

Crown Pastoral Land Tenure Review

Lease name: BEN OHAU

Lease number: PT 128

Substantive Proposal

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

November

05

EXECUTION COPY

Substantive Proposal

relating to

Tenure Review of the Ben Ohau 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 Ohau Station Limited

(as the **Holder**)

Date 19 June 2002

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 Ohau 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 Ohau Pastoral Lease, being Ben Ohau Station Limited (the **Holder**).

2. Substantive Proposal under Crown Pastoral Land Act

This Substantive Proposal is put to the Holder under section 46 of the Crown Pastoral Land Act 1998 (the **Act**). It takes into account the objects of Part 2 of the Act. It 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 Ohau Pastoral Lease

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

- 120 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;
- 1364 hectares (approximately) to be designated as land to be restored to Crown control as conservation area under section 35(2)(b)(i) and section 36(1)(a) of the Act, subject to a grazing concession in favour of the Holder as outlined in this Substantive Proposal; and
- 4221 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 an easement, 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 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 the 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.

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.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

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 20 June 2002, the Holder will, under the Act, be deemed to have rejected the Substantive Proposal.

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This **Substantive Proposal** is made on 19 June 2002

- between (1) **Commissioner of Crown Lands acting under the Crown Pastoral Land Act 1998 (as the Commissioner)**
- and (2) **Ben Ohau Station 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 four stages.
- C. On 15 December 1999 the Commissioner provided the Holder with the Draft Preliminary Proposal for consultation purposes. On 21 January 2000 the Holder returned the completed Holder's Acknowledgement relating to the Draft Preliminary Proposal to the Commissioner. This completed stage one of the Tenure Review.
- D. On 13 June 2000 the Commissioner put the Preliminary Proposal to the Holder under section 34 of the Act. This completed stage two of the Tenure Review.
- E. By letter dated 20 June 2001 the Commissioner provided the Holder with the Draft Substantive Proposal for consultation purposes. The Holder has returned the completed Holder's Acknowledgement dated 28 January 2002 relating to the Draft Substantive Proposal to the Commissioner. This completed stage three of the Tenure Review.
- F. The Commissioner puts this Substantive Proposal to the Holder as Stage Four 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;

Chief Surveyor means the Chief Surveyor of the Canterbury Land Registry, appointed under section 9 of the Survey Act 1986, and includes the deputy of the Chief Surveyor;

Commissioner means the Commissioner of Crown Lands appointed pursuant to section 12A of the Survey Act 1986;

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 and the Schedule Two 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

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

Conservation Act means the Conservation Act 1987;

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 this 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 10.45a.m. on Reuters' page BKBM 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 and refers to the Director-General's consultative function under the Act;

Draft Preliminary Proposal means the draft preliminary proposal that the Commissioner provided to the Holder for consultation purposes under the Act on 15 December 1999; and includes all schedules, parts, plans, appendices and annexures attached to that draft preliminary proposal;

Draft Substantive Proposal means the draft substantive proposal that the Commissioner provided to the Holder for consultation purposes under the Act by letter dated 20 June 2001; and includes all schedules, parts, plans, appendices and annexures attached to that draft substantive proposal;

Easement means the Public Access to Conservation Area, Vehicle Parking 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;

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

Glacier means Glacier Southern Lakes Helicopters Limited;

Glacier's Recreation Permit means the recreation permit dated 28 April 1995 as varied by subsequent recreation permit variations dated 28 April 1995, 23 October 1996 and 12 June 1997, granted by Her Majesty the Queen acting by and through the Commissioner to Glacier;

Glacier's Recreation Permit Area means the area described in the second schedule to Glacier's Recreation Permit being part of the Lease Land and, as shown on the plan attached to the recreation permit variation to Glacier's Recreation Permit dated 28 April 1995;

Grazing Concession means a profit à prendre in gross to be granted to the Holder over the Schedule Two Land under section 36(1)(a) of the Act, the terms and conditions of which are specified in the document attached as Appendix 3;

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 Ohau Station Limited, being the 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 Draft Substantive Proposal;

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

Holder's Recreation Permit means the recreation permit dated 2 November 1995, as varied by subsequent recreation permit variations dated 11 April 1996 and 15 March 2000, granted by Her Majesty the Queen acting by and through the Commissioner to the Holder;

Holder's Recreation Permit Area means the area described in the second schedule of the Holder's Recreation Permit;

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

Lease means the lease comprised and described in folio number CB 10F/1319 (Canterbury Land Registry) issued under the Land Act 1948, and includes all variations and renewals of that lease;

Lease Land means 5705.6402 hectares being Part Run 336 and Section 1 Survey Office Plan 8529 being the land comprised and described in folio number CB 10F/1319 (Canterbury Land Registry) subject to:

- (a) Mortgage;
- (b) land improvement agreement 994342.1;
- (c) New Zealand Gazette 1970 page 1961 (Proc 817132) part of No. 8 State Highway (Timaru – Milton) to be a limited access road; and
- (d) section 58 of the Land Act 1948;

Minister means the Minister of Conservation;

Mortgage means mortgage 838889.3 (Canterbury Land Registry) registered against the Lease;

Mortgagee means The National Bank of New Zealand Limited, 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 Holder's Payment; and
- (d) when the Holder'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 Easement routes, the Grazing Concession area and the new fencelines, and includes Diagram A and Diagram B which are enlargements of parts of the Lease Land showing some of the new fencelines and the parking area marked "b", all attached as Appendix 1;

Preliminary Proposal means the preliminary proposal, that the Commissioner put to the Holder under, and subject to, the Act on 13 June 2000; and includes all schedules, parts, plans, appendices and annexures attached to the preliminary proposal;

Public Access to Conservation Area, Vehicle Parking and Vehicles for Management Purposes Easement means an easement in gross to provide:

- (a) public access on foot, or by non-motorised vehicle powered by a person or persons, or on or accompanied by horses, over that part of the Lease Land marked route "B" on the Plan;
- (b) public access on foot, or by non-motorised vehicle powered by a person or persons, or on or accompanied by horses, or with motor vehicles and the right to stop, leave and park any such motor vehicles, over that part of the Lease Land being the parking area marked "b" on the Plan; and
- (c) access for employees, tenants, agents, workmen and invitees of the Minister 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 route "B" on the Plan,

in the form attached as Appendix 2;

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 120 hectares of the Lease Land, being the areas marked "1" on the Plan;

Schedule Two Land means 1364 hectares of the Lease Land, being the area marked "4" on the Plan;

Schedule Three Land means 4221 hectares of the Lease Land, being the areas marked "2" 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 Four 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, the Act; and includes all schedules, parts, plans, appendices and annexures attached to this Substantive Proposal;

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; and

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 include 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 the Substantive Proposal to the Holder;
- (c) obtained the prior written consent of the Minister to the Substantive Proposal; and
- (d) ensured that the Crown has completed all statutory clearance and other actions that the Crown is required to complete 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 the:

- (a) Schedule One Land 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;
- (b) Schedule Two Land be restored to Crown control as conservation area, subject to the Grazing Concession, under section 35(2)(b)(i) and section 36(1)(a) of the Act, and the provisions of Schedule Two apply to this designation; and

- (c) Schedule Three 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 Easement; and
 - (iv) New Zealand Gazette 1970 page 1961 (Proc 817132) part of No. 8 State Highway (Timaru - Milton) to be a limited access road,

and the provisions of Schedule Three apply to this designation.

