

Crown Pastoral Land Tenure Review

Lease name : HUXLEY GORGE I & II

Lease number : PT 106/ PT 139

Preliminary Proposal- Part 1

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

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

April

14

**PROPOSAL FOR MULTIPLE REVIEW OF CROWN LAND
HUXLEY GORGE GROUP**

Date:

Parties:

Commissioner of Crown Lands:

C/- The Manager tenure Review
Opus International Consultants Ltd
PO Box 142
CHRISTCHURCH

And

Holder: Huxley Gorge Limited as lessee under the **Huxley Gorge I Lease**
6 Queen street
TIMARU

The Land

Lease: Huxley Gorge I

Legal Description: Run 314

Area: 6860 ha

Certificate of Title/Unique Identifier: CB529/213

Holder: Huxley Gorge Limited as lessee under the **Huxley Gorge II Lease**
6 Queen Street
TIMARU

The Land

Lease: Huxley Gorge II

Legal Description: Runs 528 and 727

Area: 7506.9187

Certificate of Title/Unique Identifier: OT386/33


Summary of Designations

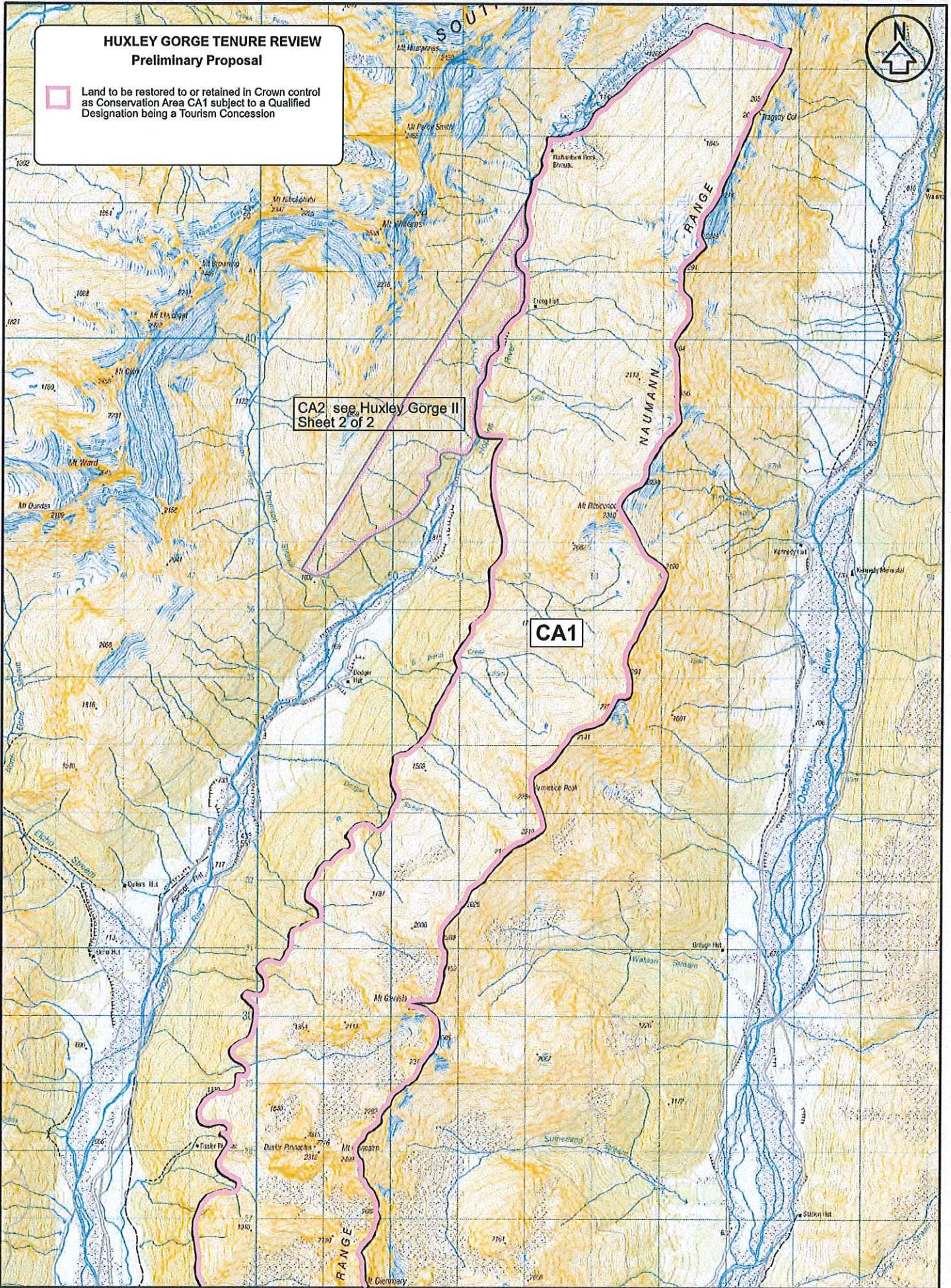
Under this Proposal, the Land in relation to each lease is designated as follows:

