

# **Tenure Review of the Simons Pass Pastoral Lease – Substantive Proposal Document**



**August 2020**

**PROPOSAL FOR REVIEW OF CROWN LAND**

**Under Part 2 of the Crown Pastoral Land Act 1998**

**Date:** 4 August 2020

**Parties**

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**Holder:**

Murray Graham Valentine  
C/- Jackson Valentine Ltd  
258 Stuart Street  
PO Box 5546  
DUNEDIN  
Email: [mgv@jacksonv.co.nz](mailto:mgv@jacksonv.co.nz)

**Holder's Solicitor:**

David Wilding  
Wilding Law  
356 Memorial Avenue  
PO Box 29473  
Christchurch 8053  
T: (03) 358 9988  
M: 021 324 114  
Email: [dave@wildinglaw.co.nz](mailto:dave@wildinglaw.co.nz)

**Commissioner of Crown Lands:**

Land Information New Zealand  
Crown Property  
112 Tuam Street  
Private Bag 4721  
Christchurch 8140  
Email: [pastoral&tenurereview@linz.govt.nz](mailto:pastoral&tenurereview@linz.govt.nz)

**The Land**

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<b>Lease:</b>	Simons Pass
<b>Legal Description:</b>	Part Run 86
<b>Area:</b>	5575.2867 hectares more or less
<b>Certificate of Title/Unique Identifier:</b>	CB529/5

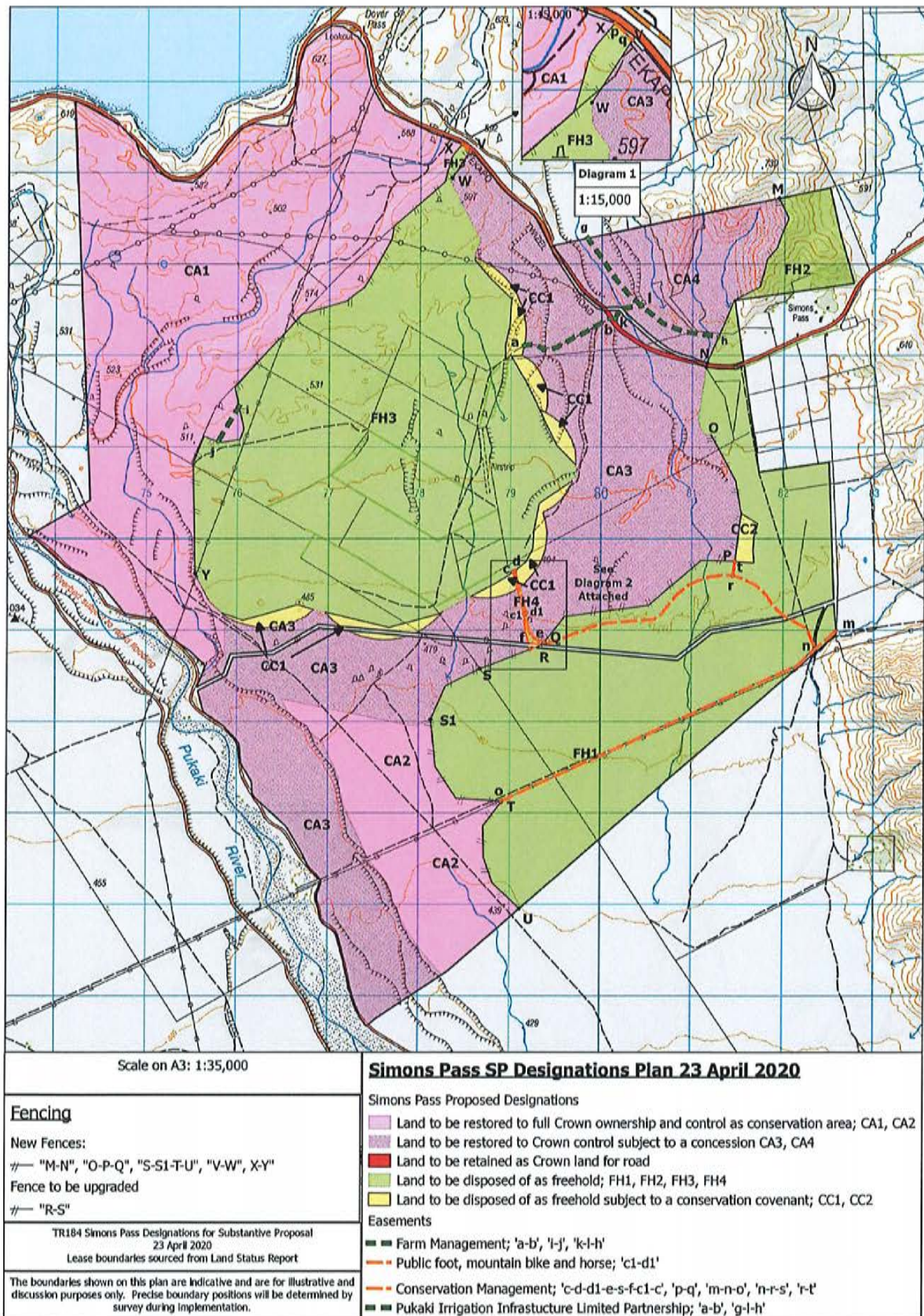
**Summary of Designations**

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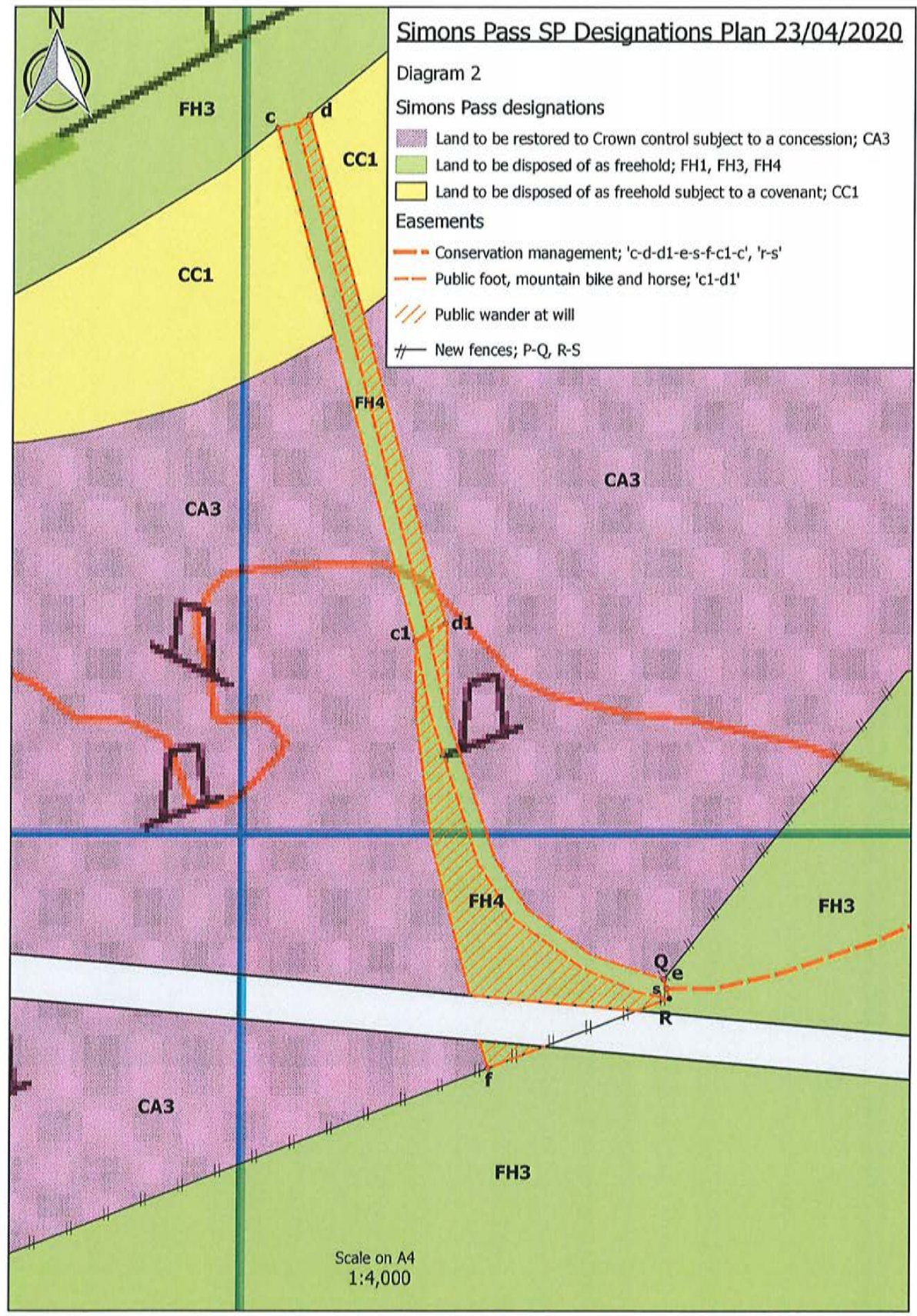
Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown shaded or cross hatched pink, or shaded red 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 shaded green or yellow on the Plan) is to be disposed by freehold disposal to the Holder as set out in Schedule Three.











## **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 will be the day that is TEN (10) working days following the day on which Land Information New Zealand notifies the Commissioner that the Final Plan and a copy of this Proposal are registered in accordance with the Act.
- 3.2 The Freehold Land will be disposed of to the Holder under the Land Act 1948.
- 3.3 Notwithstanding anything to the contrary, if, as at the Settlement Date (as determined pursuant to clause 3.1), the rent payable under the Lease is subject to a Rent Review, then the Commissioner may elect to:
- (a) Settle on the Settlement Date on the basis that the Commissioner may retain from the Commissioner's Payment an amount which the Commissioner, acting reasonably, estimates will be payable by the Holder to the Commissioner following agreement or determination of the Rent Review ("the Retention"). The Retention shall be held by the Crown Law Office in an on-call, interest-bearing trust account in the joint names of the parties for their respective rights and interests. Upon agreement or determination of the Rent Review, the Commissioner shall calculate the rent shortfall payable by the Holder to the Commissioner in respect of the period from the effective date of the Rent Review to the Settlement Date, both dates inclusive ("the Shortfall"). If:
    - (i) The Shortfall is less than the Retention and the net interest earned thereon, the balance shall be paid by the Commissioner to the Holder within TEN (10) working days; or
    - (ii) The Shortfall is more than the Retention and the net interest earned thereon, the balance shall be paid by the Holder to the Commissioner within TEN (10) working days;
  - Or
  - (b) Defer the Settlement Date until TEN (10) working days after the rent payable as a consequence of the Rent Review:
    - (i) Has been agreed or determined; and
    - (ii) Is not and will not be subject to any appeal, rehearing or other proceedings.

## **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 in cleared funds 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 in cleared funds..
- 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.



- 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 fencing:
- (a) Approximately along the line marked "New Fencing Line" and "Fence to be upgraded" on the Plan; and
  - (b) To the specifications in Appendix 3;
- ("the Fencing").
- 11.2 If the Fencing requires resource consent or any other consent from any local or territorial authority ("the Fencing Consent"), the following provisions shall apply:
- (a) The Commissioner shall use reasonable endeavours to obtain the Fencing Consent within 6 months of this Proposal taking effect pursuant to the Act.
  - (b) If the Fencing Consent:
    - (i) Is not obtained within 6 months of this Proposal taking effect pursuant to the Act; and/or

- (ii) Is obtained on terms which are not satisfactory to the Commissioner in all respects;

the Commissioner may, acting reasonably, elect to do any one or more of the following:

- (iii) Erect the Fencing in a position different from that shown on the Plan;
- (iv) Erect the Fencing over a shorter distance than that shown on the Plan; or
- (v) Erect the Fencing to specifications different from those in Appendix 3.

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

the Commissioner may, acting reasonably, elect to vary the extent of the Construction Works in question and/or the terms and conditions upon which they are carried out.

## **12 Apportionments**

- 12.1 Rent payable under the Lease in respect of the Freehold Land shall be apportioned as follows:
  - (a) Rent paid or payable will be apportioned on the Settlement Date as at the Settlement Date and either deducted from or added to (as the case may be) the amount required to settle.
  - (b) Notwithstanding that the Lease continues in effect until a certificate of title issues for the Freehold Land, the Holder shall not be required to pay any rent under the Lease for the Freehold Land from the Settlement Date.
- 12.2 Rent paid or payable under the Lease for the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.



- 12.3 All rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Freehold Land will, unless otherwise agreed by the parties, be apportioned on the Settlement Date as at the Settlement Date.
- 12.4 All rates, levies and all other incomings and outgoings and other charges receivable from or charged upon the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.
- 12.5 Following the date that a certificate of title issues for the Freehold Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will pay to the Commissioner, any additional amounts due because of any payments made or received by one party on behalf of the other for the period from the Settlement Date to the date on which a new certificate of title issues for the Freehold Land.

