

Crown Pastoral Land Tenure Review

Lease name: SANDY POINT

Lease number: PO 350

Substantive Proposal - Part 1

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

August

06

**EXECUTION
COPY**

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

Date:  March 2006

Parties

Holder: Glenfoyle Limited
C/- A & BM Kane
Glenfoyle
RD 3
CROMWELL

Commissioner of Crown Lands:

C/- The Manager for Tenure Review
Quotable Value New Zealand Limited
P O Box 13-443
CHRISTCHURCH

The Land

Lease: Sandy Point

Legal Description: Sections 1, 2, 3, 4, 5, 6 and 7 Survey Office Plan 22542, Sections 1 & 2 Survey Office Plan 21849 and Section 1 Survey Office Plan 21850

Area: 1797.8319 hectares

Certificate of Title/Unique Identifier: OT13A/121

Summary of Designations

Under this Proposal, the Land is designated as follows:

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

1 The Plan

2 Conditions

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

3 Settlement

- 3.1 Unless otherwise agreed by the parties, the Settlement Date for the disposal of the Freehold Land to the Holder by freehold disposal will be the day that is TEN (10) working days following the day on which Land Information New Zealand notifies the Commissioner that the Final Plan and a copy of this Proposal are registered in accordance with the Act.
- 3.2 The Freehold Land will be disposed of to the Holder under the Land Act 1948.

4 Holder's Payment

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

5 Commissioner's Payment

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

6 Vesting of Crown Land

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

7 Issue of Certificate of Title

- 7.1 Notwithstanding any other provision in this Proposal, the Commissioner will not request that the Surveyor-General issue a certificate to the Registrar pursuant to section 116 of the Land Act 1948 (to enable a certificate of title to issue for the Freehold Land) unless and until:
- (a) the Commissioner has received the Holder's Payment from the Holder under clause 4, and all other money payable by the Holder under this Proposal and the Notice;
 - (b) the Holder has provided to the Commissioner duplicate copies of the certificate of title relating to the Lease (if any) and/or the Lease if requested by the Commissioner;
 - (c) the Holder has signed and returned to the Commissioner all documents required by the Commissioner to be signed by the Holder to give effect to this Proposal

(including, without limitation, any permit, covenant, easement and/or any other document); and

- (d) the Holder has procured a registrable discharge of any Mortgage and provided this to the Commissioner together with any new mortgage documents to be registered against the Freehold Land.

8 Registration of Documents

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

9 Consents

- 9.1 The Holder must obtain the written consent to the Holder's acceptance of this Proposal from all persons having an interest in the Land (other than the Holder), including, but not limited to:
- (a) any Mortgagee(s);
 - (b) any party entitled to the benefit of a land improvement agreement registered against the Lease and/or the Land; and
 - (c) any other person that the Commissioner reasonably believes has an interest in the Land or who the Holder reasonably believes has an interest in the Land, whether registered or not.
- 9.2 The consents required under clause 9.1 must be in a form acceptable to the Commissioner in all respects and be returned to the Commissioner with this Proposal on its acceptance by the Holder. Examples of the form of consents required under clause 9.1 are set out in Appendix 1.
- 9.3 The Holder must also obtain, and provide to the Commissioner if requested, all consents necessary for the Holder to accept this Proposal including (without limitation) any:
- (a) corporate and/or trustee consents; and
 - (b) consent required under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005.
- 9.4 The Holder will procure the Mortgagee to execute a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder will execute registrable new mortgage documents and forward these to the Commissioner to be registered as set out in clause 8.
- 9.5 If required by the Mortgagee, the Commissioner will provide an undertaking that, subject to the provisions of clause 7 being satisfied, the Commissioner will register the discharge of the Mortgage and register any new mortgage against the certificate of title for Freehold Land at the same time as the certificate of title for the Freehold Land issues.

10 Continuation of Lease

- 10.1 The Lease will remain in full force and effect until a certificate of title issues for the Freehold Land. Notwithstanding when Settlement Date occurs, until a certificate of title issues for the

Freehold Land the Holder will duly and punctually comply with all obligations on its part under the Lease (other than as set out at clause 12.1 (b)) and the Lease will remain in full force and effect.

