

# **Crown Pastoral Land Tenure Review**

**Lease name : KIRKLISTON**

**Lease number : PT 119**

## **Substantive Proposal**

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

**July**

**15**

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

**Date:** 13 MARCH 2015

**Parties**

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**Holder:** Haldon Station Limited  
 Level 5  
 57 Fort Street  
 AUCKLAND 1010

**Commissioner of Crown Lands:**

Land Information New Zealand  
 Crown Property  
 112 Tuam Street  
 Private Bag 4721  
 Christchurch 8140  
 Attn: Karyn Lee

**The Land**

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**Lease:** Kirkliston

**Legal Description:** Part Run 329 and Section 41303 situated in Block XIV MacKenzie and Block IV and VIII Hewlings and Blocks I, II, V, VI, VII, and IX Dalzell Survey District.

**Area:** 7521.3143 hectares more or less

**Certificate of Title/Unique Identifier:** CB6B/313

**Summary of Designations**

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Under this Proposal, the Land is designated as follows:

- (a) The Crown Land:
- i. Shown edged in pink on the Plan and labelled "CA1", is land to be restored to or retained in full Crown ownership and control as conservation area as set out in Schedule One; and
  - ii. Shown edged in pink on the Plan and labelled "CA2", and "CA3" is to be restored to or retained in Crown control as conservation area, as set out in Schedule One.
- (b) The Freehold Land (shown edged in green on the Plan) is to be disposed by freehold disposal to the Holder as set out in Schedule two.

**1 The Plan**

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**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.

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**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.

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**6 Vesting of Crown Land**

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

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**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.

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**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.

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**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.

- 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 "Fencing Upgrades/New Fence" Lines on the Plan: "T-Q", "Q-S", "U-Z", "Z-N", "N-Y", "O-X", "X-V", "V-W"; 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 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 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 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 Solicitors 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 solicitors certificate required is set out at Appendix 2.
- 18.2 The Holder must return the completed solicitor's certificate to the Commissioner with this Proposal on its acceptance by the Holder.

#### **19 Default**

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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.

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**21 Lowest price**

- 21.1 The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Freehold Land under section 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.

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**22 Costs**

- 22.1 The Commissioner will meet the costs of the survey (if any) of the Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Freehold Land.

- 22.2 The Holder is responsible for all costs the Holder incurs in respect of and incidental to the Tenure Review. In particular, but without limitation, the Holder shall bear all its costs in relation to the review of all documentation forming part of the Tenure Review (including this Proposal), and all professional advice provided to or sought by the Holder.

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**23 No nomination or assignment**

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

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**24 Recreation Permit**

- 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.

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**25 Consents for Activities**

- 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.

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**26 General**

- 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.

## 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 person's obligations, as Holder, will be both joint and several.

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

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**1 Details of Designation**

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1.1 Under this Proposal:

- (a) The land shown edged in pink on the Plan and labelled "CA1", being 1002 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area; and
- (b) The land shown edged in pink on the Plan and labelled "CA2", and "CA3" being 1068 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area, subject to the granting of an easement concession (over the areas shown as a blue dashed line and labelled "d-k", "d-r", "m-j" and "c-p" on the Plan) and substantially as set out in Appendix 5.
- (c) "CA2" is subject to a right of way over part herein marked T on SO Plan 15566 appurtenant to Section 2-6 SO 472241 CFR 665251 and Section 1 SO Plan 472241 (formally RS 41297 CB32A/379).

## **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 edged in green on the Plan, being 5451 hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:
- (a) Part IVA of the Conservation Act 1987;
  - (b) Section 11 of the Crown Minerals Act 1991;
  - (c) An easement over the approximate areas marked "a-d", "b-c", "i-e-l", "l-f" and "g-h" on the Plan and substantially as set out in Appendix 4, or, if the Commissioner so chooses, the same reformatted as an Easement Instrument; and
  - (d) A covenant over the approximate area coloured yellow and labelled "CC1" on the Plan and substantially as set out in Appendix 6.
  - (e) Subject to a right of way over part herein marked T on SO Plan 15566 appurtenant to Section 2-6 SO 472241 CFR 665251 and Section 1 SO Plan 472241 (formally RS 41297 CB32A/379).
  - (f) (503027.1) Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941.
  - (g) (688948.3) Grant of Right of Way in gross over part herein (Marked T on S.O. Plan 15566) in favour of Her Majesty the Queen.



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

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**1 Details of designation**

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Nil

**Schedule Four: Conditions**

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- 1 The Commissioner is under no obligation, and may decide, in its sole discretion, not to proceed further with the Tenure Review unless and until:
  - (a) the Commissioner considers that sufficient funds will be obtained in order to complete the Tenure Review;
  - (b) the Director General of Conservation has completed all actions required under Part IVA of the Conservation Act 1987;
  - (c) the Commissioner has reviewed, and is satisfied, in its sole discretion that the easement referred to in Appendix 4 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease.
  - (d) the Commissioner has reviewed, and is satisfied, in its sole discretion that the easement referred to in Appendix 5 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease.
  - (e) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 6 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease.

**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:

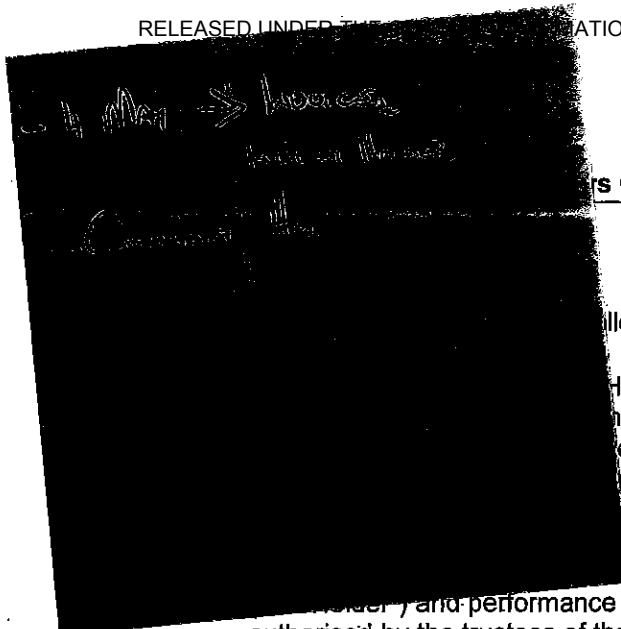
**SIGNED** for and on behalf of )  
[ ] )  
in the presence of: )

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:  
Occupation:  
Address:



**Holder's Certificate**

allows:

Holder") is a duly incorporated company under the Companies Act and performance of its obligations under the Proposal dated [ ] have been duly authorised by the directors and, if required, by the [ ] Holder has executed the Proposal in accordance with its

and [ ] ("the Proposal") by [insert name of 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**

#### **Indicative Fencing Requirements - new fences and some upgrading / repairs:**

The general "fencing specification" calls for the erection of 7 wire, t-iron and y-post, fencing to the indicative requirements set out below for the boundaries of "CA1", "CA2" and "CA3". Use of treated timber post is acceptable should ground conditions allow for installation. Some fencing will require the removal of existing fence lines and replacement with fencing in line with the general fencing specification noted above, particularly with respect to area "CA3".

Fencing also includes the checking and repair of some existing boundary fencing on "CA1" and at the western end of "CA2".

