

## Crown Pastoral Land Tenure Review

Lease name : *DUNSTAN PEAKS*

Lease number : *PO 200*

### Substantive Proposal

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

*May*

*12*

**EXECUTION  
COPY**

**PROPOSAL FOR REVIEW OF CROWN LAND**  
**Under Part 2 of the Crown Pastoral Land Act 1998**

**Date: 21 December 2011**

**Parties**

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**Holder: Dunstan Peaks Limited**

Dunstan Peaks Station  
Private Bag  
OMARAMA

**Commissioner of Crown Lands:**

C/- Darroch Limited  
PO Box 27  
ALEXANDRA 9320

**The Land**

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**Lease:** Dunstan Peaks

**Legal Description:** Run 201E Hawkdun Survey District

**Area:** 5376.2488 Hectares more or less

**Certificate of Title/Unique Identifier:** OT386/86

**Crown Land:**

**Legal Description:** Sections 1, 2 and 5 SO 405914

**Area:** 343.9204 Hectares

**Summary of Designations**

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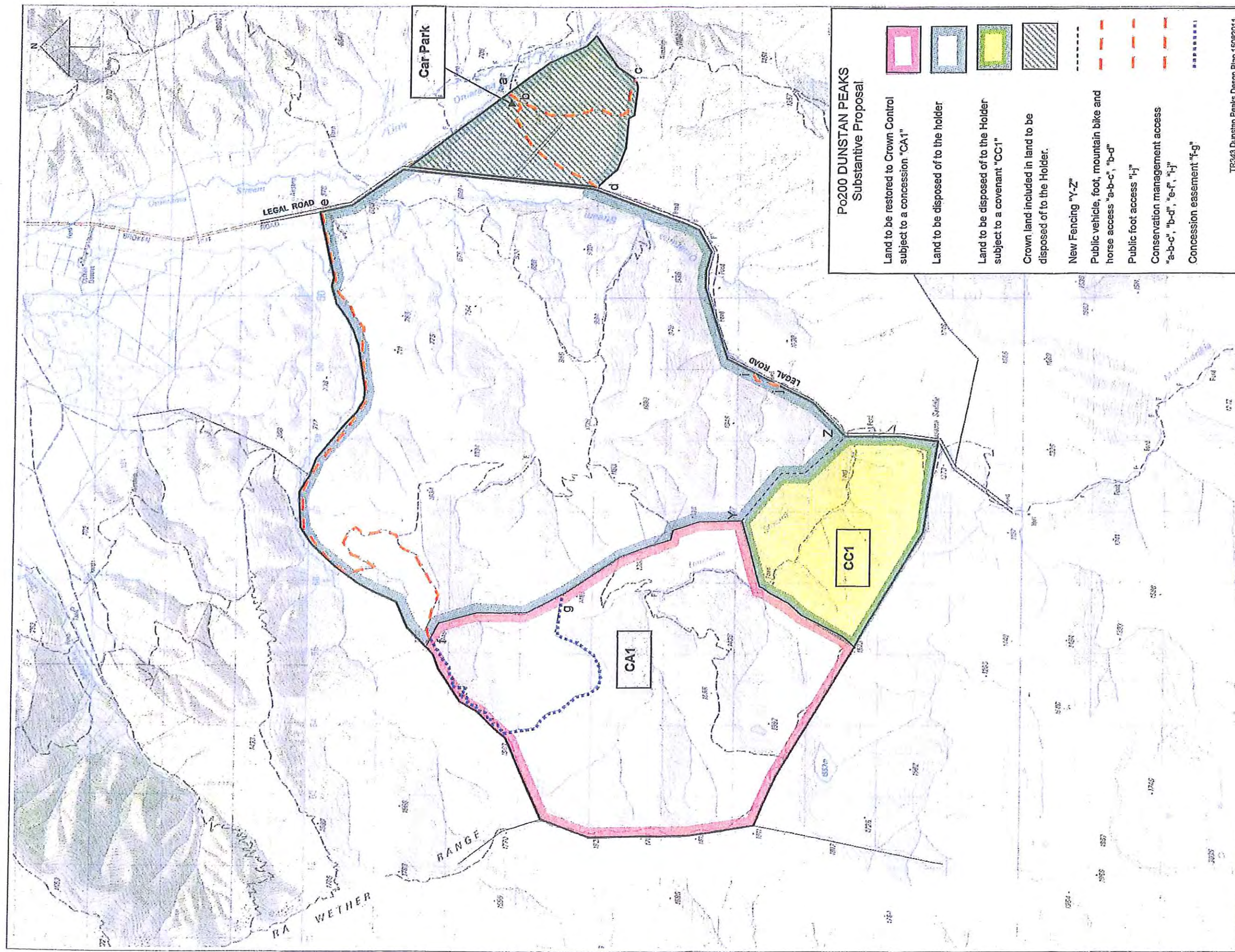
Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown marked in pink and labelled 'CA1' on the Plan) is to be restored to, or retained by, the Crown as set out in Schedules One and Two; and
- (b) The Freehold Land (shown marked in green on the Plan) is to be disposed by freehold disposal to the Holder as set out in Schedule Three.

**1      The Plan**

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The boundaries on this plan are for illustrative purposes in showing the recommended designations.

**DTZ** McMeeking Mapping  
Independent Contractor to  
DTZ Ltd. Dunedin  
021 851937  
04.10.2009

## Dunstan Peaks

Scale - 1:50,000  
0 1 km 2 km 3 km

TR343 Dunstan Peaks Design Plan 15082011

This plan accurately portrays the boundary of Dunstan Peaks Pastoral Lease and the land status is unchanged from that certified by the Chief Surveyor on 23/03/01.  
Murray Bradley, Crown Accredited Supplier

Version	1	2	3	4	5
Olago Land District					
Topographical Map 260 - H39 & H40					
Sheet 1 of 1					
Date 04.10.2009					



## **2 Conditions**

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

## **3 Settlement**

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

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

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

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

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

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

or

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

(i) has been agreed or determined; and

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

## **4 Holder's Payment**

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

- 4.2 If the Holder fails to pay the Holder's Payment or any part of it or any other money to the Commissioner or to the duly appointed agent of the Commissioner on the Settlement Date clause 19 will apply.

## **5 Commissioner's Payment**

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- 5.1 The Commissioner shall pay the Commissioner's Payment to the Holder on the Settlement Date.
- 5.2 No interest shall be payable to the Holder by the Commissioner in respect of the Commissioner's Payment, including (without limitation) for the period from the Vesting Date to the Settlement Date.

## **6 Vesting of Crown Land**

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- 6.1 The Crown Land will vest in the Crown on the Vesting Date.

## **7 Issue of Certificate of Title**

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- 7.1 Notwithstanding any other provision in this Proposal, the Commissioner will not request that the Surveyor-General issue a certificate to the Registrar pursuant to section 116 of the Land Act 1948 (to enable a certificate of title to issue for the Freehold Land) unless and until:
  - (a) the Commissioner has received the Holder's Payment from the Holder under clause 4, and all other money payable by the Holder under this Proposal and the Notice;
  - (b) the Holder has provided to the Commissioner duplicate copies of the certificate of title relating to the Lease (if any) and/or the Lease if requested by the Commissioner;
  - (c) the Holder has signed and returned to the Commissioner all documents required by the Commissioner to be signed by the Holder to give effect to this Proposal (including, without limitation, any permit, covenant, easement and/or any other document); and
  - (d) the Holder has procured a registrable discharge of any Mortgage and provided this to the Commissioner together with any new mortgage documents to be registered against the Freehold Land.

## **8 Registration of Documents**

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- 8.1 Subject to clause 7, the Commissioner will lodge all documents necessary to give effect to this Proposal (including, without limitation any easement, covenant, discharge of mortgage, and/or duplicate copy of the Lease) and any new mortgage documents to be registered against the certificate of title to be issued for the Freehold Land so that the certificate of title for the Freehold Land will issue subject to the encumbrances provided in this Proposal. Any new mortgage will be registered after any other encumbrances such as any easements and/or covenants are registered.

## **9 Consents**

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- 9.1 The Holder must obtain the written consent to the Holder's acceptance of this Proposal from all persons having an interest in the Land (other than the Holder), including, but not limited to:
  - (a) any Mortgagee(s);
  - (b) any party entitled to the benefit of a land improvement agreement registered against the Lease and/or the Land; and
  - (c) any other person that the Commissioner reasonably believes has an interest in the Land or who the Holder reasonably believes has an interest in the Land, whether registered or not.
- 9.2 The consents required under clause 9.1 must be in a form acceptable to the Commissioner in all respects and be returned to the Commissioner with this Proposal on its acceptance by the Holder. Examples of the form of consents required under clause 9.1 are set out in Appendix 1.
- 9.3 The Holder must also obtain, and provide to the Commissioner if requested, all consents necessary for the Holder to accept this Proposal including (without limitation) any:
  - (a) corporate and/or trustee consents; and
  - (b) consent required under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005.

