

# **Crown Pastoral Land Tenure Review**

**Lease name : INVERCROY**

**Lease number : PT 133**

## **Substantive Proposal**

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

**May**

**14**

EXEMPTION  
COPY

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

**Date:** 9 August 2013

**Parties**

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**Holder:** Cattle Creek Farm Limited  
C/-Hastie Chartered Accountants Ltd,  
Unit 10  
333 Harewood Rd,  
Christchurch 8543

**Commissioner of Crown Lands:**

Bob Webster  
Opus International Consultants Limited  
20 Moorhouse Avenue  
PO Box 1482  
Christchurch

Attention: Bob Webster

**The Land**

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**Lease:** Invercroy

**Legal Description:** Rural Section 41297 and Rural Section 41512

**Area:** 2457.0000 hectares more or less

**Certificate of Title/Unique Identifier:** CB32A/379 (Canterbury)

**Summary of Designations**

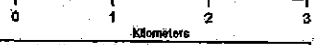
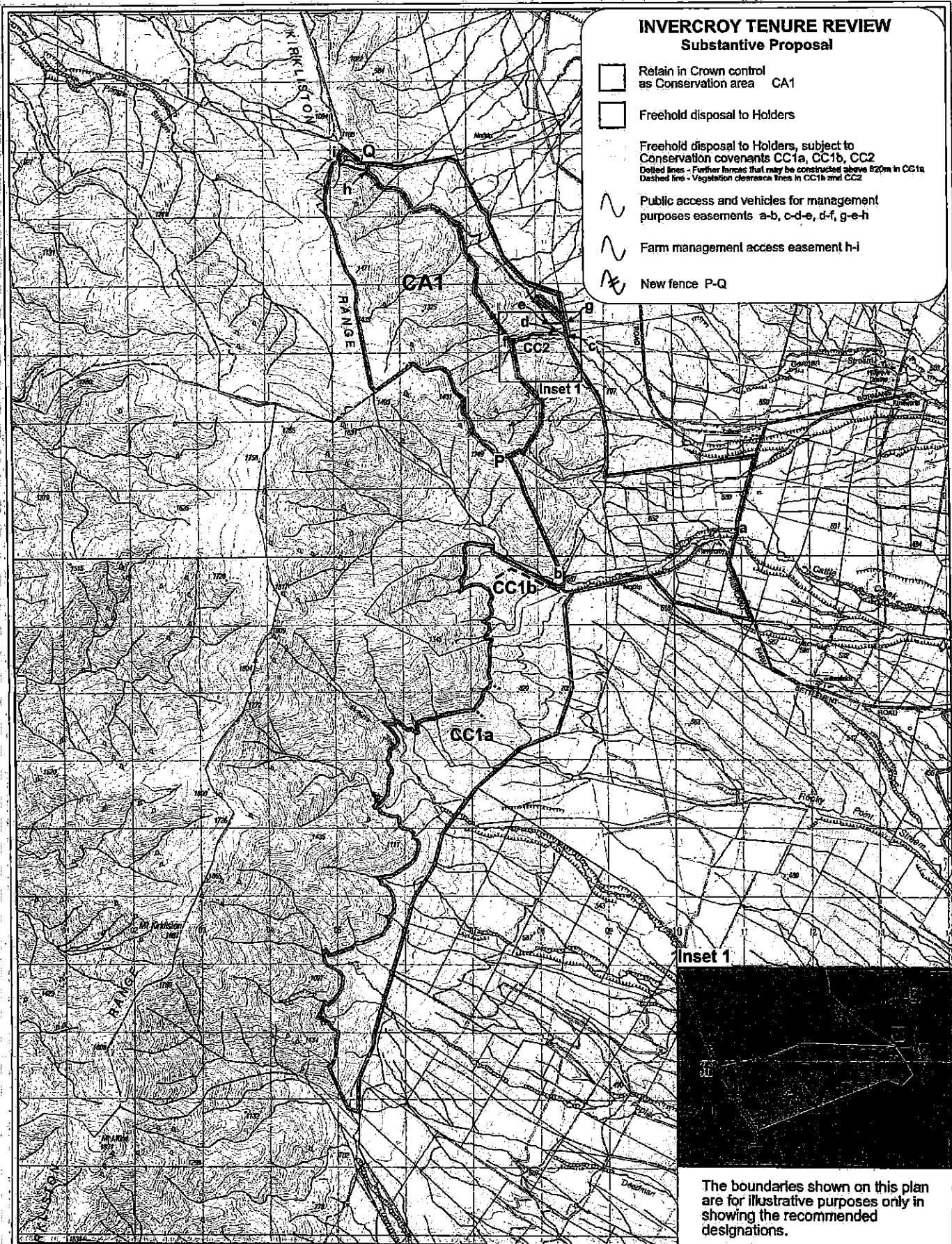
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Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown edged in pink and labelled CA1 on the Plan) is to be restored to, or retained by, the Crown as set out in Schedule Two; and
- (b) The Freehold Land (shown edged in green on the Plan) is to be disposed by freehold disposal to the Holder as set out in Schedule Three.