#### **1. New Fence Lines**

##### **(a) "CA1" Fence Line - Point Y to Point N (3,050m).**

- 1.1 Fence to be of 7 wire, t-iron and y-post construction with timber strainers at gateways. 1.5 metre Y-post at a maximum spacing of 3 metres (1.95kg/m minimum weight). T-irons, 1.65m heavy duty, as intermediate post at a maximum spacing of 21 metres with allowance for additional posts on high spots along fence line. All T-irons to be tied back at intermediate corners.
- 1.2 1.8m x 125mm treated intermediate timber posts acceptable in lieu of T-irons if ground conditions allow for acceptable installation.
- 1.3 2.1m x 175mm treated timber strainer posts to be used at the end of all strains and intermediate corners. All Strainer posts are to be securely tied down or footed. All strainers to be a maximum length of 3.00m and strained with permanent type strainer.
- 1.4 All timber stays to be treated, 2.4m x 125mm.
- 1.5 7- wire installation to be;
  - 1 x 4.00mm bottom wire
  - 5 x 2.5mm high tensile middle wires
  - 1 x 2.5mm reverse twisted 2 strand barbed top wire, laced securely with 3.15mm wire.
- 1.6 All tie downs and tie backs are to be completed in 4.00mm wire and have at least 2 anchor points.
- 1.7 Gates are to be capable of being swung to a fully open position and closed securely against the opposite strainer post with wrap around chain and hook.
- 1.8 Construction of creek crossings is to be of netting and vertical wooden batons, secured both sides of the creek above the high water line, and to operate independent of the main fence line.

##### **(b) "CA2" Fence Line - Point X to Point V (3,555m).**

- 1.9 Fence to be of 7 wire, t-iron and y-post construction with timber strainers at gateways. 1.5 metre Y-post at a maximum spacing of 3 metres (1.95kg/m minimum weighting). T-irons, 1.65m heavy duty, as intermediate post at a maximum spacing of 21 metres with allowance for additional posts on high spots along fence line. All T-irons to be tied back at intermediate corners.

1.10 1.8m x 125mm treated intermediate timber posts acceptable in lieu of T-irons if ground conditions allow for acceptable installation.

1.11 2.1m x 175mm treated timber strainer posts to be used at the end of all strains and intermediate corners. All Strainer posts are to be securely tied down or footed. All strainers to be a maximum length of 3.00m and strained with permanent type strainer.

1.12 All timber stays to be treated, 2.4mm x 125mm.

1.13 7- wire installation to be;

- 1 x 4.00mm bottom wire
- 5 x 2.5mm high tensile middle wires
- 1 x 2.5mm reverse twisted 2 strand barbed top wire, laced securely with 3.15mm wire.

1.14 All tie downs and tie backs are to be completed in 4.00mm wire and have at least 2 anchor points.

1.15 Gates are to be capable of being swung to a fully open position and close securely against the opposite strainer post with wrap around chain and hook.

1.16 Construction of creek crossings, including flood gate, is to be of netting and vertical wooden batons, secured both sides of the creek above the high water line, and to operate independent of the main fence line.

(c) "CA2" Fence Line – Point V to Point W (2,555m).

1.17 Fence to be of 7 wire, t-iron and y-post construction with timber strainers at gateways. 1.5 metre Y-post at a maximum spacing of 3 metres (1.95kg/m minimum weighting). T-irons, 1.65m heavy duty, as intermediate post at a maximum spacing of 21 metres with allowance for additional posts on high spots along fence line. All T-irons to be tied back at intermediate corners.

1.18 1.8m x 125mm treated intermediate timber acceptable in lieu of T-irons if ground conditions allow for acceptable installation.

1.19 2.1m x 175mm treated timber strainer posts to be used at the end of all strains and intermediate corners. All Strainer posts are to be securely tied down or footed. All strainers to be a maximum length of 3.00m and strained with permanent type strainer.

1.20 All timber stays to be treated, 2.4m x 125mm.

1.21 7- wire installation to be;

- 1 x 4.00mm bottom wire
- 5 x 2.5mm high tensile middle wires
- 1 x 2.5mm reverse twisted 2 strand barbed top wire, laced with 3.15mm wire.

1.22 All tie downs and tie backs are to be completed in 4.00mm wire and have at least 2 anchor points.

1.23 All gates are to be capable of being swung to a fully open position and close securely against the opposite strainer post with wrap around chain and hook.

1.24 Construction of creek crossings, including flood gate, is to be of netting and vertical wooden batons, secured both sides of the creek above the high water line, and to

operate independent of the main fence line.

(d) "CA3" Fence Line Point d to Point Q to Point r (1,890m).

1.25 Fence to be of 7 wire, t-iron and y-post construction with timber strainers at gateways. 1.5 metre Y-post at a maximum spacing of 3 metres (1.95kg/m minimum weighting). T-irons, 1.65m heavy duty, as intermediate post at a maximum spacing of 21 metres with allowance for additional posts on high spots along fence line. All T-irons to be tied back at intermediate corners.

1.26 1.8m x 125mm treated intermediate timber acceptable in lieu of T-irons if ground conditions allow for acceptable installation.

1.27 2.1m x 175mm treated timber strainer posts to be used at the end of all strains and intermediate corners. All Strainer posts are to be securely tied down or footed. All strainers to be a maximum length of 3.00m and strained with permanent type strainer.

1.28 All timber stays to be treated, 2.4m x 125mm.

1.29 wire installation to be;

- 1 x 4.00mm bottom wire
- 5 x 2.5mm high tensile middle wires
- 1 x 2.5mm reverse twisted 2 strand barbed top wire, laced securely with 3.15mm wire.

Installation to include fully electrified second top wire connected to existing power source and under gate cable.

1.30 All tie downs and tie backs are to be completed in 4.00mm wire and have at least 2 anchor points.

## 2. Upgrading of Existing Fences

(a) "CA1" Fence Line - Point Z to Point N (225m).

2.1. The existing fence line to be removed and replaced with new fence in line with the specifications 1.1 – 1.8 noted above. If in good condition existing 2.5mm wire from current fence can be re-used in upgraded fence.

(b) "CA1" Fence Line - Point Z to Point U (3070m).

2.2. The existing fence will remain to form the boundary fence. Walking of the fence line will be required to confirm that the boundary is stock proof. Minor repairs to be completed on an as required basis include: install additional tie downs; repair broken wires and strainers; re-staple posts where staples have pulled out; ensure creek crossings are stock proof.

(c) "CA2" Fence Line - Point O to Point X (580m).

2.3. The existing fence line to be upgraded as follows;

- Installation of 7.8 x 125mm treated timber posts at 50m intervals and at high points.
- Existing fence wire to be re-used and stapled to these posts using 50 x 4 barbed staples.

(d) "CA3" Fence Line - Point T to Point d (2770m) & Point r to Point S (1830m).



- 2.4. Existing 5 wire fence to be removed and replaced with upgraded fence line as per the below specification.
- 2.5. Fence to be of 7 wire, t-iron and y-post construction with timber strainers at gateways. 1.5 metre Y-post at a maximum spacing of 3 metres (1.95kg/m minimum weighting). T-irons, 1.65m heavy duty, as intermediate post at a maximum spacing of 21 metres with allowance for additional posts on high spots along fence line. All T-irons to be tied back at intermediate corners.
- 2.6. Intermediate treated timber posts acceptable in lieu of T-irons if ground conditions allow for acceptable installation.
- 2.7. Strainer posts to be treated timber, 2.1m x 175mm and located at the end of all strains and intermediate corners. All Strainer posts are to be securely tied down or footed. All strainers to be a maximum length of 3.00m and strained with permanent type strainer.
- 2.8. All timber stays to be treated, 2.4m x 125mm.
- 2.9. 7- wire installation to be;
  - 1 x 4.00mm bottom wire
  - 5 x 2.5mm high tensile middle wires
  - 1 x 2.5mm reverse twisted 2 strand barbed top wire, laced securely with 3.15mm wire.

The second top wire is to be electrified including connection to existing power source and under gate cable.

- 2.10. All tie downs and tie backs are to be completed in 4.00mm wire and have at least 2 anchor points.
- 2.11. Gates are to be capable of being swung to a fully open position and close securely against the opposite strainer post with wrap around chain and hook.
- 2.12. Material from existing fence to be used in upgraded fence should they be in good condition and repair and meet the fencing specifications noted above.

### 3. Length and location:

(a) New fences are to be erected along the lines marked as follows on the plan:

- 3.1 Conservation area "CA1" – "Y – N", approximately 3,050 metres.
- 3.2 Conservation area "CA2" – "X – V" and "V – W", approximately 6,110 metres.
- 3.3 Conservation area "CA3" – "d-Q-r", approximately 1,890 metres

(b) Upgrading and repair of existing fences along the lines marked on the plan.