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

## **10 Continuation of Lease**

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

## **11 Fencing and Construction Works**

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

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

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

## **12 Apportionments**

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



- 12.4 All rates, levies and all other incomings and outgoings and other charges receivable from or charged upon the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.
- 12.5 Following the date that a certificate of title issues for the Freehold Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will pay to the Commissioner, any additional amounts due because of any payments made or received by one party on behalf of the other for the period from the Settlement Date to the date on which a new certificate of title issues for the Freehold Land.

### **13 Risk**

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

### **14 Survey**

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

### **15 Holder's Acknowledgements**

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- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) it is obtaining the freehold interest in the Freehold Land:
    - (i) "as is", solely in reliance on its own investigations and judgement; and
    - (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
  - (b) the Holder has carried out all inspections of the Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
  - (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
    - (i) the Resource Management Act 1991 and the Resource Management Amendment Act 2005; and
    - (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
    - (iii) the Building Act 2004 and the Building Amendment Act 2009; and

the Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this clause 15;

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

## **16 No Representations or Warranties by the Commissioner**

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

## **17 Acceptance**

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

## **18 Solicitor's Certificate**

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- 18.1 The Holder must procure the Holder's solicitors to provide the Commissioner with a solicitor's certificate (in a form satisfactory to the Commissioner, in its reasonable opinion) relating to such matters as the Holder's execution of this Proposal and the Holder's execution of any documents required to give effect to this Proposal (including, without limitation any easement, protective mechanism and/or concession). An example of the form of solicitor's certificate required is set out at Appendix 2.
- 18.2 The Holder must return the completed solicitor's certificate to the Commissioner with this Proposal on its acceptance by the Holder.

## **19 Default**

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- 19.1 If from any cause whatever (except the default of the Commissioner) all or any part of the Holder's Payment or any other money payable by the Holder to the Commissioner is not paid on the due date the Holder will pay to the Commissioner interest at the Default Rate on the part of the Holder's Payment or any other money payable by the Holder to the Commissioner so unpaid from the due date until the date of actual payment in full.
- 19.2 The Commissioner's rights under this clause 19 are without prejudice to any other rights or remedies available to the Commissioner at law or in equity.

## **20 Goods and Services Tax**

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- 20.1 Unless the context otherwise requires, words and phrases used in this clause have the same meaning as in the GST Act.

- 20.2 If the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are taxable supplies under the GST Act, then:
- (a) the Commissioner and the Holder warrant to each other that they are registered for GST purposes as at the Holder's acceptance of this Proposal and that they will be so registered on the Settlement Date;
  - (b) the Commissioner and the Holder confirm that as at the Settlement Date:
    - (i) each is acquiring the goods supplied with the intention of using the goods for making taxable supplies; and
    - (ii) the Commissioner and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Crown Land and the Holder and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Freehold Land as a principal place of residence; and
  - (c) the Commissioner and the Holder agree that the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are to be zero-rated for GST purposes under section 11(1)(mb) of the GST Act.
- 20.3 If any of the circumstances set out in clause 20.2 change between the date of the Holder's acceptance of this Proposal and the Settlement Date, then the relevant party will notify the other of the changed circumstances as soon as practicable and in any event not later than 2 working days before the Settlement Date and such party shall warrant that the changed circumstances are correct as at the Settlement Date. If the GST treatment of the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration changes as a result of the changed circumstances and a party has already provided the other with a GST invoice, then that party will issue a debit note or credit note, as the case may be, for GST purposes.
- 20.4 On the 10<sup>th</sup> working day following the Unconditional Date, the Commissioner will provide to the Holder a GST invoice in respect of the supply evidenced by the Holder's Consideration. The invoice will specify the Commissioner's GST Date.
- 20.5 The Holder will pay GST (if any) on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 20.6 On the 10<sup>th</sup> working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration.
- 20.7 The Commissioner will pay GST (if any) on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.8 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
  - (b) any Default GST.

## **21 Lowest price**

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

## **22 Costs**

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- 22.1 The Commissioner will meet the costs of the survey (if any) of the Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Freehold Land.
- 22.2 The Holder is responsible for all costs the Holder incurs in respect of and incidental to the Tenure Review. In particular, but without limitation, the Holder shall bear all its costs in relation to the review of all documentation forming part of the Tenure Review (including this Proposal), and all professional advice provided to or sought by the Holder.

## **23 No nomination or assignment**

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

## **24 Recreation Permit**

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

## **25 Consents for Activities**

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

## **26 General**

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- 26.1 This Proposal and the Notice:
  - (a) constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and
  - (b) supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and the Holder relating to the Tenure Review.
- 26.2 Each provision of this Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.
- 26.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 26.4 The Commissioner and the Holder will sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the other to effectively carry out and give effect to the terms and intentions of this Proposal.
- 26.5 This Proposal is governed by, and must be construed under, the laws of New Zealand and the Commissioner and the Holder irrevocably submit to the jurisdiction of the New Zealand courts or other New Zealand system of dispute resolution.
- 26.6 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 26.7 In relation to notices and other communications under this Proposal:
  - (a) each notice or other communication is to be in writing, and sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for that purpose by the addressee to the other party. Other than the address to which the Holder is to send its acceptance of this Proposal (which the Commissioner will specifically notify the Holder of) the address, person or office holder (if any) for each party is shown on the front page of this Proposal;

- (b) no communication is to be effective until received. A communication will be deemed to be received by the addressee:
- (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
  - (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), on the working day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and
  - (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

## 27 Interpretation

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### 27.1 Definitions

In this Proposal unless the context otherwise requires:

**Act** means the Crown Pastoral Land Act 1998;

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

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

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

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

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

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

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

**Fencing** means any stock proof farm fence.

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

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

**Freehold Land** means the land set out in Schedule Three;

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

**GST Act** means the Goods and Services Tax Act 1985;

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

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

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

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

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

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

**Mortgagee** means the holder of any Mortgage;

**Notice** means the notice to the Holder setting out:

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

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

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

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

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

**Settlement Date** means the settlement date defined in clause 3.1;

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

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

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

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

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

**Works Consent** means any and all consents required under the Resource Management Act 1991 and/or the Building Act 2004 and their respective amendments.

## 27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

- (a) a reference to a certificate of title includes a reference to a computer register;
- (b) words importing a gender include all genders;



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

**Schedule One: Provisions relating to the Schedule One Land**

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Nil

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## **Schedule Two: Provisions relating to the Schedule Two Land**

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### **1 Details of designation**

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- 1.1 Under this Proposal the land shown marked in pink and labelled "CA1" on the Plan, being 1650 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of the concession (shown on the Plan as a dotted blue line) substantially as set out in Appendix 4;

### **2 Information Concerning Proposed Concession**

---

2.1 Description of the proposed activity:

Easement Concession for the adjoining landholder along an existing access track for farm management purposes.

2.2 Description of area where proposed activity is to be carried out and proposed status:

One easement area is required as marked on the plan attached to the substantive proposal.

The easement area is over an existing farm access track on the Wether Range above the northern headwaters of Omarama Stream. The proposed Conservation Area on the Wether Range encompasses part of the existing farm track which is needed to give practical farm management access to the upper slopes of the proposed freehold land on the Wether Range for mustering purposes. The easement route follows the existing formed farm track over the proposed Conservation Area for approximately 5 kilometres. The easement route is for farm management purposes by foot, horse, vehicle and with farm dogs and guns along a traditionally used access track which provides the only safe practical access route to the upper slopes of the Wether Range. Farm stock is not included on the access route.

2.3 Description of potential affects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse affect:

The easement concession area on the Wether Range is over an existing access track which has traditionally been used in the management of the property. It is the only practical access route to enable access to the upper slopes of the Wether Range above the northern headwaters of Omarama Stream. Access will be confined to the line of the existing access track where these activities have always taken place so affects will generally be limited and confined to the width of the easement area. Any effects will be mitigated by the terms of the concession including restrictions on earth disturbance, depositing of materials, lighting of fires and disturbance of waterways.

2.4 Details of the proposed type of concession:

An easement concession under S. 17Q (1) Conservation Act 1987.

2.5 Proposed duration of concession and reason for proposed duration:

*Proposed duration:* In perpetuity.

The easement concession is essential to the running of the farming operation to enable the continuation of practical access for mustering the upper slopes of the Wether Range. The access track has become encompassed within the proposed Conservation Area. The period of the concession will allow surety for the practical ongoing operation of the farm.

2.6 Relevant information:

The lessees of Dunstan Peaks Pastoral Lease have entered into this review voluntarily. The proposed easement concession area is essential for ongoing management of the farm and the effects on the land which the easement area is over will be limited.





**Schedule Three: Provisions relating to the Schedule Three Land**

---

**1 Details of designation**

---

- 1.1 Under this Proposal the land shown marked in green on the Plan, being 4070 hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:
- (a) Part IVA of the Conservation Act 1987;
  - (b) Section 11 of the Crown Minerals Act 1991;
  - (c) the covenant (shown on the Plan in yellow and marked as CC1) substantially as set out in Appendix 5; and
  - (d) the easement marked as "a-b-c", "b-d", "e-f" and "i-j" on the Plan and substantially as set out in Appendix 6;
  - (e) the continuation of the appurtenant easement registered as 7889630.1 a copy of which is included in Appendix 7.

