

Crown Pastoral Land Tenure Review

Lease name: STONEHURST

Lease number: PO 276

Substantive Proposal - Part 1

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

August

05

PROPOSAL FOR REVIEW OF CROWN LAND

Under Part 2 of the Crown Pastoral Land Act 1998

Date: 19th Nov 2004 *JCF*

Parties

Holder: John Charles Frederick James
Stonehurst
RD 2
Middlemarch

Commissioner of Crown Lands: c/o DTZ New Zealand Limited
P.O. Box 27
Alexandra
Attention: Ken Taylor

The Land

Lease: Po 276 - Stonehurst
Legal Description: Part Run 599 Loganburn and Sutton Survey Districts
Area: 2844.6233 hectares
Certificate of Title/Unique Identifier: OT A2/1198

Summary of Designations

Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown marked 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 marked in green on the Plan) is to be disposed of by freehold disposal to the Holder as set out in Schedule Three.

Po.276

STONEHURST

Land to be Restored to full Crown Ownership and Control

Land to be disposed of to the holders

Proposed Conservation Covenant Part A

Proposed Conservation Covenant Part B

Easement for public access a-b-c

Easement for conservation management purposes d-b-c

Existing Fences

Unfenced

Firebreak/Access tracks:

V
X
W
Y

Scale 1:50,000

K Taylor

7-Oct-03

Pt Run 599

Irrigation Purposes

Report 2 of 2

Pt Run 599

Report 1 of 2

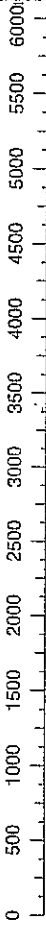
Marginal Strip Subject to Section 4(1)(g) Conservation Act 1987



INTERNATIONAL CONSULTANTS

Stonehurst

Scale 1:50,000



Version	1	2	3	4	5
Otago Land District					
NZMS 260 H 43					
Sheet 1 of 1					
Date 30/9/1999					

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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 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.

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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 1973 and the Overseas Investment Regulations 1995.
- 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 Construction of Firebreak

- 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, construct a firebreak approximately along the line marked as such on the Plan (if any).

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- 11.2 The Commissioner will construct the firebreak referred to in clause 11.1 according to the specifications in Appendix 3.
- 11.3 If the Commissioner has not completed the firebreak 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 the construction of the firebreak. The Holder will do all things necessary (including signing any document) to enable the Commissioner to register such a covenant.

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.

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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 1991; 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;
 - (e) 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
 - (f) 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.

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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. The invoice will specify the Holder's GST Date.
- 20.5 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Holder'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 or the Holder's GST Date (as the case may be) until the date of payment of the unpaid GST; and
 - (b) any Default GST.

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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 EH 48(3)(a) of the Income Tax Act 1994 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 EH 48(3)(a) of the Income Tax Act 1994 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 General

- 24.1 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.
- 24.2 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.
- 24.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 24.4 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.
- 24.5 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.
- 24.6 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 24.7 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).

25 Interpretation

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

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;

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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.

25.2 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;

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- (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.

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Schedule One: Provisions relating to the Schedule One Land

1 **Details of Designation**

- 1.1 Under this Proposal the land shown marked in pink on the Plan, being 2070 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

2 **Schedule One Improvements**

Not applicable.

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Schedule Two: Provisions relating to the Schedule Two Land

1 Details of designation

Not applicable.

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Schedule Three: Provisions relating to the Schedule Three Land

1 Details of designation

- 1.1 Under this Proposal the land shown marked in green on the Plan, being 775 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) an easement for public access along the line shown orange and marked "a-b-c" on the Plan substantially as set out in Appendix 4;
 - (d) an easement for conservation management purposes along the line shown orange and marked "d-b-c" on the Plan substantially as set out in Appendix 5; and
 - (e) a covenant over the areas shaded yellow and marked as "A" and "B" on the Plan substantially as set out in Appendix 6.

Schedule Four: Conditions

Not applicable.