- 3.4 Conservation area "CA1" – "Z – N",, approximately 225 metres.
- 3.5 Conservation area "CA1" – "Z – U", approximately 3,070m metres.
- 3.6 Conservation area "CA2" – "O – X", approximately 580 metres
- 3.7 Conservation Area "CA3" - "T-d" and "r – S" approximately 4,600 metres.

- (c) The holder may require fences of greater specifications and must meet any additional costs incurred.

#### 4. Preliminary and General Matters

(a) New Materials

- 4.1 All materials forming a permanent part of the fence shall be new, and shall conform to any relevant New Zealand or international standard.

(b) Standards

- 4.2 Materials forming a permanent part of the specified fence shall conform to the applicable standard. Such materials shall either identify the applicable standard on the label or certificate from the supplier or manufacturer shall be supplied stating the materials have been manufactured in a process that has been tested and which conforms to that standard.

Current standards that apply to fencing materials include but may not be limited to:

- 3471:1974 (NZS) Specifications for galvanised steel fencing wire plain and barbed.
- 3607:1989 (NZS) Specifications for round and part round timber fence posts.
- 3640:1992 (NZMP) Specifications of the minimum requirements of the NZ Timber Preservation Council Inc.
- D360:1986 (NZS/ASTM) Creosote Treatment
- 4534:1998 (AS/NZS) Zinc and zinc/aluminum alloy coating on steel wire.
- 4680:1999 (AS/NZS) Hot dip galvanised (zinc) coating on fabricated ferrous articles.

Where no applicable standard exists then materials shall be of best quality as generally accepted in the New Zealand farming and fencing industries.

- 4.3 Documentation would be required of:

- Manufacturers (or suppliers) warranties and test certificates where applicable.
- Guarantee certificates that transfer to the owners of the completed fences.
- Remedies available under the guarantee.
- Installation instructions for hardware where applicable to the warrantee and guarantee.

(c) Blasting

- 4.4 Any blasting required to loosen or remove rock shall be undertaken using electric detonators to reduce the risk of fire.

(d) Drilling

- 4.5 Any rock drilling will be undertaken with a rock drill no larger than 40mm diameter.

(e) Spiking

- 4.6 Where placement of posts requires spiking, the spike shall be 90mm or more in diameter.

(f) Lacing

- 4.7 The top wire is to be laced to the top of the steel Y stake with 3.15 mm (9 gauge) wire.

**5. Materials General – to be used except where these have been specifically modified by the provisions of Clause 6 which shall take precedence.**

(a) Wire

- 5.1 Fence wire will be 2.5mm galvanised high tensile steel wires and 4 mm galvanised mild steel wire all of which are to be of good quality. Tie-downs and tie-backs will be 4mm galvanised mild steel kept clear of any ground contact.

(b) Netting for wing fences

- 5.2 Sheep netting, eight x 2.5 mm galvanised high tensile wires, 900 mm high netting with independent knots.

(c) Infill Posts

- 5.3 Infill posts will be steel Y stakes or galvanised T irons for use on high spots.

(d) Strainer, Intermediate and Angle Posts

- 5.4 All timber posts used will be round and ground treated.

(e) Stay Block

- 5.5 12 x 2 x 24cm ground treated.

(f) Staples

- 5.6 Staples will be 50mm x 4mm barbed galvanised steel.

(g) Permanent Wire Strainers

- 5.7 Permanent wire strainers are to be of the yoke and reel type with a sprung loaded locking bar.

(h) Crossing Netting

- 5.8 Netting on creek and river crossings will be seven wire galvanised sheep netting.

(i) Gates

- 5.9 The swung gates shall be manufactured of 32 mm 2.6wt galvanised steel pipe frame, suitably braced to withstand normal pressure by beef cattle and fully covered with 50mm chain mesh manufactured from 3.15 mm gauge wire and attached with 2.24 mm galvanised lacing wire.

(j) Gate Chains

- 5.10 Gate chains will be galvanised steel chain and staple type.

(k) Gate Gudgeons

- 5.11 Gudgeons are to be of galvanised steel. Top gudgeon is to be lock through type and the bottom gudgeon a bolt through type. The bottom gudgeon will have a hole through the lug fitting to enable a 150 mm galvanised nail to be driven through the hole and into the post so that stock cannot lift the gate off the hinges.

**6. Best Practice**

(a) Best fencing practice must be adhered to on all occasions.

(b) Strains

6.1 Length of strains to be determined by the territory but to not exceed 300 metres for HT and 250 metres for No. 8 wire, unless specifically varied by clauses 1.6, 1.20, 1.21 and where flood gates are required to be on a separate strain. To conform to best practice and if applicable the wire manufacturing recommendations. Wire tension to account for weather conditions at time of strain and have regard to effect of winter conditions. Wire tension to average 110 kg force.

(c) Placement of timber strainers, posts and stays

6.2 Under no circumstances are any strainers, stays or posts to be shortened either prior to or subsequent to their placement in the ground.

6.3 All strainers are to be dug in or driven and rammed and footed. Strainer, angle and intermediate posts are to have a minimum of 117 cm (46") out of the ground. Stays are to be 1/3 of the way up posts.

(d) Placement of footer at strainers and angles

6.4 Strainers and angles will be footed using a wooden H4 treated cut off post with a minimum length of 350 mm rammed in beside the strainer or angle so that the foot is lying 200 mm up from the bottom of the hole at a 90 degree angle to the strainer or angle, and will be attached with 4 mm stainless steel wire and stapled to both the foot and the strainer or angle using three or more staples on both ends.

(e) Placement of wires

6.5 Wires are to be located on the grazing side of the boundary, except where there is a high risk of snow damage where they shall be placed on leeward side away from the prevailing snow. The bottom wire to be 100 -150 mm above the ground.

6.6 Post staples are to be driven well in but allow the wire to run through.

6.7 All wires are to be securely and neatly tied off and strained evenly. Figure eight knots are to be used in all joins with electric wires to have an extra tie off in place after figure eight ties.

(f) Gates

6.8 Gates must close against a post and be able to fully open back against the fence.

(g) Netting at creek crossing

6.9 Netting to be hung at creek and river crossings and left to swing.

(h) Tie Downs

6.10 Tie downs are to consist of half or full steel Y stakes according to conditions and the tie down is to be with 4mm stainless steel wire (which is to remain above ground). If a post is a tie down, it is to be fixed to the Y stake by a 150mm x 6mm galvanised nail.

Anywhere that there is a 100 mm or more upward pull on the wires is to have a tie down placed.

(i) Tie backs

6.11 Tie backs can be used on angle posts or T irons and are permitted on both sides of the fence. There will be no tie backs on the bottom of any of the 3 front face blocks all angles are to be double stayed.

(i) T Irons

6.12 T irons, if used, are to be used on all corners and on the end of strains with tie-backs on them except on the gateways where conventional block and stays are to be used.

## **GENERAL REQUIREMENTS AFTER COMPLETION OF FENCE**

### Contractor's Warranty

The fencer installing the fence shall be responsible for fully maintaining the fence, resulting from installation faults, for a period of 12 months from completion of installation and to replace or add additional materials to ensure its continued effectiveness.

### Adjoining Landholders' Obligations

When such fencing is completed to the satisfaction of both parties, ongoing maintenance, following the 12 month maintenance period, shall be in terms of the Fencing Act 1978.

