

## **Crown Pastoral Land Tenure Review**

**Lease name: Mt ASPIRING**

**Lease number: PO 231**

### **Preliminary Proposal**

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

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

**February**

**09**

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

**Date:**

**Parties**

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**Holder:**           **Mt Aspiring Company Limited**

Mt Aspiring Station  
PO Box 94  
Wanaka

**Commissioner of Crown Lands:**

c/- Opus International Consultants  
197 Rattray Street  
Private Bag 1913  
Dunedin

**The Land**

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<b>Lease:</b>	<b>Mt Aspiring</b>
<b>Legal Description:</b>	Part Run 715, Run 773 and Part Run 458
<b>Area:</b>	9,674.3439 hectares
<b>Certificate of Title/Unique Identifier:</b>	OT386/143

**Summary of Designations**

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Under this Proposal, the Land is designated as follows:

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

**1      The Plan**

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**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).

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**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:

(a) has been agreed or determined; and

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

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**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.

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**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.

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**6 Vesting of Crown Land**

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

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**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.

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**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.

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**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**

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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, at its cost, erect new fencing approximately along the line marked as such on the Plan (if any).
- 11.2 The Commissioner will erect the fencing referred to in clause 11.1 according to the specifications in Appendix 3. The ongoing maintenance of the fencing referred to in clause 11.1 will be under the terms of the Fencing Act 1978.
- 11.3 If the Commissioner has not completed any fencing as set out in Appendix 3 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 such fencing. The Holder will do all things necessary (including signing any document) to enable the Commissioner to register such a covenant.
- 11.4 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, the parties will (or the relevant will (as the case may be)) undertake the construction works set out in Appendix 3 on the terms and conditions set out in Appendix 3.

## **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

- (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
- (iii) the Building Act 2004; and

the Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this clause 15;

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

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## **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.

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## **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.

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## **18 Solicitors 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 solicitors certificate required is set out at Appendix 2.
- 18.2 The Holder must return the completed solicitor's certificate to the Commissioner with this Proposal on its acceptance by the Holder.

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## **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.

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## **20 Goods and Services Tax**

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- 20.1 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.
- 20.2 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.
- 20.3 The Holder will pay GST on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 20.4 On the 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.
- 20.5 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.6 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
  - (b) any Default GST.

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**21 Lowest price**

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

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**22 Costs**

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

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**23 No nomination or assignment**

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

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**24 Recreation Permit**

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

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**25 Discretionary Actions**

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

## 26 General

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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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Working day** means a day that is not a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, or a day during the period commencing on any Christmas Day and ending with the 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.

## 27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

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

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

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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 "CA2" on the Plan, being 572 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.
- 1.2 Under this Proposal the land shown marked in pink and labelled "CA4" on the Plan, being 1.5 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.
- 1.3 Under this Proposal the land shown marked in pink and labelled "CA5" on the Plan, being 40 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

**2 Schedule One Improvements**

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Not applicable

**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 5000 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of a grazing concession over 650 hectares to the Holder as set out in Appendix 4.
  - (b) the granting of a grazing concession over 180 hectares to the Holder as set out in Appendix 5.
  - (c) the granting of a recreation concession to Trilane Industries Limited as set out in Appendix 6.
- 1.2 Under this Proposal the land shown marked in pink and labelled “CA3” on the Plan, being 1970 hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of a grazing concession over 200 hectares to the Holder as set out in Appendix 7.

**[2 Information Concerning Proposed Concessions**

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**2.1 Grazing Concession 1 – Mill Creek**

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

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

1. Description of proposed activity(s) [s.39(a)]: Grazing of 250 mixed age steers between January and April each year.
2. Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]: Shown on the Designations Plan as a 650 ha portion of “CA1”, marked as “CG1” and coloured pink. The area is known as Mill Creek. The proposed Conservation land will be subject to Section 36 (1)(a) and Sec 66, CPLA.
3. Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) CPLA: The concession is a continuation of an activity that has been carried out on this land for many years. The grazing is phase out only to allow the holder reasonable time to adjust his farming practice.
4. Details of the proposed type of concession: Grazing concession under section 36 (1) (a) CPLA.
5. Proposed duration of concession and reasons for proposed duration [s.39(e)]:  
Proposed duration: 10 years commencing on the date of settlement of the tenure review.

Reasons for proposed duration: Provides a long lead in time for the destocking of this area.

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

Proposed grantee: Mt Aspiring Station Limited.

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

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

## 2.2 Grazing Concession 2 – Cattle Face

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

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

1. Description of proposed activity(s) [s.39(a)]: Grazing of 180 steers between May to October each year for the first 10 years. For the remaining 5 years 100 steers may be grazed between May to October each year.
2. Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]: Shown on the Designations Plan as 180 ha portion of "CA1", marked as "CG2" and coloured pink. The area is known as Cattle Face. The proposed Conservation land will be subject to Section 36 (1)(a) and Sec 66, CPLA.
3. Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) CPLA: The concession is a continuation of an activity that has been carried out on this land for many years. The grazing is phase out only to allow the holder reasonable time to adjust his farming practice. In time it is expected that shrublands will encroach into this area and without burning it will reduce the available cattle grazing. The goal is to allow succession to re-establish this area as forest. Continued cattle grazing will slow this process and remove palatable species.
4. Details of the proposed type of concession: Grazing concession under section 36 (1) (a) CPLA.
5. Proposed duration of concession and reasons for proposed duration [s.39(e)]:  
Proposed duration: 15 years commencing on the date of settlement of the tenure review.  
Reasons for proposed duration: Provides a long lead in time for the destocking of this area.
6. Relevant information about the proposed grantee including information relevant to the grantee's ability to carry out the proposed activity [s.39(f)]:

Proposed grantee: Mt Aspiring Station Limited.

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

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

### 2.3 Recreation Concession – Whare Kea Lodge

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

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

1. Description of proposed activity(s) [s.39(a)]: Lease an area of proposed conservation land on the Albert Burn Saddle for the site of an existing hut known as the Whare Kea Chalet. The activity includes the landing of a helicopter adjacent to the hut and commercial guided foot access from both the East Matukituki and the Albert Burn.
2. Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]: The hut site is shown on the Designations Plan as part of "CAI", marked as "RC" and Shaded red. This area includes the footprint of the hut, an area of 50 meters surrounding it and an adjacent helicopter landing pad. The walking access to the site from both the East Matukituki and the Albert Burn is included but the exact route through "CAI" is not specified (nor does it need to be). The proposed Conservation land will be subject to Section 36 (1)(a) and Sec 66, CPLA.
3. Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) CPLA: The concession is a continuation of an activity that has been carried out on this land for some years. The hut was completed about 2004 and has been used in conjunction with Whare Kea Lodge (An exclusive resort) in Wanaka since that time.

In order to satisfy the department that this is not an exclusive hut requiring a stay in the exclusive lodge first, the concessionaires will offer a guided tramping opportunity to the public of a similar nature to other concessions where privately owned huts are sited on conservation land/national park.

4. Details of the proposed type of concession: Lease concession under section 36 (1) (a) CPLA.
5. Proposed duration of concession and reasons for proposed duration [s.39(e)]:  
Proposed duration: 15 + 15 years commencing on the date of settlement of the tenure review.

Reasons for proposed duration: This term recognises the considerable expenditure on the hut. The concession may be renewed at the end of the period depending on the policies at the time.

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

Proposed grantee: Trilane Industries Ltd trading as "Whare Kea Lodge".

Relevant information: The grantee is currently undertaking this activity under a CPLA recreation permit. This activity was subject to an environment court decision RM010564 in 2002.

In particular special conditions in the decision require:

- In the event that the hut ceases to be used to accommodate guests of the Whare Kea Lodge, the hut shall be removed from the site at the consent holder's expense. (Note that this may not preclude others from also using it and is covered under the review clause in the consent. It appears to be related to non use of the hut).
- The consent holder shall ensure that every group occupying the hut is accompanied by an appropriately experienced guide.

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



## 2.4 **Grazing Concession 3 – West Matukituki Faces**

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

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

1. Description of proposed activity(s) [s.39(a)]: Sheep (ewes, lambs, hoggets and rams) of a breed other than merinos, may graze on the Land.
2. Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]: Shown on the Designations Plan as a portion of "CA3", marked "Grazing Concession 3" and shaded pink being approximately 200 ha. The proposed Conservation land will be subject to Section 36 (1)(a) and Sec 66, CPLA.
3. Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) CPLA: The concession is to recognize that the boundary is unfenced and that a low level of stock movement upwards onto conservation land will occur. This concession will recognise this stock drift and provide a basis for managing it.
4. Details of the proposed type of concession: Grazing concession under section 36 (1) (a) CPLA.
5. Proposed duration of concession and reasons for proposed duration [s.39(e)]:  
Proposed duration: 30 years commencing on the date of settlement of the tenure review.  
Reasons for proposed duration: This is a statutory timeframe. There is every expectation that this term may need to be extended if stock are still drifting into conservation land.
6. Relevant information about the proposed grantee including information relevant to the grantee's ability to carry out the proposed activity [s.39(f)]:

Proposed grantee: Mt Aspiring Station Limited.

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

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

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

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**1 Details of designation**

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- 1.1 Under this Proposal the land shown marked in green on the Plan, being 2091 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) conservation covenant one shown marked in yellow wash and labelled "CC1" on the Plan and substantially as set out in Appendix 8;
  - (d) conservation covenant two shown marked in yellow wash and labelled "CC2" on the Plan and substantially as set out in Appendix 9;
  - (e) an easement to convey water and for management purposes along the dashed blue line marked "v-w" and "Z" on the Plan and substantially as set out in Appendix 10.
  - (f) an easement for public access and for management purposes along the dashed orange line marked "a-b", "c-d", "e-f", "c-g", "h-i", "j-k", "l-m", "n-o", "p-q", "r-s" and "t-u" on the Plan and substantially as set out in Appendix 11.
    - (i) public access on foot, or by non-motorised vehicle powered by person or persons, or by motor vehicles along the dashed orange line marked "a-b" on the Plan;
    - (ii) public access on foot, or by non-motorised vehicle powered by person or persons along the dashed orange line marked "c-d", "e-f", "c-g", "h-i" and "j-k" on the Plan;
    - (iii) public access on foot along the dashed orange line marked "l-m", "n-o", "p-q", "r-s" and "t-u" on the Plan;
    - (iv) access for management purpose ,on foot, or accompanied by horses, or by motor vehicles, with or without machinery or implements of any kind along the dashed orange line marked "a-b", "c-d", "e-f", "c-g", "h-i", "j-k", "l-m", "n-o", "p-q", "r-s" and "t-u" on the Plan.

**Schedule Four: Conditions**

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- 1 The Commissioner is under no obligation, and may decide, in its sole discretion, not to proceed further with the Tenure Review unless and until:
- (a) the Commissioner considers sufficient funds will be obtained to complete the Tenure Review;
  - (b) the Director General of Conservation has completed all actions required under Part IVA of the Conservation Act 1987;
  - (c) It has been identified that certain parts of the formed and maintained alignment of the Wanaka Mount Aspiring Road deviate from the surveyed legal road alignment. This proposal is subject to the Commissioner and the Holder agreeing to partially surrender the Lease so as to exclude such parts of Wanaka Mount Aspiring Road;
  - (d) the Commissioner notes the historic consent by the Holder to the occupation by the Tititea Lodge Trust of part of the land to be disposed of, located at GR F39 760296. The Commissioner further notes that the Tititea Lodge Trust continues to occupy that land at the discretion of the Holder. The Holder therefore indemnifies the Commissioner against any and all claims that may be made by Tititea Lodge Trust arising from the disposal of the lessor interest in the land to the Holder;
  - (e) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 8 is in an acceptable form, has been executed and consented by the necessary parties and has been registered against the lease;
  - (f) the Commissioner has reviewed, and is satisfied, in its sole discretion that the covenant referred to in Appendix 9 is in an acceptable form, has been executed and consented by the necessary parties and has been registered against the lease;
  - (g) the Commissioner has reviewed, and is satisfied, in its sole discretion that the easement to convey water and management purposes easement referred to in Appendix 10 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease;
  - (h) the Commissioner has reviewed, and is satisfied, in its sole discretion that the public access and management purposes easement referred to in Appendix 11 is in an acceptable form, has been executed, consented by the necessary parties and has been registered against the Lease.