### **13 Risk**

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

### **14 Survey**

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

### **15 Holder's Acknowledgements**

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- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) It is obtaining the freehold interest in the Freehold Land:
    - (i) "As is", solely in reliance on its own investigations and judgement; and
    - (ii) Not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
  - (b) The Holder has carried out all inspections of the Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
  - (c) The Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
    - (i) the Resource Management Act 1991 any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and

(iii) the Building Act 2004; and

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

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

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

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

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## **17 Acceptance**

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

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## **18 Solicitors Certificate**

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

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## **19 Default**

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



## **20 Goods and Services Tax**

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- 20.1 Unless the context otherwise requires, words and phrases used in this clause have the same meaning as in the GST Act.
- 20.2 If the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are taxable supplies under the GST Act, then:
- (a) The Commissioner and the Holder warrant to each other that they are registered for GST purposes as at the Holder's acceptance of this Proposal and that they will be so registered on the Settlement Date;
  - (b) The Commissioner and the Holder confirm that as at the Settlement Date:
    - (i) Each is acquiring the goods supplied with the intention of using the goods for making taxable supplies; and
    - (ii) The Commissioner and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Crown Land and the Holder and any associated person in terms of section 2A(1)(c) of the GST Act do not intend to use the Freehold Land as a principal place of residence; and
  - (c) The Commissioner and the Holder agree that the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration are to be zero-rated for GST purposes under section 11(1)(mb) of the GST Act.
- 20.3 If any of the circumstances set out in clause 20.2 change between the date of the Holder's acceptance of this Proposal and the Settlement Date, then the relevant party will notify the other of the changed circumstances as soon as practicable and in any event not later than 2 working days before the Settlement Date and such party shall warrant that the changed circumstances are correct as at the Settlement Date. If the GST treatment of the supplies evidenced by the Holder's Consideration and the Commissioner's Consideration changes as a result of the changed circumstances and a party has already provided the other with a GST invoice, then that party will issue a debit note or credit note, as the case may be, for GST purposes.
- 20.4 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.
- 20.5 The Holder will pay GST (if any) on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 20.6 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.
- 20.7 The Commissioner will pay GST (if any) on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.8 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.

## **21 Lowest price**

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

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

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**22 Costs**

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

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**23 No nomination or assignment**

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

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**24 Recreation Permit**

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

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**25 Consents for Activities**

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

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**26 General**

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- 26.1 This Proposal and the Notice:
- (a) Constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and
  - (b) Supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and the Holder relating to the Tenure Review.
- 26.2 Each provision of this Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.
- 26.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 26.4 The Commissioner and the Holder will sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the other to effectively carry out and give effect to the terms and intentions of this Proposal.
- 26.5 This Proposal (including any schedules or other documents) may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts), each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same document. A signed copy of this Proposal and the Notice transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy.



- 26.6 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.
- 26.7 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 26.8 In relation to notices and other communications under this Proposal:
- (a) Each notice or other communication is to be in writing, and sent by personal delivery, email or by post to the addressee at the 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 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
    - (ii) In the case of a letter, on the fifth working day after mailing (postage paid); and
    - (iii) In the case of an email, if the addressee has designated an information system for receiving emails, at the time the email first enters that information system, or in other situations, when the email comes to the attention of the addressee.

## 27 Interpretation

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### 27.1 Definitions

In this Proposal unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

**Fencing Consent** means any and all consents required for fencing 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;

**GST Act** means the Goods and Services Tax Act 1985;

**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 shaded pink on the Plan and labelled 'CA1' being 1,313 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area subject to the granting of a pipeline easement concession to the Holder shown on the Plan as a dashed green line and labelled "i-j", substantially as set out in Appendix 4. For the avoidance of doubt, Easement Instrument 10904750.1 is not to continue in force in relation to 'CA1'.
- 1.2 Under this Proposal part of the land shown shaded pink on the Plan and labelled 'CA2' being 330 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area
- 1.3 Under this Proposal part of the land shown on the Plan shaded red, being 8 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as Crown land for road.

### **2 Information Concerning Proposed Concession**

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#### **2.1 Water Pipeline Easement Concession**

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

*A right to convey water for the purpose of an underground pipeline for water passing over, on, through or under the Burdened Land.*

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

*Area within 'CA1' adjacent to 'FH3' labelled "i-j" on the Plan.*

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

*Easement through CA1 to protect an existing underground 2 inch diameter pipeline for stock water. Any potential negative effects for maintenance expected will be avoided or mitigated by the special conditions.*

*DOC staff will periodically visit the easement area over the proposed conservation land for a range of activities including surveillance and control of wild animals and weeds and will therefore be aware if the concession activity is having any negative effects.*

4. Details of the proposed types of concession:

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

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

a) *Proposed duration- 30 years*

b) *Reasons for proposed duration - the proposed concessionaire already uses the waterpipe over which the easement is proposed, as it transports stock water to areas of freehold land on either side of CA1 and will need to continue to do this.*



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

a) *Proposed grantee- Murray Graham Valentine*

b) *Relevant information- The proposed concessionaire already uses the pipeline over which the easement is proposed. No negative effects associated with the current use of the pipeline have been noted. It is expected that the concessionaire will honour the terms and conditions of the concession and will have a positive working relationship with DOC staff.*



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

---

### 1 Details of designation

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- 1.1 Under this Proposal the land shown on the Plan cross hatched in pink, being 1,237 hectares (approximately) and labelled "CA3" is designated as land to be restored to or retained in Crown control as conservation area subject to:
- 1.1.1 The granting of the right of way easement concession to the Holder (shown on the Plan as a dashed green line and labelled "a-b"), substantially as set out in Appendix 5; and
  - 1.1.2 The granting of the right of way easement concession in gross to Pukaki Irrigation Infrastructure Limited Partnership (shown on the Plan as a dashed green line and labelled "a-b") substantially as set out in Appendix 6; and
  - 1.1.3 The granting of a concession licence to Simons Pass Station Limited (shown on the Plan cross hatched pink and labelled "CA3") substantially as set out in Appendix 7.
- 1.2 Under this Proposal the land shown on the Plan cross hatched in pink, being 252 hectares (approximately) labelled "CA4" is designated as land to be restored to or retained in Crown control as conservation area subject to:
- 1.2.1 The granting of the right of way easement concession to the Holder (shown on the Plan as a dashed green line and labelled "k-l-h") substantially as set out in Appendix 5; and
  - 1.2.2 The granting of the pipeline easement concession in gross to Pukaki Irrigation Infrastructure Limited Partnership (shown on the Plan as a dashed green line and labelled "g-l-h") substantially as set out in Appendix 8; and
  - 1.2.3 The granting of a grazing concession to the Holder (shown on the Plan cross hatched pink and labelled "CA4") substantially as set out in Appendix 9.

### 2 Information Concerning Proposed Concessions

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#### 2.1 Right of Way Easement Concession

1. Description of proposed activities [s.39(a)]:  
*To provide access by foot, motor vehicles, horse, machinery and implements of any kind and with or without domestic livestock, guns and farm dogs for farm management purposes.*
2. Description of place(s) where proposed activity to be carried out and proposed status [s.39(b)]  
*Areas labelled "a-b" and "k-l-h" on the Plan.*
3. Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect, [s.39(c)] noting the requirements of s.51(3)(a) and s.51(2)(d) of the CPLA  
*The farm management access easement along route "a-b" on CA3 is over an existing formed track. The farm management access route "k-l-h" on CA4 will remain unformed but it will need clearance of a few matagouri plants within a briar-dominated shrubland to provide for the access. These routes are considered necessary for the ongoing farm*





*operations in areas being freeholded. The easement conditions will address potential adverse impacts of stock movement over these easements.*

*DOC staff will periodically visit the easement areas for a range of activities including surveillance and control of wild animals and weeds and will therefore be aware if the concession activity is having any negative effects.*

4. Details of the proposed types of concession:

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

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

a) *Proposed duration- In perpetuity*

b) *Reasons for proposed duration - The proposed concessionaire already relies on access of the proposed easement areas and will need to continue to do this for farm management purposes.*

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

a) *Proposed grantee- Murray Graham Valentine*

b) *Relevant information - the proposed concessionaire already uses the tracks over which the easement is proposed. No negative effects associated with the current use of the tracks have been noted. It is expected that the concessionaire will honour the terms and conditions of the concession and will have a positive working relationship with DOC staff.*

2.2 Pukaki Irrigation Infrastructure Limited Partnership Right of Way Easement Concession

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

*To provide access on foot, by motor vehicle, with or without machinery and implements of any kind for the sole purpose of providing access to irrigation infrastructure owned or operated by the Concessionaire on adjoining land.*

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

*Area within 'CA3' labelled "a-b" on the Plan.*

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

*The access easement is over an existing formed vehicle track. Minimal impact of vehicle and machinery use of this track is expected and the easement conditions will address potential adverse impacts.*

*DOC staff will periodically visit the easement area for a range of activities including surveillance and control of wild animals and weeds and will therefore be aware if the concession activity is having any negative effects.*

4. Details of the proposed types of concession:

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

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

a) *Proposed duration- 199 years*

b) *Reasons for proposed duration – to provide access to irrigation infrastructure owned or operated by the Concessionaire on adjoining land.*

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

a) *Proposed grantee - Pukaki Irrigation Infrastructure Limited Partnership.*

b) *Relevant information - the proposed concessionaire already uses this track to access irrigation infrastructure on adjoining land to be freeholded. No negative effects associated with the current use of the track have been noted. It is expected that the concessionaire will honour the terms and conditions of the concession and will have a positive working relationship with DOC staff.*

2.3 Concessions Licence in favour of Simons Pass Station Limited as holder of Canterbury Regional Council consent CRC 176720

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

*For Restoration and maintenance of the land as required to meet the conditions of the Canterbury Regional Council resource consent CRC176720 (and any replacement consent to the same or similar effect). Permitted activities on the Land include:*

a) *erection and maintenance of rabbit proof fencing on the boundaries of the Land*

b) *annual control of mammalian and plant pests*

c) *establishment and maintenance of local native divaricating shrubs where required to buffer the outer edge of pivot circles adjoining the Land*

d) *actions to promote restoration management for indigenous dryland ecosystems*

e) *any further actions as required to be undertaken to meet the requirements of the Dryland Recovery Management Plan (DRMP) under CRC176720*

f) *access on and to the Land with motor vehicles and machinery, and with implements and tools including firearms, and with horses and dogs, as required to undertake the activities in paragraphs a) – e) inclusive.*

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

*Area labelled CA3 on the Plan.*

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

*CA3 is subject to a concession (Licence), with expiry 30 April 2025 and one right of renewal, which authorises access to restore and maintain the land to meet the conditions of Canterbury Regional Council resource consent CRC176720 for the 'dryland recovery area'. The resource consent requires at least \$100,000 per annum be spent towards implementing a Recovery Management Plan for the 'dryland recovery*



area'. Concession activities include rabbit proof fencing and annual control of mammalian and plant pests. It also includes actions to promote restoration management for indigenous dryland ecosystems and to buffer them from pivot irrigation on adjoining lands. The concession activity will complement DOC's management and protection of values within conservation area CA3.

4. Details of the proposed types of concession:

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

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

- a) *Proposed duration- 5 years with expiry 30 April 2025 PROVIDED that if the Canterbury Regional Council issues a replacement resource consent for CRC176720 to the same or similar effect then the expiry date shall become the expiry date of that new resource consent, SUBJECT that in any event the final expiry date of this concession shall be the 30th anniversary of the commencement date.*
- b) *Reasons for proposed duration - to coincide with the term of the Concessionaire's resource consent for CRC176720 and one possible replacement.*

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

- a) *Proposed grantee- Simons Pass Station Limited*
- b) *Relevant information- The proposed concessionaire currently uses this land for this activity under existing consent CRC176720. It is expected that the concessionaire will honour the terms and conditions of the concession and will have a positive working relationship with DOC staff.*

2.4 Pukaki Irrigation Infrastructure Limited Partnership Pipeline Easement Concession

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

*A right to convey water by means of underground pipeline under the Easement Area.*

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

*Area marked CA4 labelled "g-l-h" on the Plan.*

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

*Easement Concession for the Conveyance of Water "g-l-h" to Pukaki Irrigation Infrastructure Limited Partnership for conveyance of water and maintenance of existing below-ground pipelines for irrigation within CA4 . Special Conditions are expected to mitigate any potential negative effects of use and maintenance of the existing pipeline.*

*DOC staff will periodically visit the easement area for a range of activities including surveillance and control of wild animals and weeds and will therefore be aware if the concession activity is having any negative effects.*

4. Details of the proposed types of concession:

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

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

a) *Proposed duration - 199 years*

b) *Reasons for proposed duration - the duration is consistent with the expected lifetime of the infrastructure. The proposed concessionaire already uses the pipelines over which the easement is proposed, and will need to continue to do this.*

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

a) *Proposed grantee- Pukaki Irrigation Infrastructure Limited Partnership*

b) *Relevant information - the proposed concessionaire already uses the pipeline over which the easement is proposed. It is expected that the concessionaire will honour the terms and conditions of the concession and will have a positive working relationship with DOC staff.*

2.5 Grazing Concession

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

*The grazing concession provides for sheep grazing for up to 750 stock units annually.*

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

*The proposed grazing concession is to provide phase out grazing over an area of land proposed to become conservation area labelled as CA4 on the Plan.*

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

*The grazing concession on CA4 is restrictive, allowing only for sheep grazing at acceptable levels for land that has been oversown and topdressed (2.97 stock units per hectare annually), for a 'phase-out' term of 5 years. This will provide the time needed for the Concessionaire to adjust stock management to the outcomes of the tenure review while mitigating the impacts of stocking throughout the term. Stocking will cease upon expiry of the grazing concession, as it has no right of renewal.*

*The cessation of farming-related activities including the immediate removal of cattle and phasing out of sheep grazing after five years will enable the recovery and enhancement of indigenous flora and fauna within CA4.*

*DOC staff will periodically visit the concession area for a range of activities including surveillance and control of wild animals and weeds and will therefore be aware if the concession activity is having any negative effects. Given the limited term of this concession, it is not considered necessary to establish elaborate monitoring.*



4. Details of the proposed types of concession:

*The proposed grazing concession will be under Section 17(Q) (1) Conservation Act 1987*

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

a) *Proposed duration- 5 years*

b) *Reasons for proposed duration – to provide phase out grazing to enable the Holder time to make the necessary adjustments to their farming practices.*

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

a) *Proposed grantee- Murray Valentine*

b) *Relevant information – The proposed concessionaire already grazes the area under the Simons Pass Pastoral Lease*



## **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 on the Plan shaded green and yellow and labelled "FH1", "FH2", "FH3", "FH4", "CC1" and "CC2"; being 2,435 hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:
- 1.1.1 Part IVA of the Conservation Act 1987;
  - 1.1.2 Section 11 of the Crown Minerals Act 1991;
  - 1.1.3 The conservation covenant (shown on the Plan shaded yellow and labelled "CC1" and "CC2") substantially as set out in Appendix 10; and
  - 1.1.4 The easement (shown on the Plan as a dashed or as a diagonal orange line and labelled "c-d-d1-e-s--f-c1-c", "p-q", "m-n-o", "n-r-s", "r-t") substantially as set out in Appendix 11.





