

# **Crown Pastoral Land Tenure Review**

**Lease name: RIVERSLEA**

**Lease number: PO 178**

## **Substantive Proposal**

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

**September**

**10**

**EXECUTION  
COPY**

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

**Date:** 10 May 2010

**Parties**

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**Holder:** SH Andrews & Sons Limited  
Attention: Kate Walker  
Anderson Lloyd Lawyers  
Otago House,  
Cnr Princess & Moray Place  
DUNEDIN

**Commissioner of Crown Lands:**

C/o Project Manager for Tenure Review  
Darroch Limited  
PO Box 27  
ALEXANDRA

**The Land**

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**Lease:** Riverslea

**Legal Description:** Run 204C and Sections 59 and 60 Block I Rock and Pillar Survey District

**Area:** 1589.8935 hectares

**Certificate of Title/Unique Identifier:** OT386/84

**Summary of Designations**

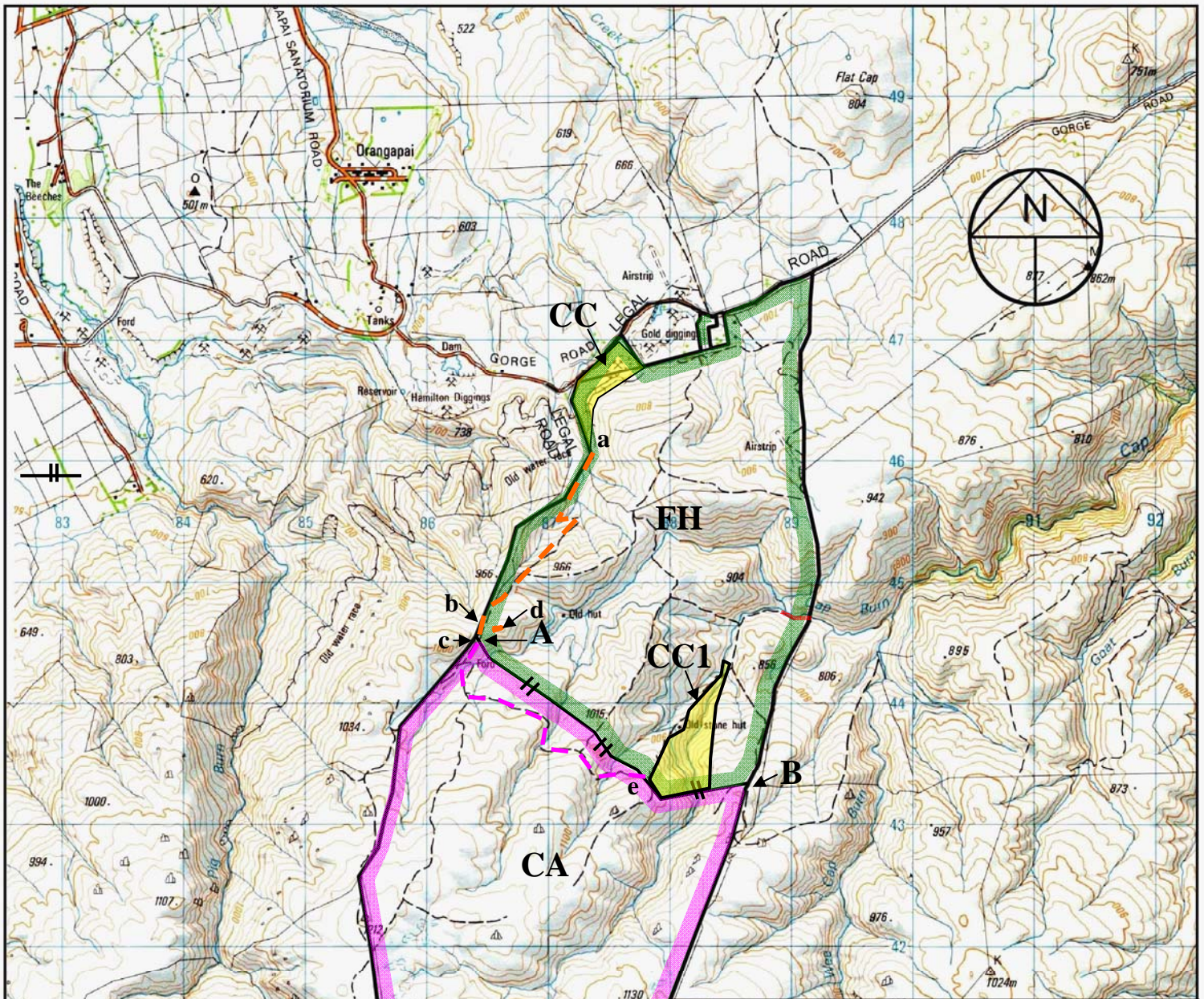
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Under this Proposal, the Land is designated as follows:

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







**1      The Plan**

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The boundaries on this plan are for illustrative purposes in showing the recommended designations.

**Substantive Proposal**

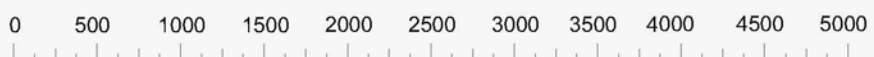
-  Land to be restored to Crown control as conservation area subject to grazing concession and easement concession (CA).
-  Land to be disposed of by freehold disposal to S.H. Andrews and Sons Limited (FH).
-  Conservation covenant (CC & CC1).
-  Public access easement for access by foot, motorised and non motorised vehicle and by horse and access for management purposes a-b-c, b-d.
-  Easement concession for access for farm management purposes c-e.
-  Fence upgrade A-B

Version	1	2	3	4	5
Otago Land District	Sheet 1 of 1				
Topographic Map 260 - H42	Date 15/05/07				

TR346 Riverslea 9\_6 08092009

**Riverslea**

Scale 1:50000



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**2 Conditions**

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

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**3 Settlement**

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

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

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

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

If:

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

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

or

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

(i) has been agreed or determined; and

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

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**4 Holder's Payment**

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

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

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**5 Commissioner's Payment**

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

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

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**6 Vesting of Crown Land**

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

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**7 Issue of Certificate of Title**

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

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**8 Registration of Documents**

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

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**9 Consents**

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

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

## **10 Continuation of Lease**

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

## **11 Fencing and Construction Works**

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

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

## **12 Apportionments**

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



Holder will pay to the Commissioner, any additional amounts due because of any payments made or received by one party on behalf of the other for the period from the Settlement Date to the date on which a new certificate of title issues for the Freehold Land.

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**13 Risk**

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

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**14 Survey**

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

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**15 Holder's Acknowledgements**

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- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) it is obtaining the freehold interest in the Freehold Land:
    - (i) "as is", solely in reliance on its own investigations and judgement; and
    - (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
  - (b) the Holder has carried out all inspections of the Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
  - (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
    - (i) the Resource Management Act 1991 and the Resource Management Amendment Act 2005; and
    - (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
    - (iii) the Building Act 2004 and the Building Amendment Act 2009; and
- the Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this clause 15;

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

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

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

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**17 Acceptance**

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

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**18 Solicitor's Certificate**

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

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**19 Default**

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

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**20 Goods and Services Tax**

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- 20.1 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.
- 20.2 On the 10<sup>th</sup> working day following the Unconditional Date, the Commissioner will provide to the Holder a GST invoice in respect of the supply evidenced by the Holder's Consideration. The invoice will specify the Commissioner's GST Date.

- 20.3 The Holder will pay GST on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 20.4 On the 10<sup>th</sup> working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration.
- 20.5 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.6 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
  - (b) any Default GST.

