

Crown Pastoral Land Tenure Review

Lease name : AIRIES

Lease number : PT 090

Substantive Proposal

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

June

16

PROPOSAL FOR REVIEW OF CROWN LAND

Under Part 2 of the Crown Pastoral Land Act 1998

Date: 9 November 2015

**EXECUTION
COPY**

Parties

Holder: Alastair Leonard Munro, Lucy Lilian Munro, Grant Andrew Munro and Elizabeth Anne Munro
Airies
R.D. 17
FAIRLIE

Commissioner of Crown Lands:

C/- Opus International Consultants Limited
PO Box 1482
Christchurch
Attention: Bob Webster

The Land

Lease: Airies (Pt090)
Legal Description: Run 295
Area: 1655.9736 hectares (approximately)
Certificate of Title/Unique Identifier: CB529/234

Summary of Designations

Under this Proposal, the Land is designated as follows:

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

1 The Plan

2 Conditions

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

3 Settlement

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

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

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

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

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

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

or

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

(i) has been agreed or determined; and

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

4 Holder's Payment

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

5 Commissioner's Payment

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

- 9.4 The Holder will procure the Mortgagee to execute a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder will execute registrable new mortgage documents and forward these to the Commissioner to be registered as set out in clause 8.
- 9.5 If required by the Mortgagee, the Commissioner will provide an undertaking that, subject to the provisions of clause 7 being satisfied, the Commissioner will register the discharge of the Mortgage and register any new mortgage against the certificate of title for Freehold Land at the same time as the certificate of title for the Freehold Land issues.

10 Continuation of Lease

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

11 Fencing and Construction Works

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

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

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

12 Apportionments

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

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

13 Risk

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

14 Survey

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

15 Holder's Acknowledgements

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

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

16 No Representations or Warranties by the Commissioner

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

17 Acceptance

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

18 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 Unless the context otherwise requires, words and phrases used in this clause have the same meaning as in the GST Act.
- 20.2 If the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are taxable supplies under the GST Act, then:

- (a) the Commissioner and the Holder warrant to each other that they are registered for GST purposes as at the Holder's acceptance of this Proposal and that they will be so registered on the Settlement Date;
 - (b) the Commissioner and the Holder confirm that as at the Settlement Date:
 - (i) each is acquiring the goods supplied with the intention of using the goods for making taxable supplies; and
 - (ii) the Commissioner and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Crown Land and the Holder and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Freehold Land as a principal place of residence; and
 - (c) the Commissioner and the Holder agree that the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are to be zero-rated for GST purposes under section 11(1)(mb) of the GST Act.
- 20.3 If any of the circumstances set out in clause 20.2 change between the date of the Holder's acceptance of this Proposal and the Settlement Date, then the relevant party will notify the other of the changed circumstances as soon as practicable and in any event not later than 2 working days before the Settlement Date and such party shall warrant that the changed circumstances are correct as at the Settlement Date. If the GST treatment of the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration changes as a result of the changed circumstances and a party has already provided the other with a GST invoice, then that party will issue a debit note or credit note, as the case may be, for GST purposes.
- 20.4 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.
- 20.5 The Holder will pay GST (if any) on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 20.6 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.
- 20.7 The Commissioner will pay GST (if any) on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.8 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
 - (b) any Default GST.

21 Lowest price

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

22 Costs

- 22.1 The Commissioner will meet the costs of the survey (if any) of the Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Freehold Land.

- 22.2 The Holder is responsible for all costs the Holder incurs in respect of and incidental to the Tenure Review. In particular, but without limitation, the Holder shall bear all its costs in relation to the review of all documentation forming part of the Tenure Review (including this Proposal), and all professional advice provided to or sought by the Holder.

23 No nomination or assignment

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

24 Recreation Permit

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

25 Consents for Activities

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

26 General

- 26.1 This Proposal and the Notice:
- (a) constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and
 - (b) supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and the Holder relating to the Tenure Review.
- 26.2 Each provision of this Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.
- 26.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 26.4 The Commissioner and the Holder will sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the other to effectively carry out and give effect to the terms and intentions of this Proposal.
- 26.5 This Proposal is governed by, and must be construed under, the laws of New Zealand and the Commissioner and the Holder irrevocably submit to the jurisdiction of the New Zealand courts or other New Zealand system of dispute resolution.
- 26.6 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 26.7 In relation to notices and other communications under this Proposal:
- (a) each notice or other communication is to be in writing, and sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for that purpose by the addressee to the other party. Other than the address to which the Holder is to send its acceptance of this Proposal (which the Commissioner will specifically notify the Holder of) the address, person or office holder (if any) for each party is shown on the front page of this Proposal;
 - (b) no communication is to be effective until received. A communication will be deemed to be received by the addressee:

- (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
- (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), on the working day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and
- (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

27 Interpretation

27.1 Definitions

In this Proposal unless the context otherwise requires:

Act means the Crown Pastoral Land Act 1998;

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

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

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

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

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

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

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

Fencing means any stock proof farm fence.

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

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

Freehold Land means the land set out in Schedule Three;

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

GST Act means the Goods and Services Tax Act 1985;

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

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

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

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

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

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

Mortgagee means the holder of any Mortgage;

Notice means the notice to the Holder setting out:

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

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

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

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

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

Settlement Date means the settlement date defined in clause 3.1;

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

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

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

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

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

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

27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

- (a) a reference to a certificate of title includes a reference to a computer register;
- (b) words importing a gender include all genders;
- (c) reference to a statute includes reference to all enactments that amend or are passed in substitution for the relevant statute and to all regulations relating to that statute;
- (d) words in the singular include the plural and vice versa;

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

Schedule One: Provisions relating to the Schedule One Land

1 Details of Designation

Nil.

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 shaded green or yellow on the Plan, being 1655.9736 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 Queen Elizabeth the Second National Trust covenant for the purpose of preserving the natural environment and landscape, shown shaded yellow and labelled C1, C2, C3 and C4 on the Plan and substantially as set out in Appendix 4.
 - (d) the Land Improvement Agreements embodied in interests 835178 and 233554.1 on the Airies CIR CB529/234.