**Schedule Four: Conditions**

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Nil

RELEASED UNDER THE OFFICIAL INFORMATION ACT

**Appendix 1: Consents – Example of Mortgagee Consent**

---

[ ] as Mortgagee under Mortgage [ ] ("the Mortgage"), hereby:

- (a) consents to acceptance of the Proposal dated [ ] ("the Proposal") by [the Holder] ("the Holder") pursuant to the Crown Pastoral Land Act 1998 and agrees and consents to the registration of the documents affecting the Freehold Land referenced in the Proposal prior to the registration of any new mortgage to be granted in its favour over the Freehold Land ; and
- (b) agrees to sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the Holder or the Commissioner to register a discharge of the Mortgage and any new mortgage over the Freehold Land.

Dated:

SIGNED by [ ] )  
in the presence of: )

---

Witness Signature:

---

Witness Name:

Occupation:

Address:



**Appendix 1: Consents (continued) - Example of "Other" Consent**

---

[ ], being the party entitled to the benefit of [ ] registered  
against Lease [ ], hereby consents to the acceptance of the Proposal dated [ ] by  
[the Holder] pursuant to the Crown Pastoral Land Act 1998.

Dated:

**SIGNED** for and on behalf of )  
[ ] )  
in the presence of: )

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:

Occupation:

Address:



## **Appendix 2: Example of Solicitor's Certificate**

---

### **Certifications**

I [ ] hereby certify as follows:

1. [[insert name of Holder] ("the Holder") is a duly incorporated company under the Companies Act 1993. The Holder's entry into and performance of its obligations under the Proposal dated [ ] ("the Proposal") have been duly authorised by the directors and, if required, by the shareholders of the Holder. The Holder has executed the Proposal in accordance with its constitution.] **OR**

The entry into the Proposal dated [ ] ("the Proposal") by [insert name of Holder] ("the Holder") and performance of the Holder's obligations under the Proposal have been duly authorised by the trustees of the [insert name of trust] in accordance with its trust deed **OR**

[[insert name of Holder] ("the Holder") has delegated responsibility for signing the Proposal on its behalf to an attorney in accordance with its constitution. The attorney of the Holder has properly executed the Proposal in accordance with this power of attorney and in accordance with the Holder's constitution and a certificate of non-revocation is enclosed.]

2. The consent of each person that has an interest (registered or unregistered) in the Land (as that term is defined in the Proposal), to the Holder's acceptance of the Proposal has been obtained and included in the copy of the Proposal, signed by the Holder, that has been provided to the Commissioner.
3. [No consent, licence, approval or authorisation by any court, regulatory authority or governmental agency is required to enable the Holder to accept the Proposal, perform the Holder's obligations under the Proposal and to acquire the freehold interest in the Land (as defined in the Proposal).] **OR**

[All necessary consents, licences, approvals and authorisations required to enable the Holder to accept the Proposal, perform its obligations under it and to acquire the freehold interest in the Land (as defined in the Proposal) have been obtained. Evidence of the consents, licences, approvals and authorisations are attached to this letter.]

Yours faithfully

[signed by principal of law firm]





### **Appendix 3: Indicative Fencing and Construction Requirements**

---

**Length and location:** Fence to be constructed along the line Y-Z (2000m approximately) as shown on the plan.

**Type:** Seven wire steel sheep fence

**Specifications:**

1. Fence to be constructed of six HT (2.4 mm) wires with one bottom No. 8 wire. Wires to be located on the freehold side of the boundary except where there is a high risk of snow damage where they will be placed on the leeward side away from the prevailing snow.
2. 1.65 metre Heavy T iron strainers with a suitable stay to be used for gateways and end of strains
3. Six "Y" standards per 20 metres to be used. "Y" standards to be mostly 150 cm long with 135 cm standards on rocky ground and 165 cm standards on soft ground.
4. "Y" standards, back to back, to be used on high spots and on corners, with tie-backs on tussock country.
5. All T-Irons, angle posts and dip posts to be driven or dug in and rammed and footed with acceptable footing material. No. 8 wire to be used on foots. All dips and hollows to be tied down to "Y" standards of a minimum length of 75 cm on rocky ground and 130 cm on soft ground.
6. All strainers and angles to be stayed and blocked. Stays to be one-third of the way up posts.
7. T-Irons to be dug in to such a depth that 117 cm (46") remains out of the ground.
8. Tie backs are permitted on both sides of the fence.
9. Strains not to exceed 300 metres for HT wire and 250 metres for No. 8 wire and strained to a tension recommended by the wire manufacturer.
10. Triplex strainers to be used on all strains.
11. All wires are to be securely and neatly tied off. Bottom wire to be kept between 100 and 150 mm off the ground. Line to be benched where required. Most of the line will need to be cleared manually as required.
12. Netting to be hung on creek crossings and left to swing.
13. 3.6 metre Cyclone Heavy Duty gates to be erected at appropriate locations.

### **Construction**

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No other works are included in this proposal

**Appendix 4: Form of Concession Easement to be Created**

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Concession number: \_\_\_\_\_

DATED \_\_\_\_\_

Between

**MINISTER OF CONSERVATION**  
("the Grantor")

and

**DUNSTAN PEAKS LIMITED**  
("the Concessionaire")

**EASEMENT CONCESSION**  
**UNDER CROWN PASTORAL LAND ACT 1998**



Department of Conservation  
*Te Papa Atawhai*

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THIS DOCUMENT is made this            day of            20

**PARTIES:**

1.     **MINISTER OF CONSERVATION**, ("the Grantor")
2.     **DUNSTAN PEAKS LIMITED**, ("the Concessionaire")

**BACKGROUND**

- A.     The land described in Item 1 of Schedule 1 as the Servient Land is a Conservation Area or a Reserve under the management of the Grantor.
- B.     The land described in Item 2 of Schedule 1 as the Dominant Land is freehold land of the Concessionaire.
- C.     Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- D.     The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Document.
- E.     The Grantor has agreed to grant the Concessionaire an Easement appurtenant to the Dominant Land over that part of the Servient Land specified as the Easement Area.

**OPERATIVE PARTS**

**TERMS AND CONDITIONS**

**1.0     DEFINITIONS AND INTERPRETATION**

- 1.1     In this Document, unless the context otherwise requires:

"Background" means the matters referred to under the heading 'Background' on page 2 of this Document.

"Compensation" means the amount specified in Item 6 of Schedule 1 and required by the Grantor under section 53 of the Crown Pastoral Land Act 1988 and section 17X of the Conservation Act 1987 for the adverse effects of the Concession Activity on the Crown's or public's interest in the Easement Area.

"Concession" means a concession as defined in section 2 of the Conservation Act 1987.

"Concessionaire" means the registered proprietor for the time being of the Dominant Land and includes the Concessionaire's successors, assigns, executors, and administrators.

"Concession Activity" means the use of the Easement Area by the Concessionaire for purposes specified in Item 4 of Schedule 1.

"Conservation Area" has the same meaning as "Conservation area" in section 2 of the Conservation Act 1987.

"Director-General" means the Director-General of Conservation.

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"Document" means this document and any subsequent amendments and all schedules, annexures, and plans attached to it.

"Dominant Land" means the land specified in Item 2 of Schedule 1.

"Easement" means the Appurtenant Easement granted under this Document by the Grantor to the Concessionaire under section 17Q of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).

"Easement Area" means that part of the Servient Land specified in Item 3 of Schedule 1.

"Reserve" has the same meaning as "reserve" in section 59A of the Reserves Act 1977.

"Servient Land" means a Conservation Area being the area more particularly described in Item 1 of Schedule 1.

"Structure" includes a bridge, a culvert, and a fence.

"Term" means the period of time specified in Item 5 of Schedule 1 during which this Document operates.

"Working Day" means the period between any one midnight and the next excluding Saturdays, Sundays and Statutory holidays in the place where the Concession Activity is being carried out.

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;
- (e) words in a singular number include the plural and vice versa;
- (f) words importing a gender include other genders;
- (g) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (h) where the Grantor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

1.3 Words used in the Background to this Document have the same meaning given to them in clause 1.1.

2.0 **GRANT OF APPURTENANT EASEMENT**

- 2.1 In exercise of the Grantor's powers under either section 66 or section 68 of the Crown Pastoral Land Act 1998 (whichever is relevant in the circumstances) the Grantor **GRANTS** to the Concessionaire an **EASEMENT APPURTENANT** to the Dominant Land under either section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances) to carry out the Concession Activity on the Easement Area subject to the terms and conditions contained in this Document.



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**3.0 TERM**

3.1 The Easement is for the Term specified in Item 5 of Schedule 1.

**4.0 COMPENSATION**

4.1 The Concessionaire must pay to the Grantor in the manner specified by the Grantor the Compensation specified in Item 6 of Schedule 1.

**5.0 OTHER CHARGES**

5.1 In addition to Compensation, the Concessionaire must pay all rates, levies, taxes, duties, assessments, charges, and other outgoings which may be charged, levied, or reasonably assessed, or which may become payable in relation to the Easement Area and which are attributable to the Concessionaire's use of or activity on the Easement Area.

