

## **Crown Pastoral Land Tenure Review**

**Lease name : CABERFEIDH**

**Lease number : PT 134**

### **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.

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

**Date:**

**Parties**

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**Holder:** Star Holdings Limited  
Level 2  
295 Trafalgar Street  
Nelson

**Commissioner of Crown Lands:**

C/- Opus International Consultants Limited  
PO Box 1482  
Christchurch  
Attention: Bob Webster

**The Land**

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**Lease:** Caberfeidh (Pt134)

**Legal Description:** Rural Section 41381 and Lot 1 DP 9888, Lot 1 DP 44493, Part Lots 2,3 & 4 DP 2739, Part Lot 1 DP 44485 shown as Rural Section 41298 and Rural Section 41382

**Area:** 2083.5812 (subject to survey)

**Certificate of Title/Unique Identifier:** CB31F/1199

**Summary of Designations**

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Under this Proposal, the Land is designated as follows:

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

## **1      The Plan**

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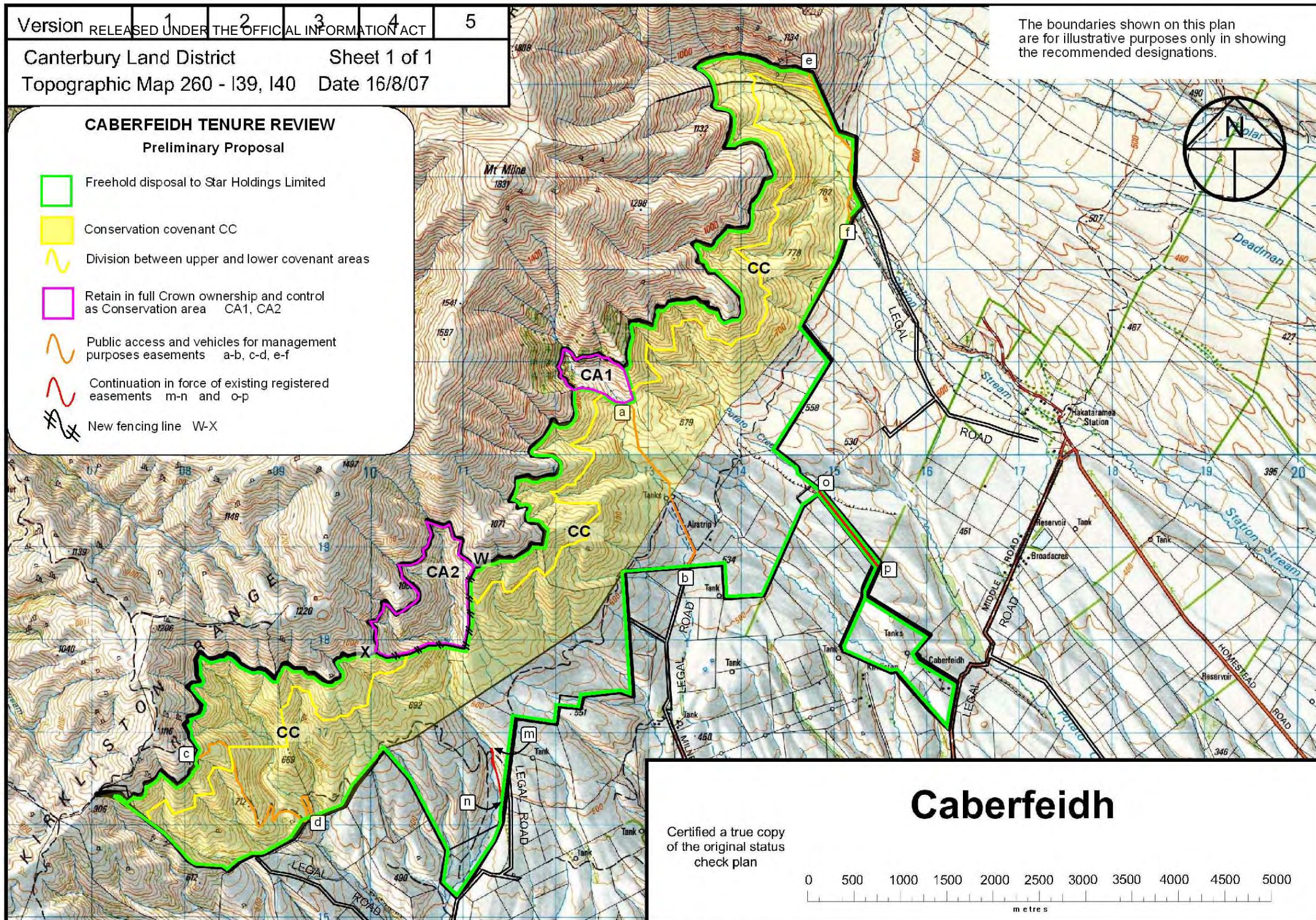


