages and *Carex* fens, short tussock grassland, shrub thickets and stands of tall tussock grassland.

Seepages are vegetated in a short turf with emergent rushes and toetoe (*Cortaderia richardii*) and a diverse range of other species, including the natives *Blechnum penna-marina*, *Juncus gregiflorus*, sharp-spike sedge (*Eleocharis acuta*), *Microtis unifolia*, toetoe, *Acaena novae-zeelandiae*, *Ranunculus glabrifolius*, *R. multiscapus*, *Epilobium brunnescens*, *Lagenifera petiolata*, *Hydrocotyle novae-zeelandiae*, native mint (*Mentha cunninghamii*), and the exotics jointed rush (*Juncus articulatus*), *Isolepis setacea*, sweet vernal, purging flax (*Linum catharticum*), bog stitchwort (*Stellaria alsine*), catsear (*Hypochaeris radicata*), mouse-ear chickweed (*Cerastium fontanum*), turf speedwell (*Veronica serpyllifolia*), grassland forget-me-not (*Myosotis discolor*), pearlwort (*Sagina procumbens*) and watercress (*Nasturtium microphyllum*).

Silver tussock is the dominant short tussock species on these terraces, while intact stands of narrow-leaved snow tussock, *Chionochloa rigida*, are present locally.

Shrub thickets are dominated by matagouri (*Discaria toumatou*), *Coprosma rugosa*, *C. propinqua*, *Olearia bullata*, shrub pohuehue (*Muehlenbeckia complexa*) and prickly shield fern (*Polystichum vestitum*), with the native *Oxalis exilis* a common groundcover species.

Tall tussock grassland

Dense tall tussock grassland dominated by narrow-leaved snow tussock occurs over most of the country on the true left of the Mid Branch Maerewhenua River (MBWR). Tussock stature and deep litter layers suggest that the country to the true left of the river has not been burned for some time. Hard tussock, *Blechnum penna-marina*, *Acaena caesiiglauca*, *Pimelea oreophila*, *Elymus solandri* and *Ranunculus multiscapus* are common inter-tussock species at lower altitudes (400-600 m), with mountain flax (*Phormium cookianum*) and occasional shrubs of *Olearia bullata*, *Coprosma rugosa* and matagouri. *Schoenus pauciflorus* dominates the seepage areas and *Carex flagellifera* is occasionally present. Above 700 m, turpentine shrub becomes more prominent, while tussock hawkweed (*Hieracium lepidulum*), *Hymenophyllum multifidum*, *Coprosma cheesemaniae*, *Brachyglottis lagopus* and *Forstera tenella* occur only occasionally above 800 m. *Aciphylla scott-thompsonii* extends to these altitudes in gullies. Coral broom (*Carmichaelia crassicaule*) occurs above 900 m on Conical Peak at the head of the MBWR catchment.

The lowest slopes, particularly on dry north aspects, have less narrow-leaved snow tussock and more silver tussock and hard tussock, with exotic grasses and mouse-ear hawkweed common inter-tussock species.

Stock camps with denuded plant cover occur locally on ridges at the 600 m level. These areas include small rock outcrops and support a distinctive vegetation comprising shrubs of matagouri, *Gaultheria crassa*, turpentine shrub (*Dracophyllum uniflorum*), tauhinu (*Ozothamnus leptophyllus*) and subshrubs of *Pimelea pseudolyallii*, *Leucopogon fraseri* and *Pentachondra pumila*. Blue tussock is common here. Herbs in this habitat include *Kelleria dieffenbachii*, *Thelymitra* sp., *Brachyscome sinclairii*, *Luzula rufa*, *Gingidia decipiens*, *Leptinella pectinata*, *Lycopodium fastigiatum*, *Scleranthus uniflorus*, golden spaniard (*Aciphylla aurea*), *Raoulia glabra*, *Anaphalioides bellidioides*, *Ranunculus multiscapus* and *Celmisia hookeri*. Exotic species include sweet vernal, *Aira caryophyllea* and mouse-ear hawkweed.

Rock outcrops at intermediate altitudes support a characteristic flora of ferns (*Microsorium pustulatum*, *Asplenium hookerianum*, *A. richardii* and *A. flabellatum*), shrubs (*Helichrysum aggregatum*, porcupine shrub, *Gaultheria crassa*, *Fuchsia perscandens*, *Rubus cissoides*), grasses (*Rytidosperma pumilum*, *Poa colensoi*, *Elymus solandri*) and herbs (*Celmisia hookeri*, *Anaphalioides bellidioides*, *Colobanthus strictus*, *Gingidia grisea*, *Acaena dumicola*, *Wahlenbergia albomarginata*). Small screes below these bluffs support occasional shrubs of *Carmichaelia petriei*, golden spaniard and the thousand-leaved fern (*Hypolepis millefolium*).

