

# **Crown Pastoral Land Tenure Review**

**Lease name: MUZZLE**

**Lease number: PM 027**

## **Substantive Proposal - Part 2**

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

**February 06**

**SCHEDULE 1**

1. **Servient Land:** The Land described as being Part Run 121 being public Conservation Land (400ha) situated in the Marlborough Land District and delineated as CA2 on the Plan attached to the Proposal. *(see definition of Servient Land in clause 1.1)*
  
2. **Dominant Land:** Part Run 121, Upcot, Kaitarau, Tone and Tapuae-o-nuku Survey Districts. Land Registry Folio Ref: 46/177 (Marlborough Registry) *(see definition of Servient Land in clause 1.1)*
  
3. **Easement Area:** That part of the Servient Land marked g-i on the Plan attached to the Proposal and being no more than a maximum width of 10 metres. *(see definition of Easement Area in clause 1.1)*
  
4. **Concession Activity:** The Concessionaire has the right to from time to time and at all times for the Concessionaires, their servants, employees, agents workmen, contractors, licensees and invitees (in common with the Grantor and any other person lawfully entitled so to do) to have the full, free uninterrupted and unrestricted right liberty and privilege from time to time and at all times by day and by night to go pass and repass with motor vehicles and with or without horses, machinery and implements of any kind and with or without farm dogs and farm stock to and from the Dominant Land over and along the Easement Area, but subject to the limitations expressed in this deed, to the intent that the easement hereby created shall forever be appurtenant to the Dominant Land. Provided that in undertaking the Concession Activity with respect to livestock movement the Concessionaire must take all practical steps to ensure that the stock remain on the Easement Area for the shortest possible time. *(see definition of Concession Activity in clause 1.1.)*
  
5. **Term:** The concession is granted in perpetuity commencing on .... *(see clause 3.1)*
  
6. **Compensation:** \$ NIL *(see clause 4.1)*  
(Payable on date of Execution of this Document)
  
7. **Public Liability General Indemnity Cover:** \$500,000 *(see clause 12.3)*
  
8. **Public Liability Forest & Rural Fire Act Extension:** \$500,000 *(see clause 12.3)*
  
9. **Statutory Liability:** Nil *(see clause 12.3)*
  
10. **Other Types of Insurance:** Nil *(see clauses 12.3)*
  
11. **Address for Notices:** *(see clause 15)*
  - (a) Grantor
 

Conservator  
Department of Conservation  
Private Bag 5  
NELSON  
Facsimile Number (03) 548 2805
  
  - (b) Concessionaire
 

Colin A Nimmo and Christina A Nimmo  
Muzzle Station  
PO Box 48  
Kaikoura

**SCHEDULE 2**

*Special Conditions*

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

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

DATED \_\_\_\_\_

Between

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

and

**COLIN ALLEN NIMMO AND CHRISTINA ANNE NIMMO**  
("the Concessionaire")

**CONCESSION DOCUMENT**

**UNDER THE CROWN PASTORAL LAND ACT 1998**  
(for Grazing & Tourism Activities)



Department of Conservation  
*Te Papa Atawhai*

**THIS LICENCE** is made on this day of

**PARTIES:**

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **COLIN ALLEN NIMMO AND CHRISTINA ANNE NIMMO**, ("the Concessionaire")

**BACKGROUND**

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

**OPERATIVE PARTS**

**TERMS AND CONDITIONS**

**1.0 DEFINITIONS AND INTERPRETATION**

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

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

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

"**Background**" means the matters referred to under the heading 'Background' on page 1 of this Document.

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

"**Concessionaire**" includes the Concessionaire's successors, assigns, executors, and administrators.

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

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

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

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

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

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

**"Co-Site"** means the use of the 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.

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

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

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

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

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

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

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

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

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

**2.0 GRANT OF LICENCE**

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

**3.0 TERM**

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

3.2 If the Concessionaire has not been in breach of this Tourism Concession and has given to the Grantor written notice to renew the Tourism Concession at least three months before the end of the Term, the Grantor will, at the cost of the Concessionaire, renew the Tourism Concession 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 Tourism Concession is otherwise to be in accordance with and subject to the covenants and agreements expressed and implied in this Tourism Concession 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 REVIEW**

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

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

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

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

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

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

**7.0 CONCESSION ACTIVITY**

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

**8.0 COMPLIANCE**

8.1 The Concessionaire will comply where relevant:

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

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

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

9.2 The Concessionaire is hereby granted permission to;

- (a) modify the concrete bunkhouse accommodation by installing a gas hot water heater, shower facilities subject to the plans for such work being agreed by the Grantor prior to work commencing.
- (b) may use the Quail Flat cookhouse for the purposes of a cookhouse on the following terms:



- (i) no modification shall be undertaken without prior written approval from the grantor.
- (ii) the facility will remain open to the public for viewing only and for use by the Grantor and specified groups and persons.
- (iii) the Grantor will be responsible for the maintenance.

