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**Covenants as a Policy Mechanism
for Providing Conservation of
Natural Features: Survey of QEII
Covenantees in Canterbury**

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Abstract

Conservation covenants have received scant attention internationally as a tool for providing conservation. This paper examines their use in New Zealand where they have been almost the sole policy measure in protecting land under private ownership. Under these covenants landowners/managers surrender some of their property rights in perpetuity in return for little if any compensation. The motivation for this is important in understanding their applicability to other situations. A survey of covenantees in the Canterbury region of New Zealand did highlight a high proportion had entered the covenant for altruistic reasons the main attraction being protection in perpetuity. Whilst the covenanted land was managed less intensively three quarters had alternative uses mainly development and forestry implying a not insignificant positive opportunity cost for covenantees. However on the commercially managed holdings the covenanted land was only a small part. The survey highlights the fact that landowners/managers are more willing to providing conservation than may be expected given an appropriate mechanism. Conservation covenants may therefore have wider appeal especially where there are limited resources. They are suited best to areas of land which are small proportions of commercial holdings; uncontroversial and well defined management prescriptions which are static; little active management; and little conflict between the conservation and other objectives for the land.

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1. Introduction

International interest in the protection of natural resources has grown over the last few decades. In particular there has been growing interest in the environmental impact of agriculture, forestry and other development on natural resources such as wildlife habitat, landscape quality as well as recreational access. This has led to the development of a wide range of policies to protect and enhance areas of conservation interest.

In New Zealand the pressures on land use have been relatively small compared to those in many other developed countries. The relatively late economic development and the low density of population have given New Zealand less acute problems than can be seen elsewhere.

New Zealand still has large tracts of land under public ownership, with National Parks, Forest parks and wilderness areas, in which other land use is heavily restricted. These lands are all under the management of the Department of Conservation (DoC).

Nonetheless New Zealand does have land with conservation interest under private ownership. However New Zealand does not have substantial resources politically available to protect this land. Thus whilst problems in New Zealand may not be as acute as in other countries, there are not the same resources to solve them. Therefore policies for conservation on private land have concentrated upon the use of voluntary schemes (in particular covenants), and it is the operation of these which is the subject of this paper.

Policies for Conservation Protection

The conservation interest in land provides benefits to a wide range of people, both users and non-users. Users include the landowner/manager of the land who may benefit from the conservation, as well as visitors to the site. Non-users are those who obtain benefit from the conservation value of the site although they may never visit it. It is because the conservation value of land benefits so many that it is considered a public good. That is the benefits are non-exclusive, at least visually and for non-users, and non-rival that is more than one person can benefit at the same time from the existence of the site.

Due to the public good nature of conservation sites the benefits of the site are likely to be greater for society as a whole than for the landowner/manager alone and therefore the private provision of conservation at the site is likely to be below its social optimum. As it is not usually possible to either obtain the other beneficiaries to state their willingness to pay or even if so to collect it (due to the free-rider problem and high transaction costs) some form of government intervention is needed.

Various policy mechanisms have been developed to secure conservation interest in land. These include public purchase where property rights are directly under control of the state. This however requires a high initial outlay and is not always politically acceptable. Alternatively the government through the legislative process can change the property rights over land which is the case to a limited extent with the introduction of the Resource Management Act 1991. However altering property rights over land by blanket legislation has limited applicability as a means of providing conservation partly because of the general reluctance to use retrospective legislation and the difficulty of applying blanket conditions to achieve different conservation objectives.

Alternatively a policy mechanism used widely in other countries is management agreements between the landowner/managers and conservation or other agencies. These agreements can be voluntary or compulsory and specify certain management practices usually with compensation in return, making them somewhat expensive. They are also typically for a specified period in time and thus do not guarantee protection in perpetuity.

Other schemes rely more upon the voluntary principle with low or zero compensation. These include advisory services and voluntary organisations offering assistance with practical conservation works. Provision of compensation is therefore heavily reliant upon the goodwill of landowner/managers.

Into this category fall covenants, which generally rely on the voluntary principle but which formalise the provision of conservation.

Covenants

A covenant is a legally binding agreement - 'a promise contained in a deed'. In the case of conservation covenants these generally are related to the land. Covenants can run for any period of time but their main attraction for policy makers interested in the conservation of land is the fact that they can run in perpetuity and therefore give protection with current and subsequent landowners. This makes them an attractive option as a cheaper alternative to land purchase. Each covenant can be negotiated separately and include prescriptions specific to the site.

