

Crown Pastoral Land Tenure Review

Lease name:

ALLANDALE / GREENVALE

Lease number: PS 068 / PS 067

Preliminary Proposal

- Part 2

A Preliminary Proposal is advertised for public submissions as per Section 43 of the Crown Pastoral Land Act 1998.

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

December 07

Appendix 7: Form of Covenant to be Created

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

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THIS DEED of COVENANT is made the day of

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

AND MINISTER OF CONSERVATION

BACKGROUND

- A. The Commissioner of Crown Lands is deemed for the purposes of section 77 of the Reserves Act 1977 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land contains certain Values specified in Schedule 1.
- C. The parties agree that the Land should be managed so as to preserve the particular Values specified in Schedule 1, and that such purpose can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.
- D. An approved plan designating the Land as land over which a Covenant under section 77 of the Reserves Act 1977 is to be created has been registered under section 64 of the Crown Pastoral Land Act 1998.
- E. The Commissioner of Crown Lands has agreed to grant the Minister a Covenant over the Land to preserve the particular Values specified in Schedule 1.

OPERATIVE PARTS

In accordance with section 77 of the Reserves Act 1977, and with the intent that the Covenant run with the Land and bind all subsequent Owners of the Land, the Commissioner of Crown Lands and Minister agree as follows:

1. INTERPRETATION

- 1.1 In this Covenant unless the context otherwise requires:

"Act"	means the Reserves Act 1977.
"Covenant"	means this Deed of Covenant made under section 77 of the Act.
"Director-General"	means the Director-General of Conservation.
"Fence"	includes a gate.
"Fire Authority"	means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
"Land"	means the land described in Schedule 1.
"Minerals"	means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
"Minister"	means the Minister of Conservation.
"Natural Water"	includes water contained in streams the banks of which have, from time to time, been realigned.
"Owner"	means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.

- "Party" or "Parties"** means either the Minister or the Owner or both.
- "Values"** means any or all of the Land's natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
- "Working Day"** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 clause and other headings are for ease of reference only and are not to be treated as forming any part of the context or to affect the interpretation of this Covenant;
- 1.2.3 words importing the singular number include the plural and vice versa;
- 1.2.4 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and in determining the issue, the parties must have regard to the matters contained in the Background;
- 1.2.5 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.6 words importing one gender include the other gender;
- 1.2.7 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;
- 1.2.8 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

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 on or in relation to the Land:

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;

- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
- 3.1.10 any other activity which might have an adverse effect on the Values.
- 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
- 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must:
 - 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
 - 3.2.3 keep the Land free from exotic tree species;
 - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
 - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
 - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

4. THE MINISTER'S OBLIGATIONS

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

5. IMPLEMENTATION OF OBJECTIVES

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

6. DURATION OF COVENANT

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

7. OBLIGATIONS ON SALE OF LAND

- 7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, or assignee to ensure that on any subsequent sale, lease, or assignment, any subsequent purchaser, lessee, or assignee must also comply with the terms of this Covenant including this clause.
- 7.2 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

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.

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 facsimile addressed to the receiving party at the address or facsimile number 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 facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next 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 District Law Society in the region in which the Land is situated is to appoint the mediator.

11.3 Failure of Mediation

11.3.1 in the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;

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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 District Law Society in the region in which the Land is situated;

11.3.3 the parties further agree that the results of arbitration are to be binding upon the parties.

12. JOINT OBLIGATIONS

12.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvements or take any action either jointly or individually to better preserve the Values.

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

Signed by _____ acting under a _____)
delegation from the Commissioner of Crown Lands _____)
deemed pursuant to section 80(5) of the Crown Pastoral _____)
Land Act 1998 to be the Owner of the Land for the _____)
purposes of section 77 of the Reserves Act 1977 _____)
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

Signed by Jeffrey Edward Connell exercising his _____)
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

As shown on the Designations Plan the covenant area for CC1a is split into 3 areas along the Allen Creek river terraces just SW of Kingston. (Approx. 4 ha in the top area, approx. 60 ha in the middle area, and approx. 85 ha in the lower area).

The covenant area described as CC1b (approx. 300 ha) is a roughly triangular shape extending from the ridgeline south of Bushy Creek and includes the eastern facing slopes above the Allen Creek flats.

