

Conservation Management Agreement

This Agreement is made on the 22 day of January 2018

PARTIES

BETWEEN **BAYTOWN INVESTMENTS LIMITED** (the Owner)
T/A PONGARUA STATION
AND **WHANGAWEHI CATCHMENT MANAGEMENT GROUP**
INCORPORATED being a registered incorporated society
under the Incorporated Societies Act 1908 (the Whangawehi
Catchment Group)

BACKGROUND

- A. The Whangawehi Catchment Group is a local initiative of landowners, marae, tangata whenua, school representatives and agencies working collaboratively to "maintain and improve the different cultural, ecological, recreational and economical values of the Whangawehi catchment". The Group operates under a set of Society rules with some key principles and values which include:
- (i) Kaitiakitanga – the exercise of guardianship in accordance with Tikanga Māori;
 - (ii) Respect of the land and water, and cultural significance associated; and
 - (iii) Good will, openness, trust and honesty.
- B. The Owner is the registered proprietor of the Land, which includes the Protected Land.
- C. The Protected Land contains certain Conservation Values specified in Schedule 1.
- D. The parties agree that:
- (i) the Protected Land should be managed so as to preserve and enhance the Conservation Values specified in Schedule 1; and
 - (ii) such purpose can be achieved without the Whangawehi Catchment Group acquiring a fee simple, leasehold or other interest in the Protected Land.
- E. The Owner has agreed to enter into this Agreement over the Protected Land with the Whangawehi Catchment Group to preserve the Conservation Values specified in Schedule 1.

OPERATIVE PARTS

The Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions:** In this Agreement (including the Introduction), the following expressions have the following meanings, unless the context otherwise requires:

"Agreement"	means this Conservation Management Agreement entered into by the parties.
"Conservation Values"	means any or all of the Protected Land's natural values as specified in Schedule 1.
"Fence"	includes a gate.
"Land"	means the land owned by the registered proprietor and described in Schedule 1.
"Protected Land"	means the land described in Schedule 1.
"Management Plan"	includes the initial Management Plan provided for in Schedule 3 and the 5-year Management Plan to be prepared by the parties within one year of entering into this Agreement.
"Owner"	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Protected Land.
"Structure"	includes any building, fence, gate, traps, monitoring structure or instrument stile, marker, bridge or notice.

2 Interpretation: In this agreement:

- 2.1 Where the context permits, the singular includes the plural and vice versa.
- 2.2 References to any "party" means a party to this agreement, and includes their respective successors and permitted assigns (as the case may be).
- 2.3 References to clauses and schedules are to the clauses in and schedules to this agreement (unless stated otherwise). All schedules form part of this Agreement.
- 2.4 A reference to any legislation includes that legislation as from time to time amended, re-enacted or substituted and any statutory instruments or regulations issued under such legislation.

3. PURPOSE OF AGREEMENT

- 3.1. The Owner permits the Whangawehi Catchment Group to manage the Protected Land so as to preserve and enhance the Conservation Values described in clause 3.2 below and/or specified in Schedule 1.
- 3.2. Conservation Values include but are not limited to the improvement of water quality, biodiversity, protection and/or enhancement of natural and cultural values of the Whangawehi catchment.

4. TERM OF AGREEMENT

- 4.1. The Owner agrees to enter into this Agreement for a term of 25 years commencing on [insert commencement date]. 22/01/2018
- 4.2. The Owner may, before the expiry of 25 year term, give notice that the Owner wishes to:
 - 4.2.1. Extend this Agreement for a further term on the same terms and conditions as provided by this Agreement (the length of that further term to be agreed between the Owner and the Whangawehi Catchment Group); or
 - 4.2.2. Enter into a new agreement with the Whangawehi Catchment Group on such terms and conditions as may be agreed by those parties.

5. IMPLEMENTATION OF PURPOSE

- 5.1. Unless agreed in writing by the parties (or permitted by the Management Plan), the Owner and Whangawehi Catchment Group must not carry out the following activities or permit such activities to be carried out on or in relation to the Protected Land:
 - 5.1.3. grazing by livestock;

