

## **Crown Pastoral Land Tenure Review**

**Lease name: TEMPLE PEAK STATION**

**Lease number: PO 094**

### **Preliminary Proposal**

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

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

**October**

**09**

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

**Date:** 23 October 2009

**Parties**

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**Holder:** **Temple Peak Limited**  
WHK Cook Adam Ward Wilson  
First Floor  
50 Stanley Street  
QUEENSTOWN

**Commissioner of Crown Lands:**  
C/- **The** Tenure Review Manager  
**DTZ**  
43 Tarbert Street  
ALEXANDRA

**The Land**

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**Lease:** Temple Peak

**Legal Description:** Run 14, Sections 47-48, Sections 52-55 and Section 60-67 Block II Earnslaw Survey District, Section 38, Sections 40-41 Block I Glenorchy Survey District.

**Area:** 7934.9218 hectares

**Certificate of Title/Unique Identifier:** OT338/119

**Summary of Designations**

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Under this Proposal, the Land is designated as follows:

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

**1      The Plan**

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### Po 094 Temple Peak

#### Preliminary Proposal

Land to be restored to full Crown ownership and control as conservation area CA3

Land to be restored to Crown control subject to a grazing concession CA2

Land to be restored to Crown control subject to a Commercial Concession CA1. CA2

Land to be disposed of to the holders (excl legal roads and marginal strips)

Conservation covenant CC1

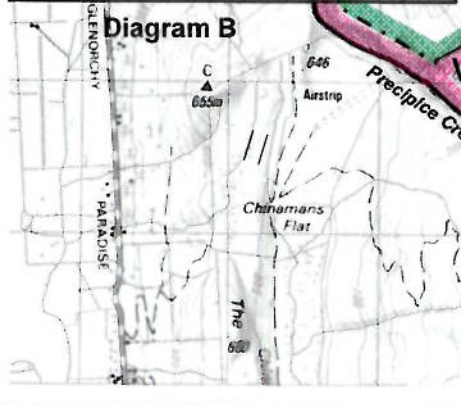
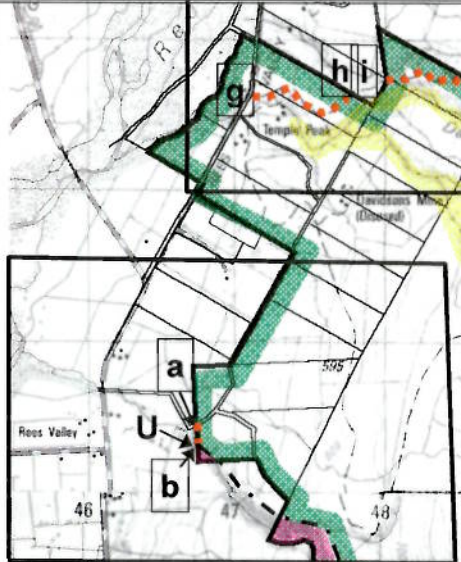
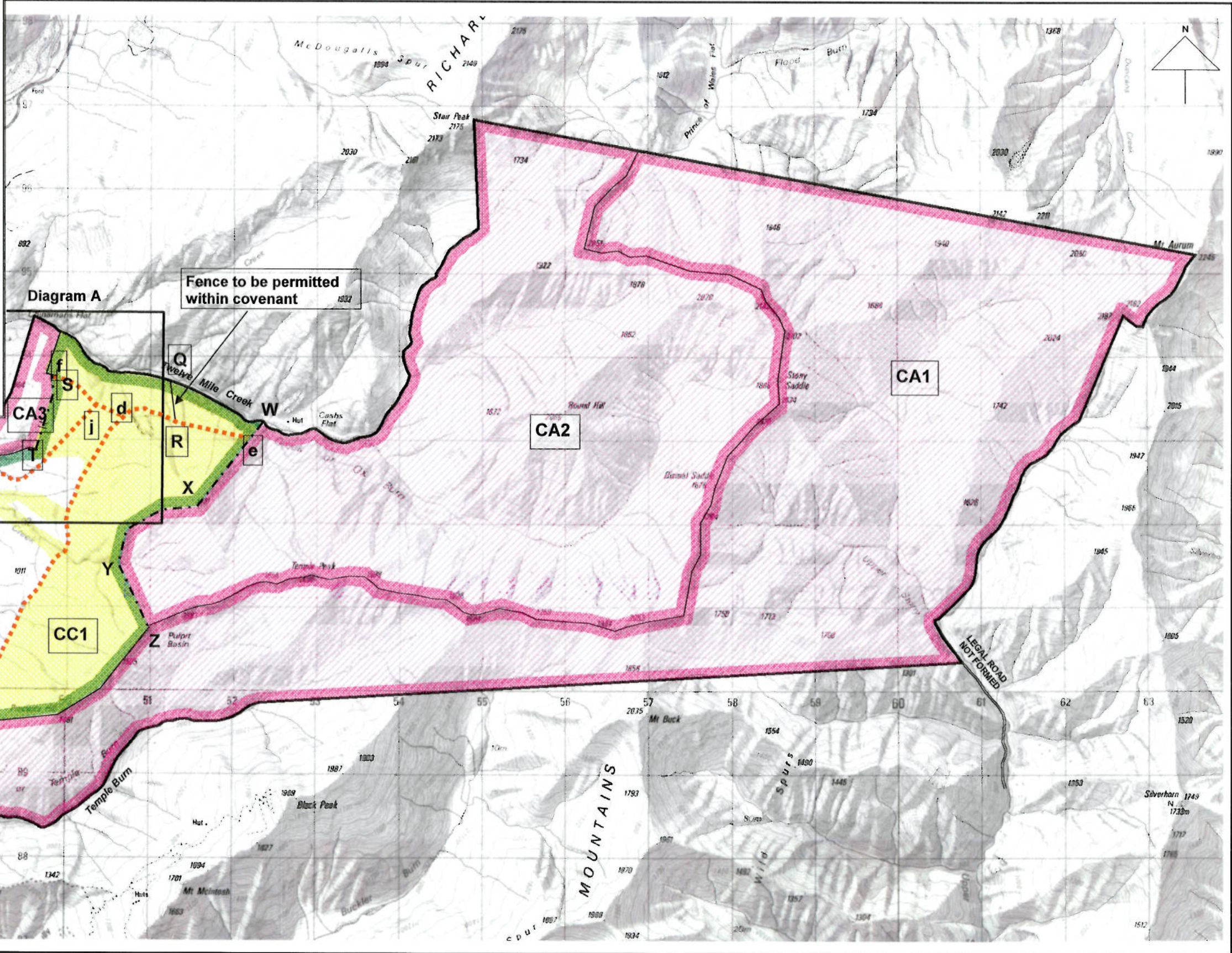
Easement for public and conservation management access 'a-b', 'c-d-e', 'd-j-f'

Easement for conservation management access 'g-h', 'i-j', 'j-d-e', 'j-f'

New Fence, 'S-T', 'U-V', 'W-X-Y-Z'



TR 317 Temple Peak 8\_5.1.5 Design Plan 23102009



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

### Temple Peak

Scale - 1:50,000

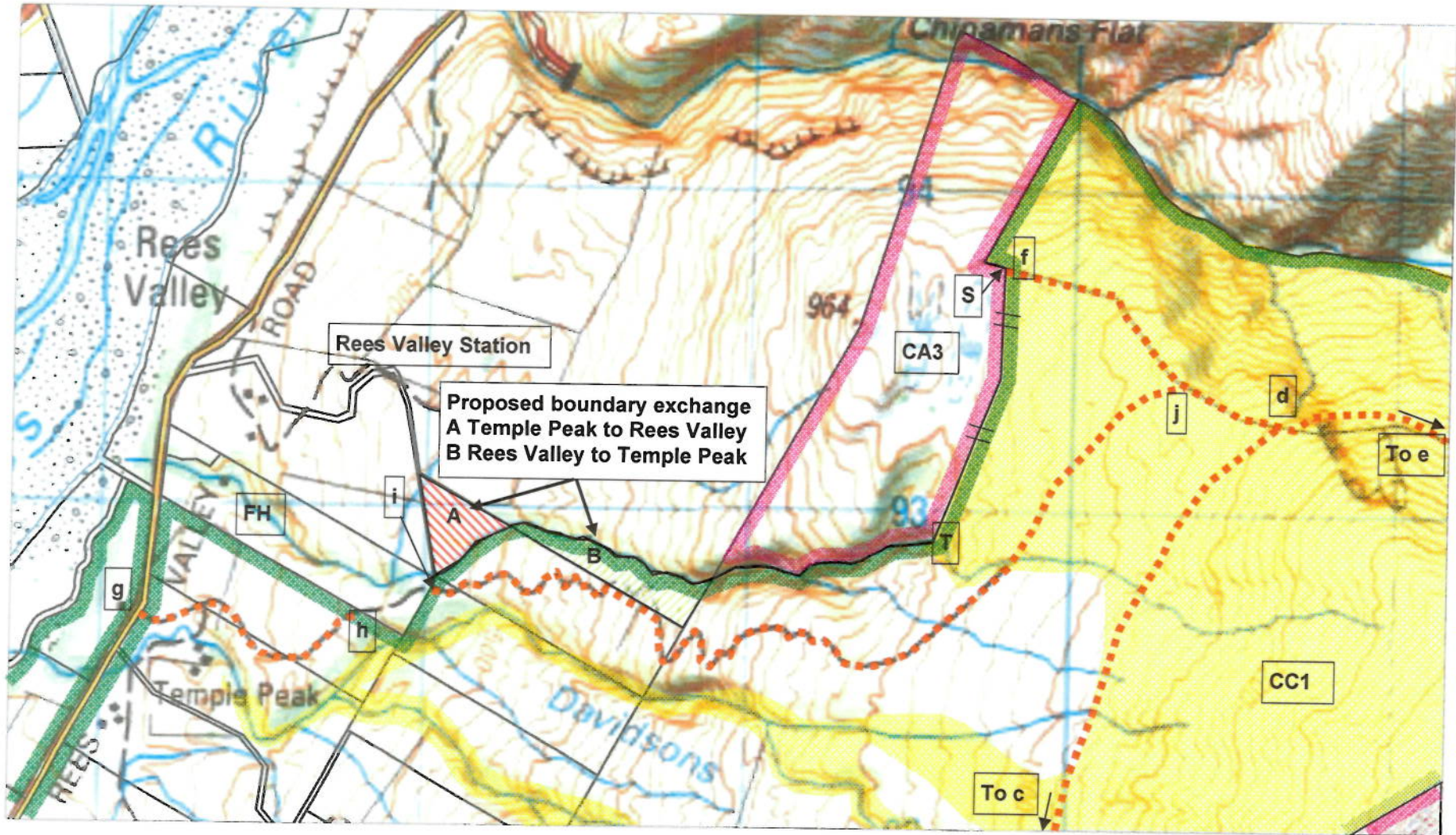


Version	1	2	3	4	5
Otago Land District Topographical Map 260 - E40 & E41					
Sheet 1 of 1 Date 13.01.2005					