The covenant area described as CC1c surrounds the Maori archaeological site E43/1 relating to recorded remnants of an umu (maori oven).

(Legal description can be inserted following survey)

2. Address for Service¹

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

Department of Conservation
PO Box 5244
Dunedin

Phone: (03) 477 0677
Fax: (03) 477 8626

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

Lake Wakatipu Station Ltd
Private Bag 92142
Auckland

Phone: (09) 303 2824
Fax: (09) 303 4224

3. Values of Land to be Protected

CC1a – preserving the natural environment and historical value, CC1b – preserving the landscape amenity and CC1c – preserving the historical value, as shown on plan attached as Schedule 3.

The Values contained in area CC1a are moraine deposits and a section of the old lake outlet. These highly visible sites are vulnerable to being altered by earthworks and/or being hidden by exotic woody species. The Land also contains Maori archaeological site F42/2. The values of this site include hollows and mounds, umu and ti umu, and possibly graves, not uncommon features on archaeological sites associated with a campsite or settlement on a traditional Ngai Tahu Pounamu Trail. Location map attached.

The Values contained in area CC1b are regenerating indigenous vegetation (in particular bracken fern, shrublands and beech remnant) on a highly visible face which forms a physical backdrop to the

¹ State street address not Post Office Box number.

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southern end of Lake Wakatipu. This face is vulnerable to both further subdivision and vegetation removal.

The Values contained in area CC1c is Maori archaeological site E43/1 relating to recorded remnants of an umu (maori oven) associated with a campsite on a traditional Ngai Tahu Pounamu Trail. Location map attached.

SCHEDULE 2

Special Conditions

For all areas.

1. Clause 3.2.1 is deleted and replaced with the following;
 - 3.2.1 take all reasonable steps to 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;

For the areas marked "CC1a" and "CC1b".

1. Clause 3.1.1 is deleted.
2. Clause 3.1.4 is deleted.
- 3.1 The Owner may erect only new buildings or structures with the prior written approval of the Minister, if they are sympathetically placed so not to be visible from either State Highway 6 (Kingston/Garston Highway) or the Kingston Branch railway.
- 3.2 The replacement of any existing building, structure or other improvements on the Land in place of any existing facility is permitted on the basis that such replacement or repair is of the same nature and scale as that which existed previously.
- 3.3 Despite the provisions contained in clause 3.1 and 3.2 the Owner is permitted to erect new fences and/or replace and repair existing fences as of right.
4. Clause 3.1.3 is deleted and replaced with the following;
 - 3.1.3 the planting of any species of tree, shrub or other plant, other than those planted for shelter belts for the purpose of stock protection;
5. Clause 3.1.11 is deleted and replaced with the following;
 - 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind, other than those removed during cultivation being less than landscape sized rocks, on or under the Land;

For only the area marked "CC1a"

1. Clause 3.1.2 is deleted.
2. Clause 3.1.5 is deleted.
3. Clause 3.1.6 is deleted.
4. Clause 3.2.5 is deleted and replaced with the following;
 - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, or members of Te Runanga o Ngai Tahu in respect to archaeological sites F42/2 (NZAA Site Record form attached), a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
5. The Owner will be required to meet his/her obligations on the protection of archaeological sites on the covenant land as defined in Sections 2 and 10 of the Historic Places Trust Act 1993.

6. The Owner shall agree to abide by an 'Accidental Discovery Protocol' in regards to the finding or suspicion of finding an archaeological site, burial or artefact as defined by Section 2 of the Historic Places Trust Act 1993, and the Antiquities Act 1975. An 'Accidental Discovery Protocol' requires that when an archaeological site, burial or artefact are found or are suspected to be found;
 - i) for archaeological sites and artefacts – the Area Office of the New Zealand Historic Places Trust must be contacted immediately.
 - ii) for burials – the local Police, the Area Office of the New Zealand Historic Places Trust and the appropriate Runanga representative must be contacted immediately.
7. The Owner is to allow the Department of Conservation to define the extent of the archaeological site F42/2 with warratah standards for identification purposes.

For only the area marked "CC1b"

1. Clause 3.1.5 is deleted and replaced with:
 - 3.1.5 any burning and chemical spraying. Top dressing and sowing of seed is permitted only to the extent that has historically been done, the rate of which shall be determined during the consultation of the tenure review; and
2. Clause 3.1.6 is deleted and replaced with the following:
 - 3.1.6 any cultivation, earth works or other soil disturbances, apart from any such activity required to maintain existing vehicle tracks through the Land to a standard appropriate for four wheel drive vehicles.
3. Clause 3.2.6 is deleted.