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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:

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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:

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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]

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Appendix 3: Indicative Firebreak Specifications

The firebreak and access track will be 3 metres wide and located:

- (i) adjacent to the lower boundary of the upper portion of the conservation covenant area generally along the line marked "V-W" on the plan; and
- (ii) to the north-western corner of the lower portion of the conservation covenant area generally along the line marked "X-Y" on the plan,

and in each case on a gradient suitable for 4-wheel-drive vehicle access and in each case at the cost of the Commissioner.

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Appendix 4: Form of Easement to be Created

Transfer Instrument

Section 90, Land Transfer Act 1952

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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.

and Registration District

OTAGO

[Empty box]

Unique Identifier(s) All/Part Area/description of part or stratum or C/T(s)

All

Transferor Surname(s) must be underlined

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

Transferee Surname(s) must be underlined

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

Estate or Interest to be transferred, or easement(s) or profit(s) à prendre to be created State if fencing covenant imposed.

Public Access Easement to conservation area under section 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

Operative Clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or profit à prendre is described above, that easement or profit à prendre is granted or created.

Dated this day of

Attestation If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule.

Signed in my presence by the Transferor

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Signature [common seal] of Transferor

Certified correct for the purposes of the Land Transfer Act 1952

[Empty box]

[Solicitor for] the Transferee

Annexure Schedule

Transfer Instrument 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 [] metres wide which is marked "[]" S.O. Plan No [].
 - 1.2 "Dominant Land" means the land administered by the Department of Conservation and contained in Certificate of Title "[]".
 - 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 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.
 - 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

- 2.1 The Transferee has the right in common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, or on or accompanied by horses, or by non-motorised vehicle powered by a person or persons for the purpose of obtaining access to the Dominant Land.
- 2.2 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.

Exclusion of Implied Rights and Powers

3. 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

4. The easement created by this transfer is to be appurtenant to the Dominant Land in perpetuity.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

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Annexure Schedule

Transfer Instrument Dated Page of Pages

Temporary Suspension

5. The Transferee 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

6.1 If a dispute arises between the Transferor and Transferee concerning the rights created by this transfer the parties are to enter into negotiations in good faith to resolve it.

6.2 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.

6.3 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.

6.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

7.1 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; or
- (c) be sent by facsimile to the receiving party.

7.2 If clause 7.1(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.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Transfer Instrument Dated Page of Pages

7.3 If clause 7.1(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

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

8.2 In doing any of the matters specified in clause 2, the Transferee must take reasonable and proper care not to damage any property of the Transferor and must properly repair any such damage.

8.3 The Transferee has the right:

8.3.1 To mark the Easement Area as appropriate

8.3.2 To erect and maintain stiles.

8.3.3 To erect and maintain signs informing the public:

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

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

8.3.4 To use whatever reasonable means of access she feels fit over the Easement Area to carry out the works in clause 8.3.1-8.3.3.

8.4 The Easement Area is closed for a period of up to six weeks (such a period to be determined by the Transferor) each year for lambing.

8.5 For the avoidance of doubt, guns and dogs are not permitted on the Easement Area.

8.6 That the Transferee will pay that proportion of the cost of maintenance of the Easement Area which the parties determine is attributable to use of the Easement Area by the Transferee.

Continuation of "Attestation"

All signing parties and either their witnesses or solicitors must sign or initial in this box.

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Annexure Schedule

Transfer Instrument Dated Page of Pages

Signed for and on behalf of)
Her Majesty the Queen by)
Ian Robert Hugh Whitwell)
under a written delegation in the)
presence of:)

Witness (Signature)

Name _____

Address _____

Occupation _____

All signing parties and either their witnesses or solicitors must sign or initial in this box.

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Appendix 5: Form of Easement to be Created

Transfer Instrument

Section 90, Land Transfer Act 1952

RELEASED UNDER THE OFFICIAL INFORMATION ACT

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.

and Registration District

OTAGO

[Empty box]

Unique Identifier(s) All/Part Area/description of part or stratum or C/T(s)

All

Transferor

Surname(s) must be underlined

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

Transferee

Surname(s) must be underlined

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

Estate or Interest to be transferred, or easement(s) or profit(s) à prendre to be created State if fencing covenant imposed.

