

# **Crown Pastoral Land Tenure Review**

**Lease name: DOUBLE HILL**

**Lease number: PC 127**

## **Substantive Proposal**

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

October

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EXECUTION  
COPY

## Substantive Proposal

relating to

Tenure Review of the Double Hill Pastoral Lease under  
the Crown Pastoral Land Act 1998 -

Commissioner of Crown Lands acting under the  
Crown Pastoral Land Act 1998

(the Commissioner)

and

Double Hill Station Limited

(the Holder)

Date 6th May 2003

### *Important*

*It is recommended that the Holder seek legal advice  
regarding the effect and consequences of this  
Substantive Proposal and the accompanying documents.*

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**Executive Summary for the Substantive Proposal for the Tenure Review of the Double Hill Pastoral Lease under the Crown Pastoral Land Act 1998.**

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**1. Putting of Substantive Proposal**

In accordance with the Tenure Review process currently being undertaken by the Commissioner of Crown Lands (the **Commissioner**), the Commissioner puts this Substantive Proposal to the holder of the Double Hill Pastoral Lease, being Double Hill Station Limited (the **Holder**).

**2. Substantive Proposal under Crown Pastoral Land Act**

This Substantive Proposal is put under the provisions of the Crown Pastoral Land Act 1998 (the **Act**). It takes into account the objects of Part 2 of the Act. This Substantive Proposal relates to the land held under the Holder's Crown pastoral lease granted under the Land Act 1948 (the **Lease Land**)

**3. Synopsis of the Substantive Proposal for the Double Hill Pastoral Lease**

Under this Substantive Proposal the Commissioner proposes the following designations in respect of the Lease Land:

- 4718 hectares (approximately) to be designated as land to be restored to full Crown ownership and control under section 35(2)(a)(i) of the Act as conservation area;
- 179 hectares (approximately) to be designated as land to be restored to Crown control under section 35(2)(b)(i) and section 36(1)(a) of the Act, subject to an easement concession in favour of the Holder as outlined in this Substantive Proposal; and
- 2913 hectares (approximately) to be designated as land to be disposed of by freehold disposal to the Holder under section 35(3) of the Act, subject to Part IVA of the Conservation Act 1987, section 11 of the Crown Minerals Act 1991, and the Easements as outlined in this Substantive Proposal.

**4. Separate draft Notice**

Accompanying, but not forming part of, this Substantive Proposal is a Notice that sets out the proposed amounts that will be payable under this Substantive Proposal.

**5. Holder's Acceptance**

This Substantive Proposal, when accepted by the Holder, will constitute a contract between the Holder and the Commissioner.

To accept this Substantive Proposal the Holder must:

- sign two "Execution Copies" of this Substantive Proposal where provided in the Execution Section; and
- obtain and have endorsed in the Execution Section the written consent of all persons having an interest in the Lease Land subject to the Tenure Review, as required by clause 12.1 of this Substantive Proposal.

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An original signed Execution Copy of this Substantive Proposal must be returned to the Commissioner. The Holder's acceptance of this Substantive Proposal will be irrevocable.

The Holder is to provide a Solicitor's Certificate (in a form satisfactory to the Commissioner) from the Holder's solicitors certifying as to certain matters relating to the Holder's acceptance of this Substantive Proposal.

The original signed Execution Copy of this Substantive Proposal and the completed Solicitor's Certificate is to be delivered by courier or by post to the Commissioner at the following address:

Commissioner of Crown Lands  
Land Information New Zealand  
Lambton House  
160 Lambton Quay  
Private Box 5501  
WELLINGTON

Attention: Jean Greedy

If the Commissioner does not receive acceptance of this Substantive Proposal within three months of 6<sup>th</sup> May 2003, the Holder will, under the Act, be deemed to have rejected this Substantive Proposal.

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*Sept 2003*  
*[Signature]*

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This Substantive Proposal is made on 6<sup>th</sup> May 2003

between (1) Commissioner of Crown Lands acting under the Crown Pastoral Land Act 1998 (as the Commissioner)

and (2) Double Hill Station Limited (as the Holder).

## Introduction

- A. The Holder is the lessee under the Lease.
- B. On the written invitation of the Holder, the Commissioner is undertaking Tenure Review of the Lease Land. The Tenure Review process comprises three stages.
- C. On 8th February 2001 the Commissioner provided the Holder with a Draft Preliminary Proposal for consultation purposes. The Holder returned a completed Holder's Acknowledgement dated 27 September 2001 relating to the Draft Preliminary Proposal to the Commissioner. This completed stage one of the Tenure Review.
- D. On 10 May 2002, the Commissioner put the Preliminary Proposal to the Holder under section 34 of the Act. On the 29 May 2002, the Holder returned a completed Holder's Acknowledgement relating to the Preliminary Proposal. This completed stage two of the Tenure Review.
- E. The Commissioner puts this Substantive Proposal to the Holder as Stage Three of the Tenure Review.

## It is declared

### 1. Interpretation

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#### 1.1 Definitions

In this Substantive 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 Schedule One Land and the Schedule Two Land, as specified in the Notice;

**Commissioner's GST Date** means the earlier of Settlement Date and 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 Substantive Proposal;

**Conservation Act** means the Conservation Act 1987;

**Crown** means the Crown as defined in section 2 of the Public Finance Act 1989;

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**Default GST** means any additional GST, penalty or other sum levied against either the Commissioner or the Holder under the GST Act or the Tax Administration Act 1994 by reason of either the Commissioner or the Holder failing to pay GST as required by the Substantive 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 (in each instance, as the case may be);

**Default Rate** means the floating rate agreement mid-point thirty day bank bill rate as at 10.45 a.m. on Reuters' page BKBM on the date on which the relevant payment becomes due and payable plus 500 basis points and compounded monthly;

**Director-General** means the Director-General of Conservation and refers to the Director-General's consultative function under the Act;

**Draft Preliminary Proposal** means the draft of the Preliminary Proposal that the Commissioner provided to the Holder for consultation purposes under the Act on 8<sup>th</sup> February 2001; and includes all schedules, parts, plans, appendices and annexures attached to that draft of the preliminary proposal;

**Substantive Proposal** means this Substantive Proposal a copy of which the Commissioner provided to the Holder for consultation purposes under the Act by letter dated 24<sup>th</sup> February 2003; and includes all schedules, parts, plans, appendices and annexures attached to this Substantive Proposal;

**Easements** means, collectively the:

- (a) Public Access to Conservation Area and Vehicles for Management Purposes Easement;
- (b) Public Access and Vehicles for Management Purposes Easement in Gross;

**Easement Concession** means an easement to provide

- (a) access for the Holder and the Holder's servants, employees, agents, workmen, contractors, licensees and invitees on or accompanied by horses, or by motor vehicle with or without machinery and implements of any kind, farm dogs and farm stock, for farm management purposes over that part of the Lease Land marked route w-x on Plan A, and
- (b) access for stock over that part of the Lease Land being marked b1-b2 on Plan A, for the purpose the watering stock at the waterway adjacent to route b1-b2 on Plan A,

in the form attached as Appendix 4;

**Execution Copies** means the two copies of this Substantive Proposal each labelled "Execution Copy";

**Execution Section** means the section at the end of this Substantive Proposal containing the Commissioner's signature and evidencing the Holder's acceptance of this Substantive Proposal and containing the consent of any person having an interest in the Lease Land;

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

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

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**GST Act** means the Goods and Services Tax Act 1985;

**Holder** means Double Hill Station Limited, being lessee of the Lease Land;

**Holder's Acknowledgement** means, where not inconsistent with the context, the Holder's Acknowledgement that accompanied, but did not form part of, the Draft Preliminary Proposal, and the Preliminary Proposal;

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

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

**Holder's solicitors** means the solicitor, or solicitors, if any, acting for the Holder;

**Lease** means the lease comprised and described in folio number CB9K/1410 (Canterbury Registry) issued under the Land Act 1948, and includes all variations and renewals of that lease;

**Lease Land** means 7810.4328 hectares being Run 334, Double Hill Blocks VIII and XII Whitcombe, I, II, IV, V, VII, VIII and IX Glenrock, I, II, III, V, VI and IX Somers and IV and VIII Heron Survey Districts, being the land comprised and described in folio number CB9K/1410 (Canterbury Land Registry) subject to:

- (a) Mortgage; and
- (b) Land Improvement Agreement 835180;

**Minister** means the Minister of Conservation;

**Mortgage** means mortgage 900556.3(Canterbury Land Registry) registered against the Lease;

**Mortgagee** means The National Bank of New Zealand, the mortgagee under the Mortgage;

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

- (a) the Holder's Consideration;
- (b) the Commissioner's Consideration;

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

**Plan A** means the 2 sheet plan of the Lease Land showing all designations, the Easements and the Easement Concession, which plans are marked "A" and attached as part of Appendix 1;

**Plan B** means the 1 sheet plan of the Lease Land showing the fencelines, which plan is marked "B" and attached as part of Appendix 1;

**Plans** means Plan A and Plan B as attached as Appendix 1;

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**Preliminary Proposal** means the preliminary proposal, that the Commissioner put to the Holder under, and subject to, section 34 of the Act on 10<sup>th</sup> May 2002 and includes all schedules, parts, plans, appendices and annexures attached to the preliminary proposal;