**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**

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[ ], 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**

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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: Indicative Fencing and Construction Requirements**

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#### **Fenceline**

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**Length and location:** Located near Cascade Hut, boundary between CA5 and freehold land

A-B (550m approximately)

**Type:** New seven wire fence with posts and Y-posts

#### **Specifications:**

- 2.4 metre x 125mm treated timber posts at 20m maximum spacing and on appropriate high and low points.
- Six steel Y-posts standards per 20 metres or at 4 metre spacing between posts. Y-posts standards to be mostly 1.5 metre long with 1.35 metre standards on rocky ground and 1.65 metre standards on soft ground.
- 2.4 metre x 200mm treated timber strainers with treated timber stay to be used for gateways and ends of strains.
- All strainers, to be driven or dug in and rammed and footed with acceptable footing material. No. 8 wire to be used on foots. All dips and hollows to be tied down.
- All strainers and angles to be mortised stayed and blocked. Stays to be one-third of the way up posts.
- Tie-backs are permitted on both sides of the fence.
- Post staples to be 50 x 4mm galvanized slice pointed barb and be driven well in but allow the wire to run through.
- Strains not to exceed 300 metres for HT and 250m for No.8 and strained to a tension recommended by the wire manufacture.
- Strainers and angle posts to be dug in to such a depth that 117cm (46 inches) remains out of the ground.
- Under no circumstances are any strainers, posts or stays to be shortened either prior to or subsequent to their placement in the ground.
- Lightning droppers may be used where appropriate.
- Fence to have a 4mm medium tensile bottom wire and five 2.5mm high tensile wires and suggested top wire as low-medium tensile style barb.
- Gates to be 4.2 metre heavy duty able to withstand cattle such as "stressmaster" style and be secured with a heavy duty wrap around chain
- Fencing to be completed in a professional workmanlike manner using standard fencing practices.
- No mechanical earth works are permitted, some minor line clearing of vegetation and benching by hand, and blasting for post holes is permitted when required.

#### **Construction**

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A separate stock proof boundary will need to be erected along the river margin. The detail of the design and if any construction is required will be determined during the pre survey field investigation.

**Appendix 4: Grazing Concession One (GC1) – Mill Creek**

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

DATED \_\_\_\_\_

Between

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

and

**MT ASPIRING COMPANY LIMITED**  
("the Concessionaire")

**GRAZING CONCESSION**  
**UNDER CROWN PASTORAL LAND ACT 1998**



Department of Conservation  
*Te Papa Atawhai*

THIS LICENCE is made this day of

**PARTIES:**

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **MT ASPIRING COMPANY LIMITED**  
("the Concessionaire")

**BACKGROUND**

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

**OPERATIVE PARTS**

**TERMS AND CONDITIONS**

**1.0 DEFINITIONS AND INTERPRETATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

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

## **2.0 GRANT OF LICENCE**

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

## **3.0 TERM**

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

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

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

## **4.0 CONCESSION FEE AND ADMINISTRATION FEE**

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

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

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

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

## **5.0 OTHER CHARGES**

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

**6.0 CONCESSION FEE AND ADMINISTRATION FEE REVIEW**

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

**7.0 CONCESSION ACTIVITY**

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

**8.0 COMPLIANCE**

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

**9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS**

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

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

## **10.0 PROTECTION OF THE ENVIRONMENT**

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

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

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

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

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

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

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

## **11.0 HEALTH AND SAFETY**

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

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

## 12.0 TEMPORARY SUSPENSION

12.1 The Grantor may suspend this Document:

- (a) if, in the opinion of the Grantor the activities of the Concessionaire, its employees, agents, contractors, licensees or invitees are having or may have an adverse effect on the environment and the Grantor considers that the effect can not be avoided, remedied or mitigated to an extent satisfactory to the Grantor;
- (b) while the Grantor investigates any of the circumstances contemplated by this clause and also while the Grantor investigates any potential breach or possible offence by the Concessionaire related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.

12.2 The Grantor is not liable to the Concessionaire for any loss sustained by the Concessionaire by reason of a suspension under clause 12.1 including loss of profits.

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

## 13.0 ASSIGNMENT

13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause, however consent will not be unreasonably withheld.

13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.

13.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.

13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

## 14.0 TERMINATION

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

- (a) the Concession Fee or the Administration Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
- (b) the Concessionaire breaches any terms of this Document; and
  - (i) the Grantor has notified the Concessionaire in writing of the breach; and
  - (ii) the Concessionaire does not rectify the breach within 28 days of receiving notification; or
- (c) the Concessionaire ceases to conduct the Concession Activity; or
- (d) the Concessionaire is convicted of an offence, related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Resource Management Act 1991; or the Biosecurity Act 1993; or the Health and Safety in Employment Act 1992; or



- (e) the Concessionaire is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire cease to function or operate.

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

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

## 15.0 INDEMNITIES AND INSURANCE

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

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

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

- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
  - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
  - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
- (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
- (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.

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

**16.0 ENVIRONMENTAL MONITORING**

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

**17.0 FORCE MAJEURE**

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

**18.0 DISPUTE RESOLUTION AND ARBITRATION**

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

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

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

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

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

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

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

**19.0 NOTICES**

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

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

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

**20.0 RELATIONSHIP OF PARTIES**

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

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

20.2 The Concessionaire acknowledges that the Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard.

**21.0 COSTS**

21.1 The Concessionaire must pay the Grantor's legal costs and expenses associated with preparing and signing this Document or any extension or variation to it.

21.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and the fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

**22.0 OFFENCES**

22.1 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.

**23.0 SPECIAL CONDITIONS**

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

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

Signed by :

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

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

Signed by :

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

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

**SCHEDULE 1**

1. **Land:** Shown on the Designations Plan as a 650 ha portion of “CAI”, marked as “Grazing Concession 1” and shaded pink. The area is known as Mill Creek.  
(see definition of Land in clause 1.1)
2. **Concession Activity:** Grazing of 250 mixed age steers between January and April each year. (see definition of Concession Activity in clause 1.1)
3. **Term:** 10 years commencing on the date of settlement of the tenure review.  
(see clause 3)
4. (a) **Renewal Date:** Not to be renewed (see clause 3.2)  
(b) **Renewal Period:** NA (see clause 3.2)
5. **Final Expiry Date:** 10 years from settlement of the tenure review. (see clause 3.2)
6. (a) **Concession Fee:** \$6.00 per stock unit per annum + GST where:  
R1yr Steer = 4 SU  
R2yr Steer = 5 SU  
R3yr Steer = 5.5 SU  
Where a return is submitted as specified in special condition 2, the grazing fee will be charged on actual numbers carried only.  
(b) **Administration Fee:** \$100 per annum + GST (see clause 4)
7. **Concession Fee Payment Date:** (see clause 4)  
On or before the date specified on the invoice generated by the Grantor
8. **Penalty Interest Rate:** (see clause 4.2)  
Double the Grantor’s bank’s current highest 90 day bank bill buy rate
9. **Concession Fee Review Date:** Every 3 years. (see clause 6)
10. **Public Liability General Indemnity Cover:** (see clause 15.3)  
for \$1,000,000.00
11. **Public Liability Forest & Rural Fire Extension:** (see clause 15.3)  
for \$1,000,000.00
12. **Statutory Liability Insurance:** (see clause 15.3)  
Amount \$250,000.00
13. **Other Types of Insurance:** (see clause 15.3)  
**Amounts Insured for Other Types of Insurances:** (see clause 15.3)  
Amount
14. **Environmental Monitoring Contribution:** \$0 \_\_\_\_\_ (see clause 16)
15. **Address for Notices (including facsimile number):** (see clause 19)  
(a) Grantor: C/- PO Box 5244, Dunedin. (03) 4778 626  
(b) Concessionaire: Mt Aspiring Co Ltd, C/- John and Sue Aspinall, P.O. Box 94, Wanaka. (03)

**SCHEDULE 2**

*Special Conditions*

1. The Concessionaire will take care not to overstock the Land and will ensure that grazing is not having an adverse impact on the indigenous vegetation within the Land.
2. In order that the grazing fee may be calculated, a return of stock must be made by 30 of June of each year showing the stock carried on the Land over the preceding grazing period. If a return is not made by this date, the fee will be based on the maximum allowable stock numbers regardless of the numbers actually run.
3. Clause 13.4 is modified to provide for share changes within the Aspinall family without the consent of the Grantor.

**Appendix 5: Grazing Concession Two (GC2) – Cattle Face**

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

DATED \_\_\_\_\_

Between

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

and

**MT ASPIRING COMPANY LIMITED**  
("the Concessionaire")

**GRAZING CONCESSION**  
**UNDER CROWN PASTORAL LAND ACT 1998**



Department of Conservation  
*Te Papa Atawhai*

THIS LICENCE is made this day of

**PARTIES:**

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **MT ASPIRING COMPANY LIMITED** ("the Concessionaire")

**BACKGROUND**

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

**OPERATIVE PARTS**

**TERMS AND CONDITIONS**

**1.0 DEFINITIONS AND INTERPRETATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

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

## **2.0 GRANT OF LICENCE**

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

## **3.0 TERM**

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

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

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

## **4.0 CONCESSION FEE AND ADMINISTRATION FEE**

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

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

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

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

## **5.0 OTHER CHARGES**

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

**6.0 CONCESSION FEE AND ADMINISTRATION FEE REVIEW**

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

**7.0 CONCESSION ACTIVITY**

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

**8.0 COMPLIANCE**

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

**9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS**

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

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

## **10.0 PROTECTION OF THE ENVIRONMENT**

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

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

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

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

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

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

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

## **11.0 HEALTH AND SAFETY**

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

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

## 12.0 TEMPORARY SUSPENSION

12.1 The Grantor may suspend this Document:

- (a) if, in the opinion of the Grantor the activities of the Concessionaire, its employees, agents, contractors, licensees or invitees are having or may have an adverse effect on the environment and the Grantor considers that the effect can not be avoided, remedied or mitigated to an extent satisfactory to the Grantor;
- (b) while the Grantor investigates any of the circumstances contemplated by this clause and also while the Grantor investigates any potential breach or possible offence by the Concessionaire related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.

12.2 The Grantor is not liable to the Concessionaire for any loss sustained by the Concessionaire by reason of a suspension under clause 12.1 including loss of profits.

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

## 13.0 ASSIGNMENT

13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause, however consent will not be unreasonably withheld.

13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.

13.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.

13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

## 14.0 TERMINATION

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

- (a) the Concession Fee or the Administration Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
- (b) the Concessionaire breaches any terms of this Document; and
  - (i) the Grantor has notified the Concessionaire in writing of the breach; and
  - (ii) the Concessionaire does not rectify the breach within 28 days of receiving notification; or
- (c) the Concessionaire ceases to conduct the Concession Activity; or
- (d) the Concessionaire is convicted of an offence, related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Resource Management Act 1991; or the Biosecurity Act 1993; or the Health and Safety in Employment Act 1992; or

- (e) the Concessionaire is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire cease to function or operate.

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

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

## 15.0 INDEMNITIES AND INSURANCE

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

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

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

- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
  - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
  - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
- (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
- (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.

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



**16.0 ENVIRONMENTAL MONITORING**

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

**17.0 FORCE MAJEURE**

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

**18.0 DISPUTE RESOLUTION AND ARBITRATION**

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

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

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

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

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

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

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

**19.0 NOTICES**

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

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

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

**20.0 RELATIONSHIP OF PARTIES**

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

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

20.2 The Concessionaire acknowledges that the Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard.

**21.0 COSTS**

21.1 The Concessionaire must pay the Grantor's legal costs and expenses associated with preparing and signing this Document or any extension or variation to it.

21.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and the fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

**22.0 OFFENCES**

22.1 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.

**23.0 SPECIAL CONDITIONS**

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

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

Signed by :

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

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

Signed by :

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

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

**SCHEDULE 1**

1. **Land:** Shown on the Designations Plan as 180 ha portion of “CA1”, marked as “Grazing Concession 2” and shaded pink. The area is known as Cattle Face. The concession extends from the bush edge to 1100m, and between the old PL boundary to the north and a major bluff at grid ref F39 327N to the south.  
(see definition of Land in clause 1.1)
2. **Concession Activity:** Grazing of 180 steers between May to October each year for the first 10 years. For the remaining 5 years 100 steers may be grazed between May to October each year. (see definition of Concession Activity in clause 1.1)
3. **Term:** 15 years commencing on the date of settlement of the tenure review.  
(see clause 3)
4. (a) **Renewal Date:** Not to be renewed (see clause 3.2)
- (b) **Renewal Period:** NA (see clause 3.2)
5. **Final Expiry Date:** 15 years from settlement of the tenure review. (see clause 3.2)
6. (a) **Concession Fee:** \$6.00 per stock unit per annum + GST where:  

R1yr Steer = 4 SU  
R2yr Steer = 5 SU  
R3yr Steer = 5.5 SU

Where a return is submitted as specified in special condition 2, the grazing fee will be charged on actual numbers carried only.
- (b) **Administration Fee:** \$100 per annum + GST (see clause 4)
7. **Concession Fee Payment Date:** (see clause 4)  
On or before the date specified on the invoice generated by the Grantor
8. **Penalty Interest Rate:** (see clause 4.2)  
Double the Grantor’s bank’s current highest 90 day bank bill buy rate
9. **Concession Fee Review Date:** Every 3 years (see clause 6)
10. **Public Liability General Indemnity Cover:** (see clause 15.3)  
for \$1,000,000.00
11. **Public Liability Forest & Rural Fire Extension:** (see clause 15.3)  
for \$1,000,000.00
12. **Statutory Liability Insurance:** (see clause 15.3)  
Amount \$250,000.00
13. **Other Types of Insurance:** (see clause 15.3)  
**Amounts Insured for Other Types of Insurances:** (see clause 15.3)  
Amount
14. **Environmental Monitoring Contribution:** \$0\_\_\_\_\_ (see clause 16)
15. **Address for Notices (including facsimile number):** (see clause 19)

- (a) Grantor: C/- PO Box 5244, Dunedin. (03) 4778 626
- (b) Concessionaire: Mt Aspiring Co Ltd, C/- John and Sue Aspinall, P.O. Box 94, Wanaka. (03)

**SCHEDULE 2**

*Special Conditions*

1. The Concessionaire will take care not to overstock the Land and will ensure that grazing is not having an adverse impact on the indigenous vegetation within the Land.
2. In order that the grazing fee may be calculated, a return of stock must be made by 30 of June of each year showing the stock carried on the Land over the preceding grazing period. If a return is not made by this date, the fee will be based on the maximum allowable stock numbers regardless of the numbers actually run.
3. Management Prescription: The parties will comply with the management prescription document attached as schedule 3.
4. Clause 13.4 is modified to provide for share changes within the Aspinall family without the consent of the Grantor.

