

Crown Pastoral Land Tenure Review

Lease name: CATTLE FLAT (OTAGO)

Lease number: PO 352

Substantive Proposal - Part 2

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

February 06

Appendix 5: Form of Concession to be Created – Grazing Concession for Area CA3.

Concession number: _____

DATED _____

Between

MINISTER OF CONSERVATION
("the Grantor")

and

CHARLTON GEORGE EWING MELANIE RUTH EWING AND THE TRUSTEES
EXECUTORS AND AGENCY COMPANY OF NEW ZEALAND LIMITED
("the Concessionaire")

GRAZING CONCESSION
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made this day of

PARTIES:

1. MINISTER OF CONSERVATION, ("the Grantor")
2. CHARLTON GEORGE EWING (1/3 share) MELANIE RUTH EWING (1/3 share) AND THE TRUSTEES EXECUTORS AND AGENCY COMPANY OF NEW ZEALAND LIMITED and the said CHARLTON GEORGE EWING (1/3 share jointly inter se) as tenants in common in the shares set out ("the Concessionaire")

BACKGROUND

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area.
- B. Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

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

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

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

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

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

"Concessionaire" includes the Concessionaire's successors, assigns, executors, and administrators.

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

"Concession Fee" means the amount specified in Item 6(a) of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review. It also includes, where relevant, the amount which the parties agree to be the new Concession Fee on a renewal of the Document.

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

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

"**Concession Fee Review Date**" means the date specified in Item 9 of Schedule 1 on which the Concession Fee Review occurs being at 3 year intervals calculated from the date of commencement of the term of this Document; and includes any additional dates inserted into Item 9 of Schedule 1 following a renewal of this Document.

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

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

"**Document**" means this Licence and any subsequent amendments and all schedules, annexures, and plans attached to it.

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

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

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

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

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

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

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

"**Structure**" includes a bridge, a culvert, and a fence.

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

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

1.2 In this Document unless the context otherwise requires:

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

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

2.0 GRANT OF LICENCE

2.1 In exercise of the Grantor's powers under either section 66 or section 68 of the Crown Pastoral Land Act 1998 (whichever is relevant in the circumstances) the Grantor **GRANTS** to the Concessionaire a **LICENCE** under either section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances) to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Document.

3.0 TERM

3.1 The Licence is for the Term specified in Item 3 of Schedule 1.

3.2 Unless otherwise specified in Items 4 and 5 of Schedule 1, if the Concessionaire has not been in breach of this Document and has given to the Grantor written notice to renew the Document at least three months before the end of the Term, the Grantor will, at the cost of the Concessionaire, renew the Document from the Renewal Date for the next Renewal Period on the following terms:

- (a) the new Concession Fee is to be agreed upon before the end of the Term or, failing agreement, is to be determined as though it were a Concession Fee Review under clause 6;
- (b) the Concession Fee is to be subject to review during the Renewal Period on each Concession Fee Review Date;
- (c) the renewed Document is otherwise to be in accordance with and subject to the covenants and agreements expressed and implied in this Document except that the Term of the Document and all renewals, if any, end on the Final Expiry Date;
- (d) pending the determination of the new Concession Fee, the Concessionaire is to pay the new Concession Fee proposed by the Grantor. Upon determination an appropriate adjustment is to be made to the Concession Fee.

4.0 CONCESSION FEE AND ADMINISTRATION FEE

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

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

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

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

5.0 OTHER CHARGES

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

6.0 CONCESSION FEE REVIEW

- 6.1 The Grantor will review the Concession Fee on the Concession Fee Review Dates.
- 6.2 The Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
- 6.3 The notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
- 6.4 If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 18.
- 6.5 Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee payable immediately before the Concession Fee Review Date. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.
- 6.6 If the Concessionaire does not give notice to the Grantor under clause 6.4 the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.

7.0 CONCESSION ACTIVITY

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

8.0 COMPLIANCE

- 8.1 The Concessionaire will comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan under Part IIIA of the Conservation Act 1987 together with any amendment or review of the strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
 - (b) with the Conservation Act 1987, the Reserves Act 1977, the Health and Safety in Employment Act 1992, the Resource Management Act 1991, and any other statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land, or affecting or relating to the Concession Activity.

9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

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

10.0 PROTECTION OF THE ENVIRONMENT

10.1 Except as approved in writing by the Grantor the Concessionaire will not, whether by act or omission:

- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Land; or
- (b) bring any plants, or animals (other than farm stock described in Item 2 of Schedule 1, farm dogs and horses for purposes of the Concession Activity) on to the Land; or
- (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
- (d) pile or store materials in any place on the Land where they may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Land; or
- (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Land; or
- (g) disturb or allow stock to disturb any stream or watercourse on the Land; or
- (h) light any fire on the Land.

