

Crown Pastoral Land Tenure Review

Lease name: MT POTTS

Lease number: PC 143

Preliminary Proposal - Part 2

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.

August

05

Appendix 5: Form of Licence Concession to be Created

Concession number: _____

DATED _____ 2003

Between

THE MINISTER OF CONSERVATION
("the Grantor")

and

MT POTTS STATION LIMITED
("the Concessionaire")

LICENCE CONCESSION DOCUMENT
UNDER THE CROWN PASTORAL LAND ACT 1998
(LICENCE)



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made this day of

2003

PARTIES:

1. **THE MINISTER OF CONSERVATION**, ("the Grantor")
2. **MT POTTS STATION LIMITED** ("the Concessionaire")

BACKGROUND

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area
- B. Section 66 of the Crown Pastoral Land Act 1998 authorises the Grantor to grant a Concession for a Concession Activity in a Conservation Area under section 17Q(1) of the Conservation Act 1987.
- 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:

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

"**Access**" means the right, in common with others, to pass and repass over the Land and any roads of the Grantor for ingress to and egress from the Land as is reasonably necessary for the Concessionaire to exercise its rights under this Licence. Access includes helicopter access to the Site if specified in Schedule 3

"**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.

"**Background**" means the matters referred to under the heading "Background" on p 1 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(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.

"**Concession Fee Payment Date**" means the date specified in Item 8 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 10 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**" means the use of the Land or the Concessionaire's facilities on the Land by a third party for an Activity and "**Co-Sitee**" and "**Co-Siting**" have corresponding meanings.

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

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

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

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

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

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

"**Licence**" has the same meaning as "Licence" in section 2 of the Conservation Act 1987 and for purposes of this Document is the Licence granted under this Document by the Grantor to the Concessionaire under either section 17Q of the Conservation Act 1987, section 59A of the Reserves Act 1977 or section 49 of the National Parks Act 1980.

"**Penalty Interest Rate**" means the rate specified in Item 9 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 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 and includes that party's successors in title;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;
- (e) a reference to a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, or an agency of State or of the Crown (in each case whether or not having separate legal personality);
- (f) words in a singular number include the plural and vice versa;
- (g) words importing a gender include all other genders;
- (h) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;

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

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

2.0 GRANT OF LICENCE

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

3.0 TERM

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

4.0 SURRENDER OF DOCUMENT

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

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

5.0 CONCESSION FEE

5.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor on or before the Concession Fee Payment Date specified in Item 8 of Schedule 1:

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

5.2 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 9 of Schedule 1.

5.3 For purposes of clause 7.0 a reference to Concession Fee includes a reference to the Administration Fee.

6.0 OTHER CHARGES

6.1 In addition to the Concession 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 or the Concessionaire's use of or activity on the Land.

7.0 CONCESSION FEE REVIEW

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

- (a) the Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
- (b) subject to clause 7.1(e), the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.

- (c) if, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 7.2 (a) or (b).
- (d) if the Concessionaire does not give notice to the Grantor under clause 7.1 (c) the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) notwithstanding clause 7.1(b), the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and will be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
- (f) until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

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

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

section 17Y(2) of the Conservation Act 1987 but in no cases the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and

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

8.0 CONCESSION ACTIVITY

8.1 The Concessionaire is not to use the Site 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 Grantor's request the Concessionaire must supply the Grantor with a complete statement of audited financial accounts.

9.2 Any information supplied to the Grantor under clause 9.1 is subject to an obligation of confidence; but the parties acknowledge that such information may be subject to the provisions of the Official Information Act 1982 and the Privacy Act 1993.

10.0 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, which ever 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 Site, or affecting or relating to the Concession Activity.

10.2 The Concessionaire must comply with all conditions imposed by the Grantor in granting this Document.

10.3 (a) A breach or contravention by the Concessionaire of a relevant conservation management strategy, 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 Site or affecting or relating to the Concession Activity will be deemed to be a breach of this Document.

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 Grantor.

11.2 In giving approval under clause 11.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate

under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.

11.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.

11.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before :

- (a) erecting or altering any structure on the Land;
- (b) bringing any structure on to the Land;
- (c) installing any facilities on the Land; or
- (d) altering the Land in any way.

