

Crown Pastoral Land Tenure Review

Lease name: Ben Avon

Lease number: PO 251

Substantive Proposal - Part 1

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

December

05

Substantive Proposal

relating to

Tenure Review of the Ben Avon Pastoral Lease under
the Crown Pastoral Land Act 1998

Commissioner of Crown Lands acting under the
Crown Pastoral Land Act 1998

(as the Commissioner)

and

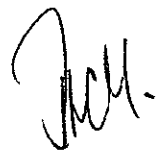
Ben Avon Run Co. Limited

(as the Holder)

Date 19 May 2003

Important

*It is recommended that the Holder seek legal advice
regarding the effect and consequences of this
Substantive Proposal and the accompanying documents.*



Executive Summary for the Substantive Proposal for the Tenure Review of the Ben Avon Pastoral Lease under the Crown Pastoral Land Act 1998.

1. Putting of Substantive Proposal

In accordance with the Tenure Review process currently being undertaken by the Commissioner of Crown Lands (the **Commissioner**), the Commissioner puts this Substantive Proposal to the holder of the Ben Avon Pastoral Lease, being Ben Avon Run Co. Limited (the **Holder**).

2. Substantive Proposal under Crown Pastoral Land Act

This Substantive Proposal is put under the provisions of the Crown Pastoral Land Act 1998 (the **Act**). It takes into account the objects of Part 2 of the Act. This Substantive Proposal relates to the land held under the Holder's Crown pastoral lease granted under the Land Act 1948 (the **Lease Land**).

3. Synopsis of the Substantive Proposal for the Ben Avon Pastoral Lease

Under this Substantive Proposal the Commissioner proposes the following designations in respect of the Lease Land:

- 4729 hectares (approximately) to be designated as land to be restored to full Crown ownership and control under section 35(2)(a)(i) of the Act as conservation area;
- 75 hectares (approximately) to be designated as land to be restored to full Crown ownership and control under section 35(2)(a)(ii) of the Act as scenic reserve; and
- 3496 hectares (approximately) to be designated as land to be disposed of by freehold disposal to the Holder under section 35(3) of the Act, subject to Part IVA of the Conservation Act 1987, section 11 of the Crown Minerals Act 1991, and the covenant and the easements as outlined in this Substantive Proposal.

4. Separate Notice

Accompanying, but not forming part of, this Substantive Proposal is a Notice that sets out the proposed amounts that will be payable under this Substantive Proposal.

5. Holder's Acceptance

This Substantive Proposal, when accepted by the Holder, will constitute a contract between the Holder and the Commissioner.

To accept this Substantive Proposal the Holder must:

- sign two "Execution Copies" of this Substantive Proposal where provided in the Execution Section; and
- obtain and have endorsed in the Execution Section the written consent of all persons having an interest in the Lease Land subject to the Tenure Review, as required by clause 14.1 of this Substantive Proposal.

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An original signed Execution Copy of this Substantive Proposal must be returned to the Commissioner. The Holder's acceptance of this Substantive Proposal will be irrevocable.

The Holder is to provide a Solicitor's Certificate (in a form satisfactory to the Commissioner) from the Holder's solicitors certifying as to certain matters relating to the Holder's acceptance of this Substantive Proposal.

The original signed Execution Copy of this Substantive Proposal and the completed Solicitor's Certificate is to be delivered by courier or by post to the Commissioner at the following address:

Commissioner of Crown Lands
Land Information New Zealand
Lambton House
160 Lambton Quay
Private Box 5501
Wellington

Attention: Jean Greedy

If the Commissioner does not receive acceptance of this Substantive Proposal within three months of **19 May 2003**, the Holder will, under the Act, be deemed to have rejected this Substantive Proposal.

JB

MRC

Jack.
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This **Substantive Proposal** is made on 19 May 2003

between (1) **Commissioner of Crown Lands acting under the Crown Pastoral Land Act 1998 (as the Commissioner)**

and (2) **Ben Avon Run Co. Limited (as the Holder).**

Introduction

- A. The Holder is the lessee under the Lease.
- B. On the written invitation of the Holder, the Commissioner is undertaking Tenure Review of the Lease Land. The Tenure Review process comprises three stages.
- C. On 10 September 2001 the Commissioner provided the Holder with a draft of the Preliminary Proposal for consultation purposes. The Holder returned a completed Holder's Acknowledgement dated 15 October 2001 relating to the draft of the Preliminary Proposal to the Commissioner. This completed stage one of the Tenure Review.
- D. On 6 March 2002 the Commissioner put the Preliminary Proposal to the Holder under section 34 of the Act. This completed stage two of the Tenure Review.
- E. The Commissioner puts this Substantive Proposal to the Holder as Stage Three of the Tenure Review.

It is declared

1. Interpretation

1.1 Definitions

In this Substantive Proposal unless the context otherwise requires:

Act means the Crown Pastoral Land Act 1998;

Area One means 4,729 hectares of the Lease Land, being part of the Schedule One Land, shown as "CA1" and "CA2" outlined in pink on the Plan;

Area Two means 75 hectares of the Lease Land, being part of the Schedule One Land, shown as "SR" outlined in pink on the Plan;

Commissioner means the Commissioner of Crown Lands appointed pursuant to 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 Schedule One Land, as specified in the Notice;

Commissioner's GST Date means the earlier of Settlement Date and the fifth working day before the day on which the Commissioner is due to pay to the Inland Revenue Department

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all GST payable by the Commissioner in respect of the supply made under this Substantive Proposal;

Commissioner's Payment means the balance of the consideration payable by the Commissioner to the Holder by equality of exchange for surrender of the leasehold interest in the Lease in respect of the Schedule One Land, as specified in the Notice;

Conservation Act means the Conservation Act 1987;

Covenant means a conservation covenant granted under section 40(1)(b) of the Act for the purpose of preserving the natural environment and landscape amenity value of the Puke Makariri faces and the natural environment of turf communities surrounding kettleholes on the Lease Land over that part of the Schedule Two Land, being:

- 200 hectares, approximately, coloured yellow and shown marked "CC1" on the Plan;
- 71 hectares, approximately, coloured yellow and shown marked "CC2" on the Plan,

in the form attached as Appendix 4;

Crown means the Crown as defined in section 2 of the Public Finance Act 1989;