The boundaries shown on this plan are for illustrative purposes only in showing the recommended designations.

# CABERFEIDH TENURE REVIEW

## Preliminary Proposal

- Freehold disposal to Star Holdings Limited
- Conservation covenant CC
- Division between upper and lower covenant areas
- Retain in full Crown ownership and control as Conservation area CA1, CA2
- Public access and vehicles for management purposes easements a-b, c-d, e-f
- Continuation in force of existing registered easements m-n and o-p
- W X New fencing line W-X



## Caberfeidh

Certified a true copy  
of the original status  
check plan





## **2 Conditions**

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

## **3 Settlement**

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

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

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

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

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

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

or

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

(i) has been agreed or determined; and

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

## **4 Holder's Payment**

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

## **5 Commissioner's Payment**

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

## **6 Vesting of Crown Land**

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

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

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

## **8 Registration of Documents**

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

## **9 Consents**

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

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

## **10 Continuation of Lease**

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

## **11 Fencing and Construction Works**

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

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

## **12 Apportionments**

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



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

### **13 Risk**

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

### **14 Survey**

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

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

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

- (iii) the Building Act 2004 and the Building Amendment Act 2009; and
- the Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this clause 15;
- (d) nothing in this Proposal is affected by, and the Commissioner has no liability of any nature in respect of, the existence or terms of any leases, licences or other occupation rights of any nature (if any) granted by the Holder in respect of the Land; and
  - (e) the Holder has no claim (and will not have any claim) whatsoever against the Crown and/or Commissioner in relation to the Tenure Review and/or this Proposal, including (without limitation) any claim for any misrepresentation or for any loss or damage suffered whether in contract, tort (including negligence) or otherwise.

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

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

## **17 Acceptance**

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

## **18 Solicitors Certificate**

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

## **19 Default**

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

## **20 Goods and Services Tax**

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- 20.1 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.
- 20.2 On the 10<sup>th</sup> working day following the Unconditional Date, the Commissioner will provide to the Holder a GST invoice in respect of the supply evidenced by the Holder's Consideration. The invoice will specify the Commissioner's GST Date.
- 20.3 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 10<sup>th</sup> working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration.
- 20.5 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.

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## **21 Lowest price**

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

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## **22 Costs**

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

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## **23 No nomination or assignment**

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

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## **24 Recreation Permit**

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

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## **25 Consents for Activities**

- 25.1 If the Holder has been granted a consent by the Commissioner to do an activity on the land under sections 15 or 16 of the Act, and the area over which the consent is exercised is designated in the proposal as Crown Land then the Holder agrees to act in good faith whilst

exercising the terms of consent and not damage or destroy the Crown Land or anything thereon.

## **26 General**

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- 26.1 This Proposal and the Notice:
- (a) constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and
  - (b) supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and the Holder relating to the Tenure Review.
- 26.2 Each provision of this Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.
- 26.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 26.4 The Commissioner and the Holder will sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the other to effectively carry out and give effect to the terms and intentions of this Proposal.
- 26.5 This Proposal is governed by, and must be construed under, the laws of New Zealand and the Commissioner and the Holder irrevocably submit to the jurisdiction of the New Zealand courts or other New Zealand system of dispute resolution.
- 26.6 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 26.7 In relation to notices and other communications under this Proposal:
- (a) each notice or other communication is to be in writing, and sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for that purpose by the addressee to the other party. Other than the address to which the Holder is to send its acceptance of this Proposal (which the Commissioner will specifically notify the Holder of) the address, person or office holder (if any) for each party is shown on the front page of this Proposal;
  - (b) no communication is to be effective until received. A communication will be deemed to be received by the addressee:
    - (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
    - (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), on the working day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and
    - (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

## **27 Interpretation**

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### **27.1 Definitions**

In this Proposal unless the context otherwise requires:

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Works Consent** means any and all consents required under the Resource Management Act 1991 and the Resource Management Amendment Act 2005; 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 persons' obligations, as Holder, will be both joint and several.