11.5 The Concessionaire must not commence any work on the Land until the Grantor has given written approval.

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

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

12.0 CONCESSIONAIRE'S FURTHER OBLIGATIONS

12.1 The Concessionaire must at the Concessionaire's expense:

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

13.0 PROTECTION OF THE ENVIRONMENT

13.1 Except as approved in writing by the Grantor and except as specified in Schedule 1, 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;
- 13.2 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.
- 13.3 The Concessionaire must make adequate provision for suitable sanitary facilities for the Land if required by the Grantor and for the disposal of all refuse material and is to comply with the reasonable directions of the Grantor in regard to these matters.
- 13.4 The Concessionaire will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably required by the Grantor the Concessionaire will paint all structures and facilities in colours specified in writing by the Grantor and with paints of a type approved in writing by the Grantor.
- 13.5 If, during the Term, the Concessionaire removes a structure or facility from the Land the Concessionaire will, unless the Grantor indicates otherwise in writing, repair and make good at its own expense all damage which may have been done by the removal and will leave the Land in a clean and tidy condition.
- 13.6 Should the Concessionaire fail to repair and restore the damage within 6 months of the removal of a structure or facility or such further time as the Grantor may approve in writing, the Grantor may undertake whatever works and operations are necessary to effect the same and may recover from the Concessionaire any costs and expenses incurred in doing it as a debt due by the Concessionaire to the Grantor.
- 13.7 The Concessionaire must:
- (a) take all reasonable precautions to ensure no fire hazards arise from its carrying out of the Concession Activity or from any act or neglect of its employees, contractors, invitees or agents;
 - (b) not light or permit to be lit any fire on the Land.
 - (c) not store or permit to be stored fuels or other combustible materials on the Land without the written permission of the Grantor. In that event storage of fuels and combustible materials must be in accordance with the provisions of the Dangerous Goods Act 1974;
 - (d) comply with the Grantor's requirements for fire warning and safety equipment and for fire fighting equipment to be kept on the Land at all times.
- 13.8 The Concessionaire must ensure that its employees, clients and invitees do not carry out any acts prohibited under clause 13.
- 13.9 The Concessionaire must immediately report to the Grantor any act in contravention of clause 13 and wherever possible the names and addresses of any person carrying out such acts; and must provide the Grantor with details of the circumstances surrounding such incidents.
- 14.0 ADVERTISING.**
- 14.1 The Concessionaire must not erect or display any signs or advertising on the Land without the prior written approval of the Grantor. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.
- 14.2 Where required by the Grantor, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the Concession Activity under a Concession granted by the Grantor on land administered by the Department.
- 14.3 If required by the Grantor in writing the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the Land and the surrounding area.

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

15.0 EMPLOYMENT OF STAFF

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

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

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

16.0 HEALTH AND SAFETY

16.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner and must comply with:

- (a) the Health and Safety in Employment Act 1992 and its regulations; and
- (b) all other statutes, regulations and bylaws and all notices and requisitions of any competent authority relating to the conduct of the Concession Activity.

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

16.3 The Concessionaire must:

- (a) take all reasonable steps to protect the safety of all persons present on the Land and must, where necessary, erect protective signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
- (b) take all reasonable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware.

16.4 Before commencing the Concession Activity the Concessionaire must, if required by the Grantor, prepare a safety plan and have it audited by a suitably qualified person approved by the Grantor.

16.5 The Concessionaire must not commence the Concession Activity until:

- (a) the person appointed to audit the safety plan has certified the safety plan is suitable for the Concession Activity; and
- (b) the Concessionaire supplies the Grantor with a copy of the safety plan certified under clause 16.5(a).

16.6 Receipt of the certified safety plan by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 16 and is not to be construed as implying any responsibility or liability on the part of the Grantor.

17.0 TEMPORARY SUSPENSION

17.1 The Grantor may temporarily suspend this Document if, in the opinion of the Grantor, there is a temporary risk to public safety or the safety of the Department's staff or the safety of other Concessionaires whether arising from natural events such as earthquake, land slip, volcanic activity, or flood or whether arising in any other way including the activities of the Concessionaire, its employees, clients or invitees.

17.2 If in the opinion of the Grantor the activities of the Concessionaire, its employees, clients or invitees are having or may have an adverse effect on the environment and the Grantor is of the opinion that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, the Grantor may suspend this Concession until the Concessionaire remedies, avoids or mitigates the adverse impact to the satisfaction of the Grantor.

- 17.3 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 17.1 and 17.2 and also while the Grantor investigates any potential breach or possible offence by the Concessionaire under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.
- 17.4 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 17.5 The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under clause 17 including loss of profits.

18.0 ASSIGNMENT

- 18.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may in the Grantor's discretion decline any application for consent under this clause.
- 18.2 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.
- 18.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 18.4 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.

