

## **Crown Pastoral Land Tenure Review**

**Lease name : CAMBRIAN HILLS**

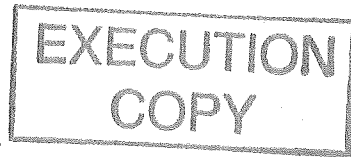
**Lease number : PO 069**

### **Substantive Proposal**

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:** 12 July 2010



**Parties**

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**Holder:** Cambrian Hills Limited  
c/- The Directors  
755 Loop Road  
RD2  
OMAKAU

**Commissioner of Crown Lands:** C/- The Manager for Tenure Review  
Darroch Valuations  
Broadway Building  
62 Riccarton Road  
P O Box 13-443  
CHRISTCHURCH

**The Land**

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**Lease:** Cambrian Hills Limited

**Legal Description:** Run 226A

**Area:** 3144.4074hectares approximately

**Certificate of Title/Unique Identifier:** OT338/145 (Otago Registry)

**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

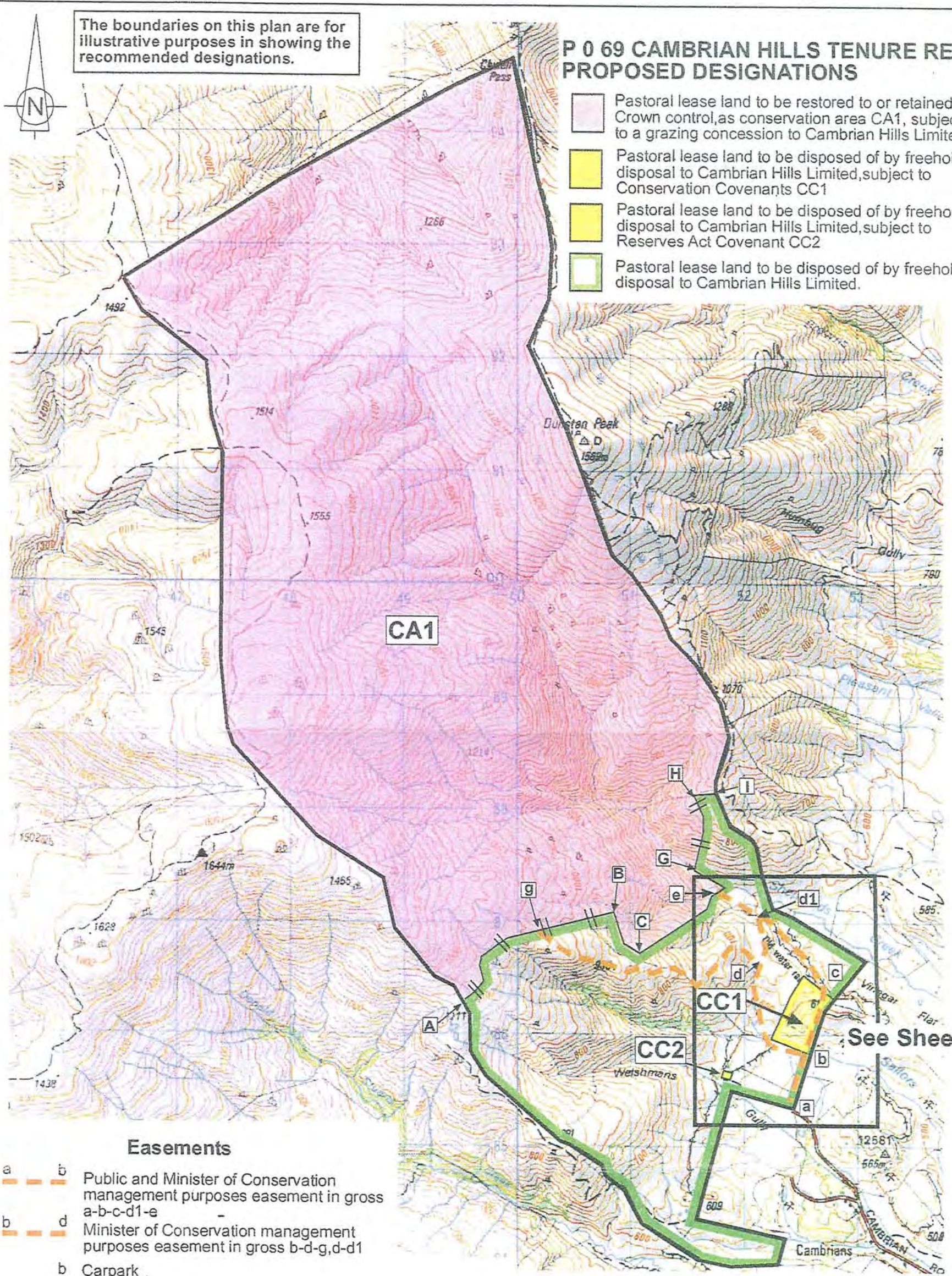
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The boundaries on this plan are for illustrative purposes in showing the recommended designations.