Default GST means any additional GST, penalty or other sum levied against either the Commissioner or the Holder under the GST Act or the Tax Administration Act 1994 by reason of either the Commissioner or the Holder failing to pay GST as required by the Substantive 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 (in each instance, as the case may be);

Default Rate means the floating rate agreement mid-point thirty day bank bill rate as at 10.45 a.m. on Reuters' page BKBK on the date on which the relevant payment becomes due and payable plus 500 basis points and compounded monthly;

Director-General means the Director-General of Conservation;

Draft Preliminary Proposal means the draft of the Preliminary Proposal that the Commissioner provided to the Holder for consultation purposes under the Act on 10 September 2001 and includes all schedules, parts, plans, appendices and annexures attached to that draft of the Preliminary Proposal;

Easements means, collectively the:

- (a) Public Access to Conservation Area and Vehicles for Management Purposes Easement; and
- (b) Public Access to Reserve and Vehicles for Management Purposes Easement;

Execution Copies means the two copies of this Substantive Proposal each labelled "Execution Copy";

Execution Section means the section at the end of this Substantive Proposal containing the Commissioner's signature and evidencing the Holder's acceptance of this Substantive Proposal and containing the consent of any person having an interest in the Lease Land;

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Fencing Plan means the plan setting out details of the fencing routes, attached as Appendix 6;

Final Plan means the final plan for the Lease Land, prepared and submitted by the Commissioner to the Surveyor-General under section 62(4)(c) and (d) of the Act;

GST means all goods and services tax payable by the Commissioner or the Holder under the GST Act in respect of their respective supplies evidenced by this Substantive Proposal;

GST Act means the Goods and Services Tax Act 1985;

Holder means Ben Avon Run Co. Limited, being lessee of the Lease Land;

Holder's Acknowledgement means, where not inconsistent with the context, the Holder's Acknowledgement that accompanied, but did not form part of, the Draft Preliminary Proposal and the Preliminary Proposal;

Holder's Consideration means the amount payable by the Holder to the Commissioner by equality of exchange for the freehold of the Schedule Two Land, as specified in the Notice;

Holder's GST Date means the earlier of Settlement Date and the fifth working day before the day on which the Holder is due to pay to the Inland Revenue Department all GST payable by the Holder in respect of the supply made under this Substantive Proposal;

Holder's solicitors means the solicitor, or solicitors, if any, acting for the Holder;

Lease means the lease comprised and described in folio number OTA2/1220 (Otago Land Registry) issued under the Land Act 1948, and includes all variations and renewals of that lease;

Lease Land means 8300.2737 hectares being Part Run 429A, Longslip and Longslipside Survey Districts, Part Run 433 Longslipside Survey District, Sections 1, 3 and 5 SO Plan 22899 and Section 2 SO Plan 23922 being the land comprised and described in folio number OTA2/1220 (Otago Land Registry) subject to:

- (a) Mortgage;
- (b) Part IVA Conservation Act;
- (c) land improvement agreement 629969; and
- (d) conservation covenant 976089.1;

Minister means the Minister of Conservation;

Mortgage means mortgage 723683.8 (Otago Land Registry) registered against the Lease;

Mortgagee means Westpac Banking Corporation, the mortgagee under the Mortgage;

Notice means the notice to the Holder setting out:

- (a) the Holder's Consideration;

- (b) the Commissioner's Consideration;
- (c) the Commissioner's Payment; and
- (d) when the Commissioner's Payment will be payable,

which includes amounts proposed to be paid by way of equality of exchange and accompanies this Substantive Proposal, but is not part of this Substantive Proposal;

Plan means the plan of the Lease Land showing all designations, the Covenant and the Easement areas and includes Diagram A showing detail of Area Two and part of the Covenant area, attached as Appendix 1;

Preliminary Proposal means the preliminary proposal, that the Commissioner put to the Holder under, and subject to, section 34 of the Act on 6 March 2002 and includes all schedules, parts, plans, appendices and annexures attached to the preliminary proposal;

Public Access to Conservation Area and Vehicles for Management Purposes Easement means an easement to provide:

- (a) public access for persons on foot, or on or accompanied by horses, or by non-motorised vehicle powered by a person or persons, over that part of the Lease Land marked "a-b", "c-d", "e-f" and "g-h" on the Plan; and
- (b) access for tenants, agents, contractors and licensees of the Minister and any employee or contractor of the Director-General on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, for management purposes, over that part of the Lease Land marked "a-b", "c-d", "e-f" and "g-h" on the Plan,

a sample of the form of the easement is attached as Appendix 2, although the form of and the parties to the easement may be subject to change, the rights over the easement area will conform to those contained in this sample;

Public Access to Reserve and Vehicles for Management Purposes Easement means an easement to provide:

- (a) public access for persons on foot, or on or accompanied by horses, or by motor vehicle, or by non-motorised vehicle powered by a person or persons, over that part of the Lease Land marked "i-j" on the Plan; and
- (b) access for tenants, agents, contractors and licensees of the Minister and any employee or contractor of the Director-General on foot, or on or accompanied by horses, or by motor vehicles, with or without machinery and implements of any kind, for management purposes, over that part of the Lease Land marked "i-j" on the Plan,

a sample of the form of the easement is attached as Appendix 3, although the form of and the parties to the easement may be subject to change, the rights over the easement area will conform to those contained in this sample;

Registrar means the Registrar-General of Land appointed pursuant to section 4 of the Land Transfer Act 1952;

RM Act means the Resource Management Act 1991;

Schedule One Land means Area One and Area Two;

Schedule Two Land means 3496 hectares of the Lease Land, as outlined in green on the Plan;

Settlement Date means the settlement date defined in clause 9.1;

Solicitor's Certificate means the certificate provided by the Holder's solicitors addressed to the Commissioner, in a form acceptable to the Commissioner, certifying as to certain matters relating to the Holder's acceptance of this Substantive Proposal;

Stage Three of the Tenure Review means the process set out in clause 2;

Substantive Proposal means this substantive proposal that the Commissioner puts to the Holder under, and subject to, section 46 of the Act, and includes all schedules, parts, plans, appendices and annexures attached to this substantive proposal;

Surveyor-General means the Surveyor-General appointed pursuant to section 5 of the Cadastral Survey Act 2002;

Tenure Review means the tenure review of the Lease Land being undertaken by the Commissioner under Part 2 of the Act;

Unconditional Date means the date that the Commissioner receives from the Holder an Execution Copy of this Substantive Proposal signed by the Holder and containing the consents of all persons having an interest in the Lease Land to the Holder's acceptance of this Substantive Proposal which results in the acceptance taking effect under section 60(4) of 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.