10.2 From the date that a certificate of title is issued for the Freehold Land the Lease is deemed to be surrendered and, subject to clause 10.3, the Commissioner releases and discharges the Holder from the performance and observance of all covenants, conditions and obligations under the Lease.

10.3 The release and discharge in clause 10.2 is without prejudice to:

- (a) the rights, remedies and powers of the Commissioner contained in the Lease (except as varied in accordance with clause 12.1(b)); and
- (b) will not release or discharge the Holder from any liability under the Lease,

arising prior to the date that the certificate of title for the Freehold Land is issued, under any statute or by any reason where such liability is due to the fault of the Holder.

10.4 As from the Vesting Date, the Holder will not have any estate, right or claim against any of the land, improvements, fencing, buildings, structures, fixtures, fittings or chattels on the Crown Land (subject to the provisions of any permit, easement, concession, other encumbrance or document provided under this Proposal). The Holder will not be entitled to any compensation for any of its improvements, fencing, buildings, structures, fixtures, fittings or chattels which are on the Crown Land as at the Vesting Date.

11 Fencing and Construction

11.1 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, the Commissioner will, at its cost, erect new fencing approximately along the line marked as such on the Plan (if any).

11.2 The Commissioner will erect the fencing referred to in clause 11.1 according to the specifications in Appendix 3. The ongoing maintenance of the fencing referred to in clause 11.1 will be under the terms of the Fencing Act 1978.

11.3 If the Commissioner has not completed any fencing as set out in Appendix 3 by the Settlement Date, the Holder agrees that the Commissioner may register a covenant, on terms entirely satisfactory to the Commissioner (in the Commissioner's sole discretion), over the Freehold Land to enable the Commissioner to complete such fencing. The Holder will do all things necessary (including signing any document) to enable the Commissioner to register such a covenant.

11.4 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, the parties will (or the relevant will (as the case may be)) undertake the construction works set out in Appendix 3 on the terms and conditions set out in Appendix 3.

12 Apportionments

12.1 Rent payable under the Lease in respect of the Freehold Land shall be apportioned as follows:

- (a) Rent paid or payable will be apportioned on the Settlement Date as at the Settlement Date and either deducted from or added to (as the case may be) the amount required to settle.

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

13 Risk

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

14 Survey

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

15 Holder's Acknowledgments

- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) it is obtaining the freehold interest in the Freehold Land:
- (i) "as is", solely in reliance on its own investigations and judgement; and

- (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
- (b) the Holder has carried out all inspections of the Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
- (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
 - (i) the Resource Management Act 1991; and
 - (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
 - (iii) the Building Act 2004; andthe Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this clause 15;
- (d) nothing in this Proposal is affected by, and the Commissioner has no liability of any nature in respect of, the existence or terms of any leases, licences or other occupation rights of any nature (if any) granted by the Holder in respect of the Land; and
- (e) the Holder has no claim (and will not have any claim) whatsoever against the Crown and/or Commissioner in relation to the Tenure Review and/or this Proposal, including (without limitation) any claim for any misrepresentation or for any loss or damage suffered whether in contract, tort (including negligence) or otherwise.

16 No Representations or Warranties by the Commissioner

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

17 Acceptance

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

18 Solicitors Certificate

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

19 Default

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

20 Goods and Services Tax

- 20.1 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.
- 20.2 On the 10th working day following the Unconditional Date, the Commissioner will provide to the Holder a GST invoice in respect of the supply evidenced by the Holder's Consideration. The invoice will specify the Commissioner's GST Date.
- 20.3 The Holder will pay GST on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 20.4 On the 10th working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration.
- 20.5 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.6 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
 - (b) any Default GST.

21 Lowest price

- 21.1 The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Freehold Land under section EW 32(3) of the Income Tax Act 2004 is equal to the Holder's Consideration.
- 21.2 The Commissioner's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Crown Land under section EW 32(3) of the Income Tax Act 2004 is equal to the Commissioner's Consideration.