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**21 Lowest price**

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

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**22 Costs**

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

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**23 No nomination or assignment**

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

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**24 Recreation Permit**

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

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**25 Consents for Activities**

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

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**26 General**

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- 26.1 This Proposal and the Notice:
- (a) constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and

- (b) supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and the Holder relating to the Tenure Review.
- 26.2 Each provision of this Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.
- 26.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 26.4 The Commissioner and the Holder will sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the other to effectively carry out and give effect to the terms and intentions of this Proposal.
- 26.5 This Proposal is governed by, and must be construed under, the laws of New Zealand and the Commissioner and the Holder irrevocably submit to the jurisdiction of the New Zealand courts or other New Zealand system of dispute resolution.
- 26.6 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 26.7 In relation to notices and other communications under this Proposal:
  - (a) each notice or other communication is to be in writing, and sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for that purpose by the addressee to the other party. Other than the address to which the Holder is to send its acceptance of this Proposal (which the Commissioner will specifically notify the Holder of) the address, person or office holder (if any) for each party is shown on the front page of this Proposal;
  - (b) no communication is to be effective until received. A communication will be deemed to be received by the addressee:
    - (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
    - (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), on the working day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and
    - (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

## **27 Interpretation**

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### **27.1 Definitions**

In this Proposal unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

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

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

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**1 Details of Designation**

---

1.1 Nil

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

---

### **1 Details of designation**

---

- 1.1 Under this Proposal the land outlined in pink and shown marked **CA** on the Plan, being **810** hectares (approximately) is designated as land to be restored to or retained in Crown control as conservation area subject to:
- (a) the granting of the easement concession for access for farm management purposes to SH Andrews & Sons Limited (shown as a dashed pink line c-e on proposed designations plan) substantially as set out in Appendix 4;
  - (b) the granting of the easement concession for phase out grazing to SH Andrews & Sons Limited substantially as set out in Appendix 5;
  - (c) the continuation in force of an existing Deed of Easement (5325921.1) granting the right to convey water together with incidental rights as set out in Appendix 6;

### **2 Information Concerning Proposed Concession – Farm Access through proposed conservation area**

---

2.1 Description of proposed activity(s) [s.39(a)]

Farm access easement over an existing 4WD track which traverses through the lower reaches of area CA on the designations plan. The track provides linkages with three internal tracks on Riverslea and represents the most efficient way of accessing the uppermost blocks proposed for freeholding. The proposed easement (concession) permits the use of the easement area for access on foot, with motor vehicles and access for farm dogs, farm stock and machinery and implements for management of the lands to which it provides access.

2.2 Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]

The easement area comprises a formed four wheel drive track which traverses through the lower reaches of area "CA" and marked c-e on the Plan for some 3km. Current status for the area is "existing pastoral lease to become conservation area".

2.3 Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) CPLA

The driving of stock along the easement may lead to some minor grazing of native vegetation on the periphery of the track. However it is considered that the easement terms contain sufficient controls to avoid, mitigate or remedy any adverse effects. The easement contains clauses dealing with the protection of the environment, interference with natural features, deposit of dangerous matter, obstruction of the public and restraint of use during periods when it is vulnerable to damage.

DoC will regularly visit the area for a diverse range of activities including wild animal and weed control and recreational management and will therefore be aware if the concession activity is having any negative effects.

2.4 Details of the proposed type of concession [s.39(d)]

Concession (easement) under Section 17Q Conservation Act 1987.

2.5 Proposed duration of concession and reasons for proposed duration [s.39(e)]



*Proposed duration:*  
21 years.

*Reasons for proposed duration:*

The route provides the most practical access to the upper reaches of the proposed freehold land and lies only just inside the area "CA". Effects associated with the concession activity are expected to be minor. Therefore the term has been set for a substantive period of 21 years to give the holder long term practical access to lands proposed for freeholding.

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

*Proposed grantee:*  
S H Andrews & Sons Limited

*Relevant information:*

The proposed concessionaire currently maintains and uses the track over which the easement is proposed. No negative effects associated with the current use of the track have been noted. DoC has a good working relationship with the proposed concessionaire.

NB: The preparation of this information is not intended to imply consent under s.41 of the CPLA.

### **3 Information Concerning Proposed Concession – Grazing Concession CA**

---

3.1 Description of proposed activities [s.39(a)]

The concession caters for a period of phase out grazing for sheep to allow the lessees to adjust their farming operation to the loss of some 810 hectares. The concession runs for 4 years commencing on date of signing of the Substantive Proposal for the tenure review of Riverslea pastoral lease or such residual that remains of this term when the Concession is granted.

3.2 Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]

Area outlined in pink and marked CA on the designations plan.

The conservation area comprises fell field, peat bogs, flushes, short tussocklands, tall snow and red tussocklands and localised shrublands.

3.3 Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) of the CPLA

Ongoing grazing of the area at a reducing rate, while not optimal conservation management, should have limited impact on values present given the relatively short term and low stocking rates.

3.4 Details of the proposed types of concession [s.39(d)]

The proposed easement concession will be under Section 17Q(1) Conservation Act 1987.

3.5 Proposed duration of concession and reasons for proposed duration [s.39(e)]

4 years from signing of the Substantive Tenure Review Proposal. The proposed duration is a compromise between stocking ceasing on tenure review completion and providing the holders an opportunity to adjust their farming operation to revised circumstances.

3.6 Relevant information about the proposed grantee including information [s.39(f)]

- (a) Proposed grantee – SH Andrews and Sons Limited (operated by John and Sally Andrews)
- (b) Relevant information – The proposed concessionaire currently farms the area and has an excellent relationship with the Department of Conservation.

NB: The preparation of this information is not intended to imply consent under s.41 of the CPLA.

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

---

**1 Details of designation**

---

- 1.1 Under this Proposal the land shown outlined in green and marked **FH** on the Plan, being **780** hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:
- (a) Part IVA of the Conservation Act 1987;
  - (b) Section 11 of the Crown Minerals Act 1991;
  - (c) the easement shown as a dashed orange line and marked “**a-b-c**” and “**b-d**” on the plan for public access and management purposes and substantially as set out in Appendix 7; and
  - (d) the conservation covenant shown shaded yellow and labelled **CC** on the plan and substantially as set out in Appendix 8;
  - (e) the conservation covenant shown shaded yellow and labelled **CC1** on the plan and substantially as set out in Appendix 9;
  - (f) the continuation in force of an existing Deed of Easement (5325921.1) granting the right to convey water together with incidental rights substantially as set out in Appendix 6.

**Schedule Four: Conditions**

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

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

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

Dated:

**SIGNED** by [ ] )  
in the presence of: ) \_\_\_\_\_

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

Witness Name:  
Occupation:  
Address:

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

---

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

Dated:

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

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

Witness Name:  
Occupation:  
Address:

## Appendix 2: Example of Solicitor's Certificate

---

### Certifications

I [ ] hereby certify as follows:

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

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

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

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

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

Yours faithfully

[signed by principal of law firm]

**Appendix 3: Indicative Fencing and Construction Requirements**

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**Fenceline:** Marked A - B on plan and shown as "Fence upgrade"

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**Length and location:** 2.5 km

**Type:** Fence upgrade

**Specifications:** The bottom two wires of the existing fence are to be removed and replaced with Number 8 gauge wire.

**Construction**

---

No other works are included in this proposal.



**Appendix 4: Form of Easement concession to be Created – for access for farm management purpose marked c-e on the plan.**

---

- 1 -

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

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

**Between**

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

**and**

**S.H. Andrews and Sons Limited ("the Concessionaire")**

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

**THIS DOCUMENT** is made this        day of

**PARTIES:**

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **S.H. ANDREWS AND SONS LIMITED**, ("the Concessionaire")

**BACKGROUND**

- A.** The land described in Item 1 of Schedule 1 as the Servient Land is a Conservation Area under the management of the Grantor.
- B.** The land described in Item 2 of Schedule 1 as the Dominant Land is freehold land of the Concessionaire.
- C.** Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- D.** The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Document.
- E.** The Grantor has agreed to grant the Concessionaire an Easement appurtenant to the Dominant Land over that part of the Servient Land specified as the Easement Area.

**OPERATIVE PARTS**

**TERMS AND CONDITIONS**

**1.0 DEFINITIONS AND INTERPRETATION**

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

“**Background**” means the matters referred to under the heading ‘Background’ on page 2 of this Document.

