

Crown Pastoral Land Tenure Review

Lease name: CAMBRIAN HILLS

Lease number: PO 069

Preliminary Proposal - Part 1

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

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

January

09

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

Date:

Parties

Holder: Cambrian Hills Limited
C/- Business & Accounting Solutions Limited
77 Centennial Avenue
PO Box 179
Alexandra 9181

Commissioner of Crown Lands: C/- The Manager for Tenure Review
Quotable Value Limited
Broadway Building
62 Riccarton Road
PO Box 13-443
Christchurch

The Land

Lease: Cambrian Hills
Legal Description: Run 226A
Area: 3,144.4074 hectares
Certificate of Title/Unique Identifier: OT 338/145 (Otago Registry)

Summary of Designations

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

2 Conditions

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

3 Settlement

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

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

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

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

If:

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

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

or

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

(a) has been agreed or determined; and

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

4 Holder's Payment

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

- 4.2 If the Holder fails to pay the Holder's Payment or any part of it or any other money to the Commissioner or to the duly appointed agent of the Commissioner on the Settlement Date clause 19 will apply.

5 Commissioner's Payment

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

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

6 Vesting of Crown Land

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

7 Issue of Certificate of Title

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

8 Registration of Documents

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

9 Consents

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

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

11 Fencing and Construction Works

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

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

12 Apportionments

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

- 12.5 Following the date that a certificate of title issues for the Freehold Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will pay to the Commissioner, any additional amounts due because of any payments made or received by one party on behalf of the other for the period from the Settlement Date to the date on which a new certificate of title issues for the Freehold Land.

13 Risk

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

14 Survey

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

15 Holder's Acknowledgements

- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) it is obtaining the freehold interest in the Freehold Land:
 - (i) "as is", solely in reliance on its own investigations and judgement; and
 - (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
 - (b) the Holder has carried out all inspections of the Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
 - (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
 - (i) the Resource Management Act 1991; and
 - (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
 - (iii) the Building Act 2004; and
- the Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this clause 15;

- (d) nothing in this Proposal is affected by, and the Commissioner has no liability of any nature in respect of, the existence or terms of any leases, licences or other occupation rights of any nature (if any) granted by the Holder in respect of the Land; and
- (e) the Holder has no claim (and will not have any claim) whatsoever against the Crown and/or Commissioner in relation to the Tenure Review and/or this Proposal, including (without limitation) any claim for any misrepresentation or for any loss or damage suffered whether in contract, tort (including negligence) or otherwise.

16 No Representations or Warranties by the Commissioner

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

17 Acceptance

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

18 Solicitors Certificate

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

19 Default

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

20 Goods and Services Tax

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

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

21 Lowest price

- 21.1 The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Freehold Land under section EW 32(3) of the Income Tax Act 2004 is equal to the Holder's Consideration.
- 21.2 The Commissioner's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Crown Land under section EW 32(3) of the Income Tax Act 2004 is equal to the Commissioner's Consideration.

22 Costs

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

23 No nomination or assignment

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

24 Recreation Permit

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

25 Discretionary Actions

- 25.1 If the Holder has been granted a consent by the Commissioner to do an activity on the land under s18 of the Act, and the area over which the consent is exercised is designated in the proposal as Crown Land then the Holder agrees to act in good faith whilst exercising the terms of consent and not damage or destroy the Crown Land.

26 General

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

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

27 Interpretation

27.1 Definitions

In this Proposal unless the context otherwise requires:

Act means the Crown Pastoral Land Act 1998;

Commissioner means the Commissioner of Crown Lands appointed under section 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 under the Resource Management Act 1991.

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

Freehold Land means the land set out in Schedule Three;

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

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

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

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

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

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

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

Mortgagee means the holder of any Mortgage;

Notice means the notice to the Holder setting out:

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

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

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

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

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

Settlement Date means the settlement date defined in clause 3.1;

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

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

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

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

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

Works Consent means any and all consents required under the Resource Management Act 1991; and/or the Building Act 2004.

27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

- (a) a reference to a certificate of title includes a reference to a computer register;
- (b) words importing a gender include all genders;
- (c) reference to a statute includes reference to all enactments that amend or are passed in substitution for the relevant statute and to all regulations relating to that statute;
- (d) words in the singular include the plural and vice versa;
- (e) reference to a month means a calendar month;
- (f) reference to a person means an individual, a body corporate, an association of persons (whether corporate or not), a trust or a state or agency of a state (in each case, whether or not having separate legal personality);
- (g) references to sections, clauses, sub-clauses, parts, annexures, attachments, appendices, schedules, paragraphs and sub-paragraphs are references to such as they appear in this Proposal and form part of this Proposal;
- (h) headings are included for ease of reference only and will not affect the construction or interpretation of this Proposal;
- (i) all monetary amounts are expressed in New Zealand currency;
- (j) references to obligations includes reference to covenants, undertakings, warranties and, generally, obligations or liabilities of any nature properly arising whether directly or indirectly, under or in respect of the relevant contract, agreement or arrangement;
- (k) all references to times are references to times in New Zealand;
- (l) if the Holder comprises more than one person, each of those person's obligations, as Holder, will be both joint and several.

