

Crown Pastoral Land Tenure Review

Lease name: CARRICK STATION

Lease number: PO 357

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.

February

09

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

Date:

Parties

Holder: Donald William Clark as to a ½ share
Marion Isabelle Clark as to a ½ share

DW Clark
Carrick Station
RD 2
Cromwell

Commissioner of Crown Lands:

C/- OPUS International Consultants Limited
144 Rattray Street
PO Box 1913
Dunedin
(Attention: Simon de Lautour)

The Land

Lease: Po 357 Carrick Station

Legal Description: Sections 3, 27, 28, 29, 31, 34 and Part Section 30 Block III Nevis Survey District, Sections 1, 3, 4, 5, and 6 Block III Bannockburn Survey District, Sections 13, 14 and 15 Block IV Bannockburn Survey District and Run 339E Nevis, Lorn and Lornside Survey Districts.

Area: 9,261.7461 hectares

Certificate of Title/Unique Identifier: OT338/81

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

- 1.1 Under this Proposal the land shown edged in pink and labelled "CA2" on the Plan, being 445 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

2 Schedule One Improvements

Not applicable

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 A" and "CA1 B" on the Plan, being 2446 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area.
- a) the granting of grazing concession two to the Holder as set out in Appendix 4;
 - b) the granting of recreation concession to R W & S L Brown as set out in Appendix 5;
 - c) the continuation in force of an easement in gross in favour of Carrick Irrigation Company Limited, registered as Transfer 885721/2 (and embodied in Register OT17C/734), shown with a dashed blue line labelled A-B, on the plan. A copy of this easement is attached as Appendix 6;
- 1.2 Under this Proposal the land shown edged in pink with pink hatched lines and labelled "R" on the Plan, being 109 hectares (approximately) is designated as land to be restored to or retained in Crown control as historic reserve.
- a) the granting of grazing concession one to the Holder as set out in Appendix 7;
 - b) the continuation in force of an easement in gross in favour of The Carrick Irrigation Company Limited, registered as Transfer 885721/2 (and embodied in Registry OT17C/734), shown with a dashed blue line labelled G-H-I-J and I-K, on the plan). A copy of this easement is attached as Appendix 6;

2 Information Concerning Proposed Concession

2.1 Grazing Concession Two

Information on proposed concession provided by Director-General of Conservation (section 39 CPL Act)

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

1. Description of proposed activity(s) [s.39(a)]: Grazing of the Top Nevis Block as a phase out to allow changes in stock systems to take place.
2. Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]: The Top Nevis Block is proposed for retention in Crown control. It is shown as "CA1" on the Proposed Designations Plan.

3. Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) CPLA: The concession is a continuation of an activity that has been carried out on this land for more than 100 years. The continuation of grazing will be for a short period only, with the maximum number of stock fixed. An incentive to reduce stock numbers is provided where only the numbers grazed are paid for in the concession.
4. Details of the proposed type of concession: Grazing concession under section 36 (1) (a) CPLA. The total carrying capacity has been approximated as 600SUs/annum.
5. Proposed duration of concession and reasons for proposed duration [s.39(e)]:
Proposed duration: The term of the grazing starts on the signing of the Substantive proposal. Therefore the concession will run for a lesser period, to finish 5 years after the SP is signed.

Reasons for proposed duration: This is to allow for the farming system to change. The wether flock will not be replaced and therefore numbers grazed will reduce over the period of the concession.
6. Relevant information about the proposed grantee including information relevant to the grantee's ability to carry out the proposed activity [s.39(f)]: Has been grazing area for many years.

Proposed grantee: Donald W. Clark and Marion I. Clark.

Relevant information: The grantee is currently engaged in farming and is currently using the area for grazing.

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

2.2 Grazing Concession One

Information on proposed concession provided by Director-General of Conservation (section 39 CPL Act)

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

1. Description of proposed activity(s) [s.39(a)]: Reserve areas adjoining and unfenced from the blocks known as "Water Wheel" and "Forks" can be grazed at a level that does not adversely impact the vegetation.
2. Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]: The grazing concession will be over approximately 109 ha shown as "R" in the Proposed Designations Plan to be restored to Crown Control. The proposed reserve land will be subject to Section 36 (1)(a) and Sec 66, CPLA.
3. Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) CPLA: The concession is a continuation of an activity that has been carried out on this land for more than 100 years. The continuation of grazing will have the beneficial effect of keeping the historic sites open and not overgrown with vegetation. Stock impacts on the sites, particularly the old stone huts will be monitored so that any effects can be mitigated. Given the grazing history, impacts are considered unlikely.

4. Details of the proposed type of concession: Grazing concession under section 36 (1) (a) CPLA. The area will be stocked under the historic management regime of semi rotational grazing of the adjoining larger "Waterwheel" and "Forks" blocks. The total carrying capacity has been approximated as 35SU

5. Proposed duration of concession and reasons for proposed duration [s.39(e)]:
Proposed duration: Twenty Years

Reasons for proposed duration: We are satisfied that current grazing use of these areas has had little impact on the values. Within the term consideration can be given to the amalgamation of the proposed concession areas with the existing Young Australian Waterwheel Reserve into one concession. Both can be managed into the future as one, as they are not separately fenced.

6. Relevant information about the proposed grantee including information relevant to the grantee's ability to carry out the proposed activity [s.39(f)]:

Proposed grantee: Donald W. Clark and Marion I Clark.

Relevant information: The grantee is currently engaged in farming and is using the area for grazing.

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

2.3 Recreation Concession

Information on proposed concession provided by Director-General of Conservation (section 39 CPL Act)

RECREATION/TOURISM CONCESSION – BASE BUILDINGS, GUIDED SNOW MOBILE TOURS, SNOW MOBILE AND SNOW CAT BORNE SKIING AND AIRCRAFT LANDING LICENCE– OLD WOMAN RANGE (Carrick pastoral lease tenure review)

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

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

The concession is for siting of base camp buildings, guided snow mobile tours, snow mobile and snow cat borne skiing and landing of ski planes and helicopters for a term commencing on date of signing of the substantive proposal for the tenure review of Carrick pastoral lease and expiring on 30 September 2010, with no right of renewal. The concession is granted between the period 1 June and 31 October in each year, except that the activity must cease by the 30th day of September 2010.

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

The area for this concession activity comprises approx. 2000 ha of land proposed to become part of the Old Woman Conservation Area; although the actual area utilised will be somewhat less. Status for the area is "conservation area" for the purpose of protection of natural and historic resources, to be managed by the Department of Conservation.

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

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

The proposed activities potential adverse effects are:

- a) the adverse effects on the natural features of the land; and***
- b) the adverse effects on other users of the area.***

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

With regard to aircraft landings, any adverse effects on other users shall be somewhat mitigated by a requirement that the aircraft operator used by the proposed concessionaire lands only in the area adjoining the base camp buildings specifically designated for aircraft landings.

The existing base camp buildings within the proposed conservation area are to remain until the expiry of the concession. The construction of any new structures is prohibited unless approved by the department.

The concession document contains clauses relating to littering, noisome and/or dangerous activities and fires.

The concession area and adjoining lands have been utilised by back country skiers for several decades. The impact of the concession activity in terms of loss of tranquillity and wilderness attributes cannot be meaningfully mitigated by concession conditions. The Otago Conservation Management Strategy (CMS) recognises the area's winter wilderness qualities. The stated CMS objective for the area is "To protect the entire high altitude range crests for their landscape, nature conservation, cultural and recreational importance, to improve legal access to them, and to ensure that recreational and commercial uses are managed to sustain resources and ensure quality recreational experiences, including the remote quality of the Old Woman-Garvie area."