“**Compensation**” means the amount specified in Item 6 of Schedule 1 and required by the Grantor under section 53 of the Crown Pastoral Land Act 1988 and section 17X of the Conservation Act 1987 for the adverse effects of the Concession Activity on the Crown’s or public’s interest in the Easement Area.

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

“**Concessionaire**” means the registered proprietor for the time being of the Dominant Land and includes the Concessionaire’s successors, assigns, executors, and administrators.

“**Concession Activity**” means the use of the Easement Area by the Concessionaire for purposes specified in Item 4 of Schedule 1.

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

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

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

“**Dominant Land**” means the land specified in Item 2 of Schedule 1.

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

“**Easement Area**” means that part of the Servient Land specified in Item 3 of Schedule 1.

“**Reserve**” has the same meaning as “reserve” in section 59A of the Reserves Act 1977.

“**Servient Land**” means a Conservation Area being the area more particularly described in Item 1 of Schedule 1.

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

“**Term**” means the period of time specified in Item 5 of Schedule 1 during which this Document operates.

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

1.2 In this Document unless the context otherwise requires:

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

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

## **2.0 GRANT OF APPURTENANT EASEMENT**

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

## **3.0 TERM**

3.1 The Easement is for the Term specified in Item 5 of Schedule 1.

#### **4.0 COMPENSATION**

4.1 The Concessionaire must pay to the Grantor in the manner specified by the Grantor the Compensation specified in Item 6 of Schedule 1.

4.2 Under section 53 of the Crown Pastoral Land Act 1998 the Grantor waives any requirement for rent on the basis that the costs of setting and collecting the rent would exceed any rent which may be collected.

#### **5.0 OTHER CHARGES**

5.1 In addition to Compensation, the Concessionaire must pay all rates, levies, taxes, duties, assessments, charges, and other outgoings which may be charged, levied, or reasonably assessed, or which may become payable in relation to the Easement Area and which are attributable to the Concessionaire's use of or activity on the Easement Area.

#### **6.0 CONCESSION ACTIVITY**

6.1 The Concessionaire is not to use the Easement Area for any purpose other than the Concession Activity.

#### **7.0 COMPLIANCE**

7.1 The Concessionaire will comply where relevant:

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

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

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

8.2 The Concessionaire must keep and maintain any Structures, and facilities on and alterations to the Easement Area in good repair.

8.3 On expiry or early termination of this Document either as to the whole or any part of the Easement Area, the Concessionaire will not be entitled to compensation for any improvements and any Structure or facilities remaining on the Easement Area are to become the property of the Grantor.

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

#### **9.0 PROTECTION OF THE ENVIRONMENT**

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

- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Easement Area; or
- (b) bring any plants, or animals (except those stipulated in Item 4 of Schedule 1) on to the Easement Area; or
- (c) deposit on the Easement Area debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Easement Area; or
- (d) pile or store materials in any place on the Easement Area where they may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Easement Area; or
- (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Easement Area; or
- (g) disturb or allow stock to disturb any stream or watercourse on the Easement Area; or
- (h) light any fire on the Easement Area.

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

- (a) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Easement Area or any Structure or facility on the Easement Area;
- (b) comply strictly with the provisions of the Biosecurity Act 1993.

9.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 9

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

9.5 The Concessionaire may for purposes of the Concession Activity take onto or use vehicles on the Easement Area on existing formed access tracks only.

## **10. TEMPORARY SUSPENSION**

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

## **11.0 TERMINATION**

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

- (a) the Concessionaire breaches any terms of this Document; and
- (b) the Grantor has notified the Concessionaire in writing of the breach; and
- (c) the Concessionaire does not rectify the breach within 28 days of receiving notification.

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

## **12.0 INDEMNITIES AND INSURANCE**

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

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

12.3 Without prejudice to or in any way limiting its liability under clause 12.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:

- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Easement Area and covering:
  - (i) general indemnity for a sum not less than the amount specified in Item 7 of Schedule 1; and
  - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 8 of Schedule 1; and
- (b) statutory liability insurance for the amount specified in Item 9 of Schedule 1; and
- (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 10 of Schedule 1.

12.4 With respect to clause 12.3 the Concessionaire must before commencing the Concession Activity and on each renewal of insurance, provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

## **13.0 ASSIGNMENT**

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

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

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

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

## **14.0 DISPUTE RESOLUTION AND ARBITRATION**

- 14.1 If any dispute arises between the parties in connection with this Document, the parties must, without prejudice to any other rights they have under this Document, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.
- 14.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties.
- 14.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Easement Area is located is to appoint the mediator.
- 14.4 In the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions of the Arbitration Act 1996 will apply.
- 14.5 Notwithstanding any provision to the contrary in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the District Law Society in the region in which the Easement Area is located is to appoint the arbitrator. The arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 14.6 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 14.7 The parties agree that the results of any arbitration are to be binding on the parties.

#### **15.0 NOTICES**

- 15.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 11 of Schedule 1.
- 15.2 A notice given in accordance with clause 15.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of pre-paid post, on the third working day after posting;
  - (c) in the case of facsimile, on the Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

#### **16.0 RELATIONSHIP OF PARTIES**

- 16.1 Nothing expressed or implied in this Document shall be construed as:
- (a) conferring on the Concessionaire any right of exclusive occupation or use of the Easement Area;
  - (b) preventing the Grantor from granting similar concessions to other persons;
  - (c) derogating from the rights of the Grantor and the public to have access across the Easement Area.

#### **17.0 SPECIAL CONDITIONS**

- 17.1 Special conditions relating to this Document are set out in Schedule 2.
- 17.2 The standard conditions contained in this Document must be read subject to any special conditions.



Signed by :

---

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

---

Witness:  
Occupation:  
Address:

Signed by :

---

as Concessionaire  
in the presence of :

---

Witness :  
Occupation :  
Address :

**SCHEDULE 1**

1. **Servient Land:** *(see definition of Servient Land in clause 1.1)*  
*Area outlined pink and marked CA on the Designations Plan*
2. **Dominant Land:** *(see definition of Dominant Land in clause 1.1)*  
*Area outlined in green on the Designations Plan.*
3. **Easement Area:** *(see definition of Easement Area in clause 1.1)*  
*Area being 20 metres wide and marked "c-e" on the Designations Plan*
4. **Concession Activity:** *(see definition of Concession Activity in clause 1.1.)*  
(a) to use the Easement Area for access by motor vehicle, by foot and by non motorised vehicles powered by a person or persons;  
  
(b) to use the Easement Area for access for farm dogs, farm stock, and farm machinery and implements for farm management purposes;  
  
(c) to maintain the existing road on the Easement Area.
5. **Term:** 21 years \_\_\_ 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:** *(see clause 12.3)*  
for \$1,000,000
8. **Public Liability Forest & Rural Fire Act Extension:** *(see clause 12.3)*  
for \$1,000,000
9. **Statutory Liability Insurance** *(see clause 12.3)*  
for \$20,000
10. **Other Types of Insurance:** Not Applicable *(see clauses 12.3)*
11. **Address for Notices (including facsimile number):** *(see clause 15)*
  - (a) Grantor Conservation House, 77 Lower Stuart Street, Dunedin  
Telephone (03) 477-0677  
Facsimile (03) 477-8626
  - (b) Concessionaire S.H. Andrews and Sons Limited  
C/- John and Sally Andrews  
RD 3 RANFURLY

**SCHEDULE 2**

*Special Conditions*

- 1 In carrying out the Concession Activity the Concessionaire must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.
- 2 Insurance coverage figures referred to clauses 7 to 10 may be periodically adjusted by the Grantor to compensate for the effects of price inflation.
- 3 The Concessionaire may apply to maintain the farm track which lies on the Easement Area. Consent will not be unreasonably withheld provided the Minister is satisfied that techniques employed will have minimal impact on the environment.