This plan accurately portrays the boundary of Temple Peak Pastoral Lease and the land status is unchanged from that certified by the Chief Surveyor on 06/04/01.  
Murray Bradley,  
Crown Accredited Supplier



# Temple Peak Diagram A

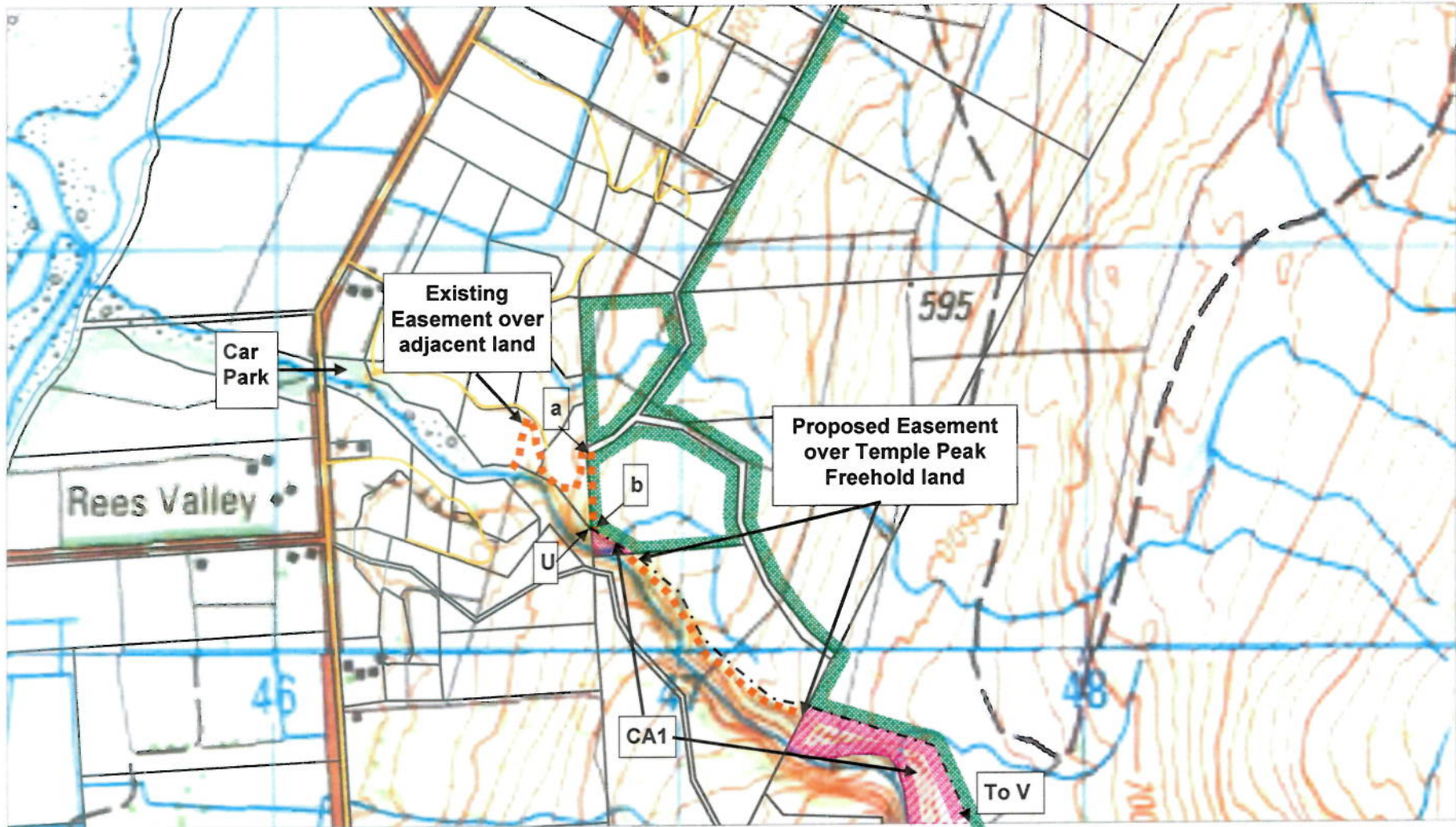


Scale: 1:18667

2000 metres



# Temple Peak Diagram B



Scale: 1:15000

1500 metres

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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).

## **3 Settlement**

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

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

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

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

If:

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

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

or

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

(a) has been agreed or determined; and

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

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## **4 Holder's Payment**

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

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

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## **5 Commissioner's Payment**

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

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

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**6 Vesting of Crown Land**

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

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**7 Issue of Certificate of Title**

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

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**8 Registration of Documents**

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

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**9 Consents**

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



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

## **10 Continuation of Lease**

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

## **11 Fencing and Construction 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 anyone 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] [the Holder] [both parties] 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
    - (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
    - (iii) the Building Act 2004; andthe 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.

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.

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.

18 Solicitors Certificate

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

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.

20 Goods and Services Tax

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



- 20.5 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.6 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date until the date of payment of the unpaid GST; and
  - (b) any Default GST.

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**21 Lowest price**

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

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**22 Costs**

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

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**23 No nomination or assignment**

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

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**24 Recreation Permit**

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

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**25 Discretionary Actions**

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

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**26 General**

- 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 24M 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.

## 27.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

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

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

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**1 Details of Designation**

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- 1.1 Under this Proposal part of the land shown marked in pink and shown as CA3 on the Plan, being 85 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

Schedule Two: Provisions relating to the Schedule Two Land

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1 Details of designation

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- 1.1 Under this Proposal part of the land shown marked in pink and shown as CA1 and CA2 on the Plan, being 6250 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 recreation concession shown on the Plan hatched pink substantially as set out in Appendix 4;
  - (b) the granting of the easement concession shown on the Plan hatched pink substantially as set out in Appendix 5;

2 Information Concerning Proposed Concessions

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2.1 Recreation Concession

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

*The concession is for aircraft landing, for the purpose of heliskiing for a term of 10 years from issue date. The Concession is granted for the period between 15<sup>th</sup> June and 30<sup>th</sup> October (both dates inclusive) each year during the term.*

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

*The operational area for this concession activity comprises approx 2200 ha of spectacular remote mountain country in the Ox Burn, Flood Burn and Davidsons Creek catchments. Ground cover comprises tall and short tussocklands, bluff communities, shrublands and alpine areas. Proposed status for the area is conservation area sUbject to a commercial recreation concession to be managed by the Department of Conservation.*

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:

*This concession activity is a continuation of an activity that has been previously conducted on the land.*

*The proposed activities potential adverse effects are:*

- a) *the adverse effects on the natural features of the land; and*
- b) *the adverse effects on other users of the area.*

*Adverse effects on the natural features of the land shall be avoided by the concessionaire complying with certain conditions, including those contained in the department's environmental and water care codes. The department also reserves the right to both monitor compliance with these conditions and to require the concessionaire to alter their activities in a manner so to remedy any adverse environmental effects.*

*Adverse effects on other users shall be somewhat mitigated by a requirement that the operator avoids land skiing parties in the vicinity of private parties. The installation of structures and the storage of fuel within the proposed conservation area are prohibited unless approved by the department.*



*The concession document contains clauses relating to littering, noisome and/or dangerous activities and fires.*

4. Details of the proposed type of concession:

*Recreation/tourism concession under Section 17Q Conservation Act 1987.*

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

Proposed duration:

*10 years.*

Reasons for proposed duration]:

*The term will allow the Department the future opportunity to review the activity's suitability and to consider in relation to departmental policy regarding issuing future heliskiing concessions i.e. tendering and securing a full range of recreation opportunities.*

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: *Temple Peak Station who propose to assign the concession to Alpine Heliski Limited*

Relevant information: *The Department requires that the concessionaire must hold current heliskiing and heliboarding industry minimum safety qualifications and also meet Civil Aviation Authority qualifications and standards including part 119 and 135 requirements of the CAA rules or other such standards as CAA may require. The Department also requires the Concessionaire to take measures that will avoid, remedy or mitigate adverse effects of their aircraft and the heliskiing and heliboarding activities on public conservation land and its visitors.*

*It is noted that Temple Peak Station intend to transfer the concession to Alpine Heliski Limited. Alpine Heliski Limited has been conducting heli skiing activities in conjunction with Alpine Helicopters for some five years and hold recreation permits issued under the Land Act 1948 over a substantial area of land held under pastoral lease tenure.*

2.2 Grazing Concession:

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

*The Concessionaire must only use the land for grazing sheep wethers. Not more than 1000 wethers may be grazed. Grazing is to be confined between the period 1 January - 10 April. Maximum stocking levels may be decreased or the concession terminated in terms 2 and 3 if monitoring results reveal a deterioration in vegetation condition - see criteria set out in Management Prescription Document. The concession also allows for the use of dogs on the land for mustering purposes.*

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

*The concession area comprises some 2200 hectares of spectacular remote mountain country in the Ox Burn, Flood Burn and Davidsons Creek catchments. Ground cover comprises tall and short tussocklands, bluff communities, shrublands and alpine areas. Proposed status for the combined area is conservation land subject to a grazing concession.*

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:

*Given the large area subject to the concession, the stocking rate is conservative. The rationale for continued grazing is that conservation values in the area have remained largely intact during the period which the proposed concessionaires have grazed the area under their pastoral lease.*

*The concession document contains eight standard clauses dealing with protection of the environment. These preclude interference with natural features, deposit of rubbish or other dangerous or unsightly matter, oversowing and topdressing and obstruction of pUblc enjoyment of the area. In addition to the standard clauses it contains a specific clause relating to protection of native wildlife (in particular to keas).*

*DOC staff will regularly visit the area for a diverse range of activities including wild animal control and ecological monitoring work and will therefore be aware if the concession activity is haVing any negative effects.*

4. Details of the proposed type of concession:

*Grazing concession under Section 17Q Conservation Act 1987.*

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

Proposed duration:

*21 years (3x7 year renewal periods subject to favourable results from vegetation monitoring).*

Reasons for proposed duration]:

*In light of the relatively benign effects associated with the proposed Grantees past management of the area and their reliance on this grazing in order to operate a viable farming operation, a longer than usual term is proposed. This term is proposed on the basis that monitoring prOVisions allow stock numbers*

***to be reduced or the concession to be terminated if results point to a deterioration in vegetation condition.***

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: ***Temple Peak Limited (Mark and Amanda Hasselman)***

Relevant information: ***The proposed concessionaires currently graze the area which is part of Temple Peak pastoral lease. DOC currently has a good working relationship with the Hasselmans over a variety of issues including pest control and community planning issues. The Hasselmans obviously have a strong affinity with the land and the values which it contains.***

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

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**1 Details of designation**

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- 1.1 Under this Proposal the land shown marked in green on the Plan, being 1600 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 marked as a-b, c-d-e, and d-j-f on the Plan and substantially as set out in Appendix 6; and
  - (d) the easement marked as g-h, i-j, j-d-e, and j-f on the Plan and substantially as set out in Appendix 7;
  - (e) the covenant (shown on the Plan in yellow) substantially as set out in Appendix 8.