For only the area marked "CC1c"

1. Clause 3.2.5 is deleted and replaced with the following:
 - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, or members of Te Runanga o Ngai Tahu in respect to archaeological site E43/1 (NZAA Site Record form attached), a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
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4. The Owner is to allow the Department of Conservation to define the extent of the archaeological site E43/1 with warratah standards for identification purposes.

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SCHEDULE 3

The Plan

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

Solicitor for the Minister

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

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH

Appendix 8: Form of Covenant to be Created

DATED _____

Between

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Pursuant to Section 80 of the Crown Pastoral Land Act 1998

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Department of Conservation
Te Papa Atawhai

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- "Party" or "Parties"** means either the Minister or the Owner or both.
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- 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;
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- 6.1 This Covenant binds the Minister and Owner in perpetuity to the rights and obligations contained in it.

7. OBLIGATIONS ON SALE OF LAND

- 7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, or assignee to ensure that on any subsequent sale, lease, or assignment, any subsequent purchaser, lessee, or assignee must also comply with the terms of this Covenant including this clause.
- 7.2 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

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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.

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 facsimile addressed to the receiving party at the address or facsimile number 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 facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next 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 District Law Society in the region in which the Land is situated is to appoint the mediator.

11.3 Failure of Mediation

11.3.1 in the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;

11.3.2 notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the District Law Society in the region in which the Land is situated;

11.3.3 the parties further agree that the results of arbitration are to be binding upon the parties.

12. JOINT OBLIGATIONS

12.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvements or take any action either jointly or individually to better preserve the Values.

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

Signed by _____ acting under a _____)
delegation from the Commissioner of Crown Lands _____)
deemed pursuant to section 80(5) of the Crown Pastoral _____)
Land Act 1998 to be the Owner of the Land for the _____)
purposes of section 77 of the Reserves Act 1977 _____)
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

Signed by Kevin O'Connor exercising his _____)
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 covenant area described as CC2 on the Designations Plan (approx. 100 ha) is situated on the western facing slopes containing two tributaries of Robert Creek.

(Legal description can be inserted following survey)

2. Address for Service¹

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

Department of Conservation
PO Box 743
Invercargill

Phone: (03) 214 4589
Fax: (03) 214 4486

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

Lake Wakatipu Station Ltd
Private Bag 92142
Auckland

Phone: (09) 303 2824
Fax: (09) 303 4224

3. Values of Land to be Protected

Purpose is to protect freshwater life and natural environment.

The two tributaries of Robert Creek contain populations of two species of galaxiid, Gollum galaxias (*G. gollumoides*) and southern flathead galaxias (*G. sp southern*). These populations of galaxiids are endemic species and occur on the property at their distributional limits. Sympatric populations of two or more species of galaxiid are highly unusual and therefore significant.

The vegetation follows a gradual change with the subalpine area being covered in a dense sward of tall tussocks while most of the upper reaches are dominated by fescue tussocklands.

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions

1. Clause 3.1.1 is deleted and replaced with the following:
 - 3.1.1 grazing of land by livestock other than sheep. The grazing limit to be up to 800 breeding ewes per annum.
2. Clause 3.1.3 is deleted and replaced with the following:
 - 3.1.3 the planting of any species of tree, shrub or other plant and the releasing of any species of fish.
3. Clause 3.1.4 is deleted and replaced with the following:
 - 3.1.4.1 the erection of any new buildings or structures
 - 3.1.4.2 the replacement of existing building, structure or other improvements on the Land in place of any existing facility, unless such replacement or repair is of the same nature and scale as that which existed previously
 - 3.1.4.3 despite the provisions contained in clause 3.1.4.1 and 3.1.4.2, the Owner is permitted to erect new fences and/or replace and repair existing fences as of right.
4. Clause 3.1.6 is deleted and replaced with the following:
 - 3.1.6 any cultivation, earth works or other soil disturbances, apart from any such activity required to maintain existing vehicle tracks through the Land to a standard appropriate for four wheel drive vehicles.
5. The Owner shall not conduct any activity that encourages stock into any waterway.
6. The Owner shall prohibit cattle entering the Land by maintaining the boundary fencing to a standard suitable to exclude cattle from the area. If cattle droppings are found on the Land, it will be construed that this requirement isn't being met and within 6 months of being directed by the Minister the Owner must at their own cost improve the boundary fencing to the satisfaction of the Minister to a cattle proof standard.
7. Any future consideration to increase stocking levels may require waterways to be fenced to exclude stock, solely at the Owners expense so as to mitigate adverse affects.
8. For the purpose of protecting the Values, the Minister reserves the right to remove any freshwater organisms from the Land.
9. The Owner and the Minister will comply with the provisions of the Management Prescription Document contained in Schedule 3.

