

Crown Pastoral Land Tenure Review

Lease name: BEN NEVIS

Lease number: PO 241

Preliminary Proposal

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.

September 09

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

Date:

Parties

Holder: Pioneer Generation Limited
11 Ellis Street
PO Box 275
Alexandra

Commissioner of Crown Lands:

C/- Project Manager-Tenure Review
Darroch Valuations
Broadway Building
62 Riccarton Road
PO Box 13 443
Christchurch

The Land

Lease: Ben Nevis

Legal Description: Part Section 1, Section 15 and Section 18 Block I Nevis Survey District, Section 6, Section 13A, Section 32 and Section 35, Block III Nevis Survey District, Section 16 Block XIII Nevis Survey District, Part Run 345A and Run 345B

Area: 14,560.3542 hectares more or less

Certificate of Title/Unique Identifier: OTA2/1215 (Otago Registry)

Summary of Designations

Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown marked 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 marked in green on the Plan) is to be disposed by freehold disposal to the Holder as set out in Schedule Three.

1 The Plan

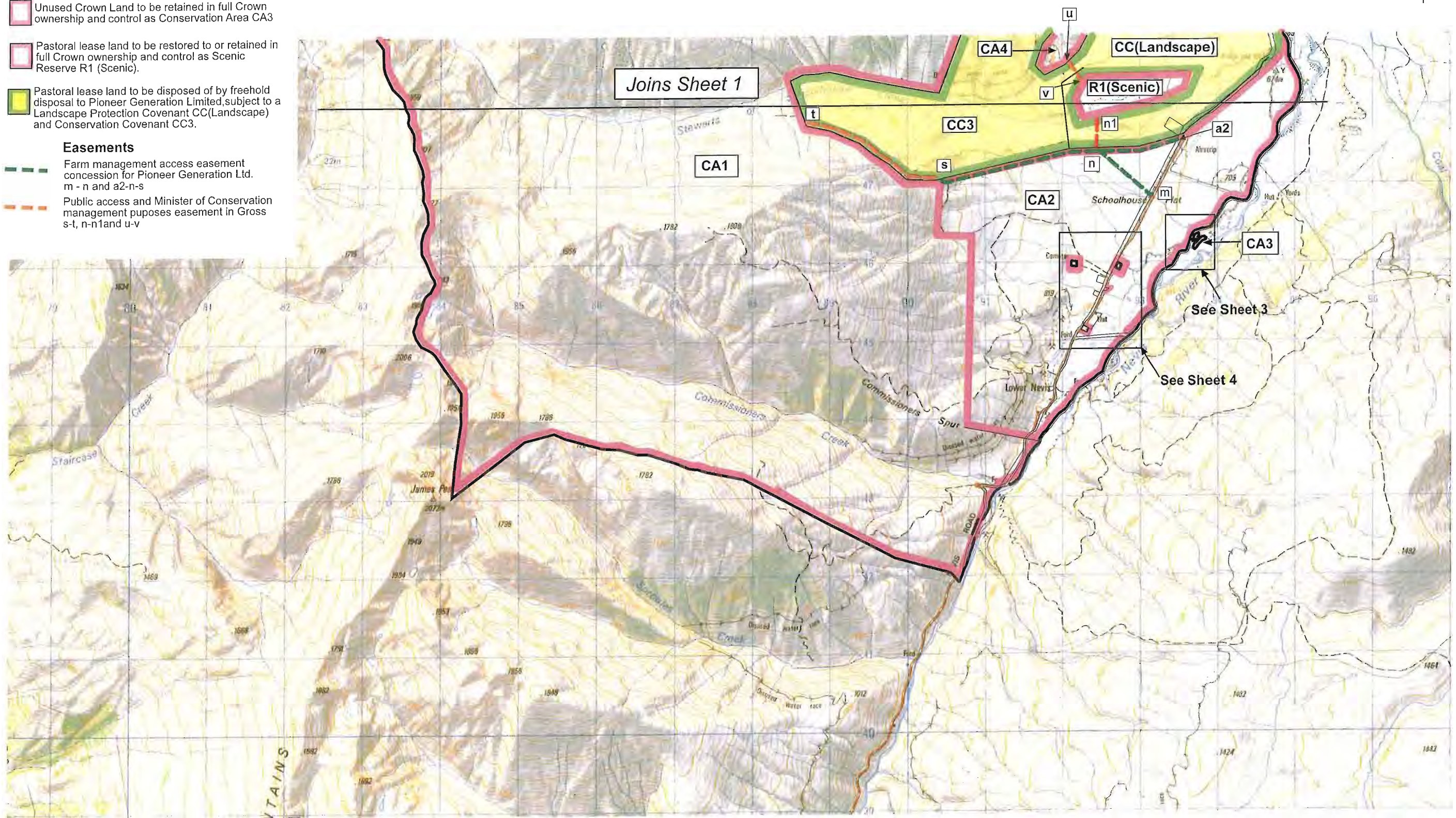
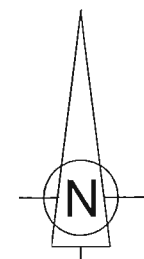
**P 241 BEN NEVIS TENURE REVIEW
PROPOSED DESIGNATIONS**

- Pastoral lease land to be restored to or retained in Crown control, as Conservation Area CA1, subject to a Heleskiing concession.
- Pastoral lease land to be restored to or retained in Crown control as Conservation Area CA2, subject to an easement concession.
- Unused Crown Land to be retained in full Crown ownership and control as Conservation Area CA3
- Pastoral lease land to be restored to or retained in full Crown ownership and control as Scenic Reserve R1 (Scenic).
- Pastoral lease land to be disposed of by freehold disposal to Pioneer Generation Limited, subject to a Landscape Protection Covenant CC(Landscape) and Conservation Covenant CC3.

Easements

- Farm management access easement concession for Pioneer Generation Ltd. m - n and a2-n-s
- Public access and Minister of Conservation management purposes easement in Gross s-t, n-n1 and u-v

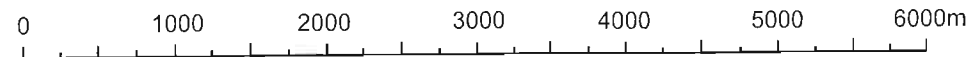
The boundaries on this plan are for illustrative purposes in showing the recommended designations.



Graphics by :
TL Survey services Ltd DUNEDIN
Certified a true copy of the
original status check plan.









Ben Nevis

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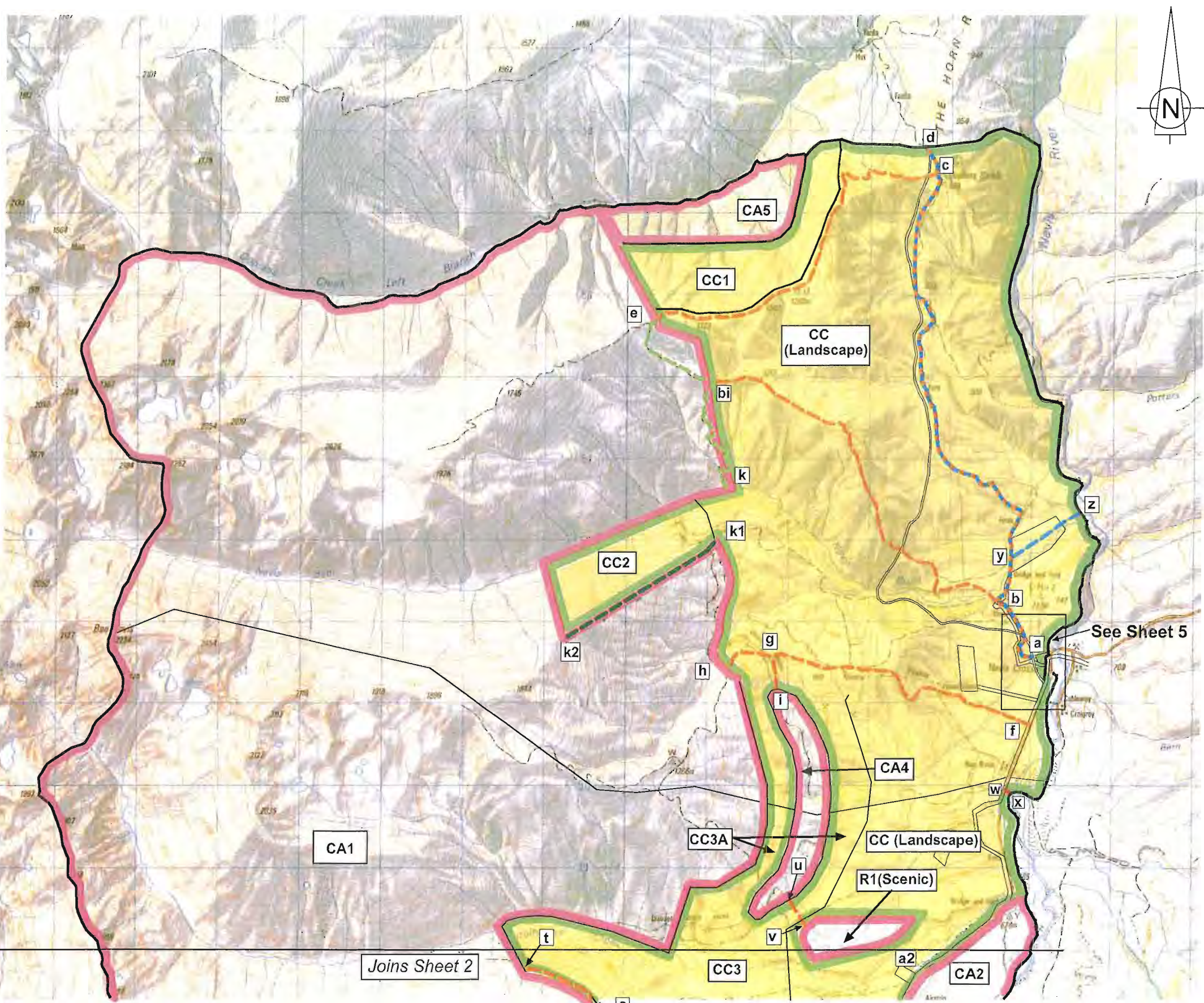


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**P 241 BEN NEVIS TENURE REVIEW
PROPOSED DESIGNATIONS**

-  Pastoral lease land to be restored to or retained in Crown control, as conservation area CA1, subject to a Heleskiing Concession and farm management access easement concession e-b1-k and k1-k2.
 -  Pastoral lease land to be restored to Crown control as conservation area, subject to a grazing concession CA4 & CA5
 -  Pastoral lease land to be restored to or retained in full Crown ownership and control as Scenic Reserve R1 (Scenic)
 -  Pastoral lease land to be disposed of by freehold disposal to Pioneer Generation Limited, subject to a Landscape Protection Covenant CC (Landscape) and Conservation Covenant CC1, CC2, CC3 and CC3A
- Easement**
-  Public access and Minister of Conservation management purposes easement in gross a-b-y-c-d, b-bi, c-e, f-g, h, g-l, s-t, u-v, and w-x
 -  Public vehicle access easement in gross a-b-y-c-d
 -  Farm management access easement concession for Pioneer Generation Ltd. e-bi-k and k1-k2
 -  Otago Fish & Game Council management purposes easement a-b-y-c-d and y-z

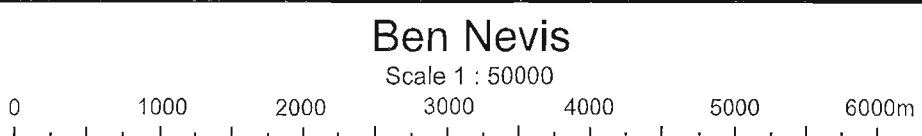
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See Sheet 5

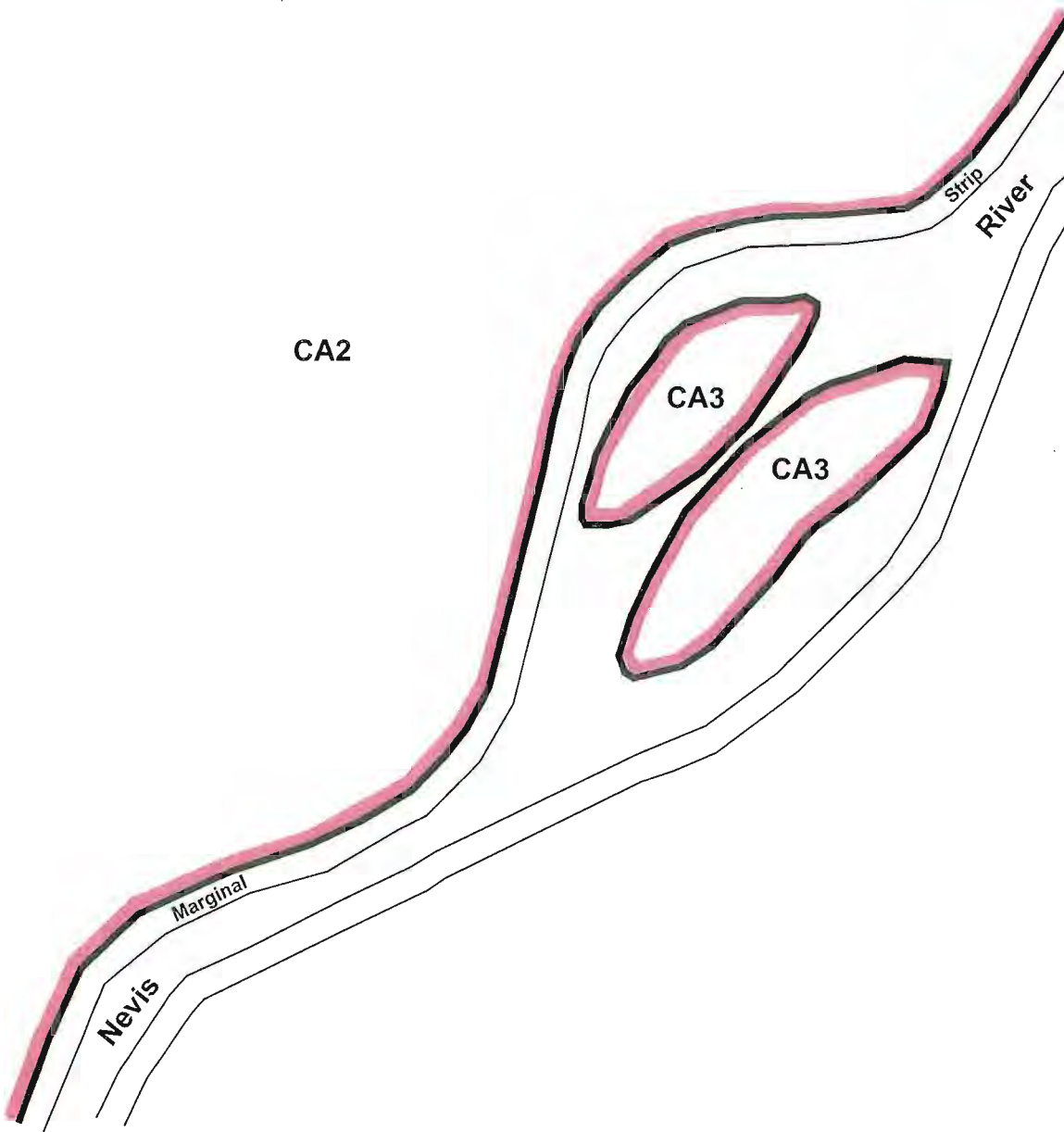
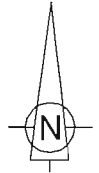
Joins Sheet 2

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**P 241 BEN NEVIS TENURE REVIEW
PROPOSED DESIGNATIONS**

-  Pastoral lease land to be restored to or retained in Crown control as conservation area, subject to an easement concession CA2
-  Pastoral lease land to be restored to or retained in full Crown ownership and control as conservation area CA3

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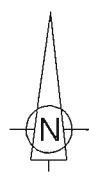
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Ben Nevis
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Existing Conservation Land

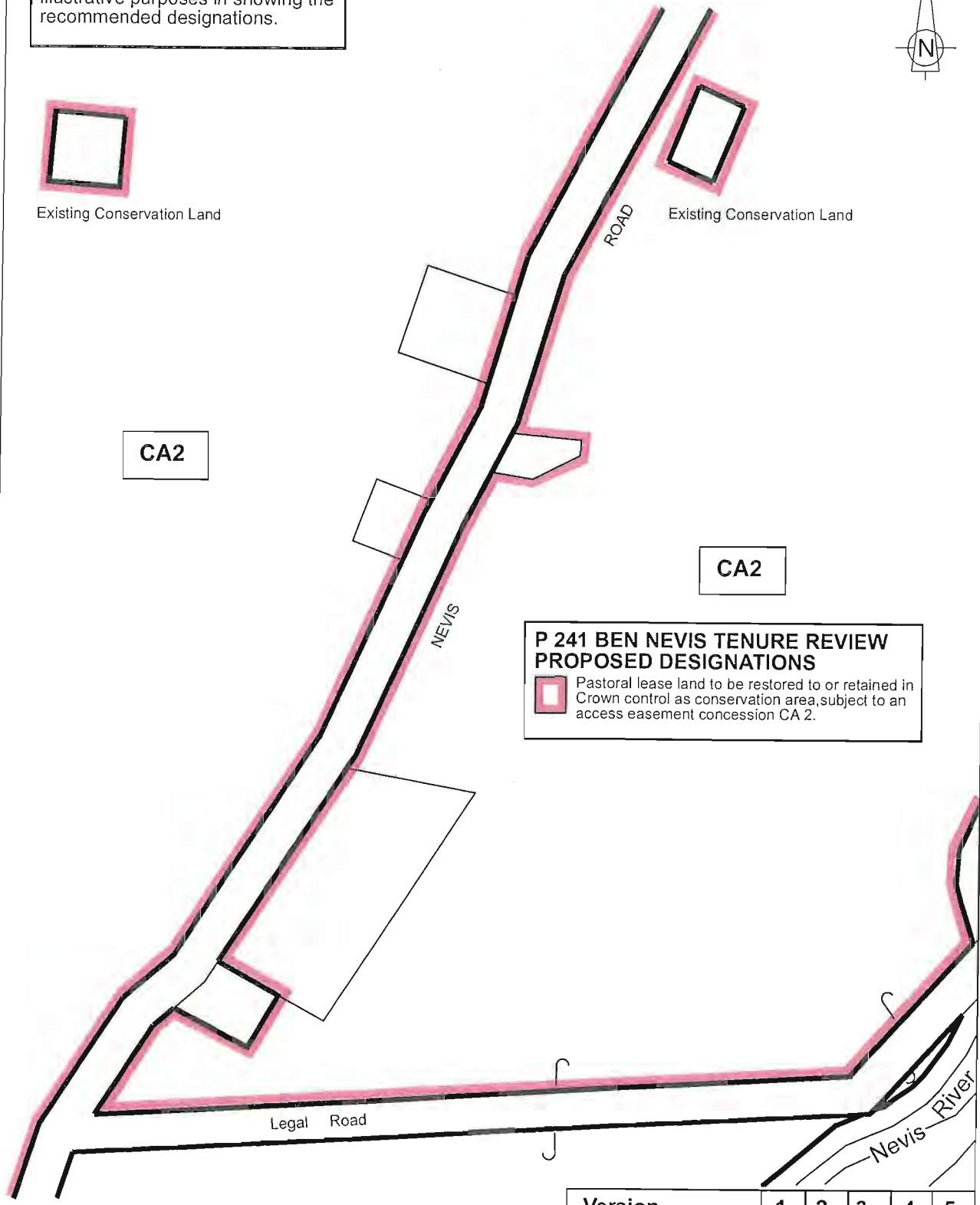


Existing Conservation Land

CA2

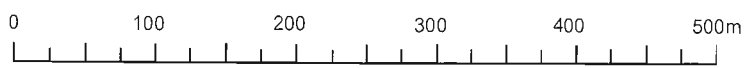
CA2

**P 241 BEN NEVIS TENURE REVIEW
PROPOSED DESIGNATIONS**
 Pastoral lease land to be restored to or retained in Crown control as conservation area, subject to an access easement concession CA 2.