1.2 Construction of certain references

In this Substantive Proposal, unless inconsistent with the context:

- (a) words importing a gender include all other genders;
- (b) reference to a statute includes reference to all enactments that amend or are passed in substitution for the relevant statute;
- (c) words in the singular number include the plural and vice versa;
- (d) reference to a month means a calendar month;
- (e) 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);
- (f) references to sections, clauses, sub-clauses, parts, annexures, attachments, appendices, schedules, paragraphs and sub-paragraphs are references to such as they appear in this Substantive Proposal and form part of this Substantive Proposal;

- (g) headings are included for ease of reference only and will not affect the construction or interpretation of this Substantive Proposal;
- (h) all monetary amounts are expressed in New Zealand currency;
- (i) 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;
- (j) all references to times are references to times in New Zealand;
- (k) if the Unconditional Date or the Settlement Date falls on a day that is not a working day, the Unconditional Date or the Settlement Date will be the next working day after the day so nominated; and
- (l) if the Holder comprises more than one person, each of those person's obligations, as Holder, will be both joint and several.

1.3 The illegality, invalidity or unenforceability of any provision in this Substantive Proposal will not affect the legality, validity or enforceability of any other provision.

2. Substantive Proposal

2.1 The Commissioner having:

- (a) considered, under section 47 of the Act:
 - (i) all matters raised by the iwi authority concerned during the consultation on the Preliminary Proposal; and
 - (ii) all written submissions relating to the Preliminary Proposal received by the Commissioner (from any person or organisation) on or before the day specified in the notice given under section 43 of the Act at the address specified in that notice;
- (b) consulted with the Director-General under section 26 of the Act about putting this Substantive Proposal to the Holder;
- (c) obtained the prior written consent of the Minister to this Substantive Proposal; and
- (d) ensured that the Crown has completed all statutory clearance and other actions and obtained all statutory and regulatory consents that the Crown is required to complete and obtain in relation to the Lease Land,

puts this Substantive Proposal to the Holder under section 46 of the Act.

2.2 Under this Substantive Proposal, the Commissioner designates that:

- (a) Area One be restored to full Crown ownership and control as conservation area under section 35(2)(a)(i) of the Act, and the provisions of Schedule One apply to this designation;

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(b) Area Two be restored to full Crown ownership and control as a scenic reserve under section 35(2)(a)(ii) of the Act, and the provisions of Schedule One apply to this designation;

(c) the Schedule Two Land be disposed of to the Holder by freehold disposal under section 35(3) of the Act, subject to:

(i) Part IVA of the Conservation Act;

(ii) Section 11 of the Crown Minerals Act 1991;

(iii) the Easements; and

(iv) the Covenant,

and the provisions of Schedule Two apply to this designation.

2.3 Notwithstanding any other clause and subject to clause 14, the Schedule Two Land to be disposed of in accordance with clause 2.2(c) may be also subject to the provisions of section 114 of the Land Act 1948.

2.4 This Substantive Proposal is accompanied by a Notice under section 46(4) of the Act.

3. Conservation Act

As required by section 24 of the Conservation Act, the Commissioner has notified the Director-General of the disposition of Crown land contemplated by this Substantive Proposal.

4. Acceptance by Holder

4.1 The Holder may accept this Substantive Proposal by completing the Execution Section at the end of this Substantive Proposal and returning one original signed Execution Copy of this Substantive Proposal to the Commissioner. The original signed Execution Copy of this Substantive Proposal must be delivered by courier or by post to the Commissioner at the following address:

Commissioner of Crown Lands
Land Information New Zealand
Lambton House
160 Lambton Quay
Private Box 5501
Wellington

Attention: Jean Greedy

4.2 The Holder must arrange for the Mortgagee and any other person having an interest in the Lease Land to consent to the Holder's acceptance of this Substantive Proposal as required by clause 14.1 of this Substantive Proposal. These consents must be endorsed in the Execution Section of the Execution Copy of this Substantive Proposal that is to be returned to the Commissioner.

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- 4.3 Under section 60(5) of the Act, the Holder's acceptance of this Substantive Proposal is irrevocable and has the effect as an irrevocable authority to, and obligation on, the Commissioner to take the appropriate actions required by Part 2 of the Act. The Holder's acceptance of this Substantive Proposal constitutes a binding contract between the Commissioner and the Holder.
- 4.4 The Holder must procure the Holder's solicitors to provide the Solicitor's Certificate and the Holder must return the executed Solicitor's Certificate to the Commissioner with the Execution Copy of this Substantive Proposal (signed by the Holder and including the written consents of all the persons referred to in clause 4.2).
- 4.5 If the Commissioner does not receive the Execution Copy of this Substantive Proposal referred to in clause 4.1 (signed by the Holder and including the written consents of all the persons referred to in clause 4.2) within three months of the Commissioner putting this Substantive Proposal to the Holder, then the Holder is deemed to have rejected this Substantive Proposal.
- 4.6 The Holder acknowledges that:
- (a) under section 61(4) of the Act, every person who, after the notice referred to in clause 5.2 has been registered, acquires an estate or interest in the Lease Land, will be bound by the Holder's acceptance of this Substantive Proposal to the same extent as the Holder; and
 - (b) under section 61(5) of the Act, if a person acquires an estate or interest in the Lease Land:
 - (i) after the Holder has accepted this Substantive Proposal; and
 - (ii) before the notice referred to in clause 5.2 has been lodged for registration,then Part 2 of the Act has effect as if the Holder had rejected this entire Substantive Proposal.

5. Implementation of Substantive Proposal

- 5.1 If:
- (a) the Holder accepts this Substantive Proposal in accordance with clause 4; and
 - (b) the acceptance has taken effect under section 60(4) of the Act,
- then the parties will proceed to implement this Substantive Proposal in accordance with clauses 5.2 – 5.16.
- 5.2 Under section 61 of the Act, once the Commissioner receives the Execution Copy of this Substantive Proposal completed by the Holder and containing the requisite consents, the Commissioner must sign and forward to the Registrar a written notice of the Holder's acceptance of this Substantive Proposal, describing this Substantive Proposal in general terms.