**Public Access and Vehicles for Management Purposes Easement in Gross** means an easement to provide:

- (a) public access for persons on foot, or by motor vehicle, on or accompanied by horses, or by non - motorised vehicle powered by a person or persons, over that part of the Lease Land marked "c-e", "j-k-l-m" and "k-m" on Plan A; and
- (b) access for employees, tenants, agents, workmen and invitees of the Minister on foot or on or accompanied by horses, or by motor vehicles, with or without machinery and implements of any kind, for management purposes, over that part of the Lease Land marked routes "c-e", "j-k-l-m" and "k-m" on Plan A,

in the form attached as Appendix 3;

**Public Access to Conservation Area and Vehicles for Management Purposes Easement** means an easement to provide:

- (a) public access for persons on foot, over that part of the Lease Land marked routes "a-c", "c-d", "f-g-h", "z-y", "a-b" and "n-o" on Plan A, and public access on foot on or accompanied by horses, or by motor vehicle or by non-motorised vehicle powered by a person or persons, over that part of the Lease Land marked route "a-c" on Plan A; and
- (b) access for employees, tenants, agents, workmen and invitees of the Minister on foot or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, for management purposes, over that part of the Lease Land marked routes "f-g-h", "g-i", "a-c-e", "c-d", "z-y", "a-b", "p1-p2" and "n-o" on Plan A,

in the form attached as Appendix 2;

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

**RM Act** means the Resource Management Act 1991;

**Schedule One Land** means 4718 hectares of the Lease Land, marked "1" and outlined in pink on Plan A;

**Schedule Two Land** means 179 hectares of the Lease Land, marked "2" and outlined in blue on Plan A;

**Schedule Three Land** means 2913 hectares of the Lease Land, marked "4" and outlined in green on the Plan A;

**Settlement Date** means the settlement date defined in clause 9.1;

**Solicitor's Certificate** means the certificate provided by the Holder's solicitors addressed to the Commissioner, in a form acceptable to the Commissioner, certifying as to certain matters relating to the Holder's acceptance of this Substantive Proposal;

**Stage Four of the Tenure Review** means the process set out in clause 2;

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**Substantive Proposal** means this substantive proposal that the Commissioner puts to the Holder under, and subject to, section 46 of the Act, and includes all schedules, parts, plans, appendices and annexures attached to this substantive proposal;

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

**Tenure Review** means the tenure review of the Lease Land being undertaken by the Commissioner under Part 2 of the Act;

**Unconditional Date** means the date that the Commissioner receives from the Holder an Execution Copy of this Substantive Proposal signed by the Holder and containing the consents of all persons having an interest in the Lease Land to the Holder's acceptance of this Substantive Proposal which results in the acceptance taking effect under section 60(4) of the Act;

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

### 1.2 Construction of certain references

In this Substantive Proposal, unless inconsistent with the context:

- (a) words importing a gender include all other genders;
- (b) reference to a statute includes reference to all enactments that amend or are passed in substitution for the relevant statute;
- (c) words in the singular number include the plural and vice versa;
- (d) reference to a month means a calendar month;
- (e) 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);
- (f) references to sections, clauses, sub-clauses, parts, annexures, attachments, appendices, schedules, paragraphs and sub-paragraphs are references to such as they appear in this Substantive Proposal and form part of this Substantive Proposal;
- (g) headings are included for ease of reference only and will not affect the construction or interpretation of this Substantive Proposal;
- (h) all monetary amounts are expressed in New Zealand currency;
- (i) 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;
- (j) all references to times are references to times in New Zealand;
- (k) if the Unconditional Date or the Settlement Date falls on a day that is not a working day, the Unconditional Date or the Settlement Date will be the next working day after the day so nominated; and

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- (l) if the Holder comprises more than one person, each of those person's obligations, as Holder, will be both joint and several.

1.3 The illegality, invalidity or unenforceability of any provision in this Substantive Proposal will not affect the legality, validity or enforceability of any other provision.

## 2. Substantive Proposal

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2.1 The Commissioner having:

- (a) considered, under section 47 of the Act:
  - (i) all matters raised by the iwi authority concerned during the consultation on the Preliminary Proposal; and
  - (ii) all written submissions relating to the Preliminary Proposal received by the Commissioner (from any person or organisation) on or before the day specified in the notice given under section 43 of the Act at the address specified in that notice;
- (b) consulted with the Director-General under section 26 of the Act about putting this Substantive Proposal to the Holder;
- (c) obtained the prior written consent of the Minister to this Substantive Proposal; and
- (d) ensured that the Crown has completed all statutory clearance and other actions that the Crown is required to complete in relation to the Lease Land,

put this Substantive Proposal to the Holder under section 46 of the Act.

2.2 Under this Substantive Proposal, the Commissioner designates that the:

- (a) Schedule One Land be restored to full Crown ownership and control as conservation area under section 35(2)(a)(i) of the Act, and the provisions of Schedule One apply to this designation;
- (b) Schedule Two Land be restored to Crown control as conservation area, subject to the Easement Concession, under section 35(2)(b)(i) and section 36(1)(a) of the Act, and the provisions of Schedule Two apply to this designation;
- (c) Schedule Three Land be disposed of to the Holder by freehold disposal under section 35(3) of the Act, subject to:
  - (i) Part IVA of the Conservation Act;
  - (ii) Section 11 of the Crown Minerals Act 1991;
  - (iii) the Easements,

and the provisions of Schedule Three apply to this designation.

2.3 Notwithstanding any other clause and subject to clause 14, the Schedule Three Land to be disposed of in accordance with clause 2.2(c) may be also subject to the provisions of section 114 of the Land Act 1948.

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2.4 This Substantive Proposal is accompanied by a Notice under section 46(4) of the Act.

### 3. Conservation Act

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As required by section 24 of the Conservation Act, the Commissioner has notified the Director-General of the disposition of Crown land contemplated by this Substantive Proposal.

### 4. Acceptance by Holder

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4.1 The Holder may accept this Substantive Proposal by completing the Execution Section at the end of this Substantive Proposal and returning one original signed Execution Copy of this Substantive Proposal to the Commissioner. The original signed Execution Copy of this Substantive Proposal must be delivered by courier or by post to the Commissioner at the following address:

Commissioner of Crown Lands  
Land Information New Zealand  
Lambton House  
160 Lambton Quay  
Private Box 5501  
**Wellington**  
Attention: Jean Greedy

4.2 The Holder must arrange for the Mortgagee and any other person having an interest in the Lease Land to consent to the Holder's acceptance of this Substantive Proposal as required by clause 12.1 of this Substantive Proposal. These consents must be endorsed in the Execution Section of the Execution Copy of this Substantive Proposal that is to be returned to the Commissioner.

4.3 Under section 60(5) of the Act, the Holder's acceptance of this Substantive Proposal is irrevocable and has the effect as an irrevocable authority to, and obligation on, the Commissioner to take the appropriate actions required by Part 2 of the Act. The Holder's acceptance of this Substantive Proposal constitutes a binding contract between the Commissioner and the Holder.

4.4 The Holder must procure the Holder's solicitors to provide the Solicitor's Certificate and the Holder must return the executed Solicitor's Certificate to the Commissioner with the Execution Copy of this Substantive Proposal (signed by the Holder and including the written consents of all the persons referred to in clause 4.2).

4.5 If the Commissioner does not receive the Execution Copy of this Substantive Proposal referred to in clause 4.1 (signed by the Holder and including the written consents of all the persons referred to in clause 4.2) within three months of the Commissioner putting this Substantive Proposal to the Holder, then the Holder is deemed to have rejected this Substantive Proposal.

4.6 The Holder acknowledges that:

- (a) under section 61(4) of the Act, every person who, after the notice referred to in clause 5.2 has been registered, acquires an estate or interest in the Lease Land, will be bound by the Holder's acceptance of this Substantive Proposal to the same extent as the Holder; and

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- (b) under section 61(5) of the Act, if a person acquires an estate or interest in the Lease Land:
  - (i) after the Holder has accepted this Substantive Proposal; and
  - (ii) before the notice referred to in clause 5.2 has been lodged for registration,then Part 2 of the Act has effect as if the Holder had rejected this entire Substantive Proposal.

### 5. Implementation of Substantive Proposal

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- 5.1 If:
- (a) the Holder accepts this Substantive Proposal in accordance with clause 4; and
  - (b) the acceptance has taken effect under section 60(4) of the Act,
- then the parties will proceed to implement this Substantive Proposal in accordance with clauses 5.2 – 5.17.
- 5.2 Under section 61 of the Act, once the Commissioner receives the Execution Copy of this Substantive Proposal completed by the Holder and containing the requisite consents, the Commissioner must sign and forward to the Registrar a written notice of the Holder's acceptance of this Substantive Proposal, describing this Substantive Proposal in general terms.
- 5.3 Under section 61 of the Act, the Registrar must register the notice referred to in clause 5.2 against every instrument of title to the Lease Land to which this Substantive Proposal relates.
- 5.4 Under section 62 of the Act, once the Holder's acceptance of this Substantive Proposal takes effect, the Commissioner must give the Surveyor General written notice of the Holder's acceptance, attaching a copy of this Substantive Proposal.
- 5.5 Under section 62 of the Act, as soon as is practicable after receiving the Commissioner's notice referred to in clause 5.4, the Surveyor General must:
- (a) determine whether any of the Lease Land needs to be surveyed before this Substantive Proposal can be given effect to; and
  - (b) give the Commissioner written notice:
    - (i) of the Lease Land or parts of the Lease Land (including, but not limited to, all Easement and Concession areas) that need to be surveyed; or
    - (ii) that none of the Lease Land needs to be surveyed.
- 5.6 Under section 62 of the Act, if the Commissioner is notified by the Surveyor General that any of the Lease Land needs to be surveyed, the Commissioner is to have it surveyed, and to have a plan or plans of it prepared and approved under the Cadastral Survey Act 2002.
- 5.7 Under section 62 of the Act, once the Commissioner:

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- (a) has complied with clause 5.6; or
- (b) has been notified that none of the Lease Land needs to be surveyed,

the Commissioner must prepare a Final Plan of the Lease Land to which this Substantive Proposal relates, showing the various areas to which it relates, and in respect of each area giving:

- (a) a legal description;
- (b) its designation by this Substantive Proposal; and

submit two copies of the Final Plan to the Surveyor General.

