

Crown Pastoral Land Tenure Review

Lease name : MORVEN HILLS

Lease number : PO 359

Preliminary Proposal – Part 1

A Preliminary Proposal is advertised for public submissions as per Section 43 of the Crown Pastoral Land Act 1998.

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

March

15

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

Date:

Parties

Holder:

Morven Hills Limited
C/- Ibbotson Cooney Limited
Level 1, 69 Tarbert Street
ALEXANDRA

Commissioner of Crown Lands:

C/- Crown Property
CBRE House
112 Tuam Street
Christchurch 8140
Private Bag 4721

Attention: Karyn Lee

The Land

Lease:	Morven Hills
Legal Description:	Part Runs 678 and 679, Run 680 Lindis Survey District, Section 2 Block V Lindis Survey District, and Sections 1 and 2 SO 20678.
Area:	14207.2797ha (more or less)
Certificate of Title/Unique Identifier:	OT338/20

Summary of Designations

Under this Proposal, the Land is designated as follows:

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

1 The Plan

2 Conditions

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

3 Settlement

- 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

- 4.1 By 3.00 p.m. on the Settlement Date, the Holder must pay the Holder's Payment and all other money payable to the Commissioner or the duly appointed agent of the Commissioner by bank cheque without set-off or deduction of any kind in accordance with the settlement requirements of the Commissioner.
- 4.2 If the Holder fails to pay the Holder's Payment or any part of it or any other money to the Commissioner or to the duly appointed agent of the Commissioner on the Settlement Date clause 19 will apply.

5 Commissioner's Payment

- 5.1 The Commissioner shall pay the Commissioner's Payment to the Holder on the Settlement Date.

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

6 Vesting of Crown Land

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

7 Issue of Certificate of Title

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

8 Registration of Documents

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

9 Consents

- 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

- 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

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

- (iii) erect the Fencing in a position different from that shown on the Plan;
 - (iv) erect the Fencing over a shorter distance than that shown on the Plan; or
 - (v) erect the Fencing to specifications different from those in Appendix 3.
- 11.3 If the Commissioner has not completed the Fencing by the Settlement Date, the Holder agrees that the Commissioner may register a covenant, on terms entirely satisfactory to the Commissioner (in the Commissioner's sole discretion), over the Freehold Land to enable the Commissioner to complete the Fencing. The Holder will do all things necessary (including signing any document) to enable the Commissioner to register such a covenant.
- 11.4 The ongoing maintenance of the Fencing referred to in clauses 11.1 and 11.2 will be subject to the terms of the Fencing Act 1978.
- 11.5 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, the Commissioner 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

- 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

- 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

- 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; andthe 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

- 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

- 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

- 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

- 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

- 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 10th 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 10th working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration.
- 20.7 The Commissioner will pay GST (if any) on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.8 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
 - (b) any Default GST.

21 Lowest price

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

22 Costs

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

23 No nomination or assignment

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

24 Recreation Permit

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

25 Consents for Activities

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

26 General

- 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

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 15th 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

1 Details of Designation

- 1.1 Under this Proposal the land shown edged in pink and labelled SCR on the Plan, being 5 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as a Scientific Reserve.

2 Schedule One Improvements

Nil

Schedule Two: Provisions relating to the Schedule Two Land

1 Details of designation

1.1 Under this Proposal the land shown shaded in pink with diagonal lines and labelled SR1 on the Plan, being 268 hectares (approximately) is designated as land to be restored to or retained in Crown control as a Scenic Reserve subject to:

- (a) the continuation in force of an easement in gross in favour of Telecom New Zealand Limited recorded as transfer 5010363.2 and substantially as set out in Appendix 13.

1.2 Under this Proposal the land shown shaded in pink and labelled CA1 on the Plan, being 3,294.2797 hectares (approximately) is designated as land to be restored to or retained in Crown control as a Conservation Area subject to:

- (a) the granting of a grazing concession shown on the Plan in pink cross hatched lines and labelled GC, substantially as set out in Appendix 11;
- (b) the granting of an easement concession shown on the Plan as a dashed blue line, labelled d-e substantially as set out in Appendix 12;
- (c) the continuation in force of an easement in gross in favour of Telecom New Zealand Limited recorded as transfer 5010363.2 and substantially as set out in Appendix 13.

2 Information Concerning Proposed Concessions

2.1 Easement Concession for Farm Management purposes

[Explanatory note: This information is required in the event that the CCL accepts the recommendation of the Director-General to designate land as land to be restored to or retained in Crown control subject to the granting of a concession or over which a concession is to be granted. This information must be provided for each concession if more than one is proposed.]

1. Description of proposed activities [s.39(a)]:

An easement concession for farm management purposes only for the concessionaire (including the concessionaire's tenants and contractors) on foot, on or accompanied by horses, by motor vehicles, with or without machinery and implements of any kind, guns and farm dogs.

2. Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]

The easement route follows an existing formed farm track known as the Pylon Track that is within proposed conservation area CA1 in part and then travels north through proposed scenic reserve SR1 described as d-e on the designations plan.

3 Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) of the CPLA

The easement concession for farm management purposes is over an existing access track which has traditionally been used in the management of the property. Access will be confined

to the line of the existing access track where this activity has always taken place so effects will generally be limited and confined to the width of the easement area which is 10 metres. Any effects will be mitigated by the terms of the concession. The concessionaire 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.

3. Details of the proposed types of concession:
The proposed easement concession will be in terms of Section 17Q(1) Conservation Act 1987.
4. Proposed duration of concession and reasons for proposed duration [s.39(e)]:
 - a) Proposed duration- 60 years
 - b) Reasons for proposed duration-
The easement concession is required to ensure the continued access to and from the proposed freehold and the Omarama-Lindis Pass Road.
5. Relevant information about the proposed grantee including information relevant to the grantee's ability to carry out the proposed activity [s.39(f)]:
 - a) Proposed grantee- Morven Hills Limited
 - b) Relevant information-
It is expected that the concessionaire will honour the terms and conditions of the concession and will have a positive working relationship with Departmental staff.

N.B. The preparation of this information is not intended to imply consent under s.41 of the CPLA.

2.2 Phase out Grazing Concession

[Explanatory note: This information is required in the event that the CCL accepts the recommendation of the Director-General to designate land as land to be restored to or retained in Crown control subject to the granting of a concession or over which a concession is to be granted. This information must be provided for each concession if more than one is proposed.]

1. Description of proposed activities [s.39(a)]:
A phase out Grazing Concession for up to 0.37SUE per hectare from 1 February to 10 May in each year during the proposed term of the Grazing Concession. One merino ewe equates to 0.8 stock unit.
2. Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]:
The Grazing Concession is over the area known as Bluecliffs Block. The area will be designated as land to be restored to Crown control as a Conservation Area and adjoins a larger area of land designated as land to be restored to Crown control as Conservation Area. (marked CA1 on the designations plan)
3. Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) of the CPLA
The carrying capacity for the term of the concession is to be determined through further consultation between the Holder, LINZ Agent and DoC staff.
DOC staff will periodically visit the proposed conservation land as part of the normal management regime and will therefore be aware if the concession activity is having any negative effects.
4. Details of the proposed types of concession:
The proposed concession will be in terms of Section 17Q Conservation Act 1987.

5. Proposed duration of concession and reasons for proposed duration [s.39(e)]:
 - a) Proposed duration- The concession will be for a term of 5 years with no right of renewal.
 - b) Reasons for proposed duration-
This is phase out grazing only. The term is to provide the Holder with time to modify farming practice to accommodate land previously grazed as part of the pastoral lease that is being retained by the crown as conservation area.

6. Relevant information about the proposed grantee including information relevant to the grantee's ability to carry out the proposed activity [s.39(f)]:
 - a) Proposed grantee- Morven Hills Limited
 - b) Relevant information-
It is expected that the concessionaire will honour the terms and conditions of the concession and will have a positive working relationship with Departmental staff.

N.B. The preparation of this information is not intended to imply consent under s.41 of the CPLA.

Schedule Three: Provisions relating to the Schedule Three Land

1 Details of designation

- 1.1 Under this Proposal the land shown shaded green or yellow on the Plan, being 10,640 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) conservation covenant one shown marked in yellow wash and labelled "CC1" and "CC1a" on the Plan and substantially as set out in Appendix 4;
 - (d) conservation covenant two shown marked in yellow wash and labelled "CC2" on the Plan and substantially as set out in Appendix 5;
 - (e) conservation covenant three shown marked in yellow wash and labelled "CC3" on the Plan and substantially as set out in Appendix 6;
 - (f) conservation covenant four boundary shown with a blue line and labelled "CC4" on the Plan and substantially as set out in Appendix 7;
 - (g) conservation covenant five shown marked in yellow wash and labelled "CC5" on the Plan and substantially as set out in Appendix 8;
 - (h) the easements shown with a dashed orange line and labelled a-b-c, b-d on the Plan and substantially as set out in Appendix 9;
 - (i) the easement shown with a dashed red line and labelled k-l on the Plan and substantially as set out in Appendix 10;
 - (j) the continuation in force of an easement in gross in favour of Telecom New Zealand Limited recorded as transfer 5010363.2 and substantially as set out in Appendix 13;
 - (k) the continuation in force of a registered Deemed Permit pursuant to Section 417(2) of the Resource Management Act 1991 in favour of Brian Alexander McCaughan and Sheila Ellen McCaughan, registered as transfer 928124 and substantially as set out in Appendix 14;
 - (l) the continuation in force of a registered Mining Permit No 41 625 in favour of Richard Gibson Snow and Annie Louise Snow, registered as transfer 5058889.1 and substantially as set out in Appendix 15;

Schedule Four: Conditions

- 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 covenant 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 covenant 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.
 - (f) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 7 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease.
 - (g) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 8 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease.
 - (h) the Commissioner has reviewed, and is satisfied, in its sole discretion that the easement referred to in Appendix 9 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease.
 - (i) the Commissioner has reviewed, and is satisfied, in its sole discretion that the easement referred to in Appendix 10 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:

Appendix 2: Example of Solicitors Certificate

Certifications

I [] hereby certify as follows:

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

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

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

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

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

Yours faithfully

[signed by principal of law firm]

Appendix 3: Indicative Fencing and Construction Requirements

New fenceline – 7 wire sheep/cattle fence:

Length and location:	A-B	5,875m (approximately)
	C-D	4,995m (approximately)

Type: Fence to be a standard 7 wire sheep/cattle fence

Specifications

- Fence to be constructed of six HT (2.4mm) wires with a bottom No 8 wire located on the line shown on the plan, subject to further consultation.
- One 4.2 metre heavy duty cyclone gate to be erected on each section in a position to be specified.
- 2.1 metre treated timber strainers with treated stays to be used for gateways and ends of strains.
- Hunter chain and clips to be used to support wires on sections of the fencelines that are snow prone.
- 1.8 metre x 100-125mm treated timber posts to be used where required.
- All strainers, angle posts and dip posts to be driven or dug in and rammed and footed with acceptable footing material. No8 or 9 wires to be used on foots. All dips and hollows to be tied down.
- T-irons may be used with crossbar instead of posts on high spots and on corners, with tie-backs.
- Netting to be hung on any creek crossings and left to swing.
- All strainers and angles to be mortised stayed and blocked. Stays to be one-third of the way up posts.
- Tie-backs are permitted on both sides of the fence.
- All wires are to be securely and neatly tied off and strained evenly. Bottom wire to be kept 15 cm off the ground. The line to be cleared manually where required.
- Post staples (barbed) to be driven well in but allow the wire to run through.
- Strains not to exceed 400 metres on easy country for HT wire and 250 metres for No8 wire.
- Posts to be driven or dug in to such a depth that 112cm (44") remains out of the ground.
- Strainers and angle posts to be dug in to such a depth that 117cm (46") remains out of the ground.
- Under no circumstances are any strainers, post or stays to be shortened either prior to or subsequent to their placement in the ground.
- Six waratah standards per 20 metres to be used Waratah standards to be mostly 1.8m long with 1.65m standards allowed on rocky ground.
- Triplex strainers to be used on all strains.
- Lightning droppers to be used where required on either side of gateways.

