



View Instrument Details

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Lodged By Kirby, Paul Brian
Instrument Type Covenant (All types except Land covenants)



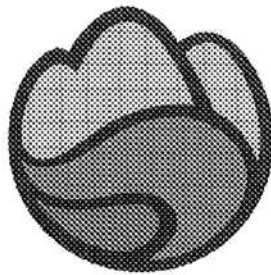
Affected Computer Registers	Land District
OTA2/1228	Otago

Annexure Schedule: Contains 30 Pages.

Signature

Signed by Paul Brian Kirby as Grantor/Grantee Representative on 19/02/2015 02:57 PM

***** End of Report *****



QEII National Trust
Open Space New Zealand
Ngā Kairauhi Papa

Open Space Covenant
Coronet Peak

Soho Property Limited
The Queen Elizabeth the Second National Trust

Parties

Soho Property Limited (Soho)

The Queen Elizabeth the Second National Trust (National Trust)

Background

- A The National Trust is established under the Queen Elizabeth the Second National Trust Act 1977.
- B Soho is the registered proprietor of the Crown Pastoral Lease in schedule 2 and wants to protect and preserve the Covenant Area as an area of Open Space.
- C The Covenant Area includes the Open Space Values more particularly described in Schedule 3.
- D Soho and the National 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 National Trust agree to enter into an open space covenant, in perpetuity, within the meaning of section 22 of the Act in favour of the National Trust on the terms and conditions set out in this deed.
- 1.2 The Covenantor and the National Trust acknowledge that the establishment and the terms of this open space covenant (the **Covenant**) are:
 - 1.2.1 conditional on the consent of the Commissioner of Crown Lands pursuant to section 89 of the Land Act 1948 and section 22 of the Queen Elizabeth the Second National Trust Act 1977; and
 - 1.2.2 subject to the terms and conditions of the underlying Crown pastoral lease and the Land Act 1948 and the Crown Pastoral Land Act 1998.

2 Purpose and objectives

- 2.1 The Covenantor and the National Trust agree that the purpose of the Covenant is to protect, maintain and enhance the Covenant Area with the overriding objectives of:
 - 2.1.1 Managing the area as a Kohanga, by protecting and enhancing (including by way of new plantings) the indigenous biodiversity (as described further in the

- Open Space Values), and encouraging the restoration of indigenous vegetation and animal species, including any threatened species indigenous to the area; and
- 2.1.2 Protecting the Covenant Area, its aesthetic natural landscapes and features which are national landmarks and which contribute to New Zealanders' sense of place (as described further in the Open Space Values), so that the Covenant Area is not materially adversely affected by human modification, and remains free from the effects of farmed animals, weeds and pests, cultivation, mining or mineral exploration, commercial forestry or other activities detrimental to the natural state of the Covenant Area.
- 2.2 Provided that to do so would not be inconsistent with the overriding objectives in clause 2.1 above, the Covenant is also established to:
- 2.2.1 Protect and enhance Open Space Values other than those referred to in clause 2.1;
- 2.2.2 Avoid Historic places and Archaeological sites being damaged;
- 2.2.3 Prevent fires;
- 2.2.4 Recognise and acknowledge Ngāi Tahu cultural values;
- 2.2.5 Prevent subdivision (within the meaning of the Resource Management Act 1991 or any other equivalent replacement legislation) of the Covenant Area.

Part B – Terms and conditions

3.0 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 (which shall for the purposes of clause 3 include any change in the ownership or control of the Covenantor) the Covenantor must:
- 3.1.1 Notify the National Trust of this and provide the National Trust with the name and contact address of the new legal / beneficial owner/s, lessee/s, licensee/s or other relevant party/ies; and
- 3.1.2 If any such sale, disposition or other alteration in beneficial ownership or control occurs before registration of this deed by the Registrar-General of Land:
- (a) Ensure such sale, disposition or other alteration in beneficial ownership or control is made expressly subject to the objectives, terms and conditions of this deed; and

- (b) Obtain, for the benefit of the National Trust, the agreement of the new legal / beneficial owner/s, lessee/s, licensee/s or other relevant party/ies to adhere to, comply with and be bound by the objectives, terms and conditions of this deed.
- 3.3 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 Effects on the Covenant Area**
- 4.1 Nothing may be done or be permitted to be done nor may anything be permitted to remain on the Covenant Area which in the opinion of the Board materially adversely alters the appearance or condition of the Covenant Area or is prejudicial to the Covenant Area as an area of Open Space.
- 4.2 The Covenantor must not do nor permit others to do any of the following on and in respect of the Covenant Area:
- 4.2.1 Plant any exotic trees, shrubs or plants or scatter or sow any seed of any exotic trees, shrubs or plants;
- 4.2.2 Introduce any weeds or pests, noxious substance or substance otherwise injurious to animal or plant life except for the purpose of controlling weeds or pests; and
- 4.2.3 Carry out any prospecting, exploration, mining or quarrying for any minerals, petroleum or other substance or deposit.
- 4.2.4 Directly or indirectly cause harm to any animal on the Covenant Area except to the extent necessary to protect native plants and animals.
- 4.3 The Covenantor must also not do nor permit others to do any of the following on and in respect of the Covenant Area without the prior written consent of the National Trust, which consent will not be unreasonably withheld (and if given may be given subject to reasonable conditions imposed in respect of such consent):
- 4.3.1 Fell, remove or damage any native trees, shrubs or plants of any kind or in any state whatsoever;
- 4.3.2 Move or remove rock or stone, blast, mark, paint, deface or otherwise disturb the ground in a way that which would materially adversely affect the Open Space Values of the Covenant Area;
- 4.3.3 Construct or erect any building or structure or undertake any exterior alterations to any existing building or structure that is materially prejudicial to the Open Space Values of the Covenant Area;
- 4.3.4 Erect or display any sign, notice, hoarding or advertising material of any kind prejudicial to the Open Space Values of the Covenant Area except for signs identifying the Covenant Area, providing interpretation of open space values or indicating walking tracks that are or may be established on the Covenant Area;