## SCHEDULE 3

**MANAGEMENT PRESCRIPTION DOCUMENT FOR MT ASPIRING STATION – CATTLE FACE - CONSERVATION AREA GRAZING CONCESSION**

As this concession is for a term exceeding 10 years a management prescription document is required. A management prescription in the concession conditions provides, over the full term:

1. The specific goals of management of the land consistent with the nature of the concession activity (covering vegetation, landscape, historic, public recreation, soil and water).
2. A description of how the goals are to be met.
3. A detailed description of the type and condition of conservation resources at the commencement of the concession.
4. A description of the monitoring programme (of activity effects) to be carried out (for vegetation).
5. A specification concerning grazing systems, including identification of vegetation trends and how that will

This management prescription document shall apply until it is reviewed ten years from the date of commencement of the concession and every ten years thereafter.

1. The goal of the concession is to permit, for a limited time, the continuation of the existing practice of cattle grazing above the bush edge in the East Matukituki while encouraging the regeneration of the indigenous cover during this time.

**(a) Vegetation**

To manage the vegetation within the concession area back into native flora by preventing burning and minimising stock impacts.

**(b) Landscape**

The continued stocking of this area will have minimal impact on the landscape character of the area.

**(c) Recreation**

The public will have unfettered access to the area along with adjoining conservation land.

**(d) Soil and Water**

Continued stocking is not expected to affect soil and water values over the term of the concession.

**2. A description of how the goals are to be met.**

The management of the concession can be considered in future as outlined below:

A condition of the concession provides that the Concessionaire will take care not to overstock the Land and will ensure that grazing is not having an adverse impact on the indigenous vegetation within the Land.

Previous management of this face has included periodic burning to reduce the fern and shrubland regeneration. This was successful. The aim now is to reverse this process by prohibiting burning and reducing the stocking pressure. After 10 years of the concession stock numbers will be reduced from 180 cattle to 100. Stock will be removed altogether at the end of the concession to allow the expected reversion to indigenous cover to continue without cattle trampling and grazing.

The grazing of the face will be minimized by having the fee payable only on the number of cattle grazed, rather than a set amount each year. In that way less grazing might take place when feed supplies or farm management practices allow.

This area will be managed for public access in the same manner as adjoining conservation land.

### **3. Description and condition of conservation resources present.**

#### **Landscape:**

The wider landscape on this face has outstanding visual and scenic values, analogous with the Mount Aspiring National Park and the western mountains zone. The glacial landforms and vegetation patterns are inherently visually highly spectacular and impressive. Impressive rocky peaks and scree, exposed ridgetops, glacial valleys and ice-carved rockforms and landforms, together with alpine and subalpine vegetation, combine to form a landscape with outstanding visual and scenic values.

#### **Vegetation:**

The wider face encompasses the west-facing mountain slopes between the ridge running southwest from Mt Eostre, to Dragonfly Peak and down to the Lease boundary on the upper margins of the beech forest. Plant communities are most intact at the southern end and become progressively modified along the northern half of the face.

Stature and density of shrublands declines north of the unnamed stream which drains west off Mt Eostre. Turpentine shrub and *Coprosma* sp. "t" co-dominate but increasing large canopy gaps are covered in comb sedge, tussock hawkweed, browntop and sweet vernal (*Anthoxanthum odoratum*). This further deteriorates to an abrupt transition to pasture grasses and herbs, especially timothy (*Phleum pratense*) and lotus (*Lotus pedunculatus*) on slump-prone slopes. Many agricultural weeds are present including selfheal, musk, Scotch thistle and burdock (*Arctium minus*). Resilient native species include patches of tutu, prickly shield fern and alpine hard fern (*Blechnum penna-marina*) and small pockets of *Coprosma* sp. "t", *C. rugosa*, mountain lacebark, inaka, koromiko and occasional mountain toatoa.

### **4. Description of a monitoring programme to be established for vegetation condition and soil and water values**

Photopoint monitoring will be established to track changes in the face over time. While it is not considered that this will be particularly useful in monitoring the concession itself, it will be useful to understand the regeneration processes and timeframes.

Monitoring will include periodic inspections by staff, consultation with the concessionaires and reports from the public.

### **5. Number of stock and duration permitted to be run on the concession area within the current term of the management prescription document.**

Grazing of 180 steers between May to October each year for the first 10 years. For the remaining 5 years 100 steers may be grazed between May to October each year.



**Appendix 6: Recreation Concession – Whare Kea Lodge**

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DRAFT AS AT 26 June 2008

DATED \_\_\_\_\_

**Between**

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

**and**

**TRILANE INDUSTRIES LTD trading as**  
**“WHARE KEA LODGE”**

**("the Concessionaire")**

**CONCESSION DOCUMENT**  
**(LEASE)**



Department of Conservation  
*Te Papa Atawhai*

**THIS LEASE** is made this day of

**PARTIES:**

1. **MINISTER OF CONSERVATION**, ("the Lessor")
2. **TRILANE INDUSTRIES LTD** trading as "**WHARE KEA LODGE**", ("the Concessionaire")

**BACKGROUND**

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

## OPERATIVE PARTS

### TERMS AND CONDITIONS

#### 1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

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

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

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

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

"**Concession Fee**" means the amount specified in Item 6 of Schedule 1 and charged by the Lessor for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review.

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

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

"**Concession Fee Review Date**" means the date specified in Item 9 of Schedule 1 on which the Concession Fee Review occurs being at 3 year intervals calculated from the date of commencement of this Document.

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

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

"**Co-Site**" and "**Co-Siting**" mean the use of the land or the Concessionaire's structures or facilities on the Land by a third party for a purpose permitted by the Lessor; and "**Co-Sitee**" has a corresponding meaning.

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

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

"**Document**" means this Lease 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.

**“Guarantor”**, where relevant, means the person guaranteeing this Document under clause 41.

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

**“Lease”** means the Lease granted under this Document by the Lessor to the Concessionaire under either section 17Q of the Conservation Act 1987, section 59A of the Reserves Act 1977, or section 49 of the National Parks Act 1980.

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

- (i) where the Lessor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Lessor for each separate occasion it is required notwithstanding that the Lessor 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.

1.4 The covenants and powers contained in sections 106 and 107 of the Property Law Act 1952 are not to be implied in this Concession and are expressly negated.

## **2.0 GRANT OF LEASE**

2.1 In exercise of the Lessor's powers under section 17Q of the Conservation Act 1987 the Lessor **GRANTS** to the Concessionaire a **LEASE** 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 Lease is for the Term specified in Item 3 of Schedule 1.

3.2 Subject to clause 3.3 the Lessor, at the Concessionaire's cost, will renew the Term for a further period specified in Item 4 of Schedule 1.

3.3 The renewal is to be on the same terms and conditions expressed or implied in this Document excluding a right of renewal provided the Concessionaire:

- (a) observes the terms and conditions contained in this Document; and
- (b) has given to the Lessor written notice of the Concessionaire's intention to renew this Document at least 3 months before the end of the Term which notice is to be irrevocable.

3.4 The Term and all renewals, if any, will end on the Final Expiry Date specified in Item 5 of Schedule 1.

## **4.0 SURRENDER OF DOCUMENT**

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

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

## **5.0 CONCESSION FEE**

- 5.1 The Concessionaire must pay to the Lessor in advance and in the manner directed by the Lessor the Concession Fee plus GST in the installments and on the Concession Fee Payment Dates specified in Item 7 of Schedule 1.
- 5.2 If the Concessionaire defaults in payment of the Concession Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

## **6.0 OTHER CHARGES**

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

- 6.5 If, during the Term, the Site becomes rateable land, following any amendment to the Rating Powers Act 1988 or the introduction of a new Act in substitution for it and the Site's rateability is attributable to the Concession Activity, or if separate rates are levied under section 7 of the Rating Powers Act 1988 in respect of the Site and are attributable to the Concession Activity, the Concessionaire is to pay any rates which may be struck or levied and which are attributable to the Concession Activity.

## **7.0 CONCESSION FEE REVIEW**

- 7.1 The Lessor will review the Concession Fee on the Concession Fee Review Dates in the following manner:

- (a) the Lessor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
- (b) subject to clause 7.1(e), the notice must specify the Concession Fee which the Lessor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
- (c) if, within 28 days of receipt of the Lessor's notice, the Concessionaire gives written notice to the Lessor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 7.2 (a) or (b).
- (d) if the Concessionaire does not give notice to the Lessor under clause 7.1 (c) the Concessionaire will be deemed to have accepted the Concession Fee specified in the Lessor's notice.
- (e) notwithstanding clause 7.1(b), the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and will be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
- (f) until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Lessor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Lessor or by the Concessionaire, whichever is applicable.

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

- (a) by one party giving written notice to the other requiring the new Concession Fee to be determined by arbitration; or, if the parties agree,



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

## RELEASED UNDER THE OFFICIAL INFORMATION ACT

- (iii) each subsequent Concession Fee Review Date will take place in accordance with the date fixed in clause 7.1.

### 8.0 CONCESSION ACTIVITY

- 8.1 Subject to clause 42, the Concessionaire is not to use the Land for any purpose other than the Concession Activity.
- 8.2 The Concessionaire must, as a condition of this Document:
  - (a) take out and maintain and pay all fees for all licences, permits, authorisations, consents (including resource consents under the provisions of the Resource Management Act 1991), and renewals ("the Permissions") as may be necessary for the proper conduct of the Concession Activity;
  - (b) not do or suffer to be done any act whereby these Permissions may be forfeited or suspended or refused.

### 9.0 SUPPLY OF INFORMATION

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

### 10.0 COMPLIANCE

- 10.1 The Concessionaire will comply where relevant:
  - (a) with the provisions of any conservation management strategy or conservation management plan as required by section 17W(7) of the Conservation Act 1987 pursuant to Part IIIA of the Conservation Act 1987 or Part IIA of the Reserves Act 1997 or any general policy statement or management plan under section 44 or 45 of the National Parks Act 1980, whichever is appropriate to the Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
  - (b) with the Conservation Act 1987, the Reserves Act 1977 the National Parks Act 1980 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land or affecting or relating to the Concession Activity, including any bylaws made under the Reserves Act 1977 or the National Parks Act 1980.
- 10.2 The Concessionaire must comply with all conditions imposed by the Lessor in granting this Document.

- 10.3 (a) A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or general policy statement will be deemed to be a breach of this Document.
- (b) A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity will be deemed to be a breach of this Document.
- 10.4 If the Legislation requires the Lessor to spend money on the Lessor's own structures, facilities or land alterations on the Land, the Lessor may charge, in addition to the Concession Fee, an annual sum equal to 15% of the amount spent by the Lessor.
- 10.5 If the Legislation requires the Lessor to spend money on structures, facilities or land alterations on the Land which the Lessor considers unreasonable, the Lessor may determine this Lease and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 32.

#### **11.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS**

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

## **RELEASED UNDER THE OFFICIAL INFORMATION ACT**

11.6 When undertaking any work under this clause the Concessionaire must comply with all statutory requirements including obtaining building consents and code compliance certificates under the Building Act 1991.

11.7 The Concessionaire is to keep and maintain its structures and facilities on, or alterations to, the Land in good repair.

### **12.0 LESSOR'S STRUCTURES, FACILITIES AND LAND ALTERATIONS**

12.1 The Concessionaire is to keep and maintain in good and substantial repair and condition the Lessor's structures, facilities and land alterations.

12.2 At the end or earlier determination of the Term, the Concessionaire must quietly yield up the Lessor's structures, facilities and land alterations in the same good and substantial repair and condition as they were in at the commencement of this Document.

12.3 Subject to the Lessor providing to the Concessionaire reasonable notice the Lessor and the Lessor's employees and agents may at all reasonable times enter the Land to view its condition and the condition of the structures and facilities on it.

12.4 The Concessionaire must comply with any written notice given by the Lessor of any failure on the part of the Concessionaire to comply with any requirement of this Document.

### **13.0 INSURANCE OF STRUCTURES, FACILITIES AND LAND ALTERATIONS**

13.1 The Concessionaire must insure and keep insured with an insurer approved by the Lessor all structures, facilities and land alterations on the Land to their full replacement value against loss or damage caused by fire, earthquake, fire consequent on earthquake, avalanche, flood, volcanic activity; and including indemnity insurance for the cost of demolition, removal of debris and clearance of the Land.