The Construction Works

Lines must be cleared manually as required. For the avoidance of doubt there is to be no line clearance other than by hand. If in the course of the fencing work it is considered that a specific section of line should be cleared using machinery, then a separate consent from LINZ will be required prior to any work being undertaken. Such consent is to be sought by LINZ's implementation contractor and approval will require an undertaking of:

- Minimal vegetation disturbance
- Not to cause slope instability
- Not to cause erosion or siltation

Should any earthworks be considered then a Works Consent from the Otago Regional Council must be obtained under the Resource Management Act 1991.

Appendix 4: Form of Covenant CC1 to be Created

DATED _____

Between

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

and

MINISTER OF CONSERVATION
(“the Minister”)

COVENANT UNDER CONSERVATION ACT 1987
AND THE 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 27 of the Conservation Act 1987 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. Section 27 of the Conservation Act 1987 provides that a covenant for conservation purposes may be granted or reserved over any land in favour of the Minister; and section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of the lands Reserve Values.
- C. The Land contains Conservation Values and Reserves Values worthy of protection
- D. The parties agree that the Land should be managed.
 - (i) for Conservation Purposes in order to protect the Conservation Values; and
 - (ii) so as to preserve the Reserve Values,

Which purposes can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.

- E. An approved plan designating the Land as land over which a Covenant under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 is to be created has been registered under section 64 of the Crown Pastoral Land Act 1998.
- F. The Commissioner of Crown Lands has agreed to grant the Minister a Covenant over the Land:
 - (i) for Conservation Purposes; and
 - (ii) to preserve the Reserve Values

OPERATIVE PARTS

In accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977, and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Commissioner of Crown Lands and Minister agree as follows:

1. INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

“Conservation Purposes” means the preservation and protection of natural and historic resources including Conservation Values on the Land for the purpose of maintaining their intrinsic values, providing for

their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

“Conservation Values”	means the Conservation Values specified in Schedule 1.
“Covenant”	means this Deed of Covenant made under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977.
“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.
“Mineral”	means any mineral that is not 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.
“Reserve 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 situated.
“Values”	means the Conservation Values and the Reserve Values.

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 references to clauses are references to clauses in this Covenant.
- 1.2.3 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 seek to determine the issue, the parties must have regard to the matters contained in the Background.
- 1.2.4 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.
- 1.2.5 words importing the singular number include the plural and vice versa.

- 1.2.6 words importing one gender include the other gender.
- 1.2.7 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

2. OBJECTIVES OF THE COVENANT

- 2.1 The Land must be managed:
 - 2.1.1 for Conservation purposes;
 - 2.1.2 so as to preserve the Reserve Values;
 - 2.1.3 to provide, subject to this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

3. IMPLEMENTATION OF OBJECTIVES

- 3.1 Unless agreed in writing by the parties the Owner must not carry out or permit 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 the 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 Conservation Values or Reserve Values of the Land;
 - 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 and replace all such Fences when reasonably required except as provided in clause 5.1.2;
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
 - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.
- 3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister may pay the Owner a proportionate share of:
- (a) the repair or maintenance of fences on the Land if the work has first been approved by the Minister;
 - (b) the eradication or control of all animal and plant pests, and the removal of exotic tree species if:
 - (i) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
 - (ii) the Minister has first approved the work.
- 3.5 The proportionate share which may be payable by the Minister under clause 3.4 is to be calculated having regard to the purpose of any expenditure with the intent that:
- (a) expenditure essentially for conservation purposes only will be borne by the Minister;
 - (b) expenditure essentially for farming purposes only will be borne by the Owner;
 - (c) where the expenditure is partly for conservation purposes and partly for farming purposes then the expenditure will be borne by the parties equally or in such other proportion as they may agree and failing agreement as may be determined by the process set out in clause 12.

4. PUBLIC ACCESS

- 4.1 The Owner must, subject to this Covenant, allow the public to enter upon the Land and no specific permission or authority is required from the Owner for such entry.

5. THE MINISTER'S OBLIGATIONS AND OTHER MATTERS

- 5.1 The Minister must

- 5.1.1 Have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant;
- 5.1.2 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, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

- 5.2 The Minister may:

- 5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2 subject to any financial statutory or other constraints which may apply to the Minister from time to time;
- 5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.
- 5.2.3 prepare, in consultation with the Owner, a monitoring plan to assist the parties to meet the objectives specified in clause 2.

6. JOINT OBLIGATIONS

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.

7. DURATION OF COVENANT

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

8. OBLIGATIONS ON SALE, ASSIGNMENT OR OTHER DEPOSAL OF LAND

- 8.1 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..
- 8.2 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 8.1.

9. MISCELLANEOUS MATTERS

- 9.1 **Rights**

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

9.2 **Trespass Act:**

9.2.1 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;

9.2.2 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.

9.3 **Reserves Act**

9.3.1 In accordance with section 77(3) of the Reserves Act 1977 but 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.

9.4 **Titles**

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

9.5 **Acceptance of Covenant**

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

9.6 **Fire**

9.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wild fire threatening the Land.

9.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister may render assistance to the Fire Authority in suppressing the fire if:

9.6.2.1 requested to do so; or

9.6.2.2 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.

10. **DEFAULT**

10.1 Where either the Owner or the Minister 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 Owner and the Minister 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 the dispute to mediation with a mediator agreed between them;

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. NOTICES

12.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent 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 2.

12.2 A notice given in accordance with clause 12.1 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 day is a Working Day or, if not a Working Day or if it is dispatched after 5.00pm, on the next Working Day after the date of dispatch.

12.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land and must supply the Minister with the name and address of the new owner or person in control.

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 3.

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 27 of the Conservation Act 1987 _____)
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ and acting under a _____)
Written delegation from the Minister of Conservation _____)
and exercising his/her powers under section 117 of the _____)
Reserves Act 1977 as designated Commissioner in the _____)
Presence of: _____)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

Coloured in yellow wash and labelled "CC1" and "CC1a" being approximately 3970 ha, on the Tenure Review Designations Plan attached as Plan 1.

2. Reserve Values of Land to be Protected

Area CC1

Natural Environment:

This covenant will protect the shrubland values including the riparian shrublands along the valley floors of Hogget Block, Farmers Gully, G-Mars, Station Range, Manuka Gullies, Hummocks and Davis blocks. The major species include matagouri, mingimingi, mountain wineberry (*Aristotelia fruticosa*), *Olearia odorata*, *Rubus schmidelioides* and *Muehlenbeckia complexa*. Other native components include *Melicytus alpinus*, koromiko (*Hebe salicifolia*), desert broom (*Carmichaelia petriei*), *Coprosma intertexta*, *Olearia fimbriata*, *Clematis marata*, *Parsonsia capsularis*, *Carmichaelia kirkii* and *Muehlenbeckia australis*.

Grey scrub is present on hillslopes. This relatively widespread community is dominated by matagouri, mingimingi and a variable amount of briar. Other native species include kanuka, *Olearia odorata*, desert broom, *Melicytus alpinus*, *Rubus schmidelioides*, *Muehlenbeckia complexa* and *Clematis marata*.

The following threatened/at risk species are present and along with their habitats are protected:

- *Carex inopinata* (plant) – Nationally Endangered
- *Olearia fimbriata* (plant) – Nationally Vulnerable
- *Pseudocoremia* sp. "knobby" (moth) – Nationally Endangered
- *Carmichaelia kirkii* - Declining
- *Anisotome cauticola* - Naturally Uncommon
- *Einadia allanii* – Naturally Uncommon
- *Colobanthus brevisepalus* – Naturally Uncommon
- *Urtica aspera* – Naturally Uncommon

The following originally rare ecosystems are present:

- cushionbog
- seepages and flushes

Landscape amenity:

The shrublands associated with deeply incised gullies and steep rocky terrain form significant landscape features within the broad undulating plateau landform. These shrublands were once much more widespread. They are important to retaining landscape character and sense of place. In addition, the often steep rocky outcrops and bluffs associated with the shrublands are visually impressive and distinctive.

Wildlife Habitat:

This covenant provides for the in situ management of Otago and grand skinks (*Oligosoma ottagense* and *O. grande*) which have a threat status of Nationally Critical. Known habitats are within this covenant area.

O. ottagense are believed to exist as a meta-population spread across rock outcrops. Migration movements between rocks are important for genetic flow between and thus long term health of the sub-populations on outcrops. Such migration movements are likely to be inhibited or unsuccessful if high predator levels are found in the landscape between rocks. Landscape scale connections of all sites on Morven Hills are thus critical to the future of the western populations of these skinks.

This covenant will ensure that the currently occupied sites and known habitat of threatened Otago and/or grand skinks (i.e. sites with historic records of occupancy) are not degraded as habitat and have the potential to be protected using current and potential future tools and methods. Protection can be considered at two scales. Localized protection should be used to ensure persistence of at least some of the population of Otago skinks at Morven Hills until such time as tools are developed to enable wide scale protection within available resources across the habitat currently encompassed by the property. This will allow other management actions including harvest for translocation or captive breeding of Otago skinks, and (re)introduction of both grand and Otago skinks from other populations or captive stock to ensure viable populations and potentially leverage any protection for the benefit of the second species.

Localized protection has been effectively demonstrated by DOC at Macraes Flat (and by the Central Otago Ecological Trust at Aldinga) using mammal-proof fences. This covenant allows for guaranteed access rights for the construction and subsequent regular upkeep of any type of fence including mammal-proof fences. This covenant provides the flexibility to undertake fencing of any type should it be considered necessary in the future, accepting however that it would lack the security of full Crown ownership.

Wide scale protection has also been demonstrated by DOC at Macraes Flat (where intensive predator control over an area of 4600ha enables population increase of skinks in habitat buffered by 1.5km of trapping protection). The effort required to achieve the necessary degree of predator reduction is probably beyond what can be resourced using current tools in the terrain at Morven Hills. New tools are being developed which are likely to make future protection across the required areas in this terrain affordable. Consequently, it is desirable to ensure that buffered predator protection of the identified skink habitat be enabled whenever methods and resources allow it to be applied.

Area CC1a

Dip Faces Values – Natural Environment, Wildlife Habitat, Historical Values:

The Pass Burn face is an area of considerable ecological diversity with a number of rare ecosystems and species. The historic sheep dip and other sites adjacent to the Lindis are included within this area. As the important shrubland values are also on the true left of Dip Creek, a margin on this side is also included within this area.

The Dip Creek dip site is a rare surviving example of a sheep dip used by high country farmers to wash fleeces prior to shearing to remove dirt and grease. Dipping the sheep lessened the weight of the wool which reduced the weight of wool bales transported by bullock wagon. It is difficult to determine how much of the dip features are intact.

The threatened Otago skink is present at least one site here. The western populations of *O. otagense*, of which the populations on Morven Hills are the most extensive currently known, are genetically different from the more substantial eastern population currently under management by DOC at Macraes Flat.

Contiguous riparian shrublands extend along the course of Dip Creek from its confluence with the Pass Burn upstream for over 3 km, with extensions up several tributaries. In parts they are of such density and stature as to be almost impenetrable. Common shrubs include matagouri, mingimingi, *Olearia odorata*, mountain wineberry and koromiko. Some large matagouri have reached tree proportions. The rare scrambling shrub *Carmichaelia kirkii* is present sporadically along the length of the shrubland belt. Other lianes are very common and include *Parsonsia* sp., *Muehlenbeckia complexa*, and *Rubus schmidelioides*. A swamp in the middle reaches of Dip Creek is variously dominated by *Juncus* spp., *Carex sinclairii*, *C. coriacea*, *Schoenus pauciflorus*, and exotic grasses. Drier margins support silver tussock. Very small examples of similar *Carex* dominated wetlands are present on low-lying terraces along the length of Dip Creek.

Species are present that fall within the 'Threatened' categories are:

- *Carmichaelia crassicaulis* subsp. *racemosum* – Nationally Vulnerable
- *Oligosoma otagense* – Nationally Critical
- *Pseudocoremia* sp. "knobby" (moth) - Nationally Endangered
- *Carmichaelia kirkii* – Declining

- *Meterana exquisita* (moth) - Gradual Decline

Two RAPs are present as follows:

- Lindis RAP A4: Dip Creek, in the gorge of Dip Creek, is a 1 ha stand of mountain beech. Its recommendation for protection arose from its identification as the most south-eastern driest outlier of the beech forest remnants characteristic of the north-western Lindis District
- Lindis RAP A5: Dip Creek, also in the gorge of Dip Creek, is a small stand of Hall's totara. It is the easternmost and driest site for Hall's totara in the District and the only example of totara on a talus fire refuge in the District.