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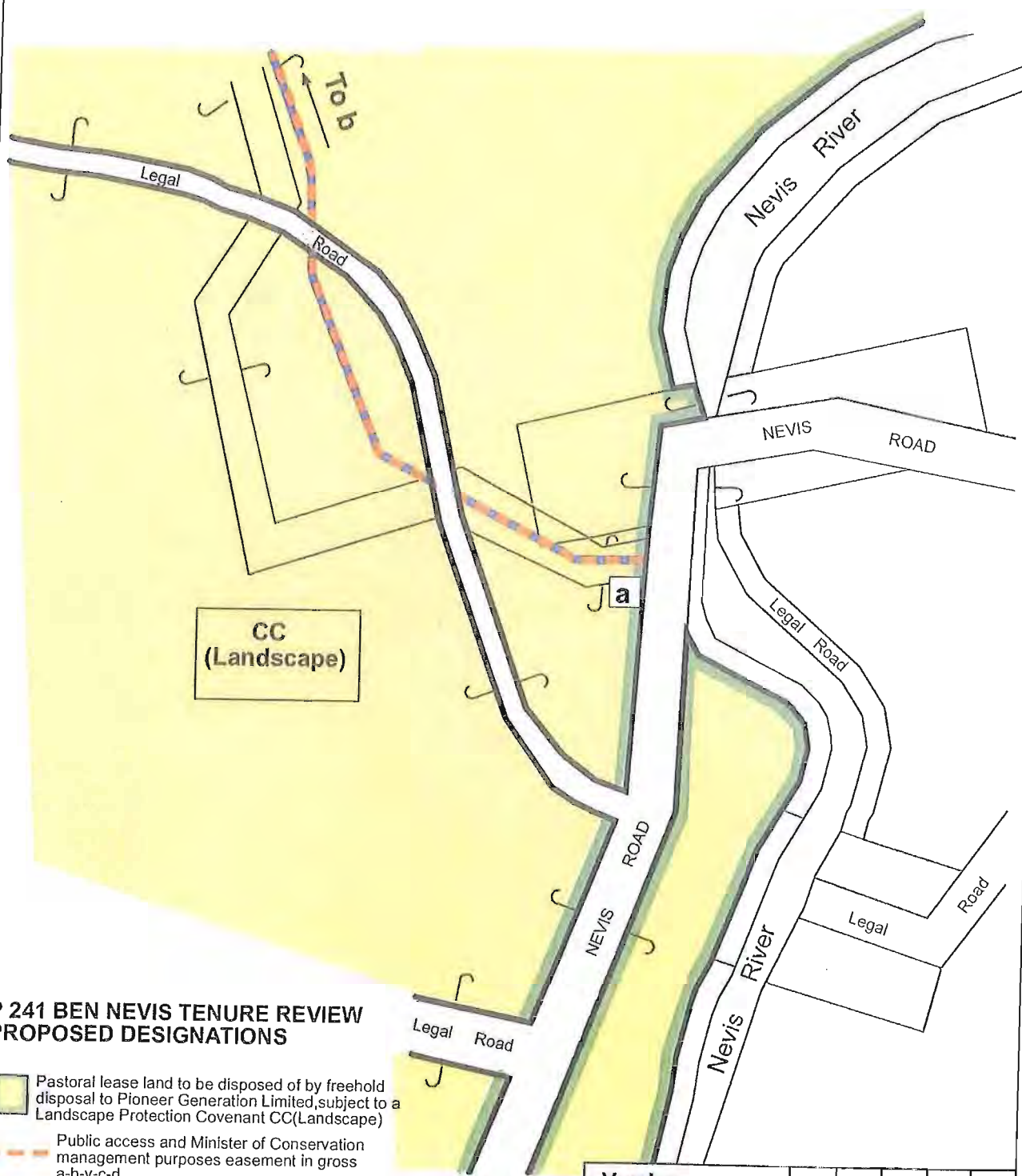
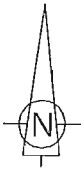
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**P 241 BEN NEVIS TENURE REVIEW
PROPOSED DESIGNATIONS**

- Pastoral lease land to be disposed of by freehold disposal to Pioneer Generation Limited, subject to a Landscape Protection Covenant CC(Landscape)
- Public access and Minister of Conservation purposes easement in gross a-b-y-c-d,
- Otago Fish & Game Council management purposes easement a-b-y-c-d

Version	1	2	3	4	5
Otago Land District	Sheet 5 of 5				
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Ben Nevis
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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:

(a) has been agreed or determined; and

(b) 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/odge 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 and the Overseas Investment Regulations
- 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 anyone or more of the following:

- (Hi) erect the Fencing in a position different from that shown on the Plan;
 - (iv) erect the Fencing over a shorter distance than that shown on the Plan; or
 - (v) erect the Fencing to specifications different from those in Appendix 3.
- 11.3 If the Commissioner has not completed the Fencing by the Settlement Date, the Holder agrees that the Commissioner may register a covenant, on terms entirely satisfactory to the Commissioner (in the Commissioner's sole discretion), over the Freehold Land to enable the Commissioner to complete the Fencing. The Holder will do all things necessary (including signing any document) to enable the Commissioner to register such a covenant.
- 11.4 The ongoing maintenance of the Fencing referred to in clauses 11.1 and 11.2 will be subject to the terms of the Fencing Act 1978.
- 11.5 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, [the Commissioner] [the Holder] [both parties] will, subject to clause 11.6, undertake the construction works set out in Appendix 3 on the terms and conditions set out in Appendix 3 ("the Construction Works").
- 11.6 If any Construction Works for which the Commissioner is liable, or jointly liable with the Holder, require a resource consent or any other consent from any local or territorial authority ("the Works Consent"), the following provisions shall apply:
- (a) The Commissioner shall use reasonable endeavours to obtain the Works Consent within 6 months of this Proposal taking effect pursuant to the Act.
 - (b) If the Works Consent:
 - (i) is not obtained within 6 months of this Proposal taking effect pursuant to the Act; and/or
 - (H) 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; and
 - (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
 - (iii) the Building Act 2004; and
- the 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 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.

20.2 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.

- 20.3 The Holder will pay GST on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 20.4 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.
- 20.5 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.6 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 2004 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 2004 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 Discretionary Actions

- 25.1 If the Holder has been granted a consent by the Commissioner to do an activity on the land under s18 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.

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 24M 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 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;

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 part of the land shown marked in pink and labelled "CA3" on the Plan, being 8 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.
- 1.2 Under this Proposal part of the land shown marked in pink and labelled "R1(Scenic)" on the Plan, being 52 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as scenic reserve.

2 Schedule One Improvements

Nil

Schedule Two: Provisions relating to the Schedule Two Land

1 Details of designation

- 1.1 Under this Proposal part of the land shown marked in pink and labelled "CA1" on the Plan, being 8,807 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of an easement concession (shown marked on the plan in dashed green and labelled "e-b1-k" and "k1-k2") sUbstantially as set out in Appendix 4;
 - (b) the granting of a heliskiing concession substantially as set out in Appendix 5;
- 1.2 Under this Proposal part of the land shown marked in pink and labelled "CA2" on the Plan, being 950 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of an easement concession (shown marked on the plan in dashed green and labelled "a2-n-s" and "m-n") substantially as set out in Appendix 4;
- 1.3 Under this Proposal part of the land shown marked in pink and labelled "CA4" on the Plan, being 140 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of a grazing concession substantially as set out in Appendix 6;
- 1.4 Under this Proposal part of the land shown marked in pink and labelled "CAS" on the Plan, being 160 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of a grazing concession substantially as set out in Appendix 7;

[2 Information Concerning Proposed Concession]

- 2.1 Information regarding easement concession provided for in 1.1 (a) and 1.2 (a) above:

2.1.1 Description of proposed activity:

The easement concession over Land shown marked "CA1" and "CA2" and labelled "a2-n-s", "e-b1-k", "k'l-k2" and "m-n" on the Plan, permit access on foot, on or accompanied by horses or by motor vehicle, and with or without machinery and implements of any kind, and with or without livestock, guns and dogs associated with farming the land to which it provides access.

2.1.2 Description of the places where proposed activities to be carried out and proposed status:

Farm access easement over existing 4 wheel drive tracks that traverse through several areas of proposed conservation area for approximately 7 kilometres over several discrete sections in the Nevis Burn and Schoolhouse Creek catchments. Proposed status for the areas is conservation area

2.1.3 Description of the potential effects of proposed activity and any actions proposed to avoid, remedy or mitigate any adverse effects:

The driving of stock along the easement may lead to minor grazing of native vegetation on the periphery of the track, however it is considered that the easement terms contain sufficient controls to avoid, remedy or mitigate any adverse effects. The easement contains clauses dealing with protection of the environment, interference with natural features, deposit of dangerous matter, obstruction of the public and restraint of use during periods when the land is vulnerable to damage.

Department of Conservation staff will periodically visit the area for a range of activities including wild animal control, weed control and threatened species management and will therefore aware if the concession activity is having any negative effects.

2.1.4 Details of the proposed type of concession:

Easement Concession under section 17Q Conservation Act 1987.

2.1.5 Proposed duration of concession and reasons for proposed duration:

- (a) Proposed duration- the easement shall be forever appurtenant to the land of the concessionaire to which it provides access. A perpetual term is therefore required.
- (b) Reasons for proposed duration- the easement routes provide the only access to the higher lands in the Nevis Burn area as well as to land in the Schoolhouse Flat area proposed to be freeholded. The term of the concession must be for the longest possible term to give the holder permanent access rights to the land being disposed of by way of freehold disposal.

2.1.6 Relevant information about the proposed grantee, including information relevant to the grantee's ability to carry out each proposed activity:

1. Proposed grantee- Pioneer Generation Limited
2. Relevant information- the proposed grantee currently maintain and use the tracks over which the easement is proposed. No negative effects associated with the current use of the tracks have been noted.

2.2 Information regarding heliskiing concession provided for in 1.1 (b) above

2.2.1 Description of proposed activity:

The concession is for the landing of aircraft for the purpose of heliskiing, for the period between 1 July and 30 September each year.

2.2.2 Description of the places where proposed activities to be carried out and proposed status:

The operational area for this concession activity comprises approximately 8,807 hectares of land shown marked "CA1" on the Plan proposed to become part of the Remarkables Conservation Area. Proposed status is conservation area.

2.2.3 Description of the potential effects of proposed activity and any actions proposed to avoid, remedy or mitigate any adverse effects:

This concession is the continuation of an activity that has been previously conducted on the land

The potential adverse effects are:

- (a) adverse effects on the natural features of the land; and

- (b) Adverse effects on other users of the area.

Adverse effects on the natural features of the land shall be avoided by the concessionaire complying with certain conditions, including those contained in the Department of Conservation environmental and water care codes. The Department of Conservation also reserves the right to both monitor compliance with these conditions and to require the concessionaire to alter their activities in a manner so as to remedy any adverse environmental effects.

Adverse effects on other users shall be somewhat mitigated by a requirement that the operator avoids landing ski parties in the vicinity of any recreational party not associated with the concession activity.

The installation of structures and the storage of fuel within the proposed conservation area are prohibited unless approved by the Department of Conservation. The concession document contains clauses relating to littering, noisome and / or dangerous activities and fires.

2.2.4 Details of the proposed type of concession:

Recreation & tourism concession under section 17Q Conservation Act 1987.

2.2.5 Proposed duration of concession and reasons for proposed duration:

- (a) Proposed duration- 10 years commencing on the date the substantive proposal is signed or such residual that remains of the term when the concession is granted.
- (b) Reasons for proposed duration- The proposed term will allow the Department of Conservation the future opportunity to review the activities suitability and to consider in relation to the Departments policy regarding issuing future heliskiing concessions i.e. tendering and securing a full range of recreation opportunities.

2.2.6 Relevant information about the proposed grantee, including information relevant to the grantee's ability to carry out each proposed activity:

- (a) Proposed grantee- Pioneer Generation Limited who propose to assign the concession to Alpine Heliski Limited.
- (b) Relevant information- it is noted that Pioneer Generation Limited intends to transfer the concession to Alpine Heliski Limited. Alpine Heliski Limited has been conducting heliski activities in conjunction with Alpine helicopters for some 5 years and hold recreation permits issued under the Land Act 1948 over a substantial area of land held under pastoral leases.

Department of Conservation require the concessionaire to hold current heliskiing and heliboarding industry minimum safety qualifications and meet Civil Aviation Authority (CM) qualifications and standards including Part 119 and 135 requirements of the CM rules or other such standards as CM may require.

- 2.3 Information regarding grazing concession provided for in 1.3 (a) above:

2.3.1 Description of proposed activity

The concession provides for limited grazing of sheep, up to 70 sheep per annum or in practice more sheep for a lesser period on proposed conservation area shown labelled "CA4" in recognition that there is no fenced boundary between "CA4" and freeholded land.

2.3.2 Description of the places where proposed activities to be carried out and proposed status:

The area contains three major sets of sluicing faces spread along the hillside for approximately 1500 metres, all of which were likely to have been formed in the 1930's. The area also contains mining tailings and races.

Proposed status is conservation area.

2.3.3 Description of the potential effects of proposed activity and any actions proposed to avoid, remedy or mitigate any adverse effects:

It is anticipated that sheep grazing will help maintain the legibility of the historic mining site by controlling grasses and herbs. Sheep being light on the ground and without physical bulk to damage or destroy features such as tailings and hut remains.

To safeguard against adverse effects a monitoring program is to be undertaken including general inspections, liaison with the concessionaire and revision of grazing limits prior to the preparation of management prescription documents.

2.3.4 Details of the proposed type of concession:

Grazing concession under section 17Q Conservation Act 1987.

2.3.5 Proposed duration of concession and reasons for proposed duration:

- (a) Proposed duration- 7 years commencing on the date that the relevant land become conservation area, with right of renewal for a further two terms of 7 years. Final expiry date - 21 years from commencement date.
- (b) Reasons for proposed duration- The proposed 21 year period made up of 3 x 7 year term is in recognition that a level of sheep grazing in the area is desirable. The 7 year review periods allow the purpose of the grazing to be reviewed subject to monitoring results.

2.3.6 Relevant information about the proposed grantee, including information relevant to the grantee's ability to carry out each proposed activity:

- (a) Proposed grantee- Pioneer Generation Limited.
- (b) Relevant information- the proposed grantee currently farms the area and negative effects associated with the current use have not been noted.

2.4 Information regarding grazing concession provided for in 1.4 (a) above:

2.4.1 Description of proposed activity

The concession provides for limited grazing of sheep on proposed conservation area shown labelled "CAS" in recognition that there is no fenced boundary between "CAS" and freeholded land. The onus will be on the concessionaire to conduct grazing in a manner than minimises stock drift into the area.

2.4.2 Description of the places where proposed activities to be carried out and proposed status:

The area comprises predominantly indigenous vegetation. Below approximately 1000 metres ASL are extensive mixed shrublands including *Olearia odorata*, *Coprosma propinqua* and *matagouri*. There are occasional *kowhai* trees. The tors and rocky outcrops have distinctive vegetation including *Coprosma cheesemanii*, *Meliccytus alpinus*, *Muehlenbeckia axillaris*, *Celmisia lyallii*, *Blechnum penna-marina*, *Myrsine nummularia*, *Stellaria gracilentia* and *Thelymitra longifolia*. The upper parts have a moderate cover of narrow leaved tussock, speargrass, dwarf broom and hard tussock.

Proposed status is conservation area.

2.4.3 Description of the potential effects of proposed activity and any actions proposed to avoid, remedy or mitigate any adverse effects:

The majority of the area comprises shrublands that are relatively inaccessible to stock. Sheep will drift into the concession area and graze areas of mixed native and exotic pasture. Over time shrublands will likely expand into these areas reducing the amount of grazing available.

The concession document contains clauses relating to environmental protection covering removal of natural features, introduction of plants or animals (excluding domestic sheep and farm dogs), littering, noisome or dangerous activities, top dressing, disturbance of water courses and fire. The concessionaire is prohibited from actively encouraging sheep into the area for instance by mustering or use of salt blocks.

2.4.4 Details of the proposed type of concession:

Grazing concession under section 17Q Conservation Act 1987.

2.4.5 Proposed duration of concession and reasons for proposed duration:

- (a) Proposed duration- 30 years commencing on the date that the relevant land become conservation area.
- (b) Reasons for proposed duration- The proposed 30 year period is in recognition that it is not practical to fence the concession area from the proposed freehold land. This situation will not change in the foreseeable future with existing fencing technology and while the land owners are farming livestock.

2.4.6 Relevant information about the proposed grantee, including information relevant to the grantee's ability to carry out each proposed activity:

- (a) Proposed grantee- Pioneer Generation Limited.
- (b) Relevant information- the proposed grantee currently farms the area and negative effects associated with the current use have not been noted.

Schedule Three: Provisions relating to the Schedule Three Land

1 Details of designation

- 1.1 Under this Proposal the land shown marked in green on the Plan, being 4,451 hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:
- (a) Part IVA of the Conservation Act 1987;
 - (b) Section 11 of the Crown Minerals Act 1991;
 - (c) the easement marked as dashed orange line and labelled "a-b-y-c-d", "b-b1", "c-e", "f-g-h", "g-i", "n-n1", "s-f", "u-v" and "w-x" on the Plan and substantially as set out in Appendix 8; and
 - (d) the easement marked as dashed blue line and labelled "a-b-y-c-d" and "y-z" on the Plan and substantially as set out in Appendix 9 and
 - (e) the covenants (shown on the Plan in yellow wash and labelled "CC1", "CC2", "CC3", "CC3A" and "CC(Landscape)" substantially as set out in Appendices 10 and 11.

Schedule Four: Conditions

1 Schedule Four: Conditions

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 sufficient funds will be obtained 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) It has been identified that certain parts of the formed and maintained alignment of the Nevis Road deviate from the surveyed legal alignment. This proposal is subject to the Commissioner and the Holder agreeing to partially surrender the Lease so as to exclude such parts of the Nevis Road.
- (d) The Commissioner has reviewed, and is satisfied, in its sole discretion that the easement 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.
- (e) 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.
- (f) The Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant 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.
- (g) The Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 11 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

Fenceline

Length and location: New fence is to be erected along the lines marked as follows on the plan

- (a) Conservation fence shown marked A-B (CC3) approximately 1,500 metres.
- (b) Conservation fence shown marked C-D-E R1(Scenic). Approximately 3,250 metres.
- (c) Conservation Fence shown marked H-I (CA1). Approximately 1,500 metres.

Type:

The fencing specification calls for the erection of a wooden post and seven wire fence with steel Y stakes between posts, to the indicative requirements set out in 1(a) (b) and (c). We have not walked the fence lines to determine the precise requirements. The specifications are indicative only and will be updated once a detailed inspection of the boundary line has taken place.

Specifications:

1.0 New Fence Lines

(a) Conservation Fence A-B

- 1.1 Six x 2.5 mm galvanized high tensile wires and the bottom wire being 4 mm galvanized mild steel. Total of 7 wires.
- 1.2 2.1 metre x 200 mm treated timber strainer posts with 2.4 metre x 125 mm stay posts to be used for gateways and end of strains.
- 1.3 1.8 metre x 125 mm treated wooden intermediate posts or T irons to be used at 20 metre gaps or at lesser intervals on appropriate high and low points as required. 117 em (46") to remain out of the ground. Steel Y stakes, back to back, may be used on high spots and on corners instead of wooden posts or T irons, with tie backs on tussock country.
- 1.4 Six steel Y stakes per 20 metres to be used. Y stakes will be 1.65 metres in length.

Vegetation and Ground Clearance Requirements-

- 1.5 The fence line may require hand clearing, if applicable.

(b) Reserve Fence C-D-E R1(Scenic)

- 1.6 Six x 2.5 mm galvanized high tensile wires and the bottom wire being 4 mm galvanized mild steel. Total of 7 wires.
- 1.7 2.1 metre x 200 mm treated timber strainer posts with 2.4 metre x 125 mm stay posts to be used for gateways and end of strains.
- 1.8 1.8 metre x 125 mm treated wooden intermediate posts or T irons to be used at 20 metre gaps or at lesser intervals on appropriate high and low points as required. 117 em (46") to remain out of the ground. Steel Y stakes, back to back, may be used on high spots and on corners instead of wooden posts or T irons, with tie backs on tussock country.
- 1.9 Six steel Y stakes per 20 metres to be used. Y stakes will be 1.65 metres in length.

Vegetation and Ground Clearance Requirements-

- 1.10 The fence line may require hand clearing, if applicable.

(c) *Conservation Fence H-I (CA1)*

- 1.11 Six x 2.5 mm galvanized high tensile wires and the bottom wire being 4 mm galvanized mild steel. Total of 7 wires.
- 1.12 2.1 metre x 200 mm treated timber strainer posts with 2.4 metre x 125 mm stay posts to be used for gateways and end of strains.
- 1.13 1.8 metre x 125 mm treated wooden intermediate posts or T irons to be used at 20 metre gaps or at lesser intervals on appropriate high and low points as required. 117 em (46") to remain out of the ground. Steel Y stakes, back to back, may be used on high spots and on corners instead of wooden posts or T irons, with tie backs on tussock country.
- 1.14 Six steel Y stakes per 20 metres to be used. Y stakes will be 1.65 metres in length.

Vegetation and Ground Clearance Requirements-

- 1.15 The fence line may require hand clearing either by hand or mechanical munching, if applicable.

2.0 **Length and location:**

- 2.1 New fence is to be erected along the lines marked as follows on the plan.
 - (d) Conservation fence shown marked A-B (CC3) approximately 1,500 metres.
 - (e) Conservation fence shown marked C-D-E R1 (Scenic). Approximately 3,250 metres.
 - (f) Conservation Fence shown marked **H-I** (CA1). Approximately 1,500 metres.

3.0 **Preliminary and General Matters**

3.1 New Materials

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

3.2 Standards

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

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

- 3471:1974 (NZS) Specifications for galvanized steel fencing wire plain and barbed.
- 3607:1989 (NZS) Specifications for round and part round timber fence posts.
- 3640:1992 (NZMP) Specifications of the minimum requirements of the NZ Timber Preservation Council Inc.
- 0360:1986 (NZS/ASTM) Creosote Treatment
- 4534:1998 (AS/NZS) Zinc and zinc/aluminum alloy coating on steel wire.
- 4680:1999 (AS/NZS) Hot dip galvanized (zinc) coating on fabricated ferrous articles.

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

Documentation would be required of:

- Manufacturers (or suppliers) warranties and test certificates where applicable.
- Guarantee certificates that transfer to the owners of the completed fences.

- Remedies available under the guarantee.
- Installation instructions for hardware where applicable to the warrantee and guarantee.

3.3 Blasting

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

3.4 Drilling

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

3.5 Spiking

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

3.6 Lacing

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

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

4.1 Wire

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

4.2 Infill Posts

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

4.3 Strainer, Intermediate and Angle Posts

All timber posts used will be round and ground treated.

4.4 Stay Block

12 x 2 x 24 ground treated.

4.5 Staples

Staples will be 50mm x 4mm barbed galvanized steel.

4.6 Permanent Wire Strainers

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

4.7 Crossing Netting

Netting on creek and river crossings will be 7 wire galvanized sheep netting.

4.8 Swung Gate

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

4.9 Gate Chains

Gate chains will be galvanized steel chain and staple type.

4.10 Gate gudgeons

GUdgeons are to be of galvanized steel. Top gUdgeon is to be lock through type and the bottom gudgeon a bolt through type.

5.0 **Best Practice**

5.1 Best fencing practice must be adhered to on all occasions.

5.2 Strains

Length of strains to be determined by the territory but to not exceed 300 metres for HT and 250 metres for No 8 wire. To conform to best practice and if applicable the wire manufacturing recommendations. Strain to account for weather conditions at time of strain.

5.3 Placement of timber strainers, posts and stays

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

All strainers are to be dug in or driven and rammed and footed. NO.8 (4 mm) galvanised steel wire is to be used on foots. Strainer, angle and intermediate posts are to have a minimum of 117 em (46") out of the ground. Stays are to be 1/3 of the way up posts.

5.4 Placement of wires

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

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

All wires are to be securely and neatly tied off and strained evenly. Figure 8 knots are to be used in all joins.

5.5 Gate

Swung gate must close against a post and be able to fully open back against the fence.