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

Length and location: Fencing to be along lines:

New fencelines:

X-Y 3160 metres

U-W-V 580 metres

Fence upgrade:

U-V 190 metres

Specifications for new fenceline X-Y

- Existing fence to be replaced with new 7 wire sheep/cattle fence
- Fence to be constructed of 5 x high tensile (2.5mm) wires and a bottom 4mm wire
- An additional 2 strand high tensile barbed top wire, laced on with 3.15mm wire
- 2.1m x 200mm treated timber strainer posts with 2.4m x 125mm treated timber stays for all intermediate corners and end of strains
- 1.8m x 125mm intermediate posts @ 21m maximum spacings
- 1.5m Y-posts (minimum weight 2.00 kg/m) @ 3m maximum spacings, 6 posts per 21m
- 4mm wire for all tie downs and tie backs
- Permanent type wire strainers on all wires on all strains. Maximum strain lengths 300m for high tensile wire and 250m for 4mm wire.
- 50mm x 4mm barbed staples driven in but to allow wire to run through
- Tiebacks permitted on both sides of fence
- Bottom wire to remain 150mm above ground
- Existing five gateways to be re-instated using 4.2 metre heavy duty steel gates swung to open fully and to close securely on opposing strainers.

- Old fence to be removed with all old fence material removed from site
- Minor line clearance by mechanical means by hand tools only
- No requirement for benching or major earth disturbance

Specifications for new fenceline U-W-V

- Construction of a 7 wire sheep/cattle fence with rabbit netting
- Fence to be constructed of 5 x high tensile (2.5mm) wires and a bottom 4mm wire
- An additional 2 strand high tensile barbed top wire, laced on with 3.15mm wire
- 2.1m x 200mm treated timber strainer posts with 2.4m x 125mm treated timber stays for all intermediate corners and end of strains
- 1.8m x 125mm intermediate posts @ 21m maximum spacings
- 1.5m Y-posts (minimum weight 2.00 kg/m) @ 3m maximum spacings, 6 posts per 21m
- 4mm wire for all tie downs and tie backs
- Permanent type wire strainers on all wires on all strains. Maximum strain lengths 300m for high tensile wire and 250m for 4mm wire.
- 50mm x 4mm barbed staples driven in but to allow wire to run through
- Tiebacks permitted on both sides of fence
- Bottom wire to remain 150mm above ground
- A 4.2 metre heavy duty steel gate swung to open fully and to close securely on opposing strainers in new fence at point "U".
- 1060 x 1.4mm x 45mm rabbit netting placed on outside of fence entirely surrounding covenant area unless on steep side slopes where netting is to be on uphill side of fence

- Netting to be securely clipped to fence using "Gerrard" type ring fasteners. Top of netting placed on 2nd top fence wire leaving a flap on the ground to be secured firmly to ground by rocks. A minimum of 10 clips per metre of netting. i.e. 3 clips along top, 3 along bottom, and 4 dispersed throughout middle of netting.
- Minor line clearance by mechanical means by hand tools only
- No requirement for benching or major earth disturbance

Specifications for fence upgrade U-V

Upgrade existing fence with addition of Y-posts at 3m spacing between each existing post. Y-posts to be 1.5m long, with existing fence wires clipped to Y-post with netting clips.

Rabbit netting to be installed as for U-W-V.

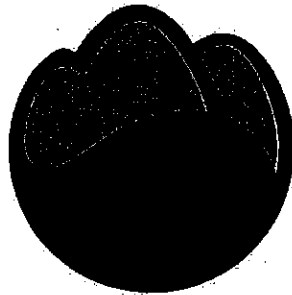
Specifications for earthworks and vegetation clearance

Lines must be cleared manually as required. For the avoidance of doubt there is to be no line clearance other than by hand. If in the course of fencing work it is considered that a specific section of line should be cleared using machinery, then a separate consent from LINZ will be required prior to any work being undertaken. Such consent is to be sought by LINZ's implementation contractor and approval will require an undertaking of:

- Minimal vegetation disturbance
- Not to cause slope instability
- Not to cause erosion or siltation

Should any earthworks be considered then consent from ECAN must be obtained under the Resource Management Act 1991.

Appendix 4: Form of covenant to be created



QEI National Trust
Open Space New Zealand
Ngā Kairauhī Papa

Open Space Covenant
Airies

The Commissioner of Crown Lands
The Queen Elizabeth the Second National Trust

Parties

The Commissioner of Crown Lands acting pursuant to section 80 of the Crown Pastoral Land Act 1998 (Covenantor)

The Queen Elizabeth the Second National Trust (Trust)

Background

- A The Trust is established under the Queen Elizabeth the Second National Trust Act 1977.
- B The Commissioner of Crown Lands is deemed to be the owner of the land comprising the Covenant Area under section 80(4) of the Crown Pastoral Land Act 1998
- C An approved plan designating the Covenant Area as land over which an open space covenant may be created pursuant to Section 22 of the Queen Elizabeth the Second National Trust Act 1977 has been registered pursuant to section 64 of the Crown Pastoral Land Act 1998
- D The Covenant Area comprises the Open Space Values more particularly described in Schedule 3.
- E The Covenantor and the Trust now wish to record the agreed objectives, terms and conditions of the open space covenant in this deed.

Operative provisions

Part A – Purpose and objectives

1 Creation of open space covenant

- 1.1 The Covenantor and the Trust agree to enter into an open space covenant within the meaning of section 22 of the Act in favour of the Trust on the terms and conditions set out in this deed with the intent that the covenant created by this deed shall run with and bind the land comprising the Covenant Area in perpetuity.

2 Purpose and objectives

- 2.1 The Covenantor and the Trust agree that the purpose of this deed is to protect, maintain and enhance the Open Space Values of the Covenant Area and in particular to achieve the following objectives:
 - 2.1.1 The protection and enhancement of the natural character of the Covenant Area with particular regard to the indigenous flora and fauna and giving particular priority to original ecosystems and any nationally threatened species;
 - 2.1.2 The protection, maintenance and enhancement of the landscape value of the Covenant Area with particular regard to representative landforms, kowhai shrub land, grey scrub and tussock land;

- 2.1.3 The enhancement of the contribution the Covenant Area makes to the protection of indigenous biodiversity, by encouraging (where appropriate) the restoration of indigenous vegetation cover on the Covenant Area;
- 2.1.4 The prevention of subdivision (within the meaning of the Resource Management Act 1991 or any other equivalent replacement legislation) of the Covenant Area and
- 2.1.5 The continuation of the management of the Covenant Area, having particular regard to the objectives contained in clauses 2.1.1 to 2.1.4, by way of sustainable high country pastoral farming practices or such other land management method as would achieve the equivalent outcomes.

Part B – Terms and conditions

3 Disposition of the land comprising the Covenant Area

- 3.1 If the Covenantor wishes to sell or otherwise dispose of all or any part of the land comprising the Covenant Area the Covenantor must:
 - 3.1.1 Notify the Trust of such sale or other disposition and provide the Trust with the name and contact address of the new owner, lessee or licensee; and
 - 3.1.2 If any such sale or other disposition occurs before registration of this deed by the Registrar-General of Land:
 - (a) Ensure such sale or other disposition is made expressly subject to the objectives, terms and conditions of this deed; and
 - (b) Obtain the agreement of the party to whom such sale or other disposition is made to comply with and be bound by the objectives, terms and conditions of this deed.
- 3.2 If the Covenantor sells or otherwise disposes of all or any part of the land comprising the Covenant Area to a company, the covenants contained in this deed will bind a mortgagee in possession, receiver, the Official Assignee, liquidator, statutory manager or statutory receiver to the fullest extent permitted by law.