19.0 TERMINATION

- 19.1 The Grantor may terminate this Concession by 14 days notice in writing to the Concessionaire if:
- (a) the Concession Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - (b)
 - (i) the Concessionaire breaches any terms of this Document; and
 - (ii) the Grantor has notified the Concessionaire in writing of the breach; and
 - (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or
 - (c) the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the services provided by the Concessionaire are manifestly inadequate; or
 - (d) the Concessionaire is convicted of an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Health and Safety in Employment Act 1982; or the Building Act 1991; or the Resource Management Act 1991; or the Biosecurity Act 1993; or
 - (e) the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
 - (f) there is, in the opinion of the Grantor, a permanent risk to public safety or the environment whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Document on the part of the Concessionaire.
- 19.2 If the Grantor terminates the Concession under this clause all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.

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

20.0 GRANTOR MAY REMEDY CONCESSIONAIRE'S DEFAULT

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

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

21.0 GRANTOR'S DIRECTIONS

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

22.0 POWERS, RIGHTS AND AUTHORITIES

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

23.0 INDEMNITIES AND INSURANCE

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

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

23.3 Without prejudice to or in any way limiting its liability under clause 23.1 the Concessionaire must take out and keep in force during the Term:

(a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:

(i) general indemnity for a sum not less than the amount specified in Item 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.

23.4 With respect to clause 23.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.

23.5 (a) Without prejudice to any other provision of this Document the Concessionaire will indemnify the Grantor against all damage or loss resulting from any act or omission on the part of the Concessionaire or the Concessionaire's employees, agents, contractors, clients, or invitees;

(b) The Concessionaire is to recompense the Grantor for all expenses incurred by the Grantor in making good any damage to the Site or the property of the Grantor resulting from such act or omission.

23.6 (a) The Grantor will not be liable and does not accept any responsibility for damage to or interference with the Concession Activity or to the structures or facilities on the Land or any other indirect or

consequential damage due to any natural disaster, vandalism, sabotage, fire or exposure to the elements except where, subject to the clause 23.6(b), such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors;

- (b) Where the Grantor is found to be liable due to a wilful act or omission, the total extent of the Grantor's liability is limited to _____ in respect of the Concessionaire's structures and facilities.

23.7 Notwithstanding anything else in clause 23 the Grantor is not liable for any indirect or consequential loss howsoever caused.

24.0 ENVIRONMENTAL MONITORING AND LAND REHABILITATION

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

24.2 If the Grantor does not make a request under clause 24.1 the Concessionaire must, during the Term, pay to the Grantor the annual environmental monitoring contribution specified in Item 15 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.

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

25.0 EXPIRY OF LICENCE

25.1 If the parties have not entered into a new agreement by the Final Expiry Date the Concessionaire accepts that the Grantor has no liability whatsoever for any costs incurred by the Concessionaire as a result of the expiry of this Document.

25.2 Upon the expiry or earlier termination of the Term the Grantor will not be liable to pay compensation for any structure, facility or land alteration of the Concessionaire, all of which, subject to clause 25.4 are to remain the property of the Concessionaire and will be deemed not to have become fixtures on the Land.

25.3 Subject to any conditions set out in Schedule 3, at the expiry, surrender or termination of the Term the Concessionaire must remove all the Concessionaire's structures and facilities on the Land unless the Grantor approves otherwise in writing.

25.4 If the Concessionaire does not remove the structures and facilities as required by clause 25.3, or as otherwise approved by the Grantor, the structures and facilities remaining on the Land will be deemed to have become fixtures and ownership in them will vest absolutely in the Grantor.

25.5 In that case the Grantor will not be liable to pay any compensation to the Concessionaire for the structures and facilities and may, at the Grantor's option, remove or destroy or otherwise dispose of them and recover the costs and expenses of the removal or destruction from the Concessionaire as a debt due to the Grantor.

26.0 FORCE MAJEURE

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

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

27.0 DISPUTE RESOLUTION AND ARBITRATION

27.1 If a dispute arises between the parties in connection with this Document including without limitation the interpretation, validity, breach or termination of any of its provisions, the parties will, without prejudice to any other rights or entitlements they may have under this Document or otherwise, attempt to resolve the dispute by

agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.

27.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.

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

27.4 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

27.5 The arbitrator must include in the arbitration award reasons for the determination.

28.0 NOTICES

28.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 16 of Schedule 1.