#### Schedule Four: Conditions

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Nil



## Appendix 1: Consents – Example of Mortgagee Consent

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

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

Dated:

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

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

Witness Name:  
Occupation:  
Address:



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

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

Dated:

**SIGNED** for and on behalf of

[ ]

in the presence of:

)

)

)

---

Witness Signature:

---

Witness Name:

Occupation:

Address:

## Appendix 2: Example of Solicitors Certificate

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### Certifications

I [ ] hereby certify as follows:

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

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

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

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

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

Yours faithfully

[signed by principal of law firm]



### Appendix 3: Indicative Fencing and Construction Requirements

#### Fencing (to be installed by the Commissioner)

Length and location:	M-N	2,132 metres approximately
	O-P-Q	3,877 metres approximately
	S-S1-T-U	2,812 metres approximately
	V-W	345 metres approximately
	X-Y	6,337 metres approximately

**Type:** Standard rabbit netted sheep fence.

#### Specifications:

1. Fence to be constructed of five HT (2.4mm) wires (one electrified) and one bottom No 8 wire.
2. 2.1 metre (7") treated timber strainers with treated timber stay to be used for gateways and at the end of strains.
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 without separate and specific approval from LINZ.  
Limited manual clearance may be required on parts of the line.
18. Rabbit netting to be affixed on the freehold side of the existing fence with the skirt rock packed.

NB: The Holder may choose to adopt a higher standard of fence and pay any differential in cost.

**Fencing (to be upgraded by the Commissioner)**

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**Length and location:** R-S 771 metres approximately

**Type:** Standard rabbit netted sheep and cattle fence.

**Specifications:**

Upgrade existing fence to the same specifications as new fencing specified above.

**Construction**

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Nil



**Appendix 4: Form of pipeline easement concession to be created**

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### Concession Document (Easement)

**THIS CONCESSION** is made this                      day of

#### **PARTIES:**

**Minister of Conservation** (the Grantor)

**Murray Graham Valentine** (the Concessionaire)

#### **BACKGROUND**

- A.** The Department of Conservation ("Department") Te Papa Atawhai is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B.** The land described in Item 1 of Schedule 1 as the Burdened Land is a Conservation Area or a Reserve under the management of the Grantor.
- C.** The land described in Item 2 of Schedule 1 as the Benefited Land is freehold land of the Concessionaire.
- D.** 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).
- E.** The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Concession.
- F.** The Grantor has agreed to grant the Concessionaire an Easement appurtenant to the Benefited Land over that part of the Burdened Land specified as the Easement Area.

#### **OPERATIVE PARTS**

1. In exercise of the Grantor's powers under the Crown Pastoral Land Act 1998, and the Conservation Act 1987 or the Reserves Act 1977 as relevant, the Grantor **GRANTS** to the Concessionaire an **EASEMENT APPURTENANT** to the Benefited Land to carry out the Concession Activity on the Easement Area subject to the terms and conditions contained in this Concession and its Schedules.

SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate]

acting under delegated authority  
in the presence of:

SIGNED by **Murray Graham Valentine** in the presence of:

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

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



<p>_____ Witness Signature</p> <p>Witness Name: _____</p> <p>Witness Occupation: _____</p> <p>Witness Address: _____</p> <p>A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.</p>	<p>Witness Occupation: _____</p> <p>Witness Address: _____</p>
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<i>Concessionaire's initials</i>		<i>Grantor's initials</i>
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**SCHEDULE 1**

1.	<b>Burdened Land</b> (Schedule 4)	As marked on the Proposed Designations plan attached in Schedule 4 being the labelled CA1: <i>Physical Description/Common Name: Farm Management Easement – Underground pipeline</i> <i>Land Status: TBC</i> <i>Area:</i> <i>Legal Description:</i>
2.	<b>Benefited Land</b> (Schedule 4)	As marked on the Proposed Designations plan in Schedule 4 being the area labelled as FH3: <i>Physical Description/Common Name:</i> <i>Land Status:</i> <i>Area:</i> <i>Legal Description:</i>
3.	<b>Easement Area</b> (Schedule 4)	As marked on the Proposed Designations Plan attached in Schedule 4 being the areas shown by the green dashed lines between the points “i-j” 5m wide
4.	<b>Concession Activity</b> (clause 2)	A right to convey water by means of an underground pipeline under the Burdened Land.
5.	<b>Term</b> (clause 3)	30 Years starting on the Commencement date
6.	<b>Final Expiry Date</b> (clause 3)	The 30 <sup>th</sup> anniversary of the Commencement date
7.	<b>Concession Fee</b> (clause 4)	A one-off fee has (in effect) been accounted for on behalf of the Grantor as part of the substantive proposal put by the Commissioner of Crown Lands and accepted by the Concessionaire on [date] and for which an approved plan has been registered pursuant to section 65 of the Crown Pastoral Land Act 1998.
8.	<b>Concession Fee Payment Date</b> (clause 4)	Not Applicable – see item 7 above.
9.	<b>Penalty Interest Rate</b> (clause 4)	Double the current Official Cash Rate (OCR). <a href="#">See Reserve Bank of New Zealand website</a>
10.	<b>Insurance</b> (To be obtained by	Types and amounts: Public Liability Insurance for general indemnity for an

Concessionaire's initials

Grantor's initials





	Concessionaire) (clause 9)	amount no less than \$1,000,000.00; and Third party vehicle liability for an amount no less than \$500,000.00. Insurance amounts subject to review (clause 9)
11.	<b>Addresses for Notices</b> (clause 18)	The Grantor's address is: Department of Conservation Level 1 John Wickliffe House 265 Princes Street Dunedin 9016 Phone: (03) 477 0677 Email: permissionsdunedin@doc.govt.nz
		The Concessionaire's address in New Zealand is: Murray Valentine C/- Jackson Valentine 258 Stuart Street Dunedin Phone: (03) 474 0900 Cell: 021 425 034 Email: mgv@jacksonv.co.nz

Note: The clause references are to the Grantor's Standard Terms and Conditions set out in Schedule 2.

Note: Please initial each page of Schedule 1

Concessionaire's initials		Grantor's initials	
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## SCHEDULE 2

### STANDARD TERMS AND CONDITIONS

#### 1. Interpretation

1.1 In this Concession, unless the context otherwise requires:

**"Background"** means the matters referred to under the heading 'Background' on the first page of this Document, and words used in the Background have the meaning given to them in this clause 1.1.

**"Benefited Land"** means the land specified in Item 2 of Schedule 1.

**"Burdened Land"** means a Conservation Area or Reserve being the land more particularly described in Item 1 of Schedule 1.

**"Commencement date"** means the date that an approved plan is registered vesting the Burdened Land in the Crown as conservation area or reserve.

**"Concession Fee"** means the amount specified in Item 7 of Schedule 1 and required by the Grantor under section 53 of the Crown Pastoral Land Act 1998 and section 17X of the Conservation Act 1987 for the adverse effects of the Concession Activity on the Crown's or public's interest in the Easement Area.

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

**"Concessionaire"** means the registered proprietor for the time being of the Benefited Land and includes the Concessionaire's successors, assigns, executors, and administrators.

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

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

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

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

**"Easement Area"** means that part of the Burdened Land specified in Item 3 of 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 5 of Schedule 1 during which this Document operates.

1.1 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients, tenants and invitees (excluding other members of the public accessing the Easement Area). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Area), as if the breach had been committed by the Concessionaire.





1.2 In this Concession unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Concession;
- (b) words appearing in this Concession which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (c) a provision of this Concession to be performed by two or more persons binds those persons jointly and severally;
- (d) words in a singular number include the plural and vice versa;
- (e) words importing a gender include other genders;
- (f) 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 Concession;

**2. What is being authorised?**

- 2.1 The Concessionaire is only allowed to use the Easement Area for the Concession Activity.

**3. How long is the Concession for - the Term?**

- 3.1 This Concession commences on the date specified in Item 5 of Schedule 1 and ends on the Final Expiry Date specified in Item 6 of Schedule 1.

**4. What are the fees and when are they to be paid?**

- 4.1 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 7 and 8 of Schedule 1.
- 4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then 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 9 of Schedule 1.

**5. Are there any other charges?**

- 5.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Easement Area or for the services provided to the Easement Area which relate to the Concessionaire's use of the Easement Area or the carrying on of the Concession Activity. Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 9 of Schedule 1.



**6. What are the obligations to protect the environment?**

- 6.1 Without the prior written consent of the Grantor, the Concessionaire must not allow or carry out any of the following on the Easement Area:
- (a) cut down or damage any vegetation;
  - (b) bring any animals onto the easement area other than those specified in item 4 of Schedule 1 ;
  - (c) disturb, or allow any stock to disturb any stream or watercourse;
  - (d) undertake any earthworks or disturbance to the ground, other than as required for repair or maintenance;
  - (e) damage any natural feature or historic resource;
  - (f) light any fire on the Easement Area.
- 6.2 The Concessionaire must at its cost keep the easement facility (as defined in Schedule 5) now or hereafter upon the Easement Area, in good order, condition and repair and must keep the Easement Area in a clean and tidy condition and must not store hazardous materials on the Easement Area nor store other materials on the Easement Area where they may obstruct the public or create a nuisance.
- 6.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 6.
- 6.4 The Concessionaire may bring firearms on to the Easement Area for use in connection with the Concession Activity and pest control operations.
- 6.5 For the purposes of the Concession Activity, the Concessionaire may take onto or use vehicles on the Easement Area on existing formed access tracks only.

**7. When can structures be erected?**

- 7.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Area without the prior consent of the Grantor.
- 7.2 The Concessionaire must keep and maintain and structures and facilities on and alterations to the Easement Area in good repair.

**8. What if the Concessionaire wishes to surrender the Concession?**

- 8.1 If the Concessionaire wishes to surrender this Concession or any part of it during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

**9. What are the liabilities and who insures?**

- 9.1 The Concessionaire agrees to use the Easement Area at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's



employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Easement Area.

- 9.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 9.3 This indemnity is to continue after the surrender, expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its surrender, expiry or termination.
- 9.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 9.5 Despite anything else in clause 9 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 9.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Area, the Concession Activity, or to any structures, equipment or facilities on the Easement Area or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 9.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 9.7 Where the Grantor is found to be liable in accordance with clause 9.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 9.8 Despite anything else in clause 9 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 9.9 Without prejudice to or in any way limiting its liability under this clause 9 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 10 of Schedule 1 with a substantial and reputable insurer.
- 9.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 9.9. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 9.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
  - (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
  - (b) a copy of the current certificate of such policies.

## **10. What about Health and Safety?**

- 10.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with any safety directions of the Grantor.

## **11. What are the compliance obligations of the Concessionaire?**

- 11.1 The Concessionaire must comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part 2A of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Burdened Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
  - (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, the Wildlife Act 1953, the Biosecurity Act 1993, the Resource Management Act 1991 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Burdened Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and the Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
  - (c) with all notices and requisitions of any competent authority affecting or relating to the Burdened Land or affecting or relating to the conduct of the Concession Activity; and
  - (d) unless previously agreed in writing with the Grantor, with all Department signs and notices placed on or affecting the Easement Area.
- 11.2 The Concessionaire must comply with this Concession.
- 11.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 11.1.(a) is deemed to be a breach of this Concession.
- 11.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Burdened Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

## **12. When can the Concession be terminated?**

- 12.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Area. Before so terminating the Grantor must give the Concessionaire either:



- (a) one calendar month's notice in writing; or
- (b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession.

- 12.2 The Grantor may choose to remedy at any time any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default. Before electing to so remedy in accordance with this clause the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.

**13. What happens on termination or expiry of the Concession?**

- 13.1 On expiry or termination of this Concession, either as to all or part of the Easement Area, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Area.
- 13.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement Area. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Area and other public conservation land affected by the removal in a clean and tidy condition.
- 13.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement Area. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Area, Burdened Land and other public conservation land affected by the removal in a clean and tidy condition, and replant the Burdened Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

**14. When is the Grantor's consent required?**

- 14.1 Where the Grantor's consent or approval is required, such consent or approval must not be unreasonably withheld. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.
- 14.2 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion.

**15. Are there limitations on public access and closure?**

- 15.1 The Concessionaire acknowledges that the Easement Area is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.