4 Appearance and condition of the Covenant Area

- 4.1 No act or thing may be done or placed or permitted to be done or remain on the Covenant Area which in the sole opinion of the Board materially alters the appearance or condition of the Covenant Area or is prejudicial to the Covenant Area as an area of open space as defined in the Act.
- 4.2 In particular, the Covenantor must not do nor permit others to do any of the following activities on and in respect of the Covenant Area without the prior written consent of the Trust, which consent will not be unreasonably withheld (and if given may be given with reasonable conditions imposed to any consent) if the Trust is satisfied that such activity does not conflict with the purpose and objectives of this deed:
 - 4.2.1 Fell, remove, burn or take any native trees, shrubs or plants of any kind or in any state whatsoever;
 - 4.2.2 Plant any trees, shrubs or plants or scatter or sow any seed of any trees, shrubs or plants, other than local native species sourced from the ecological district within which the Covenant Area is situated;

- 4.2.3 Introduce any noxious substance or substance otherwise injurious to plant life except in the control of pests;
- 4.2.4 Move or remove any rock or stone, blast, mark, paint, deface or otherwise disturb the ground;
- 4.2.5 Construct or erect any building or structure or undertake any exterior alterations to any existing building or structure;
- 4.2.6 Erect or display any sign, notice, hoarding or advertising material of any kind except for signs identifying the Covenant Area or indicating walking tracks that are or may be established on the Covenant Area;
- 4.2.7 Carry out any prospecting or exploration, mining or quarrying of any minerals, petroleum or other substance or deposit;
- 4.2.8 Deposit any rubbish, debris or other materials, except in the course of undertaking maintenance or approved construction works, provided that on completion of any such maintenance or construction works all rubbish, debris and other materials not required for the time being are removed as promptly as possible and the Covenant Area left in a clean and tidy condition;
- 4.2.9 Allow any livestock on the Covenant Area except in connection with sustainable high country pastoral farming practices in accordance with the objective contained in clause 2.1.5; or
- 4.2.10 Cause deterioration in the natural flow, supply, quantity or quality of water of any river, stream, lake, wetland, pond, marsh or any other water resource affecting the Covenant Area.

5 Third party access to the Covenant Area

- 5.1 If the Covenantor is notified by any person, or authority of an intention to erect any structure or infrastructure, or carry out any other works on the Covenant Area, the Covenantor must as soon as reasonably possible:
 - 5.1.1 Inform the person or authority of the existence of this deed.
 - 5.1.2 Inform the Trust of the proposed intentions of any such person or authority; and
 - 5.1.3 Not consent to or otherwise allow the undertaking of the proposed works or any other works by such person or authority without the prior written consent of the Trust.
- 5.2 Any such person or authority will be the responsibility of the Covenantor during the course of any approved works being carried out within the Covenant Area.

6. Management of the Covenant Area

- 6.1 The Trust may provide to the Covenantor technical advice or assistance as is appropriate and practical to assist in meeting the purpose and objectives set out in this deed.

Management Plan

- 6.2 To facilitate the effective management of the Covenant Area and for the purposes of assisting in achieving the purpose and objectives of this deed, the Covenantor will comply with the Management Plan attached in Schedule 5 and any subsequent Management Plan approved under clause 6.3.

- 6.3 If a review of any Management Plan is either required by the Trust or specified in any approved Management Plan, the following will apply:
- 6.3.1 Within 3 months of receipt of any request by the Trust do so, the Covenantor will, either provide sufficient and appropriate information to assist the Trust in the revision of the Management Plan or provide a revised draft Management Plan to the Trust for approval;
 - 6.3.2 If the Trust develops the revised Management Plan the Trust will provide a copy of such revised Management Plan (which shall be the approved Management Plan for the purposes of this clause) to the Covenantor;
 - 6.3.3 If the Covenantor provides a draft Management Plan to the Trust for approval the Trust will within 3 months of receipt of a draft Management Plan, provide its approval to the Covenantor and/or notice of the Trust's reasonable recommendations and amendments to the draft Management Plan (if any); and
 - 6.3.4 The Covenantor will within 3 months of receipt of the Trust's approval and notice under subclause 6.3.3 finalise the Management Plan, complying with the Trust's requirements and provide a copy of the final Management Plan to the Trust for its records.

Non-compliance by the Covenantor in management of the Covenant Area

- 6.4 If the Covenantor is in default of the Covenantor's obligations in respect of the management of the Covenant Area, (including obligations arising under any approved Management Plan), the following will apply:
- 6.4.1 The Trust may give notice to the Covenantor stating the nature of the Covenantor's default, the reasonable actions required to remedy the default and providing a reasonable timeframe within which the Covenantor must remedy the default (**Default Notice**);
 - 6.4.2 If on expiry of the timeframe specified in any Default Notice the Covenantor's default has not been remedied the Trust will give further notice to the Covenantor advising that if the default advised of in the Default Notice is not remedied within a further reasonable timeframe then the Trust will be entitled to arrange for the undertaking of any works required to remedy the default and may recover the cost in all things of doing so from the Covenantor as a debt payable on demand; and
 - 6.4.3 If, on expiry of the further reasonable timeframe specified in clause 6.4.2, the Covenantor's default has not been remedied the Trust may arrange for the undertaking of any works required to remedy such default and may recover the cost in all things of doing so from the Covenantor as a debt payable on demand.

7 Pest plants and animals

- 7.1 The Covenantor must eradicate and control all weeds and pests in the Covenant Area to the extent required by any statute and in particular comply with the provisions of, and any notices given under the Biosecurity Act 1993 and the Wild Animal Control Act 1977.
- 7.2 The Covenantor will comply with the Wilding Tree Control Plan in Schedule 6 and keep the Covenant Area free from any exotic species specified in any Management Plan for the Covenant Area.

8 Fire

- 8.1 If fire threatens the Covenant Area the Covenantor must, as soon as practical notify the appropriate fire authority.

9 Fences and gates

- 9.1 Except when the provisions of the Fencing Act 1978 apply, the Covenantor must keep and maintain all fences and gates on the boundary of the Covenant Area in good order, repair and condition including replacement when that is reasonably required.
- 9.2 If in the reasonable opinion of the Trust, the presence of certain stock types and/or stock levels on the land adjacent to any unfenced portion of the Covenant Area is likely to have a detrimental effect on the Covenant Area, then the Covenantor must at the Covenantor's cost erect appropriate stock proof fencing on the affected unfenced boundary of the Covenant Area.