Provided further that the use of both the bunkhouse and cookhouse is for a maximum term of 6 years from commencement of this licence.

- 9.3 The Concessionaire must keep and maintain at the Concessionaire's cost any Structures, facilities and alterations to the Land in good repair.
- 9.4 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.
- 9.5 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, cultivation, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Land; or
  - (g) disturb or allow stock to disturb any stream or watercourse on the Land; or
  - (h) light any fire on the Land.
- 10.2 The Concessionaire, must at the Concessionaire's expense:
- (a)(i) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Land or any Structure or facility on the Land;
  - (a)(ii) if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor; and
  - (b) comply strictly with the provisions of the Biosecurity Act 1993.

- 10.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 10.
- 10.4 The Concessionaire may bring firearms (subject to a permit) on to the Land for use in connection with the Concession Activity and pest control operations.
- 10.5 The Concessionaire for purposes of the Concession Activity may take onto or use vehicles on the Land.

#### **11.0 HEALTH AND SAFETY**

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

#### **12.0 TEMPORARY SUSPENSION**

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

#### **13.0 ASSIGNMENT**

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

#### **14.0 TERMINATION**

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

**21.0 OFFENCES**

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

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

**22.0 ADVERTISING.**

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

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

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

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

22.5 The above clause applies to the Tourism Concession only.

**23.0 EMPLOYMENT OF STAFF.**

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

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

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

23.4 The above clause applies to the Tourism Concession only.

**24.0 VARIATIONS**

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

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

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

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

**25.0 CO-SITING.**

25.1 The Concessionaire must, if 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.

25.2 The Grantor will be entitled to require the Concessionaire to obtain at the Concessionaire's expense a report prepared by an independent consultant acceptable to the Grantor confirming the matter specified in clause 26.1.

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

**26.0 SPECIAL CONDITIONS**

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

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

Signed by :

\_\_\_\_\_  
for and on behalf of  
the Minister of Conservation  
pursuant to a written delegation (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:** Clarence Reserve Conservation area of 8316 hectares approximately, situated in the Land District of Marlborough being Part Run 230 Kaitarau and Tone SD, Subject to the limitation imposed by Special Conditions 4 (a), (b) and (c) in Schedule 2 and as shown by a brown wash and marked CA3 & CA4 on the plan but excluding the area marked in red and labelled "woolshed & yards" on plan 2 of the Plans attached as Appendix 1 to the Proposal. *(see definition of Land in clause 1.1)*
  
2. **Concession Activity:**
  - (A) **Grazing Concession;**
    - (i) Grazing of 4000 stock units, sheep and cattle only together with, the use of the structures and buildings situated on the Land for activities associated with such grazing with the exception of the historic buildings at Quail Flat, being the bakers oven, head shepherds hut and old barn.
    - (ii) The exclusive use and occupation of the Land on which are situated the woolshed and stockyards at Quail Flat for the purposes associated with the grazing concession.
  - (B) **Tourism Concession;** The use of the Land together with the concrete bunkhouse and the Quail Flat cookhouse for the purpose of the business of tramping, horse trekking, hunting and 4WD vehicle transport. *(see definition of Land in clause 1.1)*
  
3. **Term:** (A) Grazing; 30 years commencing on the date on which the Surrender of Muzzle Pastoral lease folio number 46/177 (Marlborough registry) becomes effective pursuant to the Crown Pastoral Land Act 1998, being the .....day of .....200.  
 (B) Tourism Concession; 3 years commencing on the date on which the Surrender of Muzzle Pastoral lease folio number 46/177 (Marlborough registry) becomes effective pursuant to the Crown Pastoral Land Act 1998, being the .....day of .....200. *(see clause 3)*
  
4. **Renewal:** No right of renewal in respect of the Grazing Concession, for a further 3 years in respect of the Tourism Concession. *(see clause 3.2)*
  
5. **Expiry Date:** [Grazing Concession 30 years]  
 [Tourism Concession] *(see clause 3.2)*
  
6. **Concession Fee:**
  - (a) (i) Grazing Concession: \$3.50 + GST per stock unit per annum (4000) **Total \$14000.** PROVIDED HOWEVER that in the event that the number of stock units grazed in any one year is less than 4000 the Grantor on application by the Concessionaire may at his sole discretion reduce the Concession Fee that year to reflect the reduced stocking rate. *(see clause 4)*
  - (ii) Tourism Concession fee: \$6.00 +GST per paying tourist per activity day, \$3.00 +GST per paying tourist per half day of activity.
  - (b) Administration Fee: \$700.00 per annum + GST *(see clause 4)*
  
