

# **Crown Pastoral Land Tenure Review**

**Lease name: BENDROSE**

**Lease number: PT 097**

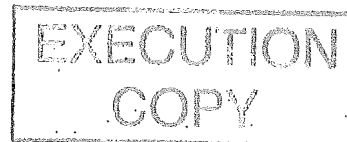
## **Substantive Proposal**

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

**August**

**10**

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



**Date: 18 January 2010**

**Parties**

---

**Holder:** **John David Joseph Allan** (as to a 1/2 share), **John David Joseph Allan and BW Trust Management Limited** (as to a 1/2 share)

Bendrose Station  
P O Box 84  
Twizel

**Commissioner of Crown Lands:**

**C/- The Manager Tenure Review**  
**Darrochs Limited**  
PO Box 27  
Alexandra

**The Land**

---

**Lease:** Bendrose

**Legal Description:** Part Run 294 Bendrose Blocks IV, VII, VIII, IX, & X Strachey SD, Blocks III, IV, VII, and VIII Campbell SD.

**Area:** 5926,5515 hectares more or less

**Certificate of Title/Unique Identifier:** CB895/96

**Existing Conservation Land:** for conservation purposes

**Legal Description:** Part RS 36867, SO 18942 Blks VII & VIII Campbell SD.

**Area:** 1315,82 hectares more or less

**Summary of Designations**

---

Under this Proposal, the Land is designated as follows:

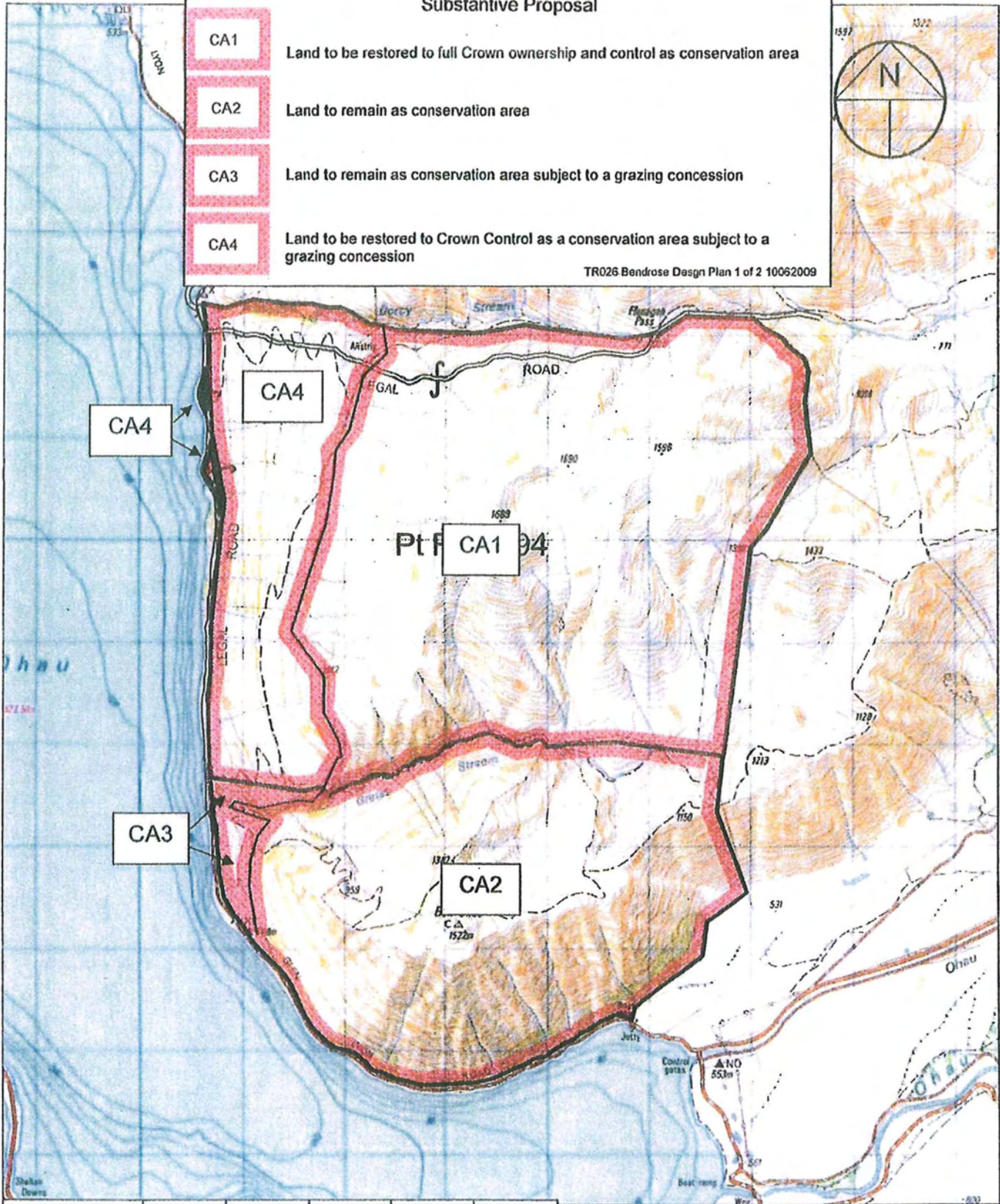
- (a) The Crown Land (shown edged in pink on the Plan and marked CA1 and CA4) is to be restored to, or retained by, the Crown as set out in Schedules One and Two; and
- (b) The Land (shown edged in green on the Plan) is to be disposed by freehold 5disposal to the Holder as set out in Schedule Three; and
- (c) The Conservation area (shown edged in pink on the Plan and marked CA2 and CA3) is to remain Conservation area as set out in Schedules One and Two.

**1      The Plan**

---

**BENDROSE**  
Substantive Proposal

- CA1** Land to be restored to full Crown ownership and control as conservation area
  - CA2** Land to remain as conservation area
  - CA3** Land to remain as conservation area subject to a grazing concession
  - CA4** Land to be restored to Crown Control as a conservation area subject to a grazing concession
- TR026 Bendrose Desgn Plan 1 of 2 10062009

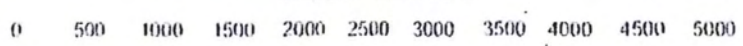


Version	1	2	3	4	5
Canterbury Land District Topographic Map 260 - H38	Sheet 1 of 2				Date 27/05/05

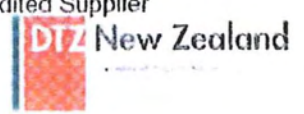
The boundaries on this plan are for illustrative purposes in showing the recommended designations.