- 2.3 Notwithstanding any other clause in this Substantive Proposal and subject to clause 14, the Schedule Three 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 a modified version of the Draft Substantive Proposal.
- 2.5 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.
- 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 the 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 the 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, is 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 the 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 the Substantive Proposal, describing this Substantive Proposal in general terms.
- 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 Chief Surveyor 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 Chief Surveyor 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 and the Grazing Concession area) 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 Chief Surveyor 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 Survey Act 1986.
- 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; and
- submit two copies of the Final Plan to the Chief Surveyor.
- 5.8 Under section 63 of the Act, if (and only if) the Chief Surveyor 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 the Substantive Proposal; and
 - (b) to the extent allowed by the position of the boundaries shown on the Final Plan:
 - (i) the areas they define; and
 - (ii) the designations of those areas,accurately reflect this Substantive Proposal,

the Chief Surveyor 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, 66 and 69 of the Act, upon registration of the Final Plan and this Substantive Proposal under section 64 of the Act:
- (a) the Schedule One Land will be restored to full Crown ownership and control as conservation area;
 - (b) the Schedule Two Land will be restored to Crown control as conservation area subject to the grant of the Grazing Concession to the Holder; and
 - (c) subject to clause 5.15, the Commissioner will dispose of the Schedule Three Land to the Holder (subject to the encumbrances specified in paragraph 1.1 of Schedule Three) under the provisions of the Land Act 1948 by requesting that the Chief Surveyor 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 Three Land in the name of the Holder.
- 5.11 The Schedule One Land and the Schedule Two Land (subject to the Grazing Concession) 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 Three Land.
- 5.13 The Lease will remain in force until a certificate of title is issued for the Schedule Three 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 Easement and the Grazing Concession, in the forms attached to this Substantive Proposal and forward the execution documents to the relevant parties to be signed;
 - (b) under section 66 of the Act, give the Minister written notice that the Schedule Two Land has vested in the Crown subject to the grant of the Grazing Concession and the Minister must promptly, under this Substantive Proposal, grant the Grazing Concession to the Holder by signing and returning to the Commissioner the execution documents for the Grazing Concession;
 - (c) under section 80 of the Act, agree with the Minister that the Minister should acquire the Easement on the terms and conditions specified in this Substantive Proposal and the Minister must sign the execution copies of the Easement and return these to the Commissioner;
 - (d) sign the execution documents for the Easement; and

- (e) provide to the Holder and the Holder must sign the execution documents for the Grazing Concession.
- 5.15 Notwithstanding any other provision in this Substantive Proposal, the Commissioner will not request that the Chief Surveyor issue a certificate under clause 5.10(c) unless and until:
- (a) the Commissioner has received the Holder's Payment from the Holder under clause 11.1 and the Commissioner has received all other 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 the Holder has signed and returned to the Commissioner the execution documents for the Grazing Concession 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 and the Holder has provided these documents to the Commissioner.
- 5.16 Subject to clause 5.15, the Commissioner will lodge the Easement, the discharge of the Mortgage, the duplicate of the Lease, and any new mortgage documents at the Canterbury Land Registry, to be registered against the certificate of title to be issued under the Land Transfer Act 1952 for the Schedule Three Land, so that the certificate of title for the Schedule Three Land will issue subject to the Easement and any new mortgage. The new mortgage will be registered after the Easement is 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, the Draft Substantive 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 Three 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 fencing is erected on; or
 - (b) any new fencing 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 the disposal of the Schedule Three Land to the Holder by freehold disposal will be the day that is five working days following the day that the Final Plan and a copy of this Substantive Proposal are registered at the Canterbury Land Registry under section 64 of the Act.
- 9.2 Notwithstanding when Settlement Date occurs, until a certificate of title issues for the Schedule Three 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 Three Land will be apportioned on the Settlement Date as at the date that a certificate of title issues for the Schedule Three 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 Three Land from the Settlement Date to the date a certificate of title issues for the Schedule Three Land shall bear the same proportion to the total rent payable under the Lease as the Schedule Three Land area bears to the total area of the Lease Land.

- (c) Any apportionments for rent for the Schedule Three Land for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Three Land will be estimated by the Commissioner in its settlement statement. Following the date that a certificate of title issues for the Schedule Three Land, the Commissioner will undertake a final apportionment and either the Commissioner will refund to the Holder, or the Holder will pay 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 and the Schedule Two Land will be apportioned (on a pro rata basis) on the Settlement Date as at the Settlement Date and either deducted from or added to (as the case may be) the amount required to settle.
- 9.5
- (a) All rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Schedule Three 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 Three Land.
- (b) The rates, levies, incomings, outgoings and other charges described in this clause 9.5 payable in respect of the Schedule Three Land from the Settlement Date to the date a certificate of title issues for the Schedule Three Land shall bear the same proportion to the total charges payable in respect of the Lease Land as the area of the Schedule Three 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) Any apportionments for rates, levies, and all other incomings, outgoings and other charges receivable from or charged upon the Schedule Three Land for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Three Land will be estimated by the Commissioner in its settlement statement. Following the date that a certificate of title issues for the Schedule Three Land, the Commissioner will undertake a final apportionment and either the Commissioner will refund to the Holder, or the Holder will pay 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 and the Schedule Two 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 Settlement Date 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 Three 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 Three 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, or the Schedule

Two Land (subject to the provisions of the Grazing Concession). 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, or the Schedule Two Land (subject to the provisions of the Grazing Concession) on the date that the Final Plan and the 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 Holder's execution of the Grazing Concession and 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.
- 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. Holder's Payment

- 11.1 By 3.00 p.m. on the Settlement Date, the Holder must pay the Holder's Payment and all other money payable to the Commissioner or the duly appointed agent of the Commissioner in cash or by bank cheque without set-off or deduction in accordance with the settlement requirements of the Commissioner.
- 11.2 If the Holder fails to pay the Holder's Payment or any part of it or any other money to the Commissioner or to the duly appointed agent of the Commissioner on the Settlement Date then clause 12 will apply.

12. Default

If from any cause whatever (except the default of the Commissioner) all or any part of the Holder's Payment or any other money payable by the Holder to the Commissioner is not paid on the due date:

- (a) the Holder will pay to the Commissioner interest at the Default Rate on all or the part of the Holder's Payment or any other money payable by the Holder to the Commissioner so unpaid from the due date until payment in full of the Holder's Payment or the other money payable by the Holder to the Commissioner; 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 Three 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 and the Schedule Two 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 Land (other than the Holder), including, but not limited to:
- (a) the Mortgagee;
- (b) Environment Canterbury, being the party entitled to the benefit of land improvement agreement 994342.1 registered against the Lease; and
- (c) 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 all corporate consents necessary for the Holder to accept the 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 Three 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 Three Land at the same time as the certificate of title for the Schedule Three Land issues.