**1      The Plan**

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VERSION CONTROL	1	2	3	4	5	6	7	8	9	10
Sourced from Topographical map Topo50 CA17 Crown Copyright Reserved										
	PREPARED BY	SM O'Brien	The boundaries on this plan are for illustrative purposes only							
	DATE	21/05/2010								

TITLE LAND STATUS PLAN CANTERBURY LAND DISTRICT			
INVERCROY - PASTORAL LEASE			
Lease Registration Reference: CIR CB32A/379			
STATUS	FILE	PT 133	
A3 SCALE 1:50,000	PLOT DATE	SHEETS	of
		1	2

**2 Conditions**

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

**3 Settlement**

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

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

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

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

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

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

or

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

(i) has been agreed or determined; and

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

**4 Holder's Payment**

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

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

**5 Commissioner's Payment**

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

## **6 Vesting of Crown Land**

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

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

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

## **8 Registration of Documents**

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

## **9 Consents**

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- 9.1 The Holder must obtain the written consent to the Holder's acceptance of this Proposal from all persons having an interest in the Land (other than the Holder), including, but not limited to:
- (a) any Mortgagee(s);
  - (b) any party entitled to the benefit of a land improvement agreement registered against the Lease and/or the Land; and
  - (c) any other person that the Commissioner reasonably believes has an interest in the Land or who the Holder reasonably believes has an interest in the Land, whether registered or not.
- 9.2 The consents required under clause 9.1 must be in a form acceptable to the Commissioner in all respects and be returned to the Commissioner with this Proposal on its acceptance by the Holder. Examples of the form of consents required under clause 9.1 are set out in Appendix 1.
- 9.3 The Holder must also obtain, and provide to the Commissioner if requested, all consents necessary for the Holder to accept this Proposal including (without limitation) any:
- (a) corporate and/or trustee consents; and
  - (b) consent required under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005.
- 9.4 The Holder will procure the Mortgagee to execute a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder will execute registrable new mortgage documents and forward these to the Commissioner to be registered as set out in clause 8.

- 9.5 If required by the Mortgagee, the Commissioner will provide an undertaking that, subject to the provisions of clause 7 being satisfied, the Commissioner will register the discharge of the Mortgage and register any new mortgage against the certificate of title for Freehold Land at the same time as the certificate of title for the Freehold Land issues.

## **10 Continuation of Lease**

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

## **11 Fencing and Construction Works**

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

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

## **12 Apportionments**

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- 12.1 Rent payable under the Lease in respect of the Freehold Land shall be apportioned as follows:
- (a) Rent paid or payable will be apportioned on the Settlement Date as at the Settlement Date and either deducted from or added to (as the case may be) the amount required to settle.
  - (b) Notwithstanding that the Lease continues in effect until a certificate of title issues for the Freehold Land, the Holder shall not be required to pay any rent under the Lease for the Freehold Land from the Settlement Date.
- 12.2 Rent paid or payable under the Lease for the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.
- 12.3 All rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Freehold Land will, unless otherwise agreed by the parties, be apportioned on the Settlement Date as at the Settlement Date.
- 12.4 All rates, levies and all other incomings and outgoings and other charges receivable from or charged upon the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.
- 12.5 Following the date that a certificate of title issues for the Freehold Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will pay to the Commissioner, any additional amounts due because of any payments made or received by one party on behalf of the other for the period from the Settlement Date to the date on which a new certificate of title issues for the Freehold Land.



**13 Risk**

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

**14 Survey**

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

**15 Holder's Acknowledgements**

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- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) it is obtaining the freehold interest in the Freehold Land:
    - (i) "as is", solely in reliance on its own investigations and judgement; and
    - (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
  - (b) the Holder has carried out all inspections of the Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
  - (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
    - (i) the Resource Management Act 1991 and the Resource Management Amendment Act 2005; and
    - (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
    - (iii) the Building Act 2004 and the Building Amendment Act 2009; and

the Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this clause 15;
  - (d) nothing in this Proposal is affected by, and the Commissioner has no liability of any nature in respect of, the existence or terms of any leases, licences or other occupation rights of any nature (if any) granted by the Holder in respect of the Land; and
  - (e) the Holder has no claim (and will not have any claim) whatsoever against the Crown and/or Commissioner in relation to the Tenure Review and/or this Proposal, including

(without limitation) any claim for any misrepresentation or for any loss or damage suffered whether in contract, tort (including negligence) or otherwise.

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

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

**17 Acceptance**

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

**18 Solicitor's Certificate**

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

**19 Default**

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

**20 Goods and Services Tax**

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- 20.1 Unless the context otherwise requires, words and phrases used in this clause have the same meaning as in the GST Act.
- 20.2 If the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are taxable supplies under the GST Act, then:
- (a) the Commissioner and the Holder warrant to each other that they are registered for GST purposes as at the Holder's acceptance of this Proposal and that they will be so registered on the Settlement Date;
  - (b) the Commissioner and the Holder confirm that as at the Settlement Date:
    - (i) each is acquiring the goods supplied with the intention of using the goods for making taxable supplies; and
    - (ii) the Commissioner and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Crown Land and the Holder and any

associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Freehold Land as a principal place of residence; and

- (c) the Commissioner and the Holder agree that the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are to be zero-rated for GST purposes under section 11(1)(mb) of the GST Act.
- 20.3 If any of the circumstances set out in clause 20.2 change between the date of the Holder's acceptance of this Proposal and the Settlement Date, then the relevant party will notify the other of the changed circumstances as soon as practicable and in any event not later than 2 working days before the Settlement Date and such party shall warrant that the changed circumstances are correct as at the Settlement Date. If the GST treatment of the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration changes as a result of the changed circumstances and a party has already provided the other with a GST invoice, then that party will issue a debit note or credit note, as the case may be, for GST purposes.
- 20.4 On the 10<sup>th</sup> working day following the Unconditional Date, the Commissioner will provide to the Holder a GST invoice in respect of the supply evidenced by the Holder's Consideration. The invoice will specify the Commissioner's GST Date.
- 20.5 The Holder will pay GST (if any) on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 20.6 On the 10<sup>th</sup> working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration.
- 20.7 The Commissioner will pay GST (if any) on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.8 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
  - (b) any Default GST.