SCHEDULE 3

Management Prescription Document

The management prescription document provides for:

1. Specific goals of management of the land consistent with the objective of the covenant document.
2. A description of how the goals are to be met.
3. A description of the freshwater life monitoring programme (FMP) that is to be conducted.
4. A specification concerning grazing limits, including the identification of freshwater trends and how these will affect the grazing limits.
5. The revision of the management prescription document ten years from the date of creation of the covenant and ten years thereafter.

1. **The specified goals of the management of the Land is the maintenance and enhancement of the existing freshwater life, whilst meeting the objective of the covenant.**

To manage the populations of *Galaxias gollumoides* and *Galaxias* sp. nov southern (flathead type) while minimising the impact of stock.

2. **These goals are to be met through regular monitoring (including general inspections), liaison with the Owner and revision of grazing limits where necessary.**

Grazing limits will be adjusted if the analysis of the results from the FMP, in association with grazing methods and field observations, indicate a deterioration of the values on the Land.

3. **Description of freshwater life monitoring programme to be established.**

- a) The Minister shall be responsible for establishing and maintaining the structures and the monitoring programme described in clause 3(b). To achieve the goal described in clause 2, grazing limits will be adjusted after the analysis of the data collected during five separate episodes of monitoring and/or from field observations of the Minister and the Owner.

- b) The FMP programme will comprise the monitoring of the following variables, using the techniques outlined in the New Zealand Stream Health Monitoring and Assessment Kit (SHMAK): Stream Monitoring Manual, Version 2, 2002, unless otherwise specified, at both the confluence of the 4 waterways within the covenant and at the base of the Bushy Creek catchment. These points, hereby termed the covenant site and the reference site, are labelled C (GR E42 655 334) and z (GR E43 692 290) respectively on the plan contained in schedule 4.

- i) Water clarity, using the SHMAK clarity tube
- ii) Algal (periphyton) growth, by the use of photo points
- iii) Bank slumping, by the use of photo points
- iv) Water temperature
- v) pH
- vi) Water velocity
- vii) Conductivity, using a hand held conductivity meter
- viii) Composition of streambed and presence and extent of loose, silty deposits on the stream bed
- ix) Invertebrates (type and number – SHMAK Level 2)
- x) Fish type, condition and number (New Zealand Freshwater Fish Database form to be completed for each sampling episode)

- c) The Minister (at his/her discretion) shall monitor these variables during summer low flow (February- March) no more than once per year. Once monitoring has been conducted five

times the results shall be analysed in association with grazing records to determine trends.
This analysis and the resulting data shall be made available upon request to the Owner.

4. Grazing limits within the current term of the management prescription document.

If the analysis of the data collected and/or field observations as described in clause 3 above establish to the reasonable satisfaction of the Minister that grazing of domestic stock is having an unacceptable adverse effect on the values of the land, the Minister will issue a notice to the effect pursuant to clause 9 of the Covenant.

The parties will then attempt to address the adverse effects by undertaking consultation to modify the grazing limits so to maintain and enhance the Values of the land.

An adverse effect on the freshwater life will be construed to be a 10% change in the baseline mean in one or all of variables being monitored (as described in clause 3(b)) between the reference site and the covenant site.

Physical evidence of an adverse effect would be indicated by the following changes in the variables being monitored.