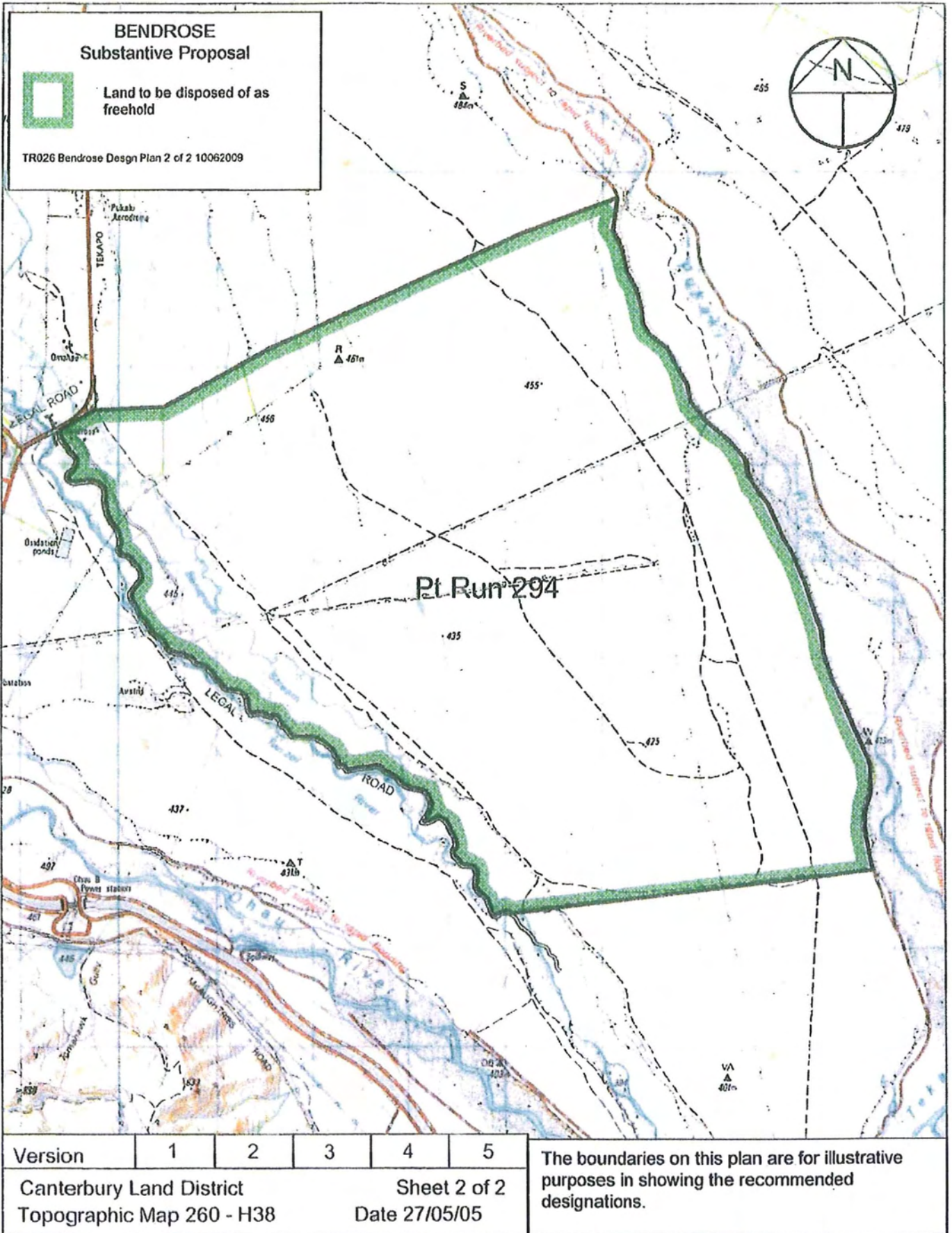
PO Box 1344  
Christchurch  
Ph: 379 0101

**Bendrose**  
Scale 1:50000



This plan accurately portrays the Bendrose pastoral lease boundaries in accordance with the land status certified by the Chief Surveyor on 15/10/99.  
Peter King, Crown Accredited Supplier





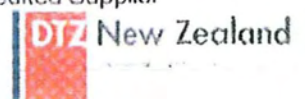
# Bendrose

Scale 1:50000

PO Box 11-14  
Christchurch 1  
Ph 379 1001

0 500 1000 1500 2000 2500 3000 3500 4000 4500 5000

This plan accurately portrays the Bendrose pastoral lease boundaries in accordance with the land status certified by the Chief Surveyor on 15/10/99.  
Peter King, Crown Accredited Supplier



---

**2 Conditions**

---

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

---

**3 Settlement**

---

- 3.1 Unless otherwise agreed by the parties, the Settlement Date for the disposal of the Freehold Land to the Holder by freehold disposal will be the day that is TEN (10) working days following the day on which Land Information New Zealand notifies the Commissioner that the Final Plan and a copy of this Proposal are registered in accordance with the Act.

- 3.2 The Freehold Land will be disposed of to the Holder under the Land Act 1948:

- 3.3 Notwithstanding anything to the contrary, if, as at the Settlement Date (as determined pursuant to clause 3.1), the rent payable under the Lease is subject to a Rent Review, then the Commissioner may elect to:

(a) settle on the Settlement Date on the basis that the Commissioner may retain from the Commissioner's Payment an amount which the Commissioner, acting reasonably, estimates will be payable by the Holder to the Commissioner following agreement or determination of the Rent Review ("the Retention"). The Retention shall be held by the Crown Law Office in an on-call, interest-bearing trust account in the joint names of the parties for their respective rights and interests. Upon agreement or determination of the Rent Review, the Commissioner shall calculate the rent shortfall payable by the Holder to the Commissioner in respect of the period from the effective date of the Rent Review to the Settlement Date, both dates inclusive ("the Shortfall").

If:

(i) the Shortfall is less than the Retention and the net interest earned thereon, the balance shall be paid by the Commissioner to the Holder within TEN (10) working days; or

(ii) the Shortfall is more than the Retention and the net interest earned thereon, the balance shall be paid by the Holder to the Commissioner within TEN (10) working days.

or

(b) defer the Settlement Date until TEN (10) working days after the rent payable as a consequence of the Rent Review:

(a) has been agreed or determined; and

(b) is not and will not be subject to any appeal, rehearing or other proceedings.

---

**4 Holder's Payment**

---

- 4.1 By 3.00 p.m. on the Settlement Date, the Holder must pay the Holder's Payment and all other money payable to the Commissioner or the duly appointed agent of the Commissioner by bank cheque without set-off or deduction of any kind in accordance with the settlement requirements of the Commissioner.
- 4.2 If the Holder fails to pay the Holder's Payment or any part of it or any other money to the Commissioner or to the duly appointed agent of the Commissioner on the Settlement Date clause 19 will apply.

---

**5 Commissioner's Payment**

---

- 5.1 The Commissioner shall pay the Commissioner's Payment to the Holder on the Settlement Date.

- 5.2 No interest shall be payable to the Holder by the Commissioner in respect of the Commissioner's Payment, including (without limitation) for the period from the Vesting Date to the Settlement Date.

---

**6 Vesting of Crown Land**

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

---

**7 Issue of Certificate of Title**

- 7.1 Notwithstanding any other provision in this Proposal, the Commissioner will not request that the Surveyor-General issue a certificate to the Registrar pursuant to section 116 of the Land Act 1948 (to enable a certificate of title to issue for the Freehold Land) unless and until:
- (a) the Commissioner has received the Holder's Payment from the Holder under clause 4, and all other money payable by the Holder under this Proposal and the Notice;
  - (b) the Holder has provided to the Commissioner duplicate copies of the certificate of title relating to the Lease (if any) and/or the Lease if requested by the Commissioner;
  - (c) the Holder has signed and returned to the Commissioner all documents required by the Commissioner to be signed by the Holder to give effect to this Proposal (including, without limitation, any permit, covenant, easement and/or any other document); and
  - (d) the Holder has procured a registrable discharge of any Mortgage and provided this to the Commissioner together with any new mortgage documents to be registered against the Freehold Land.