Shrubland

Dense shrublands are common on shady, bluffy slopes leading down to the MBWR and its tributaries. The dominant species are matagouri, *Coprosma propinqua* and *C. rugosa*, with occasional *C. crassifolia*, porcupine shrub, *Olearia bullata*, koromiko (*Hebe salicifolia*), tutu (*Coriaria arborea*) and *Carmichaelia petriei*. Mature trees of broadleaf (*Griselinia littoralis*) are sometimes present, indicating a successional trajectory toward low forest. Lianes occurring in these shrublands include *Calystegia turguriorum*, *Rubus schmidelioides*, pohuehue (*Muehlenbeckia australis*), *Scandia geniculata* and *Clematis afoliata*. *Gingidia grisea* and *Celmisia hookeri* are abundant on bluffs. The ferns *Blechnum chambersii* and *B. novae-zeelandiae* occur on damp, shady streamsides, while hard tussock, blue tussock, *Acaena dumicola*, *A. caesiiglauca*, golden spaniard and *Blechnum penna-*

marina are common on drier aspects. A single plant of *Olearia lineata* was observed on a river terrace on the true left of the river below the Round Hill 2 block.

Shrub thickets also occur in several gullies at lower altitudes in narrow-leaved snow tussock grassland. *Coprosma propinqua*, *C. rugosa* and matagouri are the dominant shrubs in these gullies

Broadleaved forest

Many remnants of broadleaved forest, of varying size, are present in Shag Valley PL. These are indicative of the extent of the broadleaved forest prior to conversion of the land for pastoral use. The remnants are all associated with riparian sites, extending upslope to varying degrees. Broadleaf is the most common canopy species occurring in all remnants. The understorey and ground cover within even the smallest of these remnants is diverse and dominated by native species. Forest remnants in the Marble Face have a different character to those in the Rookery block, reflecting the change from the Dansey ED to the Waianakarua ED.

Marble Face 1 - GR I42: 207435. A small forest remnant is associated with a small bluff above stony river flats beside the MBWR. Broadleaf forms the canopy. Shrubby bluffs adjacent to the remnant support *Coprosma propinqua*, *Gingidia* sp. aff. *montana*, *Anisotome brevistylis*, *Asplenium flabellifolium*, *Cystopteris tasmanica*, *Leucopogon fraseri*, *Anaphalioides bellidioides* and *Wahlenbergia albomarginata*. Damp, shady banks within the forest are vegetated in a dense herbaceous turf of *Corybas macranthus*, *Oxalis lactea*, *Cardamine corymbosa*, *Oreomyrrhis ramosa*, *Lagenifera cuneata*, *Hydrocotyle moschata*, *Ranunculus glabrifolius* and the ferns *Asplenium richardii*, *Blechnum novae-zelandiae*, *B. chambersii* and *Polystichum vestitum*. Wet sites at the bases of these banks are occupied by *Carex secta*, *C. solandri* and the native bidibids *Acaena anserinifolia*, *A. dumicola* and *A. novae-zelandiae*. Tutu, *Calystegia turguriorum* and *Fuchsia perscandens* occur in canopy gaps.

Marble Face 2 - GR I42: 221435. Slightly larger than Marble Face 1, a second forest remnant is located where a MBWR tributary passes through a rocky gorge. Shrublands surround the forest, in which broadleaf is again the dominant canopy species, but lancewood (*Pseudopanax crassifolium*), narrow-leaved lacebark (*Hoheria angustifolia*) and kohuhu (*Pittosporum tenuifolium*) are occasionally present in the canopy. Other native shrubs and trees include cabbage tree (*Cordyline australis*), porcupine shrub, marble leaf (*Carpodetus serratus*), tree nettle (*Urtica ferox*), *Carmichaelia petriei*, *Coprosma crassifolia*, *C. propinqua*, koromiko, *Fuchsia perscandens* and wineberry (*Aristotelia serrata*). The exotic woody species elder (*Sambucus nigra*) and broom (*Cytisus scoparius*) are sporadic. This remnant contains a remarkable diversity of some 15 fern species being: *Asplenium bulbiferum*, *A. flabellifolium*, *A. flaccidum*, *A. hookerianum*, *A. lyallii*, *A. richardii*, *Blechnum chambersii*, *B. fluviatile*, *B. novae-zelandiae*, *B. penna-marina*, *B. procerum*, *Hypolepis millefolium*, *Microsorium pustulatum*, *Polystichum neozelandicum* subsp. *zerophyllum*, *P. vestitum*), as well as the orchids *Corybas macranthus* and *Pterostylis banksii*.