28.2 A notice given in accordance with clause 28.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of a letter, on the third working day after posting;
- (c) in the case of facsimile, on the 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

29.0 COSTS

29.1 The Concessionaire must also pay the costs of the Grantor in enforcing or attempting to enforce the Grantor's rights and powers under this Document if the Concessionaire is in default.

30.0 RELATIONSHIP OF PARTIES

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

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

31.0 OFFENCES

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

- (a) no waiver or failure to act by the Grantor under this Document is to preclude the Grantor from prosecuting the Concessionaire; and

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

32.0 SEVERABILITY

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

33.0 ENTIRE UNDERSTANDING

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

34.0 GUARANTEE

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

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

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

- 34.3 Subject to clause 35.1 the Guarantor covenants with the Grantor that:

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

35.0 VARIATIONS

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

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

- (a) to deal with significant adverse effects of the Activity that were not reasonably foreseeable at the time this Licence was granted; or

- (b) because the information made available to the Grantor by the Concessionaire for the purposes of the Concessionaire's application contained inaccuracies which materially influenced the decision to grant the Licence and the effects of the Activity permitted by this Document require more appropriate conditions.

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

36.0 CO-SITING.

36.1 The Concessionaire must, if required by the Grantor, allow Co-Siting on the Land or the Land immediately adjoining the Site except when a Concessionaire demonstrates to the reasonable satisfaction of the Grantor that the Co-Siting by a third party:

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

36.2 The Grantor will be entitled to require the Concessionaire to obtain at the Concessionaire's expense a report prepared by an independent consultant acceptable to the Grantor confirming the matter specified in clause 36.1.

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

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

Witness _____

Occupation _____

Address _____

Signed for and on behalf of Mt)
 Potts Station Limited as)
 Concessionaire by the Directors in)
 the presence of: _____)

Witness _____

Occupation _____

Address _____

SCHEDULE 1

1. **Land:** THE operational area for this concession activity occurs over approximately 290 hectares of Conservation Land comprising Part of Section 5 SO 18222 and being part of Mt Potts Pastoral Lease and shown outlined in blue on the attached Plan and herein after referred to as the Land. (see definition of Land in clause 1.1)
2. **Concession Activity:**
 - i) The exercise of full management and control of all activities relevant to the operation and maintenance of an alpine downhill snow ski field. This includes;
 - a) The operation of ski field transportation in a snow cat vehicle
 - b) The provision of ski patrol and snow safety services including avalanche control measures which require the use of explosives
 - c) heli-skiing and heli-boarding and associated heli-landings
 - d) The maintenance and operation of a building necessary to provide shelter and facilities on the snow ski field
 - e) The erection and occupation of a 12m x 7m storage shed clad in dark green colour steel for the secure storage of safety, rescue, emergency, maintenance and general ski field equipment. The existing building will be removed and the new storage shed is to be located at the same position. (see definition of Concession Activity in clause 1.1)
3. **Term:** 30 years commencing on the date on which the Surrender of the pastoral lease folio number 34A/711 (Canterbury registry) becomes effective pursuant to the Crown Pastoral Land Act 1998, being the ...day of ... 200 (see clause 3.1)
4. **Right of First Refusal:** If, at the expiry date of the lease, the Lessor wishes to again lease the land, the Lessor shall offer to the Lessee a right of first refusal to the lease of the land on terms no less favorable than the Lessor proposes in respect of any third party. If the Lessee does not accept those terms and conditions within a period of three (3) months then the Lessor shall be free to offer a lease for the Land to any third party on those terms and conditions. (see clause 3.2)
5. **Final Expiry Date:** 1st July 20... (see clause 3.3)
6. **Concession Fee:** (a) Concession management fee of () plus G.S.T. per annum ; and
(b) Concession activity fee comprising or 2.5% of gross annual revenue (plus G.S.T.) generated from the exercise of this concession and should include all moneys taken for lift fees (including season passes), instruction, on field food and accommodation and supply of goods (canteen) and services (including the provision of rental equipment and storage) on the snow field. (see clause 5.1)
7. **Concession Fee Installments:** Annually (see clause 5.1)
8. **Concession Fee Payment Date:** Upon surrender of Pastoral lease 30F/684, 1st July 200.. and 1st July 200.. each year thereafter. (see clause 5.1)
9. **Penalty Interest Rate:** Current Westpac Banking Corporation Overdraft Rate Plus 2% (see clause 5.2)
10. **Concession Fee Review Date:** Every three years from the commencement date of this document being 1st July 200.., 1st July 200... (see clause 7.1)
11. **Public Liability General Indemnity Cover:** (see clause 23.3)
12. **Public Liability Forest & Rural Fire Extension:** (see clause 23.3)
13. **Statutory Liability:** (see clause 23.3)
- 14(a) **Other Types of Insurance:** Nil (see clause 23.3)
- 14(b) **Amounts Insured for Other Types of Insurances:** Nil (see clause 23.3)
15. **Environmental Monitoring Contribution:** To be negotiated between the Grantor and the Concessionaire if required as per Clause 24 (Environmental Monitoring and Land Rehabilitation) of the concession document. (see clause 24.2)