5.8 Under section 63 of the Act, if (and only if) the Surveyor General is satisfied that:

- (a) the boundaries of the various areas shown on the Final Plan submitted under clause 5.7 are, in light of any discovered imprecisions in the boundaries shown or described in the accepted Substantive Proposal concerned, as close as may reasonably practicably be achieved to the boundaries shown or described in this Substantive Proposal; and
- (b) to the extent allowed by the position of the boundaries shown on the Final Plan:
  - (i) the areas they define; and
  - (ii) the designations of those areas,

accurately reflect this Substantive Proposal,

the Surveyor General must sign and date on both copies of the Final Plan a written notice approving it for the purposes of the Act, and return one copy of the Final Plan to the Commissioner.

5.9 Under section 64 of the Act, once the Commissioner receives the approved Final Plan, the Commissioner must lodge the Final Plan and a copy of this Substantive Proposal with the Registrar, and the Registrar must register them against every instrument of title to the Lease Land to which the Final Plan and this Substantive Proposal relate.

5.10 Under sections 65, 66 and 69 of the Act, upon registration of the Final Plan and this Substantive Proposal under section 64 of the Act:

- (a) the Schedule One Land will be restored to full Crown ownership and control as conservation area;
- (b) the Schedule Two Land will be restored to Crown control as conservation area subject to the grant of the Easement Concession to the Holder; and
- (c) subject to clause 5.15, the Commissioner will dispose of the Schedule Three Land to the Holder (subject to the encumbrances specified in paragraph 1.1 of Schedule Three) under the provisions of the Land Act 1948 by requesting that the Surveyor General issue a certificate under section 116 of the Land Act 1948 to the Registrar and that the Registrar issue a certificate of title for the Schedule Three Land in the name of the Holder;

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- 5.11 The Schedule One Land and the Schedule Two Land (subject to the Easement Concession) will vest in the Crown freed and discharged from all mortgages, charges, claims, estates and interests.
- 5.12 The Commissioner will meet the costs for the survey (if any) of the Lease Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Schedule Three Land.
- 5.13 The Lease will remain in force until a certificate of title is issued for the Schedule Three Land, and at this time the Lease will, under section 69(2) of the Act, be deemed to be surrendered in respect of the Lease Land.
- 5.14 Following registration of the Final Plan and this Substantive Proposal, the Commissioner must promptly:
- (a) prepare execution documents for the Easements and the Easement Concession, in the forms attached to this Substantive Proposal and forward the execution documents to the relevant parties to be signed;
  - (b) under section 66 of the Act, give the Minister written notice that the Schedule Two Land has vested in the Crown subject to the granting of the Easement Concession and the Minister must promptly, under this Substantive Proposal, grant the Easement Concession to the Holder by signing and returning to the Commissioner the execution documents for the Easement Concession;
  - (c) under section 80 of the Act, give the Director-General the Easements on the terms and conditions specified in this Substantive Proposal and the Minister must sign the execution copies of the Easements and return these to the Commissioner;
  - (d) sign the execution documents for the Easements; and
  - (e) provide to the Holder and the Holder must sign the execution documents for the Easement Concession; and
  - (f) lodge the documents for the Easements and, at the Commissioner's sole discretion, the Easement Concession for registration at the Canterbury Land Registry once the documents are signed (as the case may be) by the Commissioner, the Holder and the Minister.
- 5.15 Notwithstanding any other provision in this Substantive Proposal, the Commissioner will not request that the Surveyor General issue a certificate under clause 5.10(c) unless and until:
- (a) the Commissioner has received any money payable by the Holder under the Substantive Proposal;
  - (b) the Holder has provided to the Commissioner the duplicate of the Lease (if the Holder has this document) and the Holder has signed and returned to the Commissioner the execution documents for the Easement Concession and any other documents reasonably required by the Commissioner to be signed by the Holder to give effect to this Substantive Proposal; and
  - (c) the Holder has procured the Mortgagee's execution of a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder has executed registrable new mortgage documents and if the Mortgagee holds the duplicate of the Lease, the Holder has procured the Mortgagee to allow the Holder to provide the Lease to the Commissioner and the Holder has provided these documents to the Commissioner.

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- 5.16 Subject to clause 5.15, the Commissioner will lodge the Easements, the discharge of the Mortgage, the duplicate of the Lease, and any new mortgage documents at the Canterbury Land Registry, to be registered against the certificate of title to be issued under the Land Transfer Act 1952 for the Schedule Three Land, so that the certificate of title for the Schedule Three Land will issue subject to the Easements and any new mortgage. The new mortgage will be registered after the Easements are registered.
- 5.17 The Commissioner, may in its sole discretion, lodge the Easement Concession for registration under the Land Act 1948 at the Canterbury Land Registry against the folium on the register of the Schedule Two Land.

### 6. Commissioner's considerations

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- 6.1 Under section 25 of the Act, in acting under Part 2 of the Act, the Commissioner must (to the extent that those matters are applicable), take into account:
- (a) the objects of Part 2 of the Act;
  - (b) the principles of the Treaty of Waitangi; and
  - (c) in acting in relation to land used or intended to be used by the Crown for any particular purpose, that purpose.
- 6.2 Under section 25 of the Act, in acting under Part 2 of the Act in relation to any part of the Lease Land, the Commissioner must take into account the objects of Part 2 of the Act in the light of:
- (a) their application to all of the Lease Land held under the Lease; rather than
  - (b) their application to that part of the Lease Land alone.

### 7. Discontinuance of Tenure Review

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Under section 33 of the Act, at any time before the Holder accepts this Substantive Proposal, in accordance with clause 4, the Commissioner:

- (a) may discontinue the Tenure Review; and
- (b) must discontinue the Tenure Review if asked in writing by the Holder to do so.

### 8. Survey

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- 8.1 All areas of the Lease Land forming part of this Substantive Proposal and delineated on the Plan are approximate and subject to preparation of the Final Plan and, therefore, the measurements of the areas may alter on the Final Plan.
- 8.2 No error, misdescription or amendment of any part of the Lease Land will annul, vary, or derogate from the Draft Preliminary Proposal, the Preliminary Proposal, the Draft Substantive Proposal, this Substantive Proposal, or the Holder's acceptance of this Substantive Proposal.
- 8.3 For the avoidance of doubt, the Holder will not be entitled to cancel or withdraw its acceptance of this Substantive Proposal, nor will the Holder, or any successor in title of the

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Holder or any party with an interest in the Schedule Three Land, be entitled to payment of any compensation, should any area of the Lease Land on the Final Plan have a different measurement to the area specified in this Substantive Proposal.

8.4 The Commissioner does not warrant that:

- (a) any existing fence is erected on; or
- (b) any new fence to be erected will be on;

any boundaries of the Lease Land or any part of the Lease Land as outlined on the Plans.

## 9. Settlement

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9.1 The Settlement Date for the disposal of the Schedule Three Land to the Holder by freehold disposal will be the day that is five working days following the day that the Final Plan and a copy of this Substantive Proposal are registered at the Canterbury Land Registry under section 64 of the Act.

9.2 Notwithstanding when Settlement Date occurs, until a certificate of title issues for the Schedule Three Land, the Holder will duly and punctually comply with all obligations on its part under the Lease, and the Lease will remain in full force and effect.

9.3

- (a) Rent paid or payable under the Lease for the Schedule Three Land will be apportioned on the Settlement Date as at the date that a certificate of title issues for the Schedule Three Land and either deducted from or added to (as the case may be) the amount required to settle.
- (b) Rent payable under the Lease for the Schedule Three Land from the Settlement Date to the date a certificate of title issues for the Schedule Three Land shall bear the same proportion to the total rent payable under the Lease as the Schedule Three Land area bears to the total area of the Lease Land.
- (c) Any apportionments for rent for the Schedule Three Land for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Three Land will be estimated by the Commissioner in its settlement statement. Following the date that a certificate of title issues for the Schedule Three Land, the Commissioner will undertake a final apportionment and either the Commissioner will refund to the Holder, or the Holder will pay to the Commissioner any additional amounts due because of the final apportionment.

9.4 Rent paid or payable under the Lease for the Schedule One Land and the Schedule Two Land will be apportioned (on a pro rata basis) 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.