**Appendix 4: Form of Easement in Gross to be created over that part of the land labelled a-d, b-c, i-e-l, l-f and g-h.**

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**See attached.**

**DOCD# -1396236 -- KIRKLISTON -- SEPTEMBER 2014**

**TRANSFER GRANT OF  
EASEMENT IN GROSS**

**For Public Access and Management Purposes**

**Land Transfer Act 1952**

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

**TRANSFER**

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

CANTERBURY

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

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Transferor Surnames must be underlined

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

Transferee 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 7(2) of the Conservation Act 1987 (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 _____ (continued on page xx of Annexure Schedule) <b>Witness to complete in BLOCK letters</b> (unless typewritten or legibly stamped) Witness name Occupation Address
Signature, or common seal of Grantor	

Certified correct for the purposes of the Land Transfer Act 1952

\_\_\_\_\_

Solicitor for the Transferee



### 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 "Management Purposes" means:
    - the protection of a significant inherent value of any land managed by the Grantee;
    - the ecological sustainable management of any land managed by the Grantee;
    - the management of the Easement Area consistent with the purposes for which the easement is held under the Conservation Act 1987.
  - 1.3 "Servient Land" means the land owned by the Grantor and described on page 1.
  - 1.4 "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 only, includes any member of the public.
  - 1.5 "Grantor" means the owner of the Servient Land described on page 1 and includes the Grantor's tenants and invitees.
  - 1.6 "Working day" means the period between any one midnight and the next, excluding Saturdays, Sundays and statutory holidays in the place where the Servient Land is located.

#### 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 that part of the Easement Area marked "a-d, b-c, 'f-e-' and g-h" on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.
  - 2.2 To pass and re-pass at any time over and along that part of the Easement Area marked "a-d, b-c, 'f-e-', 'f-f' and g-h" 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, with or without guns and accompanied by dogs, for Management Purposes.

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.

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.

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 negatived.

Term

5. The easement is to be in perpetuity.

Temporary Closure of Easement Area

- 6.1 The Grantee may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area to the public for such period as she/he considers necessary.
- 6.2 For the avoidance of doubt, it is stated that any such temporary closure by the Grantee of all or part of the Easement Area to the public in accordance with clause 6.1 does not affect the rights of the Grantor to continue to access and use the Easement Area.

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 for the time being 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.

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.

**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 email 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 emailed if that day is a working day or, if dispatched after 5.00pm, on the next working day after the date of email.

**Gates**

9. Where the Grantor wishes to erect fences across the Easement Area, the Grantor shall install a gate not less than 3 metres wide, and either:
- 9.1 Keep the gate unlocked at all times, or
  - 9.2 Ensure the Grantee is provided with a key to the gate; AND
  - 9.3 Install a stile or appropriate facility to allow for public access by foot, horse or non-motorised vehicle.
10. The Grantee (not being a member of the public) 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 and 2.2.
  - 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.

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.

**Special Easement Terms**

- 11. The standard easement terms contained above must be read subject to any special easement terms set out below.
- 12. If the Grantee (being a member of the public) has a hunting permit, issued by the Director-General of Conservation for public conservation land to which the Easement Area provides access, they may carry an unloaded gun on those parts of the Easement Area being 'i-e' and 'b-c' for the purpose of gaining access to hunt on that land.
- 13. Other than is provided in clause 2.2 above, no dogs are permitted on the Easement Area at all. Should dogs and guns be carried on the Easement Area in accordance with clause 2.2 for management purposes only, they are required to be confined within a vehicle at all times whilst on the Easement Area.
- 14. Those parts of the Easement Area being 'a-d' and 'g-h' may be closed by the Grantor between 1 October and 20 November inclusive for livestock management purposes only.

**Continuation of "Attestation"**

Signed for and on behalf of  
 Her Majesty the Queen by  
 [name] \_\_\_\_\_  
 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.*

<p>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.</p>
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**TRANSFER GRANT OF EASEMENT IN GROSS**  
For Public Access and Management Purposes

**Land Transfer Act 1952**

<b>Law Firm Acting</b>
Solicitor Legal Services Department of Conservation Dunedin

**This page is for Land Registry Office use only.**  
*(except for "Law Firm Acting")*

**Appendix 5: Form of Easement Concession Document to be created over that part of the land labelled j-m, c-p, d-k and d-r**

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See attached.



Department of Conservation  
Te Papa Atawhai

Concession Number: To be assigned

**Concession Document (Easement)**

**THIS CONCESSION** is made this      day of

**PARTIES:**

1. **Minister of Conservation** (the Grantor)
2. **Haldon Station Limited** (the Concessionaire)

**BACKGROUND**

- A. The Department of Conservation ("Department") Te Papa Atawhai is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B. 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.
- C. The land described in Item 2 of Schedule 1 as the Dominant Land is freehold land of the Concessionaire.
- D. 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).
- E. The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Concession.
- F. 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**

1. In exercise of the Grantor's powers under the Crown Pastoral Land Act 1998, and the Conservation Act 1987 or the Reserves Act 1977 as relevant, the Grantor **GRANTS** to the Concessionaire an **EASEMENT APPURTENANT** to the Dominant Land to carry out the Concession Activity on the Easement Area subject to the terms and conditions contained in this Concession and its Schedules.

SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate]

acting under delegated authority  
in the presence of:

Witness Signature: \_\_\_\_\_  
Witness Name: \_\_\_\_\_

SIGNED by Haldon Station Limited by at least two of its Directors:

\_\_\_\_\_  
Patrick John Boyd

<p><b>Witness Occupation:</b> _____ <b>Witness Address:</b> _____</p>	
<p><b>A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.</b></p>	<p>_____ <b>Laurence George Chilcott</b></p>
	<p>_____ <b>Edward Elkan Klisser</b></p>
	<p>_____ <b>Janna Klisser</b></p>
	<p>_____ <b>Johan Klisser</b></p>



**SCHEDULE 1**

1.	<b>Servient Land</b> (Schedule 4)	<p>As marked on the Proposed Designations plan attached in Schedule 4 being the area marked in pink and labelled CA2 and CA3.</p> <p>Common Name: <i>Kirkliston Range (CA2) and Haldon Downs (CA3)</i>                  Land Status: <i>Conservation Area</i>                  Area: <i>To be filled in upon approval of the survey plans.</i>                  Legal Description: <i>To be filled in upon approval of the survey plans.</i></p>
2.	<b>Dominant Land</b> (Schedule 4)	<p>As marked on the Proposed Designations plan in Schedule 4 being the area outlined in green.</p> <p><i>Physical Description/Common Name: Kirkliston Station</i>                  Land Status: <i>Freehold</i>                  Area: <i>To be filled in upon approval of the survey plans.</i>                  Legal Description: <i>To be filled in upon approval of the survey plans.</i></p>
3.	<b>Easement Area</b> (Schedule 4)	<p>As marked on the Proposed Designations Plan attached in Schedule 4 being those parts of the servient land between the points shown as <i>c-p, d-k and d-r</i> being 10 metres wide, and between the points shown as <i>j-m</i> being 5 metres wide.</p> <p><i>Legal Description: To be filled in upon approval of the survey plans.</i></p>
4.	<b>Concession Activity</b> (clause 2)	<p>(a) a right of way: (<i>c-p, d-k, d-r</i>)</p> <p>(b) a right to take and convey water (<i>j-m</i>)</p> <p>for <b>farm management purposes only</b> for the Concessionaire (including the Concessionaire's invitees, tenants and contractors) on foot, on or accompanied by horses, by motor vehicles, with or without machinery and implements of any kind, and with or without domestic livestock, guns and farm dogs.</p>
5.	<b>Term</b> (clause 3)	<p>The term commences on the day an approved plan is registered affecting Certificate of Title CB ???</p> <p>In respect of those parts of the Easement Area marked <i>c-p, d-k and d-r</i>, being the rights of way, the term is in perpetuity.</p> <p>In respect of that part of the Easement Area marked <i>j-m</i>,</p>