10.2 The Concessionaire, must at the Concessionaire's expense:

- (a)(i) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Land or any Structure or facility on the Land;
- (a)(ii) if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor; and
- (b) comply strictly with the provisions of the Biosecurity Act 1993.

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

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

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

11.0 HEALTH AND SAFETY

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

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

12.0 TEMPORARY SUSPENSION

12.1 The Grantor may suspend this Document:

- (a) if, in the opinion of the Grantor the activities of the Concessionaire, its employees, agents, contractors, licensees or invitees are having or may have an adverse effect on the environment and

the Grantor considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor;

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

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

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

13.0 ASSIGNMENT

13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause.

13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.

13.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.

13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

14.0 TERMINATION

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

- (a) the Concession Fee or the Administration Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - (b)(i) the Concessionaire breaches any terms of this Document; and
 - (b)(ii) the Grantor has notified the Concessionaire in writing of the breach; and
 - (b)(iii) the Concessionaire does not rectify the breach within 28 days of receiving notification; or
- (c) the Concessionaire ceases to conduct the Concession Activity; or
- (d) the Concessionaire is convicted of an offence, related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Resource Management Act 1991; or the Biosecurity Act 1993; or the Health and Safety in Employment Act 1992; or
- (e) the Concessionaire is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire ceases to function or operate.

- 14.2 If the Grantor terminates the Document under this clause 14 all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or Administration Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.
- 14.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.
- 15.0 INDEMNITIES AND INSURANCE**
- 15.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, contractors, or invitees or otherwise caused as a result of its use of the Land or the Concessionaire's carrying out of the Concession Activity on the Land.
- 15.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.
- 15.3 Without prejudice to or in any way limiting its liability under clause 15.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:
- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
 - (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.
- 15.4 With respect to clause 15.3 the Concessionaire must, before commencing the Concession Activity and on each renewal of insurance provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

16.0 ENVIRONMENTAL MONITORING

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

17.0 FORCE MAJEURE

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

18.0 DISPUTE RESOLUTION AND ARBITRATION

18.1 If any dispute arises between the parties in connection with this Document, the parties must, without prejudice to any other rights they have under this Document, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.

18.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.

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

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

18.5 Notwithstanding anything in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the District Law Society in the region in which the Land is situated is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

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

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

19.0 NOTICES

19.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 15 of Schedule 1.

19.2 A notice given in accordance with clause 19.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;
- (c) in the case of facsimile, on the Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

20.0 RELATIONSHIP OF PARTIES

20.1 Nothing expressed or implied in this Document shall be construed as:

- (a) conferring on the Concessionaire any right of exclusive occupation or use of the Land;
- (b) derogating from the rights of the Grantor and the public to have access across the Land;
- (c) preventing the Grantor from granting other concessions (except a grazing licence) to other persons.

21.0 OFFENCES

21.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act:

- (a) no waiver or failure to act by the Grantor under this Document is to preclude the Grantor from prosecuting the Concessionaire; and
- (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising the Grantor's remedies under this Document; and
- (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising the Grantor's remedies under this Document.

22.0 SPECIAL CONDITIONS

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

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

Signed by Jeffrey Edward Connell

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

Witness _____

Occupation _____

Address _____

Signed by CHARLTON GEORGE EWING and
MELANIE RUTH EWING

 as Concessionaire
 in the presence of :

Witness _____

Occupation _____

Address _____

TRUSTEES EXECUTORS TO EXECUTE HERE

SCHEDULE 1

1. **Land:** (Area labeled CA3 on the Proposed Designations Plan) (see definition of Land in clause 1.1)
2. **Concession Activity:** ewe grazing for sheep breeds other than merinos. (see definition of Concession Activity in clause 1.1)
3. **Term:** 30 years commencing on _ _ _ _ _ (see clause 3)
4. (a) **Renewal Date:** not applicable (see clause 3.2)
- (b) **Renewal Period:** not applicable (see clause 3.2)
5. **Final Expiry Date:** (see clause 3.2)
6. (a) **Concession Fee:** to be calculated at the rate of \$5 per ewe on an annual basis (eg. 100 ewes for ten weeks = 19 ewes on an annual basis). If ewes are not grazed on the Land in any year then only the administration fee is payable. (see clause 4)
- (b) **Administration Fee:** \$50 per annum + GST (see clause 4)
7. **Concession Fee Payment Date:** (see clause 4)
 On or before the date specified on the invoice generated by the Grantor
8. **Penalty Interest Rate:** (see clause 4.2)
 Double the Grantor's bank's current highest 90 day bank bill buy rate
9. **Concession Fee Review Date:** every three yearly anniversary of the commencement date
 see clause 6)
10. **Public Liability General Indemnity Cover:** (see clause 15.3)
 for \$250,000
11. **Public Liability Forest & Rural Fire Extension:** (see clause 15.3)
 for \$1,000,000
12. **Statutory Liability Insurance:** (see clause 15.3)
 Amount \$20,000
13. **Other Types of Insurance:** Not Applicable (see clause 15.3)