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- 5.3 Under section 61 of the Act, the Registrar must register the notice referred to in clause 5.2 against every instrument of title to the Lease Land to which this Substantive Proposal relates.
- 5.4 Under section 62 of the Act, once the Holder's acceptance of this Substantive Proposal takes effect, the Commissioner must give the Surveyor-General written notice of the Holder's acceptance, attaching a copy of this Substantive Proposal.
- 5.5 Under section 62 of the Act, as soon as is practicable after receiving the Commissioner's notice referred to in clause 5.4, the Surveyor-General must:
- (a) determine whether any of the Lease Land needs to be surveyed before this Substantive Proposal can be given effect to; and
 - (b) give the Commissioner written notice:
 - (i) of the Lease Land or parts of the Lease Land (including, but not limited to, all Easement areas) that need to be surveyed; or
 - (ii) that none of the Lease Land needs to be surveyed.
- 5.6 Under section 62 of the Act, if the Commissioner is notified by the Surveyor-General that any of the Lease Land needs to be surveyed, the Commissioner is to have it surveyed, and to have a plan or plans of it prepared and approved under the Cadastral Survey Act 2002.
- 5.7 Under section 62 of the Act, once the Commissioner:
- (a) has complied with clause 5.6; or
 - (b) has been notified that none of the Lease Land needs to be surveyed,
- the Commissioner must prepare a Final Plan of the Lease Land to which this Substantive Proposal relates, showing the various areas to which it relates, and in respect of each area giving:
- (a) a legal description;
 - (b) its designation by this Substantive Proposal;
 - (c) reserve land purpose, in respect of Area Two; and
- submit two copies of the Final Plan to the Surveyor-General.
- 5.8 Under section 63 of the Act, if (and only if) the Surveyor-General is satisfied that:
- (a) the boundaries of the various areas shown on the Final Plan submitted under clause 5.7 are, in light of any discovered imprecisions in the boundaries shown or described in the accepted Substantive Proposal concerned, as close as may reasonably practicably be achieved to the boundaries shown or described in this Substantive Proposal; and
 - (b) to the extent allowed by the position of the boundaries shown on the Final Plan:

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- (i) the areas they define; and
- (ii) the designations of those areas,

accurately reflect this Substantive Proposal,

the Surveyor-General must sign and date on both copies of the Final Plan a written notice approving it for the purposes of the Act, and return one copy of the Final Plan to the Commissioner.

- 5.9 Under section 64 of the Act, once the Commissioner receives the approved Final Plan, the Commissioner must lodge the Final Plan and a copy of this Substantive Proposal with the Registrar, and the Registrar must register them against every instrument of title to the Lease Land to which the Final Plan and this Substantive Proposal relate.
- 5.10 Under sections 65 and 69 of the Act, upon registration of the Final Plan and this Substantive Proposal under section 64 of the Act:
- (a) the Area One land will be restored to full Crown ownership and control as conservation area;
 - (b) the Area Two land will be restored to full Crown ownership and control as a scenic reserve; and
 - (c) subject to clause 5.15, the Commissioner will dispose of the Schedule Two Land to the Holder (subject to the encumbrances specified in paragraph 1.1 of Schedule Two) under the provisions of the Land Act 1948 by requesting that the Surveyor-General issue a certificate under section 116 of the Land Act 1948 to the Registrar and that the Registrar issue a certificate of title for the Schedule Two Land in the name of the Holder;
- 5.11 The Schedule One Land will vest in the Crown freed and discharged from all mortgages, charges, claims, estates and interests.
- 5.12 The Commissioner will meet the costs for the survey (if any) of the Lease Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Schedule Two Land.
- 5.13 The Lease will remain in force until a certificate of title is issued for the Schedule Two Land, and at this time the Lease will, under section 69(2) of the Act, be deemed to be surrendered in respect of the Lease Land.
- 5.14 Following registration of the Final Plan and this Substantive Proposal, the Commissioner must promptly:
- (a) prepare execution documents for the Covenant and the Easements, in the forms attached to this Substantive Proposal and forward the execution documents to the relevant parties to be signed;
 - (b) under section 80 of the Act, agree with the Minister that the Minister should acquire the Covenant and the Easements on the terms and conditions specified in this Substantive Proposal and the Minister must sign the execution copies of the Covenant and the Easements and return these to the Commissioner;

- (c) sign the execution documents for the Easements and the Covenant;
- (d) provide to the Holder, and the Holder must sign the Easements (if necessary); and
- (e) lodge the documents for the Easements and the Covenant for registration at the Otago Land Registry once the documents are signed (as the case may be) by the Commissioner, the Holder and the Minister.

5.15 Notwithstanding any other provision in this Substantive Proposal, the Commissioner will not request that the Surveyor-General issue a certificate under clause 5.10(c) unless and until:

- (a) the Commissioner has received all money payable by the Holder under this Substantive Proposal;
- (b) the Holder has provided to the Commissioner the duplicate of the Lease (if the Holder has this document and it is required by the Commissioner) and the Holder has signed and returned to the Commissioner the Easements (if required) and any other documents reasonably required by the Commissioner to be signed by the Holder to give effect to this Substantive Proposal; and
- (c) the Holder has procured the Mortgagee's execution of a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder has executed registrable new mortgage documents and if the Mortgagee holds the duplicate of the Lease, the Holder has procured the Mortgagee to allow the Holder to provide the Lease to the Commissioner (if the Commissioner requires the duplicate of the Lease) and the Holder has provided these documents to the Commissioner.

5.16 Subject to clause 5.15, the Commissioner will lodge the Easements, the Covenant, the discharge of the Mortgage, the duplicate of the Lease (if required), and any new mortgage documents at the Otago Land Registry, to be registered against the certificate of title to be issued under the Land Transfer Act 1952 for the Schedule Two Land, so that the certificate of title for the Schedule Two Land will issue subject to the Easements, the Covenant and any new mortgage. The new mortgage will be registered after the Easements and the Covenant are registered.

6. Commissioner's considerations

6.1 Under section 25 of the Act, in acting under Part 2 of the Act, the Commissioner must (to the extent that those matters are applicable), take into account:

- (a) the objects of Part 2 of the Act;
- (b) the principles of the Treaty of Waitangi; and
- (c) in acting in relation to land used or intended to be used by the Crown for any particular purpose, that purpose.