- 4.3.5 Undertake any works including disturbing the ground, planting or fencing within any Historic place or Archaeological site
- 4.3.6 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 is left in a clean and tidy condition;
- 4.3.7 Allow any livestock on the Covenant Area except for the purposes of passing through the Covenant Area on existing farm tracks;
- 4.3.8 Knowingly compromise 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. For the avoidance of doubt, this clause 4.3.8 shall not be considered to have been breached by virtue of stock being permitted to drink from any of the above water resources.

In considering whether to consent under this clause 4.3 and, if so, on what terms, the National Trust shall principally have regard to the purposes and overriding objectives of the Covenant as set out in clause 2.

5 Third party access to the Covenant Area for works

- 5.1 If the Covenantor is notified by any person or authority of an intention to erect any structure or infrastructure, or to carry out any other works on the Covenant Area, the Covenantor must:
 - 5.1.1 As soon as reasonably possible inform the person or authority of the existence of the Covenant.
 - 5.1.2 As soon as reasonably possible inform the National Trust of the proposed intentions of any such person or authority; and
 - 5.1.3 Not consent to the undertaking of the proposed works or any other works by such person or authority without the prior written consent of the National Trust.

The acts or omissions of 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 National Trust may offer the Covenantor technical advice or assistance to facilitate the Covenantor in meeting the purposes and objectives of the Covenant.

Damage to Covenant Area

- 6.2 If the Covenantor or any third party damages or causes to be damaged any plant, animal or thing in or on the Covenant Area other than as permitted by this deed, the Covenantor must:
 - 6.2.1 Notify the National Trust as soon as possible of the nature of the damage;

- 6.2.2 Provide a proposal for restoration of the damage;
- 6.2.3 Comply with any reasonable direction of the National Trust relating to the restoration of the damage.

Management Plan

- 6.3 A management plan may be agreed between the National Trust and the Covenantor in relation to the Covenant Area.
- 6.4 The National Trust and the Covenantor will consult with Ngāi Tahu in relation to the Management Plan.
- 6.4 All activities and things undertaken in keeping with the management plan shall be treated as having the consent and approval of the National Trust. If the Covenantor and the National Trust wish to amend the Management Plan, any proposed amendment must not materially compromise the purposes and overriding objectives of this deed. No variation to the terms of this Management Plan will have any force or effect unless it is in writing, signed by the National Trust and the Covenantor and consented to by the Commissioner of Crown Lands where such consent is required.

Default by the Covenantor in management of the Covenant Area

- 6.5 If the Covenantor is in default of its obligations under this deed:
 - 6.5.1 The National 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**);
 - 6.5.2 If, on expiry of the timeframe specified in any Default Notice, the Covenantor's default has not been remedied the National 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 National 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
 - 6.5.3 If, on expiry of the further reasonable timeframe specified in clause 6.5.2, the Covenantor's default has not been remedied the National 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 Weeds and pests

- 7.1 The Covenantor must control all weeds and pests in the Covenant Area to the extent required by law, in compliance with the provisions of, and any notices given under, the Biosecurity Act 1993 and the Wild Animal Control Act 1977 and as required to meet the purposes and overriding objectives of the Covenant as set out in clause 2.

- 7.2 The Covenantor must keep the Covenant Area free from any exotic species specified in any management plan for the Covenant Area.

8 Fire

- 8.1 The Covenantor must not undertake or permit anyone else to undertake any burning of the Covenant Area and, if fire threatens the Covenant Area, the Covenantor must, as soon as practical notify the appropriate fire authority and take all reasonable steps to extinguish the fire.