There are a number of different types of covenants, Edwards and Sharp (1990) divides them into four types, contractual; covenants between landlord and tenant; private covenants on freehold land; and statutory covenants. It is the latter which is relevant here as the main means of protecting conservation interest of land under private ownership.

Statutory covenants apply to agencies which have been given legislative powers to enter into covenants with landowners/managers. In New Zealand these have been used extensively since 1977 with powers to enter into covenants given to the Department of Conservation under the Reserves Act 1977, and the Conservation Act 1987, and to the Queen Elizabeth National Trust (QEII), established under the Queen Elizabeth the Second National Trust Act, in 1977. The QEII is a voluntary organisation whose main function is the conservation of land.

Covenants imply a voluntary surrender of property rights by the landowner in perpetuity in order to provide conservation benefits. The existence of a covenant not only restricts the property rights of the landowner but may also bind them to certain costs such as maintenance. At first sight therefore it is not clear what is the incentive for landowners/managers to surrender some of their property rights. If they had an interest in the conservation of the land they could pursue this without a formal loss of rights which affects the value of their property. However the number of covenants entered into in New Zealand does indicate that a number of producers are willing to lose their rights. This suggests that covenants as a mechanism for providing conservation may have a wider appeal in other countries. To determine the applicability of this mechanism to other situations it is important to determine the motivation for entry into the covenant.

The current study therefore conducted a survey of landowners/managers with covenants to identify the motivation behind entering covenants; the attitudes towards their operation; and

their comments on their effectiveness. Covenants with the voluntary agency, the QEII National Trust have been used in the survey because these are the greatest in number.

Queen Elizabeth Trust Covenants

The QEII Trust was established in 1977 to "encourage and promote the provision, protection, and enhancement of open space for the benefit and enjoyment of the people".

The main mechanism used by the Trust towards achieving this end as stated above is covenants. These are voluntary and usually initiated by the landowner/manager. The Trust does also offer advice, aid land purchase and even in exceptional cases purchase land itself, but these are only a relatively small part of its operations. In 1995 the QEII had 826 registered covenants covering 28,529 hectares and a further 380 areas covering 43,400 hectares approved for covenants (QEII National Trust 1995). The covenanted area is broken down by region and illustrated in Table 1

Table 1
Number and Area of QEII Covenants by Region

District	Number of Covenants	Area (hectares)
North Auckland	163	3190
South Auckland	203	5967
Gisborne	38	1641
Hawkes Bay	30	1026
Taranaki	48	1431
Wellington	136	8126
Marlborough	3	159
Nelson	44	1261
Westland	2	10
Canterbury	64	2121
Otago	31	2159
Southland	64	1439
TOTAL	826	28526

Source: Queen Elizabeth National Trust (1995): Open Space. No 33. Wellington

The QEII is financed mainly by government grant but also investment income; donations; bequests and membership fees. The QEII can apply for funds from the Forest Heritage fund for help with fencing where appropriate. The QEII also usually contributes to surveying, legal and registration costs as well as offering advice. Other incentives include making a covenant on conservation land a condition for granting subdivision rights for development on adjoining land; rate relief; and assistance with weed and pest control. Some covenants include management agreements between the landowner/manager and the QEII. Public access may also be included in the covenant depending upon whether it conflicts with the protection of the site.

The aim of the survey was to question a group of landowner/managers re their motivations and attitude towards the QEII and covenants. To obtain most pertinent information it was decided that a face to face survey would be the most appropriate using open-ended questions with categories only provided as a time saver to interviewer. The survey covered a 100

percent sample of farmers on Banks Peninsula and North Canterbury who have covenants, 26 in total. A copy of the questionnaire is given in the Appendix. These results were compared with an earlier postal survey of all Trust members nationwide which whilst having slightly different objectives did provide important background information (Turner 1994).

2. Results

All holdings bar two were actively engaged in farming and all of these were livestock farms. The average size of holding was 522 hectares and the median 305 hectares. Although the size of holding ranged from 26 hectares to 3000, most were between 100 and 1500 hectares. As illustrated by Table 2, nearly 69 per cent of the land was improved grass, 14 per cent other grass including tussock grass and 16 per cent forest most of which was native. All holdings bar one were freehold.