22 Costs

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

23 No nomination or assignment

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

24 Recreation Permit

- 24.1 Immediately on the registration of the Final Plan and a copy of the proposal to which it relates over the Land and pursuant to section 64 of the Act, any recreation permit granted over the Land shall be determined.

25 General

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

26 Interpretation**26.1 Definitions**

In this Proposal unless the context otherwise requires:

Act means the Crown Pastoral Land Act 1998;

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

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

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

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

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

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

Default Rate means the floating rate agreement mid-point thirty day bank bill rate as at 10.45 a.m. on Reuters' page BKBM on the date on which the relevant payment becomes due and payable plus 500 basis points and compounded monthly;

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

Freehold Land means the land set out in Schedule Three;

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

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

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

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

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

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

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

Mortgagee means the holder of any Mortgage;

Notice means the notice to the Holder setting out:

- (a) the Holder's Consideration;
- (b) the Commissioner's Consideration; and

(c) the Holder's Payment or the Commissioner's Payment (as the case may be);

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

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

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

Settlement Date means the settlement date defined in clause 3.1;

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

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

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

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

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

26.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

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

Schedule One: Provisions relating to the Schedule One Land

1 Details of Designation

1.1 Under this Proposal the land shown edged in pink and labelled:

- (a) "CA1" on the Plan, being 65 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area under Section 35(2)(a)(i) Crown Pastoral Land Act 1998;
- (b) "CA2" on the Plan, being 3.5 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area under Section 35(2)(a)(i) Crown Pastoral Land Act 1998;
- (c) "CA3" on the Plan, being 0.0650 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area under Section 35(2)(a)(i) Crown Pastoral Land Act 1998;

Schedule Two: Provisions relating to the Schedule Two Land

1 Details of Designation

Nil

Schedule Three: Provisions relating to the Schedule Three Land

1 Details of designation

1.1 Under this Proposal the land shown edged in green on the Plan, being 1,729 hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:

- (a) Part IVA of the Conservation Act 1987;
- (b) Section 11 of the Crown Minerals Act 1991;
- (c) The creation of the conservation covenant (shown edged in yellow wash and labelled "CC1" on the Plan) substantially as set out in Appendix 4; and
- (d) The creation of the conservation covenant (shown edged in yellow wash and labelled "CC(Fishery)" on the Plan) substantially as set out in Appendix 5; and
- (d) The creation of the easements substantially as set out in Appendices 6, 7 and 8; and
- (e) The continuation in force of a Land Improvement Agreement, registered number 814566 pursuant to S30A Soil Conservation and Rivers Control Act 1941.

Schedule Four: Conditions

Nil

Appendix 1: Consents – Example of Mortgagee Consent

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

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

Dated:

SIGNED by []) _____
 in the presence of: []) _____

Witness Signature:

Witness Name:
 Occupation:
 Address:

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

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

Dated:

SIGNED for and on behalf of)
[_____])
in the presence of:)

Witness Signature:

Witness Name:
Occupation:
Address:

Appendix 2: Example of Solicitors Certificate

Certifications

I [] hereby certify as follows:

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

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

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

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

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

Yours faithfully
[signed by principal of law firm]

Appendix 3: Indicative Fencing and Construction Requirements

1.0 Indicative Fencing Requirements:

New fences and some upgrading:

The fencing specification calls for the erection of a wooden post and seven wire fence with steel Y stakes between wooden posts, to the indicative requirements set out in 1(a), 1(b) and 1(d) and for the installation of a gate at the road entrance and other works to existing fences set out in 1(c) of these specifications:

(a) Hill Fence U-V, W-X, Y-Z (Area CA1):