## **21 Lowest price**

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

## **22 Costs**

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

## **23 No nomination or assignment**

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

**24 Recreation Permit**

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

**25 Consents for Activities**

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

**26 General**

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26.1 This Proposal and the Notice:

- (a) constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and
- (b) supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and the Holder relating to the Tenure Review.

26.2 Each provision of this Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.

26.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.

26.4 The Commissioner and the Holder will sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the other to effectively carry out and give effect to the terms and intentions of this Proposal.

26.5 This Proposal is governed by, and must be construed under, the laws of New Zealand and the Commissioner and the Holder irrevocably submit to the jurisdiction of the New Zealand courts or other New Zealand system of dispute resolution.

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

26.7 In relation to notices and other communications under this Proposal:

- (a) each notice or other communication is to be in writing, and sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for that purpose by the addressee to the other party. Other than the address to which the Holder is to send its acceptance of this Proposal (which the Commissioner will specifically notify the Holder of) the address, person or office holder (if any) for each party is shown on the front page of this Proposal;
- (b) no communication is to be effective until received. A communication will be deemed to be received by the addressee:
  - (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
  - (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), on the working day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and
  - (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

**27 Interpretation**

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**27.1 Definitions**

In this Proposal unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Works Consent** means any and all consents required under the Resource Management Act 1991 and/or the Building Act 2004 and their respective amendments.

## 27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

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

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

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**1 Details of Designation**

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Nil.

**2 Schedule One Improvements**

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Nil.

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

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### **1 Details of designation**

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- 1.1 Under this Proposal the land shown marked in pink and labelled "CA1" on the Plan, being 633 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area, subject to:
- (a) the granting of the easement concession shown marked red on the Plan and marked "h-f" substantially as set out in Appendix 4
  - (b) the continuation in force of the appurtenant right of way marked "T" on SO 15566 reserved in Pastoral Lease CT CB6B/313 and listed as an interest on CB32A/379, as an appurtenant easement to the land shown as CA1.

### **2 Information Concerning Proposed Concession**

---

2.1 Description of the proposed activity:

Easement Concession for the adjoining landholder along an existing access track for farm management purposes.

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

One easement area is required as marked on the plan attached to the proposal. The easement area is located on proposed Conservation Area on the eastern Kirkliston Range. The easement area connects the existing farm access track with the ridge top of the Kirkliston Range. The proposed Conservation Area encompasses part of the existing farm track which is needed to give practical farm management access to the ridge top to allow for the practical and safe turning of farm vehicles on this hillside track. The easement route follows the existing formed farm track across the northern corner of the proposed Conservation Area for approximately 500m before reaching the ridge top. The easement route is for farm management purposes along a traditionally used access track which provides the only practical access to the range top for safe turning around of farm vehicles.

2.3 Description of potential affects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse affect :

The easement concession area for farm management purposes is over an existing access track which has traditionally been used in the management of the property. It is the only practical access route to enable safe turning on the ridge top of vehicles using this hillside track. Access will be confined to the line of the existing access track where these activities have always taken place so affects will generally be limited and confined to the width of the easement area. Any effects will be mitigated by the terms of the concession including restrictions on earth disturbance, depositing of materials, lighting of fires and disturbance of waterways.

2.4 Details of the proposed type of concession:

An easement concession under S. 17Q (1) Conservation Act 1987.



2.5 Proposed duration of concession and reason for proposed duration.

In perpetuity. The easement concession area is essential to the safe running of the farming operation to enable the continuation of practical access to the ridge top for turning vehicles over a route that has become encompassed within the proposed Conservation Area boundaries. The period of the concession will allow surety for the ongoing operation of the farm.

6 Relevant information:

The lessees of Invercroy Pastoral Lease have entered into this review voluntarily. The proposed easement concession route is essential for ongoing management of the farm and the effects on the area which the easement route is to cross will be limited.

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

---

#### **1 Details of designation**

---

- 1.1 Under this Proposal the land shown marked in green on the Plan, being **1824** hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:
- (a) Part IVA of the Conservation Act 1987;
  - (b) Section 11 of the Crown Minerals Act 1991;
  - (c) the easement marked as a-b, c-d-e, d-f, g-e-h on the Plan and substantially as set out in Appendix 5; and
  - (d) the covenant marked as CC1a, CC1b, and CC2 and shaded yellow on the Plan and substantially as set out in Appendix 6.
  - (e) the continuation in force of the Water race easement created by Transfer 436000 reserved in Pastoral Lease CT CB32A/379
  - (f) the continuation in force of the appurtenant right of way marked "T" on SO 15566 reserved in Pastoral Lease CT CB6B/313 and listed as an interest on CB32A/379, as an appurtenant easement to the land shown to be disposed of by freehold disposal to the Holder.
  - (g) the surrender of the right of way marked as "S" on SO 15566 reserved in CB32A/379.

#### **2 Existing consents**

---

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

- (a) A consent to Kenilworth Limited to take water from Cattle Creek for community water supply (Consent No CRC981956.1).

**Schedule Four: Conditions**

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Nil.