9 Fences and gates

- 9.1 Subject always to the Crown Pastoral Land Act 1998 the Covenantor and the National Trust will agree from time to time on fencing requirements on the boundary of the Covenant Area as reasonably required for practical land management and in order to protect the Covenant Area from stock.
- 9.2 Subject always to the Crown Pastoral Land Act 1998 and 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) for the purposes of protection of the Covenant Area.
- 9.3 Subject always to the Crown Pastoral Land Act 1998 if in the reasonable opinion of the National 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

National Trust access

- 10.1 The Covenantor permits the National Trust and its officers, employees, contractors or agents a reasonable right of access over its land to the Covenant Area and to enter the Covenant Area for the purpose of:
- 10.1.1 Viewing the state and condition of the Covenant Area and undertaking remote monitoring;
 - 10.1.2 Ascertaining compliance by the Covenantor with the objectives, terms and conditions of this deed; and
 - 10.1.3 Remedying any default by the Covenantor pursuant to clause 6.5.3.
- 10.2 Subject always to any consent that may be required from the Commissioner of Crown Lands, the Covenantor may, in its sole discretion, invite representatives of Ngāi Tahu to enter and have access to the Covenant Area for purposes consistent with the Ngāi Tahu cultural values, provided that the Covenantor and Ngāi Tahu:

- 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 nothing is done or omitted to be done that compromises the overriding objectives of this deed; and
 - 10.2.3 Ensure that, subject to clause 3 of Schedule 4, the prohibitions set out in clause 4 are complied with.
- 10.3 Subject always to any consent required from the Commissioner of Crown Lands, the Covenantor may, in its sole discretion, invite guests (including members of the public) to enter and have access to the Covenant Area provided that in giving any such permission the Covenantor must:
- 10.3.1 Give due consideration to any specific management issues relating to the Covenant Area from time to time;
 - 10.3.2 Ensure that that nothing is done or omitted to be done that compromises the overriding objectives of this deed; and
 - 10.3.3 Ensure that the prohibitions set out in clause 4 are complied with.

Monitoring

- 10.4 For the purposes of monitoring the state of the Covenant Area, the Covenantor permits the National Trust and its officers, employees, contractors or agents to collect information about the Covenant Area.

Part C – General provisions

11 Confidentiality and Privacy

- 11.1 In recognition of the Covenantor's rights as a private person and/or landowner and the close relationship of trust and co-operation between the Covenantor and the National Trust, the National Trust will keep confidential all information about the Covenantor (including any information relating to or belonging to the Covenantor's beneficial owner/s or the Covenantor's related entities, or to family, friends or associates of the Covenantor's beneficial owner/s), the Covenantor's activities in the Covenant Area and the management of the Covenant Area by the Covenantor and the monitoring of the Covenant Area by the National Trust and will not disclose any information without the prior written approval of the Covenantor. For the avoidance of doubt, the National Trust will ensure that its officers, employees, agents and advisers also comply with this clause 11.1. Nothing in this clause shall prohibit the National Trust from disclosing information that the National Trust reasonably needs to disclose so as to have any breach of this Covenant remedied.
- 11.2 The Covenantor acknowledges that the National Trust is subject to the Official Information Act 1982 and under that Act the National Trust may be required to release information about the Covenant Area. The National Trust shall at all times seek the

approval and advice of the Covenantor before releasing any information under the Official Information Act 1982.

- 11.3 In recognition of the Covenantor's rights as a private person and/or landowner and the close relationship of trust and co-operation between the Covenantor and Ngāi Tahu, Ngāi Tahu will keep confidential all information about the Covenantor (including any information relating to or belonging to the Covenantor's beneficial owner/s or the Covenantor's related entities, or to family, friends or associates of the Covenantor's beneficial owner/s), the Covenantor's activities in the Covenant Area and the management of the Covenant Area by the Covenantor and will not disclose any information without the prior written approval of the Covenantor. For the avoidance of doubt, Ngāi Tahu will ensure that its members, officers, employees, agents and advisers also comply with this clause 11.3.

12 Variations

- 12.1 The Covenantor may, by agreement with the National Trust, vary the terms of this deed from time to time to provide for the necessary and appropriate protection, maintenance or enhancement of the Covenant Area, provided that any such variation is designed to enhance the purpose and objectives of this deed.
- 12.2 No variation to the terms of this deed will have any force or effect unless it is in writing, signed by the National Trust and the Covenantor, consented to by the Commissioner of Crown Lands where such consent is required and registered by the Registrar-General of Land.

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 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 to this deed, requested by the Covenantor.

14 Dispute resolution processes

- 14.1 If any dispute or any questions arises in relation to the interpretation of this deed or management of the Covenant Area or any other matter touching or concerning this deed between the Covenantor and the National Trust 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 in good faith or other informal dispute resolution technique agreed between the parties.

Mediation

- 14.2 If the dispute is not capable of resolution by negotiation or agreement within 14 days of written notice by one party to the other (or such other further period as the parties

may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.

- 14.3 If the parties do not agree on a mediator, the President of the branch of the New Zealand Law Society in the region in which the Covenant is situated is to appoint a mediator.