5.6 Netting at creek crossing

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

5.7 Tie Downs

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

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

5.8 Tie backs

Tie backs can be used on angle posts or T irons and are permitted on both sides of the fence.

6.0 **Resource Management Consents**

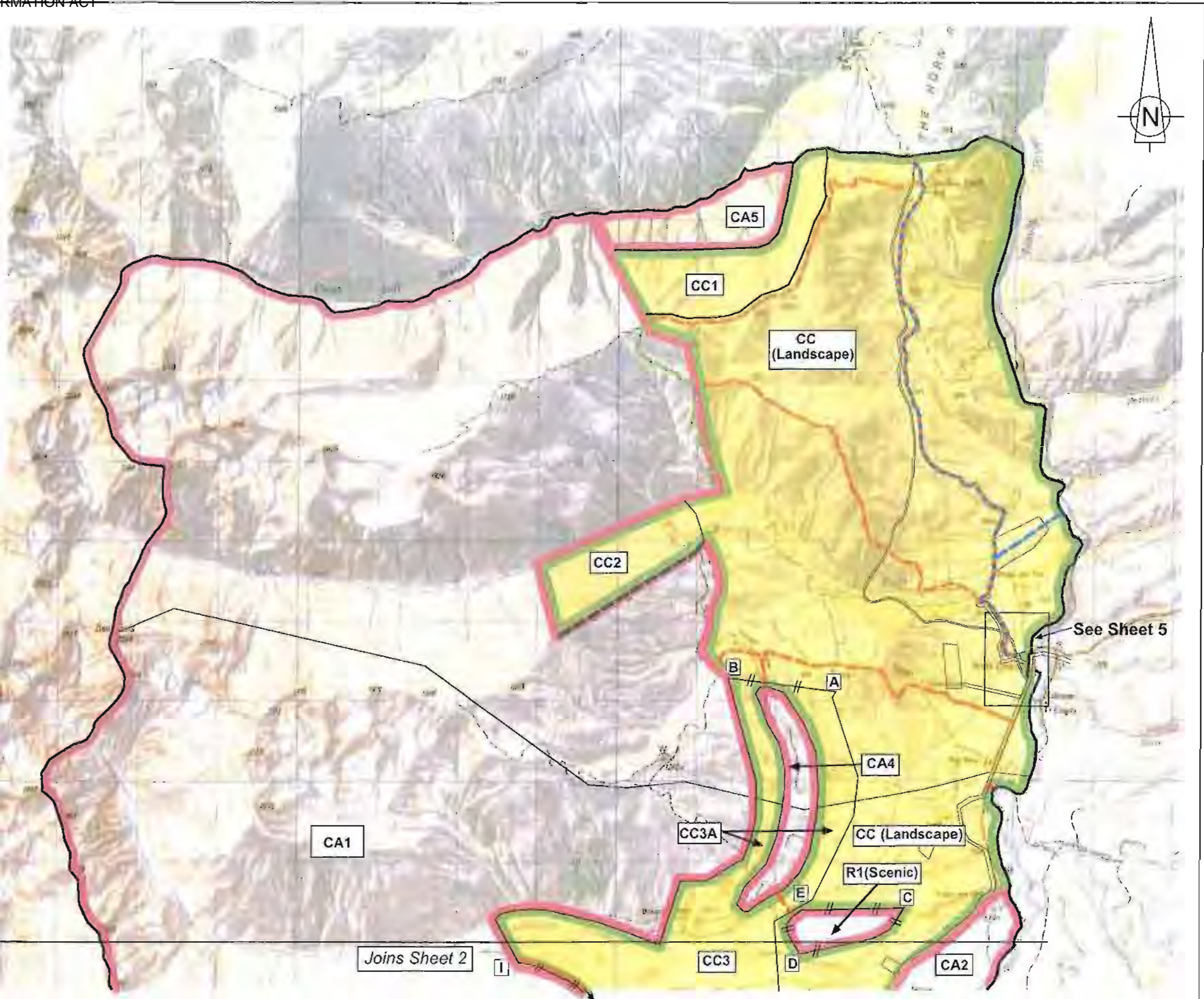
The construction of fencing is subject to the Commissioner obtaining any and all consents required pursuant to the Resource Management Act 1991.

**P 241 BEN NEVIS TENURE REVIEW
PROPOSED DESIGNATIONS**

- Pastoral lease land to be restored to or retained in Crown control, as conservation area CA1, subject to a Heleskiing Concession and farm management access easement concession e-b1-k and k1-k2.
- Pastoral lease land to be restored to Crown control as conservation area, subject to a grazing concession CA4 & CA5
- Pastoral lease land to be restored to or retained in full Crown ownership and control as Scenic Reserve R1 (Scenic)
- Pastoral lease land to be disposed of by freehold disposal to Pioneer Generation Limited, subject to a Landscape Protection Covenant CC(Landscape) and Conservation Covenant CC1, CC2, CC3 and CC3A

New fences: Marked in capital letters A-B, C-D-E and H-I

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

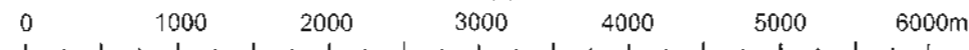


Graphics by:
TL Survey services Ltd DUNEDIN

Certified a true copy of the original status check plan.


Ben Nevis(Fencing)

Scale 1 : 50000

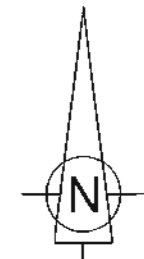



Version	1	2	3	4	5
Otago Land District NZMS 260 F.42	Sheet 1 of 5 Date 04/06/2009				

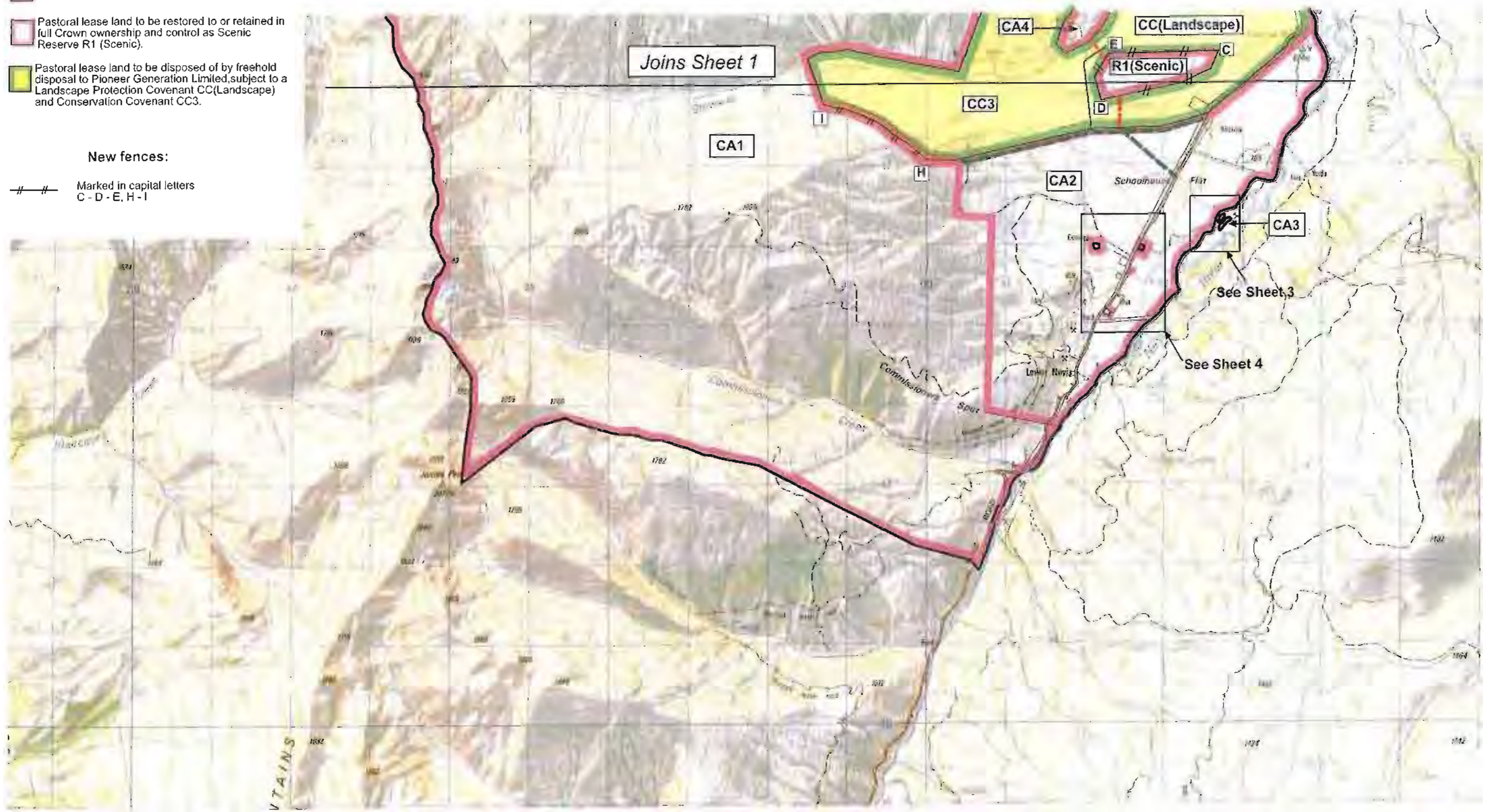
**P 241 BEN NEVIS TENURE REVIEW
PROPOSED DESIGNATIONS**

-  Pastoral lease land to be restored to or retained in Crown control, as Conservation Area CA1, subject to a Heleskiing concession.
-  Pastoral lease land to be restored to or retained in Crown control as Conservation Area CA2, subject to an easement concession.
-  Unused Crown Land to be retained in full Crown ownership and control as Conservation Area CA3
-  Pastoral lease land to be restored to or retained in full Crown ownership and control as Scenic Reserve R1 (Scenic).
-  Pastoral lease land to be disposed of by freehold disposal to Pioneer Generation Limited, subject to a Landscape Protection Covenant CC(Landscape) and Conservation Covenant CC3.

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



New fences:
 Marked in capital letters C - D - E, H - I

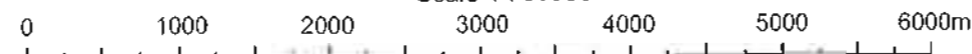


Graphics by :
 TL Survey services Ltd DUNEDIN

Certified a true copy of the original status check plan.

Ben Nevis (Fencing)

Scale 1 : 50000



Version	1	2	3	4	5
Otago Land District NZMS 260 F.42	Sheet 2 of 5 Date 04/06/2009				

Appendix 4: Form of Easement Concession to be Created for route labelled "a2-n-s", "e-b1-k", "k1-k2" and "m-n" on the Plan

Concession number: _ _ _

DATED _

Between

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

and

**PIONEER GENERATION LIMITED
(lithe Concessionaire")**

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



Department of Conservation
Te Papa Atawhai

THIS DOCUMENT is made this day of

PARTIES:

1. MINISTER OF CONSERVATION, ("the Grantor")
2. PIONEER GENERATION LIMITED ("the Concessionaire")

BACKGROUND

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

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

- 2 -

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

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

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

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

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

2.0 GRANT OF APPURTENANT EASEMENT

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

3.0 TERM

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

4.0 COMPENSATION

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

5.0 OTHER CHARGES

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

6.0 CONCESSION ACTIVITY

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

7.0 COMPLIANCE

7.1 The Concessionaire will comply where relevant:

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

8.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

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

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

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

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

9.0 PROTECTION OF THE ENVIRONMENT

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

- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Easement Area; or
- (b) bring any plants, or animals (except those stipulated in Item 4 of Schedule 1) on to the Easement Area; or
- (c) deposit on the Easement Area debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Easement Area; or

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- (d) pile or store materials in any place on the Easement Area where they may obstruct the public or create a nuisance; or
 - (e) conduct any noxious, noisome, dangerous or offensive activity on the Easement Area; or
 - (f) top-dress, bum, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Easement Area; or
 - (g) disturb or allow stock to disturb any stream or watercourse on the Easement Area; or
 - (h) light any fire on the Easement Area.
- 9.2 The Concessionaire, must at the Concessionaire's expense:
- (a) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation OCCUTing on or emanating from the Easement Area or any Structure or facility on the Easement Area;
 - (b) comply strictly with the provisions of the Biosecurity Act 1993.
- 9.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 9
- 9.4 The Concessionaire may bring fireanns on to the Easement Area for use in connection with the Concession Activity and pest control operations.
- 9.5 The Concessionaire may for purposes of the Concession Activity take onto or use vehicles on the Easement Area on existing formed access tracks only.

10. TEMPORARY SUSPENSION

- 10.1 The Grantor may, at any time in exercise of the Grantor's powers, close all or part of the Easement Area for such period as she/he considers necessary.

11.0 TERMINATION

- 11.1 The Grantor may tenninate this Document by notice in writing to the Concessionaire if:
- (a) the Concessionaire breaches any tenns of this Document; and
 - (b) the Grantor has notified the Concessionaire in writing of the breach; and
 - (c) the Concessionaire does not rectify the breach within 28 days of receiving notification.
- 11.2 Immediately on termination the Concessionaire must execute a suo'ender of this Document if the Grantor so requires it.

12.0 INDEMNITIES AND INSURANCE

- 12.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, agents, contractors, licensees or invitees or otherwise caused as a result of its use of the Easement Area or the Concessionaire's carrying out of the Concession Activity on the Easement Area.
- 12.2 This indemnity is to continue after the expiry or other detenmination of this Document in respect of those acts or omissions occurring or arising before its expiry or detenmination.

- 12.3 Without prejudice to or in any way limiting its liability under clause 12.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:
- (a) a policy of public liability insurance against liability for loss, damage or injury from anyone single accident or event arising out of its conduct of the Concession Activity on the Easement Area and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 7 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 8 of Schedule 1; and
 - (b) statutory liability insurance for the amount specified in Item 9 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 10 of Schedule 1.
- 12.4 With respect to clause 12.3 the Concessionaire must before commencing the Concession Activity and on each renewal of insurance, provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

13.0 ASSIGNMENT

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

14.0 DISPUTE RESOLUTION AND ARBITRATION

- 14.1 If any dispute arises between the parties in connection with this Document, the parties must, without prejudice to any other rights they have under this Document, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.
- 14.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties.
- 14.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Easement Area is located is to appoint the mediator.
- 14.4 In the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions of the Arbitration Act 1996 will apply.
- 14.5 Notwithstanding any provision to the contrary in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the District Law Society in the region in which the Easement Area is located is to appoint

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the arbitrator. The arbitrator must not be a person who has participated in an infOlwal dispute resolution procedure in respect of the dispute.

14.6 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.

14.7 The parties agree that the results of any arbitration are to be binding on the parties.

15.0 NOTICES

15.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 11 of Schedule 1.

15.2 A notice given in accordance with clause 15.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;
- (c) in the case of facsimile, on the Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

16.0 RELATIONSHIP OF PARTIES

16.1 Nothing expressed or implied in this Document shall be construed as:

- (a) conferring on the Concessionaire any right of exclusive occupation or use of the Easement Area;
- (b) preventing the Grantor from granting similar concessions to other persons;
- (c) derogating from the rights of the Grantor and the public to have access across the Easement Area.

17.0 SPECIAL CONDITIONS

17.1 Special conditions relating to this Document are set out in Schedule 2.

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

Signed by:

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

Witness:
Occupation:
Address:

Signed by:

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as Concessionaire
in the presence of:

Witness:
Occupation :
Address:

SCHEDULE 1

1. Servient Land: Proposed Conservation Land identified in the Tenure Review Designations Plan as (CA1&CA2) *(see definition of Servient Land in clause 1.1)*
2. Dominant Land: Proposed freehold land identified in the Tenure Review Designations Plan as (CC Landscape) *(see definition of Dominant Land in clause 1.1)*
3. Easement Area: *Marked "e-b1-k", m-n, a2-n-s and "k1-k2" on designations plan being 10 metres wide and centred on the existing farm track. (see definition of Easement Area in clause 1.1)*
4. Concession Activity: Access for activities associated with farm management purposes. *(see definition of Concession Activity in clause 1.1.)*
5. Term: In perpetuity *(see clause 3.1)*
6. Compensation: .10c if requested (payable on date of execution of this Document) *(see clause 4.1)*
7. Public Liability General Indemnity Cover: for \$200,000.00 *(see clause 12.3)*
8. Public Liability Forest & Rural Fire Act Extension: for \$1,000,000.00 *(see clause 12.3)*
9. Statutory Liability Insurance for \$20,000.00 *(see clause 12.3)*
10. Other Types of Insurance: NA *(see clauses 12.3)*
11. Address for Notices (including facsimile number): *(see clause 15)*
 - (a) Grantor
77 Stuart Street
PO Box 5244
Dunedin
Fax: (03) 477 8626
 - (b) Concessionaire
Ellis Street
PO Box 275
Alexandra
Fax: (03) 448 9439

SCHEDULE 2

Special Conditions

- 1.0 To provide access for Pioneer Generation Limited on foot, on or accompanied by horses or by motor vehicles, and with or without machinery and implements of any kind, and with or without domestic livestock and guns and farm dogs for farm management purposes.
- 2.0 The concessionaire must take all reasonable care to avoid damage to the soil and vegetation on the Easement Area.
- 3.0 Vehicles may only travel on formed vehicle tracks and no new tracks may be formed.
- 4.0 Stock must be actively driven through the Easement Areas and not left to drift through on their own.
- 5.0 No stock will be left to depasture in the Easement Areas.
- 6.0 In relation to Clause 13.1 consent to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaires interest under this Document will not be unreasonably withheld by the Grantor.

Appendix 5: Form of Heliskiing Concession to be Created over Conservation Area labelled "CA1"

Concession number:

DATED

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Between

THE MINISTER OF CONSERVATION
("the Grantor")

and

PIONEER GENERATION LIMITED
("the Concessionaire")

CONCESSION DOCUMENT
(LICENCE)



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made this day of 2001

PARTIES:

1. **MINISTER OF CONSERVATION** ("the Grantor")
2. **PIONEER GENERATION LIMITED**
 ("the Concessionaire")
3. (**"the Guarantor"**)

BACKGROUND

- A. The Grantor manages the Conservation Area described in Schedule 1 as the Land;
- B. Section 17Q(1) of the Conservation Act 1987 authorises the Grantor to grant a Concession in respect of an Activity in a Conservation Area;
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.
- D. The Grantor is satisfied that the requirements of Part III B of the Conservation Act 1987 have been met

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

"**Activity**" has the same meaning as "Activity" in section 2 of the Conservation Act 1987.

"**Access**" means the right, in common with others, to pass and repass over the Land and any roads of the Grantor for ingress to and egress from the Land as is reasonably necessary for the Concessionaire to exercise its rights under this Licence.

"**Background**" means the matters referred to under the heading "Background" on p2 of this Document.

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

"Concession Activity" means the use of the Land for purposes of the Activity carried out by the Concessionaire and specified in Item 2 of Schedule 1.

"Concession Fee" means the amount specified in Item 4 of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review.

"Concession Fee Payment Date" means the date specified in Item 5 of Schedule 1 on which the Concession Fee falls due for payment.

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

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

"Co-Site" means the use of the Land or the Concessionaire's facilities on the Land by a third party for an Activity and "Co-Sitee" and "Co-Siting" have corresponding meanings.

"Department" means the Department of Conservation established by section 5 of the Conservation Act 1987.

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

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

"Guarantor", where relevant, means the person guaranteeing this Document under clause 34.

"Land" means the Conservation Area, more particularly described in Item 1 of Schedule 1

"Licence" has the same meaning as "Licence" in section 2 of the Conservation Act 1987 and for purposes of this Document is the Licence granted under this Document by the Grantor to the Concessionaire under section 17Q of the Conservation Act 1987.

"Penalty Interest Rate" means the rate specified in Item 6 of Schedule 1.

"Term" means the period of time specified in Item 3 of Schedule 1 during which this Document operates.

"Working Days" means days on which the registered banks are open for general banking business in Dunedin.

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document and includes that party's successors in title;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;
- (e) a reference to a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, or an agency of State or of the Crown (in each case whether or not having separate legal personality);
- (f) words in a singular number include the plural and vice versa;
- (g) words importing a gender include all other genders;
- (h) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (i) where the Grantor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

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

2.0 GRANT OF LICENCE

2.1 In exercise of the Grantor's powers under section 17Q of the Conservation Act 1987 the Grantor GRANTS to the Concessionaire a LICENCE to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Document.

3.0 TERM

3.1 The Licence is for the Term specified in Item 3 of Schedule 1.

4.0 SURRENDER OF DOCUMENT

4.1 **If** the Concessionaire wishes to terminate this Document before the expiry of the Term the Concessionaire must give the Grantor 3 months' notice in writing.

4.2 The Grantor must accept the Concessionaire's notice of termination but in doing so may impose whatever terms and conditions the Grantor considers appropriate, including the matters referred to in clause 6.2.

5.0 CONCESSION FEE

5.1 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 4 and 5 of Schedule 1.

5.2 If the Concessionaire defaults in payment of the Concession Fee for 14 days after a Concession Fee Payment Date 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 6 of Schedule 1.

6.0 OTHER CHARGES

6.1 In addition to the Concession Fee the Concessionaire must pay the following charges ("Other Charges") on demand and in the manner directed by the Grantor:

- (a) all levies, taxes, duties, assessments, charges and other outgoings which may be charged, levied or reasonably assessed or which may become payable in relation to the Concessionaire's use of the Land or the carrying on of the Concession Activity;
- (b) all costs in relation to the supply of water, sewage, drainage and rubbish disposal which are not otherwise included in any charges or assessments made by any authority or by the Grantor;
- (c) all costs incurred by the Grantor in providing an annual building warrant of fitness to any territorial authority, including any costs paid to an independent qualified person for any report establishing or re-establishing compliance with a compliance schedule. If any work is required to any structure or facility of the Grantor's on the Land in order to obtain a new building warrant of fitness, the Grantor is to pay the cost of that work subject to the Concessionaire's obligations under clause 10.