- 1.1 Six x 2.5 mm galvanized high tensile wires and the bottom wire being 4 mm galvanized mild steel. Total of 7 wires.
- 1.2 2.1 metre x 200 mm treated timber strainer posts with 2.4 metre x 125 mm stay posts to be used for gateways and end of strains.
- 1.3 1.8 metre x 125 mm treated wooden intermediate posts or T irons to be used at 20 metre gaps or at lesser intervals on appropriate high and low points as required. 117 cm (46") to remain out of the ground. Steel Y stakes, back to back, may be used on high spots and on corners instead of wooden posts or T irons, with tie backs on tussock country.
- 1.4 Six steel Y stakes per 20 metres to be used. Y stakes will be 1.5 metres on the sunny face and in rocky ground and 1.65 metres on the dark side of the hill.
- 1.5 Three x 3.6 metre Taranaki gates to be erected at points marked TG3. Gates to be 8 wires, 900 mm high, 150 mm netting squares, pipe uprights at each end and centre.
- 1.6 The fence line will require hand scrub clearing where necessary (approximately 40% of the line).

(b) Car Park Fence S-T (Area CA3):

- 1.7 Six x 2.5 mm galvanized high tensile wires and the bottom wire being 4 mm galvanized mild steel. Total of 7 wires.
- 1.8 1060 mm Rabbit netting to be attached to the fence to enclose the car park.
- 1.9 2.1 metre x 200 mm treated timber strainer posts with 2.7 metre x 150 mm stay posts to be used for gateways and end of strains.
- 1.10 1.8 metre x 125 mm treated wooden intermediate posts or T irons to be used at 20 metre gaps. 117 cm (46") to remain out of the ground.
- 1.11 Six steel Y stakes per 20 metres to be used. Y stakes will be 1.65 metres long.

(c) Car Park Fence -Existing Road and South Boundary between T-S (Area CA3):

- 1.12 One x 4.25 metre heavy duty swung gate to be erected at road entrance in existing road boundary fence the location being according to Transit New Zealand requirements. Existing wires to be reused and strained to new 2.1 m x 200 mm treated timber strainer post with 2.7 metre x 150 mm stay posts.
- 1.13 1060 mm Rabbit netting to be attached to the existing south boundary fence only.

(d) River Fence Q-R (Area CA2):

- 1.14 Six x 2.5 mm galvanized high tensile wires and the bottom wire being 4 mm galvanized mild steel. Total of 7 wires.
- 1.15 2.1 metre x 200 mm treated timber strainer posts with 2.4 metre x 125 mm stay posts to be used end of strains.
- 1.16 1.8 metre x 125 mm treated wooden intermediate posts or T irons to be used at 20 metre gaps or at lesser intervals on appropriate high and low points as required. 117 cm (46") to remain out of the ground. Steel Y stakes, back to back, may be used on high spots and on corners instead of wooden posts or T irons.
- 1.17 Six steel Y stakes per 20 metres to be used. Y stakes will be 1.65 metres long.

1.18 The fence line will require clearing of young pine trees in places.

2.0 Length and location:

2.1 New fence is to be erected along the lines marked as follows on the plan.

- (a) Hill Fence shown marked U-V", W-X and Y-Z (CA1). Approximately 1,700 metres.
- (b) Car Park Fence shown marked S-T to be erected on two sides of the proposed car park (Area CA3). Approximately 50 metres.
- (c) River Fence shown marked Q-R (Area CA2). Approximately 700 metres.

2.2 Erection of strainer post, gate and restraining of existing wires for the road fence plus attaching rabbit netting in part.

- (a) Balance of car park comprising the existing road fence and fence forming the south boundary of the car park between T-S (Area CA3). Rabbit netting is not required for the road boundary fence. Approximately 50 metres.

3.0 Preliminary and General Matters

3.1 New Materials

All materials forming a permanent part of the fence shall be new and shall conform to any relevant New Zealand or international standard.

3.2 Standards

Materials forming a permanent part of the specified fence shall conform to the applicable standard. Such materials shall either identify the applicable standard on the label or certificate from the supplier or manufacturer shall be supplied stating the materials have been manufactured in a process that has been tested and which conforms to that standard.