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

1 The Designation Plans for the Huxley Gorge Group

**HUXLEY GORGE TENURE REVIEW
Preliminary Proposal**

 Land to be restored to or retained in Crown control as Conservation Area CA1 subject to a Qualified Designation being a Tourism Concession



btw south
Landscape
Architecture
and
Engineering

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GENERAL NOTES

1. Coordinates in terms of NZTM, Geodesic Datum 2000
2. Sources: LINZ Topo 50 map Series
LINZ Cadastral Data

Drawn As: S11110.LO.1

Please note that the boundary locations are indicative only and are as sourced from LINZ Cadastral Data. This Plan should be read in conjunction with the current Land Status Report and Addendum.

Project No:	059	1	2	3	4	5	6	7	8	9	10
Client:	LINZ Land & Air PT 106										
Run Name:	Huxley Gorge I										
Lease Registration Reference:	C6529213										
Land District:	Canterbury										
Sheet:	1 of 2										
Scale:	1:50,000 @ A3										

HUXLEY GORGE I
Certified Copy of Land Status Plan

0km 1 2

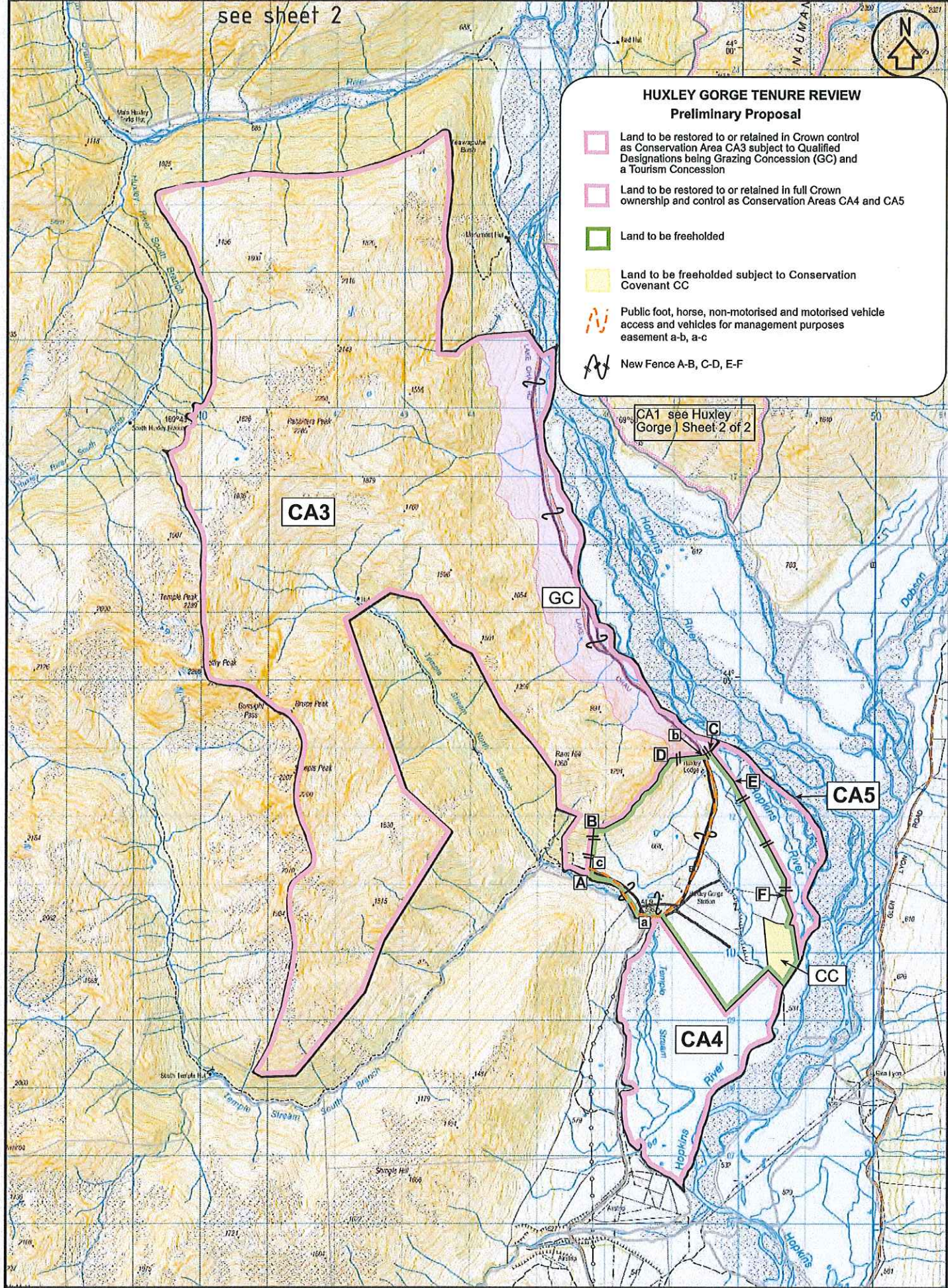
DISCONTINUED
A3

see sheet 2



HUXLEY GORGE TENURE REVIEW Preliminary Proposal

- Land to be restored to or retained in Crown control as Conservation Area CA3 subject to Qualified Designations being Grazing Concession (GC) and a Tourism Concession
- Land to be restored to or retained in full Crown ownership and control as Conservation Areas CA4 and CA5
- Land to be freeholded
- Land to be freeholded subject to Conservation Covenant CC
- Public foot, horse, non-motorised and motorised vehicle access and vehicles for management purposes easement a-b, a-c
- New Fence A-B, C-D, E-F



btw south
 100-105
 100-105
 100-105
 100-105

GENERAL NOTES
 1 Coordinates in terms of NZTM Geodesic Datum 2000
 2 Sources: LINZ Topo 50 map Series
 LINZ Cadastral Data

Region/DC										LINZ License Ref	PT 135
City	66102211									Run Name	Huxley Gorge II
Please note that the boundary locations are indicative only and are as sourced from LINZ Cadastral Data. This Plan should be read in conjunction with the current Land Status Report and Addendum.											
Lease Registration Reference: CB38933											
Lands District: Canterbury											
Sheet	1	of	2	Scale	1:50,000 @ A3	Dkm			1	2	

HUXLEY GORGE II
 Certified Copy of Land Status Plan

2 Conditions

- 2.1 This Proposal is put to each Holder and any agreement arising therefrom, is subject to the conditions contained in Schedule Four of the relevant Lease schedule.

3 Settlement

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

- 3.2 The Freehold Land will be disposed of to each 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 any Lease is subject to a Rent Review, then in respect of settlement with the Holder of that Lease 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

- 4.1 By 3.00 p.m. on the Settlement Date, each Holder must pay its 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 any Holder fails to pay its Holder's Payment or any part of it or any other money to the Commissioner or to the duly appointed agent of the Commissioner on the Settlement Date clause 19 will apply.