9.5 (a) All rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Schedule Three Land will, unless otherwise agreed by the parties, be apportioned on the Settlement Date as at the date that a certificate of title issues for the Schedule Three Land.

(b) The rates, levies, incomings, outgoings and other charges described in this clause 9.5 payable in respect of the Schedule Three Land from the Settlement Date to the date a certificate of title issues for the Schedule Three Land shall bear the same proportion to the total charges payable in respect of the Lease Land as the area of the Schedule Three Land bears to the total area of the Lease Land. The appropriate payments, if

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any, will be made on the Settlement Date by the Commissioner and the Holder, as the case may be.

- (c) Any apportionments for rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Schedule Three Land for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Three Land will be estimated by the Commissioner in its settlement statement. Following the date that a certificate of title issues for the Schedule Three Land, the Commissioner will undertake a final apportionment and either the Commissioner will refund to the Holder, or the Holder will pay to the Commissioner any additional amounts due because of the final apportionment.
- 9.6 All rates, levies and all other incomings and outgoings and other charges receivable from or charged upon the Schedule One Land and the Schedule Two Land will be apportioned (on a pro rata basis in respect of the Lease Land if they cannot be separately assessed) 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.
- 9.7 From the date that a certificate of title is issued for the Schedule Three Land, under section 69(2) of the Act, the Lease is deemed to be surrendered and subject to clause 9.8, the Commissioner releases and discharges the Holder from the performance and observance of all covenants, conditions and obligations under the Lease.
- 9.8 The release and discharge in clause 9.7 is without prejudice to the rights, remedies and powers of the Commissioner contained in the Lease and 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 Schedule Three Land is issued or under any statute or by any reason where such liability is due to the fault of the Holder.
- 9.9 As from the date that the Final Plan and this Substantive Proposal are registered, 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 Schedule One Land, or the Schedule Two Land (subject to the provisions of the Easement Concession, if applicable). 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 Schedule One Land, or the Schedule Two Land (subject to the provisions of the Easement Concession) on the date that the Final Plan and this Substantive Proposal are registered.
- 9.10 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Substantive Proposal. These requirements may involve procuring 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 the Easement Concession and the execution and registrability of any new mortgage in favour of the Mortgagee.

## 10. GST

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- 10.1 If:
- (a) the Holder has accepted this Substantive Proposal in accordance with clause 4; and
  - (b) the acceptance has taken effect under section 60(4) of the Act,
- then clauses 10.2 - 10.7 apply and will form part of this Substantive Proposal.

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- 10.2 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.
- 10.3 On the 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.
- 10.4 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.
- 10.5 On the 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. The invoice will specify the Holder's GST Date.
- 10.6 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Holder's GST Date, time being of the essence.
- 10.7 Where any GST is not so paid to the Commissioner or to the Holder (as the case may be), 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 or the Holder's GST Date (as the case may be) until the date of payment of the unpaid GST; and
  - (b) any Default GST.

## 11. Lowest price

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- 11.1 The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Schedule Three Land under section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Holder's Consideration.
- 11.2 The Commissioner's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Schedule One Land and the Schedule Two Land under section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Commissioner's Consideration.

## 12. Consents

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- 12.1 Under section 60(4) of the Act the Holder must obtain the written consent to the Holder's acceptance of this Substantive Proposal from all persons having an interest in the Lease Land (other than the Holder), including, but not limited to:
- (a) the Mortgagee;
  - (b) the grantee of the Land improvement Agreement 835180, registered against the Lease;
  - (c) any other person that the Commissioner reasonably believes has an interest in the Lease Land or who the Holder reasonably believes has an interest in the Lease Land.

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- 12.2 In addition to obtaining the consents of the persons outlined in clause 12.1, the Holder must also obtain:
- (a) all corporate consents; and
  - (b) if required, consent under the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995,

necessary for the Holder to accept this Substantive Proposal.

- 12.3 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 at the same time as the certificate of title for the Schedule Three Land issues.
- 12.4 The Commissioner will provide the Mortgagee with an undertaking that, subject to the provisions in clause 5.15 being satisfied, it will register the discharge of the Mortgage and register the new mortgage against the certificate of title for the Schedule Three Land at the same time as the certificate of title for the Schedule Three Land issues.

### 13. Access and stock

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- 13.1 The Commissioner will give, and the Holder will take, vacant possession of the Schedule Three Land on the Settlement Date.
- 13.2 The Holder will not, from and including the Settlement Date, enter on, pass through, or use or permit to be entered on, passed through, or used, the Schedule One Land for any purpose.
- 13.3 The Holder will not, from and including the Settlement Date, enter on, pass through, or use or permit to be entered on, passed through, or used, the Schedule Two Land for any purpose, except in accordance with the provisions of the Easement Concession.
- 13.4 The Holder will not, from and including the Settlement Date, permit any of the Holder's stock to enter onto or graze on the Schedule One Land, or the Schedule Two Land (subject to the provisions of the Easement Concession).
- 13.5 The Holder's stock may from time to time stray onto the Schedule One Land, or the Schedule Two Land (in contravention of the provisions of the Easement Concession). If such straying occurs, the Holder will, at its own cost, remove the stock within a reasonable time after the Holder becomes aware of the straying or after being requested by the Minister to remove the straying stock.

### 14. Costs

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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 Substantive Proposal), and all professional advice provided to or sought by the Holder.

### 15. No nomination or assignment

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- 15.1 The Holder is currently the lessee under the Lease.

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

## 16. General

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- 16.1 Each provision of this Substantive Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.
- 16.2 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 Substantive Proposal.
- 16.3 This Substantive 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.
- 16.4 In relation to notices and other communications under this Substantive 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. The initial facsimile number, address, person or office holder (if any) for each party is specified in clause 16.4(c);
  - (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), when delivered; and
    - (iii) in the case of a letter, on the fifth working day after mailing; and
  - (c) the initial address details for the Commissioner and the Holder are:

**The Commissioner:**

Commissioner of Crown Lands  
c/- The Manager  
DTZ New Zealand Limited  
Level 4, 76 Cashel Street  
CHRISTCHURCH

Fax No.: (03) 379-8840

**The Holder:**

Double Hill Station Limited  
c/- Polson Higgs and Co,  
PO Box 4449,  
CHRISTCHURCH  
Attention: Geoff Bolderston

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- 16.5 This Substantive 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.
- 16.6 For the avoidance of doubt, neither the Draft Preliminary Proposal, nor the Preliminary Proposal, constitutes or could constitute a binding agreement between the parties.

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

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**1. Details of Designation**

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- 1.1 Under section 35(2)(a)(i) of the Act, the Schedule One Land will be designated as land to be restored to full Crown ownership and control as a conservation area.
- 1.2 Subject to the Holder accepting the Substantive Proposal under section 60(1) of the Act and that acceptance taking effect under section 60(4) of the Act, the Commissioner will implement the designation of the Schedule One Land in the Substantive Proposal.

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

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### 1. Details of designation

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- 1.1 Under section 35(2)(b)(i) and section 36(1)(a) of the Act, the Schedule Two Land will be designated as land to be restored to Crown control as a conservation area, subject to the granting of the Easement Concession.
- 1.2 Subject to the Holder accepting the Substantive Proposal under section 60(1) of the Act and that acceptance taking effect under section 60(4) of the Act, the Commissioner will implement the designation of the Schedule Two Land in the Substantive Proposal (as envisaged by clause 7 of this Preliminary Proposal).

### 2. Details of Easement Concession

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- 2.1 The proposed terms and conditions of the Easement Concession are specified in Appendix 4.
- 2.2 The proposed activities for the Easement Concession are:
- (a) to provide access for the Holder with motor vehicles, and with or without horses, machinery and implements of any kind, and with or without farm dogs and farm stock, over that part of the Schedule Two Land being the route marked "w-x" on Plan A (the **Access Route**); and
  - (b) to provide access for stock, over that part of the Schedule Two Land being the route marked "b1-b2" on Plan A, for the purposes of watering stock at the waterway adjacent to route "b1-b2" on Plan A (the **Stock Route**).
- 2.3 The Access Route allows vehicle and stock access through a narrow stretch of conservation area (less than 10 metres in width) and across a bridge over Glenariffe Stream between points marked "w" and "x" on Plan A at K35 749641.
- 2.4 The Stock Route allows access for stock to water in a branch of Double Hill Stream at grid reference K35 716668, marked as route "b1-b2" on Plan A. The stream at this point is over three metres wide and flows between silt banks approximately one metre deep.
- 2.5 The proposed status of the land forming the Access Route and the Stock Route is conservation area.
- 2.6 The Access Route over the bridge at Glenariffe Stream is only 10 metres wide so any damage will be confined to a limited area. The Easement Concession document ensures that the provisions of the Conservation Act apply. The Access Route and bridge have been in place for many years and prevent stock entering the stream. It is anticipated that farm use will decrease following Tenure Review, as stock will only be using the Access Route when the stock is driven across and the stock will be in the presence of the Holder or the Holder's farm staff. The stock will not have open access to the stream banks as they have currently.
- 2.7 The Stock Route is along a short stretch of Double Hill Stream. With ongoing use of this stream by cattle there will be continued localised adverse effects on water quality and fish spawning habitat from cattle. There will also be some stream bank erosion as the banks will continue to be broken down and the stream substrata compacted. The Stock Route is, however, only 50 metres long, which is far more restrictive than the current position, where cattle have access to six kilometres of waterway.