Management Purposes Easement to conservation area granted under section 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

Operative Clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or profit à prendre is described above, that easement or profit à prendre is granted or created.

Dated this day of

Attestation If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule.

Signed in my presence by the Transferor

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Signature [common seal] of Transferor

Certified correct for the purposes of the Land Transfer Act 1952

[Empty box]

[Solicitor for] the Transferee

Annexure Schedule

Transfer Instrument 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 [] metres wide which is marked "[]" S.O. Plan No [].
 - 1.2 "Dominant Land" means the land administered by the Department of Conservation and contained in Certificate of Title "[]".
 - 1.3 "Management Purposes" means:
 - the protection of a significant inherent value of the Dominant Land;
 - the management of the Dominant Land in a way that is ecologically sustainable.
 - 1.4 "Servient Land" means the land owned by the Transferor and described on page 1.
 - 1.5 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and includes the Transferee's tenants, agents, contractors and invitees; or any employee or contractor of the Director-General of Conservation.
 - 1.6 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

Standard Easement Terms

Access

- 2.1 The Transferee has the right in common with the Transferor at any time to pass and re-pass over and along the Easement Area on foot, or on or accompanied by horses, or by motor vehicles, with or without machinery and implements of any kind, for Management Purposes associated with the Dominant Land.
- 2.2 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.

Exclusion of Implied Rights and Powers

3. 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.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

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Annexure Schedule

Transfer Instrument Dated Page of Pages

Term

4. The easement created by this transfer is to be appurtenant to the Dominant Land in perpetuity.

Dispute Resolution

5.1 If a dispute arises between the Transferor and Transferee concerning the rights created by this transfer the parties are to enter into negotiations in good faith to resolve it.

5.2 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.

5.3 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.

5.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notices

6.1 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; or
- (c) be sent by facsimile to the receiving party.

6.2 If clause 6.1(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.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Transfer Instrument Dated Page of Pages

6.3 If clause 6.1(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

- 7.1 The standard easement terms contained above must be read subject to any special easement terms set out below.
- 7.2 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.
- 7.3 That the Transferee will pay that proportion of the cost of maintenance of the Easement Area which the parties determine is attributable to use of the Easement Area by the Transferee.

Continuation of "Attestation"

Signed for and on behalf of)
Her Majesty the Queen by)
Ian Robert Hugh Whitwell)
under a written delegation in the)
presence of:)

Witness (Signature)

Name _____

Address _____

Occupation _____

All signing parties and either their witnesses or solicitors must sign or initial in this box.

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Appendix 6: Form of Covenant to be Created

DATED _____

Between

COMMISSIONER OF CROWN LANDS
("the Owner")

and

MINISTER OF CONSERVATION
("the Minister")

COVENANT UNDER CONSERVATION ACT 1987
FOR CROWN PASTORAL LAND ACT 1998 PURPOSES



Department of Conservation
Te Papa Atawhai

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THIS DEED of COVENANT is made the day of

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

AND MINISTER OF CONSERVATION

BACKGROUND

- A. The Commissioner of Crown Lands is deemed to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land is in 2 parts. Part A contains narrow leaved snow tussockland and cushionfield above 900 metres on the south slopes of Rock and Pillar Range. Below 900 metres the Land is modified narrow leaved snow tussock, subject to aerial oversowing and topdressing. Part B contains low-mid altitude shrubland and regenerating broadleaf forest within the 350- 600 metre contours.
- C. The parties agree that there should be a Covenant granted over the Land for Conservation Purposes in order to protect the Conservation Values.
- D. An approved plan designating the Land as land over which a Covenant under section 27 of the Conservation Act 1987 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 for Conservation purposes.