---

**8 Registration of Documents**

- 8.1 Subject to clause 7, the Commissioner will lodge all documents necessary to give effect to this Proposal (including, without limitation any easement, covenant, discharge of mortgage, and/or duplicate copy of the Lease) and any new mortgage documents to be registered against the certificate of title to be issued for the Freehold Land so that the certificate of title for the Freehold Land will issue subject to the encumbrances provided in this Proposal. Any new mortgage will be registered after any other encumbrances such as any easements and/or covenants are registered.

---

**9 Consents**

- 9.1 The Holder must obtain the written consent to the Holder's acceptance of this Proposal from all persons having an interest in the Land (other than the Holder), including, but not limited to:
- (a) any Mortgagee(s);
  - (b) any party entitled to the benefit of a land improvement agreement registered against the Lease and/or the Land; and
  - (c) any other person that the Commissioner reasonably believes has an interest in the Land or who the Holder reasonably believes has an interest in the Land, whether registered or not.
- 9.2 The consents required under clause 9.1 must be in a form acceptable to the Commissioner in all respects and be returned to the Commissioner with this Proposal on its acceptance by the Holder. Examples of the form of consents required under clause 9.1 are set out in Appendix 1.
- 9.3 The Holder must also obtain, and provide to the Commissioner if requested, all consents necessary for the Holder to accept this Proposal including (without limitation) any:
- (a) corporate and/or trustee consents; and
  - (b) consent required under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005.
- 9.4 The Holder will procure the Mortgagee to execute a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder will execute registrable new mortgage documents and forward these to the Commissioner to be registered as set out in clause 8.

- 9.5 If required by the Mortgagee, the Commissioner will provide an undertaking that, subject to the provisions of clause 7 being satisfied, the Commissioner will register the discharge of the Mortgage and register any new mortgage against the certificate of title for Freehold Land at the same time as the certificate of title for the Freehold Land issues.

## **10 Continuation of Lease**

---

- 10.1 The Lease will remain in full force and effect until a certificate of title issues for the Freehold Land. Notwithstanding when Settlement Date occurs, until a certificate of title issues for the Freehold Land the Holder will duly and punctually comply with all obligations on its part under the Lease (other than as set out at clause 12.1 (b)) and the Lease will remain in full force and effect.
- 10.2 From the date that a certificate of title is issued for the Freehold Land the Lease is deemed to be surrendered and, subject to clause 10.3, the Commissioner releases and discharges the Holder from the performance and observance of all covenants, conditions and obligations under the Lease.
- 10.3 The release and discharge in clause 10.2:
- (a) Is without prejudice to the rights, remedies and powers of the Commissioner contained in the Lease (except as varied in accordance with clause 12:1(b));and
- (b) will not release or discharge the Holder from any liability under the Lease, arising prior to the date that the certificate of title for the Freehold Land is issued, under any statute or by any reason where such liability is due to the fault of the Holder.
- 10.4 As from the Vesting Date, the Holder will not have any estate, right or claim against any of the land, improvements, fencing, buildings, structures, fixtures, fittings or chattels on the Crown Land (subject to the provisions of any permit, easement, concession, other encumbrance or document provide under this Proposal). The Holder will not be entitled to any compensation for any of its improvements, fencing, buildings, structures, fixtures, fittings or chattels which are on the Crown Land as at the Vesting Date.

## **11 Fencing and Construction Works**

---

- 11.1 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, the Commissioner will, subject to clause 14.4, erect at the Commissioner's cost new fencing to the specifications in Appendix 3;
- ("the Fencing").

## **12 Apportionments**

---

- 12.1 Rent payable under the Lease in respect of the Freehold Land shall be apportioned as follows:
- (a) Rent paid or payable will be apportioned on the Settlement Date as at the Settlement Date and either deducted from or added to (as the case may be) the amount required to settle.
- (b) Notwithstanding that the Lease continues in effect until a certificate of title issues for the Freehold Land, the Holder shall not be required to pay any rent under the Lease for the Freehold Land from the Settlement Date.
- 12.2 Rent paid or payable under the Lease for the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.
- 12.3 All rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Freehold Land will, unless otherwise agreed by the parties, be apportioned on the Settlement Date as at the Settlement Date.
- 12.4 All rates, levies and all other incomings and outgoings and other charges receivable from or charged upon the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.



- 12.5 Following the date that a certificate of title issues for the Freehold Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will pay to the Commissioner any additional amounts due because of any payments, made or received by one party on behalf of the other for the period from the Settlement Date to the date on which a new certificate of title issues for the Freehold Land.

### **13 Risk**

---

- 13.1 On and with effect from the Unconditional Date all risk of any nature in respect of the Freehold Land will pass from the Commissioner to the Holder. For the avoidance of doubt, the Holder's current risk in respect of matters arising under the Lease, including, without limitation, the Holder's risk in respect of all improvements, buildings, fencing, fixtures, fittings and chattels, will continue to remain with the Holder until the Lease is deemed to be surrendered under clause 10.2.
- 13.2 The Holder will be required to comply with its settlement obligations under this Proposal irrespective of any damage to, or destruction of, the Freehold Land prior to the Settlement Date.

### **14 Survey**

---

- 14.1 All areas of the Land forming part of this Proposal and delineated on the Plan are approximate and subject to preparation of the Final Plan. The measurements of the areas may therefore alter on the Final Plan.
- 14.2 No error, misdescription or amendment of any part of the Land will annul, vary, or derogate from this Proposal, or the Holder's acceptance of this Proposal.
- 14.3 For the avoidance of doubt, the Holder will not be entitled to cancel or withdraw its acceptance of this Proposal, nor will the Holder, or any successor in title of the Holder or any party with an interest in the Land, be entitled to payment of any compensation, should any area of the Land on the Final Plan have a different measurement to the area specified in this Proposal.
- 14.4 The Commissioner does not warrant that any existing fence is erected on, or that any new fence to be erected will be on, any boundaries of the Land or any part of the Land as outlined on the Plan or the Final Plan.

### **15 Holder's Acknowledgements**

---

- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) it is obtaining the freehold interest in the Freehold Land:
    - (i) "as is", solely in reliance on its own investigations and judgement; and
    - (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
  - (b) the Holder has carried out all inspections of the Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
  - (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
    - (i) the Resource Management Act 1991; and
    - (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
    - (iii) the Building Act 2004; 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 clause 15;

- (d) nothing in this Proposal is affected by, and the Commissioner has no liability of any nature in respect of, the existence or terms of any leases, licences or other occupation rights of any nature (if any) granted by the Holder in respect of the Land; and
- (e) the Holder has no claim (and will not have any claim) whatsoever against the Crown and/or Commissioner in relation to the Tenure Review and/or this Proposal, including (without limitation) any claim for any misrepresentation or for any loss or damage suffered whether in contract, tort (including negligence) or otherwise.

---

**16 No Representations or Warranties by the Commissioner**

---

- 16.1 The Commissioner gives no representations or warranties of any nature in respect of the Freehold Land. Without limitation, the Commissioner does not warrant:
- (a) the accuracy of any matter in the Notice or this Proposal or in any notice, or any correspondence or other information provided to the Holder by the Commissioner or by any agent, contractor or employee of the Commissioner; or
  - (b) that the Freehold Land is or will remain suitable for the Holder's use; or
  - (c) that the Freehold Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Freehold Land.