**6.0 CONCESSION ACTIVITY**

6.1 The Concessionaire is not to use the Easement Area for any purpose other than the Concession Activity.

**7.0 COMPLIANCE**

7.1 The Concessionaire will comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under Part IIIA of the Conservation Act 1987 together with any amendment or review of any strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the Resource Management Act 1991 and the Health and Safety in Employment Act 1992 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Easement Area or affecting or relating to the Concession Activity.

**8.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS**

8.1 The Concessionaire must not erect or bring on to the Easement Area any Structure, install any facility, or alter the Land in any way without the prior written consent of the Grantor.

8.2 The Concessionaire must keep and maintain any Structures, and facilities on and alterations to the Easement Area in good repair.

8.3 On expiry or early termination of this Document either as to the whole or any part of the Easement Area, the Concessionaire will not be entitled to compensation for any improvements and any Structure or facilities remaining on the Easement Area are to become the property of the Grantor.

8.4 If requested by the Grantor, the Concessionaire must, within such time as the Grantor determines, remove all Structures, facilities or other improvements erected or installed by the Concessionaire and make good at the Concessionaire's own expense all damage done by the removal and must leave the Easement Area in a clean and tidy condition to the satisfaction of the Grantor.

**9.0 PROTECTION OF THE ENVIRONMENT**

9.1 Except as approved in writing by the Grantor the Concessionaire will not, whether by act or omission:

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- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Easement Area; or
  - (b) bring any plants, or animals (except those stipulated in Item 4 of Schedule 1) on to the Easement Area; or
  - (c) deposit on the Easement Area debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Easement Area; or
  - (d) pile or store materials in any place on the Easement Area where they may obstruct the public or create a nuisance; or
  - (e) conduct any noxious, noisome, dangerous or offensive activity on the Easement Area; or
  - (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Easement Area; or
  - (g) disturb or allow stock to disturb any stream or watercourse on the Easement Area; or
  - (h) light any fire on the Easement Area.
- 9.2 The Concessionaire, must at the Concessionaire's expense:
- (a) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Easement Area or any Structure or facility on the Easement Area;
  - (b) comply strictly with the provisions of the Biosecurity Act 1993.
- 9.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 9
- 9.4 The Concessionaire may bring firearms on to the Easement Area for use in connection with the Concession Activity and pest control operations.
- 9.5 The Concessionaire may for purposes of the Concession Activity take onto or use vehicles on the Easement Area on existing formed access tracks only.
- 10. TEMPORARY SUSPENSION**
- 10.1 The Grantor may, at any time in exercise of the Grantor's powers, close all or part of the Easement Area for such period as she/he considers necessary.
- 11.0 TERMINATION**
- 11.1 The Grantor may terminate this Document by notice in writing to the Concessionaire if:
- (a) the Concessionaire breaches any terms of this Document; and
  - (b) the Grantor has notified the Concessionaire in writing of the breach; and
  - (c) the Concessionaire does not rectify the breach within 28 days of receiving notification.
- 11.2 Immediately on termination the Concessionaire must execute a surrender of this Document if the Grantor so requires it.

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**12.0 INDEMNITIES AND INSURANCE**

- 12.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, agents, contractors, licensees or invitees or otherwise caused as a result of its use of the Easement Area or the Concessionaire's carrying out of the Concession Activity on the Easement Area.
- 12.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.
- 12.3 Without prejudice to or in any way limiting its liability under clause 12.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:
- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Easement Area and covering:
    - (i) general indemnity for a sum not less than the amount specified in Item 7 of Schedule 1; and
    - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 8 of Schedule 1; and
  - (b) statutory liability insurance for the amount specified in Item 9 of Schedule 1; and
  - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 10 of Schedule 1.
- 12.4 With respect to clause 12.3 the Concessionaire must before commencing the Concession Activity and on each renewal of insurance, provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

**13.0 ASSIGNMENT**

- 13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause.
- 13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.
- 13.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

**14.0 DISPUTE RESOLUTION AND ARBITRATION**

- 14.1 If any dispute arises between the parties in connection with this Document, the parties must, without prejudice to any other rights they have under this Document, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.

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- 14.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties.
- 14.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Easement Area is located is to appoint the mediator.
- 14.4 In the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions of the Arbitration Act 1996 will apply.
- 14.5 Notwithstanding any provision to the contrary in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the District Law Society in the region in which the Easement Area is located is to appoint the arbitrator. The arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 14.6 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 14.7 The parties agree that the results of any arbitration are to be binding on the parties.

#### **15.0 NOTICES**

- 15.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 11 of Schedule 1.
- 15.2 A notice given in accordance with clause 15.1 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 Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

#### **16.0 RELATIONSHIP OF PARTIES**

- 16.1 Nothing expressed or implied in this Document shall be construed as:
  - (a) conferring on the Concessionaire any right of exclusive occupation or use of the Easement Area;
  - (b) preventing the Grantor from granting similar concessions to other persons;
  - (c) derogating from the rights of the Grantor and the public to have access across the Easement Area.

#### **17.0 SPECIAL CONDITIONS**

- 17.1 Special conditions relating to this Document are set out in Schedule 2.
- 17.2 The standard conditions contained in this Document must be read subject to any special conditions.

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Signed by :

\_\_\_\_\_  
for and on behalf of  
the Minister of Conservation  
pursuant to a written delegation (or designation as the case may be)  
in the presence of :

\_\_\_\_\_  
Witness:  
Occupation:  
Address:

Signed by :

\_\_\_\_\_  
Ann Rosalie Patterson - Director  
Dunstan Peaks Limited  
as Concessionaire  
in the presence of :

\_\_\_\_\_  
Witness :  
Occupation :  
Address :

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**SCHEDULE 1**

1. **Servient Land:** The land described as being part of \_\_\_\_\_ being Conservation Land situated in the Otago Land District and designated as Conservation Area on the Wether Range near OmaramaStream, and being outlined in pink in the plan attached to the Proposal.  
*(see definition of Servient Land in clause 1.1)*
2. **Dominant Land:** The land described as being \_\_\_\_\_ in Certificate of Title OT \_\_\_\_\_ (Otago Registry). *(see definition of Dominant Land in clause 1.1)*
3. **Easement Area:** That part of the land labelled "f-g" shown as a blue dotted line on the plan attached to the Proposal and having a width of 20 metres.  
*(see definition of Easement Area in clause 1.1)*
4. **Concession Activity:** The Concessionaire has the right to from time to time and at all times for the Concessionaires, their servants, employees, agents workmen, contractors, licensees and invitees (in common with the Grantor and any other person lawfully entitled so to do) to have the full, free uninterrupted and unrestricted right liberty and privilege from time to time and at all times by day and by night to go pass and repass for farm management purposes only on foot and with motor vehicles and with or without horses, machinery and implements of any kind, farm dogs and guns over and along;
  - easement area "f-g"
 but subject to the limitations expressed in this deed, to the intent that the easement hereby created shall forever be appurtenant to the Dominant Land.  
*(see definition of Concession Activity in clause 1.1)*
5. **Term:** The concession is granted in perpetuity commencing on the day of registration of an approved plan affecting Certificate of Title OT 386/86 (Otago Registry)  
*(see clause 3.1)*
6. **Compensation:** \$ Nil  
(payable on date of execution of this Document) *(see clause 4.1)*
7. **Public Liability General Indemnity Cover:** *(see clause 12.3)*  
for \$1,000,000
8. **Public Liability Forest & Rural Fire Act Extension:** *(see clause 12.3)*  
for \$1,000,000
9. **Statutory Liability Insurance** *(see clause 12.3)*  
Nil
10. **Other Types of Insurance:** *(see clauses 12.3)*  
Nil

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11. Address for Notices (including facsimile number):

(see clause 15)

(a) Grantor

Conservator  
Department of Conservation  
195 Hereford Street  
Private Bag 4715  
**CHRISTCHURCH**  
PH: (03) 371 3700  
Fax: (03) 365 1388

(b) Concessionaire

Dunstan Peaks Limited

Registered Office:  
Whk, 6-10 Coquet Street  
**OAMARU 9400**

Director:  
Ann Rosalie Patterson  
Munro Lane  
**OMARAMA**  
PH: 03 438 9493  
Fax:

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**SCHEDULE 2**

***Special Conditions***

1. **THE** rights granted under this deed are non-exclusive and are exercisable in common with the Grantor and any other person granted similar rights by the Grantor, whether now or in the future, and without limitation the Grantor may grant the following persons access rights over the Easement Area:
  - i. members of the public ;
  - ii any lessee or licensee of the Grantors land
2. **THAT** in exercising the right liberty and privilege take all reasonable care to avoid damage to the soil and vegetation of the land in the easement and in particular will avoid using the easement when conditions render the land over which the easement is granted particularly vulnerable to damage.
3. **THE** cost and responsibility of any maintenance of the easement Area shall be borne by the Concessionaire and any other person or person(s) to whom the Grantor has granted similar rights in respect of the Easement Area, according to each persons use of the Easement Area **PROVIDED THAT** if any repair or maintenance is rendered necessary by the act, neglect, or default of any user or its servants, agents, contractors, workmen, licensees or invitees, then that user shall promptly carry such repair and maintenance and bear the cost of the work **PROVIDED THAT** the Grantor shall not be required to contribute to the cost of any maintenance in respect to the Easement Area **PROVIDED** further that any routine maintenance undertaken by the Concessionaire within the existing alignment does not require the prior consent in writing of the Grantor **HOWEVER** maintenance outside of the existing alignment undertaken by the Concessionaire requires the prior consent in writing of the Grantor.
4. **THAT** the Concessionaire shall ensure that no action by them or on their behalf has the effect of preventing the Easement Area over which the easement is granted being kept clear at all times of obstructions whether caused by parked vehicles, deposit of materials, or any other unreasonable impediment to the use and enjoyment of the said land.