The following geopreservation inventory sites are present:

- Dip Creek Beech is classified as a soil site of national importance as one of the few remnants of yellow-grey earths with mountain beech forest cover in New Zealand.
- Dip Creek Totara is classified as a soil site of national importance as the driest site in the district – notable for the Arrow soils under original vegetation cover (although modified).

3. Conservation Values to be Protected

In addition to the Reserves Values set out above, the Conservation purposes of the covenant are the preservation and protection of natural and historic resources on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public on the Land, and safeguarding the options of future generations

SCHEDULE 2
Address for Service¹

The address for service of the Owner is:

Morven Hills Station Limited
P.O. Box 18
Tarras 9347

Email:

The address for service of the Minister is:

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

C/- Box 5244, DUNEDIN 9058

C/- 77 Stuart Street, DUNEDIN 9016

Email: permissionsdunedin@doc.govt.nz

¹ Ensure Street Addresses are included as well as any Post Office Box. Include email addresses.

SCHEDULE 3**Special Conditions**

1. Clause 2.1.3 is deleted and replaced with:

2.1.3 to provide, subject to this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the part of the Land on CC1a west of the Lindis Pass Highway containing the historic sheep dip site only.

1A. Clause 4.1 is deleted and replaced with the following:

4.1 The Owner must, subject to this Covenant, allow the public to enter upon the part of the Land on CC1a west of the Lindis Pass Highway containing the historic sheep dip site only, and no specific permission or authority is required from the Owner for such entry.

2. Clause 3.1.1 is deleted and replaced with:

Sheep and cattle only may be grazed on the Land at a stocking rate that does not, in the opinion of the Minister, compromise the Values.

Cattle numbers will be restricted to;

Hummocks – 575 cattle SU/annum
Manuka Gully – 210 cattle SU/annum
Rocky Hills – 210 cattle SU/annum
Davis – 575 cattle SU/annum
Lower Rocky Hill – No cattle restriction
Hogget – 150 cattle SU/annum
Farmers Gully – cattle may be driven through this block

Stock unit calculation is based on the following;

Cow with or without calf at foot = 6SU
R 1yr heifer or steer = 4SU
R 2yr heifer or steer = 5SU
Ewes = 1SU
Dry sheep = 0.7SU

Records of stock numbers and type must be kept by the Owner and available for inspection on request.

3. Clause 3.1.4 is modified to allow for the erection of new fences and maintenance of existing structures.

4. Clause 3.1.5 is modified to allow for oversowing and topdressing on the Land.

5. Clause 3.1.6 is modified to allow for the maintenance of existing formed tracks on the Land.

6. The Minister or the Minister's authorised agent (which may include a charitable trust or community group) may carry out weed control as required on the Land to protect the Values.

7. The Minister or the Minister's authorised agent (which may include a charitable trust or community group), may undertake pest control as required on the Land to protect the Values by poisoning, trapping, shooting or any other methods to control predators including rabbits, cats, ferrets, stoats, weasels, rats, mice and/or their prey.

8. The Minister may manage the skink population on the Land either in situ or ex situ (including removal and/or introduction of skinks).

9. The Minister or the Minister's authorised agent (which may include a charitable trust or community group) may enhance the skink habitat on the Land by any means, including planting native species.
10. The Minister or the Minister's authorised agent (which may include a charitable trust or community group), or either of these in partnership with a third party, may construct and maintain fences, and undertake any other activities as required on the Land to protect the Values. Should the Minister, the Minister's authorised agent or a third party undertake any fencing activities under this condition, the Owner shall have no obligation to maintain such fences, which shall remain the responsibility of the party who installed them.
11. The Owner accepts that any areas of the Land fenced to protect the values may need to be destocked (for example within a predator fence).
12. In undertaking work on the Land such as enhancing skink habitat by any means, other activities outlined, or destocking, in clauses 9, 10 and 11 above, the Minister will first seek agreement of the owner, unless the impact on the farming operation is of a minor nature only.
13. Notwithstanding clause 3.2.6 or special condition 10 above, where any boundary fence on any portion of the Land adjoins other land owned by another person (including the Minister), the Fencing Act 1978 applies with the adjoining owners having joint liability for the construction and maintenance of fencing on the boundary for that portion of the Land.
14. A vegetation monitoring programme will be established on the Land as outlined in Schedule 4.
15. In addition to the vegetation monitoring programme, the Minister may undertake a skink monitoring programme on the Land, at the Minister's sole cost.
16. Should the Owner wish to undertake spraying of exotic shrublands on the Land, a spray programme (including a plan) must be agreed by Minister. As a guide to this process the area to be sprayed:
 - a. Must be predominantly briar
 - b. May contain matagouri
 - c. Must not contain plant species listed as threatened
 - d. Must not contain kanuka
 - e. Avoids other native species that will be effected by the spray
17. Spraying may be used by the Owner for maintaining a stock access route down Long Spur Creek. That sprayed access route to be one spray boom wide and generally follow the route shown on the attached plan 3 in Schedule 5. It must however, avoid spraying the creek by at least 10m to protect areas where there is a diverse native shrubland, particularly any threatened species.
18. The Owner is required to control to low numbers the feral deer, tahr and goat populations in the that part of the Land known as the Dip Face as shown as "CC1a" on the attached plan.
19. Further to Clause 3.2.5, prior to accessing the Land the Minister shall give the Owner at least 24 hours notice by telephone and shall have regard to reasonable requests by the Owner relating to farm management issues. This condition does not apply is an emergency or if the Owner is unable to be contacted by telephone.

**SCHEDULE 4
DESCRIPTION OF THE MONITORING PROGRAMME TO BE ESTABLISHED.**

(DRAFT ONLY)

1. Responsibilities:

A vegetation monitoring programme will be established at the commencement of the covenant term by the Minister. Subsequent re-monitoring will occur every 5 years and is to be organised by the Owner with the assistance of the Minister.

The Minister will be party to the re-monitoring by providing one staff member to assist with the physical monitoring. 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 is responsible for the cost of establishing the vegetation monitoring. The Owner will be responsible for the cost of repeat monitoring. The Minister will cover his own staff cost for re-monitoring.

3. Monitoring Methods:

A series of general repeatable photo point sites will be established for vegetation monitoring. The purpose of these photopoints is to detect deterioration of the tussock, shrublands and forest being recorded as a consequence of sheep, cattle and feral animal impacts and other management practices.

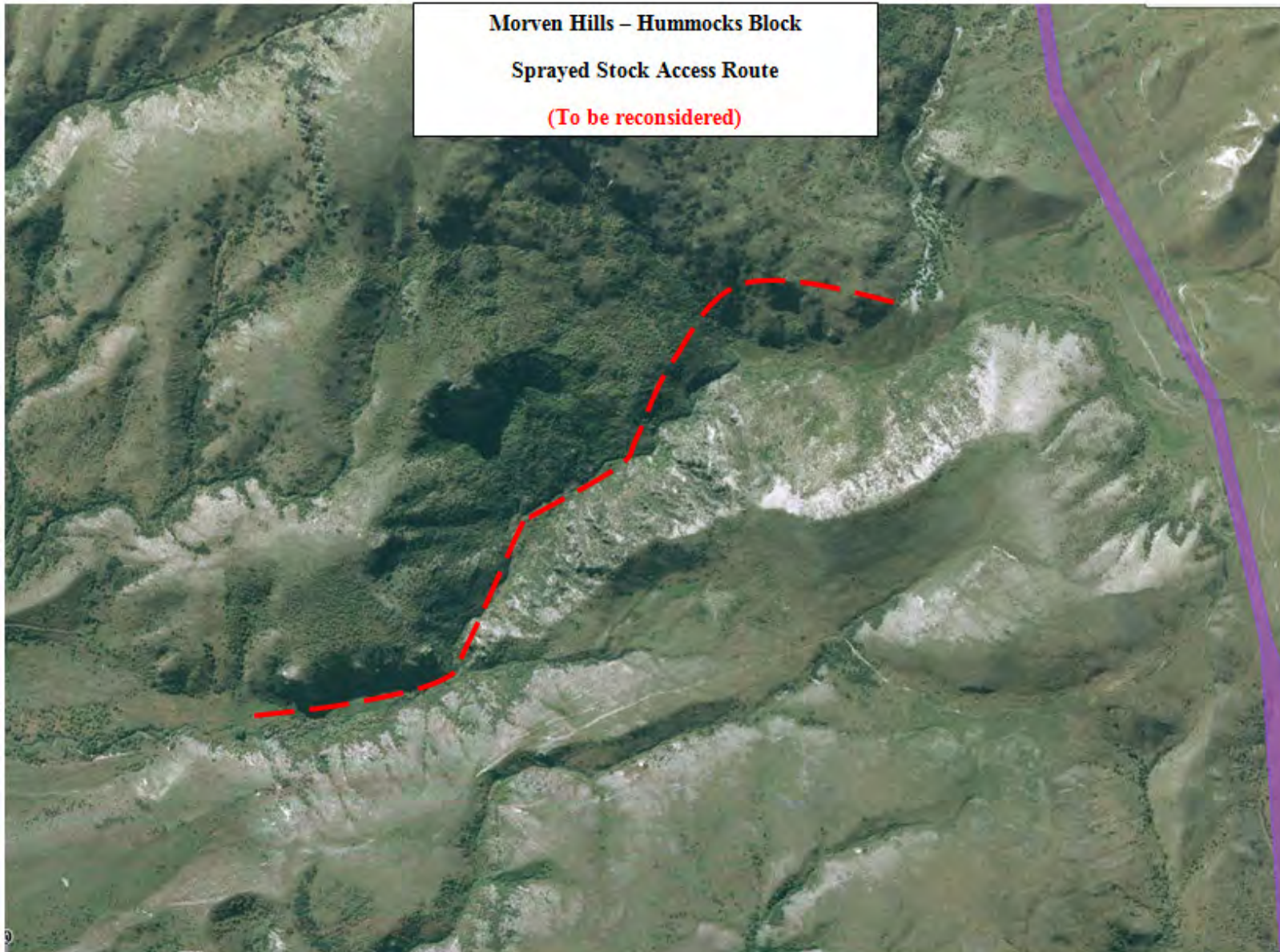
Photopoints will be at yet to be decided sites and yet to be decided number:

3. Monitoring Results:

Following monitoring, results will be discussed between the Owner and the Minister.

Should it be noted as a result of monitoring that grazing or other pastoral practices are having a detrimental impact on the values then the Owner will take significant steps to prevent this continuing.

SCHEDULE 5



GRANT of

Correct for the purposes of the
Land Transfer Act 1952

Solicitor for the Minister

CONSERVATION COVENANT UNDER
SECTION 27 OF THE CONSERVATION ACT 1987
AND 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

Appendix 5: Form of Covenant CC2 to be Created

DATED _____

Between

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

and

MINISTER OF CONSERVATION
(“the Minister”)

COVENANT UNDER CONSERVATION ACT 1987
AND THE 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 27 of the Conservation Act 1987 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. Section 27 of the Conservation Act 1987 provides that a covenant for conservation purposes may be granted or reserved over any land in favour of the Minister; and section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of the lands Reserve Values.
- C. The Land contains Conservation Values and Reserves Values worthy of protection
- D. The parties agree that the Land should be managed.
 - (i) for Conservation Purposes in order to protect the Conservation Values; and
 - (ii) so as to preserve the Reserve Values,

Which purposes can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.