13.2 The Concessionaire must provide the Lessor with a copy certificate of currency for the policy or policies of insurance before commencing the Concession Activity and on each renewal of the policy.

### **14.0 CONCESSIONAIRE'S FURTHER OBLIGATIONS**

14.1 The Concessionaire must at the Concessionaire's expense:

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

- (c) comply with all requirements of any competent authority regarding sanitation and with all relevant bylaws and fire safety requirements;
- (d) at all times display a copy of the relevant current building warrant of fitness under the Building Act 1991 showing the location of the compliance schedule in a place in each building (as defined in that Act) on the Land to which users of the building have ready access;
- (e) keep and maintain all building systems and any structure on the Land in accordance with the requirements of any compliance schedule;
- (f) retain and make available to any territorial authority and any other person with a right to inspect any structures on the Land under the Building Act 1991 a copy of the compliance schedule together with the written reports relating to compliance with the compliance schedule over the previous two year period.

## 15.0 PROTECTION OF THE ENVIRONMENT

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

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

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

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

15.4 The Concessionaire will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably required by the Lessor the Concessionaire will paint all structures and facilities in colours specified in writing by the Lessor and with paints of a type approved in writing by the Lessor.

15.5 If, during the Term, the Concessionaire removes a structure or facility from the Land the Concessionaire will, unless the Lessor indicates otherwise in writing, repair and make

good at its own expense all damage to the Land which may have been done by the removal and will leave the Land in a clean and tidy condition.

15.6 Should the Concessionaire fail to repair and restore the damage to the Land within 6 months of the removal of a structure or facility or such further time as the Lessor may approve in writing, the Lessor may undertake whatever works and operations are necessary to effect the same and may recover from the Concessionaire any costs and expenses incurred in doing it as a debt due by the Concessionaire to the Lessor.

15.7 The Concessionaire must:

- (a) take all reasonable precautions to ensure no fire hazards arise from its carrying out of the Concession Activity or from any act or neglect of its employees, contractors, invitees or agents;
- (b) not light or permit to be lit any fire on the Land without the written permission of the Lessor in which event the following provisions are to apply:
  - (i) the Concessionaire may light or use at a campsite a fire in the open air if the fire is an approved camp fire and is fuelled by dead wood only;
  - (ii) an approved camp fire is any fire lit for the purpose of camping, cooking, comfort or warmth;
  - (iii) an approved camp fire may not be lit:
    - (aa) within 3 metres of a tree or place underneath overhanging vegetation;
    - (bb) within 3 metres of a log or dry vegetation;
    - (cc) unless the Concessionaire clears all combustible material away from around the base of the approved camp fire before lighting it;
    - (dd) where there are notices or other advertising limiting the lighting of fires to a particular receptacle or to a particular place;
    - (ee) during a prohibited fire season
  - (iv) for the purpose of this paragraph "open air" has the same meaning ascribed to it in the Forest and Rural Fires Act 1977;
- (c) not store or permit to be stored fuels or other combustible materials on the Land without the written permission of the Lessor. In that event storage of fuels and combustible materials must be in accordance with the provisions of the Dangerous Goods Act 1974;
- (d) comply with the Lessor's requirements for fire warning and safety equipment and for fire fighting equipment to be kept on the Land at all times.

- 15.8 The Concessionaire must ensure that its employees, clients and invitees do not carry out any acts prohibited under clause 15.
- 15.9 The Concessionaire must immediately report to the Lessor any act in contravention of clause 15 and wherever possible the names and addresses of any person carrying out such acts; and must provide the Lessor with details of the circumstances surrounding such incidents.

## **16.0 ADVERTISING**

- 16.1 The Concessionaire must not erect or display any signs or advertising on the Land without the prior written approval of the Lessor. 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.
- 16.2 Where required by the Lessor, 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 Lessor on land administered by the Department.
- 16.3 If required by the Lessor 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.
- 16.4 In preparing such information the Concessionaire must obtain information from and have regard to the views of tangata whenua.

## **17.0 EMPLOYMENT OF STAFF**

- 17.1 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.
- 17.2 The Concessionaire must provide the Lessor with evidence of the competency and qualifications of its employees if the Lessor so requests.
- 17.3 The Concessionaire must comply with all statutes relating to employment of staff.

## **18.0 HEALTH AND SAFETY**

- 18.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner and must comply with:
- (a) the Health and Safety in Employment Act 1992 and its regulations; and
  - (b) all other statutes, regulations and bylaws and all notices and requisitions of any competent authority relating to the conduct of the Concession Activity.

- 18.2 The Concessionaire must notify the Lessor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment.
- 18.3 The Concessionaire must :
- (a) take all reasonable steps to protect the safety of all persons present on the Land and must, where necessary, erect protective signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
  - (b) take all reasonable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware.
- 18.4 Before commencing the Concession Activity the Concessionaire must, if required by the Lessor, prepare a safety plan and have it audited by a suitably qualified person approved by the Lessor.
- 18.5 The Concessionaire must not commence the Concession Activity until:
- (a) the person appointed to audit the safety plan has certified the safety plan is suitable for the Concession Activity; and
  - (b) the Concessionaire supplies the Lessor with a copy of the safety plan certified under clause 18.5(a).
- 18.6 Receipt of the certified safety plan by the Lessor is not in any way to limit the obligations of the Concessionaire under clause 18 and is not to be construed as implying any responsibility or liability on the part of the Lessor.

## **19.0 TEMPORARY SUSPENSION**

- 19.1 The Lessor may temporarily suspend this Document if, in the opinion of the Lessor, there is a temporary risk to public safety or the safety of the Department's staff or the safety of other Concessionaires whether arising from natural events such as earthquake, land slip, volcanic activity, or flood or whether arising in any other way including the activities of the Concessionaire, its employees, clients or invitees.
- 19.2 If, in the opinion of the Lessor, the activities of the Concessionaire, its employees, clients or invitees are having or may have an adverse effect on the environment and the Lessor is of the opinion that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Lessor, the Lessor may suspend this Concession until the Concessionaire remedies, avoids or mitigates the adverse impact to the satisfaction of the Lessor.
- 19.3 The Lessor may suspend this Concession while the Lessor investigates any of the circumstances contemplated in clauses 19.1 and 19.2 and also while the Lessor investigates any potential breach or possible offence by the Concessionaire whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Lessor has become aware.



- 19.4 The word “investigates” in clause 19.3 includes the laying of charges and awaiting the decision of the Court.
- 19.5 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 19.6 The Lessor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under clause 19 including loss of profits.

## **20.0 ASSIGNMENT**

- 20.1 The Concessionaire is not to transfer, sublease, 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 Lessor. The Lessor may in the Lessor's discretion decline any application for consent under this clause.
- 20.2 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Lessor, in the Lessor's discretion, decides otherwise.
- 20.3 If the Lessor 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, sublessee, or assignee a covenant to be bound by the terms and conditions of this Document.
- 20.4 The Concessionaire must pay the costs reasonably incurred by the Lessor incidental to any application for consent, whether or not such consent is granted.
- 20.5 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Lessor.

## **21.0 DAMAGE OR DESTRUCTION OF LESSOR'S STRUCTURES OR FACILITIES**

- 21.1 If the Lessor's structures or facilities or any portion of them are totally destroyed or so damaged:
- (a) as to render them untenable, the Term is to terminate at once; or
  - (b) as, in the reasonable opinion of the Lessor, to require demolition or reconstruction, the Lessor may, within 3 months of the date of damage or destruction, give the Concessionaire 1 month's written notice to terminate and a fair proportion of the Concession Fee and Other Charges will cease to be payable according to the nature and extent of the damage.

21.2 Any termination under clause 21.1 is to be without prejudice to the rights of either party against the other.

21.3 If the Lessor's structures or facilities or any portion of them are damaged but not so as to render the premises untenable and:

- (a) the Lessor's policy or policies of insurance have not been invalidated or payment of the policy monies refused in consequence of some act or default of the Concessionaire; and
- (b) all the necessary permits and consents are obtainable; and
- (c) the Lessor has not exercised the right to terminate under clause 21.1,

the Lessor must, with all reasonable speed, apply all insurance money received by the Lessor in respect of the damage towards repairing the damage or reinstating the structures or facilities; but the Lessor will not be liable to spend any sum of money greater than the amount of the insurance money received.

21.4 Any repair or reinstatement may be carried out by the Lessor using such materials and form of construction and according to such plan as the Lessor thinks fit and is to be sufficient so long as it is reasonably adequate for the Concessionaire's use of the Land for the Concession Activity.

21.5 Until the completion of the repairs or reinstatement a fair proportion of the Concession Fee and other charges is to cease to be payable according to the nature and extent of the damage.

21.6 If any necessary permit or consent is not obtainable or the insurance money received by the Lessor is inadequate for the repair or reinstatement, the Term is at once to terminate but without prejudice to the rights of either party against the other.

## **22.0 TERMINATION**

22.1 The Lessor may terminate this Concession by 14 days notice in writing to the Concessionaire if:

- (a) the Concession Fee or any other money payable to the Lessor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
- (b)
  - (i) the Concessionaire breaches any terms of this Document; and
  - (ii) the Lessor has notified the Concessionaire in writing of the breach; and
  - (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or

- (c) the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Lessor, the services provided by the Concessionaire are manifestly inadequate; or
- (d) the Concessionaire is convicted of an offence, whether or not related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Health and Safety in Employment Act 1982; or the Building Act 1991; or the Resource Management Act 1991; or the Biosecurity Act 1993; or
- (e) the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
- (f) there is, in the opinion of the Lessor, a permanent risk to public safety or the environment whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Document on the part of the Concessionaire.

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

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

### **23.0 LESSOR MAY REMEDY CONCESSIONAIRE'S DEFAULT**

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

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

### **24.0 QUIET ENJOYMENT**

24.1 The Concessionaire, while paying the Concession Fee and performing and observing the terms and conditions of this Document, is entitled peaceably to hold and enjoy the Land and any structures and facilities of the Lessor without hindrance or interruption by Lessor or by any person or persons claiming under the Lessor until the expiration or earlier determination of this Concession.

## **25.0 LESSOR'S DIRECTIONS**

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

## **26.0 POWERS, RIGHTS AND AUTHORITIES**

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

## **27.0 INDEMNITIES AND INSURANCE**

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

27.2 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.

27.3 Without prejudice to or in any way limiting its liability under clause 28.1 the Concessionaire must take out and keep in force during the Term:

(a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of the Concessionaire's use of the Land or 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 11 of Schedule 1; and

(ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 12 of Schedule 1; and

(b) statutory liability for the amount specified in Item 13 of Schedule 1; and

(c) such other policy or policies of insurance against any other liability and for such other sums which the Lessor specifies in Item 14 of Schedule 1, including those matters specified in clause 13.

27.4 With respect to clause 28.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.

- 27.5 (a) Without prejudice to any other provision of this Document the Concessionaire will indemnify the Lessor against all damage or loss resulting from any act or omission on the part of the Concessionaire or the Concessionaire's employees, agents, contractors, clients, or invitees;
- (b) The Concessionaire is to recompense the Lessor for all expenses incurred by the Lessor in making good any damage to the Land or the property of the Lessor resulting from such act or omission.
- 27.6 (a) The Lessor will not be liable and does not accept any responsibility for damage to or interference with the Concession Activity or to the structures or facilities on the Land or any other indirect or consequential damage due to any natural disaster, vandalism, sabotage, fire or exposure to the elements except where, subject to the clause 28.6(b), such damage or interference is caused by any wilful act or omission of the Lessor, the Lessor's employees, agents or contractors;
- (b) Where the Lessor is found to be liable due to a wilful act or omission, the total extent of the Lessor's liability is limited to \$1M in respect of the Concessionaire's structures and facilities.
- 27.7 Notwithstanding anything else in clause 28 the Lessor is not liable for any indirect or consequential loss howsoever caused.