 Amounts Insured for Other Types of Insurances: Not Applicable (see clause 15.3)
14. **Environmental Monitoring Contribution:** Not Applicable (see clause 16)
15. **Address for Notices (including facsimile number):** (see clause 19)
 - (a) Grantor: C/- PO Box 5244 Dunedin Facsimile (03) 477-8626
 - (b) Concessionaire: P O Box 168 ALEXANDRA

SCHEDULE 2

Special Conditions

Land Management

- 1 The Concessionaire must not break up or crop any part of the Land without the prior written consent of the Grantor.
- 2.1 The Concessionaire must not actively encourage ewes to drift above 1000 metres above sea level by any means. This includes mustering or the use of salt blocks.
- 2.2 The Grantor acknowledges that despite the best efforts of the Concessionaire some ewe drift will occur above 1000 metres above sea level.
- 2.3 If the Grantor determines that the Concessionaire is taking no steps to monitor and control 'ewe drift' above 1000 metres above sea level and the Grantor is made aware that ewes are grazing above this altitude, the Grantor may terminate this concession unless effective measures to control 'ewe drift' are agreed between the Grantor and Concessionaire.
- 3 The Concessionaire may oversow and topdress the Land with seed and fertiliser.
- 4 The maximum number of stock run will reduce over the duration of the concession.

For each of the first five years of the Term 266 ewes on an annual basis may be run between January 1 and May

1. This equates to 809 ewes between January 1 and May 1. The Concessionaire may elect to run a greater number for a shorter duration if they wish.

For each of years 6 to 10 of the Term, 200 ewes on an annual basis may be run between January 1 and May 1.

This equates to 608 ewes between January 1 and May 1. The Concessionaire may elect to run a greater number for a shorter duration if they wish.

From year 11 until the termination of this concession 133 ewes on an annual basis may be run between January 1 and May 1. This equates to 404 ewes between January 20 and April 15. The Concessionaire may elect to run a greater number for a shorter duration if they wish.

5. The Concessionaire may use a helicopter on the Land for purposes consistent with this Concession Activity.

Fencing

6. The Grantor is not to be called upon at any time to contribute to the costs of "work on a fence" as that term is defined in the Fencing Act 1978 between the Land and any adjoining land of the Grantor.
7. The Concessionaire must keep and maintain at the Concessionaires cost any fences, stiles or gates in good repair.

Hunting

8. The Grantor reserves the right to authorise hunters who hold a valid hunting permit issued by the Department of Conservation to hunt on the Land. The Grantor will not issue hunting permits for the Land between January 1 and May 1.

Inspection

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

Management Prescription

10. The parties will comply with the management prescription document attached as schedule 3.

Other Matters

11. The words "and arising from the grant of this Concession" are added to clause 10(2)(a)(i).
12. The Concessionaire may terminate this Concession by giving at least three month's notice in writing to the Grantor.
13. Upon receiving an application for a concession which stands to impact on this Concession the Grantor will forthwith consult with the Concessionaire and have regard to his views in deciding whether to grant the concession. In reaching a decision the Grantor will not act unreasonably. The Concessionaire accepts that on various occasions e.g. in the case of a one day grant of a Concession, the Grantor may have no ability to other than simply notify the Concessionaire of the Concession.
14. Clause 13.1 is deleted and replaced with the following:
 - 13.1. The Concessionaire may transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it provided it obtains the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline any application for consent under this clause.

Appendix 6: Form of Covenant to be Created – for area coloured yellow and marked CC on Plan.

DATED _____

Between

COMMISSIONER OF CROWN LANDS
("the Owner")

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

OPERATIVE PARTS

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

1. INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

- “Act” means the Reserves Act 1977.
- “Covenant” means this Deed of Covenant made under section 77 of the Act.
- “Director-General” means the Director-General of Conservation.
- “Fence” includes a gate.
- “Fire Authority” means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
- “Land” means the land described in Schedule 1.
- “Minerals” means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “Minister” means the Minister of Conservation.
- “Natural Water” includes water contained in streams the banks of which have, from time to time, been realigned.
- “Owner” means the person or persons who from time to time is or are registered as the proprietor(s) of the Land. Except for purposes of clauses 3, 5, 7, 8.5, 9 and 10 it also includes the Commissioner of Crown Lands.

