

Crown Pastoral Land Tenure Review

Lease name: CAMBRIAN

Lease number: PO 375

Substantive Proposal

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

September

10

EXECUTION
COPY

PROPOSAL FOR REVIEW OF CROWN LAND

Under Part 2 of the Crown Pastoral Land Act 1998

Date: 12 April 2010

Parties

Holder: Ottrey Farms Limited

C/- Malloch McClean
3 Fairfield Street
Gore

Commissioner of Crown Lands:

C/- Manager for Tenure Review
Darroch Limited
PO Box 21
Alexandra

The Land

Lease: P375, Cambrian

Legal Description: Section 1 Survey Office Plan 22848 and Section 1 Survey Office Plan 22850

Area: 981.8455 Hectares more or less

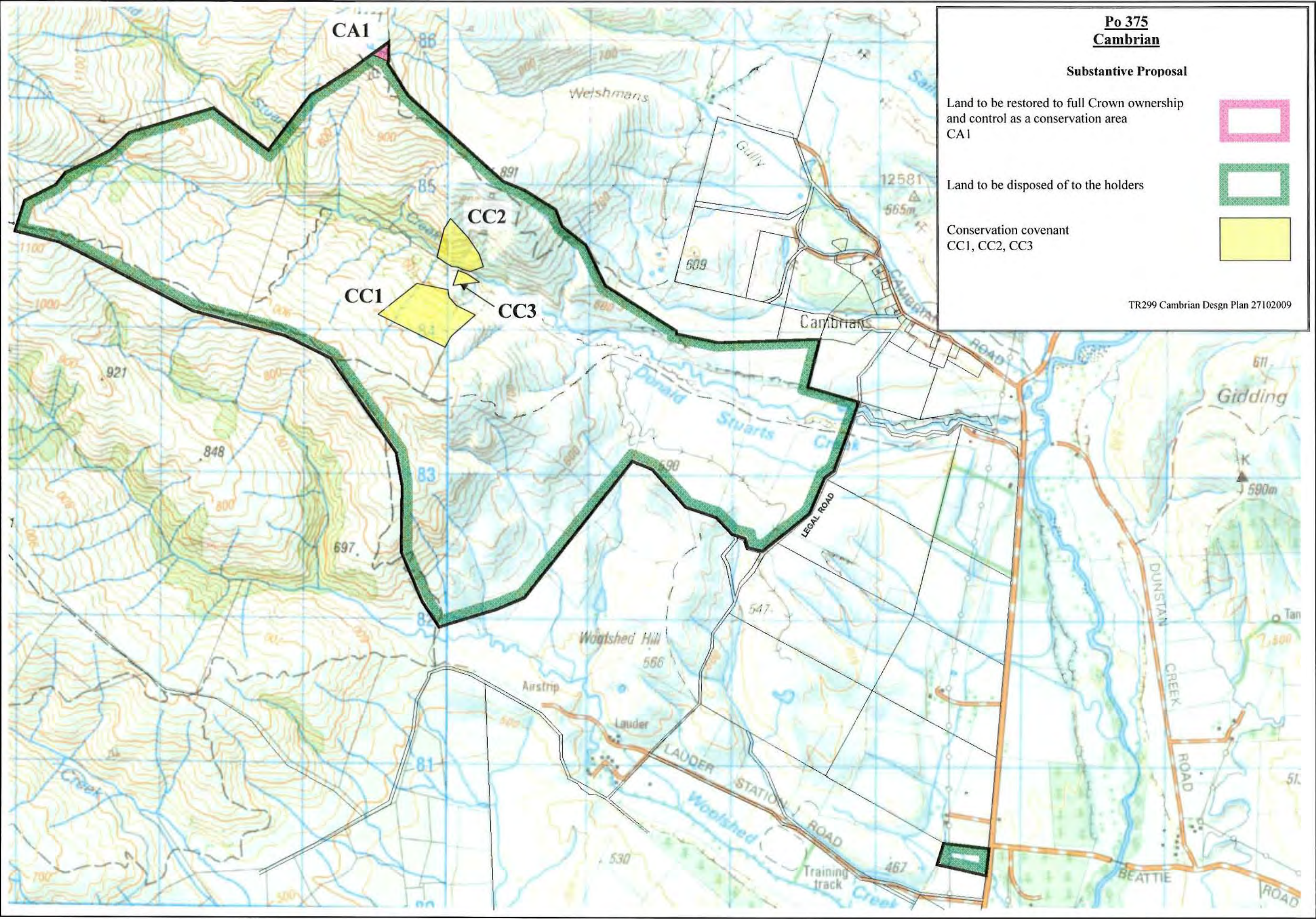
Certificate of Title/Unique Identifier: OT 12C/1138

Summary of Designations

Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown edged in pink and labelled CA1 on the Plan) is to be restored to, or retained by, the Crown as set out in Schedules One and Two; and
- (b) The Freehold Land (shown edged in green on the Plan) is to be disposed by freehold disposal to the Holder as set out in Schedule Three.

1 The Plan



2 Conditions

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

3 Settlement

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

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

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

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

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

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

or

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

(i) has been agreed or determined; and

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

4 Holder's Payment

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

- 4.2 If the Holder fails to pay the Holder's Payment or any part of it or any other money to the Commissioner or to the duly appointed agent of the Commissioner on the Settlement Date clause 19 will apply.

5 Commissioner's Payment

- 5.1 The Commissioner shall pay the Commissioner's Payment to the Holder on the Settlement Date.
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- 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 provided under this Proposal). The Holder will not be entitled to any compensation for any of its improvements, fencing, buildings, structures, fixtures, fittings or chattels which are on the Crown Land as at the Vesting Date.

11 Fencing and Construction Works

- 11.1 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, the Commissioner will, subject to clauses 11.2 and 14.4, erect at the Commissioner's cost new fencing:
- (a) approximately along the line marked "New Fencing" on the Plan; and
 - (b) to the specifications in Appendix 3;
- ("the Fencing").
- 11.2 If the Fencing requires a resource consent or any other consent from any local or territorial authority ("the Fencing Consent"), the following provisions shall apply:
- (a) The Commissioner shall use reasonable endeavours to obtain the Fencing Consent within 6 months of this Proposal taking effect pursuant to the Act.
 - (b) If the Fencing Consent:
 - (i) is not obtained within 6 months of this Proposal taking effect pursuant to the Act; and/or
 - (ii) is obtained on terms which are not satisfactory to the Commissioner in all respects;

the Commissioner may, acting reasonably, elect to do any one or more of the following:

 - (iii) erect the Fencing in a position different from that shown on the Plan;

- (iv) erect the Fencing over a shorter distance than that shown on the Plan; or
 - (v) erect the Fencing to specifications different from those in Appendix 3.
- 11.3 If the Commissioner has not completed the Fencing by the Settlement Date, the Holder agrees that the Commissioner may register a covenant, on terms entirely satisfactory to the Commissioner (in the Commissioner's sole discretion), over the Freehold Land to enable the Commissioner to complete the Fencing. The Holder will do all things necessary (including signing any document) to enable the Commissioner to register such a covenant.
- 11.4 The ongoing maintenance of the Fencing referred to in clauses 11.1 and 11.2 will be subject to the terms of the Fencing Act 1978.
- 11.5 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, [the Commissioner] [the Holder] [both parties] will, subject to clause 11.6, undertake the construction works set out in Appendix 3 on the terms and conditions set out in Appendix 3 ("the Construction Works").
- 11.6 If any Construction Works for which the Commissioner is liable, or jointly liable with the Holder, require a resource consent or any other consent from any local or territorial authority ("the Works Consent"), the following provisions shall apply:
- (a) The Commissioner shall use reasonable endeavours to obtain the Works Consent within 6 months of this Proposal taking effect pursuant to the Act.
 - (b) If the Works Consent:
 - (i) is not obtained within 6 months of this Proposal taking effect pursuant to the Act; and/or
 - (ii) is obtained on terms which are not satisfactory to the Commissioner in all respects;
- the Commissioner may, acting reasonably, elect to vary the extent of the Construction Works in question and/or the terms and conditions upon which they are carried out.

12 Apportionments

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

made or received by one party on behalf of the other for the period from the Settlement Date to the date on which a new certificate of title issues for the Freehold Land.

13 Risk

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

14 Survey

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

15 Holder's Acknowledgements

- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) it is obtaining the freehold interest in the Freehold Land:
 - (i) "as is", solely in reliance on its own investigations and judgement; and
 - (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
 - (b) the Holder has carried out all inspections of the Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
 - (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
 - (i) the Resource Management Act 1991 and the Resource Management Amendment Act 2005; 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 Building Amendment Act 2009; 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 10th working day following the Unconditional Date, the Commissioner will provide to the Holder a GST invoice in respect of the supply evidenced by the Holder's Consideration. The invoice will specify the Commissioner's GST Date.
- 20.3 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 10th working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration.
- 20.5 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 nomination or assignment

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

24 Recreation Permit

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

25 Consents for Activities

- 25.1 If the Holder has been granted a consent by the Commissioner to do an activity on the land under sections 15 or 16 of the Act, and the area over which the consent is exercised is designated in the proposal as Crown Land then the Holder agrees to act in good faith whilst exercising the terms of consent and not damage or destroy the Crown Land or anything thereon.

26 General

- 26.1 This Proposal and the Notice:
- (a) constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and
 - (b) supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and the Holder relating to the Tenure Review.

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

27 Interpretation

27.1 Definitions

In this Proposal unless the context otherwise requires:

Act means the Crown Pastoral Land Act 1998;

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

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

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

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

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

Default GST means any additional GST, penalty or other sum levied against either the Commissioner or the Holder under the Goods and Services Tax Act 1985 or the Tax Administration Act 1994 by reason of either the Commissioner or the Holder failing to pay

GST as required by this Proposal. It does not include any sum levied against the Commissioner or the Holder by reason of a default by the Commissioner after payment of GST to the Commissioner by the Holder or by reason of a default by the Holder after payment of GST to the Holder by the Commissioner;

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

Fencing means any stock proof farm fence.