Schedule One: Provisions relating to the Schedule One Land

1 Details of Designation

Nil

Schedule Two: Provisions relating to the Schedule Two Land

1 Details of designation

1.1 Under this Proposal the land shown edged in pink and labelled "CA1" on the Plan, being 2,532 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area under Section 35(2)(b)(i) and Section 36(1)(a) Crown Pastoral Land Act 1998 subject to:

- (a) the creation of the easement concession over the area shown coloured blue and labelled "i-j" on the Plan, substantially as set out in Appendix 4.

2 Information Concerning Proposed Concession

2.1 Description of the proposed activity:

Water supply intake and pipeline to provide water to adjacent proposed freehold.

2.2 Description of area where proposed activity is to be carried out and proposed status:

The easement concession is located in Shepherds Creek (proposed conservation area) and involves a small intake structure and a short section of pipeline (25mm) to reticulate water to a dwelling for domestic supply and for stock water on proposed freehold land. It is desirable for the holder to source water from the proposed conservation area so as to have sufficient fall to easily reticulate water.

2.3 Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect

Provided that the intake structure and pipeline is constructed/installed and maintained to the design specifications set by DOC as included in the concession easement document, and that DOC supervises the installation of the works, the effects of the proposed easement concession are considered to be minor.

Periodic inspections will be undertaken by DOC staff (in conjunction with other work in the area) to ensure the conditions pertaining to the easement are being abided by.

2.4 Details of the proposed type of concession:

Concession easement under Section 17Q Conservation Act 1987.

2.5 Proposed duration of concession and reason for proposed duration

Proposed duration:

The duration of the concession is 60 years.

Reasons for proposed duration:

Given the minimal impact this concession will have, and to provide guaranteed access to a supply of stock water to the adjoining land, a term of 60 years is considered appropriate.

2.6 Relevant information:

Proposed grantee:

Cambrian Hills Limited operated by Peter and Sarah Shaw.

Relevant information:

The proposed concessionaires currently occupy the area and graze it as part of Cambrian Hills pastoral lease. The concessionaires have been the lessee for many years and have managed the grazing utilisation of the area in a responsible manner in accordance with the requirements of the pastoral lease and have deliberately managed the land so as to protect and enhance its natural values. Post tenure review, the proposed conservation area will be destocked. DOC has accepted the validity of this request and supports the granting of the proposed easement concession.

DOC has a good working relationship with the proposed concessionaire and this is expected to continue.

Schedule Three: Provisions relating to the Schedule Three Land

1 Details of designation

- 1.1 Under this Proposal the land shown edged in green on the Plan, being 612 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 covenant over the area shown coloured in yellow wash and labelled "CC1" on the Plan, being 4 hectares (approximately), substantially as set out in Appendix 5;
 - (d) The creation of the covenant over the area shown coloured in yellow wash and labelled "CC2" on the Plan, being 0.4047 hectares (approximately), substantially as set out in Appendix 6;
 - (f) The creation of the easement over the area shown coloured as a dashed orange line and labelled "a-b-c-d-d1-e", "b", "a-b-f-d-d1-e" and "d1-g-h" on the Plan, substantially as set out in Appendix 7.

Schedule Four: Conditions

- 1 The Commissioner is under no obligation, and may decide, in its sole discretion, not to proceed further with the Tenure Review unless and until:
 - (a) the Commissioner considers that sufficient funds will be obtained in order to complete the Tenure Review;
 - (b) the Director General of Conservation has completed all actions required under Part IVA of the Conservation Act 1987;
 - (c) the Commissioner has reviewed, and is satisfied, in its sole discretion that the easement referred to in Appendix 7 is in an acceptable form, has been executed, consented to by the necessary parties and has been registered against the Lease.

Appendix 1: Consents – Example of Mortgagee Consent

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

- (a) consents to acceptance of the Proposal dated [] ("the Proposal") by [the Holder] ("the Holder") pursuant to the Crown Pastoral Land Act 1998 and agrees and consents to the registration of the documents affecting the Freehold Land referenced in the Proposal prior to the registration of any new mortgage to be granted in its favour over the Freehold Land ; and
- (b) agrees to sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the Holder or the Commissioner to register a discharge of the Mortgage and any new mortgage over the Freehold Land.

Dated:

SIGNED by []) _____
in the presence of: [])

Witness Signature: _____

Witness Name:
Occupation:
Address:

Appendix 1: Consents (continued) - Example of "Other" Consent

[], being the party entitled to the benefit of [] registered against Lease [], hereby consents to the acceptance of the Proposal dated [] by [the Holder] pursuant to the Crown Pastoral Land Act 1998.

Dated:

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

Witness Signature:

Witness Name:
Occupation:
Address:

Appendix 2: Example of Solicitors Certificate

Certifications

I [] hereby certify as follows:

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

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

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

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

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

Yours faithfully
[signed by principal of law firm]

Appendix 3: Indicative Fencing and Construction Requirements

1 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 not walked the fence lines to determine the precise requirements. The specifications are indicative only and will be updated once a detailed inspection of the boundary line has taken place.

1.0 New Fence Lines

(a) Conservation Fence A-B-C,D-E-F,G-H

- 1.1 Six x 2.5 mm galvanised high tensile wires and the bottom wire being 4 mm galvanised mild steel. Total of 7 wires.
- 1.2 2.1 metre x 200 mm treated timber strainer posts with 2.4 metre x 125 mm stay posts to be used for gateways and end of strains.
- 1.3 1.8 metre x 125 mm treated wooden intermediate posts or T irons to be used at 20 metre gaps or at lesser intervals on appropriate high and low points as required. 117 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.
- 1.4 Six steel Y stakes per 20 metres to be used. Y stakes will be 1.65 metres in length.