OPERATIVE PARTS

In accordance with section 27 of the Conservation Act 1987, 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 Conservation Act 1987.
“Conservation Purposes”	means the preservation and protection of the Land’s natural and historic resources including Conservation Values for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.
“Conservation Values”	means the Conservation Values specified in Schedule 1.
“Covenant”	means this Deed of Covenant made under section 27 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.

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“Land”	means the land described in Schedule 1.
“Mineral”	means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
“Minister”	means the Minister of Conservation.
“Natural Water”	includes water contained in streams, the banks of which have, from time to time, been realigned.
“Owner”	means the person or persons who from time to time is or are registered as the proprietor(s) of the Land. Except for purposes of clauses 3, 4, 8, 9.5, 10, 11 and 13, it also includes the Commissioner of Crown Lands.
“Working Days”	means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is situated.

1.2 For avoidance of doubt:

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

2. OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

- 2.1.1 for Conservation purposes.
- 2.1.2 to provide, subject to this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

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 -

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- 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 the 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 Conservation purposes.
 - 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 and replace all such Fences when reasonably required except as provided in clause 5.2.

4. PUBLIC ACCESS

- 4.1 The Owner must, subject to this Covenant, permit the public to enter upon the Land.

5. THE MINISTER'S OBLIGATIONS

- 5.1 The Minister must have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant.
- 5.2 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 member of the public exercising any of the rights conferred by this Covenant.

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6. IMPLEMENTATION OF OBJECTIVES

6.1 The Minister may:

6.1.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2.1;

6.1.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.1.

7. DURATION OF COVENANT

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

8. OBLIGATIONS ON SALE OF LAND

8.1 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.

8.2 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.

9. MISCELLANEOUS MATTERS

9.1 Rights

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

9.2 Trespass Act:

9.2.1 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;

9.2.2 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.

9.3 Titles

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

9.4 Acceptance of Covenant

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

9.5 Fire

9.5.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land.

9.5.2 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:

- 9.5.2.1 requested to do so; or
- 9.5.2.2 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.

10. NOTICES

- 10.1 Any 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.
- 10.2 A notice given in accordance with clause 10.1 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.
- 10.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land and must supply the Minister with the name and address of the new owner or person in control.

11. DEFAULT

- 11.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:
 - 11.1.1 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
 - 11.1.2 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.
- 11.2 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:
 - 11.2.1 advise the defaulting party of the default;
 - 11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
 - 11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

12. DISPUTE RESOLUTION PROCESSES

- 12.1 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.

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12.2 Mediation

12.2.1 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 the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties;

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

12.3 Failure of Mediation

12.3.1 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;

12.3.2 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 located.

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

13. JOINT OBLIGATIONS

13.1 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 achieve the Conservation Purposes on the Land.

14. SPECIAL CONDITIONS

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

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

Executed as a Deed

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

Witness: _____

Address : _____

Occupation: _____

Signed by Ian Robert Hugh Whitwell acting under a)
delegation from the Minister of Conservation)
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

2. Address for Service

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

PO Box 5244
DUNEDIN
Fax (03) 477 8626

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

The term "Owner" does not include the Commissioner of Crown Lands

3. Conservation Values

Snow tussockland, cushion field and indigenous shrublands

SCHEDULE 2

Special Conditions

1. The Minister shall pay to the Owner a proportional share of the following:
 - 1.1 the cost of new fences or the repair or maintenance of existing fences on the Land if the Minister has first approved the work
 - 1.2 the cost of any work under clause 3.2 if the Minister has first approved the work.
2. The proportional share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
 - 2.1 the Minister will bear the cost of work essential for purposes of nature/historic conservation
 - 2.2 the Owner will bear the cost of work essential for farming purposes
 - 2.3 when the expenditure is partly for nature/historic conservation and partly for farming purposes, the parties will bear the costs equally or in such other proportion as they may agree, and failing agreement, as may be determined under clause 11.
3. Clause 3.1.6 is varied by allowing the Owner to maintain both the existing vehicle track through the Land to a standard appropriate for four wheel drive vehicles and existing tracking to that required for practical use by four wheel drive bikes.
4. The Owner may use a tractor or other vehicles on the Land for the purpose of complying with clause 3.2.1.
5. The Owner will allow members of the public to have access on and through the Land by mountain bike and foot only along that portion of the formed track, marked b-c on the attached plan, which lies within the Land.