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- 2.8 The Easement Concession is a farm management access easement and waterway access easement granted under section 17Q of the Conservation Act. Section 17ZD(1) of the Conservation Act applies to the granting of the Easement Concession and sections 17Q(2), 17R to 17Z and 17ZJ of the Conservation Act do not apply to the granting of the Easement Concession.
- 2.9 It is proposed that the term of the Easement Concession will be in perpetuity as:
- (a) in relation to the farm management access aspect of the Easement Concession, the Easement Concession allows the Holder access between areas of the Schedule Three Land that will be bisected as a result of Tenure Review. The farm management access aspect of the Easement Concession must be for the longest possible term to give the Holder permanent practical access rights to the Schedule Three Land over the Access Route; and
  - (b) in relation to the waterway access aspect of the Easement Concession, the waterway is very important to the operation of the Schedule Three Land as the Schedule Two Land cuts off stock access to the water supply in the Schedule Three Land. The Stock Route to the waterway allows the Holder to farm the Schedule Three Land in an economic and sustainable way. The waterway access aspect of the Easement Concession must be for the longest possible term to give the Holder permanent practical access rights to the waterway.
- 2.10 The proposed grantee of the Easement Concession is the Holder. The Holder has farmed the Schedule Two Land with cattle for a long period but the Holder has agreed to protect the Schedule Two Land, being most of the catchment of Double Hill and Glenariffe Stream, which are both important fish spawning areas and wetland habitat. The associated shrub lands will also be protected alongside the marginal strips. In order to continue operating on the Schedule Three Land, the Holder requires access over the Access Route as well as access to the waterway over the Stock Route, and this is provided for in the Easement Concession document.

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

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### 1. Details of designation

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1.1 Under section 35(3) of the Act, the Schedule Three Land will be disposed of by freehold disposal to the Holder subject to:

- (a) Part IVA of the Conservation Act;
- (b) Section 11 of the Crown Minerals Act 1991; and
- (c) the Easements.

The disposal of the Schedule Three Land to the Holder may also be subject to the provisions of section 114 of the Land Act 1948.

1.2 Subject to the Holder accepting the Substantive Proposal under section 60(1) of the Act and that acceptance taking effect under section 60(4) of the Act, and subject to clause 7.14, the Commissioner will implement the designation of the Schedule Three Land in the Substantive Proposal (as envisaged by clause 7 of this Preliminary Proposal).

1.3 The Easements are protective mechanisms as defined in the Act.

### 2. Fencing

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2.1 If:

- (a) the Commissioner puts the Substantive Proposal to the Holder;
- (b) the Substantive Proposal is accepted by the Holder under section 60(1) of the Act; and
- (c) that acceptance takes effect pursuant to section 60(4) of the Act,

then paragraphs 2.2 – 2.4 of this Schedule Three apply and will form part of the Substantive Proposal.

2.2 The Commissioner will, at its cost, erect new fencing along the lines coloured blue and marked:

- (a) "N-O", "L-M", "P-Q", "A-B"; and
- (b) "I-J-K", "R-S", "C-D", "E-F", "G-H",

on Plan B. The position of the fenceline has been identified by using either satellite positioning technology (GPS) or by pegging or such other method that has been recommended by the Commissioner's representatives and approved by the Commissioner.

The Commissioner may elect, in its sole discretion, to prepare a plan showing the fenceline for inclusion in the Substantive Proposal.

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- 2.3 The Commissioner will, at its cost, upgrade the existing fencing along the line coloured green and marked "T-R" on Plan B.
- 2.4 The Commissioner will:
- (a) erect the new fencing in paragraph 2.2(a) of this Schedule Three according to the specifications in clause 1 of Appendix 5;
  - (b) erect the new fencing in paragraph 2.2(b) of this Schedule Three according to the specifications in clause 2 of Appendix 5; and
  - (c) upgrade the existing fencing in paragraph 2.3 of this Schedule Three according to the specifications in clause 3 of Appendix 5.
- 2.5 The ongoing maintenance of the fencing along the lines marked "N-O", "L-M", "P-Q", "A-B", "I-J-K", "R-S", "C-D", "E-F", "G-H" and "T-R" on Plan B will be under the terms of the Fencing Act 1978.

### 3. Default

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If from any cause whatsoever (save the default of the Commissioner) any money payable to the Commissioner is not paid by the Holder on the due date:

- (a) the Holder will pay to the Commissioner interest at the Default Rate on all money payable by the Holder to the Commissioner so unpaid from the due date until payment in full; and
- (c) this paragraph is without prejudice to any other rights or remedies available to the Commissioner at law or in equity.

### 4. Access and stock

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- 4.1 The Commissioner will give, and the Holder will take, vacant possession of the Schedule Three Land on Settlement Date.
- 4.2 The Holder will not, from and including Settlement Date, enter on, pass through, or use or permit to be entered on, passed through, or used, the Schedule One Land for any purpose.
- 4.3 The Holder will not, from and including Settlement Date, enter on, pass through, or use or permit to be entered on, passed through, or used, the Schedule Two Land for any purpose, except in accordance with the terms of the Easement Concession.
- 4.4 The Holder will not, from and including the Settlement Date, permit any of the Holder's stock to enter onto or graze on the Schedule One Land, or the Schedule Two Land (subject to the terms and conditions of the Easement Concession).
- 4.5 The Holder's stock may from time to time stray onto the Schedule One Land, or the Schedule Two Land (in contravention of the provisions of the Easement Concession). If such straying occurs, the Holder will, at its own cost, remove the stock within a reasonable time after the Holder becomes aware of the straying or after being requested by the Minister to remove the straying stock.

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## 5. Lease and apportionments

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5.1 Notwithstanding when Settlement Date occurs, until a certificate of title issues for the Schedule Three Land, the Holder will duly and punctually comply with all obligations on its part under the Lease, and the Lease will remain in full force and effect.

5.2 Rent paid or payable under the Lease for the Schedule Three Land will be apportioned on the Settlement Date as at the date that a certificate of title issues for the Schedule Three Land and either deducted from or added to (as the case may be) the amount required to settle.

Rent payable under the Lease for the Schedule Three Land from the date that the Final Plan and the Substantive Proposal are registered to the date a certificate of title issues for the Schedule Three Land shall bear the same proportion to the total rent payable under the Lease as the Schedule Three Land area bears to the total area of the Lease Land.

Any apportionments for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Three Land (should a certificate of title issue after Settlement Date) will be estimated in the settlement statement which will be prepared by the Commissioner. If a certificate of title issues for the Schedule Three Land after the Settlement Date, then following the date that a certificate of title issues for the Schedule Three Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will refund to the Commissioner any additional amounts due because of the final apportionment.

5.3 Rent paid or payable under the Lease for the Schedule One Land and the Schedule Two Land will be apportioned (on a pro rata basis) on the Settlement Date as at the date that the Final Plan and the Substantive Proposal are registered and either deducted from or added to (as the case may be) the amount required to settle.

5.4 All rates, levies, and all other incomings and outgoings whatsoever receivable from or charged upon the Schedule Three Land will, unless otherwise agreed by the parties, be apportioned on the Settlement Date as at the date that a certificate of title issues for the Schedule Three Land.

The rates, levies, incomings, outgoings and other charges described in this paragraph 5.4 payable in respect of the Schedule Three Land from the date that the Final Plan and the Substantive Proposal are registered to the date a certificate of title issues for the Schedule Three Land shall bear the same proportion to the total charges payable in respect of the Lease Land as the area of the Schedule Three Land bears to the total area of the Lease Land. The appropriate payments, if any, will be made on the Settlement Date by the Commissioner and the Holder, as the case may be.

If a certificate of title issues for the Schedule Three Land after the Settlement Date, any apportionments for rates, levies, and all other incomings and outgoings whatsoever receivable from or charged upon the Schedule Three Land for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Three Land will be estimated by the Commissioner in its settlement statement. Following the date that a certificate of title issues for the Schedule Three Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will refund to the Commissioner any additional amounts due because of the final apportionment.

5.5 All rates, levies and all other incomings and outgoings whatsoever receivable from or charged upon the Schedule One Land and/or the Schedule Two Land will be apportioned (on a pro rata basis if they cannot be separately assessed) on the Settlement Date as at the date that the Final Plan and the Substantive Proposal are registered and are either deducted from or added to (as the case may be) the amount required to settle.

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- 5.6 From the date that a certificate of title is issued for the Schedule Three Land, under section 69(2) of the Act, the Lease is deemed to be surrendered and, the Commissioner releases and discharges the Holder from the performance and observance of all covenants, conditions and obligations under the Lease.
- 5.7 The release and discharge in paragraph 5.6 of this Schedule Three is without prejudice to the rights, remedies and powers of the Commissioner contained in the Lease and 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 Schedule Three Land is issued or under any statute or by any reason where such liability is due to the fault of the Holder.
- 5.8 As from the date that the Final Plan and the Substantive Proposal are registered, 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 Schedule One Land or the Schedule Two Land (subject to the Easement Concession). 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 Schedule One Land or the Schedule Two Land (subject to the Easement Concession) on the date that the Final Plan and the Substantive Proposal are registered.