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

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### **1 Details of Designation**

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- 1.1 Under this Proposal the land shown edged in pink and labelled CA1 being 25 hectares (approximately) and CA2 being 82 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

### **2 Schedule One Improvements**

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**Nil**



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

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Nil

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

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**1 Details of designation**

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- 1.1 Under this Proposal the land shown marked in green on the Plan, being 1,976.5812 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 with an orange line and labelled a-b, c-d, and e-f on the Plan and substantially as set out in Appendix 4;
  - (d) the covenant shaded yellow and labelled CC on the Plan and substantially as set out in Appendix 5;
  - (e) the continuation in force of the easement embodied in interest 7032093.1 on the title of Caberfeidh pastoral lease, labelled m-n on the Plan, and as set out in Appendix 6.
  - (f) the continuation in force of the easement embodied in interests 7189215.1 on the title of Caberfeidh pastoral lease, labelled m-n on the Plan, and as set out in Appendix 7.
  - (g) the continuation in force of the easement embodied in interests 8457638.1 on the title of Caberfeidh pastoral lease, labelled o-p on the Plan, and as set out in Appendix 8.

**2 Existing consents**

---

The following rights with Environment Canterbury to take and divert surface water are held by and will continue to be held by the consent holders indicated after the completion of the tenure review:

- (a) A consent to divert and take surface water (consent No CRC011989) to Padkins Creek Community Race, substantially as set out in Appendix 9, and
- (b) A consent to divert and take surface water (consent No CRC021585) to Star Holdings Limited, substantially as set out in Appendix 10, and
- (c) A consent to divert and take surface water (consent No CRC030733) to Hakataramea Water Scheme Incorporated Society, substantially as set out in Appendix 11, and
- (d) A consent to divert and take surface water (consent No CRC950458.2) to Hakataramea Station Limited, substantially as set out in Appendix 12, and
- (e) A consent to divert and take surface water (consent No CRC951776.6) to Star Holdings Limited, substantially as set out in Appendix 13, and
- (f) A consent to divert and take surface water (consent No CRC961543.2) to Star Holdings Limited, substantially as set out in Appendix 14.



#### **Schedule Four: Conditions**

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- 1 The Commissioner is under no obligation, and may decide, in its sole discretion, not to proceed further with the Tenure Review unless and until:
  - (a) the Commissioner considers that sufficient funds will be obtained in order to complete the Tenure Review;
  - (b) the Director General of Conservation has completed all actions required under Part IVA of the Conservation Act 1987;
  - (c) the Commissioner has reviewed, and is satisfied, in its sole discretion that the easement referred to in Appendix 4 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease.
- 2 The Commissioner and the Holder agree that the easements provided for in this proposal in Schedule Three, clause 1.1(c), shall be deemed to replace the Right of Way embodied in the clause 4 of the Pastoral Lease Deed contained in CB31F/1199, and that clause 4(f) of that Deed shall be considered to be discharged by the provisions of the easements provided for in Schedule Three, clause 1.1(c) of this proposal.



## **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**

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### **1 Details of designation**