15. Access and stock

- 15.1 The Commissioner will give, and the Holder will take, vacant possession of the Schedule Three 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, enter on, pass through, or use or permit to be entered on, passed through, or used, the Schedule Two Land for any purpose, except in accordance with the provisions of the Grazing Concession.
- 15.4 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, or the Schedule Two Land (subject to the provisions of the Grazing Concession).
- 15.5 The Holder's stock may from time to time stray onto the Schedule One Land, or the Schedule Two Land (in contravention of the provisions of the Grazing Concession). 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.
- 18.2 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.
- 18.3 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.
- 18.4 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 5.00p.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
DTZ New Zealand Limited
1st Floor
Public Trust Building
Corner Church and Sophia Streets
P O Box 564
Timaru

The Holder:

Ben Ohau Station Limited
32b Sheffield Crescent
Christchurch

- 18.5 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.

18.6 For the avoidance of doubt, none of the Draft Preliminary Proposal, the Preliminary Proposal and the Draft Substantive Proposal constitute, or could constitute, a binding agreement between the parties.

19. Recreation Permits

19.1 On the day that the Substantive Proposal and the Final Plan are registered at the Canterbury Land Registry under section 64 of the Act, the Holder's Recreation Permit shall cease to exist in its entirety in relation to all of the Holder's Recreation Permit Area and neither party to the Holder's Recreation Permit shall have a claim against the other.

19.2 In relation to Glacier's Recreation Permit:

- (a) the Commissioner requires that Glacier's Recreation Permit be varied by removing Glacier's Recreation Permit Area from Glacier's Recreation Permit as part of the Tenure Review, such variation to be effective from the Unconditional Date; and
- (b) the Holder acknowledges that it has:
 - (i) informed Glacier that the Lease Land is under Tenure Review and advised Glacier of the effect of registration of this Substantive Proposal and the Final Plan as outlined in clause 19.2(a); and
 - (ii) entered into an alternative arrangement with Glacier on terms and conditions acceptable to both parties.

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 Schedule One Land will be designated as land to be restored to full Crown ownership and control as conservation area.
- 1.2 Subject to the Holder accepting the 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 in this Substantive Proposal (as envisaged by clause 5).

Schedule Two: Provisions relating to the Schedule Two Land

1. Details of designation

- 1.1 Under section 35(2)(b)(i) and section 36(1)(a) of the Act, the Schedule Two Land will be designated as land to be restored to Crown control as conservation area, subject to the granting of the Grazing Concession.
- 1.2 Subject to the Holder accepting the 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 Two Land in this Substantive Proposal (as envisaged by clause 5).

2. Details of the Grazing Concession

- 2.1 The terms and conditions of the Grazing Concession are specified in Appendix 3.
- 2.2 Under the Grazing Concession, the Holder will graze sheep at a rate of 240 stock units (900 wethers or 720 breeding ewes) for a period of four months from 1 September to 31 January each year during the proposed term of the Grazing Concession.
- 2.3 The site of the Grazing Concession is the Schedule Two Land. The proposed status of the Schedule Two Land is conservation area as defined in section 2 of the Conservation Act.
- 2.4 The Schedule Two Land is an extensive area of short tussock grassland that contains a diverse inter tussock herb field. Grazing has traditionally been a component of this grassland. In order to maintain the grassland some limited form of grazing is desirable. In order to avoid, mitigate or remedy any adverse effect on the Schedule Two Land during the term of the Grazing Concession, the Grazing Concession contains a number of conditions including, but not limited to, the following:
- (a) a stock limit of 240 stock units for four months from 1 September to 31 January each year during the proposed term of the Grazing Concession;
 - (b) pest control if required by the Minister, the costs to be borne by the Holder;
 - (c) the Minister to set up a monitoring system to ascertain the effects of ongoing grazing and this monitoring system will be reviewed every three years; and
 - (d) the three yearly reviews referred to in paragraph 2.4(c) of this Schedule Two are to coincide with a review of the grazing sheep numbers and the Minister reserves the right to adjust the stock numbers in order to meet conservation objectives.
- 2.5 The Grazing Concession is a profit à prendre under section 17Q of the Conservation Act and section 17ZD(1) of the Conservation Act applies to the granting of the Grazing Concession, but sections 17Q(2), 17R to 17Z, and 17ZJ of the Conservation Act do not apply to the granting of the Grazing Concession.
- 2.6 The term of the Grazing Concession will be 10 years from the Settlement Date with no right of renewal. The reason for the length of the term of the Grazing Concession is:

- (a) to allow for some security of tenure for the Holder so that pest control and sheep grazing is economic for the Holder; and
- (b) to allow monitoring results to be of sufficient worth so that adjustments in sheep numbers can be made.

2.7 The Holder, being the lessee under the Lease, has grazed the Schedule Two Land for a number of decades and the significant inherent values of the Schedule Two Land have survived under the Holder's grazing regime. The Grazing Concession is at a slightly lesser stocking rate as a precautionary approach. The Holder has the ability to stock the area for conservation objectives, subject to the conditions of the Grazing Concession, for the term of 10 years.

Schedule Three: Provisions relating to the Schedule Three Land

1. Details of designation

- 1.1 Under section 35(3) of the Act, the Schedule Three 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 Easement; and
 - (d) New Zealand Gazette 1970 page 1961 (Proc 817132) part of No. 8 State Highway (Timaru – Milton) to be a limited access road.

The disposal of the Schedule Three 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 the 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 Three Land in this Substantive Proposal (as envisaged by clause 5).

- 1.3 The Easement is a protective mechanism as defined in the Act.

2. Fencing

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

then the parties will comply with paragraphs 2.2 – 2.6 of this Schedule Three.

- 2.2 The Commissioner will, at its cost, erect new fencing shown on the Plan:
- (a) along the lines marked "C-D", "G-H" and "I-J";
 - (b) along the line marked "E-F"; and
 - (c) around the perimeter of the car parking area marked "b" along the line marked "K-L".
- 2.3 The Commissioner will erect the fencing referred to in paragraph 2.2 of this Schedule Three according to the specifications in Appendix 4.
- 2.4 The Commissioner will fully maintain the fencing along the lines marked "C-D", "E-F", "G-H", "I-J" and "K-L" on the Plan for a period of one month from completion of installation of this

fencing and will also replace or add additional materials to this fencing to ensure its continued effectiveness during this one month maintenance period.