10 Entry and access**Trust access**

- 10.1 The Trust may through its officers, employees, contractors or agents enter the Covenant Area for the purpose of:
- 10.1.1 Viewing the state and condition of the Covenant Area;
- 10.1.2 Ascertaining compliance by the Covenantor with the objectives, terms and conditions of this deed and any approved Management Plan; and
- 10.1.3 Remedying any default by the Covenantor pursuant clause 6.4.3.

Public access

- 10.2 The Covenantor may, in its sole discretion, permit members of the public to have freedom of entry and access to the Covenant Area provided that in giving any such permission the Covenantor must:
- 10.2.1 Give due consideration to any specific management issues relating to the Covenant Area from time to time;
- 10.2.2 Ensure that regard is had to the purpose and objectives of this deed during such access; and
- 10.2.3 In particular, ensure that the prohibitions set out in clause 4.2 are complied with during such access.

Part C – General provisions**11 Variations**

- 11.1 Subject to the unanimous approval of the Board, the Trust may vary the terms of this deed from time to time to provide for the necessary and appropriate protection of the Covenant Area, provided that any such variation is not contrary to the purpose and objectives of this deed.
- 11.2 No variation to the terms of this deed will have any force or effect unless it is in writing, signed by the Trust and the Covenantor and registered by the Registrar-General of Land.

12 Official Information Act

- 12.1 The Covenantor acknowledges that the Trust is subject to the Official Information Act 1982 and under that act the Trust may be required to release information about the Covenant Area including information gathered in relation to the Trust's monitoring of the Covenant Area.

13 Costs

- 13.1 The Covenantor may be required, at the Board's discretion, to pay the Board's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Board's rights, remedies and powers arising under and from this deed.
- 13.2 The Covenantor may be required, at the Board's discretion, to pay the Board's costs, including administration costs, associated with any variation, requested by the Covenantor, to the registered open space covenant provided for by this deed.

14 Questions related to this deed or management of the Covenant Area

- 14.1 If any question arises in relation to the management of the Covenant Area or any other matter touching or concerning this deed then the Covenantor and the Trust will use their best endeavours in good faith to promptly resolve the question amicably by conference and negotiation between the Covenantor and the Chief Executive of the Trust, provided that any resolution does not in any way diminish the purpose and objectives of this deed.

15 Notices

- 15.1 Any consent, approval, authorisation or notice to be given by the Board or the Trust may be given in writing signed by the Chief Executive and delivered or sent by ordinary post to the last known residential or postal address of the Covenantor or to the solicitor acting on behalf of the Covenantor.

16 Severability

- 16.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause of this deed is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this deed, but the rest of this deed will not be affected.

17 Governing law

- 17.1 This deed is governed by the law of New Zealand. The Covenantor and the Trust submit to the non-exclusive jurisdiction of its courts and will not object to the exercise of jurisdiction by those courts on any basis.

18 Waiver

- 18.1 A waiver of any right, power or remedy under this deed must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other

obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

- 18.2 The fact that a party fails to do or delays in doing something the party is entitled to do under this deed does not amount to a waiver.

19 Definitions and interpretation

- 19.1 In this deed unless the context requires otherwise, the following definitions apply:

Act means the Queen Elizabeth the Second National Trust Act 1977;

Board means the board of directors of the Trust in terms of section 4 of the Act;

Chief Executive means the person appointed under section 18(1)(a) of the Act;

Covenant Area means the area or areas of the land described in Schedule 2 and as outlined and indicated on any plan annexed to this deed;

Covenantor means the person, persons or other entity that from time to time is registered as proprietor of the land comprising the Covenant Area;

Management Plan means the management plan attached in Schedule 5 and any subsequent approved revised management plan; and

Open Space Values mean those values associated with the Covenant Area as set out in Schedule 3 which may include all or some of the following: the natural environment, landscape amenity, biodiversity, wildlife, freshwater life habitat, historic, cultural, scenic, scientific, recreational and social interest values of the Covenant Area.

- 19.2 In the event of any inconsistency between the general terms and conditions contained in Parts B and C of this deed and the special conditions contained in Schedule 1, Schedule 1 will prevail and in the event of any conflict between this deed, Schedule 1 and the Act, the Act will prevail.

- 19.3 In this deed, unless the context otherwise requires:

19.3.1A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

19.3.2A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;

19.3.3A reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;

19.3.4An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

19.3.5A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this deed unless otherwise stated; and

19.3.6 All schedules and attachments to this deed form part of this deed.

Schedule 1 – Special Conditions

Special conditions relating to the Covenant Area

The following special conditions will apply in respect of the Covenant Area.

1 Naming

- 1.1 The Covenantor and the Trust agree that the Covenant Area shall be known as the Airies Station Covenant.

2 Four wheel drive tracks and access ways

- 2.1 In order to facilitate the ongoing management of the Covenant Area and adjoining land and provide safe access over the Covenant Area, the Covenantor may continue to use and maintain the existing four wheel drive tracks and other access ways on the Covenant Area for vehicle, foot and stock access purposes provided that the width of any four wheel drive track or other access way remains no greater than the width of the particular four wheel drive track or access way current as at the date of this deed.
- 2.2 The Covenantor may not establish new four wheel drive tracks or farm access ways, new fences or realign existing fences without the approval of the Trust except in the part of the Covenant Area below 800 metres in C4

3 Water use

- 3.1 In connection with the ongoing management of the Covenant Area the Covenantor may draw water from the stream on the Covenant Area for stock and domestic purposes. if in the reasonable opinion of the Trust the drawing of water is, or is likely to have a detrimental effect on the Covenant Area, the Covenantor will adjust water use appropriately and in accordance with the reasonable direction of the Trust.

4 Establishment of monitoring facilities

- 4.1 The Covenantor will, at the Covenantor's cost establish the monitoring points as specified in Schedule 4 of this deed.

5 Grazing

- 5.1 Despite clause 4 of this deed, the Covenantor may continue to graze stock on the Covenant Area in accordance with the Management Plan. If in the reasonable opinion of the Trust the presence of certain stock types and/or stock levels on the Covenant Area is having or is likely to have a detrimental effect on the Covenant Area the Covenantor will adjust grazing methods appropriately and in accordance with the reasonable direction of the Trust.