- 5.1.4. the erection of any structure or facilities;
 - 5.1.5. the wilful damage to or interference with any structure adjoining or on the Protected Land whether pre-existing or which has been installed by agreement by one or both of the parties;
 - 5.1.6. taking any vehicle on to the Protected Land except as required for management purposes;
 - 5.1.7. the felling, removal or damage of any tree, scrub or other plant (unless acting in accordance with the Biosecurity Act 1993 or in performance of a party's obligations elsewhere provided under this Agreement);
 - 5.1.8. the disposition or removal of organic or inorganic material;
 - 5.1.9. any other activity which might have an adverse effect on the Conservation Values.
- 5.2. The parties agree that access to the waterway and the Owner's ability to pump water from the river at any time for farming or forestry purposes may continue.
- 5.3. The Owner and Whangawehi Catchment Group agree that a stock proof fence will be constructed along and around the Protected Land (the Fence).
- 5.4. The Owner and Whangawehi Catchment Group must agree on the location of the Fence prior to its construction.
- 5.5. The Fence along and around Protected Land must be:
- 5.5.1. a conventional 8 wire post and batten fence; or
 - 5.5.2. a permanent electric fence (9 wires with 2 electric wires); or
 - 5.5.3. a netting fence with barbed wire at the top and bottom;
- and
- 5.5.4. stay posts will be internal (goats); and
 - 5.5.5. in all cases the Fence must be sufficient to exclude all classes of stock farmed on the Owner's land.
- 5.6. For Sites of Significance within the Protected Land, the parties must agree prior to the construction of the Fence on a fence type that will be appropriate and relevant to Site of Significance within the Protected Land. This means that the Fence may be a sheep only or railing fence.
- 5.7. Each Fence will provide for a minimum of one gateway from the balance of the Land to the Protected Land.

- 5.8. Within 30 days of entering into this Agreement the parties will agree in writing:
- 5.8.1. Which party is to bear the costs of constructing the Fence (including fencing materials and preparation of the fence line); and
 - 5.8.2. If those costs are to be shared, what proportion of those costs each party will bear.
- 5.9. The ongoing maintenance of the Fence will be borne by the Owner.
- 5.10. Maintenance of the Fence will be carried out as and when necessary to ensure:
- 5.10.1. any agreed fencing standards are adhered to; and
 - 5.10.2. stock are excluded at all times (including goats), except as permitted under the Management Plan.
- 5.11. The cost of replacing the Fence at age 25 (average life span of a fence), including the supply of all necessary fencing materials, preparation of the fence line and any associated earthworks will be borne by the Owner.
- 5.12. The Owner must carry out appropriate spraying programs to prevent grass growth from interfering with electric wires of the Fence (if applicable).
- 5.13. The Owner must spray woody vegetation including blackberry and scrub when necessary.

6. ACCESS TO PROTECTED LAND

- 6.1. No public access to the Protected Land is permitted without the prior written consent of the Owner.
- 6.2. The Whangawehi Catchment Group's employees, contractors and/or invitees are permitted access to the Protected Land for monitoring purposes, during daylight hours and following notice to the Owner on each occasion.
- 6.3. The Owner may only withhold his or her consent or restrict access for one of the following reasons:
- 6.3.1. Access to the Protected Land may adversely affect that land due to extremely wet conditions;
 - 6.3.2. Access to the Protected Land may adversely affect that land due to extremely dry conditions;
 - 6.3.3. Access to the Protected Land may adversely affect the Owner's seasonal farming operations (such as lambing or calving);

6.3.4. Health and Safety reasons; or

6.3.5. The Owner objects or disapproves to the person entering the Protected Land.

7. OBLIGATIONS ON SALE OF LAND

7.1. If the Owner sells, leases, or parts with possession of the Protected Land, the Owner must obtain the agreement of the purchaser, lessee, or assignee to comply with the terms of this Agreement.

7.2. Such agreement must also include an agreement by the purchaser, lessee, or assignee that they will be bound by clause 7.1 in the event of any subsequent sale, lease, or assignment. For the avoidance of doubt, the purchaser, lessee or assignee must obtain the subsequent purchaser's, lessee's, or assignee's agreement to comply with the terms of this Agreement including this clause.

7.3. If, for any reason, the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Agreement, the Owner will continue to be liable in damages to the Whangawehi Catchment Group for any breach of the Agreement committed after the Owner has parted with all interest in the Protected Land in respect of which a breach occurs.

8. WHANGAWEHI CATCHMENT GROUP TRANSFER OF OBLIGATIONS

8.1. The Whangawehi Catchment Group, its successors or assignees may transfer their rights and obligations under this Agreement, in whole or part, to a new party without the consent of the Owner.

8.2. Where the Whangawehi Catchment Group, its successors or assignees transfer any of their rights and obligations under this Agreement, the new party will comply with the terms of this Agreement including this clause.

9. DEFAULT

9.1. Where either the Owner or the Whangawehi Catchment Group breaches any of the terms and conditions contained in this Agreement the other party:

9.1.1. 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

9.1.2. 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 further damage.