Vegetation and Ground Clearance Requirements-

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

2.0 Length and location:

- 2.1 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 3,000 metres.
- (b) Conservation fence shown marked D-E-F (CC1). Approximately 750 metres.

3.0 Preliminary and General Matters

3.1 New Materials

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

3.2 Standards

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

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

- 3471:1974 (NZS) Specifications for galvanised steel fencing wire plain and barbed.
- 3607:1989 (NZS) Specifications for round and part round timber fence posts.

- 3640:1992 (NZMP) Specifications of the minimum requirements of the NZ Timber Preservation Council Inc.
- D360:1986 (NZS/ASTM) Creosote Treatment
- 4534:1998 (AS/NZS) Zinc and zinc/aluminum alloy coating on steel wire.
- 4680:1999 (AS/NZS) Hot dip galvanised (zinc) coating on fabricated ferrous articles.

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

Documentation would be required of:

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

3.3 Blasting

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

3.4 Drilling

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

3.5 Spiking

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

3.6 Lacing

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

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

4.1 Wire

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

4.2 Infill Posts

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

4.3 Strainer, Intermediate and Angle Posts

All timber posts used will be round and ground treated.

4.4 Stay Block

12 x 2 x 24 ground treated.

4.5 Staples

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

4.6 Permanent Wire Strainers

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

4.7 Crossing Netting

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

4.8 Swung Gate

The swung gate shall be manufactured of 32 mm 2.6wt galvanised 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 galvanised lacing wire.

4.9 Gate Chains

Gate chains will be galvanised steel chain and staple type.

4.10 Gate gudgeons

Gudgeons are to be of galvanised steel. Top gudgeon is to be lock through type and the bottom gudgeon a bolt through type.

5.0 Best Practice

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

5.2 Strains

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

5.3 Placement of timber strainers, posts and stays

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

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

5.4 Placement of wires

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

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

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

5.5 Gate

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

5.6 Netting at creek crossing

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

5.7 Tie Downs

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

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

5.8 Tie backs

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

6.0 Resource Management Consents

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

Appendix 4: Form of Easement Concession to be Created over the area shown coloured blue and labelled "i-j" on the Plan

Concession number: _____

DATED _____

Between

MINISTER OF CONSERVATION
("the Grantor")

and

CAMBRIAN HILLS LIMITED
("the Concessionaire")

CONCESSION DOCUMENT
(Appurtenant Easement)



Department of Conservation
Te Papa Atawhai

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THIS DOCUMENT is made this day of

PARTIES:

1. **MINISTER OF CONSERVATION**, ("the Grantor")

2. **CAMBRIAN HILLS LIMITED**, ("the Concessionaire")

BACKGROUND

- A. The Land described in Item 1 of Schedule 1 as the First Land is a Conservation Area managed by the Grantor.

- B. The Concessionaire is the registered proprietor of the land described in Item 2 of Schedule 1 as the Second Land.

- C. Section 17Q(1) of the Conservation Act 1987 authorises the Grantor to grant a Concession in respect of an Activity in a Conservation Area;

- D. The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Document.

- E. The Grantor has agreed to grant the Concessionaire an Easement appurtenant to the Second Land over that part of the First Land specified as the Easement Area in Item 3 of Schedule 1.

- F. The Grantor is satisfied that the requirements of Part III B of the Conservation Act 1987 have been met

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

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

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

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

"**Concession Activity**" means the use of the Land for purposes of the Activity carried out by the Concessionaire and specified Item 4 of Schedule 1.

"**Concession Fee**" means the amount specified in Item 8 of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review.

"**Concession Fee Payment Date**" means the date specified in Item 10 of Schedule 1 on which each instalment of the Concession Fee falls due for payment.

"**Concession Fee Review**" means a review of the Concession Fee determined in accordance with clause 7 of this Document.

"**Concession Fee Review Date**" means the date specified in Item 12 of Schedule 1 on which the Concession Fee Review occurs being at 3 year intervals calculated from the date of commencement of this Document.

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

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

"**Co-Site**" means the use of the Easement Area or the Concessionaire's facilities on the Easement Area by a third party for a purpose permitted by the Grantor; and "**Co-Sitee**" and "**Co-Siting**" have corresponding meanings.

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

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

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

"Easement" means the easement appurtenant to the Second Land granted under this Document by the Grantor to the Concessionaire under either section 17Q of the Conservation Act 1987, section 59A of the Reserves Act 1977, or section 49 of the National Parks Act 1980.

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

"Final Expiry Date" means the date specified in Item 7 of Schedule 1.

"First Land" means a Conservation Area, a Park, or a Reserve, whichever is relevant in the context of this Document, and is the area more particularly described in Item 1 of Schedule 1.

"Park" means a national park constituted under the National Parks Act 1980.

"Penalty Interest Rate" means the rate specified in Item 11 of Schedule 1.

"Reserve" means a reserve vested in the Grantor under the Reserves Act 1977.

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

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

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

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document and includes that party's successors in title;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;
- (e) a reference to a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, or an agency of State or of the Crown (in each case whether or not having separate legal personality);
- (f) words in a singular number include the plural and vice versa;
- (g) words importing a gender include all other genders;

- (h) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (i) where the Grantor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

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

2.0 GRANT OF APPURTENANT EASEMENT

2.1 In exercise of the Grantor's powers under section 17Q of the Conservation Act 1987 the Grantor **GRANTS** to the Concessionaire an **EASEMENT APPURTENANT** to the Second Land the right to carry out the Concession Activity on the Easement Area subject to the terms and conditions contained in this Document.