6.2 If the Concessionaire surrenders this Document with the consent of the Grantor, the Concessionaire will continue to be liable for and must pay to the Grantor on demand in respect of its use of the Land and its conduct of the Concession Activity all Other Charges which may be due for the current payment period even though that this period may not expire until after the date of surrender.

6.3 Where the Grantor or Director-General has provided a community service, benefit or facility for the benefit of the Concessionaire under section 17ZH of the Conservation Act 1987, the Concessionaire must pay the Grantor whatever contribution the Grantor determines as specified in Schedule 2.

6.4 The Concessionaire must pay all charges for electric power, water supply, geothermal energy, telephone rental and other utilities supplied to the Land. The Grantor will not be liable for any cost incurred in re-establishing the supply of any of these utilities in the event of any of them becoming unavailable for any reason.

6.5 If, during the Term, the Land becomes rateable land, following any amendment to the Rating Powers Act 1988 or the introduction of a new Act in substitution for it and the Land's rateability is attributable to the Concession Activity, or if separate rates are levied under section 7 of the Rating Powers Act 1988 in respect of the Land and are attributable to the Concession Activity, the Concessionaire is to pay any rates which may be struck or levied and which are attributable to the Concession Activity; but both parties expressly agree that such payment is not to constitute an acknowledgement of exclusive possession by the Concessionaire of the Land.

7.0 CONCESSION FEE REVIEW

7.1 The Grantor will review the Concession Fee on the Concession Fee Review Dates in the following manner:

- (a) the Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
- (b) subject to clause 7.1(e), the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
- (c) if, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 7.2 (a) or (b).
- (d) if the Concessionaire does not give notice to the Grantor under clause 7.1 (c) the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) notwithstanding clause 7.1(b), the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and will be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
- (f) until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

7.2 Immediately the Concessionaire gives notice to the Grantor under clause 7.1(c) the parties will endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:

- (a) by one party giving written notice to the other requiring the new Concession Fee to be determined by arbitration; or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:
 - (i) each party will appoint a valuer and give written notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.

- (ii) if the party receiving a notice does not appoint a valuer within the **14** day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination will be binding on both parties.
 - (iii) before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
 - (iv) the valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. **If** they fail to agree the Concession Fee is to be determined by the umpire.
 - (v) **in** determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide Access to the Land.
 - (vi) each party is to be given the opportunity to make written or verbal representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
 - (vii) the valuers or the umpire must have regard to any such representations but will not be bound by them.
- (c) the valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to provide how the costs of the determination are to be borne and be binding on the parties.
- (d) (i) if a Concession Fee Review date is postponed because of a moratorium imposed by law the Concession Fee Review Date is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
- (ii) the Concession Fee Review will establish the market value for the Concession Activity as at that date instead of the date fixed under clause 7.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no cases the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and
- (iii) each subsequent Concession Fee Review date will take place in accordance with the date fixed in clause 7.1.

7.3 The Concessionaire shall pay to the Grantor all costs associated with any Concession Fee Review (i.e. the cost of staff time spent in reviewing the fee plus the cost of any independent valuation advice).

8 CONCESSION ACTIVITY

- 8.1 The Concessionaire is not to use the Land for any purpose other than the Concession Activity.
- 8.2 The Concessionaire must, as a condition of this Document:
- (a) take out and maintain and pay all fees for all licences, permits, authorisations, consents (including resource consents under the provisions of the Resource Management Act 1991), and renewals ("the Permissions") as may be necessary for the proper conduct of the Concession Activity;
 - (b) not do or suffer to be done any act whereby these Permissions may be forfeited or suspended or refused.

9 SUPPLY OF INFORMATION

- 9.1 At the Grantor's request the Concessionaire must supply the Grantor with a complete statement of audited financial accounts.
- 9.2** Any information supplied to the Grantor under clause 9.1 is subject to an obligation of confidence; but the parties acknowledge that such information may be subject to the provisions of the Official Information Act 1982 and the Privacy Act 1993.

10 COMPLIANCE

- 10.1 The Concessionaire will comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan as required by section 17W(7) of the Conservation Act 1987 pursuant to Part IIIA of the Conservation Act 1987 together with any amendment or review of any strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
 - (b) with the Conservation Act 1987 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.
- 10.2 The Concessionaire must comply with all conditions imposed by the Grantor in granting this Document.
- 10.3
- (a) A breach or contravention by the Concessionaire of a relevant conservation management strategy or conservation management plan will be deemed to be a breach of this Document.
 - (b) A breach or contravention by the Concessionaire of the Legislation affecting or relating to the Land or affecting or relating to the Concession Activity will be deemed to be a breach of this Document.

10A If the Legislation requires the Grantor to spend money on the Grantor's own structures, facilities or alterations on the Land, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% of the amount spent by the Grantor.

10.5 If the Legislation requires the Grantor to spend money on structures, facilities or alterations on the Land which the Grantor considers unreasonable, the Grantor may determine this Document and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 27.

11 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

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

11.2 In giving approval under clause 11.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.

11.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.

11.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before:

- (a) erecting or altering any structure on the Land;
- (b) bringing any structure on to the Land;
- (c) installing any facilities on the Land; or
- (d) altering the Land in any way.

11.5 The Concessionaire must not commence any work on the Land until the Grantor has given written approval.

11.6 When undertaking any work under this clause the Concessionaire must comply with all statutory requirements including obtaining building consents and code compliance certificates under the Building Act 1991.

11.7 The Concessionaire is to keep and maintain its structures and facilities on, or alterations to, the Land in good repair.

12 CONCESSIONAIRE'S FURTHER OBLIGATIONS

12.1 The Concessionaire must at the Concessionaire's expense:

- (a) if required by the Grantor take all steps necessary to control or, at the Grantor's option, contribute to the cost of controlling any pest, insect or rodent infestation occurring in or emanating from the Land or any structure or facility on the Land, and if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor;
- (b) comply strictly with the provisions of the Biosecurity Act 1993;
- (c) comply with all requirements of any competent authority regarding sanitation and with all relevant bylaws and fire safety requirements;
- (d) at all times display a copy of the relevant current building warrant of fitness under the Building Act 1991 showing the location of the compliance schedule in a place in each building (as defined in that Act) on the Land to which users of the building have ready access;
- (e) keep and maintain all building systems and any structure on the Land in accordance with the requirements of any compliance schedule;
- (f) retain and make available to any territorial authority and any other person with a right to inspect any structures on the Land under the Building Act 1991 a copy of the compliance schedule together with the written reports relating to compliance with the compliance schedule over the previous two year period.

13 PROTECTION OF THE ENVIRONMENT

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

- (a) interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Land; or
- (b) bring any plants, animals, or (in the case of guided walking operations only) firearms on to the Land; or
- (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
- (d) pile or store materials in any place on the Land where it may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Land;

13.2 The Concessionaire will keep the Land in a clean and tidy condition to the satisfaction of the Area Manager Department of Conservation Central Otago and free of weeds and all organisms specified as pests in a relevant pest management strategy.

13.3 The Concessionaire must make adequate provision for suitable sanitary facilities for the Land if required by the Grantor and for the disposal of all refuse material and is to comply with the reasonable directions of the Grantor in regard to these matters.

13.4 The Concessionaire will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition to the satisfaction of the Area Manager Department of Conservation Central Otago. If reasonably required by the Grantor the Concessionaire will paint all structures and facilities in colours specified in writing by the Grantor and with paints of a type approved in writing by the Grantor.

- 13.5 If, during the Term, the Concessionaire removes a structure or facility from the Land the Concessionaire will, unless the Grantor indicates otherwise in writing, repair and make good at its own expense all damage which may have been done by the removal and will leave the Land in a clean and tidy condition.
- 13.6 Should the Concessionaire fail to repair and restore the damage within 6 months of the removal of a structure or facility or such further time as the Grantor may approve in writing, the Grantor may undertake whatever works and operations are necessary to effect the same and may recover from the Concessionaire any costs and expenses incurred in doing it as a debt due by the Concessionaire to the Grantor.
- 13.7 The Concessionaire must:
- (a) take all reasonable precautions to ensure no fire hazards arise from its carrying out of the Concession Activity or from any act or neglect of its employees, contractors, invitees or agents;
 - (b) not light or permit to be lit any fire on the Land without the written permission of the Grantor in which event the following provisions are to apply:
 - (i) the Concessionaire may light or use at a campsite a fire in the open air if the fire is an approved camp fire and is fuelled by dead wood only;
 - (ii) an approved camp fire is any fire lit for the purpose of camping, cooking, comfort, or warmth;
 - (iii) an approved camp fire may not be lit:
 - (aa) within 3 metres of a tree or place underneath overhanging vegetation;
 - (bb) within 3 metres of a log or dry vegetation;
 - (cc) unless the Concessionaire clears all combustible material away from around the base of the approved camp fire before lighting it;
 - (dd) where there are notices or other advertising limiting the lighting of fires to a particular receptacle or to a particular place;
 - (ee) during a prohibited fire season
 - (iv) for the purpose of this paragraph "open air" has the same meaning ascribed to it in the Forest and Rural Fires Act 1977
 - (c) not store or permit to be stored fuels or other combustible materials on the Land without the written permission of the Grantor. In that event storage of fuels and combustible materials must be in accordance with the provisions of the Dangerous Goods Act 1974;
 - (d) comply with the Grantor's requirements for fire warning and safety equipment and for fire fighting equipment to be kept on the Land at all times.
- 13.8 The Concessionaire must ensure that its employees, clients and invitees do not carry out any acts prohibited under clause 13.
- 13.9 The Concessionaire must immediately report to the Grantor any act in contravention of clause 13 and wherever possible the names and addresses of any person carrying out such acts; and must provide the Grantor with details of the circumstances surrounding such incidents.

14 ADVERTISING

- 14.1 The Concessionaire must not erect or display any signs or advertising on the Land without the prior written approval of the Grantor. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.
- 14.2 Where required by the Grantor, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the Concession Activity under a Concession granted by the Grantor on land administered by the Department.
- 14.3 If required by the Grantor in writing the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the Land and the surrounding area.
- 14.4 In preparing such information the Concessionaire must obtain information from and have regard to the views of tangata whenua.

15 EMPLOYMENT OF STAFF

- 15.1 The Concessionaire must ensure that the Concession Activity is conducted at all times by a person or persons suitably trained and qualified to carry out the Concession Activity.
- 15.2 The Concessionaire must provide the Grantor with evidence of the competency and qualifications of its employees if the Grantor so requests.
- 15.3 The Concessionaire must comply with all statutes relating to employment of staff.

16 HEALTH AND SAFETY

- 16.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner and must comply with:
- (a) the Health and Safety in Employment Act 1992 and its regulations; and
 - (b) all other statutes, regulations and bylaws and all notices and requisitions of any competent authority relating to the conduct of the Concession Activity.
- 16.2 The Concessionaire must notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment.
- 16.3 The Concessionaire must:
- (a) take all reasonable steps to protect the safety of all persons present on the Land and must, where necessary, erect protective signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
 - (b) take all reasonable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware.

- 16.4 Before commencing the Concession Activity the Concessionaire must, if required by the Grantor, prepare a safety plan and have it audited by a suitably qualified person approved by the Grantor.
- 16.5 The Concessionaire must not commence the Concession Activity until:
- (a) the person appointed to audit the safety plan has certified the safety plan is suitable for the Concession Activity; and
 - (b) the Concessionaire supplies the Grantor with a copy of the safety plan certified under clause 16.5(a).
- 16.6 Receipt of the certified safety plan by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 16 and is not to be construed as implying any responsibility or liability on the part of the Grantor.

17 TEMPORARY SUSPENSION

- 17.1 The Grantor may temporarily suspend this Document if, in the opinion of the Grantor, there is a temporary risk to public safety or the safety of the Department's staff or the safety of other Concessionaires whether arising from natural events such as earthquake, land slip, volcanic activity, or flood or whether arising in any other way including the activities of the Concessionaire, its employees, clients or invitees.
- 17.2 If in the opinion of the Grantor the activities of the Concessionaire, its employees, clients or invitees are having or may have an adverse effect on the environment and the Grantor is of the opinion that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, the Grantor may suspend this Concession until the Concessionaire remedies, avoids or mitigates the adverse impact to the satisfaction of the Grantor.
- 17.3 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 17.1 and 17.2 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 of which the Grantor has become aware.
- 17.4 The word "investigates" in clause 17.3 includes the laying of charges and awaiting the decision of the Court.
- 17.5 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 17.6 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 clause 17 including loss of profits.

18 ASSIGNMENT

- 18.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may in the Grantor's discretion decline any application for consent under this clause.
- 18.2 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.
- 18.3 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document.
- 18.4 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 18.5 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

19 TERMINATION

- 19.1 The Grantor may terminate this Concession by 14 days notice in writing to the Concessionaire if:
- (a) the Concession Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - (b)
 - (i) the Concessionaire breaches any terms of this Document; and
 - (ii) the Grantor has notified the Concessionaire in writing of the breach; and
 - (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or
 - (c) the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the services provided by the Concessionaire are manifestly inadequate; or
 - (d) the Concessionaire is convicted of an offence, whether or not related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Health and Safety in Employment Act 1982; or the Building Act 1991; or the Resource Management Act 1991; or the Biosecurity Act 1993; or
 - (e) the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the

- Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
- (f) there is, in the opinion of the Grantor, a permanent risk to public safety or the environment whether arising from the conduct of the Concession Activity or from natural causes 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 Document on the part of the Concessionaire.

19.2 If the Grantor terminates the Concession under this clause all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.

19.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

20 GRANTOR MAY REMEDY CONCESSIONAIRE'S DEFAULT

20.1 The Grantor may elect to remedy at any time "without notice any default by the Concessionaire under this Concession.

20.2 The Concessionaire must pay to the Grantor forthwith on demand all reasonable costs and expenses incurred by the Grantor, including legal costs and expenses as between solicitor and client, in remedying such default.

21 GRANTOR'S DIRECTIONS

21.1 The Concessionaire must comply with all reasonable notices and directions of the Grantor concerning the Concession Activity on the Land or the conduct of any person on the Land under the authority of this Document.

22 POWERS, RIGHTS AND AUTHORITIES

22.1 All powers, rights and authorities of the Grantor under this Document and any notice required to be given by the Grantor may be exercised and given by the Director-General or any officer, employee, or agent of the Director-General.

23 INDEMNITIES AND INSURANCE

23.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, agents, contractors, or clients or otherwise caused as a result of its carrying out the Concession Activity on the Land.

- 23.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.
- 23.3 Without prejudice to or in any way limiting its liability under clause 23.1 the Concessionaire must take out and keep in force during the Term:
- (a) a policy of public liability insurance against liability for loss, damage or injury from anyone single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 8 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 9 of Schedule 1; and
 - (b) statutory liability for the amount specified in Item 10 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 11 of Schedule 1.
- 23.4 With respect to clause 23.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.
- 23.5 (a) Without prejudice to any other provision of this Document the Concessionaire will indemnify the Grantor against all damage or loss resulting from any act or omission on the part of the Concessionaire or the Concessionaire's employees, agents, contractors, clients, or invitees;
- (b) The Concessionaire is to recompense the Grantor for all expenses incurred by the Grantor in making good any damage to the Land or the property of the Grantor resulting from such act or omission.
- 23.6 (a) The Grantor will not be liable and does not accept any responsibility for damage to or interference with the Concession Activity or to the structures or facilities on the Land or any other indirect or consequential damage due to any natural disaster, vandalism, sabotage, fire or exposure to the elements except where, subject to the clause 23.6(b), such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors;
- (b) Where the Grantor is found to be liable due to a wilful act or omission, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures and facilities.
- 23.7 Notwithstanding anything else in clause 23 the Grantor is not liable for any indirect or consequential loss howsoever caused.

24 ENVIRONMENTAL MONITORING AND LAND REHABILITATION

- 24.1 The Concessionaire must, during the Term, if the Grantor so requests in writing, design in consultation with the Grantor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity on the Land.

- 24.2 Subject to any conditions imposed by the Grantor and set out in Schedule 3, at the expiry, surrender or termination of this Document, the Concessionaire must reinstate the Land to its condition at the commencement of the Term and replant the Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

25 EXPIRY OF LICENCE

- 25.1 If the parties have not entered into a new agreement by the Final Expiry Date the Concessionaire accepts that the Grantor has no liability whatsoever for any costs incurred by the Concessionaire as a result of the expiry of this Document.
- 25.2 Upon the expiry or earlier termination of the Term the Grantor will not be liable to pay compensation for any structure, facility or land alteration of the Concessionaire, all of which, subject to clause 25.4 are to remain the property of the Concessionaire and will be deemed not to have become fixtures on the Land.
- 25.3 Subject to any conditions set out in Schedule 3, at the expiry, surrender or termination of the Term the Concessionaire must remove all the Concessionaire's structures and facilities on the Land unless the Grantor approves otherwise in writing.
- 25.4 If the Concessionaire does not remove the structures and facilities as required by clause 25.3, or as otherwise approved by the Grantor, the structures and facilities remaining on the Land will be deemed to have become fixtures and ownership in them will vest absolutely in the Grantor.
- 25.5 In that case the Grantor will not be liable to pay any compensation to the Concessionaire for the structures and facilities and may, at the Grantor's option, remove or destroy or otherwise dispose of them and recover the costs and expenses of the removal or destruction from the Concessionaire as a debt due to the Grantor.

26 FORCE MAJEURE

- 26.1 Neither party will be liable to the other party for any delay in performance of, or failure to perform, its obligations (other than a payment of money) under this Document as a result of any cause beyond its reasonable control.
- 26.2 If the delay or failure continues for at least 28 days either party will be entitled to terminate this Document by notice in writing.

27 DISPUTE RESOLUTION AND ARBITRATION

- 27.1 If a dispute arises between the parties in connection with this Document including without limitation the interpretation, validity, breach or termination of any of its provisions, the

parties will, without prejudice to any other rights or entitlements they may have under this Document or otherwise, 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.

- 27.2 **If** the dispute is not capable of resolution by agreement within **14** days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 27.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 27.4 **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.
- 27.5 The arbitrator must include in the arbitration award reasons for the determination.

28 NOTICES

- 28.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 12 of Schedule 1.
- 28.2 A notice given in accordance with clause 28.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of a letter, on the third working day after posting;
 - (c) in the case of facsimile, on the date of dispatch.

29 COSTS

- 29.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and executing this Document or any extension or variation of this Document.
- 29.2 The Concessionaire must pay if full immediately on demand all costs and fees (including but not limited to solicitors' costs and the fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor:
- (a) to enforce or attempt to enforce the Grantor's rights and powers under this Document if the Concessionaire is in breach or default;
 - (b) to recover outstanding money owed to the Grantor.

30 RELATIONSHIP OF PARTIES

30.1 Nothing expressed or implied in this Document shall be construed as:

- (a) constituting the parties as partners or joint venturers;
- (b) conferring on the Concessionaire any right of exclusive occupation or use of the Land;
- (c) granting any estate or interest in the Land to the Concessionaire;
- (d) preventing the Grantor from granting other concessions, whether similar or not, to other persons;
- (e) derogating from the rights of the Grantor and the public to have access across the Land.

31 OFFENCES

31.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act:

- (a) no waiver or failure to act by the Grantor under this Document is to preclude the Grantor from prosecuting the Concessionaire; and
- (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising the Grantor's remedies under this Document; and
- (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising the Grantor's remedies under this Document.

32 SEVERABILITY

32.1 Any illegality, or invalidity or unenforceability of any provision in this Document is not to affect the legality, validity or enforceability of any other provisions.

33 ENTIRE UNDERSTANDING

33.1 Except as provided by legislation, this Document and any written variation agreed by the parties contain the entire understanding between the parties with reference to the subject matter of this Document and there is no other agreement, representation or warranty whether it is expressed or implied which in any way extends, defines or otherwise relates to the provisions of this Document.

34 VARIATIONS

34.1 The provisions of section 17ZC of the Conservation Act 1987 apply to all variations sought by the Concessionaire and to any applications for extension of the Term.

- 34.2 The Grantor may vary any conditions of this Document if the variation is necessary:
- (a) to deal with significant adverse effects of the Activity that were not reasonably foreseeable at the time this Licence was granted; or
 - (b) because the information made available to the Grantor by the Concessionaire for the purposes of the Concessionaire's application contained inaccuracies which materially influenced the decision to grant the Licence and the effects of the Activity permitted by this Document require more appropriate conditions.
- 34.3 The Concessionaire is to be bound by every such variation.

35.0 GUARANTEE

- 35.1 If the Grantor notifies the Concessionaire in writing that the Grantor requires this Document to be guaranteed by a third party the following clauses are to apply.
- 35.2 Subject to clause 35.1 and in consideration of the Grantor entering into this Document at the Guarantor's request the Guarantor:
- (a) guarantees payment of the Concession Fee and the performance by the Concessionaire of the covenants in this Document; and
 - (b) indemnifies the Grantor against any loss the Grantor might suffer should the Document be lawfully disclaimed or abandoned by any liquidator, receiver or other persons.
- 35.2 Subject to clause 35.1 the Guarantor covenants with the Grantor that:
- (a) no release, delay, or other indulgence given by the Grantor to the Concessionaire to the Concessionaire's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety is to release, prejudice, or affect the liability of the Guarantor as a Guarantor or as indemnifier;
 - (b) as between the Guarantor and Grantor the Guarantor may, for all purposes, be treated as the Concessionaire and the Grantor is under no obligation to take proceedings against the Concessionaire before taking proceedings against the Guarantor;
 - (c) the guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Concession Fee;
 - (d) any assignment of this Document and any Concession Fee Review in accordance with this Document are not to release the Guarantor from liability;
 - (e) should there be more than one Guarantor the liability of each Guarantor under this Guarantee is to be joint and several.

36 CO-SITING

- 36.1 The Concessionaire must, if required by the Grantor, allow Co-Siting on the Land except when a Concessionaire demonstrates to the reasonable satisfaction of the Grantor that the Co-Siting by a third party:
- (a) would impact on the ability of the Concessionaire to conduct its Concession Activity;
or
 - (b) would result in a substantial change to the Concession Activity carried out by the Concessionaire on the Land.
- 36.2 The Grantor will be entitled to require the Concessionaire to obtain at the Concessionaire's expense a report prepared by an independent consultant acceptable to the Grantor confirming the matter specified in clause 36.1.
- 36.3 For the avoidance of doubt, a Co-Sitee permitted on the Land must enter into a separate agreement with the Grantor in terms of which the Co-Sitee will be required to pay a fee to the Grantor to conduct an Activity on the Land. This separate agreement will not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Land.