This concession is being issued to allow the current Land Act Recreation Permit to run its term following completion of tenure review. Issue of a new concession upon expiry would be inconsistent with the Otago Conservation Management Strategy.

4. Details of the proposed type of concession:

Recreation/tourism concession under Section 17Q Conservation Act 1987.

5. Proposed duration of concession and reasons for proposed duration [s.39(e)]:

Proposed duration:

Commencing following surrender of the current Land Act 1948 Recreation Permit and expiring on 30 September 2010, with no right of renewal.

Reasons for proposed duration]:

The term is the residual term of the current recreation permit under the Land Act 1948 held by the proposed concessionaire. Upon registration of the Substantive Proposal the current permit ceases to exist.

6. Relevant information about the proposed grantee including information relevant to the grantee's ability to carry out the proposed activity [s.39(f)]:

Proposed grantee: **Robert William Brown and Sandra Louise Brown.**

Relevant information: **The Department requires that the concessionaire must use aircraft operators who meet Civil Aviation Authority qualifications and standards including part 119 and 135 requirements of the CAA rules or other such standards as CAA may require. The Department also requires the Concessionaire to take measures that will avoid, remedy or mitigate adverse effects of their aircraft landings, snow mobilizing and snow cat borne skiing activities on public conservation land and its visitors.**

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

Schedule Three: Provisions relating to the Schedule Three Land

1 Details of designation

- 1.1 Under this Proposal the land shown marked in green on the Plan, being 6262 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 continuation in force of an easement in gross in favour of Carrick Irrigation Company Limited, registered as Transfer 885721.2 (and embodied in Register OT17C/734), shown with a dashed blue line labelled C-D, C-E-F, E-G and K-L on the plan). A copy of this easement is attached as Appendix 6;
 - (d) the continuation in force of an easement in gross in favour of Carrick Irrigation Company Limited, registered as Transfer 885721/1 (and embodied in Register OT17C/733), shown with a dashed blue line labelled M-N, O-P and Q-R on the plan). A copy of this easement is attached as Appendix 8;
 - (e) Conservation Covenant One, being 1,775 hectares (approximately), shown as CC1 and marked in yellow on the Plan, substantially as set out in Appendix 9;
 - (f) Conservation Covenant Two, being 320 hectares (approximately) shown as CC2 and marked in yellow on the Plan substantially as set out in Appendix 10;
 - (g) Conservation Covenant Three, being 137 hectares (approximately) shown as CC3 and marked in yellow on the Plan substantially as set out in Appendix 11;
 - (h) Conservation Covenant Four, being 1,382 hectares (approximately) shown as CC4 and marked in yellow on the Plan substantially as set out in Appendix 12;
 - (i) an easement for public access and access for management purposes along the lines shown orange and marked a-b-c, b-d, f-g, h-i-j, i-k, l-m] on the Plan and substantially as set out in Appendix 13;
 - (j) an easement for public access and access for management purposes along the line shown orange and marked e-f, on the Plan and substantially as set out in Appendix 14.

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) It has been identified that certain parts of the formed and maintained alignment of the Nevis Road deviate from the surveyed legal road alignment. This proposal is subject to the Commissioner and the Holder agreeing to partially surrender the Lease so as to exclude such parts of the Nevis Road;
 - (d) the Commissioner is satisfied, in its sole discretion, that the easement in gross in favour of Carrick Irrigation Company Limited, registered as 885721/1 (and embodied in Register OT17C/733), continue in force, unless the grantee of the easement elects to surrender it;
 - (e) the Commissioner is satisfied, in its sole discretion, that the easement in gross in favour of Carrick Irrigation Company Limited, registered as 885721/2 (and embodied in Register OT17C/734), continue in force, unless the grantee of the easement elects to surrender it;
 - (f) the Commissioner has reviewed, and is satisfied, in its sole discretion that the grazing concession referred to in Appendix 4 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
 - (g) the Commissioner has reviewed, and is satisfied, in its sole discretion that the recreation concession referred to in Appendix 5 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
 - (h) the Commissioner has reviewed, and is satisfied, in its sole discretion that the grazing concession referred to in Appendix 7 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
 - (i) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 9 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
 - (j) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 10 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
 - (k) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 11 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
 - (l) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 12 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
 - (m) the Commissioner has reviewed, and is satisfied, in its sole discretion that the easement referred to in Appendix 13 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;

- (n) the Commissioner has reviewed, and is satisfied, in its sole discretion that the easement referred to in Appendix 14 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease.

Appendix 1: Consents – Example of Mortgagee Consent

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

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

Dated:

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

Witness Signature: _____

Witness Name:
Occupation:
Address:

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

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

Dated:

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

Witness Signature: _____

Witness Name:
Occupation:
Address:

Appendix 2: Example of Solicitors Certificate

Certifications

I [] hereby certify as follows:

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

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

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

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

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

Yours faithfully

[signed by principal of law firm]

Appendix 3: Indicative Fencing and Construction Requirements

Fenceline

Length and location: Located along the southern boundary of CA2.

Along the line **A-B** (4500m approximately), as shown on the plan.

Type: New seven wire fence with T Irons or posts

Specifications:

- 2.4 metre x 125mm treated timber posts or T irons to be used at 20m gaps or on appropriate high and low points with waratahs at 4m spacing between posts.
- Waratahs, back to back, may be used instead of posts on high spots and on corners with tiebacks on tussock country.
- All strainers, to be driven or dug in and rammed and footed with acceptable footing material. No. 8 wire to be used on foots. All dips and hollows to be tied down.
- Netting to be hung on creek crossings and left to swing.
- All strainers and angles to be mortised stayed and blocked. Stays to be one-third of the way up posts.
- Tie-backs are permitted on both sides of the fence.
- Post staples to be 50 x 4mm galvanized slice pointed barb and be driven well in but allow the wire to run through.
- Strainers and angle posts to be dug in to such a depth that 117cm (46 inches) remains out of the ground.
- Under no circumstances are any strainers, posts or stays to be shortened either prior to or subsequent to their placement in the ground.
- Lightning droppers may be used where appropriate.
- No mechanical earth works are permitted; some minor line clearing of vegetation by hand, benching by hand and blasting for post holes is permitted when required.

Construction

Nil

Appendix 4: Form of Grazing Concession Two to be Created

Concession number: _____

DATED _____

Between

MINISTER OF CONSERVATION
("the Grantor")

and

DONALD WILLIAM CLARK and MARION ISABELLE CLARK
("the Concessionaire")

GRAZING CONCESSION
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made this day of

PARTIES:

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **DONALD WILLIAM CLARK and MARION ISABELLE CLARK**
("the Concessionaire")

BACKGROUND

- A.** The Grantor manages the Land described in Schedule 1 as a Conservation Area or Reserve.
- B.** Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- C.** The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

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

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

“**Background**” means the matters referred to under the heading ‘Background’ on page 1 of this Document.

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

“**Concessionaire**” includes the Concessionaire’s successors, assigns, executors, and administrators.

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

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

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

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

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

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

“Director-General” means the Director-General of Conservation.

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

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

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

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

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

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

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

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

“Structure” includes a bridge, a culvert, and a fence.