6.2 Under section 25 of the Act, in acting under Part 2 of the Act in relation to any part of the Lease Land, the Commissioner must take into account the objects of Part 2 of the Act in the light of:

- (a) their application to all of the Lease Land held under the Lease; rather than

- (b) their application to that part of the Lease Land alone.

7. Discontinuance of Tenure Review

Under section 33 of the Act, at any time before the Holder accepts this Substantive Proposal, in accordance with clause 4, the Commissioner:

- (a) may discontinue the Tenure Review; and
- (b) must discontinue the Tenure Review if asked in writing by the Holder to do so.

8. Survey

- 8.1 All areas of the Lease Land forming part of this Substantive Proposal and delineated on the Plan are approximate and subject to preparation of the Final Plan and, therefore, the measurements of the areas may alter on the Final Plan.
- 8.2 No error, misdescription or amendment of any part of the Lease Land will annul, vary, or derogate from the Draft Preliminary Proposal, the Preliminary Proposal, this Substantive Proposal, or the Holder's acceptance of this Substantive Proposal.
- 8.3 For the avoidance of doubt, the Holder will not be entitled to cancel or withdraw its acceptance of this Substantive Proposal, nor will the Holder, or any successor in title of the Holder or any party with an interest in the Schedule Two Land, be entitled to payment of any compensation, should any area of the Lease Land on the Final Plan have a different measurement to the area specified in this Substantive Proposal.
- 8.4 The Commissioner does not warrant that:
- (a) any existing fence is erected on; or
- (b) any new fence to be erected will be on;

any boundaries of the Lease Land or any part of the Lease Land as outlined on the Plan or the Final Plan.

9. Settlement

- 9.1 The Settlement Date for payment of the Commissioner's Payment and the apportionments payable under clauses 9.3, 9.4, 9.5 and 9.6 will be the day that is 20 working days following the day that the Final Plan and a copy of this Substantive Proposal are registered at the Otago Land Registry under section 64 of the Act.
- 9.2 Notwithstanding when Settlement Date occurs, until a certificate of title issues for the Schedule Two Land, the Holder will duly and punctually comply with all obligations on its part under the Lease, and the Lease will remain in full force and effect.

9.3

- (a) Rent paid or payable under the Lease for the Schedule Two Land will be apportioned on the Settlement Date as at the date that a certificate of title issues for the Schedule Two Land and either deducted from or added to (as the case may be) the amount required to settle.
- (b) Rent payable under the Lease for the Schedule Two Land from the date that the Final Plan and a copy of the Substantive Proposal are registered to the date a certificate of title issues for the Schedule Two Land shall bear the same proportion to the total rent payable under the Lease as the Schedule Two Land area bears to the total area of the Lease Land.
- (c) Any apportionments for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Two Land (should a certificate of title issue after Settlement Date) will be estimated in the settlement statement which will be prepared by the Commissioner. If a certificate of title issues for the Schedule Two Land after the Settlement Date, then following the date that a certificate of title issues for the Schedule Two Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will refund to the Commissioner any additional amounts due because of the final apportionment.

9.4 Rent paid or payable under the Lease for the Schedule One Land will be apportioned (on a pro rata basis) on the Settlement Date as at the date that the Final Plan and a copy of this Substantive Proposal are registered and either deducted from or added to (as the case may be) the amount required to settle.

9.5

- (a) All rates, levies, and all other incomings, outgoings and other charges receivable from or charged upon the Schedule Two Land will, unless otherwise agreed by the parties, be apportioned on the Settlement Date as at the date that a certificate of title issues for the Schedule Two Land.
- (b) The rates, levies, incomings, outgoings and other charges described in this clause 9.5 payable in respect of the Schedule Two Land from the date that the Final Plan and a copy of this Substantive Proposal are registered to the date a certificate of title issues for the Schedule Two Land shall bear the same proportion to the total charges payable in respect of the Lease Land as the area of the Schedule Two Land bears to the total area of the Lease Land. The appropriate payments, if any, will be made on the Settlement Date by the Commissioner and the Holder, as the case may be.
- (c) If a certificate of title issues for the Schedule Two Land after the Settlement Date, any apportionments for rates, levies, and all other incomings, outgoings and other charges receivable from or charged upon the Schedule Two Land for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Two Land will be estimated by the Commissioner in its settlement statement. Following the date that a certificate of title issues for the Schedule Two Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will refund to the Commissioner any additional amounts due because of the final apportionment.

9.6 All rates, levies and all other incomings, outgoings and other charges receivable from or charged upon the Schedule One Land will be apportioned (on a pro rata basis in respect of the Lease Land if they cannot be separately assessed) on the Settlement Date as at the date

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that the Final Plan and a copy of this Substantive Proposal are registered and either deducted from or added to (as the case may be) the amount required to settle.

- 9.7 From the date that a certificate of title is issued for the Schedule Two Land, under section 69(2) of the Act, the Lease is deemed to be surrendered and subject to clause 9.8, the Commissioner releases and discharges the Holder from the performance and observance of all covenants, conditions and obligations under the Lease.
- 9.8 The release and discharge in clause 9.7 is without prejudice to the rights, remedies and powers of the Commissioner contained in the Lease and 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 Schedule Two Land is issued or under any statute or by any reason where such liability is due to the fault of the Holder.
- 9.9 As from the date that the Final Plan and this Substantive Proposal are registered, 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 Schedule One Land. 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 Schedule One Land, on the date that the Final Plan and this Substantive Proposal are registered.
- 9.10 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Substantive Proposal. These requirements may involve procuring 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 execution and registrability of any new mortgage in favour of the Mortgagee.

10. GST

- 10.1 If:
- (a) the Holder has accepted this Substantive Proposal in accordance with clause 4; and
 - (b) the acceptance has taken effect under section 60(4) of the Act,
- then clauses 10.2 - 10.7 apply and will form part of this Substantive Proposal.
- 10.2 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.
- 10.3 On the 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.
- 10.4 The Holder will pay GST on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 10.5 On the 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. The invoice will specify the Holder's GST Date.

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- 10.6 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Holder's GST Date, time being of the essence.
- 10.7 Where any GST is not so paid to the Commissioner or to the Holder (as the case may be), 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 or the Holder's GST Date (as the case may be) until the date of payment of the unpaid GST; and
 - (b) any Default GST.