### P 0 69 CAMBRIAN HILLS TENURE REVIEW PROPOSED DESIGNATIONS

- Pastoral lease land to be restored to or retained in Crown control, as conservation area CA1, subject to a grazing concession to Cambrian Hills Limited.
- Pastoral lease land to be disposed of by freehold disposal to Cambrian Hills Limited, subject to Conservation Covenants CC1
- Pastoral lease land to be disposed of by freehold disposal to Cambrian Hills Limited, subject to Reserves Act Covenant CC2
- Pastoral lease land to be disposed of by freehold disposal to Cambrian Hills Limited.



See Sheet 2

#### Easements

- Public and Minister of Conservation management purposes easement in gross a-b-c-d1-e
- Minister of Conservation management purposes easement in gross b-d-g,d-d1
- b Carpark

#### New fences:

Marked in capital letters A-B-C and G-H,

#### Upgrade fence:

Marked in capital letters H-I

Version	1	2	3	4	5
Otago Land District	Sheet 1 of 2				
NZMS 260 G.40,G41 & H.40,H.41	Date 24/02/2010				

Certified a true copy of the original status check plan.

### Cambrian Hills

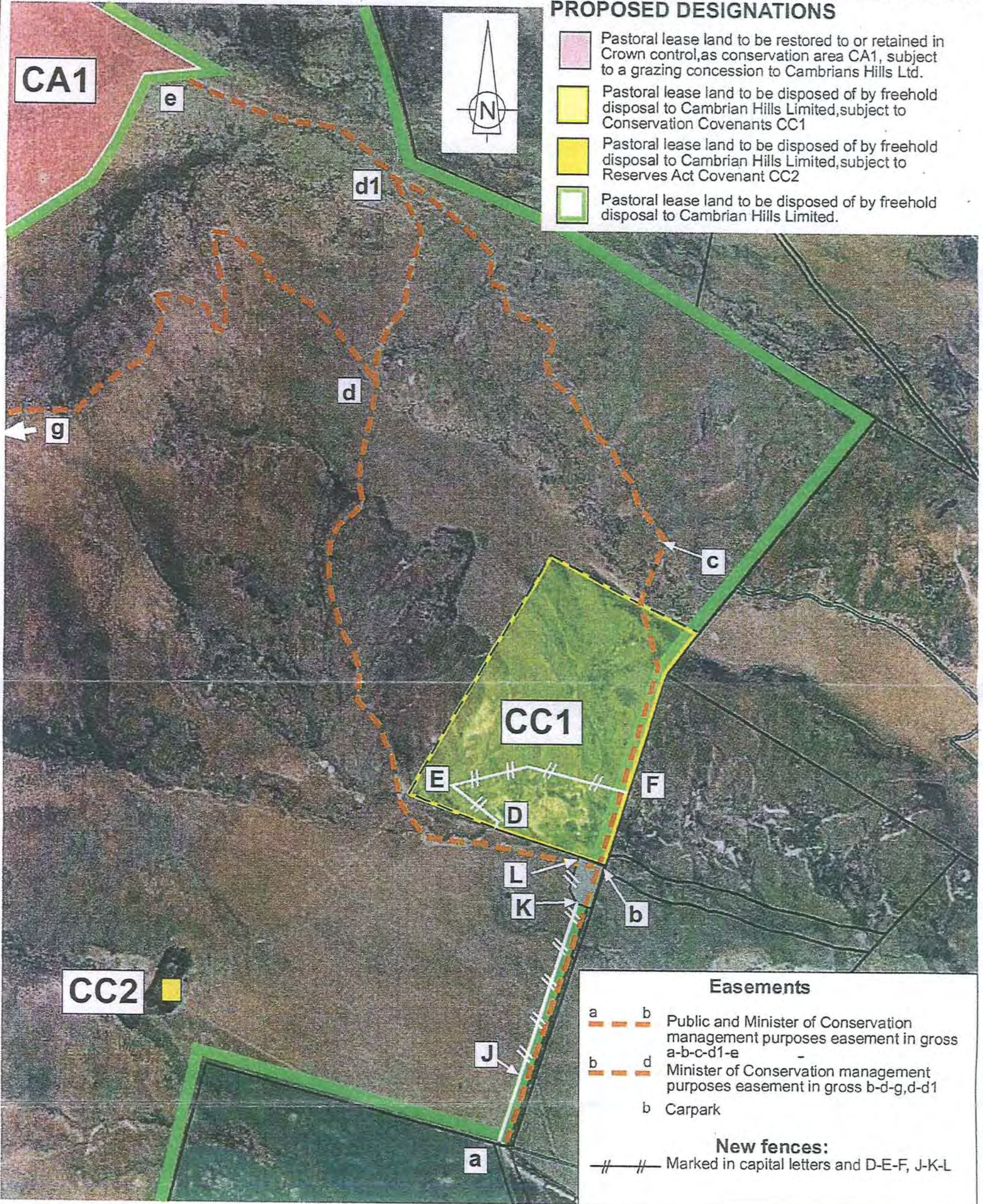
Scale 1 : 50000



Graphics by :  
TL Survey Services Ltd  
DUNEDIN



**P 0 69 CAMBRIAN HILLS TENURE REVIEW  
PROPOSED DESIGNATIONS**

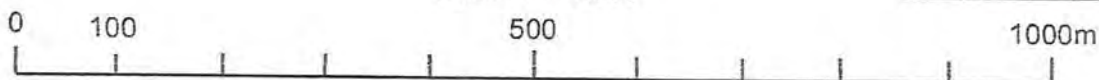


The boundaries on this plan are for illustrative purposes in showing the recommended designations.