5 Commissioner's Payment

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

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

6 Vesting of Crown Land

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

7 Issue of Certificate of Title

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

8 Registration of Documents

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

9 Consents

- 9.1 Each Holder must obtain the written consent to each Holder's acceptance of this Proposal from all persons having an interest in that Holder's Land (other than that 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 relevant Lease and/or the Holder's Land; and
 - (c) any other person that the Commissioner reasonably believes has an interest in that Holder's Land or who that Holder reasonably believes has an interest in that Holder's 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 each Holder. Examples of the form of consents required under clause 9.1 are set out in Appendix 1.
- 9.3 Each Holder must also obtain, and provide to the Commissioner if requested, all consents necessary for that 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 Each Holder will procure the Mortgagee to execute a registrable discharge of the Mortgage and, if required by the Mortgagee, that 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 relevant certificates of title for the Freehold Land at the same time as the certificates of title for the relevant Freehold Land issue.

10 Continuation of Lease

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

11 Fencing and Construction Works

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

the Commissioner may, acting reasonably, elect to do any one or more of the following:

- (iii) erect the Fencing in a position different from that shown on the Plan;
 - (iv) erect the Fencing over a shorter distance than that shown on the Plan; or
 - (v) erect the Fencing to specifications different from those in Appendix 3.
- 11.3 If the Commissioner has not completed the Fencing by the Settlement Date, the Holders agree 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. Each 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 all of the Holders have accepted this Proposal and that acceptance has taken effect pursuant to the Act, [the Commissioner] [each Holder] [other] 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 any Holder, require a resource consent or any other consent from any local or territorial authority ("the Works Consent"), the following provisions shall apply:
- (a) The Commissioner shall use reasonable endeavours to obtain the Works Consent within 6 months of this Proposal taking effect pursuant to the Act.
 - (b) If the Works Consent:
 - (i) is not obtained within 6 months of this Proposal taking effect pursuant to the Act; and/or
 - (ii) is obtained on terms which are not satisfactory to the Commissioner in all respects;
- the Commissioner may, acting reasonably, elect to vary the extent of the Construction Works in question and/or the terms and conditions upon which they are carried out.