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- 1.1 Length and location: W-X 1,800m (approximately)
- 1.2 Type: Fence to be a standard 7 wire sheep/cattle fence
- 1.3 **Specifications for fencing**
- Fence to be constructed of six HT (2.4mm) wires with a bottom No 8 wire located on the line shown as W-X on the plan, subject to further consultation.
  - 4.2 metre heavy duty cyclone gates to be erected at locations to be determined.
  - 2.1 metre treated timber strainers with treated stays to be used for gateways and ends of strains.
  - Hunter chain and clips to be used to support wires on sections of the fencelines that are snow prone.
  - 1.8 metre x 100-125mm treated timber posts to be used where required.
  - All strainers, angle posts and dip posts to be driven or dug in and rammed and footed with acceptable footing material. No8 or 9 wires to be used on foots. All dips and hollows to be tied down.
  - T-irons may be used with crossbar instead of posts on high spots and on corners, with tie-backs.
  - Netting to be hung on any creek crossings and left to swing.
  - All strainers and angles to be mortised stayed and blocked. Stays to be one-third of the way up posts.
  - Tie-backs are permitted on both sides of the fence.
  - All wires are to be securely and neatly tied off and strained evenly. Bottom wire to be kept 15 cm off the ground. The line to be cleared manually where required.
  - Post staples (barbed) to be driven well in but allow the wire to run through.
  - Strains not to exceed 400 metres on easy country for HT wire and 250 metres for No8 wire.
  - Posts to be driven or dug in to such a depth that 112cm (44") remains out of the ground.
  - Strainers and angle posts to be dug in to such a depth that 117cm (46") remains out of the ground.
  - Under no circumstances are any strainers, post or stays to be shortened either prior to or subsequent to their placement in the ground.
  - Six waratah standards per 20 metres to be used Waratah standards to be mostly 1.8m long with 1.65m standards allowed on rocky ground.
  - Triplex strainers to be used on all strains.
  - Lightning droppers to be used where required on either side of gateways.

### **2 Specifications for earthworks and vegetation clearance**

---

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

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

Should any earthworks be considered then consent from ECAN must be obtained under the Resource Management Act 1991.

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

---

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

**DOCDM-254420 – Caberfeidh – October 2010**

# **TRANSFER GRANT OF EASEMENT IN GROSS**

1. Public Access
2. Management Access

**Land Transfer Act 1952**

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

**TRANSFER**  
RELEASED UNDER THE OFFICIAL INFORMATION ACT  
**Land Transfer Act 1952**

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

**Land Registration District**

Canterbury

**Certificate of Title No.**

**All or Part?**

**Area and legal description – *Insert only when part or Stratum, CT***

--	--	--	--

**Grantor** *Surnames must be underlined*

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

**Grantee** *Surnames must be underlined*

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

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

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

**Consideration**

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

**Operative Clause**

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

Dated this                      day of

**Attestation**

Signed by  
acting under written delegation  
from the Commissioner of Crown  
Lands

Signature, or common seal of Grantor

Signed in my presence by the Grantor  
Signature of Witness

**Witness to complete in BLOCK letters**  
*(unless typewritten or legibly stamped)*

Witness name

Occupation

Address

(continued on page 4 of Annexure Schedule)

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

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

**Solicitor for the Grantee**

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

**Annexure Schedule**

**Insert below**

**“Mortgage”, “Transfer”, “Lease”, etc**

Dated

Page

of

Pages

**Definitions**

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

**Standard Easement Terms**

Access

2. The Grantee has the right in common with the Grantor:
  - 2.1 To pass and re-pass at any time over and along the Easement Area “a-b”, “c-d” and “e-f” on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons, subject to Special Easement Term 12.
  - 2.2 To pass and re-pass at any time over and along the Easement Area “a-b”, “c-d” and “e-f” on foot, or on or accompanied by horses, or by non-motorised vehicle, or by motor vehicle, with or without machinery and implements of any kind, for Management Purposes, subject to Special Easement Terms 12 and 13.
3. The Grantor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Grantor.

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



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

**Annexure Schedule**

**Insert below**

**“Mortgage”, “Transfer”, “Lease”, etc**

Dated

Page

of

Pages

Exclusion of Schedules

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

Term

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

Temporary Suspension

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

Dispute Resolution

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

Notice

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

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

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

**Annexure Schedule**

Insert below

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

Dated Page  of  Pages

**Special Easement Terms**

9. The standard easement terms contained above must be read subject to any special easement terms set out below.
10. The Grantee has the right:
- 10.1 To mark the Easement Area as appropriate.
- 10.2 To erect and maintain stiles and/or gates.
- 10.3 To erect and maintain signs informing the public:  
(a) of the location of the land managed by the Crown and available for public access and recreation; and  
(b) of their rights and responsibilities in relation to the Easement Area.
- 10.4 From time to time to modify the surface of the Easement Area so that it becomes and remains fit for the purpose of clauses 2.1 and 2.2
- 10.5 To use whatever reasonable means of access he/she thinks fit over the Easement Area to carry out the works in clause 10.1 to 10.4.
- 11 Where the Grantor erects fences across the Easement Area the Grantor must install gates no less than 1metre in width and keep gates unlocked at all times unless otherwise agreed with the Grantee.
- 12 Easement Area "a-b", "c-d" and "e-f" may be closed between 25 September and 6 November for livestock management purposes.
- 13 In accessing Easement Area "a-b", "c-d" and "e-f" for management purposes all practical effort will be taken to inform the Grantor of intended use of the easement area with 24 hours notice given where this is possible. The Grantor may offer use of an alternative access route at that time which should be used if it enables more practical access than the easement route.