Schedule 2 – Schedule of land comprising the Covenant Area

Land Registry: Canterbury

Estate: Lease under s83 Land Act 1948

Area:

C1 3 ha

C2 32 ha

C3 9 ha

C4 365 ha

Total 409ha

Lot & D.P. No.
(other legal description)

Part Run 295
Pukaki Survey District

Part Computer Freehold Register: CB529/234

Schedule 3 - Open Space Values to be protected, maintained and enhanced

1 Natural environment of the Covenant Area

- 1.1 The natural environment and inherent values of the Covenant Area and the property as a whole are discussed in detail in the Conservation Resources Report (2006) commissioned by the Department of Conservation.
- 1.2 This information will provide a useful background and guide to the protection and management of the Covenant Area.
- 1.3 The two most significant parts of the Covenant Area are:
- (a) **Tussock grassland and shrub land** on west-facing slopes of the Albury Range between c. 800m and the ridgeline property boundary at c.1100m, and labelled C4 on the plan attached to this Schedule 3.
 - (b) **Kowhai shrub land** on north-facing and west-facing summits of the southernmost hillocks of a north-south trending series, ranging in altitude from C.750-800m, and labelled C1, C2 and C3 on the plan attached to this Schedule 3.

2 Tussock grassland and shrub land

- 2.1 This area covers approximately 365 hectares and is divisible into two parts. Above c.800m the landscape is dominated by narrow leaved snow tussock, *Chionochloa rigida*, grading upslope into slim snow tussock *C.macra* and hybrids between these two, with minor habitats of rock and scree vegetation. These uppermost slopes support a modified version of the original ecosystems and are reported to have high landscape, botanical, avifauna, and invertebrate values, although wilding pines sourced from neighbouring land detract from these values and will require continued control as has been achieved on part of the Covenant Area in the past.
- 2.2 Below c.800m the vegetation is secondary in origin, consisting of depleted narrow leaved snow tussock and induced short tussock grasslands, dominated by silver tussock *Poa cita*, increasing amounts of grey scrub dominated by matagouri, *Discaria toumatou*, and introduced pasture plants, especially on the lowermost oversown and topdressed slopes. This pattern has arisen from the removal of the original forest vegetation by a combination of natural and early Polynesian fires, the migration of both snow tussock species down and across slopes after these fires, followed by the depletion and retreat of snow tussock upslope, and the spread of short tussocks, matagouri, and introduced pasture plants during the pastoral era. A feature of the vegetation throughout is the number of species present, native and introduced, indicative of disturbance and the relatively high level of natural fertility in these soils, e.g., the native silver tussock and matagouri, both enhanced further by topdressing with artificial fertiliser in the pastoral era.
- 2.3 All the native plants found in this area are widespread tussock grassland species. No 'nationally threatened' native plant is known to occur in this area, although a native broom, *Carmichaelia crassicaulis* is ranked as 'at risk and declining', with the smaller herbs *Leptinella serrulata* and *Senecio dunedinensis* ranked as 'naturally uncommon'. However these three native species are widely distributed in eastern tussock grasslands and are not uncommon throughout the Covenant Area and adjoining land.

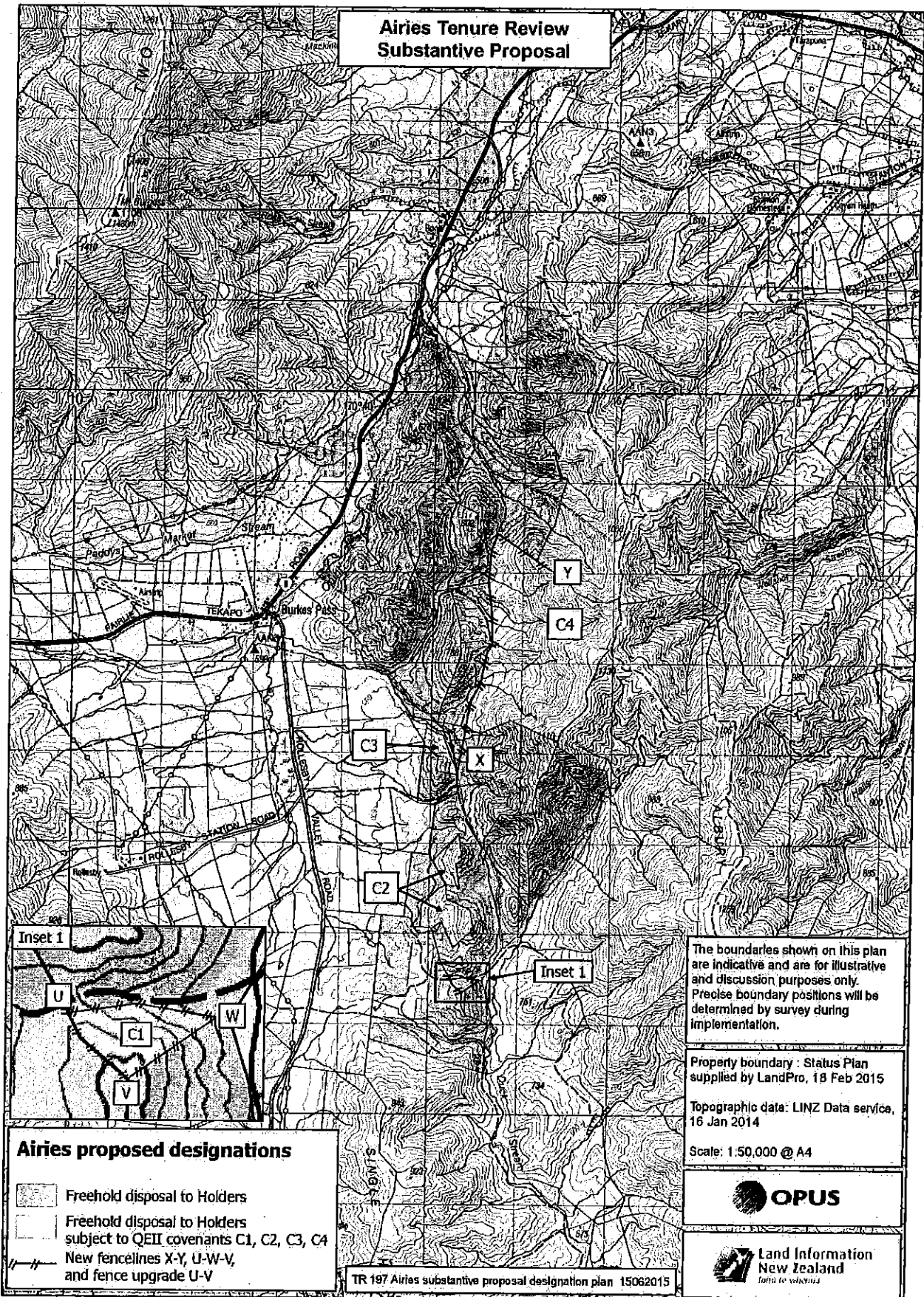
- 2.4 This tussock grassland and shrub land area, and associated rock outcrops is regarded as a valuable feeding and possible nesting habitat for the NZ falcon, *Falco novaeseelandiae*, a species considered to be in decline nationally.