**Schedule Four: Conditions**

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



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

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

Dated:

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

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:  
Occupation:  
Address:

**Appendix 2: Example of Solicitors Certificate**

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**Certifications**

I [ ] hereby certify as follows:

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

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

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

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

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

Yours faithfully

*[signed by principal of law firm]*



Appendix 3: Indicative Fencing and Construction Requirements

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Fenceline

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Length and location: 3500 metres approximately shown on the Plan as W-X-Y-Z

1000 metres approximately shown on the Plan as S-T

1800 metres approximately shown on the Plan as U-V

Type: Sheep and Cattle fence

*Specifications:*

1. Fence to be constructed of five HT (2.4mm) wires and two bottom No 8 wires.
2. 2.1 metre (7") treated timber strainers with treated timber stay to be used for gateways.
3. 125 mm (5") treated timber posts to be used where required.
4. All strainers, angle posts and dip posts to be driven or dug in and rammed and footed with acceptable footing material. No 9 wire to be used on foots. All dips and hollows to be tied down to Y standards of a minimum length of 75 cm on rocky ground and 130 cm on soft ground.
5. All strainers and angles are to be mortised, stayed and blocked. Stays are to be one-third of the way up the posts.
6. Tie-backs are permitted on both sides of the fence.
7. All wires are to be securely and neatly tied off and strained evenly. Bottom wire is to be kept 15 cm off the ground.
8. Post staples (*barbed*) to be driven well in but allow the wire to run through.
9. Strains not to exceed 400 metres for HT wire and 250 metres for No 8 wire on easy country.
10. Posts to be driven or dug in to such a depth that 112 cm (44") remains out of the ground.
11. Strainers and angle posts to be dug in to such a depth that 117 cm (46") remains out of the ground.
12. Under no circumstances are any strainers, posts or stays to be shortened either prior to or subsequent to their placement in the ground.
13. Six Y standards per 20 metres to be used. Y standards to be mostly 150 cm (5' long with 135 cm (4'6") standards allowed on rocky ground and 165 cm (5'6") standards on soft ground.
14. Triplex strainers to be used on all strains.
15. Lightning droppers to be used where required on either side of gateways.
16. Gate ways are to be constructed on the new fences on existing tracks and near the corners of blocks. All gates are to be swung and to be steel gates 4.2 metres wide.
17. No mechanical line clearance is to be undertaken during construction of fences

Construction

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Nil

**Appendix 4: Form of Recreation Concession to be Created**

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Concession number:

DATED \_\_\_\_\_

**Between**

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

**and**

**TEMPLE PEAK LIMITED**  
**("the Concessionaire")**

**CONCESSION DOCUMENT**  
**(LICENCE)**



Department of Conservation  
*Te Papa Atawhai*



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

**"Concession Fee Payment Date"** means the date specified in Item 5 of Schedule 1 on which the Concession Fee falls due for payment.

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

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

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

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

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

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

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

**"Land"** means the Conservation Area, more particularly described in Item 1 of Schedule 1

**"Licence"** has the same meaning as "Licence" in section 2 of the Conservation Act 1987 and for purposes of this Document is the Licence granted under this Document by the Grantor to the Concessionaire under section 17Q of the Conservation Act 1987.

**"Penalty Interest Rate"** means the rate specified in Item 6 of Schedule 1.

**"Term"** means the period of time specified in Item 3 of Schedule 1 during which this Document operates.

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

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document and includes that party's successors in title;

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

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

## **2.0 GRANT OF LICENCE**

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

## **3.0 TERM**

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

## **4.0 SURRENDER OF DOCUMENT**

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

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

## **5.0 CONCESSION FEE**

5.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee plus GST on the Concession Fee Payment Date specified in Items 4 and 5 of Schedule 1.

5.2 If the Concessionaire defaults in payment of the Concession Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid

Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 6 of Schedule 1.

## **6.0 OTHER CHARGES**

- 6.1 In addition to the Concession Fee the Concessionaire must pay the following charges ("Other Charges") on demand and in the manner directed by the Grantor:
- (a) all 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 Concessionaire's use of the Land or the carrying on of the Concession Activity;
  - (b) all costs in relation to the supply of water, sewage, drainage and rubbish disposal which are not otherwise included in any charges or assessments made by any authority or by the Grantor;
  - (c) all costs incurred by the Grantor in providing an annual building warrant of fitness to any territorial authority, including any costs paid to an independent qualified person for any report establishing or re-establishing compliance with a compliance schedule. If any work is required to any structure or facility of the Grantor's on the Land in order to obtain a new building warrant of fitness, the Grantor is to pay the cost of that work subject to the Concessionaire's obligations under clause 10.
- 6.2 If the Concessionaire surrenders this Document with the consent of the Grantor, the Concessionaire will continue to be liable for and must pay to the Grantor on demand in respect of its use of the Land and its conduct of the Concession Activity all Other Charges which may be due for the current payment period even though that this period may not expire until after the date of surrender.
- 6.3 Where the Grantor or Director-General has provided a community service, benefit or facility for the benefit of the Concessionaire under section 17ZH of the Conservation Act 1987, the Concessionaire must pay the Grantor whatever contribution the Grantor determines as specified in Schedule 2.
- 6.4 The Concessionaire must pay all charges for electric power, water supply, geothermal energy, telephone rental and other utilities supplied to the Land. The Grantor will not be liable for any cost incurred in re-establishing the supply of any of these utilities in the event of any of them becoming unavailable for any reason.
- 6.5 If, during the Term, the Land becomes rateable land, following any amendment to the Rating Powers Act 1988 or the introduction of a new Act in substitution for it and the Land's rateability is attributable to the Concession Activity, or if separate rates are levied under section 7 of the Rating Powers Act 1988 in respect of the Land and are attributable to the Concession Activity, the Concessionaire is to pay any rates which may be struck or levied and which are attributable to the Concession Activity; but both parties expressly agree that such payment is not to constitute an acknowledgement of exclusive possession by the Concessionaire of the Land.



## **7.0 CONCESSION FEE REVIEW**

- 7.1 The Grantor will review the Concession Fee on the Concession Fee Review Dates in the following manner:
- (a) the Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
  - (b) subject to clause 7.1(e), the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
  - (c) if, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 7.2 (a) or (b).
  - (d) if the Concessionaire does not give notice to the Grantor under clause 7.1 (c) the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.
  - (e) notwithstanding clause 7.1(b), the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and will be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
  - (f) until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.
- 7.2 Immediately the Concessionaire gives notice to the Grantor under clause 7.1(c) the parties will endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:
- (a) by one party giving written notice to the other requiring the new Concession Fee to be determined by arbitration; or, if the parties agree,
  - (b) by registered valuers acting as experts and not as arbitrators as follows:
    - (i) each party will appoint a valuer and give written notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.

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

7.3 The Concessionaire shall pay to the Grantor all costs associated with any Concession Fee Review (i.e. the cost of staff time spent in reviewing the fee plus the cost of any independent valuation advice).

## **8 CONCESSION ACTIVITY**

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

## **9 SUPPLY OF INFORMATION**

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

## **10 COMPLIANCE**

- 10.1 The Concessionaire will comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan as required by section 17W(7) of the Conservation Act 1987 pursuant to Part IIIA of the Conservation Act 1987 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 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land, or affecting or relating to the Concession Activity.
- 10.2 The Concessionaire must comply with all conditions imposed by the Grantor in granting this Document.
- 10.3
- (a) A breach or contravention by the Concessionaire of a relevant conservation management strategy or conservation management plan will be deemed to be a breach of this Document.
  - (b) A breach or contravention by the Concessionaire of the Legislation affecting or relating to the Land or affecting or relating to the Concession Activity will be deemed to be a breach of this Document.

- 10.4 If the Legislation requires the Grantor to spend money on the Grantor's own structures, facilities or alterations on the Land, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% of the amount spent by the Grantor.
- 10.5 If the Legislation requires the Grantor to spend money on structures, facilities or alterations on the Land which the Grantor considers unreasonable, the Grantor may determine this Document and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 27.

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

- 11.1 The Concessionaire must not erect or bring on to the Land any structure, install any facility or alter the Land in any way without the prior written consent of the Grantor.
- 11.2 In giving approval under clause 11.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.
- 11.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.
- 11.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before :
- (a) erecting or altering any structure on the Land;
  - (b) bringing any structure on to the Land;
  - (c) installing any facilities on the Land; or
  - (d) altering the Land in any way.
- 11.5 The Concessionaire must not commence any work on the Land until the Grantor has given written approval.
- 11.6 When undertaking any work under this clause the Concessionaire must comply with all statutory requirements including obtaining building consents and code compliance certificates under the Building Act 1991.
- 11.7 The Concessionaire is to keep and maintain its structures and facilities on, or alterations to, the Land in good repair.

## **12 CONCESSIONAIRE'S FURTHER OBLIGATIONS**

- 12.1 The Concessionaire must at the Concessionaire's expense:

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

### **13 PROTECTION OF THE ENVIRONMENT**

- 13.1 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, animals, plants, or historic resources on the Land; or
  - (b) bring any plants, animals, or (in the case of guided walking operations only) firearms on to the Land; or
  - (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
  - (d) pile or store materials in any place on the Land where it may obstruct the public or create a nuisance; or
  - (e) conduct any noxious, noisome, dangerous or offensive activity on the Land;
- 13.2 The Concessionaire will keep the Land in a clean and tidy condition to the satisfaction of the Area Manager Department of Conservation Wakatipu and free of weeds and all organisms specified as pests in a relevant pest management strategy.
- 13.3 The Concessionaire must make adequate provision for suitable sanitary facilities for the Land if required by the Grantor and for the disposal of all refuse material and is to comply with the reasonable directions of the Grantor in regard to these matters.
- 13.4 The Concessionaire will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition to the satisfaction of the Area Manager Department of Conservation Wakatipu. If reasonably required by the Grantor the Concessionaire will paint all structures and facilities in colours specified in writing by the Grantor and with paints of a type approved in writing by the Grantor.