12 Apportionments

- 12.1 Rent payable under each 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 relevant Lease continues in effect until certificates of title issue for the Freehold Land, the Holder shall not be required to pay any rent under its relevant Lease for the Freehold Land from the Settlement Date.
- 12.2 Rent paid or payable under each Lease for the Crown Land will be apportioned (on a pro rata basis in respect of the Land if they cannot be separately assessed) 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 for each Lease.
- 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 in relation to each Lease.

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

13 Risk

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

14 Survey

- 14.1 All areas of the Land forming part of this Proposal and delineated on the Plan are approximate and subject to preparation of the Final Plans. The measurements of the areas may therefore alter on the Final Plans.
- 14.2 No error, misdescription or amendment of any part of the Land will annul, vary, or derogate from this Proposal, or each Holder's acceptance of this Proposal.
- 14.3 For the avoidance of doubt, none of the Holders will be entitled to cancel or withdraw its acceptance of this Proposal, nor will any Holder, or any successor in title of any 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 Acknowledgments

- 15.1 If each Holder accepts this Proposal and that acceptance takes effect under the Act, each Holder acknowledges that:
- (a) it is obtaining the freehold interest in the land specified in Schedule Three as being freeholded to that Holder:
 - (i) "as is", solely in reliance on its own investigations and judgement; and
 - (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
 - (b) each Holder has carried out all inspections of the land specified in Schedule Three as being freeholded to that Holder which each Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
 - (c) each Holder, at its cost, is entirely responsible for all work to ensure that the land specified in Schedule Three as being freeholded to that Holder 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

each 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 each 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 relevant Land; and
- (e) each Holder has no claim (and will not have any claim) whatsoever against the Crown and/or Commissioner in relation to the Tenure Review and/or this Proposal, including (without limitation) any claim for any misrepresentation or for any loss or damage suffered whether in contract, tort (including negligence) or otherwise.

16 No Representations or Warranties by the Commissioner

16.1 The Commissioner gives no representations or warranties of any nature in respect of the Freehold Land. Without limitation, the Commissioner does not warrant:

- (a) the accuracy of any matter in the Notice for the relevant Lease or this Proposal or in any notice, or any correspondence or other information provided to each 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 each Holder's use; or
- (c) that the Freehold Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Freehold Land.

17 Acceptance

17.1 Subject to s60(3) and (4) of the Crown Pastoral Land Act 1998 each Holder's acceptance of this Proposal is irrevocable and constitutes a binding agreement between the Commissioner and each Holder.

17.2 If the Commissioner does not receive an acceptance to this Proposal signed by each Holder, including the written consents of all persons referred to in clause 9, within three (3) months of putting it (in its substantive form) to each Holder, each Holder is deemed to have rejected this Proposal.

18 Solicitors Certificate

18.1 Each Holder must instruct its solicitor 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 each Holder's execution of this Proposal and each Holder's execution of any documents required to give effect to this Proposal (including, without limitation any easement, protective mechanism and/or concession). An example of the form of solicitors certificate required is set out at Appendix 2.

18.2 Each Holder must return the completed solicitor's certificate to the Commissioner with this Proposal on its acceptance by that Holder.

19 Default

19.1 If from any cause whatever (except the default of the Commissioner) all or any part of the Holder's Payment or any other money payable by that Holder to the Commissioner is not paid on the due date that Holder will pay to the Commissioner interest at the Default Rate on the part of that Holder's Payment or any other money payable by that Holder to the Commissioner so unpaid from the due date until the date of actual payment in full.

19.2 The Commissioner's rights under this clause 19 are without prejudice to any other rights or remedies available to the Commissioner at law or in equity.

20 Goods and Services Tax

- 20.1 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 each Holder warrant to each other that they are registered for GST purposes as at such Holder's acceptance of this Proposal and that they will be so registered on the Settlement Date;
 - (b) the Commissioner and each 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 each 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 each 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 others 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 10th working day following the Unconditional Date, the Commissioner will provide to each 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 10th working day following the Unconditional Date, each 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 each 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 any Holder (as the case may be) in accordance with this clause 20, such Holder will pay to the Commissioner, or the Commissioner will pay to such Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
 - (b) any Default GST.

21 Lowest price

- 21.1 Each Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the land specified in Schedule Three as being freeholded to that Holder under section EW 32(3) of the Income Tax Act 2007 is equal to that 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

- 22.1 The Commissioner will meet the costs of the survey (if any) of the Land, including all designation areas, the Final Plans and for certificates of title to issue for the Freehold Land.
- 22.2 Each Holder is responsible for all costs that Holder incurs in respect of and incidental to the Tenure Review. In particular, but without limitation, each 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 each Holder.