Certified a true copy of the original status check plan.

**Cambrian Hills**

Scale 1 : 10000



<b>Version</b>	1	2	3	4	5
<b>Otago Land District</b>	<b>Sheet 2 of 2</b>				
<b>NZMS 260 G.40,G41 &amp; H.40,H.41</b>	<b>Date 24/02/2010</b>				

Graphics by :  
TL Survey Services Ltd  
DUNEDIN



## **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. *120\* paid*
- 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.

## **21 Lowest price**

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

valuing the Freehold Land under section EW 32(3) of the Income Tax Act 2007 is equal to the Holder's Consideration.

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

## **22 Costs**

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

## **23 No nomination or assignment**

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

## **24 Recreation Permit**

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

## **25 Consents for Activities**

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

## **26 General**

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- 26.1 This Proposal and the Notice:
- (a) constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and

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



- working day, on the next working day after the date of delivery; and
- (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

## **27 Interpretation**

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### **27.1 Definitions**

In this Proposal unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

**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**

---

1.1 Nil.

## **2      Schedule One Improvements**

---

Not applicable.



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

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### **1 Details of designation**

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1.1 Under this Proposal the land shown marked in pink and labelled "CA1" on the Plan, being 2464 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area subject to:

- (a) the granting of the grazing concession substantially as set out in Appendix 7

### **2 Information Concerning Proposed Concessions**

---

2.1 Information regarding grazing concessions provided for in 1.1 (a) above:

#### **2.1.1 Description of proposed activity**

The concessions provide for phase out grazing of sheep over the proposed conservation area CA1 comprising approximately 2,464 hectares. The concession allows for a maximum of 500 ewes on an annual basis with the area to be grazed between January 1 and April 30.

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

The conservation area contains dense narrow leaved snow tussock in the higher reaches, and short tussock species in the sunnier more exposed areas. The Shepherds Creek Gorge supports mixed shrublands featuring a number of tree species including Halls totara and numerous broadleaf. Mixed manuka-kanuka shrublands are also prevalent.

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

Sheep grazing will likely have little effect on wooded and regenerating shrubland areas. It is anticipated that grazing will have some impact on the sunny aspects and other areas where tall tussock cover is open or sparse.

**2.1.4 Details of the proposed type of concessions:**

- (a) For conservation area-grazing concession under section 17Q(1) Conservation Act 1987.

**2.1.5 Proposed duration of concessions and reasons for proposed duration:**

- (a) Proposed duration- 5 years commencing on the date the Substantive Proposal is signed.
- (b) Reasons for proposed duration- The proposed term is to allow phase out grazing for the current holder as noted above.

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

- (a) Proposed grantee- Cambrian Hills Limited operated by Peter and Sarah Shaw.

## **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 680 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 creation of the easement marked as a dashed orange line and identified for public and conservation management access as "a-b-c-d1-e" and for conservation management access only as "b-d-g" and "d-d1" on Plan 1 of 2 and 2 of 2 substantially as set out in Appendix 4; and
  - (d) the covenant (shown on the Plan in yellow and labelled CC1) substantially as set out in Appendix 5; and
  - (e) the covenant (shown on the Plan in yellow and labelled CC2) substantially as set out in Appendix 6.



## **Schedule Four: Conditions**

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Nil

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

[ ① ] as Mortgagee under Mortgage [ ② ] ("the Mortgage"), hereby:

- (a) consents to acceptance of the Proposal dated [ 12 July 2010 ] ("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:

2 0 1 0

**SIGNED** by [ ① ]  
in the presence of:

] ) \_\_\_\_\_  
)

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

Witness Name:

Occupation:

Address:

*Camden 17*

**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**

### **Indicative Fencing Requirements:**

#### ***New fences:***

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 walked the fence lines and the requirements of the various fence lines are noted below.

### **1.0 New Fence Lines**

#### **(a) *Conservation Fence A-B-C, G-H***

- 1.1 Five x 2.5 mm galvanized high tensile wires and the bottom wire being 4 mm galvanized mild steel. Top wire barbed. Total of 7 wires.
- 1.2 For A-B-C, 2.1 metre x 175 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 For G-H, 2.4 metre x 175 mm treated timber strainer posts with 2.4 metre x 125 mm stay posts to be used for gateways and end of strains.
- 1.4 1.8 metre x 125 mm treated wooden intermediate posts to be used at 20 metre gaps or at lesser intervals on appropriate high and low points as required. 117 cm (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.
- 1.5 Six steel Y stakes per 20 metres to be used. Y stakes will be 1.65 metres in length.
- 1.6 4.2 metre galvanised gates at WP's 16, 5052, 48, 42, 95, 115, 110, 117 and Point 'J'
- 1.7 A major floodgate is required at WP 42. This gate needs to be constructed to remain freestanding of the fence to ensure it does not impede the flow of the stream.
- 1.8 Minor floodgates are required in a number of gullies as marked on the plans. These also need to be able to swing independently of the fence.

#### ***Vegetation and Ground Clearance Requirements-***

- 1.9 The fence line will require hand clearing of vegetation between WP's 42-96 on G-H.