15 Notices

- 15.1 Any consent, approval, authorisation or notice to be given by the Board or the National 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 National 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, if the waiver is limited to a particular occasion, 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;

Archaeological site means an archaeological site as defined under Section 6 of the Heritage New Zealand Pouhere Taonga Act 2014;

Board means the board of directors of the National 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 subject to the terms of this deed, 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 Crown pastoral lease comprising the Covenant Area;

Fences means a fence approved by the National Trust and which provides protection to the Open Space Values of the Covenant Area;

Historic place means an historic place as defined under Section 6 of the Heritage New Zealand Pouhere Taonga Act 2014;

Kohanga means an area designated as a breeding ground for indigenous animals and as a nursery for indigenous plants;

Ngāi Tahu has the meaning given to Ngāi Tahu Whānui in Te Rūnanga o Ngāi Tahu Act 1996 and includes any member or group of members of Ngāi Tahu Whānui.

Ngāi Tahu cultural values means the values described in Schedule 3.

Open Space has the meaning given to it in section 2 of the Act as at the date of this deed;

Open Space Values means those values set out in Schedule 3;

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 (apart from Schedule 1), Schedule 1 and the Act, the Act will prevail.

19.3 In this deed, unless the context otherwise requires:

19.3.1 A 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;

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

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

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

- 19.3.5 A 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. Any reference to this deed includes any schedules and attachments to this deed.

20 No action contrary to law

- 20.1 Notwithstanding any other provision of this deed, no party to this deed:
- 20.1.1 shall be required to do or not do anything where to do or not do that thing would be in breach of any statutory obligation
- 20.1.2 shall be required to permit an activity to be undertaken in breach of any statutory obligation imposed on that party;
- 20.1.3 shall be in breach of this deed by doing (or allowing others to do) anything which is permitted by statute notwithstanding any provisions to the contrary in this deed.

21 Counterparts

- 21.1 This deed may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement and delivered by exchange of facsimile or scanned and emailed copies.

Schedule 1 – Special Conditions

Special conditions relating to the Covenant Area

The standard conditions are read subject to the following special conditions which apply in respect of the Covenant Area.

1 Naming

- 1.1 The Covenantor and the National Trust agree that the Covenant Area shall be known as Coronet Peak.

2 Historic places and archaeological sites

- 2.1 The Covenantor and the National Trust acknowledge the existence of Historic places and Archaeological sites in the Covenant Area in the Historic places and Archaeological site in Schedule 3.
- 2.2 The Covenantor will avoid damaging the Historic places and Archaeological sites in accordance with the terms of this deed and the requirements under the Heritage New Zealand Pouhere Taonga Act 2014 and will notify Heritage New Zealand Pouhere Taonga if any Historic place or Archaeological site is damaged.
- 2.4 If a dispute arises between the Covenantor and the National Trust that concerns Historic places or Archaeological sites, Heritage New Zealand Pouhere Taonga will be involved in any discussions or resolutions.
- 2.5 If the Covenantor requests consent to undertake works on an Archaeological site or Historic place, the Covenantor will consult Heritage New Zealand Pouhere Taonga.

3 Sequestered carbon

- 3.1 If the Covenantor enters into any arrangements with any body responsible for acknowledging or confirming that all or any part of the Covenant Area qualifies as a site guaranteed for permanent carbon storage, the following will apply:
- 3.1.1 Such arrangements must be without prejudice to the terms and conditions of this deed.
- 3.1.2 The Covenantor must advise the National Trust of such arrangements.
- 3.1.3 The National Trust will not be required to be party to such arrangements.
- 3.1.4 Such arrangements must not involve the use of exotic species or species considered to represent a risk of wildings harmful to the surrounding area being spread.

4 Other permits

- 4.1 Any person including the leaseholder of the Covenant Area may apply to the Commissioner of Crown Lands for a permit authorising the use and or occupation of the land for activities other than those contemplated by the Crown Pastoral Lease. The Covenantor may consent to the issue of a permit on the Covenant Area provided that in doing so:
- 4.1.1 The Covenantor shall have particular regard to the purpose and objectives contained in clause 2 of this deed.
- 4.1.2 The Covenantor shall advise permit holders that the land is a protected area and that permit holders must acquaint themselves with the covenant terms and obligations.
- 4.1.3 Where it is necessary, the Covenantor obtains the National Trust's prior written approval in relation to the prohibitions contained in clause 4.3 of this deed.
- 4.1.4 The Covenantor obtains all necessary consents and permissions required from other responsible authorities, including the Commissioner of Crown Lands.
- 4.1.5 Any activities do not:
- (a) breach any terms and obligations of this deed;
 - (b) include any illegal or offensive activity, trade or business;
 - (c) otherwise have any adverse effect on the Covenant Area.
- 5 Farm track under section 16 of the Crown Pastoral Land Act 1998**
- 5.1 Subject always to consent from the Commissioner of Crown Lands under section 16 of the Crown Pastoral Leases, the Covenantor may continue to use and maintain the existing farm tracks on the Covenant Area for vehicle, foot and stock access purposes provided that stock is not permitted to linger or graze or cause damage to the native vegetation or identified Historic places on the Covenant Area.
- 6 Pets**
- 6.1 The Covenantor shall not introduce or keep, or allow to be kept on the Covenant Area, any non-indigenous animal species, including dogs, cats, birds and fish, except for;
- 6.1.1 approved purposes consistent with the aim and purpose of the covenant as contained in Part A of this Deed. However the Covenantor shall not be deemed to be in breach of this provision where the non-indigenous animal species is self introduced or introduced by another person without the consent of the Covenantor;
- 6.1.2 where utilised for reasonable land management purposes.