16. Address for Notices:

(see clause 28)

(a) Grantor Canterbury Conservator

Department Of Conservation
Private Bag 4715
CHRISTCHURCH
Ph (03) 379 9758
Fax (03)365 1388

(b) Concessionaire

Mt Potts Station Ltd
P O Box 12
Mt Somers
Ph 03-303-9738
Fax

SCHEDULE 2

Special Conditions

1. THAT all helicopters will keep at least 500 metres from ground parties encountered during flying.
2. THE Licensee shall have no priority use of the Land or landing sites and shall only be permitted to land only if the sites are clear of other users, including recreationalists.
3. The Concessionaire shall positively promote the philosophies of conservation and preservation inherent in the relevant legislation and shall adhere to the Departments Environmental Care Code.
4. The Conservator shall be entitled to send any officer of the Department of Conservation on any of the activities authorized by this permit during the term of this permit for the purpose of assessing the impact thereof on conservation values, and the implications of the service offered to clients on the Department's responsibility to visitors in general.
5. The Concessionaire shall, if, in the opinion of the Conservator Canterbury, excessive impact is occurring to any part of the area to which this permit applies, modify the method of operation to satisfaction of the Conservator Canterbury, to avoid, remedy or mitigate the adverse effects.
6. Any proposal to provide interpretation of matters of cultural significance to Ngai Tahu must be done in consultation with Te Runanga o Ngai Tahu and Papatipu Runanga.
7. The Concessionaire must submit statutory declarations, as specified by the Grantor on an annual basis which must contain the following information:
 - The number of landings undertaken and sites visited on public conservation lands
 - The sites at which landings/sites visited occurred
 - The number of clients landed/sites visited and the reason for the landing or visit
 - The days on which the landings/sites visited occurred.
8. The Concessionaire may carry out the following maintenance work without specific approval from the Grantor:
 - i) The interior maintenance and modification of the storage shed.
 - ii) The exterior maintenance of the storage shed where such maintenance does not alter that outside appearance of the building.
 - iii) Emergency work where failure to do the work will be prejudicial to the immediate continued safe use and existence of the storage shed.

Appendix 6: Form of Easement to be Created

In Gross Easement: Public Access and Management Purposes to
Conservation Area. – Version 5.1

CHCCO-65602 –Mt Potts

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Vehicles for Management Purposes

Land Transfer Act 1952

This page does not form part of the Transfer.

~~TRANSFER~~
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

Canterbury

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.*

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).

Consideration

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

Operative Clause

For the above consideration (receipt of which is acknowledged) the 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

Signature, or common seal of Transferor

Signed in my presence by the Transferor
Signature of Witness

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

Witness name

Occupation

Address

(continued on page 4 of Annexure Schedule)

Certified correct for the purposes of the Land Transfer Act 1952

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

Solicitor for the Transferee

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 which is marked "[]" on Deposited Plan/S.O. Plan No [].
 - 1.2 "Management Purposes" means:
 - the protection of a significant inherent value of the land managed by the Transferee;
 - the ecological sustainable management of the land managed by the Transferee.
 - 1.3 "Servient Land" means the land owned by the Transferor and described on page 1.
 - 1.4 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee's tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.
 - 1.5 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

Standard Easement Terms

Access

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

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.

Exclusion of Schedules

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

Term

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

Temporary Suspension

6. 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

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

Notice

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

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

Special Easement Terms

- 9. The standard easement terms contained above must be read subject to any special easement terms set out below.
- 10. The Transferee (not being a member of the Public) has the right:
 - 10.1 To mark the Easement Area as appropriate.
 - 10.2 To erect and maintain stiles.
 - 10.3 To erect and maintain signs informing the public:
 - (a) of the location of the land managed by the Crown and available for public access and recreation; and
 - (b) of their rights and responsibilities in relation to the Easement Area.
 - 10.4 To use whatever reasonable means of access he/she thinks fit over the Easement Area to carry out the works in clause 10.1 to 10.3.