- “Values” means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
- “Working Day” means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

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

2. **OBJECTIVE OF THE COVENANT**

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

3. **THE OWNER’S OBLIGATIONS**

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;
- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;

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

4. THE MINISTER'S OBLIGATIONS

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

5. IMPLEMENTATION OF OBJECTIVES

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

6. DURATION OF COVENANT

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

7. OBLIGATIONS ON SALE OF LAND

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

8. MISCELLANEOUS MATTERS

8.1 Rights

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

8.2 Trespass Act:

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

8.3 Reserves Act

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

8.4 Titles

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

8.5 Acceptance of Covenant

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

8.6 Fire

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

9. NOTICES

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

10. DEFAULT

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

11. DISPUTE RESOLUTION PROCESSES

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

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

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

12. JOINT OBLIGATIONS

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

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

Signed by _____ acting under a)
delegation from the Commissioner of Crown Lands)
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

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

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

(Area marked in yellow and marked CC on the Designations Plan)

2. Address for Service

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

C/- PO Box 5244 Fax (03) 477 8626
Dunedin

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

PO Box 168
Wanaka

3. Values of Land to be Protected

The land supports tall tussocklands and an assemblage of predominantly native herbs and grasses. It is also an integral part of an extensive little modified high country landscape.

SCHEDULE 2

Special Conditions

- 1 The Minister will pay to the Owner a proportionate share of the cost of any work under clause 3.2 if the Minister has first approved the work.
- 2 The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
 - 2.1 the Minister will bear the cost of work essential for purposes of nature/historic conservation;
 - 2.2 the Owner will bear the cost of work essential for farming purposes;
 - 2.3 when the expenditure is partly for nature/historic conservation and partly for farming purposes, the parties will bear the costs equally or in such other proportion as they may agree, and failing agreement, as may be determined under clause 11.
- 3 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 except for a deer fence which may be erected and maintained on the boundary of the Land.
- 4 Clause 3.1.1 is deleted and replaced with the following:
 - 3.1.1 Grazing of adult wethers at any time and adult sheep between 25 November and 31 May (both dates inclusive) in any year and lambs between 31 May and 1 February (both dates inclusive) in any year.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

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 7: Form of Covenant to be Created – for area coloured yellow and marked NC1 on Plan.

DATED _____

Between

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

and

TE RŪNANGA o NGĀI TAHU

RELEASED UNDER THE OFFICIAL INFORMATION ACT

"Covenant"	means this Deed of Covenant made under section 77 of the Act.
"Fence"	includes a gate.
"Fire Authority"	means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
"Land"	means the land described in Schedule 1.
"Minerals"	means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
"Natural Water"	includes water contained in streams the banks of which have, from time to time, been realigned, groundwater and wetlands.
"Ngäi Tahu Whānui"	means the collective of the individuals who descend from the primary hapū of (Waitaha, Ngāti Mamoe, and Ngäi Tahu), namely, Kāti Kuri, Kāti Irakehu, Kāti Huirapa, Ngäi Tūāhuriri, and Kāi Te Ruahikihiki (Section 2, Te Rūnanga o Ngäi Tahu Act 1996).
"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 Te Rūnanga o Ngäi Tahu or the Owner or both.
"Papatipu Rūnanga"	means the Papatipu Rūnanga of Ngäi Tahu Whānui as defined in the first schedule of the Te Rūnanga o Ngäi Tahu Act 1996 or any subsequent amendment. Refer to Schedule 2 for a list of the kaitiaki Papatipu Rūnanga.
"Te Rūnanga o Ngäi Tahu"	means the body corporate established on 24 th April 1996 under section 6 of Te Rūnanga o Ngäi Tahu Act 1996, as a tribal representative body of Ngäi Tahu Whānui.
"Values"	means the significant inherent cultural values associated with the Land as referred to 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. OBJECTIVES OF THE COVENANT

- 2.1 To manage the Land so as to protect the Values.
- 2.2 To provide access for groups and/or individuals organised by Te Rūnanga o Ngāi Tahu or by any of the kaitiaki Papatipu Rūnanga (as referred to in Schedule 2) to the Land for cultural and management purposes.

3. THE OWNER'S OBLIGATIONS

- 3.1 For as long as there are no adverse effects on the Values, to permit the grazing of sheep and/or cattle on the Land,
- 3.2 Unless first agreed in writing by Te Rūnanga o Ngāi Tahu, the Owner must not carry out any of the following activities on or in relation to the Land:
 - 3.2.1 (subject to 3.1) the grazing of livestock except for sheep and/or cattle;
 - 3.2.2 subject to clauses 3.2.1 and 3.2.3, the felling or removal of, or damage to any tree, shrub or other plant;
 - 3.2.3 the planting of any species of tree, shrub or other plant;
 - 3.2.4 the erection of any fence, building, structure or other improvement for any purpose;

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- 3.2.5 apart from topdressing and the oversowing of seed, any burning or chemical spraying on the Land;
 - 3.2.6 any cultivation, earth works or other soil disturbances;
 - 3.2.7 any archaeological or other scientific research;
 - 3.2.8 the damming, diverting or taking of Natural Water;
 - 3.2.9 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;
 - 3.2.10 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.2.11 the erection of utility transmission lines across the Land.
 - 3.2.12 any other activity which might have an adverse effect on the Ngāi Tahu Whānui association with 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 3.2.7) allow groups and/or individuals organised by Te Rūnanga o Ngāi Tahu or by a kaitiaki Papatipu Rūnanga, access to the Land for cultural and management purposes on the following conditions:
 - (a) That at least fifteen (15) working days advance notice of any such proposed visit is provided to the Owner by telephone, facsimile or letter, except where the Owner decides to waive this requirement at their discretion; or
 - (b) That such access will not unduly inconvenience pastoral farming operations; or
 - (c) That no person shall enter onto the Land with a motor vehicle, dog or firearm unless they have express permission from the Owner to do so; or

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(d) That the number of people accessing the Land at any one time is no more than fifteen (15) persons, unless a greater number is otherwise first agreed to by the Owner.