Signed by:
Area Manager Department of Conservation
Central Otago Area Office for and on behalf of
the Minister of Conservation
pursuant to a written delegation
in the presence of :

Witness (signature) _____

Witness (print name) _____

Occupation _____

Address _____

Signed by:

as Concessionaire
in the presence of:

Witness (signature) _____

Witness (print name) _____

Occupation _____

Address _____

Signed by:

as Guarantor
in the presence of:

Witness (signature) _____

Witness (print name) :

Occupation:

Address:

SCHEDULE 1

1. **Land:** *"As outlined pink and labeled CA1 on the Proposed Designations Plan"* (see definition of Land in clause 1.1)
2. **Concession Activity:** (see definition of Concession Activity in clause 1.1)
The Grantor will allow the Concessionaire to conduct heliskiing only between the dates of 1st July and 30th September (both dates inclusive) each year.
3. **Term:** 10 years commencing on date of signing of the substantive proposal for the tenure review of Ben Nevis pastoral lease or such residual that remains of this term when the Concession is granted. (see clause 3.1)
4. **Concession Fee:** \$30 plus GST per person per day OR the lump sum fee of \$500 plus GST whichever is the greater. The per person fee to be increased by \$1 plus GST per year. (see clause 5.1)
5. **Concession Fee Payment Date:** Before 30 June (see clause 5.1)
6. **Penalty Interest Rate:** (see clause 5.2)
Double the Grantor's bank's current highest 90 day bank bill buy rate
7. **Concession Fee Review Date:**
At three yearly intervals from commencement date.
8. **Public Liability General Indemnity Cover:** (see clause 23.3)
for \$1,000,000
9. **Public Liability Forest & Rural Fire Extension:** (see clause 23.3)
for \$1,000,000
10. **Statutory Liability:** (see clause 23.3)
Amount: Nil
- 11(a) **Other Types of Insurance:** not applicable (see clause 23.3)
- 11(b) **Amounts Insured for Other Types of Insurances:** not applicable (see clause 23.3)
12. **Address for Notices:** (see clause 28)

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- (a) Grantor: C/o Box 5244,
DUNEDIN

- (b) Concessionaire: Ellis Street
PO Box 275
Alexandra
Fax (03) 448 9439

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SCHEDULE 2

Community Service Contribution

Nil

SCHEDULE 3

Special Conditions

1. The Concessionaire will ensure the companies employees and clients adhere to the New Zealand Environmental Care Code and Water Care Code attached to this Permit.
2. At the end of each year the Concessionaire shall forward to the Conservator, Department of Conservation Dunedin, an annual activity report showing the number of clients guided on full day and half day trips during the last year and shall at the same time forward the Concession Fee payable. The activity report shall specify the numbers guided, and areas visited on a daily basis.
3. The Concessionaire shall indemnify the Grantor, against all and any action claim injury damage or loss which may arise as a result of the granting of this permit.
4. The Grantor reserves the right to apply restrictions on the Concession Activity, or withdraw all or part of the Land or Concession Activity approved, if in the sole opinion of the Grantor the Concession Activity granted is having, or may have, an adverse effect on the physical or social environment and the effect cannot be avoided, remedied or mitigated to an extent satisfactory to the Grantor. The concessionaire shall not be entitled to any compensation in the event of such action being taken.
5. The Grantor shall be entitled to send any officer of the Department of Conservation free of charge on the Concession Activity during the term of this permit for the purpose of assessing the impact of the Concession Activity, and compliance with the terms and conditions of the Permit.
6. The Grantor may require a monitoring programme to be implemented that records the social and environmental effects of the activity. The monitoring programme is to be approved by the Grantor. All costs associated with the monitoring programme are to be met by the concessionaire.
7. This Concessionaire shall limit party size to 20 clients per trip unless otherwise stated and shall conduct a maximum of 10 trips per year.
8. No landings will occur within 500 metres of any recreational party not associated with the Concession Activity.
8. The Grantor acknowledges the intent of the Concessionaire to transfer and assign this concession, pursuant to clause 18 of this concession, to Alpine Heliski Limited. The Grantor has been provided with, through the concession application process, details of how Alpine Heliski Limited will conduct the activity pursuant to this concession. Upon the basis that the transfer and assignment to Alpine Heliski Limited takes place within six months of the date of this concession then the Grantor consents to herein to such transfer and assignment.

If the transfer and assignment is not completed within the six month period then, the Grantors consent to any proposal to transfer and assign this concession will be determined pursuant to the provisions of clause 18 of this concession."

9. Before the concession activity can commence the Concessionaire must provide the Grantor with an independently audited safety plan which meets the requirements of clause 16.4, 16.5 and 16.6 of the general conditions. The Concessionaire shall keep this document in force during the term of this concession.

Appendix 6: Form of Grazing Concession to be Created over Conservation Area labelled "CA4" on the Plan

Concession number: _ _ _ _

DATED _

Between

MINISTER OF CONSERVATION
("the Grantor")

and

PIONEER GENERATION LIMITED
("the Concessionaire")

GRAZING CONCESSION
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made this day of

PARTIES:

1. **MINISTER OF CONSERVATION**, (lithe Grantor")
2. **PIONEER GENERATION LIMITED** (lithe Concessionaire")

BACKGROUND

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area or Reserve.
- B. 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).
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

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

"Access" means the right, in common with others, to pass and repass over the Land and any roads of the Grantor for ingress to and egress from the Land as is reasonably necessary for the Concessionaire to exercise its rights under this Licence.

"**Administration Fee**" means the amount specified in Item 6(b) of Schedule 1 and is the annual fee for administering the Concession imposed by the Grantor under section 60D of the Conservation Act 1987. It includes any variation in that amount following a Concession Fee Review.

"**Background**" means the matters referred to under the heading "Background" on page 1 of this Document.

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

"**Concessionaire**" includes the Concessionaire's successors, assigns, executors, and administrators.

"**Concession Activity**" means the use of the Land for purposes of the activity carried out by the Concessionaire and specified in Item 2 of Schedule 1.

"**Concession Fee**" means the amount specified in Item 6(a) of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review. It also includes, where relevant, the amount which the parties agree to be the new Concession Fee on a renewal of the Document.

"**Concession Fee Payment Date**" means the date specified in Item 7 of Schedule 1 on which the Concession Fee falls due for payment.

"**Concession Fee Review**" means a review of the Concession Fee determined in accordance with clause 6 of this Document.

- 2 -

"Concession Fee Review Date" means the date specified in Item 9 of Schedule 1 on which the Concession Fee Review occurs being at 3 year intervals calculated from the date of commencement of the term of this Document; and includes any additional dates inserted into Item 9 of Schedule 1 following a renewal of this Document.

"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.

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

"Final Expiry Date" means the date specified in Item 5 of Schedule 1.

"Land" means a Conservation Area or a Reserve (whichever is relevant in the circumstances) being the area more particularly described in Item 1 of Schedule 1.

"Licence" for purposes of this Document is the Licence granted under this Document by the Grantor to the Concessionaire under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).

"Penalty Interest Rate" means the rate specified in Item 8 of Schedule 1.

"Renewal Date" means the date specified in Item 4(a) of Schedule 1.

"Renewal Period" means the period specified in Item 4(b) of the Schedule 1.

"Reserve" has the same meaning as "reserve" in section 2 of the Reserves Act 1977.

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

"Term" means the period of time specified in Item 3 of Schedule 1 during which this Document operates. It includes, where relevant, any period of renewal of the Term.

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

1.2 In this Document unless the context otherwise requires:

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

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

2.0 GRANT OF LICENCE

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

3.0 TERM

3.1 The Licence is for the Term specified in Item 3 of Schedule 1.

3.2 Unless otherwise specified in Items 4 and 5 of Schedule 1, if the Concessionaire has not been in breach of this Document and has given to the Grantor written notice to renew the Document at least three months before the end of the Term, the Grantor will, at the cost of the Concessionaire, renew the Document from the Renewal Date for the next Renewal Period on the following terms:

- (a) the new Concession Fee is to be agreed upon before the end of the Term or, failing agreement, is to be determined as though it were a Concession Fee Review under clause 6;
- (b) the Concession Fee is to be subject to review during the Renewal Period on each Concession Fee Review Date;
- (c) the renewed Document is otherwise to be in accordance with and subject to the covenants and agreements expressed and implied in this Document except that the Term of the Document and all renewals, if any, end on the Final Expiry Date;
- (d) pending the determination of the new Concession Fee, the Concessionaire is to pay the new Concession Fee proposed by the Grantor. Upon determination an appropriate adjustment is to be made to the Concession Fee.

4.0 CONCESSION FEE AND ADMINISTRATION FEE

4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor on or before the Concession Fee Payment Date specified in Item 7 of Schedule 1:

- (a) the Concession Fee plus GST specified in Item 6(a) of Schedule 1; and
- (b) the Administration Fee plus GST specified in Item 6(b) of Schedule 1.

4.2 If the Concessionaire defaults in payment of the Concession Fee and Administration Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee and Administration Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

4.3 For purposes of clause 6.0, a reference to Concession Fee includes a reference to the Administration Fee.

5.0 OTHER CHARGES

5.1 In addition to the Concession Fee and Administration Fee the Concessionaire must pay all rates, levies, taxes, duties, assessments, charges, and other outgoings which may be charged, levied, or reasonably assessed, or which become payable in relation to the Land as a result of the grant of this Licence.

6.0 CONCESSION FEE AND ADMINISTRATION FEE REVIEW

- 6.1 The Grantor will review the Concession Fee and the Administration Fee on the Concession Fee Review Dates.
- 6.2 The Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
- 6.3 The notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987. The Notice must also specify the Administration Fee which the Grantor intends to impose until the next Concession Fee Review Date.
- 6.4 If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 18.
- 6.5 Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee payable immediately before the Concession Fee Review Date. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable notwithstanding anything in this clause, the new Administration Fee will be payable by the Grantor upon receipt of the Notice referred to in clause 6.3.
- 6.6 **If** the Concessionaire does not give notice to the Grantor under clause 6.4 the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.

7.0 CONCESSION ACTIVITY

- 7.1 The Concessionaire is not to use the Land for any purpose other than the Concession Activity.

8.0 COMPLIANCE

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

9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 9.1 The Concessionaire must not erect or bring on to the Land any Structure, install any facility, or alter the Land in any way without the prior written consent of the Grantor.
- 9.2 The Concessionaire must keep and maintain at the Concessionaire's cost any Structures, facilities and alterations to the Land in good repair.
- 9.3 On expiry or early termination of this Document either as to the whole or any part of the Land, the Concessionaire will not be entitled to compensation for any improvements (including pasture) and any Structures or facilities remaining on the Land are to become the property of the Grantor.

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

10.0 PROTECTION OF THE ENVIRONMENT

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

- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Land; or
- (b) bring any plants, or animals (other than farm stock described in Item 2 of Schedule 1, farm dogs and horses for purposes of the Concession Activity) on to the Land; or
- (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
- (d) pile or store materials in any place on the Land where they may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Land; or
- (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Land; or
- (g) disturb or allow stock to disturb any stream or watercourse on the Land; or
- (h) light any fire on the Land.

10.2 The Concessionaire, must at the Concessionaire's expense:

- (a)(i) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Land or any Structure or facility on the Land;
- (a)(ii) if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor; and
- (b) comply strictly with the provisions of the Biosecurity Act 1993.

10.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 10.

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

10.5 The Concessionaire for purposes of the Concession Activity may take onto or use farm vehicles on the Land on existing formed access tracks only.

11.0 HEALTH AND SAFETY

11.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations.

11.2 The Concessionaire must notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment.

12.0 TEMPORARY SUSPENSION

- 12.1 The Grantor may suspend this Document:
- (a) if, in the opinion of the Grantor the activities of the Concessionaire, its employees, agents, contractors, licensees or invitees are having or may have an adverse effect on the environment and the Grantor considers that the effect can not be avoided, remedied or mitigated to an extent satisfactory to the Grantor;
 - (b) while the Grantor investigates any of the circumstances contemplated by this clause and also while the Grantor investigates any potential breach or possible offence by the Concessionaire related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.
- 12.2 The Grantor is not liable to the Concessionaire for any loss sustained by the Concessionaire by reason of a suspension under clause 12.1 including loss of profits.
- 12.3 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.

13.0 ASSIGNMENT

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

14.0 TERMINATION

- 14.1 The Grantor may terminate this Document by notice in writing to the Concessionaire if:
- (a) the Concession Fee or the Administration Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - (b)(i) the Concessionaire breaches any terms of this Document; and
 - (b)(ii) the Grantor has notified the Concessionaire in writing of the breach; and
 - (b)(iii) the Concessionaire does not rectify the breach within 28 days of receiving notification; or
 - (c) the Concessionaire ceases to conduct the Concession Activity; or
 - (d) the Concessionaire is convicted of an offence, related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Resource Management Act 1991; or the Biosecurity Act 1993; or the Health and Safety in Employment Act 1992; or
 - (e) the Concessionaire is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company has a receiver appointed; or is put

into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire cease to function or operate.

14.2 If the Grantor terminates the Document under this clause 14 all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or Administration Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.

14.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

15.0 INDEMNITIES AND INSURANCE

15.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, contractors, or invitees or otherwise caused as a result of its use of the Land or the Concessionaire's carrying out of the Concession Activity on the Land.

15.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.

15.3 Without prejudice to or in any way limiting its liability under clause 15.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:

- (a) a policy of public liability insurance against liability for loss, damage or injury from anyone single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
- (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
- (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.

15.4 With respect to clause 15.3 the Concessionaire must, before commencing the Concession Activity and on each renewal of insurance provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

16.0 ENVIRONMENTAL MONITORING

16.1 The Concessionaire must, during the Term, if required in writing by the Grantor, pay to the Grantor the annual environmental monitoring contribution specified in Item 14 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's conduct of the Concession Activity on the Land.

17.0 FORCE MAJEURE

17.1 Neither party will be liable to the other party for any delay in performance of, or failure to perform, its obligations (other than a payment of money) under this Document as a result of any cause beyond its reasonable control.

18.0 DISPUTE RESOLUTION AND ARBITRATION

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

18.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.

18.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

18.4 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.

18.5 Notwithstanding anything in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the District Law Society in the region in which the Land is situated 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.

18.6 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.

18.7 The parties agree that the results of any arbitration are to be binding on the parties.

19.0 NOTICES

19.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 15 of Schedule 1.

19.2 A notice given in accordance with clause 19.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;
- (c) in the case of facsimile, on the Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

20.0 RELATIONSHIP OF PARTIES

20.1 Nothing expressed or implied in this Document shall be construed as:

- (a) conferring on the Concessionaire any right of exclusive occupation or use of the Land;
- (b) derogating from the rights of the Grantor and the public to have access across the Land;
- (c) preventing the Grantor from granting other concessions (except a grazing licence) to other persons.

21.0 OFFENCES

21.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act:

- (a) no waiver or failure to act by the Grantor under this Document is to preclude the Grantor from prosecuting the Concessionaire; and
- (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising the Grantor's remedies under this Document; and
- (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising the Grantor's remedies under this Document.

22.0 SPECIAL CONDITIONS

22.1 Special conditions relating to this Document are set out in Schedule 2.

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

Signed by :

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

Witness _____

Occupation _____

Address _____

Signed by :

as Concessionaire
 in the presence of :

Witness _____

Occupation _____

Address _____

SCHEDULE 1

1. Land: *(see definition of Land in clause 1.1)*
2. Concession Activity: Grazing of sheep only in the area marked as CA4 on the designations plan in conjunction with the adjoining freehold marked as CC3 on designations plan.
(see definition of Concession Activity in clause 1.1)
3. Term: 7 years commencing on the date of the completion of the tenure review.
4. (a) Renewal Date: 7 years from commencement.
(b) Renewal Period: Right of renewal for 2 further 7 year terms subject to conditions set out in this document being complied with.
5. Final Expiry Date: 21 years from date of commencement date *(see clause 3.2)*
6. (a) Concession Fee: \$315 (based on carrying .5su ha⁻¹ @ \$4.50 su over 140 ha) *(see clause 4)*
(b) Administration Fee: \$100 per annum + GST *(see clause 4)*
7. Concession Fee Payment Date: *(see clause 4)*
On or before the date specified on the invoice generated by the Grantor
8. Penalty Interest Rate: *(see clause 4.2)*
Double the Grantor's bank's CUIent highest 90 day bank bill buy rate
9. Concession Fee Review Date: Each 3 year anniversary date from commencement.
(see clause 6)
10. Public Liability General Indemnity Cover: *(see clause 15.3)*
for \$200,000.00
11. Public Liability Forest & Rural Fire Extension: *(see clause 15.3)*
for \$1,000,000.00
12. Statutory Liability Insurance: *(see clause 15.3)*
Amount \$20,000
13. Other Types of Insurance: NA *(see clause 15.3)*
Amounts Insured for Other Types of Insurances: *(see clause 15.3)*
NA
14. Environmental Monitoring Contribution: NA *(see clause 16)*
15. Address for Notices (including facsimile number): *(see clause 19)*
 - (a) Grantor
77 Stuart Street
PO Box 5244
Fax (03) 4778626

DUNEDIN

(b) Concessionaire

Ellis Street
PO Box 275
Fax (03) 448 9439
ALEXANDRA

SCHEDULE 2

Special Conditions

- 1.0 The Concessionaire must not break up or crop any part of the Land without the prior written consent of the Grantor.
- 2.0 The Grantor reserves the right for the Grantor's employees or agents to enter on the Land at any time for the purpose of inspecting the Land.
- 3.0 Photopoint monitoring will be used to record the condition and trends of historic features present in the concession area. Upwards of 10 photo points will be established and located at selected sites which are considered representative of the values contained in the covenant area.
- 4.0 In relation to Clause 13.1 consent to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaires interest under this Document will not be unreasonably withheld by the Grantor.

SCHEDULE 3

As this concession is for a term exceeding 10 years a management prescription document is required. A management prescription in the concession conditions provides, over the full term:

1. The specific goals of management of the land consistent with the nature of the concession activity (covering vegetation, landscape, historic, public recreation, soil and water).
2. A description of how the goals are to be met.
3. A detailed description of the type and condition of historic resources at the commencement of the concession.
4. A description of the monitoring programme (of activity effects) to be carried out (for vegetation and historic features).
5. A specification concerning grazing systems, including identification of vegetation trends and how that will affect the grazing systems.

This management prescription document shall apply until it is reviewed ten years from the date of commencement of the concession and every ten years thereafter.

1. The goal of the concession is to achieve the protection of historic sites, landscape values, vegetation, soil and water values and recreational opportunities whilst allowing for limited sheep grazing.

(a) **Vegetation**

To manage the vegetation within the concession area to maintain or enhance the cover of exotic and introduced grass and herb species whilst minimising the risk of invasion by exotic woody weeds and trees.

(b) **Landscape**

To manage the concession area in a manner which retains and enhances the open landscape character and maintains and enhances the physical presence of visible historic features.

(c) **Recreation**

To facilitate public access within the conservation area. Appropriate interpretative information and sign posting will be erected as resourced per the plan.

(d) **Soil and Water**

To manage the concession in a manner which prevents soil loss and maintains high water quality.

2. These goals are to be met through regular monitoring (including general inspections), liaison with the Concessionaire and revision of grazing limits prior to the preparation of management prescription documents.

- (a) Grazing levels and management will be adjusted should that be necessary following analysis of photo point monitoring and field observations by the Grantor or Concessionaire.

- (b) Boundary sign posting indicating the status of the land and conditions pertaining to public use will be erected.

- (c) The concession document requires the Concessionaire to comply with the legal obligations of the Biosecurity Act. The Concessionaire may also wish to carry out a programme of woody weed and tree control beyond any obligations under this act. In order to prevent adverse effects to conservation features present, some accepted methods of control suitable for agricultural purposes may need to be restricted.

Methods of woody weed control practices are to be limited to:

- (i) hand cutting and poison treatment of stumps; or
- (ii) hand-held spraying, ego from a vehicle mounted operation, with hand cutting of dead branches; or
- (iii) prill treatment with hand cutting of dead branches.

A weed control programme will be jointly agreed to by the Concessionaire and the Area Manager Department of Conservation, Alexandra which will determine what method(s) are to be used and where.

Given that these method(s) are likely to be more expensive than those practiced for normal agricultural purposes, the cost of weed control will be apportioned on the basis that the Concessionaire meets those costs to meet his/her legal obligations and the Grantor will meet the difference in costs of the above accepted methods (if any) in order to safeguard the conservation features.

Under the terms of the concession the Concessionaire has the responsibility for pest control.

3. Description and condition of historic resources present.

Three major sets of sluice faces are spread along the hillside, for about 1500 metres, all of which are likely to have been formed in the 1930's. The area also contains tidy tailings and races.

This needs to be expanded upon and upgraded prior to preparation of a Substantive Proposal.

4. Description of a monitoring programme to be established for historic sites, vegetation condition and soil and water values

Up to 10 photo points are to be established and located at selected historic sites which are considered vulnerable to stock damage, woody weed invasion or other factors such as slope instability. Of primary concern are stacked stone structures which can be vulnerable to physical damage.

Additional photo points will be established which will provide a general record of vegetation cover, composition and condition.

5. Number of stock and duration permitted to be **run** on the concession area within the current term of the management prescription document.

Approximately 70 sheep per annum (in practice more sheep will be run for a lesser period).

Appendix 7: Form of Grazing Concession to be Created over Conservation Area labelled "CAS" on the Plan

Concession number: _ _ _ _

DATED _

Between

MINISTER OF CONSERVATION
("the Grantor")

and

PIONEER GENERATION LIMITED
("the Concessionaire")

GRAZING CONCESSION
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made this day of

PARTIES:

1. MINISTER OF CONSERVATION, ("the Grantor")
2. PIONEER GENERATION LIMITED ("the Concessionaire")

BACKGROUND

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area.
- B. 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).
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

"Access" means the right, in common with others, to pass and repass over the Land and any roads of the Grantor for ingress to and egress from the Land as is reasonably necessary for the Concessionaire to exercise its rights under this Licence.