**16. What about other concessions?**

- 16.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

**17. How will disputes be resolved?**

- 17.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, 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.
- 17.2 If the dispute cannot be resolved by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties
- 17.3 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 17.4 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.
- 17.5 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.
- 17.6 The arbitrator must include in the arbitration award reasons for the determination.
- 17.7 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

**18. How are notices sent and when are they received?**

- 18.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, by pre paid post or by email to the receiving party at the address or email address specified in Item 11 of Schedule 1. Any such notice is to be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of post, on the 3<sup>rd</sup> working day after posting;
  - (c) in the case of email, notice will be deemed to have been received on the day on which it is emailed if that is a working day or, if dispatched after 5.00pm, on the next working day after the date of email.



- 18.2 If either party's details specified in Item 11 of Schedule 1 change then the party whose details change must provide the other party with the changed details within 5 working days of such change.

**19. What about the payment of costs?**

- 19.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing any variation of this Concession, including a partial surrender.
- 19.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

**20. What about the powers implied by statute?**

- 20.1 The rights and powers implied in the relevant easements by the Fifth Schedule to the Property Law Act 2007 and the Fifth Schedule to the Land Transfer Regulations 2018 (as set out in Schedule 5 of this Concession) apply to this easement **EXCEPT** to the extent set out in Schedule 3 of this Concession.

**21. What about Co-Siting?**

- 21.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Area by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.
- 21.2 The Concessionaire must not allow Co-Siting on the Easement Area without the prior written consent of the Grantor.
- 21.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Easement Area.
- 21.4 In addition, the Grantor must withhold consent if:
- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Area; or
  - (b) the Grantor considers the change to be detrimental to the environment of the Easement Area.
- 21.5 Subject to clause 21.4 the Concessionaire must, if required by the Grantor, allow Co-Siting on the Easement Area.
- 21.6 Where the Concessionaire maintains that Co-Siting by a third party on the Easement Land would:

- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Area; or
  - (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
  - (c) obstruct or impair the Concessionaire's ability effectively to operate from the Easement Area; or
  - (d) interfere with or prevent future forecast works of the Concessionaire,
- the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 21.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 21.6.
- 21.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 17 of Schedule 2.
- 21.8 Where the Concessionaire is required under clause 21.5 to allow Co-Siting on the Easement Area, the Concessionaire is, subject to clause 21.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Area and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement Area. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:
- (a) any written comments or submissions of the Concessionaire and third party;
  - (b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
  - (c) any other matters the Grantor considers relevant.
- 21.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 17 of Schedule 2.
- 21.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement Area must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Easement Area. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Area.
- 21.11 The Grantor must not authorise the third party to commence work on the Easement Area until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.



**22. Are there any Special Conditions?**

- 22.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

**23. The Law**

- 23.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

## SCHEDULE 3

### SPECIAL CONDITIONS

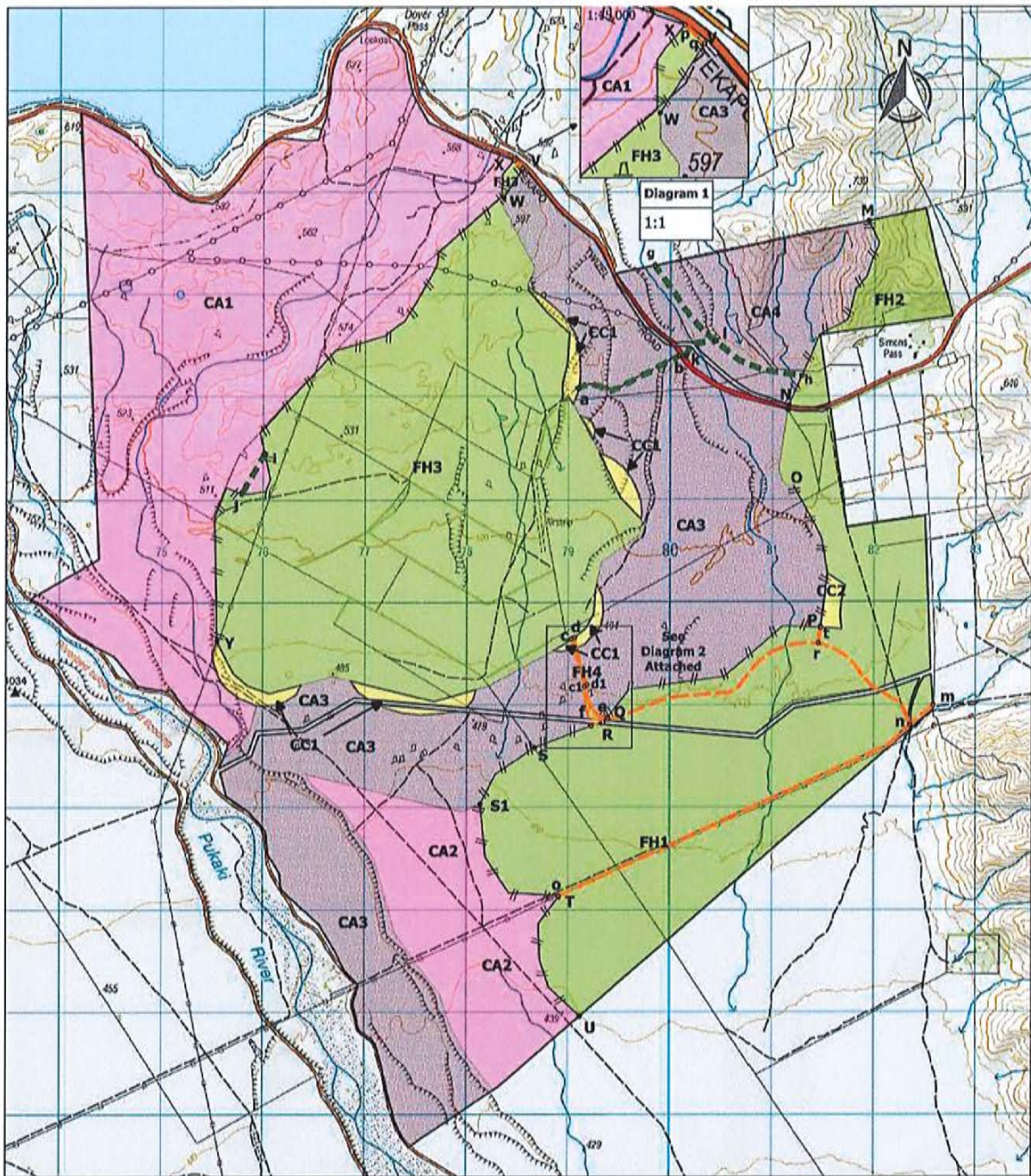
1. The rights and powers implied in easements under Schedule 5 of the Land Transfer Regulations 2018, apply as is relevant to the class of easement provided for in this Concession. Schedule 5 of the Regulations (excluding clauses 13 and 14) is set out in Schedule 5 of this Concession and the Schedule is varied or amended as follows:
  - a. Clause 1 is amended by adding the words "in Schedule 4" after the words "on a plan" in paragraph (a) of the interpretation of "**easement area**"
  - b. Clause 1 is amended by deleting the words "grantee and" from the interpretation of "**grantee and grantor**"
  - c. A new Clause 1A is inserted: "Any reference to "grantee" in this Schedule is to be read as "Concessionaire" and includes the Concessionaire's agents, employees, contractors, tenants, licensees and invitees."
  - d. Clause 11(2) is deleted and clause 11(4) is amended by deleting the reference to (2).
  - e. Clauses 13 and 14 are deleted.
2. The Concessionaire must take all reasonable care to avoid any archaeological values on the Easement Area. If any archaeological evidence is uncovered, the Concessionaire must stop all works immediately and notify the Twizel Operations Manager. Works may not recommence until authorised by the Twizel Operations Manager to do so.
3. Nothing contained or implied in this easement requires the Grantor or the Concessionaire to supply services on or under the Easement Area or entitles the Concessionaire to interfere with the services of any other user of the Easement Area.
4. Nothing contained or implied in this easement enables the Concessionaire whether by subdivision or by any means whatsoever to have the within easement be available to or for additional users.



## **SCHEDULE 4**

### Proposed Designations Plan





Scale on A3: 1:35,000

### Simons Pass SP Designations Plan 07 April 2020

#### Simons Pass Proposed Designations

- Land to be restored to full Crown ownership and control as conservation area; CA1, CA2
- Land to be restored to Crown control subject to a concession CA3, CA4
- Land to be retained as Crown land for road
- Land to be disposed of as freehold; FH1, FH2, FH3, FH4
- Land to be disposed of as freehold subject to a conservation covenant; CC1, CC2

#### Easements

- Farm Management; 'a-b', 'i-j', 'k-l-h'
- Public foot, mountain bike and horse; 'c1-d1'
- Conservation Management; 'c-d-d1-e-s-f-c1-c', 'p-q', 'm-n-o', 'n-r-s', 'r-t'
- Pukaki Irrigation Infrastructure Limited Partnership; 'a-b', 'g-l-h'

#### Fencing

##### New Fences:

#—"M-N", "O-P-Q", "S-T-U", "V-W", "X-Y"

Fence to be upgraded

#—"R-S"

TR184 Simons Pass Designations for Substantive Proposal  
07 April 2020  
Lease boundaries sourced from Land Status Report

The boundaries shown on this plan are indicative and are for illustrative and discussion purposes only. Precise boundary positions will be determined by survey during implementation.

*This map dated 7 April 2020 is replaced with the map dated 23 April 2020  
Refer to the Plan on page 2 of this Proposal*





**SCHEDULE 5**

**RIGHTS AND POWERS IMPLIED IN EASEMENTS**

**A. FIFTH SCHEDULE PROPERTY LAW ACT 2007**

[Deleted as not relevant to this easement]



## **B LAND TRANSFER REGULATIONS 2018**

The following are the rights and powers implied in easements as set out in Schedule 5 of the Land Transfer Regulations 2018. The Regulation Schedule applies to all classes of easement and so it is only the specific provisions which relate to the class of easement dealt with in this Concession which apply, along with those that apply to all forms of easement.

This Schedule does not include clauses 13 and 14 of Schedule 5 of the Regulations as they are deleted and replaced by the specific default and dispute provisions of the Concession.

Refer to Schedule 3 of the Concession for changes to these implied rights and powers.

### **1 Interpretation**

In this schedule, unless the context otherwise requires,—

**benefited land**, in relation to an easement that benefits land, means the land that takes the benefit of the easement and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document

**burdened land**, in relation to an easement,—

- (a) means the land over which the easement is registered and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document; and
- (b) includes the easement area

**easement area**, in relation to an easement, means an area that—

- (a) is shown on a plan in Schedule 4; and
- (b) is referred to in the relevant easement instrument, transfer instrument, or deposit document as the area to which the easement applies

**easement facility**,—

- (a) for a right to convey water, means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution;
- (b) for a right to convey electricity or a right to convey telecommunications, means wires, cables (containing wire or other media conducting materials), ducts, surface boxes, towers, poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution;
- (c) for a right of way, means the surface of the land described as the easement area, including any driveway;
- (d) for a right to drain water, means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution;
- (e) for a right to drain sewage, means pipes, conduits, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment



suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:

- (f) for a right to convey gas, means pipes, conduits, valves, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution

**grantor—**

- (a) have the meanings given by section 107 of the Act; and
- (b) in clauses 3 to 9 and 12(1), include those persons' agents, employees, contractors, tenants, licensees, and invitees

**repair and maintenance**, in relation to an easement facility, includes the replacement of the easement facility

**telecommunication** means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not.

- 1A** Any reference to "grantee" in this Schedule is to be read as "Concessionaire" and includes the Concessionaire's agents, employees, contractors, tenants, licensees and invitees.

**2 Classes of easements**

For the purposes of regulation 21, easements are classified by reference to the following rights:

- (a) a right to convey water:
- (b) a right to drain water:
- (c) a right to drain sewage:
- (d) a right of way:
- (e) a right to convey electricity:
- (f) a right to convey telecommunications:
- (g) a right to convey gas.

*Rights and powers implied in easements granting certain rights*

**3 Right to convey water**

- (1) A right to convey water includes the right for the grantee in common with the grantor and other persons to whom the grantor may grant similar rights to take and convey water in free and unimpeded flow from the source of supply or point of entry through the easement facility and over the servient land to the dominant land.
- (2) The right to take and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.
- (3) The easement facility referred to in sub clause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.

- (4) The grantor must not do and must not allow to be done anything on the servient land that may cause the purity or flow of water in the water supply system to be diminished or polluted.

**4 Right to drain water**

4(1) to 4(3) deleted as not relevant.

**5 Right to drain sewage**

5(1) to 5(3) deleted as not relevant.

**6 Rights of way**

6(1) to 6(5) deleted as not relevant.

**7 Right to convey electricity**

7(1) to 7(3) deleted as not relevant

**8 Right to convey telecommunications**

8(1) to 8(3) deleted as not relevant.

**9 Right to convey gas**

9(1) to 9(3) deleted as not relevant.

*Rights and powers implied in all classes of easement*

**10 General rights**

- (1) All the easements referred to in this schedule include—

- (a) the right to use any easement facility already situated in the easement area for the purpose of the easement granted; and
- (b) if no suitable easement facility exists in the easement area, the right to lay, install, and construct in the easement area (including the right to excavate land for the purpose of that construction) an easement facility that the grantee reasonably requires and for which the grantor has given prior consent; and
- (c) the right to repair and maintain the easement facility.

- (2) The grantor must not unreasonably withhold consent under subclause (1)(b).