Current standards that apply to fencing materials include but may not be limited to:

- 3471:1974 (NZS) Specifications for galvanized steel fencing wire plain and barbed.
- 3607:1989 (NZS) Specifications for round and part round timber fence posts.
- 3640:1992 (NZMP) Specifications of the minimum requirements of the NZ Timber Preservation Council Inc.
- D360:1986 (NZS/ASTM) Creosote Treatment
- 4534:1998 (AS/NZS) Zinc and zinc/aluminum alloy coating on steel wire.
- 4680:1999 (AS/NZS) Hot dip galvanized (zinc) coating on fabricated ferrous articles.

Where no applicable standard exists then materials shall be of best quality as generally accepted in the New Zealand farming and fencing industries.

Documentation would be required of:

- Manufacturers (or suppliers) warranties and test certificates where applicable.
- Guarantee certificates that transfer to the owners of the completed fences.
- Remedies available under the guarantee.
- Installation instructions for hardware where applicable to the warrantee and guarantee.

- 3.3 Blasting
Any blasting required to loosen or remove rock shall be undertaken using electric detonators to reduce the risk of fire.
- 3.4 Drilling
Any rock drilling will be undertaken with a rock drill no larger than 40mm diameter.
- 3.5 Spiking
Where placement of posts requires spiking, the spike shall be 90mm or more diameter.
- 3.6 Lacing
The top wire is to be laced to the top of the steel Y stake with 3.15 mm (9 gauge) wire.

4.0 Materials General – to be used except where these have been specifically modified by the provisions of Clause 5 which shall take precedence.

- 4.1 Wire
Fence wire will be 2.5mm galvanized high tensile steel wires and 4 mm galvanized mild steel wire all of which are to be of good quality. Tie-downs and tie-backs will be 4mm galvanized mild steel kept clear of any ground contact.
- 4.2 Infill Posts
Infill posts will be steel Y stakes or galvanized T irons for use on high spots.
- 4.3 Strainer, Intermediate and Angle Posts
All timber posts used will be round and ground treated.
- 4.4 Stay Block
12 x 2 x 24 ground treated.
- 4.5 Staples
Staples will be 50mm x 4mm barbed galvanized steel.
- 4.6 Permanent Wire Strainers
Permanent wire strainers are to be of the yoke and reel type with a sprung loaded locking bar.
- 4.7 Crossing Netting
Netting on creek and river crossings will be 7 wire galvanized sheep netting.
- 4.8 Swung Gate
The swung gate shall be manufactured of 32 mm 2.6wt galvanized steel pipe frame, suitable braced to withstand normal pressure by beef cattle and fully covered with 50mm chain mesh manufactured from 3.15 mm gauge wire and attached with 2.24 mm galvanized lacing wire.
- 4.9 Taranaki Gates
3.6 metre Taranaki gates to be 8 wires, 900 mm high, 150 mm netting squares, pipe uprights at each end and centre
- 4.10 Gate Chains
Gate chains will be galvanized steel chain and staple type.
- 4.11 Gate gudgeons
Gudgeons are to be of galvanized steel. Top gudgeon is to be lock through type and the bottom gudgeon a bolt through type.

5 Best Practice

5.1 Best fencing practice must be adhered to on all occasions.

5.2 Strains

Length of strains to be determined by the territory but to not exceed 300 metres for HT and 250 metres for No 8 wire. To conform to best practice and if applicable the wire manufacturing recommendations. Strain to account for weather conditions at time of strain.

5.3 Placement of timber strainers, posts and stays

Under no circumstances are any strainers, stays or posts to be shortened either prior to or subsequent to their placement in the ground.

All strainers are to be dug in or driven and rammed and footed. No.8 (4 mm) galvanised steel wire is to be used on foots. Strainer, angle and intermediate posts are to have a minimum of 117 cm (46") out of the ground. Stays are to be 1/3 of the way up posts.

5.4 Placement of wires

Wires are to be located on the grazing side of the boundary, except where there is a high risk of snow damage where they shall be placed on leeward side away from the prevailing snow. The bottom wire to be 100 -150 mm above the ground.

Post staples are to be driven well in but allow the wire to run through.