9.2. If the Owner or the Whangawehi Catchment Group reasonably believes that the other party (the defaulting party) has defaulted in performance of or

observance of its obligations under this Agreement then that party (notifying party) may, by written notice:

- 9.2.1. Advise the defaulting party of the default;
- 9.2.2. state the action reasonably required of the defaulting party to perform or observe in accordance with this Agreement; and
- 9.2.3. state a reasonable period within which the defaulting party must take action to remedy the default.

10. DISPUTE RESOLUTION PROCESSES

- 10.1. If any dispute arises between the Owner and the Whangawehi Catchment Group in connection with this Agreement, the parties must, without prejudice to any other rights they may have under this Agreement, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

Mediation

- 10.2. If the dispute is not capable of resolution by agreement within 14 days of written notice being given by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
- 10.3. If the parties cannot agree on a mediator, the President of the District Law Society in the region in which the Protected Land is situated will appoint the mediator.

Failure of Mediation

- 10.4. In the event that the matter 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.
- 10.5. 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 will be made by the President for the time being of the District Law Society in the region in which the Protected Land is situated;
- 10.6. The parties further agree that the results of arbitration are to be binding upon the parties.
- 10.7. This clause will not apply to an application by either party seeking urgent interlocutory relief from any court.
- 10.8. Pending resolution of any dispute, the parties will perform this agreement in all respects, including performance of the matter which is the subject of dispute.

11. NOTICES

- 11.1. A notice to be given under this Agreement by one party to the other is to be in writing and sent 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 4.
- 11.2. A notice given in accordance with clause 11.1 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.
- 11.3. The Owner must notify the Whangawehi Catchment Group of any change of ownership or control of all or part of the Protected Land and must supply the Whangawehi Catchment Group with the name and address of the new owner or person in control.

12. MANAGEMENT PLAN

- 12.1. The parties agree to manage the Protected Land in accordance with the Management Plan in place from time to time.
- 12.2. The Protected Land shall be managed in accordance with the initial Management Plan in Schedule 3 until such time as the parties have agreed on the content of an expanded 5-year Management Plan, at which point the Protected Land shall be managed in accordance with the 5-year Management Plan.
- 12.3. The standard conditions contained in this Agreement must be read subject to the Management Plan.
- 12.4. In the event of any conflict between the conditions contained in this Agreement and any Management Plan, the Management Plan prevails.
- 12.5. If the Owner wishes to carry out any activity on the Protected Land which is not permitted under this Agreement or the Management Plan, the Owner must first obtain the consent of the Whangawehi Catchment Group in writing to that activity.

5-year Management Plan

- 12.6. The Owner and the Whangawehi Catchment Group will agree to the principle and content of an expanded 5-year Management Plan within one year of entering into this Agreement.
- 12.7. The 5-year Management Plan will contain an annual work program tailored to guide restoration and biodiversity work.
- 12.8. The 5-year Management Plan will be reviewed and updated at the end of each 5-year period.

13. Force majeure

- 13.1. Notwithstanding any other provision of this Agreement, the non-performance by any party of its obligations under this Agreement shall be excused without liability to the extent that such performance is prevented wholly or substantially by event beyond that party's reasonable control.

14. General

- 14.1. **Partial invalidity:** If any clauses in this Agreement are found by a court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of the agreement.
- 14.2. **Non-waiver:** Failure by either party at any time to enforce any provision of this Agreement will not be considered a waiver of that power or right to enforce such provision.
- 14.3. **Governing law:** This Agreement is governed by and construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive court jurisdiction of the Courts of New Zealand in relation to all disputes arising out of or in connection with this Agreement.
- 14.4. **Entire Agreement:** This Agreement supersedes all prior negotiations, contracts, arrangements, understandings and agreements including any negotiations, arrangements, representations, understandings or agreements between the Owner and the Whangawehi Catchment Group.
- 14.5. **Variations:** Any provision in this Agreement may be varied by signed agreement between the parties. No variation to this Agreement will be legally enforceable unless it is in writing and signed by the parties.

14.6. **Further assurances:** Each party shall make all applications, do all things and execute all documents reasonably required in order to give effect to this agreement.

Executed as a Deed.....

Signed by SIR MICHAEL FAY ~~insert name of Owner~~ as
Owner in the presence of:

) Michael Fay,
Director,
Baytown
Investments Ltd.