3.0 TERM

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

3.2 The Term and/or renewals, if any, end on the Final Expiry Date specified in Item 7 of Schedule 1.

4.0 SURRENDER OF DOCUMENT

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

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

5.0 CONCESSION FEE

5.1 The Concessionaire must pay to the Grantor in advance and in the manner directed by the Grantor the Concession Fee plus GST in the instalments and on the Concession Fee Payment Dates specified in Items 8, 9 and 10 of Schedule 1.

5.2 If the Concessionaire defaults in payment of the Concession Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 11 of Schedule 1.

6.0 OTHER CHARGES

- 6.1 In addition to the Concession Fee the Concessionaire must pay the following charges ("Other Charges") on demand and in the manner directed by the Grantor:
- (a) all rates, levies, taxes, duties, assessments, charges and other outgoings which may be charged, levied or reasonably assessed or which may become payable by virtue of the Concessionaire's use of the Easement Area, any structure or facility on the Easement Area, or the carrying on of the Concession Activity;
 - (b) all costs in relation to the supply of water, sewage, drainage and rubbish disposal which are not otherwise included in any charges or assessments made by any authority or by the Grantor;
 - (c) all costs incurred by the Grantor in providing an annual building warrant of fitness to a territorial authority, including costs paid to an independent qualified person for a report establishing or re-establishing compliance with a compliance schedule. If work is required to a structure or facility of the Grantor's on the Easement Area in order to obtain a new building warrant of fitness, the Grantor is to pay the cost of the work subject to the Concessionaire's obligations under clause 10.
- 6.2 If the Concessionaire surrenders this Document with the consent of the Grantor, the Concessionaire will continue to be liable for and must pay to the Grantor on demand in respect of its occupation of and activity on the Easement Area all Other Charges which may be due for the current payment period even though this period may not expire until after the date of surrender.
- 6.3 Where the Grantor or Director-General has provided a community service, benefit or facility for the benefit of the Concessionaire under section 17ZH of the Conservation Act 1987, the Concessionaire must pay the Grantor whatever contribution the Grantor determines as specified in Schedule 2.
- 6.4 The Concessionaire must pay all charges for electric power, water supply, geothermal energy, telephone rental and other utilities supplied to the Easement Area. The Grantor will not be liable for any cost incurred in re-establishing the supply of any of these utilities in the event of any of them becoming unavailable for any reason.

7.0 CONCESSION FEE REVIEW

- 7.1 The Grantor will review the Concession Fee on the Concession Fee Review Dates in the following manner:
- (a) the Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.

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- (b) the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
- (c) if, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 7.2 (a) or (b).
- (d) if the Concessionaire does not give notice to the Grantor under clause 7.1 (c) the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) the new Concession Fee so determined or accepted will be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
- (f) until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

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

- (a) by one party giving written notice to the other requiring the new Concession Fee to be determined by arbitration; or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:
 - (i) each party will appoint a valuer and give written notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
 - (ii) if the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination will be binding on both parties.
 - (iii) before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
 - (iv) the valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987. If they fail to agree the Concession Fee is to be determined by the umpire.

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- (v) in determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Land.
 - (vi) each party is to be given the opportunity to make written or verbal representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
 - (vii) the valuers or the umpire must have regard to any such representations but will not be bound by them.
- (c) the valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to provide how the costs of the determination are to be borne and is to be binding on the parties.
 - (d) if a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable. The Concession Fee Review will establish the market value for the Concession Activity as at that date instead of the date fixed under clause 7.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987; but each subsequent Concession Fee Review Date will take place in accordance with the date fixed in clause 7.1.

8.0 CONCESSION ACTIVITY

- 8.1 The Concessionaire is not to use the Easement Area for any purpose other than the Concession Activity.
- 8.2 The Concessionaire must, as a condition of this Document:
 - (a) take out and maintain and pay all fees for all licences, permits, authorisations, consents (including resource consents under the provisions of the Resource Management Act 1991), and renewals (collectively "the Permissions") as may be necessary for the proper conduct of the Concession Activity;
 - (b) not do or suffer to be done any act whereby these Permissions may be forfeited or suspended or refused.
- 8.3 The rights and powers conferred on the Concessionaire by the provisions set out in Item 3 of Schedule 1 are subject to the terms and conditions of this Document. In the event of a conflict between the provisions of Item 3 and the terms and conditions of this Document, the latter is to prevail.

9.0 SUPPLY OF INFORMATION

- 9.1 At the Grantor's request the Concessionaire must supply the Grantor with a complete statement of audited financial accounts.

- 9.2 Information supplied to the Grantor under clause 9.1 is subject to an obligation of confidence; but the parties acknowledge that such information may be subject to the provisions of the Official Information Act 1982 and the Privacy Act 1993.

10.0 COMPLIANCE

- 10.1 The Concessionaire will comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan as required by section 17W(7) of the Conservation Act 1987 pursuant to Part IIIA of the Conservation Act 1987 or Part IIA of the Reserves Act 1997 or any general policy statement or management plan under section 44 or 45 of the National Parks Act 1980, whichever is appropriate to the Easement Area, together with any amendment or review of any policy, 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 National Parks Act 1980 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Easement Area or affecting or relating to the Concession Activity.