- E. An approved plan designating the Land as land over which a Covenant under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 is to be created has been registered under section 64 of the Crown Pastoral Land Act 1998.
- F. The Commissioner of Crown Lands has agreed to grant the Minister a Covenant over the Land:
 - (i) for Conservation Purposes; and
 - (ii) to preserve the Reserve Values

OPERATIVE PARTS

In accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977, and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Commissioner of Crown Lands and Minister agree as follows:

1. INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

“Conservation Purposes” means the preservation and protection of natural and historic resources including Conservation Values on the Land for the

purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

“Conservation Values”	means the Conservation Values specified in Schedule 1.
“Covenant”	means this Deed of Covenant made under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977.
“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.
“Mineral”	means any mineral that is not 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.
“Reserve 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.
“Values”	means the Reserve Values and the Conservation Values.
“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 situated.

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 references to clauses are references to clauses in this Covenant.
- 1.2.3 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 seek to determine the issue, the parties must have regard to the matters contained in the Background.

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

2. OBJECTIVES OF THE COVENANT

- 2.1 The Land must be managed:
 - 2.1.1 for Conservation purposes;
 - 2.1.2 so as to preserve the Reserve Values;
 - 2.1.3 to provide, subject to this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

3. IMPLEMENTATION OF OBJECTIVES

- 3.1 Unless agreed in writing by the parties the Owner must not carry out or permit 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 the 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 Conservation Values or Reserve Values of the Land;
 - 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 and replace all such Fences when reasonably required except as provided in clause 5.1.2;

3.3 The Owner acknowledges that:

- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
- 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.

3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister may pay the Owner a proportionate share of:

- (a) the repair or maintenance of fences on the Land if the work has first been approved by the Minister;
- (b) the eradication or control of all animal and plant pests, and the removal of exotic tree species if:
 - (i) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
 - (ii) the Minister has first approved the work.

3.5 The proportionate share which may be payable by the Minister under clause 3.4 is to be calculated having regard to the purpose of any expenditure with the intent that:

- (a) expenditure essentially for conservation purposes only will be borne by the Minister;
- (b) expenditure essentially for farming purposes only will be borne by the Owner;
- (c) where the expenditure is partly for conservation purposes and partly for farming purposes then the expenditure will be borne by the parties equally or in such other

proportion as they may agree and failing agreement as may be determined by the process set out in clause 12.

4. PUBLIC ACCESS

- 4.1 The Owner must, subject to this Covenant, allow the public to enter upon the Land and no specific permission or authority is required from the Owner for such entry.

5. THE MINISTER'S OBLIGATIONS AND OTHER MATTERS

- 5.1 The Minister must

5.1.1 Have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant;

5.1.2 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, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

- 5.2 The Minister may:

5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2 subject to any financial statutory or other constraints which may apply to the Minister from time to time;

5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.

5.2.3 prepare, in consultation with the Owner, a monitoring plan to assist the parties to meet the objectives specified in clause 2.

6. JOINT OBLIGATIONS

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.

7. DURATION OF COVENANT

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

8. OBLIGATIONS ON SALE, ASSIGNMENT OR OTHER DEPOSAL OF LAND

- 8.1 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..

- 8.2 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 8.1.

9. MISCELLANEOUS MATTERS

9.1 Rights

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

9.2 Trespass Act:

9.2.1 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;

9.2.2 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.

9.3 Reserves Act

9.3.1 In accordance with section 77(3) of the Reserves Act 1977 but 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.

9.4 Titles

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

9.5 Acceptance of Covenant

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

9.6 Fire

9.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wild fire threatening the Land.

9.6.2 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:

9.6.2.1 requested to do so; or

9.6.2.2 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.

10. DEFAULT

10.1 Where either the Owner or the Minister 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 Owner and the Minister 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 the dispute to mediation with a mediator agreed between them;

- 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. NOTICES

- 12.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent 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 2.

- 12.2 A notice given in accordance with clause 12.1 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 day is a Working Day or, if not a Working Day or if it is dispatched after 5.00pm, on the next Working Day after the date of dispatch.

12.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land and must supply the Minister with the name and address of the new owner or person in control.

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 3.

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 27 of the Conservation Act 1987 _____)
 in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ and acting under a _____)
 Written delegation from the Minister of Conservation _____)
 and exercising his/her powers under section 117 of the _____)
 Reserves Act 1977 as designated Commissioner in the _____)
 Presence of: _____)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

1. Description of Land

Coloured in yellow wash and labelled "CC2" being approximately 2.5 ha, on the Tenure Review Designations Plan.

2. Conservation Values to be protected:

The preservation and protection of natural and historic resources on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations. In particular, the historic resources associated with Polson's Hut and surrounds and to provide for public appreciation and enjoyment, as further set out under the Reserves Values

3. Reserve Values to be protected:

Historical Value:

This covenant is to recognise the significant historic values associated with Polson's Hut and surrounds. This area is of interest to the public and access is provided by this covenant.

Polson's Hut is well constructed of split and partially dressed schist. The hut is in good condition and a fence has been erected around it to prevent stock damage. The hut was one of the early shepherds' huts on Morven Hills and is associated with one of the sadder tales of the early pastoral history of Central Otago.

John and Christina Polson lived in Polson's hut (GPS 042) from 1867 until about 1870 when they moved to the Morven Hills Homestead to work for the owner Jock Mclean. It was in the depths of winter while residing in the hut that Mrs Polson gave birth to premature twin girls. Unfortunately the isolation and the intense cold meant the twins did not survive. They were buried some distance away with their grave marked by a willow tree.

An earthen walled enclosure is situated close by Polson's hut at GPS 043-044. This enclosure may have functioned as stock yards or as a garden.

The purpose of the covenant is to maintain the hut structure in its current state whilst also enabling the landowner to utilise it and allowing access for the public to view the exterior of the structure and its immediate surrounds.

SCHEDULE 2
Address for Service¹

The address for service of the Owner is:

Morven Hills Station Limited
P O Box 18
Tarras 9347

Email:

Phone:

The address for service of the Minister is:

C/- P O Box 5244
DUNEDIN 9058

C/- 77 Stuart Street
DUNEDIN 9016

Email: permissionsdunedin@doc.govt.nz

Phone:

¹ Ensure Street Addresses are included as well as any Post Office Box. Include email addresses.

SCHEDULE 3

Special Conditions

1. Clause 3.1.1 is modified to allow for sheep and cattle grazing by the Owner on the Land, except within the small fenced area around Polson's Hut which will remain destocked. Cattle are also excluded from grazing the area comprising the earthen walled enclosure situated close to the hut.
2. Notwithstanding clause 4.1, the public are permitted foot access on and to the Land. However the Owner is entitled to keep the hut on the Land locked.
3. The Minister may erect interpretative signage on the Land to inform the public of the history of the site.
4. The boundaries or parts of the Land not already fenced may be fenced by the Minister entirely at her expense to exclude cattle but not sheep.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

Solicitor for the Minister

**CONSERVATION COVENANT UNDER
SECTION 27 OF THE CONSERVATION ACT 1987
AND 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

Legal Services

DUNEDIN/CHRISTCHURCH

Appendix 6: Form of Covenant CC3 to be Created

DATED _____

Between

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

and

MINISTER OF CONSERVATION
(“the Minister”)

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



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

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

AND **MINISTER OF CONSERVATION**

BACKGROUND

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

OPERATIVE PARTS

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

Coloured in yellow wash and labelled "CC3" being approximately 2725 ha, on the Tenure Review Designations Plan.

2. Address for Service¹

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

C/- Box 5244

C/- 77 Stuart Street Fax (03) 474 7090

DUNEDIN

DUNEDIN

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

Morven Hills Station Limited

P.O. Box 18

Tarras 9347

Fax (03) 445 2832

3. Values of Land to be Protected**Landscape amenity:**

This covenant is in two parts:

a. This area is to recognise the nationally significant landscape values of the Lindis Highway corridor and covers Sledges Hill, part Black Hill Sunny and part Black Hill Dark farm blocks.

b. This area covers the landscape corridor of the route through the pylon track including Bluecliffs, Top Airstrip and Rocky Hills farm blocks which have high landscape and scenic values. The western side of the Chain Hills as well as south of Double Peak and adjoining basins contain characteristics analogous with the Lindis Pass. The landforms contained within this area are particularly impressive and distinctive with steep smooth slopes, and a complex of low ridges, spurs and knobs and alluvial surfaces. The area is dominated and unified by tussock from crest to valley floor. Although seriously depleted in places, it retains the appearance of a tussock landscape as whole. Wholeness is important as context and visual catchments are important for appreciation of landscape values.

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions

1. Clause 3.1.1 is modified to allow for grazing by sheep and cattle.
2. Clause 3.1.4 is modified to allow for the erection of new fences and maintenance of existing structures.
3. Clause 3.1.5 is modified to allow for oversowing and topdressing.
4. Clause 3.1.6 is modified to allow for maintenance of existing formed tracks.
5. Further to Clause 3.2.5, prior to accessing the Land the Minister shall give the Owner at least 24 hours notice by telephone and shall have regard to reasonable requests by the Owner relating to farm management issues. This condition does not apply in an emergency or if the Owner is unable to be contacted by telephone.
6. It is recognised that there are existing electricity transmission lines and a fibre optic cable on, over and under the Land and this Covenant does not compromise the existing rights of the owners of those existing structure and facilities.
7. Should the Owner wish to undertake spraying of exotic shrublands, a spray programme (including a plan) must be agreed by Minister. As a guide to this process the area to be sprayed:
 - a. Must be predominantly briar
 - b. May contain matagouri
 - c. Must not contain plant species listed as threatened
 - d. Must not contain kanuka
 - e. Avoids other native species that will be effected by the spray

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

Appendix 7: Form of Covenant CC4 to be Created

DATED _____

Between

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

and

MINISTER OF CONSERVATION
(“the Minister”)

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



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

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

AND **MINISTER OF CONSERVATION**

BACKGROUND

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

OPERATIVE PARTS

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

Shown within a blue line and labelled " CC4" being approximately 4000 ha, on the Tenure Review Designations Plan.

2. Address for Service¹

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

C/- Box 5244
DUNEDIN 9058

C/- 77 Stuart Street
DUNEDIN 9016

Email: permissionsdunedin@doc.govt.nz

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

Morven Hills Station Limited
P.O. Box 18
Tarras 9347

Email:

3. Values of Land to be Protected**Area CC4**Wildlife Habitat

Area approx 4000 ha (including parts of CC1 and CC3)

The purpose of this Covenant is to enable skink predator and pest control operations to be undertaken on the Land if required within the entire area encompassed by the blue boundary line depicted on the plan.

Wide scale protection has been demonstrated by the Department of Conservation at Macraes Flat where intensive predator control over an area of 4600ha enables population increase of skink populations in habitat buffered by 1.5km of trapping protection.

The effort required to achieve the necessary degree of predator reduction is probably beyond what can be resourced using current tools in the terrain on the Land at Morven Hills. New tools are being developed which are likely to make future protection of skink habitat across the required areas on the Land in this terrain affordable. Consequently, it is desirable to ensure that buffered predator protection of the identified skink habitat be enabled on the Land whenever methods and resources allow it to be applied.

SCHEDULE 2

Special Conditions

1. Clauses 3.1.1 to 3.1.12, 3.2.1 to 3.2.4, and 3.2.6 are deleted. A new clause 3.2.1 is inserted as follows:
 - 3.2.1 Have regard to the Values, and not undertake actions and activities on the Land which would have a significant adverse effect on the Values.
2. Further to Clause 3.2.5, prior to accessing the Land the Minister shall give the Owner at least 24 hours notice by telephone and shall have regard to reasonable requests by the Owner relating to farm management issues. This condition does not apply in an emergency or if the Owner is unable to be contacted by telephone.
3. The Minister or the Minister's authorised agent (including a charitable trust or community group), may undertake poisoning or trapping on the Land to control lizard predators and/or their prey (such as rabbits, cats, ferrets, stoats, weasels, rats and mice).
4. The Minister may, in consultation with the Owner, construct tracks or clear vegetation on the Land for the purpose of creating access to facilitate special condition 3 above.

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

Appendix 8: Form of Covenant CC5 to be Created

DATED _____

Between

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

and

MINISTER OF CONSERVATION
(“the Minister”)

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



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

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

AND **MINISTER OF CONSERVATION**

BACKGROUND

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

OPERATIVE PARTS

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

Coloured in yellow wash and labelled "CC5" being approximately 27.5 ha, on the Tenure Review Designations Plan, and as further shown in Schedule 3.