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.

3.2.7 if any archaeological sites, including but not limited to umu, midden or shelter caves, are discovered on the Land, permit Te Rūnanga o Ngāi Tahu to immediately fence them off or otherwise secure them so as to prevent them from being damaged.

4. TE RŪNANGA O NGĀI TAHU OBLIGATIONS

4.1 Te Rūnanga o Ngāi Tahu must have regard to the objectives specified in clause 2.1 and 2.2 when considering any requests for approval under this Covenant.

4.2 Te Rūnanga o Ngāi Tahu must repair and/or 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 any person authorised by Te Rūnanga o Ngāi Tahu 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 Te Rūnanga o Ngāi Tahu 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 or 2.2;

5.1.2 prepare, in consultation with the Owner, a joint management plan for the Land to achieve the objectives specified in clause 2.1.

6. DURATION OF COVENANT

6.1 This Covenant binds Te Rūnanga o Ngāi Tahu and the Owner in perpetuity to the rights and obligations contained in it.

7. MISCELLANEOUS MATTERS

7.1 **Rights**

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

7.2 **Trespass Act**

7.2.1 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;

7.2.2 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.

7.3 Reserves Act

7.3.1 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.

7.4 Titles

7.4.1 This Covenant must be signed by the Commissioner of Crown Lands and Te Rūnanga o Ngāi Tahu and, for the benefit of the Parties, the Commissioner of Crown Lands undertakes to register it against the Certificate of Title to the Land as soon after the execution of this Covenant as practicably possible.

7.5 Acceptance of Covenant

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

7.6 Fire

7.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and Te Rūnanga o Ngāi Tahu in the event of wildfire threatening the Land;

8. NOTICES

8.1 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.

8.2 A notice given in accordance with clause 8.1 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.

8.3 The Owner must notify Te Rūnanga o Ngāi Tahu of any change of ownership or control of all or part of the Land and must supply Te Rūnanga o Ngāi Tahu with the name and address of the new owner or person in control.

9. **DEFAULT**

9.1 Where either Te Rūnanga o Ngāi Tahu or the Owner breaches any of the terms and conditions contained in this Covenant the other Party:

9.1.1 may take such action as may be necessary to remedy the breach, to prevent the continuation of any such breach and to prevent any further damage occurring as a result of the breach; and

9.1.2 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.

9.2 Should either Te Rūnanga o Ngāi Tahu 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:

9.2.1 advise the defaulting Party of the default.

9.2.2 state the action reasonably required of the defaulting Party to perform or observe in accordance with this Covenant; and

9.2.3 state a reasonable period within which the defaulting Party must take action to remedy the default.

10. **DISPUTE RESOLUTION PROCESSES**

10.1 If any dispute arises between Te Rūnanga o Ngāi Tahu 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.

10.2 **Mediation**

10.2.1 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;

10.2.2 if the Parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

10.3 **Failure of Mediation**

10.3.1 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;

- 10.3.2 notwithstanding anything to the contrary in the Arbitration Act 1996, if the Parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the District Law Society in the region in which the Land is situated;
- 10.3.3 the Parties further agree that the results of arbitration are to be binding upon the Parties.

11. JOINT OBLIGATIONS

- 11.1 The Owner or Te Rūnanga o Ngāi Tahu may, by mutual agreement, carry out any work or activity or improvements or take any action either jointly or individually to assist in the management and protection of the Values.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

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 :

Name: _____

Address: _____

Occupation: _____

Signed on behalf of: **Te Rūnanga o Ngāi Tahu**
by the Kaiwhakahaere of Te Rūnanga o Ngāi Tahu

in the presence of:

Name: _____

Address: _____

Occupation: _____

SCHEDULE 1

1. **Description of Land**

Refer to the attached map.

2. **Address for Service**

The address for service (including facsimile number) of Te Rūnanga o Ngāi Tahu is:

Kaupapa Taiao
Ngāi Tahu Development Corporation Limited
158 Hereford Street
CHRISTCHURCH

Fax: (03) 366 4267

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

CG & MR Ewing
Cattle Flat
PO Box 168
Wanaka

Phone: 03 443 7152

or such other street and fax address as the Owner may in writing, from time to time, notify Te Rūnanga o Ngāi Tahu.