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

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

Freehold Land means the land set out in Schedule Three;

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

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

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

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

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

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

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

Mortgagee means the holder of any Mortgage;

Notice means the notice to the Holder setting out:

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

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

Plan means the plan of the Land showing all designations on page 2 of this Proposal;

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

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

Settlement Date means the settlement date defined in clause 3.1;

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

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

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

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

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

Works Consent means any and all consents required under the Resource Management Act 1991 and/or the Building Act 2004 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 persons' 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 and labelled "CA1" on the Plan, being **1** hectare (approximately), is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

Schedule Two: Provisions relating to the Schedule Two Land

1 Details of designation

1.1 Nil

Schedule Three: Provisions relating to the Schedule Three Land

1 Details of designation

- 1.1 Under this Proposal the land shown edged in green on the Plan, being **981** 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; and
 - (b) Section 11 of the Crown Minerals Act 1991; and
 - (c) the covenants (shown on the Plan shaded yellow and marked CC1, CC2 and CC3) substantially as set out in Appendix 4; and
 - (d) the continuation in force of Deed of Easement OT16D/601 a copy of which is included as Appendix 5; and
 - (e) the continuation in force of Deed of Easement 5495395.5 a copy of which is included in Appendix 6; and
 - (f) the continuation in force of Deed of Easement 7393626.1 a copy of which is included in Appendix 7.

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 [] hereby certify as follows:

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

The entry into the Proposal dated [] ("the Proposal") by [insert name of Holder] ("the Holder") and performance of the Holder's obligations under the Proposal have been duly authorised by the trustees of the [insert name of trust] in accordance with its trust deed **OR**

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

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

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

Yours faithfully

[signed by principal of law firm]

Appendix 3: Indicative Fencing and Construction Requirements

Fenceline

Length and location: 1500m (approximately) marked C-D-E-A, F-G-H-I-F and W-X-Y on the fencing plan

Type: Seven wire

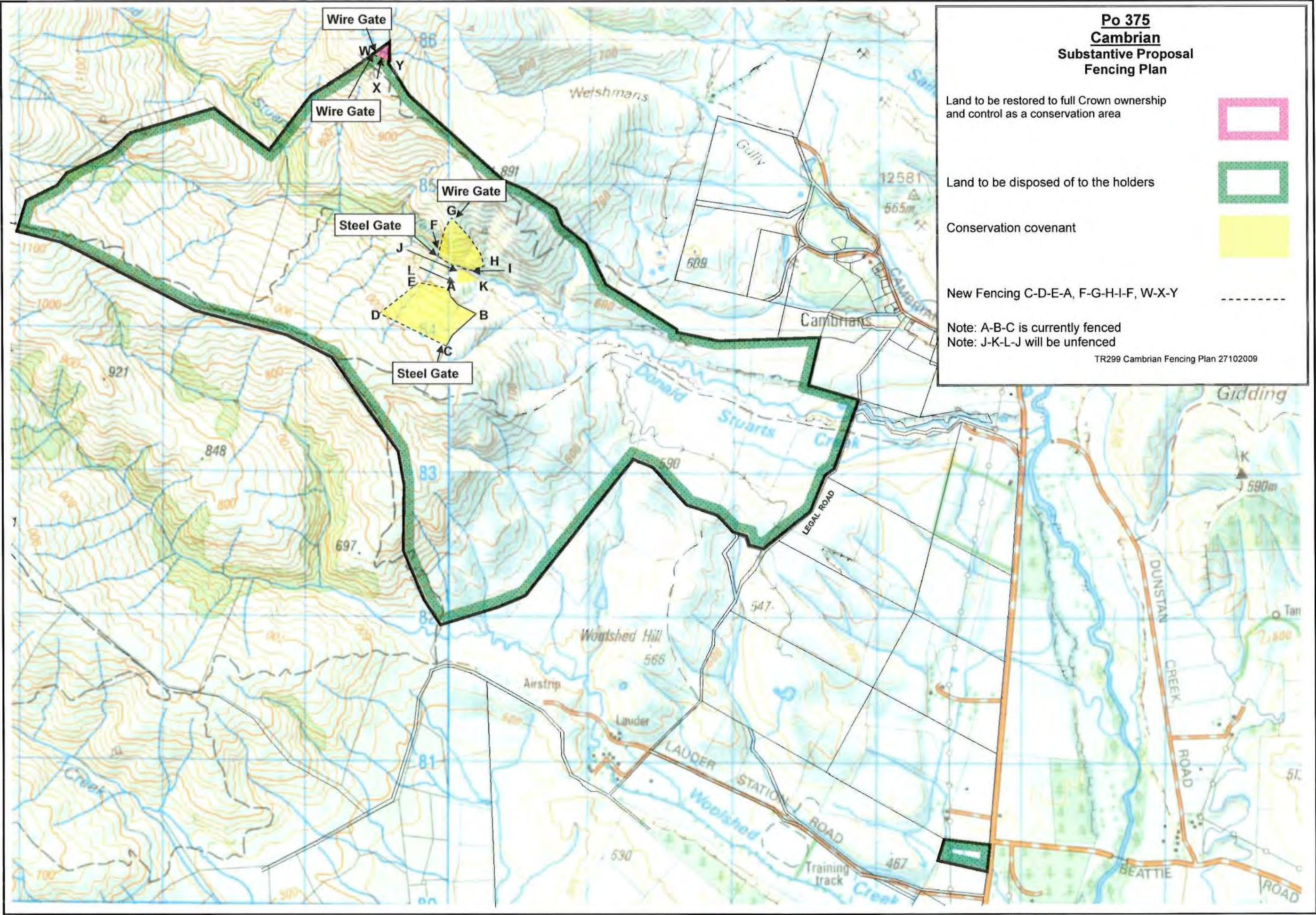
Specifications:

- The fence is to be constructed of seven HT (2.4mm) wires. The fence is to include a Number 8 gauge bottom wire and a top barbed wire.
- 2.1 metre treated timber strainers with treated timber stays to be used for gateways and end of strains.
- Gates are to be erected as shown on the fencing plan
- 100-125mm treated timber posts to be used where required.
- T-irons may be used with cross bar instead of posts on high spots.
- All strainers, angle posts and dip posts to be driven or dug in and rammed and footed with acceptable footing material. No. 8 or No. 9 wire to be used on foots. All dips and hollows to be tied down.
- All strainers and angles to be mortised, stayed and blocked. Stays to be one third of the way up posts.
- Tie-backs are permitted on both sides of the fence.
- All wires are to be securely and neatly tied off and strained evenly. Bottom wire to be kept 15 cm off the ground. The line to be hand cleared where required.
- Post staples to be barbed and driven well in but allow the wire to run through.
- Posts to be driven or dug in to such a depth that 112cm (44") remains out of the ground.
- Strainers and angle posts to be dug in to such a depth that 117cm (46") remains out of the ground.
- Under no circumstances are any strainers, posts or stays to be shortened either prior to or subsequent to their placement in the ground.
- Post and four waratah standards per 20 metres to be used. Waratah standards to be mostly 1.5m long with 1.35m standards allowed on rocky ground.
- Triplex strainers to be used on all strains.
- No mechanical line clearance is to be undertaken.

Construction

Nil

NOTE: Fences may not be completed at settlement



Appendix 4: Form of Covenants to be created

DATED _____

Between

COMMISSIONER OF CROWN LANDS
Pursuant to Section 80 of the Crown Pastoral Land Act 1998

and

MINISTER OF CONSERVATION
(“the Minister”)

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



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

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

AND **MINISTER OF CONSERVATION**

BACKGROUND

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

OPERATIVE PARTS

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

1. INTERPRETATION

- 1.1 In this Covenant unless the context otherwise requires:

“Act”	means the Reserves Act 1977.
“Covenant”	means this Deed of Covenant made under section 77 of the Act.
“Director-General”	means the Director-General of Conservation.
“Fence”	includes a gate.
“Fire Authority”	means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
“Land”	means the land described in Schedule 1.
“Minerals”	means any mineral that is a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
“Minister”	means the Minister of Conservation.
“Natural Water”	includes water contained in streams the banks of which have, from time to time, been realigned.

“Owner”	means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.
“Party” or “Parties”	means either the Minister or the Owner or both.
“Values”	means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
“Working Day”	means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

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

2. OBJECTIVE OF THE COVENANT

- 2.1 The Land must be managed so as to preserve the Values.

3. THE OWNER’S OBLIGATIONS

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out or allow to be carried out on or in relation to the Land:
 - 3.1.1 grazing of the Land by livestock;
 - 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
 - 3.1.3 the planting of any species of tree, shrub or other plant;
 - 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
 - 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
 - 3.1.6 any cultivation, earth works or other soil disturbances;

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

4. THE MINISTER'S OBLIGATIONS

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

5. IMPLEMENTATION OF OBJECTIVES

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

6. DURATION OF COVENANT

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

7. OBLIGATIONS ON SALE OF LAND

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

8. MISCELLANEOUS MATTERS

8.1 Rights

- 8.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

8.2 Trespass Act:

- 8.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 8.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

8.3 Reserves Act

- 8.3.1 Subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

8.4 Titles

- 8.4.1 This Covenant must be signed by the Commissioner of Crown Lands and the Minister and registered against the Certificate of Title to the Land.

8.5 Acceptance of Covenant

- 8.5.1 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

8.6 Fire

- 8.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land;
- 8.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:
- 8.6.2.1 requested to do so; or
- 8.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

9. NOTICES

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.
- 9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of pre-paid post, on the third Working Day after posting;
 - (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 9.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

10. DEFAULT

- 10.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:
- 10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and
 - 10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.
- 10.2 Should either the Minister or the Owner become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 10.2.1 advise the defaulting party of the default.
 - 10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
 - 10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

11. DISPUTE RESOLUTION PROCESSES

- 11.1 If any dispute arises between the Minister and the Owner in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 11.2 **Mediation**
- 11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;
 - 11.2.2 if the parties do not agree on a mediator, the President of the local branch of the New Zealand Law Society in the region in which the Land is situated is to appoint the mediator.
- 11.3 **Failure of Mediation**
- 11.3.1 in the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;

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

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

12. JOINT OBLIGATIONS

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

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

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

Witness: _____

Address : _____

Occupation: _____

Signed by _____ exercising his/her _____)
powers under section 117 of the Reserves Act 1977 _____)
as designated Commissioner and acting for and on _____)
behalf of the Minister of Conservation _____)
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

As marked CC1 and CC2 and shaded yellow on the *Designations Plan*.

2. Address for Service¹

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

77 Stuart Street
PO Box 5244
Fax (03) 477-8626
DUNEDIN

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

Cambrian Station 911 Loop Road, Becks
Fax (03) 447-3073
R D 0 OMAKAU

3. Values of Land to be Protected

Preserving the natural environment and landscape amenity.