- 2.5 Following expiry of the one month maintenance period specified in paragraph 2.4, and subject to the fencing in paragraph 2.2 having been completed to the satisfaction of both parties, the ongoing maintenance of the fencing along the lines marked "C-D", "E-F", "G-H", "I-J" and "K-L" on the Plan will be under the terms of the Fencing Act 1978.
- 2.6 The position of the fencelines have been identified by using satellite positioning technology (GPS) and have been flagged.

3. **Holder's acknowledgements**

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

- (a) it is obtaining the freehold in the Schedule Three 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 Three Land which the Holder considers necessary to satisfy itself as to the condition of the Schedule Three Land;
- (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Schedule Three 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, the Draft Substantive 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 Three 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 Three 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 Three Land. Without limitation, the Commissioner does not warrant:

- (a) the accuracy of any matter in the Draft Preliminary Proposal, the Preliminary Proposal, the Draft Substantive 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 Three Land is or will remain suitable for the Holder's use; or
- (c) that the Schedule Three Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Schedule Three Land.

Appendix 1: Plan

**Appendix 2: Form for Public Access to Conservation Area, Vehicle
Parking and Vehicles for Management Purposes Easement**

WGNHO-56949 Easement in Gross for Public and DOC Management Access Version 2

Ben Chau WL011710142.doc

TRANSFER GRANT OF EASEMENT IN GROSS

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

This page does not form part of the Transfer.

TRANSFER
 RELEASED UNDER THE OFFICIAL INFORMATION ACT

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

Canterbury

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

To Be Advised	To Be Advised	All	
---------------	---------------	-----	--

Transferor Surnames must be underlined

COMMISSIONER OF CROWN LANDS

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.*

Easement in Gross under section 7(2) Conservation Act 1987 for:

- 1 Foot, horse and non-motorised vehicle access;
- 2 Vehicle parking
- 3 Motor vehicles and machinery access for Management Purposes.

Consideration

The various considerations set out in a substantive proposal accepted under the Crown Pastoral Land Act 1998 on the day of 200.

Operative Clause

the above consideration (receipt of which is acknowledged) the TRANSFEROR TRANSFERS to the TRANSFEREE 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 200

Attestation

Signed by _____ acting under written delegation from the Commissioner of Crown Lands.

Signed in my presence by the Transferor
Signature of Witness

Witness to complete in BLOCK letters
(unless typewritten or legibly stamped)

(continued on page 2 annexure schedule)

Witness name

Occupation

Address

Signature, or common seal of Transferor

Certified correct for the purposes of the Land Transfer Act 1952

Certified that Part 11A of the Land Settlement Promotion and Land Acquisition Act 1952 does not apply
 Certified that no conveyance duty is payable by virtue of Section 24(1) of the Stamp and cheque Duties Act 1971.
 (DELETE INAPPLICABLE CERTIFICATE)

Solicitor for the Transferee

Annexure Schedule

RELEASED UNDER THE OFFICIAL INFORMATION ACT

TRANSFER Dated Page of Pages

Definition

1. In this transfer unless the context otherwise requires:
 - 1.1 "Easement Area" means that part of the Servient Land which is marked "[]" on Deposited Plan/S.O. Plan No [].
 - 1.2 "Parking Area" means that part of the Easement Area marked Parking Area.
 - 1.3 "Servient land" means the land owned by the Transferor and described on page 1.
 - 1.4 "Management Purposes" means:
 - the protection of a significant inherent value of the Easement Area;
 - the management of the Dominant Land in a way that is ecologically sustainable.
 - 1.5 "Transferee", means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clauses 2.1 and 2.2, includes the Transferee's employee's, tenants, agents, workmen, licensees and any member of the public; but for the purposes of clause 2.3 means the Transferee's employees, tenants, agents, workmen and invitees only.
 - 1.7 "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 over and along the Easement Area on foot, or on or accompanied by horses, or by non-motorised vehicle powered by a person or persons, at any time.
 - 2.2 In common with the Transferor to use, stop and park any motor vehicle on the Parking Area only.
 - 2.3 To pass and re-pass over and along the Easement Area on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, for Management Purposes.
 - 2.4 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.

Exclusion of Schedules

3. The rights and powers contained in the Seventh Schedule of the Land Transfer Act 1952 and the Ninth Schedule of the Property Law Act 1952 are expressly excluded.

Term

4. The Easement created by this transfer is to be in perpetuity.

Temporary Suspension

5. The Transferee may close all or a part of the Easement Area and suspend public access to it under section 7 of the Conservation Act 1987 if reasons of public safety or emergency require closure, or otherwise in accordance with the provisions of section 13 of the Conservation Act 1987.

6. Dispute

- 6.1 If a dispute arises between the Transferor and Transferee concerning the rights created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 6.2 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.

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

TRANSFER

Dated

[]

Page

[]

of

[]

Pages

- 6.3 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.
- 6.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

- 7.1 A notice to be given under this easement 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.
- 7.2 If clause 7.1(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.

Special Terms

- 8. The Transferee has the right:
 - 8.1 To mark the Easement Area as appropriate.
 - 8.2 To erect and maintain stiles.
 - 8.3 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. Where the fences cross the Easement Area, the Transferor must install gates that are no less than one metre in width. Installed gates must be kept unlocked at all times unless otherwise agreed with the Transferee.
- 10. The Transferor will maintain the Parking Area to such a standard as to enable its use by motor vehicles.

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 is yet to be prepared), the proposed easement described in clause 1 is shown as marked on the Plan.

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

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access to Conservation Areas & Vehicle Parking.
2. Vehicles for Management Purposes

Land Transfer Act 1952

Law Firm Acting

Conservancy Solicitor
Department of Conservation
133 Victoria Street
Christchurch

Auckland District Law Society
REF:4135

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Appendix 3: Form for Grazing Concession

Concession number: _____

DATED _____

Between

THE MINISTER OF CONSERVATION
("the Grantor")

and

BEN OHAU STATION LIMITED
("the Concessionaire")

CONCESSION DOCUMENT
UNDER THE CROWN PASTORAL LAND ACT 1998
(GRAZING PROFIT À PRENDRE)



Department of Conservation
Te Papa Atawhai

THIS PROFIT À PRENDRE is made this day of

PARTIES:

1. MINISTER OF CONSERVATION, ("the Grantor")
2. BEN OHAU STATION LIMITED, ("the Concessionaire")

BACKGROUND

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area.
- B. Section 66 of the Crown Pastoral Land Act 1998 authorises the Grantor to grant a Concession for a Concession Activity in a Conservation Area under section 17Q(1) of the Conservation Act 1987.
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 In this Document, unless the context otherwise requires:

"Access" means the right, in common with others, to pass and repass over the Land and any roads of the Grantor for ingress to and egress from the Land as is reasonably necessary for the Concessionaire to exercise its rights under this Profit à prendre.

"Administration Fee" means the amount specified in Item 6(b) of Schedule 1 and is the annual fee for administering the Concession imposed by the Grantor under section 60D of the Conservation Act 1987. It includes any variation in that amount following a Concession Fee Review under clause 6.0.