(b) *Public Access Easement Fence Line J-K-L*

- 1.10 Five x 2.5 mm galvanized high tensile wires and the bottom wire being 4 mm galvanized mild steel. Top wire barbed. Total of 7 wires.
- 1.11 2.4 metre x 175 mm treated timber strainer posts with 2.4 metre x 125 mm stay posts to be used for gateways and end of strains.
- 1.12 1.8 metre x 125 mm treated wooden intermediate posts to be used at 20 metre gaps or at lesser intervals on appropriate high and low points as required. 117 cm (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.
- 1.13 Six steel Y stakes per 20 metres to be used. Y stakes will be 1.65 metres in length.
- 1.14 4.2 metre galvanised gates at WP's 9003, 117 and midway between Points 'J' and 'K'.

*Vegetation and Ground Clearance Requirements-*

- 1.15 No work is required.

**2.0 Upgrade Fence Line**

(a) *Conservation Fence H-I*

- 2.1 Steel Y stake between each existing standard. Y stakes will be 1.65 metres in length.
- 2.2 1.8 metre x 125 mm treated wooden intermediate posts to be used where necessary, but at no more than 20 metre spacing.
- 2.3 Two x barb wire to be laced above existing five wires to create a seven wire fence.

**3.0 Length and location:**

- 3.1 New fence is to be erected along the lines marked as follows on the plan.
  - (a) Conservation fence shown marked A-B-C, G-H (CA1) approximately 2,500 metres.
  - (b) Covenant fence shown marked D-E-F (CC1). Approximately 375 metres.

(c) Easement fence shown marked J-K-L. Approximately 440 metres.

3.2 Existing fence is to be upgraded along the lines marked as follows on the plan.

(d) Conservation fence shown marked H-I (CA1) approximately 250 metres.

#### 4.0 Preliminary and General Matters

##### 4.1 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.

##### 4.2 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.
- D360:1986 (NZS/ASTM) Creosote Treatment
- 4534:1998 (AS/NZS) Zinc and zinc/aluminum alloy coating on steel wire.
- 4680:1999 (AS/NZS) Hot dip 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.

4.3 Blasting

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

4.4 Drilling

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

4.5 Spiking

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

4.6 Lacing

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

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

5.1 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.

5.2 Infill Posts

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

5.3 Strainer, Intermediate and Angle Posts

All timber posts used will be round and ground treated.

5.4 Stay Block

12 x 2 x 24 ground treated.

5.5 Staples

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

5.6 Permanent Wire Strainers



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

5.7 Crossing Netting

Netting on creek and river crossings will be 7 wire galvanized sheep netting. See 1.6 and 1.7 above.

5.8 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.

5.9 Gate Chains

Gate chains will be galvanized steel chain and staple type.

5.10 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.

6.0 **Best Practice**

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

6.2 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.

6.3 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 cm (46") out of the ground. Stays are to be 1/3 of the way up posts.

6.4 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 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.

6.5 Gate

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

6.6 Netting at creek crossing

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

6.7 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.

6.8 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.

These specifications are to be read in conjunction with the addendum attached.

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

---

**TRANSFER GRANT OF  
EASEMENT IN GROSS**

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

**Land Transfer Act 1952**

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



**TRANSFER**

*Land Transfer Act 1952*

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

Otago

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

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 TRANSFEE 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 Signature of Witness  _____ (continued on page 4 of Annexure Schedule)
	<b>Witness to complete in BLOCK letters</b> (unless typewritten or legibly stamped) Witness name Occupation Address
Signature, or common seal of Transferor	

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

DOCDM-325334 (exChero-78678.) Cambrian Hills Mgmt, Public, Parking Easement. 24 July 2008

\_\_\_\_\_

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 [shown as "a-b" on the Designations Plan] "[ ]" on S.O. Plan No [ ] and that part of the Servient Land being 20 metres wide which is marked [shown as "b-c-d'-e, d-d' & b-d-g" on the Designations Plan] "[ ]" on S.O. Plan No [ ].
- 1.2 "Parking Area" means that part of the Servient Land which is marked ["b" on the Designations Plan] "[ ]" on S.O. Plan No [ ].
- 1.3 "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.
- 1.4 "Servient Land" means the land owned by the Transferor and described on page 1.
- 1.5 "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.
- 1.6 "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:

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

DOCDM-325334 (exChcro-78678.) Cambrian Hills Mgmt, Public, Parking Easement. 24 July 2008.

- 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.
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.

#### Term

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.

#### Notice

- 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.