7. **Concession Fee Payment Date:** (i) Grazing Concession: Half yearly in advance upon surrender of Pastoral lease 46/177, 1<sup>st</sup> July 200.. and 1 January 200.. and each year thereafter half yearly in advance.  
 (ii) Tourism Concession: Annually after the surrender of Pastoral Lease 46/177, 1<sup>st</sup> July 200.. and 1<sup>st</sup> July each year thereafter. *(see clause 4)*
  
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 three years from commencement date. *(see clause 6)*
  
10. **Public Liability General Indemnity Cover:** for \$1,000,000 *(see clause 15.3)*



11. **Public Liability Forest & Rural Fire Extension:** for \$1,000,000 *(see clause 15.3)*
12. **Statutory Liability:** NIL *(see clause 15.3)*
13. **Other Types of Insurance:** NIL *(see clause 15.3)*  
**Amounts Insured for Other Types of Insurances:** NIL *(see clause 15.3)*
14. **Environmental Monitoring Contribution:** \$ 1800.00 + GST. Per annum  
*(see clause 16)*
15. **Address for Notices:** *(see clause 26)*
  - (a) **Grantor**  
Minister of Conservation  
C/- Department of Conservation  
Private Bag  
NELSON  
Ph (03) 546 9335  
Fax (03) 548 2805
  - (b) **Concessionaire**  
Colin A Nimmo and Christina A Nimmo  
Muzzle Station  
PO Box 48  
**Kaikoura**  
Fax (03) 319 5406

**SCHEDULE 2**

*Special Conditions*

- 1) Grazing will be based on a maximum of 4000 stock units (sheep and cattle) per annum. The stock unit conversion rate being:
 

Breeding ewes	1.0
Other dry sheep	0.8
Breeding cows	6.0
Other dry cattle	5.0
18 month cattle	4.0
  
- 2) The stock limitation will be reviewed 3 yearly as part of the Concession Fee Review or by application by the Concessionaire.
  
- 3) The Grantor may set up and implement an environmental monitoring programme at the commencement of this Licence to ascertain the ongoing effects of grazing on the conservation values on the Land and this will be reviewed at every alternate Concession Fee Review Date from commencement of this Licence.
  
- 4) Grazing will be permitted only on the following parts of the Land:
  - a) The areas that may be grazed with sheep and cattle include the following areas: Fells, Dip Basin/Red Hills, Quail Flat, Horse Flat, Tytler Point, Limestone, Goose Flat, and Dubious Downs as shown by a brown wash and marked CA3 on the Plan attached as appendix 1 of the Proposal. It is the Concessionaire's sole responsibility to ensure that the fences around these areas are stock proof and that all stock remains within the nominated areas.
  
  - b) Part of the Gridiron Hills Limestone and Lacebark catchments shown by a brown wash and marked CA4 on the Plan attached as Appendix 1 of the Proposal that is not fenced may be grazed by Cattle only. This is subject to the condition that cattle do not stray outside of the area outlined.
  
  - c) The area of CA3 north-east of Fidget Stream, known as the "Fidget Downs" shown by a brown wash and marked CA3 on the Plan attached as Appendix 1 of the Proposal that is not fenced may be grazed by sheep and cattle only, as it is considered that fencing is not necessary as the topography ensures that stock will not stray into sensitive areas.
  
- 5) It is recognized by the Grantor that capital expenditure will be required in order to securely fence parts of 4 (a) above, especially the Fells/Warder ridge to the Seymour Stream and a southern portion of a fence from Limestone Hill into Limestone Stream. The Concession Fee will be reduced from \$3.50 per stock unit to \$2.00 per stock unit for two review periods (6 years) subject to the satisfactory reconstruction of a fence along the line marked V - W - X on the plan attached and reconstruction of a fence between Y - Z to a similar standard as described in Appendix 1 of the Document. The V - W - X section must be completed with in the first review period (3 years)
  
- 6) The Concessionaire will maintain the entire boundary fences on the Land so that they are stock proof, to the satisfaction of the Grantor. The rights expressed and implied for fence maintenance under the Fencing Act are hereby expressly excluded.
  
- 7) The Land may be chemically or mechanically cleared of briar, oversown and topdressed.
  
- 8) Cultivation of the soil and any maintenance of the Land and any other earth disturbance except for existing track maintenance requires; the written consent of the Grantor. Because parts of the Land contain special historic/conservation values, such consent is a matter entirely within the discretion of the Grantor.