- 10.2 The Concessionaire must comply with all conditions imposed by the Grantor in granting this Document whether expressed or implied.

- 10.3 (a) A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or general policy statement will be deemed to be a breach of this Document.
- (b) A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Easement Area or affecting or relating to the Concession Activity will be deemed to be a breach of this Document.

- 10.4 If the Legislation requires the Grantor to spend money on its own structures, facilities or land alterations on the Easement Area, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% of the amount spent by the Grantor.

- 10.5 If the Legislation requires the Grantor to spend an amount on structures, facilities or land alterations on the Easement Area which the Grantor considers unreasonable, the Grantor may determine this Easement and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 29

11.0 STRUCTURES, FACILITIES AND LAND ALTERATIONS

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

- 11.2 In giving approval under clause 11.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.
- 11.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.
- 11.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before :
- (a) erecting or altering any structure on the Easement Area;
 - (b) bringing any structure on to the Easement Area;
 - (c) installing any facilities on the Easement Area; or
 - (d) altering the Easement Area in any way.
- 11.5 The Concessionaire must not commence any work on the Easement Area until the Grantor has given its written approval.
- 11.6 When undertaking any work under this clause the Concessionaire must comply with all statutory requirements including obtaining building consents and code compliance certificates under the Building Act 1991.
- 11.7 The Concessionaire is to keep and maintain its structures and facilities on, or alterations to, the Easement Area in good repair.

12.0 INSURANCE OF STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 12.1 The Concessionaire must insure and keep insured with an insurer approved by the Grantor all structures, facilities and land alterations on the Easement Area in the joint names of the Grantor and Concessionaire for their respective interests to their full replacement value against loss or damage caused by fire, earthquake, fire consequent on earthquake, avalanche, flood, volcanic activity; and including indemnity insurance for the cost of demolition, removal of debris and clearance of the Easement Area.
- 12.2 The Concessionaire must provide the Grantor with a copy certificate of currency for the policy or policies of insurance before commencing the Concession Activity and on each renewal of the policy.

13.0 CONCESSIONAIRE'S FURTHER OBLIGATIONS

- 13.1 The Concessionaire must at the Concessionaire's expense:

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

14.0 PROTECTION OF THE ENVIRONMENT

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

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

14.2 The Concessionaire will keep the Easement Area in a clean and tidy condition and free of weeds and all organisms specified as pests in a relevant pest management strategy.

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

- 14.4 The Concessionaire will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably required by the Grantor the Concessionaire will paint all structures and facilities in colours specified in writing by the Grantor and with paints of a type approved in writing by the Grantor.
- 14.5 If, during the Term, the Concessionaire removes a structure or facility from the Easement Area the Concessionaire will, unless the Grantor indicates otherwise in writing, repair and make good at its own expense all damage which may have been done by the removal and will leave the Easement Area in a clean and tidy condition.
- 14.6 Should the Concessionaire fail to repair and restore the damage within 6 months of the removal of a structure or facility or such further time as the Grantor may approve in writing, the Grantor may undertake whatever works and operations are necessary to effect the same and may recover from the Concessionaire any costs and expenses incurred in doing it as a debt due by the Concessionaire to the Grantor.
- 14.7 The Concessionaire must:
- (a) take all reasonable precautions to ensure no fire hazards arise from its carrying out of the Concession Activity or from any act or neglect of its employees, contractors, invitees or agents;
 - (b) not light or permit to be lit any fire on the Easement Area.
 - (c) not store or permit to be stored fuels or other combustible materials on the Easement Area without the written permission of the Grantor. In that event storage of fuels and combustible materials must be in accordance with the provisions of the Dangerous Goods Act 1974;
 - (d) comply with the Grantor's requirements for fire warning and safety equipment and for fire fighting equipment to be kept on the Easement Area at all times.
- 14.8 The Concessionaire must ensure that its employees, clients and invitees do not carry out any acts prohibited under clause 14.
- 14.9 The Concessionaire must immediately report to the Lessor any act in contravention of clause 14 and wherever possible the names and addresses of any person carrying out such acts; and must provide the Lessor with details of the circumstances surrounding such incidents.

15.0 ADVERTISING

- 15.1 The Concessionaire must not erect or display any signs or advertising on the Easement Area without the prior written approval of the Grantor. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.

- 15.2 If required by the Grantor, the Concessionaire must ensure that all its signs and advertising material specify that it is carrying out the Concession Activity under a Concession granted by the Grantor on land administered by the Department.

16.0 EMPLOYMENT OF STAFF

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

17.0 HEALTH AND SAFETY

- 17.1 The Concessionaire is to carry out the Concession Activity on the Easement Area in a safe and reliable manner and must comply with:
- (a) the Health and Safety in Employment Act 1992 and its regulations; and
 - (b) all other statutes, regulations and bylaws and all notices and requisitions of any competent authority relating to the conduct of the Concession Activity.
- 17.2 The Concessionaire must notify the Grantor of any natural events or activities on the Easement Area or the surrounding area which may endanger the public or the environment.
- 17.3 The Concessionaire must :
- (a) take all reasonable steps to protect the safety of all persons present on the Easement Area and must, where necessary, erect protective signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
 - (b) take all reasonable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware.
- 17.4 Before commencing the Concession Activity the Concessionaire must, if required by the Grantor, prepare a safety plan and have it audited by a suitably qualified person approved by the Grantor.
- 17.5 The Concessionaire must not commence the Concession Activity until:
- (a) the person appointed to audit the safety plan has certified the safety plan is suitable for the Concession Activity; and

(b) the Concessionaire supplies the Grantor with a copy of the safety plan certified under clause 17.5(a).