- (3) The grantor must not do and must not allow to be done on the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

- (4) The grantee must not do and must not allow to be done on the benefited land (if any) or the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.



- (5) To avoid doubt, all the easements referred to in this schedule (other than for a right to convey electricity) include the right to convey electricity necessary to operate a pump or other equipment that is part of the easement facility.

#### **11 Repair, maintenance, and costs**

- (1) If the 1 or more grantees have exclusive use of the easement facility, each grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.
- (2) Deleted.
- (3) If the easement is in gross, the grantee bears the cost of all work done outside the burdened land.
- (4) The parties responsible for maintenance under subclause (1) or (5) (as the case may be) must meet any associated requirements of the relevant local authority.
- (5) Any repair or maintenance of the easement facility that is attributable solely to an act or omission by the grantor or the grantee must be promptly carried out by that grantor or grantee at their sole cost.
- (6) However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the grantor or grantee,—
- (a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and
  - (b) the balance of those costs is payable in accordance with subclause (2).
- (7) The costs of any electricity used for the conveyance of water must be apportioned between users of the water in proportion to their usage of the water.

#### **12 Rights of entry**

- (1) The grantee may, for the purpose of exercising any right or power, or performing any related duty, implied in an easement by these regulations,—
- (a) enter upon the burdened land by a reasonable route and with all necessary tools, vehicles, and equipment; and
  - (b) remain on the burdened land for a reasonable time for the sole purpose of completing the necessary work; and
  - (c) leave any vehicles or equipment on the burdened land for a reasonable time if work is proceeding.
- (2) However, the grantee must first give reasonable notice to the grantor.
- (3) The grantee must ensure that as little damage or disturbance as possible is caused to the burdened land or to the grantor.
- (4) The grantee must ensure that all work is performed properly.
- (5) The grantee must ensure that all work is completed promptly.



- (6) The grantee must immediately make good any damage done to the burdened land by restoring the surface of the land as nearly as possible to its former condition.
- (7) The grantee must compensate the grantor for all damage caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the burdened land.

**13 Default**

Deleted.

**14 Disputes**

Deleted.



**Appendix 5: Form of ROW easement concession to be created**

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### Concession Document (Easement)

**THIS CONCESSION** is made this      day of

#### **PARTIES:**

**Minister of Conservation** (the Grantor)

**Murray Graham Valentine** (the Concessionaire)

#### **BACKGROUND**

- A. The Department of Conservation ("Department") Te Papa Atawhai is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B. The land described in Item 1 of Schedule 1 as the Burdened Land is a Conservation Area or a Reserve under the management of the Grantor.
- C. The land described in Item 2 of Schedule 1 as the Benefited Land is freehold land of the Concessionaire.
- D. 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).
- E. The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Concession.
- F. The Grantor has agreed to grant the Concessionaire an Easement appurtenant to the Benefited Land over that part of the Burdened Land specified as the Easement Area.

#### **OPERATIVE PARTS**

1. In exercise of the Grantor's powers under the Crown Pastoral Land Act 1998, and the Conservation Act 1987 or the Reserves Act 1977 as relevant, the Grantor **GRANTS** to the Concessionaire an **EASEMENT APPURTENANT** to the Benefited Land to carry out the Concession Activity on the Easement Area subject to the terms and conditions contained in this Concession and its Schedules.

SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate]

acting under delegated authority  
in the presence of:

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

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

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

SIGNED by **Murray Graham Valentine** in  
the presence of:

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

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

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

Concessionaire's initials

Grantor's initials



Witness Address: \_\_\_\_\_  
A copy of the Instrument of Delegation may be  
inspected at the Director-General's office at 18-22  
Manners Street, Wellington.

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

*Concessionaire's initials*

*Grantor's initials*



# **SCHEDULE 1**

<b>1.</b>	<b>Burdened Land</b> (Schedule 4)	As marked on the Proposed Designations plan attached in Schedule 4 being the labelled CA3 and CA4:  <i>Physical Description/Common Name: Farm Management Easement</i> <i>Land Status: TBC</i> <i>Area:</i> <i>Legal Description:</i>
<b>2.</b>	<b>Benefited Land</b> (Schedule 4)	As marked on the Proposed Designations plan in Schedule 4 being the area labelled as FH1, FH2, FH3 FH4, CC1 and CC2:  <i>Physical Description/Common Name:</i> <i>Land Status:</i> <i>Area:</i> <i>Legal Description:</i>
<b>3.</b>	<b>Easement Area</b> (Schedule 4)	As marked on the Proposed Designations Plan attached in Schedule 4 being the areas shown by the green dashed lines between the points: a) "a-b" being 20 metres wide, and b) "k-l-h" being 20 metres wide  <i>Legal Description:</i>
<b>4.</b>	<b>Concession Activity</b> (clause 2)	A right of way easement for <b>farm management purposes only</b> for the Concessionaire (including the Concessionaire's agents, tenants and contractors) to pass or repass on foot, on or accompanied by horses, by motor vehicles, with or without machinery and implements of any kind, and with or without domestic livestock, guns and farm dogs. Droving of farm stock is permitted on this easement.
<b>5.</b>	<b>Term</b> (clause 3)	In perpetuity from the Commencement date
<b>6.</b>	<b>Final Expiry Date</b> (clause 3)	Not Applicable
<b>7.</b>	<b>Concession Fee</b> (clause 4)	A one-off fee has (in effect) been accounted for on behalf of the Grantor as part of the substantive proposal put by the Commissioner of Crown Lands and accepted by the Concessionaire and for which an approved plan has been registered on [date] pursuant to section 65 of the Crown Pastoral Land Act 1998.

Concessionaire's initials

Grantor's initials



<b>8.</b>	<b>Concession Fee</b> <b>Payment Date</b> (clause 4)	Not Applicable – see item 7 above.
<b>9.</b>	<b>Penalty Interest</b> <b>Rate</b> (clause 4)	Not applicable
<b>10.</b>	<b>Insurance</b> (To be obtained by Concessionaire) (clause 9)	<u>Types and amounts:</u> Public Liability Insurance for general indemnity for an amount no less than \$1,000,000; and Third party vehicle liability for an amount no less than \$500,000.00 Insurance amounts subject to review (clause 9)
<b>11.</b>	<b>Addresses for</b> <b>Notices</b> (clause 18)	The Grantor's address is: Department of Conservation Level 1 John Wickliffe House 265 Princes Street Dunedin 9016 Phone: (03) 477 0677 Email: permissionsdunedin@doc.govt.nz
		The Concessionaire's address in New Zealand is: Murray Valentine C/- Jackson Valentine 258 Stuart Street Dunedin Phone: (03) 474 0900 Cell: 021 425 034 Email: mgv@jacksonv.co.nz

Note: The clause references are to the Grantor's Standard Terms and Conditions set out in Schedule 2.

Note: Please initial each page of Schedule 1

Concessionaire's initials

Grantor's initials

## SCHEDULE 2

### STANDARD TERMS AND CONDITIONS

#### 1. Interpretation

##### 1.1 In this Concession, unless the context otherwise requires:

**"Background"** means the matters referred to under the heading 'Background' on the first page of this Document, and words used in the Background have the meaning given to them in this clause 1.1.

**"Benefited Land"** means the land specified in Item 2 of Schedule 1.

**"Burdened Land"** means a Conservation Area or Reserve being the land more particularly described in Item 1 of Schedule 1.

**"Commencement date"** means the date that an approved plan is registered vesting the Burdened Land in the Crown as conservation area or reserve.

**"Concession Fee"** means the amount specified in Item 7 of Schedule 1 and required by the Grantor under section 53 of the Crown Pastoral Land Act 1998 and section 17X of the Conservation Act 1987 for the adverse effects of the Concession Activity on the Crown's or public's interest in the Easement Area.

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

**"Concessionaire"** means the registered proprietor for the time being of the Benefited Land and includes the Concessionaire's successors, assigns, executors, and administrators.

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

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

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

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

**"Easement Area"** means that part of the Burdened Land specified in Item 3 of 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 5 of Schedule 1 during which this Document operates.

##### 1.2 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients, tenants and invitees (excluding other members of the public accessing the Easement Area). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Area), as if the breach had been committed by the Concessionaire.



1.3 In this Concession unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Concession;
- (b) words appearing in this Concession which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (c) a provision of this Concession to be performed by two or more persons binds those persons jointly and severally;
- (d) words in a singular number include the plural and vice versa;
- (e) words importing a gender include other genders;
- (f) 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 Concession;

**2. What is being authorised?**

2.1 The Concessionaire is only allowed to use the Easement Area for the Concession Activity.

**3. How long is the Concession for - the Term?**

3.1 This Concession commences on the date specified in Item 5 of Schedule 1 and ends on the Final Expiry Date specified in Item 6 of Schedule 1.

**4. What are the fees and when are they to be paid?**

4.1 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 7 and 8 of Schedule 1.

4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then 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 9 of Schedule 1.

**5. Are there any other charges?**

5.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Easement Area or for the services provided to the Easement Area which relate to the Concessionaire's use of the Easement Area or the carrying on of the Concession Activity. Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 9 of Schedule 1.

**6. What are the obligations to protect the environment?**

6.1 Without the prior written consent of the Grantor, the Concessionaire must not allow



or carry out any of the following on the Easement Area:

- (a) cut down or damage any vegetation;
- (b) bring any animals onto the easement area other than those specified in item 4 of Schedule 1;
- (c) disturb, or allow any stock to disturb any stream or watercourse;
- (d) undertake any earthworks or disturbance to the ground, other than as required for repair or maintenance;
- (e) damage any natural feature or historic resource;
- (f) light any fire on the Easement Area.

6.2 The Concessionaire must at its cost keep the easement facility (as defined in Schedule 5) now or hereafter upon the Easement Area, in good order, condition and repair and must keep the Easement Area in a clean and tidy condition and must not store hazardous materials on the Easement Area nor store other materials on the Easement Area where they may obstruct the public or create a nuisance.

6.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 6.

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

6.5 For the purposes of the Concession Activity, the Concessionaire may take onto or use vehicles on the Easement Area on existing formed access tracks only.

#### **7. When can structures be erected?**

7.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Area without the prior consent of the Grantor.

7.2 The Concessionaire must keep and maintain and structures and facilities on and alterations to the Easement Area in good repair.

#### **8. What if the Concessionaire wishes to surrender the Concession?**

8.1 If the Concessionaire wishes to surrender this Concession or any part of it during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

#### **9. What are the liabilities and who insures?**

9.1 The Concessionaire agrees to use the Easement Area at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Easement Area.

9.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the



Concession Activity.

- 9.3 This indemnity is to continue after the surrender, expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its surrender, expiry or termination.
- 9.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 9.5 Despite anything else in clause 9 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 9.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Area, the Concession Activity, or to any structures, equipment or facilities on the Easement Area or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 9.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 9.7 Where the Grantor is found to be liable in accordance with clause 9.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 9.8 Despite anything else in clause 9 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 9.9 Without prejudice to or in any way limiting its liability under this clause 9 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 10 of Schedule 1 with a substantial and reputable insurer.
- 9.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 9.9. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 9.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
- (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
  - (b) a copy of the current certificate of such policies.

## **10. What about Health and Safety?**

- 10.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with any safety directions of the Grantor.



## **11. What are the compliance obligations of the Concessionaire?**

### **11.1 The Concessionaire must comply where relevant:**

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part 2A of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Burdened Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, the Wildlife Act 1953, the Biosecurity Act 1993, the Resource Management Act 1991 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Burdened Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and the Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Burdened Land or affecting or relating to the conduct of the Concession Activity; and
- (d) unless previously agreed in writing with the Grantor, with all Department signs and notices placed on or affecting the Easement Area.

### **11.2 The Concessionaire must comply with this Concession.**

### **11.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 11.1.(a) is deemed to be a breach of this Concession.**

### **11.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Burdened Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.**

## **12. When can the Concession be terminated?**

### **12.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Area. Before so terminating the Grantor must give the Concessionaire either:**

- (a) one calendar month's notice in writing; or
- (b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession.

### **12.2 The Grantor may choose to remedy at any time any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on**



demand all reasonable costs incurred by the Grantor in remedying such default. Before electing to so remedy in accordance with this clause the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.

**13. What happens on termination or expiry of the Concession?**

- 13.1 On expiry or termination of this Concession, either as to all or part of the Easement Area, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Area.
- 13.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement Area. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Area and other public conservation land affected by the removal in a clean and tidy condition.
- 13.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement Area. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Area, Burdened Land and other public conservation land affected by the removal in a clean and tidy condition, and replant the Burdened Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

**14. When is the Grantor's consent required?**

- 14.1 Where the Grantor's consent or approval is required, such consent or approval must not be unreasonably withheld. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.
- 14.2 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion.

**15. Are there limitations on public access and closure?**

- 15.1 The Concessionaire acknowledges that the Easement Area is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.



**16. What about other concessions?**

- 16.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

**17. How will disputes be resolved?**

- 17.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, 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.
- 17.2 If the dispute cannot be resolved by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties
- 17.3 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 17.4 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.
- 17.5 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.
- 17.6 The arbitrator must include in the arbitration award reasons for the determination.
- 17.7 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

**18. How are notices sent and when are they received?**

- 18.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, by pre paid post or by email to the receiving party at the address or email address specified in Item 11 of Schedule 1. Any such notice is to be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of post, on the 3<sup>rd</sup> working day after posting;
  - (c) in the case of email, notice will be deemed to have been received on the day on which it is emailed if that is a working day or, if dispatched after 5.00pm, on the next working day after the date of email.
- 18.2 If either party's details specified in Item 11 of Schedule 1 change then the party



whose details change must provide the other party with the changed details within 5 working days of such change.