Concessionaire's initials	Grantor's initials	
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		being the right to take and convey water, the term is sixty years.		
6.	<b>Final Expiry Date</b> (clause 3)	In respect of that part of the Easement Area marked j-m, being the right to take and convey water, the final expiry date is the 60 <sup>th</sup> anniversary of the commencement date, being: <i>To be filled in when registration of approved plan is confirmed.</i>		
7.	<b>Concession Fee</b> (clause 4)	A one-off fee has (in effect) been accounted for on behalf of the Grantor as part of the substantive proposal put by the Commissioner of Crown Lands and accepted by the Concessionaire on [to be filled in /date] and for which an approved plan has been registered pursuant to section 65 of the Crown Pastoral Land Act 1998.		
8.	<b>Concession Fee Payment Date</b> (clause 4)	Not Applicable – see item 7 above.		
9.	<b>Penalty Interest Rate</b> (clause 4)	Not Applicable.		
10.	<b>Insurance</b> (To be obtained by Concessionaire) (clause 9)	<u>Types and amounts:</u> Public Liability Insurance for: (a) general indemnity for an amount no less than \$1,000,000 and (b) Forest and Rural Fires Act extension for an amount no less than \$1,000,000; Insurance amounts subject to review (clause 9)		
11.	<b>Addresses for Notices</b> (clause 19)	The Grantor's address is: Minister of Conservation, C/-Director Conservation Partnerships South and Eastern South Island Region Department of Conservation, Conservation House 77 Stuart Street P O Box 5244 DUNEDIN 9058 Phone: (03) 477 0677 Email:dunedinvc@doc.govt.nz		
		The Concessionaire's address in New Zealand is: Haldon Station Haldon Road Private Bag 66015 Fairlie 7949 Contact Persons: Edward Klisser or Paddy Boyd Phone: 03 680 6631 Email:haldon.station@xtra.co.nz		
		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; text-align: center;">Concessionaire's initials</td> <td style="width:50%; text-align: center;">Grantor's initials</td> </tr> </table>	Concessionaire's initials	Grantor's initials
Concessionaire's initials	Grantor's initials			


**Note:** The clause references are to the Grantor's Standard Terms and Conditions set out in Schedule 2.

**Note:** Please initial each page of Schedule 1

<i>Concessionaire's initials</i>		<i>Grantor's initials</i>	
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## SCHEDULE 2

### STANDARD TERMS AND CONDITIONS

#### 1. Interpretation

1.1 In this Concession, unless the context otherwise requires:

**"Background"** means the matters referred to under the heading "Background" on the first page of this Document, and words used in the Background have the meaning given to them in this clause 1.1.

**"Concession Fee"** means the amount specified in Item 7 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 this document and any subsequent amendments and all schedules, annexures, and plans attached to it.

**"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.

**"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 2 of the Reserves Act 1977.

**"Servient Land"** means a Conservation Area or Reserve being the land 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.

1.2 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients, tenants and invitees (excluding other members of the public accessing the Easement Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land), as if the breach had been committed by the Concessionaire.

1.3 In this Concession unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Concession;
- (c) words appearing in this Concession which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Concession 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 Concession;

**2. What is being authorised?**

- 2.1 The Concessionaire is only allowed to use the Easement Area for the Concession Activity.

**3. How long is the Concession for - the Term?**

- 3.1 This Concession commences on the date specified in Item 5 of Schedule 1 and ends on the Final Expiry Date specified in Item 6 of Schedule 1.

**4. What are the fees and when are they to be paid?**

- 4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee plus GST on the Concession Fee Payment Date specified in Items 7 and 8 of Schedule 1.
- 4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 9 of Schedule 1.

**5. Are there any other charges?**

- 5.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Easement Land or for the services provided to the Easement Land which relate to the Concessionaire's use of the Easement Land or the carrying on of the Concession Activity. Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 9 of Schedule 1.

**6. What are the obligations to protect the environment?**

6.1 Without the prior written consent of the Grantor, the Concessionaire must not allow or carry out any of the following on the Easement Area:

- (a) cut down or damage any vegetation;
- (b) bring any animals onto the easement area other than those specified in item 4 of Schedule 1 ;
- (c) disturb, or allow any stock to disturb any stream or watercourse;
- (d) undertake any earthworks or disturbance to the ground, other than as required for repair or maintenance;
- (e) damage any natural feature or historic resource;
- (f) light any fire on the Easement Land.

6.2 The Concessionaire must at its cost keep the easement facility (as defined in Schedule 5) now or hereafter upon the Easement Area, in good order, condition and repair and must keep the Easement Area in a clean and tidy condition and must not store hazardous materials on the Easement Area nor store other materials on the Easement Area where they may obstruct the public or create a nuisance.

6.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 6.

6.4 The Concessionaire may bring firearms on to the Easement Area for use in connection with the Concession Activity and pest control operations.

6.5 For the purposes of the Concession Activity, the Concessionaire may take onto or use vehicles on the Easement Area on existing formed access tracks only.

**7. When can structures be erected?**

7.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Land without the prior consent of the Grantor.

7.2 The Concessionaire must keep and maintain and structures and facilities on and alterations to the Easement Area in good repair.

**8. What if the Concessionaire wishes to surrender the Concession?**

8.1 If the Concessionaire wishes to surrender this Concession or any part of it during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

**9. What are the liabilities and who insures?**

9.1 The Concessionaire agrees to use the Easement Area at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Easement Area.

- 9.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 9.3 This indemnity is to continue after the surrender, expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its surrender, expiry or termination.
- 9.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 9.5 Despite anything else in clause 9 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 9.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Area, the Concession Activity, or to any structures, equipment or facilities on the Easement Area or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 9.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 9.7 Where the Grantor is found to be liable in accordance with clause 9.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 9.8 Despite anything else in clause 9 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 9.9 Without prejudice to or in any way limiting its liability under this clause 9 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 10 of Schedule 1 with a substantial and reputable insurer.
- 9.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 9.9. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 9.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
- (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
  - (b) a copy of the current certificate of such policies.
10. **What about Health and Safety?**
- 10.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations and all other provisions or requirements of any competent

under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default. Before electing to so remedy in accordance with this clause the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.

**13. What happens on termination or expiry of the Concession?**

13.1 On expiry or termination of this Concession, either as to all or part of the Easement Area, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Land.

13.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement Area. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Area and other public conservation land affected by the removal in a clean and tidy condition.

13.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement Area. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Area, Servient Land and other public conservation land affected by the removal in a clean and tidy condition, and replant the Servient Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

**14. When is the Grantor's consent required?**

14.1 Where the Grantor's consent or approval is required, such consent or approval must not be unreasonably withheld. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.

14.2 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion.

**15. Are there limitations on public access and closure?**

15.1 The Concessionaire acknowledges that the Easement Area is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.

**16. What about other concessions?**

16.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

**17. How will disputes be resolved?**

17.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, attempt



to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.

- 17.2 If the dispute cannot be resolved 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
- 17.3 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 17.4 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.
- 17.5 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 New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 17.6 The arbitrator must include in the arbitration award reasons for the determination.
- 17.7 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.
- 18. How are notices sent and when are they received?**
- 18.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, by pre paid post or by email to the receiving party at the address or email address specified in Item 11 of Schedule 1. Any such notice is to be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of post, on the 3<sup>rd</sup> working day after posting;
  - (c) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.
- 18.2 If either party's details specified in Item 11 of Schedule 1 change then the party whose details change must provide the other party with the changed details within 5 working days of such change.
- 19. What about the payment of costs?**
- 19.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing any variation of this Concession, including a partial surrender.
- 19.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including

the right to recover outstanding money owed to the Grantor.

**20. What about the powers implied by statute?**

**20.1** The rights and powers implied in the relevant easements by the 5<sup>th</sup> Schedule to the Property Law Act 2007 and the Fourth Schedule to the Land Transfer Regulations 2002 (as set out in Schedule 5 of this Concession) apply to this easement **EXCEPT** to the extent set out in Schedule 3 of this Concession.

**21. What about Co-Siting?**

**21.1** In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Area by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.

**21.2** The Concessionaire must not allow Co-Siting on the Easement Area without the prior written consent of the Grantor.

**21.3** The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Easement Area.

**21.4** In addition, the Grantor must withhold consent if:

- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Area; or
- (b) the Grantor considers the change to be detrimental to the environment of the Easement Area.

**21.5** Subject to clause 21.4 the Concessionaire must, if required by the Grantor, allow Co-Siting on the Easement Area.

**21.6** Where the Concessionaire maintains that Co-Siting by a third party on the Easement Land would:

- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Area; or
- (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
- (c) obstruct or impair the Concessionaire's ability effectively to operate from the Easement Area; or
- (d) interfere with or prevent future forecast works of the Concessionaire,

the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 21.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 21.6.