---

**17 Acceptance**

---

- 17.1 The Holder's acceptance of this Proposal is irrevocable and constitutes a binding agreement between the Commissioner and the Holder.
- 17.2 If the Commissioner does not receive an acceptance to this Proposal from the Holder within three (3) months of putting it (in its substantive form) to the Holder, the Holder is deemed to have rejected this Proposal.

---

**18 Solicitor's Certificate**

---

- 18.1 The Holder must procure the Holder's solicitors to provide the Commissioner with a solicitor's certificate (in a form satisfactory to the Commissioner, in its reasonable opinion) relating to such matters as the Holder's execution of this Proposal and the Holder's execution of any documents required to give effect to this Proposal (including, without limitation any easement, protective mechanism and/or concession). An example of the form of solicitor's certificate required is set out at Appendix 2.
- 18.2 The Holder must return the completed solicitor's certificate to the Commissioner with this Proposal on its acceptance by the Holder.

---

**19 Default**

---

- 19.1 If from any cause whatever (except the default of the Commissioner) all or any part of the Holder's Payment or any other money payable by the Holder to the Commissioner is not paid on the due date the Holder will pay to the Commissioner interest at the Default Rate on the part of the Holder's Payment or any other money payable by the Holder to the Commissioner so unpaid from the due date until the date of actual payment in full.
- 19.2 The Commissioner's rights under this clause 19 are without prejudice to any other rights or remedies available to the Commissioner at law or in equity.

---

**20 Goods and Services Tax**

---

- 20.1 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.
- 20.2 On the 10<sup>th</sup> working day following the Unconditional Date, the Commissioner will provide to the Holder a GST invoice in respect of the supply evidenced by the Holder's Consideration. The invoice will specify the Commissioner's GST Date.
- 20.3 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.

- 20.4 On the 10<sup>th</sup> working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration.
- 20.5 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.6 Where any GST is not paid to the Commissioner or to the Holder, (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
  - (b) any Default GST.

---

**21 Lowest price**

- 21.1 The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Freehold Land under section EW 32(3) of the Income Tax Act 2007 is equal to the Holder's Consideration.
- 21.2 The Commissioner's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Crown Land under section EW 32(3) of the Income Tax Act 2007 is equal to the Commissioner's Consideration.

---

**22 Costs**

- 22.1 The Commissioner will meet the costs of the survey (if any) of the Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Freehold Land.
- 22.2 The Holder is responsible for all costs the Holder incurs in respect of and incidental to the Tenure Review. In particular, but without limitation, the Holder shall bear all its costs in relation to the review of all documentation forming part of the Tenure Review (including this Proposal), and all professional advice provided to or sought by the Holder.

---

**23 No nominatron or assignment**

- 23.1 The Holder is not entitled to, and is expressly prohibited from, nominating another person to perform the Holder's obligations under this Proposal or assigning to another person the Holder's interest (or any part) under this Proposal.

---

**24 Recreation Permit**

- 24.1 Immediately on the registration of the Final Plan and a copy of the proposal to which it relates over the Land and pursuant to s64 of the Act, any recreation permit granted over the Land shall be determined.

---

**25 Discretionary Actions**

- 25.1 If the Holder has been granted a consent by the Commissioner to do an activity on the land under s18 of the Act, and the area over which the consent is exercised is designated in the proposal as Crown Land then the Holder agrees to act in good faith whilst exercising the terms of consent and not damage or destroy the Crown Land.

---

**26 General**

- 26.1 This Proposal and the Notice:
- (a) constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and
  - (b) supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and the Holder relating to the Tenure Review.
- 26.2 Each provision of this Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.

- 26.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 26.4 The Commissioner and the Holder will sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the other to effectively carry out and give effect to the terms and intentions of this Proposal.
- 26.5 This Proposal is governed by, and must be construed under, the laws of New Zealand and the Commissioner and the Holder irrevocably submit to the jurisdiction of the New Zealand courts or other New Zealand system of dispute resolution.
- 26.6 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 26.7 In relation to notices and other communications under this Proposal:
- (a) each notice or other communication is to be in writing, and sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for that purpose by the addressee to the other party. Other than the address to which the Holder is to send its acceptance of this Proposal (which the Commissioner will specifically notify the Holder of) the address, person or office holder (if any) for each party is shown on the front page of this Proposal;
  - (b) no communication is to be effective until received. A communication will be deemed to be received by the addressee:
    - (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
    - (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), on the working day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and
    - (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

## **27 Interpretation**

---

### **27.1 Definitions**

In this Proposal unless the context otherwise requires:

**Act** means the Crown Pastoral Land Act 1998;

**Commissioner** means the Commissioner of Crown Lands appointed under section 24AA of the Land Act 1948;

**Commissioner's Consideration** means the amount payable by the Commissioner to the Holder by equality of exchange for the surrender of the leasehold interest in the Lease in relation to the Crown Land, as specified in the Notice;

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

**Commissioner's Payment** means the balance of the Commissioner's Consideration payable by the Commissioner to the Holder by equality of exchange for the Crown Land, as specified in the Notice (if any);

**Crown Land** means the land (including any improvements) set out in Schedule One and the land (including any improvements) set out in Schedule Two (if any);

**Default GST** means any additional GST, penalty or other sum levied against either the Commissioner or the Holder under the Goods and Services Tax Act 1985 or the Tax Administration Act 1994 by reason of either the Commissioner or the Holder failing to pay GST as required by this Proposal. It does not include any sum levied against the Commissioner or the Holder by reason of a default by the Commissioner after payment of

GST to the Commissioner by the Holder or by reason of a default by the Holder after payment of GST to the Holder by the Commissioner;

**Default Rate** means the rate of 11 per cent per annum;

**Fencing** means any stock proof farm fence.

**Fencing Consent** means any and all consents required under the Resource Management Act 1991.

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

**Freehold Land** means the land set out in Schedule Three;

**GST** means all goods and services tax payable by the Commissioner or the Holder under the Goods and Services Tax Act 1985 in respect of their respective supplies evidenced by this Proposal;

**Holder** means holder shown on the front page of this Proposal (being the lessee under the Lease);

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

**Holder's Payment** means the balance of the Holder's Consideration payable by the Holder to the Commissioner by equality of exchange for the freehold of the Freehold Land, as specified in the Notice (if any);

**Land** means the land subject to the Tenure Review identified on the front page of this Proposal;

**Lease** means the lease described on the front page of this Proposal;

**Mortgage** means any mortgage (registered or unregistered) over the Land;

**Mortgagee** means the holder of any Mortgage;

**Notice** means the notice to the Holder setting out:

- (a) the Holder's Consideration;
- (b) the Commissioner's Consideration; and
- (c) the Holder's Payment or the Commissioner's Payment (as the case may be);

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

**Plan** means the plan of the Land showing all designations on pages 2 or 3 of this Proposal;

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

**Rent Review** means the process for determination of the rent payable under the Lease as set out in sections 6 - 8 of the Act;

**Settlement Date** means the settlement date defined in clause 3.1;

**Surveyor-General** means the Surveyor-General appointed under section 5 of the Cadastral Survey Act 2002;

**Tenure Review** means the tenure review of the Land being undertaken by the Commissioner under the Act;

**Unconditional Date** means the date that the Commissioner receives from the Holder an executed copy of this Proposal signed by the Holder containing the signed consents of all persons having an interest in the Land to the Holder's acceptance of this Proposal which results in the acceptance taking effect under the Act;

**Vesting Date** means the date on which the Crown Land vests in the Crown pursuant to the Act;

**Working day** means a day that is not a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, or a day during the period commencing on any Christmas Day and ending with the 15<sup>th</sup> day of the following January or a day which is a provincial holiday in the place where the obligation is to be performed.