The Land contains shrubland, predominantly *Kunzea ericoides* (kanuka) with a secondary component of *Leptospermum scoparium* (manuka). Other common native species include *Podocarpus hallii* (Halls totara), *Carmichaelia crassicaule* (coral broom), *Carmichaelia petriei* (native broom), *Olearia lineata* and *O. bullata*, *Discaria toumatou* (matagouri), *Coprosma propinqua* (mingimingi) and *Chionochloa rigida* (narrow-leaved snow tussock).

The native woody species are expanding into areas of more open tussock and grassland. Of particular note is the presence of young Halls totara away from rocky fire refuges.

This indigenous vegetation in conjunction with the rocky spurs and steep slopes form a semi-natural scene in an otherwise modified landscape. These values are particularly threatened by vegetation removal, earthworks and exotic forestry.

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions for both CC1 and CC2

1. Clause 3.1.4 is deleted and replaced with the following:
 - 3.1.4 the erection of any fence, building, structure or other improvement for any purpose, other than repairing any existing fence, building, structure or other improvements on the Land, or erecting any replacement fence, building, structure or other improvements on the Land in place of any existing facility.
2. Upon request, the Owner must allow public foot access to the Land. Requests for access may be declined if the presence of walkers would be incompatible with farming operations, including but not limited to lambing, calving, application of chemical sprays and burning.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

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

Solicitor for the Minister

**COMMISSIONER OF CROWN
LANDS**

to

MINISTER OF CONSERVATION

Solicitor

Department of Conservation

DOCDM -55497 – Conservation Covenant under Reserves Act 1977 – Version 5.0
docDM-414359 - Cambrian (375) covenant CC1 CC2 (prev.Otaco-43657)

September 2006
23 December 2009

DUNEDIN

DATED _____

Between

COMMISSIONER OF CROWN LANDS
Pursuant to Section 80 of the Crown Pastoral Land Act 1998

and

MINISTER OF CONSERVATION
("the Minister")

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



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

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

AND **MINISTER OF CONSERVATION**

BACKGROUND

- A. The Commissioner of Crown Lands is deemed for the purposes of section 77 of the Reserves Act 1977 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
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OPERATIVE PARTS

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“Natural Water”	includes water contained in streams the banks of which have, from time to time, been realigned.
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“Party” or “Parties”	means either the Minister or the Owner or both.
“Values”	means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
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1.2 For avoidance of doubt:

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

2. OBJECTIVE OF THE COVENANT

- 2.1 The Land must be managed so as to preserve the Values.

3. THE OWNER’S OBLIGATIONS

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out or allow to be carried out on or in relation to the Land:
 - 3.1.1 grazing of the Land by livestock;
 - 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
 - 3.1.3 the planting of any species of tree, shrub or other plant;
 - 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
 - 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
 - 3.1.6 any cultivation, earth works or other soil disturbances;
 - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
 - 3.1.8 the damming, diverting or taking of Natural Water;

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

4. THE MINISTER'S OBLIGATIONS

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

5. IMPLEMENTATION OF OBJECTIVES

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

6. DURATION OF COVENANT

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

7. OBLIGATIONS ON SALE OF LAND

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

8. MISCELLANEOUS MATTERS

8.1 Rights

- 8.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

8.2 Trespass Act:

- 8.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 8.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

8.3 Reserves Act

- 8.3.1 Subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

8.4 Titles

- 8.4.1 This Covenant must be signed by the Commissioner of Crown Lands and the Minister and registered against the Certificate of Title to the Land.

8.5 Acceptance of Covenant

- 8.5.1 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

8.6 Fire

- 8.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land;
- 8.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:
- 8.6.2.1 requested to do so; or
- 8.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

9. NOTICES

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.
- 9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of pre-paid post, on the third Working Day after posting;
 - (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 9.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

10. DEFAULT

- 10.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:
- 10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and
 - 10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.
- 10.2 Should either the Minister or the Owner become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 10.2.1 advise the defaulting party of the default.
 - 10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
 - 10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

11. DISPUTE RESOLUTION PROCESSES

- 11.1 If any dispute arises between the Minister and the Owner in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 11.2 **Mediation**
- 11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;
 - 11.2.2 if the parties do not agree on a mediator, the President of the local branch of the New Zealand Law Society in the region in which the Land is situated is to appoint the mediator.
- 11.3 **Failure of Mediation**
- 11.3.1 in the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;

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

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

12. JOINT OBLIGATIONS

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

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

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

Witness: _____

Address : _____

Occupation: _____

Signed by _____ exercising his/her _____)
powers under section 117 of the Reserves Act 1977 _____)
as designated Commissioner and acting for and on _____)
behalf of the Minister of Conservation _____)
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

As marked CC3 and shaded yellow on the proposed designation plan.

2. Address for Service¹

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

77 Stuart Street
PO Box 5244
Fax (03) 477-8626
DUNEDIN

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

Cambrian Station 911 Loop Road, Becks
Fax (03) 447-3073
R D 0 OMAKAU

3. Values of Land to be Protected

Preserving the natural environment and landscape amenity.

The Land contains shrubland, predominantly *Kunzea ericoides* (kanuka) with a secondary component of *Leptospermum scoparium* (manuka). Other notable native species include *Podocarpus hallii* (Halls totara), *Carmichaelia petriei* (native broom), *Olearia bullata* and *Discaria toumatou* (matagouri).

This indigenous vegetation in conjunction with the steep slopes forms a semi-natural scene in an otherwise modified landscape. These values are particularly threatened by vegetation removal, earthworks, excessive stocking and exotic forestry.

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions

1. Clause 3.1.1 is deleted and replaced with the following:
 - 3.1.1 grazing of Land by livestock other than sheep and/or cattle.
2. Clause 3.1.4 is deleted and replaced with the following:
 - 3.1.4 the erection of any fence, building, structure or other improvement for any purpose, other than repairing any existing fence, building, structure or other improvements on the Land, or erecting any replacement fence, building, structure or other improvements on the Land in place of any existing facility.
3. Clause 3.1.5 is deleted and replaced with the following:
 - 3.1.5 any burning, chemical spraying; or deliberate topdressing or sowing of seed.
4. The Owner shall not conduct any activity that encourages stock into the shrubland areas.
5. Upon request, the Owner must allow public foot access to the Land. Requests for access may be declined if the presence of walkers would be incompatible with farming operations, including but not limited to lambing, calving, application of chemical sprays and burning.
6. The Minister will establish photo points in order to record the condition of the Values at sites which are considered representative of the values contained on the Land;

This data shall be made available by the Minister to the Owner within 6 months of the date of the collection of the data.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

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

Solicitor for the Minister

**COMMISSIONER OF CROWN
LANDS**

to

MINISTER OF CONSERVATION

**Solicitor
Department of Conservation
DUNEDIN**

Appendix 5: Copy of Easement document 16D/601 to continue



**COMPUTER INTEREST REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy

R.W. Muir
Registrar-General
of Land

Identifier OT16D/601
Land Registration District Otago
Date Registered 22 June 1995 10:07 am

Type Deed of easement under s60 Land Act
1948
Area 981.8455 hectares more or less
Legal Description Section 1 Survey Office Plan 22850 and
Section 1 Survey Office Plan 22848

Proprietors
Her Majesty The Queen

Interests

7914247.1 Certificate pursuant to Section 417 (2) Resource Management Act 1991 to Ottrey Farms Limited -
21.8.2008 at 9:00 am

Transaction Id
Client Reference

ipwtx000001

Search Copy Printed 18/08/09 1:23 pm, Page 2 of 5
Registry Only

Identifier

OT16D/601

<p>Sec 37 CT 255/12 2A ROAD, Hurley</p> <p>SO 3447</p> <p>SECTION 1 5.4455 ha</p> <p>SO 833</p> <p>Pf Run 226 B CL 48/269 2A ROAD, Hurley</p> <p>Don THAS (CT 255/243) Proprietors, Owners, & Inheritors, Hurley Ltd</p>		<p>Approved as to Layout <i>W.G. Whiting</i> 28.8.88</p> <p>Property Manager Land Corporation (NZ) Ltd</p> <p>Datum: Geodetic 1949. Coordinates are in terms of Lindis Peak with false origin 500 000 m N, 500 000 m E.</p> <p>Note: Submerged 80' from Coastal Bearing to bring into Geodetic Datum</p> <p>Former Description: Pf Run 226 B Block 12 Auckland SO.</p>
<p>LAND DISTRICT: Otago</p> <p>SURVEY BLK & DIST. IV Blackstone</p> <p>NZMS 261 SHE. H41 RECORDED MAP No H41/12</p>		<p>Section 1</p> <p>TERITORIAL AUTHORITY: Maniototo County</p> <p>Surveyed by: W.G. Whiting</p> <p>Scale: 1:2000 Date: January 1988</p>
<p>LAND AREA: 5.4455 ha</p> <p>Comprised in: CL 48/269 (UP)</p> <p>I, W.G. Whiting, Surveyor, do hereby certify that the above is a true and correct copy of the original survey plan as shown to me by the registered owner, and that the same is in accordance with the Survey Regulations 1972.</p> <p>Dated at Dunedin this 21st day of March 1988.</p> <p>Field Book: 2754, p. 65-67. Volume: 2, 242A, 25-27.</p> <p>Reference from: SO 833, 3-47, 2825, 1982A.</p> <p>212 Described under TO 257/12</p> <p>Approved as to Survey: <i>W.G. Whiting</i> 28.8.88 21.8.88 Deputy Surveyor</p> <p>Registered: 28.8.88</p>		<p>Section 1</p> <p>SO 22848</p>