7 Enhancement planting under section 16 of the Crown Pastoral Land Act 1998

- 7.1. Subject always to consent from the Commissioner of Crown Lands under section 16 of the Crown Pastoral Leases, the Covenantor may enhance the indigenous vegetation of the Covenant Area including by relocating seedlings and small native plants. These works must not adversely affect any historic place or archaeological sites unless agreed on by Heritage New Zealand Pouhere Taonga.

8 Monitoring

- 8.1 The Covenantor and the National Trust agree to work cooperatively in monitoring the Covenant Area and ongoing monitoring work.
- 8.2 Upon registration of this covenant, the Covenantor and the National Trust will establish a monitoring programme.
- 8.3 The National 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.

9 Surrender of lease

- 9.1 The Covenantor shall not enter into any agreements to surrender the lease without the approval of the National Trust.
- 9.3 The National Trust shall treat any request by the Covenantor under this clause as a variation to the covenant under clause 12 of this deed and section 22A of the Act requiring unanimous Board agreement.

Schedule 2 – Schedule of land comprising the Covenant Area

Estate: Lease under s83 Land Act 1948

Area: 21909.62 hectares more or less

Legal Description	Run 26, Part Run 27, Part Run 34, Block I Town of Macetown, Section 1, Section 2 and Section 3 Block II Town of Macetown, Section 1, Section 6, Section 7, Section 9 and Section 10 Block III Town of Macetown, Block IV Town of Macetown, Section 4, Section 5, Section 6, Section 7, Section 10, Section 13 and Section 14 Block V Town of Macetown, Block VI, Block VIII, Block IX, Block X, Block XI, Block XII and Block XIII Town of Macetown and all unsectionized areas in the Town of Macetown. Excluding all areas contained in DP 482612 & DP 483009
Part of Computer Interest Register	OTA2/1228

Schedule 3 – Open space values to be protected, maintained and enhanced

OVERVIEW

The covenant area comprises 21,508 ha of Coronet Peak Station, and is located immediately north of Arrowtown in the Queenstown Lakes District. The Skippers and The Branches Roads provide road access to the remote western part of the property, while the front country is accessed from the Wakatipu Basin. The covenant area is situated at the southern end of the Harris Mountains. It is bound by the Shotover River to the west, Polnoon Burn to the north, Arrow River to the east, and the northern Wakatipu Basin to the south.

VISUAL LANDSCAPE VALUES

Virtually the entire covenant area has been identified as an Outstanding Natural Landscape, while the Wakatipu faces that enclose the Wakatipu basin, forming an important backdrop to the Queenstown locality, is an Outstanding Natural Landscape in its own right. The outstanding natural landscapes are the romantic landscapes comprising the mountains and lakes that have a high degree of openness and naturalness. It is these landscapes that many New Zealanders think of as “our place”; and our inheritance².

The remote upland tussocklands of the Shotover and Arrow catchments are already showing a marked recovery following the removal of sheep and cattle and the vast reduction in the feral goat population. Landforms are striking and distinctive. The feeling of remoteness and distinct lack of human modification contributes to this significance. This area is part of a larger backcountry tussock landscape, which incorporates the upper Shotover and Motatapu catchments. Together they are recognised as one of the best remaining examples of tussock grassland landscapes and are valued as an iconic landscape, characteristic of prehuman New Zealand³.

The tussock covered, rugged slopes of the Upper Shotover Faces and Polnoon Burn, and associated narrow gorges, bare rock and bluffs form part of the Upper Shotover glacial landscape, which as a whole is recognised as an outstanding and iconic New Zealand landscape².

Downstream of Deep Creek, the landscape associated with the Shotover River is striking and iconic. The river has carved precipitous bluffs known as Devil's Elbow, and is bound to the west by the renowned Shotover Canyon. The famous Skippers Road, which was built by hand in the 1880s to service the early gold mining settlements at Skippers, clings precipitously to the cliff edge around Devil's Elbow. Today the road provides access for many international and domestic visitors participating in rafting, jet boating, kayaking and cultural appreciation tours. The landscape is equally dramatic from the river.

The Wakatipu Faces ONL forms a major part of the northern enclosing mountain slopes of the Wakatipu Basin. Beech forest remnants within Station and McMullan Creeks are significant landscape features. Further east, slopes on either side of Brow Peak form the immediate backdrop to Arrowtown, the Arrow Gorge and historic Macetown Road. Arrowtown is enclosed by rugged tussock covered slopes, which are an important part of the town's character and context³.