"Administration Fee" means the amount specified in Item 6(b) of Schedule 1 and is the annual fee for administering the Concession imposed by the Grantor under section 60D of the Conservation Act 1987. It includes any variation in that amount following a Concession Fee Review.

"Background" means the matters referred to under the heading 'Background' on page 1 of this Document.

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

"Concessionaire" includes the Concessionaire's successors, assigns, executors, and administrators.

"Concession Activity" means the use of the Land for purposes of the activity carried out by the Concessionaire and specified in Item 2 of Schedule 1.

"Concession Fee" means the amount specified in Item 6(a) of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review. It also includes, where relevant, the amount which the parties agree to be the new Concession Fee on a renewal of the Document.

"Concession Fee Payment Date" means the date specified in Item 7 of Schedule 1 on which the Concession Fee falls due for payment.

"Concession Fee Review" means a review of the Concession Fee determined in accordance with clause 6 of this Document.

- 2 -

"Concession Fee Review Date" means the date specified in Item 9 of Schedule 1 on which the Concession Fee Review occurs being at 3 year intervals calculated from the date of commencement of the term of this Document; and includes any additional dates inserted into Item 9 of Schedule 1 following a renewal of this Document.

"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.

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

"Final Expiry Date" means the date specified in Item 5 of Schedule 1.

"Land" means a Conservation Area or a Reserve (whichever is relevant in the circumstances) being the area more particularly described in Item 1 of Schedule 1.

"Licence" for purposes of this Document is the Licence granted under this Document by the Grantor to the Concessionaire under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).

"Penalty Interest Rate" means the rate specified in Item 8 of Schedule 1.

"Renewal Date" means the date specified in Item 4(a) of Schedule 1.

"Renewal Period" means the period specified in Item 4(b) of the Schedule 1.

"Reserve" has the same meaning as "reserve" in section 2 of the Reserves Act 1977.

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

"Term" means the period of time specified in Item 3 of Schedule 1 during which this Document operates. It includes, where relevant, any period of renewal of the Term.

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

1.2 In this Document unless the context otherwise requires:

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

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

2.0 GRANT OF LICENCE

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

3.0 TERM

3.1 The Licence is for the Term specified in Item 3 of Schedule 1.

3.2 Unless otherwise specified in Items 4 and 5 of Schedule 1, if the Concessionaire has not been in breach of this Document and has given to the Grantor written notice to renew the Document at least three months before the end of the Term, the Grantor will, at the cost of the Concessionaire, renew the Document from the Renewal Date for the next Renewal Period on the following terms:

- (a) the new Concession Fee is to be agreed upon before the end of the Term or, failing agreement, is to be determined as though it were a Concession Fee Review under clause 6;
- (b) the Concession Fee is to be subject to review during the Renewal Period on each Concession Fee Review Date;
- (c) the renewed Document is otherwise to be in accordance with and subject to the covenants and agreements expressed and implied in this Document except that the Term of the Document and all renewals, if any, end on the Final Expiry Date;
- (d) pending the determination of the new Concession Fee, the Concessionaire is to pay the new Concession Fee proposed by the Grantor. Upon determination an appropriate adjustment is to be made to the Concession Fee.

4.0 CONCESSION FEE AND ADMINISTRATION FEE

4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor on or before the Concession Fee Payment Date specified in Item 7 of Schedule 1:

- (a) the Concession Fee plus GST specified in Item 6(a) of Schedule 1; and
- (b) the Administration Fee plus GST specified in Item 6(b) of Schedule 1.

4.2 If the Concessionaire defaults in payment of the Concession Fee and Administration Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee and Administration Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

4.3 For purposes of clause 6.0, a reference to Concession Fee includes a reference to the Administration Fee.

5.0 OTHER CHARGES

5.1 In addition to the Concession Fee and Administration Fee the Concessionaire must pay all rates, levies, taxes, duties, assessments, charges, and other outgoings which may be charged, levied, or reasonably assessed, or which become payable in relation to the Land as a result of the grant of this Licence.

6.0 CONCESSION FEE REVIEW

- 6.1 The Grantor will review the Concession Fee on the Concession Fee Review Dates.
- 6.2 The Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
- 6.3 The notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
- 6.4 If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 18.
- 6.5 Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee payable immediately before the Concession Fee Review Date. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.
- 6.6 If the Concessionaire does not give notice to the Grantor under clause 6.4 the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.

7.0 CONCESSION ACTIVITY

- 7.1 The Concessionaire is not to use the Land for any purpose other than the Concession Activity.

8.0 COMPLIANCE

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

9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 9.1 The Concessionaire must not erect or bring on to the Land any Structure, install any facility, or alter the Land in any way without the prior written consent of the Grantor.
- 9.2 The Concessionaire must keep and maintain at the Concessionaire's cost any Structures, facilities and alterations to the Land in good repair.
- 9.3 On expiry or early termination of this Document either as to the whole or any part of the Land, the Concessionaire will not be entitled to compensation for any improvements (including pasture) and any Structures or facilities remaining on the Land are to become the property of the Grantor.
- 9.4 If requested by the Grantor, the Concessionaire must, within such time as the Grantor determines, remove all Structures, facilities or other improvements erected or installed by the Concessionaire and make good at

the Concessionaire's own expense all damage done by the removal and must leave the Land in a clean and tidy condition to the satisfaction of the Grantor.

10.0 PROTECTION OF THE ENVIRONMENT

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

- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Land; or
- (b) bring any plants, or animals (other than farm stock described in Item 2 of Schedule 1, farm dogs and horses for purposes of the Concession Activity) on to the Land; or
- (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
- (d) pile or store materials in any place on the Land where they may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Land; or
- (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Land; or
- (g) disturb or allow stock to disturb any stream or watercourse on the Land; or
- (h) light any fire on the Land.

10.2 The Concessionaire, must at the Concessionaire's expense:

- (a)(i) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Land or any Structure or facility on the Land;
- (a)(ii) if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor; and
- (b) comply strictly with the provisions of the Biosecurity Act 1993.

10.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 10.

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

10.5 The Concessionaire for purposes of the Concession Activity may take onto or use farm vehicles on the Land on existing formed access tracks only.

11.0 HEALTH AND SAFETY

11.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations.

11.2 The Concessionaire must notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment.

12.0 TEMPORARY SUSPENSION

12.1 The Grantor may suspend this Document:

- (a) if, in the opinion of the Grantor the activities of the Concessionaire, its employees, agents, contractors, licensees or invitees are having or may have an adverse effect on the environment and the Grantor considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor;
- (b) while the Grantor investigates any of the circumstances contemplated by this clause and also while the Grantor investigates any potential breach or possible offence by the Concessionaire related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.

12.2 The Grantor is not liable to the Concessionaire for any loss sustained by the Concessionaire by reason of a suspension under clause **12.1** including loss of profits.

12.3 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.

13.0 ASSIGNMENT

13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause.

13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.

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

13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

14.0 TERMINATION

14.1 The Grantor may terminate this Document by notice in writing to the Concessionaire if:

- (a) the Concession Fee or the Administration Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for **14** days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - (b)(i) the Concessionaire breaches any terms of this Document; and
 - (b)(ii) the Grantor has notified the Concessionaire in writing of the breach; and
 - (b)(iii) the Concessionaire does not **rectify** the breach within 28 days of receiving notification; or
- (c) the Concessionaire ceases to conduct the Concession Activity; or
- (d) the Concessionaire is convicted of an offence, related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Resource Management Act 1991; or the Biosecurity Act 1993; or the Health and Safety in Employment Act 1992; or
- (e) the Concessionaire is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company has a receiver appointed; or is put

into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire cease to function or operate.

- 14.2 If the Grantor terminates the Document under this clause 14 all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or Administration Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.
- 14.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

15.0 INDEMNITIES AND INSURANCE

- 15.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, contractors, or invitees or otherwise caused as a result of its use of the Land or the Concessionaire's carrying out of the Concession Activity on the Land.
- 15.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.
- 15.3 Without prejudice to or in any way limiting its liability under clause 15.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:
- (a) a policy of public liability insurance against liability for loss, damage or injury from anyone single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
 - (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.
- 15.4 With respect to clause 15.3 the Concessionaire must, before commencing the Concession Activity and on each renewal of insurance provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

16.0 ENVIRONMENTAL MONITORING

16.1 The Concessionaire must, during the Term, if required in writing by the Grantor, pay to the Grantor the annual environmental monitoring contribution specified in Item 14 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's conduct of the Concession Activity on the Land.

17.0 FORCE MAJEURE

17.1 Neither party will be liable to the other party for any delay in performance of, or failure to perform, its obligations (other than a payment of money) under this Document as a result of any cause beyond its reasonable control.

18.0 DISPUTE RESOLUTION AND ARBITRATION

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

18.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.

18.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

18.4 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.

18.5 Notwithstanding anything in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the District Law Society in the region in which the Land is situated 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.

18.6 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.

18.7 The parties agree that the results of any arbitration are to be binding on the parties.

19.0 NOTICES

19.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 15 of Schedule 1.

19.2 A notice given in accordance with clause 19.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;
- (c) in the case of facsimile, on the Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

20.0 RELATIONSHIP OF PARTIES

20.1 Nothing expressed or implied in this Document shall be construed as:

- (a) conferring on the Concessionaire any right of exclusive occupation or use of the Land;
- (b) derogating from the rights of the Grantor and the public to have access across the Land;
- (c) preventing the Grantor from granting other concessions (except a grazing licence) to other persons.

21.0 OFFENCES

21.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act:

- (a) no waiver or failure to act by the Grantor under this Document is to preclude the Grantor from prosecuting the Concessionaire; and
- (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising the Grantor's remedies under this Document; and
- (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising the Grantor's remedies under this Document.

22.0 SPECIAL CONDITIONS

22.1 Special conditions relating to this Document are set out in Schedule 2.

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

Signed by Jeffrey Edward Connell

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

Witness _____

Occupation _____

Address _____

Signed by

as Concessionaire
in the presence of :

Witness _____

Occupation _____

Address _____

TRUSTEES EXECUTORS TO EXECUTE HERE

SCHEDULE 1

1. Land: *(Area marked CA5 on the designations plan) (see definition of Land in clause 1.1)*
2. Concession Activity: Sheep grazing, which is not actively encouraged *(see definition of Concession Activity in clause 1.1)*
3. Term: 30 years commencing on_ *(see clause 3)*
4. (a) Renewal Date: not applicable *(see clause 3.2)*
(b) Renewal Period: not applicable *(see clause 3.2)*
5. Final Expiry Date: *(see clause 3.2)*
6. (a) Concession Fee: \$ one peppercorn if (demanded) *(see clause 4)*
(b) Administration Fee: \$200 per annum + GST *(see clause 4)*
7. Concession Fee Payment Date: *(see clause 4)*
On or before the date specified on the invoice generated by the Grantor
8. Penalty Interest Rate: *(see clause 4.2)*
Double the Grantor's bank's current highest 90 day bank bill buy rate
9. Concession Fee Review Date: every three yearly anniversary of the commencement date
see clause 6)
10. Public Liability General Indemnity Cover: *(see clause 15.3)*
for \$250,000
11. Public Liability Forest & Rural Fire Extension: *(see clause 15.3)*
for \$1,000,000
12. Statutory Liability Insurance: *(see clause 15.3)*
Amount \$20,000
13. Other Types of Insurance: Not Applicable *(see clause 15.3)*

Amounts Insured for Other Types of Insurances: Not Applicable *(see clause 15.3)*
14. Environmental Monitoring Contribution: Not Applicable *(see clause 16)*
15. Address for Notices (including facsimile number): *(see clause 19)*
 - (a) Grantor: C/- PO Box 5244 Dunedin Facsimile (03) 477-8626
 - (b) Concessionaire:
Ellis Street
PO Box 275
Alexandra
Fax (03) 448 9439

SCHEDULE 2

Special Conditions

Land Management

1. The Concessionaire must not break up or crop any part of the Land without the prior written consent of the Grantor.

Sheep

- 2 The Concessionaire must not actively encourage sheep to enter on to the Land by any means, including but not limited to, by mustering or the use of salt blocks.
- 3 While the Grantor acknowledges that despite the best efforts of the Concessionaire, some 'sheep drift' will occur into the Land, the Concessionaire is to take all practical steps to discourage sheep from doing so and must monitor the Land on a regular basis in order to ensure compliance as far as possible.
- 4 If the Grantor determines that the Concessionaire is taking no steps to monitor and control 'sheep drift' and the Grantor is made aware that sheep are grazing on the Land, the Grantor may terminate this concession unless effective measures to control 'sheep drift' onto the Land are agreed between the Grantor and Concessionaire.

Fencing

- 5 The Grantor is not to be called upon at any time to contribute to the costs of work on a fence as that term is defined in the Fencing Act 1978 between the Land and any adjoining land of the Grantor.
- 6 The Concessionaire must keep and maintain at the Concessionaires cost any fences, stiles or gates in good repair.

Hunting

- 7 The Grantor reserves the right to authorise hunters who hold a valid hunting permit issued by the Department of Conservation to hunt on the Land.

Inspection

- 8 The Grantor reserves the right for the Grantor's employees or agents to enter on the Land at any time for the purpose of inspecting the Land.

Management Prescription

- 9 The parties will comply with the management prescription document attached as schedule 3.

Transfer

- 10 In relation to Clause 13.1 consent to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaires interest under this Document will not be unreasonably withheld by the Grantor.

SCHEDULE 3

Management Prescription

As this concession is for a term exceeding 10 years a management prescription document is required. A management prescription in the concession conditions provides, over the full term:

1. The specific goals of management of the land consistent with the nature of the concession activity (covering vegetation, landscape, historic, public recreation, soil and water).
2. A description of how the goals are to be met.
3. A detailed description of the type and condition of natural resources at the commencement of the concession.
4. A description of the monitoring programme (of activity effects) to be carried out.
5. A specification concerning grazing systems, including identification of vegetation trends and how that will affect the grazing systems.

This management prescription document shall apply until it is reviewed ten years from the date of commencement of the concession and every ten years thereafter.

1. The goal of the concession is to achieve the protection of, landscape, vegetation, soil and water values and recreational opportunities whilst formally recognising that some sheep will enter into the area as the conservation land / freehold boundary is unable to be practically fenced.
 - (a) Vegetation
To manage the vegetation within the concession area to enhance the cover of native vegetation whilst minimising the risk of invasion by exotic woody weeds and trees.
 - (b) Landscape
To manage the concession area in a manner which retains and enhances the open landscape which is characterised by a low level of human modification.
 - (c) Recreation
To facilitate public recreation activities which are compatible with the concession areas proposed status as a conservation area; for example tramping and hunting.
 - (d) Soil and Water
To manage the concession in a manner which prevents soil loss and maintains high water quality.
2. These goals are to be met through periodic regular inspections and liaison with the Concessionaire.

The concession document requires the Concessionaire to comply with the legal obligations of the Biosecurity Act.

3. Description and condition of natural resources present.

Below approximately 1000 m there are extensive mixed shrublands dominated by *Olearia odorata*, *Coprosma propinqua* and matagouri. Other important shrubs include *Corokia cotoneaster*, *Carmichaelia petriei*, *Olearia bullata* and *Melicytus alpinus*. Within these shrublands there are occasional trees of kowhai (*Sophora microphylla*) which are likely indicators of the previous forest cover. The shrublands on the lower-most river terraces are comprised of almost pure *Olearia odorata*.

4. Description of a monitoring programme to be established for historic sites, vegetation condition and soil and water values

No detailed monitoring programme is to be implemented due to the very limited nature of grazing catered for in the concession. DOC staff frequently visit and fly over the area for a range of purposes. If any specific concerns arise a monitoring programme can be implemented at a later date.

5. Number of stock and duration permitted to be run on the concession area within the current term of the management prescription document.

The concession caters for limited grazing of sheep. The onus is on the concessionaire to conduct his grazing on land above the concession area in a manner which minimises stock drift below the unfenced boundary. For this reason it is not appropriate to have a formal stock limit.

Appendix 8: Form of Public Access and Minister of Conservation Management Purposes Easement in Gross to be Created over route labelled "a-b-y-c-d", "b-b1", "c-e", "f-g-h", "g-i", "n-n1", "s-t", "u-v" and "w-x" on the Plan

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Access for Management Purposes

Land Transfer Act 1952

This page does not form part of the Transfer.

RELEASED UNDER THE OFFICIAL INFORMATION ACT
TRANSFER
Land Transfer Act 1952

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

Land Registration District

Otago

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

	All	
--	-----	--

Transferor Surnames must be underlined

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

Transferee Surnames must be underlined

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

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

Public Access and Management Purposes Easement in Gross under section 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

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 TRANSFEROR TRANSFERS to the TRANSFEREE all the transferor'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 Transferor	(continued on page 4 of Annexure Schedule)
	Signature of Witness	
Signature, or common seal of Transferor	Witness to complete in BLOCK letters (unless typewritten or legibly stamped)	
	Witness name	
	Occupation	
	Address	

Certified correct for the purposes of the Land Transfer Act 1952
Certified that Part IIA of the Land Settlement Promotion and Land Acquisition Act 1952 does not apply

Otago 37215 Easement in Gross template
Olddm-464313. "a-b-y-c-d", "c-e", "b-b1", "f-g-h", "g-i", "n-n1",
September 06.

Solicitor for the Transferee

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

Annexure Schedule

Insert below

“Mortgage”, “Transfer”, “Lease”, etc

Dated

Page of Pages

Definitions

1. In this transfer unless the context otherwise requires:
 - 1.1 “Easement Area” means that part of the Servient Land being 10 metres wide which is marked [*“a-b-y-c-d”, “c-e”, “b-b1”, “f-g-h”, “g-i”, “n-n1”, “s-t”, “u-v” and “w-x” on the designations plan*] “[]” on Deposited Plan/S.O. Plan No [].
 - 1.2 “Management Purposes” means:
 - the protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the easement area.
 - The management of the land administered by the Transferee (not being a member of the public) in a way that is-ecologically sustainable.
 - 1.3 “Servient Land” means the land owned by the Transferor and described on page 1.
 - 1.4 “Transferee” means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee’s tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee’s tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.
 - 1.5 “Transferor” means the owner of the Servient Land described on page 1 and includes the Transferor’s tenants and invitees.

Standard Easement Terms

Access

2. The Transferee has the right:
 - 2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.
 - 2.2 To pass and re-pass at any time over and along the Easement on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, or with or without guns and dogs, for Management Purposes.
3. The Transferor 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 Transferor.

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.

Otaco-37213 Easement in gross template

Olddm-464313. “a-b-y-c-d”, “c-e”, “b-b1”, “f-g-h”, “g-i”, “n-n1”, “s-t”, “u-v” & “w-x”. 22 September 06.

4. The Transferee 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.

Exclusion of Schedules

5. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Ninth Schedule of the Property Law Act 1952 are expressly negated.

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

Temporary Suspension

7. The Transferee (not being a member of the Public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary.

Dispute Resolution

- 8.1 If a dispute arises between the Transferor and Transferee (not being a member of the Public) concerning the rights, management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 8.2 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.
- 8.3 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 District Law Society in which the Servient Land is situated.
- 8.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.
- 9.1 A notice to be given under this transfer by one party to the other is to be in writing and must:
 - (a) be hand delivered to the receiving party; or
 - (b) be sent by ordinary post to the receiving party;
 - (c) be sent by facsimile to the receiving party.
- 9.2 If clause 9.1(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.
- 9.3 If clause 9.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

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

Otaco-37213 Easement in gross template

Olddm-464313. "a-b-y-c-d", "c-e", "b-bl", "f-g-h", "g-i", "n-nl", "s-t", "u-v" & "w-x". 22

September 06.

Special Easement Terms

- 10 The standard easement terms contained above must be read subject to any special easement terms set out below.
11. Clause 2.1 is deleted and replaced with:
 - 2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area as detailed below.
 - 2.1.1 On foot.
 - 2.1.2 On or accompanied by horses on those parts of the Easement Area marked "*a-b-y-c-d*" and "*c-e*" on the designations plan.
 - 2.1.3 By non-motorised vehicle powered by person or persons.
 - 2.1.4 With guns and dogs if a permit to hunt on the conservation land serviced by the easement is held. Dogs must be kept on a leash. Dogs are not permitted on those parts of the Easement Area marked "*a-b-y-c-d*" and "*c-e*" on the designations plan over the lambing period (October 15th to November 30th inclusive).
12. In addition to rights conveyed in Clause 11 the Transferee (being a member of the public) may, subject to the discretion of the Department of Conservation Central Otago Area Manager, use a motor vehicle on that part of the Easement Area labelled "*a-b-y-c-d*" between December 1st and March 15th. If weather conditions render the track vulnerable to damage, or factors associated with public vehicle use cause undue interference with the Transferor's farming operation, the Department of Conservation Central Otago Area Manager may at his/her discretion preclude vehicle use within the open period.
- 13 The Transferee will erect lockable gates or barriers at *points "a & d" on the designations plan*. Keys will be made available to members of the public from the Department of Conservation Central Otago Area Office in Alexandra during those times when the Easement Area is open for public vehicle use. The Transferor must be provided with a key, or may install their own lock.
- 14 The Transferee will be responsible for maintenance of that part of the Easement Area available for public vehicle use (*labelled "a-b-y-c-d" on the Designations Plan*). The Transferor will on invoice from the Transferee contribute \$x by March 31st each year towards track maintenance (*the exact maintenance contribution and collection mechanism is to be finalised prior to final documentation*). This money will be held in a separate trust account until required for maintenance purposes. The contribution will be reviewed every 3 years and adjusted according to movement in the consumer price index over the preceding period. The Transferee is not to be called upon to maintain tracks on other parts of the Easement Area.
- 15 In the event that the Department of Conservation Central Otago Area Manager uses his discretion to exclude public vehicle use from that part of the Easement Area labelled (*"a-b-y-c-d on the Designations Plan*) the Transferee will not be required to make the annual payment referred to in Clause 14 and Transferee will cease to be responsible for track maintenance until such time as the seasonal track opening for public vehicle use is reinstated.
- 16 The Transferor is under no obligation to maintain those parts of the Easement Area for which they hold primary maintenance responsibility.
- 17 The Transferee will make members of the public aware that use of the Easement, with the exception of the usual statutory requirements and duties incumbent upon both the Transferor and the Transferee arising out of the easement, will be at the public's own risk.