**Appendix 5: Form of Covenant to be Created**

---



DATED \_\_\_\_\_

Between

**COMMISSIONER OF CROWN LANDS**  
Pursuant to Section 80 of the Crown Pastoral Land Act 1998

and

**MINISTER OF CONSERVATION**  
("the Minister")

**COVENANT UNDER RESERVES ACT 1977**  
**FOR CROWN PASTORAL LAND ACT 1998 PURPOSES**



Department of Conservation  
*Te Papa Atawhai*

THIS DEED of COVENANT is made the                      day of

BETWEEN

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

AND

MINISTER OF CONSERVATION

#### BACKGROUND

- A. The Commissioner of Crown Lands is deemed for the purposes of section 77 of the Reserves Act 1977 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land contains certain Values specified in Schedule 1.
- C. The parties agree that the Land should be managed so as to preserve the particular Values specified in Schedule 1, and that such purpose can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.
- D. An approved plan designating the Land as land over which a Covenant under section 77 of the Reserves Act 1977 is to be created has been registered under section 64 of the Crown Pastoral Land Act 1998.
- E. The Commissioner of Crown Lands has agreed to grant the Minister a Covenant over the Land to preserve the particular Values specified in Schedule 1.

#### OPERATIVE PARTS

In accordance with section 77 of the Reserves Act 1977, and with the intent that the Covenant run with the Land and bind all subsequent Owners of the Land, the Commissioner of Crown Lands and Minister agree as follows:

##### 1. INTERPRETATION

###### 1.1 In this Covenant unless the context otherwise requires:

"Act"	means the Reserves Act 1977.
"Covenant"	means this Deed of Covenant made under section 77 of the Act.
"Director-General"	means the Director-General of Conservation.
"Fence"	includes a gate.
"Fire Authority"	means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
"Land"	means the land described in Schedule 1.
"Minerals"	means any mineral that is a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
"Minister"	means the Minister of Conservation.
"Natural Water"	includes water contained in streams the banks of which have, from time to time, been realigned.
"Owner"	means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.

- "Party" or "Parties"** means either the Minister or the Owner or both.
- "Values"** means any or all of the Land's natural environment, biodiversity including botanical and zoological, landscape amenity, wildlife, freshwater life, marine life habitat or historic values as specified in Schedule 1.
- "Working Day"** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

**1.2 For avoidance of doubt:**

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

**2. OBJECTIVE OF THE COVENANT**

- 2.1 The Land must be managed so as to preserve the Values.

**3. THE OWNER'S OBLIGATIONS**

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out or allow to be carried out on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;

- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
- 3.1.10 any other activity which might have an adverse effect on the Values.
- 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
- 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must:
  - 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
  - 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
  - 3.2.3 keep the Land free from exotic tree species;
  - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

#### **4. THE MINISTER'S OBLIGATIONS**

- 4.1 The Minister must have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant.
- 4.2 The Minister must repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

#### **5. IMPLEMENTATION OF OBJECTIVES**

- 5.1 The Minister may;
  - 5.1.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objectives specified in clause 2.1;
  - 5.1.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

#### **6. DURATION OF COVENANT**

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

**7. OBLIGATIONS ON SALE OF LAND**

- 7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, or assignee to ensure that on any subsequent sale, lease, or assignment, any subsequent purchaser, lessee, or assignee must also comply with the terms of this Covenant including this clause.
- 7.2 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

**8. MISCELLANEOUS MATTERS****8.1 Rights**

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

**8.2 Trespass Act:**

- 8.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 8.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**8.3 Reserves Act**

- 8.3.1 Subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**8.4 Titles**

- 8.4.1 This Covenant must be signed by the Commissioner of Crown Lands and the Minister and registered against the Certificate of Title to the Land.

**8.5 Acceptance of Covenant**

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

**8.6 Fire**

- 8.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land;
- 8.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:
- 8.6.2.1 requested to do so; or
- 8.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

**9. NOTICES**

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.
- 9.2 A notice given in accordance with clause 9.1 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.
- 9.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**10. DEFAULT**

- 10.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:
- 10.1.1 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
  - 10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.
- 10.2 Should either the Minister or the Owner become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 10.2.1 advise the defaulting party of the default.
  - 10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
  - 10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**11. DISPUTE RESOLUTION PROCESSES**

- 11.1 If any dispute arises between the Minister and the Owner in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 11.2 **Mediation**
- 11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;
  - 11.2.2 if the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 11.3 **Failure of Mediation**
- 11.3.1 in the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;

11.3.2 notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society;

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

## 12. JOINT OBLIGATIONS

12.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvements or take any action either jointly or individually to better preserve the Values.

## 13. SPECIAL CONDITIONS

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

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

### Executed as a Deed

Signed by \_\_\_\_\_ acting under a )  
delegation from the Commissioner of Crown Lands )  
deemed pursuant to section 80(5) of the Crown Pastoral )  
Land Act 1998 to be the Owner of the Land for the )  
purposes of section 77 of the Reserves Act 1977 )  
in the presence of : \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ exercising his/her )  
powers under section 117 of the Reserves Act 1977 )  
as designated Commissioner and acting for and on )  
behalf of the Minister of Conservation )  
in the presence of : \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_



8  
**SCHEDULE 1**

**1. Description of Land**

**CC1 – Omarama Stream Lower Headwater.**

All that piece of land containing 510 hectares approximately shown shaded yellow on the plan attached to the Proposal and labelled CC1.

**2. Values of Land to be Preserved.**

**CC1– Omarama Stream Lower Headwater.**

- The area supports diverse shrubland communities representative of the original indigenous vegetation in the area.
- The area supports the rare forest remnant Halls totara.
- The area supports a diverse altitudinal sequence of distinctive indigenous plant communities including riparian vegetation, shrubland, short tussockland, tall tussockland and alpine vegetation communities.
- The area supports a critically under protected LENZ environment on the valley floor and lower slopes and an under protected LENZ environment on the mid slopes, both supporting indigenous vegetation.

**3. Address for Service<sup>1</sup>**

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

Minister of Conservation  
C/- Conservator  
Department of Conservation  
195 Hereford Street  
Private Bag 4715  
**CHRISTCHURCH**  
Ph: 03 371-3700  
Fax: 03 365-1388

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

Dunstan Peaks Limited  
Registered Office:  
Whk, 6-10 Coquet Street  
**OAMARU 9400**

Director:  
Ann Rosalie Patterson  
Munro Lane  
**OMARAMA**  
PH: 03 438 9493  
Fax:

---

<sup>1</sup> State Street address not Post Office Box number.

## SCHEDULE 2

### Special Conditions

Notwithstanding the provisions of clause 3.1 the following shall apply;

#### CC1 – Omarama Stream Lower Headwater.

- 1 The covenant area may be grazed at any time by sheep only.
- 2 The Minister may design and undertake a monitoring programme:
  - a. to ensure that the ecological integrity of the area and associated vegetation and fauna is maintained.
  - b. To enable the monitoring of any effects on the vegetation cover and conditions, faunal values and any other conservation values in the covenant area.

The monitoring programme will be reviewed at regular intervals and if in the opinion of the Minister there are any issues identified with the status of any of the species in the covenant area or deterioration in the condition and extent of the ecological condition the Minister reserves the right to take any necessary steps to further protect any species including fencing areas of the covenant area and adjusting stock access. The Minister will liaise with the Owner in implementing these measures.
- 3 The Owner will permit Department of Conservation staff and their contractors entry upon the land at all times, for purposes associated with management of the covenant.