The Shotover and Macetown localities have been identified as Heritage Landscapes in the District Plan:

The ***Skippers Heritage Landscape*** includes the lower slopes and terraces of Long Gully, Deep Creek, and the Shotover Faces as far upstream as the Sandhill Cut Diversion. These landforms provide a striking landscape and context for the appreciation of the important historic values associated early pastoralism in the Lakes District and gold mining from the initial gold rush of 1862 to early 20th century gold mining endeavours. This heritage landscape is of high significance to New Zealanders. The views from Skippers Road are widely recognised as an iconic Otago landscape.

The ***Macetown Heritage Landscape*** includes the steep sided Arrow Gorge with its impressive bluffs, and a colourful array of (often weedy) exotic trees and herbs originally brought into the area by the miners. It is an integral and valued part of the Arrow Gorge and historic Macetown Road landscape. The Macetown Road, which is excluded from the covenant area, is part of an iconic Otago landscape and plays host to high visitor numbers. This landscape appears in many tourist publications.

HISTORIC VALUES

The covenant area includes sites associated with its pastoral history, and sites that are part of one of the greatest gold mining areas in New Zealand with sites dating from the initial gold rush of 1862 to early 20th century gold mining enterprises. These sites are well preserved and legible due to the dry climate and open landscape and represent mining associated with European, North American, Chinese and Maori gold miners. Some of the most important workings are those left by the early gold mining endeavours of the 1860s and 1870s, located near Macetown; on the true left of Shotover River, Polnoon and Long Gully areas; Green Gate, Deep and Eight Mile Creeks, and Maori Gully, (these sites are associated with both the Macetown and Shotover communities and gold rushes along the Shotover and Arrow Rivers).

Notable archaeological sites associated with Macetown include batteries and associated mines, cableways, tramways, tracks, hut sites, industrial dumps etc. that were active from 1876 to 1915 with sporadic mining during the 1930s Depression. These are part of the Macetown Heritage Landscape. Downstream of Macetown are good examples of hydraulic sluicing fed by water races high up above the sluiced faces.

Pastoral sites include the old Coronet Peak Homestead located above Deadman's Terrace in the Shotover valley, which was inhabited by John Gemmel in the 1870s. An historic surveyor's trig station is present on Mt Vanguard, the stone cairn marking the site was built during the 19th century.

All sites that pre-date 1900 are protected under the Heritage New Zealand Pouhere Taonga Act 2014 and many are recorded in the New Zealand Archaeological Association Site Recording Scheme.

CATCHMENT VALUES

Most of the property has steepland soils which are liable to severe erosion. The goldrush in the 1860s, with its method of sluicing and altering watercourses, exacerbated natural erosion. To

this day, the Shotover River yields a high sediment load which exacerbates flooding in the Clutha River.

The indigenous vegetation cover that dominates the Shotover and Arrow catchments plays a vital role in soil and water conservation and water yield. Many people in the Kawarau and Clutha catchments rely on these services as a basis for their livelihood, a source of drinking water and for water-based and outdoor recreational/ tourist activities, while nationally, their role in water harvesting is important for downstream hydro-electric generation at the Clutha Dam. Tall tussock density and cover of woody species is increasing under current management, resulting in improved vegetation cover, reduced erosion rates and increased carbon sequestration. Carbon storage in regenerating shrubland and tall tussocklands makes a modest contribution to ameliorating current anthropogenic induced rise in atmospheric carbon dioxide levels.

The outstanding intrinsic and amenity values of the Shotover catchment have been recognised and protected through its inclusion in the Kawarau Water Conservation Order (1997) which specifically highlights this river's 'wild and scenic characteristics; natural characteristics and scientific values associated with the return flow when the upper section is in high flood; its recreational value to rafting jet boating and kayaking; and historical purposes, in particular gold mining.

BIODIVERSITY VALUES

The covenant area contains outstanding representation of the plants and plant communities of the Shotover and Richardson Ecological Districts, particularly in the alpine and montane bioclimatic zones. These communities host a range of indigenous fauna² including some rare or threatened species. A '*' is used in the report to denote a Threatened or At Risk species, with details provided in Table 1.

Alpine zone

Extensive **cushionfields** are found on the harshest sites, characterized by shallow soils with much rock and wind exposure. Although mostly high alpine, examples also occur in the montane zone along disturbed stream beds and terraces.

Montane Zone

Short tussockland, dominated by hard tussock (*Festuca novae zelandiae*), occupies a narrow zone between 900-1000 m asl. The exotic component increases with decreasing altitude.

Native grassland/herbfield communities of Deep Creek, Green Gate Creek & Coronet Peak valleys are species rich and are suitable habitat for the moth *Orocrambus sophistes**. Montane slopes below Coronet Ski Field have many insects with a Type locality nearby and are highly representative of Wakatipu Basin.

Exotic grassland dominates at lower levels where shrublands are not present, but can be found above 900 m on some sunny west faces.

Wetlands are not common and occur as small bogs in the alpine zone, seepages in tussockland, ephemeral tarns in the montane zone, and along stream edges. A notable wetland complex, comprised of bog, fen, shallow water tarn and ephemeral wetland, is present east of the lower Polnoon Burn extending as far south as Stockyard Creek.