- 13.5 If, during the Term, the Concessionaire removes a structure or facility from the Land the Concessionaire will, unless the Grantor indicates otherwise in writing, repair and make good at its own expense all damage which may have been done by the removal and will leave the Land in a clean and tidy condition.
- 13.6 Should the Concessionaire fail to repair and restore the damage within 6 months of the removal of a structure or facility or such further time as the Grantor may approve in writing, the Grantor may undertake whatever works and operations are necessary to effect the same and may recover from the Concessionaire any costs and expenses incurred in doing it as a debt due by the Concessionaire to the Grantor.
- 13.7 The Concessionaire must:
- (a) take all reasonable precautions to ensure no fire hazards arise from its carrying out of the Concession Activity or from any act or neglect of its employees, contractors, invitees or agents;
  - (b) not light or permit to be lit any fire on the Land without the written permission of the Grantor in which event the following provisions are to apply:
    - (i) the Concessionaire may light or use at a campsite a fire in the open air if the fire is an approved camp fire and is fuelled by dead wood only;
    - (ii) an approved camp fire is any fire lit for the purpose of camping, cooking, comfort, or warmth;
    - (iii) an approved camp fire may not be lit:
      - (aa) within 3 metres of a tree or place underneath overhanging vegetation;
      - (bb) within 3 metres of a log or dry vegetation;
      - (cc) unless the Concessionaire clears all combustible material away from around the base of the approved camp fire before lighting it;
      - (dd) where there are notices or other advertising limiting the lighting of fires to a particular receptacle or to a particular place;
      - (ee) during a prohibited fire season
    - (iv) for the purpose of this paragraph "open air" has the same meaning ascribed to it in the Forest and Rural Fires Act 1977
  - (c) not store or permit to be stored fuels or other combustible materials on the Land without the written permission of the Grantor. In that event storage of fuels and combustible materials must be in accordance with the provisions of the Dangerous Goods Act 1974;
  - (d) comply with the Grantor's requirements for fire warning and safety equipment and for fire fighting equipment to be kept on the Land at all times.
- 13.8 The Concessionaire must ensure that its employees, clients and invitees do not carry out any acts prohibited under clause 13.
- 13.9 The Concessionaire must immediately report to the Grantor any act in contravention of clause 13 and wherever possible the names and addresses of any person carrying out such acts; and must provide the Grantor with details of the circumstances surrounding such incidents.

## **14 ADVERTISING**

- 14.1 The Concessionaire must not erect or display any signs or advertising on the Land without the prior written approval of the Grantor. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.
- 14.2 Where required by the Grantor, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the Concession Activity under a Concession granted by the Grantor on land administered by the Department.
- 14.3 If required by the Grantor in writing the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the Land and the surrounding area.
- 14.4 In preparing such information the Concessionaire must obtain information from and have regard to the views of tangata whenua.

## **15 EMPLOYMENT OF STAFF**

- 15.1 The Concessionaire must ensure that the Concession Activity is conducted at all times by a person or persons suitably trained and qualified to carry out the Concession Activity.
- 15.2 The Concessionaire must provide the Grantor with evidence of the competency and qualifications of its employees if the Grantor so requests.
- 15.3 The Concessionaire must comply with all statutes relating to employment of staff.

## **16 HEALTH AND SAFETY**

- 16.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner and must comply with:
- (a) the Health and Safety in Employment Act 1992 and its regulations; and
  - (b) all other statutes, regulations and bylaws and all notices and requisitions of any competent authority relating to the conduct of the Concession Activity.
- 16.2 The Concessionaire must notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment.
- 16.3 The Concessionaire must:
- (a) take all reasonable steps to protect the safety of all persons present on the Land and must, where necessary, erect protective signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
  - (b) take all reasonable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware.



- 16.4 Before commencing the Concession Activity the Concessionaire must, if required by the Grantor, prepare a safety plan and have it audited by a suitably qualified person approved by the Grantor.
- 16.5 The Concessionaire must not commence the Concession Activity until:
- (a) the person appointed to audit the safety plan has certified the safety plan is suitable for the Concession Activity; and
  - (b) the Concessionaire supplies the Grantor with a copy of the safety plan certified under clause 16.5(a).
- 16.6 Receipt of the certified safety plan by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 16 and is not to be construed as implying any responsibility or liability on the part of the Grantor.

## **17 TEMPORARY SUSPENSION**

- 17.1 The Grantor may temporarily suspend this Document if, in the opinion of the Grantor, there is a temporary risk to public safety or the safety of the Department's staff or the safety of other Concessionaires whether arising from natural events such as earthquake, land slip, volcanic activity, or flood or whether arising in any other way including the activities of the Concessionaire, its employees, clients or invitees.
- 17.2 If in the opinion of the Grantor the activities of the Concessionaire, its employees, clients or invitees are having or may have an adverse effect on the environment and the Grantor is of the opinion that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, the Grantor may suspend this Concession until the Concessionaire remedies, avoids or mitigates the adverse impact to the satisfaction of the Grantor.
- 17.3 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 17.1 and 17.2 and also while the Grantor investigates any potential breach or possible offence by the Concessionaire whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.
- 17.4 The word "investigates" in clause 17.3 includes the laying of charges and awaiting the decision of the Court.
- 17.5 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 17.6 The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under clause 17 including loss of profits.

## 18 ASSIGNMENT

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

## 19 TERMINATION

- 19.1 The Grantor may terminate this Concession by 14 days notice in writing to the Concessionaire if:
- (a) the Concession Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
  - (b)
    - (i) the Concessionaire breaches any terms of this Document; and
    - (ii) the Grantor has notified the Concessionaire in writing of the breach; and
    - (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or
  - (c) the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the services provided by the Concessionaire are manifestly inadequate; or
  - (d) the Concessionaire is convicted of an offence, whether or not related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Health and Safety in Employment Act 1982; or the Building Act 1991; or the Resource Management Act 1991; or the Biosecurity Act 1993; or
  - (e) the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the

- Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
- (f) there is, in the opinion of the Grantor, a permanent risk to public safety or the environment whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Document on the part of the Concessionaire.
- 19.2 If the Grantor terminates the Concession under this clause all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.
- 19.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

## **20 GRANTOR MAY REMEDY CONCESSIONAIRE'S DEFAULT**

- 20.1 The Grantor may elect to remedy at any time without notice any default by the Concessionaire under this Concession.
- 20.2 The Concessionaire must pay to the Grantor forthwith on demand all reasonable costs and expenses incurred by the Grantor, including legal costs and expenses as between solicitor and client, in remedying such default.

## **21 GRANTOR'S DIRECTIONS**

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

## **22 POWERS, RIGHTS AND AUTHORITIES**

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

## **23 INDEMNITIES AND INSURANCE**

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

- 23.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.
- 23.3 Without prejudice to or in any way limiting its liability under clause 23.1 the Concessionaire must take out and keep in force during the Term:
- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Land and covering:
    - (i) general indemnity for a sum not less than the amount specified in Item 8 of Schedule 1; and
    - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 9 of Schedule 1; and
  - (b) statutory liability for the amount specified in Item 10 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 11 of Schedule 1.
- 23.4 With respect to clause 23.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.
- 23.5 (a) Without prejudice to any other provision of this Document the Concessionaire will indemnify the Grantor against all damage or loss resulting from any act or omission on the part of the Concessionaire or the Concessionaire's employees, agents, contractors, clients, or invitees;
- (b) The Concessionaire is to recompense the Grantor for all expenses incurred by the Grantor in making good any damage to the Land or the property of the Grantor resulting from such act or omission.
- 23.6 (a) The Grantor will not be liable and does not accept any responsibility for damage to or interference with the Concession Activity or to the structures or facilities on the Land or any other indirect or consequential damage due to any natural disaster, vandalism, sabotage, fire or exposure to the elements except where, subject to the clause 23.6(b), such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors;
- (b) Where the Grantor is found to be liable due to a wilful act or omission, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures and facilities.
- 23.7 Notwithstanding anything else in clause 23 the Grantor is not liable for any indirect or consequential loss howsoever caused.

## **24 ENVIRONMENTAL MONITORING AND LAND REHABILITATION**

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

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

## **25 EXPIRY OF LICENCE**

- 25.1 If the parties have not entered into a new agreement by the Final Expiry Date the Concessionaire accepts that the Grantor has no liability whatsoever for any costs incurred by the Concessionaire as a result of the expiry of this Document.
- 25.2 Upon the expiry or earlier termination of the Term the Grantor will not be liable to pay compensation for any structure, facility or land alteration of the Concessionaire, all of which, subject to clause 25.4 are to remain the property of the Concessionaire and will be deemed not to have become fixtures on the Land.
- 25.3 Subject to any conditions set out in Schedule 3, at the expiry, surrender or termination of the Term the Concessionaire must remove all the Concessionaire's structures and facilities on the Land unless the Grantor approves otherwise in writing.
- 25.4 If the Concessionaire does not remove the structures and facilities as required by clause 25.3, or as otherwise approved by the Grantor, the structures and facilities remaining on the Land will be deemed to have become fixtures and ownership in them will vest absolutely in the Grantor.
- 25.5 In that case the Grantor will not be liable to pay any compensation to the Concessionaire for the structures and facilities and may, at the Grantor's option, remove or destroy or otherwise dispose of them and recover the costs and expenses of the removal or destruction from the Concessionaire as a debt due to the Grantor.

## **26 FORCE MAJEURE**

- 26.1 Neither party will be liable to the other party for any delay in performance of, or failure to perform, its obligations (other than a payment of money) under this Document as a result of any cause beyond its reasonable control.
- 26.2 If the delay or failure continues for at least 28 days either party will be entitled to terminate this Document by notice in writing.

## **27 DISPUTE RESOLUTION AND ARBITRATION**

- 27.1 If a dispute arises between the parties in connection with this Document including without limitation the interpretation, validity, breach or termination of any of its provisions, the parties will, without prejudice to any other rights or entitlements they may have under this Document or otherwise, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any

other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.

- 27.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 27.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 27.4 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 27.5 The arbitrator must include in the arbitration award reasons for the determination.

## **28 NOTICES**

- 28.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 12 of Schedule 1.
- 28.2 A notice given in accordance with clause 28.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of a letter, on the third working day after posting;
  - (c) in the case of facsimile, on the date of dispatch.

## **29 COSTS**

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

## **30 RELATIONSHIP OF PARTIES**

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

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

### **31 OFFENCES**

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

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

### **32 SEVERABILITY**

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

### **33 ENTIRE UNDERSTANDING**

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

### **34 VARIATIONS**

34.1 The provisions of section 17ZC of the Conservation Act 1987 apply to all variations sought by the Concessionaire and to any applications for extension of the Term.

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

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



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

### **35.0 GUARANTEE**

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

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

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

35.2 Subject to clause 35.1 the Guarantor covenants with the Grantor that:

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

### **36 CO-SITING**

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

- (a) would impact on the ability of the Concessionaire to conduct its Concession Activity;  
or

(b) would result in a substantial change to the Concession Activity carried out by the Concessionaire on the Land.