- 9) Subject to clause 10 hereof the public have unrestricted access rights to the Land. The Grantor will signpost and mark the access routes through the Land for the benefit of the public and so as to minimize farming and stock disturbance. Where access routes are fenced over then the Grantor shall erect gates or styles in a suitable place. The key routes for foot, mountain bikes and horses will be from the Seymour Stream to the Willows hut and north past Quail Flat to the Fidget.
- 10) The Grantor will issue all hunting permits for the Land. All hunters will be responsible for obtaining access permission from the Concessionaire (including permission to utilize dogs on the Concession Land) such permission will not be unreasonably withheld from:
  - a) hunters who hold a valid hunting permit issued by the Department of Conservation to hunt on the Land or
  - b) hunters seeking access across the Land.
- 11) The Concessionaire may use the Fidget and Goose Flat huts situated on the Land for accommodation associated with farming purposes, such use will be in conjunction with other visitors to the Land.
- 12) The Grantor will have no obligation to maintain any of the tracks within the Land. The Grantor shall have all rights and powers whether on the track or necessarily adjacent thereto to take all reasonable steps to repair and maintain the tracks to a standard suitable for Conservation management use and public pedestrian access.
- 13) The Grantor will inspect the Land at the commencement of this Licence for the presence of weeds and pests in order to set up an operational weed and pest control plan for the Concessionaire to implement. This plan will be reviewed at every Concession Fee Review Date from commencement of this Licence.
- 14) The woolshed and covered yards at Quail Flat are, or will be following settlement, be the property of the Concessionaire.

**APPENDIX 1**

## FENCE SPECIFICATIONS

### FENCING:

#### *Length and Location:*

Fence to be reconstructed along line V - W - X (6600m approximately) and reconstructed to a like standard along line Y - Z (12,000 m approximately) as shown on the attached plan.

#### *Type*

Seven wire fence.

#### *Specifications:*

1. Fence to be constructed of six HT (2.5mm) wires, plus one bottom galvanized medium tensile 4mm (No. 8) wire, with wires located on the grazing Concession side of the boundary, except where there is a high risk of snow damage where they shall be placed on the leeward side away from the prevailing snow.
2. 2.4 metre x 200mm treated timber strainers with treated timber stay to be used for gateways and ends of strains. [ Alternatively heavy T irons in lieu of strainers with steel stays]
3. 3.6 metres Cyclone gates to be erected across vehicle track.
4. Six steel waratah standards per 20 metres to be used. Waratahs standards to be mostly 1500 mm long with 1350 mm standards on rocky ground and 1650 mm standards on soft ground.
5. Waratahs, back to back, may be used instead of posts on high spots and on corners, with tie-backs on tussock country.
6. 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.
7. Netting to be hung on creek crossings and left to swing.
8. All strainers and angles to be mortised, stayed and blocked. Stays to be one-third of the way up posts.
9. Tie-backs are permitted on both sides of the fence.
10. All wires are to be securely and neatly tied off. Bottom wire to be between 100mm - 150mm above the ground. Line to be benched where required. Most of the line will need to be cleared manually as required.
11. Post staples to be 50 x 4mm galvanized slice pointed barb and be driven well in but allow the wire to run through.
12. Strains not to exceed 300 metres for HT and 250m for No 8 and strained to a tension recommended by the wire manufacture.
13. Strainers and angle posts to be dug in to such a depth that 117 cm (46") remains out of the ground.
14. Under no circumstances are any strainers, posts or stays to be shortened either prior to or subsequent to their placement in the ground.
15. Triplex strainers to be used on all strains.

**Appendix 5: Existing easement 5435691.1**

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This Instrument, containing an aerial photograph / diagram<sup>(2)</sup> has been retained at the LINZ Search Counter for searching purposes as the scanned image of the aerial photograph / diagram is illegible.

NB 2 colour diagrams  
Apply to this Doc

Deed of Grant of Easement dated *12<sup>th</sup> December* 2002 *A*

between (1) Her Majesty the Queen acting by and through the Commissioner of Crown Lands (the Grantor)

and (2) Colin Allen Nimmo and Christina Anne Nimmo (as tenants in common in equal shares) (the Grantee).

## Introduction

- A. The Grantee is the holder of a leasehold interest in the Dominant Land and wishes to have a right of access over the Grantor's Land.
- B. The Grantor has agreed to grant to the Grantee an easement over the Grantor's Land on the terms and conditions set out in this Deed.

## It is agreed

### 1. Interpretation

---

#### 1.1 Definitions

In this Deed (including the Schedules):

**Commencement Date** means 1 December 2002;

**Deed** means this deed, the introduction and the schedules;

**Dominant Land** means:

- (a) 17,919.7783 hectares more or less being Part Runs 119 and 121, Part Sections ~~3, 5, 6 and 8~~ and Sections 1, 2, 4, 7 and 9 ~~SO6748~~ situated in Upcot, Tapuae-o-uenuku, Tone and Kaitarau Survey Districts and being all the land comprised and described in pastoral lease folio MB 46/177 (Marlborough Land Registry); and
- (b) pastoral lease volume MB 46 folio 177 (Marlborough Land Registry) subject to:
- (i) mortgage 133578.1;
  - (ii) land improvement agreement 169052;
  - (iii) transfer 184586.2;
  - (iv) transfer 184586.3; and
  - (v) transfer 5071235.2;