## **28.0 ENVIRONMENTAL MONITORING AND LAND REHABILITATION**

- 28.1 The Concessionaire must, during the Term, if the Lessor so requests in writing, design in consultation with the Lessor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's occupation of and activities on the Land.
- 28.2 If the Lessor does not make a request under clause 29.1 the Concessionaire must, during the Term, pay to the Lessor the annual environmental monitoring contribution specified in Item 14 of Schedule 1 to enable the Lessor to design and undertake a programme to monitor the environmental effects of the Concessionaire's occupation of and activities on the Land.
- 28.3 Subject to any conditions imposed by the Lessor and set out in Schedule 3, at the expiry, surrender or termination of this Document, the Concessionaire must reinstate the Land to its condition at the commencement of the Term and replant the Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

## **29.0 EXPIRY OF LEASE**

- 29.1 If the Lessor permits the Concessionaire to remain in occupation of the Land after the expiry or earlier termination of the Term, the occupation is to be on the basis:
- (a) of a monthly tenancy only, terminable by 1 month's written notice by either party;  
and

- (b) at the Concession Fee then payable; and
  - (c) otherwise on the same terms and conditions, as they would apply to a monthly tenancy, as expressed or implied in this Document.
- 29.2 If, on expiry of the Term, the future occupation of, or any operation on, the Land is not authorised by the Lessor, the Concessionaire accepts that the Lessor will have no liability whatsoever for any costs incurred by the Concessionaire as a result of the expiry of this Document.
- 29.3 The Concessionaire shall have no right to compensation for any improvements effected on the Land but on the expiration of the Lease provided all conditions of the Lease have been complied with or on earlier termination of this Lease the Concessionaire must if requested by the Lessor and within such time as the Lessor shall determine remove any improvements now on the Land and owned by it or which may hereafter be erected on the Land with the prior written consent of the Lessor as hereinbefore provided. If such improvements are not removed and the Land is re-let to any one other than the Concessionaire the new lease will be loaded with the Lessor's valuation of all improvements now on or hereafter erected on the Land with the Lessor's consent and the amount of the loading when received will be paid to the outgoing Concessionaire less all moneys which may be owing to the Lessor and less the Lessor's reasonable expenses (which shall include the cost of obtaining the valuation of improvements as aforesaid).
- 29.4 If the improvements are removed from the Land then the Concessionaire shall leave the Land in a clean and tidy condition to the satisfaction of the Lessor. If this is not done then the Lessor may, at the Lessor's option, do the work and recover the costs and expenses from the Concessionaire as a debt due to the Lessor.

### 30.0 **FORCE MAJEURE**

- 30.1 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.
- 30.2 If the delay or failure continues for at least 28 days either party will be entitled to terminate this Document by notice in writing.

### 31.0 **DISPUTE RESOLUTION AND ARBITRATION**

- 31.1 If a dispute arises between the parties in connection with this Document including without limitation the interpretation, validity, breach or termination of any of its provisions, the parties will, without prejudice to any other rights or entitlements they may have under this Document or otherwise, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.
- 31.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing)

either party may refer the dispute to the Disputes Tribunal, where relevant or to arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.

- 31.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 31.4 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 31.5 The arbitrator must include in the arbitration award reasons for the determination.

### **32.0 NOTICES**

- 32.1 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 16 of Schedule 1.
- 32.2 A notice given in accordance with clause 33.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of a letter, on the third working day after posting;
  - (c) in the case of facsimile, on the date of dispatch.

### **33.0 COSTS**

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

### **34.0 RELATIONSHIP OF PARTIES**

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

- (a) constituting the parties as partners or joint venturers;
- (b) preventing the Lessor from granting similar concessions to other persons.

### **35.0 OFFENCES**

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

### **36.0 SEVERABILITY**

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

### **37.0 ENTIRE UNDERSTANDING**

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

### **38.0 REGISTRATION**

38.1 The Lessor is not required to do any act or thing to enable this Document to be registered and the Concessionaire will not register a caveat in respect of the Concessionaire's interest under this Document.

38.2 Nevertheless, in the event that the Concessionaire wishes to register this Document under the Land Transfer Act 1952, the Lessor must take all such steps as are necessary to enable a certificate of title to issue in respect of the land against which this Document may be registered subject to the Concessionaire being responsible for and bearing all costs of and incidental to any survey necessary to enable such issue of title and all costs incurred by the Lessor in enabling such an issue of title and in having this Lease re-executed by the parties in a form suitable for registration.



### **39.0 VARIATIONS**

- 39.1 The provisions of section 17ZC of the Conservation Act 1987 apply to all variations sought by the Concessionaire and to any applications for extension of the Term.
- 39.2 The Lessor 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 Lease was granted; or
  - (b) because the information made available to the Lessor by the Concessionaire for the purposes of the Concessionaire's application contained inaccuracies which materially influenced the decision to grant the Lease and the effects of the Activity permitted by this Document require more appropriate conditions.
- 39.3 The Concessionaire is to be bound by every such variation.

### **40.0 GUARANTEE**

- 40.1 If the Lessor notifies the Concessionaire in writing that the Lessor requires this Document to be guaranteed by a third party the following clauses are to apply.
- 40.2 Subject to clause 41.1 and in consideration of the Lessor entering into this Document at the Guarantor's request the Guarantor:
- (a) guarantees payment of the Concession Fee and the performance by the Concessionaire of the covenants in this Document; and
  - (b) indemnifies the Lessor against any loss the Lessor might suffer should the Document be lawfully disclaimed or abandoned by any liquidator, receiver or other persons.
- 40.3 Subject to clause 41.1 the Guarantor covenants with the Lessor that:
- (a) no release, delay, or other indulgence given by the Lessor to the Concessionaire to the Concessionaire's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety is to release, prejudice, or affect the liability of the Guarantor as a Guarantor or as indemnifier;
  - (b) as between the Guarantor and Lessor the Guarantor may, for all purposes, be treated as the Concessionaire and the Lessor is under no obligation to take proceedings against the Concessionaire before taking proceedings against the Guarantor;
  - (c) the guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Concession Fee;

- (d) any assignment of this Document and any Concession Fee Review in accordance with this Document are not to release the Guarantor from liability;
- (e) should there be more than one Guarantor the liability of each Guarantor under this Guarantee is to be joint and several.

#### **41.0 CO-SITING**

- 41.1 (a) The Concessionaire will not allow Co-Siting without the prior written consent of the Lessor.
- (b) The Lessor's consent must not be unreasonably withheld, but is at the Lessor's sole discretion and subject to such reasonable terms and conditions as the Lessor thinks fit, including a requirement that the Co-Sitee be liable for direct payment to the Lessor of a Concession Fee in respect of the Co-Sitee's Activity.
- (c) The Lessor may withhold consent:
  - (i) the Co-Siting would result in a substantial change to the Concession Activity on the Land; and
  - (ii) the Lessor considers the changes to be detrimental to the environment of the land.
- 41.2 Any contract, licence or agreement by the Concessionaire to permit a Co-Sitee, with the consent of the Lessor, to Co-Site must have annexed to it a copy of this Document, and must contain a Covenant on the part of the Co-Sitee not to cause the provisions of this Document to be breached by any act or omission of the Co-Sitee.
- 41.3 For the avoidance of doubt a Co-Sitee permitted on the Land must enter into a separate agreement with the Lessor in terms of which the Co-Sitee will be required to pay a fee to the Lessor to conduct an Activity on the Land. This separate agreement must not contain provisions which conflict with the Concessionaire's rights and obligations in relation to the Land.

Signed by:

\_\_\_\_\_

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

Witness (signature) \_\_\_\_\_

Witness (print name) \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

Signed by :

\_\_\_\_\_

For and on behalf of  
TRILANE INDUSTRIES LTD  
as Concessionaire by its Directors  
in the presence of :

Witness (signature) \_\_\_\_\_

Witness (print name) \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

**SCHEDULE 1**

1. **Land:** A. Site marked "X" on land proposed as conservation land  
 B. Site marked "LS" on land proposed as conservation land  
 C. Route from the East Matukituki River and the Albertburn to the Site marked X on land proposed as conservation land  
*(see definition of Land in clause 1.1)*
  
2. **Concession Activity:**  
 A. To undertake the operation of an accommodation chalet on Site marked X  
 B. To engage Concessionaires authorised by the Lessor to land helicopters at Site marked "LS"  
 C. To undertake overnight guided tramps known as the Chalet Tramp on the Land  
*(see definition of Concession Activity in clause 1.1)*
  
3. **Term:** Fifteen years with one right of renewal for 15 years provided all conditions met  
*(see clause 3)*
  
4. (a) **Renewal Date:** ( to be inserted) *(see clause 3.2)*  
 (b) **Renewal Period:** One period of 15 years from ( to be inserted) *(see clause 3.2)*
  
5. **Final Expiry Date:** ( Not more than total of 30 years) *(see clause 3.4)*
  
6. (a) **Concession Fee:** \$6500 per annum plus GST *(see clause 5)*  
 (b) **Administration Fee:** \$200 plus GST *(see clause 5)*
  
7. **Concession Fee Payment Date:** *(see clause 5)*  
 On or before the date specified on the invoice generated by the Grantor
  
8. **Penalty Interest Rate:** *(see clause 5.2)*  
 Double the Grantor's bank's current highest 90 day bank bill buy rate
  
9. **Concession Fee Review Date:** Every three years. *(see clause 7)*
  
10. **Public Liability General Indemnity Cover:** For \$2,000,000 *(see clause 13)*
  
11. **Public Liability Forest & Rural Fire Extension:** For \$1,000,000 *(see clause 13)*
  
12. **Statutory Liability Insurance:** N/A *(see clause 13)*
  
13. **Other Types of Insurance:** N/A *(see clause 13)*  
**Amounts Insured for Other Types of Insurances:** N/A *(see clause 13)*
  
14. **Environmental Monitoring Contribution:** N/A *(see clause 29/28)*
  
15. **Address for Notices (including facsimile number):** *(see clause 33/32)*

(a) Lessor  The Conservator Department of Conservation PO Box 5244 77 Stuart St Dunedin	(b) Concessionaire  Whare Kea Lodge Box 115 WANAKA 9343
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## SCHEDULE 2

### SPECIAL CONDITIONS

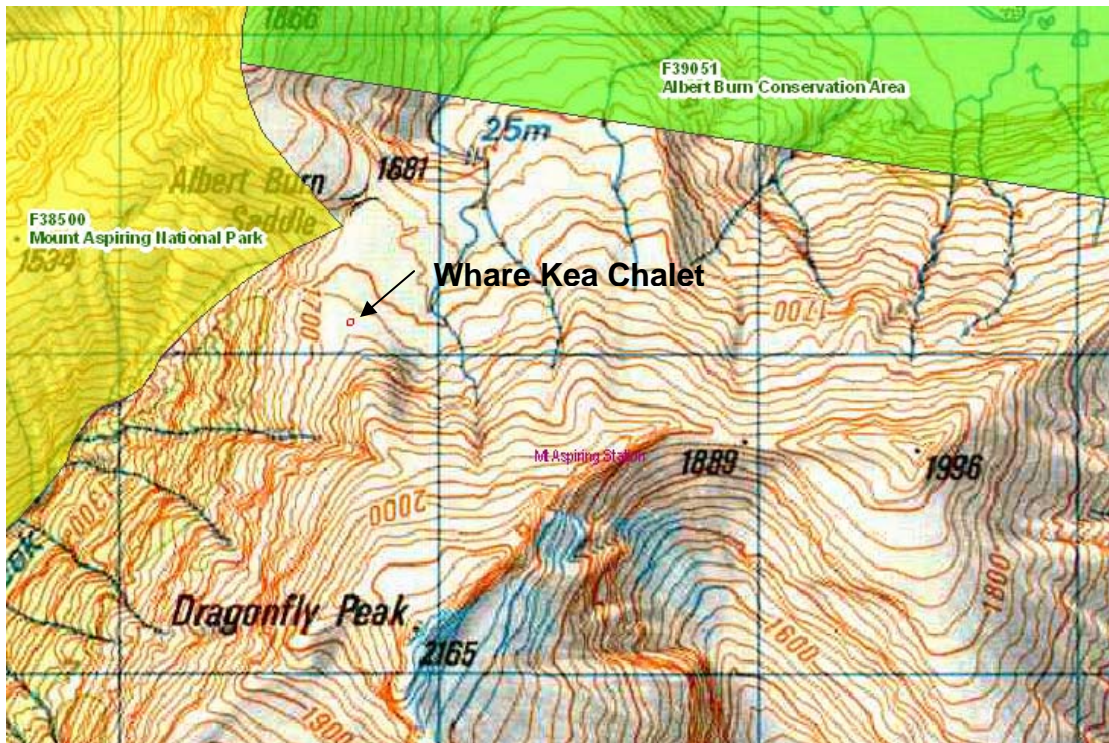
1. The chalet may only be used by the Concessionaires clients who undertake the Chalet Tramp and are guided by the Concessionaire or the Concessionaires clients who are staying at the Concessionaires Whare Kea Lodge while the lodge is in the ownership of the Concessionaire.
2. Access to and from the chalet by the Concessionaires clients staying at Whare Kea Lodge may be by aircraft or walking as part of the Chalet Tramp.
3. Access to and from the chalet by the Concessionaires clients who are not staying at the Whare Kea Lodge will be as part of the Chalet Tramp only.
4. The accommodation fee and guided chalet tramping fee must be approved by the Lessor in advance of it being set and charged and that consent will not be unreasonably withheld.
5. The Concessionaire acknowledges that the Chalet is not a facility for the private use and benefit of the Concessionaire its directors, shareholders, the shareholders or directors family or associates but is to be generally available for the concession activity.
6. Site 1 includes the chalet footprint and the land for a distance of 50 metres surrounding the chalet ("the surrounds") as marked on the attached plan.
7. Members of the public will retain the right to utilise the surrounds but will not be permitted to camp, light fires or otherwise unduly or unreasonably disturb the occupants of the chalet.
8. The Concessionaire must provide an independently audited safety plan in terms of Clause 18 of the concession for all activities authorised by this concession.
9. Any aircraft operator engaged by the Concessionaire to land at the designated landing site must hold its own concession from the Lessor for this purpose.
10. No more than a combined total of 200 return flights (400 movements) within any calendar year with a maximum of 10 return flights per day and a maximum of 20 per month.
11. The Concessionaire agrees to request the aircraft operator to fly to and from the designated landing site from the east and to avoid flying over the Matukituki East Valley except when adverse weather conditions prevent this flight path.
12. The Concessionaire agrees to limit the maximum party size to seven clients plus two guides on any one day.