**Appendix 5: Form of a concession to be Created – for phase out grazing over area marked CA on the plan.**

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

DATED \_\_\_\_\_

Between

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

and

**S.H. ANDREWS AND SONS LIMITED**  
("the Concessionaire")

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



Department of Conservation  
*Te Papa Atawhai*

**THIS LICENCE** is made this day of

**PARTIES:**

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **S.H. ANDREWS AND SONS LIMITED** ("the Concessionaire")

**BACKGROUND**

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area or Reserve.
- 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 and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.

**OPERATIVE PARTS**

**TERMS AND CONDITIONS**

**1.0 DEFINITIONS AND INTERPRETATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

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

## **2.0 GRANT OF LICENCE**

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

## **3.0 TERM**

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

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

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

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

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

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

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

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

## **5.0 OTHER CHARGES**

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



## **6.0 CONCESSION FEE AND ADMINISTRATION FEE REVIEW**

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

## **7.0 CONCESSION ACTIVITY**

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

## **8.0 COMPLIANCE**

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

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

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

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

#### **10.0 PROTECTION OF THE ENVIRONMENT**

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

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

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

- (a)(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 on to the Land for use in connection with the Concession Activity and pest control operations.

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

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

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

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

**12.0 TEMPORARY SUSPENSION**

12.1 The Grantor may suspend this Document:

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

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

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

**13.0 ASSIGNMENT**

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

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 cease to function or operate.
- 14.2 If the Grantor terminates the Document under this clause 14 all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or Administration Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.
- 14.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

## **15.0 INDEMNITIES AND INSURANCE**

- 15.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, contractors, or invitees or otherwise caused as a result of its use of the Land or the Concessionaire's carrying out of the Concession Activity on the Land.
- 15.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.
- 15.3 Without prejudice to or in any way limiting its liability under clause 15.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:
- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
    - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
    - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
  - (b) statutory liability insurance for the amount specified in Item 12 of Schedule 1; and
  - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.
- 15.4 With respect to clause 15.3 the Concessionaire must, before commencing the Concession Activity and on each renewal of insurance provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

**16.0 ENVIRONMENTAL MONITORING**

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

**17.0 FORCE MAJEURE**

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

**18.0 DISPUTE RESOLUTION AND ARBITRATION**

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

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

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

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

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

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

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

**19.0 NOTICES**

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

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

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

**20.0 RELATIONSHIP OF PARTIES**

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

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

**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 SPECIAL CONDITIONS**

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

22.2 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:** *Area shaded pink and marked as CA on the Designations Plan (see definition of Land in clause 1.1)*
  
2. **Concession Activity:**  

Phase out grazing at a reducing rate as described below:

Year 1: 1500 sheep for 10 weeks commencing February 1<sup>st</sup>  
Year 2: 1500 sheep for 8 weeks commencing February 1<sup>st</sup>  
Year 3: 1500 sheep for 6 weeks commencing February 1<sup>st</sup>  
Year 4: 1500 sheep for 4 weeks commencing February 1<sup>st</sup>
  
3. **Term:** 4 years commencing on date of signing of the substantive proposal for the tenure review of Riverslea pastoral lease or such residual that remains of this term when the Concession is granted. *(see clause 3)*
  
4. (a) **Renewal Date:** NA *(see clause 3.2)*  
(b) **Renewal Period:** On expiry of this Concession, no renewal will be considered.
  
5. **Final Expiry Date:** 4 years from signing of substantive proposal. *(see clause 3.2)*
  
6. (a) **Concession Fee:** The concession fee has been calculated on the basis of \$5/sheep per annum.  

Year 1: \$1442.30 + GST  
Year 2: \$1153.84 + GST  
Year 3: \$865.38 + GST  
Year 4: \$576.92 + GST

*(see clause 4)*

  
(b) **Administration Fee:** NA *(see clause 4)*
  
7. **Concession Fee Payment Date:** *(see clause 4)*  

On or before the date specified on the invoice generated by the Grantor
  
8. **Penalty Interest Rate:** *(see clause 4.2)*  

Double the Grantor's bank's current highest 90 day bank bill buy rate
  
9. **Concession Fee Review Date:** NA. *(see clause 6)*
  
10. **Public Liability General Indemnity Cover:** *(see clause 15.3)*  

for \$1,000,000.00
  
11. **Public Liability Forest & Rural Fire Extension:** *(see clause 15.3)*  

for \$500,000.00
  
12. **Statutory Liability Insurance:** *(see clause 15.3)*  

Amount \$250,000.00
  
13. **Other Types of Insurance:** *(see clause 15.3)*  
  

**Amounts Insured for Other Types of Insurances:** *(see clause 15.3)*  
Amount NA

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14. **Environmental Monitoring Contribution:** \$ NA (see clause 16)

15. **Address for Notices (including facsimile number):** (see clause 19)

(a) Grantor: C/- PO Box 5244, Dunedin. (03) 4778 626

(b) Concessionaire: S.H. Andrews and Sons Limited  
C/- John and Sally Andrews  
RD3 Ranfurly



**SCHEDULE 2**

*Special Conditions*

**Land Management**

1. The Concessionaire will take care not to overstock the Land and will ensure that grazing is not having an adverse impact on the indigenous vegetation within the Land.

**Fencing**

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

**Hunting**

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

**Inspection**

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

**Appendix 6: Form of an existing Deed of Easement 5325921.1**

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*(If easement is to be registered)*

REC 5325921.3 DEED OF EASEMENT  
COPY-01/01.P05-012.27/07/02.09184



DocID: 110369435

Entered in the Register Book as

Volume Folio

(*State*) Registry) this

day of *(Year)*

at *(Year)* o'clock

Assistant District Land Registrar

*(State District)*

### GRANT OF EASEMENT

DATED 11. January 2002

#### PARTIES

- 1 THE COMMISSIONER OF CROWN LANDS  
at Wellington (together with its successors and assigns) (the Grantor).
- 2 IAN DONALD MCDONALD, FRAZER DONALD MCDONALD AND  
OWEN IAN MCDONALD<sup>16</sup> of Paerau Farmers (together with their successors  
and permitted assigns) (the Grantee).  
\* and HELEN PATRICIA MCDONALD and ANNA LYNLEY MCDONALD

#### BACKGROUND

- A The Grantor is the owner of the servient land tenement (the Servient Tenement)
- B The Grantee is the owner of the dominant land tenement (the Dominant Tenement).
- C The Grantee wishes to have and to maintain a pipeline over or through the servient land to convey water to the dominant Land.
- D The Grantor has agreed to grant to the Grantee an easement over the servient land appurtenant to the dominant land on the terms and conditions set out in this deed.

#### TERMS OF THIS DEED

##### 1 DEFINITIONS and INTERPRETATION

1.1 In this deed (including the Schedules)

"Deed" means this deed, the background and the schedules.

"Dominant Tenement" shall have the same meaning as Grantee's Land.

"Easement Land" means the area of the Grantor's Land delineated BY the lines marked "A" "B" and "D" on SO Plan 21966 within which the Grantee may exercise the rights granted by this Deed, and more particularly the area of the Grantor's Land occupied by the Pipeline extending to a reasonable distance on either side of the pipeline as is necessary for the proper operation and maintenance of the Pipeline and to enable access along the course of the Pipeline by people vehicles and machinery provided however that the total width of the Easement Land, partly on one side and partly on the other side of the Pipeline, shall at no stage exceed a distance of six metres measured tangentially through the centre of the Pipeline.

"Execution Date" means the date of execution of this Deed.

"Grantee" includes the Grantee's servants, agents, employees, workers, invitees, licencees and contractors.

"Grantee's Land" means that piece of land situated in the Land District of Otago being Section 76 Block 1 Rock and Pillar Survey District and being all the land comprised and described in Certificate of Title Volume 13B folio 1020 (Otago Land Registry).

"Grantor" means the Commissioner of Crown Lands at Wellington together with his delegates, servants, agents, successors and assigns.