Rookery - A relatively large forest remnant exists here, on fertile soils on the sides of gullies. In contrast to the remnants in the Marble Face, a number of species share dominance in the canopy. Many species seen here (underlined) were not observed in the Marble Face remnants. The forest is fringed by shrublands dominated by *Coprosma propinqua*, *C. rigida* and mountain flax, with occasional *Coprosma virescens*. Within the forest, the main canopy species are broadleaf, lancewood, marble leaf, wineberry, narrow-leaved lacebark, lemonwood (*Pittosporum eugenioides*) and three finger (*Pseudopanax colensoi*). Kaikomako (*Pennantia corymbosa*), rare in the Waianakarua Scenic Reserve (Ward & Munro, 1989) and not recorded from the Dansey ED (Comrie, 1992), is a common canopy species here. Mapou (*Myrsine australis*) and lowland ribbonwood (*Plagianthus regius*) occasionally reach the canopy. In the understory, koromiko, tree nettle, wineberry, mahoe (*Meliccytus ramiflorus*), *Coprosma rotundifolia*, *Fuchsia perscandens* and saplings of the canopy species are common, although in areas where stock have access, recruitment of palatable species such as lemonwood, mahoe, mapou and kaikomako is being inhibited. Ground cover includes most of the species found in the Marble Face 2 remnant, as well as *Hydrocotyle microphylla*, the orchid *Pterostylis* sp. aff. *montana*, three species of bidibid (*Acaena anserinifolia*, *A. dumicola* and *A. juvenca*), *Libertia ixiodes*, *Poa imbecilla*, the native buttercup *Ranunculus membranifolius* and the liane *Clematis marata*. Stock is having a significant effect on regeneration of canopy and understorey species in the forest remnants in the Rookery block, particularly on easier terrain.

SCHEDULE 2**Special Conditions****Conditions Applying to all parts of the Land:**

- 1) Notwithstanding clause 3.2.1, the Owner must control wilding pines, exotic broom and gorse on the Land and must prevent them seeding. The Owner will bear the cost of this work. Should the Owner fail to undertake this work the Minister may arrange to have this work undertaken and the Owner will bear the cost which may include reasonable costs of the Minister. Where in the sole opinion of the Minister, weed liabilities are significant, the Owner will submit to the Minister an agreed eradication plan for the control of weeds.
- 2) The Land will be monitored to ensure that the conditions of the covenant have been adhered to. The details of the monitoring including timing, methods, results and consequential actions are detailed in the monitoring description Schedule 3.
- 3) Feral animals including rabbits, possums, deer, goats and pigs will be controlled by the Owner to low levels to avoid damage to the values of the Land.

Conditions Applying only to CC1 – “Landscape Buffer Covenant”

The “landscape buffer covenant” area is designed to protect the natural landscape character, the tussock and riparian values, ensure the land is sustainably managed and to buffer the “Biodiversity Covenant” areas. The following special conditions apply solely to the “Landscape Buffer Covenant” area:

- 4) Clause 3.1.1 is deleted and replaced with: Sheep and cattle may graze the “Landscape Buffer Covenant” at a stocking rate that does not, in the opinion of the Minister, adversely impact on the values.
- 5) Clause 3.1.5 is amended to allow for oversowing and topdressing.
- 6) Clause 3.1.5 is amended to allow spraying vegetation by the Owner for the purpose of keeping land open for pastoral use, subject to the following conditions:
 - a) The Owner will ensure that the spray used will not damage the tussock cover.
 - b) No spraying is permitted within 20m of any stream or water course and spray mist not be permitted to damage “Biodiversity Covenant” areas.

Conditions Applying only to CC1A, CC1B, CC1C and CC1D – “Biodiversity Covenant”

The “Biodiversity Covenant” areas contain the highest values. These include shrublands, forest relics and rock face habitats. The following special condition applies only to the “Biodiversity Covenant” area:

- 7) The Owner must not deliberately stock the “biodiversity covenant” areas or in any way encourage stock into these areas.