## 6. Holder's acknowledgements

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If the Holder accepts the Substantive Proposal under section 60(1) of the Act, and that acceptance takes effect under section 60(4) of the Act the Holder acknowledges that:

- (a) it is obtaining the freehold in the Schedule Three Land to be disposed of to the Holder:
- (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 Schedule Three Land which the Holder considers necessary to satisfy itself as to the condition of the Schedule Three Land;
- (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Schedule Three Land complies with:
- (i) the RM Act and its amendments and regulations; or
  - (ii) any rule in any plan, resource consent or other requirement issued under the RM Act, 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 paragraph 6;

- (d) nothing in the Draft Preliminary Proposal, this Preliminary Proposal, the Draft Substantive Proposal or the Substantive Proposal is affected by, and the Commissioner has no liability of any nature in respect of, the existence or terms of any

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leases, licences or other occupation rights of any nature granted (if any) by the Holder under the Lease; and

- (e) for the avoidance of doubt, the Commissioner has no liability of any nature in respect of the previous occupation of the Schedule Three Land by the salmon hatchery operated by the Ministry of Fisheries.

### 7. Risk

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- 7.1 On and with effect from the Unconditional Date all risk of any nature in respect of the Schedule Three Land will pass from the Commissioner to the Holder. This risk does not include the Holder's current risk in respect of matters arising under the Lease, including, without limitation, the Holder's current risk in respect of all improvements, buildings, fencing, fixtures, fittings and chattels, which risk will continue to remain with the Holder.
- 7.2 The Holder will be required to comply with its settlement obligations under the Substantive Proposal irrespective of any damage to, or destruction of, the Schedule Three Land prior to the Settlement Date.

### 8. No representations or warranties by the Commissioner

---

The Commissioner makes no representations or warranties of any nature in respect of the Schedule Three Land. Without limitation, the Commissioner does not warrant:

- (a) the accuracy of any matter in the Draft Preliminary Proposal, this Preliminary Proposal, the Draft Substantive Proposal, the Notice or the Substantive Proposal or in any notice, or any correspondence or other information provided to the Holder by the Commissioner or by any agent or employee of the Commissioner;
- (b) that the Schedule Three Land is or will remain suitable for the Holder's use; or
- (c) that the Schedule Three Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Schedule Three Land.

### 9. No nomination or agency

---

- 9.1 The Holder is currently the lessee under the Lease.
- 9.2 The Holder is not entitled to, and is expressly prohibited from;
- (a) nominating another person to perform the Holder's obligations under the Substantive Proposal;
- (b) assigning to another person the Holder's interest under the Substantive Proposal.

Appendix 1: Plans

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**Appendix 2: Proposed easement form for Public Access to  
Conservation Area and Vehicles for Management Purposes  
Easement**

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Transfer Instrument

Section 90, Land Transfer Act 1952

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

Land Registration District

Canterbury



Unique Identifier(s) or C/T(s) All/Part Area/description of part or stratum

TBA All

Transferor

Surname(s) must be underlined

DOUBLE HILL STATION LIMITED

Transferee

Surname(s) must be underlined

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

Estate or Interest to be transferred, or easement(s) or profit(s) à prendre to be created State if fencing covenant imposed.

Public Access and Management Purposes Easement to conservation area granted by section 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

Operative Clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or profit à prendre is described above, that easement or profit à prendre is granted or created.

Dated this day of

Attestation If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule.

Witness signature and name fields. Includes text: Signed in my presence by the Transferor, Signature of witness, Witness to complete in BLOCK letters (unless legibly printed), Witness name, Occupation, Address. Double Hill Station Limited.

Certified correct for the purposes of the Land Transfer Act 1952

[Solicitor for] the Transferee

[Solicitor for] the Transferee

Handwritten signature and initials: SHL, East of 8

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Annexure Schedule

Transfer Instrument          Dated          .          Page          of          Pages

**Definitions**

1. In this transfer unless the context otherwise requires:
  - 1.1 "Easement Area" means that part of the Servient Land being [ ] metres wide which is marked "[ ]" on Deposited Plan/S.O. Plan No [ ].
  - 1.2 "Dominant Land" means the land administered by the Department of Conservation and contained in Certificate of Title "[ ]".
  - 1.3 "Management Purposes" means:
    - the protection of a significant inherent value of the Dominant Land;
    - the management of the Dominant Land in a way that is ecologically sustainable.
  - 1.4 "Servient Land" means the land owned by the Transferor and described on page 1.
  - 1.5 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee's tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.
  - 1.6 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

**Standard Easement Terms**

Access

2. The Transferee has the right:
  - 2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area marked a-c, c-d, f-g-h, z-y, a-b and n-o on foot, and Easement Area marked a-c by motor vehicle, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons for the purpose of obtaining access to the Dominant Land.
  - 2.2 To pass and re-pass at any time over and along the Easement Area marked f-g-h, g-i, a-c-e, c-d, z-y, a-b, p1-p2 and n-o, on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, for Management Purposes associated with the Dominant Land.
3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area.

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

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Annexure Schedule

Transfer Instrument          Dated          Page          of          Pages

Exclusion of Implied Rights and Powers

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

Term

5. The easement created by this transfer is to be appurtenant to the Dominant Land in perpetuity.

Temporary Suspension

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

Dispute Resolution

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

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

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S.M.  
AF  
GOK  
[Signature]

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Annexure Schedule

Transfer Instrument          Dated          Page          of          Pages

Notice

8.1 A notice to be given under this transfer by one party to the other is to be in writing and must:

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

8.2 If clause 8.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.

8.3 If clause 8.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

**Special Easement Terms**

9. The standard easement terms contained above must be read subject to any special easement terms set out below. The Transferee has the right:

9.1 To mark the Easement Area as appropriate

9.2 To erect and maintain stiles

9.3 To erect and maintain signs informing the public:

- (a) of the location of the land managed by the Crown and available for public access and recreation; and
- (b) of their rights and responsibilities in relation to the Easement Area.

9.4 To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clauses 9.1 to 9.3.

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

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Annexure Schedule

Transfer Instrument      Dated      .      Page      of      Pages

**Continuation of "Attestation"**

Signed for and on behalf of \_\_\_\_\_ )  
Her Majesty the Queen by \_\_\_\_\_ )

under a written delegation in the \_\_\_\_\_ )  
presence of: \_\_\_\_\_ )

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

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

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

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JMT  
WEL  
[Signature]

Transfer Instrument

Section 90, Land Transfer Act 1952

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

Land Registration District

Canterbury



Unique Identifier(s) or C/T(s)

All/Part

Area/description of part or stratum

TBA

ALL

Transferor

Surname(s) must be underlined

DOUBLE HILL STATION LIMITED

Transferee

Surname(s) must be underlined

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

Estate or Interest to be transferred, or easement(s) or profit(s) à prendre to be created  
State if fencing covenant imposed.

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

Operative Clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or profit à prendre is described above, that easement or profit à prendre is granted or created.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Attestation

If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule.

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

Certified correct for the purposes of the Land Transfer Act 1952



[Solicitor for] the Transferee

Handwritten signatures and initials

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## Annexure Schedule

Transfer Instrument          Dated          .          Page          of          Pages

### Definitions

1. In this transfer unless the context otherwise requires:
  - 1.1 "Easement Area" means that part of the Servient Land being 10 metres wide which is marked "c-e, j-k-l-m, and k-m" on Deposited Plan/S.O. Plan No [          ].
  - 1.2 "Management Purposes" means:
    - the protection of a significant inherent value of the land managed by the Transferee;
    - the ecological sustainable management of the land managed by the Transferee.
  - 1.3 "Servient Land" means the land owned by the Transferor and described on page 1.
  - 1.4 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee's tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.
  - 1.5 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

### Standard Easement Terms

#### Access

- 2.1 The Transferee has the right in common with the Transferor to pass and re-pass at any time over and along the Easement Area marked e-c, j-k-l-m, and k-m, on foot, or by motor vehicle, or on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.
- 2.2 To pass and re-pass at any time over and along the Easement Area marked e- c, j-k-l-m, and k-m, on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, for Management Purposes.
3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area.

#### Exclusion of Implied Rights and Powers

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

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

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[Handwritten signatures and initials]



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Annexure Schedule

Transfer Instrument                      Dated                      .                      Page                      of                      Pages

Term

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

Temporary Suspension

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

Dispute Resolution

7.1          If a dispute arises between the Transferor and Transferee concerning the rights created by this transfer the parties are to enter into negotiations in good faith to resolve it.

7.2          If the dispute is not resolved within 14 days of written notice by one party to the other it is to be referred to mediation.

7.3          If the dispute is not resolved within 21 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated.

7.4          The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

8.1          A notice to be given under this transfer by one party to the other is to be in writing and must:

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

8.2          If clause 8.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.

8.3          If clause 8.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if it is dispatched after 5.00 pm, on the next day after the date of dispatch.

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

Handwritten initials and signatures in the bottom right corner, including "AF 79" and "M. Kelt".