**Easement Land** means those parts of the Grantor's Land marked "A", "C", "D", "F", "I", "J", "L", "P", "R" and "U" on SO Plan 7242T (Marlborough Land Registry), the Holding Paddock and the further areas of the Grantor's Land delineated in blue dashes on Plan A (excluding

*CAW* *CAW*



those areas over marginal strips); the Holding Paddock and the areas in blue dashes are subject to final survey;

**Grantee** includes the Grantee's successors and permitted assigns and, where the context permits, the Grantee's servants, agents, employees, workers, invitees, licencees and contractors;

**Grantor's Land** means 37,450.4720 hectares more or less being Run 231 and Parts Run 230, situated in Greenburn, Tone, Kaitarau, Acheron and Barefell Survey Districts (Marlborough Land Registry);

**Holding Paddock** means 8500 square metres more or less being that area of land cross hatched in black on Plan B but does not include that part of section 38 SO 4288 within the Holding Paddock;

**Plan A** means the plan attached marked "A" in the Second Schedule to this Deed;

**Plan B** means the plan attached marked "B" in the Second Schedule to this Deed;

**Settlement Date** means the date that is 10 working days after the date that the Surveyor General of the Marlborough Land Registry signs the final survey plan referred to in clauses 4.2 and 4.3; and

**working day** means a day when registered banks in Wellington and Blenheim are open for normal banking business.

1.2 In the interpretation of this Deed unless the context otherwise requires:

- (a) the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Deed;
- (b) references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to;
- (c) the singular includes the plural and vice versa and words incorporating any gender shall include every gender; and
- (d) the rights and powers implied under section 90D of the Land Transfer Act 1952 and set out in the Ninth Schedule to the Property Law Act 1952 shall not apply to this Deed.

## 2. Grant of Easement

2.1 Pursuant to section 60 of the Land Act 1948 the Grantor grants to the Grantee, from the Commencement Date, the right from time to time and at all times for the Grantee, its servants, employees, agents, workmen, licensees, contractors, and invitees (in common with the Grantor and any other person lawfully entitled so to do) to have the full, free, uninterrupted and unrestricted right, liberty and privilege by day and by night to go, pass and repass with motor vehicles and with or without horses, machinery and implements of any kind and with or without farm dogs and farm stock to and from the Dominant Land over and along the Easement Land, together with the right to hold farm stock on that part of the Easement Land comprising the Holding Paddock, but subject to the limitations expressed in



this Deed, to the intent that the easement hereby created shall forever be appurtenant to the Dominant Land upon the terms and conditions contained in this Deed.

2.2 The rights granted under this Deed are non-exclusive and are exercisable in common with the Grantor and any other person granted similar rights by the Grantor, whether now or in the future, and without limitation the Grantor may grant the following persons access rights over the Easement Land:

- (a) members of the public for access on foot and with or without bicycles and horses;
- (b) Her Majesty the Queen acting by and through the Minister of Conservation for the purposes of undertaking management of adjacent land held for conservation purposes;
- (c) any lessee or licensee of the Minister of Conservation; and
- (d) any lessee or licensee of the Grantor's Land,

PROVIDED THAT prior to granting such rights to any other person, the Grantor shall first obtain the Grantee's written consent to such grant, which consent shall not be unreasonably or arbitrarily withheld or delayed if the rights to be granted are granted on reasonable terms and conditions.

2.3 For the avoidance of doubt, the right granted under this easement to the Grantee to hold stock on the Holding Paddock does not entitle the Grantee to graze stock on the Holding Paddock. The right to hold stock on the Holding Paddock is to hold stock from time to time and for short periods of time in preparation for the stock to be removed by truck from the Grantee's land.

2.4 Grantee acknowledges that the Grantee's use of the Holding Paddock for holding stock is at the Grantee's own risk in all things.

### 3. Consideration

3.1 In consideration of the grant of easement in this Deed:

- (a) the Grantee shall pay the Grantor a lump sum payment of \$45,000.00 plus GST. The lump sum payment shall be paid by the Grantee on the Settlement Date. From the Commencement Date until the Settlement Date the Grantee shall pay to the Grantor an annual fee of \$2,000.00 plus GST for every year that elapses (with a proportionate payment for any period less or more than one year); and
- (b) the Grantee shall observe the obligations imposed on it under this Deed.

3.2 Notwithstanding clause 3.1(a), should the Surveyor General approve and sign the final survey plan referred to in clauses 4.2 and 4.3 on or before 1 December 2003, the Grantor will waive the Grantee's liability to pay the annual fee set out in clause 3.1(a). This waiver does not in any way affect or reduce the Grantee's liability to pay:

- (a) the lump sum as set out in clause 3.1(a); or
- (b) the annual fee, should the Surveyor General not approve and sign the final survey plan referred to in clauses 4.2 and 4.3 until after 1 December 2003.