**Works Consent** means any and all consents required under the Resource Management Act 1991; and/or the Building Act 2004 and their respective amendments.

## 27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

- (a) a reference to a certificate of title includes a reference to a computer register;
- (b) words importing a gender include all genders;
- (c) reference to a statute includes reference to all enactments that amend or are passed in substitution for the relevant statute and to all regulations relating to that statute;
- (d) words in the singular include the plural and vice versa;
- (e) reference to a month means a calendar month;
- (f) reference to a person means an individual, a body corporate, an association of persons (whether corporate or not), a trust or a state or agency of a state (in each case, whether or not having separate legal personality);
- (g) references to sections, clauses, sub-clauses, parts, annexures, attachments, appendices, schedules, paragraphs and sub-paragraphs are references to such as they appear in this Proposal and form part of this Proposal;
- (h) headings are included for ease of reference only and will not affect the construction or interpretation of this Proposal;
- (i) all monetary amounts are expressed in New Zealand currency;
- (j) references to obligations includes reference to covenants, undertakings, warranties and, generally, obligations or liabilities of any nature properly arising whether directly or indirectly, under or in respect of the relevant contract, agreement or arrangement;
- (k) all references to times are references to times in New Zealand;
- (l) if the Holder comprises more than one person, each of those person's obligations, as Holder, will be both joint and several.

**Schedule One: Provisions relating to the Schedule One Land**

---

**1 Details of Designation**

---

- 1.1 Under this Proposal the land shown edged in pink on the Plan and identified as CA1, being **1848** hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.
  
- 1.2 Under this Proposal the land shown edged in pink on the Plan and labelled as CA2 being **1216** hectares (approximately) is designated as land to remain conservation area.

## **Schedule Two: Provisions relating to the Schedule Two Land**

---

### **1 Details of designation**

---

1.1 Under this Proposal the land shown, edged in pink on the Plan and labelled as CA4, being **480** hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:

- (a) the granting of the concession substantially as set out in Appendix 4;

1.2 Under this Proposal the land shown edged in pink on the Plan and labelled as CA3, being **100** hectares (approximately) is designated as land to remain conservation area subject to:

- (a) the granting of the concession substantially as set out in Appendix 4;

### **2 Information Concerning Proposed Concession over CA 4**

---

#### *2.1 Description of proposed activity*

Grazing at any time of the year of not more than 1000 stock units on an annual basis.

#### *2.2 Description of place/s where activity may be carried out*

Approximately 480 hectares (approximately) of land located on Conservation land either side of Greta's Stream and edged in pink on the Plan.

#### *2.3 Description of the potential effects of the activity and actions that the proposed grantees of the concession proposes to take to avoid, remedy or mitigate any adverse effects:*

Potential effects of the activity include erosion, uneven nutrient transfer, grazing impacts on indigenous plants and reduction in surface and/or groundwater quality.

For the purposes of protecting the environment:

The Concessionaire must ensure that the Concessionaire, the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 10 (of the concession document).

#### *2.4 Details of the proposed type of concession*

The concession is a grazing concession.

#### *2.5 The proposed duration and reason/s for this duration*

24 years, as agreed by the Holder and the Commissioner of Crown Land, commencing on the date on which the surrender of Bendrose pastoral lease folio number CB895/96 becomes effective pursuant to the Crown Pastoral Land Act 1998.

#### *2.6 Information regarding the proposed Concessionaire*

The Concessionaire currently farms the Bendrose pastoral lease and has a good working knowledge of the limitations of grazing in this environment.



### **3 Information Concerning Proposed Concession over CA3**

---

#### *3.1 Description of proposed activity*

Grazing at any time of the year of not more than 100 stock units on an annual basis.

#### *3.2 Description of place/s where activity may be carried out*

Approximately 100 hectares (approximately) of land located on Conservation land either side of Greta's Stream and edged in pink on the Plan.

#### *3.3 Description of the potential effects of the activity and actions that the proposed grantees of the concession proposes to take to avoid, remedy or mitigate any adverse effects*

Potential effects of the activity include erosion, uneven nutrient transfer, grazing impacts on indigenous plants and reduction in surface and/or groundwater quality.

For the purposes of protecting the environment:

The Concessionaire must ensure that the Concessionaire, the Concessionaire's employees; agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 10 (of the concession document).

#### *3.4 Details of the proposed type of concession*

The concession is a grazing concession.

#### *3.5 The proposed duration and reason/s for this duration*

24 years, as agreed by the Holder and the Commissioner of Crown Land, commencing on the date on which the surrender of Bendrose pastoral lease folio number CB895/96 becomes effective pursuant to the Crown Pastoral Land Act 1998.

#### *3.6 Information regarding the proposed Concessionaire*

The Concessionaire currently farms the Bendrose pastoral lease and has a good working knowledge of the limitations of grazing in this environment.

**Schedule Three: Provisions relating to the Schedule Three Land**

---

**1 Details of designations**

---

- 1.1 Under this Proposal the land shown edged in green on the Plan, being **3598** hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:
- (a) Part IVA of the Conservation Act 1987;
  - (b) Section 11 of the Crown Minerals Act 1991.
  - (c) The easement as set out in Appendix 5.

**Schedule Four: Conditions**

---

nil

**Appendix 1: Consents – Example of Mortgagee Consent**

---

[ ] as Mortgagee under Mortgage [ ] (“the Mortgage”), hereby:

- (a) consents to acceptance of the Proposal dated [ ] (“the Proposal”) by [the Holder] (“the Holder”) pursuant to the Crown Pastoral Land Act 1998 and agrees and consents to the registration of the documents affecting the Freehold Land referenced in the Proposal prior to the registration of any new mortgage to be granted in its favour over the Freehold Land ; and
- (b) agrees to sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the Holder or the Commissioner to register a discharge of the Mortgage and any new mortgage over the Freehold Land.

Dated:

**SIGNED** by [ ] ) \_\_\_\_\_  
in the presence of: [ ] )

Witness Signature: \_\_\_\_\_

Witness Name:  
Occupation:  
Address:

**Appendix 1: Consents (continued) - Example of "Other" Consent**

---

[ ], being the party entitled to the benefit of [ ] registered against Lease [ ], hereby consents to the acceptance of the Proposal dated [ ] by [the Holder] pursuant to the Crown Pastoral Land Act 1998.

Dated:

**SIGNED** for and on behalf of ) \_\_\_\_\_  
[ ] )  
in the presence of: )

Witness Signature: \_\_\_\_\_

Witness Name:  
Occupation:  
Address:

**Appendix 2: Example of Solicitor's Certificate**

**Certifications**

I [EG BRADLEY] hereby certify as follows:

- BW Trust Management Limited one of the Holders with J D J Allen*
1. [[insert name of Holder] ("the Holder") is a duly incorporated company under the Companies Act 1993. The Holder's entry into and performance of its obligations under the Proposal dated [18.1.10] ("the Proposal") have been duly authorised by the directors and, if required, by the shareholders of the Holder. The Holder has executed the Proposal in accordance with its constitution.] **OR**

*J D J Allen and BW Trust Management Limited*  
The entry into the Proposal dated [18.1.2010] ("the Proposal") by [insert name of Holder] ("the Holder") and performance of the Holder's obligations under the Proposal have been duly authorised by the trustees of the [insert name of trust] in accordance with its trust deed **OR**  
*Allen Family Trust No 2*

[[insert name of Holder] ("the Holder") has delegated responsibility for signing the Proposal on its behalf to an attorney in accordance with its constitution. The attorney of the Holder has properly executed the Proposal in accordance with this power of attorney and in accordance with the Holder's constitution and a certificate of non-revocation is enclosed.]