[Signature]
Signature of Witness

Warren Butler
Witness Name

Accountant
Occupation

123 Celtic Crescent, Ellerslie, Auckland
Address

Signed by the Whangawehi Catchment Management Group Inc in the presence of:) PAT O'Brien

Nicolas Caviale
Signature of Witness

[Signature]
Witness Name

Project Coordinator
Occupation

46 Freyberg Street - Wairoa.
Address

SCHEDULE 1

The Land:

Riparian margins on both side of the Whangawehi stream from the Whangawehi bridge
(39° 5'49.59''S - 177°56'56.72''E) to the Western boundary (39°6'31.51''S - 177°55'32.24'' E)

Farm Name:

Pongaroa Station

The Protected Land:

Riparian margins

Type :

Wetland

Native Bush

Riparian strip

x

Site of significance

GPS Coordinates of fence line:

Beginning of the fence (39° 5'49.59''S - 177°56'56.72''E) – end of the fence (39°6'31.51''S - 177°55'32.24'' E).

Length of the fence: 3 km

Conservation Values:

Riparian margins with cultural and historical sites of significance

SCHEDULE 2

Boundaries and management areas of the Protected Land shall be as shown in aerial photograph attached.



SCHEDULE 3

INITIAL MANAGEMENT PLAN

Purpose

This Management Plan identifies the management practices to be used within the Protected Land, such practices being intended to preserve or restore water quality, biodiversity and cultural values in the Whangawehi catchment. This is a general guideline developed on the base of good faith and trust with the sole intention of protecting the investment made by Whangawehi Catchment Group and its funders.

The Protected Land

The course of the riparian strip, the lay of the land around a wetland, bush block or site of significance may move due to floods, slips, natural disaster and may require fence changes but this will be with mutual agreement between the parties. If the parties agree to a change to the fence line along or around the Protected Land boundary at any time, the changed fence line may encompass more land than what is identified in Schedule 1 and 2 of the Agreement due to management reasons.

The management of the Protected Land and additional land will be carried out as outlined below.

Responsibilities

The Owner will be responsible at its cost (subject to any assistance for which it is eligible from the Whangawehi Catchment Group) for the following on the Protected Land:

- i. Plant pest control and animal pest control, to the extent that the Owner was responsible for such activities prior to the granting of the Agreement;
- ii. Maintenance of the Fence as provided for in the Agreement;
- iii. Maintenance of any native plantings after the first three years of establishment with a clear focus on weed control (blackberry, old man's beard, gorse, Pampa etc) to the extent that the Owner was responsible for these activities prior to entering into the Agreement;

The Owner will not be liable for any costs associated with degradation of the Protected Land caused by flooding, drought, fire, landslide, or natural disaster.

The Whangawehi Catchment Group will be responsible for:

- i. Providing advice and expertise for protection and enhancement works;
- ii. Providing financial assistance toward fencing, riparian planting and other activities, where eligible under the terms, conditions and financial limits of, the Whangawehi Catchment Group.

Vegetation

The following plants have been identified within the Protected Land for removal:

- i. Any total control and containment control plants as identified in the Regional Plant Pest Management Strategy; and
- ii. Crack willow and Grey Willow.

Plants will be removed in accordance with this Management Plan and as described in the work program.

Removal of trees and plants for customary purposes must be part of a sustainable harvesting plan agreed with the Whangawehi Catchment Group.

Planting:

The following plants have been agreed to be planted within the Protected Land:

- i. A selection of native plants, agreed upon by the Owner and the Whangawehi Catchment Group (the Enhancement Plants).

Planting is to be carried out in accordance with this Management Plan and as described in the work program.

Maintenance:

All reasonable efforts will be made to ensure survival of Enhancement Plants, which includes release spraying in the first two years.

Weed control will be ongoing and part of a weed control management plan.

Grazing Management

No grazing allowed

Pest control

The Whangawehi Catchment Group may carry out pest control work on the Protected Land with the prior written agreement of the Owner. Such pest control work will be over and above the pest control for which the Owner is responsible under this initial Management Plan.

The Whangawehi Catchment Group and the Owner will first agree on the following matters:

- i. The type of traps and toxins to be used by the Whangawehi Catchment Group;
and
- ii. The Owner's contribution to the cost of that pest control work (if any).

SCHEDULE 4

ADDRESS FOR SERVICE

The address for service of the Owner is:

Baytown Investments Limited
Level 3, Building 10, 666 Gt South Rd, Penrose, Auckland.
PO Box 1650, Shortland St, Auckland 1140

The address for service of the Whangawehi Catchment Group is:

Whangawehi Catchment Management Group
720 Mahia East Coast Road RD 8 Nuhaka
4198 Hawkes Bay