2. Address for Service¹

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

C/- Box 5244

C/- 77 Stuart Street

DUNEDIN 9058

DUNEDIN 9016

Email: permissionsdunedin@doc.govt.nz

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

Morven Hills Station Limited

P.O. Box 18

Tarras 9347

Email:

3. Values of Land to be Protected

Natural Environment, Wildlife Habitat and Historic Value, in particular:

Wetlands:

At Grid Ref. G40 342 144 the wetland contains several distinct communities. There are two areas dominated by raupo (*Typha orientalis*), with *Carex secta*, *Carex maorica* and other species. Also present is sedgeland consisting of a mixture of *Carex coriacea*, *C. diandra*, *C. sinclairii*, *C. gaudichaudiana*, *Schoenus pauciflorus* and *Eleocharis acuta*. A turf community is dominated by *Hydrocotyle hydrophila*, with *Ranunculus glabrifolius*, *Eleocharis acuta*, *Epilobium chionanthum* and *Juncus pusillus*. Special elements from this wetland include *Triglochin palustris*, *Epilobium chionanthum* and *Carex maorica*.

A second wetland occurs at the foot of a terrace at Grid Ref. G40 344 149. The wetland contains *Carex coriacea*, *C. diandra*, *C. sinclairii*, *Eleocharis acuta*, *Juncus articulatus*, *Juncus conglomeratus?*, *Myosotis laxa* ssp. *caespitosa* and special elements including *Triglochin palustris* and *Epilobium chionanthum*.

Triglochin palustris is a Nationally Critical threatened species.

This flat area and wetland are classed as LENZ environments N4.1d (Chronically threatened) and N5.1b (Acutely threatened).

Geological:

A block of calcium rock known as travertine located behind the swamp. Travertine is an example of a sedimentary rock and is formed from precipitated carbonate minerals. This is an unusual occurrence is a geological curiosity probably warranting geopreservation site status (Geoff Rogers pers. com.). This rock also contains a small rock shelter (GPS 063) where Maori artefacts have reportedly been picked up by one of the last shepherds on the original Morven Hills.

SCHEDULE 2

Special Conditions

1. Clause 3.1.1 is modified to allow for grazing by sheep.
2. Should the Owner wish to undertake spraying of exotic shrublands, a spray programme (including a plan) must be agreed by Minister. As a guide to this process the area to be sprayed:
 - a. Must be predominantly briar
 - b. May contain matagouri
 - c. Must not contain plant species listed as threatened
 - d. Must not contain kanuka
 - e. Avoids other native species that will be effected by the spray

SCHEDULE 3



Morven Hills Covenant CC5

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

Appendix 9: Form of Public and Management Purposes Easement a-b-c, b-d to be Created

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Car Parking
3. Management Purposes

Land Transfer Act 1952

This page does not form part of the Transfer.

TRANSFER
RELEASED UNDER THE OFFICIAL INFORMATION ACT
Land Transfer Act 1952

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

Land Registration District

Otago

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

--	--	--	--

Grantor *Surnames must be underlined*

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

Grantee *Surnames must be underlined*

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

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

Public Access and Management Purposes Easement in Gross under Section 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 _____ Witness to complete in BLOCK letters <i>(unless typewritten or legibly stamped)</i> Witness name Occupation Address
Signature, or common seal of Grantor	(continued on page 4 of Annexure Schedule)

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Transferee

Annexure Schedule

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

Transfer Easement

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 "a-b-c" and "b-d" on the tenure review designations plan for public access under clauses 2.1 and 2.2 and " " for Minister of Conservation management purposes under clause 2.3 on Deposited Plan/S.O. Plan No [] and includes the Parking Area.
- 1.2 "Parking Area" means that part of the Servient Land which is marked "a "on *the Designations Plan*] "[]" on SO Plan No [].
- 1.3 "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 or the Reserves Act 1977.
- 1.4 "Servient Land" means the land owned by the Grantor and described on page 1.
- 1.5 "Grantee" means Her Majesty the Queen acting by and through the Minister of Conservation and includes tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation and, for the purposes of clauses 2.1 and 2.2, includes any member of the public.
- 1.6 "Grantor" means the owner of the Servient Land described on page 1 and includes the Grantor's tenants and invitees.
- 1.7 "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 the Easement Area on foot or by non-motorised vehicle powered by a person or persons.
 - 2.2 To pass and re-pass by motor vehicle along that part of the Easement Area marked "a" and to use, stop and park any motor vehicle on the Parking Area only.
 - 2.3 To pass and re-pass at any time over and along the Easement Area 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.

Annexure Schedule

Insert below
“Mortgage”, “Transfer”, “Lease”, etc

Transfer Easement

Dated

Page

of

Pages

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 negated.

Term

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

Temporary Suspension

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

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.

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.

Annexure Schedule

Insert below
“Mortgage”, “Transfer”, “Lease”, etc

Transfer Easement

Dated

Page

of

Pages

- 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 3.6 metres wide, and either:
- 9.1 Keep the gate unlocked; 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 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 clear, form, modify and maintain the surface of the Easement Area so that it becomes and remains fit for the purpose of clauses 2.1, 2.2 and 2.3.
- 10.5 To use whatever reasonable means of access he/she thinks fit over the Easement Area to carry out the works in clause 10.1 to 10.4.

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.

Annexure Schedule

Insert below
“Mortgage”, “Transfer”, “Lease”, etc

Transfer Easement

Dated

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of

Pages

Special Easement Terms

- 11. The standard easement terms contained above must be read subject to any special easement terms set out below.
- 12. Clause 2.3 is deleted and replaced with the following;
 - 2.3 To pass and re-pass at any time over and along the Easement Area on foot, 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 confined to motorised vehicles, for Management Purposes.
- 13. In doing any of the matters specified in clause 2.2, the Grantee must take reasonable and proper care not to damage any property of the Grantor and must properly repair any such damage.
- 14. The Grantee and the Grantor shall pay for maintenance on tracks on the Easement Area in proportion to the impact of their use as agreed.

Continuation of “Attestation”

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

under a written delegation in the)
presence of:)

Witness (Signature)

Name _____

Address _____

Occupation _____

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

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

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

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Car Parking
3. Vehicles for Management Purposes

Land Transfer Act 1952

Law Firm Acting

Solicitor
Legal Services
Department of Conservation
Dunedin

Appendix 10: Form of Management Purposes Easement k-l to be Created

TRANSFER GRANT OF EASEMENT IN GROSS

For Management Purposes

Land Transfer Act 1952

This page does not form part of the Transfer.

TRANSFER
RELEASED UNDER THE OFFICIAL INFORMATION ACT
Land Transfer Act 1952

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

Land Registration District

Otago

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

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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.*

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

Consideration

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

Operative Clause

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

Dated this day of

Attestation

Signed by acting under written delegation from the Commissioner of Crown Lands	Signed in my presence by the Grantor Signature of Witness _____ Witness to complete in BLOCK letters <i>(unless typewritten or legibly stamped)</i> Witness name Occupation Address
Signature, or common seal of Grantor	(continued on page 4 of Annexure Schedule)

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Transferee

Annexure Schedule

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

Transfer Easement

Dated

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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 shown with a dashed red line and labelled "k-l" on the tenure review designations plan and [] "[]" 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 or the Reserves Act 1977.
 - 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 the Grantee's tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation.
 - 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 to pass and re-pass at any time over and along the Easement Area 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 guns and accompanied by dogs, for Management Purposes.
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 negated.

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.

Annexure Schedule

Insert below
“Mortgage”, “Transfer”, “Lease”, etc

Transfer Easement

Dated

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of

Pages

Term

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

Dispute Resolution

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

- 7.1 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.
- 7.2 If clause 7.1(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.
- 7.3 If clause 7.1(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

8. Where the Grantor wishes to erect fences across the Easement Area, the Grantor shall install a gate not less than 3.6 metres wide, and either:
- 8.1 keep the gate unlocked; or
 - 8.2 ensure the Grantee is provided with a key which will unlock the gate.

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.

Annexure Schedule

Insert below
“Mortgage”, “Transfer”, “Lease”, etc

Transfer Easement

Dated

Page

of

Pages

Special Easement Terms

- 9. The standard easement terms contained above must be read subject to any special easement terms set out below.
- 10. Clause 2 is deleted and replaced with the following;
 - 2 The Grantee has the right in common with the Grantor to pass and re-pass at any time over and along the Easement Area on foot, or by non-motorised vehicle, or by motor vehicle, with or without machinery and implements of any kind, with guns and accompanied by dogs confined to motorised vehicles, for Management Purposes.
- 11 The Grantee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.
- 12 The Grantee has the right to clear, form and maintain any track or path on the Easement Area.
- 13 In doing any of the matters specified in clause 2, the Grantee must take reasonable and proper care not to damage any property of the Grantor and must properly repair any such damage.
- 14 The Grantee and the Grantor shall pay for maintenance on tracks on the Easement Area in proportion to the impact of their use as agreed.
- 15 The Grantor may require the Grantee to use a suitable alternate route during the period of lambing or calving to avoid disturbance.

Continuation of “Attestation”

Signed for and on behalf of _____)
 Her Majesty the Queen by _____)
 [name] _____)
 Commissioner (Reserves) in the _____)
 presence of: _____)

Witness (Signature)

Name _____

Address _____

Occupation _____

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.

Annexure Schedule

Insert below
“Mortgage”, “Transfer”, “Lease”, etc

Transfer Easement

Dated

Page

of

Pages

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

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

docDM-1133054 – Management Purposes Easement template

Jan 2013

DocDM-947112 – Morven Hills – Doc Management purposes easement 18/11/2014

TRANSFER GRANT OF EASEMENT IN GROSS

Vehicles for Management Purposes

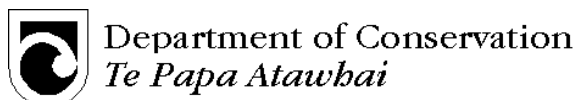
Land Transfer Act 1952

Law Firm Acting

Solicitor
Legal Services
Department of Conservation
Dunedin

This page is for Land Registry Office use only.

Appendix 11: Form of Grazing Concession over part of "CA1" to be Created



Department of Conservation
Te Papa Atawhai

Concession Number:

Concession Document (Grazing Licence)

THIS CONCESSION is made this day of

PARTIES:

- 1. Minister of Conservation** (the Grantor)
- 2. Morven Hills 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 Land is a Conservation Area or a Reserve under the management of the Grantor.
- C.** Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- D.** The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Concession.
- E.** The parties wish to record the terms and conditions of this Concession and its Schedules.

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 a **GRAZING LICENCE** to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Concession and its Schedules.