"Grantor's Land" means 1589.8935 Ha more or less being Run 204C Rock and Pillar Survey District and Sections 59 and 60 Rock and Pillar Survey District and 1067.5607 Ha more or less being Part Run 204B Upper Taieri and Rock and Pillar Survey districts and Sections 25 and 26 Block IV Upper Taieri Survey District.

"Lessees" means the lessees of Pastoral Leases 386/60 (Otago Land Registry) and 386/84 (Otago Land Registry).

"Pipeline" means the pipe or pipes owned or installed by the Grantee to convey water from its source over or through the Easement Land and includes all constructions forming an integral part of the pipeline and necessary to enable the conveyance of the water and includes any pipes or constructions in replacement of those referred to in this Deed.

"Servient Tenement" shall have the same meaning as 'Grantor's Land'.

"Water Easement" means the right created by this Deed to convey water over or through the Easement Land.

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

1.2.1 the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Deed;



- 1.2.2 except in relation to Clause 1.2.3, 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 include substitution provisions that substantially correspond to those referred to and;
- 1.2.3 the provisions of sections 16 and 18 of the Crown Pastoral Land Act 1998 in force on the Execution Date are to be read into this Deed;
- 1.2.4 notwithstanding the definition of Easement Land, Easement Land shall be deemed to include the land occupied on the Execution Date for the purpose of using and maintaining the Pipeline; and
- 1.2.5 the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

2 GRANT OF EASEMENT

- 2.1 Pursuant to section 60 of the Land Act 1948 and from the date of execution of this Deed, the Grantor grants forever to the Grantee the following easement appurtenant to the Dominant Tenement
  - 2.1.1 From time to time and at all times the right to convey water over or through the Easement Land.
  - 2.1.2 From time to time and at all times the right:
    - (a) to take, convey, and lead water in a free and unimpeded flow and in any quantity over or through the Easement Land (except when the flow is halted for any reasonable period necessary for essential repairs);
    - (b) to use the Pipeline for the purpose of conveying water over or through the Easement land;
    - (c) to maintain, replace, improve or increase the size of the Pipeline provided that all such works are carried out at the expense of the Grantee and with the written consent of the Grantor;
    - (d) to enter, exit, pass and remain on, under or over such part of the Grantor's land for all purposes reasonably necessary for the exercise of the rights granted under this Deed, with or without vehicles or machinery necessary for such purposes but subject to the limitations expressed in this Deed;

SUBJECT TO the condition that as little disturbance as possible is caused to the surface of the Grantor's Land and that the surface is restored as nearly as possible to its original condition and any other damage done by reason of the aforesaid operations is repaired expeditiously;

AND SUBJECT FURTHER to the condition that the Grantee shall not exercise these rights in a manner inconsistent with the rights of anyone with

the same or similar rights.

**3. CONSIDERATION**

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

3.1.1 The Grantee shall pay the Grantor a lump sum payment of \$1.00 upon demand.

3.1.2 The Grantee shall observe the obligations imposed on it under this Deed.

**4. REGISTRATION**

4.1 This easement shall be registered pursuant to section 60 of the Land Act 1948.

**5. PAYMENT OF COMPENSATION TO LESSEES**

5.1 The Grantee has entered into an agreement with the Lessees recording receipt by the Lessees of a payment of one dollar (\$1.00) (inclusive of GST) by the Grantee (attached as the Second Schedule). That agreement records the Lessees' acknowledgement that such payment is in lieu of compensation from the Grantor pursuant to section 60(1) of the Land Act 1948, and that the Lessees waive their right to any compensation from the Grantor in respect of the grant of easement in this Deed.

**6. OBLIGATIONS OF THE GRANTEE**

6.1 The Grantee shall when on the Grantor's Land (subject to clause 2.1.2):

6.1.1 Wherever possible remain on the constructed roads and tracks and when on those roads or tracks comply, as far as is practicable, with all traffic laws and regulations as are applicable to public roads.

6.1.2 Immediately after passing through any gates, close such of them as were closed and lock such of them as were locked immediately before such passing through.

6.1.3 Take all reasonable precautions for guarding against any danger (including, but without limitation, fire, physical damage or disease), and for this purpose shall (without limiting the general obligation to take full and proper precautions pursuant to this clause 6.1.3) comply with such conditions as may be imposed from time to time by the Grantor or any lawful authority.

6.1.4 Ensure that as little damage or disturbance as possible is caused to the surface of the Grantor's Land and that the surface is restored as nearly as possible to its former condition and any other damage done by reason of the activities permitted on the Easement Land by this Deed is repaired forthwith:

6.1.5 The Grantee shall only enter onto the Grantor's Land pursuant to

*Handwritten mark*

this Deed and upon reasonable prior notice **EXCEPT** in an emergency where the Grantee may enter without notice if necessary provided that subsequent notice is given as soon as practicable. In both cases notice shall be given the Lessees (or if no Lessees to the Grantor).

6.1.6 The Grantee shall, at its cost, maintain and repair to the satisfaction of the Grantor any part of the Grantor's Land, including the tracks, fences, gates, drains, buildings or other structures, which is damaged by the Grantee **PROVIDED THAT** the obligation to maintain and repair shall only arise if the damage is caused directly or indirectly by the Grantee.

6.2 The Grantee shall compensate the Grantor and the Lessees for any loss suffered by the Grantor or the Lessees resulting directly or indirectly from the actions of the Grantee.

6.3 The Grantee shall at all times in the exercise of the rights set out in this Deed not obstruct or hamper the Grantor or the Lessees, or any agents, employees and contractors of the Grantor or the Lessees, in its or their normal or reasonable use of the Grantor's Land.

6.4 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 Grantor's Land, or do any other thing which would affect the ability of the Grantor or the Lessees to use the Grantor's Land.

6.5 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.

## 7 OWNERSHIP OF STRUCTURES

7.1 The Pipeline exists for the purpose of enabling the Grantee to exercise the rights created by this Deed and no part of it is or will become a fixture on the Easement Land. It is acknowledged that at the date of this Deed the Pipeline is the property of the Grantee.

## 8 COSTS

8.1 The Grantee shall pay to the Grantor the sum of three hundred dollars (\$300.00) (inclusive of GST) towards the preparation of this Deed and shall pay all prescribed registration and lodgement charges. Otherwise the Grantor and the Grantee shall each meet their own costs associated with the preparation and registration of this Deed.

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

8.3 All costs for the maintenance or the replacement of the Pipeline as

permitted by this Deed shall be at the grantee's cost.

9 **INDEMNITY**

9.1 The Grantee hereby indemnifies the Grantor and the Lessees against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor and the Lessees in connection with this Deed or 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**

10.1 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 this Deed or any activity undertaken by the Grantor on the Grantor's Land, whether the expense, cost, loss, injury or damage is the direct or indirect result of negligence or otherwise.

11 **TERMINATION**

11.1 The Grantor may terminate the rights created by this Deed if the Grantee breaches any of the material terms of this Deed and the breach remains unrectified for 7 days from the date of the notice (or such further time as the parties may agree) or is unable to be rectified.

11.2 If the breach can be remedied the Grantor must give 7 days' notice of the termination in writing to the Grantee, specifying the breach and identifying how the breach should be rectified (if capable of being rectified). If the breach cannot be rectified the Grantor may terminate the rights immediately by notice in writing to the Grantee specifying the breach.

11.3 If the Grantor terminates the rights under 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 If the Grantee has not, within a reasonable period after the termination of the rights created by this Deed, removed the Pipeline and restored the Grantor's Land to a reasonable condition, the Grantor may remove the Pipeline from the Easement Land and restore the Grantor's Land to a reasonable condition and recover all reasonable costs incurred from the Grantee.

12 **DISPUTES**

12.1 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 address in writing to the other party.

13.1.1 The Grantor's Address as set out in paragraph 2 of the First Schedule.

13.1.2 The Grantee's Address as set out in paragraph 4 of the First Schedule.

13.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

14 SEVERABILITY

14.1 If any part of this Deed is held by any court or administration 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.

IN WITNESS WHEREOF this Deed has been duly executed on the date first written above.