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.

Otaco-37213 Easement in gross template

Olddm-464313. "*a-b-y-c-d*", "*c-e*", "*b-bl*", "*f-g-h*", "*g-i*", "*n-nl*", "*s-t*", "*u-v*" & "*w-x*". 22

September 06.

- 18 The sections of the Easement area marked "b-bl", "f-g-h", "g-i" "u-v" and "n-nl", shall be closed to members of the public for lambing purposes from October 15th to November 30th inclusive.
- 19 The Transferee has the right:
 - 19.1 To mark the Easement Area as appropriate
 - 19.2 To erect and maintain stiles/gates.
 - 19.3 To construct and maintain a benched track along those sections of the Easement area where there is currently no formed track
 - 19.4 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.
 - 19.5 to use whatever reasonable means of access he/she thinks fit over the Easement Area to carry out the works in clause 19.1 to 19.4
 - 19.6 install cattle stops and adjacent stock gates on that part of the Easement Area available for public vehicle use
- 20 The Transferee 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.

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.

Otaco-37213 Easement in gross template

Olddm-464313. "a-b-y-c-d", "c-e", "b-bl", "f-g-h", "g-i", "n-nl", "s-1", "u-v" & "w-x". 22

September 06.

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

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
 2. Management Purposes
- Land Transfer Act 1952

Law Firm Acting

Conservancy Solicitor
Department of Conservation
Dunedin

Auckland District Law Society
REF:4135

This page is for Land Registry Office use only.

Otaco-37213 Easement in gross template (except for "Law Firm Acting")

Olddm-464313. "a-b-y-c-d", "c-e", "b-b1", "f-g-h", "g-i", "n-n1", "s-1", "u-v" & "w-x". 22
September 06.

Appendix 9: Form of Otago Fish and Game Council Management Purposes Easement in Gross to be Created over route labelled "a-b-y-c-d" and "y-z" on the Plan

Approved by Registrar-General of Land under No. 2002/6055

Easement instrument to grant easement or profit à prendre, or create land covenant
Sections 90A and 90F, Land Transfer Act 1952

Land registration district

OTAGO



BARCODE

Grantor

Surname(s) must be underlined or in CAPITALS.

COMMISSIONER OF CROWN LANDS

Grantee

Surname(s) must be underlined or in CAPITALS.

OTAGO FISH & GAME COUNCIL

Grant* of easement or profit à prendre or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this _____ day of _____ 2006

Attestation

	Signed in my presence by the Grantor
	_____ <i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name
	Occupation
Signature [common seal] of Grantor	Address

	Signed in my presence by the Grantee
	_____ <i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name
	Occupation
Signature [common seal] of Grantee	Address

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

[Solicitor for] the Grantee

*If the consent of any person is required for the grant, the specified consent form must be used.

Approved by Registrar-General of Land under No. 2002/6055
Annexure Schedule 1



Easement Instrument Dated Page 1 of 1 pages

Schedule A (Continue in additional Annexure Schedule if required.)

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of Way under Section 26S(2)(a) of the Conservation Act 1987 for management purposes	"a-b-y-c-d" and "y-z" on Survey Office Plan No. []	TBA	In Gross

Easements or profits à prendre rights and powers (including terms, covenants, and conditions)

*Delete phrases in [] and insert memorandum number as required.
 Continue in additional Annexure Schedule if required.*

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Ninth Schedule of the Property Law Act 1952.

The implied rights and powers are ~~varied~~ ~~negatived~~ ~~added to~~ or ~~substituted~~ by:

~~{Memorandum number _____, registered under section 155A of the Land Transfer Act 1952,~~

~~{the provisions set out in Annexure Schedule 2}.~~

Covenant provisions

*Delete phrases in [] and insert memorandum number as required.
 Continue in additional Annexure Schedule if required.*

The provisions applying to the specified covenants are those set out in:

~~{Memorandum number _____, registered under section 155A of the Land Transfer Act 1952,~~

~~{Annexure Schedule 2}.~~

All signing parties and either their witnesses or solicitors must sign or initial in this box

Approved by Registrar-General of Land under No. 2002/5032

Annexure Schedule

Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

DRAFT - Easement

Dated

[]

Page **1** of **2** Pages

(Continue in additional Annexure Schedule, if required.)

Definitions

1. In this easement instrument unless the context otherwise requires:
 - 1.1 "Easement Area" means that part of the Servient Land marked "a-b-y-c-d" and "y-z" on Survey Office Plan No [].
 - 1.2 "Management Purposes" means the management of sports fish and game bird and the protection management and monitoring of the habitat for sports fish and game bird on the Easement Area or any adjacent public land or waterway.
 - 1.3 "Servient Land" means the land owned by the Grantor and described on page 1.
 - 1.4 "Grantee" means the Otago Fish & Game Council, and includes the Grantee's agents, contractors, employees, invitees and any honorary rangers.
 - 1.5 "Grantor" means the owner of the Servient Land and includes the Grantor's tenants and invitees.

Standard Easement Terms

2. Access
 - 2.1 The Grantee has the right to pass and re-pass at any time over and along the Easement Area on foot, or by motor vehicle, and in each case with or without machinery and implements of any kind, for Management Purposes. For motor vehicle access, prior consent of the Grantor is required, and this will not be unreasonably withheld.
 - 2.2 In doing any of the matters specified in clause 2.1 the Grantee has the right to take all reasonable steps on, or adjacent to, the Easement Area to repair and maintain the Easement Area to a standard suitable for pedestrian or vehicular access by the Grantee.
 - 2.3 In carrying out the activity in clause 2.1 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.
3. Grantor's Obligations

The Grantor must keep the Easement Area clear at all times of obstructions and must not impede the use and enjoyment of the Easement Area by the Grantee.

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

Approved by Registrar-General of Land under No. 2002/5032

Annexure Schedule

Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

DRAFT - Easement

Dated

Page **2** of **2** Pages

(Continue in additional Annexure Schedule, if required.)

4. Exclusion of Schedules

The rights and powers contained in the Ninth Schedule of the Property Law Act 1952 and the Fourth Schedule of the Land Transfer Regulations 2002 are expressly excluded.

5. Term

The easement created by this easement instrument is to be in perpetuity.

6. Dispute Resolution

Any dispute or difference which may arise as to the liability of either party or as to the construction or interpretation of any of the provisions of this easement instrument shall be determined by arbitration in accordance with the provisions of the Arbitration Act 1996 or any Act passed in substitution or amendment for that Act and this clause shall be deemed to be a submission to arbitration within the meaning of that Act.

7. Notice

Any notice to be given under this easement instrument by one party to the other is to be in writing and must:

- (a) be hand delivered to the receiving party; or
- (b) be sent by ordinary post to the receiving party;
- (c) be sent by facsimile to the receiving party.

7.1 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.




7.2 If clause 7.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

In substitution of the Survey Office Plan (which is yet to be prepared) the "Easement Area" described in Clause 1 is marked on the Plan.

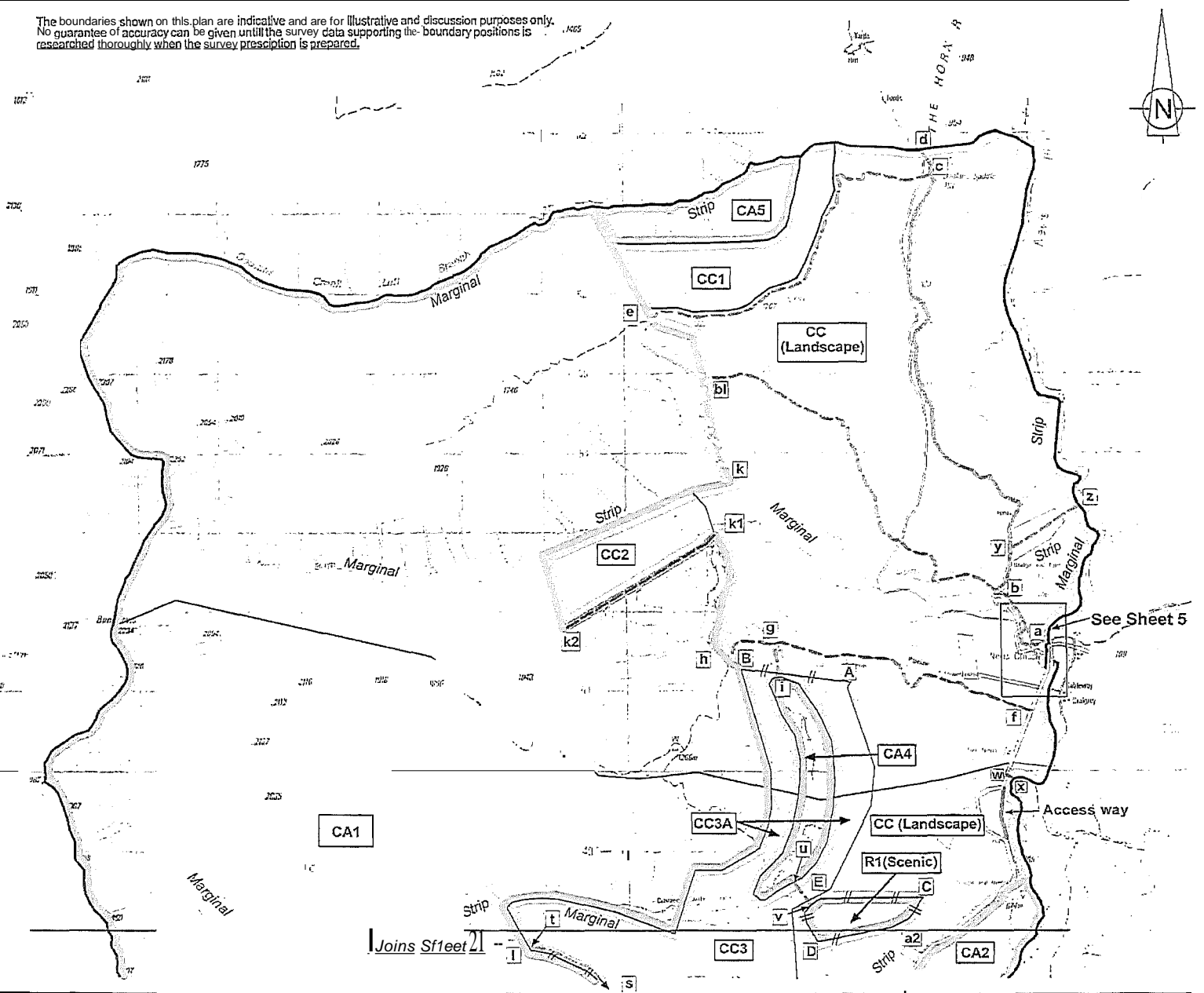
If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**P 241 BEN NEVIS TENURE REVIEW
PROPOSED DESIGNATIONS**

The boundaries shown on this plan are indicative and are for illustrative and discussion purposes only. No guarantee of accuracy can be given until the survey data supporting the boundary positions is researched thoroughly when the survey prescription is prepared.

- D** Pastoral lease land to be restored to or retained in Crown control as conservation area CA1, subject to a Healeskiing Concession.
 - D** Pastoral lease land to be restored to or retained in Crown control as conservation area CA1, subject to an access easement concession e.b-k.
 -  Pastoral lease land to be restored to Crown control as conservation area, subject to an easement and grazing concession CA4 & CA5
 - D** Pastoral lease land to be restored to or retained in full Crown ownership and control as Scenic Reserve R1 (Scenic)
 - Pastoral lease land to be restored to or retained in full Crown ownership and control as a public access way marked "Access way"
 - O** Pastoral lease land to be disposed of by freehold disposal to Pioneer Generation Limited, subject to a Landscape Protection Covenant, CC(Landscape) and Conservation Covenant CC1, CC2 and CC3
- Easement**
Public access and Minister of Conservation management purposes easement in gross a-b-y-c-d, b-bl, c-e, f-g-h, g-l, s-l, u-v, and w-x
Farm management access easement concession for Pioneer Generation Ltd. b-bl-k and k1-k2
-  = Otago Fish & Game Council management purposes easement a-b-y, c-d and y-z
-  = New fences: Marked in capital letters A-B, CoO-E and H-I

Any fee simple title arising from freehold designation of Crown owned land will be issued subject to 10 marginal strips along streams, rivers and lakes (that meet the criteria set out in Section 24 Conservation Act 1987) if the creation of marginal strips has not already been triggered by the issue or renewal of a lease.

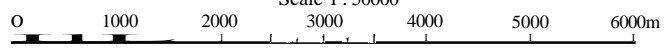


See Sheet 5

Joins Sheet 21

Graphics by:
TL Survey services Ltd DUNEDIN
Certified a true copy of the
original status check plan.

Ben Nevis
Scale 1 : 50000



Version	1	2	3	4	5
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otago Land District
NZMS 260 F.42
Sheet 10f 5
Date 1410912006

Appendix 10: Form of Conservation Covenant to be Created over Area labelled "CC1", "CC2", "CC3" and "CC3A" on the Plan

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

- "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, freshwater life, marine life habitat or historic values as specified in Schedule 1.
- "Working Day" means the period between anyone midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

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

2. OBJECTIVE OF THE COVENANT

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

3. THE OWNER'S OBLIGATIONS

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out on or in relation to the Land:

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
- 3.1.6 any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;

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

4. THE MINISTER'S OBLIGATIONS

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

5. IMPLEMENTATION OF OBJECTIVES

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

6. DURATION OF COVENANT

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

7. OBLIGATIONS ON SALE OF LAND

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

8. MISCELLANEOUS MATTERS

8.1 Rights

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

8.2 Trespass Act:

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

8.3 Reserves Act

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

8.4 Titles

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

8.5 Acceptance of Covenant

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

8.6 Fire

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

9. NOTICES

9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.

9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third Working Day after posting;
- (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

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

10. DEFAULT

10.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:

10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

10.2 Should either the Minister or the Owner become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

10.2.1 advise the defaulting party of the default.

10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

11. DISPUTE RESOLUTION PROCESSES

11.1 If any dispute arises between the Minister and the Owner in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

11.2 Mediation

11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;

11.2.2 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated 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 District Law Society in the region in which the Land is situated;

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

12. JOINT OBLIGATIONS

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

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

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

Witness: _____

Address: _____

Occupation: _____

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

Witness: _____

Address: _____

Occupation: _____

SCHEDULE 1

1. Description of Land

Shaded yellow and marked CCI, CC2 and CC3 on the Designations Plan.

2. Address for Service!

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

77 Stuart Street
PO Box 5244
Dunedin
Fax: (03) 477 8626

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

Ellis Street
PO Box 275
Alexandra
Fax: (03) 4489439

3. Values of Land to be Protected

Landscape: The Land forms a component of a wide open, highly legible landscape and contributes significantly to the natural landscape character of the Remarkables Ecological District.

Botanical Values: The Land contains significant botanical values. The three separate component areas are described below: (threat status is sourced from Hitchmough, R. (Comp.) 2002. New Zealand threat classification system lists 2002. Threatened Species Occasional Publication 23. Department of Conservation, Wellington.

CCI

Below approximately 1000 m there are extensive mixed shrublands dominated by *Olearia odorata*, *Coprosma propinqua* and matagouri. Other important shrubs include *Corokia cotoneaster*, *Carmichaelia petriei*, *Olearia bullata* and *Melicytus alpinus*. Within these shrublands there are occasional trees of kowhai (*Sophora microphylla*) which are likely indicators of the previous forest cover. The shrublands on the lower-most river terraces are comprised of almost pure *Olearia odorata*.

The upper parts of the face support a moderate cover of narrow-leaved tussock with a predominantly native groundcover comprising golden speargrass (*Aciphylla aurea*), *Pimelea oreophila*, dwarf broom (*Carmichaelia vexillata*), hard tussock (*Festuca novae-zelandiae*), *Leucopogon fraseri*, *Raoulia subsericea*, *Gaultheria depressa* and *Scleranthus uniflorus*.

Imbedded within the higher portion of this area are tors and rock outcrops which have distinctive vegetation that includes *Coprosma cheesemaniai*, *Melicytus alpinus*, *Muehlenbeckia axillaris*, *Celmisia lyallii*, *Blechnum penna-marina*, *Myrsine nummularia*, *Stellaria gracilentia* and *Thelymitra longifolia*.

The many mossy seeps in this upper portion contain *Olearia bullata*, *Bulbinella angustifolia*, *Anaphalioides bellidioides*, mosses, liverworts, *Uncinia* spp. and *Hydrocotyle montana*.

State street address not Post Office Box number.

Recorded threatened plants are *Carmichaelia vexillata* ("Serious Decline"- found in the upper tussocklands) and *Vittadinia australis* ("Data Deficient"- found in the middle slopes).

This area encompasses a continuous altitudinal sequence of predominantly indigenous vegetation between approximately 700 m and 1300 m, that forms part of a greater ecological and landscape sequence from the valley floor to the summit ridge of the Hector Mountains.

eC2

This area encompasses a continuous altitudinal sequence which stretches from alpine herbfield on the ridge tops (c. 1680m) to valley floor riparian shrublands (c. 1000m). The alpine herbfield includes a large population of *Myosotis pygmaea* var. *drucei* set in scattered *Chionochloa rigida*, the latter of which extends downslope to the Nevis Bum. This tussockland is intact with a good diversity of inter-tussock herbs and is intermixed with both *Aciphylla* "Lomond" and *Hebe anomala*. Shrub density increases towards the Nevis Bum with matagouri, *Coprosma propinqua*, *Olearia bullata* and *Carmichaelia petriei* being the dominant species. The exotic ground cover increases (with a corresponding decrease in botanical values) in the lower portion of the area near the Nevis Bum and is interspersed with heavily grazed *Chionochloa rigida* and cattle pugged wetlands. These wetlands consist of scattered flushes and impounded drainage bogs with occasional specimens of *Carex kaloides* and *Ranunculus maculatus* (ranked Data Deficient). This area of exotic vegetation interspersed with the aforementioned remnant indigenous vegetation is below the two water races marked on F42 which are centred on grid reference F42 908 531.

The continuous altitudinal sequence of predominantly indigenous vegetation between approximately 1000m and 1680 m, forms part of a greater ecological and landscape sequence, from the lower slopes to the summit ridge of the Hector Mountains.

CC3

Exotic grasses and herbs are the dominant ground cover in the lower portion of this area and their cover decreases with altitude. Below approximately 1000 m the ground cover is completely dominated by indigenous vegetation.

Remnant shrubland is present in the riparian area along Schoolhouse Creek and on adjoining slopes between approximately 700 m to 1200 m. Characteristic species of these shrublands include matagouri, *Hebe* and *Coprosma* species. Individual species include *Hebe anomala*, *H. propinqua*, *Carmichaelia petriei*, *Coprosma ciliata*, *Aristotelia jruticosa*, *Olearia odorata*, *Dracophyllum longifolium*, *Olearia cymbifolia* and mingimingi (c. *propinqua*). These shrublands are the robust survivors of the pre-human woody vegetation in this area and are a significant seed source for future regeneration.

Throughout the area *Chionochloa rigida* persists and its extent increases with altitude. *Chionochloa macra* begins to appear at approximately 1500 m. Of particular note is a record of a type of cress found within a boulderfield. This is an unusual *Cardamine* is known elsewhere only from one site (which is on the Old Man Range) and may represent an unnamed species (Peter Heenan, Landcare Research pers. com).

This area contains a continuous altitudinal sequence of indigenous vegetation between approximately 700 m and 1460 m, that forms part of a greater ecological and landscape sequence from the valley floor to the summit ridge of the Hector Mountains.

In that part of the covenant area surrounding the 1930's gold workings (conservation area)- indigenous vegetation is limited to scattered *C. rigida*.

SCHEDULE 2

Special Conditions

- 1.0 Clause 3.1.1 is deleted and replaced with:

The Land may be grazed to the extent consistent with the preservation of the Values. See Schedule 3 (Management Prescription Document) for stocking rates.

- 2.0 Clause 3.1.4 is deleted and replaced with the following:

3.1.4 the erection of any fence, building, structure or other improvement for any purpose, other than repairing any existing fence, building, structure or other improvements on the Land, or erecting any replacement fence, building, structure or other improvements on the land to replace any existing facility. Locations of existing fences are marked on Map 1, Schedule 4.

- 3.0 Clause 3.1.5 is deleted and replaced with the following:

3.1.5 (a) any burning
(b) any chemical spraying of native vegetation apart from any activity required to keep existing open grassed areas clear of woody vegetation (existing open areas are marked on Map 1 Schedule 4.; and
(c) any topdressing or sowing of seed other than to the extent traditionally carried out, (traditional fertilizer application comprises 190 kg per hectare of sulphur super every two to three years. Areas which have been historically oversown and topdressed are marked on Map 1, Schedule 4.

- 4.0 Clause 3.1.6 is deleted and replaced with the following:

3.1.6 any cultivation, earth works or other soil disturbances, apart from any such activity required to maintain existing vehicle tracks on the Land to a standard appropriate for four wheel drive vehicles and to maintain the current extent of land under cultivation. Existing tracks and cultivated areas are marked on Map 1, Schedule 4.

- 5.0 The Owner and the Minister will comply with the provisions of the Management Prescription Document contained in Schedule 3.

SCHEDULE 3

BEN NEVIS CONSERVATION COVENANTS CC1, CC2, AND CC3 – MANAGEMENT
PRESCRIPTION DOCUMENT

The management prescription document provides for:

1. The specific goals of management of the land consistent with the objective of the covenant document.
2. A description of how the goals are to be met.
3. A description of how the vegetation monitoring programme of the activity effects is to be carried out.
4. A specification concerning grazing systems, including identification of vegetation trends and how that will affect the grazing systems.
5. A description of the existing balance of exotic pasture species and the indigenous plant communities.
6. The revision of the management prescription document ten years from the date of creation of the covenant and ten years thereafter.
 1. The specified goals of the management of the land is to achieve the maintenance and enhancement of existing vegetation, whilst meeting the objective of the covenant.