All wires are to be securely and neatly tied off and strained evenly. Figure 8 knots are to be used in all joins.

5.5 Gate

Swung gate must close against a post and be able to fully open back against the fence.

5.6 Netting at creek crossing

Netting to be hung at creek and river crossings and left to swing.

5.7 Tie Downs

Tie downs are to consist of half or full steel Y stakes according to conditions and the tie down is to be with 4mm mild steel galvanised wire (which is to remain above ground). If a post is a tie down, it is to be fixed to the Y stake by a 150mm x 6mm galvanized nail.

Anywhere that there is a 100 mm or more upward pull on the wires is to have a tie down placed.

5.8 Tie backs

Tie backs can be used on angle posts or T irons and are permitted on both sides of the fence.

5.9 Rabbit Netting

Rabbit netting is to be attached to wires in fence with Ring Fasteners using approximately 10 per square metre.

6 Public Car Park

6.1. For the avoidance of doubt the Commissioner is responsible for the erection of and meeting the cost of fencing work around the public car park shown marked CA3 on the plan, and accepts no responsibility for any other work associated with the formation of the car park and its access from Tarras- Luggate Road, this work coming under the jurisdiction of the Director-General of Conservation.

Appendix 4 – Form of Conservation Covenant to be created over area shown edged in yellow wash and labelled “CC1” on the Plan

DATED _____

Between

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

and

MINISTER OF CONSERVATION
("the Minister")

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



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

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

AND MINISTER OF CONSERVATION

BACKGROUND

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

OPERATIVE PARTS

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

1. INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

- “Act” means the Reserves Act 1977.
- “Covenant” means this Deed of Covenant made under section 77 of the Act.
- “Director-General” means the Director-General of Conservation.
- “Fence” includes a gate.
- “Fire Authority” means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
- “Land” means the land described in Schedule 1.
- “Minerals” means any mineral that is 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.

- “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 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 1

1. Description of Land

The Land is described for the purposes of the proposal as "CC1" on the proposed designations plan.
(the description to be replaced with the freehold land legal description)

2. Address for Service

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

C/- Box 5244
Dunedin

Fax 03-477 8626

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

Glenfoyle Limited
C/-A Kane
Glenfoyle
RD 3
Cromwell

Fax 03- 443 1543

3. Values of Land to be Protected:

This broom shrubland is a distinctive feature of botanical interest. The community consists of relatively tall *Carmichaelia petriei* (visually dominant, but with a vegetation cover of c. 20%), with briar and occasional matagouri and mingimingi. (The ground cover is dominated by exotic grasses and herbs of no conservation value).

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. Clause 3.1.1 is deleted and replaced with the following:
 - 3.1.1 The Owner may graze the Land with sheep to an extent consistent in the opinion of the Minister with the objectives of this Covenant. The grazing of other animals on the land must have the Minister's prior approval.
 - 3.1.2 The Owner will cease to graze all or part of the land if requested to do so by the Minister.
4. The Minister may undertake active management and/ or restoration of the area to enhance its natural values.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

Solicitor for the Minister

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

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Appendix 5 - Form of Conservation Covenant (Fishery) to be created over that part of the land shown in yellow wash and labelled "CC(Fishery)" on the Plan

CONSERVATION COVENANT

between

OTAGO FISH AND GAME COUNCIL

and

COMMISSIONER OF CROWN LANDS

Date

2006

2006

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 berms 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 and the blocks adjacent to the Site, subject to the conditions outlined in 2.1(a), (b), (c), (d).