Table 2
Type of Land

	Percentage
Improved grass	68.8
Other Grass	13.8
Forest/bush/scrub	
native	14.1
non-native	1.5

The average stocking rate per holding was 4.5 units per hectare. Sheep accounted for the greatest number of stock units as illustrated by Table 3, with ewes accounting for half the stock units and lambs a further 14 per cent. Beef cattle and calves accounted for 17 per cent, cows and bulls 14 per cent and deer and goats four per cent.

Table 3
Percentage of Stock Units by Type

	Percentage
Adult sheep	50.1
Lambs	14.2
Cows + bulls	13.6
Calves	17.2
Deer and goats	4.0

As an introduction to conservation issues the pilot questionnaire asked respondents to identify the main conservation issues affecting their holding at the moment. Respondents in the pilot found this difficult to address so the question was altered to ask "what are the main pressures affecting you as a farmer at present" both to open discussion and to determine whether conservation issues were an important problem. This was not the case with nearly a half citing low prices, only a few citing weeds or pests and none conservation issues at all.

The covenanted land was in general a small percentage of total area with for 65 per cent of respondents the area being under 6 per cent of their total area. Only for one was all their area under covenant and for another 50 per cent.

The average area under covenant was 27.9 hectares and median 15.5 hectares, with sites ranging from 1.5 hectares to 150 hectares. The majority of this land, at 71 per cent, was native bush or native bush remnant. However there was considerable discrepancy between the area of covenant given by the QEII and the area given by the landowners/managers. The area under survey should have according to the QEII just covered 471 hectares compared to 725.6 reported by respondents. Whether this is a serious problem or not is doubtful but may mean that the QEII is obtaining protection on a greater area of land than expected!

According to 73 percent of respondents the main objective of the covenants were the protection of native bush. Other objectives of the covenants included two citing geological interest; and another two to prevent development. When these responses were compared with the conservation objectives of QEII there did not seem to be much conflict between the conservation objectives of QEII and the landowner/manager which is perhaps not surprising given the dominance of one habitat type.

A wide range of threats to covenanted land were reported as shown in Table 4. Nearly a half cited possums and grazing of livestock as a threat; a third fire; a quarter weeds.

Table 4
The Main Threats to the Conservation of Covenanted Land

Threatened By	Number of Covenants
Pests: goats	4
possums	12
pigs	2
deer	2
wasps	2
Weeds	7
Fire	9
Grazing of Livestock	12
Quarrying	1
Development	5

Nearly 60 per cent of respondents cited the main motive for placing land under covenant was to preserve features for the future a similar percentage as found by Turner. A quarter had purchased the land with the covenant on. Only three had entered the covenant explicitly for assistance, mainly to aid conservation. None had entered to secure development rights and only one cited prevention of tourism development as a benefit of the covenant. This again is consistent with the wider survey where under one per cent entered the covenant to secure development rights on adjoining land and few for assistance.

In the absence of the covenant nearly 60 per cent of landowners/managers thought that there would be no effect on the conservation interests of the land. However nearly half of these qualified this by stating that under their ownership/management they would protect the area

under covenant in any case. Therefore whilst the land may not be under threat with current owner, with or without the covenant, it may well be under threat if there was a change in ownership. Of the remaining 40 per cent, 23 per cent felt the covenanted land would have been under risk of agricultural/forestry development whereas 15 per cent thought other development, such as building and quarrying, as the main threat.

To obtain an estimate of the opportunity cost of entering land under covenant the land owners/managers were asked the alternative viable uses for the covenanted land. This also allowed further qualification to be given to the responses reported above in that it was stressed that information on possible alternative uses of the land were required whether these were intended or not. The most cited alternative viable use given was commercial forestry with just over 60 per cent giving it as alternative use followed by agricultural production, and then development and quarrying. Nineteen per cent stated that the land had no alternative viable use.

So 75 per cent of the covenanted area had an alternative land use, 44 per cent forestry and 31 per cent some form of development. Whilst some of this may not be possible due to planning restrictions it does indicate that there is a positive opportunity cost for most landowners/managers in entering the land under the covenant. Calculating this level is more difficult especially in the case of development but certainly not insubstantial. In case of forestry the estimated internal rate of return in 1993 range between 7 and 12 per cent, Ministry of Forestry(1993).