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

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

1.2 In this Document unless the context otherwise requires:

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

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

2.0 GRANT OF LICENCE

2.1 In exercise of the Grantor's powers under either section 66 or section 68 of the Crown Pastoral Land Act 1998 (whichever is relevant in the circumstances) the Grantor **GRANTS** to the Concessionaire a **LICENCE** under either section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances) to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Document.

3.0 TERM

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

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

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

4.0 CONCESSION FEE AND ADMINISTRATION FEE

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

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

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

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

5.0 OTHER CHARGES

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

6.0 CONCESSION FEE AND ADMINISTRATION FEE REVIEW

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

7.0 CONCESSION ACTIVITY

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

8.0 COMPLIANCE

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

9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

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

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

10.0 PROTECTION OF THE ENVIRONMENT

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

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

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

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

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

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

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

11.0 HEALTH AND SAFETY

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

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

12.0 TEMPORARY SUSPENSION

12.1 The Grantor may suspend this Document:

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

13.0 ASSIGNMENT

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

14.0 TERMINATION

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

Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire cease to function or operate.

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

15.0 INDEMNITIES AND INSURANCE

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

16.0 ENVIRONMENTAL MONITORING

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

17.0 FORCE MAJEURE

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

18.0 DISPUTE RESOLUTION AND ARBITRATION

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

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

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

18.4 In the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions of the Arbitration Act 1996 will apply.

18.5 Notwithstanding anything in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the District Law Society in the region in which the Land is situated is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

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

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

19.0 NOTICES

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

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

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

20.0 RELATIONSHIP OF PARTIES

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

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

21.0 OFFENCES

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

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

22.0 SPECIAL CONDITIONS

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

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

Signed by :

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

Witness _____

Occupation _____

Address _____

Signed by :

as Concessionaire
 in the presence of :

Witness _____

Occupation _____

Address _____

SCHEDULE 1

1. **Land:** The land is shown on Designations plan as “CA1” and is known as the “Top Block”. The estimated size is 2446 ha. *(see definition of Land in clause 1.1)*
2. **Concession Activity:** Grazing of no more than 3000 wethers or dry ewes for a period of 3mths in any one year is permitted on the Land (Wethers are 0.8 SU therefore this is 600 SU/annum).*(see definition of Concession Activity in clause 1.1)*
3. **Term:** 5 years commencing on date of signing of the substantive proposal for the tenure review of P357 or such residual that remains of this term when the Concession is granted. *(see clause 3)*
4. (a) **Renewal Date:** Nil *(see clause 3.2)*
 (b) **Renewal Period:** On expiry of this Concession, no renewal will be considered.
5. **Final Expiry Date:** NA *(see clause 3.2)*
6. (a) **Concession Fee:** The concession fee is to be calculated on the basis of \$6/SU/annum, for the stock run on the Land for that year. In order that the grazing fee may be calculated, a return of stock will be made by 30 of June of each year showing the stock carried on the land over the preceding year. If a return is not made by this date, a fee will be charged assuming the maximum stock numbers had been run (600SU). *(see clause 4)*
 (b) **Administration Fee:** \$100 per annum + GST *(see clause 4)*
7. **Concession Fee Payment Date:** *(see clause 4)*
 On or before the date specified on the invoice generated by the Grantor
8. **Penalty Interest Rate:** *(see clause 4.2)*
 Double the Grantor’s bank’s current highest 90 day bank bill buy rate
9. **Concession Fee Review Date:** 3 years after commencement date. *(see clause 6)*
10. **Public Liability General Indemnity Cover:** *(see clause 15.3)*
 for \$1,000,000.00
11. **Public Liability Forest & Rural Fire Extension:** *(see clause 15.3)*
 for \$500,000.00
12. **Statutory Liability Insurance:** *(see clause 15.3)*
 Amount \$250,000.00
13. **Other Types of Insurance:** *(see clause 15.3)*
Amounts Insured for Other Types of Insurances: *(see clause 15.3)*
 Amount NA
14. **Environmental Monitoring Contribution:** \$__NA_____ *(see clause 16)*
15. **Address for Notices (including facsimile number):** *(see clause 19)*
 (a) Grantor: C/- PO Box 5244, Dunedin. (03) 4778 626
 (b) Concessionaire: Donald W. Clark, Bannockburn Road, RD2, Cromwell Fax (03) 445 0917

SCHEDULE 2

Special Conditions

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

Appendix 5: Form of Recreation Concession to be Created

Concession number:

DATED _____

Between

**THE MINISTER OF CONSERVATION
("the Grantor")**

and

**R W & S L BROWN
("the Concessionaire")**

**CONCESSION DOCUMENT
(LICENCE)**



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made this day of 200

PARTIES:

1. **MINISTER OF CONSERVATION** ("the Grantor")
2. **ROBERT WILLIAM BROWN AND SANDRA LOUISE BROWN**("the Concessionaire")
3. ("the Guarantor")

BACKGROUND

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

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

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

2.0 GRANT OF LICENCE

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

3.0 TERM

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

4.0 SURRENDER OF DOCUMENT

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

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

5.0 CONCESSION FEE

5.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee plus GST on the Concession Fee Payment Date specified in Items 4 and 5 of Schedule 1.

5.2 If the Concessionaire defaults in payment of the Concession Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 6 of Schedule 1.

6.0 OTHER CHARGES

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

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

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

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

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

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

7.0 CONCESSION FEE REVIEW

- 7.1 The Grantor will review the Concession Fee on the Concession Fee Review Dates in the following manner:
- (a) the Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
 - (b) subject to clause 7.1(e), the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
 - (c) if, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 7.2 (a) or (b).
 - (d) if the Concessionaire does not give notice to the Grantor under clause 7.1 (c) the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.
 - (e) notwithstanding clause 7.1(b), the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and will be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
 - (f) until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.
- 7.2 Immediately the Concessionaire gives notice to the Grantor under clause 7.1(c) the parties will endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:
- (a) by one party giving written notice to the other requiring the new Concession Fee to be determined by arbitration; or, if the parties agree,
 - (b) by registered valuers acting as experts and not as arbitrators as follows:
 - (i) each party will appoint a valuer and give written notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.

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

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

8 CONCESSION ACTIVITY

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

9 SUPPLY OF INFORMATION

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

10 COMPLIANCE

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

- 10.4 If the Legislation requires the Grantor to spend money on the Grantor's own structures, facilities or alterations on the Land, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% of the amount spent by the Grantor.
- 10.5 If the Legislation requires the Grantor to spend money on structures, facilities or alterations on the Land which the Grantor considers unreasonable, the Grantor may determine this Document and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 27.

11 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 11.1 The Concessionaire must not erect or bring on to the Land any structure, install any facility or alter the Land in any way without the prior written consent of the Grantor.
- 11.2 In giving approval under clause 11.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.
- 11.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.
- 11.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before :
- (a) erecting or altering any structure on the Land;
 - (b) bringing any structure on to the Land;
 - (c) installing any facilities on the Land; or
 - (d) altering the Land in any way.
- 11.5 The Concessionaire must not commence any work on the Land until the Grantor has given written approval.
- 11.6 When undertaking any work under this clause the Concessionaire must comply with all statutory requirements including obtaining building consents and code compliance certificates under the Building Act 1991.
- 11.7 The Concessionaire is to keep and maintain its structures and facilities on, or alterations to, the Land in good repair.