2. The consent of each person that has an interest (registered or unregistered) in the Land (as that term is defined in the Proposal), to the Holder's acceptance of the Proposal has been obtained and included in the copy of the Proposal, signed by the Holder, that has been provided to the Commissioner.
3. [No consent, licence, approval or authorisation by any court, regulatory authority or governmental agency is required to enable the Holder to accept the Proposal, perform the Holder's obligations under the Proposal and to acquire the freehold interest in the Land (as defined in the Proposal).] **OR**

[All necessary consents, licences, approvals and authorisations required to enable the Holder to accept the Proposal, perform its obligations under it and to acquire the freehold interest in the Land (as defined in the Proposal) have been obtained. Evidence of the consents, licences, approvals and authorisations are attached to this letter.]

Yours faithfully

[signed by principal of law firm]

BRADLEY WEST LIMITED

*E. Bradley*  
Director

**Appendix 3: Indicative Fencing and Construction Requirements**

---

Nil

**Appendix 4: Form of Concession to be Created**

---



Concession number: \_\_\_\_\_

DATED \_\_\_\_\_

Between

MINISTER OF CONSERVATION  
("the Grantor")

and

JOHN DAVID JOSEPH ALLAN (as to a half share) and  
JOHN DAVID JOSEPH ALLAN and BW TRUST MANAGEMENT LIMITED  
(as to a half share)  
("the Concessionaire")

GRAZING CONCESSION  
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation  
*Te Papa Atawhai*

THIS LICENCE is made this day of

**PARTIES:**

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **JOHN DAVID JOSEPH ALLAN (as to a half share) and JOHN DAVID JOSEPH ALLAN and BW TRUST MANAGEMENT LIMITED (as to a half share)** ("the Concessionaire")

**BACKGROUND**

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area.
- B. Sections 66 of the Crown Pastoral Land Act 1998 authorise 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 Licence.

“**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.

“**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.

“**Concessionaire**” includes the Concessionaire’s successors, assigns, executors, and administrators.

“**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. It also includes, where relevant, the amount which the parties agree to be the new Concession Fee on a renewal of the Document.

“**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 the term of this Document; and includes any additional dates inserted into Item 9 of Schedule 1 following a renewal 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 Licence and any subsequent amendments and all schedules, annexures, and plans attached to it.

“**Final Expiry Date**” means the date specified in Item 5 of Schedule 1.

“**Land**” means a Conservation Area or a Reserve (whichever is relevant in the circumstances) being the area more particularly described in Item 1 of Schedule 1.

“**Licence**” for purposes of this Document is the Licence granted under this Document by the Grantor to the Concessionaire under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).

“**Penalty Interest Rate**” means the rate specified in Item 8 of Schedule 1.

“**Renewal Date**” means the date specified in Item 4(a) of Schedule 1.

“**Renewal Period**” means the period specified in Item 4(b) of the Schedule 1.

“**Reserve**” has the same meaning as “reserve” in section 2 of the Reserves Act 1977.

“**Structure**” includes a bridge, a culvert, and a fence.

“**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;
- (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 LICENCE**

2.1 In exercise of the Grantor's powers under either section 66 of the Crown Pastoral Land Act 1998 the Grantor **GRANTS** to the Concessionaire a **LICENCE** under either 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 Licence is for the Term specified in Item 3 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 Administration Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee and 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 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 and Administration 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 a result of the grant of this Licence.

**6.0 CONCESSION FEE AND ADMINISTRATION FEE REVIEW**

6.1 The Grantor will review the Concession Fee and the Administration 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. The Notice must also specify the Administration Fee which the Grantor intends to impose until the next Concession Fee Review Date.

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 notwithstanding anything in this clause, the new Administration Fee will be payable by the Grantor upon receipt of the Notice referred to in clause 6.3.

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 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, the Reserves Act 1977, the Health and Safety in Employment Act 1992, the Resource Management Act 1991, 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 at the Concessionaire's cost 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, indigenous animals and plants, or historic resources on the Land; or
- (b) bring any plants, or animals (other than farm stock described in Item 2 of Schedule 1, farm dogs and horses for purposes of the Concession Activity) 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) burn, 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, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 10.

10.4 The Concessionaire may bring firearms on to the Land for use in connection with the Concession Activity and pest control operations.

10.5 The Concessionaire for purposes of the Concession Activity may take onto or use farm vehicles on the Land on existing formed access tracks only.

#### **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, agents, contractors, licensees or invitees are having or may have an adverse effect on the environment and the Grantor considers that the effect can not 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, sublicense, 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. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause.

- 13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.
- 13.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the 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 the Administration Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days 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 28 days of receiving notification; or
  - (c) the Concessionaire ceases to conduct the Concession Activity; 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 the Health and Safety in Employment Act 1992; 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 ceases 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 Administration 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, contractors, or invitees 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 if required by the Grantor:
- (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, before commencing the Concession Activity and on each renewal of insurance provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

## **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 mediation with a mediator agreed between the parties.

18.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

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

18.5 Notwithstanding anything 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 District Law Society in the region in which the Land is situated 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.

18.6 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.



18.7 The parties agree that the results of any arbitration are to be binding on the parties.

## **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 on which it is dispatched or, if dispatched after 5.00pm 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 licence) 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.

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

Signed by \_\_\_\_\_ )  
for and on behalf of the Minister of Conservation )  
pursuant to a written delegation (or designation as )  
the case may be) in the presence of : )

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

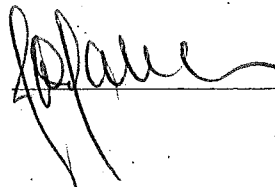
Address \_\_\_\_\_

Signed by **John David Joseph Allan** )  
as Concessionaire in the presence of : )

Witness J. Cromarty

Occupation J. Cromarty

Address Legal Executive  
Timaru

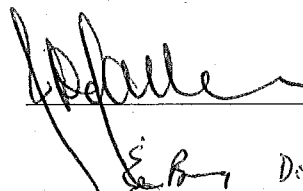

  
\_\_\_\_\_

Signed by **John David Joseph Allan and** )  
**BW Trust Management Limited** )  
As Concessionaire in the presence of: )