"Background" means the matters referred to under the heading "Background" on page 1 of this Document.

"Concession" means a concession as defined in section 2 of the Conservation Act 1987.

"Concession Activity" means the use of the Land for purposes of the Activity carried out by the Concessionaire and specified in Item 2 of Schedule 1.

"Concession Fee" means the amount specified in Item 6(a) of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review.

"Concession Fee Payment Date" means the date specified in Item 7 of Schedule 1 on which the Concession Fee falls due for payment.

"Concession Fee Review" means a review of the Concession Fee determined in accordance with clause 6 of this Document.

"Concession Fee Review Date" means the date specified in Item 9 of Schedule 1 on which the Concession Fee Review occurs being at 3 year intervals calculated from the date of commencement of this Document.

"Conservation Area" has the same meaning as "Conservation area" in section 2 of the Conservation Act 1987.

"Director-General" means the Director-General of Conservation.

"Document" means this Profit à prendre and any subsequent amendments and all schedules, annexures, and plans attached to it.

"Expiry Date" means the date specified in Item 5 of Schedule 1.

"Land" means a Conservation Area being the area more particularly described in Item 1 of Schedule 1.

"Penalty Interest Rate" means the rate specified in Item 8 of Schedule 1.

"Profit à prendre" means this grant of grazing rights which is a concession and a licence for the purposes of the Conservation Act 1987.

"Structure" includes bridges, culverts, and fences.

"Term" means the period of time specified in Item 3 of Schedule 1 during which this Document operates. It includes, where relevant, any period of renewal of the Term.

"Working Day" means the period between any one midnight and the next excluding Saturdays, Sundays and Statutory holidays in the place where the Concession Activity is being carried out.

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document and includes that party's successors in title;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;
- (e) words in a singular number include the plural and vice versa;
- (f) words importing a gender include other genders;
- (g) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (h) where the Grantor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

1.3 Words used in the Background to this Document have the same meaning given to them in clause 1.1.

2.0 GRANT OF PROFIT À PRENDRE

2.1 In exercise of the Grantor's powers under section 66 of the Crown Pastoral Land Act 1998 the Grantor **GRANTS** to the Concessionaire a Profit à prendre, in gross, under section 17Q(1) of the Conservation Act 1987 to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Document.

3.0 TERM

3.1 The Profit à prendre is for the Term specified in Item 3 of Schedule 1.

3.2 The Term ends on the Expiry Date specified in Item 5 of Schedule 1.

4.0 CONCESSION FEE AND ADMINISTRATION FEE

4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor on or before the Concession Fee Payment Date specified in Item 7 of Schedule 1:

- (a) the Concession Fee plus GST specified in Item 6(a) of Schedule 1; and
- (b) the Administration Fee plus GST specified in Item 6(b) of Schedule 1.

4.2 If the Concessionaire defaults in payment of the Concession Fee and/or Administration Fee for 14 days or more after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee and/or Administration Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

4.3 For the purposes of clause 6.0, a reference to Concession Fee includes a reference to the Administration Fee.

5.0 OTHER CHARGES

5.1 In addition to the Concession Fee the Concessionaire must pay all rates, levies, taxes, duties, assessments, charges, and other outgoings which may be charged, levied, or reasonably assessed, or which become payable in relation to the Land as the result of the grant of this Profit à prendre.

6.0 CONCESSION FEE REVIEW

6.1 The Grantor will review the Concession Fee on the Concession Fee Review Dates.

6.2 The Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.

6.3 The notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.

6.4 If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 18.

6.5 Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee payable immediately before the Concession Fee Review Date. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

6.6 If the Concessionaire does not give notice to the Grantor under clause 6.4 the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.

7.0 CONCESSION ACTIVITY

7.1 The Concessionaire is not to use the Land for any purpose other than the Concession Activity.

8.0 COMPLIANCE

8.1 The Concessionaire will comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan as required by section 17W(7) of the Conservation Act 1987 under Part IIIA of the Conservation Act

1987 together with any amendment or review of the strategy or plan whether approved before, on, or after the date on which this Document takes effect; and

- (b) with the Conservation Act 1987, and any other statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land, or affecting or relating to the Concession Activity.

9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 9.1 The Concessionaire must not erect or bring on to the Land any Structure, install any facility, or alter the Land in any way without the prior written consent of the Grantor.
- 9.2 The Concessionaire must keep and maintain any Structures, facilities and alterations to the Land in good repair.
- 9.3 On expiry or early termination of this Document either as to the whole or any part of the Land, the Concessionaire will not be entitled to compensation for any improvements (including pasture) and any Structures or facilities remaining on the Land are to become the property of the Grantor.
- 9.4 If requested by the Grantor, the Concessionaire must, within such time as the Grantor determines, remove all Structures, facilities or other improvements erected or installed by the Concessionaire and make good at the Concessionaire's own expense all damage done by the removal and must leave the Land in a clean and tidy condition to the satisfaction of the Grantor.

10.0 PROTECTION OF THE ENVIRONMENT

- 10.1 Except as approved in writing by the Grantor the Concessionaire will not, whether by act or omission:
 - (a) interfere with, remove, damage, or endanger the natural features, animals (other than farm animals), plants, or historic resources on the Land; or
 - (b) bring any plants, or animals (other than farm dogs, sheep and horses) on to the Land; or
 - (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
 - (d) pile or store materials in any place on the Land where they may obstruct the public or create a nuisance; or
 - (e) conduct any noxious, noisome, dangerous or offensive activity on the Land; or
 - (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Land; or
 - (g) disturb or allow stock to disturb any stream or watercourse on the Land; or
 - (h) light any fire on the Land.
- 10.2 The Concessionaire, must at the Concessionaire's expense:
 - (a)(i) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Land or any Structure or facility on the Land;
 - (a)(ii) if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor; and
 - (b) comply strictly with the provisions of the Biosecurity Act 1993.
- 10.3 The Concessionaire must ensure that the Concessionaire's employees, contractors, agents, clients and invitees do not carry out any acts or omissions prohibited under clause 10.

10.4 The Concessionaire may bring firearms on to the Land for use in farming activities and pest control operations.

11.0 HEALTH AND SAFETY

11.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations.

11.2 The Concessionaire must notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment.

12.0 TEMPORARY SUSPENSION

12.1 The Grantor may suspend this Document:

(a) if, in the opinion of the Grantor the activities of the Concessionaire, its employees, clients or invitees are having or may have an adverse effect on the environment and the Grantor considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor;

(b) while the Grantor investigates any of the circumstances contemplated by this clause and also while the Grantor investigates any potential breach or possible offence by the Concessionaire related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.

12.2 The Grantor is not liable to the Concessionaire for any loss sustained by the Concessionaire by reason of a suspension under clause 12.1 including loss of profits.

12.3 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.