The restrictions and changes in management imposed by the covenant are given in Table 5 and include a fifth containing at least one of the following stocking constraints; restrictions on the planting of trees; obligations to control weeds; no grazing; and no development. Fencing and stock control was mentioned by four and restrictions on the movement of stock by two, six stated that the covenant had no effect at all.

Table 5
Restrictions/Changes on Management are Imposed by the Covenant

	Number of Responses
Reduction in stocking rate	5
Planting of trees	5
Control of weed	5
Fencing/stock control	4
No grazing	5
Movement of stock	2
Development	5
None	6

However these effects on management are in general minor with over 60 per cent stating there had been no overall effect on farming practice and 15 per cent stating it had actually made it easier to handle stock.

Nearly three quarters of respondents had received some form of assistance although there did seem to be some confusion over what type. Just under half cited lower rates as benefit from the covenant but a few were unsure whether they paid rates or not on the land. However the

benefit of this is minimal. A half had received assistance with fencing which usually amounted to half the fencing costs arising from the conditions of the covenant. This seemed to be the greatest benefit to covenantees but a few did bemoan the fact that they had to maintain extra fences and were not aware of any ongoing assistance for this. Only four mentioned advice and one survey costs as assistance although all must in some measure received this. Two cited assistance from volunteers and one help with weed control.

All but one agreed that the covenant had achieved its objectives, although comments on the operation of covenants included extra help from volunteers and that assistance with ongoing fencing costs would be useful. Suggestions for further improvement included three mentioning more publicity (which is interesting given 20 per cent of respondents in the wider study suggested this as well, Turner 1994). One respondent wanted greater penalties for those who broke covenants.

To compare the attraction of covenants with alternative conservation policies the respondents were asked to state their preferences on a scale of one to five for a range of policies including covenants, the results of which are given in Table 6.

Table 6
Preferences for Alternative Policies in the Absence of a Covenant on Your Land
(results in percentages)

	not attractive		very attractive		
	1	2	3	4	5
Advice/consultation with agencies as given below					
MAF	42	11	15	23	8
DoC	19	8	15	42	15
Other agency (<i>please state</i>)	0	0	21	50	29
(Agencies included: forest & bird (2); regional council (7); QEII (5); any private organisation (3))					
Voluntary scheme with incentives such as certificates given for good practice	38	12	27	15	8
Public purchase	54	12	4	12	19
Covenants	8	4	4	15	70
Management agreement with agency on over fixed time					
no compensation	54	23	12	12	0
with compensation for loss in income	46	15	19	19	0
tax concessions	27	4	19	23	27

Respondents were asked initially their preference for advice as a means of providing conservation on their land if the covenant was available. Moreover to obtain a feel for preferences for advice from different types of organisations different agencies were included. The Ministry of Agriculture (MAF) and the Department of Conservation (DoC) were included specifically and respondents were also asked to include any other bodies they would consider. Interestingly MAF did not rate highly with only 8 per cent stating their advice would be very attractive and 42 per cent stating it was not attractive at all. This is in contrast to surveys in other countries where it is shown that farmers generally prefer agencies with supposing greater sympathy for farmers such as MAF (Whitby et al. 1985). In fact DoC seemed more attractive with 15 per cent giving it a rating of 5 (very attractive) and

42 per cent a rating of four and only 19 per cent a rating of one (not attractive). Of other agencies mentioned regional councils were cited seven times with generally positive ratings; QEII five times also with a positive rating; and Forest and Bird twice; and any private organisation three times, reflecting appreciation for independent advice.

A voluntary scheme with incentives for good practice such as certificates was not rated highly with 38 per cent finding it not attractive and 27 per cent giving it a middle rating.

Interestingly public purchase was not seen as a preferred option with 54 per cent finding it not attractive at all, although 19 per cent found it very attractive. This 19 per cent includes the two in the sample who identified public purchase independently as their preferred option to covenants.

Covenants perhaps not surprisingly got the greatest endorsement given the sample, with 70 per cent stating then as very attractive. However on a more positive note this must reflect the goodwill and satisfaction with the current system.