Witness J. Cromarty

Occupation J. Cromarty

Address Legal Executive  
Timaru

  
\_\_\_\_\_ *E. B. Director*  
 *J. Director*

## SCHEDULE 1

1. **Land:** (a) Lake Ohau Faces – CA4  
Conservation Area of 480 hectares approximately located between Gretas Stream and Dorcy Stream on the eastern shore of Lake Ohau being part of \_\_\_\_\_ situated in the Canterbury Land District and shown on the plan attached to the proposal as CA4 and herein referred to as the Land.
- (b) Ruataniwha Conservation Area – CA3  
Conservation Area of 100 hectares approximately located on the northern end of Ruataniwha Conservation Area being Part Rural Section 36867 SO 18942 Blk VII and VIII Campbell Survey District and shown on the plan attached to the proposal as CA3 and herein referred to as the Land.
2. **Concession Activity:**
- (a) Lake Ohau Faces  
Grazing at any time of the year of not more than 1,000 stock units on an annual basis, together with the use of the structures and buildings situated on the Land for activities associated with such grazing.
- (b) Ruataniwha Conservation Area  
Grazing at any time of the year of not more than 100 stock units on an annual basis.  
(see definition of Concession Activity in clause 1.1)
3. **Term:** 24 years commencing on the date on which the Surrender of Bendrose Pastoral Lease folio number CB895/96 (Canterbury Registry) becomes effective pursuant to the Crown Pastoral Land Act 1998, being the .....day of .....200.. (see clause 3)
4. **Renewal:** (a) No Rights of renewal  
(b) **Right of first refusal:** If, at the expiry date of the licence, the Grantor wishes to again offer a grazing licence of the land, the Grantor shall offer to the Grantee a right of first refusal to the licence of the land on terms and conditions no less favourable than the Grantor proposes in respect of any third party. If the Grantee does not accept those terms and conditions within a period of three (3) months then the Grantor shall be free to offer a licence for the Land to any third party on those terms and conditions. (see clause 3)
5. **Expiry Date:** 24 years after commencement subject to a right of first refusal, being the \_\_\_\_ day of \_\_\_\_\_ 200\_\_ (see clause 3)
6. (a) **Concession Fee:** \$5.00 per stock unit per annum + GST **Total \$ 5,500 + GST** (\$5 x 1,000 x 52/52 + \$5 x 100 x 52/52) PROVIDED HOWEVER that in the event that the stock number grazed in any one year is less than the stock unit limits stated in the concession activity above 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:** \$200.00 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, being the 1<sup>st</sup> July \_\_\_\_\_ and 1<sup>st</sup> January \_\_\_\_\_ (see clause 4)
8. **Penalty Interest Rate:** (see clause 4.2)  
Double the Grantor's bank's current highest 90 day bank bill buy rate
9. **Concession Fee Review Date:** Every three years from commencement date. (see clause 6)

10. **Public Liability General Indemnity Cover:** for \$1,000,000 (see clause 15.3)
11. **Public Liability Forest & Rural Fire Extension:** for \$1,000,000 (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:** NIL (see clause 15.3)
14. **Environmental Monitoring Contribution:** To be negotiated between the Grantor and the Concessionaire if required under clause 16 (Environmental Monitoring ) of the concession document. (see clause 16)

15. **Address for Notices:**

(see clause 19)

(a) **Grantor**

Minister of Conservation  
Department of Conservation  
195 Hereford St  
Private Bag 4715  
CHRISTCHURCH  
Ph (03) 371 3700  
Fax (03) 365 1388

(b) **Concessionaire**

John D J Allan and  
John D J Allan and BW Trust Management Trust Limited  
Bendrose Station  
PO Box 84  
TWIZEL  
Ph: 03-435-0843  
Fax:

**SCHEDULE 2*****Special Conditions*****Land Management**

1. The Concessionaire is allowed grazing at any time of the year of not more than 1,000 stock units on an annual basis on the Lake Ohau faces (CA4) and grazing at any time of the year of not more than 100 stock units on an annual basis on the Ruataniwha Conservation Area (CA3), although the concessionaire may, with prior written consent of the Grantor, increase the stock numbers in any one 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. Cultivation of the soil and any maintenance of the Land and any other earth disturbance except for existing track maintenance requires the written consent of the Grantor.
4. The Concessionaire may oversow and topdress the Land and chemically or mechanically clear the Land of weeds .
5. The public shall at all times have access to and across all parts of the Land. Where fences occur the Grantor will erect gates or stiles in suitable places and mark the public access route through the Land so as to minimize farming and stock disturbance.

**Fencing**

6. The Concessionaire must, at no expense to the Grantor, ensure that stock is adequately contained within the Land.
7. 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 if the purpose of the fencing is to assist the Concessionaire to comply with clause 6.
8. The Concessionaire must keep and maintain all fences (including boundary fences) or gates on the Land in good repair.

**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 may set up and design and undertake a monitoring program:
  - i) to ensure that the ecological integrity of the land 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 should be reviewed at three 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 5: Form of Easement to be continued**

---

Pursuant to section 36(3)(c) of the Act, the continuation in force of an existing registered right of way easement on the terms of the Deed of Easement attached.

YEC 8331958.1 Deed of I

Cpy-01/03, Pgs-007,02/11/09,15:54



DocID: 212470986

Parties

Her Majesty the Queen Acting By and Through  
The Commissioner of Crown Lands

And

High Country Rosehip Orchards Limited

---

DEED OF EASEMENT

---



DEED OF EASEMENT

DATE

10 September

2009

PARTIES

- 1 HER MAJESTY THE QUEEN ACTING BY AND THROUGH THE COMMISSIONER OF CROWN LANDS pursuant to the Land Act 1948 ("Grantor")
- 2 HIGH COUNTRY ROSEHIP ORCHARDS LIMITED a duly incorporated company having its registered office in Dunedin ("Grantee")

BACKGROUND

- A The Grantee is the registered proprietor an estate in fee simple in the land containing 2105.4216 hectares more or less and described as Section 1, 3 and 8 Survey Office Plan 384036 and contained in Certificate of Title 387077 (Canterbury Land Registry) ("Grantee's Land").
- B The Grantee seeks a right of way over part of the Grantor's Land described in this Deed as the Easement Land for the purpose of gaining access to Section 3 of the Grantee's Land.
- C The Grantor has agreed to grant the easement sought on the terms and conditions now stated.
- D The Parties agree that this Deed is in substitution for and replaces the Prior Deed to the intent that on execution of this Deed the Prior Deed will have no effect.

THIS DEED RECORDS

1 Definitions and Interpretation

1.1 Definitions: In this Deed unless the context otherwise requires:

"Commencement Date" means the 14<sup>th</sup> October 2002.

"Deed" means this Deed of Easement.

"Easement Land" means that part of the Grantor's Land marked "A" on SO 380742

"Grantee" includes its successors in title, all servants, agents, employees, workers, and contractors, and any licensee, lessee, or tenant of the Grantee.

"Grantor's Land" means the property known as Bendrose Station being an estate in fee simple containing 5927.870 hectares more or less and being part of the land contained in Certificate of Title 895/96 (Canterbury Land Registry).

"Lessee" means the Lessee under the Pastoral Lease and includes its respective transferees, successors and assigns.

"Pastoral Lease" means Lease number 97 contained in Certificate of Title 895/96 (Canterbury Land Registry)

"Prior Deed" means the deed between the parties dated 14 October 2002.

1.2 Interpretation: In this Deed:

- a Headings are for convenience only and shall not affect interpretation.



- b Words denoting the singular number shall include the plural and vice versa.
- c Words denoting any gender shall include all genders.
- d Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings.
- e Words denoting natural persons shall include corporations and vice versa.
- f References to clauses are to clauses in this Deed.
- g References to any legislation or to any provision of any legislation shall include any modification or re-enactment of that legislation or any legislative provision substituted for, and all regulations and statutory instruments issued under, such legislation or provision.

**2 Grant of Rights**

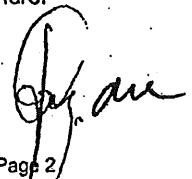
- 2.1 The Grantor grants to the Grantee a Right of Way over the Easement Land being appurtenant to the Grantee's Land.
- 2.2 The Right of Way shall be granted from the Commencement Date for the period of twenty seven (27) years with an expiry date of the 30<sup>th</sup> June 2028.

