

Crown Pastoral Land Tenure Review

Lease name: DEEP CREEK

Lease number: PO 036

Preliminary Proposal - Part 2

A Preliminary Proposal is advertised for public submissions as per Section 43 of the Crown Pastoral Land Act 1998.

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

March

09

Appendix 6: Form of Conservation Covenant to be created "CC1"

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

- "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 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 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)
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 2

Special Conditions

1. The Minister will pay to the Owner a proportionate share of the following:
 - 1.1 the cost of new fences or the repair and maintenance of existing fences on the land if the Minister has first approved the work or activity;
 - 1.2 the cost of any work or activity under clause 3.2 if the Minister has first approved the work or activity.
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 preserving the Values;
 - 2.2 the Owner will bear the cost of work essential for all other purposes;
 - 2.3 when the expenditure is partly for preserving the Values and partly for other 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. The Minister may undertake active management, fencing and/ or restoration of the area to enhance its natural values.
4. Clause 3.1.1 is deleted subject to the Minister requiring destocking of all or part of the area for activities under special condition 3 above.

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/CHRISTCHURCH

Appendix 7: Form of Conservation Covenant to be created "CC2"

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

- "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 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 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)
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: _____

4.

SCHEDULE 2

Special Conditions

1. The Minister will pay to the Owner a proportionate share of the following:
 - 1.1 the cost of new fences or the repair and maintenance of existing fences on the land if the Minister has first approved the work or activity;
 - 1.2 the cost of any work or activity under clause 3.2 if the Minister has first approved the work or activity.
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 preserving the Values;
 - 2.2 the Owner will bear the cost of work essential for all other purposes;
 - 2.3 when the expenditure is partly for preserving the Values and partly for other 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 The Minister may undertake active management, fencing and/ or restoration of the area to enhance its natural values,
- 4 Clause 3.1.1 is deleted subject to the Minister requiring destocking of all or part of the area for activities under special condition 3 above.

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/CHRISTCHURCH

Appendix 8: Form of Conservation Covenant to be created "CC(Fishery)"

Execution Section

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

SIGNED by the **Commissioner of Crown Lands** pursuant to the **Crown Pastoral Land Act 1998** in the presence of:

Witness

Occupation

Address

SIGNED for and on behalf of **Bendigo Station Limited** by two of its directors:

John Charles Perriam

Heather Lorna Perriam

CONSERVATION COVENANT

between

OTAGO FISH AND GAME COUNCIL

and

COMMISSIONER OF CROWN LANDS

This Deed is made on

between (1) **Otago Fish and Game Council (the Council)**
and (2) **Commissioner of Crown Lands (the Owner)**

Introduction

- A. Section 77 of the Reserves Act 1977 (the Act) provides that:
- (i) any body, with approval of the Minister of Conservation (Minister), may agree with any owner or lessee of land, that all or part of the land should be managed so as to preserve the natural environment or landscape amenity or wildlife or freshwater life or marine-life habitat or historical value of the land; and
 - (ii) the terms of such agreement may be recorded in a conservation covenant which is registered against the title to the land or the lease so as to bind the land or the lease and its owner or lessee to the performance of the terms of the agreement, in perpetuity or for such other period as the parties may agree.
- B. The Minister has approved the Council as a body authorised to enter into conservation covenants under section 77 of the Act.
- C.
- (i) An approved plan designating the land in the Schedule (Land) as land over part of which a conservation covenant under section 77 of the Act shall apply, has been registered under section 64 of the Crown Pastoral Land Act 1998;
 - (ii) The Owner is deemed to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998; and
 - (iii) The area of the Land to be managed under the terms of this deed (Site) is described in the Schedule.
- D. The Owner and the Council are concerned to preserve the fishery value in the West Coast Gully Creek being an important spawning and juvenile rearing habitat for brown and rainbow trout that feed into the Lindis River. The Lindis River itself has recreational fishery values. There is concern to prevent damage to the stream banks and stream bed and modification of the stream or other activities that may change the character of the Site or adversely affect the vegetation, the fresh water life and habitat of the Site.
- E. The Owner and the Council have agreed that the Site is to be managed with the following conservation purposes and objectives (**Purposes and Objectives**):
- (i) to preserve and maintain the spawning and juvenile rearing grounds for brown and rainbow trout at the Site;
 - (ii) to protect and enhance the natural and fishery values of the Site including protecting the stream bed from physical disturbance or modification; and
 - (iii) to permit access to the Site by the Council for fishery management purposes.

Agreed**1. Covenant**

In accordance with section 77 of the Act, the Owner and the Council covenant from the date of this deed and in perpetuity, that the Site shall be managed so as to meet the Purposes and Objectives.