SIGNED by : ROBERT WILLIAM LYSAGHT  
Acting for and on behalf of )  
the Commissioner of Crown Lands )  
pursuant to a delegation under section 41) *R.W. Lysaght*  
of the State Sector Act 1988  
in the presence of: *R. Webster*

ROBERT JOSEPH WEBSTER  
PORTFOLIO MANAGER  
CROWN PROPERTY MANAGEMENT  
C/- LINZ, CHRISTCHURCH

SIGNED by the Grantee

Ian Donald McDONALD ) *I.D. McDonald*

Frazer Donald McDONALD ) *F. McDonald*

Owen Ian McDONALD ) *O.I. McDonald*

Anna Lynley McDONALD ) *A.L. McDonald*

HeLen Patricia McDONALD ) *H.P. McDonald*


*R*

in the presence of:

Witness: "

Occupation:

Address:

  
\_\_\_\_\_  
**PHILIP A TONKIN**  
\_\_\_\_\_  
**SOLICITOR**  
\_\_\_\_\_  
**RANFURLY**  
\_\_\_\_\_

*L*

FIRST SCHEDULE

1 GRANTOR'S LAND

"Grantor's Land" means 1589.8935 Ha more or less being Run 204C Rock and Pillar Survey District and Sections 59 and 60 Rock and Pillar Survey District and 1067.5607 Ha more or less being Part Run 204B Upper Taieri and Rock and Pillar Survey districts and Sections 25 and 26 Block IV Upper Taieri Survey District.

2 GRANTOR'S ADDRESS

The Commissioner of Crown Lands  
Lambton House  
160 Lambton Quay PO Box 5501  
Wellington

Facsimile: (04) 460 0111

2 GRANTEE'S LAND

"Grantee's Land" means that piece of land situated in the Land District of Otago being Section 76 Block 1 Rock and Pillar Survey District and being all the land comprised and described in Certificate of Title Volume 13B folio 1020 (Otago Land Registry).

4 GRANTEE'S ADDRESS

*P*

~~SECOND~~  
~~THIRD~~ SCHEDULE  
Agreement with Lessee

DATE:

BETWEEN: IAN DONALD McDONALD, FRAZER DONALD  
McDONALD and OWEN IAN McDONALD all of Paerau  
Farmers ("the Grantee")

AND: S.H. ANDREWS & SON LIMITED being the Lessee of  
1589.8935 Ha more or less being Run 204C and Sections  
59 & 60 Block I Rock and Pillar Survey District as comprised  
in Lease P178 (Otago Registry) ("the Lessee")

BACKGROUND: The Commissioner of Crown Lands has agreed to grant an  
easement for a pipeline to the Grantee on the terms and  
conditions set out in Schedule attached.

The Lessee has accepted a payment of \$1.00 (G.S.T. inclusive)  
from the Grantee in full and final settlement of all rights the  
Lessee has to claim compensation for the grant of that  
easement.

AGREEMENT AND ACKNOWLEDGMENT

The Lessee hereby agrees to accept (and acknowledges receipt  
of) the payment of \$1.00 (GST inclusive) in full and final  
settlement of all rights the Lessee has to claim compensation  
from either the Grantee or the Commissioner of Crown Lands  
including (but not limited) to settlement of the Lessee's rights  
under Section 60 of the Land Act 1948.

SIGNED by IAN DONALD McDONALD ) *IDM Donald*  
FRAZER DONALD McDONALD and ) *F McDonald*  
OWEN IAN McDONALD ) *OIM Donald*  
in the presence of: )



PHILIP A TONKIN  
SOLICITOR  
RANFURLY

*R*

SECOND  
~~THIRD~~ SCHEDULE  
Agreement with Lessee

DATE:

BETWEEN: IAN DONALD McDONALD, FRAZER DONALD  
McDONALD and OWEN IAN McDONALD all of Paerau  
Farmers ("the Grantee")

AND: ANDREW WILLIAM WEIR and STUART GERARD WEIR  
being the Lessee of 1067.5607 Ha more or less being Part Run  
204b and Sections 25 and 28 Block IV Upper Taieri Survey  
District as comprised in Lease P175 (Otago Registry) ("the  
Lessee")

BACKGROUND: The Commissioner of Crown Lands has agreed to grant an  
easement for a pipeline to the Grantee on the terms and  
conditions set out in Schedule attached.

The Lessee has accepted a payment of \$1.00 (G.S.T. inclusive)  
from the Grantee in full and final settlement of all rights the  
Lessee has to claim compensation for the grant of that  
easement.

AGREEMENT AND ACKNOWLEDGMENT


The Lessee hereby agrees to accept (and acknowledges receipt  
of) the payment of \$1.00 (GST inclusive) in full and final  
settlement of all rights the Lessee has to claim compensation  
from either the Grantee or the Commissioner of Crown Lands  
including (but not limited) to settlement of the Lessee's rights  
under Section 60 of the Land Act 1948.

SIGNED by IAN DONALD McDONALD ) *I D Donald*  
FRAZER DONALD McDONALD and ) *F D Donald*  
OWEN IAN McDONALD ) *O I Donald*  
in the presence of: PHILIP A TONKIN )  
*[Signature]* SOLICITOR )  
RANFURLY )

SIGNED by ANDREW WILLIAM WEIR ) *A W Weir*  
and STUART GERARD WEIR ) *S G Weir*  
in the presence of: *[Signature]*  
*Bank Officer*  
*Ranfurlly*

R

SIGNED on behalf of S.H. ANDREWS )  
& SON LIMITED in the presence of: )

  
.....  
Director

Witness Signature: Patricia McCalland

Witness Name: Patricia Patricia McCalland

Witness Address: 1 Taha Street Temuka

Witness Occupation: Retired





**Appendix 7: Form of a Deed of Easement – for public access on route a-b-c and b-d on the plan**

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# **TRANSFER GRANT OF EASEMENT IN GROSS**

1. Public Access
2. Access for Management Purposes

**Land Transfer Act 1952**

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



**TRANSFER**  
*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.*

Otago

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

**Transferor** Surnames must be underlined

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

**Transferee** Surnames must be underlined

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

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

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

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

**Operative Clause**

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

Dated this            day of

**Attestation**

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

**Certified correct for the purposes of the Land Transfer Act 1952**  
**Certified that Part IIA of the Land Settlement Promotion and Land Acquisition Act 1952 does not apply.**

DOC-37213 Easement in gross template  
DOC-375942 River In Public Easement 17 June 2008  
Certified that no conveyance duty is payable by virtue of Section 24(1) of the Stamp and Cheque Duties Act 1971.  
(DEI FTF INAPPI ICARI F CERTIFICATE)

**Solicitor for the Transferee**

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

**Annexure Schedule**

**Insert below**

**“Mortgage”, “Transfer”, “Lease”, etc**

Dated  Page  of  Pages

**Definitions**

1. In this transfer unless the context otherwise requires:
  - 1.1 “Easement Area” means that part of the Servient Land being 20 metres wide which is marked [shown as “a-b-c & b-d” on the Designations Plan] “[ ]” on S.O. Plan No [ ].
  - 1.2 “Management Purposes” means:
    - the protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the easement area.
    - The management of the land administered by the Transferee (not being a member of the public) in a way that is-ecologically sustainable.
  - 1.3 “Servient Land” means the land owned by the Transferor and described on page 1.
  - 1.4 “Transferee” means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee’s tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee’s tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.
  - 1.5 “Transferor” means the owner of the Servient Land described on page 1 and includes the Transferor’s tenants and invitees.

**Standard Easement Terms**

Access

2. The Transferee has the right:
  - 2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons. *See special easement conditions in relation to motor vehicle use.*

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.  
Otaco-37213 Easement in gross template  
DOCDM-275942. Riverslea, Public Easement. 17 June 2008.