11. Commissioner's Payment

By 3.00 p.m. on the Settlement Date, the Commissioner must pay the Commissioner's Payment to the Holder or to the Holder's solicitors in cash or by bank cheque without set-off or deduction.

12. Default

If from any cause whatever (save the default of the Commissioner) any money payable by the Holder to the Commissioner is not paid on the due date:

- (a) the Holder will pay to the Commissioner interest at the Default Rate on any money payable by the Holder to the Commissioner so unpaid from the due date until payment in full; and
- (b) the Commissioner's rights under this clause 12 are without prejudice to any other rights or remedies available to the Commissioner at law or in equity.

13. Lowest price

- 13.1 The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Schedule Two Land under section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Holder's Consideration.
- 13.2 The Commissioner's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Schedule One Land under section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Commissioner's Consideration.

14. Consents

- 14.1 Under section 60(4) of the Act the Holder must obtain the written consent to the Holder's acceptance of this Substantive Proposal from all persons having an interest in the Lease (other than the Holder), including, but not limited to:
- (a) the Mortgagee;

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- (b) the grantee of conservation covenant 976089.1, registered against the Lease;
- (c) the grantee of land improvement agreement 629969, registered against the Lease; and
- (d) any other person that the Commissioner reasonably believes has an interest in the Lease Land or who the Holder reasonably believes has an interest in the Lease Land.

14.2 In addition to obtaining the consents of the persons outlined in clause 14.1, the Holder must also obtain:

- (a) all corporate consents; and
- (b) if required, consent under the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995,

necessary for the Holder to accept this Substantive Proposal.

14.3 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 at the same time as the certificate of title for the Schedule Two Land issues.

14.4 The Commissioner will provide the Mortgagee with an undertaking that, subject to the provisions in clause 5.15 being satisfied, it will register the discharge of the Mortgage and register the new mortgage against the certificate of title for the Schedule Two Land at the same time as the certificate of title for the Schedule Two Land issues.

15. Access and stock

15.1 The Commissioner will give, and the Holder will take, vacant possession of the Schedule Two Land on the Settlement Date.

15.2 The Holder will not, from and including the Settlement Date, enter on, pass through, or use or permit to be entered on, passed through, or used, the Schedule One Land for any purpose.

15.3 The Holder will not, from and including the Settlement Date, permit any of the Holder's stock to enter onto or graze on the Schedule One Land.

15.4 The Holder's stock may from time to time stray onto the Schedule One Land. If such straying occurs, the Holder will, at its own cost, remove the stock within a reasonable time after the Holder becomes aware of the straying or after being requested by the Minister to remove the straying stock.

16. Costs

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 Substantive Proposal), and all professional advice provided to or sought by the Holder.

17. No nomination or assignment

17.1 The Holder is currently the lessee under the Lease.

17.2 The Holder is not entitled to, and is expressly prohibited from:

- (a) nominating another person to perform the Holder's obligations under this Substantive Proposal; or
- (b) assigning to another person the Holder's interest (or any part) under this Substantive Proposal.

18. General

18.1 Each provision of this Substantive Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date. 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 Substantive Proposal.

18.2 This Substantive 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.

18.3 In relation to notices and other communications under this Substantive 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. The initial facsimile number, address, person or office holder (if any) for each party is specified in clause 18.4(c);
- (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), when delivered; and
 - (iii) in the case of a letter, on the fifth working day after mailing; and
- (c) the initial address details for the Commissioner and the Holder are:

The Commissioner:

Commissioner of Crown Lands
c/- The Manager

The Holder:

Ben Avon Run Co. Limited
c/- Meredith D Lowe & Associates

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DTZ New Zealand Limited
41-43 Tarbet Street
PO Box 27
Alexandra

145 Tancred Street
Ashburton

Fax No.: 03 448 9099

18.4 This Substantive 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.

18.5 For the avoidance of doubt, neither the Draft Preliminary Proposal, nor the Preliminary Proposal, constitutes or could constitute a binding agreement between the parties.

16 *18* *19* *20* *21* *22* *23* *24* *25* *26* *27* *28* *29* *30* *31* *32* *33* *34* *35* *36* *37* *38* *39* *40* *41* *42* *43* *44* *45* *46* *47* *48* *49* *50* *51* *52* *53* *54* *55* *56* *57* *58* *59* *60* *61* *62* *63* *64* *65* *66* *67* *68* *69* *70* *71* *72* *73* *74* *75* *76* *77* *78* *79* *80* *81* *82* *83* *84* *85* *86* *87* *88* *89* *90* *91* *92* *93* *94* *95* *96* *97* *98* *99* *100*

Schedule One: Provisions relating to the Schedule One Land

1. Details of Designation

- 1.1 Under section 35(2)(a)(i) of the Act, the Area One land will be designated as land to be restored to full Crown ownership and control as conservation area and under section 35(2)(a)(ii) of the Act, the Area Two land will be designated as land to be restored to full Crown ownership and control as a scenic reserve.
- 1.2 Subject to the Holder accepting this Substantive Proposal in accordance with clause 4 and that acceptance taking effect under section 60(4) of the Act, the Commissioner will implement the designation of the Schedule One Land (as envisaged by clause 5 of this Substantive Proposal).

Schedule Two: Provisions relating to the Schedule Two Land

1. Details of designation

1.1 Under section 35(3) of the Act, the Schedule Two Land will be disposed of by freehold disposal to the Holder subject to:

- (a) Part IVA of the Conservation Act;
- (b) Section 11 of the Crown Minerals Act 1991;
- (c) the Covenant; and
- (d) the Easements.

The disposal of the Schedule Two Land to the Holder may also be subject to the provisions of section 114 of the Land Act 1948.

1.2 Subject to the Holder accepting this Substantive Proposal in accordance with clause 4 and that acceptance taking effect under section 60(4) of the Act, and subject to clause 5.15, the Commissioner will implement the designation of the Schedule Two Land (as envisaged by clause 5 of this Substantive Proposal).

2. Fencing

2.1 If:

- (a) the Holder has accepted this Substantive Proposal in accordance with clause 4; and
- (b) that acceptance has taken effect pursuant to section 60(4) of the Act,

then the parties will comply with paragraphs 2.2 – 2.4 of this Schedule Two.