**Special Easement Terms**

- 10 The standard easement terms contained above must be read subject to any special easement terms set out below.
- 11 The Transferee (not being a member of the public) has the right:
- 11.1 To construct and maintain a track on that part of the Easement Area marked [a-b-c-d on the Designations Plan] and mark all parts of the Easement Area as appropriate.
- 11.2 To erect and maintain stiles.
- 11.3 To erect and maintain signs informing the public:
- (a) of the location of 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.
- 11.4 To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 11.1 to 11.3.
- 12 In relation to that part of the Easement Area available for public access the Transferee (being a member of the public) may pass and re-pass over and along that part of the Easement Area with guns and dogs provided that:
- (a) the Transferee holds a Department of Conservation hunting permit for the adjoining Conservation Area; and
- (b) in relation to dogs only, the hunting permit allows the Transferee to take dogs on to the Conservation Area.
- 13 Clause 2 is deleted and replaced with the following: 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 labelled [“a-b” on the Designations Plan] on foot, or on or accompanied by horses, or by non-motorised vehicle powered by a person or persons, and by motor vehicle. The Transferee has the right in common with the Transferor to pass and re-pass at any time over and along the Easement Area labelled [“b-c-d-e” on the Designations Plan] on foot, or 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 Area labelled [“a-b-d-d-e & d-g” on the Designations Plan] on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, for Management Purposes.
- 14 The Transferee has the right in common with the Transferor to pass and repass over and along the Parking Area [“b” on the Designations Plan] on foot and with motor vehicles or non-motorised vehicle powered by a person or persons at any time and to stop leave and park any such motor vehicle or non-motorised vehicle powered by a person or persons on the Parking Area .

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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.

**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.*

## **Appendix 5: Form of Covenant Created (CC1)**

---



**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 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 and 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 local branch of the New Zealand 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 local branch of the New Zealand 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

Area shown shaded yellow and labelled CC1 on the designations plan and shaded yellow and red on the plan in Schedule 3.

Appropriately 13 hectares encompassing a complex of mine tailings, races and ancillary earth works. The Land extends from the margins of Sailors Creek to the ridge crest dividing the Sailors Creek and Sherpherds Creek catchments. Approximately 3 hectares of the sluicing faces are to be separately fenced. The balance of the land is fenced into a larger block.

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

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

C/- PO Box 5244                      fax (03) 477 8626  
DUNEDIN

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

Cambrian Hills Limited  
Loop Road  
Becks OMAKAU

### 3. Values of Land to be Protected

The Land comprises appropriately 13 hectares encompassing a complex of mine tailings, races and ancillary earth works. The Land extends from the margins of Sailors Creek to the ridge crest dividing the Sailors Creek and Sherpherds Creek catchments. Approximately 3 hectares of the sluicing faces are to be separately fenced. The balance of the land is fenced into a larger block.

#### Natural Values

The natural values within the area comprise the low growing indigenous flora on outwash gravels and/or mining tailings and primarily lie within the area shaded red on the plan included as Schedule 3 of this document. The largely native vegetation communities that colonise such sites are now rare in the Dunstan Ecological District.

The following rare or threatened plant species were recorded in the area during the 2004 tenure review inspection (threat rankings are derived from Hitchmough R. (2002). New Zealand Threat Classification System lists. Threatened species occasional publication No. 23. Department of Conservation, Wellington).

- *Acaena buchananii* and Coral broom *Carmichaelia crassicaule* - "gradual decline"
- *Kirkianella novae-zelandiae* and *Pimelea pseudolyallii* - "sparse".

#### Historic Values

The gold-mining site represents a surviving portion of 19<sup>th</sup> Century gold-mining on the Vinegar Flat/Shepherds Flat area, which can be directly related to historic records on who mined in this

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

location. Mining features present include tailings, line riveted iron pipes typical of those used for gold-mining operations, prospector's pits, water races and dray tracks. Many of the surrounding areas of past gold-mining have been destroyed through farming activities. The site represents a good example of the type of sluicing activity which occurred along the boundary of and inside the Cambrian Hills property.

## SCHEDULE 2

### Special Conditions

1. Clause 3.1.1 is deleted and replaced with the following:
  - 3.1.1 grazing of the Land by livestock other than by sheep on that part of the Land shaded red on the plan in Schedule 3 and by sheep and cattle on that part of the plan shaded yellow.
2. The words "top dressing or sowing of seed" are deleted from clause 3.1.5.
3. The Owner must allow public foot access over that part of the Land shaded red on the plan in Schedule 3 (without prior notification). Guns and dogs may not be taken onto the Land without permission from the Owner.

**SCHEDULE 3**



**Appendix 6: Form of covenant created (CC2)**

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**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*



**“Values”** means any or all of the Land’s cultural or amenity 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 on or in relation to the Land:

3.1.1 any earth works or other soil disturbances;

3.1.2 any archaeological or other scientific research involving disturbance of the soil or buildings;

3.1.3 deliberately damage or demolish or permit the deliberate damage or demolition of any building or associated structure or undertake any action which in the option of the Minister may be detrimental to the Values or their preservation without prior written consent of the Minister.

3.1.4 permit anything to be done, or undertake or permit any activity to be carried out on the Land that in the opinion of the Minister may be detrimental to the Values associated with the cottage and associated ruins within the context of their setting.

3.1.5 effect a subdivision within the meaning of the Resource Management Act 1991 of the Land, irrespective of whether or not such a subdivision fully complies with relevant provisions of that Act.

3.1.6 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land or allow other persons access to the Land for these purposes;

- 3.1.7 the erection of utility transmission lines across the Land.
- 3.1.8 any other activity which might have an adverse effect on the Values.

3.2 The Owner must:

- 3.2.1 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
- 3.2.2 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
- 3.2.3 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 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.