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

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

Signed by:  
Area Manager Department of Conservation  
Wakatipu Area Office for and on behalf of  
the Minister of Conservation  
pursuant to a written delegation  
in the presence of :

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

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

Occupation \_\_\_\_\_

Address \_\_\_\_\_

Signed by Temple Station Limited by its Directors:

\_\_\_\_\_

\_\_\_\_\_ as Concessionaire

Signed by :

\_\_\_\_\_

as Guarantor  
in the presence of :

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

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

Occupation \_\_\_\_\_

Address \_\_\_\_\_

## SCHEDULE 1

1. **Land:** “*Labelled CA1 & CA2 on the Proposed Designations Plan*” (see definition of Land in clause 1.1)
2. **Concession Activity:** (see definition of Concession Activity in clause 1.1)  
The Grantor will allow the Concessionaire to conduct heliskiing only between the dates of 15<sup>th</sup> June and 30<sup>th</sup> October (both dates inclusive) each year during the term.
3. **Term:** 10 years commencing on date of signing of the substantive proposal for the tenure review of Temple Peak pastoral lease or such residual that remains of this term when the Concession is granted. (see clause 3.1)
4. **Concession Fee:** \$30 plus GST per person per day OR the lump sum fee of \$500 plus GST whichever is the greater. The per person fee to be increased by \$1 plus GST per year. (see clause 5.1)
5. **Concession Fee Payment Date:** Before 30 June (see clause 5.1)
6. **Penalty Interest Rate:** (see clause 5.2)  
Double the Grantor’s bank’s current highest 90 day bank bill buy rate
7. **Concession Fee Review Date:**  
At three yearly intervals from the commencement date.
8. **Public Liability General Indemnity Cover:** (see clause 23.3)  
for \$1,000,000
9. **Public Liability Forest & Rural Fire Extension:** (see clause 23.3)  
for \$1,000,000
10. **Statutory Liability:** (see clause 23.3)  
Amount: Nil
- 11(a) **Other Types of Insurance:** not applicable (see clause 23.3)
- 11(b) **Amounts Insured for Other Types of Insurances:** not applicable (see clause 23.3)

12. **Address for Notices:** *(see clause 28)*

(a) Grantor: Conservation House, 77 Lower Stuart Street, Dunedin  
Postal – Department of Conservation PO Box 5244 Dunedin 9058  
Telephone: (03) 477-0677  
Facsimile: (03) 477 8626  
DUNEDIN 9058

(b) Concessionaire: Temple Peak Station  
Rees Valley Road  
Glenorchy  
Facsimile: Nil  
Telephone: (03) 442-9942

## **SCHEDULE 2**

### *Community Service Contribution*

Nil

## SCHEDULE 3

### *Special Conditions*

1. The Concessionaire will ensure the companies' employees and clients adhere to the New Zealand Environmental Care Code and Water Care Code attached to this Permit.
2. By 31 December in each year the Concessionaire shall forward to the Conservator, Department of Conservation, Dunedin, an annual activity report showing the number of clients guided on full day and half day trips during the last year and shall at the same time forward the Concession Fee payable. The activity report shall specify the numbers guided, and areas visited on a daily basis.
3. The Concessionaire shall indemnify the Grantor, against all and any action claim injury damage or loss which may arise as a result of the granting of this licence.
4. The Grantor reserves the right to apply restrictions on the Concession Activity, or withdraw all or part of the Land or Concession Activity approved, if in the sole opinion of the Grantor the Concession Activity granted is having, or may have, an adverse effect on the physical or social environment and the effect cannot be avoided, remedied or mitigated to an extent satisfactory to the Grantor. The concessionaire shall not be entitled to any compensation in the event of such action being taken.
5. The Grantor shall be entitled to send an officer of the Department of Conservation free of charge on the Concession Activity during the term of this permit for the purpose of assessing the impact of the Concession Activity, and compliance with the terms and conditions of the Permit.
6. The Grantor may require a monitoring programme to be implemented that records the social and environmental effects of the activity. The monitoring programme is to be approved by the Grantor. All costs associated with the monitoring programme are to be met by the Concessionaire.
7. This Concessionaire shall limit party size to 24 clients per trip unless otherwise stated and shall conduct a maximum of 15 trips per year.
8. No landings will occur within 500 metres of any recreational party not associated with the Concession Activity.
8. The Grantor acknowledges the intent of the Concessionaire to transfer and assign this concession, pursuant to clause 18 of this concession, to Alpine Heliski Limited. The Grantor has been provided with, through the concession application process, details of how Alpine Heliski Limited will conduct the activity pursuant to this concession. Upon the basis that the transfer and assignment to Alpine Heliski Limited takes place within six months of the date of

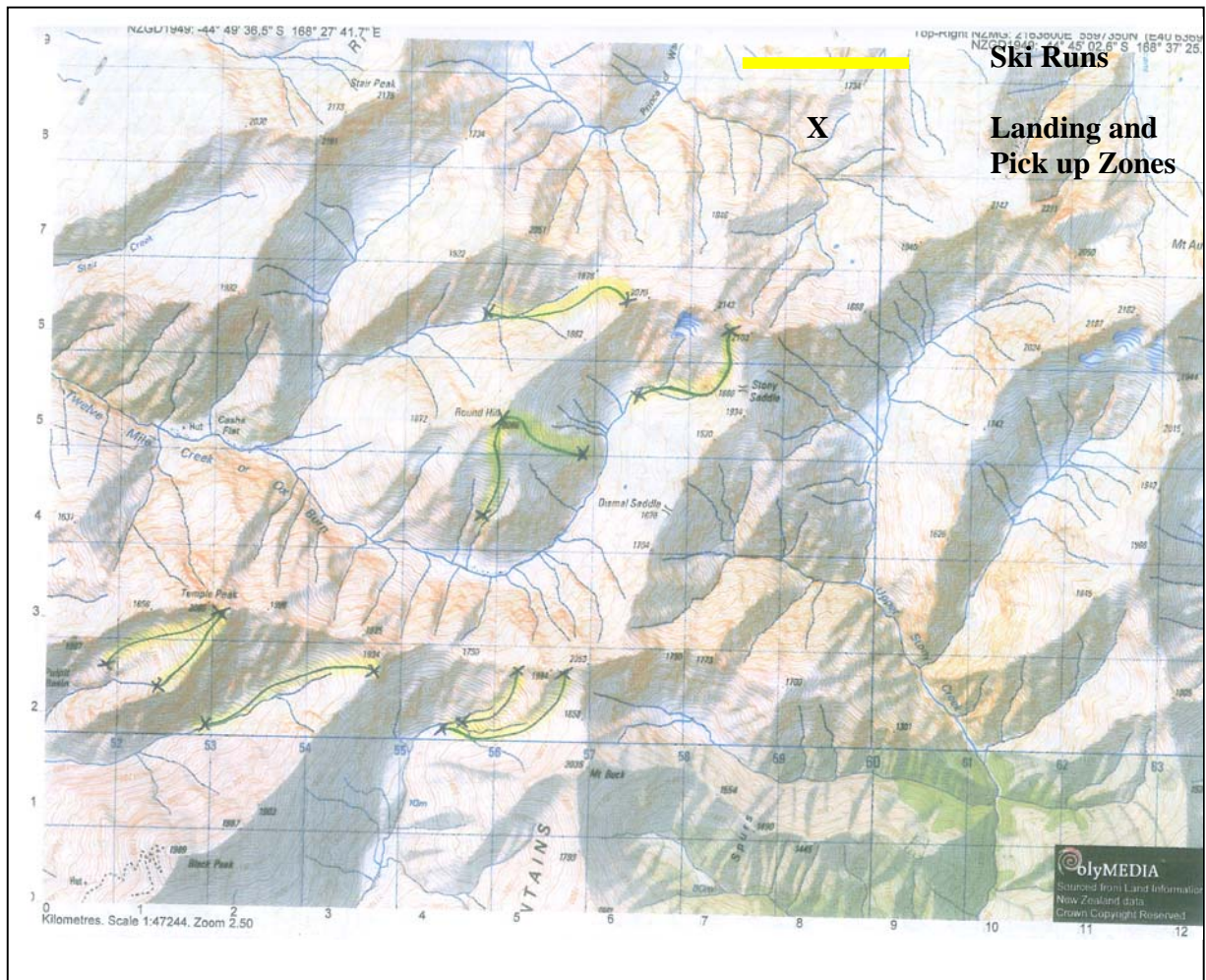
commencement of this concession then the Grantor consents herein to such transfer and assignment.

If the transfer and assignment to Alpine Heliski Limited is not completed within the six month period then, the Grantors consent to any proposal to transfer and assign this concession will be determined pursuant to the provisions of clause 18 of the general conditions.

9. Before the concession activity can commence the Concessionaire must provide the Grantor with an independently audited safety plan which meets the requirements of clause 16.4, 16.5 and 16.6 of the general conditions. The Concessionaire shall keep this safety plan in force during the term of this concession.



### SCHEDULE 4



**Appendix 5: Form of Grazing Concession to be Created**

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

**DATED 2008**

**Between**

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

**and**

**TEMPLE PEAK 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. **TEMPLE PEAK LIMITED** ("the Concessionaire")

**BACKGROUND**

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area.
- B. Sections 66 and 68 of the Crown Pastoral Land Act 1998 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 REVIEW**

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

## **7.0 CONCESSION ACTIVITY**

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

## **8.0 COMPLIANCE**

- 8.1 The Concessionaire will comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan under Part IIIA of the Conservation Act 1987 together with any amendment or review of the strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
  - (b) with the Conservation Act 1987, the Reserves Act 1977, the Health and Safety in Employment Act 1992, the Resource Management Act 1991, 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 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 Ian Robert Hugh Whitwell ) \_\_\_\_\_  
 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 on Behalf of Temple Peak Limited by: ) \_\_\_\_\_  
 as Concessionaires )  
 in the presence of : )

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

**SCHEDULE 1**

1. **Land:** *Area hatched in pink and marked "CA2" on the Proposed Designations Plan. (see definition of Land in clause 1.1)*
2. **Concession Activity:** Sheep grazing *(see definition of Concession Activity in clause 1.1)*
3. **Term:** 7 years commencing on : *(see clause 3)*
4. (a) **Renewal Date:** 7 years from commencement *(see clause 3.2)*  
 (b) **Renewal Period:** right of renewal for 2 further 7 year terms subject to conditions set out in Management Prescription Document (Schedule 3). *(see clause 3.2)*
5. **Final Expiry Date:**  
 21 years from date of commencement - *(see clause 3.2)*
6. (a) **Concession Fee:** \$ *(see clause 4)*  
 A fee calculated on the basis of \$2.20+ GST per annum for 1 sheep wether (equates to 60 cents+GST per wether for permitted grazing period)  
 (b) **Administration Fee:** \$100.00 per annum + GST *(see clause 4)*
7. **Concession Fee Payment Date:** *(see clause 4)*  
 On or before the date specified on the invoice generated by the Grantor
8. **Penalty Interest Rate:** *(see clause 4.2)*  
 Double the Grantor's bank's current highest 90 day bank bill buy rate
9. **Concession Fee Review Date:** *(see clause 6)*  
 Each 3 year anniversary from the date of commencement of the Term
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 \$250,000.00
12. **Statutory Liability Insurance:** *(see clause 15.3)*  
 Amount: Nil
13. **Other Types of Insurance:** Nil *(see clause 15.3)*  
**Amounts Insured for Other Types of Insurances:** *(see clause 15.3)*  
 Amount: Nil
14. **Environmental Monitoring Contribution:** \$600 per annum to be reviewed at the same time as the concession fee. *(see clause 16)*