12 CONCESSIONAIRE'S FURTHER OBLIGATIONS

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

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

13 PROTECTION OF THE ENVIRONMENT

- 13.1 Except as approved in writing by the Grantor the Concessionaire will not, whether by act or omission:
- (a) interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Land; or
 - (b) bring any plants, animals, or (in the case of guided walking operations only) firearms on to the Land; or
 - (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
 - (d) pile or store materials in any place on the Land where it may obstruct the public or create a nuisance; or
 - (e) conduct any noxious, noisome, dangerous or offensive activity on the Land;
- 13.2 The Concessionaire will keep the Land in a clean and tidy condition to the satisfaction of the Area Manager Department of Conservation Central Otago and free of weeds and all organisms specified as pests in a relevant pest management strategy.
- 13.3 The Concessionaire must make adequate provision for suitable sanitary facilities for the Land if required by the Grantor and for the disposal of all refuse material and is to comply with the reasonable directions of the Grantor in regard to these matters.
- 13.4 The Concessionaire will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition to the satisfaction of the Area Manager Department of Conservation Central Otago. If reasonably required by the Grantor the Concessionaire will paint all structures and facilities in colours specified in writing by the Grantor and with paints of a type approved in writing by the Grantor.

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

14 ADVERTISING

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

15 EMPLOYMENT OF STAFF

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

16 HEALTH AND SAFETY

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

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

17 TEMPORARY SUSPENSION

- 17.1 The Grantor may temporarily suspend this Document if, in the opinion of the Grantor, there is a temporary risk to public safety or the safety of the Department's staff or the safety of other Concessionaires whether arising from natural events such as earthquake, land slip, volcanic activity, or flood or whether arising in any other way including the activities of the Concessionaire, its employees, clients or invitees.
- 17.2 If in the opinion of the Grantor the activities of the Concessionaire, its employees, clients or invitees are having or may have an adverse effect on the environment and the Grantor is of the opinion that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, the Grantor may suspend this Concession until the Concessionaire remedies, avoids or mitigates the adverse impact to the satisfaction of the Grantor.
- 17.3 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 17.1 and 17.2 and also while the Grantor investigates any potential breach or possible offence by the Concessionaire whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.
- 17.4 The word "investigates" in clause 17.3 includes the laying of charges and awaiting the decision of the Court.
- 17.5 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 17.6 The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under clause 17 including loss of profits.

18 ASSIGNMENT

- 18.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may in the Grantor's discretion decline any application for consent under this clause.
- 18.2 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.
- 18.3 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document.
- 18.4 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 18.5 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

19 TERMINATION

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

- Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
- (f) there is, in the opinion of the Grantor, a permanent risk to public safety or the environment whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Document on the part of the Concessionaire.
- 19.2 If the Grantor terminates the Concession under this clause all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.
- 19.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

20 GRANTOR MAY REMEDY CONCESSIONAIRE'S DEFAULT

- 20.1 The Grantor may elect to remedy at any time without notice any default by the Concessionaire under this Concession.
- 20.2 The Concessionaire must pay to the Grantor forthwith on demand all reasonable costs and expenses incurred by the Grantor, including legal costs and expenses as between solicitor and client, in remedying such default.

21 GRANTOR'S DIRECTIONS

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

22 POWERS, RIGHTS AND AUTHORITIES

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

23 INDEMNITIES AND INSURANCE

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

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

24 ENVIRONMENTAL MONITORING AND LAND REHABILITATION

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

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

25 EXPIRY OF LICENCE

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

26 FORCE MAJEURE

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

27 DISPUTE RESOLUTION AND ARBITRATION

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

parties will, without prejudice to any other rights or entitlements they may have under this Document or otherwise, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.

- 27.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 27.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 27.4 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 27.5 The arbitrator must include in the arbitration award reasons for the determination.

28 NOTICES

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

29 COSTS

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

30 RELATIONSHIP OF PARTIES

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

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

31 OFFENCES

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

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

32 SEVERABILITY

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

33 ENTIRE UNDERSTANDING

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

34 VARIATIONS

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

34.2 The Grantor may vary any conditions of this Document if the variation is necessary:

- (a) to deal with significant adverse effects of the Activity that were not reasonably foreseeable at the time this Licence was granted; or
- (b) because the information made available to the Grantor by the Concessionaire for the purposes of the Concessionaire's application contained inaccuracies which materially influenced the decision to grant the Licence and the effects of the Activity permitted by this Document require more appropriate conditions.

34.3 The Concessionaire is to be bound by every such variation.

35.0 GUARANTEE

35.1 If the Grantor notifies the Concessionaire in writing that the Grantor requires this Document to be guaranteed by a third party the following clauses are to apply.

35.2 Subject to clause 35.1 and in consideration of the Grantor entering into this Document at the Guarantor's request the Guarantor:

- (a) guarantees payment of the Concession Fee and the performance by the Concessionaire of the covenants in this Document; and
- (b) indemnifies the Grantor against any loss the Grantor might suffer should the Document be lawfully disclaimed or abandoned by any liquidator, receiver or other persons.

35.2 Subject to clause 35.1 the Guarantor covenants with the Grantor that:

- (a) no release, delay, or other indulgence given by the Grantor to the Concessionaire to the Concessionaire's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety is to release, prejudice, or affect the liability of the Guarantor as a Guarantor or as indemnifier;
- (b) as between the Guarantor and Grantor the Guarantor may, for all purposes, be treated as the Concessionaire and the Grantor is under no obligation to take proceedings against the Concessionaire before taking proceedings against the Guarantor;
- (c) the guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Concession Fee;
- (d) any assignment of this Document and any Concession Fee Review in accordance with this Document are not to release the Guarantor from liability;
- (e) should there be more than one Guarantor the liability of each Guarantor under this Guarantee is to be joint and several.

36 CO-SITING

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

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

Witness (signature) _____

Witness (print name) _____

Occupation _____

Address _____

Signed by :

as Concessionaire
in the presence of :

Witness (signature) _____

Witness (print name) _____

Occupation _____

Address _____

Signed by :

as Guarantor
in the presence of :

Witness (signature) _____

Witness (print name) :

Occupation :

Address :

SCHEDULE 1

1. **Land:** *“Part of the area marked CA1 on the Proposed Designations Plan” Area is also outlined in red in Schedule 5.* (see definition of Land in clause 1.1)
2. **Concession Activity:** (see definition of Concession Activity in clause 1.1)
The Grantor will allow the Concessionaire to conduct the following commercial recreation activities; siting of base camp buildings, guided snow mobile tours, snow mobile and snowcat borne skiing and landing of helicopters, and ski planes, between the period 1 June and 31 October in each year, except that the activity must cease by the 30th day of September 2010.
3. **Term:** commencing on (as soon as practical following completion of tenure review) and expiring on 30 September 2010, with no right of renewal. (see clause 3.1)
4. **Concession Fee:** \$125 plus GST lump sum fee per year. (see clause 5.1)
5. **Concession Fee Payment Date:** Before 30 June (see clause 5.1)
6. **Penalty Interest Rate:** (see clause 5.2)
Double the Grantor’s bank’s current highest 90 day bank bill buy rate
7. **Concession Fee Review Date:**
At three yearly intervals from commencement date.
8. **Public Liability General Indemnity Cover:** (see clause 23.3)
for \$1,000,000
9. **Public Liability Forest & Rural Fire Extension:** (see clause 23.3)
for \$1,000,000
10. **Statutory Liability:** (see clause 23.3)
Amount: Nil
- 11(a) **Other Types of Insurance:** not applicable (see clause 23.3)
- 11(b) **Amounts Insured for Other Types of Insurances:** not applicable (see clause 23.3)
12. **Address for Notices:** (see clause 28)
 - (a) Grantor: c/o Box 5244,
DUNEDIN