17.6 Receipt of the certified safety plan by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 17 and is not to be construed as implying any responsibility or liability on the part of the Grantor.

18.0 TEMPORARY SUSPENSION

18.1 The Grantor may temporarily suspend this Document if, in the opinion of the Grantor, there is a temporary risk to public safety or the safety of the Department's staff or the safety of other Concessionaires whether from arising from natural events such as earthquake, land slip, volcanic activity, or flood or whether arising in any other way including the activities of the Concessionaire, its employees, clients or invitees.

18.2 If, in the opinion of the Grantor, the activities of the Concessionaire, its employees, clients or invitees are having or may have an adverse effect on the environment and the Grantor is of the opinion that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, the Grantor may suspend this Concession until the Concessionaire remedies, avoids or mitigates the adverse impact to the satisfaction of the Grantor.

18.3 The Grantor may suspend this Concession while it investigates any of the circumstances contemplated in clauses 18.1 and 18.2 and also while it investigates any potential breach or possible offence by the Concessionaire whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which it has become aware.

18.4 The word "investigates" in clause 18.3 includes the laying of charges and awaiting the decision of the Court.

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

18.6 The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under clause 18 including loss of profits.

19.0 ASSIGNMENT

19.1 The Concessionaire is not to transfer, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may in the Grantor's discretion decline any application for consent under this clause or may grant consent on such conditions as the Grantor thinks fit.

- 19.2 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor decides otherwise.
- 19.3 If the Grantor gives consent under this clause the Concessionaire is to procure from the transferee, or assignee a covenant to be bound by the terms and conditions of this Document.
- 19.4 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 19.5 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

20.0 CO-SITING

- 20.1 (a) The Concessionaire will not allow Co-Siting on the Easement Area without the prior written consent of the Grantor.
- (b) The Grantor's consent must not be unreasonably withheld, but it is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a Concession Fee in respect of the Co-Sitee's Activity on the Easement Area.
- (c) The Grantor may withhold consent if:
- (i) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Area; and
 - (ii) the Grantor considers the change to be detrimental to the environment of the Easement Area.
- 20.2 Any contract, licence or agreement by the Concessionaire to permit a Co-Sitee, with the consent of the Grantor, to Co-Site on the Easement Area must have annexed to it a copy of this Document, and must contain a covenant on the part of the Co-Sitee not to cause the provisions of this Document to be breached by any act or omission of the Co-Sitee.
- 20.3 The Concessionaire must, if required by the Grantor, allow Co-Siting on the Easement Area except where the Concessionaire demonstrates to the reasonable satisfaction of the Grantor that such Co-Siting by the third party would:
- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Area; or
 - (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority.

- 20.4 The Grantor will be entitled to require the Concessionaire to obtain a report prepared by an independent consultant acceptable to the Grantor, confirming the presence of either of the matters referred to in clause 20.3. The cost of the report is to be borne by the Concessionaire.
- 20.5 Subject to clause 20.6, the Concessionaire will be entitled to enter into commercial agreements with third parties for them to conduct an Activity on the Easement Area and to receive a reasonable fee from them for any agreed Activity they intend to carry out on the Easement Area.
- 20.6 For the avoidance of doubt a Co-Sitee permitted on the Easement Area must enter into a separate agreement with the Grantor in terms of which the Co-Sitee will be required to pay a fee to the Grantor to conduct an Activity on the Easement Area. This separate agreement must not contain provisions which conflict with the Concessionaire's rights and obligations in relation to the Easement Area.

21.0 TERMINATION

- 21.1 The Grantor may terminate this Concession by 7 days notice in writing to the Concessionaire if:
- (a) the Concession Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - (b)
 - (i) the Concessionaire breaches any terms of this Document; and
 - (ii) the Grantor has notified the Concessionaire in writing of the breach; and
 - (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or
 - (c) the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the services provided by the Concessionaire are manifestly inadequate; or
 - (d) the Concessionaire is convicted of an offence, whether or not related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Health and Safety in Employment Act 1982; or the Building Act 1991; or the Resource Management Act 1991; or the Biosecurity Act 1993; or
 - (e) the Concessionaire 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 Concessionaire ceases to function or operate; or

(f) there is, in the opinion of the Grantor, a permanent risk to public safety or the environment whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Document on the part of the Concessionaire.

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

21.3 The Grantor may exercise the 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.

21.4 Immediately on termination, the Concessionaire must execute a surrender of this Document if the Grantor so requires it.

22.0 GRANTOR MAY REMEDY CONCESSIONAIRE'S DEFAULT

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

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

23.0 GRANTOR'S DIRECTIONS

23.1 The Concessionaire must comply with all reasonable notices and directions of the Grantor concerning the activities conducted by the Concessionaire on the Easement Area or the conduct of any person on the Easement Area under the authority of this Document.