GRANT of

Correct for the purposes of the  
Land Transfer Act 1952

CONSERVATION COVENANT UNDER  
SECTION 77 OF THE  
RESERVES ACT 1977 FOR  
CROWN PASTORAL LAND ACT 1998 PURPOSES

Solicitor for the Minister

COMMISSIONER OF CROWN  
LANDS

to

MINISTER OF CONSERVATION

---

Solicitor  
Department of Conservation  
DUNEDIN/CHRISTCHURCH

**Appendix 6: Form of Easement to be Created**

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In Gross Easement: Public Access and Management Access – Version 6

**DOCDM- 791653 – Dunstan Peaks SP Document – August 2011**

## **TRANSFER GRANT OF EASEMENT IN GROSS**

1. Public Access
2. Management Access

**Land Transfer Act 1952**

**This page does not form part of the Transfer.**

**TRANSFER**

RELEASED UNDER THE OFFICIAL INFORMATION ACT

**Land Transfer Act 1952**

*If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.*

**Land Registration District**

Otago

**Certificate of Title No.****All or Part?****Area and legal description – *Insert only when part or Stratum, CT***

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**Grantor Surnames must be underlined**

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

**Grantee Surnames must be underlined**

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

**Estate or Interest or Easement to be created:** *Insert e.g. Fee simple; Leasehold in Lease No. ....; Right of way etc.*

Public Access and Management Purposes Easement in Gross under section 12 of the Reserves Act 1977 (continued on pages 2, 3 and 4 of Annexure Schedule).

**Consideration**

The various considerations set out in a substantive proposal accepted under the Crown Pastoral Land Act 1998 on the \_\_\_\_\_ day of \_\_\_\_\_

**Operative Clause**

For the above consideration (receipt of which is acknowledged) the GRANTOR TRANSFERS to the GRANTEE all the grantor's estate and interest in the land in the above Certificate(s) of Title and if an easement is described above such is granted or created.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

**Attestation**

Signed by acting under written delegation from the Commissioner of Crown Lands	Signed in my presence by the Grantor Signature of Witness
	Witness to complete in <b>BLOCK</b> letters (unless typewritten or legibly stamped) Witness name Occupation Address
Signature, or common seal of Grantor	

(continued on page 4 of Annexure Schedule)

**Certified correct for the purposes of the Land Transfer Act 1952**

Certified that Part IIA of the Land Settlement Promotion and Land Acquisition Act 1952 does not apply  
Certified that no conveyance duty is payable by virtue of Section 24(1) of the Stamp and cheque Duties Act 1971.  
(DELETE INAPPLICABLE CERTIFICATE)

Solicitor for the Grantee

Approved by Register-General of Land under No. 1995/5003  
**Annexure Schedule**

Insert below

"Mortgage", "Transfer", "Lease", etc

Dated

Page

of

Pages

**Definitions**

1. In this transfer unless the context otherwise requires:

- 1.1 "Easement Area" means that part of the Servient Land being 20 metres wide which is marked "[ ]" on Deposited Plan/S.O. Plan No [ ].
- 1.2 "Parking Area" means that part of the Easement Area being 20 metres by 20 metres square marked "Parking Area".
- 1.3 "Management Purposes" means:
  - the protection of a significant inherent value of the land managed by the Grantee; and/or
  - the ecological sustainable management of the land managed by the Grantee.
- 1.4 "Servient Land" means the land owned by the Grantor and described on page 1.
- 1.5 "Grantee" means Her Majesty the Queen acting by and through the Minister of Conservation and includes tenants, agents, invitees, contractors, licensees and employees of the Minister of Conservation and the Director-General of Conservation; and for the purposes of clause 2.1 and 2.2 only, includes any member of the public.
- 1.6 "Grantor" means the owner of the Servient Land described on page 1 and includes the Grantor's tenants and invitees.

**Standard Easement Terms**

Access

2. The Grantee has the right in common with the Grantor:

- 2.1 To pass and re-pass at any time over and along the Easement Area "a-b-c", "b-d", and "i-j" on foot, and in respects of Easement Areas "a-b-c" and "b-d" on or accompanied by horses, or by non-motorised vehicle powered by a person or persons, or by off road motor vehicle also.
- 2.2 To use, stop and park any motor vehicle on the Parking Area at point "b" only.
- 2.3 To pass and re-pass at any time over and along the Easement Area "a-b-c", "b-d", "i-j" and "e-f" on foot, or on or accompanied by horses, or by non-motorised vehicle, or by motor vehicle, with or without machinery and implements of any kind, for Management Purposes, subject to Special Easement Term 11.

3. The Grantor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Grantor.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.



Approved by Register-General of Land under No. 1995/5003  
**Annexure Schedule**

Insert below  
"Mortgage", "Transfer", "Lease", etc

Dated

Page

of

Pages

Exclusion of Schedules

4. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 are expressly negated.

Term

5. The easement created by this transfer is to be in perpetuity.

Temporary Suspension

6. The Grantee may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area to members of the public for such period as she/he considers necessary.

Dispute Resolution

- 7.1 If a dispute arises between the Grantor and Grantee concerning the rights, management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 7.2 If the dispute is not resolved within 14 days of written notice by one party to the other it is to be referred to mediation.
- 7.3 If the dispute is not resolved within 21 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President of the New Zealand Law Society.
- 7.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

- 8.1 A notice to be given under this transfer by one party to the other is to be in writing and must:
- (a) be hand delivered to the receiving party; or
  - (b) be sent by ordinary post to the receiving party;
  - (c) be sent by facsimile to the receiving party.
- 8.2 If clause 8.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.
- 8.3 If clause 8.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

Approved by Register-General of Land under No. 1995/5003  
**Annexure Schedule**

Insert below  
"Mortgage", "Transfer", "Lease", etc

Dated

Page

of

Pages

**Special Easement Terms**

9. The standard easement terms contained above must be read subject to any special easement terms set out below.
10. The Grantee has the right:
- 10.1 To mark the Easement Area as appropriate.
  - 10.2 To erect and maintain stiles and/or gates.
  - 10.3 To erect and maintain signs informing the public:  
(a) of the location of the land managed by the Crown and available for public access and recreation; and  
(b) of their rights and responsibilities in relation to the Easement Area.
  - 10.4 From time to time to modify the surface of the Easement Area so that it becomes and remains fit for the purpose of clauses 2.1, 2.2 and 2.3
  - 10.5 To use whatever reasonable means of access he/she thinks fit over the Easement Area to carry out the works in clause 10.1 to 10.4.
- 11.0 In accessing Easement Area "e-f" for management purposes all practical effort will be taken to inform the Grantor of intended use of the Easement Area.
- 12.0 The Grantee is to maintain the Easement Areas "a-b-c" and "b-d" at the Grantee's cost, to a standard suitable for off road four wheel drive vehicles.

**Continuation of "Attestation"**

Signed for and on behalf of )  
Her Majesty the Queen by )

under a written delegation in the )  
presence of: )

\_\_\_\_\_  
Witness (Signature)

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

*Footnote: In substitution of the SO Plan (which has yet to be prepared), the proposed easement described in clause 1 is marked on the Plan.*

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

Approved by Registrar-General  
of Land under No. 1995/1004

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access to Conservation Areas
2. Management Access

**Land Transfer Act 1952**

<b>Law Firm Acting</b>
------------------------

Conservancy Solicitor Department of Conservation 195 Hereford Street Christchurch
--

Auckland District Law Society  
REF:4135

<b>This page is for Land Registry Office use only.</b> (except for "Law Firm Acting")
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**Appendix 7: Copy of Easement 7889630.1 to Continue**

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YEC 7889630.1 Deed o

Copy - 01/03, Pages - 010, 26/07/08, 11:55



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**DEED OF GRANT OF EASEMENT**

**HER MAJESTY THE QUEEN**  
acting by and through the Commissioner  
of Crown Land as Grantor

**AND**

**DUNSTAN PEAKS LIMITED**

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*me*

- 3 -

**DEED OF GRANT OF EASEMENT** dated

2008

**BETWEEN HER MAJESTY THE QUEEN** acting by and through the **COMMISSIONER OF CROWN LANDS** (the Grantor)And **DUNSTAN PEAKS LIMITED** (the Grantee).**INTRODUCTION**

- A. The Grantee is the holder of a leasehold interest in the Dominant Land and wishes to have a right of access over the Grantor's Land.

**IT IS AGREED****1. Interpretation****1.1 Definitions**

In this Deed (including the schedule)

**Commencement Date:** means the date this Deed of Grant of Easement is executed.

**Deed:** means this deed, the introduction and the schedule

**Dominant Land:** means Run 201E comprised in OT386/86

**Easement Land** means: those parcels of land shown A, B and C on SO 405296

**Grantee:** includes the Grantee's successors and permitted assigns and, where the context permits, the Grantee's servants, agents, employees, workers, invitees, licencees and contractors;

**Grantor's Land** means: Section 4 SO 405914

**Working day:** means a day when registered banks in Wellington and Dunedin are open for normal banking business.

**1.2 In the interpretation of this Deed unless the context otherwise requires:**

- (a) the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Deed;
- (b) references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to;
- (c) the singular includes the plural and vice versa and words incorporating any gender shall include every gender; and
- (d) the rights and powers implied under section 90D of the Land Transfer Act 1952 and set out in the Ninth Schedule to the Property Law Act 1952 and Schedule 4 of the Land Transfer Regulations 2002 shall not apply to this Deed.