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

#### Exclusion of Schedules

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

#### Term

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

#### Temporary Suspension

7. The Transferee (not being a member of the Public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary.

#### **Dispute Resolution**

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

#### Notice

- 9.1 A notice to be given under this transfer by one party to the other is to be in writing and must:
  - (a) be hand delivered to the receiving party; or
  - (b) be sent by ordinary post to the receiving party;
  - (c) be sent by facsimile to the receiving party.
- 9.2 If clause 9.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.

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

**Special Easement Terms**

- 10 The standard easement terms contained above must be read subject to any special easement terms set out below.
- 11 The Transferee (not being a member of the public) has the right:
- 11.1 To mark the Easement Area as appropriate.
  - 11.2 To erect and maintain stiles.
  - 11.3 To erect and maintain signs informing the public:
    - (a) of the location of 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.
  - 11.4 To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 11.1 to 11.3.
- 12 The Transferee (being a member of the public) may pass and re-pass over and along the Easement Area with guns and dogs provided that:
- (a) the Transferee holds a Department of Conservation hunting permit for the adjoining Conservation Area;
  - (b) in relation to dogs only, the hunting permit allows the Transferee to take dogs on to the Conservation Area and;
  - (c) dogs may only be taken on Easement Area if confined in a motor vehicle between November 1<sup>st</sup> and April 30<sup>th</sup>.
- 13 In addition to rights conveyed in Clause 2 the Transferee (being a member of the public) may subject to the discretion of the Department of Conservation Central Otago Area Manager use a motor vehicle on the Easement Area between November 1<sup>st</sup> and April 30<sup>th</sup>. If weather conditions render the track vulnerable to damage or other factors associated with public vehicle use cause undue interference with the Transferors farming operation, the Department of Conservation Central Otago Area Manager will at his/her discretion adopt appropriate mitigating measures or preclude vehicle use within the open period.
- 14 The Transferee will erect lockable gates or barriers at *points "a & c" on the Designations Plan*. Keys will be made available during office hours to members of the public from the Department of Conservation Central Otago Area Office in Alexandra throughout the year to horse riders and to vehicle owners during those times when the Easement Area is open for public vehicle use. The Transferor must be provided with a key, or may install his/her own locks.
- 15 The Department of Conservation will upon request from the Transferor contribute 50% towards maintenance of the vehicle track ("*a-b-c" on the Designations Plan*) upon receiving an invoice from the Transferor with accompanying receipts for work done. This invoice must be supplied to the Department of Conservation Central Otago Area Manager by the 31<sup>st</sup> March. The maximum

maintenance contribution shall be \$1000.00 in 2007 and adjusted upwards at the consumer price index thereafter.

**Continuation of "Attestation"**

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

under a written delegation in the )  
presence of: )

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

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

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

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

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Management Purposes

**Land Transfer Act 1952**

Law Firm Acting

Conservancy Solicitor  
Department of Conservation  
Dunedin

TRANSFER GRANT OF EASEMENT IN GROSS

**Appendix 8: Form of a covenant - shown shaded yellow and labelled CC on the plan.**

**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 CONSERVATION ACT 1987**  
**FOR CROWN PASTORAL LAND ACT 1998 PURPOSES**



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





“ <b>Mineral</b> ”	means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
“ <b>Minister</b> ”	means the Minister of Conservation.
“ <b>Natural Water</b> ”	includes water contained in streams, the banks of which have, from time to time , been realigned.
“ <b>Owner</b> ”	means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.
“ <b>Party</b> ” or “ <b>Parties</b> ”	means either the Minister or the Owner or both.
“ <b>Working Days</b> ”	means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is situated.

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. OBJECTIVES OF THE COVENANT**

2.1 The Land must be managed:

- 2.1.1 for Conservation purposes.
- 2.1.2 to provide, subject to this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

**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;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of tree, shrub or other plant;

- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
  - 3.1.5 any burning, chemical spraying, top dressing or sowing of seed;
  - 3.1.6 any cultivation, earth works or other soil disturbances;
  - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
  - 3.1.8 the damming, diverting or taking of Natural Water;
  - 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of the 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 Conservation purposes.
  - 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 and to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild and replace all such Fences when reasonably required except as provided in clause 5.2.

#### **4. PUBLIC ACCESS**

- 4.1 The Owner must, subject to this Covenant, permit the public to enter upon the Land.

#### **5. THE MINISTER'S OBLIGATIONS**

- 5.1 The Minister must have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant.
- 5.2 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 member of the public exercising any of the rights conferred by this Covenant.

**6. IMPLEMENTATION OF OBJECTIVES**

6.1 The Minister may:

6.1.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2.1;

6.1.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.1.

**7. DURATION OF COVENANT**

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

**8. OBLIGATIONS ON SALE OF LAND**

8.1 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.

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

**9. MISCELLANEOUS MATTERS**

**9.1 Rights**

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

**9.2 Trespass Act:**

9.2.1 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;

9.2.2 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.

**9.3 Titles**

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

**9.4 Acceptance of Covenant**

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

**9.5 Fire**

9.5.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wild fire threatening the Land.

9.5.2 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:

- 9.5.2.1 requested to do so; or
- 9.5.2.2 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.

## **10. NOTICES**

- 10.1 Any 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.
- 10.2 A notice given in accordance with clause 10.1 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.
- 10.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land and must supply the Minister with the name and address of the new owner or person in control.

## **11. DEFAULT**

- 11.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:
- 11.1.1 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
  - 11.1.2 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.
- 11.2 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:
- 11.2.1 advise the defaulting party of the default;
  - 11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
  - 11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

## **12. DISPUTE RESOLUTION PROCESSES**

- 12.1 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.

### **12.2 Mediation**

- 12.2.1 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 the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties;
- 12.2.2 If the parties do not agree on a mediator, the President of the local branch of the New Zealand Law Society in the region in which the Land is located is to appoint the mediator.

**12.3 Failure of Mediation**

- 12.3.1 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;
- 12.3.2 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 local branch of the New Zealand Law Society in the region in which the Land is located.
- 12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

**13. JOINT OBLIGATIONS**

- 13.1 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 achieve the Conservation Purposes on the Land.

**14. SPECIAL CONDITIONS**

- 14.1 Special conditions relating to this Covenant are set out in Schedule 2.
- 14.2 The standard conditions contained in this Document must be read subject to any special conditions.

Executed as a Deed

Signed by \_\_\_\_\_ acting under a \_\_\_\_\_ )  
 delegation from the Commissioner of Crown Lands \_\_\_\_\_ )  
 deemed pursuant to section 80(5) of the Crown Pastoral )  
 Land Act 1998 to be the Owner of the Land for the \_\_\_\_\_ )  
 purposes of section 27 of the Conservation Act 1987 \_\_\_\_\_ )  
 in the presence of : \_\_\_\_\_ )

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

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

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

Signed by \_\_\_\_\_ acting under a \_\_\_\_\_ )  
 delegation from the Minister of Conservation \_\_\_\_\_ )  
 in the presence of : \_\_\_\_\_ )

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

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

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

**SCHEDULE 1**

**1. Description of Land**

*An area shown shaded yellow and labelled CC on the designations plan.*

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

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

C/- PO Box 5244  
DUNEDIN

C/- 77 Stuart Street  
DUNEDIN

Fax (03) 477 8626

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

S.H. Andrews and Sons Limited  
C/- John and Sally Andrews  
RD 3  
RANFURLY

**3. Conservation Values**

Historic

The area forms part of the Shepherds Hut Workings and includes NZAA site H42/107 being a nicely defined sluicing pit with feeding water races, tailings and a gully with small dams along the west side of the main mining area. The value of this area as a whole is increased by the synergy between different areas of the adjoining workings and the complete picture it provides of gold mining over a period of time. The location near the rail trail provides for good visitor interactions.