Ephemeral tarns between Church Hill Creek and south of Carmichaels Creek are dominated by turf species including willowherb *Epilobium angustum**. The uncommon sedge *Carex rubicunda** occurs at one location.

Montane Shrublands occur below about 1000 m, mainly in damp gullies and along stream courses. Diverse mature shrublands are a rare ecosystem. The covenant area has some excellent examples due to their size, intactness and distinctive associations e.g. at Carmichaels Creek and Stockyard Creek.

Remnants of **mountain beech forest** are confined to small pockets on the Wakatipu faces; the lower Arrow River and its small tributaries, and a tiny area in the Shotover River. These remnants are highly significant relicts of the former forest cover that would have clothed the lower slopes in pre-human times. The importance of woody vegetation in Central Otago has been given prominence by Walker *et al.* (2003)⁷.

Most of the covenant area has significant biodiversity values. At least 301 native vascular species are present, representing approximately 70% of the plant diversity recorded for the Harris Mountains⁸.

EDUCATION AND RECREATION VALUES

Recreational opportunities within, and at the periphery of, the covenant area, form an important part of the spectrum, in an area where outdoor recreation is a vital part of the social and economic fabric of the community.

Public access easements in relation to the Hayes Creek Track, Big Hill walking Track, Long Gully, Green Gate Pack Track, Deep Creek to Coronet Peak Pack Track, ridge Route, Polnoon Tunnel Track, Bush Creek, Sawpit Gully, Macetown Miners (Dry Access) Track, Macetown Road, and Advance Peak Track will be sought as a result of conditions imposed by the Overseas Investment Office

CULTURAL VALUES

The covenant area is rich in cultural heritage. Before European settlement, Ngāi Tahu moved around nearly the whole of Te Waipounamu (the South Island) following the lifecycles of animals and plants. Hunting and gathering in the high country was a fundamental element of the systematic seasonal food gathering patterns of Ngāi Tahu hapū.

Ngāi Tahu used a comprehensive network of trails which ensured the safest journey from coast to coast and inland into the high country. Trails followed rivers, valleys and coastlines, and overhanging rock faces provided a night's recovery before the next day's journey, while food resources gathered en route were critical to the survival of travellers on their journeys. These trails were memorized and passed on through careful learning and practice and became arteries of economic and social relationships. Over generations of use, Ngāi Tahu developed extensive knowledge of the place-names, stories, food resources, resting places and natural features of the trails.

Within the covenant area, ara tawhito (ancient trails) include the tributaries of the Haehaenui (Arrow River) and the Ō Rau (Cardrona River), while the Shotover River (Kimi-ākau) led through to the Matukituki River valley which provided access to the West Coast and the Arrow River

(Haehae-nui) led to a saddle over into the south branch of the Motatapu River, the most direct route to Lake Wānaka. Numerous rock shelters in the area are likely to have been utilized by Ngāi Tahu when travelling or hunting.

One of the most highly valued of all natural resources for Ngāi Tahu was pounamu (also known as greenstone, jade or nephrite). The principal deposits of pounamu are in the Taramakau and Arahura Rivers in Westland, coastal South Westland and the Whakatipu-wai-māori (Lake Wakatipu) area, with Te Awa Whakatipu (the Dart River) providing a particularly important source for Southern Ngāi Tahu. Pounamu is not only entrenched in mythology and spirituality but was essential for survival, and was manufactured to make weapons and tools such as adzes, chisels and knives, which were essential for daily living. Items of personal adornment were also made from pounamu, such as amulets and hei tiki (human neck pendants).

Ngāi Tahu established settlements, both seasonal and permanent, in strategic positions in the high country, especially around the high country lakes. The high country was an invaluable source of flora and fauna resources for Māori, both for those living in coastal settlements passing through, and those living permanently inland.

The important mahinga kai (food and resource gathering areas) in the covenant area are predominantly within the freshwater wetland and riparian habitats. These include the rivers and creeks inhabited by waterfowl and, in some cases, native fish species (e.g. Koaro in Māori Gully), though land modifications, particularly over the lower altitude flats, have reduced the extent of wetland/riparian areas. Higher altitude areas also have mahinga kai values particularly given the abundance of taramea.

In pre-European times, Coronet Peak Station, in particular, was covered in extensive forest which Ngāi Tahu tipuna would have utilised for its vast bird population including Korimako (Bellbird), Titipounamu (Rifleman), Weka, Karearea (New Zealand Falcon), Kea, Kakarua (Robin), Putangitangi (Paradise Shelduck) and Riroriro (Greywarbler). Several of these manu (bird) species are listed as taonga species in the Ngāi Tahu Claims Settlement Act 1998, in recognition of the special relationship Ngāi Tahu has with them.

More recent Ngāi Tahu history is also recorded on the landscape, such as in the area known as Māori Gully, which was the site of a significant gold strike by Māori, including Ngāi Tahu, in 1862.