3 Kowhai shrub land

- 3.1 This area covering approximately 44 hectares in total, consists of the north-facing and west-facing tops of the four southernmost hillocks in a line of six in the Covenant Area. Each hillock is separated from its neighbour close by, and the whole sequence is of fault origin and shaped by erosion of the original exposed bedrock. These rounded hillocks are mantled with colluvium and rock outcrops, and the shallow soils are fertile but drought prone and support a shrub land dominated by prostrate kowhai, *Sophora prostrata*, porcupine bush, *Melicactus alpinus*, interlaced with native climbers, and are considered to be the best example of this original ecosystem in the ecological region. This shrub land has a long history of rabbit infestation. At present numbers are controlled by the recycling of the rabbit virus RHD and regular poisoning.
- 3.2 The shrub land features large separate cushions of kowhai and porcupine bush with a sparse cover in between of native and introduced herbs indicative of disturbance and the high soil fertility generated by rabbits, such as stonecrop, *Sedum acre*, horehound, *Marrubium vulgare*, and the rhizomatous native button daisy *Leptinella serrulata*, and the bidibids *Acaena inermis* and *A. buchananii*.
- 3.3 This area is reported to have moderately high landscape values and high botanical, avifauna, herpatofauna and invertebrate values.

4 Other values of the Covenant Area

- 4.1 The terrestrial and aquatic faunas of the Covenant Area have been studied to some extent, the former confined to beetles, and the latter mainly to fish. The small ephemeral streams and seepages draining the covenant area require more detailed survey. Nonetheless, the record of the longfin eel (declining) and several notable invertebrate finds on the property may require management consideration.



Schedule 4 - Monitoring

1 Tussock grassland and shrub land area and Kowhai shrub land

1.1 Upon registration of this covenant, the Covenantor will:

1.1.1 Establish representative photo points at selected sites in the Tussock Grassland, shrub land area and the Kowhai shrub land area as agreed between the Trust and Covenantor. These photo points will be numbered, permanently marked, and their location fixed using GPS technology.

1.1.2 Arrange for 2 types of photographs, panorama and vegetation composition/condition, to be taken at five yearly intervals, or some other interval agreed between the Trust and the Covenantor, to record long term changes in the structure, composition and health of the different classes of vegetation.

1.1.3 Plot sites may be established for vegetation plot analysis.

1.1.4 Keep written records on the status of wilding pines and the incidence and effect of rabbits and any other pest plant or animal.

2 Trust's role

2.1 The Trust will inspect the Covenant Area for compliance and management purposes by way of evaluation of the photos from the established photo points and where appropriate, evaluation of the vegetative plot sites.

Schedule 5 - Management Plan

1 Pre-pastoral land use

- 1.1 Fires arising from natural causes and those lit later during early Polynesian settlement cleared the original indigenous forest vegetation from the Covenant Area. The frequency and timing of Polynesian fires on the Covenant Area are unknown but are likely to have occurred between 600 and 1,000 years ago based on radiocarbon dates of fossil wood and buried charcoal obtained elsewhere within the region.
- 1.2 The sole survivors of this original forest cover include scattered trees of common kowhai, *Sophora microphylla*, mountain lacebark, *Hoheria lyalii*, the tree daisy *Olearia lineata* and cabbage tree, *Cordyline australis*, an indicator of form matai, *Prumnopitys taxifolia* territory. This is a familiar survival pattern seen elsewhere in the region.
- 1.3 The natural recovery of the original forest on the Covenant Area is severely limited by the absence of seed sources and is highly unlikely to occur.

2 Early pastoral land use

- 2.1 Little direct information is available about the vegetation of the Covenant Area and land use during the first 100 years of pastoral occupation. Airies was formerly part of Run 358 and was first taken up along with Ashwick, Run 357, in 1857 although not stocked until the 1860s.
- 2.2 At that time the original tall tussock grassland along the summit of the west facing slopes would have been present, the secondary tall tussock grasslands had spread over former forested land, and shrubs such as matagouri would have been a minor component.
- 2.3 There is anecdotal evidence that stock numbers peaked in the 1880s and decreased after that. The grasslands were burnt at frequent intervals, and the vegetation was depleted by rabbits which reached peak numbers in the region in the 1880s, 1910s, 1930s, 1940s, 1950s, and more recently in the 1980s.
- 2.4 From the 1950s the direction of land use changed with the introduction of a run plan and conservation measures by the local and national soil and water conservation authorities, resulting in an assisted programme of aerial topdressing and seeding of the lower slopes, subdivision fencing, windbreaks, and control of rabbits.
- 2.5 These measures have resulted in a significant improvement in vegetation cover and farm production. Photos taken of the west-facing slopes of the Covenant Area in 1950, compared to the same sites today show the remarkable recovery of the vegetation, since then, largely due to the effective control of rabbits.

3 Current pastoral practice

- 3.1 The tussock grassland shrub land (C4) part of the Covenant Area on the Albury Range is used for 250 ewes (Perendale x Texel) with lambs from October to February and for 3,000 ewes post-weaning for one month. The kowhai shrub land (blocks C1, C2, C3) part of the Covenant Area are used for 500 ewes with lambs from October to February and every year for continued grazing by 3,000 ewes from March to June. The northernmost fenced block of the tussock grassland shrub land part of the Covenant Area on the Albury Range is used for 150 cows for 1-3 months in early winter.

- 3.2 Burning is no longer used as a management tool and it is now difficult to find tussocks in the Covenant Area on the Albury Range showing evidence of past fires.
- 3.3 Topdressing of the lowermost slopes < 800m is practised regularly. As a result stock tends to concentrate along these easier topdressed and oversown slopes and seldom venture into the unimproved tall tussock grassland shrub land part of the Covenant Area above this belt.
- 3.4 Topdressing of the lowermost slopes <800m has also promoted the growth and density of the thorny native shrub matagouri in places which in turn poses a stock management problem for pastoralists. This has been addressed by the periodic application of herbicide on those areas suitable for pasture improvement. Areas of taller dense growths of grey scrub with matagouri on stony or bouldery slopes are excluded from this practice and allowed to recover.