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

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

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

Dated:

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

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:  
Occupation:  
Address:

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

---

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

Dated:

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

---

Witness Signature:

---

Witness Name:  
Occupation:  
Address:



## Appendix 2: Example of Solicitor's Certificate

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### Certifications

I [ ] hereby certify as follows:

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

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

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

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

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

Yours faithfully

[signed by principal of law firm]





### Appendix 3: Fencing and Construction Requirements

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**New fencelines – 7 wire sheep/cattle fence:** P-Q

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**Length and location:** P-Q 6200m (approximately)

**Type:** Fence to be an "all-steel" type 7 wire sheep/cattle fence

**Specifications:**

- 1.5m steel Y posts at 3m max spacings
- Intermediate posts at 21m spacing, being back to back 1.5m steel Y posts with 1.8m x 125mm wooden posts in sections of fence where practical i.e. bottom of gullies at creek crossings or nearing gateways.
- 1.35m steel Y posts acceptable in extremely rocky sections where drilling or holes is necessary to install Y post
- 1.65m t-irons on intermediate corners tied back acceptable in rocky conditions
- 2.1m x 175mm treated timber strainers for gateways & ends of strains
- 2.4m x 125mm treated stays
  
- Top barb 2.5mm reverse twist 150mm laced to Y-post with 3.55mm wire.
- 5 x 3.55mm wires
- 1 x 4.00mm bottom wire
- 50 x 4 mm barbed staples driven well in but to allow wires to run through
- Tie backs to consist of min 2 anchor points
- Tie backs and tie downs 4.00mm wire
- Max strain length 250m strained with permanent type wire strainers
  
- 3.6m steel gates at track crossings (4 locations, specified on plans in Pre Implementation Report).
- 3m 'aranaki style' wire gate at fence end 'Q'.
- Floodgates across all creek crossings constructed independent to fence using 300mm netting, swung off multiple twist 4.00mm wire, securely anchored to points either side of creek above flood level. (6 locations, specified on plans in Pre Implementation Report).
  
- The first 300m (approx.) from Q is along an existing fenceline. Existing materials can be used for this short section, with the addition of 1.5m steel Y posts at 3m spacings.
- Netting clips 3.55mm to clip wires to Y posts
- Top barb laced on with 3.55 wire
- Taranaki style gateway 3.6m to be put in existing fence immediately beyond where fenceline P-Q diverges from existing fenceline.

### Specifications for earthworks and vegetation clearance

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

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

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



**Appendix 4: Form of Easement Concession to be Created ('h-i').**

---

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

DATED \_\_\_\_\_

Between

MINISTER OF CONSERVATION  
("the Grantor")

and

CATTLE CREEK FARM LIMITED  
("the Concessionaire")

EASEMENT CONCESSION  
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation  
*Te Papa Atawhai*

THIS DOCUMENT is made this        day of                    20

**PARTIES:**

1.     **MINISTER OF CONSERVATION, ("the Grantor")**
2.     **CATTLE CREEK FARM LIMITED, ("the Concessionaire")**

**BACKGROUND**

- A.     The land described in Item 1 of Schedule 1 as the Servient Land is a Conservation Area or a Reserve 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.

"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.

**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.

**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
- (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; 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. TEMPORARY SUSPENSION

10.1 The Grantor may, at any time in exercise of the Grantor's powers, close all or part of the Easement Area for such period as she/he considers necessary.

## 11.0 TERMINATION

11.1 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.

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

## 12.0 INDEMNITIES AND INSURANCE

12.1 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.

- 12.2 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.
- 12.3 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.
- 12.4 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.

### 13.0 ASSIGNMENT

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

### 14.0 DISPUTE RESOLUTION AND ARBITRATION

- 14.1 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.
- 14.2 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.
- 14.3 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.
- 14.4 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.

14.5 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.

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

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

#### 15.0 NOTICES

15.1 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.

15.2 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.

#### 16.0 RELATIONSHIP OF PARTIES

16.1 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.

#### 17.0 SPECIAL CONDITIONS

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

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

**Signed by :**

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

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

**Signed by :**

\_\_\_\_\_  
**Cattle Creek Farm Limited**  
as Concessionaire  
in the presence of :

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

**SCHEDULE 1**

1. **Servient Land:** The land described as being part of \_\_\_\_\_ being Conservation Land situated in the Canterbury Land District and designated as Conservation Area on the eastern faces of the Kirkliston Range, and being outlined in pink in the plan attached to the Proposal.  
*(see definition of Servient Land in clause 1.1)*
  
2. **Dominant Land:** The land described as being \_\_\_\_\_ situated in Blocks II, III, VI, VII, VIII, XI, XII, XIV and XV Dalzell Survey District and described in Certificate of Title CB \_\_\_\_\_ (Canterbury Registry).  
*(see definition of Dominant Land in clause 1.1)*
  
3. **Easement Area:** That part of the land labelled "h-i" shown as a red line on the plan attached to the Proposal and having a width of 20 metres.  
*(see definition of Easement Area in clause 1.1)*
  
4. **Concession Activity:** Right of way appurtenant to the Dominant Land for farm management purposes only on foot and with motor vehicles and with or without horses, farm stock, machinery and implements of any kind, farm dogs and guns over and along;
  - easement area "h-i",  
*(see definition of Concession Activity in clause 1.1.)*
  
5. **Term:** The concession is granted in perpetuity commencing on the day of registration of an approved plan affecting Certificate of Title CB32A/379 (Canterbury Registry)  
*(see clause 3.1)*
  