2. Owner's Obligations

- 2.1 The Owner may graze the Site to an extent consistent, in the opinion of the Council, with the Purposes and Objectives.
- 2.2 The Owner shall, so far as is practicable keep the Site free from:
- (a) gorse, broom, sweet briar, nodding thistle and all other noxious plants and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - (b) rabbits and vermin and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993, and
 - (c) rubbish or other unsightly or offensive material arising from the Owner's use of the Site.
- 2.3 The Owner shall not carry out, nor allow to be carried out, without the Council's prior approval but such approval cannot be unreasonably be withheld:
- (a) the erection of any fence, building, structure or other improvements on the Site whether for the Owner's purpose or for the other private or public purposes;
 - (b) any prospecting or mining for minerals, coal, or other deposit on or under the Site;
 - (c) any cultivation, earthworks, drainage or other soil disturbance on the site;
 - (d) any subdivision of the Site;
 - (e) any tree planting on the Site;
 - (f) any removal of native plants shrubs or trees or other exotic trees from the Site; or
 - (g) depositing or discharge of any waste or rubbish on, or any contamination of, the Site.

and the Council shall have regard to the Purposes and Objectives when considering any request for approval under this clause, and shall not unreasonably decline approval.

- 2.4 The Owner shall not carry out nor allow to be carried out the modification of the banks or bed of any waterway on the Site, the construction of any dam on the Site or the diversion or taking of the natural water on or from the Site.

3. Council's Obligations

The Council may provide to the Owner from time to time, and at any time upon request by the Owner, such technical advice or assistance as may be necessary or desirable to assist in meeting the Purposes and Objectives.

4. Access

The Owner grants to the Council, and any officer or duly authorised agent of the Council, a right of access on to the Site for the purposes of examining and recording the condition of the Site or for carrying out fisheries management, protection or maintenance work on the Site consistent with the Purposes and Objectives. Prior to exercising this right, the Council and the officers or agents of the Council shall consult with the Owner and have regard to all reasonable requests and requirements of the Owner but the Owners consent will not be unreasonably withheld.

5. Fires

The Owner will notify the appropriate Fire Authority (District Council or the Minister as the case may be, see section 2 of the Forest and Rural Fires Act 1977) in the event of wildfire threatening the Site.

6. Notice

- 6.1 Each notice or other communication under this deed is to be in writing, is to be sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address provided by each party from time to time, and is to be marked for the attention of the person or office holder (if any), from time to time designated for that purpose by the addressee to the other party. The initial address, facsimile number and contact person in respect of each party is set out under their respective names at the end of this deed.
- 6.2 No communication is to be effective until received. A communication will be deemed to be received by the addressee:
- (a) 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;
 - (b) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), when delivered; and
 - (c) in the case of a letter, on the fifth working day after mailing.

7. Arbitration

If any dispute or difference arises between the Owner and the Council in any way arising out of, or in connection with, this deed, it is agreed that the dispute or difference must be referred at the request of either the Council or the Owner to arbitration under the Arbitration Act 1996.

8. General

- 8.1 In the event that the Site, or a part of the Site, is on land designated as land to be freeholded under the Crown Pastoral Land Act 1998 it is intended that this deed will be registered against the fee simple title to issue for that land and shall bind the registered proprietor of that land or any transferee or lessee of the registered proprietor.
- 8.2 The Owner shall not be personally liable in damages for any breach of covenant under this deed committed after the Owner has parted with all interest in the Site in respect of which such a breach occurs.
- 8.3 Where there is more than one owner of the leasehold or fee simple title to the Site, the covenants contained in this deed shall bind each owner jointly and severally.
- 8.4 Where the Owner is a company the covenants contained in this deed shall bind a receiver, liquidator, statutory manager or statutory receiver. Where the Owner is a natural person, this deed shall bind an Official Assignee. In either case this deed binds a mortgagee in possession.
- 8.5 The reference to any legislation in this deed extends to and includes any amendments to, or re-enactment of, that legislation.
- 8.6 The Owner and the Council shall take all steps and do all things necessary to register this deed against the Land at the relevant District Land Registry.

9. Severance

If any part of this deed is or becomes legally ineffective, invalid, or unenforceable, the effectiveness, validity, or enforceability of the remainder is not affected.

Execution

Executed as a deed

The Common Seal of the
Otago Fish and Game Council
was affixed in the presence of:

Witness(es) Signature(s)

Print Name(s)

Occupation

Address(es)

Address of Otago Fish and Game Council

Address Cnr Hanover and Harrow Streets Facsimile (03) 477-0146
Dunedin

Attention Niall Watson

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

Witness Signature

Print Name

Occupation

Address

Address of Commissioner of Crown Lands

Address Land Information New Zealand Facsimile
160 Lambton Quay, (04) 460 0373
Wellington
Attention: Jean Greedy

Schedule

Land: All that parcel of land containing approximately 2,245 hectares and being the land outlined in green on the Plan attached to the Proposal dated [], relating to Deep Creek Pastoral Lease prepared under the Crown Pastoral Land Act 1998.

Site: That part of the land, to a width of five metres including the stream bed, generally being shown as a solid yellow line and labelled "CC(Fishery)" on the Plan attached to the Proposal dated [] relating to those parts of the Stream within Deep Creek Pastoral Lease prepared under the Crown Pastoral Land Act 1998.

Fish & Game Covenant – Precedent