(b) Concessionaire: Craigroy PO Box 12
CROMWELL
Fax 0-3-445 0843

SCHEDULE 2

Community Service Contribution

Nil

SCHEDULE 3

Special Conditions

1. The Concessionaire will ensure the company's employees and clients adhere to the New Zealand Environmental Care Code and Water Care Code attached to this Permit.
2. At the end of each year the Concessionaire shall forward to the Conservator, Department of Conservation Dunedin, an annual activity report showing the number of clients guided on full day and half day trips during the last year and shall at the same time forward the Concession Fee payable.
3. The annual activity report will record, in the form shown in Schedule 4;
 - 3.1 the dates of all trips
 - 3.2 the number of persons guided and the numbers of snow mobiles and/or snowcats vehicles used
 - 3.3 the locations visited
 - 3.4 the number of helicopter landings and their location together with the route taken and time on the ground.
4. The Concessionaire shall indemnify the Grantor, against all and any action claim injury damage or loss which may arise as a result of the granting of this licence.
5. The Grantor reserves the right to apply restrictions on the Concession Activity, or withdraw all or part of the Land or Concession Activity approved, if in the sole opinion of the Grantor the Concession Activity granted is having, or may have, an adverse effect on the physical or social environment and the effect cannot be avoided, remedied or mitigated to an extent satisfactory to the Grantor. The concessionaire shall not be entitled to any compensation in the event of such action being taken.
6. The Grantor shall be entitled to send any officer of the Department of Conservation free of charge on the Concession Activity during the term of this licence for the purpose of assessing the impact of the Concession Activity, and compliance with the terms and conditions of the licence.
7. The Grantor may require a monitoring programme to be implemented that records the social and environmental effects of the activity. The monitoring programme is to be approved by the Grantor. All costs associated with the monitoring programme are to be met by the concessionaire.
8. A maximum of six return flights to the ski plane landing zone (as marked in schedule 5) per day is permitted (all of those flights may be by fixed wing ski planes but no more than four of those six daily return flights may be by helicopter). The maximum number of persons brought to the

site on each flight (excluding the pilot) is nine, with the maximum number of persons flown in a single day being 54.

9. No landings will occur within 500 metres of any recreational party not associated with the Concession Activity.
10. No ski planes are permitted to land except:
 - (a) At the ski plane landing zone situated on Carrick Run and located 3.5 kilometres from the Cairnmuir Department of Conservation hut; and
 - (b) The Concessionaire shall ensure that a person on the ground is responsible for testing snow conditions for landing and to alert pilots to the suitability of these conditions prior to the departure of any ski plane flights coming to the site; and
 - (c) Ski planes are to land from the south-south west, south-west or south, shall turn on the ground and shall depart from the ski plane landing zone towards the south-south-west, south-west or south.
11. The Grantor acknowledges that the concessionaire holds recreation permits over Glenaray and Nokamai pastoral leases and also holds a concession license over conservation land (formerly part of the Craigroy pastoral lease) adjoining the land described in clause 1 of schedule one of this concession. Having regard to the limits imposed on both the recreation permits and the concession license for the adjoining conservation land, the limits on the exercise of the concession activity under this concession are as follows;
 - (a) The maximum number of snowmobiles operating at any one time on the land described in clause 1 of schedule one for the purposes of snowmobile touring, sightseeing, ski touring and skiing activities is 13. Within that limit, snowmobiles and snowmobile tours are permitted on the following basis;
 - (b) A maximum of four snowmobile tours per day is permitted. The maximum party size for each tour is 10 snowmobiles except that where snowmobiles are being used for the purpose of cross country skiing, the maximum party size for each tour is 9 snowmobiles.
 - (c) The maximum number of snowcats operating at any one time, in addition to the maximum number of snowmobiles, is 2.
12. Snowmobile and snowcat trails are to be marked.
13. The Concessionaire must not carry out the permitted activities on any area with a snow depth of less than 300mm of compacted snow.
14. The sound emitted by any snowmobile when cruising shall not exceed 80dBA when measured at a distance of 15 metres and the sound emitted by any snowcat shall not exceed 60dBA at a distance of 100 metres.
15. Before the concession activity can commence the Concessionaire must provide the Grantor with an independently audited safety plan which meets the requirements of clause 16.4, 16.5 and

16.6 of the general conditions. The Concessionaire shall keep this document in force during the term of this concession.

17. The Concessionaire shall ensure that all cooking and heating requirements are by gas or liquid fuel only.
18. In the event that the Concessionaire ceases business or upon expiry of the concession the Concessionaire is required to remove all structures including foundations, septic tanks and any other underground structures and are to reinstate the surface of the land by grading and levelling (if required) and transplanting tussocks onto any bare ground in numbers sufficient to re-establish a natural cover.