6. **Compensation:** \$ A one-off fee has (in effect) been accounted for on behalf of the Grantor as part of the substantive proposal put by the Commissioner of Crown Lands and accepted by the Concessionaire on [date] \_\_\_\_\_ and for which an approved plan has been registered pursuant to section 65 of the Crown Pastoral Land Act 1998.  
*(see clause 4.1)*
  
7. **Public Liability General Indemnity Cover:** for \$1,000,000 *(see clause 12.3)*
  
8. **Public Liability Forest & Rural Fire Act Extension:** for \$1,000,000 *(see clause 12.3)*
  
9. **Statutory Liability Insurance** Nil *(see clause 12.3)*
  
10. **Other Types of Insurance:** Nil *(see clauses 12.3)*

11. **Address for Notices (including facsimile number):**

*(see clause 15)*

(a) Grantor

Conservator  
Department of Conservation  
70 Moorhouse Avenue  
Private Bag 4715  
**CHRISTCHURCH**  
PH: (03) 371 3700  
Fax: (03) 365 1388

(b) Concessionaire

Cattle Creek Farm Limited  
c/o David and Melanie Milne  
Inverroy Station  
Cattle Creek  
Hakataramea Valley  
R. D. Kurow  
**NORTH OTAGO**  
PH: 03 436 0155  
Fax: 03 436 0255

**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 ;
  - 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 of the land in the easement and in particular will avoid using the easement when conditions render the land over which the easement is granted 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.
  
5. **THE** Right and Powers implied in easements under the 4th Schedule of the Land Transfer Regulations 2002 are varied as follows:
  - a. Regulation 1 is amended by replacing the word, "grantee" with "Concessionaire"
  - b. Regulation 6(3)(a) is deleted
  - c. Regulation 10(1)(b) is deleted
  - d. Regulation 11(2) is deleted and sub clause (4) is amended by deleting the reference to sub clause (2)
  - e. Regulations 13 and 14 are deleted.





**Appendix 5: Form of Easement to be Created for Public Access and Management Access  
Purposes ('a-b', 'c-d-e', 'd-f' and 'g-e-h')**

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

DOCDM-411475 – Invercroy – August 2012

## **TRANSFER GRANT OF EASEMENT IN GROSS**

1. Public Access.
2. Management Access

**Land Transfer Act 1952**

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

**TRANSFER**

**Land Transfer Act 1952**

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

Land Registration District

Canterbury

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

--	--	--	--

Grantor Surnames must be underlined

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

Grantee Surnames must be underlined

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

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

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

Consideration

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

Operative Clause

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

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

Attestation

Signed by acting under written delegation from the Commissioner of Crown Lands     Signature, or common seal of Grantor	Signed in my presence by the Grantor Signature of Witness  _____ (continued on page 4 of Annexure Schedule) Witness to complete in <b>BLOCK</b> letters (unless typewritten or legibly stamped) Witness name Occupation Address
--	--

Certified correct for the purposes of the Land Transfer Act 1952

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

Solicitor for the Grantee

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

Insert below  
"Mortgage", "Transfer", "Lease", etc

Dated  Page  of  Pages

**Definitions**

1. In this transfer unless the context otherwise requires:
  - 1.1 "Easement Area" means that part of the Servient Land being 20 metres wide which is marked "[ ]" on Deposited Plan/S.O. Plan No [ ].
  - 1.2 "Parking Area" means that part of the Easement Area being approximately 20 metres by 20 metres square marked "a".
  - 1.3 "Management Purposes" means:
    - the protection of a significant inherent value of the land managed by the Grantee; and/or
    - the ecological sustainable management of the land managed by the Grantee.
  - 1.4 "Servient Land" means the land owned by the Grantor and described on page 1.
  - 1.5 "Grantee" means Her Majesty the Queen acting by and through the Minister of Conservation and includes tenants, agents, invitees, contractors, licensees and employees of the Minister of Conservation and the Director-General of Conservation; and for the purposes of clauses 2.1 and 2.2 only, includes any member of the public.
  - 1.6 "Grantor" means the owner of the Servient Land described on page 1 and includes the Grantor's tenants and invitees.

**Standard Easement Terms**

Access

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

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

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

Insert below  
"Mortgage", "Transfer", "Lease", etc

Dated  Page  of  Pages

Exclusion of Schedules

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

Term

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

Temporary Suspension

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

Dispute Resolution

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

Notice

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

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

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

Insert below  
"Mortgage", "Transfer", "Lease", etc

Dated Page  of  Pages

**Special Easement Terms**

9. The standard easement terms contained above must be read subject to any special easement terms set out below.
10. The Grantee (not being a member of the public) has the right:
  - 10.1 To mark the Easement Area as appropriate.
  - 10.2 To erect and maintain stiles and/or gates.
  - 10.3 To erect and maintain signs informing the public:
    - (a) of the location of the land managed by the Crown and available for public access and recreation; and
    - (b) of their rights and responsibilities in relation to the Easement Area.
  - 10.4 From time to time to modify the surface of the Easement Area so that it becomes and remains fit for the purpose of clauses 2.1, 2.2 and 2.3.
  - 10.5 To use whatever reasonable means of access he/she thinks fit over the Easement Area to carry out the works in clause 10.1 to 10.4.
11. Easement Area "e-h" may be closed by the Grantor between 1 October and 20 November for livestock management purposes only.
12. No dogs are permitted on the Easement Area at all.
13. If the Grantee (being a member of the public) has a hunting permit, issued by the Director-General of Conservation for public conservation land to which the Easement Area provides access, they may carry a gun on the Easement Area for the purpose of gaining access to hunt on that land.