15. **Address for Notices:**

*(see clause 19)*

- (a) Conservation House, 77 Lower Stuart Street, Dunedin  
Postal – Department of Conservation PO Box 5244 Dunedin 9058  
Telephone: (03) 477-0677  
Facsimile: (03) 477 8626
  
- (b) Concessionaire: Temple Peak Station, Rees Valley Road, Glenorchy.  
Telephone: (03) 442-9942  
Facsimile: Nil

**SCHEDULE 2**

*Special Conditions*

1. The Minister is not liable to pay for or contribute towards the cost of work (as that word is defined in section 2 of the Fencing Act 1978) on any fence between the land and any adjoining land administered by the Department of Conservation.
2. The Concessionaire must only use the land for grazing sheep wethers. Not more than 1000 wethers may be grazed. Grazing is to be confined between the period 1 January – 10 April. Maximum stocking levels may be decreased or the concession terminated in terms 2 and 3 if monitoring results reveal a deterioration in vegetation condition – see criteria set out in Management Prescription Document ( Schedule 3).
3. Clause 10.1.b is amended to allow the Concessionaire to use dogs and horses on the Land for the purpose of mustering stock.
4. The concessionaire should note that all native wildlife within the concession area are absolutely protected. Accordingly, and by way of example, any attack on sheep by Kea does not represent grounds for culling Kea.
5. Concession Fee. The concessionaire shall make an annual return of stock carried to the Grantor by the 31<sup>st</sup> May each year. Rental will be calculated on the basis of the actual number of wethers grazed and shall be payable for the previous year by demand by the 1<sup>st</sup> say of July in each and every year. The annual monitoring contribution and administrative fees will be payable regardless of whether the concession area has been stocked.
6. In relation to Background B this concession is to be under section 17Q(1) of the Conservation Act.



### SCHEDULE 3

#### MANAGEMENT PRESCRIPTION DOCUMENT FOR GRAZING CONCESSION – TEMPLE PEAK

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

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

1. The goal of the concession is to achieve the protection of, landscape, vegetation, wildlife, soil and water values and recreational opportunities whilst allowing for a conservative level of sheep (wethers only) grazing.

**(a) Biological Values**

**Vegetation:** To manage the vegetation within the concession area in a manner which maintains or enhances the cover of native vegetation whilst minimising the risk of invasion by exotic species.

**Fauna:** To manage the concession area in a manner which enhances the habitat for the full range of native fauna present.

**(b) Landscape**

To manage the concession area in a manner which retains and enhances the open landscape which is characterised by negligible levels of human modification.

**(c) Recreation**

To facilitate public recreation in the concession area. Likely activities include tramping, hunting and ski mountaineering. Commercial recreation will be allowed to the extent that it complies with the Otago Conservation Management Strategy and relevant future planning documents. Commercial activities will not be permitted if they have a significant adverse effect on the ability of the Concessionaire to use this grazing concession. Commercial activities which may impact on the areas remote and wild nature will be advertised for public comment.

**(d) Soil and Water**

To manage the concession in a manner which prevents soil loss and maintains high water quality.

2. These goals are to be met through periodic regular inspections of the concession area and regular liaison with the Concessionaire.

The concession document requires the Concessionaire to comply with the legal obligations of the Biosecurity Act.

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

#### Vegetation

The dominant cover over most of the concession area is tall tussock grassland. On higher slopes and scattered through the tussockland, particularly on spurs and rocky ridges, there is much *Dracophyllum* shrubland with extensive subalpine shrublands in the head of the Ox Burn. At the highest altitude, cushionfield and fellfield communities occur amongst large expanses of rocky ridges and slopes.

#### Shrublands

Above the treeline in the upper Ox Burn, there are extensive and diverse subalpine shrublands. *Dracophyllum longifolium* forms extensive pure stands on steep rocky slopes or mixed stands with *Hebe rakaiensis*, *H. anomala*, *Olearia cymbifolia*, *Coprosma ciliata*, *C. rugosa*, *C. sp. "alpina"*, *Dracophyllum uniflorum*, *Brachyglottis cassinioides* and *Podocarpus nivalis*. These species in various combinations, form a diverse mosaic intermixed with narrow-leaved snow tussock (*Chionochloa rigida*), robust speargrass (*Aciphylla sp. "lomond"*), mountain ribbonwood and mountain toatoa (*Phyllocladus alpinus*). *Helichrysum intermedium* occurs on bluffs with *Gaultheria crassa*. The shrubland extends to about 1200 m in altitude and higher on some ridges. The density of the shrubland excludes goats to some extent except where frequent slips give access and seepages reduce shrub cover. *Hebe pauciramosa* occurs on the latter.

*Dracophyllum* shrublands are found in most of the upper valleys where they occur on steep terrace risers, rocky knobs, spurs and ridges as well as scattered plants in the tussockland.

#### Tall tussockland

Narrow-leaved tussockland dominates large areas of concession area. In valley heads above about 1300m, and lower on cold south and east faces, slim snow tussock (*Chionochloa macra*) dominates. The cover is generally high at between 70- 90% except for localised areas where goats have camped. In places goats have induced compositional changes from tall to short tussock or have eliminated tussock.

Mid-ribbed snow tussock (*Chionochloa pallens*) occurs locally above about 1800 m and snow patch tussock (*Chionochloa oreophila*) grows in high altitude hollows and slopes where the snow lies for long periods. Many small shrubs, herbs, grasses and sedges occupy the inter-tussock spaces, open stony areas along stream edges and stony fans, and places with shallow soils. Common shrubs and sub-shrubs include *Gaultheria novae-zelandiae*, *G. nubicola*, *Pimelea oreophila*, *Coprosma cheesemani*, *C. niphophila*, *Hebe buchananii*, and *H. hectorii*. Common herbaceous plants include *Celmisia lyallii*, *Acaena saccaticupula*, *A. caesiuglauca*, *Anisotome flexuosus*, *Viola cunninghamii*, *Ranunculus gracilipes*, *Gentiana bellidioides*, *Leptinella pectinata*, *Wahlenbergia albomarginata*, *Euphrasia zelandica*, *Raoulia apicenigra*, *Poa colensoi*, *Rytidosperma pumila*, *Elymus solandri*, *Deyeuxia crinita*, *Uncinia divaricata*, *Lycopodium fastigiatum*, *Blechnum penna-marina*, and *Carex wakatipu*.

Mossy stable stream edges within the tussockland are variously dominated by *Dolichoglottis lyallii*, *Lagenifera barkeri*, *Nertera balfouriana* and other small grasses and sedges.

#### Short tussockland

Growing amongst the tall tussock in many places is *Festuca mathewsii*. This species also forms dominant stands on some the valley floors. Some high altitude fans and gravelly flood plains are dominated by bristle tussock (*Rytidosperma setifolia*) with good examples on south-facing slopes in the Ox Burn (west branch). A few places are dominated by blue tussock (*Poa colensoi*).

***Cushionfield/fellfield***

Cushion vegetation occupies most alpine ridge tops where the soil is shallow and the exposure to the weather greatest. Adjacent fellfields hold similar plants though more widely spaced. Common plants include *Dracophyllum muscoides*, *Hectorella caespitosa*, *Hebejeebie* (= *Chionohebe*) *densifolia*, *Chionohebe thomsonii*, *Myosotis pulvinaris*, *Epilobium tasmanicum*, *Agrostis muelleriana*, *Gentiana divisa*, *Poa colensoi*, *Stellaria gracilentia*, *Raoulia grandiflora*, *Ourisia caespitosa*, *Luzula pumila*, *Plantago lanigera*, *Kelleria croizatii*, *Colobanthus buchananii*, *Phyllachne colensoi* and *Anisotome imbricata*.

***Alpine scree***

Rocky places support the mountain fern *Polystichum cystostegia*, *Leucogenes grandiceps*, *Raoulia youngii*, *Trisetum tenellum* and *Celmisia angustifolia* with *Haastia pulvinaris*, *Parahebe planopetiolata*, *Hebe petriei* and *Koelaria cheesemaniae* on stable screes. The rush *Marsippospermum gracile* forms large patches on cold, damp slopes such as at the head of Davidsons Creek with *Ranunculus royi*, *Acaena saccaticupula*, *Coprosma perpusilla*, *Geum leiospermum* and other plants. *Epilobium purpuratum* also grows here on damp screes.

***Snowbanks***

Snowbanks are common in the upper basins of many of the streams. They contain many of the cushionfield plants listed above, as well as other herbs including *Celmisia haastii*, *Carex pyrenaica*, *Carex pterocarpa*, *Raoulia subulata*, *Ourisia glandulosa*, and *Abrotanella inconspicua*.

***Wetlands***

Although wetlands do not feature prominently within the concession area there are several types of wetland present with distinctive plant assemblages. Wet seepages are the most widely distributed. Typical species include *Oreobolus pectinatus*, *Gnaphalium laterale*, *Epilobium komarovianum*, *Carex gaudichaudiana*, *Pratia angulata*, *Juncus antarcticus*, *Gonocarpus micranthus*, *Schoenus pauciflorus*, *Elaeocharis acuta* and *Leptinella mediana*. Small patches of *Sphagnum cristatum* are occasionally present.

Other wetlands include a series of small alpine tarns. These are set amongst hummocky terraces on slump topography in the headwaters of the Ox Burn (1480 m).

***Dry terrace herbfields***

Small, well drained and elevated streamside terraces in the Ox Burn have a dry-tolerant herb and sub-shrub flora. Common species include the moss *Racomitrium* sp, *Gaultheria parvula*, *Rytidosperma pumilum*, *Acaena saccaticupula*, *Coprosma atropurpurea* and *Lycopodium fastigiatum*.

***Rock bluffs***

Rock bluffs, especially those with a shady aspect and/or permanent wetness have a distinctive flora comprising species not commonly encountered in other communities. Such species include *Anisotome pilifera*, *Celmisia bellidioides*, *Parahebe planopetiolata*, *Geum parvifolium* and *Schizelema haastii*.

***Invertebrates***

Four species of invertebrate fauna present in the concession area are of particular conservation interest.

***Hypsithocus hudsonae* Bergroth (Hemiptera: Pentatomidae)**

*Hypsithocus hudsonae*, a pentomid bug, has a restricted, disjunct distribution in subalpine and alpine environments in western and Central Otago and *Hebe odora* is a likely host plant (Larivière 1995).