SCHEDULE 3**DESCRIPTION OF THE MONITORING PROGRAMME TO BE ESTABLISHED.****1. Responsibilities:**

A vegetation monitoring programme will be established at the commencement of the covenant term by the Minister. Subsequent re-monitoring will occur every 5 years (or at some other agreed period) and is to be organised by the Owner with the assistance of the Minister.

The Minister will be party to the re-monitoring by providing one staff member to assist with the physical monitoring. The Minister will be consulted as to the selection of a suitably qualified monitoring provider (which does not preclude the Owner undertaking this work to an acceptable standard). The Minister will be given a copy to the monitoring report in a format nominated by the Minister.

2. Costs:

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

3. Monitoring Methods:

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

The number and position of photo points will be decided when baseline monitoring is established.

Within the "Landscape Buffer Covenant" areas photopoints will consist of a series of general landscape photos to ensure that conditions of the covenant are complied with.

Within the "Biodiversity Covenant" areas monitoring will identify effects as follows:

- within shrublands will include:
 - the amount of fragmentation, tracking, gaps and any improvement/decline in canopy density.
- within the forest areas will include:
 - Observations of stock damage to the understory and regeneration of the forest.

The Minister will have the discretion to require additional methods of monitoring to be used if results from photopoints or observations are found to be unsuitable for measuring the values being protected. Costs would be apportioned as per clause 2 above.

4. Monitoring Results:

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

Should it be noted as a result of monitoring that cattle and/or sheep or other pastoral practices are having a detrimental impact on the values then the Owner will take the necessary steps to prevent this continuing through such measures as fencing, reducing stock numbers or changing stock types.

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

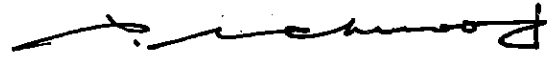
DUNEDIN/CHRISTCHURCH

Execution Section

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

SIGNED for and on behalf of the **Commissioner of Crown Lands** by BRIAN JOHN USHERWOOD, pursuant to the Crown Pastoral Land Act 1998, in the presence of:





Brian John Usherwood

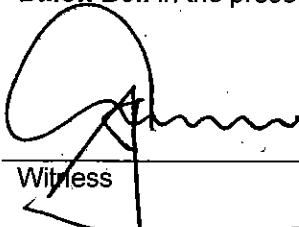
Witness

Sheryl Dawne Robinson
Solicitor
Wellington

Occupation

Address

SIGNED by the Holder **Jonathan Dillon Bell** in the presence of:





Jonathan Dillon Bell

Witness

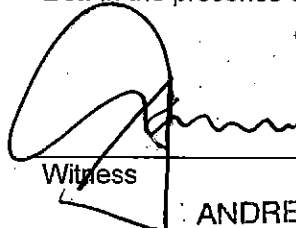
ANDREW JOHN ANDERSON

Occupation BARRISTER / SOLICITOR

DUNEDIN

Address

SIGNED by the Holder **Tanya Elms Bell** in the presence of:





Tanya Elms Bell

Witness

ANDREW JOHN ANDERSON

Occupation BARRISTER / SOLICITOR

DUNEDIN

Address

SIGNED by the Holder **HGW Trustees Limited** by two of its directors:

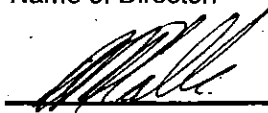


R.P. FRIEDRICH - Director
HGW Trustee's Limited
Trustee Company

Director

Robyn Phyllis Friedrich

Name of Director:

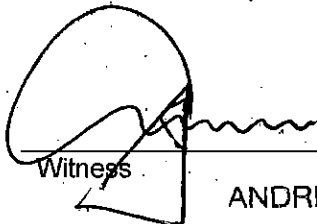


B. M. CHALLIS - Director
HGW Trustee's Limited
Trustees Company

Director

Name of Director: **BRETT MICHAEL CHALLIS**

SIGNED by the Holder **Jonathan Dillon Bell** in the presence of:



Witness

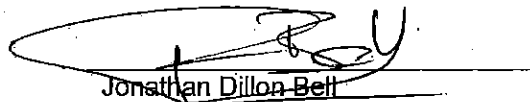
ANDREW JOHN ANDERSON

Occupation

BARRISTER / SOLICITOR

DUNEDIN

Address



Jonathan Dillon Bell