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

**Continuation of "Attestation"**

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

under a written delegation in the  
presence of: )

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

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

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

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

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

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access to Conservation Areas
2. Management Access

**Land Transfer Act 1952**

**Law Firm Acting**

Conservancy Solicitor  
Department of Conservation  
70 Moorhouse Avenue  
Christchurch

Auckland District Law Society  
REF:4135

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





**Appendix 6: Form of Covenant to be Created (CC1(a), CC1(b) and CC2)**

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

**Between**

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

**and**

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

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



**Department of Conservation**  
*Te Papa Atawhai*



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

1.2 For avoidance of doubt:

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

2. **OBJECTIVE OF THE COVENANT**

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

3. **THE OWNER'S OBLIGATIONS**

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

- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
  - 3.1.10 any other activity which might have an adverse effect on the Values.
  - 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
  - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must:
- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
  - 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
  - 3.2.3 keep the Land free from exotic tree species;
  - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on and to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

#### 4. THE MINISTER'S OBLIGATIONS

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

#### 5. IMPLEMENTATION OF OBJECTIVES

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

#### 6. DURATION OF COVENANT

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

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

- 7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, or assignee to ensure that on any subsequent sale, lease, or assignment, any subsequent purchaser, lessee, or assignee must also comply with the terms of this Covenant including this clause.
- 7.2 A Transferee of the Land will at law be bound by the registered Covenant. Such transfer is deemed to provide the agreement to comply with the terms of this Covenant required by clause 7.1.

## **8. MISCELLANEOUS MATTERS**

### **8.1 Rights**

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

### **8.2 Trespass Act:**

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

### **8.3 Reserves Act**

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

### **8.4 Titles**

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

### **8.5 Acceptance of Covenant**

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

### **8.6 Fire**

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

**9. NOTICES**

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

**10. DEFAULT**

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

**11. DISPUTE RESOLUTION PROCESSES**

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



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

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

**12. JOINT OBLIGATIONS**

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

**13. SPECIAL CONDITIONS**

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

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

**Executed as a Deed**

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

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

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

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

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

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

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

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

8  
SCHEDULE 1

1. **Description of Land**

**CC1a – East Kirkliston Range Mid Slopes.**

All that piece of land containing 645 hectares approximately shown shaded yellow on the plan attached to the Proposal and labelled CC1a.

**CC1b – Cattle Creek Catchment.**

All that piece of land containing 90 hectares approximately shown shaded yellow on the plan attached to the Proposal and labelled CC1b.

**CC2 – North-eastern Kirkliston Range.**

All that piece of land containing 22 hectares approximately shown shaded yellow on the plan attached to the Proposal and labelled CC2.

2. **Values of Land to be Preserved.**

**CC1a– East Kirkliston Range Mid Slopes –Natural Environment, Historical and Landscape Amenity Values.**

- The area supports shrubland communities and remnant isolated trees (kowhai and mountain totara) that are representative of the original vegetation of the Kirkliston ecological district.
- The area supports the threatened plant species *Carmichaelia crassicaule* (threat status “declining” (de Lange, et al. 2009)).
- The area supports healthy populations of indigenous lizard species (common gecko, common skink and McCanns skink) which are present in high numbers.
- The area has been identified as containing two archaeological sites; I39/5: South Canterbury Rabbit Fence, being the line of the government funded rabbit fence built to stop the spread of rabbits into Canterbury, and I39/6 Rabbiter’s Hut, being the site of one of the huts built in association with the rabbit fence and occupied by a rabbit fence caretaker.
- The area has moderate degrees of naturalness, intactness, legibility and coherence, forming a landscape with moderate aesthetic values and is an integral part of the Kirkliston Range landscape making a significant contribution to the natural character of the area.
- The area acts as a buffer to the existing Conservation Area higher on the slopes of the Kirkliston Range.

**CC1b– Cattle Creek Catchment –Natural Environment and Landscape Amenity Values.**

- The area supports shrubland communities and remnant kowhai trees that are representative of the original vegetation of the Kirkliston ecological district.
- The area has moderate degrees of naturalness, intactness, legibility and coherence, forming a landscape with moderate aesthetic values and is an integral part of the Kirkliston Range landscape making a significant contribution to the natural character of the area.
- The area acts as a buffer to the existing Conservation Area higher on the slopes of the Kirkliston Range.

**CC2 - North-eastern Kirkliston Range – Natural Environment and Landscape Amenity Values.**

- The area supports shrubland communities and remnant kowhai trees that are representative of the original vegetation of the Kirkliston Ecological District.
- The area supports remnant prostrate kowhai which are regionally uncommon.
- The area has high degrees of naturalness, intactness, legibility and coherence forming a landscape with high aesthetic values and is an integral part of the Kirkliston Range landscape making a significant contribution to the natural character of the area.
- The area acts as a buffer to a proposed Conservation Area higher up on the slopes of the Kirkliston Range.