3. **Significant Inherent Cultural Values Associated with the Land:**

In 1995 Ngāi Tahu representatives visited Cattle Flat Station. During this visit terraces and an umu (Māori oven) was located on Speargrass Spur. The isolated rise at the foot of the spur is terraced on the eastern ridge, and has at least one clearly defined umu on the flat top.

Since the time of the Rūnanga visit in 1995 and the iwi inspection in 2003 a fence has been constructed which runs over the top of Speargrass Spur. It seems that the construction of the fence unintentionally destroyed this archaeological / cultural site.

Regardless that the archaeological / cultural site has been damaged this site it is of still cultural importance to Ngāi Tahu and therefore warrants some form of protection. The preservation and analysis of archaeological sites provides information on the lifestyle of Māori who occupied the area. For example, the variety of diet can often be readily seen in the food refuse exposed in these sites and the radiocarbon dates on charcoal and shell from sites can indicate how long Māori have lived in the area

Kaitiaki Papatipu Rūnanga and Contact Details

Te Rūnanga o Moeraki whose takiwā centres on Moeraki and extends from Waitaki to Waihemo and inland to the Main Divide as defined in the First Schedule of the Te Rūnanga o Ngāi Tahu Act 1996 or any subsequent amendment.

Old School Building
Cnr Tenby & Haverford St
Moeraki

Fax: (03) 439 4816

Kāti Huirapa ki Puketeraki whose takiwā centres on Karitane and extends from Waihemo to Purehurehu and includes an interest in Otepoti and the greater harbour of Otakou. The takiwā extends inland to the Main Divide sharing an interest in the lakes and mountains to Whakatipu-Waitai with Rūnanga to the south as defined in the First Schedule of the Te Rūnanga o Ngāi Tahu Act 1996 or any subsequent amendment.

C/- Post Office
Karitane 9064

Fax: (03) 465 7318

Te Rūnanga o Otakou whose takiwā centres on Ōtākou and extends from Purehurehu to Te Matau and inland, sharing an interest in the lakes and mountains to the western coast with Rūnanga to the North and to the South as defined in the First Schedule of the Te Rūnanga o Ngāi Tahu Act 1996 or any subsequent amendment.

RD 2
Otakou
Dunedin

Fax: (03) 478 0354

Te Rūnaka o Hokonui whose takiwā centres on the Hokonui regions and includes a shared interest in the lakes and mountains between Whakatipu-Waitai and Tawhititarere with other Murihiku Rūnanga and those located from Waihemo southwards as defined in the First Schedule of the Te Rūnanga o Ngāi Tahu Act 1996 or any subsequent amendment.

PO Box 114
Gore
Southland

(03) 208 7954

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

Solicitor for Te Rūnanga o Ngāi

Tahu

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

COMMISSIONER OF CROWN
LANDS

to

TE RŪNANGA o NGĀI TAHU

Solicitor

DUNEDIN/CHRISTCHURCH

Appendix 8: Form of Covenant to be Created – for area coloured yellow and marked NC2 on Plan.

DATED _____

Between

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

and

TE RŪNANGA o NGĀI TAHU

"Fire Authority"	means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
"Land"	means the land described in Schedule 1.
"Minerals"	means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
"Natural Water"	includes water contained in streams the banks of which have, from time to time, been realigned, groundwater and wetlands.
"Ngäi Tahu Whānui"	means the collective of the individuals who descend from the primary hapū of (Waitaha, Ngāti Mamoe, and Ngäi Tahu), namely, Kāti Kuri, Kāti Irakehu, Kāti Huirapa, Ngäi Tüähuriri, and Kāi Te Ruahikihiki (Section 2, Te Rünanga o Ngäi Tahu Act 1996).
"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 Te Rünanga o Ngäi Tahu or the Owner or both.
"Papatipu Rünanga"	means the Papatipu Rünanga of Ngäi Tahu Whānui as defined in the first schedule of the Te Rünanga o Ngäi Tahu Act 1996 or any subsequent amendment. Refer to Schedule 2 for a list of the kaitiaki Papatipu Rünanga.
"Te Rünanga o Ngäi Tahu"	means the body corporate established on 24 th April 1996 under section 6 of Te Rünanga o Ngäi Tahu Act 1996, as a tribal representative body of Ngäi Tahu Whānui.
"Values"	means the significant inherent cultural values associated with the Land as referred to 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. OBJECTIVES OF THE COVENANT

- 2.1 To provide access for groups and/or individuals organised by Te Rūnanga o Ngāi Tahu or by any of the kaitiaki Papatipu Rūnanga (as referred to in Schedule 2) to the Land for cultural and management purposes.