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

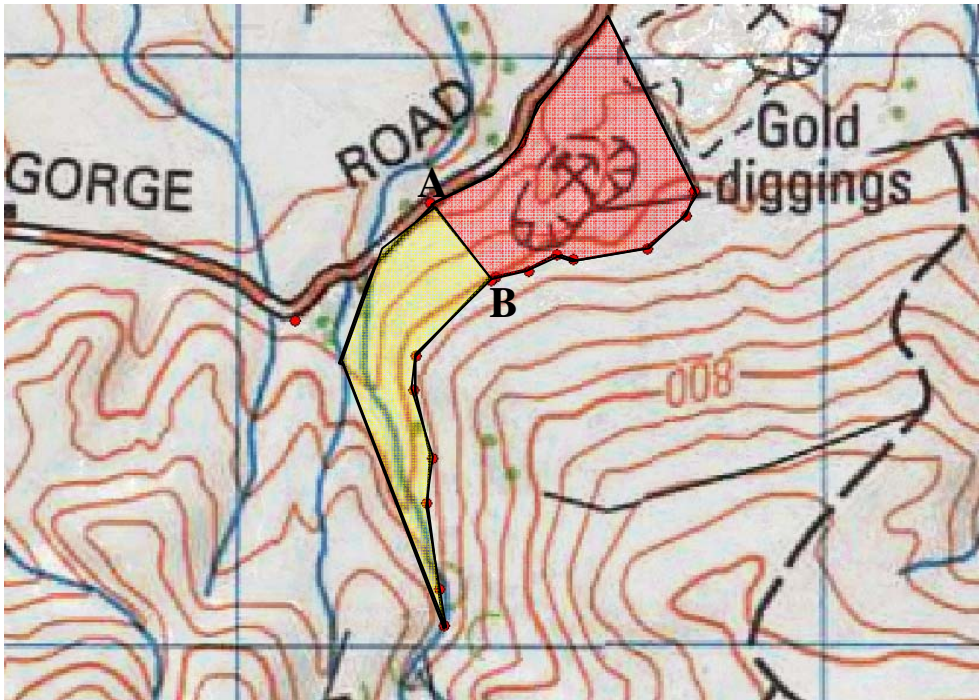
**SCHEDULE 2**

**Special Conditions**

1. Clause 3.1.1 is deleted and replaced with the following:
  - 3.1.1 grazing of the Land by livestock other than by sheep on that part of the Land shaded red on the plan in Schedule 3 and by sheep and cattle on that part of the plan shaded yellow;
2. The Owner may at his own cost erect a fence between the points marked "A" and "B" on the plan in Schedule 3.
3. The Owner must allow public foot access over the Land (without prior notification), except between 1<sup>st</sup> of October and 15<sup>th</sup> of November when access is closed for lambing purposes. Guns and dogs may not be taken onto the Land without permission from the Owner.



SCHEDULE 2



**GRANT** of

Correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister

**CONSERVATION COVENANT UNDER  
SECTION 27 OF THE  
CONSERVATION ACT 1987 FOR  
CROWN PASTORAL LAND ACT 1998 PURPOSES**

**COMMISSIONER OF CROWN  
LANDS**

to

**MINISTER OF CONSERVATION**

---

**Solicitor  
Department of Conservation  
DUNEDIN**

**Appendix 9: Form of a covenant - shown shaded yellow and labelled CC1 on the plan.**

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

**Between**

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

**and**

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

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



Department of Conservation  
*Te Papa Atawhai*

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

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

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

**BACKGROUND**

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

**OPERATIVE PARTS**

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

**1. INTERPRETATION**

1.1 In this Covenant unless the context otherwise requires:

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

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

1.2 For avoidance of doubt:

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

**2. OBJECTIVE OF THE COVENANT**

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

**3. THE OWNER’S OBLIGATIONS**

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

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

#### **4. THE MINISTER'S OBLIGATIONS**

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

#### **5. IMPLEMENTATION OF OBJECTIVES**

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

#### **6. DURATION OF COVENANT**

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

**7. OBLIGATIONS ON SALE OF LAND**

- 7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, or assignee to ensure that on any subsequent sale, lease, or assignment, any subsequent purchaser, lessee, or assignee must also comply with the terms of this Covenant including this clause.
- 7.2 If for any reason this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

**8. MISCELLANEOUS MATTERS**

**8.1 Rights**

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

**8.2 Trespass Act:**

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

**8.3 Reserves Act**

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

**8.4 Titles**

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

**8.5 Acceptance of Covenant**

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

**8.6 Fire**

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



## **9. NOTICES**

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

## **10. DEFAULT**

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

## **11. DISPUTE RESOLUTION PROCESSES**

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

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

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

**12. JOINT OBLIGATIONS**

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

**13. SPECIAL CONDITIONS**

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

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

Executed as a Deed

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

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

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

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

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

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

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

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

## SCHEDULE 1

### 1. Description of Land

*Area shaded yellow and labelled CCI on the designations plan.*

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

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

C/- PO Box 5244  
DUNEDIN

C/- 77 Stuart Street  
DUNEDIN

Fax (03) 477 8626

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

S.H. Andrews and Sons Limited  
C/- John and Sally Andrews  
RD 3  
RANFURLY

### 3. Values of Land to be Protected

Values present are an extension of those on adjoining conservation land which lies above the Land. The adjoining conservation area and this covenant were created as part of a tenure review of Riverslea pastoral lease.

The Land supports a mixed narrow leaved tussockland/grey shrubland in the headwaters of the Cap Burn. A series of bluffs are present on both sides of the creek.

Areas of moderate terrain which have been subject to repeated fire are dominated by narrow leaved snow tussock. Vegetation on bluffy and bouldery talus areas where fire has been less frequent is dominated by grey shrublands.

Narrow leaved tussock areas are interspersed with a number of native species including hard tussock, bracken, *Muehlenbeckia complexa*, patotara, golden Spaniard and *Coprosma atropurpurea*. Exotic grasses are prevalent in some open areas and the valley floor.

Grey shrublands are dominated by matagouri and mingimingi. Other common shrubs include porcupine shrub, *Coprosma rugosa* and *Carmichaelia petrei*. Of note are scattered coral broom throughout the area and several *Coprosma intertexta* shrubs growing on a terrace scarp on the true right of the Cap Burn at the northern (down stream) extremity of the Land

*C.intertexta* is ranked as "At Risk (relict)" under the New Zealand threat classification system (Townsend et al 2008) whilst coral broom (*Carmichaelia crassicaulis subsp crassicaulis*) is classified as "At Risk (declining).

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

Toi toi represents an attractive component of the vegetation along the margins of the Cap Burn.

Flat head galaxiids (*G. depressiceps*) are present in the Cap Burn. The flathead *Galaxias* is listed as a chronically threatened species 'gradual decline' (Hitchmough, 2005) and is included in the New Zealand Non-migratory Galaxiid Fishes Recovery Plan (DOC 2004).

**SCHEDULE 2**

**Special Conditions**

1. The standard terms contained in the Covenant are amended as follows:
  - 1.1 Clause 3.1.1 is deleted and replaced with the following: “Grazing of the Land by livestock other than sheep and cattle, which are permitted to be grazed on the Land.”
  - 1.2 The words “top dressing or sowing of seed” are deleted from clause 3.1.5.

**GRANT** of

Correct for the purposes of the  
Land Transfer Act 1952

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

Solicitor for the Minister

**COMMISSIONER OF CROWN  
LANDS**

to

**MINISTER OF CONSERVATION**

---

**Solicitor  
Department of Conservation  
DUNEDIN**

**Execution Section**

---

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

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

  
\_\_\_\_\_

Anthony Hatch  
Witness

Lawyer  
Occupation

100 Wadestown Rd  
Address  
Wellington 6012

**SIGNED** by SH Andrews and Sons Limited in the presence of:

\_\_\_\_\_


\_\_\_\_\_  
Witness

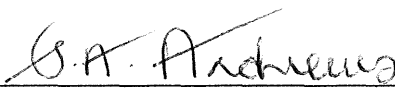
\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**OR**

**SIGNED** for and on behalf of SH Andrews and Sons Limited by two of its directors:

  
\_\_\_\_\_  
[name of director]  
JOHN DICKSON ANDREWS

  
\_\_\_\_\_  
[name of director]  
SALLY-ANN ANDREWS