**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 fire threatening the Land;

## **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

*Marked in yellow as CC2 on the designations plan.*

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

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

C/- PO Box 5244  
DUENDIN

C/-77 Stuart St  
DUNEDIN

Fax: (03) 477 8626

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

Cambrian Hills Ltd  
Loop Rd  
Becks, RD OMAKAU

Fax: (03) 447 3656

### 3. Values of Land to be Protected

The cottage and ruins are considered to have historical and cultural heritage value in view of:

The cottage is a notably original example of a circa 1907 mud brick Central Otago farm cottage and is of architectural and technological significance due to this. It also has historical significance as being the 2<sup>nd</sup> homestead that was built on this site, the first of which remains as the stone cottage ruins.

The ruins located alongside the cottage are the remains of an early homesteading thought to have been built prior to 1870 on what was then known as the Lauder Block. The ruins are an expression of the stacked schist with mud binding wall construction that was typical of the earliest substantial European Central Otago vernacular buildings. The ruins are notable for the quality of their built stonework. Some distance from the cottage ruins and outside the Land are the archaeological remains of what appear to be a stables and yards and associated sheep yards. There are no records available on who the builders or inhabitants of the ruins and original steading were.

The original Lauder Block was broken up into a series of smaller runs in 1882 in response to a shift in political power away from the large run holders to the interests of small farmers. The first leaseholders of the newly created Cambrian Hills Run 226A were Handiside and Roberts. In 1883 the run lease was transferred to Ross and Robert Glendining. In 1907 the run lease was transferred to William McConochies and William Harold McConochie who are understood to have built the mud brick cottage at that time.

The ruins are defined as an archaeological site under the provisions of the Historic Places Act 1993.

Collectively, the cottage, the ruins and the yard areas about them (here-in referred to as "the defined areas of land") are culturally and historically significant as an example of the evolution and development of a Central Otago farm steading from its initial establishment circa 1870 through to the early 20<sup>th</sup> century and beyond.

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

## SCHEDULE 2

### Special Conditions

1. The Owners will seek consent from the Minister if they wish to undertake repairs or stabilisation to the site. Consent will be granted provided the Owners have regard to and, as far as is practical given financial constraints, comply with the ICOMOS<sup>\*</sup> New Zealand Charter for the Conservation of Places of Cultural and Heritage Value attached as Schedule 4 (\*International Council on Monuments and Sites).
2. The Owner agrees to manage the Values on the basis that they constitute an Archaeological Site under the Historic Places Act 1993 and consequently that the provisions of that Act and in particular section 10 of that Act apply. Section 10 provides:  
  
*"Archaeological sites may not be destroyed, damaged or modified;*  
  
*(1) Except pursuant to an authority granted under Section 14 of this Act, it shall not be lawful for any person to destroy, damage or modify, or cause to be destroyed, damaged or modified the whole or any part of an archaeological site, knowing or having reasonable cause to suspect that it is an archaeological site.*  
  
*(2) Except as provided in Section 15 or in Section 18 of this Act, it shall not be lawful for any person to carry out any archaeological investigation that may destroy damage or modify any archaeological site.*
3. In the event that the Owners wish to substantially renovate (including any structural alterations) any of the buildings on the Land for any purpose, the Owner will enter into a heritage covenant in similar terms in perpetuity with the New Zealand Historic Places Trust pursuant to section 6 of the Historic Places Act 1993. Upon registration of a New Zealand Historic Places Trust heritage covenant the Minister will discharge this Covenant from the Owner's title.
4. The Owner agrees to erect and maintain at own expense a stock proof fence about the cottage and ruins;
  - (i) to restrict stock ingress onto, and grazing on the defined area of land to sheep; and
  - (ii) in the advent of stock being on the defined area of land, to erect fences or other effective barriers about the cottage and the ruins so as to ensure no stock damage of any kind can occur to the cottage or ruins.
5. The Owners recognise and agree, that;  
  
As well as the stone cottage ruins, there may be other pre 1900 sub surface archaeological material on the Land, and that in the event of discovery of such material, works that may disturb that material shall cease. The Minister shall be advised of the discovery and consulted before any further modification of the site shall occur. Any further work shall be subject to the outcome of such consultation.

SCHEDULE 3



## SCHEDULE 4

### **ICOMOS NEW ZEALAND CHARTER FOR THE CONSERVATION OF PLACES OF CULTURAL HERITAGE VALUE**

Conservation projects should include the following:

- (i) definition of the cultural heritage value of the place, which requires prior researching of any documentary and oral history, a detailed examination of the place, and the recording of its physical condition;
- (ii) community consultation, continuing throughout a project as appropriate;
- (iii) preparation of a plan which meets the conservation principles of this charter;
- (iv) the implementation of any planned work; and
- (v) the documentation of any research, recording and conservation work, as it proceeds.

### **GENERAL PRINCIPLES**

#### **4. CONSERVATION METHOD**

Conservation should:

- (i) make use of all relevant conservation values, knowledge, disciplines, arts and crafts;
- (ii) show the greatest respect for, and involve the least possible loss of, material of cultural heritage value;
- (iii) involve the least degree of intervention consistent with long term care and the principles of this charter;
- (iv) take into account the needs, abilities and resources of the particular communities; and
- (v) be fully documented and recorded.