#### 4. Execution and registration

---

- 4.1 On receipt of execution copies of this Deed from the Grantor, the Grantee shall be required to execute and return to the Grantor without delay, the execution copies of this Deed. The Grantor will in due course return the Grantee's copy of the fully executed Deed to the Grantee.
- 4.2 Should final survey of the Holding Paddock and that part of the Easement Land between Seymour Stream and Tytler Point be completed by the Grantee, and the final survey plan be signed by the Surveyor General, prior to this Deed being executed, the Grantor may, following its execution, register this Deed under section 60 of the Land Act 1948.
- 4.3 Should final survey of the Holding Paddock and that part of the Easement Land between Seymour Stream and Tytler Point be completed by the Grantee, and the final survey plan be signed by the Surveyor General after execution of this Deed, the Grantee irrevocably appoints the Grantor, or a duly authorised delegate of the Grantor, jointly and severally, as the Grantee's attorney to execute a further deed, in the same form as this Deed, but including final survey plans for the Holding Paddock and the part of the Easement Land between Seymour Stream and Tytler Point and excluding this clause. The Grantee also irrevocably agrees to ratify and confirm (if necessary) anything done by its attorney pursuant to this clause. The Grantor may, following its execution, register this further deed under section 60 of the Land Act 1948.

#### 5. Obligations of the Grantee

---

- 5.1 The Grantee shall:
- (a) limit the use of horses and vehicles on the Easement Land to those required for the Grantee's own use or by workmen or agents authorised by the Grantee for the Grantee's bona fide farming business;
  - (b) immediately after passing through any gates on the Easement Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;
  - (c) take all reasonable precautions for guarding against any danger on the Easement Land (including, but without limitation, fire, physical damage or disease), and in particular shall (but without limiting the general obligation to take full and proper precautions under this clause) comply with all conditions that may be imposed from time to time by the Grantor or any lawful authority;
  - (d) wherever possible, remain on the formed roads and tracks on the Easement Land and when on those roads and tracks, comply with all traffic laws and regulations as are applicable to public roads;
  - (e) at its cost, repair to the satisfaction of the Grantor any part of the Grantor's Land, including tracks, fences, gates, drains, buildings or other structures, which are damaged directly or indirectly by the Grantee; and
  - (f) at all times, use its best endeavours to keep the Easement Land clear of noxious weeds and pests.

- 5.2 The Grantee shall at all times in the exercise of the rights set out in this Deed, not obstruct or hamper the Grantor, or any agents, employees and contractors of the Grantor, in its normal or reasonable use of the Grantor's Land.
- 5.3 The Grantee shall not at any time except with the prior written approval of the Grantor, carry out any activity which is not included within clause 2 of this Deed on the Easement Land, or do any other thing which would affect the ability of the Grantor to use the Grantor's Land.
- 5.4 The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed.

## 6. Maintenance

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- 6.1 The Grantee shall maintain the Easement Land as an access track of sufficient standard for use by four wheel drive vehicles, save where the track is impassable by reason of adverse weather conditions. The Grantee shall obtain the Grantor's prior written consent before commencing any maintenance work that requires the realignment of the access track on the Easement Land.
- 6.2 The cost of any maintenance of the Easement Land shall be borne by the Grantee and any other person or person(s) to whom the Grantor has granted similar rights in respect of the Easement Land, according to each person's use of the Easement Land PROVIDED THAT if any repair or maintenance is rendered necessary by the act, neglect or default of any user or its servants, agents, contractors, workmen, licensees or invitees, then that user shall promptly carry out such repair and maintenance and bear the cost of the work PROVIDED FURTHER THAT the Grantor shall not be required to contribute to the cost of any maintenance in respect of the Easement Land.
- 6.3 Subject to clauses 6.1 and 6.2, no party shall do anything that prevents or interferes with free passage over and along the Easement Land.
- 6.4 Should the Grantee or any other user of the Easement Land desire to upgrade the access track on the Easement Land then it shall obtain the prior written consent of the Grantor, the Grantee (if relevant) and any other user of the Easement Land and then proceed to carry out such works and future maintenance of those works at its own cost.

## 7. Grantor's obligations

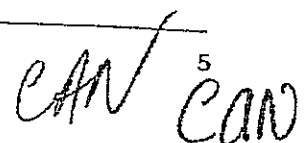
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- 7.1 The Grantor shall provide the Grantee and all authorised users of the Easement Land with keys to all locked gates on the Easement Land.
- 7.2 The Grantor shall give the Grantee notice of the name and address of the occupier for the time being of the Grantor's Land.

## 8. Costs

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- 8.1 The Grantee shall bear all reasonable costs and expenses (including the Grantor's legal costs) in relation to the preparation and enforcement of any provisions in this Deed.