SCHEDULE 4

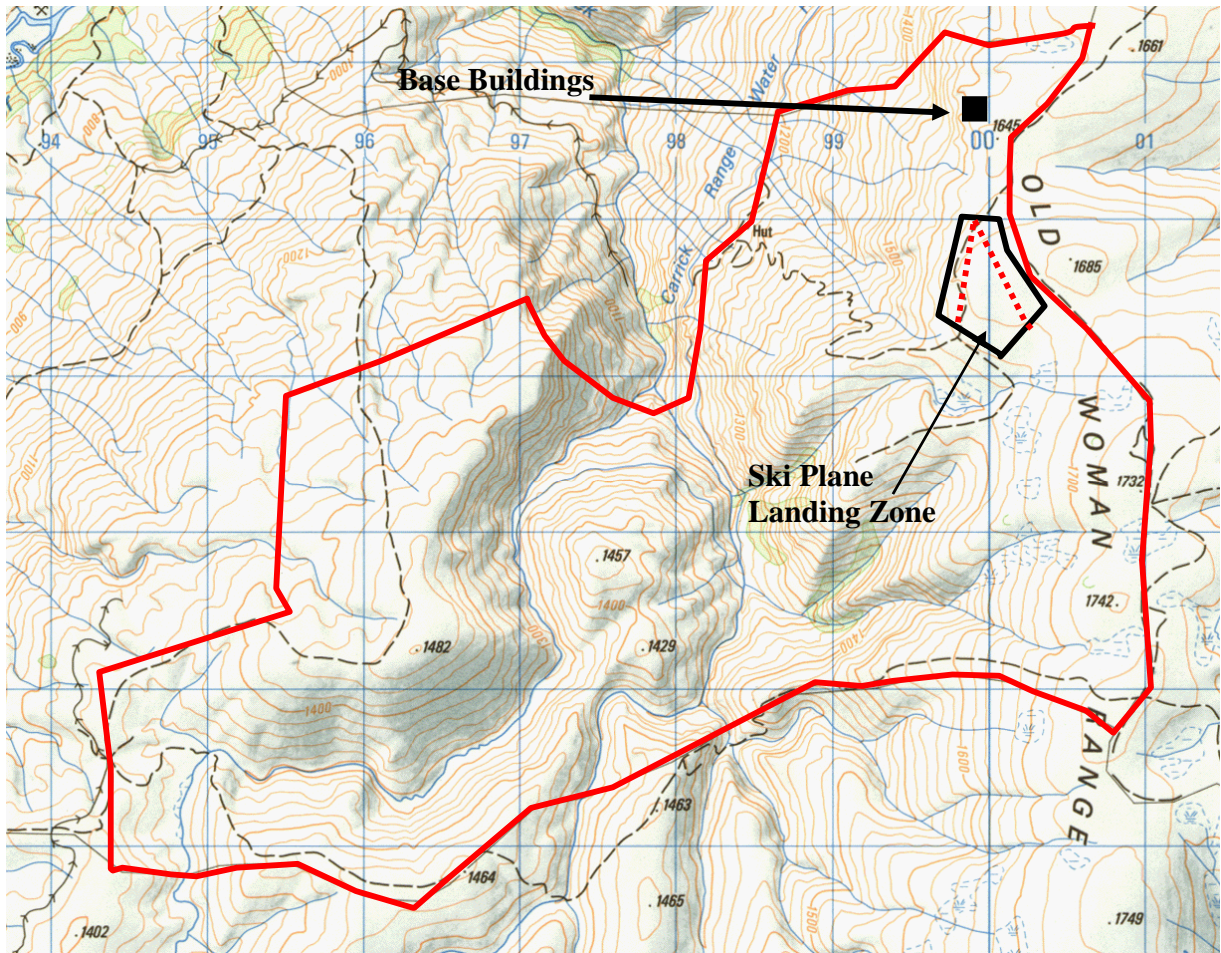
MONTHLY ACTIVITY RETURN FORM

Operator: RW & SL Brown
Concession No: PAC
Guide Snow mobile tours, snow mobile and snowcat borne skiing and helicopter landings.

DATE	TIME	NO. OF SNOWMOBILES / SNOWCATS	LOCATION	NO. OF AIRCRAFT LANDINGS (and type)	LOCATION	TIME ON GROUND	SHUT DOWN (Y/N)	NO. OF PERSONS LANDED AND GUIDED	COMMENTS (ground parties seen; the reason for variation if landing wasn't on exact site (within 500m) etc)

SCHEDULE 5

Concession Area



Appendix 6: Copy of easement 885721/2 in favour of the Carrick Irrigation Company

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Approved by the Registrar-General of Land, Wellington, No. B319989.1/93

Memorandum of Transfer

~~(herein called "the Transferor") being registered as proprietor of an estate~~

~~subject however to such encumbrances, liens and interests as are notified by memoranda underwritten or endorsed hereon in the piece or pieces of land situated in the Land District of containing more or less being~~

17C1734

1.0 BACKGROUND

1.1 The Carrick Irrigation Company Limited at Bannockburn (called "the Irrigation Company") has purchased the Bannockburn Irrigation Scheme pursuant to a Sale and Purchase Agreement between MURRAY THOMAS DENNISON, RICHARD STEVEN CLARK and EDGAR PARCELL all of Bannockburn Farmers as agents for the Irrigation Company then yet to be incorporated and DAVID FRANCIS CAYGILL, Minister of Finance and COLIN JAMES MOYLE, Minister of Agriculture on behalf of the Crown, dated 18 December 1989 and subsequently adopted by the Irrigation Company as the Purchaser. The Bannockburn Irrigation Scheme (called "the Irrigation Scheme") is more particularly described in the said Sale and Purchase Agreement.

1.2 HER MAJESTY THE QUEEN acting by and through the Commissioner of Crown Lands (called "the Crown") is the proprietor of that land containing 9,250.0534 hectares more or less being Sections 3, 27, 28, 29, 30, 31 and 34 Block III Nevis Survey District, Section 1, Block III and Sections 9, 10, and 11, Block IV Bannockburn Survey District, Run 339E Nevis, Lorn and Lornside Survey Districts and Part Run 330B Nevis and Bannockburn Survey Districts (part of the said land and adjoining Crown land now known as Sections 3, 4, 5 and 6, Block III Bannockburn Survey District and Sections 13, 14 and 15, Block IV Bannockburn Survey District) subject to Pastoral Lease Number P56 comprised in Register Book Volume 338 Folio 81 (Otago Land Registry). (called "the Crown's land").

1.3 DONALD WILLIAM CLARK of Bannockburn Farmer and MARION ISABELLE CLARK of Bannockburn Farmer (called "the Lessee") are registered as the lessee of the said Pastoral Lease.

1.4 The Minister of Agriculture (called "the Minister") had the right immediately before the date of sale of the Irrigation Scheme to the Irrigation Company,

ds
M I Clark
D W Clark

-2-

pursuant to Section 223 of the Public Works Act 1981 or the corresponding provisions of any former enactment relating to irrigation, to enter, use, occupy, carry out work on, store water on, or convey water over the Crown's land and in the manner, detailed in this Instrument, for the purposes of the Irrigation Scheme.

- 1.5 Section 4 of the Irrigation Schemes Act 1990 provides the statutory mechanism to transfer from the Landowners to the Irrigation Company, the same easement rights as the Crown previously had over the Crown's land, and the Crown, lessee and the Irrigation Company have agreed to the transfer of these easement rights to the Irrigation Company.

2.0 GRANT OF EASEMENT

- 2.1 The Crown pursuant to section 60 of the Land Act 1948 and section 4 of the Irrigation Schemes Act 1990 TRANSFERS AND GRANTS to the Irrigation Company as an easement in gross forever, the right to irrigation works (in this instrument referred to as "water works") over the said Crown's land comprising of the following rights:

- (a) The right to convey water marked "A-B" on the plan No.1 annexed and marked "A-B", "C-D", "E-F-G", "F-H", "I-J", "A-K", "P-Q" and "Q-R" on plan No.5 annexed.

- ~~(b) The right of access marked "C-D-E" and "D-F" on the plan No.1 annexed and marked "L-M-N" and "M-O" on the plan No.5 annexed.~~

- (c) The right of support for a weir marked "A" on the plan No.1 annexed.

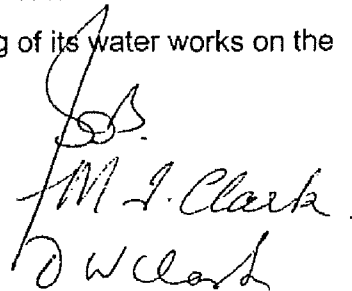
M. J. Clark
D. W. Clark

which rights shall have attached to them the rights, powers and obligations detailed in the following clause 3.0.

3.0 RIGHTS AND POWERS RELATING TO THE GRANT OF EASEMENT

3.1 The Irrigation Company together with any person (as defined in Section 4 of the Acts Interpretation Act 1924) acting with the authority, or on the instructions, of the Irrigation Company and together with all tools, implements, machinery, vehicles, equipment and materials of whatsoever nature shall have the uninterrupted and unrestricted rights:

- (a) To situate and maintain water works including the weir at the stipulated position on the Crown's land, and the rights of access and rights to convey water unimpeded along the stipulated course on the Crown's land, shown on the plan attached and for this purpose to have the right to use, have access over, occupy, construct, maintain, reconstruct and carry out such works (in this Instrument called "water works") as the Irrigation Company considers necessary or desirable on the Crown's land along the stipulated course and at the stipulated position including, but without limitation, structures and works for; the weir, intakes, conveying water, water flow control and supply, turnouts, monitoring and discharges.
- (b) To monitor and control its waterflows and the water source flows and to carry out viewing, surveillance and monitoring of its water works on the Crown's land.