Of particular interest was the response to management agreements which were not seen as attractive to respondents even with compensation for profits forgone. This is of interest as it is the means by which much of conservation is provided in Europe and other developed countries. Whilst the respondents may have been unfamiliar with the operation of this system of providing conservation they did suggest that they would rather have a voluntary system of covenants as it provided protection in perpetuity. Also the greater interference with management of the property implied by management agreements was not seen as attractive.

Tax concessions did receive some interest, equal numbers (27 per cent) stating they were not attractive and (27 per cent) that they were very attractive. It would have been of interest to break this down further by type of tax relief.

Nearly half the respondents were members of federated farmers; 43 per cent of other organisations; and 30 per cent were members of no group at all. Membership of an organisation did not significantly affect the responses.

Thirty-five per cent of respondents were full-time farmers with no other source of income. Of the remainder 15 per cent had no income from farming; 19 per cent had up to 25 per cent from farming; eight per cent between 25 and 50; eight per cent between 50 to 75 per cent; and the remaining 15 per cent had between 75 and 100 percent from farming. Of the 15 per cent who had no income from farming the percentage of land under covenant was high and two had bought the land specifically due to its conservation interest as stated below. Not surprisingly there tended to be an inverse relationship between the percentage of land area under covenant and percentage of income from farming. Thus use of covenants to protect conservation interest where it covers large area of commercial land use is limited.

In general all respondents bar one were very positive about the QEII and the operation of the covenants. However most did say they would have protected the land in the absence of the covenant. The overriding reason for entering into the covenant seemed to be altruistic and the main motive was protecting the land into the future. Interest in other forms of conservation policy was lower as there was no guarantee of protection with future land owners/managers.

However, the covenant had provided important assistance. So for example whilst the intention might have been to protect the land in perpetuity landowners/managers might not

have had the immediate resources to do so. So, for example, aid with fencing helped to protect land at an earlier stage than otherwise would have been possible. Other motives were apparent, for example in one case a covenant with QEII prevented interference from other conservation bodies; and on another the covenant protected land from tourism threats.

Two covenantees actually bought the land because of the covenants and its conservation value and therefore would not have put land under pressure in any case. A further three were either not farming or had very small holdings and also had a strong commitment to nature conservation. A further five cited that they would have protected in any case and/or the land had little alternative use.

The overall impression was of satisfaction with the covenant but it didn't impinge substantially on income generation of the household. The fact that the covenant was in perpetuity was a major attractive feature of the policy; the voluntary nature was also attractive (not surprisingly), in addition the lack of interference by the agency seemed to be appreciated.

3. Conclusion

Covenants clearly are only appropriate in certain circumstances and for covering certain types of threat. Covenants seem to be well suited to the conservation of native bush where the objectives are clear and the conservation prescriptions fairly uncontroversial and the area to be conserved is only part of commercial land holding. They would be harder to apply where more controversy exists as to means of conservation, for example, in the case of gorse control, or where a greater degree of detail is required which may change according to different circumstances, for example cutting dates to preserve grass/herb species which is affected by the weather. They are also suitable where there is little or no conflict between landowner/managers and others overall objectives for conservation.

Covenants in New Zealand attract a certain type of landowner/manager as identified by Edwards and Sharp in their study of QEII covenants (Edwards and Sharp 1990). They identified that the coverage was primarily freehold land with a few agreements with Maori land. However in the case of the latter, especially for the protection of bush, the Nga Whenua Radui Fund, a fund set up to help protect forest under Maori tenure, is likely to be more applicable.

Covenants rely on the voluntary principle therefore the benefits of conservation to the landowner/manager are sufficient to protect the site. As stated earlier this is likely to mean an under provision of conservation given that the benefits to others from conservation are not fully accounted for. The under provision of conservation can be two fold firstly due to fewer sites and/or area being protected and secondly the level of conservation at a particular site being sub-optimal. The operation of the QEII as a means by which private landowners/managers can protect their land in perpetuity will increase the area conserved. As will the advice and assistance offered by the agency. Thus more sites are likely to be provided than in its absence. How close this is to the optimum for society is difficult to assess. The level of conservation at the site under covenant is more likely to be optimal given the nature of sites under covenant where management prescriptions are clear and uncontroversial; there is little conflict between conservation and commercial operations; and sites requiring minimum maintenance, for example, geological sites which just need protection from development or the regeneration of native forest which in most cases just

needs time with some protection from weeds/pests and grazing. So whilst the number of sites protected may not be society's optimum the level of protection on the sites surveyed is likely to be adequate.