2.2 The Commissioner will, at its cost, and in its sole discretion, erect new fencing and upgrade the existing fencing as more particularly described in Appendix 5. The position of the fenceline has been identified by using satellite positioning technology (GPS) and by pegging or by such other method that has been recommended by the Commissioner's representatives and approved by the Commissioner.

2.3 The Commissioner will erect the fencing referred to in paragraph 2.2 of this Schedule Two according to the specifications in Appendix 5.

2.4 The ongoing maintenance of the fencing referred to in paragraph 2.2 of this Schedule Two will be under the terms of the Fencing Act 1978.

3. Holder's acknowledgements

If the Holder accepts this Substantive Proposal in accordance with the provisions set out in clause 4 and that acceptance takes effect under section 60(4) of the Act, the Holder acknowledges that:

- (a) it is obtaining the freehold in the Schedule Two Land to be disposed of to the Holder:
 - (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 Schedule Two Land which the Holder considers necessary to satisfy itself as to the condition of the Schedule Two Land;
- (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Schedule Two Land complies with:
 - (i) the RM Act and its amendments and regulations; and
 - (ii) any rule in any plan, resource consent or other requirement issued under the RM Act, and

the 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 paragraph 3; and

- (d) nothing in the Draft Preliminary Proposal, the Preliminary Proposal or this Substantive 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 Lease Land.

4. Risk

- 4.1 On and with effect from the Unconditional Date all risk of any nature in respect of the Schedule Two 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.
- 4.2 The Holder will be required to comply with its settlement obligations under this Substantive Proposal irrespective of any damage to, or destruction of, the Schedule Two Land prior to the Settlement Date.

5. No representations or warranties by the Commissioner

The Commissioner gives no representations or warranties of any nature in respect of the Schedule Two Land. Without limitation, the Commissioner does not warrant:

- (a) the accuracy of any matter in the Draft Preliminary Proposal, the Preliminary Proposal, the Notice or this Substantive Proposal or in any notice, or any correspondence or other information provided to the Holder by the Commissioner or by any agent or employee of the Commissioner; or
- (b) that the Schedule Two Land is or will remain suitable for the Holder's use; or

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- (c) that the Schedule Two Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Schedule Two Land.

Appendix 1: Plan

**Appendix 2: Sample of Public Access to Conservation Area and
Vehicles for Management Purposes Easement**

JB *JRM*
AL *AF*
24 *y*

Appurtenant Easement: Public Access and Management Purposes to
Conservation Area. WGNHO 136888 - Version 5.

CHCCO-46630 Ben Avon -Appurtenant Easement for Public access and man purposes(1)Ben Avon - 22 November
2002

TRANSFER GRANT OF APPURTENANT EASEMENT

1. Public Access to Conservation Area
2. Vehicles for Management Purposes

Land Transfer Act 1952

This page does not form part of the Transfer.

Transfer Instrument

RELEASED UNDER THE OFFICIAL INFORMATION ACT *Section 90, 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

Otago

Unique Identifier(s)
or C/T(s)

All/Part

Area/description of part or stratum

To be advised

All

Transferor

Surname(s) must be underlined

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

Transferee

Surname(s) must be underlined

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

Estate or Interest to be transferred, or easement(s) or *profit(s) à prendre* to be created
State if fencing covenant imposed.

Public Access and Management Purposes Easement to conservation area granted by section 7(2) of the Conservation Act 1987
(continued on pages 2, 3 and 4 of Annexure Schedule).

Operative Clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or *profit à prendre* is described above, that easement or *profit à prendre* is granted or created.

Dated this day of

Attestation

If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule.

Signed in my presence by the Transferor

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Signature [common seal]
of Transferor

Certified correct for the purposes of the Land Transfer Act 1952

[Solicitor for] the Transferee

Annexure Schedule

Transfer Instrument 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 [] metres wide which is marked "[]" on Deposited Plan/S.O. Plan No [].
 - 1.2 "Dominant Land" means the land administered by the Department of Conservation and contained in Certificate of Title "[]".
 - 1.3 "Management Purposes" means:
 - the protection of a significant inherent value of the Dominant Land;
 - the management of the Dominant Land in a way that is ecologically sustainable.
 - 1.4 "Servient Land" means the land owned by the Transferor and described on page 1.
 - 1.5 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee's tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.
 - 1.6 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

Standard Easement TermsAccess

2. The Transferee has the right:
 - 2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area marked a-b, c-d, e-f and g-h on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons for the purpose of obtaining access to the Dominant Land.
 - 2.2 To pass and re-pass at any time over and along the Easement Area marked a-b, c-d, e-f and g-h on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, for Management Purposes associated with the Dominant Land.
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.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Transfer Instrument

Dated

Page

of

Pages

Exclusion of Implied Rights and Powers

4. 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

5. The easement created by this transfer is to be appurtenant to the Dominant Land in perpetuity.

Temporary Suspension

6. The Transferee 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

- 7.1 If a dispute arises between the Transferor and Transferee concerning the rights management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 7.2 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.
- 7.3 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.
- 7.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Transfer Instrument

Dated

Page

of

Pages

Notice

8.1 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.

8.2 If clause 8.1(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.

8.3 If clause 8.1(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

9. The standard easement terms contained above must be read subject to any special easement terms set out below. The Transferee has the right:

9.1 To mark the Easement Area as appropriate

9.2 To erect and maintain stiles

9.3 To erect and maintain signs informing the public:

- (a) of the location of the land managed by the Crown and available for public access and recreation; and
- (b) of their rights and responsibilities in relation to the Easement Area.

9.4 To use whatever means of access she thinks fit over the Easement Area to carry out the works in clauses 9.1 to 9.3.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Transfer Instrument

Dated

Page

of

Pages

Continuation of "Attestation"

Signed for and on behalf of)
Her Majesty the Queen by)

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 easement described in clause 1 is marked on the Plan.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Appendix 3: Sample of Public Access to Reserve and Vehicles for Management Purposes Easement

Appurtenant Easement: Public Access and Management Purposes to Reserve WGNHO 136904 - Version 5.

CHCCO 46987 - Ben Avon - 22 November 2002.

TRANSFER GRANT OF APPURTENANT EASEMENT

1. Public Access to Reserve
2. Vehicles for Management Purposes

Land Transfer Act 1952

This page does not form part of the Transfer.