OT16D/601

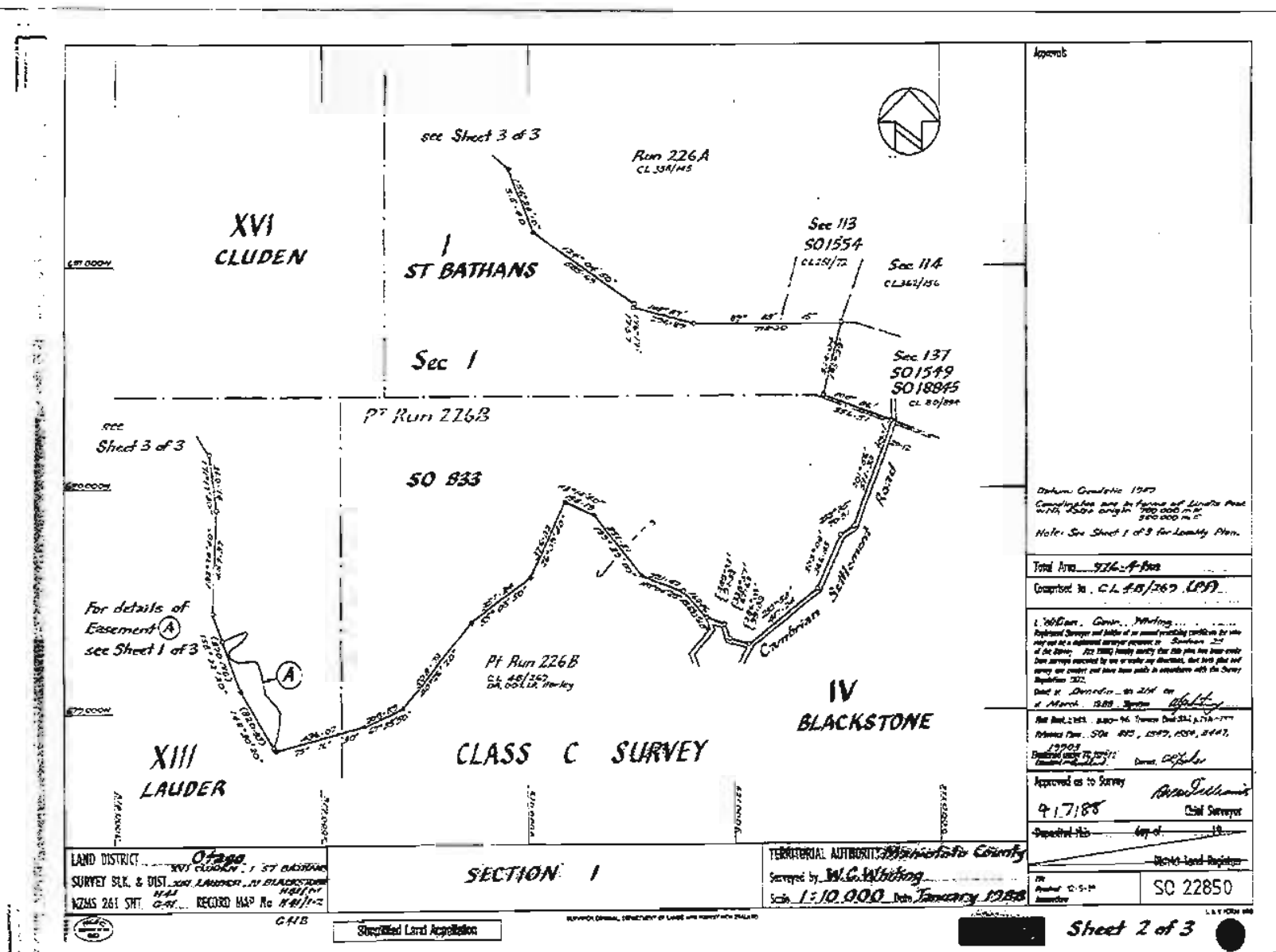


Transcription of
Official Record
Number 000001

Search Copy Dated 18/09/09 1:22 pm, Page 4 of 5
Register Only

Identifier

OT16D/601



Approved

Datum: Geodetic 1987
Contour lines are in terms of Linde Road
with 150m origin 100,000 m
Note: See Sheet 1 of 3 for Locality Plan.

Total Area 926.4 Hec

Comprised in C.L. 48/262 (L.P.)

I, W.C. Whiting, Surveyor, do hereby certify that this plan has been made
from surveys conducted by me or under my direction, that both plan and
survey are correct and have been made in accordance with the Survey
Regulations 1987.

Dated at Dunedin on 21st day of March 1988

W.C. Whiting, Surveyor

Approved as to Survey

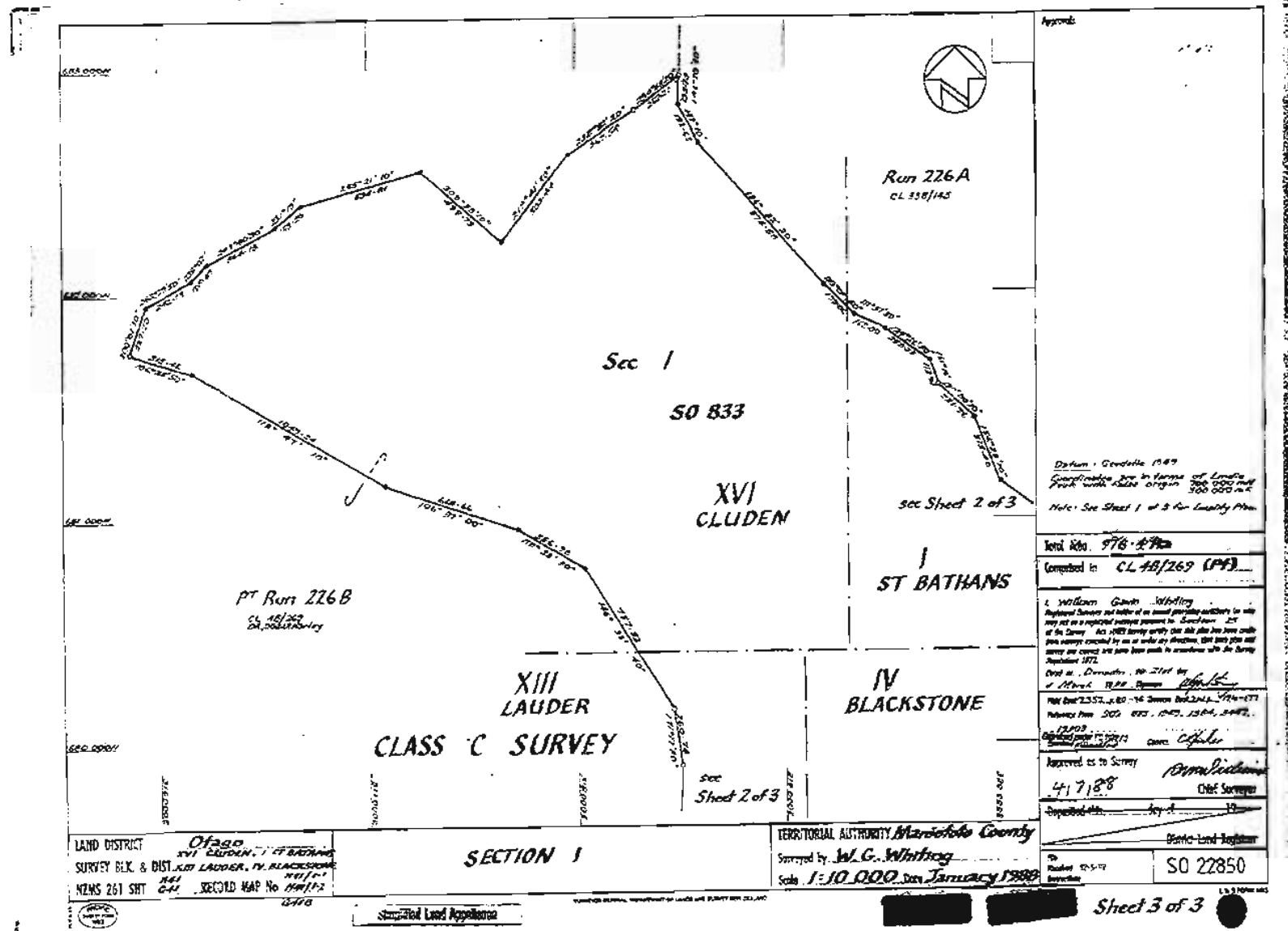
4/7/88

District Land Registrar

SO 22850

Sheet 2 of 3

OT16D/601





View Instrument

Instrument Type Certificate Specifying Mining Rights under s417 Resource Management Act 1991
Instrument Number 7914247.1
Status Registered
Completion Date 27/08/2008
Date & Time Lodged 21/08/2008 09:00:00

Lodged By Bodkins
Lodged For Bodkins
Approved By Gower, Mark

Affected Computer Registers Land District

359004	Otago
81806	Otago
OT12C/1138	Otago
OT16D/601	Otago
OT16D/990	Otago
OT16D/996	Otago
OT9C/617	Otago

*** End of Report ***



ORC FILE 97839, MC030

C417 7914247.1 Certifi

Cpy - 01/03, Pgs - 005, 20/08/06, 12:42



DocID: 212245570

CERTIFICATE UNDER S. 417 OF THE RESOURCE MANAGEMENT ACT 1991

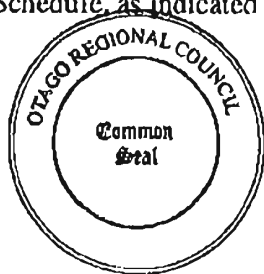
oOo

Pursuant to Section 417(2) of the Resource Management Act 1991, the Otago Regional Council hereby certifies that:

Ottrey Farms Limited

of **Malloch Mclean, 3 Fairfield Street, Gore**

being registered as a joint holder of Licences for Water Race No's 1531, 1532 and 1533 Naseby Registry of the Warden's Court, are entitled to cut, construct, and maintain the races, to use as a race a natural channel (but only where that channel has been so used under the licences); to occupy (but only for the purposes of the construction, maintenance, and improvement of the races) the land forming the course of the races plus a strip 6.1 metres wide (20 feet) along the entire length of the races, and measured either wholly on one side of their course or partly on one side and partly on the other, so that the total on both sides does not exceed 6.1 metres; to deposit within those strips any material removed from the races in the course of maintaining and improving them, and to convey water in the races, across the lands described in the Schedule, as indicated on the attached diagram.