23 No nomination or assignment

- 23.1 Each Holder is currently the lessee under one of the relevant Leases.
- 23.2 Each Holder is not entitled to, and is expressly prohibited from, nominating another person to perform its obligations under this Proposal or assigning to another person that Holder's interest (or any part) under this Proposal.

24 Recreation Permit

- 24.1 Immediately on the registration of the Final Plan in relation to the relevant Lease 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

- 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 this Proposal as Crown Land, then the Holder agrees to act in good faith whilst exercising such consent and not damage or destroy the Crown Land or anything thereon.

26 General

- 26.1 This Proposal and the Notice:
- (a) constitute the entire understanding and agreement between the Commissioner, the Crown and each Holder in relation to the Tenure Review; and
 - (b) supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and each 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 Each 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 each 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 each Holder irrevocably submits 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 each Holder is to send its acceptance of this Proposal (which the Commissioner will specifically notify each Holder of) the address, person or office holder (if any) for each party is shown on the front page of this Proposal;

- (b) no communication is to be effective until received. A communication will be deemed to be received by the addressee:
 - (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
 - (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), on the working day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and
 - (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

27 Interpretation

27.1 Definitions

In this Proposal unless the context otherwise requires:

Act means the Crown Pastoral Land Act 1998;

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

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

Crown Land means collectively the land (including any improvements) set out in Schedule One and collectively 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 each Holder under the Goods and Services Tax Act 1985 or the Tax Administration Act 1994 by reason of either the Commissioner or any Holder failing to pay GST as required by this Proposal. It does not include any sum levied against the Commissioner or any Holder by reason of a default by the Commissioner after payment of GST to the Commissioner by any Holder or by reason of a default by that Holder after payment of GST to that 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 for fencing required under the Resource Management Act 1991

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

Freehold Land means the land specified in Schedule Three as being freeholded to the Holders individually

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

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

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

Lease means those leases known as the:

Lease;

Lease; and

Lease,

each of these leases being identified on the front page of this Proposal;

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

Mortgagee means the mortgage-holder of any Mortgage;

Notice means the notice to each Holder setting out:

- (a) that Holder's Consideration;
- (b) the Commissioner's Consideration; and
- (c) that 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, covenant areas, easement routes, indicative fence lines as attached and shown 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 the determination of the rent payable under any Lease as set out in sections 6 to 8 of the Act;

Relevant Land means the land in the relevant Lease described on the front page of this Proposal.

Relevant Lease means the Lease described on the front page of the Proposal

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 each Holder an executed copy of this Proposal signed by each Holder containing the signed consents of all persons having an interest in the Land to each Holder's acceptance of this Proposal which results in the acceptance taking effect under the Act;

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

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

Works Consent means any and all consents required under the Resource Management Act 1991 and the Resource Management Amendment Act 2005; and/or the Building Act 2004.

27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

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

Schedule One: Provisions relating to the Schedule One Land

1 Details of Designation

- 1.1 Under this Proposal part of the land shown marked in pink on the Plan (CA4 and CA5), being 690 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

Schedule Two: Provisions relating to the Schedule Two Land

1 Details of designation

- 1.1 Under this Proposal part of the land shown marked in pink on the Plan (CA1, CA2 and CA3), being 13,057 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of the tourism concession over the total area substantially as set out in Appendix 5;
 - (b) the granting of the grazing concession over the area GC (shown on the Plan in pink) substantially as set out in Appendix 6;

Information Concerning Proposed Concessions

- 1.2 Information on the proposed concessions provided by the Director-General of Conservation (section 39 CPL Act) is set out in Appendix 7.

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 620 hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder of the Huxley Gorge II Lease 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' and 'a-c' on the Plan and substantially as set out in Appendix 4.

Schedule Four: Conditions

1. This Proposal is conditional on the acceptance of all the Holders and its acceptance by a Holder does not take effect unless it is also accepted by all the Holders.

2. The Commissioner is under no obligation, and may decide, in its sole discretion, not to proceed further with the Tenure Review unless and until:
 - (a) the Commissioner considers that sufficient funds will be obtained in order to complete the Tenure Review;
 - (b) the Director General of Conservation has completed all actions required under Part IVA of the Conservation Act 1987;

3. The land described in Schedule 3 will continue to be subject to an existing interest which is not a designation under section 36 of the Crown Pastoral Land Act 1998.

This proposal is conditional upon the following existing interest continuing with the land:

- An Electricity Agreement registered as 300604, securing the supply of electricity to Huxley Gorge, substantially as set out in Appendix 8.

General

Pursuant to Clause 9.1(c) of this proposal, the consent of the holder of the above interest must be obtained.