To manage the vegetation within the covenant area in a manner which preserves and enhances the condition of the following indigenous plant communities, whilst minimising the risk of invasion by exotic weeds and trees.

- *Chionochloa rigida* tussocklands
 - Diverse Shmblands
 - Extensive short tussock grasslands
 - Communities associated with rocky tors
2. These goals are to be met through regular monitoring (including general inspections), liaison with the Owner and revision of grazing limits prior to the preparation of management prescription documents.

Grazing levels and management will be adjusted should that be necessary following analysis of photo point monitoring and field observations by the Grantor or Owner.

3. Description of a monitoring programme to be established for vegetation conditions.

Photo points are to be established and located at selected sites which are considered representative of the values contained in the covenant areas.
4. Number of stock and duration permitted to be run on the covenanted areas within the current term of the management prescription document.

Up to the following stock numbers may be grazed on the Land:

Area CC1 on the designations plan (sunny Elliots): 2000 ewes over 2.5 months in winter. 1500 hoggets for 6 weeks in November/December.

Area CC2 on the designations plan (Sunny Ryders): 350 ewes lambed on this block from October 1 and remain until 30 August the following year.

Area CC3 on the designations plan (Sunny Schoolhouse): 400 ewes lambed on this block from October 1 to end of February. 30 cows calve on this block from October until the end of March. 1000 ewes winter on this block for three months. Sheep only shall be mn in that part of CC3 labelled *CC3A on the designations plan*.

The grazing limitations shall be reviewed after 10 years in light of the monitoring results.

5. Description of the existing balance of exotic pasture species and the indigenous plant communities.

CC1

This covenant area encompasses a continuous altitudinal sequence of predominantly indigenous vegetation. This forms part of a greater ecological and landscape sequence. Below approximately 1000m are extensive mixed shrublands including *Olearia odorata*, *Coprosma propinqua* and matagouri. Occasional trees of kowhai are indicators of previous forest cover. The tors and rocky outcrops have distinctive vegetations that includes *Coprosma cheesemani*, *Melicytus alpinus*, *Muehlenbeckia axillaris*, *Celmisia lyallii*, *Blechnum penna-marina*, *Myrsine nummularia*, *Stellaria gracilentia* and *Thelymitra longifolia*. The upper parts have a moderate cover of narrow-leaved tussock and groundcover of golden speargrass, dwarf broom and hard tussock.

CC2

This covenant area comprises a continuous altitudinal sequence of predominantly indigenous vegetation which forms part of a greater ecological and landscape sequence. The area contains an alpine herbfield with a large population of *Myosotis pygmaea* var. *drucei*. The tussocklands are intact with good diversity of inter-tussock herbs. Exotic ground cover increases and is interspersed with heavily grazed *Chionochloa rigida* and cattle pugged wetlands, which consist of scattered flushes and impounded drainage bogs.

CC3

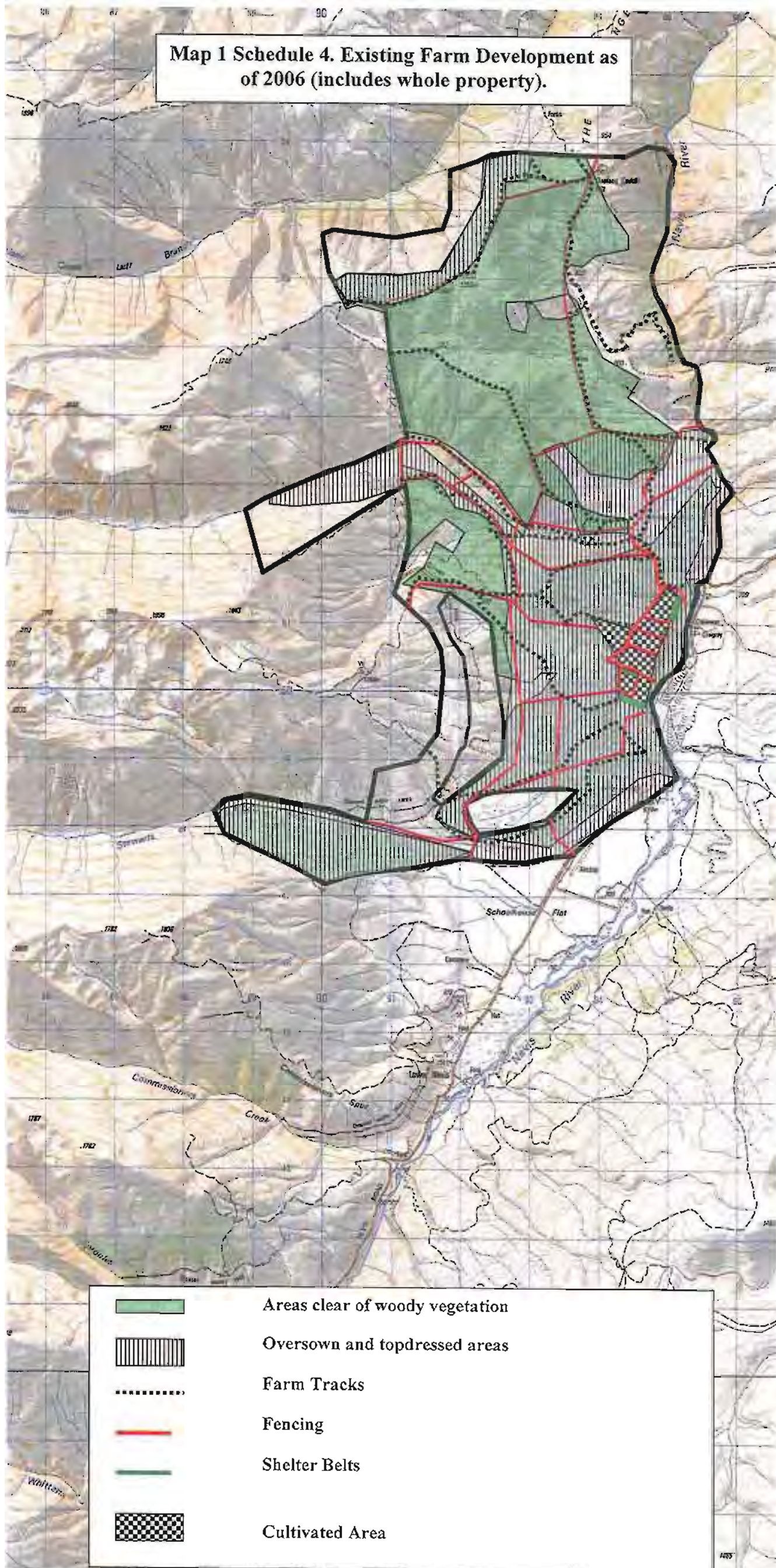
This covenant area comprises a continuous altitudinal sequence of indigenous vegetation which forms part of a greater ecological and landscape sequence. Exotic grasses and herbs are the dominant ground cover in lower parts of the covenant. Below approximately 1000m the ground cover is dominated by indigenous vegetation. Robust shrublands of the pre-human woody vegetation is found in this area and are a significant seed source for future regeneration. Throughout the area *Chionochloa rigida* is present.

6. The revision of the management prescription document ten years from the date of creation of the covenant and ten years thereafter.

At every tenth anniversary of the creation of the covenant the Grantor and/or the Owner may request that part or all of the management prescription document be amended, in order to better meet the objective of the covenant. Any such amendments must be mutually agreed to.

SCHEDULE 4

Map 1 Schedule 4. Existing Farm Development as of 2006 (includes whole property).



GRANT of

Conect for the purposes of the
Land Transfer Act 1952

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

Solicitor for the Minister

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN

**Appendix 11: Form of Conservation Covenant to be Created over Area labelled
"CC(Landscape)" on the Plan**

DATED _ _ _ _ _

Between

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

and

MINISTER OF CONSERVATION
("the Minister")

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



Department of Conservation
Te Papa Atawhai

THIS DEED of COVENANT is made the day of

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

AND MINISTER OF CONSERVATION

BACKGROUND

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

OPERATIVE PARTS

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

1. INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

- "Act" means the Reserves Act 1977.
- "Covenant" means this Deed of Covenant made under section 77 of the Act.
- "Director-General" means the Director-General of Conservation.
- "Fence" includes a gate.
- "Fire Authority" means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
- "Land" means the land described in Schedule 1.
- "Minerals" means any mineral that is 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.

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.

- "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, freshwater life, marine life habitat or historic values as specified in Schedule I.
- "Working Day" means the period between anyone midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

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

2. OBJECTIVE OF THE COVENANT

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

3. THE OWNER'S OBLIGATIONS

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out 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;

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

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

4. THE MINISTER'S OBLIGATIONS

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

5. IMPLEMENTATION OF OBJECTIVES

- 5.1 The Minister may;
 - 5.1.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objectives specified in clause 2.1;

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5.1.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

6. DURATION OF COVENANT

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

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7. OBLIGATIONS ON SALE OF LAND

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

7.2 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

8. MISCELLANEOUS MATTERS

8.1 Rights

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

8.2 Trespass Act:

8.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;

8.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

8.3 Reserves Act

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

8.4 Titles

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

8.5 Acceptance of Covenant

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

8.6 Fire

8.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land;

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

8.6.2.1 requested to do so; or

8.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

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9. NOTICES

- 9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.
- 9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of pre-paid post, on the third Working Day after posting;
 - (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 9.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

10. DEFAULT

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

11. DISPUTE RESOLUTION PROCESSES

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

11.2 Mediation

- 11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;
- 11.2.2 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

11.3 Failure of Mediation

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- 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 District Law Society in the region in which the Land is situated;
- 11.3.3 the parties further agree that the results of arbitration are to be binding upon the parties.

12. JOINT OBLIGATIONS

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

13. SPECIAL CONDITIONS

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

Executed as a Deed

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

Witness; _____

Address; _____

Occupation: _____

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

Witness; _____

Address: _____

Occupation: _____

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SCHEDULE 1

1. Description of Land

Shaded yellow and marked CC (Landscape) on the designations plan.

2. Address for Service!

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

77 Stuart Street
PO Box 5244
Dunedin
Fax: (03) 477 8626

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

Ellis Street
PO Box 275
Alexandra
Fax: (03) 448 9439

3. Values of Land to be Protected

Nationally significant landscape values which sustain the special natural quality and integrity of this wide open, highly legible landscape and contribute significantly to the natural landscape character of the Remarkables Ecological District.

Much of the Land's visual character is derived from pastoral farming and mining activity which has occurred in the valley since the 1860's. The farmscape comprises cultivated flatlands, oversown and topdressed hill country and extensively grazed tall and short tussocklands. The area's colourful mining history is reflected in a myriad of diggings, sluicings, sluice faces, dredge tailings, water races, exploration pits, discarded mining equipment, building ruins

The tall and short tussocklands and montane shrublands within the Land provide an attractive natural component to the landscape in the montane zone. Shrubland communities provide an insight into the character of the area prior to an increase in the frequency of fire associated with Maori and European settlement.

State street address not Post Office Box number.

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SCHEDULE 2

Special Conditions

1. Clause 3.1.1 is deleted and replaced with the following:
 - 3.1.1 grazing of Land by livestock other than sheep and cattle;
2. Notwithstanding Clause 3.1.3 trees which form part of an existing shelter belt may be replaced. The location of existing shelter belts is marked on Map 1, Schedule 4.
3. Clause 3.1.4 is deleted and replaced with the following:
 - 3.1.4 the erection of any fence except for the purpose of fencing conservation areas or reserves, building, structure or other improvement for any purpose, other than repairing any existing fence, building, structure or other improvements on the Land, or erecting any replacement fence, building, structure or other improvements on the Land to replace any existing facility. Locations of existing fences are marked on Map 1, Schedule 4.
4. Clause 3.1.5 is deleted and replaced with the following:
 - 3.1.5 (a) any burning
(b) any chemical spraying of native vegetation apart from any activity required to keep existing open grassed areas clear of woody vegetation (existing open areas are marked on Map 1 Schedule 4.; and
(c) any topdressing or sowing of seed other than to the extent traditionally carried out (traditional fertilizer application comprises 350kg per hectare of potash sulphur super and 250kg per hectare of lime per annum on cultivated paddocks and 190 kg per hectare of sulphur super on oversown and topdressed country every 2-3 years.
5. Clause 3.1.6 is deleted and replaced with the following:
 - 3.1.6 any cultivation, earth works or other soil disturbances, apart from any such activity required to maintain existing vehicle tracks on the Land to a standard appropriate for four wheel drive vehicles and to maintain the current extent of land under cultivation. Existing tracks and cultivated areas are marked on Map 1, Schedule 4.
6. The Owner and the Minister will comply with the provisions of the Management Prescription Document contained in Schedule 3.
7. "The Minister acknowledges that it is intended that the land be used for hydro electricity development, including the erection of transmission lines. Accordingly, it is agreed by the parties that a plan be prepared for submission to the Minister, which identifies the hydro electric development proposed, its location, extent, groundwork's, associated services and facilities, for the Minister's consent (such consent not to be unreasonably withheld). In considering the Plan the Minister will read the provisions of the covenant, including in particular the provisions of clause 3.1, so as not to prohibit the hydro electric development but with the ability to impose such conditions as may be deemed reasonable to avoid, remedy or mitigate adverse effects upon the values identified in this covenant.

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8. "The Minister acknowledges that there is a Mining Pennit 41 734, dated 24 October 2002, issued pursuant to the Crown Minerals Act and in favour of Coleman Mining Limited for the land included in this covenant. The Minister acknowledges that this covenant is to be read subject to the provisions of that Mining Pennit and that accordingly, Clause 3.1.11 of this covenant is to be deleted and replaced with the following;

"any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the land with the exception of such activities associated with mining pursuant to Mining Pennit 41 734 in favour of Coleman Mining Limited."

9. The Minister acknowledges that the occupiers of two cribs which are located on sites designated conservation land as an outcome of pastoral lease tenure review on Ben Nevis pastoral lease, may wish to relocate the buildings onto the Land included in this covenant. While the Minister will have discretion as to siting of the cribs, consent will not be unreasonably withheld for their relocation onto the Land by their current occupiers. The crib occupiers will bear all costs associated with relocating the buildings. This clause does not imply consent under any other legislation under which consent may be required.

The occupiers and locations of the cribs which this condition refers to are:

Sam Graham: Situated close to the Nevis Hotel Site GPS point-E2192427
N5545345

Colin Klein (Noted in Middleton report 2005 page 7 as Cline's cottage)
F42/162 GPS E2191710 N5544116

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SCHEDULE 3

BEN NEVIS CONSERVATION COVENANT CC (LANDSCAPE) – MANAGEMENT PRESCRIPTION DOCUMENT

The management prescription document provides for;

1. The specific goals of management of the land consistent with the objective of the covenant document.
2. A description of how the goals are to be met.
3. A description of how the vegetation monitoring programme of the activity effects is to be carried out.
4. A specification concerning grazing systems, including identification of vegetation trends and how that will affect the grazing systems.
5. A description of the existing balance of exotic pasture species and the indigenous plant communities.
6. The revision of the management prescription document ten years from the date of creation of the covenant and ten years thereafter.

1. The specified goals of the management of the land is to achieve the maintenance and enhancement of existing vegetative cover and to preserve landscape values, whilst meeting the objective of the covenant.

a) Vegetation

To manage the vegetation within the covenant area by maintaining the existing balance of exotic pasture species and the following four indigenous plant communities, while minimising the risk of invasion by exotic weeds and trees.

- *Chionochloa rigida* tussocklands
- Diverse shrubland
- Extensive short tussock grasslands.
- Communities associated with rocky tors

b) Landscape

To maintain and enhance the landscape values within the covenant area. The landscape values are as follow.

- The altitudinal sequence of vegetation and landforms on the lower faces;
- The association of the indigenous plant communities with the tors;
- The historical shrubland communities;
- The substantially unmodified character of the covenant area;
- The wild and scenic characteristics of the Nevis River.

2. These goals are to be met through regular monitoring (including general inspections), liaison with the Owner and revision of grazing limits prior to the preparation of management prescription documents.
 - a) Stocking levels and management will be adjusted should it become apparent on analysis of photo point monitoring and field observations by the Grantor or Owner that grazing is having an adverse effect on the Values.

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

3. Description of a monitoring programme to be established for vegetation condition and landscape values.

Upwards of 20 photo points are to be established and located at selected sites which are considered representative of the values contained in the covenant area.

4. Number of stock and duration permitted to be run on the covenant area within the current term of the management prescription document.

The Land may be grazed with sheep and cattle only, at a stocking rate where the existing pattern of vegetation is maintained. If upon expiry of this Management Prescription Document monitoring reveals a deterioration in the Values, a stock limit may be introduced into subsequent Management Prescription Documents.

5. Description of the existing balance of exotic pasture species and the indigenous plant communities.

The covenant area comprises the front faces of the broad spurs rising above the flats and terraces. The lower slopes have been OSTD and have a mixture of pasture grasses, short tussock and a few scattered narrow-leaved snow tussock (*Chionochloa rigida*). Tall tussockland is scattered at the lower altitudes before becoming thicker at about 1250 metres. Fescue and blue tussock are a component throughout, along with adventive grasses at the lower altitudes. Silver tussock (*Poa cita*) occurs in the more fertile sites and along road edges.

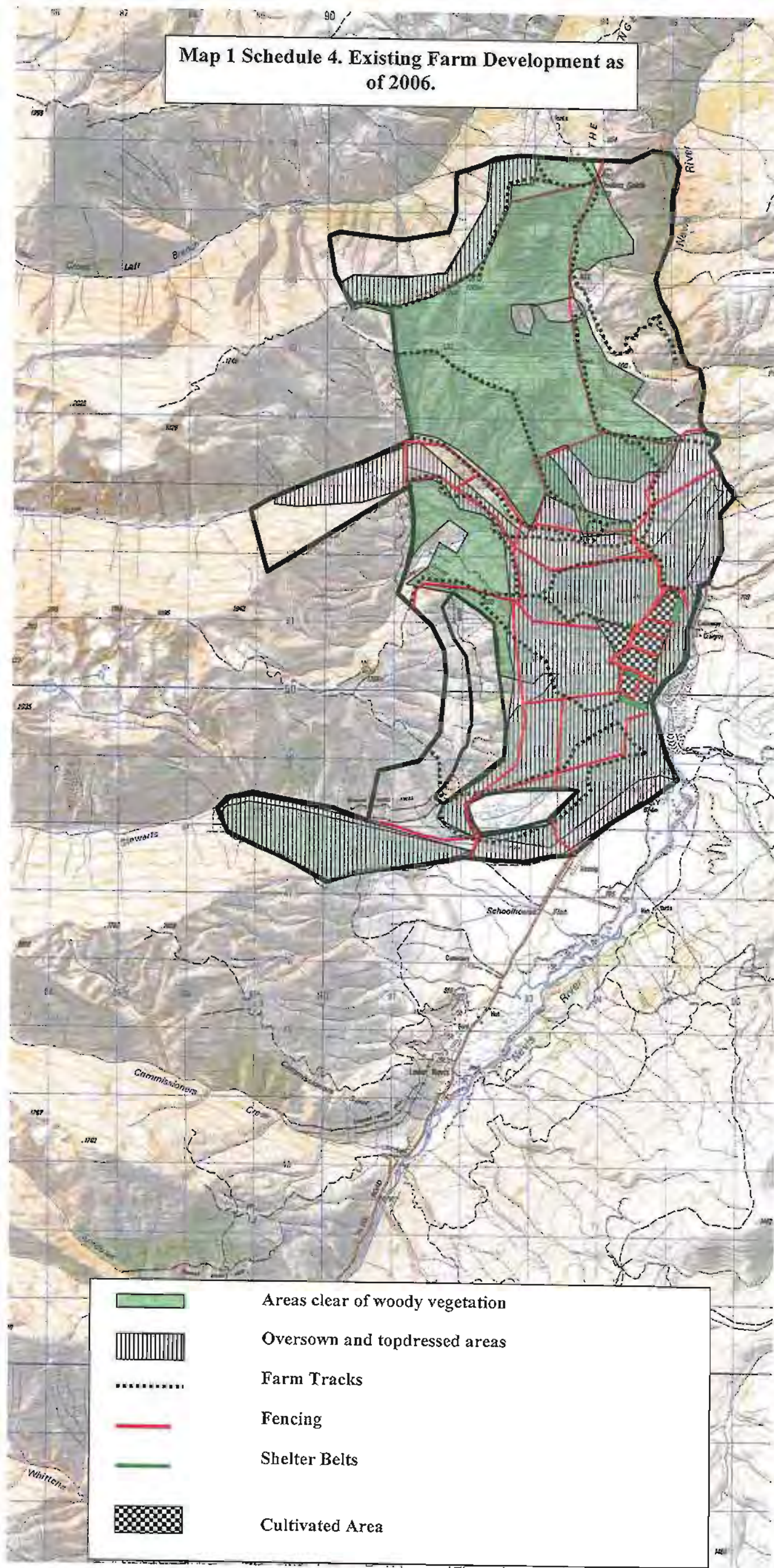
Shrublands are common on the toe slopes and close to creeks. Old gold mining tailings occupying the toe slopes often support low growing mingimingi, native broom, matagouri and sweet briar. The creeks climb steeply and the riparian zones contain a shrubby element of matagouri, *Hebe* and *Coprosma* species. Rocky tors, common along streamsides at the northern end of the property, support rock loving plants such as *Anisotome cal/ticola*.

6. The revision of the management prescription document ten years from the date of creation of the covenant and ten years thereafter.

At the tenth anniversary of the registration this covenant the Grantor and/or the Owner may request that part or all of the management prescription document be amended, in order to better meet the objective of the covenant. Any such amendments must be mutually agreed to.

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SCHEDULE 4



GRANT of

Correct for the purposes of the
Land Transfer Act 1952

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

Solicitor for the Minister

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN

Execution Section

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

SIGNED by the **Commissioner of Crown Lands** pursuant to the Crown Pastoral Land Act 1998 in the presence of:

Witness

Occupation

Address

SIGNED by [the Holder] in the presence of:

Witness

Occupation

Address

OR

SIGNED for and on behalf of **Pioneer Generation Limited** by two of its directors:

[name of director]

[name of director]