Transfer Instrument

RELEASED UNDER THE OFFICIAL INFORMATION ACT
Section 90, 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

Otago

Unique Identifier(s)
or C/T(s)

All/Part

Area/description of part or stratum

To be advised

All

Transferor

Surname(s) must be underlined

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

Transferee

Surname(s) must be underlined

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

Estate or Interest to be transferred, or easement(s) or *profit(s) à prendre* to be created
State if fencing covenant imposed.

Public Access and Management Purposes Easement to reserve granted by section 12 of the Reserves Act 1977 (continued on pages 2, 3 and 4 of Annexure Schedule).

Operative Clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or *profit à prendre* is described above, that easement or *profit à prendre* is granted or created.

Dated this

day of

Attestation

If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule.

Signed in my presence by the Transferor

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Signature [common seal]
of Transferor

Certified correct for the purposes of the Land Transfer Act 1952

[Solicitor for] the Transferee

Annexure Schedule

Transfer Instrument 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 [] metres wide which is marked "[]" on Deposited Plan/S.O. Plan No [].
 - 1.2 "Dominant Land" means the land administered by the Department of Conservation and contained in Certificate of Title "[]".
 - 1.3 "Management Purposes" means:
 - the protection of a significant inherent value of the Dominant Land;
 - the management of the Dominant Land in a way that is ecologically sustainable.
 - 1.4 "Servient Land" means the land owned by the Transferor and described on page 1.
 - 1.5 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee's tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.
 - 1.6 "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:
 - 2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area marked i-j on foot, on or accompanied by horses, or by motor vehicle, or by non-motorised vehicle powered by a person or persons for the purpose of obtaining access to the Dominant Land.
 - 2.2 To pass and re-pass at any time over and along the Easement Area marked i-j on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, for Management Purposes associated with the Dominant Land.
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.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Transfer Instrument Dated Page of Pages

Exclusion of Implied Rights and Powers

4. 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

5. The easement created by this transfer is to be appurtenant to the Dominant Land in perpetuity.

Temporary Suspension

6. The Transferee 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 appropriate.

Dispute Resolution

- 7.1 If a dispute arises between the Transferor and Transferee concerning the rights management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 7.2 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.
- 7.3 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.
- 7.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Transfer Instrument

Dated

Page

of

Pages

Notice

- 8.1 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.
- 8.2 If clause 8.1(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.
- 8.3 If clause 8.1(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

- 9 The standard easement terms contained above must be read subject to any special easement terms set out below. The Transferee has the right:
- 9.1 To mark the Easement Area as appropriate
- 9.2 To erect and maintain signs informing the public:
- (a) of the location of the land managed by the Crown and available for public access and recreation; and
 - (b) of their rights and responsibilities in relation to the Easement Area.
- 9.3 To use whatever means of access she thinks fit over the Easement Area to carry out the works in clauses 9.1 to 9.2.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

MRC SF

Annexure Schedule

Transfer Instrument Dated Page of Pages

Continuation of "Attestation"

Signed for and on behalf of)
Her Majesty the Queen by)

under a written designation in the)
presence of:)

Witness (Signature)

Name _____

Address _____

Occupation _____

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

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Appendix 4: Form for Covenant

DATED _____

Between

COMMISSIONER OF CROWN LANDS
(Pursuant to section 80 of the
Crown Pastoral Land Act 1998)

and

MINISTER OF CONSERVATION

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



Department of Conservation
Te Papa Atawhai

15 July 2002.

[Handwritten signatures and initials]

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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:
i) The Puke Makariri Faces of short and tall tussock grassland, matagouri shrubland marked as CC1 on the Plan is situated on the steep hillslopes below 1200m north of the Ben Avon homestead towards the Birchwood boundary.
ii) The kettleholes, associated turf communities and wetlands marked as CC2 on the Plan is 3 kilometres south of the Ben Avon homestead
- 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.

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- "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.
- "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 Owner and the Minister disagree over the interpretation of anything contained in this Covenant and in determining the issue, they 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 Owner and the Minister and their administrators and executors, successors and assigns in perpetuity;
- 1.2.8 where clauses in this Covenant require further agreement between the Owner and the Minister 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 Owner and the Minister, the Owner must not carry out on or in relation to the Land:
- 3.1.1 the planting of any species of tree, shrub or other plant;
- 3.1.2 the erection of any building or structure, other than fences;
- 3.1.3 any burning;
- 3.1.4 any cultivation, earth works or other soil disturbances;
- 3.1.5 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.6 the damming, diverting or taking of natural Water;

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- 3.1.7 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;
- 3.1.8 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 3.1.2, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

4. THE MINISTER'S OBLIGATIONS

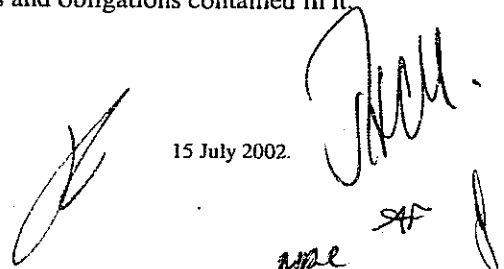
- 4.1 The Minister must have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant.
- 4.2 The Minister must repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in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



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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

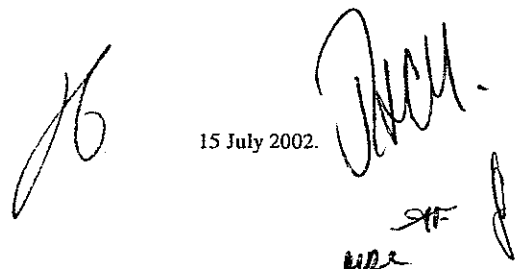
- 8.4.1 This Covenant must be signed by both parties and registered against the Certificate of Title to the Land.

8.5 Acceptance of Covenant

- 8.5.1 The Owner and the Minister 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.

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9. NOTICES

- 9.1 A notice to be given under this Covenant by either the Owner or the Minister 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:
- 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 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 (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 Owner and the Minister 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 them.
- 11.2 Mediation
- 11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by either the Owner or the Minister to the other (or such further period as they may agree to in writing) either the Owner or the Minister may refer the dispute to mediation with a mediator agreed between them;
 - 11.2.2 if the Owner and the Minister 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 Owner and the Minister agree that the provisions in the Arbitration Act 1996 will apply;