3. THE OWNER'S OBLIGATIONS

- 3.1 The Owner will allow groups and/or individuals organised by Te Rūnanga o Ngāi Tahu or by a kaitiaki Papatipu Rūnanga, access to the Land for cultural and management purposes on the following conditions:
 - (a) That at least fifteen (15) working days advance notice of any such proposed visit is provided to the Owner by telephone, facsimile or letter, except where the Owner decides to waive this requirement at their discretion; or
 - (b) That such access will not unduly inconvenience pastoral farming operations; or
 - (c) That no person shall enter onto the Land with a motor vehicle, dog or firearm unless they have express permission from the Owner to do so; or
 - (d) That the number of people accessing the Land at any one time is no more than fifteen (15) persons, unless a greater number is otherwise first agreed to by the Owner.

4. TE RŪNANGA O NGĀI TAHU OBLIGATIONS

- 4.1 Te Rūnanga o Ngāi Tahu must repair and/or 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 any person authorised by Te Rūnanga o Ngāi Tahu or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

5. DURATION OF COVENANT

5.1 This Covenant binds Te Rūnanga o Ngāi Tahu and the Owner in perpetuity to the rights and obligations contained in it.

6. MISCELLANEOUS MATTERS

6.1 Trespass Act

6.1.1 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;

6.1.2 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.

6.4 Titles

6.4.1 This Covenant must be signed by the Commissioner of Crown Lands and Te Rūnanga o Ngāi Tahu and, for the benefit of the Parties, the Commissioner of Crown Lands undertakes to register it against the Certificate of Title to the Land as soon after the execution of this Covenant as practicably possible.

6.5 Acceptance of Covenant

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

6.6 Fire

6.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and Te Rūnanga o Ngāi Tahu in the event of wildfire threatening the Land;

7. NOTICES

7.1 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.

7.2 A notice given in accordance with clause 8.1 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.

7.5 The Owner must notify Te Rūnanga o Ngāi Tahu of any change of ownership or control of all or part of the Land and must supply Te Rūnanga o Ngāi Tahu with the name and address of the new owner or person in control.

8. DEFAULT

8.1 Where either Te Rūnanga o Ngāi Tahu or the Owner breaches any of the terms and conditions contained in this Covenant the other Party:

8.1.1 may take such action as may be necessary to remedy the breach, to prevent the continuation of any such breach and to prevent any further damage occurring as a result of the breach; and

8.1.2 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.

8.2 Should either Te Rūnanga o Ngāi Tahu 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:

8.2.1 advise the defaulting Party of the default.

8.2.2 state the action reasonably required of the defaulting Party to perform or observe in accordance with this Covenant; and

8.2.3 state a reasonable period within which the defaulting Party must take action to remedy the default.

9. DISPUTE RESOLUTION PROCESSES

9.1 If any dispute arises between Te Rūnanga o Ngāi Tahu 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.

9.2 Mediation

9.2.1 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;

9.2.2 if the Parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

9.3 Failure of Mediation

- 9.3.1 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;
- 9.3.2 notwithstanding anything to the contrary in the Arbitration Act 1996, if the Parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the District Law Society in the region in which the Land is situated;
- 9.3.3 the Parties further agree that the results of arbitration are to be binding upon the Parties.

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 :

Name: _____

Address: _____

Occupation: _____

Signed on behalf of: **Te Rūnanga o Ngāi Tahu**
by the Kaiwhakahaere of Te Rūnanga o Ngāi Tahu

in the presence of:

Name: _____

Address: _____

Occupation: _____

SCHEDULE 1

1. **Description of Land**

Refer to the attached map.

2. **Address for Service**

The address for service (including facsimile number) of Te Rūnanga o Ngāi Tahu is:

Kaupapa Taiao
Ngāi Tahu Development Corporation Limited
158 Hereford Street
CHRISTCHURCH

Fax: (03) 366 4267

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

CG & MR Ewing
Cattle Flat
PO Box 168
Wanaka

Phone: 03 443 7152

or such other street and fax address as the Owner may in writing, from time to time, notify Te Rūnanga o Ngāi Tahu.

3. **Significant Inherent Cultural Values Associated with the Land:**

The Land contains archaeological sites, including cultivated gardens of potatoes and turnips, and is most probably the site of a well known Ngāi Tahu kainga. Manuscripts show that on the Land wekas were hunted, fern root was gathered and kauru prepared from tī stands.

The Land contains many other natural resources that were used by local Ngāi Tahu. Due to the Ngāi Tahu occupation of the Land there is a high possibility of discovering other archaeological and cultural sites with Ngāi Tahu values. As a result of this, the Land is of immense cultural, spiritual and traditional importance to Ngāi Tahu Whānui.

Kaitiaki Papatipu Rūnanga and Contact Details

Te Rūnanga o Moeraki whose takiwā centres on Moeraki and extends from Waitaki to Waihemo and inland to the Main Divide as defined in the First Schedule of the Te Rūnanga o Ngāi Tahu Act 1996 or any subsequent amendment.