4 Management of Open Space Values of the Covenant Area

- 4.1 It is intended to continue current pastoral practices in the tall tussock grassland shrub land area, labelled C4 on the plan attached to Schedule 3, to monitor the outcomes, and to require a change in management should monitoring prove it necessary.
- 4.2 This part of the Covenant Area is secured by stock proof fences in good condition except the lower boundary which will require replacement and extension along the unfenced part. It is not proposed to fence the boundary between the topdressed lower slopes and the unimproved upper slopes for practical reasons and since stock are seldom seen above the topdressed lower slopes.
- 4.3 The contour interval of 800m shown on the plan attached to Schedule 3 marks the approximate boundary between the topdressed lower slopes and the unimproved upper slopes of C4 and is to be used as a guide for future management.
- 4.4 There is to be no deliberate stocking with sheep or cattle above the 800m contour interval.
- 4.5 There is to be no oversowing or topdressing above the 800m contour interval.
- 4.6 Aerial application of herbicide to control wilding conifers above the 800m contour interval is allowed.
- 4.7 There is to be no grazing of C4 with merino sheep.
- 4.8 It is proposed to enclose the core area of the prostrate kowhai shrub land on the southernmost hillock of the Covenant Area, labelled C1 on the plan attached to Schedule 3 with a rabbit proof fence to secure this site from sheep, cattle and rabbits.
- 4.9 It is intended to continue current pastoral practices on the two blocks containing the kowhai shrub land, labelled C2 and C3 on the plan attached to Schedule 3, to monitor the comparative outcomes, and to require a change in management should monitoring prove it necessary.

5 Management of threats to Open Space Values

Pest Plants

- 5.1. The principal pest plants on the Covenant Area are the exotic conifers (wilding pines) European larch, Corsican pine and Radiata pine sourced from 'take off' points on adjoining

land. Of these larch is the most abundant and continues to spread. Some control of these wildings has already been achieved and must be continued in order to protect the Open Space Values. Larch in particular is browsed by animals resulting in prostrate plants which are difficult to control by mechanical means. However a recent trial using a selective herbicide is promising and should be pursued.

- 5.2 The control of Larch (*Larix decidua*) and Corsican Pine (*Pinus nigra*) is the on-going responsibility of the Covenantor in accordance with the Wilding tree control plan in Schedule 6 so long as the source plants on neighbouring land remain.
- 5.3 Other woody pest plants recorded from the property and probably sourced from the nearby Burkes Pass village include gorse, broom, elderberry, rowan, sycamore, grey poplar, and cotoneaster. The removal of isolated plants and small infestations of these plants from the Covenant Area is necessary to protect the Open Space Values.
- 5.4 Herbaceous pest plants such as mouse ear hawkweed, stone crop, horehound, nettle and thistles are now well established, especially on lower slopes of the Covenant Area and would be very difficult and impracticable to eradicate.

Pest animals

- 5.5 Historically rabbits have been the major pest animal on the property. With the introduction of control measures since the 1950s rabbit numbers have decreased significantly resulting in spectacular recovery of the vegetation. At present rabbits are still present but their numbers are relatively low due to a regular poisoning programme and the recycling of the rabbit virus RHD. Control of rabbits is essential for the maintenance of the Open Space Values on the Covenant Area and must be continued. The regular monitoring of rabbit numbers by Canterbury Regional Council provides an additional safeguard.
- 5.6 The brush tailed possum, ferrets and stoats occur on the Covenant Area. Possums in particular are selective browsers of native plants and along with the mustelids predate on birds, lizards and the larger insects. At present numbers of all three are low due to a regular trapping and tuberculosis testing programme organised by the Animal Health Board as the property lies within a tuberculosis buffer management zone.
- 5.7 Wallabies and fallow deer have been seen on the upper slopes of the Covenant Area, and although their numbers are low, and their effects on the vegetation are ill-defined, steps should be taken if and when necessary to control these animals at a level that provides for a healthy ecosystem. At present some control is achieved by private hunters.
- 5.8 Other animals reported from the property include the ubiquitous hare, feral cats and hedgehogs, and while the selective browsing of native plants by hares is well known, the direct effects of the other two on the Covenant Area are unknown. The control of all three animals, while desirable, is probably not practicable or achievable.

Schedule 6 - Wilding Tree Control Plan

Airies Covenant Wilding Tree Control Plan

For the purposes of this Wilding Tree Control Plan "wilding tree" is defined as being any plant of the following species: Larch *Laryx decidua* and Corsican Pine (*Pinus nigra*).

Objectives:

Zero density of wilding trees on that part of the Land marked as C4 by 2025. (For the purposes of this covenant "zero density" means that any regeneration or wilding tree infestations are continually removed.)

To protect the native plant and other species on that part of the Land marked as C4 from the threat of invasion of exotic weeds and trees.

Control Plan Priorities:

The Covenantor is to undertake wilding tree control on that part of the Land marked as C4 using suitably qualified persons in accordance with the zoning as shown on the attached Control Plan

Map and the following set of priorities:

- (a) Aerial boom spray the P nigra and larch dense stands (Blue and brown zones).
- (b) Commence ground control containment operations on the high ground first in a south to north direction. Starting at high point 1110 to 1130 to 1068 and so on to the northern boundary of C4 (Green zone).
- (c) Ground control containment around and between the sprayed dense zones of any surviving or left trees not controlled in priority 1 (Blue and green zones).
- (d) Ground control of all visible wilding trees in the gullies (Green zone) up and down the matagouri shrubland belts.

The light green zones along the lower western boundary below the 800m contour line can be done at any time and/or easily included with the gullies as one operation.

Aerial wanding (ABBA) of very steep or unsafe terrain on the Land can be done at any time or season.

Maintenance:

Seed viability is known to be 3 – 5 years in the ground. The Covenantor will undertake maintenance control on a 3 – 5 year cycle until all the seed bank is depleted or the adjacent seed source is entirely removed.

Maintenance cycles should follow the same pattern described in plan priorities 2 – 5, given that aerial spraying the dense stands at the start of the programme may not be necessary after the initial phase.

Techniques:

A description of various techniques which may be used to control wilding trees and other weed species follows:

Basal Techniques to Control Wilding Trees:**1. Basal Bark Application (chemical "ring-barking"):**

Using an adjustable cone nozzle or a narrow angle flat fan spray tip, squirt at **low pressure** to prevent over-application and herbicide waste. Saturate the entire circumference of the bottom 30 - 50 cm of trunk, including the root collar area, until just before the point of runoff. Trees that have trunk diameters much larger than 20 cm will require more herbicide to be applied higher up the trunk.

Apply the herbicide to at least twice the height of the diameter of the tree being treated; and use slightly more rather than less herbicide to ensure good kills.

Basal bark herbicide is an oil based carrier with 20% triclopyr and 10% penetrant (current Trade name as at 2013 is "X-Tree Basal").

2. Basal "Cut'n'Stump" Method:

Using the same basal treatment equipment as above, the tree is first cut down and the stump is treated around the cambium and root collar area of the exposed stump.