M. I. Clark
D W Clark

(c) Generally and without restriction to access ~~only over the positions marked on the attached plans, to enter~~ the Crown's land and to have access across the Crown's land by the most practicable route.

- (d) To erect and maintain such fixtures or markers as may be necessary to indicate the location of any pipeline and associated works provided that such fixtures or markers do not interfere with the reasonable management of the Crown's land.
- (e) To generally do anything necessary or convenient for the full exercise of the rights under this Instrument and to give full effect to the purposes of this Instrument.

It being acknowledged that the words "convey water" and "conveying water" include "bye-wash water" and "bye-washing water".

3.2 In exercising its rights and powers under this Instrument, the Irrigation Company shall:

- (a) Cause as little disruption and disturbance to the occupation and enjoyment by the Crown and the lessee of the Crown's land, as is reasonably possible.
- (b) Cause as little damage to the Crown's land and the fixtures on it and the surface of it as is reasonably possible.
- (c) After exercising its rights and powers, restore the Crown's land and the fixtures on it as nearly as is reasonably possible to its former condition but as shall be reasonable in the circumstances having regard to the

M. J. Clark
D. W. Clark

economic and amenity values to the Crown and the lessee of the land and the fixtures affected.

- 3.3 (a) When the Irrigation Company requires entry with machinery on the Crown's land to carry out maintenance or construction works, it shall take reasonable steps to give to the lessee or occupier of the land not less than 24 hours notice by direct personal contact, ordinary letter, facsimile transmission, or telephone prior to such entry and works being undertaken, unless there is an emergency and in which case no notice shall be required.
- (b) If the lessee or occupier has received such notice the lessee or occupier shall notify the Irrigation Company, prior to the entry and work being undertaken, of the presence of pipes or other underground facilities in the Crown's land and if the lessee or occupier fails to notify the Irrigation Company then the Irrigation Company will not be liable for any damage it may cause to such underground pipes or underground facilities.
- 3.4 (a) It is acknowledged that the Irrigation Company shall not fence the boundaries of the easements.
- (b) The Crown and lessee shall not do, or permit to be done, anything, including planting trees or constructing works or buildings, which will prevent or interfere with the free passage of water along the stipulated course or prevent or interfere with the Irrigation Company's full rights of access and full use by it of its rights created by this Instrument and shall not interfere, or permit any interference, or allow trees, tree roots or other vegetation growing on or from the landowners land or stock pastured on the crown's land to interfere with the support, structure or integrity of the Irrigation Company's water works.

M. J. Clark
D. W. Clark

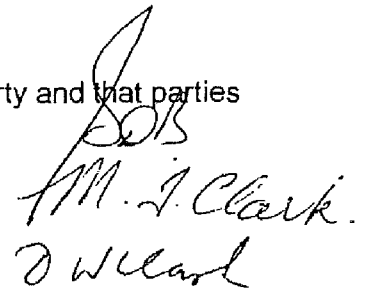
(c) Without limiting the extent of this clause 3.4, the Crown and lessee shall not, without the prior written consent of the Company, plant or permit to be planted trees or construct or permit to be constructed works or buildings within 4 metres of the centre line of a pipe or within 3 metres from the edge of a water race or other water works.

3.5 The rights and powers contained in paragraphs ~~4~~ 2 and 5 of the Seventh Schedule to the Land Transfer Act 1952 shall apply except insofar as they are varied by this instrument and with the deletion from both paragraphs 2 and 5 of the words "(in common with the grantor, his tenants and any other person lawfully entitled so to do)".

3.6 Any right of action or remedy which shall at any time after the date of this instrument accrue to the irrigation company because of any breach or non-observance by or on behalf of the Lessee of any of the covenants expressed or implied in this instrument and to be observed or performed by the Crown, shall be enforced only against the registered proprietor for the time being of the Pastoral Lease in respect of which such breach or non-observance shall occur or against the lessee of the Pastoral Lease at the time of such occurrence aforesaid but to the intent that any lessee of the Pastoral Lease shall only be liable for acts or defaults occurring while that person is so registered.

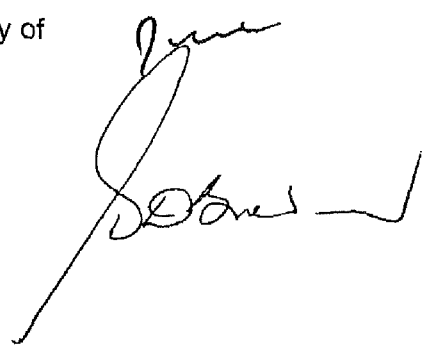
3.7 The lessee agrees to the terms of this instrument and is bound by them to the extent that the terms apply to the lessee and the lessee consents, without payment of compensation, to the terms of this instrument.

3.8 A reference to any party to this instrument includes that party and that parties transferees and successors.


M. J. Clark
D. W. Clark

Dated the 28th day of June 1995

SIGNED by and on behalf)
of HER MAJESTY THE)
QUEEN by the)
Commissioner of Crown)
Lands as landowner)
in the presence of:)



Witness Helen Hance

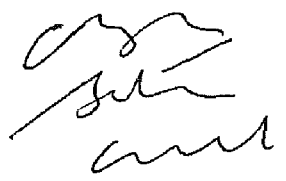
Occupation Administration Consultant

Address Wellington

SIGNED by the CARRICK)
IRRIGATION COMPANY) Director
LIMITED)



Director



D. W. Clark
M. J. Clark

SIGNED by DONALD

) *D.W. Clark*

WILLIAM CLARK and

)

MARION ISABELLE CLARK

) *M. I. Clark*

as lessee in the presence of:)

Witness *Al Brown J.P.*

Occupation *Farmer*

Address *Comwell*

[Handwritten signature]

SCHEDULE OF EASEMENTS				CT	Owner	Plan No
Shown	Purpose	Servient Tenement	Grantee			
A-B	RIGHT TO CONVEY WATER	RUN 339E LORNSIDE S.D BLK III, V NEVIS S.D	CARRICK IRR Co. Ltd	388/81	D.W & M.I CLARK	1
C-D-E, D-F	RIGHT OF ACCESS	" " "	" "	" "	" "	"
(A)	RIGHT OF SUPPORT	" " "	" "	" "	" "	"