G N Martin
Chief Executive

Dated this 29th day of May 2008

THE COMMON SEAL of the
OTAGO REGIONAL COUNCIL
Was hereunto affixed in the
Presence of:

R W Scott
Director Corporate Services

c:\sl\ottrey farms limited 14-05.doc



Mission Statement: "To promote the sustainable development and enhancement of Otago's resources"
70 Stafford Street, Private Bag, Dunedin. Telephone (03) 474-0827. Facsimile (03) 479-0015

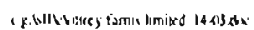


ORC FILE 97839, MC030

SCHEDULE

Land Affected	Title Reference	Owner
Sec 1 SO 22850	12C/1138	Ottrey Farms Limited
	16D/601	Crown
	16D/996	Crown
	81806	Crown
	359004	Crown
Sec 32 BLK IV Blackstone Survey District	9C/617	Cambrian Hills Limited
Sec 33 BLK IV Blackstone Survey District	16D/990	Calder Farming Company Limited

c.g. W. Ottrey Farms Limited 14-03.doc



Appendix 6: Copy of Easement document 5495395.5 to continue

VEC 5495395.5 Deed of Easements

Cpy - 01/01, Pgs - 012, 20/02/08, 08:24



DocID: 110477898

DEED OF GRANT OF EASEMENTS

Dated 17th February 2003

Parties

1. Her Majesty the Queen acting by and through the Commissioner of Crown Lands pursuant to the Land Act 1948 ("the grantor").
2. Donald Gordon Harley and Leanne Ruth Harley ("the Harleys") (as to the easements referred to in clause 1.1), Patricia Anne Batkin and Dorothy Joan Walker ("Batkin and Walker") (as to the easements referred to in clause 1.2), Grahame Charles Sydney ("Sydney") (as to the easements referred to in clause 1.3) and Murray William Kennedy and Suzanne Helen Kennedy ("the Kennedys") (as to the easements referred to in clause 1.4) ("the grantee").
3. Otirey Farms Limited at Tapanui, West Otago ("the Lessee").

Background

- A. The grantor is the owner of the Crown land.
- B. The Commissioner of Crown Lands has agreed to grant to the grantee easements to take, store and convey water on the terms specified in this Deed, pursuant to Section 60 of the Land Act 1948.
- C. The Lessee consents to the within easements and waives its right to compensation as specified in this Deed.

This Deed Witnesseth

1. **Grant of Easements**
The grantor **CONVEYS AND GRANTS** from the date of this Deed the following easements to the following parties, on the terms specified in this instrument:
 - 1.1 The Harleys shall have the following rights being forever appurtenant to the Harleys' land contained in OT 19B/531:
 - (a) A right to take water marked "E" on DP27806.
 - (b) A right to store water marked "E" on DP27806.
 - (c) A right to convey water marked "D" and "E" on DP27806.
 - 1.2 Batkin and Walker shall have the following rights being forever appurtenant to the Batkin and Walker land contained in OT 13C/473:

SEN LRA
Page 1 of 9

AF9 RIA.
ELCO. QW

- (a) A right to take water marked "E" on DP27806.
- (b) A right to store water marked "E" on DP27806.
- (c) A right to convey water marked "D" and "E" on DP27806.
- (d) A right to take water marked "I" on DP27809.
- (e) A right to store water marked "I" on DP27809.
- (f) A right to convey water marked "H" and "I" on DP27809.

1.3 Sydney shall have the following rights being forever appurtenant to the Sydney's land contained in OT 16C/797:

- (a) A right to take water marked "I" on DP27809.
- (b) A right to store water marked "I" on DP27809.
- (c) A right to convey water marked "H" and "I" on DP27809.

1.4 The Kennedys shall have the following rights being forever appurtenant to the Kennedy's land contained in OT 16D/611:

- (a) A right to take water marked "I" on DP27809.
- (b) A right to store water marked "I" on DP27809.
- (c) A right to convey water marked "H" and "I" on DP27809.

1.5 The "right to take water" means the right for the grantee to situate an Intake/settling tank predominantly sunk in the creek, outlet pipe and ancillary works ("the Intake Structure" and also referred to as an "easement facility") to take water at the creek, at the stipulated position on the land over which the easement is granted.

1.6 The "right to store water" means the right for the grantee to situate the Intake Structure (together with such accessories as may be reasonably required for the purposes of the easement) (referred to as an "easement facility") and to use it to collect water, at the stipulated position on the land over which the easement is granted.

1.7 Subject to the alterations specified in this instrument, the rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 shall apply to the easements created by this instrument, including the application of clauses 1 and 10 to 14 to the easements specified in the preceding clauses 1.5 and 1.6.

1.8 The words "in common with the grantor and other persons to whom the grantor may grant similar rights", where they appear in Schedule 4, are deleted.

1.9 The Lessee shall have the right to take and convey water in free and unimpeded flow from the source of supply at the point marked "E" on DP 27806 and through the easement facility relating to this right to take and convey water under this instrument but only through the pipeline not connected to the pump system, which pipeline will be installed by the parties which shall use it, ~~within 12 months of the date of this instrument.~~ *6W.D. SE SDPH NKA RZ.*

1.10 The pipelines used to convey water under this instrument shall, apart from at the point of intake,

be buried under ground level.

2. Restriction on use of water

(a) The water to be taken and conveyed pursuant to the terms of the instrument shall be:

(i) supplied to:

(1) not more than one dwelling house on each Dominant Title (as defined in clause 13 (c)) and one dwelling house of the Lessee; and

(2) not more than three Stock Water Connections of the Lessee;

(ii) except for the Lessee's Stock Water Connections, used solely for the reasonable domestic use of the grantees and Lessee including watering the domestic garden and lawn immediately adjacent to each dwelling house; and

(iii) subject to the following clause (c) equally shared between those grantees and Lessee using the same water supply.

(b) Notwithstanding that in the future the Lessee may become more than one party, the right of all the Lessees to take and convey water under this instrument shall be restricted to one dwelling and three Stock Water Connections in total. This paragraph is inserted for the avoidance of doubt.

(c) With respect to the water supply to the Harleys, Batkin & Walker and the Lessee from the Intake at the point marked "E" on DP27806, during times of water supply shortage the Harleys may take their essential domestic water needs for one dwelling only ahead of the water needs of Batkin & Walker and the Lessee. Notwithstanding clause 13 (b) a reference to "the Harleys" in this clause 2 (c) is a reference to the Harleys personally and only those successors and transferees of the Harleys which are direct descendants of the Harleys.

(d) In the event of any of the Dominant Titles being further subdivided, the grantee who is the registered proprietor of the title being subdivided shall only bring the within easement down on to one title created by the subdivision, to be nominated by that grantee, and shall register a surrender of this easement over the remaining titles of the subdivision.

(e) For clarification it is acknowledged that the Harleys land contained in OT 19B/531 is excluded from the specified Dominant Titles to the effect that the restrictions for a single water supply to one dwelling house shall not apply to the Harleys land.

(f) The grantees and Lessee shall not waste the water supplied pursuant to the easements created by this instrument.

(g) The registered proprietors of the dominant land and Lessee may, by unanimous written agreement between them, amend the terms set out in the foregoing paragraphs (a) to (f).

3. Grantee obligations in exercising easement rights

3.1 In exercising the grantees' rights and obligations under this instrument, the grantees shall:

(a) where practicable, keep vehicles within existing tracks on the easement land and leave the gates as found and if requested by the Lessee locked when not used by the grantees for passing through;

- (b) not obstruct the grantor or agents, employees and contractors of the grantor;
- (c) take reasonable precautions to guard against danger or injury to the grantees on the grantor's land;
- (d) keep the works which are the subject of the easements created by this instrument well maintained and in good repair so as to prevent them becoming a nuisance or danger; and
- (e) comply with all Acts and Regulations.

3.2 Without limitation of the obligations of the grantees express or implied to remedy any damage, a grantee shall make good any damage or loss by the grantee, to any track, fence, gate, drain, building or other structure or stock on the servient land, caused by the grantee in exercising its rights and obligations under this instrument or caused by any breach by the grantee of its rights and obligations under this instrument and if such stock is lost or damaged then compensate the owner for such loss or damage.

4. Costs

4.1 The grantees shall equally meet the following costs:

- (a) Their costs in preparing and registering this instrument.
- (b) All costs charged by the grantor in consenting to this instrument and his execution of it.

4.2 Those grantees who are the users of the works which are the subject of the following charges or costs shall equally meet the following charges and costs:

- (a) Any future charges lawfully made by the grantor in relation to the easements which are the subject of this instrument.
- (b) Subject to clause 4.3 all of the costs of the installation, maintenance, replacement, removal and operation of the easement facility which are the subject of the easements created by this instrument.

4.3 If any maintenance, repair or replacement of an easement facility becomes necessary through the omission, neglect or default of one or more grantee, then the grantee responsible shall meet the cost of such maintenance, repair or replacement attributable to that omission, neglect or default.

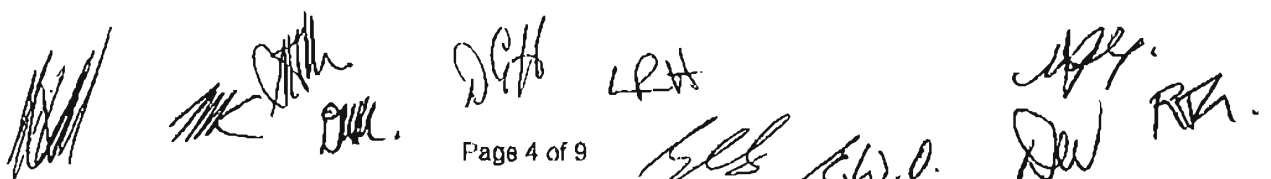
5. Indemnity

The grantees indemnify the grantor against any loss, claim, damage, cost, expense, liability or proceeding suffered or incurred at any time by the grantor in connection with this instrument or as a direct result of the exercise by the grantees of their rights under this instrument, or any breach by the grantees of their obligations, undertakings or warranties contained or implied in this instrument.

6. Exclusion of Grantor liability

The grantor shall have no liability in relation to any aspect of this instrument or the rights of the grantees created by this instrument including (but without limitation) no liability:

- (a) in contract, tort or otherwise;

The bottom of the page contains several handwritten signatures and initials. From left to right, there is a signature that appears to be 'M. J.', followed by 'DCH', 'LH', 'GEB', 'CW.O.', and a signature that appears to be 'R. J.'.

- (b) for consequential loss;
- (c) for anything arising directly or indirectly from this instrument;
- (d) for any activity, action or inaction by or on behalf of the grantor; and
- (e) for any activity, action or inaction by or on behalf of the Lessee.

7. On termination

- 7.1 If these easement rights shall terminate, the grantees shall remove all of the grantees' easement facilities on the servient land and restore the servient land to the condition of the immediately surrounding land which is unaffected by the easement facilities and their removal.
- 7.2 If the grantees fail to remove the easement facilities and restore the servient land as provided for in the preceding clause 7.1, the grantor or Lessee may remove the easement facilities and restore the land in the manner provided in the preceding clause 7.1 and recover the costs in doing so from the grantees.

8. Grantor's rights of delegation

All rights, benefits and obligations of the grantor arising under this instrument may be exercised by any person duly appointed by the grantor but without limiting the obligations of the grantor in the performance or observance of the provisions of this instrument.