- a) The owner may graze beef cattle in each block adjacent to the site including that part of the site associated with each block, for a maximum of 2000 stock grazing days per annum. The blocks are West Gully (~100 hectares), Bluffs (~120 hectares) and Long Gully (~160 hectares). The term "stock grazing days" equates to one beef cow for one day. The maximum number of stock to be allowed in each block shall not exceed 100 at any one time.
- b) The intensity of beef cattle grazing shall not be greater than that specified in the covenant if the land area of the blocks is altered. If the owner wishes to graze beef cattle at a greater density than that specified in 2.1 then the owner will erect a fence no closer than 5 metres from the top of the stream bank to exclude stock from the site.
- c) The owner may not graze dairy cattle or deer on the site unless stock are excluded from West Coast Gully Stream by a fence that is to be erected no closer than 5 metres from the top of the stream bank.
- d) There is no restriction on the number of sheep the owner may graze on the site or the blocks adjacent to the site.
- e) If a fence is erected on the site under Clause 2.1 (b) or (c), all restrictions imposed under this covenant on the adjacent blocks will be deemed to have been complied with.

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 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 berms or bed of any waterway on the Site, the construction of any dam on the Site or the diversion of taking of the natural water on or from the Site.

3. Council's Obligations

The Council may:

- (a) 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. The right of access is at the convenience of the Owner and 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 [] hectares, being [] and being the land outlined in green on the Plan attached to the Proposal dated [], relating to Sandy Point 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 Sandy Point Pastoral Lease prepared under the Crown Pastoral Land Act 1998.

Fish & Game Covenant – Sandy Point

Appendix 6: Form of Public Access and Vehicles for Management Purposes Easement in Gross to be created over that part of the land shown dashed orange and labelled "a-b-c" and "b-d-e" on the Plan

**TRANSFER GRANT OF
EASEMENT IN GROSS**

1. Public Access
2. Access for Management Purposes

Land Transfer Act 1952

This page does not form part of the Transfer.

TRANSFER

Land Transfer Act 1952

If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.

Land Registration District

[Empty box for Land Registration District]

Certificate of Title No.	All or Part?	Area and legal description – <i>Insert only when part or Stratum, CT</i>
[Empty]	[Empty]	[Empty]

Transferor Surnames must be underlined

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

Transferee Surnames must be underlined

HER MAJESTY THE QUEEN, acting by and through the Minister of Conservation

Estate or Interest or Easement to be created: *Insert e.g. Fee simple; Leasehold in Lease No.; Right of way etc.*

Public Access and Management Purposes Easement in Gross under section 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

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

Operative Clause

For the above consideration (receipt of which is acknowledged) the TRANSFEROR TRANSFERS to the TRANSFEREE all the transferor's estate and interest in the land in the above Certificate(s) of Title and if an easement is described above such is granted or created.

Dated this _____ day of _____

Attestation

Signed by acting under written delegation from the Commissioner of Crown Lands	Signed in my presence by the Transferor Signature of Witness	(continued on page 4 of Annexure Schedule)
	Witness to complete in BLOCK letters (unless typewritten or legibly stamped)	
Signature, or common seal of Transferor	Witness name	
	Occupation	
	Address	

Certified correct for the purposes of the Land Transfer Act 1952 Certified that Part IIA of the Land Settlement Promotion and Land Acquisition Act 1952 does not apply

[Empty box for Solicitor for the Transferee]

Solicitor for the Transferee

Approved by Register-General of Land under No. 1995/5003
Annexure Schedule

Insert below
"Mortgage", "Transfer", "Lease", etc

[]

Dated

[]

Page

[]

of

[]

Pages

Definitions

1. In this transfer unless the context otherwise requires:

1.1 "Easement Area" means that part of the Servient Land being 10 metres wide (shown as "a"-
"b", "c" and "b", "d", "e" on the designations plan) which is marked [] "[]" on Deposited
Plan/S.O. Plan No [].

1.2 "Management Purposes" means:

- the protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the easement area.
- the management of the land administered by the Transferee (not being a member of the public) in a way that is ecologically sustainable.

1.3 "Servient Land" means the land owned by the Transferor and described on page 1.

1.4 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee's tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.

1.5 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

Standard Easement Terms

Access

2. The Transferee has the right:

2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.

2.2 To pass and re-pass at any time over and along the Easement on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, or with or without guns and dogs, for Management Purposes.

3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Transferor.