Appendix 1: Consents – Example of Mortgagee Consent

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

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

Dated:

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

Witness Signature: _____

Witness Name:
Occupation:
Address:

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

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

Dated:

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

Witness Signature: _____

Witness Name:
Occupation:
Address:

Appendix 2: Example of Solicitors Certificate

Certifications

I [] hereby certify as follows:

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

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

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

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

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

Yours faithfully

[signed by principal of law firm]

Appendix 3: Indicative Fencing and Construction Requirements for

Fenceline

Length and location:

750 metres (approximately) located along the line marked "A-B" on the designation plan.

550 metres (approximately) located along the line marked "C-D" on the designation plan.

Type: Seven-wire sheep/cattle fence with T irons or posts

Specifications

- Fence to be constructed of five HT (2.5mm) wires, one barbed on top and one bottom galvanised medium tensile 4mm (No.8) wire, with wires located on the proposed freehold side of the boundary, except where there is a high risk of snow damage where they shall be placed on the leeward side away from the prevailing snow. Wires to be on uphill side of fence unless snow is a major risk.
- 2.4 metre x 200mm treated timber strainers with treated timber stay to be used for gateways and ends of strains. 2.4m x 125mm stays to be used
- 4.2 metre heavy duty galvanised pipe (e.g. Cyclone Heavy Duty) gates to be erected across vehicle tracks or at appropriate locations in each span indicated above.
- 2.4 metre x 125mm treated timber posts or T irons to be used at 20metre gaps or on appropriate high and low points. Posts to be 1.8m x 125mm. Maximum spacing between posts 20m, and on high spots not low spots
- Six steel Y standards (e.g. Waratah) per 20 metres to be used. Y standards to be mostly 1500mm long with 1350 standards on rocky ground and 1650mm standards on soft ground.
- Y standards back to back, may be used instead of posts on high spots and on corners, with tie-backs on tussock country. To be confirmed prior to construction.
- All strainers to be driven or dug in a rammed and footed with acceptable footing material. No.8 wire to be used on foots. All dips and hollows to be tied down.
- Netting to be hung on creek crossings and left to swing.
- All strainers and angles to be mortised, stayed and blocked. Stays to be one-third of the way up posts.
- Tie-backs are permitted on both sides of the fence. To have at least 2 anchor points and a minimum of 2 wires on each.
- All wires to be securely and neatly tied off. Bottom wire to be between 100mm – 150mm above the ground. Line to be benched by hand where required. Most of the line will need to be cleared manually as required.
- Post staples to be 50mm x 40mm galvanised slice pointed barb and be driven well in, while still allowing the wire to run through. Staples 50 x 4 mm
- Strains not to exceed 300 metres and strained to a tension recommended by the wire manufacturer. 250m
- Strainers and angle posts to be dug in to such a depth that 1170mm remains out of the ground.
- Under no circumstances are any strainers, posts of stays to be shortened either prior to or subsequent to their placement in the ground.
- Ratchet strainers (e.g. Triplex) to be used on all strains.
- Droppers to be used near gateways where appropriate.

Construction

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 the Canterbury Regional Council must be obtained under the Resource Management Act 1991.

Appendix 4: Form of Easement to be Created

HUXLEY GORGE: CONSENT TO PRELIMINARY PROPOSAL
Creation of a Protective Mechanism -Easements
Canterbury Conservancy.

Report to the Minister of Conservation (Delegated to Conservator) on an Application by the Commissioner of Crown Lands (CCL) for a Provisional Consent to Designate any Land to which s.35 CPLA Applies as Land to be Disposed of to Huxley Gorge Limited subject to the Creation of a Protective Mechanism - Easements.

1. Protective Mechanism Proposal

- 1.1 The designation is proposed in the Part 2 CPLA review of Glen Lyon Pastoral Lease contained in certificate of title CB 386/33 (Otago Registry)
Area: 14,367 hectares approximately.
- The Preliminary Proposal proposes that:
- Five areas of land totalling 13,747 hectares approximately become **Conservation Area**.
 - The balance of 620 hectares approximately be disposed of as **freehold land** to the lessee, subject to two easement routes being created over the freehold land to provide public and DOC management access.
- 1.2 Type of protective mechanism: Easements under section 12 of the Reserves Act 1977 as follows;
- **Lower Hopkins Fan Route** for public and DOC management access.
 - **Temple Stream Route** for public and DOC management access.
- 1.3 See the attached plan showing the proposed conservation areas, surrender land, freehold land, exchange areas, covenant areas and easement routes.
- 1.4 The CCL's request for consent (through the Service Provider) was made on 21st March 2012.