**19. What about the payment of costs?**

- 19.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing any variation of this Concession, including a partial surrender.
- 19.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

**20. What about the powers implied by statute?**

- 20.1 The rights and powers implied in the relevant easements by the Fifth Schedule to the Property Law Act 2007 and the Fifth Schedule to the Land Transfer Regulations 2018 (as set out in Schedule 5 of this Concession) apply to this easement **EXCEPT** to the extent set out in Schedule 3 of this Concession.

**21. What about Co-Siting?**

- 21.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Area by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.
- 21.2 The Concessionaire must not allow Co-Siting on the Easement Area without the prior written consent of the Grantor.
- 21.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Easement Area.
- 21.4 In addition, the Grantor must withhold consent if:
- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Area; or
  - (b) the Grantor considers the change to be detrimental to the environment of the Easement Area.
- 21.5 Subject to clause 21.4 the Concessionaire must, if required by the Grantor, allow Co-Siting on the Easement Area.
- 21.6 Where the Concessionaire maintains that Co-Siting by a third party on the Easement Area would:
- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Area; or
  - (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or

(c) obstruct or impair the Concessionaire's ability effectively to operate from the Easement Area; or

(d) interfere with or prevent future forecast works of the Concessionaire,

the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 21.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 21.6.

21.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 17 of Schedule 2.

21.8 Where the Concessionaire is required under clause 21.5 to allow Co-Siting on the Easement Area, the Concessionaire is, subject to clause 21.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Area and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement Area. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:

(a) any written comments or submissions of the Concessionaire and third party;

(b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;

(c) any other matters the Grantor considers relevant.

21.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 17 of Schedule 2.

21.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement Area must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Easement Area. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Area.

21.11 The Grantor must not authorise the third party to commence work on the Easement Area until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.



**22. Are there any Special Conditions?**

- 22.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

**23. The Law**

- 23.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

## **SCHEDULE 3**

### **SPECIAL CONDITIONS**

1. The rights implied in easements of vehicular right of way in the 5<sup>th</sup> Schedule of the Property Law Act 2007 as set out in Schedule 5 of this document are amended by:
  - (a) replacing the word, "grantee" with "Concessionaire"; and
  - (b) adding to Clause 2(a) the words, "after first obtaining the prior consent of the Grantor as required in clauses 6 and 7 of Schedule 2 of this easement, and as required by special conditions 7 and 8 of Schedule 3 of this easement."
2. The Right and Powers implied in easements under the 5<sup>th</sup> Schedule of the Land Transfer Regulations 2018 as set out in Schedule 5 of this Concession are varied as follows, the rights and powers in:
  - (a) Clause 1 is amended by replacing the word, "grantee" with "Concessionaire"
  - (b) Clause 10(1)(b) is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor as required in clauses 6 and 7 of Schedule 2 of this easement, and as required by special conditions 7 and 8 of Schedule 3 of this easement."
  - (c) Clause 11(2) is deleted and sub clause (4) is amended by deleting the reference to sub clause (2).
  - (d) Clauses 13 and 14 are deleted.
3. The Concessionaire must take all reasonable care to avoid any archaeological values on the Easement Area. If any archaeological evidence is uncovered, the Concessionaire must stop all works immediately and notify the Twizel Operations Manager. Works may not recommence until authorised by the Twizel Operations Area Manager to do so.
4. Nothing contained or implied in this easement requires the Grantor or the Concessionaire to supply services on or under the Easement Area or entitles the Concessionaire to interfere with the services of any other user of the Easement Area.
5. Nothing contained or implied in this easement enables the Concessionaire whether by subdivision or by any means whatsoever to have the within easement be available to or for additional users.
6. The easement is for access only, animals and machinery must not be held within the easement area.

### **Establishment and maintenance of formed track(s)**

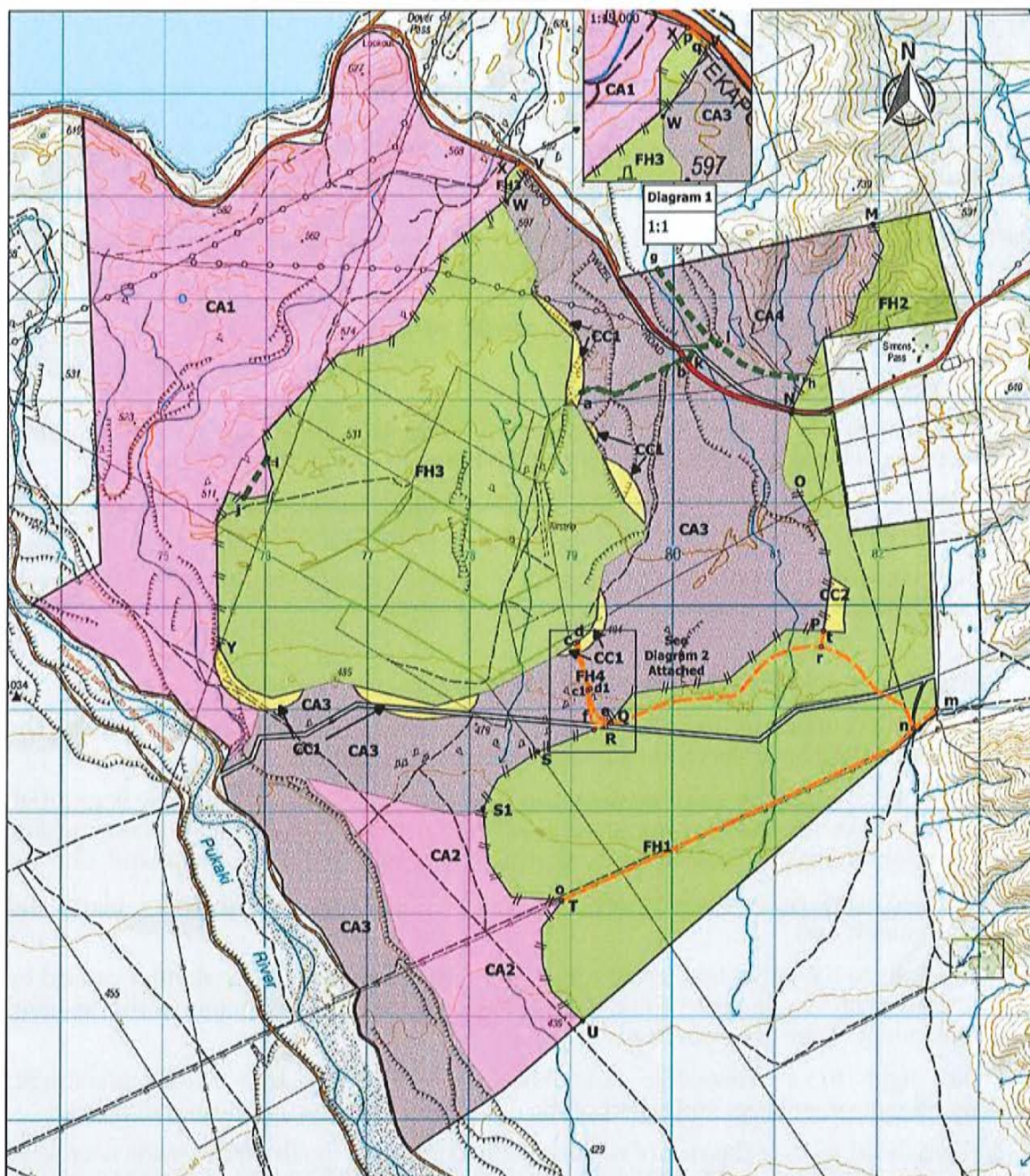
7. Prior to any establishment, maintenance or repair of formed tracks on that part of the Easement Area marked "k-l-h", the Concessionaire shall seek the prior written approval of the Grantor for such works and comply with the Grantor's reasonable directions. In particular, the Concessionaire must not undertake earthworks or deposit any aggregate or rock material to form any track, on those parts of the Easement Area marked "k-l-h" without first obtaining prior written approval of the Grantor.



8. Prior to any maintenance, repair or installation of laneway fencing on those parts of the Easement Area marked "k-l-h" the Concessionaire shall seek the prior written approval of the Grantor for such works and comply with the Grantor's reasonable directions.
9. The Concessionaire may remove sweet briar and rock within a 5-metre corridor to enable passage by a Four Wheel Drive vehicle along that part of the Easement Area marked "k-l".
10. The cost of maintaining any formed track(s) and lane fencing on the Easement Area shall be at the sole cost of the Concessionaire.
11. In carrying out the Concession Activity the Concessionaire must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.
12. The Concessionaire shall not prevent public access or the Grantor's access and use or crossing of formed track(s) within the Easement Area. Any gates installed on the Easement Area including as part of lane fencing are to remain unlocked at all times.
13. The Grantor may, at her own cost, install gates in and/or stiles over fences to facilitate public access through the Easement Area.



# SCHEDULE 4



Scale on A3: 1:35,000

## Simons Pass SP Designations Plan 07 April 2020

### Fencing

New Fences:

# "M-N", "O-P-Q", "S-T-U", "V-W", "X-Y"

Fence to be upgraded

# "R-S"

TR184 Simons Pass Designations for Substantive Proposal  
07 April 2020  
Lease boundaries sourced from Land Status Report

The boundaries shown on this plan are indicative and are for illustrative and discussion purposes only. Precise boundary positions will be determined by survey during implementation.

### Simons Pass Proposed Designations

- Land to be restored to full Crown ownership and control as conservation area; CA1, CA2
- Land to be restored to Crown control subject to a concession CA3, CA4
- Land to be retained as Crown land for road
- Land to be disposed of as freehold; FH1, FH2, FH3, FH4
- Land to be disposed of as freehold subject to a conservation covenant; CC1, CC2

### Easements

- Farm Management; 'a-b', 'i-j', 'k-l-h'
- Public foot, mountain bike and horse; 'c1-d1'
- Conservation Management; 'c-d-d1-e-s-f-c1-c', 'p-q', 'm-n-o', 'n-r-s', 'r-t'
- Pukaki Irrigation Infrastructure Limited Partnership; 'a-b', 'g-l-h'

*This map dated 7 April 2020 is replaced with the map dated 23 April 2020  
Refer to the Plan on Page 2 of this proposal*

*Handwritten signature*



## **SCHEDULE 5**

### **RIGHTS AND POWERS IMPLIED IN EASEMENTS**

#### **A. FIFTH SCHEDULE PROPERTY LAW ACT 2007**

The following are rights and powers implied in easements of vehicular right of way as set out in Schedule 5 of the Land Property Law Act 2007. These implied rights and powers are subject to the express terms and conditions of this concession and modified accordingly.

In particular, rights to establish and maintain a driveway in clause 2 and restoration in clause 3 below are subject to Schedule 2 and Schedule 3.

#### **Rights implied in easements of vehicular right of way**

##### **1. Right to pass and re-pass**

- (1) The grantee and the grantor have (in common with one another) the right to go, pass, and re-pass over and along the land over which the right of way is granted.
- (2) That right to go, pass, and re-pass is exercisable at all times, by day and by night, and is exercisable with or without vehicles, machinery, and equipment of any kind.
- (3) In this clause, the grantee and the grantor include agents, contractors, employees, invitees, licensees, and tenants of the grantee or the grantor.

##### **2. Right to establish and maintain driveway**

The owners and occupiers of the land for the benefit of which, and the land over which, the right of way is granted have the following rights against one another:

- (a) the right to establish a driveway on the land over which the right of way is granted, and to make necessary repairs to any existing driveway on it, and to carry out any necessary maintenance or upkeep, altering if necessary the state of that land; and
- (b) any necessary rights of entry onto that land, with or without machinery, plant, and equipment; and
- (c) the right to have that land at all times kept clear of obstructions, whether caused by parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the driveway; and
- (d) the right to a reasonable contribution towards the cost of establishment, maintenance, upkeep, and repair of the driveway to an appropriate standard; and
- (e) the right to recover the cost of repairing any damage to the driveway made necessary by any deliberate or negligent act of a person bound by these covenants or that person's agents, contractors, employees, invitees, licensees, or tenants.

##### **3. Right to have land restored after completion of work**

- (1) This clause applies to a person bound by these covenants (person A) if a person entitled to enforce these covenants (person B) has undertaken work, in accordance with the right conferred by clause 2(a) or with an order of a court, on the land over which a right of way is granted.
- (2) Person A has the right, after the completion of the work, to have the land restored as far as possible to its former condition (except for the existence of the driveway).
- (3) That right of person A is subject to person B's right, in accordance with clause 2(d), to receive a reasonable contribution towards the cost of the work.

d



## **B. LAND TRANSFER REGULATIONS 2018**

The following are rights and powers implied in easements as set out in Schedule 5 of the Land Transfer Regulations 2018. The Regulation Schedule applies to all classes of easement and so it is only the specific provisions which relate to the class of easement dealt with in this Concession which apply, along with those that apply to all forms of easement.

The rights and powers implied in all classes of easement in clauses 10, 11 and 12 of the Regulations below are subject to Schedule 2 and Schedule 3.

This Schedule does not include clauses 13 and 14 of Schedule 5 of the Regulations as they are deleted and replaced by the specific default and dispute provisions of this Concession.

Refer to Schedule 3 special condition 2 of this Concession for changes to these implied rights and powers.