**Continuation of "Attestation"**

Signed for and on behalf of )  
Her Majesty the Queen by )  
under a written delegation in the )  
presence of: )

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

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

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

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

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

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access to Conservation Areas
2. Management Access

**Land Transfer Act 1952**

Law Firm Acting

Conservancy Solicitor  
Department of Conservation  
195 Hereford Street  
Christchurch

Auckland District Law Society  
REF:4135

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

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

---

**DATED** \_\_\_\_\_

**Between**

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

**and**

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

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



Department of Conservation  
*Te Papa Atawhai*

**THIS DEED of COVENANT** is made the                      day of

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

**AND**    **MINISTER OF CONSERVATION**

## **BACKGROUND**

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

## **OPERATIVE PARTS**

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

### **1. INTERPRETATION**

- 1.1 In this Covenant unless the context otherwise requires:

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

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

1.2 For avoidance of doubt:

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

## 2. OBJECTIVE OF THE COVENANT

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

## 3. THE OWNER’S OBLIGATIONS

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

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

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

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

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

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

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

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



## **7. OBLIGATIONS ON SALE OF LAND**

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

## **8. MISCELLANEOUS MATTERS**

### **8.1 Rights**

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

### **8.2 Trespass Act:**

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

### **8.3 Reserves Act**

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

### **8.4 Titles**

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

### **8.5 Acceptance of Covenant**

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

### **8.6 Fire**

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

**9. NOTICES**

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

**10. DEFAULT**

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

**11. DISPUTE RESOLUTION PROCESSES**

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

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

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

## **12. JOINT OBLIGATIONS**

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

## **13. SPECIAL CONDITIONS**

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

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

Executed as a Deed

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

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

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

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

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

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

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

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

**SCHEDULE 1****1. Description of Land****CC – Kirkliston Range Mid Slopes.**

All that piece of land containing 1,353 hectares approximately shown shaded yellow on the plan attached to the Proposal and labelled CC.

**2. Values of Land to be Preserved.****CC– Kirkliston Range Mid Slopes.**

- The area supports shrubland communities and remnant kowhai and mountain totara that are representative of the original woody vegetation at these sites.
- The area supports the threatened plant species coral broom *Carmichaelia crassicaulis* (threat status – declining) and *Pimelea pseudolyallii* (threat status – naturally uncommon) in tussock lands within the area.
- The area supports the threatened bird species eastern falcon *Falco novaeseelandiae* “eastern” (threat status – nationally vulnerable).
- The area provides habitat for the threatened lizard species green skink and spotted skink (threat status – gradual decline).
- The area above 700m in the Station Stream catchment supports an unnamed species of grasshopper (collected only from the eastern Kirkliston Range) and an unnamed species of carabid beetle (*Oregus* sp).
- The area provides habitat for indigenous lizard species (common gecko, common skink and McCanns skink).
- The area contains part of the old bridle path that ascends the Kirkliston Range and is of historic interest.
- The area is an integral part of the Kirkliston Range landscape making a significant contribution to the natural character of the area.
- The area acts as a buffer to the existing Conservation Area higher on the slopes of the Kirkliston Range.