9. Disputes

If any party requires the resolution of a dispute between them regarding the rights or obligations under this instrument then:

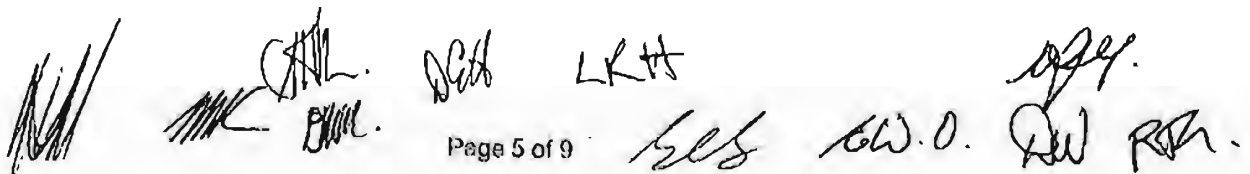
- (a) the procedure set out in section 17 of the Land Act 1948 shall be followed if that section can be applied; and
- (b) if section 17 of the Land Act 1948 cannot be applied to the dispute, then clause 14 of Schedule 4 of the Land Transfer Regulations 2002 shall apply except that the Lessee may also be a party to the dispute resolution process.

10. Notices

10.1 A written notice to be sent pursuant to the terms of this instrument shall be:

- (a) delivered to that person; or
- (b) posted by ordinary mail to that person's address if it is a natural person and if it is a company then to its registered office; or
- (c) sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.

- 10.2 (a) A notice delivered to a natural person shall be served by handing the notice to that person. If service is to a company then delivery shall be by handing the notice to an officer of the company or to a person working at the registered office of the company.

The bottom of the page contains several handwritten signatures and initials. From left to right, there is a large, dark, illegible signature, followed by 'C.H.L.', 'B.H.L.', 'D.C.H.', 'L.R.H.', 'S.E.S.', 'G.W.O.', 'D.W.', and 'R.H.'. Below the 'D.C.H.' and 'L.R.H.' initials, the text 'Page 5 of 9' is printed.

- (b) A posted notice shall be deemed to be received three working days after it is posted.
- (c) A notice sent by facsimile machine is deemed to have been received on the working day following the day on which it was properly transmitted.

11. Severability

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

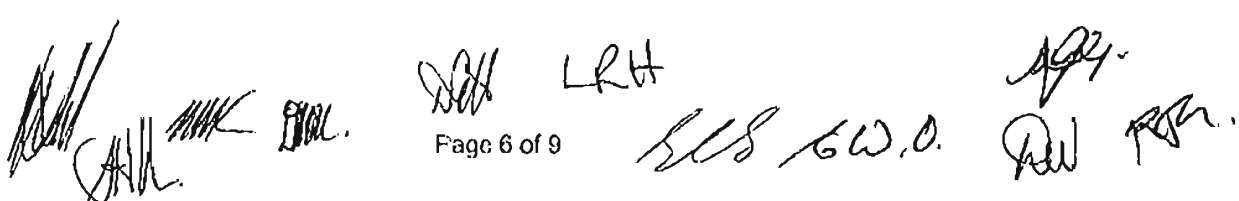
12. Privity of Contract

The obligations of the grantees under this instrument, express or implied, confer a benefit on the Lessee enforceable by the Lessee under the Contracts (Privity) Act 1982.

13. Interpretation

In this instrument, unless the context otherwise requires:

- (a) "Act" and "Regulations" have the meaning given to them in the Interpretation Act 1999.
- (b) "Crown land" means that land containing 981.8455 ha more or less being Section 1 SO Plan 22848 and Section 1 SO Plan 22850 subject to lease number L 760287.1 comprised in OT 12C/1138.
- (c) A reference to "the Harleys", "Batkin & Walker", "Sydney" and "the Kennedys" includes their respective successors and transferees
- (d) In clauses 3 to 7 inclusive excluding clause 4.1, a reference to the "grantee" and "grantees" includes the Lessee if the Lessee is at the applicable time a user of the right to convey water and associated easement facilities as authorised under this instrument.
- (e) "Dominant Title" means:
 - (i) with respect to the supply of water from the point marked "I" on DP27809 the three (and not more than three) titles which receive the benefit of the easements created by this instrument and which are at the outset OT13C/473, OT16C/797 and OT16D/611; and
 - (ii) with respect to the supply of water from the point marked "E" on DP27806 OT13C/473 or any one, but not more than one, title following a subdivision of the land in OT13C/473.
- (f) A reference to "grantee" includes their respective servants, agents, employees and contractors, and any licensee, lessee or tenant of the grantee.
- (g) "Lessee" means Ottrey Farms Limited and its transferees, successors and assigns who are the lessee or freehold owner of the servient land.
- (h) "Stock Water Connections" means stock water troughs restricted in total to 3, with each trough to have a control valve to prevent water overflow, and with the grantor to properly maintain the water troughs and control valve in a good operational condition.

The bottom of the page contains several handwritten signatures and initials. From left to right, there is a large signature that appears to be 'GAIL', followed by 'BIL', 'DWH', 'LRH', 'SLS', 'G.W.O.', 'A.P.', and 'R.R.'. Below the 'DWH' signature, the text 'Page 6 of 9' is printed.

(a) consents to the within easements; and

15. Registration

SIGNED for and on behalf of Her Majesty
the Queen by **REBECCA JANE GILLESPIE**
pursuant to a delegation from the
Commissioner of Crown Lands in the
presence of:

Revised

[Handwritten signature]

M. Makrone

Robert M. Meyer
WINSTON-SALEM, N.C.

Place of residence 2142 - Christchurch

Place of residence

SIGNED by Donald Gordon HARLEY
and Leanne Ruth HARLEY as grantee in
the presence of:

D. E. Harley
Leanne Ruth Harley

Walter J. Kinnis
Witness Signature

Helen Louise Kinnis
Print Name

Office Manager
Witness Occupation

Winnipeg
Place of residence

SA MA

MC DM DEH LRA

EO.O. SES RR

SIGNED by Patricia Anne BATKIN
by her Attorney Dorothy Joan WALKER
as Grantee in the presence of:

Dorothy Walker

Nes Gentle
Witness Signature

Print Name

Nes Gentle

Witness Occupation

School Teacher

Place of residence

162 Broughton St Gore.

SIGNED by Dorothy Joan WALKER
as grantee in the presence of:

Dorothy Walker

Nes Gentle
Witness Signature

Print Name

Nes Gentle

Witness Occupation

162 Broughton St School Teacher

Place of residence

162 Broughton St. Gore

SIGNED by Graham Charles SYDNEY
as grantee in the presence of:

Graham Sydney

Witness Signature

Print Name

LESLIE ZETLAND GRIFFIN
SOLICITOR
DUNEDIN

Witness Occupation

Place of residence

[Signature]

[Signature]

[Signature]
Page 9 of 9

[Signature]

EW.O.

[Signature]
DW POK.

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Dorothy Joan WALKER of Gore, Teacher HEREBY CERTIFY:

1. THAT by Deed dated *10 February 2003* Patricia Anne BATKIN, Apartment Manager of Port Douglas, Australia appointed me her Attorney on the terms and subject to the conditions set out in the said Deed (a copy of which Power of Attorney is registered in the Land Registry Office at Dunedin under number).

2. THAT at the date hereof I have not received any notice or information of the revocation of that appointment by the death of the said Patricia Anne Batkin or otherwise.

SIGNED at *Gore* this *17th* day of *February* 2003

Dorothy Walker.....

SIGNED by Murray William KENNEDY
and Susanne Helen KENNEDY
as grantee in the presence of:

Witness Signature

Print Name

J. A. Williamson
Solicitor

Witness Occupation

Alexandra

Place of residence

Signed by Ottrey Farms
Limited as Lessee

Director

Director

DEED OF EASEMENT

Parties:

1. Her Majesty the Queen acting by and through the Commissioner of Crown Lands.
2. Donald Gordon Harley and Leanne Ruth Harley, Patricia Anne Batkin and Dorothy Joan Walker, Grahame Charles Sydney and Murray William Kennedy and Suzanne Helen Kennedy.
3. Ottrey Farms Limited.

Checketts McKay
Lawyers
Central Otago

Appendix 7: Copy of Easement document 7393626.1 to continue

DEED OF EASEMENT

YEC 7393626.1 Deed o

Copy - 01/03, Pgs - 015, 28/05/07, 07:14



DocID 2190C2052

Parties:

1. Her Majesty the Queen acting by and through the Commissioner of Crown Land.
2. Cambrian Hills Limited.
3. Ottrey Farms Limited.
4. Ottrey Farms Limited and Calder Farming Co Limited.

Checketts McKay
Lawyers
Central Otago

W:\JAW\HarleyDG&LR\ShawEasement\19988\Deed of Easement CCL 08.06.06.doc

Handwritten signatures and initials:
Hew. O.
Kron
650.
[Several other illegible signatures and initials]

DEED OF GRANT OF EASEMENT

Dated 28th March 2007
J. S. C.

Parties

1. Her Majesty the Queen acting by and through the Commissioner of Crown Lands pursuant to the Land Act 1948 ("the Grantor").
2. Cambrian Hills Limited ("the Grantee").
3. Ottrey Farms Limited ("the Lessee").
4. Ottrey Farms Limited and Calder Farming Co Limited ("the Water race owners").

Background

- A. The Grantor is the owner of the Grantors Land.
- B. The Commissioner of Crown Lands has agreed to grant to the Grantee an easement to convey water on the terms specified in this Deed, pursuant to Section 60 of the Land Act 1948.
- C. The Lessee has consented to the within easement and waives its right to compensation as specified in this Deed.
- D. The Water race owners have consented to the within easement.

This Deed Witnesseth

1. Interpretation

1.1 In this instrument, unless the context otherwise requires:

- (a) "Commencement Date" means the date of execution of this Deed.
- (b) "Deed" means this Deed, the background and the schedules.
- (c) "Act" and "Regulations" have the meaning given to them in the Interpretation Act 1999.
- (d) "Dominant Land" means the land which receives the benefit of the easement created by this instrument and which is at the outset OT 9C/554 and OT 9C/617.
- (e) "Easement Land" means the stipulated course or stipulated area over that part of the Grantor's Land as referred to in clause 2.1.
- (f) "Grantee" includes its respective servants, agents, employees, workers and contractors, any licensee, lessee or tenant of the Grantee, and the Grantee's successors and transferees.