2. Terms and Conditions

- 2.1 The proposed landowner of the freehold is: Huxley Gorge Limited – the present lessee.
- 2.2 The terms and conditions (DOCDM - 928452) will be the same as the model easement in Part 5 of the CPLA Manual, with the following conditions:
- Public access is on foot, on or accompanied by horses, or by non motorised vehicle powered by a person or persons or by road motor vehicle.
 - DOC management access is on foot, on or accompanied by horses, or by non-motorised vehicle, or by motor vehicle with or without machinery and implements.
 - The easements must be kept clear of obstructions at all times.

3. Significant Inherent Values etc.

3. Significant Inherent Values etc.

- 3.1 The land over which the easements pass contain no significant inherent values that warrant protection. Both routes predominantly follow existing 4WD tracks and are over land that is being used for farming.
- 3.2 Both easements follow an existing farm track that is also close to the legal road. One easement crosses the lower Hopkins fan by the Huxley Gorge homestead. The other easement follows a track into the Temple Stream. The route provides practical public vehicle, foot, Mt bike and horse access, as well as conservation management access, to the proposed Conservation Areas and conservation land beyond in the Temple valley. The CPLA identifies land may be disposed of subject to the creation of a protective mechanism under s.40(1)(c) and in this case s.40(2)(c) is the appropriate matter being an easement to facilitate " *Public access across or to the land concerned*".

4. Justification

- 4.1 The protective mechanisms developed for this proposal fulfil the objectives of the CPLA by adequately securing public and management access. The route provides practical public access, as well as conservation management access. The existing farm track is the only practical access into the valley and vehicle access is essential due to the distances involved.
- 4.2 The CCL has consulted with the High Country Tenure Review Manager (HCTRM) (under delegated authority from the DGC) in devising the proposed designations to commence formal consultation. The HCTRM along with the CCL's agent developed a proposal that identified areas of significant inherent value that the Department believed should be in Crown Control. This proposal was prepared in December 2011 and presented to the lessee.

There have been numerous meetings and discussions between the lessee, the agent for the CCL and the HCTRM and staff since the commencement of formal consultation which have resulted in changes to some of the conservation areas, and access routes originally in the proposal. Both easement routes were included in the original proposal and have remained unchanged. The Holders have never questioned the public access needs over this lease. Public access has been well established and recognised for many years.

5. Conclusion

- 5.1 The Proposal has been discussed with the holders of Huxley Gorge Pastoral Lease. Both easement routes were included in the original proposal and have remained unchanged.
- 5.2 The standards and objectives of the CPLA and the DOC manual have been met.

6. Recommendation

- 6.1 That you note that you must not consent provisionally to this designation unless satisfied it is reasonably likely that the Minister would consent to a Substantive Proposal containing the designation under s 41(2) CPLA.
- 6.2 That pursuant to s. 41(1) (h) CPLA you give written provisional consent to the proposed easements on the terms and conditions set out above.

HCTRM comments: This review has been ongoing since the mid 1990's and is now at a critical stage, where the Holders have to either accept the review or with draw from the process.

Signed: 
Mike Clare, HCTRM

Date: 23 /03 /2012

7. Decision

7.1 Recommendation

~~Approved/Declined~~


Conservator, Canterbury Conservancy

Date: 2 /04 /2012

Appendix 5: Form of Tourism Concession to be Created

Concession number: _____

DATED _____

Between

THE MINISTER OF CONSERVATION
("the Grantor")

and

HUXLEY GORGE LIMITED
("the Concessionaire")

CONCESSION DOCUMENT
UNDER THE CROWN PASTORAL LAND ACT 1998
(for Tourism Activities)



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made on this day of

PARTIES:

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **HUXLEY GORGE LIMITED**, ("the Concessionaire")

BACKGROUND

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area.
- B. Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorize the Grantor to grant a Concession for a Concession Activity in a Conservation Area.
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Licence**” for purposes of this Document is the Licence granted under this Document by the Grantor to the Concessionaire under section 17Q(1) of the Conservation Act 1987.

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

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

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

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

2.0 GRANT OF LICENCE

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

3.0 TERM

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

4.0 CONCESSION FEE AND ADMINISTRATION FEE

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

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

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

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

5.0 OTHER CHARGES

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

6.0 CONCESSION FEE REVIEW

6.1 The Grantor will review the Concession Fee on the Concession Fee Review Dates.

6.2 The Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.

6.3 The notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.

6.4 If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 18.

6.5 Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee payable immediately before the Concession Fee Review Date. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

6.6 If the Concessionaire does not give notice to the Grantor under clause 6.4 the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.

7.0 CONCESSION ACTIVITY

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

8.0 COMPLIANCE

8.1 The Concessionaire will comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under Part IIIA of the Conservation Act 1987 together with any amendment or review of the strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the Health and Safety in Employment Act 1992, the Resource Management Act 1991, Historic Places Act 1993 and any other statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land, or affecting or relating to the Concession Activity.