- 8.2 The Grantee shall be solely responsible for the costs of registration (if any) of this Deed under clause 4.2 or the deed prepared and executed under clause 4.3, and any associated costs.
- 8.3 The Grantee shall, at its cost, undertake the survey work, and prepare the survey plan for approval and signing by the Surveyor General, for the Holding Paddock and that part of the Easement Land between Seymour Stream and Tyller Point.

**9. Indemnity**

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The Grantee indemnifies the Grantor against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor as a result of the exercise by the Grantee of its rights under this Deed, or any breach by the Grantee of its obligations, undertakings or warranties contained or implied in this Deed.

**10. Grantor's Liability Excluded**

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Except for the Grantor's liability to repair damage to the Easement Land caused by or through the Grantor as provided in clause 6.2, under no circumstances will the Grantor be liable in contract, tort, or otherwise to the Grantee for any expense, costs, loss, injury, or damage whether consequential or otherwise, arising directly or indirectly from any activity undertaken by the Grantor or the Grantor's employees, agents, contractors, workmen, lessees, licensees, or invitees, on the Grantor's Land relating to this Deed, whether the expense, cost, loss, injury or damage is the direct or indirect result of negligence or otherwise.

**11. Termination**

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- 11.1 The Grantor may terminate the rights created by this Deed if the Grantee breaches any of the terms of this Deed and the breach remains unrectified following written notice to the Grantee specifying the breach and seeking rectification within fourteen days or such other time provided the parties agree.
- 11.2 If the breach remains unrectified (or is unable to be rectified) then termination must be by written notice from the Grantor.
- 11.3 Upon termination (for whatever reason) of the grant of easement evidenced by this Deed all rights of the Grantee shall immediately cease but the Grantee shall not be released from any liability to pay consideration or other moneys up to the date of termination.
- 11.4 Upon termination the Grantee shall formally surrender the rights under this Deed and surrender the grant of easement.

**12. Disputes**

---

If any dispute arises between the Grantor and the Grantee concerning the rights created by this Deed, the parties shall enter into negotiations in good faith to resolve their dispute. If the dispute is not resolved within one month of the date on which the parties begin their negotiations, the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Grantor's Land is situated. Such arbitration shall be determined in accordance with the

Arbitration Act 1996, excluding the Second Schedule thereof, and the parties' execution of this Deed shall be deemed to be a submission to arbitration PROVIDED THAT this clause shall be subject in all respects to the provisions of section 17 of the Land Act 1948.

### 13. Notices

---

13.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

- (a) the Grantor's Address, as set out in item 1 of the First Schedule; and
- (b) the Grantee's Address, as set out in item 2 of the First Schedule.

13.2 Any notice posted shall be deemed to be served three working days after the date of posting.

### 14. Assignment

---

Unless the Grantor has consented to a transfer of pastoral lease volume MB folio 177 (Marlborough Registry) pursuant to section 89 of the Land Act 1948, in which case the Grantor shall be deemed to have consented to the assignment of the Grantee's interest comprised in this Deed of Grant of Easement to the transferee of the pastoral lease, the Grantee may not transfer, lease, assign or licence all or any part of its interest in the Easement Land, and/or the rights in this Deed or any parts of those rights, without the prior written consent of the Grantor (such consent to be given or withheld in the Grantor's sole discretion). Any such transfer, lease, assignment or licence shall be subject to the rights and obligations set out in this Deed and any other rights and obligations as the Grantor may require.

### 15. Severability

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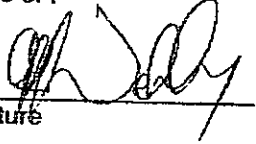
If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

### Execution

Executed as a Deed.

SIGNED for and on behalf of  
HER MAJESTY THE QUEEN by the  
~~Commissioner of Crown Lands~~  
in the presence of :

ROBERT WILLIAM LYSAGHT  
} PURSUANT TO A DELEGATION  
} FROM THE COMMISSIONER  
} OF CROWN LANDS



Witness Signature

Print Name

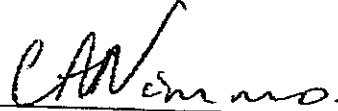
GRANT KASPER WEBLEY  
PORTFOLIO MANAGER  
CROWN PROPERTY MANAGEMENT  
OF LINZ, CHRISTCHURCH

Witness Occupation

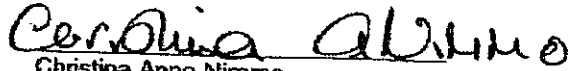
Place of residence

SIGNED by Colin Allen Nimmo and  
Christina Anne Nimmo  
in the presence of :

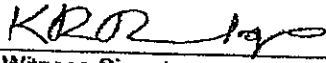
}  
}  
}



Colin Allen Nimmo



Christina Anne Nimmo



Witness Signature

KEITH RAYMOND DUNLOP

Print Name

CONSERVATION RANGER

Witness Occupation

ST TORQUAUST KAIKOURA

Place of residence

## Schedule 1:

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1. Grantor's Address

The Commissioner of Crown Lands  
Land Information New Zealand Limited  
11<sup>th</sup> Floor  
Lambton House  
160 Lambton Quay  
Wellington