13. The Concessionaire to provide to the Lessor annual activity returns showing the occupancy of the Chalet for each day of the month and the day, month and party size of every Chalet Tramp.

14. The Lessor reserves the right to undertake an annual inspection of the sites and all costs will be met by the Concessionaire.

15. Clause 15.7 (c) is requires the Lessors written permission to store fuels and other combustible materials on the Land. The storage of LPG bottles is permitted.

16. Clause 22.1 (b) (iii) is modified to allow for the period to be extended until conditions on the Land permit access so that work can be done.



**Appendix 7: Grazing Concession Three (GC3) – Upper Matuki Faces**

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

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

**Between**

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

**and**

**MT ASPIRING COMPANY LIMITED**  
**("the Concessionaire")**

**GRAZING CONCESSION**  
**UNDER CROWN PASTORAL LAND ACT 1998**



Department of Conservation  
*Te Papa Atawhai*

THIS LICENCE is made this day of

**PARTIES:**

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **MT ASPIRING COMPANY LIMITED** ("the Concessionaire")

**BACKGROUND**

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

**OPERATIVE PARTS**

**TERMS AND CONDITIONS**

**1.0 DEFINITIONS AND INTERPRETATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

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

## 2.0 GRANT OF LICENCE

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

### **3.0 TERM**

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

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

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

### **4.0 CONCESSION FEE AND ADMINISTRATION FEE**

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

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

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

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

### **5.0 OTHER CHARGES**

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

**6.0 CONCESSION FEE AND ADMINISTRATION FEE REVIEW**

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

**7.0 CONCESSION ACTIVITY**

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

**8.0 COMPLIANCE**

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

**9.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS**

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

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

## **10.0 PROTECTION OF THE ENVIRONMENT**

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

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

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

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

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

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

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

## **11.0 HEALTH AND SAFETY**

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

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

## **12.0 TEMPORARY SUSPENSION**

12.1 The Grantor may suspend this Document:

- (a) if, in the opinion of the Grantor the activities of the Concessionaire, its employees, agents, contractors, licensees or invitees are having or may have an adverse effect on the environment and the Grantor considers that the effect can not be avoided, remedied or mitigated to an extent satisfactory to the Grantor;
- (b) while the Grantor investigates any of the circumstances contemplated by this clause and also while the Grantor investigates any potential breach or possible offence by the Concessionaire related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.

12.2 The Grantor is not liable to the Concessionaire for any loss sustained by the Concessionaire by reason of a suspension under clause 12.1 including loss of profits.

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

### **13.0 ASSIGNMENT**

13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause, however consent will not be unreasonably withheld.

13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.

13.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.

13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

### **14.0 TERMINATION**

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

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



presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a writ of sale or charging order; or the Concessionaire cease to function or operate.

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

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

#### **15.0 INDEMNITIES AND INSURANCE**

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

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

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

- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
  - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
  - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
- (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
- (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.

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

**16.0 ENVIRONMENTAL MONITORING**

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

**17.0 FORCE MAJEURE**

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

**18.0 DISPUTE RESOLUTION AND ARBITRATION**

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

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

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

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

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

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

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

**19.0 NOTICES**

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

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

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

**20.0 RELATIONSHIP OF PARTIES**

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

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

20.2 The Concessionaire acknowledges that the Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard.

**21.0 COSTS**

21.1 The Concessionaire must pay the Grantor's legal costs and expenses associated with preparing and signing this Document or any extension or variation to it.

21.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and the fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

**22.0 OFFENCES**

22.1 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.

**23.0 SPECIAL CONDITIONS**

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

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

Signed by :

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

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

Signed by :

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

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

SCHEDULE 1

1. **Land:** Shown on the Designations Plan as a portion of “CA3”, marked “Grazing Concession 3” and shaded pink being approximately 200 ha.  
(see definition of Land in clause 1.1)
2. **Concession Activity:** Ewes, lambs, rams and hoggets of a breed other than merinos may graze on the Land.  
(see definition of Concession Activity in clause 1.1)
3. **Term:** 30 years commencing on the date of settlement of the tenure review.  
(see clause 3)
4. (a) **Renewal Date:** NA (see clause 3.2)  
(b) **Renewal Period:** NA (see clause 3.2)
5. **Final Expiry Date:** (see clause 3.2)
6. (a) **Concession Fee:** \$100. A nominal concession fee only is applicable as the concession is to provide for minor stock incursion within the unfenced conservation land.  
(b) **Administration Fee:** \$100 per annum + GST (see clause 4)
7. **Concession Fee Payment Date:** (see clause 4)  
On or before the date specified on the invoice generated by the Grantor
8. **Penalty Interest Rate:** (see clause 4.2)  
Double the Grantor’s bank’s current highest 90 day bank bill buy rate
9. **Concession Fee Review Date:** Every 3 yrs. (see clause 6)
10. **Public Liability General Indemnity Cover:** (see clause 15.3)  
for \$1,000,000.00
11. **Public Liability Forest & Rural Fire Extension:** (see clause 15.3)  
for \$1,000,000.00
12. **Statutory Liability Insurance:** (see clause 15.3)  
Amount \$250,000.00
13. **Other Types of Insurance:** (see clause 15.3)  
**Amounts Insured for Other Types of Insurances:** (see clause 15.3)  
Amount
14. **Environmental Monitoring Contribution:** \$0 \_\_\_\_\_ (see clause 16)
15. **Address for Notices (including facsimile number):** (see clause 19)
  - (a) Grantor: C/- PO Box 5244, Dunedin. (03) 4778 626
  - (b) Concessionaire: Mt Aspiring Co Ltd, C/- John and Sue Aspinall, P.O. Box 94, Wanaka. (03)

## SCHEDULE 2

### *Special Conditions*

#### **Land Management**

1. The Concessionaire must not break up or crop any part of the Land without the prior written consent of the Grantor.
2. Ewes, lambs, rams and hoggets only are permitted within the Land.
- 2.1 While the Grantor acknowledges that despite the best efforts of the Concessionaire, some 'sheep drift' will occur onto the Land, the Concessionaire is to take all practical steps to discourage sheep from doing so.
3. The Concessionaire may use a helicopter on the Land for purposes consistent with this Concession Activity.

#### **Fencing**

4. The Grantor is not to be called upon at any time to contribute to the costs of work on a fence as that term is defined in the Fencing Act 1978 between the Land and any adjoining land of the Grantor.
5. The Concessionaire must keep and maintain at the Concessionaires cost any fences, stiles or gates in good repair.

#### **Hunting**

6. The Grantor reserves the right to authorise hunters who hold a valid hunting permit issued by the Department of Conservation to hunt on the Land.

#### **Inspection**

7. The Grantor reserves the right for the Grantor's employees or agents to enter on the Land at any time for the purpose of inspecting the Land.

#### **Management Prescription**

8. The parties will comply with the management prescription document attached as schedule 3.

#### **Share Transfers**

9. Clause 13.4 is modified to provide for share changes within the Aspinall family without the consent of the Grantor.

#### **New Concession**

10. At the end of this concession the MOC will consider the need for a new concession, depending on the requirement to formally recognise sheep drift onto conservation land.

**SCHEDULE 3****MANAGEMENT PRESCRIPTION DOCUMENT FOR MT ASPIRING STATION – WEST MATUKITUKI FACES - CONSERVATION AREA GRAZING CONCESSION**

As this concession is for a term exceeding 10 years a management prescription document is required. A management prescription in the concession conditions provides, over the full term:

1. The specific goals of management of the land consistent with the nature of the concession activity (covering vegetation, landscape, historic, public recreation, soil and water).
2. A description of how the goals are to be met.
3. A detailed description of the type and condition of conservation resources at the commencement of the concession.
4. A description of the monitoring programme (of activity effects) to be carried out (for vegetation).
5. A specification concerning grazing systems, including identification of vegetation trends and how that will affect the grazing systems.

This management prescription document shall apply until it is reviewed ten years from the date of commencement of the concession and every ten years thereafter.

1. The goal of the concession is to recognise that as it is impractical to construct a boundary fence, some minor stock trespass onto conservation land will occur. This concession is purely to formalise the expected stock drift and avoid future issues.

**(a) Vegetation**

To manage the vegetation within the concession area to maintain the cover of tussock and other native flora by preventing burning and minimising stock use.

**(b) Landscape**

The minor stock incursion will have no impact on the landscape character of the area.

**(c) Recreation**

The public will have unfettered access to the area in line with the much larger adjoining conservation area.

**(d) Soil and Water**

The minor stocking expected on the concession area is not expected to affect soil and water values.

**2. A description of how the goals are to be met.**

These goals are to be met through monitoring of the area from time to time.

Liaison with the Concessionaire and the public using the area will be important.

- (a) Management changes to reduce grazing levels and will be considered, should that be necessary following field observations by the Grantor or Concessionaire.

Sheep only are permitted within the land.

The type of stock has been limited to recognise the tendency for some stock types to wander up to higher altitudes. Crossbred sheep do not tend to wander far from oversown pastures.

- (b) Sign posting indicating conditions pertaining to public use will be erected on the proposed easements through the adjoining freehold land.

### 3. Description and condition of conservation resources present.

#### Landscape:

The whole of the Matukituki River West Branch is assessed as having significant inherent landscape values. This area (contained within the concession) forms part of a spectacular and highly scenic landscape. This striking and visually impressive montane landscape comprises spectacular physical features including a glaciated trough landscape and landforms, and fluvial-glacial valley floor landforms and features. Natural vegetation patterns and features remain dominant and appear natural despite considerable modification on the valley floor and lower slopes.

#### Vegetation:

Between c. 900 – 1000 m, depending on steepness and brokenness of terrain, an abrupt vegetation change to introduced pasture grasses demarcates the extent of pastoral development. It is approximately along this edge that this grazing concession is placed. The band of indigenous vegetation above this point is described in general terms as follows:

At c. 1400 m narrow-leaved tussock (*Chionochloa rigida* subsp. *rigida*) is present along with an array of shrubs and large herbs. These include turpentine shrub (*Dracophyllum uniflorum*), *D. kirkii*, *Hebe hectorii*, *Coprosma fowerakeri*, *C. cheesemaniae*, creeping mapou (*Myrsine nummularia*), cottonwood (*Ozothamnus vauvilliersii*), *Astelia nervosa*, *A. petriei*, *Aciphylla divisa* and *Celmisia verbascifolia*. *Hebe hectorii* and *H. odora* form narrow shrubby belts along seeps. This community is widespread and extends well down slopes.

As the terrain steepens, numerous small seepages coalesce into small cascades, the sides of which are festooned with *Celmisia verbascifolia*, Mt Cook lily (*Ranunculus lyallii*), yellow snow groundsel (*Dolichoglottis lyallii*), *Anaphalioides bellidioides*, *Hebe pauciramosa* and *Astelia petriei*.

Mid-slope rock outcrops and dry spur crests have a more dry-tolerant flora including mountain flax (*Phormium cookianum*), *Coprosma serrulata*, *C. atropurpurea*, *Blechnum montanum*, *Leucopogon fraseri*, *Lycopodium fastigiatum*, *Celmisia gracilentia*, *Gaultheria crassa*, *Pentachondra pumila* and *Gentianella* sp. Ravines at c. 1000 m have dense riparian shrublands dominated by turpentine shrub and *Hebe subalpina* along with cottonwood, mountain flax, *Coprosma ciliata*, *C. rugosa*, native broom, koromiko (*Hebe salicifolia*), *Olearia arborescens*, feathery tutu (*Coriaria plumosa*), prickly shield fern, and *Chionochloa conspicua*.

### 4. Description of a monitoring programme to be established for vegetation condition and soil and water values

Monitoring will be limited to periodic inspections by staff, consultation with the concessionaires and observations by the public.

### 5. Number of stock and duration permitted to be run on the concession area within the current term of the management prescription document.

No specific stock numbers are specified. The expectation is that low numbers of sheep will graze the concession area. The success of the aims of this concession can be looked at on review and it can be amended via this document if required.



**Appendix 8: Form of Conservation Covenant One (CC1) to be Created – Landscape**

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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*

**THIS DEED of COVENANT** is made the                      day of

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

**AND**    **MINISTER OF CONSERVATION**

**BACKGROUND**

- A. The Commissioner of Crown Lands is deemed for the purposes of section 77 of the Reserves Act 1977 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land contains certain Values specified in Schedule 1.
- C. The parties agree that the Land should be managed so as to preserve the particular Values specified in Schedule 1, and that such purpose can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.
- D. An approved plan designating the Land as land over which a Covenant under section 77 of the Reserves Act 1977 is to be created has been registered under section 64 of the Crown Pastoral Land Act 1998.
- E. The Commissioner of Crown Lands has agreed to grant the Minister a Covenant over the Land to preserve the particular Values specified in Schedule 1.