*Hypsithocus hudsonae* was previously known from only five populations and occurs in habitats that are

currently at risk (Larivière 1995). This species has limited dispersal power, therefore loss of habitat could lead to local population extinction (McGuinness 2001).

***Gingidiobora subobscurata* (Walker) (Lepidoptera: Geometridae)**

This local moth species, found at Ox Burn near Cashs Flat hut, has larvae that feed on *Gingidia* spp. on rock faces and is believed to be threatened (B.H. Patrick *pers. comm.*).

***Pseudocoremia lutea* (Philpott) (Lepidoptera: Geometridae)**

The host plant and biology of this montane moth species is unknown and *P. lutea* was previously only known from Bold Peak, the Type locality (Patrick & Dugdale 2000). The two specimens were found at Ox Burn near Cashs Flat hut.

**Avi Fauna.**

Native birds recorded in the concession area during the 2003 tenure review inspection were as follows:

Australasian harrier (*Circus approximans gouldi*)  
Greywarbler (*Gerygone igata*)  
Silvereye (*Zosterops lateralis*)  
Pipit (*Anthus novaeseelandiae*)  
Kea (*Nestor notabilis*)  
Southern black-backed gull (*Larus dominicanus*)  
Falcon (*Falco novaeseelandiae*)

Kea were sighted in large numbers feeding on the berries of *Coprosma atropurpurea* – kea are ranked as “Nationally Endangered”. Falcon, ranked as “Gradual Decline” utilise the area as part of a larger range.

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

A vegetation monitoring programme will be established at the commencement of the concession term with the assistance of the concessionaire. Eight 50 metre transects will be established. Transects will be sited in a range of environments where sheep are known to graze and will be sited in consultation with the Concessionaire.

Detailed information will be gathered from the transects. Cover, frequency and biomass data will be recorded as well as a photographic record including photopoints and transect photos.

A 50cm by 50cm quadrat will be placed every two metres along each transect and the following information recorded:

**Ground Cover**

- Rock and Rubble
- Bare Ground
- Litter
- Dead Vegetation
- Live Vegetation

**Cover Classes**

Each Species present in each quadrat is given a cover class between 1-6 where:

- 1 = <1%
- 2 = 1-5%
- 3 = 6-25%
- 4 = 26-50%
- 5 = 51-75%
- 6 = 76-100%

**Species Present**

All species found in each quadrat will be recorded as present. The frequency of occurrence is the % of quadrats in which the species is present.

**Point Heights**

Point Heights of tussock species will be measured where present, every metre up the transects. This measure gives a measure of relative biomass.

**Photos**

On each transect, photos will be taken with a standard lens (55mm) looking up and down the line. A series of general repeatable photo point sites will be established.

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

Years 1-7. 1000 wethers from 1 January to 10 April.

Transects will be established in year 1 and re measured prior to years 7 and 14. Information gathered will be used to review stocking rates for successive 7 year periods as set out below.

**Specific thresholds which if breached can be used as a trigger by the Grantor to reduce stocking on the concession area.**

The maximum stocking rate may be reduced by 10 percent from the base level under the following scenarios:

If estimated bare ground cover (including rock and rubble) increases by more than 5 percentage points when averaged across all transect sites.

If estimated cover of combined snow tussock species (*Chionochloa* species) decreases by more than 5 percentage points when averaged across all transect sites.

The maximum stocking rate may be reduced to 50% percent of the base level under the following scenarios:

If estimated bare ground cover (including rock and rubble) increases by more than 10 percentage points when averaged across all transect sites.

If estimated cover of combined snow tussock species decreases by more than 10 percentage points when averaged across all transect sites.

The lease may be terminated prior to the expiry date under the following scenarios:

If estimated bare ground cover (including rock and rubble) increases by more than 15 percentage points when averaged across all transect sites.

If estimated cover of combined tussock species decreases by more than 15 percentage points when averaged across all transect sites.

Following monitoring, results will be discussed between the Grantor and the Concessionaire. The Grantor may elect not to reduce stocking levels in the manner set out if in his/her opinion vegetation condition has fallen below identified thresholds for reasons other than grazing by sheep wethers. There may be by mutual

agreement, acceptance that changes in vegetation not identified as thresholds are undesirable and that stock numbers should be reduced.

**Appendix 6: Form of Easement to be Created (Public)**

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**TRANSFER GRANT OF  
EASEMENT IN GROSS**

Public Access

**Land Transfer Act 1952**

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



**TRANSFER**  
RELEASED UNDER THE OFFICIAL INFORMATION ACT  
Land Transfer Act 1952

*If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.*

Land Registration District

OTAGO

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

		ALL	
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Transferor *Surnames must be underlined*

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

Transferee *Surnames must be underlined*

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

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

Public Access 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  _____ <b>Witness to complete in BLOCK letters</b> <i>(unless typewritten or legibly stamped)</i>  Witness name Occupation Address  (continued on page 4 of Annexure Schedule)
Signature, or common seal of Transferor	

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

Easement in Gross for Public Access (adapted from Otaco 37213).  
DOCDM-414605-Temple Peak Public Access *a-b, c-d-e and d-f*. 30.03.2009.

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 (*marked a-b, c-d-e and d-j-f, on the Designation Plan*) being 10 metres wide marked [ ] “[ ]” on Deposited Plan/S.O. Plan No [ ]
  - 1.2 “Servient Land” means the land owned by the Transferor and described on page 1.
  - 1.3 “Transferee” means Her Majesty the Queen acting by and through the Minister of Conservation and includes the Transferee’s tenants, agents, contractors, invitees and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public.
  - 1.4 “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 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.
3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Transferor.
4. The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.

Exclusion of Schedules

5. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 are expressly negated.

Term

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

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.

Easement in Gross for Public Access (adapted from Otaco 37213).  
DOCDM-414605-Temple Peak Public Access *a-b, c-d-e and d-f*. 30.03.2009.

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 Branch of the New Zealand 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 words “on or accompanied by horses, or by non-motorised vehicle powered by a person or persons” are deleted from Clause 2.
- 12 The Transferee (not being a member of the public) has the right:
- 12.1 To mark the Easement Area as appropriate.
  - 12.2 To erect and maintain stiles.
  - 12.3 To erect and maintain signs informing the public of their rights and responsibilities in relation to the Easement Area.
  - 12.4 To construct and maintain a benched track on the Easement Area.

Easement in Gross for Public Access (adapted from Otaco 37213).  
DOCDM-414605- Temple Peak Public Access a-b, c-d, d-e & d-f. 30.03.09.

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.

- 12.5 To use whatever reasonable means of access she thinks fit over the Easement Area to carry out the works in clause 12.1 to 12.4.
- 13 The words “on or accompanied by horses, or by non-motorised vehicle powered by a person or persons” are deleted from Clause 2.
- 14 If the Transferee (being a member of the public) has a hunting permit, issued by the Director-General of Conservation for land to which the easement provides access, he may carry a gun on the Easement Area for the purpose of gaining access to hunt on that land.
- 15 he Transferee (not being a member of the public) and the Transferor agree that should the Transferee secure public access over a route which in the sole opinion of the Transferee provides superior foot access between the Rees Valley Road and conservation land in the headwaters of Twelve Mile Creek (alternatively known as the Ox Burn), the Transferor and the Transferee shall vary this Document by removing from the Easement Area that section which links Precipice Creek and the Ox Burn or Twelve Mile Creek (*marked c-d on the Designations Plan*) [ ] “[ ]” on Deposited Plan/S.O. Plan No [ ].
- 16 The Transferor and the Transferee (not being a member of the public) agree that should this document and the Easement Area need to be varied in accordance with clause 15 above each will execute all documents and undertake all actions required to complete this.
- 17 The Transferee (not being a member of the public) agrees that should the Easement Area be varied pursuant to clause 15 above, the Transferee will meet the reasonable legal costs of the Transferor relating to such variation.
- 18 Dogs may only be taken onto the Easement Area with the permission of the Transferor.
- 19 In terms of clause 9.1 notices will not be sent to the Transferor via facsimile.

**Continuation of “Attestation”**

Signed for and on behalf of )  
 Her Majesty the Queen by )  
 under a written delegation in the )  
 presence of: )

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Easement in Gross for Public Access (adapted from Otaco 37213).  
 DOCDM-414605- Temple Peak Public Access a-b, c-d, d-e & d-f. 30.03.09.

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.

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.*

Easement in Gross for Public Access (adapted from Otaco 37213).  
DOC DM-414605- Temple Peak Public Access a-b, c-d, d-e & d-f. 30.03.09.

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

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

## TRANSFER GRANT OF EASEMENT IN GROSS

### 1. Public Access

#### Land Transfer Act 1952

Law Firm Acting

Conservancy Solicitor  
Department of Conservation  
Dunedin

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Auckland District Law Society  
REF:4135

**This page is for Land Registry Office use only.**

*(except for "Law Firm Acting")*

Easement in Gross for Public Access (adapted from Otaco 37213).  
DOCDM-414605- Temple Peak Public Access a-b, c-d, d-e & d-f. 30.03.09.

**Appendix 7: Form of Easement to be Created (Conservation Management Access)**

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**TRANSFER GRANT OF  
EASEMENT IN GROSS**

Access for Management Purposes

**Land Transfer Act 1952**

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



**TRANSFER**  
RELEASED UNDER THE OFFICIAL INFORMATION ACT  
Land Transfer Act 1952

*If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.*

Land Registration District

OTAGO

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

		ALL	
--	--	-----	--

Transferor Surnames must be underlined

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

Transferee Surnames must be underlined

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

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

Management Purposes Easement in Gross under section 7(2) of the Conservation Act 1987 (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)

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

Witness name

Occupation

Address

Signature, or common seal of Transferor

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

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 (*marked g-h, i-j, j-f & j-d-e on the Designation Plan*) being 20 metres wide which is marked “[ ]” on S.O. Plan No [ ].
  - 1.2 “Management Purposes” means:
    - the protection of a significant inherent value of the land managed by the Transferee in the vicinity of the easement area.
    - The management of the land administered by the Transferee 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, includes the Transferee’s tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation.
  - 1.5 “Transferor” means the owner of the Servient Land described on page 1 and includes the Transferor’s tenants and invitees.

**Standard Easement Terms**

Access

2. The Transferee has the right 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, or by non motorised vehicle powered by person or persons, with or without machinery and implements of any kind, or with or without guns and dogs, for Management Purposes.
3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Transferor.
4. The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.

Exclusion of Schedules

5. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 are expressly negated.

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-38229 Easement for Mgmt in Gross Templ.doc  
DOCDM 414854 - DOC Mgmt. Temple Peak g-h, i-j, j-f & d-e 30 March 2009.