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**Appendix 3: Proposed easement form for Public Access and  
Vehicles for Management Purposes Easement in Gross**

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Appendix 4: Proposed form for Easement Concession

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W. Hill

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

DATED \_\_\_\_\_

Between

**MINISTER OF CONSERVATION**

("the Grantor")

and

**Double Hill Station Limited**

("the Concessionaire")

**CONCESSION DOCUMENT**

**UNDER CROWN PASTORAL LAND ACT 1998**

**(Easement Concession)**



Department of Conservation  
*Te Papa Atawhai*

15 July 2002.

*[Handwritten signatures and initials]*

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THIS DOCUMENT is made on this day of

## PARTIES:

1. MINISTER OF CONSERVATION, ("the Grantor")
2. DOUBLE HILL STATION LIMITED ("the Concessionaire")

## BACKGROUND

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

## OPERATIVE PARTS

### TERMS AND CONDITIONS

#### 1.0 DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Working Day" means the period between 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 APPURTENANT EASEMENT

2.1 In exercise of the Grantor's powers under either section 66 or section 68 of the Crown Pastoral Land Act 1998 (whichever is relevant in the circumstances) the Grantor **GRANTS** to the Concessionaire an **EASEMENT APPURTENANT** to the Dominant Land under either section 17Q(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 Easement Area subject to the terms and conditions contained in this Document.

## 3.0 TERM

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

Handwritten initials and signatures in the bottom right corner, including "AF", "West", and a large signature.

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## 4.0 COMPENSATION

- 4.1 The Concessionaire must pay to the Grantor in the manner specified by the Grantor the Compensation specified in Item 6 of Schedule 1.
- 4.2 Under section 53 of the Crown Pastoral Land Act 1998 the Grantor waives any requirement for rent on the basis that the costs of setting and collecting the rent would exceed any rent which may be collected.

## 5.0 OTHER CHARGES

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

## 6.0 CONCESSION ACTIVITY

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

## 7.0 COMPLIANCE

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

## 8.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 8.1 The Concessionaire must not erect or bring on to the Easement Area any Structure, install any facility, or alter the Land in any way without the prior written consent of the Grantor.
- 8.2 The Concessionaire must keep and maintain any Structures, and facilities on and alterations to the Easement Area in good repair.
- 8.3 On expiry or early termination of this Document either as to the whole or any part of the Easement Area, the Concessionaire will not be entitled to compensation for any improvements and any Structure or facilities remaining on the Easement Area are to become the property of the Grantor.
- 8.4 If requested by the Grantor, the Concessionaire must, within such time as the Grantor determines, remove all Structures, facilities or other improvements erected or installed by the Concessionaire and make good at the Concessionaire's own expense all damage done by the removal and must leave the Easement Area in a clean and tidy condition to the satisfaction of the Grantor.

## 9.0 PROTECTION OF THE ENVIRONMENT

- 9.1 Except as approved in writing by the Grantor the Concessionaire will not, whether by act or omission:
- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Easement Area; or

*[Handwritten signatures and initials]*



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- (b) bring any plants, or animals (except those stipulated in Item 4 of Schedule 1) on to the Easement Area; or
- (c) deposit on the Easement Area debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Easement Area; or
- (d) pile or store materials in any place on the Easement Area where they may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Easement Area; or
- (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Easement Area; or
- (g) disturb or allow stock to disturb any stream or watercourse on the Easement Area (except as stipulated in Item 4 of Schedule 1); or
- (h) light any fire on the Easement Area.

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

- (a) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Easement Area or any Structure or facility on the Easement Area;
- (b) comply strictly with the provisions of the Biosecurity Act 1993.

9.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 9

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

9.5 The Concessionaire may for purposes of the Concession Activity take onto or use vehicles on the Easement Area on existing formed access tracks only.

### 10.0 TERMINATION

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

- (a) the Concessionaire breaches any terms of this Document; and
- (b) the Grantor has notified the Concessionaire in writing of the breach; and
- (c) the Concessionaire does not rectify the breach within 28 days of receiving notification.

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

### 11.0 INDEMNITIES AND INSURANCE

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

*Handwritten signatures and initials:*  
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- 11.2 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.
- 11.3 Without prejudice to or in any way limiting its liability under clause 12.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:
- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Easement Area and covering:
    - (i) general indemnity for a sum not less than the amount specified in Item 7 of Schedule 1; and
    - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 8 of Schedule 1; and
  - (b) statutory liability insurance for the amount specified in Item 9 of Schedule 1; and
  - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 10 of Schedule 1.
- 11.4 With respect to clause 12.3 the Concessionaire must before commencing the Concession Activity and on each renewal of insurance, provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

### 12.0 ASSIGNMENT

- 12.1 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.
- 12.2 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 until such time as the Concessionaire procures from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document.
- 12.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 12.4 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.

### 13.0 DISPUTE RESOLUTION AND ARBITRATION

- 13.1 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.
- 13.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties.
- 13.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Easement Area is located is to appoint the mediator.
- 13.4 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.

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*df*

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13.5 Notwithstanding any provision to the contrary in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the District Law Society in the region in which the Easement Area is located is to appoint the arbitrator. The arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

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

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

### 14.0 NOTICES

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

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

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

### 15.0 RELATIONSHIP OF PARTIES

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

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

### 16.0 SPECIAL CONDITIONS

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

16.2 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:

WGNHO - 72325 - Easement Concession \_CPLA - Version 4.  
CHCCO - 32408 Double Hill - 17 December 2002.

15 July 2002.

*Handwritten signatures and initials:*  
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Signed by :

\_\_\_\_\_  
as Concessionaire  
in the presence of :

\_\_\_\_\_  
Witness :  
Occupation :  
Address :

15 July 2002.

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SOH

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SCHEDULE 1

1. **Servient Land:** The land described as being Part Run 334 Double Hill situated in Blocks VIII and XII Whitcombe, I, II, IV, V, VII, VIII and IX Glenrock, I,II, III, V, VI and IX Somers and IV and VIII Heron Survey Districts (Canterbury Land Registry) and [marked 2 on the Plans attached to Proposal]. (see definition of Servient Land in clause 1.1)
2. **Dominant Land:** Part of Run 334 Double Hill situated in Blocks VIII and XII Whitcombe, I, II, IV, V, VII, VIII and IX Glenrock, I, II, III, V, VI and IX Somers and IV and VIII Heron Survey Districts (Canterbury Land Registry) and [marked 4 on the Plans attached to Proposal]. (see definition of Dominant Land in clause 1.1)
3. **Easement Area:** The land marked [route w - x and b1 - b2 on the Plans attached to the Proposal] and being no more than a maximum width of 10 metres. (see definition of Easement Area in clause 1.1)
4. **Concession Activity:** The Concessionaire has the right to from time to time and at all times for the Concessionaires, their servants, employees, agents workmen, contractors, licensees and invitees (in common with the Grantor and any other person lawfully entitled so to do) to have the full, free uninterrupted and unrestricted right liberty and privilege from time to time and at all times by day and by night to go pass and repass with motor vehicles and with or without horses, machinery and implements of any kind and with or without farm dogs and farm stock to and from the Dominant Land over and along route w - x, and in respect of b1 - b2 only the right for the Concessionaire to water farm stock from the adjacent waterway, but subject to the limitations expressed in this deed, to the intent that the easement hereby created shall forever be appurtenant to the Dominant Land.(see definition of Concession Activity in clause 1.1.)
5. **Term:** The Concession is granted in perpetuity commencing on \_\_\_\_\_ (see clause 3.1)
6. **Compensation:** \$ [REDACTED] (payable on date of Execution of this deed) (see clause 4.1)
7. **Public Liability General Indemnity Cover:** [REDACTED] (see clause 12.3)
8. **Public Liability Forest & Rural Fire Act Extension:** [REDACTED] (see clause 12.3)
9. **Statutory Liability** [REDACTED] (see clause 12.3)
10. **Other Types of Insurance:** [REDACTED] (see clauses 12.3)
11. **Address for Notices:** (see clause 14)
  - (a) **Grantor**  
Minister of Conservation  
C/- Department of Conservation  
Private bag 4715  
**CHRISTCHURCH**
  - (b) **Concessionaire**  
Double Hill Station Limited  
C/- Polson Higgs and Co  
PO Box 4449  
**CHRISTCHURCH**  
Attention: G Bolderston

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## SCHEDULE 2

### *Special Conditions*

1. THE rights granted under this deed are non-exclusive and are exercisable in common with the Grantor and any other person granted similar rights by the Grantor, whether now or in the future, and without limitation the Grantor may grant the following persons access rights over the Easement Area:
  - i. members of the public for access on foot and with or without bicycles and horses;
  - ii any lessee or licensee of the Grantors land
  
2. THAT in exercising the right liberty and privilege take all reasonable care to avoid damage to the soil and vegetation in the Easement Area and in particular will avoid using the Easement when conditions such as softening during frost thaw render the Easement Area as being particularly vulnerable to damage.
  
3. THE cost and responsibility of any maintenance of the Easement Area shall be borne by the Concessionaire and any other person or person(s) to whom the Grantor has granted similar rights in respect of the Easement Area, according to each persons use of the Easement Area PROVIDED THAT if any repair or maintenance is rendered necessary by the act, neglect, or default of any user or its servants, agents, contractors, workmen, licensees or invitees, then that user shall promptly carry such repair and maintenance and bear the cost of the work PROVIDED THAT the Grantor shall not be required to contribute to the cost of any maintenance in respect to the Easement Area PROVIDED further that any routine maintenance undertaken by the Concessionaire within the existing alignment does not require the prior consent in writing of the Grantor HOWEVER maintenance outside of the existing alignment undertaken by the Concessionaire requires the prior consent in writing of the Grantor.
  