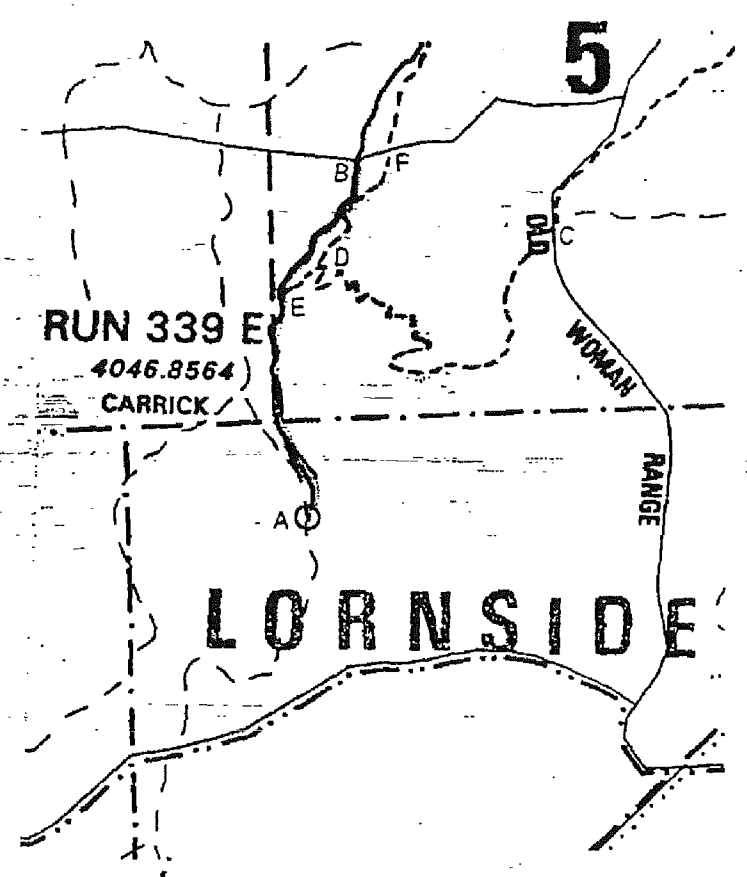


DIAGRAM OF IRRIGATION RIGHT
 PREPARED PURSUANT TO THE
 IRRIGATION SCHEMES ACT 1990
 CARRICK IRRIGATION Co. Ltd

M.I. Clark
D.W. Clark

PREPARED BY C. HUGHES & ASSOCIATES SURVEYING CONSULTANTS CROMWELL	Scale 1:50 000
	Date 5/94
	Job No 3665

SCHEDULE OF EASEMENTS				CT	Owner	Plan N ^o
Shown	Purpose	Servient Tenement	Grantee			
A-B, C-D E-F-G, F-H I-J, A-K, P-Q, Q-R	RIGHT TO CONVEY WATER	RUN 330B BLK II, IV NEVIS S.D BLK II, III BANNOCKBURN SD	CARRICK IRR Co. Ltd	338/81	D.W & M.I CLARK	5
L-M, N, M-G	RIGHT OF ACCESS	" " "	" " "	" "	" " "	" "

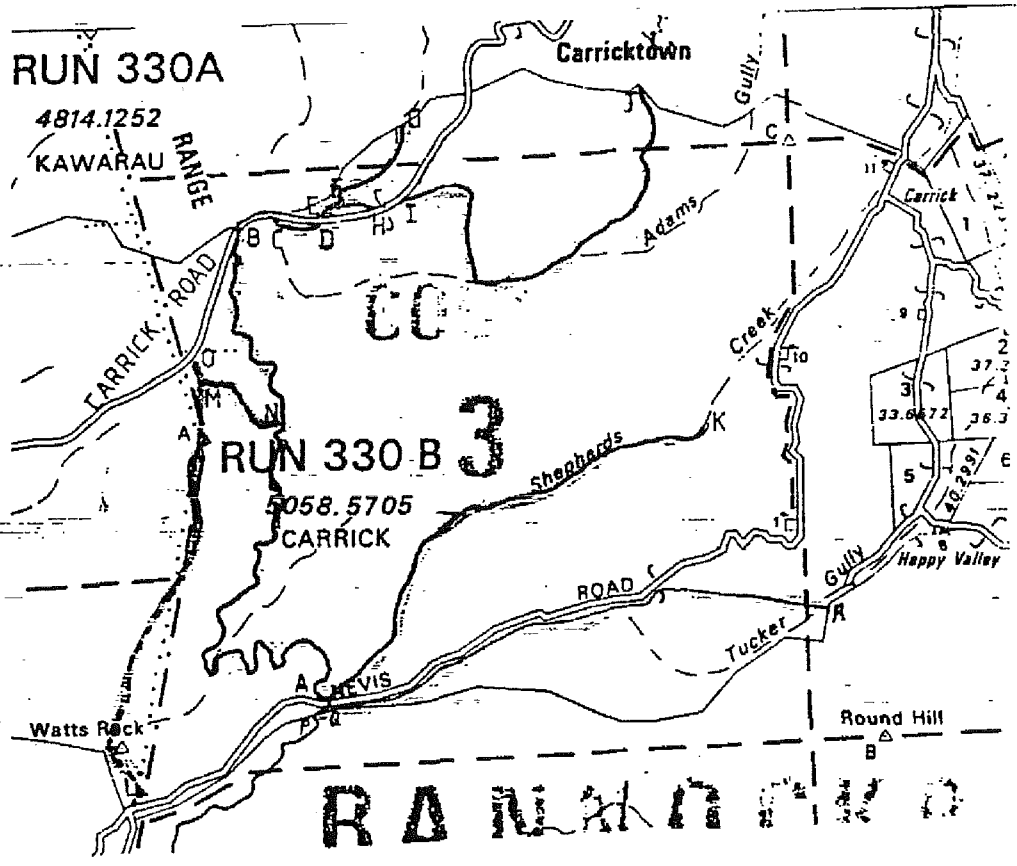


DIAGRAM OF IRRIGATION RIGHT
PREPARED PURSUANT TO THE
IRRIGATION SCHEMES ACT 1990

M.I. Clark
D.W. Clark
DOB

CARRICK IRRIGATION Co. Ltd

PREPARED BY C. HUGHES & ASSOCIATES SURVEYING CONSULTANTS CROMWELL	Scale 1:50 000
	Date 5/94
	Job N ^o 3665

In Consideration of the sum of _____

paid to the Transferor by

(herein called "the Transferee") the receipt of which sum is hereby acknowledged **Hereby Transfers** to the Transferee all the Transferor's estate and interest in the said piece or pieces of land

In witness whereof these presents have been executed this _____ day of _____ 19____

Signed by the Transferor

(by the affixing of its common seal)

~~in the presence of:~~

MEMORANDUM OF TRANSFER
MEMENTS IN GROSS FOR IRRIGATION
WORKS

Correct for the purposes of the Land Transfer Act 1952

170/734
170/734

GARRICK IRRIGATION COMPANY Transferor
LIMITED

SOLICITOR FOR THE TRANSFEEE

I hereby certify that this transaction does not contravene the provisions of Part IIA of the Land Settlement Promotion and Land Acquisition Act 1952.

SOLICITOR FOR THE TRANSFEEE

Particulars entered in the Register as shown herein on the date and at the time endorsed below.

I hereby certify for the purposes of the Stamp and Cheque Duties Act 1971 that no conveyance duty is payable on this instrument by reason of the application of Section 24(1) of the Act and that the provisions of subsection (2) of that section do not apply.

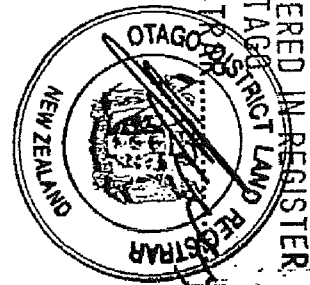
Assistant / District Land Registrar of the

District of OTAGO

SOLICITOR FOR THE TRANSFEEE

CHECKETTS MCKAY
LAWYERS
CENTRAL OTAGO

12.11.30 JUN 95 885721/2
PARTICULARS ENTERED IN REGISTER
LAND REGISTRY OTAGO
ASST. LAND REGISTRAR
330/81.



170/734