#### **5. RESPECT FOR EXISTING EVIDENCE**

The evidence of time and the contributions of all periods should be respected in conservation. The material of a particular period may be obscured or removed if assessment shows that this would not diminish the cultural heritage value of the place. In these circumstances such material should be documented before it is obscured or removed.

#### **6. SETTING**

The historical setting of a place should be conserved with the place itself. If the historical setting no longer exists, construction of a setting based on physical and documentary evidence should be the aim. The extent of the appropriate setting may be affected by constraints other than heritage value.

#### **7. RISK MITIGATION**

All places of cultural heritage value should be assessed as to their potential risk from any natural process or event. Where a significant risk is determined, appropriate action to minimise the risk should be undertaken. Where appropriate, a risk mitigation plan should be prepared.

#### **8. RELOCATION**

The site of an historic structure is usually an integral part of its cultural heritage value. Relocation, however, can be a legitimate part of the conservation process where assessment shows that: (i) the site is not of associated value (an exceptional

circumstance); or

(ii) relocation is the only means of saving the structure; or

(iii) relocation provides continuity of cultural heritage value. A new site should provide a setting compatible with cultural heritage value.

## **9. INVASIVE INVESTIGATION**

Invasive investigation of a place can provide knowledge that is not likely to be gained from any other source. Archaeological or structural investigation can be justified where such evidence is about to be lost, or where knowledge may be significantly extended, or where it is necessary to establish the existence of material of cultural heritage value, or where it is necessary for conservation work. The examination should be carried out according to accepted scientific standards. Such investigation should leave the maximum amount of material undisturbed for study by future generations.

## **10. CONTENTS**

Where the contents of a place contribute to its cultural heritage value, they should be regarded as an integral part of the place and be conserved with it.

## **11. WORKS OF ART AND SPECIAL FABRIC**

Carving, painting, weaving, stained glass and other arts associated with a place should be considered integral with a place. Where it is necessary to carry out maintenance and repair of any such material, specialist conservation advice appropriate to the material should be sought.

## **12. RECORDS**

Records of the research and conservation of places of cultural heritage value should be placed in an appropriate archive and made available to all affected people. Some knowledge of places of indigenous heritage value is not a matter of public record, but is entrusted to guardians within the indigenous community.

## **CONSERVATION PROCESSES**

### **13. DEGREES OF INTERVENTION**

Conservation may involve, in increasing extent of intervention: non-intervention, maintenance, stabilisation, repair, restoration, reconstruction or adaptation. Where appropriate, conservation processes may be applied to parts or components of a structure or site. Re-creation, meaning the conjectural reconstruction of a place, and replication, meaning to make a copy of an existing place, are outside the scope of this charter.

### **14. NON-INTERVENTION**

In some circumstances, assessment may show that any intervention is undesirable. In particular, undisturbed constancy of spiritual association may be more important than the physical aspects of some places of indigenous heritage value.

### **15. MAINTENANCE**

A place of cultural heritage value should be maintained regularly and according to a plan, except in circumstances where it is appropriate for places to remain without intervention.

### **16. STABILISATION**

Places of cultural heritage value should be protected from processes of decay, except where decay is appropriate to their value. Although deterioration cannot be totally prevented, it should be slowed by providing stabilisation or support.

#### **17. REPAIR**

Repair of material or of a site should be with original or similar materials. Repair of a technically higher standard than the original workmanship or materials may be justified where the life expectancy of the site or material is increased, the new material is compatible with the old and the cultural heritage value is not diminished. New material should be identifiable.

#### **18. RESTORATION**

Restoration should be based on respect for existing material and on the logical interpretation of all available evidence, so that the place is consistent with its earlier form and meaning. It should only be carried out if the cultural heritage value of the place is recovered or revealed by the process. The restoration process typically involves reassembly and reinstatement and may involve the removal of accretions.

#### **19. RECONSTRUCTION**

Reconstruction is distinguished from restoration by the introduction of additional materials where loss has occurred. Reconstruction may be appropriate if it is essential to the function or understanding of a place, if sufficient physical and documentary evidence exists to minimise conjecture, and if surviving heritage values are preserved.

Reconstruction should not normally constitute the majority of a place. Generalised representations of typical features or structures should be avoided.

#### **20. ADAPTATION**

The conservation of a place of cultural heritage value is usually facilitated by it serving a socially, culturally or economically useful purpose. In some cases, alterations and additions may be acceptable where they are essential to continued use, or where they are culturally desirable, or where the conservation of the place cannot otherwise be achieved. Any change, however, should be the minimum necessary and should not detract from the cultural heritage value of the place. Any additions and alterations should be compatible with original fabric but should be sufficiently distinct that they can be read as new work.

#### **21. INTERPRETATION**

Interpretation of a place may be appropriate if enhancement of public understanding is required. Relevant protocol should be complied with. Any interpretation should not compromise the values, appearance, structure or materials of a place, or intrude upon the experience of the place.