24.0 POWERS, RIGHTS AND AUTHORITIES

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

25.0 INDEMNITIES AND INSURANCE

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

- 25.2 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.
- 25.3 Without prejudice to or in any way limiting its liability under clause 25.1 the Concessionaire must take out and keep in force during the Term:
- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of the Concessionaire's use of the Easement Area or its conduct of the Concession Activity on the Easement Area and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 13 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 14 of Schedule 1; and
 - (b) statutory liability for the matters and amount specified in Item 15 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Lessor specifies in Item 16 of Schedule 1, including those matters specified in clause 12.
- 25.4 With respect to clause 25.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.
- 25.5 (a) Without prejudice to any other provision of this Document the Concessionaire will indemnify the Grantor against all damage or loss resulting from any act or omission on the part of the Concessionaire or the Concessionaire's employees, agents, contractors, clients, or invitees;
- (b) The Concessionaire is to recompense the Grantor for all expenses incurred by the Grantor in making good any damage to the Land or the property of the Lessor resulting from such act or omission.
- 25.6 (a) The Grantor will not be liable and does not accept any responsibility for damage to or interference with the Concession Activity or to the structures or facilities on the Easement Area or any other indirect or consequential damage due to any natural disaster, vandalism, sabotage, fire or exposure to the elements except where, subject to the clause 25.6(b), such damage or interference is caused by any wilful act or omission of the Grantor, its employees, agents or contractors;
- (b) Where the Grantor is found to be liable due to a wilful act or omission, the total extent of its liability is limited to \$1,000,000 in respect of the Concessionaire's structures and facilities.

- 25.7 Notwithstanding anything else in clause 25 the Grantor is not liable for any indirect or consequential loss howsoever caused.

26.0 ENVIRONMENTAL MONITORING AND LAND REHABILITATION

- 26.1 The Concessionaire must, during the Term, if the Grantor so requests in writing, design in consultation with the Grantor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of and activities on the Easement Area.
- 26.2 If the Grantor does not make a request under clause 28.1 the Concessionaire must, during the Term, pay to the Grantor the annual environmental monitoring contribution specified in Item 17 of Schedule 1 to enable the Lessor to design and undertake a programme to monitor the environmental effects of the Concessionaire's use of and activities on the Easement Area.
- 26.3 Subject to any conditions imposed by the Grantor and set out in Schedule 3, at the expiry, surrender or termination of this Document, the Concessionaire must reinstate the Easement Area to its condition at the commencement of the Term and replant the Easement Area with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

27.0 EXPIRY OF EASEMENT

- 27.1 If, on expiry of the Term, the future use of, or any operation on, the Easement Area is not authorised by the Grantor, the Concessionaire accepts that the Grantor will have no liability whatsoever for any costs incurred by the Concessionaire as a result of the expiry of this Document.
- 27.2 Subject to any conditions set out in Schedule 3, at the expiry, surrender or termination of the Term, the Concessionaire must remove all the Concessionaire's structures and facilities on the Site unless the Grantor approves otherwise in writing.
- 27.3 If the Concessionaire does not remove the structures and facilities as required by clause 27.2 or as otherwise approved by the Grantor the structures or facilities remaining on the Easement Area at the expiry, surrender or termination of this Document will be deemed to be fixtures and property in them will vest absolutely in the Grantor.
- 27.4 In that case the Grantor will not be liable to pay compensation to the Concessionaire for the structures and facilities and may, at its option, remove or destroy or otherwise dispose of them, and recover the costs and expenses of their removal or destruction from the Concessionaire as a debt due to the Grantor.

28.0 FORCE MAJEURE

- 28.1 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.
- 28.2 If the delay or failure continues for at least 28 days either party will be entitled to terminate this Document by notice in writing.

29.0 DISPUTE RESOLUTION AND ARBITRATION

- 29.1 If a dispute arises between the parties in connection with this Document including without limitation the interpretation, validity, breach or termination of any of its provisions, the parties will, without prejudice to any other rights or entitlements they may have under this Document or otherwise, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.
- 29.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 29.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 29.4 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 29.5 The arbitrator must include in the arbitration award reasons for the determination.

30.0 NOTICES

- 30.1 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 18 of Schedule 1.
- 30.2 A notice given in accordance with clause 30.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of a letter, on the third working day after posting;

- (c) in the case of facsimile, on the date of dispatch.

31.0 COSTS

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

32.0 RELATIONSHIP OF PARTIES

- 32.1 Nothing expressed or implied in this Document shall be construed as:
 - (a) constituting the parties as partners or joint venturers;
 - (b) conferring on the Concessionaire any right of exclusive occupation or use of the Easement Area;
 - (c) preventing the Lessor from granting similar concessions to other persons;
 - (d) derogating from the rights of the Grantor and the public to have access across the Easement Area.

33.0 OFFENCES

- 33.1 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 its remedies under this Document; and
 - (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising its remedies under this Document.

34.0 SEVERABILITY

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

35.0 ENTIRE UNDERSTANDING

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

36.0 VARIATION

- 36.1 The provisions of section 17ZC of the Conservation Act 1987 apply to all variations sought by the Concessionaire and to any application for an extension to the Term.
- 36.2 As provided by section 17ZC(3) of the Conservation Act 1987, the Grantor may vary any of the conditions of this Document if the variation is necessary:
- (a) to deal with significant adverse effects of the Activity that are not reasonably foreseeable at the time this Easement is granted; or
 - (b) because the information made available to the Grantor by the Concessionaire for the purposes of the Concessionaire's application contained inaccuracies which materially influenced the decision to grant the easement and the effects of the Activity permitted by this Document require more appropriate conditions
- 36.3 The Concessionaire is to be bound by every such variation.