How far conservation covenants can be translated into other situations will obviously depend upon individual situations. It does seem however that this means has not been fully explored as an option (Hodge et al. 1993), in particular enabling legislation to allow ease of entry into covenants was identified as lacking in some other countries. The fact that protection in perpetuity was the overriding attraction of covenants in the survey does suggest that landowners/managers are more sympathetic to conservation than is generally thought. This is borne out by work comparing other means of conservation provision which shows that provision of conservation can be achieved relatively cheaply via advice and sympathetic consultation even where larger compensation was obtainable (Whitby and Saunders 1995).

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The Questionnaire

Section 1: Farm Details

1. Please could you indicate the hectarage of land you manage, by type:-

Hectares

Improved grass
Tussock grass
Other Grass
Unproductive grass/area
Forest/bush/scrub
 native
 non-native
Wetland
Other
TOTAL

2. What is the tenure of the land you manage?

3. What type of stock do you have on your holding?

Number

Adult sheep
Lambs
Dairy cows
Other cows
Other cattle
 under 2 years
 2 years and over
Hinds
Stags
Other stock

Section 2: Conservation Interest of Farm

1. What are the main pressures affecting you as a farmer at the present?

2. What is the area and type of land covered by the covenant with the QEII?

Hectares

Native bush
Tussock grass
Other grass
Wetland
Other (*please state*)

TOTAL

3. What are the conservation objectives for the covenanted land?

Protection of native bush
Protection of species
Protect landscape
Other

4. What were/are the main threats to the conservation of this covenanted land?

Pests - rabbits
- possums
Weeds
Fire
Grazing of livestock
Agricultural improvement
Other

5. What was your purpose for placing land under covenant?

Already under covenant when purchased
To obtain some form of assistance (*please state*)
To preserve features for future (*please state*)
Other

6. What would happen to the land if the covenant was not there? (for example, loss of habitat due to possums, grazing by rabbits)

7. Are there any alternative **viable** productive land uses for the covenanted land?

Commercial forestry
Agricultural production
Tourism
Other

8. What restrictions/changes on management are imposed by the covenant:

	Y/N	Detail
Reduction in stocking rate		
Planting of trees		
Fertiliser application		
Chemical application		
Control of weed		
Control of rabbits		
Other (<i>please state</i>)		
None		

9. How has this affected your overall farming practice (both positively and negatively)?

Reduction in number of stock sold
Increase in bought in fodder
Easier to handle stock (*please state*)
Removal of hazards to stock (*please state*)
None
Other (*please state*)

10. Do you receive any assistance/compensation for the management of the covenanted land?

Yes No

If yes, what type?

- a) advice
- b) rate relief
- c) rent relief
- d) financial compensation
- e) assistance with positive management costs
such as fencing
scrub clearance
other
- f) Other (*please state*)

11. Do you consider the covenant has achieved its stated objectives in protecting the land?

Yes No

If **no**, what factors do you consider should be included/considered?

Have you any suggestions to improve the way covenants operate?

12. Has any other area of your holding been designated due to its conservation interest?

13. If there was no covenant on your land could you indicate your preference for the following

Not Attractive Very Attractive

Advice/consultation with agencies as given below

MAF	1	2	3	4	5
DoC	1	2	3	4	5
Other agency (<i>please state</i>)	1	2	3	4	5

Voluntary scheme with incentives such as
certificates given for good practice

1	2	3	4	5
---	---	---	---	---

Public purchase

1	2	3	4	5
---	---	---	---	---

Covenants

1	2	3	4	5
---	---	---	---	---

Management agreement with agency on over fixed time

no compensation	1	2	3	4	5
-----------------	---	---	---	---	---

with compensation for loss in income	1	2	3	4	5
--------------------------------------	---	---	---	---	---

tax concessions	1	2	3	4	5
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Section 3: Other Information

1. Are you a member of any farming/conservation organisation?

Federated farmers

Other (*please state*)

2. Are you involved with the management/administration of any agency concerned with land use issues?

3. Does your household have any income from other sources from farming?

Yes

No

If **yes**, what proportion is from farming?

0 -25%

25% - 50%

50% - 75%

75% - 100%