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

OTACO-37091 - Easement in Gross: Public Access and Management Purposes to Conservation Area 28 July 2004
CHCRO-60506 - Easement Document 2 a-b-c, b-d-e Sandy Point

4. The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.

Exclusion of Schedules

5. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Ninth Schedule of the Property Law Act 1952 are expressly negated.

Term

6. The easement created by this transfer is to be in perpetuity.

Temporary Suspension

7. The Transferee (not being a member of the Public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary.

Dispute Resolution

- 8.1 If a dispute arises between the Transferor and Transferee (not being a member of the Public) concerning the rights, management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 8.2 If the dispute is not resolved within 14 days of written notice by one party to the other it is to be referred to mediation.
- 8.3 If the dispute is not resolved within 21 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated.
- 8.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

- 9.1 A notice to be given under this transfer by one party to the other is to be in writing and must:
 - (a) be hand delivered to the receiving party; or
 - (b) be sent by ordinary post to the receiving party;
 - (c) be sent by facsimile to the receiving party.
- 9.2 If clause 8.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.
- 9.3 If clause 8.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

Special Easement Terms

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CHCRO-60506 - Easement Document2 a-b-c, b-d-e Sandy Point

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

10 The standard easement terms contained above must be read subject to any special easement terms set out below.

10.1 The Transferor must install gates no less than 3.6 metres in width on any fenceline crossing the easement area.

10.2 Persons are prohibited from (a) camping on the easement area, (b) being present on the easement area with guns and/or dogs.

10.3 The Transferor is under no obligation to maintain the Easement Area to any standard other than that which is necessary for his own purposes.

10.4 For following conditions, the transferee is defined as the Director-General of Conservation's tenants, agents, contractors, and invitees; and any employee or contractor, only.

10.4.1 The Transferee has the right:

(a) To mark the Easement Area as appropriate.

(b) To erect and maintain stiles.

(c) To erect and maintain signs informing the public

(i) of the location of land managed by the Crown and available for public access and recreation; and

(ii) of their rights and responsibilities in relation to the Easement Area.

(d) To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 10.4.1.

10.4.2 The Transferee accepts that if there is a persistent problem with members of the public trespassing off the Easement Area, camping, taking guns or dogs, depositing toilet waste or rubbish, she, acting through the Minister of Conservation, will in consultation with the Transferor develop a strategy to eliminate or ameliorate the problem. Possible remedies include erection of additional signage, strategic placement of fencing, erection of gates and stiles and publicity (including brochures and visitor centre information). The Transferee will meet capital costs associated with the strategy.

10.4.3 The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and in particular will avoid using the easement when conditions such as softening during frost thaw render the Easement Area particularly vulnerable to damage.

10.4.4 In doing any of the matters specified in clause 2.2, the Transferee must take reasonable and proper care not to damage any property of the Transferor and must properly repair any such damage.

10.4.5 If the Transferee instigates a project, other than necessary management activities, which requires frequent use of the Easement Areas she will contribute to the cost of maintaining the Easement Area or reach other agreed recompense with the Transferor. This clause does not apply to necessary management activities on land the easement provides access too. For the purposes of this clause necessary management activities include, but are not limited to, fence maintenance, weed control, pest control, recreational management, fire, concession management and ecological monitoring.

10.4.6 If boundary gates for horse access are locked by the transferor, a key will be provided to the local Department of Conservation office, so that members of the public can obtain a key to ride horses on the easement area.

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Continuation of "Attestation"

Signed for and on behalf of _____)
Her Majesty the Queen by _____)
under a written delegation in the _____)
presence of: _____)

Witness (Signature)
Name _____
Address _____
Occupation _____

Footnote: In substitution of the SO Plan (which has yet to be prepared), the proposed easement described in clause 1 is marked on the Plan.

OTACO-37091 - Easement in Gross: Public Access and Management Purposes to Conservation Area 28 July 2004
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Approved by Registrar-General
of Land under No. 1995/1004

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Vehicles for Management Purposes

Land Transfer Act 1952

Law Firm Acting

Conservancy Solicitor
Department of Conservation
Dunedin

Auckland District Law Society
REF:4135

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