37.0 REGISTRATION

- 37.1 The Grantor may register this Easement, at the expense of the Concessionaire, as provided by section 17ZA of the Conservation Act 1987.

Signed by _____
for and on behalf of the Minister of
Conservation pursuant to a written
delegation in the presence of :

Witness (signature) _____

Witness (print name) _____

Occupation _____

Address _____

Signed by **Cambrian Hills Limited** _____

as Concessionaire

in the presence of :

Witness (signature) _____

Witness (print name) _____

Occupation _____

Address _____

SCHEDULE 1

1. **First Land:** *Area outlined in pink and marked CA on the designations plan (see definition of First Land in clause 1.1)*
2. **Second Land:** *Area outlined in green on the proposed designations plan (see definition of Second Land in clause 1.1)*
3. **Easement Area:** *That part of the Land measuring 5 metres in width coloured blue and marked "i-j" on the proposed designations plan. (see definition of Easement Area in clause 1.1)*
4. **Concession Activity: AN EASEMENT TO CONVEY WATER** over under or along the Easement Area on the following terms and conditions and those set out in this Easement.

The Concessionaire and all employees, agents, contractors and invitees of the Concessionaire have the right for the Term of this Easement with or without vehicles, implements, machinery and materials from time to time:

- (a) To take, convey and lead water in a free and unimpeded flow and in any quantity across the Easement Area, together with the additional rights attaching to easements of right to convey water set out in clauses 3 and 4 of Schedule 4 of the Land Transfer Regulations 2002.
- (b) To lay, construct, alter, cleanse, extend, repair, maintain, remove and replace any pipes, concrete or other conduits, manholes, valves, surface boxes or other plant or water systems to enable it to convey and lead such water along the Easement Area.

AND for the above purposes the Concessionaire shall have the right:

- (i) To enter and re-enter on the Easement Area on foot or by any reasonable mode of transport;
- (ii) To carry out on or in the Easement Area such works as are necessary for the exercise of the powers and authorities granted by this Easement;
- (iii) To remove as necessary any cultivated or natural vegetation including trees and shrubs affecting the Concessionaire's use of the Easement.

AND the parties agree that the following agreements, covenants, conditions and restrictions apply in respect of this Easement:

- (a) The Concessionaire must not erect any building, construction or fence or do anything that could obstruct the Easement Area without the consent of the Grantor;
- (b) The Concessionaire is to take reasonable and proper care not to damage any property of the Grantor and must promptly repair any such damage;

- (c) The Concessionaire must, at all times, maintain proper supervision and control of all works and installations on or in the Easement Area.
 - (d) The Concessionaire has, and is free to exercise in connection with this Easement, all authority, power, rights and remedies vested in the Concessionaire by law with regard to the Concessionaire's use of the Easement Area and any works and installations in the Easement Area.
 - (e) The Concessionaire must bear cost of all work and installations in the Easement Area as the Grantor may require.
 - (f) If the Concessionaire is required to open up the surface of the land comprising the Easement Area the Concessionaire must, immediately upon completion of any works, restore the surface of the land as nearly as possible to its former condition.
 - (g) Nothing herein contained or implied in this Easement requires the Grantor or the Concessionaire to construct a pipeline or take or convey water.
(see definition of Concession Activity in clause 1.1.)
5. **Term:** 60 years commencing on *(see clause 3.1)*
 6. **Renewal:** Not applicable *(see clause 3.2)*
 7. **Final Expiry Date:** *(see clause 3.3)*
 8. **Concession Fee:** \$ __ Nil __ per annum + GST *(see clause 5.1)*
 9. **Concession Fee Instalments:** Not applicable *(see clause 5.1)*
 10. **Concession Fee Payment Date:** On or before the date specified on the invoice generated by the Grantor. *(see clause 5.1)*
 11. **Penalty Interest Rate:** *(see clause 5.2)*
(Double the Grantor's bank's current highest 90 day bank bill buy rate)
 12. **Concession Fee Review Date:** Not applicable *(see clause 7.1)*
 13. **Public Liability General Indemnity Cover:** *(see clause 25.3)*
for \$1,000,000
 14. **Public Liability Forest & Rural Fire Act Extension:** *(see clause 25.3)*
for \$250,000
 15. **Statutory Liability** *(see clause 25.3)*
for \$ Nil
 - 16(a) **Other Types of Insurance:** *(see clauses 12 & 25.3)*
for \$Not applicable

16(b) **Amounts Insured for Other Types of Insurances:** *(see clauses 12 & 25.3)*
for \$Not applicable

17. **Environmental Monitoring Contribution:** *(see clause 26.2)*
Not applicable

18. **Address for Notices:** *(see clause 30)*

- | | | |
|-----|----------------|---------------------------|
| (a) | Grantor | P O Box 5244, DUNEDIN |
| (b) | Concessionaire | Loop Road RD BECKS OMAKAU |

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SCHEDULE 2

Community Service Contribution

Nil

SCHEDULE 3

Special Conditions

1. Pipe diameter for conveyance of water along the Easement Area will be a maximum of 25mm.
2. The Concessionaire shall give the Grantor at least two weeks notice of their intention to install the pipe and associated installations along the Easement Area so that the Grantor may supervise the work.