- i) Decrease in water clarity
- ii) Increase in algal growth
- iii) Increase in bank slumping
- iv) Increase in water temperature.
- v) Change in pH
- vi) Decrease in water flow
- vii) Increase in conductivity
- viii) Increase in sedimentation
- ix) Decrease in dissolved oxygen
- x) Decrease in fish type, condition and number

If after undertaking consultation the Minister reasonably deems (using the methodology described in clause 3) that grazing is still resulting in a decrease of the Land's values, the Owner shall at their expense within 6 months of being directed by the Minister to undertake this action, totally destock the Land.

5. The revision of the management prescription document ten years from the date of creation of the covenant and ten years thereafter.

At the tenth anniversary of the creation of the covenant and ten years after the Minister and/or the Owner may request that part or all of the management prescription document be amended, in order to better meet the objective of the covenant. Any such amendments must be mutually agreed to by the Minister and the Owner.

- 11 -

SCHEDULE 4

Plan showing location of the Covenant site and the Reference Site

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

Solicitor for the Minister

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

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH

Appendix 9: Form of Easement to be Created

c-6.

TRANSFER GRANT OF EASEMENT IN GROSS

1. Access for Management Purposes

Land Transfer Act 1952

This page does not form part of the Transfer.

TRANSFER

Land Transfer Act 1952

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

Land Registration District

Southland

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

Transferor Surnames must be underlined

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

Transferee Surnames must be underlined

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

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

Management Purposes Easement in Gross under section 7(2) of the Conservation Act 1987 and section 12 of the Reserves Act 1977(continued on pages 2, 3 and 4 of Annexure Schedule).

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

Operative Clause

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

Dated this _____ day of _____

Attestation

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

Certified correct for the purposes of the Land Transfer Act 1952
that Part IIA of the Land Settlement Promotion and Land
Acquisition Act 1952 does not apply

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

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

Dated

Page of Pages

Definitions

1. In this transfer unless the context otherwise requires:

- 1.1 "Easement Area" means that part of the Servient Land being 10 metres wide which is marked "a-b" on S.O. Plan No [].
- 1.2 "Management Purposes" means:
- the protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the easement area.
 - The management of the land administered by the Transferee (not being a member of the public) in a way that is-ecologically sustainable.
- 1.3 "Servient Land" means the land owned by the Transferor and described on page 1.
- 1.4 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation.
- 1.5 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

Standard Easement Terms

Access

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

Exclusion of Schedules

5. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Ninth Schedule of the Property Law Act 1952 are expressly negated.

Term

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

Temporary Suspension

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and wither their witnesses or their solicitors must put their signatures or initials here.

7. The Transferee (not being a member of the Public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary.

Dispute Resolution

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

Notice

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

Special Easement Terms

- 10 The standard easement terms contained above must be read subject to any special easement terms set out below.
- 10.1 DoC is to provide 48 hours notice for access, except in the event of civil emergency, such as rural fire fighting.
- 10.2 Clause 2 is deleted and replaced with:
- 2 To provide access for employees, tenants, agents, workmen and licensees of the Transferor and/or Transferee on foot or by motor vehicle, with or without machinery or implements of any kind for management purposes over that part of the land marked with an orange line and labelled "a-b" on the proposed Designation Plan.

Continuation of "Attestation"

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and wither their witnesses or their solicitors must put their signatures or initials here.

Signed for and on behalf of)
Her Majesty the Queen by)
Jeffrey Edward Connell)
under a written delegation in the)
presence of:)

Witness (Signature)

Name _____

Address _____

Occupation _____

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

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and wither their witnesses or their solicitors must put their signatures or initials here.

OTACO-37213 -- Management Purposes easement in gross Reserves Act/Conservation Act
OTACO-38410 -- Easement for Management Purposes -- Allandale & Greenvale (Ps 67 & 68) May 2006

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

TRANSFER GRANT OF EASEMENT IN GROSS

1. Management Purposes

Land Transfer Act 1952

Law Firm Acting
Conservancy Solicitor Department of Conservation Dunedin

Auckland District Law Society
REF:4135

This page is for Land Registry Office use only.

(except for "Law Firm Acting")
OTACO-37213 – Management Purposes easement in gross Reserves Act/Conservation Act
OTACO-38410 – Easement for Management Purposes – Allandale & Greenvale (Ps 67 & 68) May 2006

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 Paul Alexander Jackson acting
pursuant to a delegated authority in
the presence of:

Witness

Occupation

Address

SIGNED for and on behalf of Lake Wakatipu Station Limited by two of its directors:

[name of director]

[name of director]