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

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

Minister of Conservation  
C/- Conservator  
Department of Conservation  
70 Moorhouse Avenue  
Private Bag 4715  
**CHRISTCHURCH**  
Ph: 03 371-3700  
Fax: 03 365-1388

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

Cattle Creek Farm limited  
c/o David and Melanie Milne  
Invercroy Station  
Cattle Creek  
Hakataramea Valley  
R. D. Kurow  
**NORTH OTAGO**  
PH: 03 436 0155  
Fax: 03 436 0255

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

## SCHEDULE 2

## Special Conditions

Notwithstanding the conditions set out above the following special conditions shall apply in relation to each identified part of the Land;

**CC1a – East Kirkliston Range Mid Slopes.**

- 1 The covenant area may be grazed at any time by sheep and/or cattle, except for merino sheep which are not permitted, in association with the adjoining land.
- 2 If stock at any time are not able to be contained within the natural boundaries of the covenant area, the Owner, at the Owner's own cost, is to erect fencing which will contain the stock within the covenant area. If this fencing is required above 820m a.s.l. prior consultation with the Minister is required as to location and construction of the fence.
- 3 The covenant area below 820m a.s.l. may have vegetation cleared, including vegetation removal by spraying. The covenant area above 820m a.s.l. may have spot spraying of weeds only.
- 4 The covenant area below 820m a.s.l. may have any new fences or structures erected and new tracks constructed (all subject to local resource consent requirements). The covenant area above 820m a.s.l. may have routine maintenance of existing fences, structures and maintenance within the alignment of all existing tracks done. Two new fence lines may be erected as shown by the black dotted lines on the plan attached to the proposal. Any maintenance undertaken outside the existing alignment of tracks or further upgrading of tracks above 820m a.s.l. requires the prior written consent of the Minister.
- 5 The covenant area may be oversown and topdressed, but may not be oversown or topdressed above the 820m a.s.l. contour or within a 20 metre margin adjoining any waterways.
- 6 Work affecting the archaeological sites, including standing structures erected prior to 1900, is subject to the archaeological authority process under the Historic Places Act 1993. An authority (consent) from the New Zealand Historic Places Trust (NZHPT) must be obtained prior to the commencement of any earthworks, construction or clearance that could cause damage to historic values on the covenant area. In particular, any modification of the fence or hut including, but not limited to, the replacement of wires and posts will require an authority from NZHPT. It is an offence to modify damage or destroy a site for any purpose without an authority. The Historic Places Act 1993 contains penalties for unauthorised site damage.
- 7 The Minister may design and undertake a monitoring programme:
  - a. to ensure that the ecological integrity of the area and associated vegetation is maintained,
  - b. To enable the monitoring of any effects on the vegetation cover and conditions and any other conservation values in the covenant area.
 The monitoring programme will be reviewed at regular intervals and if in the opinion of the Minister there are any issues identified with the status of any of the species in the covenant area or deterioration in the condition and extent of the ecological condition the Minister reserves the right to take any necessary steps to further protect any species including fencing areas of the covenant area and adjusting stock access. The Minister will liaise with the Owner in implementing these measures and the Owner will cooperate in the giving effect to any measures considered necessary by the Minister.
- 8 The Owner will permit Department of Conservation staff and their contractors entry upon the land at all times, for purposes associated with management of the covenant.

**CC1b – Cattle Creek Catchment.**

- 9 The covenant area may be grazed at any time by sheep only, except for merino sheep which are not permitted, in association with the adjoining land.
- 10 If stock at any time are not able to be contained within the natural boundaries of the covenant area,

the Owner, at the Owner's own cost, is to erect fencing which will contain the stock within the covenant area. If this fencing is required above 820m a.s.l. prior consultation with the Minister is required as to location and construction of the fence.

- 11 The covenant area may have spot spraying of weeds only. A 20m wide stock access route may be cleared and maintained with the use of spraying or mechanical vegetation clearance but no clearance of kowhai trees or kowhai seedlings is permitted at all. The stock access route is confined to the area indicated with a black dashed line on the plan attached as Figure 1 in Schedule 3.
- 12 The covenant area may have routine maintenance of existing fences, structures and maintenance within the alignment of all existing tracks done. Any maintenance undertaken outside the existing alignment or further upgrading of tracks requires the prior written consent of the Minister.
- 13 The covenant area may be oversown and topdressed, but may not be oversown or topdressed above the 820m a.s.l. contour or within a 20 metre margin adjoining any waterways.
- 14 The Minister may design and undertake a monitoring programme:
  - a. to ensure that the ecological integrity of the area and associated vegetation is maintained.
  - b. To enable the monitoring of any effects on the vegetation cover and conditions and any other conservation values in the covenant area.

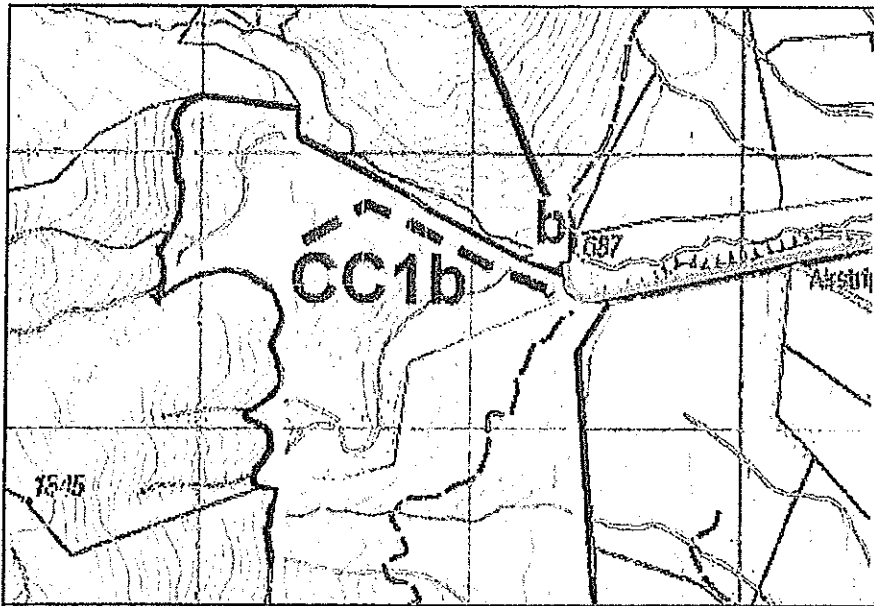
The monitoring programme will be reviewed at regular intervals and if in the opinion of the Minister there are any issues identified with the status of any of the species in the covenant area or deterioration in the condition and extent of the ecological condition the Minister reserves the right to take any necessary steps to further protect any species including fencing areas of the covenant area and adjusting stock access. The Minister will liaise with the Owner in implementing these measures and the Owner will cooperate in the giving effect to any measures considered necessary by the Minister.
- 15 The Owner will permit Department of Conservation staff and their contractors entry upon the land at all times, for purposes associated with management of the covenant.