**OPERATIVE PARTS**

In accordance with section 77 of the Reserves Act 1977, and with the intent that the Covenant run with the Land and bind all subsequent Owners of the Land, the Commissioner of Crown Lands and Minister agree as follows:

**1. INTERPRETATION**

1.1 In this Covenant unless the context otherwise requires:

- “**Act**”    means the Reserves Act 1977.
- “**Covenant**”                                        means this Deed of Covenant made under section 77 of the Act.
- “**Director-General**”                            means the Director-General of Conservation.
- “**Fence**”    includes a gate.
- “**Fire Authority**”                              means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
- “**Land**”     means the land described in Schedule 1.
- “**Minerals**”                                        means any mineral that is a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “**Minister**”                                        means the Minister of Conservation.
- “**Natural Water**”                                includes water contained in streams the banks of which have, from time to time, been realigned.
- “**Owner**”    means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.

- “**Party**” or “**Parties**” means either the Minister or the Owner or both.
- “**Values**” means any or all of the Land’s natural environment, 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 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 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

**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: \_\_\_\_\_

## SCHEDULE 1

**1. Description of Land**

Shaded yellow and labelled "CC1" (approximately 1160 ha) on the Designations Plan.

The covenant in the West branch Matukituki River covers the valley floor and lower hill slopes from around Cascade Hut to Raspberry Flat (including the hill behind Raspberry Flat) on the true right, and all the flats on the true left as far east as the area known as "Hells Gate". In the East Branch Matukituki River it covers the northern end of the flats adjacent to the glacier Burn.

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

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

C/- Box 5244  
DUNEDIN

Fax (03) 477 8626

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

Mt Aspiring Co Ltd, C/- John and Sue Aspinall, P.O. Box 94, Wanaka. (03)

**3. Values of Land to be Preserved****Landscape Values:**

The valley as a whole has highly significant visual and scenic values forming part of a grand and spectacular glacial valley close to the main divide. High mountains, dramatic glacial landforms, intact upper level tussock grasslands and herbfields combined with extensive shrublands, bracken, beech forest and the open grass covered valley floor form the key ingredients of this landscape.

The lower slopes and valley floor form a coherent landscape of developed pasture with indigenous vegetation remaining on steep slopes, associated with watercourses, gullies and along the river margin. Natural vegetation patterns and features remain dominant and appear natural despite considerable modification on the valley floor and lower slopes.

The lower valley (below Raspberry Creek) is more modified, and farming patterns such as hay paddocks and shelterbelts are now part of the valley floor landscape.

**Vegetation Values:**

Outwash fans, particularly those on the true left exhibit a chronological sequence of gravel deposition (terrace formation) with associated vegetation succession. More stable fans show shrubland development with native broom (*Carmichaelia petriei*), matagouri (*Discaria toumatou*), *Coprosma propinqua* and juvenile silver beech (*Nothofagus menziesii*).

Some rocky colluvial fans have regenerating shrublands of high diversity. Common tree and shrubs are kohuhu (*Pittosporum tenuifolium*), broadleaf (*Griselinia littoralis*), *Coprosma propinqua*, *C. rugosa*, *Podocarpus nivalis*, *Corokia cotoneaster*, *Olearia avicenniifolia*, manuka (*Leptospermum scoparium*), porcupine shrub (*Melicactus alpinus*), mountain wineberry (*Aristotelia fruticosa*), tutu (*Coriaria sarmentosa*) and false beech (*Gaultheria antipoda*). A rich understorey of predominantly ferns includes prickly shield fern (*Polystichum vestitum*), thousand-leaved fern (*Hypolepis millefolium*), *Blechnum montanum*, *B. penna-marina*, *B. vulcanicum*, hanging spleenwort (*Asplenium flaccidum*), necklace fern (*A. flabellifolium*) and hound's tongue (*Microsorium pustulatum*). Lianes are also abundant, climbing over and through the shrub canopy. Common species include

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

native jasmine (*Parsonsia heterophylla*), clematis (*Clematis marata*), pohuehue (*Muehlenbeckia australis*) and bush lawyer (*Rubus schmidelioides*).

Some of these shrub and tree species are also present in a narrow, strictly riparian zone, immediately adjoining the Matukituki River. They are supplemented by occasional beech trees, mostly mountain beech (*Nothofagus solandri* var. *cliffortioides*) and silver beech, with *Chionochloa conspicua* and inaka (*Dracophyllum longifolium*).

Silver beech is also widespread as groves and individuals on the fans of the true left of the river. It is associated with occasional Hall's totara (*Podocarpus hallii*) and mountain celery pine (*Phyllocladus alpinus*) with a sparse understorey that includes *Coprosma ciliata*, button fern (*Pellaea rotundifolia*), water fern (*Histiopteris incisa*), *Viola filicaulis*, and the orchids *Chiloglottis cornuta* and *Aporostylis bifolia*.

Rock bluffs on the true left of the river, in the vicinity of the footbridge, support the threatened cress *Pachycladon cheesemani*. At the foot of the bluffs, the locally uncommon shrub kanuka (*Kunzea ericoides*) is present.

**SCHEDULE 2**

**Special Conditions**

1. The Minister will pay to the Owner a proportionate share of the following:
  - 1.2 the cost of any work under clause 3.2 if the Minister has first approved the work.
2. The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
  - 2.1 the Minister will bear the cost of work essential for purposes of landscape/nature /recreation conservation;
  - 2.2 the Owner will bear the cost of work essential for farming purposes;
  - 2.3 when the expenditure is partly for landscape/nature/recreation conservation and partly for farming purposes, the parties will bear the costs equally or in such other proportion as they may agree, and failing agreement, as may be determined under clause 11.
3. Clause 3.1.1 is deleted. Sheep and cattle only may be grazed.
4. Clause 3.1.2 is deleted.
5. Clause 3.1.3 is only to apply to the planting of exotic species or those native plants not found in the district.
6. Nothing in clause 3.1.4 will prohibit the erection of fences and structures that are solely for the purpose of farm related activities.
7. Clause 3.1.5 is deleted.
8. Clause 3.1.6 is deleted with respect to cultivation and soil disturbance normally associated with livestock farming. No new tracks are to be cut other than maintenance, relocation or reinstatement of existing tracks.
9. Clearance of native woody vegetation is not permitted within the areas identified as 1 – 10 on the aerial photo attached.
10. Clause 3.1.11 is modified to allow the removal of floating rocks for the purpose of river control works adjacent to the property. Any removal will be subject to consultation with the Minister.

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**



1

2

3





**Appendix 9: Form of Conservation Covenant Two (CC2) to be Created – Olearia**

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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*

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.

**THIS DEED of COVENANT** is made the                      day of

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

**AND**    **MINISTER OF CONSERVATION**

**BACKGROUND**

- A. The Commissioner of Crown Lands is deemed for the purposes of section 77 of the Reserves Act 1977 to be the owner of the Land under section 80(5) of the Crown Pastoral Land Act 1998.
- B. The Land contains certain Values specified in Schedule 1.
- C. The parties agree that the Land should be managed so as to preserve the particular Values specified in Schedule 1, and that such purpose can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.
- D. An approved plan designating the Land as land over which a Covenant under section 77 of the Reserves Act 1977 is to be created has been registered under section 64 of the Crown Pastoral Land Act 1998.
- E. The Commissioner of Crown Lands has agreed to grant the Minister a Covenant over the Land to preserve the particular Values specified in Schedule 1.

**OPERATIVE PARTS**

In accordance with section 77 of the Reserves Act 1977, and with the intent that the Covenant run with the Land and bind all subsequent Owners of the Land, the Commissioner of Crown Lands and Minister agree as follows:

**1. INTERPRETATION**

1.1 In this Covenant unless the context otherwise requires:

- “**Act**”    means the Reserves Act 1977.
- “**Covenant**”                                      means this Deed of Covenant made under section 77 of the Act.
- “**Director-General**”                          means the Director-General of Conservation.
- “**Fence**”    includes a gate.
- “**Fire Authority**”                              means a Fire Authority as defined in the Forest and Rural Fires Act 1977.
- “**Land**”    means the land described in Schedule 1.
- “**Minerals**”                                        means any mineral that is a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “**Minister**”                                        means the Minister of Conservation.

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- “Natural Water”** includes water contained in streams the banks of which have, from time to time, been realigned.
- “Owner”** means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.
- “Party” or “Parties”** means either the Minister or the Owner or both.
- “Values”** means any or all of the Land’s natural environment, 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;

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.

- 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 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.

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.

- 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.

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.



**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 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

**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

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- 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.

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**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**

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.

- 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: \_\_\_\_\_

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**SCHEDULE 1**

**1. Description of Land**

*Currently shaded yellow and labelled "CC 2" on the Designations Plan. Area: approx 2.3ha.*

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

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

C/- Box 5244  
DUNEDIN

C/- 77 Stuart Street      Fax (03) 477 8626  
DUNEDIN

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

Mt Aspiring Co Ltd, C/- John and Sue Aspinall, P.O. Box 94, Wanaka. (03)

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

Along the Matukituki River West Branch, blocky colluvial fans, comprised of rock from mountain slopes above, occurs intermittently between the junction between the hill slopes and flats.

On one of these fans, opposite the Otago Boys High School bridge is a large population of the threatened tree daisy *Olearia hectorii* (c. 55 trees). *Olearia hectorii* has a threat ranking of 'Nationally Vulnerable'. Taxa in this category are facing a very high risk of extinction in the wild. Nationally the species is subject to increasing modification of its remnant forest habitat by pastoral practices, recent extinction of some populations and lack of natural regeneration opportunities in many habitats (Rogers 1996). The Matukituki Valley is a stronghold for the species in Otago but almost all sites are unprotected and in decline (Thorne 2000). This decline is brought about by the non-replacement of adult trees.

Natural regeneration opportunities are present through ongoing rock fall, flooding, and other disturbance events and tools for enhancing regeneration through the use of herbicides to kill competing grasses, are being developed. This tree is the subject of a draft national recovery plan (Rance in prep.) which promotes the formal protection of its habitat.

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

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**SCHEDULE 2**

**Special Conditions**

1. Clause 3.1.1 is deleted. The Owner may graze those parts of the land not fenced to prevent grazing.
2. Clause 3.1.3 is deleted. The Owner must not plant any species of tree or shrub plant except local native plants as identified in Schedule 3.
3. Clause 7.2 is deleted.
4. This Covenant provides freedom of access to the public for the appreciation of natural values.
5. The Owner will allow the public the right of access to the Land from the nearby public road.
6. This document is to be read in conjunction with the Management Prescription Document Schedule 3.

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GRANT of

Correct for the purposes of the  
Land Transfer Act 1952

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

Solicitor for the Minister

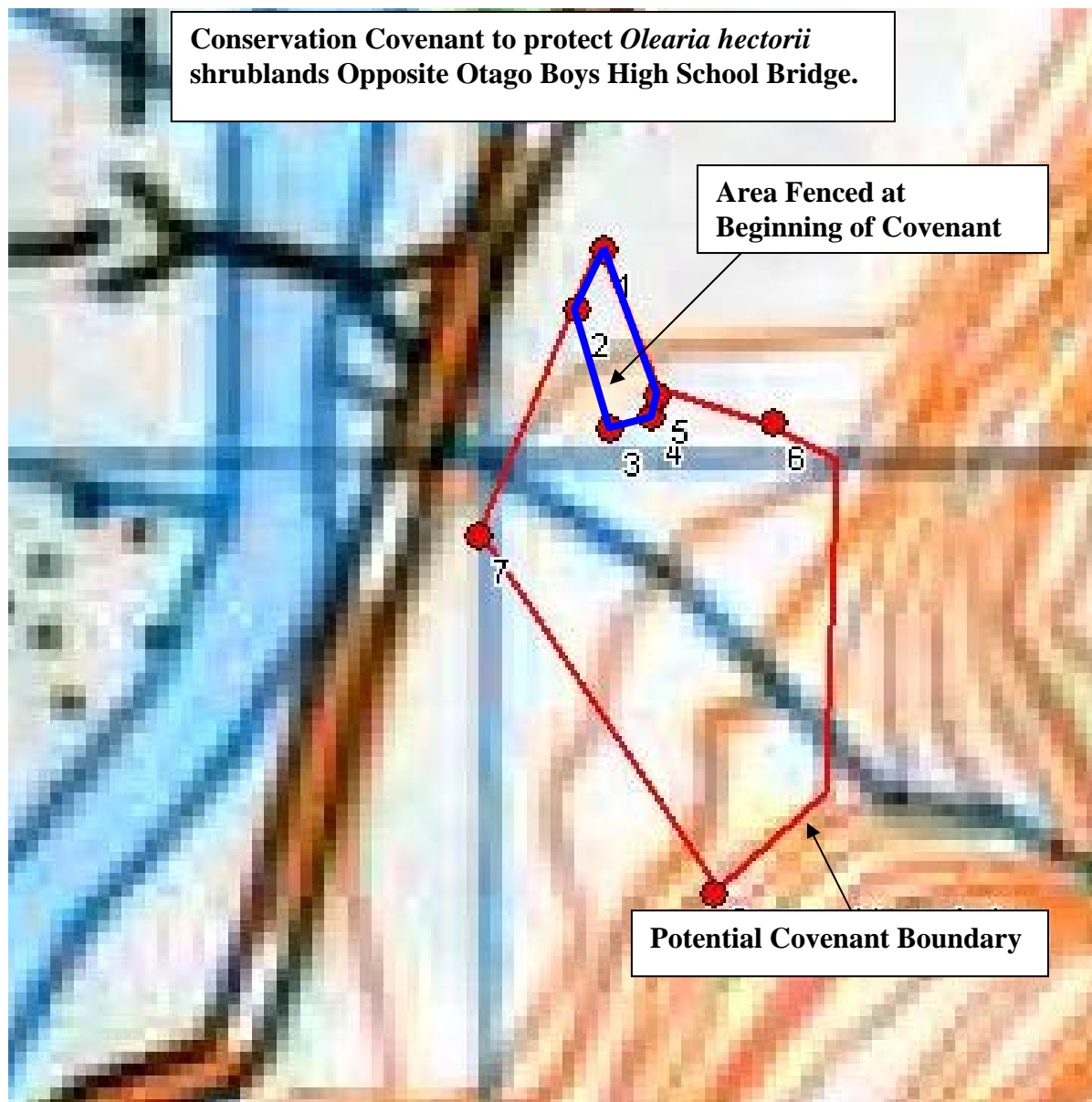
COMMISSIONER OF CROWN  
LANDS

to

MINISTER OF CONSERVATION

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**Solicitor**  
**Department of Conservation**  
**DUNEDIN/CHRISTCHURCH**