#### **22. DEFINITIONS**

For the purposes of this charter:

*adaptation* means modifying a place to suit it to a compatible use, involving the least possible loss of cultural heritage value

*conservation* means the processes of caring for a place so as to safeguard its cultural heritage value

*cultural heritage value* means possessing historical, archaeological, architectural, technological, aesthetic, scientific, spiritual, social, traditional or other special cultural significance, associated with human activity

*maintenance* means the protective care of a place



**material** means physical matter which is the product of human activity or has been modified by human activity

**place** means any land, including land covered by water, and the airspace forming the spatial context to such land, including any landscape, traditional site or sacred place, and anything fixed to the land including any archaeological site, garden, building or structure, and any body of water, whether fresh or seawater, that forms part of the historical and cultural heritage of New Zealand

**preservation** means maintaining a place with as little change as possible

**reassembly** (anastylosis) means putting existing but dismembered parts back together

**reconstruction** means to build again in the original form using old or new material

**reinstatement** means putting components of earlier material back in position

**repair** means making good decayed or damaged material

**restoration** means returning a place as nearly as possible to a known earlier state by reassembly, reinstatement and/or the removal of extraneous additions

**stabilisation** means the arrest of the processes of decay

**structure** means any building, equipment, device or other facility made by people and which is fixed to the land

## **Appendix 7: Form of Grazing Concession**

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

DATED \_\_\_\_\_

Between

MINISTER OF CONSERVATION  
("the Grantor")

and

CAMBRIAN HILLS 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. **CAMBRIAN HILLS LIMITED**, ("the 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.

**"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 any one midnight and the next excluding Saturdays, Sundays and Statutory holidays in the place where the Concession Activity is being carried out.

1.2 In this Document unless the context otherwise requires:

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

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

## **2.0 GRANT OF 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(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances) to carry out the Concession Activity on the 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 any one 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 local branch of the New Zealand 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 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 local branch of the New Zealand 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:** *Area shaded pink and marked as CA on the Designations Plan (see definition of Land in clause 1.1)*
  
2. **Concession Activity:**

Grazing of sheep ewes between January 1<sup>st</sup> and April 30<sup>th</sup> at a rate which equates to no more than 500 ewes on an annual basis:

For example:                   1500 sheep ewes for the full 4 months, or  
  2000 sheep ewes for 3 months
  
3. **Term:** 5 years commencing on date of signing of the substantive proposal for the tenure review of Cambrian Hills pastoral lease or such residual that remains of this term when the Concession is granted.

*(see clause 3)*
  
4. (a) **Renewal Date:** NA *(see clause 3.2)*
- (b) **Renewal Period:** On expiry of this Concession, no renewal will be considered.
  
5. **Final Expiry Date:** 5 years from signing of substantive proposal. *(see clause 3.2)*
  
6. (a) **Concession Fee:** The concession fee is to be calculated on the basis of \$5 plus GST/sheep ewe/annum, for the stock run on the Land for that year. In order that the grazing fee may be calculated, a return of stock will be made by 30 of June of each year showing the stock carried on the land over the preceding year. If a return is not made by this date, a fee will be charged assuming the maximum stock numbers had been run.

*(see clause 4)*
- (b) **Administration Fee:** \$100 plus GST Per annum *(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 year anniversary from the date of commencement for term of the Concession. *(see clause 6)*
  
10. **Public Liability General Indemnity Cover:** *(see clause 15.3)*

for \$1,000,000.00
  
11. **Public Liability Forest & Rural Fire Extension:** *(see clause 15.3)*

for \$500,000.00
  
12. **Statutory Liability Insurance:** *(see clause 15.3)*

Amount NA
  
13. **Other Types of Insurance:** *(see clause 15.3)*

**Amounts Insured for Other Types of Insurances:** *(see clause 15.3)*  
Amount NA

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14. **Environmental Monitoring Contribution:** \$ NA \_\_\_\_\_ *(see clause 16)*

15. **Address for Notices (including facsimile number):** *(see clause 19)*

(a) Grantor: C/- PO Box 5244, Dunedin. (03) 4778 626

(b) Loop Road RD BECKS OMAKAU

**SCHEDULE 2**

*Special Conditions*

**Land Management**

1. The Concessionaire will take care not to overstock the Land and will ensure that grazing is not having an adverse impact on the indigenous vegetation within the Land.

**Fencing**

- 2 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.
- 3 The Concessionaire must keep and maintain at the Concessionaires cost any fences, stiles or gates on the Land which the Concessionaire requires to be in place in good repair.

**Hunting**

- 4 The Grantor reserves the right to authorize hunters who hold a valid hunting permit issued by the Director General of Conservation to hunt on the Land.

**Inspection**

- 5 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.

**Assignment**

- 6 Notwithstanding clause 13 this concession will be terminated should the Concessionaire no longer wish to utilize the Land for grazing or in the event that the Concessionaire sells or otherwise disposes of adjoining freehold land which comprises Cambrian Hills Station.



**Execution Section**

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

**SIGNED** by

**Brian Usherwood**

on behalf of the  
**Commissioner of  
Crown Lands** pursuant  
to the Crown Pastoral  
Land Act 1998 in the  
presence of:



---

am Pagan  
Witness  
Solicitor  
Occupation  
Wellington  
Address

**SIGNED** for and on  
behalf of Cambrian Hills  
Limited by one of its  
directors, **Peter John  
Stewart Shaw** in the  
presence of:

*P. Shaw*

*[Signature]*

Witness

*Solicitor*

Occupation

*Wanaka*

Address