13.0 ASSIGNMENT

13.1 The Concessionaire is not to transfer, sublicence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor.

14.0 TERMINATION

14.1 The Grantor may terminate this Document by notice in writing to the Concessionaire if:

(a) the Concession Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days or more after any of the days appointed for payment whether it has been lawfully demanded or not; or

(b)(i) the Concessionaire breaches any terms of this Document; and

(b)(ii) the Grantor has notified the Concessionaire in writing of the breach; and

(b)(iii) the Concessionaire does not rectify the breach within seven days of receiving notification; or

(c) the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the services provided by the Concessionaire are manifestly inadequate; or

(d) the Concessionaire is convicted of an offence, related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Resource Management Act 1991; or the Biosecurity Act 1993; or

- (e) the Concessionaire is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire cease to function or operate.

14.2 If the Grantor terminates the Document under this clause 14 all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.

14.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

15.0 INDEMNITIES AND INSURANCE

15.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, agents, contractors, invitees or clients or otherwise caused as a result of its use of the Land or the Concessionaire's carrying out of the Concession Activity on the Land.

15.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.

15.3 Without prejudice to or in any way limiting its liability under clause 15.1 the Concessionaire must take out and keep in force during the Term:

- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
- (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
- (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.

15.4 With respect to clause 15.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.

16.0 ENVIRONMENTAL MONITORING

16.1 The Concessionaire must, during the Term, if required in writing by the Grantor, pay to the Grantor the annual environmental monitoring contribution specified in Item 14 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's conduct of the Concession Activity on the Land.

17.0 FORCE MAJEURE

17.1 Neither party will be liable to the other party for any delay in performance of, or failure to perform, its obligations (other than a payment of money) under this Document as a result of any cause beyond its reasonable control.

18.0 DISPUTE RESOLUTION AND ARBITRATION

- 18.1 If any dispute arises between the parties in connection with this Document, the parties must, without prejudice to any other rights they have under this Document, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.
- 18.2 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 the Disputes Tribunal, where relevant, or to arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 18.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 18.4 Not with standing anything to the contrary in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the local District Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

19.0 NOTICES

- 19.1 Any notice to be given under this Document 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 Item 15 of Schedule 1.
- 19.2 A notice given in accordance with clause 19.1 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 working day it is dispatched or, if dispatched after 5pm on a working day or, if dispatched on a non-working day, on the next working day after the date of dispatch.

20.0 RELATIONSHIP OF PARTIES

- 20.1 Nothing expressed or implied in this Document shall be construed as:
- (a) conferring on the Concessionaire any right of exclusive occupation or use of the Land;
 - (b) derogating from the rights of the Grantor and the public to have access across the Land;
 - (c) preventing the Grantor from granting other concessions (except a grazing profit à prendre) to other persons.

21.0 OFFENCES

- 21.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act:
- (a) no waiver or failure to act by the Grantor under this Document is to preclude the Grantor from prosecuting the Concessionaire; and
 - (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising the Grantor's remedies under this Document; and

- (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising the Grantor's remedies under this Document.

22.0 SPECIAL CONDITIONS

22.1 Special conditions relating to this Document are set out in Schedule 2.

Signed by :

for and on behalf of
the Minister of Conservation
pursuant to a written delegation
in the presence of :

Witness _____

Occupation _____

Address _____

Signed by :

as Concessionaire
in the presence of :

Witness _____

Occupation _____

Address _____

SCHEDULE 1

1. **Land:** Pukaki Flats Conservation Area of 1364 hectares approximately, being Part Run 336 situated in Blocks I, II, III, IV, V, VI, VII, and VIII Strachey Survey District, Canterbury Land District
As shown on the attached plan and marked 4 and herein referred to as the Land
(see definition of Land in clause 1.1)
2. **Concession Activity:** Grazing of 240 stock units (sheep only) for a 4 month period from 1 September to 31 January each year.
(see definition of Concession Activity in clause 1.1)
3. **Term:** 10 years commencing on the date on which the Surrender of Ben Ohau Pastoral lease folio number 10F/1319 (Canterbury Registry) becomes effective pursuant to the Crown Pastoral Land Act 1998, being theday of200..
(see clause 3)
4. **Renewal:** No Rights of renewal
(see clause 3.2)
5. **Expiry Date:** 31st January
(see clause 3.2)
6. (a) **Concession Fee:** \$████ per stock unit per annum + GST (████) Total \$████ PROVIDED HOWEVER that in the event that the stock number grazed in any one year is less than the 240 the Grantor on application by the Concessionaire may at his sole discretion reduce the Concession Fee that year to reflect the reduced stocking rate.
(see clause 4)
(b) **Administration Fee:** \$████ per annum + GST
(see clause 4)
7. **Concession Fee Payment Date:** Half yearly in advance upon commencement of the term set out in clause 3, 1st July-----and 1st January -----.
(see clause 4)
8. **Penalty Interest Rate:**
Double the Grantor's bank's current highest 90 day bank bill buy rate
(see clause 4.2)
9. **Concession Fee Review Date:** Every three years from commencement date.
(see clause 6)
10. **Public Liability General Indemnity Cover:** for \$██████
(see clause 15.3)
11. **Public Liability Forest & Rural Fire Extension:** for \$██████
(see clause 15.3)
12. **Statutory Liability:** NIL
(see clause 15.3)
13. **Other Types of Insurance:** NIL
(see clause 15.3)
Amounts Insured for Other Types of Insurances:
(see clause 15.3)
14. **Environmental Monitoring Contribution:** █████ per annum +GST
(see clause 16)

15. Address for Notices:

(see clause 19)

(a) Grantor

Minister of Conservation
C/- Department of Conservation
133 Victoria Street
Private Bag 4715
CHRISTCHURCH
Ph (03) 379 9758
Fax (03) 365 1388

(b) Concessionaire

Ben Ohau Station Limited
32b Sheffield Crescent
CHRISTCHURCH

SCHEDULE 2

Special Conditions

Land Management

1. The Concessionaire must only graze the following type of animal:
Sheep only being 240 stock units (900 wethers or 720 breeding Ewes) for 4 months only from 1st September to 31 January each year.
2. The Concessionaire must, at the Concessionaire's expense, if required by the Grantor take all steps necessary to control or, at the Grantor's option, contribute to the cost of controlling any pest, insect or rodent infestation occurring on or emanating from the Land.
3. The public shall at all times have access on foot to and across all parts of the Land. Where fences occur the Grantor may erect gates or stiles in suitable places.
4. The Grantor may at his sole discretion and at his sole expense fence off an area of the Land to allow motor vehicle parking, adjacent to the State Highway.

Fencing

5. The Concessionaire must, at no expense to the Grantor, ensure that stock are adequately contained within the Land.
6. The Grantor is not to be called upon at any time to contribute to the costs of any boundary fencing between the Land and any adjoining land of the Concessionaire if the purpose of the fencing is to assist the Concessionaire to comply with clause 5.
7. The Concessionaire must keep and maintain all fences (including boundary fences) or gates on the Land in good repair.