In recent years on Motatapu Station, Soho Property Limited has been part of the Buff Weka Translocation Project which is a joint initiative between Soho Property Limited, the Department of Conservation and Ngāi Tahu Papatipu Rūnanga to attempt to reintroduce buff weka to mainland Te Wai Pounamu. Buff weka were once abundant on the East Coast of the South Island and could be found in many areas of native bush and scrublands of Otago.

Although Ngāi Tahu use and occupation has diminished since the land came under Crown control in the nineteenth century, Ngāi Tahu spiritual, cultural and historical values are still present in the high country today. The locations of ancient settlements described in Ngāi Tahu traditions and stories are still standing, and the ancient place names and whakapapa that is entrenched in the high country landscape still exist. The descendants of those first people of Te Waipounamu – Waitaha, Ngāti Mamoe and Ngāi Tahu – seek to preserve these historical and spiritual sites and areas of mahinga kai for future generations.

Ngai Tahu kaitiaki relationship with the taonga in the environment is part of Ngai Tahu culture and identity. There are seven Ngāi Tahu Papatipu Rūnanga with a mana whenua interest in the area between Lakes Wānaka and Whakatipu-wai-māori where Coronet Peak is located. They are Kati Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Te Rūnanga o Moeraki, Hokonui Rūnanga, Waihōpai Rūnanga, Te Rūnanga o Awarua and Te Rūnanga o Oraka Aparima.

The first Pakeha who came to the Wakatipu area were the explorers of the mid 1850s, including Nathaniel Chalmers, Chubbin and MacFarlane. Then came the runholders. In 1871 a block known as the "Shotover" was leased to Gammie and Grant. The MacKenzies are recorded as farming on "Coronet Peak" during the 1870s.

The biggest influx of people were the gold miners, beginning in 1862, when thousands of people flooded into the Shotover and Arrow valleys in search for gold from every corner of the globe. The Shotover was considered in the late 19th century to be the richest river in the world. Chinese miners represented at times the majority of the population, and yet their role in the area is largely unknown. Sites such as Wong Gong's store⁴ provide context for that Chinese history, and provide a starting point in the recognition of the Chinese presence in Skippers, and in Otago.

Schedule 4 – Ngai Tahu heritage

The Covenantor and the National Trust agree that :

1. Ngāi Tahu, and specifically Ngāi Tahu Papatipu Rūnanga, have a historical connection with the area and that they will engage with Ngai Tahu from time to time over protection and management of the Ngāi Tahu cultural values.
2. Subject to any permission that might be required from the Commissioner of Crown Lands:
 - a. The Covenantor will use Ngāi Tahu place names where appropriate within the Covenant Area
 - b. The Covenantor will seek Ngāi Tahu input to the development of interpretation/signage
 - c. The Covenantor will permit Ngai Tahu to erect appropriate markers, such as a pouwhenua, on the Covenant areas
 - d. The Covenantor and the National Trust will consult Ngāi Tahu in relation to the Management Plan and any species recovery opportunities
3. Notwithstanding clause 4 of this deed, the Covenantor and the National Trust may consent to named members of Ngai Tahu to take, in a sustainable manner, a specified quantity of native plants or Weka from the Covenant Area provided that this is:
 - a. for non-commercial purposes;
 - b. not detrimental to the achievement of the overriding objectives;
 - c. not detrimental to the management of the Covenant as a Kohanga;
 - d. consistent with Ngai Tahu cultural values;
 - e. lawful.Any such consent must be given jointly by the Covenantor and the National Trust in writing.
4. Nothing in this deed shall create an obligation enforceable at the suit of Ngāi Tahu.

Execution and date

Executed as a deed *18th* day of *February* *2015*

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

Chairperson *[Signature]*

Director *[Signature]*

Acting Chief Executive *[Signature]*



Open Space Covenant – Coronet Peak Covenant

5-12-231

Signed by Soho Property Limited



Director

Thomas Steinmann

Director

Signed by Soho Property Limited

 (Stacy Levan Smith)

Director

Director

The Commissioner of Crown Lands consents to the execution of the Open Space Covenant pursuant to section 89(1) of the Land Act 1948 and pursuant to section 22(3) of the Queen Elizabeth the Second National Trust Act 1977 but without prejudice to the rights, obligations and remedies under the Coronet Peak pastoral lease, the Land Act 1948 and Crown Pastoral Land Act 1998.



Commissioner of Crown Lands

D. J. GULLEN
COMMISSIONER OF CROWN LANDS
LAND INFORMATION NEW ZEALAND
WELLINGTON

in the presence of:
Witness (Signed)



Name (Print)

SIMON MARK ESPE

Occupation

SOLICITOR

Address

WELLINGTON

.....

.....

Open Space Covenant – Coronet Peak Covenant

Covenant No. 4828

OPEN SPACE COVENANT

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

Correct for the purposes of the
Land Transfer Act 1952



Solicitor

Soho Property Limited
Covenantor

AND

**THE QUEEN ELIZABETH THE
SECOND NATIONAL TRUST**