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*WJ*



## 2. Grant of Easement

2.1 Pursuant to section 60 of the Land Act 1948 the Grantor grants to the Grantee, from the Commencement Date, the right from time to time and at all times for the Grantee, the Grantee's servants, employees, agents, workmen, licensees, contractors, and invitees (in common with the Grantor and any other person lawfully entitled so to do) to have the full, free, uninterrupted and unrestricted right, liberty and privilege by day and by night for farming and stock movement purposes only to go, pass and re-pass with motor vehicles and with or without horses, machinery and implements of any kind and with or without farm dogs and farm stock to and from the Dominant Land over and along the Easement Land but subject to the limitations expressed in this Deed, to the intent that the easement hereby created shall forever be appurtenant to the Dominant Land upon the terms and conditions contained in this Deed.

2.2 The rights granted under this Deed are non-exclusive and are exercisable in common with the Grantor and any other person granted similar rights by the Grantor, whether now or in the future, and without limitation the Grantor may grant the following persons access rights over the Easement Land:

- (a) members of the public for access on foot and with or without bicycles and horses;
- (b) Her Majesty the Queen acting by and through the Minister of Conservation for the purposes of undertaking management of adjacent land held for conservation purposes;
- (c) any lessee or licensee of the Minister of Conservation; and
- (d) any lessee or licensee of the Grantor's Land,

**PROVIDED THAT** prior to granting such rights to any other person, the Grantor shall first obtain the Grantee's written consent to such grant, which consent shall not be unreasonably or arbitrarily withheld or delayed if the rights to be granted are granted on reasonable terms and conditions.

## 3. Consideration

3.1 In consideration of the grant of easement in this Deed:

- (a) the Grantee shall pay the Grantor \$1.00; and
- (b) the Grantee shall observe the obligations imposed on it under this Deed.

## 4. Execution and registration

4.1 On receipt of execution copies of this Deed from the Grantor, the Grantee shall be required to execute and return to the Grantor without delay, the execution copies of this Deed. The Grantor will in due course return the Grantee's copy of the fully executed Deed to the Grantee and register this Deed under section 60 of the Land Act 1948.

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**5. Obligations of the Grantee.****5.1 The Grantee shall:**

- (a) limit the use of horses and vehicles on the Easement Land to those required for the Grantee's own use or by workmen or agents authorised by the Grantee for the Grantee's bona fide farming business;
- (b) immediately after passing through any gates on the Easement Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;
- (c) take all reasonable precautions for guarding against any danger on the Easement Land (including, but without limitation, fire, physical damage or disease), and in particular shall (but without limiting the general obligation to take full and proper precautions under this clause) comply with all conditions that may be imposed from time to time by the Grantor or any lawful authority;
- (d) wherever possible, remain on the formed roads and tracks on the Easement Land and when on those roads and tracks, comply with all traffic laws and regulations as are applicable to public roads;
- (e) at the Grantee's cost, repair to the satisfaction of the Grantor any part of the Grantor's Land, including tracks, fences, gates, drains, buildings or other structures, which are damaged directly or indirectly by the Grantee; and
- (f) at all times, use the Grantee's best endeavours to keep the Easement Land clear of noxious weeds and pests.

**5.2** The Grantee shall at all times in the exercise of the rights set out in this Deed, not obstruct or hamper the Grantor, or any agents, employees and contractors of the Grantor, in its normal or reasonable use of the Grantor's Land.

**5.3** The Grantee shall not at any time except with the prior written approval of the Grantor, carry out any activity which is not included within clause 2 of this Deed on the Easement Land, or do any other thing which would affect the ability of the Grantor to use the Grantor's Land.

**5.4** The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed.

**6. Maintenance**

**6.1** The Grantee shall maintain the Easement Land as an access track of sufficient standard for use by 4WD utility vehicles, save where the track is impassable by reason of adverse weather conditions. The Grantee shall obtain the Grantor's prior written consent before commencing any maintenance work that requires the realignment of the access track on the Easement Land.

**6.2** The cost of any maintenance of the Easement Land shall be borne by the Grantee and any other person or person(s) to whom the Grantor has granted similar rights in respect of the Easement Land, according to each person's use of the Easement Land PROVIDED THAT if any repair or maintenance is rendered necessary by the act, neglect or default of any user or its servants, agents, contractors, workmen, licensees or invitees, then that user shall promptly carry out such repair and

maintenance and bear the cost of the work PROVIDED FURTHER THAT the Grantor shall not be required to contribute to the cost of any maintenance in respect of the Easement Land.

6.3 Subject to clauses 6.1 and 6.2, no party shall do anything that prevents or interferes with free passage over and along the Easement Land.

6.4 Should the Grantee or any other user of the Easement Land desire to upgrade the access track on the Easement Land then it shall obtain the prior written consent of the Grantor, the Grantee (if relevant) and any other user of the Easement Land and then proceed to carry out such works and future maintenance of those works at its own cost.

#### 7. Grantor's obligations

7.1 The Grantor shall provide the Grantee and all authorised users of the Easement Land with keys to all locked gates on the Easement Land.

7.2 The Grantor shall give the Grantee notice of the name and address of the occupier for the time being of the Grantor's Land.

#### 8. Costs

8.1 The Grantee shall bear all reasonable costs and expenses (including the Grantor's legal costs) in relation to the preparation and enforcement of any provision in this Deed.

8.2 The Grantee shall be solely responsible for the costs of registration (if any) of this Deed and any associated costs.

#### 9. Indemnity

9.1 The Grantee indemnifies the Grantor against any loss, claim, damage, costs, expense, liability or proceedings suffered or incurred at any time by the Grantor as a result of the exercise by the Grantee of the Grantee's rights under this Deed, or any breach by the Grantee of the Grantee's obligations, undertakings or warranties contained or implied in this Deed.

#### 10 Grantor's Liability Excluded

10.1 Except for the Grantor's liability to repair damage to the Easement Land caused by or through the Grantor as provided in clause 6.2, under no circumstances will the Grantor be liable in contract, tort, or otherwise to the Grantee for any expense, costs, loss, injury, or damage whether consequential or otherwise, arising directly or indirectly from any activity undertaken by the Grantor or the Grantor's employees, agents, contractors, workmen, lessees, licensees, or invitees, on the Grantor's Land relating to this Deed, whether the expense, cost, loss, injury or damage is the direct or indirect result of negligence or otherwise.

#### 11. Termination

11.1 The Grantor may terminate the rights created by this Deed if the Grantee breaches any of the terms of this Deed and the breach remains unrectified following written notice to the Grantee specifying the breach and seeking rectification within fourteen days or such other time provided the parties agree.

11.2 If the breach remains unrectified (or is unable to be rectified) then termination must be by written notice from the Grantor.

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*2/10/00*

- 7 -

- 11.3 Upon termination (for whatever reason) of the grant of easement evidenced by this Deed all rights of the Grantee shall immediately cease but the Grantee shall not be released from any liability to pay consideration or other moneys up to the date of termination.
- 11.4 Upon termination the Grantee shall formally surrender the rights under this Deed and surrender the grant of easement.

## 12. Disputes

- 12.1 If any dispute arises between the Grantor and the Grantee concerning the rights created by this Deed, the parties shall enter into negotiations in good faith to resolve their dispute. If the dispute is not resolved within one month of the date on which the parties begin their negotiations, the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Grantor's Land is situated. Such arbitration shall be determined in accordance with the Arbitration Act 1996, excluding the Second Schedule thereof, and the parties' execution of this Deed shall be deemed to be a submission to arbitration **PROVIDED THAT** this clause shall be subject in all respects to the provisions of section 17 of the Land Act 1948.

## 13. Notices

- 13.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

- (a) the Grantor's Address, as set out in item 1 of the First Schedule; and
- (b) the Grantee's Address, as set out in item 2 of the First Schedule.

- 13.2 Any notice posted shall be deemed to be served three working days after the date of posting.

## 14. Assignment

- 14.1 Unless the Grantor has consented to a transfer of pastoral lease volume MB folio 177 (Marlborough Registry) pursuant to section 89 of the Land Act 1948, in which case the Grantor shall be deemed to have consented to the assignment of the Grantee's interest comprised in this Deed of Grant of Easement to the transferee of the pastoral lease, the Grantee may not transfer, lease, assign or licence all or any part of its interest in the Easement Land, and/or the rights in this Deed or any parts of those rights, without the prior written consent of the Grantor (such consent to be given or withheld in the Grantor's sole discretion). Any such transfer, lease, assignment or licence shall be subject to the rights and obligations set out in this Deed and any other rights and obligations as the Grantor may require.