- 21.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 17 of Schedule 2.
- 21.8 Where the Concessionaire is required under clause 21.5 to allow Co-Siting on the Easement Area, the Concessionaire is, subject to clause 21.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Area and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement Area. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:
- (a) any written comments or submissions of the Concessionaire and third party;
  - (b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
  - (c) any other matters the Grantor considers relevant.
- 21.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 17 of Schedule 2.
- 21.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement Area must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Easement Area. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Area.
- 21.11 The Grantor must not authorise the third party to commence work on the Easement Area until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.
- 22. Are there any Special Conditions?**
- 22.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.
- 23. The Law**
- 23.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

### **SCHEDULE 3**

#### **SPECIAL CONDITIONS**

1. The rights implied in easements of vehicular right of way in the 5<sup>th</sup> Schedule of the Property Law Act 2007 as set out in Schedule 5 of this document are amended by:
  - (a) replacing the word, "grantee" with "Concessionaire"; and
  - (b) adding to Clause 2(a) the words, "after first obtaining the prior consent of the Grantor as required in clauses 7 and 8 of Schedule 2 of this easement."
2. The Right and Powers implied in easements under the 4<sup>th</sup> Schedule of the Land Transfer Regulations 2002 as set out in Schedule 5 of this Concession are varied as follows, the rights and powers in:
  - (a) Regulation 1 is amended by replacing the word, "grantee" with "Concessionaire"
  - (b) Regulation 6(3)(a) is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor as required in clauses 7 and 8 of Schedule 2 of this easement."
  - (c) Regulation 10(1) (b) is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor as required in clauses 7 and 8 of Schedule 2 of this easement."
  - (d) Regulation 11(2) is deleted and sub clause (4) is amended by deleting the reference to sub clause (2).
  - (e) Regulations 13 and 14 are deleted.
3. Nothing contained or implied in this easement requires the Grantor or the Concessionaire to supply services on or under the Easement Land or entitles the Concessionaire to interfere with the services of any other user of the Easement Land.
4. Nothing contained or implied in this easement enables the Concessionaire whether by subdivision or by any means whatsoever to have the within easement be available to or for additional users.
5. The Concessionaire has the right to repair and maintain any formed tracks on their existing alignment, including the right to enter the Servient Land with or without machinery as necessary. Maintenance outside of the existing alignment undertaken by the Concessionaire requires the prior consent in writing of the Grantor.
6. The cost of maintaining any formed tracks shall be at the sole cost of the Concessionaire.
7. 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.
8. 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.

9. The pipeline intake to be suitably disguised so as to blend in with the surroundings.
10. The pipeline is to be laid 600mm below the surface of the ground where practicable.
11. Any vegetation removal and soil disturbance necessary to install and undertake the activity shall be kept to a minimum.
12. The surface of the ground is to be reinstated in a tidy manner following installation of the pipeline intake and pipeline. This is to be to the satisfaction of a DOC representative, Twizel District Office when the work is complete.
13. No alterations to the pipeline requiring earth disturbance to be undertaken without prior consent in writing of the Grantor.
14. The Concessionaire must ensure that all gravel and other materials used in undertaking the Concession Activity, must be cleaned and weed free prior to being taken onto the Easement Land.
15. The Concessionaire must ensure that all gravel and other materials used in undertaking the Concession Activity are from a weed free source.
16. The Concessionaire is to take reasonable and proper care not to damage any property of the Grantor and must promptly repair any such damage.
17. If the Concessionaire opens up the surface of the Easement Land the Concessionaire must immediately upon completion of any works restore the surface of the Easement Land as nearly as possible to its former condition to the satisfaction of the Grantor. If the Concessionaire fails to restore the surface of the Easement Land to the satisfaction of the Grantor, the Grantor may complete the restoration and recover the costs and expenses of so doing from the Concessionaire as a debt due to the Grantor.
18. The Concessionaire shall keep all pipelines and structures on the Easement Land and their surroundings in a clean and tidy condition to the satisfaction of the Grantor. Any surplus materials and rubbish is to be removed and not retained on the Easement Land.
19. The Concessionaire shall ensure no fires are to be lit on the site and extreme care taken with equipment likely to start fires. The concessionaire shall ensure that the DOC Twizel District Office is notified in the event of wildfire threatening the land.
20. The Concessionaire shall comply with all guidelines and notices published by Biosecurity New Zealand regarding measures to prevent and avoid the spread of the pest organism *Didymosphenia geminata* (Didymo).
21. The Concessionaire must take all reasonable care to avoid any archaeological values on the Easement Land. If any archaeological evidence is uncovered, the Concessionaire must stop all works immediately and notify the DOC Twizel District Office. Works may not recommence until authorised by the DOC Twizel District Office to do so.

**SCHEDULE 4**

**Substantive Proposal Designations Plan**

**SCHEDULE 5**

**REFER SCHEDULE 3 SPECIAL CONDITIONS 1 AND 2 FOR VARIATIONS**

**RIGHTS AND POWERS IMPLIED IN EASEMENTS**

**A. FIFTH SCHEDULE PROPERTY LAW ACT 2007**

**Rights implied in easements of vehicular right of way**

**1. Right to pass and re-pass**

- (1) The grantee and the grantor have (in common with one another) the right to go, pass, and re-pass over and along the land over which the right of way is granted.
- (2) That right to go, pass, and re-pass is exercisable at all times, by day and by night, and is exercisable with or without vehicles, machinery, and equipment of any kind.
- (3) In this clause, the grantee and the grantor include agents, contractors, employees, invitees, licensees, and tenants of the grantee or the grantor.

**2. Right to establish and maintain driveway**

The owners and occupiers of the land for the benefit of which, and the land over which, the right of way is granted have the following rights against one another:

- (a) the right to establish a driveway on the land over which the right of way is granted, and to make necessary repairs to any existing driveway on it, and to carry out any necessary maintenance or upkeep, altering if necessary the state of that land after first obtaining the prior consent of the Grantor as required by clauses 7 and 8 of Schedule 2 of this Easement; and
- (b) any necessary rights of entry onto that land, with or without machinery, plant, and equipment; and
- (c) the right to have that land at all times kept clear of obstructions, whether caused by parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the driveway; and
- (d) the right to a reasonable contribution towards the cost of establishment, maintenance, upkeep, and repair of the driveway to an appropriate standard; and
- (e) the right to recover the cost of repairing any damage to the driveway made necessary by any deliberate or negligent act of a person bound by these covenants or that person's agents, contractors, employees, invitees, licensees, or tenants.

**3. Right to have land restored after completion of work**

- (1) This clause applies to a person bound by these covenants (person A) if a person entitled to enforce these covenants (person B) has undertaken work, in accordance with the right conferred by clause 2(a) or with an order of a court, on the land over which a right of way is granted.
- (2) Person A has the right, after the completion of the work, to have the land restored as far as possible to its former condition (except for the existence of the driveway).
- (3) That right of person A is subject to person B's right, in accordance with clause 2(d), to receive a reasonable contribution towards the cost of the work.

**B. LAND TRANSFER REGULATIONS 2002**

**1. Interpretation**

In this schedule, unless the context requires otherwise,—

**dominant land**, in relation to an easement, means the land that takes the benefit of the easement and that is described by reference to the register in a transfer instrument, easement instrument, or deposit document

**easement facility**,—

- (a) in relation to a right to convey water, means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (b) in relation to a right to convey electric power or a right to convey telecommunications and computer media, means wires, cables (containing wire or other media conducting materials), towers, poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (c) in relation to a right of way, means that part of the surface of the land described as the stipulated area:
- (d) in relation to a right to drain water, means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (e) in relation to a right to drain sewage, means pipes, conduits, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (f) in relation to a right to convey gas, means pipes, conduits, valves, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution

**grantee**, in relation to an easement,—

- (a) means—
  - (i) the registered proprietor of the dominant land; or
  - (ii) the person having the benefit of an easement in gross; andincludes the agents, employees, contractors, tenants, licensees, and other invitees of the grantee

**grantor**, in relation to an easement,—

- (a) means the registered proprietor of the servient land; and
- (b) includes the agents, employees, contractors, tenants, licensees, and other invitees of the grantor

**servient land**, in relation to an easement, means—

- (a) the parcel of land over which an easement is registered and that is described by reference to the register in a transfer instrument, easement instrument, or deposit document:



**5. Right to drain sewage**

1. A right to drain sewage includes the right for the grantee in common with the grantor and other persons to whom the grantor may grant similar rights to drain, discharge, and convey sewage and other waste material and waste fluids through the easement facility and over the servient land.
2. The right to drain, discharge, and convey sewage and other waste material and waste fluids is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.
3. The easement facility referred to in sub clause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.