<p>SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate]</p> <p>acting under delegated authority in the presence of:</p> <p>_____</p> <p>Witness Signature: _____</p> <p>Witness Name: _____</p> <p>Witness Occupation: _____</p> <p>Witness Address: _____</p> <p>A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.</p>	<p>SIGNED by Morven Hills Limited by:</p> <p>_____</p> <p>Anne Louise Snow</p> <p>_____</p> <p>Madge Ngaire Dawn Snow</p> <p>_____</p> <p>Richard Gibson Snow</p>
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SCHEDULE 1

1.	Land (Schedule 4)	As marked on the Proposed Designations plan attached in Schedule 4 Physical description/ Common name: (Bluecliffs Block shown as GC on the designations plan) Land Status: proposed Stewardship area held under section 62 of the Conservation Act 1987 Area: 1300ha approx Legal description: (subject to tenure review survey) Map reference: NaPALIS ID
2.	Concession Activity (clause 2)	Sheep only grazing on the Land for up to 0.37 SUE/ha from 1 February to 10 May inclusive during each year of the term. One merino ewe equates to 0.8 stock unit.
3.	Term (clause 3)	5 years commencing on the date (the commencement date) that an approved plan is registered vesting the Land in the Crown as a conservation area or reserve. Phase out grazing term only.
4.	Renewal(s) (clause 3)	None.
5.	Final Expiry Date (clause 3)	The fifth anniversary of the commencement date.
6.	Concession Fee (clause 4 and Schedule 5)	Concession Activity Fee An activity fee will be calculated on the basis of \$8 per SUE per annum plus GST for the sheep run on the Land during the permitted grazing period for that year. In order that the activity fee may be calculated, the Concessionaire will file a return of stock in the form in Schedule 5 to the Grantor by 30 June in each year showing the stock carried on the Land over the preceding 12 months. If a return is not made by this date, the activity fee will be charged assuming the maximum stock numbers had been run for the total permitted period. Annual Management Fee: not required Annual Environmental Monitoring Fee not required
7.	Concession Fee Payment Instalments	Annually

<i>Concessionaire's initials</i>		<i>Grantor's initials</i>	
----------------------------------	--	---------------------------	--

	(clause 4)	
8.	Concession Fee Payment Date(s) (clause 4)	On or before the date specified on the invoice issued by the Grantor.
9.	Penalty Interest Rate (clause 4)	Double the current Official Cash Rate (OCR). See Reserve Bank of New Zealand website
10.	Concession Fee Review Date(s) (clause 5)	On the third anniversary of the date of commencement of this Concession as set out in item 3 above and the corresponding date every 3 years thereafter until the expiry of the term. <i>(Insert 3 year anniversary date)</i>
11.	Health and Safety (clause 12)	Not required
12.	Insurance (To be obtained by Concessionaire) (clause 11)	Types and amounts: Public Liability Insurance for: (a) General indemnity for an amount no less than \$1,000,000.00; and (b) Forest and Rural Fires Act extension for an amount no less than \$250,000.00; and Subject to review on each Concession Fee Review Date
13.	Addresses Notices (clause 21)	for The Grantor's address is: Physical Address: Department of Conservation Conservation House 77 Lower Stuart Street Dunedin 9016 Postal Address: PO Box 5244 Moray Place Dunedin 9058 Phone: (03) 477 0677 Email: permissionsdunedin@doc.govt.nz
		The Concessionaire's address in New Zealand is: C/- ICL Limited Level 1 69 Tarbet Street Alexandra 9320 Phone: Email: or Morven Hills Station Limited PO Box 18

Concessionaire's initials		Grantor's initials	
---------------------------	--	--------------------	--

		Tarras 9347
14.	Special Conditions (clause 24)	See Schedule 3.

Note: The clause references are to the Minister of Conservation's Standard Terms and Conditions for Grazing Licences 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 FOR GRAZING LICENCES

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

“**Concession Activity**” means the activity described in item 2 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

“**Land**” means the land described in item 1 of Schedule 1.

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

“**Structure**” includes a bridge, a culvert, and a fence, but not a temporary electric fence.

“**Term**” means the period of time specified in Item 5 of Schedule 1 during which this Concession operates.

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

2. What is being authorised?

2.1 The Concessionaire is only allowed to use the Land for the Concession Activity.

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

3.1 This Concession commences on the date set out in Item 3 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.

3.2 No renewals of this Concession are permitted.

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 (which includes the Annual Activity Fees, the Management Fee, and the Environmental Monitoring Fee) plus GST in the instalments and on the Concession Fee Payment Dates specified in Items 6, 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. When can the fees be reviewed?

5.1 The Grantor is to review the Concession Fee on the Concession Fee Review Date stated in Item 10 of Schedule 1. The new Concession Fee is to be the market value of the Concession Activity carried out on the Land having regard to the matters set out in section 17Y(2) of the Conservation Act 1987.

5.2 Both parties are to agree on the new fee within 30 working days of the Grantor giving the Concessionaire written notice of the review.

5.3 If the parties cannot so agree then each party is to appoint a Registered Valuer who must meet and agree on the new fee. If the Registered Valuers fail to reach agreement the new fee is to be determined by an umpire appointed by the two Registered Valuers. Each party is to bear that party's own costs and half the costs of the umpire (if any).

6. Are there any other charges?

6.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Land or for the services provided to the Land which relate to the Concessionaire's use of the 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.

7. When can the Concession be assigned?

7.1 The Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.

7.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 7.1.

7.3 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.

7.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.

7.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.

7.6 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.

8. What are the obligations to protect the environment?

8.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land; or light any fire on the Land without the prior consent of the Grantor.

8.2 The Concessionaire must use and manage the Land in a good and husband like manner, and not impoverish or waste its soil.

8.3 The Concessionaire must keep the Land free from plant and animal pests and must comply with the Biosecurity Act 1993 and relevant pest management strategies.

8.4 The Concessionaire must not bury

(a) any toilet waste within 50 metres of a water source on the Land; or

(b) any animal or fish or any part thereof within 50 metres of any water body, water source or public road or track.

9. When can structures be erected?

9.1 The Concessionaire must not place any Structure on the Land nor alter the Land without the prior written consent of the Grantor.

9.2 The Concessionaire must keep all Structures, gates, stiles, cattle stops drains and other physical improvements now or hereafter upon the Land, in good order, condition and repair and must keep the land in a clean and tidy condition and must not store hazardous materials on the Land, or store other materials on the Land where they may obstruct the public or create a nuisance.

9.3 Despite clause 9.1, where there are existing tracks on the Land, the Concessionaire may maintain these tracks within their existing alignment at its own cost, without obtaining the prior written consent of the Grantor.

10. What if the Concessionaire wishes to surrender the Concession?

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

11. What are the liabilities and who insures?

11.1 The Concessionaire agrees to use the Land 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 Land.

- 11.2 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.
- 11.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 11.4 Without prejudice to or in any way limiting its liability under this clause 12 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 stated in Item 12 of Schedule 1 with a substantial and reputable insurer.
- 11.5 The Grantor may on each Concession Fee Review Date on giving 10 working day's notice to the Concessionaire alter the amounts of insurance required under clause 11.4. 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.
- 11.6 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.

12. **What about Health and Safety?**

- 12.1 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 authority relating to the exercise of this Concession. The Concessionaire must comply with its safety plan (if one is required in Item 11 of Schedule 1), and with any safety directions of the Grantor.
- 12.2 Before commencing the Concession Activity the Concessionaire must, if required by Item 11 of Schedule 1 prepare a safety plan;
- 12.3 The Grantor may at any time request the Concessionaire to provide the Grantor with a copy of the current safety plan in which case the Concessionaire must provide the copy within 10 working days of receiving the request.
- 12.4 The Concessionaire must notify the Grantor of any natural events or activities on the Land or surrounding area which may endanger the public or the environment.

13. **What are the compliance obligations of the Concessionaire?**

- 13.1 The Concessionaire must comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part 2A of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, National Parks Act 1980, Reserves Act 1977, or the Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever

is appropriate to the Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and

- (b) with the Conservation Act 1987, the Reserves Act 1977, National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the “Legislation”) affecting or relating to the Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the land or affecting or relating to the conduct of the Concession Activity.

13.2 The Concessionaire must comply with this Concession.

13.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 13.1 (a) is deemed to be a breach of this Concession.

13.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

14. **When can the Concession be suspended?**

14.1 If, in the Grantor’s opinion, there is a temporary risk to any natural or historic resource on or in the vicinity of the Land or to public safety whether arising from natural events such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Concession on the part of the Concessionaire, then the Grantor may suspend this Concession.

14.2 If, in the Grantor’s opinion, the activities of the Concessionaire is having or may have an adverse effect on the natural, historic or cultural values or resources of the Land and the Grantor considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, then the Grantor may suspend this Concession until the Concessionaire avoids, remedies or mitigates the adverse effect to the Grantor’s satisfaction.

14.3 The Grantor may suspend the Concession for such period as the Grantor determines where the Concessionaire has breached any terms of this Concession.

14.4 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 14.1 and 14.2 and also while the Grantor investigates any potential breach or possible offence by the Concessionaire, whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act.

14.5 The word “investigates” in clause 14.4 includes the laying of charges and awaiting the decision of the Court.

14.6 During any period of temporary suspension arising under clauses 14.1 or 14.2 the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.

14.7 The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under this clause 14 including loss of profits.

15. When can the Concession be terminated?

15.1 If:

(a) the Concessionaire breaches any of the conditions of this Concession; or

(b) the whole or any part of the Land is required for the Grantor's use

the Grantor may terminate this Concession at any time in respect of the whole or any part of the Land. Before so terminating the Grantor must give the Concessionaire either

(c) one calendar month's notice in writing; or

(d) such other time period which in the sole opinion of the Grantor appears reasonable and necessary

of the Grantor's intention so to terminate this Concession. If this Concession is terminated then the Grantor, at the Grantor's sole discretion, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

16. What are the Grantor's Rights to remedy defaults?

16.1 The Grantor may choose to remedy at any time without notice any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default.

17. What happens on termination or expiry of the Concession?

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

17.2 The Concessionaire may, with the Grantor's written consent, remove any specified Structures, gates, drains and other physical improvements erected or placed on the land by the Concessionaire on the Land. 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 Land in a clean and tidy condition.

17.3 The Concessionaire must, if the Grantor gives written notice, remove any specified Structures, gates, drains and other physical improvements on the Land. 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 Land in a clean and tidy condition.

18. When is the Grantor's consent required?

18.1 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. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.

19. Are there limitations on public access and closure?

19.1 The Concessionaire acknowledges that the Land 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.

20. How will disputes be resolved?

20.1 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.

20.2 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 arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.

20.3 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.

20.4 The arbitrator must include in the arbitration award reasons for the determination.

20.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

21. How are notices sent and when are they received?

21.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, by pre paid post or email to the receiving party at the address or email address specified in Item 13 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 3rd 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.

21.2 If either party's details stated out in Item 13 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

22. What about the payment of costs?

22.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing any variation of this Concession.

22.2 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. This includes the right to recover outstanding money owed to the Grantor.

23. When can the conditions of the Concession be varied?

23.1 The Grantor may on each Concession Fee Review Date, after first consulting with the Concessionaire, vary any condition of this Concession to make the condition more effective in addressing any adverse effects resulting from the Concession Activity.

23.2 Nothing in clause 23.1 otherwise affects the Grantor's rights to vary the Concession under section 17ZC of the Conservation Act 1987.

24. What are the Special Conditions?

24.1 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.

25. The Law

25.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

SCHEDULE 3**SPECIAL CONDITIONS** – Note: Please initial each page of Schedule 3

1.	Stock matters	<p>The Concessionaire must monitor stock at regular intervals to ensure that:</p> <ul style="list-style-type: none"> (a) they are contained within the Land; and (b) there is sufficient feed available on the Land to discourage stock from grazing other land administered by the Grantor and not part of this Concession; and (c) they do not graze to a level resulting in damage to, or pugging of, the Land. <p>The Concessionaire must not develop wintering pads, stand off pads or silage pits on the Land.</p> <p>The Concessionaire must not graze, nor permit to be grazed on the Land, any stock, which the Concessionaire knows or ought to have reasonably known, would be dangerous to any person entering the Land.</p>
2.	Farm vehicles	<p>The Concessionaire may use farm vehicles for the purposes of the Concession Activity and for pest management on existing formed tracks on the Land.</p>
3.	Firearms	<p>The Concessionaire may use firearms on the Land for the purposes of the Concession Activity and for pest management.</p>
4.	Dogs and horses	<p>The Concessionaire may use dogs and horses on the Land for the purposes of the Concession Activity and for pest management.</p>
5.	Fencing	<p>The Concessionaire must at its cost ensure that stock is adequately contained within the land.</p> <p>The Concessionaire must ensure the Land is fenced so as to prevent stock access to any watercourses adjoining or on the Land and that an adequate ungrazed vegetation strip is maintained along all watercourses so as to minimize effluent from stock entering watercourses to the satisfaction of the Grantor.</p> <p>If any upgrade of any existing fence is required or additional fences are required to give effect to the requirement to contain stock, then the costs of so doing is to be the responsibility of the Concessionaire. Where the Grantor has agreed in writing to such work being carried out the Grantor may at its sole option agree to waive the Concession Fee or portion of it until such time as the cost of such work agreed to by the Grantor has been reimbursed to the Concessionaire. In such case the fence is to be owned by the Grantor.</p>