The following special conditions must be read in two parts. The special conditions in Part A apply solely to the Land marked A on the attached plan. The special conditions in Part B apply solely to the Land marked B on the attached plan.

PART A

1. Clause 2 is varied by adding the following:
 - 2.1.3 for periodic grazing of sheep and cattle only at rates specified in paragraph 1(f) of the Ecological monitoring programme attached as Schedule 3.
2. Clause 3.1.5 is varied to allow for the Owner to maintain aerial oversowing and topdressing of that part of the Land at or below 900 metres above sea level.
3. Clause 3.1.5 is further varied to allow the Owner to carry out burning (subject to the Owner complying with any legal requirements to enable burning to be carried out) on that part of the land below 900 metres above sea level, subject to the provisions of the ecological monitoring programme in schedule 3. The Minister will when requested by the Owner assist in any burning operation with manpower and equipment if her resources permit this to be done.
4. The Minister will pay to the Owner half the reasonable cost of maintenance over the three metre wide firebreak to be constructed below the bottom fence of the Land. The firebreak is to be constructed to a standard suitable for four wheel drive vehicles. The Owner will not seed the firebreak.

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5. The Owner and the Minister will comply with the provisions of the ecological monitoring programme in schedule 3.

PART B

1. The Owner shall not deliberately aerial oversow, top dress or burn the Land.
2. The Owner shall not deliberately stock the Land.
3. The Minister will pay to the Owner half the reasonable cost of maintenance over the three metre wide firebreak to be constructed in the northwest corner of the Land. The firebreak is to be constructed to a standard suitable for four wheel drive vehicles. The Owner will not seed the firebreak.

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GRANT of

Correct for the purposes of the
Land Transfer Act 1952

Solicitor for the Minister

COVENANT UNDER
SECTION 27 OF THE
CONSERVATION ACT 1987 FOR
CROWN PASTORAL LAND ACT 1998 PURPOSES

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH

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SCHEDULE 3

STONEHURST CONSERVATION COVENANT – ECOLOGICAL MONITORING PROGRAMME

1 The Owner and the Minister shall comply with the following ecological monitoring programme.

(a) The Owner shall manage the vegetation on the Land to maintain and enhance the existing cover of native species and to reduce the risk of invasion by exotic plant species. A detailed description of the type and condition of the vegetation on the Land at the commencement of this Covenant is attached.

(b) To achieve the goal in (a) grazing levels and management will be adjusted in accordance with Clauses 2 and 3 below should that be necessary following collation of vegetation information from this programme and from field observations of the Minister and the Owner.

(c) The ecological units to be managed will include:

(i) Modified narrow-leaved snow tussockland (subject to aerial oversowing and topdressing) below 900 metres above sea level on eastern slopes of the Rock and Pillar Range.

(ii) Narrow-leaved snow tussockland and associated cushionfield lying above unit (i) to the crest of the Rock and Pillar Range. Not included for monitoring are areas supporting less than 20 % narrow-leaved snow tussock cover or more than 20 % shrub cover.

(d) The monitoring programme will include:

- Application of the recovery index for narrow-leaved snow tussock (Lee et al 1997) prior to burning on ecological unit (i)
- Ten to 15 variable length transects on ecological unit (ii). Sampling will consist of estimated tall tussock and native shrubs canopy cover as measured by canopy intercepts along an outstretched tape. In addition, Scott Height Frequency estimates of structure and cover for tall tussocks and native shrubs will be made.

(e) Data gathered will consist of:

Ecological Unit (i)

- Tussock canopy area
- Tussock tiller weight
- Tussock tiller length

Ecological Unit (ii)

- Estimated tall tussock and native shrub canopy cover

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- Height frequency data for tall tussocks (exclusive of flowering parts) and native shrubs.