Hunting

8. The Grantor reserves the right to authorize hunters who hold a valid hunting permit issued by the Department of Conservation to hunt on the Land.

Inspection

9. The Grantor reserves the right for the Grantor's employees or agents to enter on the Land at any time for the purpose of inspecting the Land.

Monitoring

10. The Grantor shall design and undertake a monitoring program:
 - i) to ensure that the ecological integrity of the short tussock grassland is maintained or improved; and
 - ii) to enable the monitoring of grazing; on the vegetation cover and condition, faunal values and any other conservation values.
11. The monitoring programme will be reviewed at 3 yearly intervals to coincide with the Concession Fee Reviews and if in the opinion of the Grantor there is a deterioration in the condition and extent of the ecological condition the Grantor reserves the right to adjust stock numbers accordingly.

Appendix 4: Fencing requirements

1. Fenceline C - D

Length and location: 850m (approximately) on the left bank of the Fraser Stream west of the hydro canal and located along the line marked "C-D" on the Plan.

Type: Seven wire fence

Specifications:

- Fence construction will be tanalised 1.7 metre medium 100 – 150mm posts every 10 metres with 4 tanalised wooden battens, metal battens or metal standards between posts, six 2.5mm galvanised high tensile wires (may substitute one wire with barbed wire) plus one bottom wire of 4mm galvanised medium tensile.
- Wires to be stapled to the posts with 50 x 40mm galvanised slice point barbed staples and strained to a tension recommended by the wire manufacturer and spaced as approved on site at conventional spacing with the bottom wire between 100mm and 150mm above the ground.
- Round tanalised strainer posts to be 2.4 metres with an average diameter of 200mm to be fully stayed with either horizontal stay assemblies or angle stays and stay block at all corners and angles (inside) 135 degrees or less. Angles greater than 135 degrees to have light strainers installed of 2.1 metre length.
- The length of one strain should not be more than 300 metres.
- Tie downs to be installed at or adjacent to posts where there is more than 5 degrees lift angle between posts.
- Wires to be placed on the Schedule Three Land side of the fence.

2. Fenceline E - F

Length and location: 4400m (approximately) east of SH8 on the boundary of the Pukaki airfield and located along the line marked "E-F" on the Plan.

Type: Rabbit netted

Specifications:

- Fence construction will be tanalised 1.7 metre medium 100 – 150mm posts every 30 metres with steel 1.37 metre standards every 3 metres between posts.
- Four evenly spaced 2.5mm galvanised high tensile wires to be stapled to the posts with 50 x 4mm galvanised slice point barbed staples and strained to a tension recommended by the wire manufacturer.
- Round tanalised strainer posts to be 2.4 metres with an average diameter of 200mm to be fully stayed with either horizontal stay assemblies or angle stays and stay block

at all corners and angles (inside) 135 degrees or less. Angles greater than 135 degrees to have light strainers installed of 2.1 metre length.

- The length of one strain should not be more than 300 metres.
- Tie downs to be installed at or adjacent to posts/standards where there is more than 5 degrees lift angle between posts.
- Rabbit netting (minimum standard 40" (1016) x 1 5/8" x 17 or 18 gauge galvanised wire) to be securely fastened at 500mm intervals between, and at, uprights to the top wire and not less than 1m spacing to lower wires with not less than 200mm apron on the ground either ploughed in or weighted with rock. The whole length of the fence to be made rabbit proof.
- Wires to be placed on the Schedule Three Land side of the fence.

3. Fenceline G - H

Length and location: 820m (approximately) on the left bank of the Fraser Stream south from the Rhoboro Downs boundary and located on the line marked "G-H" on the Plan.

Type: Seven wire fence

Specifications:

- Fence construction will be tanalised 1.7 metre medium 100 – 150mm posts every 10 metres with 4 tanalised wooden battens, metal battens or metal standards between posts, six 2.5mm galvanised high tensile wires (may substitute one wire with barbed wire) plus one bottom wire of 4mm galvanised medium tensile.
- Wires to be stapled to the posts with 50 x 40mm galvanised slice point barbed staples and strained to a tension recommended by the wire manufacturer and spaced as approved on site at conventional spacing with the bottom wire between 100mm and 150mm above the ground.
- Round tanalised strainer posts to be 2.4 metres with an average diameter of 200mm to be fully stayed with either horizontal stay assemblies or angle stays and stay block at all corners and angles (inside) 135 degrees or less. Angles greater than 135 degrees to have light strainers installed of 2.1 metre length.
- The length of one strain should not be more than 300 metres.
- Tie downs to be installed at or adjacent to posts where there is more than 5 degrees lift angle between posts.
- Wires to be placed on the Schedule Three Land side of the fence.

4. Fenceline I - J

Length and location: 1950m (approximately) west of Lake Poaka to enclose part of the Schedule One Land and located on the line marked "I-J" on the Plan.

Type: Seven wire fence

Specifications:

- Fence construction will be tanalised 1.7 metre medium 100 – 150mm posts every 10 metres with 4 tanalised wooden battens, metal battens or metal standards between posts, six 2.5mm galvanised high tensile wires (may substitute one wire with barbed wire) plus one bottom wire of 4mm galvanised medium tensile.
- Wires to be stapled to the posts with 50 x 40mm galvanised slice point barbed staples and strained to a tension recommended by the wire manufacturer and spaced as approved on site at conventional spacing with the bottom wire between 100mm and 150mm above the ground.
- Round tanalised strainer posts to be 2.4 metres with an average diameter of 200mm to be fully stayed with either horizontal stay assemblies or angle stays and stay block at all corners and angles (inside) 135 degrees or less. Angles greater than 135 degrees to have light strainers installed of 2.1 metre length.
- The length of one strain should not be more than 300 metres.
- Tie downs to be installed at or adjacent to posts where there is more than 5 degrees lift angle between posts.
- Wires to be placed on the Schedule Three Land side of the fence.

5. Fenceline K - L

Length and location: 70m (approximately) around the perimeter of the carparking area marked "b" on the Plan west of the hydro canal and located on the line marked "K-L" on the Plan.

Type: Rabbit netted

Specifications:

- Fence construction will be tanalised 1.7 metre medium 100 – 150mm posts every 30 metres with steel 1.37 metre standards every 3 metres between posts.
- Four evenly spaced 2.5mm galvanised high tensile wires to be stapled to the posts with 50 x 4mm galvanised slice point barbed staples and strained to a tension recommended by the wire manufacturer.
- Round tanalised strainer posts to be 2.4 metres with an average diameter of 200mm to be fully stayed with either horizontal stay assemblies or angle stays and stay block at all corners and angles (inside) 135 degrees or less. Angles greater than 135 degrees to have light strainers installed of 2.1 metre length.
- The length of one strain should not be more than 300 metres.
- Tie downs to be installed at or adjacent to posts/standards where there is more than 5 degrees lift angle between posts.
- Rabbit netting (minimum standard 40" (1016) x 1 5/8" x 17 or 18 gauge galvanised wire) to be securely fastened at 500mm intervals between, and at, uprights to the top

wire and not less than 1m spacing to lower wires with not less than 200mm apron on the ground either ploughed in or weighted with rock. The whole length of the fence to be made rabbit proof.