		<p>The Concessionaire must place on a prominent position on any electric fence placed on the Land a warning sign advising that the fence is electric.</p> <p>The Concessionaire is solely responsible for meeting the cost of work (as that word is defined in section 2 of the Fencing Act 1978) on any fence between the Land and any adjoining land administered by the Department of Conservation.</p>
6.	Gates	The Concessionaire may lock any gates located on the Land. Where gates are to be so locked the Concessionaire must give the Grantor a key so where necessary the Grantor can unlock the gates. Where any gate is so locked the Grantor may require the Concessionaire to erect a stile near the locked gate.
7.	Adverse effects	<p>If, in the opinion of the Grantor, stock effluent discharge occurring as a result of the Concession Activity is having an adverse effect on any adjoining or downstream river, stream, waterway or wetland, then the Grantor may require the Concessionaire to modify the Concession Activity or the manner in which it is carried out so as to avoid, remedy or mitigate that adverse effect. The Grantor, at the sole discretion of the Grantor, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.</p> <p>If, in the opinion of the Grantor, the Concession Activity is having or may have an adverse effect on the Land or adjoining bush or riparian margins administered by the Grantor, the Grantor may require the Concessionaire to comply with all reasonable notices and directions by the Grantor concerning the activities conducted by the Concessionaire including but not limited to notices or directions regarding the numbers of stock that may be grazed on the Land or any part of the Land. The Grantor, at the sole discretion of the Grantor, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.</p>
8.	Suspension for plant and/ or animal control	The Grantor by giving one month's written notice to the Concessionaire may suspend the carrying out of the Concession Activity while plant or animal control is carried out by or on behalf of the Grantor on the Land or on adjoining land.
9.	Didymo	The Concessionaire must comply and ensure its employees comply with the MAF Biosecurity New Zealand, Check, Clean, Dry cleaning methods to prevent the spread of Didymo (<i>Didymosphenia geminata</i>) and other freshwater pests when moving between waterways. MAF Biosecurity New Zealand, Check, Clean, Dry cleaning methods can be found at - http://www.biosecurity.govt.nz/didymo . The Concessionaire must regularly check this website and

		update their precautions accordingly.
10.	Hunters	The Grantor reserves the right to authorise hunters who hold a current hunting permit issued by the Director-General to hunt on the Land accompanied by dogs.
11.	Changes in Concessionaire's shareholding	Notwithstanding clause 7.6 in Schedule 2, where any change in the shareholding of the Concessionaire involves the same shareholders or immediate family members of the shareholders in the Concessionaire, the Grantor's consent is not required.
12.	<i>(Add other special clauses as required)</i>	None

SCHEDULE 4

Plan or map – *Insert Designations Plan*

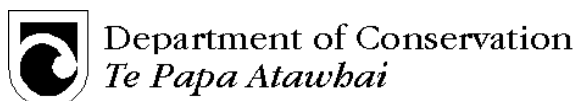
SCHEDULE 5

Activity Return

It would be useful to put a Table in here, perhaps as follows:

Stock type (if more than one type available)	Numbers	Date stock placed on Land	Date stock removed from land	Total weeks Land grazed (not exceeding xx)	Price per stock unit per annum	Total annual activity fee

Appendix 12: Form of Easement Concession “d-e” to be Created



Concession Number:

Concession Document (Easement)

THIS CONCESSION is made this day of

PARTIES:

- 1. Minister of Conservation** (the Grantor)
- 2. Morven Hills 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.

<p>SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate]</p> <p>acting under delegated authority in the presence of:</p> <p>_____</p> <p>Witness Signature: _____</p> <p>Witness Name: _____</p> <p>Witness Occupation: _____</p> <p>Witness Address: _____</p> <p>A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.</p>	<p>SIGNED by Morven Hills Limited by:</p> <p>_____</p> <p>Anne Louise Snow</p> <p>_____</p> <p>Madge Ngaire Dawn Snow</p> <p>_____</p> <p>Richard Gibson Snow</p>
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SCHEDULE 1

1.	Servient Land (Schedule 4)	As marked on the Proposed Designations plan attached in Schedule 4 being the area marked in pink and labelled CA1 and SR1 on the tenure review designations plan: <i>Physical Description/Common Name:</i> <i>Land Status:</i> <i>Area:</i> <i>Legal Description:</i> <i>Map reference: NaPALIS ID</i>
2.	Dominant Land (Schedule 4)	As marked on the Proposed Designations plan in Schedule 4 being the area outlined in green on the tenure review designations plan: <i>Title reference: CFR</i>
3.	Easement Area (Schedule 4)	As marked on the Proposed Designations Plan attached in Schedule 4 being the land between the points shown as [d-e] and being 20 metres wide. <i>Legal Description:</i>
4.	Concession Activity (clause 2)	(a) a right of way: for farm management purposes only for the Concessionaire (including the Concessionaire's tenants and contractors) on foot, on or accompanied by horses, by motor vehicles, with or without machinery and implements of any kind, guns and farm dogs.
5.	Term (clause 3)	60 years commencing _____ (the commencement date)
6.	Final Expiry Date (clause 3)	The 60 th anniversary of the commencement date, being <i>Insert final date</i>
7.	Concession Fee (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 [date] and for which an approved plan has been registered pursuant to section 65 of the Crown Pastoral Land Act 1998.
8.	Concession Fee Payment Date (clause 4)	Not Applicable – see item 7 above.
9.	Penalty Interest	Double the current Official Cash Rate (OCR).

Concessionaire's initials		Grantor's initials	
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	Rate (clause 4)	See Reserve Bank of New Zealand website
10.	Insurance (To be obtained by Concessionaire) (clause 9)	<p><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 \$250,000 .</p> <p>Third party vehicle liability for an amount no less than \$500,000.00.</p> <p>Insurance amounts subject to review (clause 9)</p>
11.	Addresses for Notices (clause 19)	<p>The Grantor's address is: Physical Address: Department of Conservation Conservation House 77 Lower Stuart Street Dunedin 9016</p> <p>Postal Address: PO Box 5244 Moray Place Dunedin 9058</p> <p>Phone: (03) 477 0677 Fax: (03) 477 8626 Email: permissionsdunedin@doc.govt.nz</p>
		<p>The Concessionaire's address in New Zealand is: ICL Limited Level 1 69 Tarbet Street Alexandra 9320 Phone: Email:</p> <p>Morven Hills Station Limited PO Box 18 Tarras 9347</p>

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

Concessionaire's initials		Grantor's initials	
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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 days 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

authority relating to the exercise of this Concession. The Concessionaire must comply with any safety directions of the Grantor.

11. What are the compliance obligations of the Concessionaire?

11.1 The Concessionaire must comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part 2A of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Servient Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, the Wildlife Act 1953, the Biosecurity Act 1993, the Resource Management Act 1991 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Servient Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and the Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Servient Land or affecting or relating to the conduct of the Concession Activity; and
- (d) unless previously agreed in writing with the Grantor, with all Department signs and notices placed on or affecting the Easement Area.

11.2 The Concessionaire must comply with this Concession.

11.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 11.1.(a) is deemed to be a breach of this Concession.

11.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Servient Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

12. When can the Concession be terminated?

12.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Area. Before so terminating the Grantor must give the Concessionaire either:

- (a) one calendar month's notice in writing; or
- (b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession.

12.2 The Grantor may choose to remedy at any time any default by the Concessionaire

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 3rd 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 5th 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 5th 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 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 Grantor. Works may not recommence until authorised by the Grantor to do so.
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.

Establishment and maintenance of formed track(s)

5. The Concessionaire has the right to repair and maintain any formed track(s) on their existing alignment, including the right to enter the Servient Land with or without machinery as necessary.
6. The cost of maintaining any formed track(s) shall be shared between the Grantor and the Concessionaire having regard to the proportion of each party’s use of the formed track(s) as agreed.
7. The Concessionaire has the right to take invitees on the Servient Land where this is incidental to the Concessionaire’s use of the Easement Area for the Concession Activity. The Concession Activity is limited and excludes e.g. the Concessionaire taking invitees on the Servient Land where such invitees are paying a fee to the Concessionaire. A separate concession would be required by the Concessionaire if it wishes to undertake a fee paying activity on the Servient Land.

SCHEDULE 4

Proposed Designations Plan

SCHEDULE 5

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; 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) deleted:
- (b) deleted:
- (c) in relation to a right of way, means that part of the surface of the land described as the stipulated area:
- (d) deleted:
- (e) deleted:
- (f) deleted

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:
- (b) a stipulated course or stipulated area

stipulated course or stipulated area, in relation to any of the classes of easements referred to in these regulations, means the course that—

- (a) is shown on a plan prepared for the purpose of specifying the easement; and
- (b) is referred to in a transfer instrument, easement instrument, or deposit document.

2. Classes of easements

For the purposes of regulation 10(a), easements are classified by reference to the following rights:

- (a) a right to convey water:
- (b) a right to drain water:
- (c) a right to drain sewage:
- (d) a right of way:
- (e) a right to convey electricity:
- (f) a right to convey telecommunications and computer media:
- (g) a right to convey gas.

Rights and powers implied in easements granting certain rights

3. Right to convey water

3(1) to 3(4) deleted as not relevant.

4. Right to drain water

4(1) to 4(3) deleted as not relevant.

5. Right to drain sewage

5(1) to 5(3) deleted as not relevant.

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; 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. 7(1) to 7(3) deleted as not relevant.

8. Right to convey telecommunications and computer media

8(1) to 8(3) deleted as not relevant.

9. Right to convey gas

9(1) to 9(3) deleted as not relevant.

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).
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. Deleted.
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 13: Copy of a registered easement in favour of Telecom New Zealand Limited
recorded as transfer 5010363.2**

YEC 5010363.2 DEED OF EASEMENT
CPY-01/01.PGS-010.11/10/00.12:21



DocID: 110113540

HER MAJESTY THE QUEEN

and

TELECOM NEW ZEALAND LIMITED

DEED OF EASEMENT
(Transmission Line Easement)

McVEAGH FLEMING
SOLICITORS
AUCKLAND

DEED OF EASEMENT

(Transmission Line Easement)

Date: 13 July 2000

PARTIES

- (1) **THE COMMISSIONER OF CROWN LANDS** pursuant to the Land Act 1948 (the "Grantor")
- (2) **TELECOM NEW ZEALAND LIMITED** at Wellington (the "Grantee")

BACKGROUND

- (A) The Grantee wishes to enter upon and cross the Grantor's Land for the purpose of installing, maintaining and using telecommunications lines and works.
- (B) The Grantor has agreed to grant to the Grantee an easement for that purpose on the terms and conditions set out in this Deed.

BY THIS DEED IT IS AGREED AND DECLARED as follows:

(a) **DEFINITIONS**

In this deed,

"Commencement Date" means the date first written above;

"Deed" means this deed, the Background and the Schedules annexed hereto;

"Easement Land" means the areas of the Grantor's Land delineated "A", "B", "C", "D", "E", "F", "G", "H", "I", "J" and "K" on Deposited Plan 300068 being the area within which the Grantee may exercise the rights granted by this Deed;

"Grantee" includes the Grantee's servants, agents, employees, workers and contractors and any licensee, lessee or tenant of the Grantee, but only where (in any case) the Grantee has allowed such person or persons to use the rights conferred by this Deed.

"Grantor's Land" means the land described in the Pastoral Lease;

"Lessee" means the lessee named in the Pastoral Lease;

[Handwritten signature]

"Line" means a wire, cable or a conductor of any kind (including fibre optic cable) used or intended to be used for Telecommunication and includes any pole, mast, transmitter, receiver, amplifier, machinery, insulator, casing, fixture, tunnel or other equipment or material used or intended to be used for supporting any such wire, cable or conductor or relating to Telecommunication and includes any part of a Line, and includes "existing lines" as defined by the Telecommunications Act 1987 and its amendments.

"Pastoral Lease" means pastoral lease no P14 recorded in the Register Book as Volume 338 Folio 20 (Otago Land District) and as is more particularly delineated in the plan drawn thereon;

"Telecommunication" means the conveyance, transmission, emission or reception of signs, signals, impulses, writing, images, sounds, instruction, information or intelligence of any nature whether by electromagnetic waves or not on any frequency and whether for the information of any person or not and includes any electronic power supply relating to Telecommunication.

(b) Construction

In the construction of this Deed, unless the context otherwise requires:

- (i) the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;
- (ii) references to Clauses and Schedules are to the clauses and schedules of this Deed;
- (iii) references to any statute, regulation or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, instrument or by-law as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and
- (iv) the singular includes the plural and vice versa, and words importing any gender include the other genders.