### **1 Interpretation**

In this schedule, unless the context otherwise requires,—

**benefited land**, in relation to an easement that benefits land, means the land that takes the benefit of the easement and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document

**burdened land**, in relation to an easement,—

- (a) means the land over which the easement is registered and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document; and
- (b) includes the easement area

**easement area**, in relation to an easement, means an area that—

- (a) is shown on a plan in Schedule 4; and
- (b) is referred to in the relevant easement instrument, transfer instrument, or deposit document as the area to which the easement applies

**easement facility**,—

- (a) for a right to convey water, means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution;
- (b) for a right to convey electricity or a right to convey telecommunications, means wires, cables (containing wire or other media conducting materials), ducts, surface boxes, towers, poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution;
- (c) for a right of way, means the surface of the land described as the easement area, including any driveway;
- (d) for a right to drain water, means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution;



- (e) for a right to drain sewage, means pipes, conduits, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution;
- (f) for a right to convey gas, means pipes, conduits, valves, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution

**grantee and grantor—**

- (a) have the meanings given by section 107 of the Act; and
- (b) in clauses 3 to 9 and 12(1), include those persons' agents, employees, contractors, tenants, licensees, and invitees

*\* Note: under Schedule 3 special condition 2, all references to "grantee" are deleted and replaced with "Concessionaire"*

**repair and maintenance**, in relation to an easement facility, includes the replacement of the easement facility

**telecommunication** means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not.

## **2 Classes of easements**

For the purposes of regulation 21, easements are classified by reference to the following rights:

- (a) a right to convey water:
- (b) a right to drain water:
- (c) a right to drain sewage:
- (d) a right of way:
- (e) a right to convey electricity:
- (f) a right to convey telecommunications:
- (g) a right to convey gas.

*Rights and powers implied in easements granting certain rights*

## **3 Right to convey water**

3(1) to 3(4) deleted as not relevant.

## **4 Right to drain water**

4(1) to 4(3) deleted as not relevant.

## **5 Right to drain sewage**

5(1) to 5(3) deleted as not relevant.

## **6 Rights of way**



- (1) A right of way includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to go over and along the easement facility.
- (2) The right to go over and along the easement facility includes the right to go over and along the easement facility with or without any kind of—
  - (a) vehicle, machinery, or implement; or
  - (b) domestic animal or (if the burdened land is rural land) farm animal.
- (3) A right of way includes the right to have the easement facility kept 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 facility.
- (4) The right to go over and along the easement facility, and to have the easement facility kept clear, is limited to the extent required by any period of necessary repair or maintenance of the easement facility.
- (5) The easement facility for the relevant easement is the surface of the land described as the easement area, including any easement facility laid or to be laid along the easement area in accordance with clause 10(1).

#### **7 Right to convey electricity**

7(1) to 7(3) deleted as not relevant

#### **8 Right to convey telecommunications**

8(1) to 8(3) deleted as not relevant.

#### **9 Right to convey gas**

9(1) to 9(3) deleted as not relevant.

### *Rights and powers implied in all classes of easement*

#### **10 General rights**

- (1) All the easements referred to in this schedule include—
  - (a) the right to use any easement facility already situated in the easement area for the purpose of the easement granted; and
  - (b) if no suitable easement facility exists in the easement area, the right to lay, install, and construct in the easement area (including the right to excavate land for the purpose of that construction) an easement facility that the grantee reasonably requires and for which the grantor has given prior consent; and
  - (c) the right to repair and maintain the easement facility.
- (2) The grantor must not unreasonably withhold consent under subclause (1)(b).
- (3) The grantor must not do and must not allow to be done on the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

- (4) The grantee must not do and must not allow to be done on the benefited land (if any) or the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.
- (5) To avoid doubt, all the easements referred to in this schedule (other than for a right to convey electricity) include the right to convey electricity necessary to operate a pump or other equipment that is part of the easement facility.

#### **11 Repair, maintenance, and costs**

- (1) If the 1 or more grantees have exclusive use of the easement facility, each grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.
- (2) Deleted.
- (3) If the easement is in gross, the grantee bears the cost of all work done outside the burdened land.
- (4) The parties responsible for maintenance under subclause (1) [deleted] or (5) (as the case may be) must meet any associated requirements of the relevant local authority.
- (5) Any repair or maintenance of the easement facility that is attributable solely to an act or omission by the grantor or the grantee must be promptly carried out by that grantor or grantee at their sole cost.
- (6) However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the grantor or grantee,—
  - (a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and
  - (b) the balance of those costs is payable in accordance with subclause (2).
- (7) The costs of any electricity used for the conveyance of water must be apportioned between users of the water in proportion to their usage of the water.

#### **12 Rights of entry**

- (1) The grantee may, for the purpose of exercising any right or power, or performing any related duty, implied in an easement by these regulations,—
  - (a) enter upon the burdened land by a reasonable route and with all necessary tools, vehicles, and equipment; and
  - (b) remain on the burdened land for a reasonable time for the sole purpose of completing the necessary work; and
  - (c) leave any vehicles or equipment on the burdened land for a reasonable time if work is proceeding.
- (2) However, the grantee must first give reasonable notice to the grantor.
- (3) The grantee must ensure that as little damage or disturbance as possible is caused to the burdened land or to the grantor.



- (4) The grantee must ensure that all work is performed properly.
- (5) The grantee must ensure that all work is completed promptly.
- (6) The grantee must immediately make good any damage done to the burdened land by restoring the surface of the land as nearly as possible to its former condition.
- (7) The grantee must compensate the grantor for all damage caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the burdened land.

**13 Default**

Deleted.

**14 Disputes**

Deleted.



**Appendix 6: Form of ROW easement in favour of Pukaki Irrigation Infrastructure Limited Partnership to be created**

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**Concession Document (Easement)**

**THIS CONCESSION** is made this                      day of

**PARTIES:**

**Minister of Conservation** (the Grantor)

**Pukaki Irrigation Infrastructure Limited Partnership** (the Concessionaire)

**BACKGROUND**

- A.** The Department of Conservation ("Department") Te Papa Atawhai is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B.** The land described in Item 1 of Schedule 1 as the Burdened Land is a Conservation Area or a Reserve under the management of the Grantor.
- C.** Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- D.** The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Concession.
- E.** The Grantor has agreed to grant the Concessionaire an **Easement in Gross** over that part of the Burdened Land specified as the Easement Area.

**OPERATIVE PARTS**

- 1. In exercise of the Grantor's powers under the Crown Pastoral Land Act 1998, and the Conservation Act 1987 or the Reserves Act 1977 as relevant, the Grantor **GRANTS** to the Concessionaire an **EASEMENT IN GROSS** to carry out the Concession Activity on the Easement Area subject to the terms and conditions contained in this Concession and its Schedules.

SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate]

acting under delegated authority  
in the presence of:

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

SIGNED for **Pukaki Irrigation  
Infrastructure Limited Partnership** by:

\_\_\_\_\_  
General Partner

Or

<p>Witness Name: _____</p> <p>Witness Occupation: _____</p> <p>Witness Address: _____</p> <p>A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.</p>	<p>_____</p> <p>[Name] being a natural person acting under authority of the Limited Partnership</p> <p>in the presence of:</p> <p>Witness Signature: _____</p> <p>Witness Name: _____</p> <p>Witness Occupation: _____</p> <p>Witness Address: _____</p>
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<i>Concessionaire's initials</i>		<i>Grantor's initials</i>
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## SCHEDULE 1

1.	<b>Burdened Land</b> (Schedule 4)	As marked on the Proposed Designations plan attached in Schedule 4 being the labelled CA3: <i>Physical Description/Common Name: Farm Management Easement – Irrigation infrastructure</i> <i>Land Status: TBC</i> <i>Area:</i> <i>Legal Description:</i>
2.	<b>Benefited Land</b> (Schedule 4)	Not Applicable – Easement in gross <i>Physical Description/Common Name:</i> <i>Land Status:</i> <i>Area:</i> <i>Legal Description:</i>
3.	<b>Easement Area</b> (Schedule 4)	As marked on the Proposed Designations Plan attached in Schedule 4 being the areas shown by the green dashed lines between the points “a-b” which is 20m wide
4.	<b>Concession Activity</b> (clause 2)	A right of way easement for the <b>sole purpose of providing access to irrigation infrastructure owned or operated by the Concessionaire on adjoining land</b> for the Concessionaire (including the Concessionaire's agents, tenants and contractors) to pass and repass on foot, by motor vehicles, with or without machinery and implements of any kind.
5.	<b>Term</b> (clause 3)	199 years from the Commencement date
6.	<b>Final Expiry Date</b> (clause 3)	the 199th anniversary of the Commencement date
7.	<b>Concession Fee</b> (clause 4)	A one-off fee has (in effect) been accounted for on behalf of the Grantor as part of the substantive proposal put by the Commissioner of Crown Lands and accepted by the Concessionaire on [date] and for which an approved plan has been registered pursuant to section 65 of the Crown Pastoral Land Act 1998.
8.	<b>Concession Fee Payment Date</b> (clause 4)	Not Applicable – see item 7 above.
9.	<b>Penalty Interest Rate</b> (clause 4)	Double the current Official Cash Rate (OCR). <a href="#">See Reserve Bank of New Zealand website</a>

Concessionaire's initials

Grantor's initials

10.	<b>Insurance</b> (To be obtained by Concessionaire) (clause 9)	Types and amounts: Public Liability Insurance for general indemnity for an amount no less than \$1,000,000,00; and Third party vehicle liability for an amount no less than \$500,000,00. Insurance amounts subject to review (clause 9)
11.	<b>Addresses for Notices</b> (clause 18)	The Grantor's address is: Department of Conservation Level 1 John Wickliffe House 265 Princes Street Dunedin 9016 Phone: (03) 477 0677 Email: permissionsdunedin@doc.govt.nz
		The Concessionaire's address in New Zealand is: Murray Valentine C/- Jackson Valentine 258 Stuart Street Dunedin Phone: (03) 474 0900 Cell: 021 425 034 Email: mgv@jacksonv.co.nz

Note: The clause references are to the Grantor's Standard Terms and Conditions set out in Schedule 2.

Note: Please initial each page of Schedule 1

Concessionaire's initials		Grantor's initials	
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## SCHEDULE 2

### STANDARD TERMS AND CONDITIONS

#### 1. Interpretation

##### 1.1 In this Concession, unless the context otherwise requires:

**"Background"** means the matters referred to under the heading 'Background' on the first page of this Document, and words used in the Background have the meaning given to them in this clause 1.1.

**"Benefited Land"** means the land specified in Item 2 of Schedule 1.

**"Burdened Land"** means a Conservation Area or Reserve being the land more particularly described in Item 1 of Schedule 1.

**"Commencement date"** means the date that an approved plan is registered vesting the Burdened Land in the Crown as conservation area.

**"Concession Fee"** means the amount specified in Item 7 of Schedule 1 and required by the Grantor under section 53 of the Crown Pastoral Land Act 1998 and section 17X of the Conservation Act 1987 for the adverse effects of the Concession Activity on the Crown's or public's interest in the Easement Area.

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

**"Concessionaire"** means the party named as Concessionaire on page 1, being the current owner or manager of irrigation infrastructure situated on adjoining land and includes the Concessionaire's successors, assigns, executors, and administrators.

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

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

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

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

**"Easement Area"** means that part of the Burdened Land specified in Item 3 of 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 5 of Schedule 1 during which this Document operates.

- 1.1 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients, tenants and invitees (excluding other members of the public accessing the Easement Area). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Area), as if the breach had been committed by the Concessionaire.

- 1.2 In this Concession unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Concession;
- (b) words appearing in this Concession which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (c) a provision of this Concession to be performed by two or more persons binds those persons jointly and severally;
- (d) words in a singular number include the plural and vice versa;
- (e) words importing a gender include other genders;
- (f) 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 Concession;

**2. What is being authorised?**

- 2.1 The Concessionaire is only allowed to use the Easement Area for the Concession Activity.

**3. How long is the Concession for - the Term?**

- 3.1 This Concession commences on the date specified in Item 5 of Schedule 1 and ends on the Final Expiry Date specified in Item 6 of Schedule 1.

**4. What are the fees and when are they to be paid?**

- 4.1 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 7 and 8 of Schedule 1.
- 4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then 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 9 of Schedule 1.

**5. Are there any other charges?**

- 5.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Easement Area or for the services provided to the Easement Area which relate to the Concessionaire's use of the Easement Area or the carrying on of the Concession Activity. Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 9 of Schedule 1.





**6. What are the obligations to protect the environment?**

- 6.1 Without the prior written consent of the Grantor, the Concessionaire must not allow or carry out any of the following on the Easement Area:
- (a) cut down or damage any vegetation;
  - (b) bring any animals onto the easement area other than those specified in item 4 of Schedule 1 ;
  - (c) disturb, or allow any stock to disturb any stream or watercourse;
  - (d) undertake any earthworks or disturbance to the ground, other than as required for repair or maintenance;
  - (e) damage any natural feature or historic resource;
  - (f) light any fire on the Easement Area.
- 6.2 The Concessionaire must at its cost keep the easement facility (as defined in Schedule 5) now or hereafter upon the Easement Area, in good order, condition and repair and must keep the Easement Area in a clean and tidy condition and must not store hazardous materials on the Easement Area nor store other materials on the Easement Area where they may obstruct the public or create a nuisance.
- 6.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 6.
- 6.4 For the purposes of the Concession Activity, the Concessionaire may take onto or use vehicles on the Easement Area on existing formed access tracks only.