**3 Consideration**

- 3.1 In consideration of the Lessee consenting to the grant of the Right of Way the Grantee has paid to the Lessee the sum of \$0.10 cents and has consented to the grant of an electricity easement over the Grantee's Land without requiring any compensation for the grant of the electricity easement.
- 3.2 The Lessee has acknowledged the receipt of the sum of \$0.10 cents.
- 3.3 The Grantee covenants to observe the obligations imposed on it by this Deed.

**4 Obligations of the Grantee**

- 4.1 The Grantee covenants:
  - a To remain on the tracks over the Easement Land;
  - b To only use vehicles that are reasonably used on farm land;
  - c To lock any gates that have been unlocked for the purpose of using the Right of Way;
  - d To take all reasonable precautions to guard against danger on the Grantor's Land;
  - e Not to damage or disturb the surface of the Grantor's Land and/or restore any land so damaged or disturbed to its former condition;
  - f To maintain and repair any tracks, fences, gates, drains, buildings or other structures damaged as a result of the activities permitted by this Deed.
- 4.2 The Grantee covenants to compensate the Lessee for any damage done to stock on the Grantor's Land.
- 4.3 The Grantee will not obstruct the Grantor or the Grantor's agents, employees and/or contractors of the Grantor.
- 4.4 The Grantee shall only carry out activities that are reasonable on farm land.



4.5 The Grantee shall comply with all relevant statutes and regulations.

**5 Access Track**

5.1 Where any access track is required by the Grantee for any activities permitted by this Deed, the Grantee shall maintain and repair the access track at the Grantee's expense. The Grantor shall determine the standard of such maintenance and repair work from time to time.

**6 Ownership of Structures**

6.1 If the Grantee installs structures for the purpose of this Deed, the Grantee shall remove such structures at the expiry of this Deed. Should the Grantee not remove such structures the Grantor may remove and restore the land to pre-easement condition and recover the costs from the Grantee.

**7 Covenants Implied by the Property Law Act 2007 and Land Transfer Act 1952**

7.1 The rights and powers conferred in the Property Law Act 2007 and the Land Transfer Act 1952 apply in so far as they do not conflict with this Deed.

**8 Costs**

8.1 The Grantee shall pay all the costs for preparation and registration of this Deed.

**9 Indemnity**

9.1 The Grantee indemnifies the Grantor against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor in connection with this Deed or as a direct result of the exercise by the Grantee of its rights under this Deed, or any breach by the Grantee of its obligations, undertakings, or warranties contained or implied by this Deed.

**10 Exclusion of Grantor's Liability**

10.1 The Grantor accepts no liability in contract, tort or, otherwise in relation to any aspect of this Deed, including any consequential loss or anything arising directly or indirectly from this Deed or any activity of the Grantor on the Grantor's Land.

**11 Termination**

11.1 Subject to clause 11.2 the Grantor in good faith may bring this Deed to an end if the Grantee is in breach of its terms or for any other legitimate reason by giving twenty one days written notice to the Grantee in accordance with clause 15.1 of this Deed.

11.2 If within the notice period provided in clause 11.1 the Grantee disputes either that the Grantor is acting in good faith, that the Grantor is in breach or that there is legitimate reason to terminate then that dispute shall be dealt with at first instance in accordance with clause 14.1 of this Deed and the Deed shall remain in force pending determination of that dispute.

**12 Registration**

12.1 The Grantee may on the giving of notice in writing to the Grantor require the right of way to be registered in the basis that all costs including survey and legal costs and registration shall be borne by the Grantee.

**13 Grantor's Rights of Delegation**

13.1 All rights, benefits and obligations of the Grantor arising under this Deed may be exercised by any person duly appointed by the Grantor PROVIDED THAT the exercise of any such rights, benefits or obligations by that person shall not limit the liability of the Grantor in the performance or observance of the provisions of this Deed.



14 Disputes

14.1 Should any dispute or difference arise between the parties concerning this Deed or the easements created or intended to be created under this Deed, the parties agree that they will in good faith endeavour to resolve the dispute by consultation and negotiation. The parties acknowledge that Section 17 of the Land Act 1948 applies.

15 Notices

15.1 A written notice may be served on any party either personally or by forwarding such notice by way of post, facsimile or by electronic transmission. A notice served by facsimile or electronic transmission shall be deemed to have been served on the day following the completion of the transmission. A notice served by post shall be deemed to have been served at the expiration of 48 hours after the envelope containing the notice was posted.

16 Severability

16.1 Where any part of this Deed is held to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

EXECUTED as a Deed

SIGNED for and on behalf of  
HER MAJESTY THE QUEEN BY  
THE COMMISSIONER OF CROWN LANDS  
in the presence of

)  
)  
)  
)  
)  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**DARYL HEJLEMANN NIELSEN**  
**PORTFOLIO MANAGER PASTORAL**  
**CROWN PROPERTY MANAGEMENT**  
**C/LINZ, CHRISTCHURCH**

**Mathew Clark (Manager Pastoral)**  
**Land Information New Zealand**  
**Under delegated authority of the**  
**Commissioner of Crown Lands.**

SIGNED by  
HIGH COUNTRY ROSEHIP ORCHARDS LIMITED  
as Grantee in the presence of

)  
)  
)  
)  
)  
\_\_\_\_\_  
Director

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

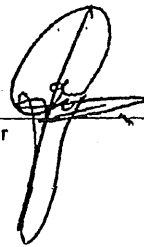
*Jane Claire Rose*  
*Secretary*  
*Dunedin*

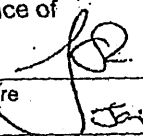
**CAVEATORS CONSENT**

**HIGH COUNTRY ROSEHIP ORCHARDS LIMITED** the Caveator under and by virtue of Caveat number 7928586.1 **HEREBY CONSENTS** to the registration of the within Deed of Easement but without prejudice to the Caveator's rights, powers and remedies under the said Caveat.

Dated the 3<sup>rd</sup> day of July 2009

SIGNED by  
**HIGH COUNTRY ROSEHIP ORCHARDS LIMITED**  
in the presence of

  
\_\_\_\_\_  
Director

Witness signature   
\_\_\_\_\_  
Full name Janice Claire Reine  
\_\_\_\_\_  
Occupation Solicitor  
\_\_\_\_\_  
Address Dunedin  
\_\_\_\_\_

**Execution Section**

---

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

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



---

Anthony Harts  
Witness

Solicitor

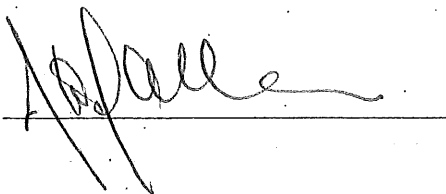
Occupation

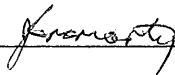
100 Wadestown Rd

Address

Wellington

**SIGNED** by **John David Joseph Allan**, in respect to his half share and in his capacity as Trustee in the other half share in the presence of:



Witness 

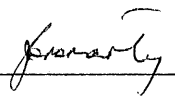
Occupation **J. Cromarty**  
**Legal Executive**  
**Timaru**

Address

**SIGNED** for and behalf of; **BW Trust Management Limited** by

in the presence of:

 Director

Witness 

Occupation **J. Cromarty**  
**Legal Executive**  
**Timaru**

Address