- Wires to be placed on the Schedule Three Land side of the fence.

Execution Section

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

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



JOSEPH MONTGOMERY

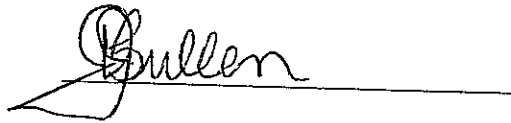
Witness

SOLICITOR

Occupation

WELLINGTON

Address



D. J. GULLEN
COMMISSIONER OF CROWN LANDS
LAND INFORMATION NEW ZEALAND
WELLINGTON

In signing this Substantive Proposal (including the schedules and appendices), the Holder:

1. accepts and agrees that:
 - (a) the Holder accepts this Substantive Proposal under section 60 of the Act and that, subject to subsections (3) and (4) of section 60 of the Act, the Holder's acceptance of this Substantive Proposal is irrevocable, and has effect as an irrevocable authority to, and obligation on the Commissioner, to take the appropriate actions required by the Act;
 - (b) the Holder is bound by the provisions of this Substantive Proposal;
 - (c) the Holder is also bound by the provisions of the Notice and must pay the Holder's Payment and all other money payable by the Holder in accordance with the provisions of the Notice and this Substantive Proposal; and
 - (d) when the Final Plan is registered under section 64 of the Act, the Notice has effect as a binding contract between the Crown and the Holder according to its tenor under section 46(4) of the Act; and
2. acknowledges that:
 - (a) the Holder has obtained the written consent of the Mortgagee (The National Bank of New Zealand Limited), and Environment Canterbury, and has also obtained the written consent of any other person having an interest in the Lease Land, to the Holder's acceptance of this Substantive Proposal;
 - (b) the relevant consent is or consents are endorsed on or attached to this completed Execution Copy of this Substantive Proposal; and
 - (c) the Holder has advised Glacier of the effect of registration of the Substantive Proposal and the Final Plan and has entered into an alternative arrangement with Glacier with

respect to Glacier's Recreation Permit, on terms and conditions acceptable to both parties.

SIGNED by Ben Ohau Station
Limited by:

Simon J. Cameron
Director

SIMON JOHN CAMERON
Print Full Name

J.A.P. Cameron
Director

JOHN ARTHUR PRESTON CAMERON
Print Full Name

Consents

The National Bank of New Zealand Limited as mortgagee under mortgage 838889.3, hereby:

- (a) consents to the Holder's acceptance of this Substantive Proposal dated 19 June 2002 pursuant to section 60 of the Crown Pastoral Land Act 1998 and agrees and consents to the registration of the Easement prior to the registration of any new mortgage to be granted in its favour over the Schedule Three Land as contemplated by clause 5.16; and
- (b) agrees to sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the Holder or the Commissioner to register a discharge of the Mortgage and any new mortgage over the Schedule Three Land.

Dated:

SIGNED by The National Bank of
New Zealand Limited by its Attorney)
in the presence of:)

GORDON

G. W. Thomas

 WILBERT THOMAS
[Signature]

Witness Signature:

Witness Name:

Michael Harris

Occupation:

Bank Officer

Address:

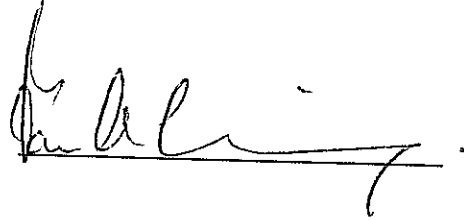
Christchurch.

Consents

Environment Canterbury, being the party entitled to the benefit of land improvement agreement 994342.1 registered against the Lease, hereby consents to the Holder's acceptance of this Substantive Proposal dated 19 June 2002 pursuant to section 60 of the Crown Pastoral Land Act 1998.

Dated: 22. 8. 02

SIGNED for and on behalf of)
Environment Canterbury)
in the presence of:)



Witness Signature:

MC Free

Witness Name:

Mike Freeman

Occupation:

Director Regulation

Address:

Environment Canterbury
PO Box 365
Christchurch



CERTIFICATE OF NON-REVOCATION OF DELEGATION OF POWER OF ATTORNEY

I, GORDON WILBERT THOMAS Senior Credit Manager, Retail Central of Christchurch in New Zealand **HEREBY CERTIFY** that:

1) By Deed dated 17 November 1992 deposited in the Land Registry Offices situated at:

Auckland	as No.	C.437380.1	Hokitika	as No.	093356.1
Blenheim	as No.	166109.1	Invercargill	as No.	205198.1
Christchurch	as No.	A.033435.1	Napier	as No.	583965.1
Dunedin	as No.	821487.1	Nelson	as No.	322991.1
Gisborne	as No.	G.190113.1	New Plymouth	as No.	396792.1
Hamilton	as No.	B.116233.1	Wellington	as No.	B.273065.1

('the Power of Attorney'), The National Bank of New Zealand Limited ('the Bank') did constitute and appoint that person for the time being and from time to time appointed by the Bank to act as the Chief Executive of the Bank ('the Attorney') to be the attorney or agent of the Bank to represent and act for, and in the name of, the Bank for all objects and purposes, and with the powers and authorities, set out in the Schedule to the Power of Attorney.

2) The Power of Attorney empowers the Attorney to delegate from time to time, either generally or specifically in writing, to any officer or employee of the Bank or of any other company in the Lloyds Bank Group for the time being, or any other person that the Attorney considers an appropriate delegate, all or any powers and authorities given to the Attorney under the provisions of paragraph 12 of the Schedule to the Power of Attorney (but not further or otherwise) so that that delegate will have, and be able to exercise, all those powers and authorities (but without power to delegate) as fully and effectually as the Attorney would have done.

3) By instrument dated 21 November 1997 deposited in the Land Registry Offices situated at:

Auckland	as No.	D.219807	Hokitika	as No.	108711
Blenheim	as No.	194478	Invercargill	as No.	254688
Christchurch	as No.	A.328568	Napier	as No.	664393
Dunedin	as No.	940341	Nelson	as No.	373413
Gisborne	as No.	G.218306	New Plymouth	as No.	446338
Hamilton	as No.	B.454897	Wellington	as No.	B.639417

JOHN ANTHONY ANDERSON of Wellington, being the then Chief Executive of the Bank, delegated all of the powers and authorities given to him under the provisions of paragraph 12 of the Schedule to the Power of Attorney to me (among others).

4) At the date of this Certificate, I have not received any notice of the revocation of that delegation of powers and authorities to me or notice of the winding-up of the Bank or other revocation of the Power of Attorney.

DATED at Christchurch this *22nd* day of *July* *2002*

G. W. Thomas