3. Aerial Basal Bark Application (ABBA):

In situations where there is steep topography or high altitude combined with very sparse infestations of wilding trees the ABBA technique is more efficient and cost effective. A helicopter is used with a hand held wand to deliver basal herbicide directly onto the stem of the target species. The ABBA technique is very effective in mountain bluff systems or inaccessible terrain.

Control Techniques by Wilding Tree Species:**• Larch (*Larix decidua*):**

Aerial boom spraying of "dense" stands on the steeper faces using a Metsulfuron – methyl based product with Kwickin or Hasten spreader/penetrant at 400L per hectare.

Ground control all outlying larch individuals with a priority on the coning age trees first, using the basal cut'n'stump technique; treat using X-Tree basal bark herbicide.

- **Corsican (Pinus nigra):**

Aerial boom spray the dense-closed canopy stand using Agent "Lucifer" (20L Grazon, 20L Conquest, 10L Dicamba 500), 20L Kwickin or Hasten spreader/penetrant with Kondemn and Companion additives at 400 - 600L per hectare depending on the size of the trees.

Ground control all outlying nigra individuals with a priority on the coning age trees first, using the basal cut'n'stump technique; treat using X-Tree basal bark herbicide.

- **All Weed Tree Species – Scattered Density:**

Where individual trees are located on very steep or unsafe terrain and amongst native woody vegetation, the ABBA technique should be used to reduce the possibility of collateral damage.

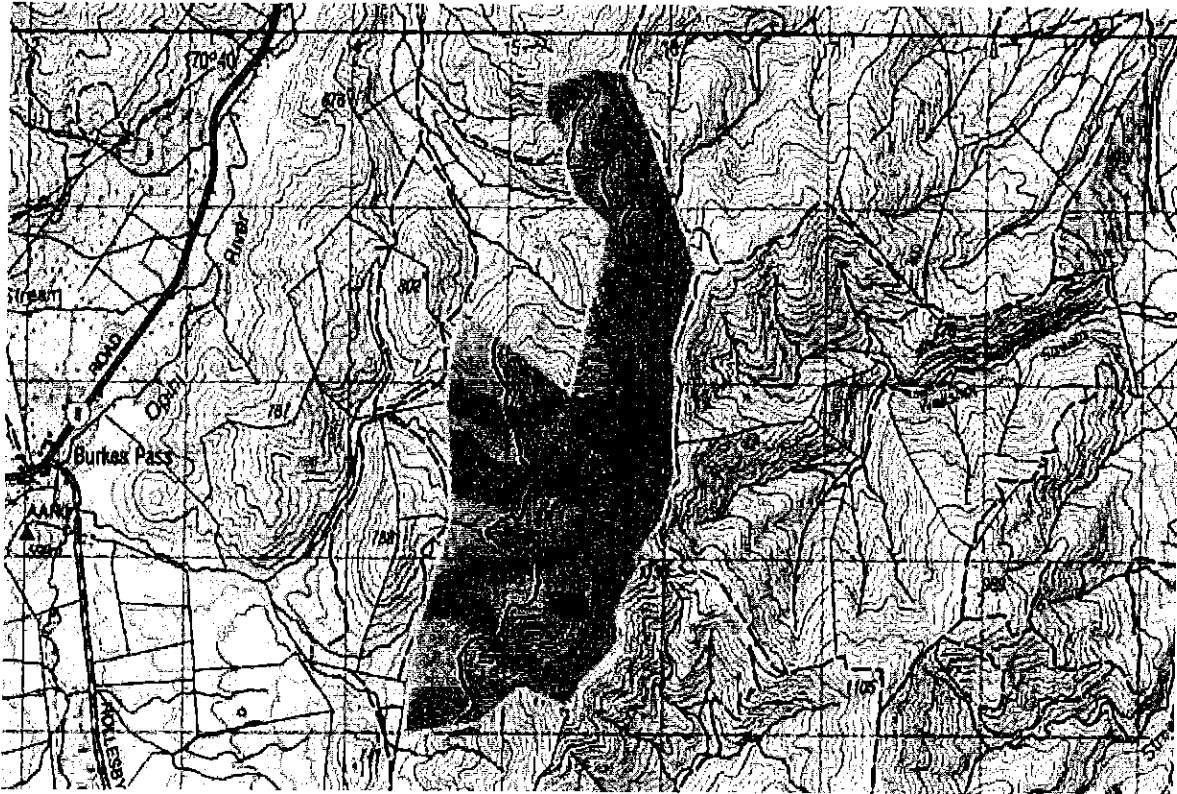
New Techniques:

New techniques to control wilding trees and other pest plants, including spray developments should be considered for adoption where or when appropriate. The Covenator and the Trust will discuss the adoption of new techniques and agree on expected outcomes prior to these techniques being attempted.

Other Weed Tree Species:

Other weed tree species such as rowan, elderberry and silver birch should be removed at the same time on any part of C4 including RPMS/pest weeds like gorse and broom etc.

Wilding Tree Control Plan Map –Covenant Area C4



KEY

- Yellow line:** Proposed C4 covenant area boundary
- Approximate location of the 800m contour line
- Zones –**
- Dark Green:** Ground control operations
- Light Green:** Ground control operations
- Blue:** Aerial spray operations
- Brown:** P Nigra stand (separate aerial spray operation)

**The Common Seal of the QUEEN
ELIZABETH THE SECOND NATIONAL
TRUST** was affixed in the presence of:

Chairperson

Director

Chief Executive

OPEN SPACE COVENANT

Pursuant to section 22 of the
Queen Elizabeth the Second
National Trust Act 1977

THE COMMISSIONER OF CROWN LANDS

Covenantor

AND

**THE QUEEN ELIZABETH THE
SECOND NATIONAL TRUST**

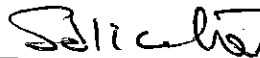
Execution Section

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

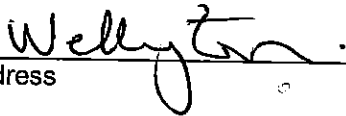
SIGNED by the **Commissioner of Crown Lands** pursuant to the Crown Pastoral Land Act 1998 in the presence of:



Witness



Occupation

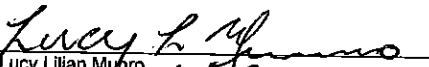


Address

SIGNED by Alastair Leonard Munro, Lucy Lillian Munro, Grant Andrew Munro and Elizabeth Anne Munro in the presence of:



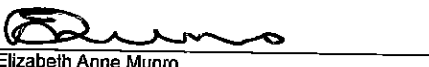
Alastair Leonard Munro



Lucy Lillian Munro



Grant Andrew Munro



Elizabeth Anne Munro



Witness

Occupation

**ROBERT HOWARD VINCENT
SOLICITOR
TIMARU**

Address