Continuation of "Attestation"

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

under a written delegation in the)
presence of:)

Witness (Signature)

Name _____

Address _____

Occupation _____

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

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

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

TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access to Conservation Areas
2. Vehicles for Management Purposes

Land Transfer Act 1952

Law Firm Acting

Conservancy Solicitor
Department of Conservation
133 Victoria Street
Christchurch

Auckland District Law Society
REF:4135

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

Appendix 7: Form of Covenant to be Created

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.
- 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 not 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 on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock other than cattle, sheep and goats;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant, with the exception of matagouri which can be chemically sprayed;
- 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, with the exception of a one off event for filming purposes where structures are erected on a temporary basis for the course of the event only and are removed completely at the end of the event and all land restored to its natural state;
- 3.1.5 any burning;
- 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.

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;

RELEASED UNDER THE OFFICIAL INFORMATION ACT

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 Michael J Cuddihy 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**

Part of section 6 on S.O. Plan 18222 having an area of approximately _____ hectares labelled CC1 and shown outlined in yellow on the plan attached and herein referred to as "The Land"

2. **Address for Service¹**

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

Conservator
Department of Conservation
Private Bag 4715
Christchurch
Ph: (03) 379 9758
Fax: (03) 365 1388

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

Mt Potts Station Limited
PO Box 12
Mt Somers
Ph (03) 303 9738
Fax

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

- Mt Sunday provides visual contrast and relief in the open floodplain, and itself contributes to the integrity of the Canterbury high country landscape.
- The visually-prominent Mt Sunday has high scenic and aesthetic values; values that have achieved international prominence as a location for filming of "Lord of the Rings".
- Parts of the area contain plant communities representative of the original vegetation of the area: wetland and shrubland.
- The area contains part of an area recommended for protection by the PNA Programme: Hakatere PNA 21, Rangitata River.
- The area contains a moderately diverse range of plant communities, and high diversity within plant community types, especially wetland communities.
- The area has moderate naturalness values, with local areas of high naturalness.
- The area is part of the Upper Rangitata SSWI: ranked "outstanding" for wildlife.
- Rock outcrops in the area provide important habitat for common gecko "Southern Alps".

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions

1. Fencing

1.1. The Minister may, in consultation with the Owner, erect any new fences required to ensure the protection of the values of the land and adjoining Conservation Areas. The Minister will pay to the Owner a proportionate share of the following:

1.1.1. the cost of new Fences or the repair and maintenance of existing Fences on the Land if the Minister has first approved the work or activity.

1.1.2. the cost of any work or activity under clause 3.2 if the Minister has first approved the work .

1.2. The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:

1.2.1. the Minister will bear the cost of work essential for Conservation Purposes

1.2.2. the Owner will bear the cost of work essential for all other purposes.

1.2.3. when the expenditure is partly for Conservation Purposes and partly for other 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 12.

1.3 The boundary of CC1 between Mt Sunday and Deep Creek and the Tarns area of CC1 are to be subject to a monitoring Programme. The Minister shall design and undertake a monitoring programme:

(a) to ensure that the ecological integrity of the Deep Creek stream bed and banks and surrounding vegetation and the Tarns wetland area is maintained .

(b) to enable the monitoring of any grazing on the vegetation cover and conditions, faunal values and any other conservation values in CA2 and around the Tarns area of CC1.

The monitoring programme will be reviewed at 3 yearly intervals and if in the opinion of the Minister there is a deterioration in the condition and extent of the ecological condition the Minister reserves the right to fence the boundary of CC1 and CA2 and around the Tarns wetland areas on CC1.

2. The Owner may graze 1080 stock units, being cattle, sheep or goats at any time of the year.

3. The Owner may topdress and sow seed except a 20metre margin around the tarns and Deep Creek.

4. The Owner must, subject to this clause, permit the public to enter upon the Land at all times

4.1. The Owner may:

4.1.1. Decline access to the Land for farm management purposes provided the matter has been the subject of prior discussion with, and agreement of, the area manager at Raukapuka Area Office.

4.1.2. Limit access to specified tracks;

4.1.3. Prohibit any person from bringing onto the Land any animal, gun, or vehicle.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

Solicitor for the Minister

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

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH

Execution Section

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

SIGNED for and on behalf of the
Commissioner of Crown Lands
by Paul Alexander Jackson acting
pursuant to a delegated authority in
the presence of:

Witness

Occupation

Address

SIGNED for and on behalf of **Mt
Potts Station Limited** by two of
Its directors:

Witness

Occupation

Address

Witness

Occupation

Address