## 15. Severability

- 15.1 If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

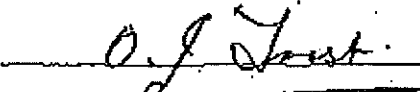
**Execution**

**SIGNED** for and on behalf of **HER  
MAJESTY THE QUEEN** by

In the presence of:

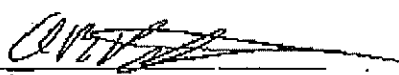
  
MATTHEW IRVIN CLARK

Witness Signature:  
Witness Full Name:  
Witness Occupation:  
Witness Address:

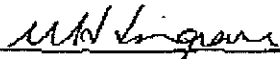
  
OWEN JOHN FROST  
PORTFOLIO MANAGER  
CROWN PROPERTY MANAGEMENT  
CA LINZ, CHRISTCHURCH

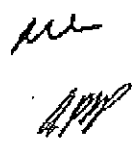
**SIGNED** by  
**DUNSTAN PEAKS LIMITED**

in the presence of:

  
Director

Witness Signature:  
Witness Full Name:  
Witness Occupation:  
Witness Address:

  
NOELINE HAZEL INGHAM  
Oamara  
Legal Executive



**Schedule 1****1. Grantor's Address**

The Commissioner of Crown Lands  
Land Information New Zealand Limited  
11<sup>th</sup> Floor  
Lambton House  
160 Lambton Quay  
Wellington

Facsimile No: (04) 460 0111

**2. Grantee's Address**

C/- Berry & Co  
Solicitors  
20 Eden Street  
Oamaru

Facsimile No: (03) 434 8750

*me*  
*[Signature]*

Landonline User ID: cross002  
 LODGING FIRM: Wilkinson Adams  
 Address: P O Box 803  
Dunedin  
 Uploading Box Number: \_\_\_\_\_  
 ASSOCIATED FIRM: \_\_\_\_\_  
 Client Code / Ref: S Foss

HEREWITH  
 Survey Plan (s) \_\_\_\_\_  
 Title Plan (s) \_\_\_\_\_  
 Traverse Sheets (s) \_\_\_\_\_  
 Field Notes (s) \_\_\_\_\_  
 Calc Sheets (s) \_\_\_\_\_  
 Survey Report \_\_\_\_\_

Dealing / SLD Number  
 (LINZ Use only)  
 Priority Processing Status  
 (LINZ use only)  
 Plan Number Pre-allocated or  
 to be Deposited: \_\_\_\_\_  
 Projected Dealing Number: \_\_\_\_\_

**YEC 7889630.1 Deed 0**  
 Copy - 20102.Fys - 010 25/07/02.11:55  
**Copies**  
 (inc. original)  
 DocID: 212231729

OT

Priority Order	CT Ref	Type of Instrument	Names of Parties	DOCUMENT OR SURVEY FEES	RESUBMISSION	NOTICES	ADVERTISING	NEW TITLES	OTHER	PRIORITY CAPTURE	FEES \$ GST INCLUSIVE
1	0736065	YEC	HMO and Dunstan Peaks Limited	60.00				1	\$65		\$125.00
2											
3											
4											
5											
6											

RECEIVED  
 25 JUL 2008

PAID

CMCH A 089905  
 CHARGE 125.00

Land Information New Zealand Lodgement Form

Annotation: LINZ (page only)

Original Signatures? \_\_\_\_\_

Subtotal (for this page)	\$125.00
Total for this dealing	\$125.00
Less Fees paid on Dealing #	
Cash/Cheque enclosed for	\$125.00

Fees Recovery and Tax Invoice  
 GST Registered Number 17-022-895  
 LINZ Form P005  
 LINZ Form P005 - PDF





## Digital Title Plan - SO 405296

**Survey Number** SO 405296  
**Surveyor Reference** 25370 - Twinbun ROW  
**Surveyor** Russell Thomas Bengo  
**Survey Firm** Davis Ogilvie & Partners Ltd (Christchurch)  
**Surveyor Declaration** I Russell Thomas Bengo, being a person entitled to practise as a licensed cadastral surveyor, certify that -  
 (a) The surveys to which this dataset relates are accurate, and were undertaken by me or under my direction in accordance with the Cadastral Survey Act 2002 and the Surveyor-General's Rules for Cadastral Survey 2002/2;  
 (b) This dataset is accurate, and has been created in accordance with that Act and those Rules.  
 Declared on 12/05/2008.

### Survey Details

**Dataset Description** Basements over Run 201F  
**Status** Approved as to Survey  
**Land District** Otago  
**Submitted Date** 12/05/2008  
**Survey Class** Class III Cadastral Survey  
**Survey Approval Date** 14/05/2008  
**Deposit Date**

### Territorial Authorities

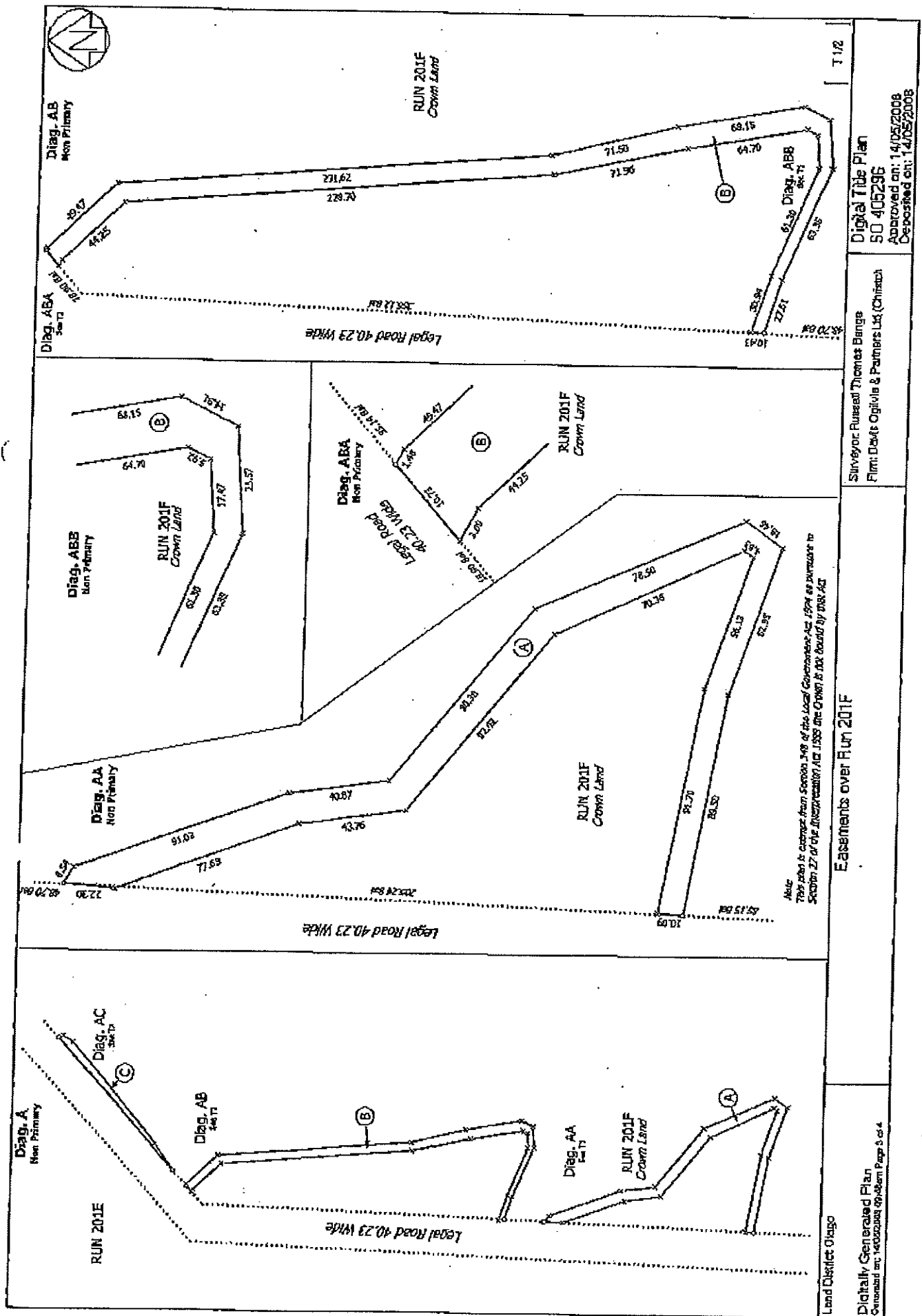
Waitaki District

### Created Parcels

Parcels	Parcel Intent	Area	CT Reference
Marked A Survey Office Plan 405296	Basement		
Marked B Survey Office Plan 405296	Easement		
Marked C Survey Office Plan 405296	Basement		
<b>Total Area</b>		<b>0.0000 Ha</b>	

Schedule / Memorandum

Schedule of Easements			
Purpose	Shown	Servient Tenement	Dominant Tenement
ACCESS FOR FARMING AND STOCK MOVEMENT PURPOSES	A	Run 201F	Run 201E
	B	Run 201F	Run 201E
	C	Run 201F	Run 201E





**Execution Section**

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

**SIGNED by Brian John Usherwood** pursuant to a delegation from the **Commissioner of Crown Lands** pursuant to the Crown Pastoral Land Act 1998 in the presence of:



CLAIRE BRADOCK

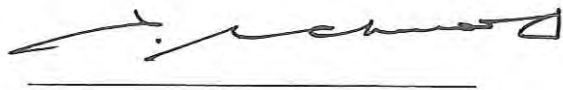
Witness

EXEC ASSISTANT

Occupation

MT VICTORIA, WELLINGTON

Address



**SIGNED** for and on behalf of **Dunstan Peaks Limited** by its director:



Anne Rosalie Patterson



GEORGE LATHAM BERRY

Oamaru  
Solicitor