**CC2 - North-eastern Kirkliston Range.**

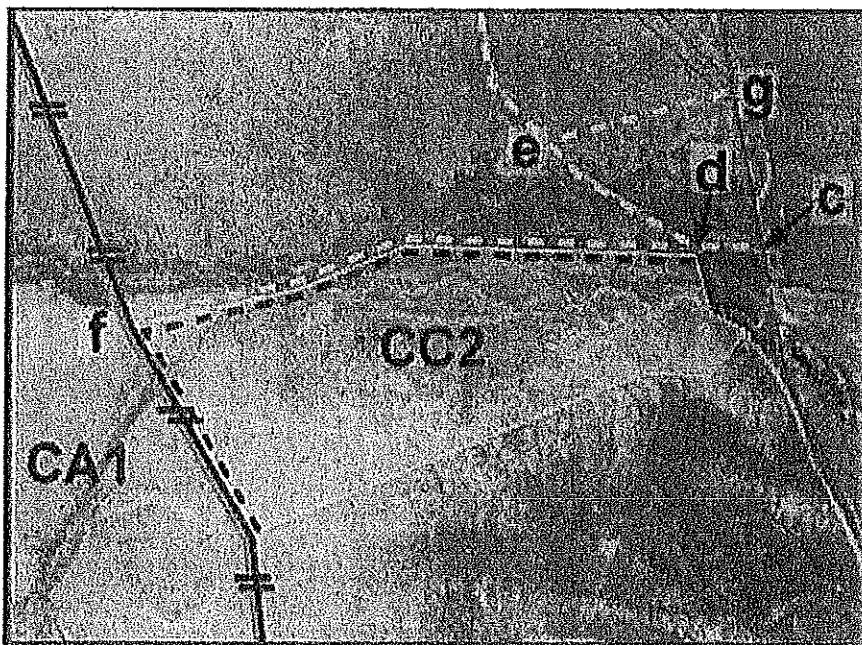
- 16 The covenant area may be grazed at any time by sheep and/or cattle only, in association with the adjoining land.
- 17 The covenant area may have spot spraying of weeds only. A 20m wide stock access route may be cleared and maintained with the use of spraying or mechanical vegetation clearance but no clearance of kowhai trees or kowhai seedlings is permitted at all. The stock access route is confined to the area indicated with a black dashed line on the plan attached as Figure 2 in Schedule 3.
- 18 The Minister may design and undertake a monitoring programme:
  - a. to ensure that the ecological integrity of the area and associated vegetation is maintained
  - b. to enable the monitoring of any effects on the vegetation cover and conditions and any other conservation values in the covenant area.

The monitoring programme will be reviewed at regular intervals and if in the opinion of the Minister there are any issues identified with the status of any of the species in the covenant area or deterioration in the condition and extent of the ecological condition the Minister reserves the right to take any necessary steps to further protect any species including fencing areas of the covenant area and adjusting stock access. The Minister will liaise with the Owner in implementing these measures and the Owner will cooperate in giving effect to any measures considered necessary by the Minister.
- 19 The Owner will permit Department of Conservation staff and their contractors entry upon the land at all times, for purposes associated with management of the covenant.

Schedule 3



**Figure 1**  
Location of 20 metre wide Stock Access Route over CC1b depicted by black dashed line.  
(Note: map to be updated once GPS references of line of route is available).



**Figure 2**  
Location of 20 metre wide Stock Access Route over CC2 depicted by black dashed line.

**GRANT** of

Correct for the purposes of the  
Land Transfer Act 1952

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

Solicitor for the Minister

**COMMISSIONER OF CROWN  
LANDS**

to

**MINISTER OF CONSERVATION**

---


**Solicitor  
Department of Conservation  
DUNEDIN/CHRISTCHURCH**

**Execution Section**

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

**SIGNED by Brian John Usherwood** pursuant to a delegation from the **Commissioner of Crown Lands** pursuant to the Crown Pastoral Land Act 1998 in the presence of:




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*Anthony Hatch*  
\_\_\_\_\_  
Witness

*Solutor*  
\_\_\_\_\_  
Occupation

*100 Wadestown Rd*  
\_\_\_\_\_  
Address  
*Wellington 6012*

**SIGNED for and on behalf of the Holder, Cattle Creek Farm Limited** by two of its directors:

  
\_\_\_\_\_  
**David Henry Milne**

  
\_\_\_\_\_  
**Melanie Jane Noble Milne**