**6. Rights of way**

1. A right of way includes the right for the grantee in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to go over and along the easement facility.
2. The right to go over and along the easement facility includes the right to go over and along the easement facility with or without any kind of—
  - (a) vehicle, machinery, or implement; or
  - (b) domestic animal or (if the servient land is rural land) farm animal.
3. A right of way includes—
  - (a) the right to establish a driveway, to repair and maintain an existing driveway, and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted after first obtaining the prior consent of the Grantor as required by clauses 7 and 8 of Schedule 2 of this Easement; and
  - (b) the right to have the easement facility kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials, or unreasonable impediment) to the use and enjoyment of the driveway.

**7. Right to convey electricity**

1. A right to convey electricity includes the right for the grantee in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to lead and convey electricity and electric impulses without interruption or impediment from the point of entry through the easement facility and over the servient land.
2. The right to convey electricity without interruption or impediment is limited to the extent required by any period of necessary renewal or repair of the easement facility.
3. The easement facility referred to in subclause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.

**8. Right to convey telecommunications and computer media**

1. A right to convey telecommunications and computer media includes the right for the grantee in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to lead and convey telecommunications and computer media without interruption or impediment from the point of entry through the easement facility and over the servient land.
2. The right to convey telecommunications and computer media without interruption or impediment is limited to the extent required by any period of necessary renewal or repair of the easement facility.
3. The easement facility referred to in subclause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.

**9. Right to convey gas**

1. A right to convey gas includes the right for the grantee in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to lead and convey gas without interruption or impediment from the point of entry through the easement facility and over the servient land.
2. The right to lead and convey gas without interruption or impediment is limited to the extent required by any period of necessary renewal or repair of the easement facility.
3. The easement facility referred to in subclause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.

**Rights and powers implied in all classes of easements**

**10. General rights**

1. All the easements referred to in this schedule include—
  - (a) the right to use any easement facility already situated on the stipulated area or course for the purpose of the easement granted; and
  - (b) if no suitable easement facility exists, the right to lay, install, and construct an easement facility reasonably required by the grantee (including the right to excavate land for the purpose of that construction) after first obtaining the prior consent of the Grantor as required by clauses 7 and 8 of Schedule 2 of this Easement.
2. The grantor must not do and must not allow to be done on the servient land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.
3. the grantee must not do and must not allow to be done on the dominant land or the servient land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

**11. Repair, maintenance, and costs**

1. If the grantee (or grantees, if more than 1) has (or have) exclusive use of the easement facility, each grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.

2. If the grantee (or grantees, if more than 1) and the grantor share the use of the easement facility, each of them is responsible equally for the repair and maintenance of the easement facility, and for the associated costs, for the purposes set out in subclause (1).
3. If the easement is in gross, the grantee bears the cost of all work done outside the servient land.
4. The parties responsible for maintenance under subclause (1) or subclause (2) (as the case may be) must meet any associated requirements of the relevant local authority.

**12. Rights of entry**

1. For the purpose of performing any duty or in the exercise of any rights conferred under these regulations or implied in any easement, the grantee may—
  - (a) enter upon the servient land by a reasonable route and with all necessary tools, vehicles, and equipment; and
  - (b) remain on the servient land for a reasonable time for the sole purpose of completing the necessary work; and
  - (c) leave any vehicles or equipment on the servient land for a reasonable time if work is proceeding.
2. The grantee must ensure that as little damage or disturbance as possible is caused to the servient land or to the grantor.
3. The grantee must ensure that all work is performed in a proper and workmanlike manner.
4. The grantee must ensure that all work is completed promptly.
5. The grantee must immediately make good any damage done to the servient land by restoring the surface of the land as nearly as possible to its former condition.
6. The grantee must compensate the grantor for all damages caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the servient land.

**13. Default**

Deleted

**14. Disputes**

Deleted

**Appendix 6: Form of Covenant to be created over that part of the land labelled CC1**

See attached.

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 the 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, landscape amenity, wildlife habitat, freshwater life habitat, 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 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;
- 1.2.3 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;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 words importing one gender include the other gender;
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

**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 grant to the Minister or authorised agent of the Minister or any employee or contractor of the Director-General, a right of access at all times on and to the Land, with or without motor vehicles, machinery, and implements of any kind, for purposes associated with the management of this Covenant;
  - 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 objectives specified in clause 2.1;

5.1.3 prepare, in consultation with the Owner, a monitoring plan to assist the parties to meet the objectives 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, ASSIGNMENT OR OTHER DEPOSAL OF LAND**

7.1 If the Owner sells, leases, or parts with possession of the Land, or hands over control of the Land to any other person, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, assignee or manager to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, assignee or manager to ensure that on any subsequent sale, lease, assignment, or change in control of the Land, any subsequent purchaser, lessee, assignee or manager must also comply with the terms of this Covenant including this clause.

7.2 A Transferee of the land will at law be bound by the registered Covenant. Such transfer is deemed to provide the agreement to comply with the terms of this covenant required by Clause 7.1

**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, notwithstanding that the Land may from time to time be sold or otherwise disposed of.

**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 email addressed to the receiving party at the address or email address 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 email, on the day on which it is dispatched if that is a Working Day or, if it is not a Working Day or if it is dispatched after 5.00pm, on the next Working 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. FURTHER AGREEMENT AND APPROVAL**

- 13.1 Where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.
- 13.2 Where clauses in this Covenant require the approval of the Minister such approval must not be unreasonably withheld.

## **14. SPECIAL CONDITIONS**

- 14.1 Special conditions relating to this Covenant are set out in Schedule 2.
- 14.2 The standard conditions contained in this Covenant 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: \_\_\_\_\_

**SCHEDULE 1**

**1. Description of Land**

**CC1 - Haldon Downs**

All that piece of land containing 1,120 hectares approximately shown shaded yellow on the plan attached to the Proposal and labelled CC1.

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

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

Minister of Conservation  
C/- Director Conservation Partnerships  
South and Eastern South Island Region  
Department of Conservation  
Conservation House  
77 Stuart Street  
P O Box 5244  
DUNEDIN 9058  
Phone: (03) 477 0677  
Fax: (03) 474 7090  
Email: [dunedinvc@doc.govt.nz](mailto:dunedinvc@doc.govt.nz)

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

Haldon Station Limited  
Address for Service  
Level 5, 57 Fort Street,  
Auckland 1010  
New Zealand  
Contact persons: Edward Klisser or Paddy Boyd  
Phone: 03 680 6631  
Email: [haldon.station@xtra.co.nz](mailto:haldon.station@xtra.co.nz)

<sup>1</sup> State street address as well as any Post Office Box number.

3. **Values of Land to be Protected (Section 77, Reserves Act 1977)**

**CCI-Haldon Downs Tussock Grasslands – Natural Environment and Landscape Amenity**

- The Land supports extensive intact narrow leaved snow tussock grasslands with a high diversity of native intertussock species.
- The Land provides extensive additional habitat for the threatened plants, *Kirkianella novae-zelandiae* (Threatened: Nationally vulnerable), mat broom, *Carmichaelia vexillata* (At Risk: Declining) and coral broom, *Carmichaelia crassicaule* (At Risk: Declining).
- The Land provides feeding and potential breeding habitat for two at risk bird species: black shag (At Risk: Naturally Uncommon) and New Zealand pipit (At Risk: Declining).
- The kettleholes on the Land are an originally rare ecosystem.
- The Land buffers areas proposed for conservation protection to the north and south of the Land.
- The Land contributes to the significant natural landscape that Haldon Downs forms. Haldon Downs is a unique landform and a distinctive feature of the upper Stony River basin. The ouesta landform combined with the dominant tussock cover, are visually impressive and distinctive. These features contrast with the flats and lowlands.
- The Land contributes to the ecosystem services of the area by including the catchments of some of the headwater tributaries of Stony River which provides opportunities for the protection of water quality and quantity for downstream uses.
- The Land contributes to carbon sequestration through natural regeneration of native plant communities.