9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

9.1 The Concessionaire must not erect or bring on to the Land any Structure, install any facility, or alter the Land in any way without the prior written consent of the Grantor.

9.2 The Concessionaire must keep and maintain at the Concessionaire's cost any Structures, facilities and alterations to the Land in good repair.

9.3 On expiry or early termination of this Document either as to the whole or any part of the Land, the Concessionaire will not be entitled to compensation for any improvements (including pasture) and any Structures or facilities remaining on the Land are to become the property of the Grantor.

9.4 If requested by the Grantor, the Concessionaire must, within such time as the Grantor determines, remove all Structures, facilities or other improvements erected or installed by the Concessionaire and make good at the Concessionaire's own expense all damage done by the removal and must leave the Land in a clean and tidy condition to the satisfaction of the Grantor.

10.0 PROTECTION OF THE ENVIRONMENT

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

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

- 10.2 The Concessionaire, must at the Concessionaire's expense:
- (a)(i) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Land described in Schedule 1 Item 1 or any Structure or facility on the Land;
 - (a)(ii) if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor; and
 - (b) comply strictly with the provisions of the Biosecurity Act 1993.
- 10.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 10.
- 10.4 The Concessionaire may bring firearms (subject to a permit) on to the Land for use in connection with the Concession Activity and pest control operations.
- 10.5 The Concessionaire for purposes of the Concession Activity may take onto or use vehicles on the Land.

11.0 HEALTH AND SAFETY

- 11.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations and an independently audited safety plan, prepared to the satisfaction of the Grantor.
- 11.2 The Concessionaire must notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment.

12.0 TEMPORARY SUSPENSION

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

13.0 ASSIGNMENT

- 13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it.
- 13.2 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

14.0 TERMINATION

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

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

14.2 If the Grantor terminates the Document under this clause 14 all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or Administration Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.

14.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

15.0 INDEMNITIES AND INSURANCE

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

15.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.

15.3 Without prejudice to or in any way limiting its liability under clause 15.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:

- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and

- (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
- (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.

15.4 With respect to clause 15.3 the Concessionaire must, before commencing the Concession Activity and on each renewal of insurance provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

16.0 ENVIRONMENTAL MONITORING

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

17.0 FORCE MAJEURE

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

18.0 DISPUTE RESOLUTION AND ARBITRATION

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

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

18.3 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.

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

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

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

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

19.0 NOTICES

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

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

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;

- (c) in the case of facsimile, on the Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

20.0 RELATIONSHIP OF PARTIES

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

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

21.0 OFFENCES

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

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

22.0 ADVERTISING.

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

22.2 Where required by the Grantor, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the Concession Activity under a Concession granted by the Grantor on land administered by the Department.

22.3 If required by the Grantor in writing the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the Land and the surrounding area.

22.4 In preparing such information the Concessionaire must obtain information from and have regard to the views of tangata whenua.

23.0 EMPLOYMENT OF STAFF.

23.1 The Concessionaire must ensure that the Concession Activity is conducted at all times by a person or persons suitably trained and qualified to carry out the Concession Activity.

23.2 The Concessionaire must provide the Grantor with evidence of the competency and qualifications of its employees if the Grantor so requests.

23.3 The Concessionaire must comply with all statutes relating to employment of staff.

24.0 VARIATIONS

24.1 The provisions of section 17ZC of the Conservation Act 1987 apply to all variations sought by the Concessionaire.

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

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

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

25.0 CO-SITING.

25.1 The Concessionaire must, if directed by the Grantor, allow Co-Siting except when a Concessionaire demonstrates to the reasonable satisfaction of the Grantor that the Co-Siting by a third party:

- (a) would impact on the ability of the Concessionaire to conduct its Concession Activity; or
- (b) would result in a substantial change to the Concession Activity carried out by the Concessionaire on the Land.

25.2 The Grantor will be entitled to require the Concessionaire to obtain at the Concessionaire's expense a report prepared by an independent consultant acceptable to the Grantor confirming the matter specified in clause 25.1.

25.3 For the avoidance of doubt, a Co-Sitee permitted on the Land must enter into a separate agreement with the Grantor in terms of which the Co-Sitee will be required to pay a fee to the Grantor to conduct an Activity on the Land. This separate agreement will not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Land.

26.0 SPECIAL CONDITIONS

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

26.2 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 in the presence of : _____

Witness _____

Occupation _____

Address _____

Signed by _____)
Director, Huxley Gorge Limited)
as Concessionaire in the presence of :) _____

Witness _____

Occupation _____

Address _____

Signed by _____)
Director, Huxley Gorge Limited)
as Concessionaire in the presence of :) _____

Witness _____

Occupation _____

Address _____