4. THAT the Concessionaire shall ensure that no action by them or on their behalf has the effect of preventing the Easement Area over which the easement is granted being kept clear at all times of obstructions whether caused by parked vehicles, deposit of materials, or any other unreasonable impediment to the use and enjoyment of the said land.

*[Handwritten signatures and initials]*

## Appendix 5: Fencing requirements

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### 1. Fenceline "N-O", "L-M", "P-Q", "A-B"

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Length and location:

- 1100 m (approximately) and located along the line coloured blue and marked "A-B" on Plan B;
- 1700 m (approximately) and located along the line coloured blue and marked "P-Q" on Plan B;
- 650 m (approximately) and located along the line coloured blue and marked "L-M" on Plan B; and
- 2218 m (approximately) and located along the line coloured blue and marked "N-O" on Plan B,

subject to paragraph 2.2 of Schedule Three.

Type: Seven wire fence and T-irons or posts.

Specifications:

- Fence to be constructed of five HT (2.5mm) wires, one barbed wire on top and one bottom galvanized medium tensile 4mm (No. 8) wire, with wires located on the Schedule Three Land side of the boundary, except where there is a high risk of snow damage where they shall be placed on the leeward side away from the prevailing snow.
- 2.4 metre x 200mm treated timber strainers with treated timber stay to be used for gateways and ends of strains.
- 4.3 metres Cyclone Heavy Duty gates to be erected across vehicle track or at appropriate locations in each span indicated above (Total 4).
- 2.4 metre x 125 mm treated timber posts of T irons to be used at 20m gaps or on appropriate high and low points.
- Six steel warratah standards per 20 metres to be used. Warratahs standards to be mostly 1500 mm long with 1350 mm standards on rocky ground and 1650 mm standards on soft ground.
- Warratahs, back to back, may be used instead of posts on high spots and on corners, with tie-backs 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.
- All wires are to be securely and neatly tied off. Bottom wire to be between 100mm – 150mm above the ground. Line to be benched by hand where required. Most of the line will need to be cleared manually as required.

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- Post staples to be 50 x 4mm galvanized slice pointed barb and be driven well in but allow the wire to run through.
- Strains not be exceed 300 metres for HT and 250mm for No 8 and strained to a tension recommended by the wire manufacturer.
- Strainers and angle posts to be dug in to such a depth that 117cm (46") remains out of the ground.
- Under no circumstances are any strainers, posts or stays to be shortened either prior to or subsequent to their placement in the ground.
- Triplex strainers to be used on all strains.
- Lightning droppers may be used where appropriate.

## 2. Fenceline "I-J-K", "R-S", "C-D", "E-F", "G-H"

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### Length and location:

- 3338 m (approximately) and located along the line coloured blue and marked "R-S" on Plan B;
- 391 m (approximately) and located along the line coloured blue and marked "G-H" on Plan B;
- 990 m (approximately) and located along the line coloured blue and marked "E-F" on Plan B;
- 1564 m (approximately) and located along the line coloured blue and marked "C-D" on Plan B;
- 1162 m (approximately) and located along the line coloured blue and marked "I-J" on Plan B; and
- 1672 m (approximately) and located along the line coloured blue and marked "J-K" on Plan B,

subject to paragraph 2.2 of Schedule Three.

Type: Nine wire fence and posts

### Specifications:

- Fence to be constructed on seven HT (2.5mm) wires, one barbed wire on top and one bottom galvanized medium tensile 4mm (No. 8) wire, with wires located on the Schedule Three Land side of the boundary.
- 2.4 metre x 200mm treated timber strainers with treated timber stays to be used for gateways and ends of strains.
- 8 x 4.2 metres Cyclone Heavy Duty gates to be erected across any vehicle tracks or at appropriate locations in each span as indicated above (total 6).
- 3 x 2.4 metre x 125mm treated timber posts to be used per 20m gaps or on appropriate high and low points as appropriate.

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- 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.
- All wires are to be securely and neatly tied off. Bottom wire to be between 100mm – 150mm above the ground. Line to be benched by hand where required. Most of the line will need to be cleared manually as required.
- Post staples to be 50 x 4mm galvanized slice pointed barb and be driven well in but allow the wire to run through.
- Strains not to exceed 300 metres for HT and 250mm for No 8 and strained to a tension recommended by the wire manufacturer.
- Strainers and angle posts to be dug in to such a depth that 117cm (46") remains out of the ground.
- Under no circumstances are any strainers, posts or stays to be shortened either prior to or subsequent to their placement in the ground.
- Triplex strainers to be used on all strains.
- Lightning droppers may be used where appropriate.

### 3. Fenceline T-R

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Length and location: 3000 m (approximately) and located along the line coloured green and marked "T-R" on Plan B.

Type: Existing fence.

Specifications:

- At least 3 posts every 20 metres.
- New barbed top wire only to be stapled to the posts.

#### NOTE:

*These specifications are prepared on the basis that no bulldozing, excavating or other similar mechanical means of major soil disturbance is used to prepare fence lines. However in exceptional circumstances, the Commissioner may, at his absolute discretion, waive this requirement.*

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Execution Section

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

SIGNED by the Commissioner of Crown Lands by Paul Jackson in the presence of: Pursuant to delegation

[Handwritten signature of Paul Jackson]

[Handwritten signature of A M Paterson]  
Witness

[Handwritten signature of Solicitor]  
Occupation

[Handwritten signature of Jones Hill]  
Address

In signing this Substantive Proposal (including the schedules and appendices), the Holder:

- 1. accepts and agrees that:
(a) the Holder accepts this Substantive Proposal under section 60 of the Act...
(b) the Holder is bound by the provisions of this Substantive Proposal;
(c) the Holder is also bound by the provisions of the Notice...
(d) when the Final Plan is registered under section 64 of the Act...
2. acknowledges that:
(a) the Holder has obtained the written consent of the Mortgagee...
(b) the relevant consent is or consents are endorsed on or attached to the completed Execution Copy of this Substantive Proposal.

[Handwritten initials and numbers: 19, 35, 247]

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SIGNED by Double Hill Station Limited by

*[Signature]* Director

*E. H. Johnson* Director

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*[Handwritten initials]*

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Consents

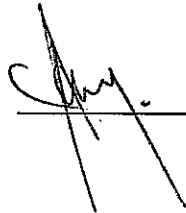
The National Bank of New Zealand Limited as Mortgagee under the Mortgage 900556.3, hereby:

- (a) consents to the Holder's acceptance of this Substantive Proposal dated <sup>6<sup>th</sup> May</sup> ~~24th February~~ 2003 pursuant to section 60 of the Crown Pastoral Land Act 1998 and agrees and consents to the registration of the Easements prior to the registration of any new mortgage to be granted in its favour over the Schedule Three Land as contemplated by clause 5.16; 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 Schedule Three Land.

Dated:

SIGNED by The National Bank of New Zealand Limited by it's Attorney Barden  
in the presence of: KAPUA PATRIK GARDNER

Witness Signature:

  
\_\_\_\_\_

Witness Name: ASH MAHARAJ  
Occupation: BANK OFFICER  
Address: AUCKLAND

"The execution of this document by the Bank is without prejudice to all the other rights and remedies of the Bank of whatsoever nature"

*Handwritten notes and initials:*  
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SPW. RF  
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## CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, **KAPUA KATRINA GARDINER** Manager Lending Services of Auckland in New Zealand **HEREBY CERTIFY:**

1. **THAT** by Deed dated 28 June 1996 deposited in the Land Registry Offices situated at:

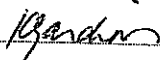
Auckland	as No	D.016180	Hokitika	as No	105147
Blenheim	as No	186002	Invercargill	as No	242542.1
Christchurch	as No	A.256503.1	Napier	as No	644654.1
Dunedin	as No	911369	Nelson	as No	359781
Gisborne	as No	G.210991	New Plymouth	as No	433509
Hamilton	as No	B.355185	Wellington	as No	B.530013.1

The National Bank of New Zealand Limited (the "Bank") appointed me its Attorney with the powers and authorities specified in that Deed.

2. **THAT** at the date of this Certificate, I am the Manager Lending Services, Auckland Regional Support Centre of the Bank.

3. **THAT** at the date of this certificate, I have not received any notice or information of the revocation of that appointment by the winding-up or dissolution of the Bank or otherwise.

DATED at Auckland the 27<sup>th</sup> day of May 2003

  
\_\_\_\_\_

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**Consents**


---

The Canterbury Regional Council, being the party entitled to the benefit of Land Improvement Agreement 835180 registered against the Lease, hereby consents to the Holder's acceptance of this Substantive Proposal dated ~~24<sup>th</sup> February~~ 2003 pursuant to section 60 of the Crown Pastoral Land Act 1998.


6<sup>th</sup> May  
WT.

Dated:

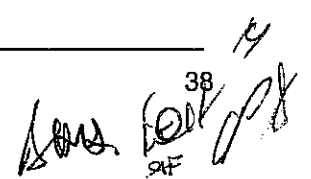
SIGNED for and on behalf of  
The Canterbury Regional Council  
in the presence of:

  
\_\_\_\_\_  
Acting Chief Executive

Witness Signature:

  
\_\_\_\_\_

Witness Name: A. Fulton  
Occupation: Secretary  
Address: P O Box 245  
Christmas

  
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AF