## SCHEDULE 2

### Special Conditions

- 1.0 Notwithstanding the provisions of clause 3.1 the following shall apply;
- 1.1 Grazing of the Land by up to 2500 head of sheep for three weeks maximum per block and followed by up to 250 head of cattle for three weeks maximum per block is allowed during the period 1 February to 31 May.
  - 1.2 Routine maintenance of all existing formed tracks and fences within their current alignment on the Land is permitted. Any new work undertaken outside the existing alignment or further upgrading of tracks and fences or new tracks and fences within the Land requires the prior written approval of the Minister.
  - 1.3 Topdressing is permitted on the Land except within a 20 metre margin of watercourses.
  - 1.4 Not with standing clause 3.1,2 clearance of exotic weeds on the Land by the Owner using mechanical and chemical means is permitted.
  - 1.5 Not with standing clause 3.2.1 and 3.2.3, the Owner must control wilding trees on the Land and must prevent them seeding. The Owner will bear the cost of this work. Should the Owner fail to undertake this work on the Land, the Minister may arrange to have this work undertaken and the Owner will be responsible for the costs of such work, which may include the reasonable costs of the Minister. Where the liabilities are significant, the Owner will submit to the Minister an agreed eradication plan for the control of wilding trees on the Land.
  - 1.6 Plantation forestry is not permitted on the Land.
  - 1.7 The Owner will permit Department of Conservation staff and their contractors entry upon the Land at all times, for purposes associated with the management of this covenant.
  - 1.8 The Minister may design and undertake a monitoring programme for the Land:
    - to ensure that the ecological integrity of the Land and associated vegetation and fauna is maintained.
    - To enable the monitoring of any effects on the vegetation cover and conditions, faunal values and any other conservation values in the Land.
    - 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 Land 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 Land area and adjusting stock access and grazing on the Land. The Minister will liaise with the Owner in implementing these measures and the Owner will cooperate in the giving effect to any measures considered necessary by the Minister in relation to the Land. The description of the monitoring programme that may be established is specified in Schedule 3.

### SCHEDULE 3

#### DESCRIPTION OF THE MONITORING PROGRAMME.

##### 1. Responsibilities:

An indigenous vegetation monitoring programme will be established on the Land by the Minister (Yr1). Re-monitoring will occur the year following the commencement of monitoring (i.e. Year 2) and then every 5 years after that. The re-monitoring is to be organised by the Owner with the assistance of the Minister.

The monitoring is intended to be a management tool, allowing the Minister and the Owner to make informed decisions about the continued management of the Land. This tool will develop and implement a system for assessing the impact of sheep grazing on the indigenous plant populations, species, communities, and ecosystems on this Land formerly part of Kirkliston Station.

The objectives are:

1. Establish a series of monitoring plots or points focussing on areas where stock grazing is likely to be most pronounced.
2. Use these points to establish baseline information about the indigenous plant populations, species, communities, and ecosystems of the Land.
3. After year 2, at 5 yearly intervals, re-monitoring each of the plots or points and use this data to compare with previous monitoring occasions.

The Minister will be party to the re-monitoring by providing one staff member to assist with the physical monitoring on the Land. The Minister will be consulted as to the selection of a suitably qualified monitoring provider (which does not preclude the Owner undertaking this work to an acceptable standard). The Minister will be given a copy to the monitoring report in a format nominated by the Minister.

##### 2. Costs:

The Minister will be responsible for the cost of establishing the monitoring. The Owner will be responsible for the cost of repeat monitoring and the report write up. The Minister will cover his/her own staff cost in assisting re-monitoring.

##### 3. Monitoring Methods:

###### Photopoint Monitoring

A series of general repeatable photo point sites will be established on the Land. The purpose of these photo points is to detect deterioration of the tussock grasslands being recorded as a consequence of sheep impacts and other management practices.

This will be done using permanent landscape photo-points. (The number is to be decided by the Minister when setting up the monitoring). The location of each photo-point is to be recorded using GPS, and the pictures analysed to determine relative cover of tussock, *Hieracium*, rock/soil, and intertussock species. Site selection will occur when the monitoring is first established.

Within the Land photo points will consist of a series of general landscape photos to ensure that conditions of the covenant are complied with along with specific monitoring that may identify detrimental impacts as follows:

- within tussock grassland areas will include:
  - Observations of stock damage to the vegetation, impacts of trampling and browsing and impacts on regeneration, along with any loss of biodiversity that may occur as a direct result of grazing.



### Permanent Plot Monitoring

A series of permanently marked 20 x 20m plots will be established within the Land; with the exact number to be decided by the Minister after a detailed analysis of altitude, aspect and vegetation community factors. Site selection will occur when the monitoring is first established, but will use the criteria set out in this document. The location of the plots is to be targeted on fragile ecosystems where sheep grazing is likely to be most pronounced; as decided by the Minister and in consultation with the Owner. It is envisaged that 5-6 plots may be implemented.

Each site will be marked using a warratah at the top NW corner and aluminium pegs used to mark the other corners.

For each plot, recording will include the aspect and slope, a compiled full list of vascular species and a cover estimate (not cover classes) for each species listed.

Within each plot monitoring may also include height-frequency sampling using four equally spaced transects. The height-frequency of plants is to be sampled at 0.5m along each transect, and follow the methodology described by Wisser and Rose (1997).

### Threatened Plant Monitoring

There may be locations identified within the Land containing threatened plant species. Site selection will occur when the monitoring is first established. These species will be established on site and may include (but are not restricted to) coral broom (*Carmichaelia crassicaulis*) and *Kirkianella novae-zelandiae*. These will be representative of the grazing-sensitive communities in the *Chionochloa rigida* tussockland habitats. At each location, all individuals of each species are to be tagged and recorded for each individual's height and level of browse (low, medium, high).

### Land Management

The Owner will maintain a record of stock numbers grazed within the Land, as well as any other significant factors affecting the stocking and stock management of the Land. This could include major stock trespass from broken fences.

The Owner will keep climate records as appropriate including rainfall.

### **4. Monitoring Results:**

Following monitoring, results along with grazing and climate records will be discussed between the Owner and the Minister.

Should it be noted as a result of monitoring that sheep or other management practices are having a detrimental impact on the values of the Land then the Minister will take significant steps to prevent this continuing, which may include such measures as requiring fencing, or reducing stock numbers. These measures will be undertaken at the owner's cost and with no compensation payable.

- For clarity, a 10% decline in cover of a significant species (e.g. *Chionochloa rigida*) in a permanent plot would be considered significant enough to trigger this active management.

GRANT of

Correct for the purposes of the  
Land Transfer Act 1952  
Solicitor for the Minister

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

COMMISSIONER OF CROWN  
LANDS

to

MINISTER OF CONSERVATION

---

Solicitor

Department of Conservation

DUNEDIN/CHRISTCHURCH

docDM-1359178 - Kirkliston - Reserves Act Conservation Covenant - August 2014

**Execution Section**

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

**SIGNED** for and on behalf of the  
**Commissioner of Crown Lands**  
by Brian John Usherwood pursuant  
to a delegation under the Crown  
Pastoral Land Act 1998 in the  
presence of:



\_\_\_\_\_  
Brian John Usherwood



\_\_\_\_\_  
Witness


SOLICITOR

\_\_\_\_\_  
Occupation

4102 - Wellington

\_\_\_\_\_  
Address

**SIGNED** for and on behalf of  
**Haldon Station Limited**  
by two of its directors:



\_\_\_\_\_  
[name of director] Jahan Klesner



\_\_\_\_\_  
[name of director] Janna Klesner,