Old School Building
Cnr Tenby & Haverford St
Moeraki

Fax: (03) 439 4816

Kāti Huirapa ki Puketeraki whose takiwā centres on Karitane and extends from Waihemo to Purehurehu and includes an interest in Otepoti and the greater harbour of Otakou. The takiwā extends inland to the Main Divide sharing an interest in the lakes and mountains to Whakatipu-Waitai with Rūnanga to the south as defined in the First Schedule of the Te Rūnanga o Ngāi Tahu Act 1996 or any subsequent amendment.

C/- Post Office
Karitane 9064

Fax: (03) 465 7318

Te Rūnanga o Otakou whose takiwā centres on Ōtākou and extends from Purehurehu to Te Matau and inland, sharing an interest in the lakes and mountains to the western coast with Rūnanga to the North and to the South as defined in the First Schedule of the Te Rūnanga o Ngāi Tahu Act 1996 or any subsequent amendment.

RD 2
Otakou
Dunedin

Fax: (03) 478 0354

Te Rūnaka o Hokonui whose takiwā centres on the Hokonui regions and includes a shared interest in the lakes and mountains between Whakatipu-Waitai and Tawhititarere with other Murihiku Rūnanga and those located from Waihemo southwards as defined in the First Schedule of the Te Rūnanga o Ngāi Tahu Act 1996 or any subsequent amendment.

PO Box 114
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Southland

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Correct for the purposes of the
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SECTION 77 OF THE
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Solicitor for Te Rūnanga o Ngāi

COMMISSIONER OF CROWN
LANDS

to

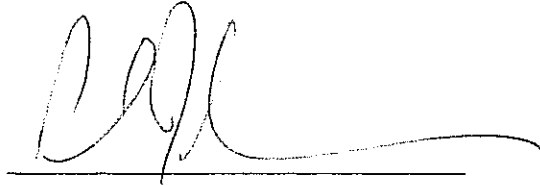
TE RŪNANGA o NGĀI TAHU

Solicitor
DUNEDIN/CHRISTCHURCH

Execution Section

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

SIGNED for and on behalf of the
Commissioner of Crown Lands
by Paul Alexander Jackson acting
pursuant to a delegated authority in
the presence of:

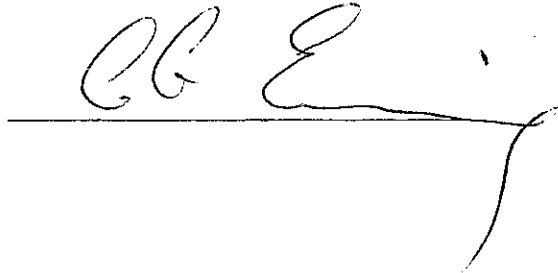


Paul Alexander Jackson
Witness

Solicitor
Occupation

Wellington
Address

SIGNED by Charlton George Ewing
in the presence of:

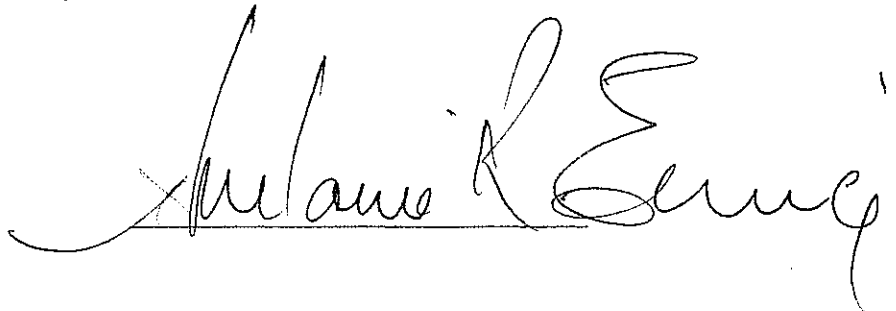


[Handwritten Signature]
Witness

Raymond Murray Blake
Occupation **Solicitor**

Wanaka
Address

SIGNED by Melanie Ruth Ewing in
the presence of:



[Handwritten Signature]
Witness

Raymond Murray Blake
Occupation **Solicitor**

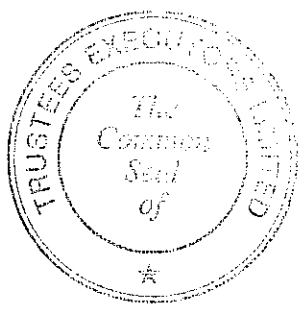
Wanaka
Address

SIGNED by ~~Trustees Executors Limited~~ and Charlton George Ewing in the presence of:

CG Ewing

[Signature]
Witness

Occupation Raymond Murray Blake
Solicitor
Address Wanaka



Signed by TRUSTEES EXECUTORS LIMITED

[Signature]

Witness

Occupation
Address

[Signature]
Witness Name:
Occupation:
Address:

[Signature]
Witness Name:
Occupation:
Address:

Sarah Anderson
New Estates Centre
Trustees Executors Limited
Wellington