Handwritten signatures and initials: J.S.C., K.S., and others.

- (g) **"Grantor's Land"** means that land containing 981.8455 ha more or less being Section 1 SO Plan 22848 and Section 1 SO Plan 22850 subject to lease number L 760287.1 comprised in OT 12C/1138.
- (h) **"Lessee"** includes its respective transferees, successors and assigns who are the lessee or freehold owners of the Servient Land.
- (i) **"Water race owners"** means the owners of the water race which is the subject of the within easement, being Ottery Farms Limited as to a two third share and Calder Farming Co Limited as to a one third share; and includes their respective transferees, successors and assigns.

1.2 In the interpretation of this Deed unless the context otherwise requires:

1.2.1 The headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed.

1.2.2 References to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and

1.2.3 The singular includes the plural and vice versa, and words incorporating any gender shall include every gender.

2. Grant of Easement

2.1 The Grantor **CONVEYS AND GRANTS** to the Grantee the right to convey water marked "M" on sheet 3 of plan DP 27809 being forever appurtenant to the Grantee's land contained in OT 9C/554 and OT 9C/617, on the terms specified in this agreement.

2.2 Subject to the alterations specified in this instrument, the rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 shall apply to the easement created by this instrument. Where there is any conflict between the express terms of this Deed and the rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002, the express terms of this Deed shall apply.

2.3 The easement facility in relation to the right to convey water includes "water race together with ancillary water control and other works to convey and control water by water race".

2.4 The rights created by this Deed commence on the Commencement Date.

3. Consideration

This Deed is entered into by the Grantor in consideration of the sum of \$1.00 paid to the Grantor by the Grantee (the receipt of which is acknowledged).

4. Payment of compensation to lessee

The Lessee consents to the within easement and waives its right under section 60(1) of the Land Act 1948 to any compensation from the Grantor in respect of the grant of easements in this instrument.

5. Consent of water race owners

The Water race owners consent to the within easement.

G. Restriction on use of water

(a) The water to be taken and conveyed pursuant to the terms of the instrument shall be:

(i) supplied to only one dwelling house on the Dominant Land;

- (ii) used solely for the reasonable domestic use of the Grantee including watering the domestic garden and lawn immediately adjacent to the dwelling house.
- (b) In the event of any of the Dominant land being subdivided, the Grantee shall only bring the within easement down on to one title created by the subdivision, to be nominated by that Grantee, and shall register a surrender of this easement over the remaining titles of the subdivision.
- (c) The Grantee shall not waste the water supplied pursuant to the easement created by this instrument.

7. Grantee obligations in exercising Easement Rights

7.1 In exercising the Grantee's rights and obligations under this instrument, the Grantee shall:

- (a) where practicable, keep vehicles within existing tracks on the easement land and leave the gates as found and if requested by the Lessee locked when not used by the Grantee for passing through;
- (b) not obstruct the Lessee, the Grantor or agents, employees and contractors of the Grantor;
- (c) take reasonable precautions to guard against danger or injury to the Lessee and the Grantee on the Grantor's land;
- (d) at the Grantee's sole expense, keep its share, based on water use, of the works which are the subject of the easements created by this instrument, well maintained and in good repair so as to prevent them becoming a nuisance or danger; and
- (e) comply with all Acts and Regulations.

7.2 Without limiting the obligations of the Grantee express or implied to remedy any damage, the Grantee shall make good any damage or loss by the Grantee, to any track, fence, gate, drain, building or other structure or stock on the servient land, caused by the Grantee in exercising its rights and obligations under this instrument or caused by any breach by the Grantee of its rights and obligations under this instrument and if such stock is lost or damaged then forthwith compensate the owner for such loss or damage.

8. Costs

The Grantee shall meet the following costs:

- (a) Its costs in preparing and registering this instrument.
- (b) All costs charged by the Grantor in consenting to this instrument and his execution of it.
- (c) Any future charges lawfully made by the Grantor in relation to the easement which is the subject of this instrument.
- (d) Its share based on water use of all of the costs of the installation, maintenance, replacement, removal and operation of the works which are the subject of the easement created by this instrument.

9. Indemnity

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

10. Exclusion of Grantor liability

The Grantor and the Lessee shall have no liability in relation to any aspect of this instrument or the rights of the Grantee created by this instrument including (but without limitation) no liability:

- (a) in contract, tort or otherwise;
- (b) for consequential loss;
- (c) for anything arising directly or indirectly from this instrument;
- (d) for any activity, action or inaction by or on behalf of the Grantor; and
- (e) for any activity, action or inaction by or on behalf of the Lessee.

11. Grantor's rights of delegation

All rights, benefits and obligations of the Grantor arising under this instrument may be exercised by any person duly appointed by the Grantor but without limiting the obligations of the Grantor in the performance or observance of the provisions of this instrument.

12. Disputes

If any party requires the resolution of a dispute between them regarding the rights or obligations under this instrument then:

- (a) the procedure set out in section 17 of the Land Act 1948 shall be followed if that section can be applied; and
- (b) if section 17 of the Land Act 1948 cannot be applied to the dispute, then the dispute shall be referred to arbitration under the Arbitration Act 1996 by an arbitrator agreed to by the parties and failing agreement appointed by the then President of the Otago District Law Society.

13. Notices

13.1 A written notice to be sent pursuant to the terms of this instrument shall be:

- (a) delivered to that person; or
- (b) posted by ordinary mail to that person's address if it is a natural person and if it is a company then to its registered office; or
- (c) sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.

13.2 (a) A notice delivered to a natural person shall be served by handing the notice to that person. If service is to a company then delivery shall be by handing the notice to an officer of the company or to a person working at the registered office of the company.

(b) A posted notice shall be deemed to be received three working days after it is posted.

(c) A notice sent by facsimile machine is deemed to have been received on the working day following the day on which it was properly transmitted.

14. Severability

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

full force.

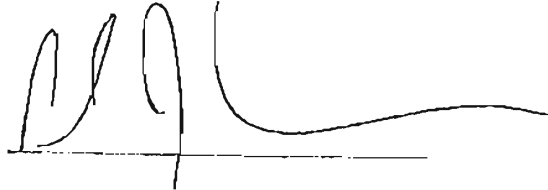
15. Privity of Contract

The obligations of the Grantee under this Instrument, express or implied, confer a benefit on the Lessee enforceable by the Lessee under the Contracts (Privity) Act 1982.

16. Registration

All parties will do all things necessary to enable registration of the within easements in the Land Registry Office of LINZ against the Grantors Land and pastoral lease of the Grantors Land.

SIGNED for and on behalf of Her Majesty the Queen by
pursuant to a delegation from the Commissioner of Crown Land in the presence of:



Paul Jackson
Manager Crown Property Management
Land Information New Zealand

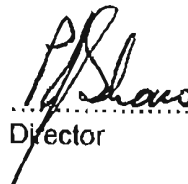
Witness Signature

Print Name **Tony Guidera**
Portfolio Manager
Crown Property Management
C/- Land Information New Zealand
Witness Occupation **National Office**



Place of residence

Signed by Cambrian
Hills Limited
In the presence of:


Director

Signature of Witness:

Director




Witness to complete in BLOCK letters

Witness Name: **R. M. Blake**

Occupation: **Solicitor**

Address: **Wanaka**

600.
K.K.
H.W.V.


Signed by Ottrey Farms
Limited
In the presence of:

E.W. Ottrey
Director

Signature of Witness:

[Signature]
Director

Witness to complete in BLOCK letters

Witness Name:

Occupation:

Address:

Signed by Calder Farming
Co Limited
In the presence of:

J.G. Calder
Director

Signature of Witness:

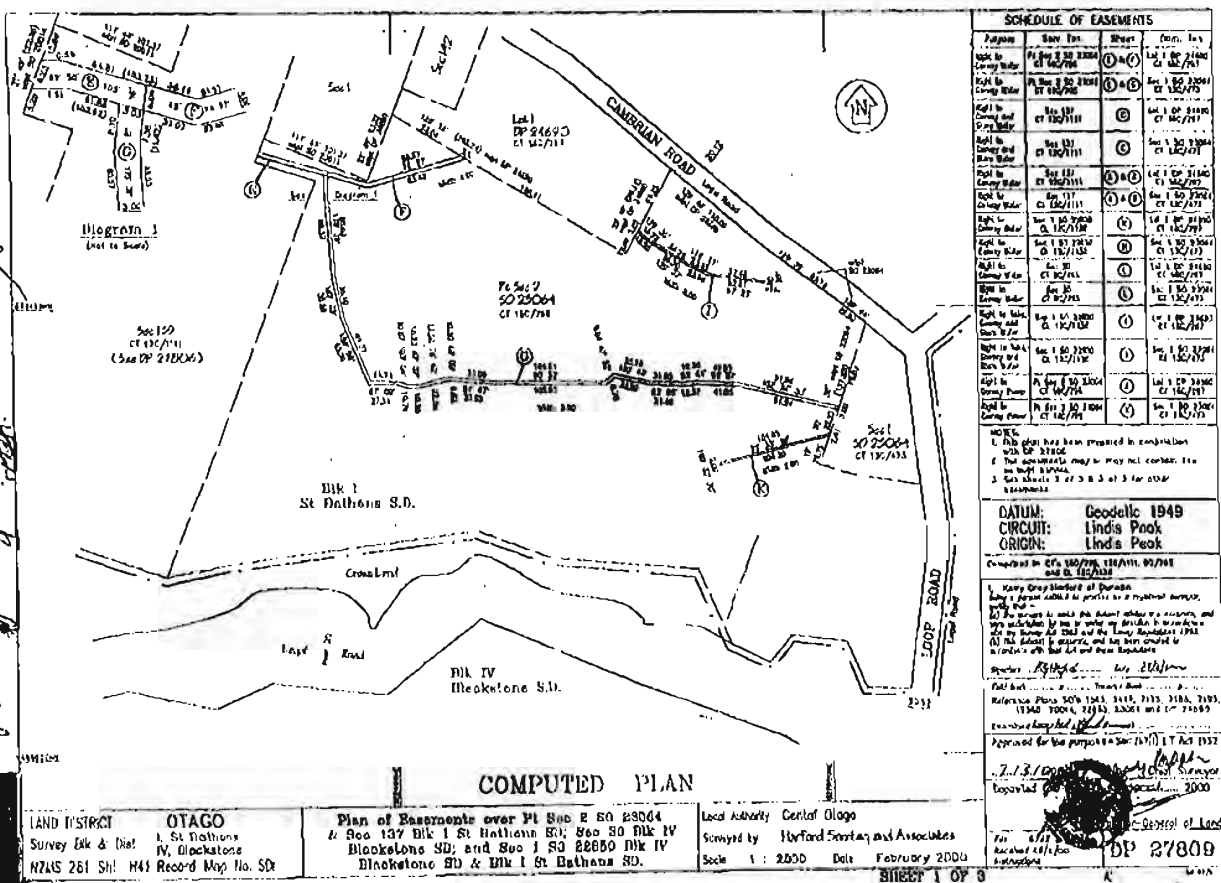
R.D. Calder
Director

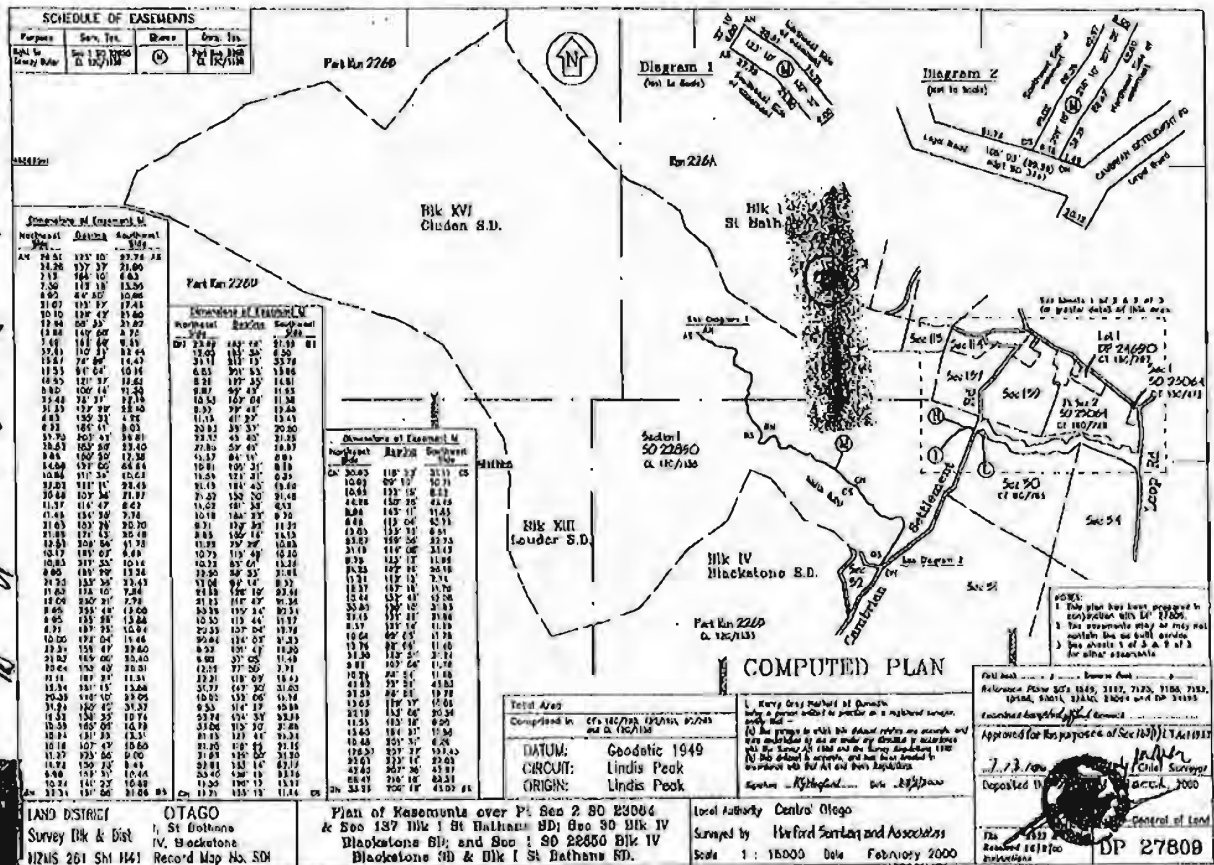
~~Witness to complete in BLOCK letters~~

~~Witness Name:~~

~~Occupation:~~

~~Address:~~







COMPUTER INTEREST REGISTER UNDER LAND TRANSFER ACT 1952

Search Copy



Identifier **OT12C/1138**
 Land Registration District **Otago**
 Date Registered **06 August 1990 11:27 am**

Prior References
OT4B/269

Type	Lease under s83 Land Act 1948	Instrument	L 760287.1
Area	981.8455 hectares more or less	Term	33 years commencing on the 1st day of July 1970 and renewed for a term of 33 years commencing on the 1st day of July 2003

Legal Description **Section 1 Survey Office Plan 22848 and
 Section 1 Survey Office Plan 22850**

Proprietors
Ottrey Farms Limited

Interests

OT16D/601 Deed of Easement creating the following easement - 22.6.1995 at 10.07 am

Type	Servient Tenement	Easement Area	Dominant Tenement
Right of way	Section 1 Survey Office Plan 22850 - herein	A Deed of Easement OT16D/601	Part Run 22613 - CT OT12C/1139

5024797.3 Variation of the within Lease - 16.2.2001 at 2:43 pm

5024797.7 Mortgage to Rabobank New Zealand Limited - 16.2.2001 at 2:43 pm

5223583.1 Variation of the within Lease - 17.5.2002 at 9:00 am

5495395.5 Deed of easement affecting the fee simple estate of Her Majesty the Queen being a grant of rights to take and store water over part marked E, convey water marked D and E on DP 27806, rights to take and store water marked I and convey water marked H and I on DP 27809 under Section 60 Land Act 1948 embodied in the Register 81806 - 20.2.2003 at 9:00 am - 20.2.2003 at 9:00 am

Some of the easements created by Deed of Easement 5495395.5 are subject to Section 243 (n) Resource Management Act 1991

Transaction Id
 Client Reference **19988 Harley DJP**

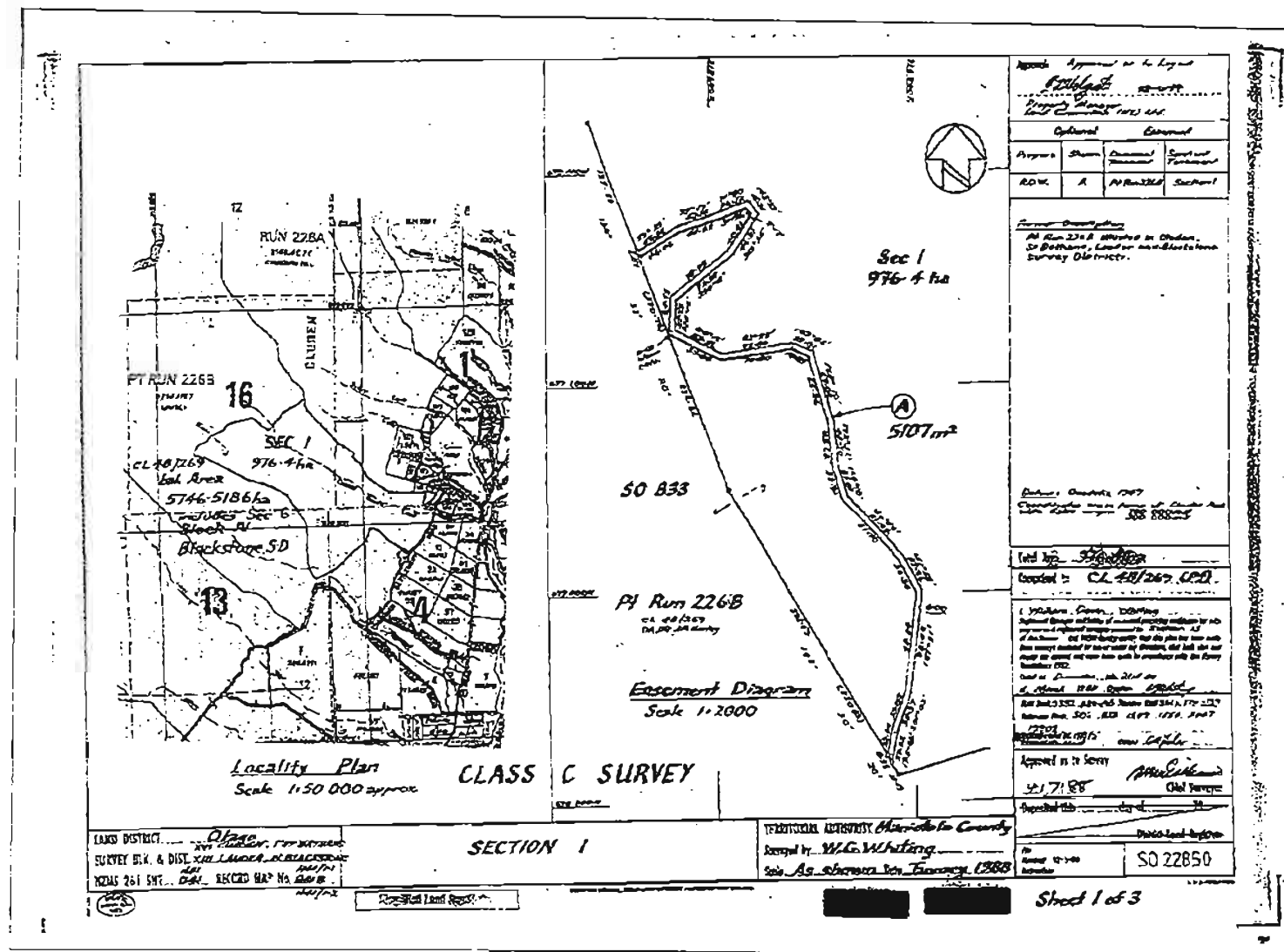
Search Copy Dated 11/08/04 11:01 am, Page 1 of 5
 Register Only

[Handwritten signatures and initials: "afly", "J. E. C.", "H. W. J.", "E. W. O."]

Register Only

Identifier

OT12C/1138



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18 Harley, D/JF
aff. 1.
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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 Henth
Witness

Solutor
Occupation

110 Wades Lane Rd.
Address

Wellington

SIGNED by [the Holder] in the presence of:


Witness


Occupation

Address

OR

SIGNED for and on behalf of [the Holder] by two of its directors:


[name of director]
DAVID MARCUS MENZIES

KRO Menzies
[name of director] 
KATHRINE RUTH OTTREY MENZIES