Measurement data for ecological unit (i) shall be taken following notification by the Owner of intention to burn, and prior to any burning taking place.

Measurement data for ecological unit (ii) shall be taken in the period November/December prior to the commencement of sheep grazing, and on each occasion measurements are taken they shall be taken at approximately the same time of the year. Transects will be established in the first year of the Covenant and re-measured every sixth year. The Minister shall give the Owner an opportunity to be present while measuring takes place.

- (f) A grazing rate of no greater than 310 stock units/annum shall be adhered to, provided that the results from the monitoring indicate, in the opinion of the Minister, that the vegetation is not being adversely affected by this level of grazing. Sheep grazing is to be confined to the period 15 November to 30 April in any year. Not more than 1000 ewes are to graze the Land for a twelve-week period. Cattle grazing is to be confined to the period 20 August to 20 November in any year. Not more than 40 breeding cows are to graze the land for a twelve week period. Vegetation monitoring results will be compared to previous vegetation monitoring data in association with grazing records to determine trends. Results of the ecological monitoring programme may be used by the Minister to adjust the grazing level.
- 2 To assist in future management of the Land it is agreed that the following trends in vegetation in ecological unit 1(c)(i) constitute adverse effects and will result in the following reductions in stocking during the anticipated period of adverse effect:
- (a) If the combined canopy cover of tall tussock and native shrubs of all transects on the ecological unit decreases by more than 5 percentage points or for height frequency by more than 5 percentage points, the Minister may reduce the maximum stocking rate by 10%.
 - (b) If the combined canopy cover of tall tussock and native shrubs or height frequency of all transects on the ecological unit decreases by more than 10 percentage points, the Minister may reduce the current block limit to half its present level.
 - (c) If the combined canopy cover of tall tussock and native shrubs or height frequency of all transects on the ecological unit decreases by more than 15 percentage points, the Minister may require this unit to be destocked.
- 3 To assist in future management of the Land it is agreed that Recovery Index parameters must be met before tussock burning is carried out in ecological unit (i)(full specifications are contained in 'Recovery Index for narrow-leaved snow tussock [*Chionochloa rigida* ssp. *rigida*] in montane and subalpine Otago, New Zealand). If measurement of the recovery index fails to meet any of the three parameters below, the Minister may require that burning not proceed.
- (a) tussock canopy must be greater than 70 %

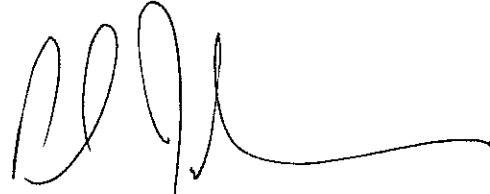
- (b) mean tiller length must exceed 0.6 metres
- (c) mean tiller weight (after drying all tillers at between 70 - 80 degrees Celsius) must exceed 1.2 grams

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Execution Section

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

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



Paul Alexander Jackson

A M Paterson

Witness
Solicitor

Occupation
Lower Hutt

Address

SIGNED by **John Charles**
Frederick James in the presence
of:



John Charles Frederick James

A M Paterson

Witness
Solicitor

Occupation
Dunedin

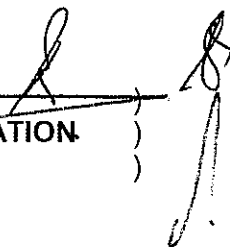
Address

WESTPAC BANKING CORPORATION LIMITED as Mortgagee under Mortgage 814113.6 ("the Mortgage"), hereby:

- (a) consents to acceptance of the Proposal dated 19 March 2004 ("the Proposal") by **JOHN CHARLES FREDERICK JAMES** ("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: 3 May 2004

~~SIGNED~~ on behalf of _____)
WESTPAC BANKING CORPORATION)
~~LIMITED~~ in the presence of: _____)



Witness Signature:

Occupation:

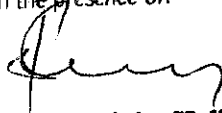
Address:

Signed by
Westpac Banking Corporation
By its Attorney/s:

Jason Paul Sheat

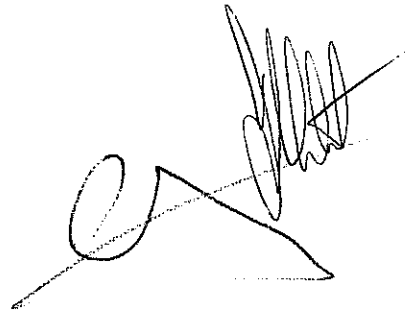
In the presence of:

Anthony Nidoo Power



Beverley Patricia Kelly

**BANK OFFICER
WESTPAC TRUST
CHRISTCHURCH**



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CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Jason Paul Sheat, of Christchurch in New Zealand, Bank Officer
AND Anthony Nidoo Power, of Christchurch in New Zealand, Bank Officer

HEREBY CERTIFY -

1. THAT by Deed dated the 10th of July 1996 copies of which are deposited in the Land Registry Offices at -

AUCKLAND (North Auckland Registry) and there numbered D.043055.1
BLENHEIM (Marlborough Registry) and there numbered 187102
CHRISTCHURCH (Canterbury Registry) and there numbered A.257595/1
DUNEDIN (Otago Registry) and there numbered 915888
GISBORNE (Poverty Bay Registry) and there numbered G.212187.1
HAMILTON (South Auckland Registry) and there numbered B.367046
HOKITIKA (Westland Registry) and there numbered 105721
INVERCARGILL (Southland Registry) and there numbered 244294.1
NAPIER (Hawkes Bay Registry) and there numbered 646199.1
NELSON (Nelson Registry) and there numbered 361557.1
NEW PLYMOUTH (Taranaki Registry) and there numbered 435551
WELLINGTON (Wellington Registry) and there numbered 533510.1

Westpac Banking Corporation ABN 33 007 457 141, incorporated in Australia (New Zealand division) under the Corporations Act 2001 and having its principal place of business in New Zealand at PWC Tower 188 Quay Street, P O Box 934, Auckland and carrying on the business of banking appointed us its attorneys on the terms and subject to the conditions set out in the said Deed and the attached document is executed by us under the powers thereby conferred.

2. THAT at the date hereof we were Team Leader of a Legal Unit and Branch Service Officer of a Legal Unit of the said Bank, respectively.
3. THAT at the date hereof we have not received any notice or information of the revocation of that appointment by the winding up or dissolution of the said **Westpac Banking Corporation** or otherwise.

Signed at Christchurch



Jason Paul Sheat

and



Anthony Nidoo Power

this 3 May 2004


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JOHN CHARLES FOOTE and ANGELA CHRISTINA FOOTE, being the parties entitled to the benefit of Transfer 613547.2 registered against Lease OTA2/1198, hereby consent to the acceptance of the Proposal dated 19 March 2004 by John Charles Frederick James pursuant to the Crown Pastoral Land Act 1998.

DATED 12 April 2004

SIGNED by JOHN CHARLES FOOTE

in the presence of:

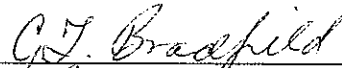


Witness Signature:

Witness Full Name:

Witness Occupation:

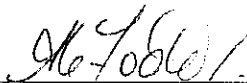
Witness Address:



GEORGE THOMAS BRADFIELD
Process Worker
Tirohanga Rd. RD2. Mosgiel.

SIGNED by ANGELA CHRISTINA FOOTE

in the presence of:

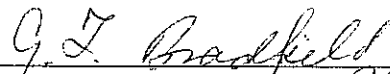


Witness Signature:

Witness Full Name:

Witness Occupation:

Witness Address:



GEORGE THOMAS BRADFIELD
Process Worker
Tirohanga Rd. RD2 Mosgiel.