Facsimile No: (04) 460 0111

2. Grantee's Address

Colin and Christina Nimmo  
The Muzzle Station  
PO Box 48  
Kaikoura



**Schedule 2: Plan A and Plan B**

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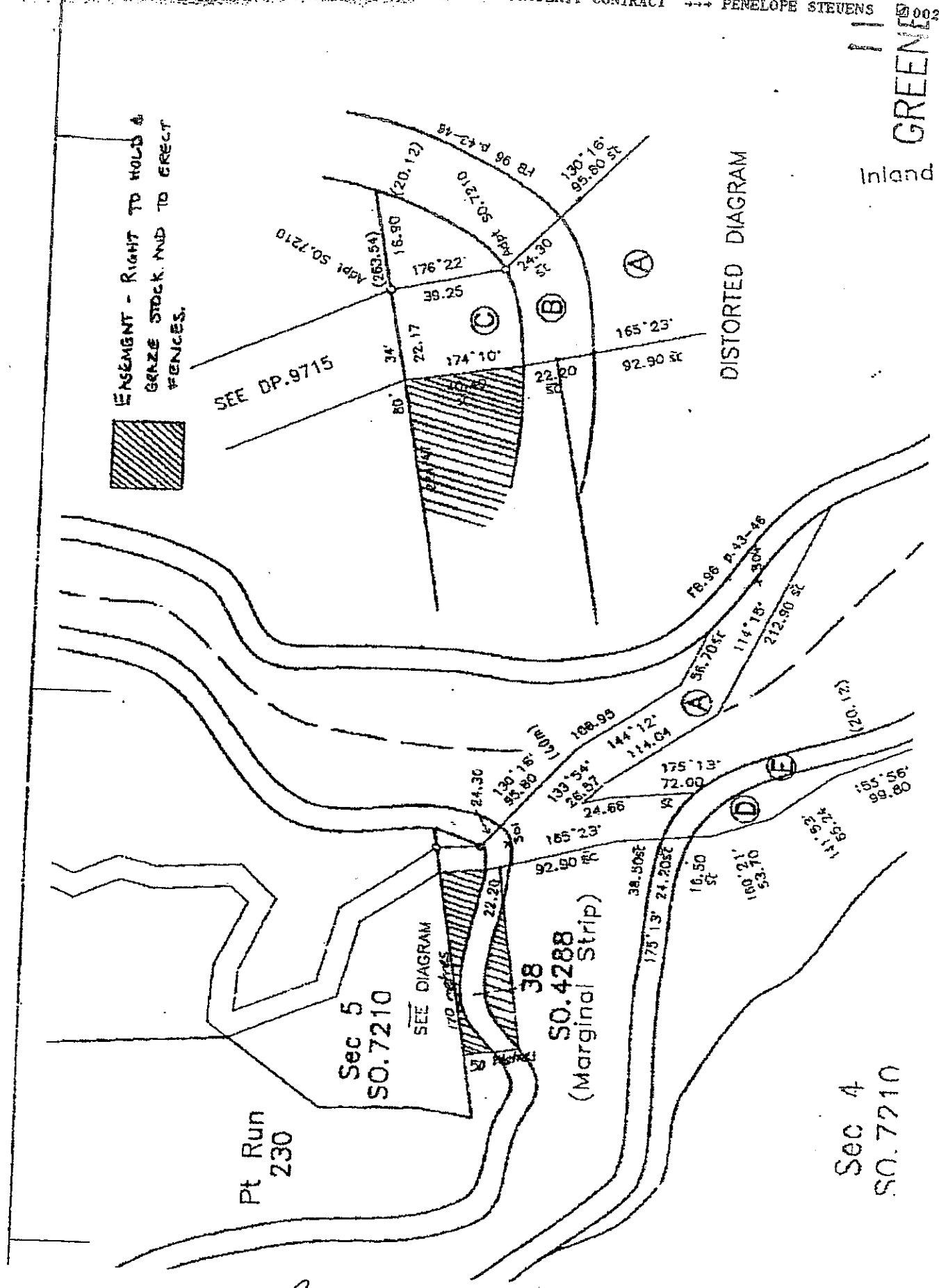
*AG*

*CAN CON<sup>10</sup>*

31/07 '01 TUE 14:53 FAX +81 3 5659715

CROWN PROPERTY CONTRACT --- PENELOPE STEVENS

GREENE Inland 002



EMSEMENT - RIGHT TO HOLD &  
GRAZE STOCK AND TO ERECT  
FENCES.

SEE DP.9715

DISTORTED DIAGRAM

Sec 5  
SO.7210

38  
SO.4288  
(Marginal Strip)

Sec 4  
SO.7210

Pt Run  
230

RQ

Camd ean