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### SCHEDULE 3

#### MANAGEMENT PRESCRIPTION DOCUMENT FOR MT ASPIRING STATION OLEARIA COVENANT

As this covenant is for the restoration of vegetation and may use methods that could be modified over time, a management prescription document provides the flexibility to meet changing goals. A management prescription in the covenant conditions provides, over the full term:

1. The specific goals of management of the land consistent with the purpose of the covenant.
2. A description of how the goals are to be met.
3. A detailed description of the type and condition of conservation resources at the commencement of the covenant.
4. A description of the vegetation restoration programme to be carried out.

This management prescription document shall apply until it is reviewed ten years from the date of commencement of the covenant and every ten years thereafter.

1. **The goal of the covenant is to achieve the protection of *Olearia hectorii* and associated shrublands. Public access will be encouraged.**

- (a) Vegetation

To manage the vegetation within the covenant area in order to maintain and enhance the population of *Olearia hectorii* and other native shrub and tree species. The areas which, for the time being are not subject to a restoration programme or are outside the active programme may be grazed.

- (b) Recreation

To encourage the public to visit and learn about *Olearia hectorii*.

2. **A description of how the goals are to be met.**

- (a) The goals are to be met through fencing and manipulation of the covenant area.

The boundaries of the covenant reflect good reserve design for the long term (i.e. covenant is of sufficient size and of compact configuration) but management within the covenant may occur on an incremental basis recognising the limited resourcing and capacity of the Minister. In that way, land within the covenant boundaries not under active restoration, may continue to be grazed until restoration begins. The extent and timing of such restoration (and retirement of grazing) would be through agreement of the parties.

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Fencing of the whole covenant area is planned from the beginning. The plan is to move outwards an internal subdivision fence as restoration progresses, thus providing protection new plantings from stock browsing. The Minister will pay for fencing costs.

This programme will require regular liaison between the Owner and the Minister.

- (b) Appropriate interpretation signage will be erected and styles will be placed to provide easy public access.

3. **A detailed description of the type and condition of conservation resources at the commencement of the covenant.**

A population of about 55 mainly mature *Olearia hectorii* trees occurs within the covenant area along with a small range of associated native shrubs.

Within an existing small fenced area DOC have been carrying out *Olearia* recruitment trials. This has involved grass suppression by herbicides and while this has not led to recruitment of *Olearia hectorii* seedlings within the enclosure, there has been recruitment of some associated species such as *Coprosma propinqua* and *Pittosporum tenuifolium*.

4. **A description of the vegetation restoration programme to be carried out.**

Both the owner and the Minister may plant trees and shrubs with the aim of reconstructing the *Olearia hectorii* community complete with commonly associated species. These species may include lowland ribbonwood (*Plagianthus regius*), kohuhu (*Pittosporum tenuifolium*), broadleaf (*Griselinia littoralis*), *Coprosma propinqua*, *C. rugosa*, *Podocarpus hallii*, *Corokia cotoneaster*, *Olearia avicenniifolia*, manuka (*Leptospermum scoparium*) and, mountain wineberry (*Aristotelia fruticosa*). Additional species may be planted only on agreement between the parties.

Previous herbicide trials are part of a much wider experiment which is leading to a greater understanding of the recruitment requirements of *O. hectorii*. Irrespective of whether the grass suppression/herbicide trials continue, nursery-raised *O. hectorii* saplings can be planted within the covenant to ensure some augmentation of the existing trees.

Other methods of enhancing *O. hectorii* recruitment may also be trialled on agreement between the parties.

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**Appendix 10: Form of Easement to Convey Water and for Management Purposes to be Created  
– v-w and Z**

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# **TRANSFER GRANT OF EASEMENT**

1. Easement to Convey Water
2. Easement for Management Purposes

**Land Transfer Act 1952**

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

**TRANSEER**  
RELEASED UNDER THE OFFICIAL INFORMATION ACT  
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

Otago

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

--	--	--	--

Transferor *Surnames must be underlined*

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

Transferee *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.*

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

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

**Operative Clause**

The Transferor, being the registered proprietor of the servient land, grants to the Transferee an easement to convey water with the rights and powers or provision set out in the Annexure schedules.

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

**Attestation**

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

**Certified correct for the purposes of the Land Transfer Act 1952**

\_\_\_\_\_

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 [ ] metres wide which is marked ( “v-w” on the Designations Plan) to convey water and marked (“z” on the Designations Plan) for management purposes on S.O. Plan No [ ].
  - 1.2 “Management Purposes” means:
    - the protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the easement area.
    - The management of the land administered by the Transferee (not being a member of the public) in a way that is ecologically sustainable.
  - 1.3 “Servient Land” means the land owned by the Transferor and described on page 1.
  - 1.4 “Transferee” means Her Majesty the Queen acting by and through the Minister of Conservation.
  - 1.5 “Transferor” means the owner of the Servient Land described on page 1 and includes the Transferor’s tenants and invitees.

**Standard Easement Terms**

Schedules

2. Unless otherwise provided in this document, the rights and powers implied in the specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the fifth Schedule of the Property Law Act 2007.

Term

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

Dispute Resolution

- 4.1 If a dispute arises between the Transferor and Transferee concerning the rights, management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 4.2 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.
- 4.3 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

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.

## RELEASED UNDER THE OFFICIAL INFORMATION ACT

independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated.

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

### Notice

- 5.1 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.
- 5.2 If clause 5.1(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.
- 5.3 If clause 5.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

### **Special Easement Terms**

- 6.1 The standard easement terms contained above must be read subject to any special easement terms set out below.
- 6.2 The Transferee including its tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation, may lay and maintain a water pipeline across the Servient land.
- 6.3 The Transferee has the right to use whatever means of access she thinks fit to carry out the works in clause 6.2 above.
- 6.4 The Transferee including its tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation, has the right to take vehicles, plant, machinery and land helicopters on the Easement Area marked "z" on the Designations Plan.

**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.*



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

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Right to Convey Water

### Land Transfer Act 1952

Law Firm Acting

Conservancy Solicitor  
Department of Conservation  
Dunedin

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Auckland District Law Society  
REF:4135

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**Appendix 11: Form of Public and Management Purposes Easement to be Created – a-b, c-d, e-f, c-g, h-i, j-k, l-m, n-o, p-q, r-s and t-u**

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# **TRANSFER GRANT OF EASEMENT IN GROSS**

1. Public Access
2. Access for Management Purposes

**Land Transfer Act 1952**

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

**TRANSFER**  
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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

OTAGO

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

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Transferor Surnames must be underlined

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

Transferee 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 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

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 TRANSFEROR TRANSFERS to the TRANSFEE all the transferor'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

Signed in my presence by the Transferor  
Signature of Witness

(continued on page 4 of Annexure Schedule)

**Witness to complete in BLOCK letters**  
(unless typewritten or legibly stamped)

Witness name

Occupation

Address

Signature, or common seal of Transferor

**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**

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 10 metres wide, “a-b”, “c-d”, “e-f”, “c-g” and “h-i” with an area available for car parking at “b”;
- that part of the Servient Land being 20 metres wide, “j-k” where vehicle access for management purposes is provided by the existing 4WD track, and 10 metres wide where the existing track provides walking access only;
- that part of the Servient Land being 20 metres wide “l-m”, “p-q”, “r-s” and “t-u”; and
- that part of the Servient Land being 10 metres wide “n-o”. A carpark area will be made available between the formed road and the Matukituki River adjacent to “n”.

as (shown on the designations plan) and marked [ ] “[ ]” on S.O. Plan No [ ]

1.2 “Management Purposes” means:

- the protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the easement area.
- The management of the land administered by the Transferee (not being a member of the public) in a way that is-ecologically sustainable.

1.3 “Servient Land” means the land owned by the Transferor and described on page 1.

1.4 “Transferee” means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee’s tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee’s tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.

1.5 “Transferor” means the owner of the Servient Land described on page 1 and includes the Transferor’s tenants and invitees.

**Standard Easement Terms**

Access

2. The Transferee has the right:

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.

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- 2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.
- 2.2 To pass and re-pass at any time over and along the Easement on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, or with or without guns and dogs, for Management Purposes.
3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Transferor.
4. The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.

### Exclusion of Schedules

5. 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

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

### Temporary Suspension

7. The Transferee (not being a member of the Public) 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

- 8.1 If a dispute arises between the Transferor and Transferee (not being a member of the Public) concerning the rights, management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 8.2 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.
- 8.3 If the dispute is not resolved within 21 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated.
- 8.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

### Notice

- 9.1 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.

## RELEASED UNDER THE OFFICIAL INFORMATION ACT

- 9.2 If clause 9.1(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.
- 9.3 If clause 9.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

### Special Easement Terms

- 10 The standard easement terms contained above must be read subject to any special easement terms set out below.
- 10.1 The Transferor is under no obligation to maintain the Easement Areas to any standard other than that which is necessary for his own purposes.
- 10.2 The Transferee to take all reasonable care to avoid damage to the soil and vegetation of the Easement Area.
- 10.3 The public have the right to carry guns on the easement when holding a hunting permit for adjoining Conservation land /National Park. For the avoidance of doubt, no dogs are permitted on the Easement Area.
- 10.4 For the following conditions, the Transferee is defined as the Director-General of Conservation's tenants, agents, contractors, and invitees; and any employee or contractor, only.
- 10.4.1 The Transferee has the right:
- (a) To mark the Easement Area as appropriate.
  - (b) To erect and maintain stiles.
  - (c) To erect and maintain signs informing the public
    - (i) of the location of land managed by the Crown and available for public access and recreation; and
    - (ii) of their rights and responsibilities in relation to the Easement Area.
  - (d) To clear, form and maintain any track or path no wider than 3 metres within the easement area.
  - (e) To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 10.4.1.
- 10.5 Clause 2.1 is modified to allow the public non motorised vehicle access from "a-b", "c-d", "e-f", "c-g", "h-i" and "j-k" only. Public vehicle access is permitted on "a-b". Reference to horse access is deleted.
- 10.6 The Transferee and the Transferor shall pay agreed maintenance on tracks proportional to the impact of their use.
- 10.7 The Minister will close easement routes "l-m", "p-q", and "t-u" to allow for lambing for a period of 3 weeks from mid October. The Minister has the right to review the closure of route "t-u" at any time after the easement has been in place 10 years. If demand for access is deemed by the Minister to be sufficient, he may choose not to close this easement

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- 10.8 The Transferee acknowledges that it will not issue concessions under the Conservation Act 1987 for commercial activity on the Easement Area.
- 10.9 The Transferor acknowledges that concessionaires and their clients are permitted, pursuant to the terms of this easement, to gain access over the Easement Area as a member of the public.
- 10.10 If the Transferee is accompanied by a dog a current sheep measles certificate must be produced on request of the Transferor.
- 10.11 For the avoidance of doubt, this Easement agreement does not give the Transferee any right to discharge a firearm on or across the Easement Area.

**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.*



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

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Management Purposes

**Land Transfer Act 1952**

Law Firm Acting

Conservancy Solicitor  
Department of Conservation  
Dunedin

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Auckland District Law Society  
REF:4135

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**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 the **Commissioner of Crown Lands** pursuant to the Crown Pastoral Land Act 1998 in the presence of:

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Witness

---

Occupation

---

Address

**SIGNED** for and on behalf of Mt Aspiring Company Limited by two of its directors:

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