Term

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

Temporary Suspension

7. The Transferee 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 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 Branch of the New Zealand 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 Transferor is under no obligation to maintain the Easement Area to any standard other than that which is necessary for his own purposes.
- 12 The Easement Area is currently maintained to standard suitable for motorcycles and All Terrain Vehicles (ATV's). Unless the Easement Area is upgraded to a standard suitable for four wheel drive motor vehicles, the Transferee will restrict her motor vehicle use of the Easement Area to motorcycles and ATV's.
- 13 In terms of clause 9.1 notices will not be sent to the Transferor via facsimile.

**Continuation of "Attestation"**

Signed for and on behalf of )  
Her Majesty the Queen by )  
Jeffrey Edward Connell )  
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. Access for Management Purposes

#### **Land Transfer Act 1952**

Law Firm Acting

Conservancy Solicitor  
Department of Conservation  
Dunedin

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Auckland District Law Society  
REF:4135

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

**Appendix 8: Form of Conservation Covenant to be Created**

---



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

**Between**

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

**and**

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

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



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



**Annexure Schedule**

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

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**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.

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- “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.

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**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;

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- 3.2.3 keep the Land free from exotic tree species;
- 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner’s use of the Land;
- 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
- 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, rebuild or replace all such Fences when reasonably required except as provided in clause 4.2.

**4. THE MINISTER’S OBLIGATIONS**

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

**5. IMPLEMENTATION OF OBJECTIVES**

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

**6. DURATION OF COVENANT**

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

**7. OBLIGATIONS ON SALE OF LAND**

- 7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, or assignee to ensure that on any subsequent sale, lease, or assignment, any subsequent purchaser, lessee, or assignee must also comply with the terms of this Covenant including this clause.

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

**8. MISCELLANEOUS MATTERS**

**8.1 Rights**

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

**8.2 Trespass Act:**

8.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;

8.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**8.3 Reserves Act**

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

**8.4 Titles**

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

**8.5 Acceptance of Covenant**

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

**8.6 Fire**

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

8.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

8.6.2.1 requested to do so; or

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- 8.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

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**9. NOTICES**

9.1 A notice to be given under this Covenant by one party to the other is to be in writing and made by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 1.

9.2 A notice given in accordance with clause 9.1 will be deemed to have been received:

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

9.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**10. DEFAULT**

10.1 Where either the Minister or the Owner breaches any of the terms and conditions contained in this Covenant the other party:

10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

10.2 Should either the Minister or the Owner become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

10.2.1 advise the defaulting party of the default.

10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**11. DISPUTE RESOLUTION PROCESSES**

11.1 If any dispute arises between the Minister and the Owner in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

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**11.2 Mediation**

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

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

**11.3 Failure of Mediation**

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

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

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

**12. JOINT OBLIGATIONS**

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

**13. SPECIAL CONDITIONS**

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

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

Executed as a Deed

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

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

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

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

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

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

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

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

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**SCHEDULE 1**

**1. Description of Land**

*Area shaded yellow and marked 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 9058

C/- 77 Stuart Street  
DUNEDIN

Fax (03) 477 8626  
Phone (03) 477-0677

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

Temple Peak Station  
Glenorchy

Phone (03) 442 9909

Fax Nil

The term "Owner" does not include the Commissioner of Crown Lands.

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

The upper Temple Faces support a more or less continuous cover of tall snow tussock. Narrow-leaved tussock dominates cover except on slopes above 1300-1400m where slim snow tussock becomes prevalent. Tussock cover is generally high at between 70- 90% except in some places at higher altitude where sheep have favoured. Many small shrubs, herbs, grasses and sedges occupy the inter-tussock spaces and places with shallow soils. Common shrubs and sub-shrubs include *Gaultheria novae-zelandiae*, *G. nubicola*, *Pimelea oreophila*, *Coprosma cheesemanii*, *C. niphophila*, *Hebe buechananii*, and *H. hectorii*. Common herbaceous plants include *Celmisia lyallii*, *Acaena saccaticupula*, *A. caesiiglauca*, *Anisotome flexuosus*, *Viola cunninghamii*, *Ranunculus gracilipes*, *Gentiana bellidioides*, *Leptinella pectinata*, *Wahlenbergia albomarginata*, *Euphrasia zelandica*, *Raoulia apicenigra*, *Poa colensoi*, *Rytidosperma pumila*, *Elymus solandri*, *Deyeuxia crinita*, *Uncinia divaricata*, *Lycopodium fastigiatum*, *Blechnum penna-marina*, and *Carex wakatipu*.

Some areas of regenerating shrubland are present, especially south of Davidsons Creek. Manuka comprises the dominant shrub species. Some slopes support patchy matagouri (*Discaria toumatou*). Often *Coprosma propinqua* and *C. rugosa* are prominent where the ground is damper. In damp shallow

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

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gullies, *Olearia bullata* forms groves along with a mixed shrubland of *Hebe rakaiensis*, *Olearia cymbifolia*, *Brachyglottis cassinioides*, *Dracophyllum longifolium*, *Coprosma* species and matagouri. Tutu (*Coriaria sarmentosa*) can be prominent on damp banks and *Dracophyllum uniflorum* occurs as scattered bushes.

Beech forest fills a series of gullies within the covenant area including Davidson’s Creek. Red beech (*Nothofagus fusca*) is prominent on favourable sites but mountain beech (*Nothofagus solandri* var. *cliffortioides*) dominates. Other trees present include broadleaf (*Griselinia littoralis*), putaputaweta (*Carpodetus serratus*), makomako (*Aristotelia serrata*), glossy karamu (*Coprosma lucida*), *Coprosma rugosa*, *C. propinqua*, *C. ciliata* and *C. sp. “t”*, kohuhu (*Pittosporum tenuifolium*), mountain ribbonwood (*Hoheria glabrata*) and *Olearia arborescens*. Cabbage trees (*Cordyline australis*) are present along some edges and the hemi-parasitic mistletoe *Alepis flavida* is locally common on its mountain beech host.

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**SCHEDULE 2**

**Special Conditions**

1. **THE** Minister may at his own cost undertake wilding pine control operations on the Land but before doing so will give the Owner at least 48 hours notice of his intention to do so and will comply with any reasonable request relating to the wilding pine operation made of him by the Owner.
2. The Owner may graze sheep and cattle on that portion of the Land which lies to the south of Davidson's Creek. The Owner may only graze sheep on that portion of the Land which lies to the north of Davidson's Creek and only to an extent that is consistent with objective set out in Clause 2 and protecting the Values described in Schedule 1. The Minister may monitor grazing on that portion of the Land lying to the North of Davidson's Creek and request a reduction in sheep numbers if it is clear to the Minister, in his sole opinion, that such grazing is inconsistent with the objective in clause 2 and the protection of the values described in Schedule 1.
3. Clause 3.1.4 is deleted and replaced with ““Unless agreed in writing between the Parties the Owner must not carry out on or in relation to the Land the erection of any Fence, building, structure or other improvement for any purpose, excepting that a 7 wire fence may be erected at the Owners cost along the line marked [Q-R] on the plan attached as Schedule 3.
4. Notwithstanding clause 3.1.5, the Owner may chemically spray for control of exotic weeds and topdress with fertiliser grassed areas, which exclude beech forest and other areas dominated by native woody vegetation.
5. The Minister acknowledges that the Owner wishes to build a small hydro electric scheme (for domestic purposes only) and install a domestic water intake in the lower reaches of Davidson's stream. Consent under this Covenant will not be unreasonably declined provided that plans are supplied to the Minister and that he is satisfied that the facilities are of a small scale, sensitively sited and designed to create minimal impact on the Values. This clause does not imply consent under any other legislation.
6. The Minister acknowledges that the Owner wishes to erect a back country style hut on the Land. Consent under this Covenant will not be unreasonably declined provided that plans are supplied to the Minister and that he is satisfied that the building is of a modest scale, sensitively sited and that the colour scheme and architectural design are compatible with a remote backcountry setting.

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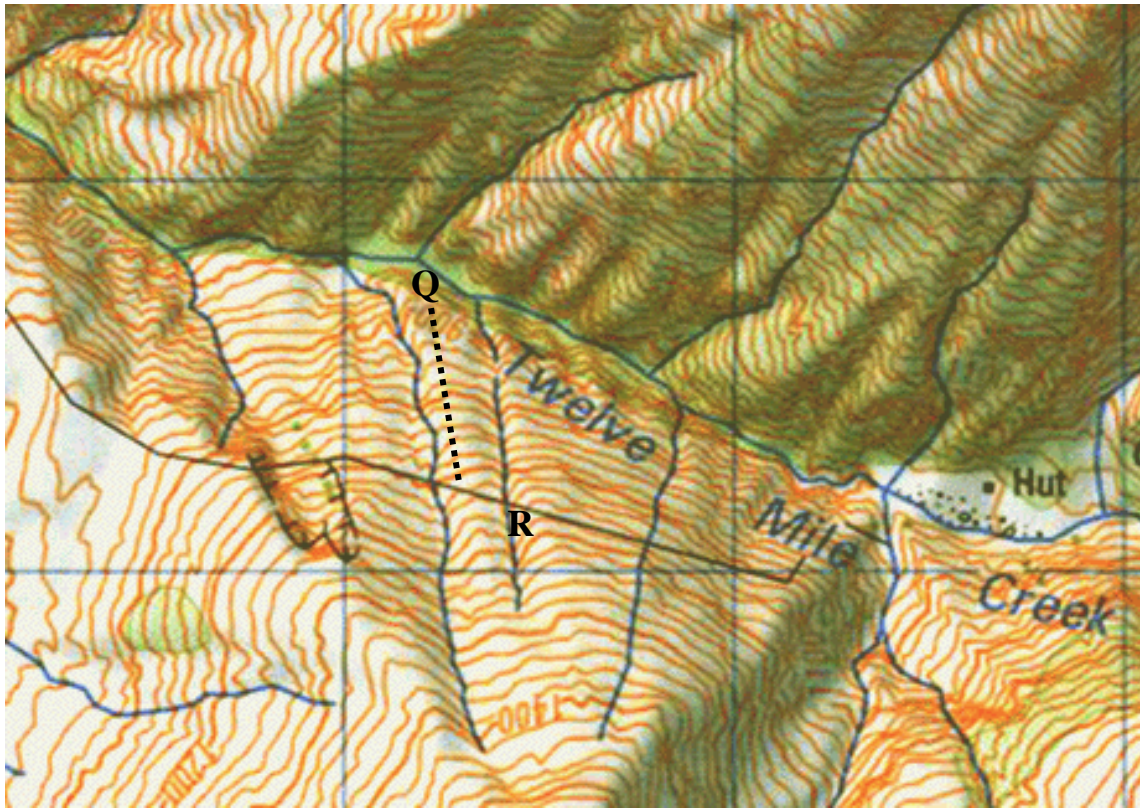
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**SCHEDULE 3**



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**GRANT** of

Correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister

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

**COMMISSIONER OF CROWN  
LANDS**

to

**MINISTER OF CONSERVATION**

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**Solicitor**  
**Department of Conservation**  
**DUNEDIN**

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