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

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

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

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

Star Holdings Limited  
Level 2  
295 Trafalgar Street  
PO Box 1242  
NELSON  
Directors:  
Thomas Sturgess and Ann Sturgess

Property Contact:  
c/o Andrew Harding – Farm Manager  
Lone Star Caberfeidh  
330 Milne Road  
Hakataramea Valley  
Kurow  
Phone: 027-536-0499  
Fax: 03-436-0205

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

**SCHEDULE 2****Special Conditions**

Notwithstanding the provisions of clause 3.1 (The Owner's Obligations) the following shall apply;

**CC – Kirkliston Range Mid Slopes.**

- 1 (a) The covenant area may be grazed with sheep and cattle only in accordance with the maximum stocking information detailed in 1(b). If merino sheep are to be grazed then fencing will be required at the Owner's own cost to an appropriate standard to contain merino sheep within the covenant area. If this fencing is desired in the upper covenant area (above the approx 800m a.s.l. line shown as a solid line on the plan attached to the proposal) prior written approval of the Minister is required as to location, site preparation and construction of the fence. All such internal fencing whether erection or maintenance shall be at the sole expense of the Owner. Pursuant to clause 3.1.4, in the event that a fence along the legal boundary with conservation land becomes necessary then the cost of such a fence shall be the sole responsibility of the owner, maintenance thereafter shall be shared on a 50/50 basis except where clause 4.2 applies.  
  
(b) Stock numbers for the covenant area are; a maximum of 4000 head of ewes from 1st January to 30th April each year, a maximum of 2000 head of hoggets from 1st October to 31st January each year, a maximum of 2,650 head of ewes from 1st September to 31st December each year and a maximum of 400 head of cattle for a maximum period of eight months at any time in any calendar year.
- 2 The lower covenant area (below the approx 800m a.s.l. line shown as a solid yellow line on the plan attached to the proposal) may have vegetation cleared, including vegetation removal by burning and spraying. The upper covenant area (above this line) may have chemical spot spraying of weeds only in compliance with clauses 3.2.1 and 3.2.3.
- 3 The lower covenant area (below the approx 800m a.s.l. line shown as a solid yellow line on the plan attached to the proposal) may have any new fences, buildings or structures erected and new tracks constructed (all subject to local resource consent requirements). The upper covenant area (above this line) may have routine maintenance of existing fences, buildings, structures and maintenance within the alignment of all existing tracks done. Any maintenance undertaken outside the existing alignment of tracks or further upgrading of tracks in the upper covenant area requires the prior written consent of the Minister.
- 4 The covenant area may be oversown and topdressed.
- 5 The Minister may design and undertake a monitoring programme:
  - a. to ensure that the ecological integrity of the area and associated vegetation is maintained.
  - b. To enable the monitoring of any effects on the vegetation cover and conditions and any other conservation values in the covenant area.The monitoring programme will be reviewed at regular intervals and if in the opinion of the Minister there are any issues identified with the status of any of the species or values in the covenant area or deterioration in the condition and extent of the ecological condition the Minister reserves the right to take any necessary steps to further protect any species or values including fencing areas of the covenant area and adjusting stock access. The Minister will liaise with the Owner in implementing these measures and the owner will cooperate in the giving effect to any measures considered necessary by the Minister.
- 6 The Owner will permit Department of Conservation staff and their contractors entry upon the land at all times, for purposes associated with management of the covenant.

**GRANT** of

Correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister

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

**COMMISSIONER OF CROWN  
LANDS**

to

**MINISTER OF CONSERVATION**

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**Solicitor  
Department of Conservation  
DUNEDIN/CHRISTCHURCH**

**Appendix 6: Easement for continuation in force**

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(7032093.1)

**Appendix 7: Easement for continuation in force**

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(7189215.1)



**Appendix 8: Easement for continuation in force**

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(8457638.1)

**Appendix 9 Copy of unregistered consent to divert and take water (consent No CRC011989) in favour of Padkins Creek Community Race**

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**Appendix 10 Copy of unregistered consent to divert and take water (consent No CRC021585)  
in favour of Star Holdings Limited**

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**Appendix 11 Copy of unregistered consent to divert and take water (consent No CRC030733) in  
favour of Hakataramea Water Scheme Incorporated Society**

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**Appendix 12 Copy of unregistered consent to divert and take water (consent No CRC950458.2)  
in favour of Hakataramea Station Limited**

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**Appendix 13 Copy of unregistered consent to divert and take water (consent No CRC951776.6)  
in favour of Star Holdings Limited**

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**Appendix 14 Copy of unregistered consent to divert and take water (consent No CRC961543.2)  
in favour of Star Holdings Limited**

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**Execution Section**

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

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

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Witness

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Occupation

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Address

**SIGNED** for and on behalf of Star Holdings Limited  
by two of its directors:

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[name of director]

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[name of director]