2. GRANT OF RIGHTS

- (a) The Grantor hereby grants to the Grantee, for a term of sixty (60) years commencing on the Commencement Date and (subject to clause 11) expiring on the day prior to the sixtieth anniversary of the Commencement Date, pursuant to section 60 of the Land Act 1948, the following easements in gross:
 - (i) the right for the Grantee to lay and maintain Lines in and under the soil of the Easement Land or as the case may be, to erect, construct and maintain Lines on, and under the Easement Land and to use the Lines for the purpose of Telecommunication without interruption or impediment;
 - (ii) the right for the Grantee to enter upon, go, pass and repass by vehicle, air or foot over the Easement Land (and such part of the Grantor's Land immediately

adjoining the Easement Land as may reasonably be necessary to exercise the rights in this clause, provided that the Lessee's consent is first obtained) with or without vehicles, laden or unladen and with materials, machinery and implements from time to time and at all times and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, replacing or altering and renewing any Lines or any part thereof and of opening up the soil of the Easement Land to such extent as may be necessary and reasonable in that regard subject to the condition that as little disturbance as possible is caused to the surface of the Grantor's Land.

3. CONSIDERATION

- (a) In consideration of the grant of easements in this Deed:
- (i) the Grantee has paid the Grantor the sum of \$10,200.00 plus GST (receipt of which is acknowledged by the Grantor), and
 - (ii) the Grantee shall duly observe the obligations imposed on it under this Deed.

4. PAYMENT OF COMPENSATION TO LESSEES

- (a) The Grantee has entered into an agreement with the Lessees recording receipt by the Lessees of a payment from the Grantee which amount is acknowledged by the Lessee to be paid in lieu of the payment of any compensation by the Grantor pursuant to section 60(1) of the Land Act 1948, and that agreement records the Lessees' waiver of their right to any compensation from the Grantor in respect of the grant of easements in this Deed.

5. OBLIGATIONS OF THE GRANTEE

- (a) The rights and powers conferred under clause 2 of this Deed are granted subject to the following conditions and obligations:
- (i) The Grantee shall when on the Easement Land:
 - wherever possible remain on the roads and tracks constructed on the Grantor's Land;
 - not use or cause to be used either any tracked vehicle or any other class of vehicle which has been prohibited by the Grantor;
 - immediately after passing through any gates close such of them as were closed and lock such of them as were locked immediately before such passing through;
 - take all reasonable precautions for guarding against any danger (including, but without limitation, fire, physical damage or disease) on the Grantor's Land, and in particular shall (but without limiting the general obligation to take full and proper precautions pursuant to this clause

5.1.1(iv)) comply with all reasonable conditions that may be imposed from time to time by the Grantor or any lawful authority;

ensure that as little damage or disturbance as possible is caused to the surface of the Grantor's Land and that the surface is restored as nearly as possible to its former condition and any other damage done by reason of the activities permitted on the Easement Land by this Deed is repaired forthwith;

ensure that the Grantee does not enter upon the Easement Land without first contacting the Lessees by telephone and advising them of their intention to enter upon the Grantor's Land for the purposes permitted in this Deed except in cases of emergency.

- (ii) The Grantee shall, at its cost, maintain and repair to the reasonable satisfaction of the Grantor any part of the Grantor's Land, including the tracks, fences, gates, drains, buildings or other structures, which is damaged by the Grantee **PROVIDED THAT** the obligation to maintain and repair shall only arise if damage is caused by the Grantee.
- (b) The Grantee shall compensate the Grantor for any loss suffered by the Grantor if the actions of the Grantee result in damage to stock on the Grantor's Land.
- (c) The Grantee shall at all times in the exercise of the rights set out in this Deed not obstruct or hamper the Grantor or any agents, employees and contractors of the Grantor, in its or their normal or reasonable use of the Grantor's Land.
- (d) The Grantee shall not at any time except with the prior written approval of the Grantor (which approval shall not be unreasonably withheld) carry out any activity which is not included within clause 2 of this Deed on the Grantor's Land, or do any other thing which would affect the ability of the Grantor to use the Grantor's Land.
- (e) The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed.

6. OBLIGATIONS OF THE GRANTOR

- (a) The Grantor shall not grant any lease, licence or easement with respect to any part of the Grantor's Land or any building erected on it to any other party which authorises the operation of any equipment which causes interference (as defined in section 2 of the Radiocommunications Act 1989) with the operation of the Grantee's Telecommunication equipment on the Easement Land.
- (b) The Grantor shall not grow or permit to be grown any trees, shrubs or bushes of any description which will interfere with the rights granted by this Deed provided however that the provisions of this clause shall not apply so long as the Grantor hereunder is Her Majesty the Queen.

7. OWNERSHIP OF LINES

- (a) All Lines placed on the Easement Land by the Grantee for the purposes of exercising the rights of the Grantee created by this Deed will remain the property of the Grantee and no part of them will become a fixture on the Easement Land.
- (b) The Grantee shall, on the determination of the rights created by this Deed, remove all Lines from the Easement Land within one month and will restore the Grantor's Land to the condition that it was in at the commencement of this Deed.
- (c) In determining whether the Grantee has restored the Grantor's Land to the condition that it was in at the commencement of this Deed, the Grantor will take into account any changes since the Commencement Date in that part of the Grantor's Land where the Easement Land is located, and any other factors affecting the physical state of the Grantor's Land.
- (d) If the Grantee has not taken the steps set out in clause 7.2 within the specified time frame, the Grantor may remove all Lines from the Easement Land and restore the Grantor's Land to the condition that it was in at the commencement of this Deed and recover all costs incurred from the Grantee.

8. COSTS

- (a) The Grantee shall bear all reasonable costs and expenses (including the Grantor's legal costs and expenses where recovery of those costs is permitted by law) in relation to the preparation registration and enforcement of any provisions in this Deed.
- (b) All costs for the installation of Lines permitted by this Deed shall be paid for by the Grantee.

9. INDEMNITY

- (a) The Grantee hereby indemnities the Grantor against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor in connection with this Deed or as a direct result of the exercise by the Grantee of its rights under this Deed, or any breach by the Grantee of its obligations, undertakings or warranties contained or implied in this Deed.

10. GRANTOR'S LIABILITY EXCLUDED

- (a) Under no circumstances will the Grantor be liable in contract, tort, or otherwise to the Grantee for any expense, costs, loss, injury, or damage whether consequential or otherwise, arising directly or indirectly from this Deed or any activity undertaken by the Grantor on the Grantor's Land, whether the expense, cost, loss, injury or damage is the direct or indirect result of negligence or otherwise.

*h**Ellen CRB*

11. TERMINATION

- (a) The Grantee may terminate the rights created by this Deed by the giving of twelve months notice in writing to the Grantor and on termination pursuant to this clause the provisions of clause 7 shall be applicable.

12. REGISTRATION

- (a) The parties shall take and do all such acts and things necessary to ensure that this Deed may be registered if the Grantee wishes to register the Deed or a Memorandum of Transfer Grant of Easement on substantially the same terms in the appropriate Land District.

13. DELEGATION

- (a) All rights, benefits, and obligations of the Grantor arising under this Deed may be exercised by a person duly appointed by the Grantor PROVIDED THAT the exercise of any such rights, benefits or obligations by that person shall not limit the liability of the Grantor in the performance or observance of the provisions of this Deed.

14. DISPUTES

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

15. NOTICES

- (a) Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the address in writing to the other party-
- (i) The Grantor's Address as set out in paragraph 2 of the First Schedule.
 - (ii) The Grantee's Address as set out in paragraph 5 of the First Schedule.
- (b) Any notice posted shall be deemed to be served three (3) working days after the date of posting.

*L**Quinn CBS*

16. SEVERABILITY

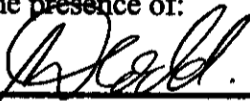
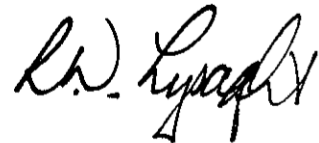
- (a) If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

17. TELECOMMUNICATIONS ACT

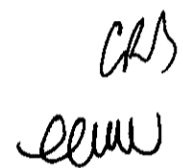
- (a) Nothing in this Deed shall be construed to limit, remove, alter or restrict any rights, powers, remedies or actions which the Grantee may have under the Telecommunications Act 1987 or any statutory amendment or re-enactment thereof.

IN WITNESS WHEREOF this Deed has been duly executed on the date first written above.

~~SIGNED by the Commissioner of Crown Lands~~ **ROBERT WILLIAM LYSAGHT**
~~DAVID JOSEPH GULLEN~~ **PURSUANT TO A DELEGATION**
~~pursuant to the Land Act 1948~~ **FROM THE COMMISSIONER**
OF CROWN LANDS
 in the presence of:



MICHAEL JOHN TODD PORTFOLIO MANAGER CROWN PROPERTY MANAGEMENT CI- LINZ, CHRISTCHURCH



SIGNED for and on behalf of **TELECOM NEW ZEALAND LIMITED**
on the 13th day of *June* 2000 by two of its Attorneys:
and

Tina Ming-Wong
Environmental Manager
Wellington

Craig Ritchie Bonnington
Network Property Information Manager
Telecom New Zealand Limited

[Signature]
.....
Signature

[Signature]
.....
Signature

in the presence of:

WITNESS: (to both signatures)

[Signature]
.....
Signature

Name:
Occupation:
Address:

Grant Jason Robertson
Acquisition Project Consultant
Wellington

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

We: Tina Ming-Wong
Environmental Manager
Wellington

and Craig Ritchie Bonnington
Network Property Information Manager
Telecom New Zealand Limited

hereby severally certify:

1. That by a Power of Attorney dated 26 February 1998 copies of which are deposited in the Land Titles Offices at:

Auckland	as No D250016.1F	Gisborne	as No G219546.1	Napier	as No 668157
Blenheim	as No 196252.1	Hamilton	as No B469761.1	Nelson	as No 375631.1
Christchurch	as No A342475.1	Hokitika	as No 109390.1	New Plymouth	as No 448858.1
Dunedin	as No 944665.1	Invercargill	as No 256408.1	Wellington	as No B654792.1

Telecom New Zealand Limited appointed as its Attorneys on the terms and subject to the conditions set out in the said Power of Attorney any two of the following persons (and each and every person as may for the time being be acting as such): the Manager, Property Acquisitions and Divestments, Telecom New Zealand Limited; the Environmental Manager, Telecom New Zealand Limited; the Network Property Information Manager, Telecom New Zealand Limited; the Property Divestments Manager, Telecom New Zealand Limited; the Manager, Network Property Asset Utilisation, Telecom New Zealand Limited; the Manager, Telecom Property Services, Telecom New Zealand Limited; the Commercial Manager, Telecom Property Services, Telecom New Zealand Limited; the Manager, Corporate Services, Telecom New Zealand Limited; the Manager, Capability Management, Telecom New Zealand Limited.

2. That we are employed by Telecom in the offices set out above under our respective names and as such are Attorneys for Telecom pursuant to the said Power of Attorney.

3. That at the date hereof we have not received any notice or information of the revocation of that appointment by the commencement of liquidation of Telecom or otherwise.

SIGNED at Wellington
this 13th day of *June* 2000

[Signature]
.....

SIGNED at Wellington
this 13 day of *JUNE* 2000

[Signature]
.....

[Handwritten mark]

FIRST SCHEDULE

1. **GRANTOR'S LAND** 14199.8510 ha being Runs numbered 678, 679 and 680 Lindis Survey District and being all of the land referred to in Pastoral Lease No P14 entered in the Otago Land District Registry Book Volume 338 Folio 20.

2. **GRANTOR'S ADDRESS**

Land Information New Zealand
Lambton House
110 Lambton Quay
Wellington

Attention: The Commissioner of Crown Lands

3. **GRANTEE'S ADDRESS**

Telecom Centre L1U2
49-55 Tory Street
Wellington

Attention: The Manager
Property Acquisitions and Divestments
(or such other person as the Grantee may hereafter advise in writing to the Grantor)

aw
rs

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