**7. When can structures be erected?**

- 7.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Area without the prior consent of the Grantor.
- 7.2 The Concessionaire must keep and maintain and structures and facilities on and alterations to the Easement Area in good repair.

**8. What if the Concessionaire wishes to surrender the Concession?**

- 8.1 If the Concessionaire wishes to surrender this Concession or any part of it during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

**9. What are the liabilities and who insures?**

- 9.1 The Concessionaire agrees to use the Easement Area at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Easement Area.
- 9.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the

Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.

- 9.3 This indemnity is to continue after the surrender, expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its surrender, expiry or termination.
- 9.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 9.5 Despite anything else in clause 9 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 9.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Area, the Concession Activity, or to any structures, equipment or facilities on the Easement Area or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 9.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 9.7 Where the Grantor is found to be liable in accordance with clause 9.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 9.8 Despite anything else in clause 9 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 9.9 Without prejudice to or in any way limiting its liability under this clause 9 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 10 of Schedule 1 with a substantial and reputable insurer.
- 9.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 9.9. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 9.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
  - (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
  - (b) a copy of the current certificate of such policies.

## **10. What about Health and Safety?**

- 10.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with any safety directions of the Grantor.



## **11. What are the compliance obligations of the Concessionaire?**

### **11.1 The Concessionaire must comply where relevant:**

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part 2A of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Burdened Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, the Wildlife Act 1953, the Biosecurity Act 1993, the Resource Management Act 1991 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Burdened Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and the Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Burdened Land or affecting or relating to the conduct of the Concession Activity; and
- (d) unless previously agreed in writing with the Grantor, with all Department signs and notices placed on or affecting the Easement Area.

### **11.2 The Concessionaire must comply with this Concession.**

### **11.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 11.1.(a) is deemed to be a breach of this Concession.**

### **11.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Burdened Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.**

## **12. When can the Concession be terminated?**

### **12.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Area. Before so terminating the Grantor must give the Concessionaire either:**

- (a) one calendar month's notice in writing; or
- (b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession.

### **12.2 The Grantor may choose to remedy at any time any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on**

demand all reasonable costs incurred by the Grantor in remedying such default. Before electing to so remedy in accordance with this clause the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.

**13. What happens on termination or expiry of the Concession?**

- 13.1 On expiry or termination of this Concession, either as to all or part of the Easement Area, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Area.
- 13.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement Area. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Area and other public conservation land affected by the removal in a clean and tidy condition.
- 13.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement Area. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Area, Burdened Land and other public conservation land affected by the removal in a clean and tidy condition, and replant the Burdened Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

**14. When is the Grantor's consent required?**

- 14.1 Where the Grantor's consent or approval is required, such consent or approval must not be unreasonably withheld. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.
- 14.2 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion.

**15. Are there limitations on public access and closure?**

- 15.1 The Concessionaire acknowledges that the Easement Area is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.

**16. What about other concessions?**

- 16.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

**17. How will disputes be resolved?**

- 17.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, 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.

- 17.2 If the dispute cannot be resolved by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties
- 17.3 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 17.4 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.
- 17.5 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.
- 17.6 The arbitrator must include in the arbitration award reasons for the determination.
- 17.7 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

#### **18. How are notices sent and when are they received?**

- 18.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, by pre paid post or by email to the receiving party at the address or email address specified in Item 11 of Schedule 1. Any such notice is to be deemed to have been received:
  - (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of post, on the 3<sup>rd</sup> working day after posting;
  - (c) in the case of email, notice will be deemed to have been received on the day on which it is emailed if that is a working day or, if dispatched after 5.00pm, on the next working day after the date of email.
- 18.2 If either party's details specified in Item 11 of Schedule 1 change then the party whose details change must provide the other party with the changed details within 5 working days of such change.

#### **19. What about the payment of costs?**

- 19.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing any variation of this Concession, including a partial surrender.
- 19.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including



the right to recover outstanding money owed to the Grantor.

**20. What about the powers implied by statute?**

20.1 The rights and powers implied in the relevant easements by the 5<sup>th</sup> Schedule to the Property Law Act 2007 and the 5th Schedule to the Land Transfer Regulations 2018 (as set out in Schedule 5 of this Concession) apply to this easement **EXCEPT** to the extent set out in Schedule 3 of this Concession.

**21. What about Co-Siting?**

21.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Area by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.

21.2 The Concessionaire must not allow Co-Siting on the Easement Area without the prior written consent of the Grantor.

21.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Easement Area.

21.4 In addition, the Grantor must withhold consent if:

- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Area; or
- (b) the Grantor considers the change to be detrimental to the environment of the Easement Area.

21.5 Subject to clause 21.4 the Concessionaire must, if required by the Grantor, allow Co-Siting on the Easement Area.

21.6 Where the Concessionaire maintains that Co-Siting by a third party on the Easement Area would:

- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Area; or
- (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
- (c) obstruct or impair the Concessionaire's ability effectively to operate from the Easement Area; or
- (d) interfere with or prevent future forecast works of the Concessionaire,

the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 21.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 21.6.



- 21.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 17 of Schedule 2.
- 21.8 Where the Concessionaire is required under clause 21.5 to allow Co-Siting on the Easement Area, the Concessionaire is, subject to clause 21.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Area and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement Area. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:
- (a) any written comments or submissions of the Concessionaire and third party;
  - (b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
  - (c) any other matters the Grantor considers relevant.
- 21.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 17 of Schedule 2.
- 21.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement Area must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Easement Area. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Area.
- 21.11 The Grantor must not authorise the third party to commence work on the Easement Area until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.
- 22. Are there any Special Conditions?**
- 22.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.
- 23. The Law**
- 23.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

## SCHEDULE 3

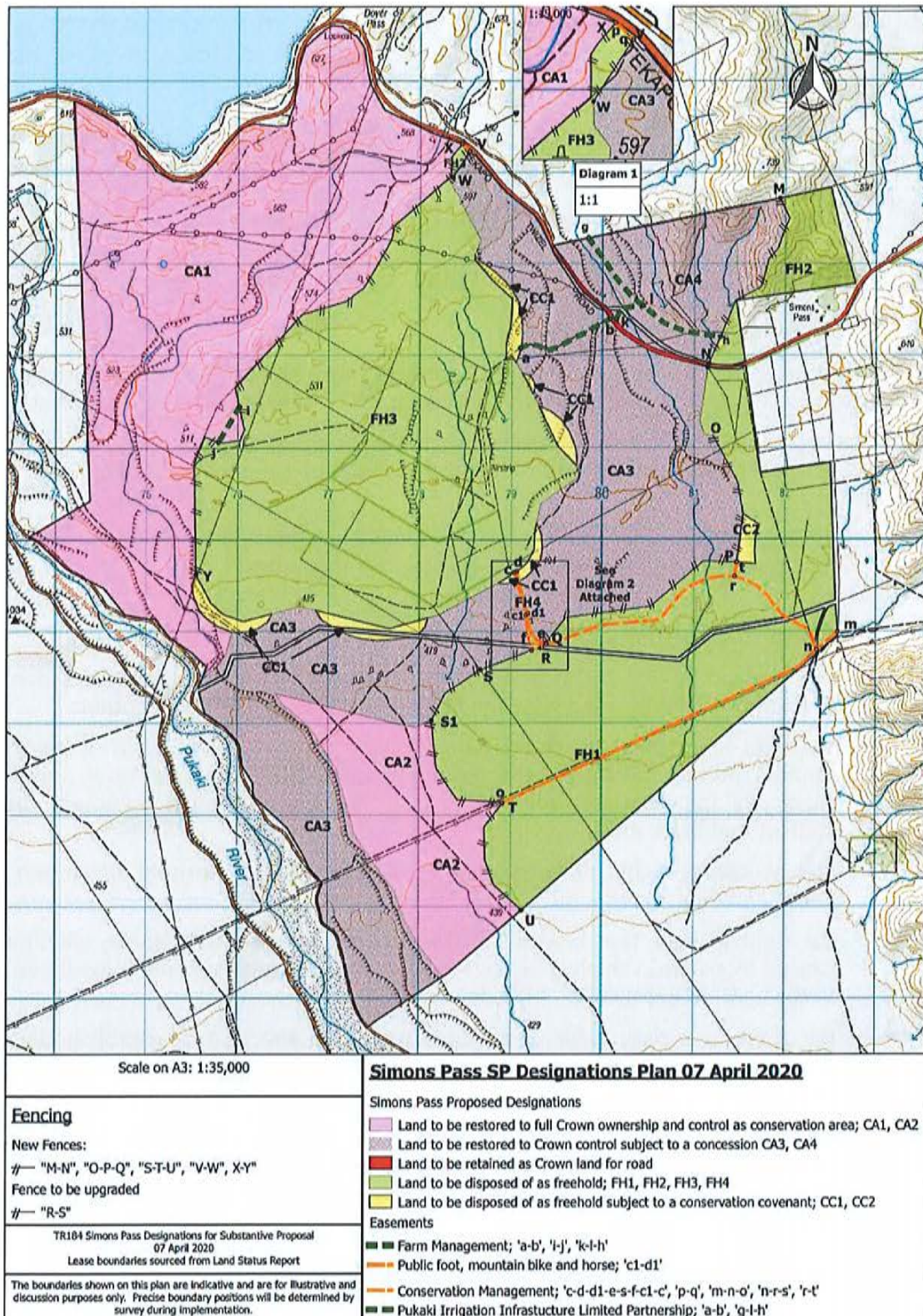
### SPECIAL CONDITIONS

1. The rights implied in easements of vehicular right of way in the 5<sup>th</sup> Schedule of the Property Law Act 2007 as set out in Schedule 5 of this document are amended by replacing the word, "grantee" with "Concessionaire."
2. The Right and Powers implied in easements under the 5th Schedule of the Land Transfer Regulations 2018 as set out in Schedule 5 of this Concession are varied as follows, the rights and powers in:
  - (a) Clause 1 is amended by replacing the word, "grantee" with "Concessionaire"
  - (b) Clause 6(3) is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor as required in clauses 6 and 7 of Schedule 2 of this easement."
  - (c) Clause 10(1)(b) is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor as required in clauses 6 and 7 of Schedule 2 of this easement."
  - (d) Clause 11(2) is deleted and sub clause (4) is amended by deleting the reference to sub clause (2).
  - (e) Clauses 13 and 14 are deleted.
3. The Concessionaire must take all reasonable care to avoid any archaeological values on the Easement Area. If any archaeological evidence is uncovered, the Concessionaire must stop all works immediately and notify the Twizel Operations Manager. Works may not recommence until authorised by the Twizel Operations Manager to do so.
4. Nothing contained or implied in this easement requires the Grantor or the Concessionaire to supply services on or under the Easement Area or entitles the Concessionaire to interfere with the services of any other user of the Easement Area.
5. Nothing contained or implied in this easement enables the Concessionaire whether by subdivision or by any means whatsoever to have the within easement be available to or for additional users.
6. In carrying out the Concession Activity the Concessionaire must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area, and in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.
7. The cost of maintaining any formed track(s) shall be at the sole cost of the Concessionaire.
8. If there is a conflict between this Concession and any other Concession granted by the Grantor over the Burdened Land, this Concession shall prevail.



# SCHEDULE 4

## Proposed Designations Plan



*This map dated 7 April 2020 is replaced with the map dated 23 April 2020  
 Refer to the Plan on Page 2 of this Proposal*



## **SCHEDULE 5**

### **RIGHTS AND POWERS IMPLIED IN EASEMENTS**

The following are rights and powers implied in easements of vehicular right of way as set out in Schedule 5 of the Land Property Law Act 2007. These implied rights and powers are subject to the express terms and conditions of this concession and modified accordingly.

In particular, rights to establish and maintain a driveway in clause 2 and restoration in clause 3 below are subject to Schedule 2 and Schedule 3.

#### **A. FIFTH SCHEDULE PROPERTY LAW ACT 2007**

##### **Rights implied in easements of vehicular right of way**

###### **1. Right to pass and re-pass**

- (1) The grantee and the grantor have (in common with one another) the right to go, pass, and re-pass over and along the land over which the right of way is granted.
- (2) That right to go, pass, and re-pass is exercisable at all times, by day and by night, and is exercisable with or without vehicles, machinery, and equipment of any kind.
- (3) In this clause, the grantee and the grantor include agents, contractors, employees, invitees, licensees, and tenants of the grantee or the grantor.

###### **2. Right to establish and maintain driveway**

The owners and occupiers of the land for the benefit of which, and the land over which, the right of way is granted have the following rights against one another:

- (a) the right to establish a driveway on the land over which the right of way is granted, and to make necessary repairs to any existing driveway on it, and to carry out any necessary maintenance or upkeep, altering if necessary the state of that land; and
- (b) any necessary rights of entry onto that land, with or without machinery, plant, and equipment; and
- (c) the right to have that land at all times kept clear of obstructions, whether caused by parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the driveway; and
- (d) the right to a reasonable contribution towards the cost of establishment, maintenance, upkeep, and repair of the driveway to an appropriate standard; and
- (e) the right to recover the cost of repairing any damage to the driveway made necessary by any deliberate or negligent act of a person bound by these covenants or that person's agents, contractors, employees, invitees, licensees, or tenants.

###### **3. Right to have land restored after completion of work**

- (1) This clause applies to a person bound by these covenants (person A) if a person entitled to enforce these covenants (person B) has undertaken work, in





accordance with the right conferred by clause 2(a) or with an order of a court, on the land over which a right of way is granted.

- (2) Person A has the right, after the completion of the work, to have the land restored as far as possible to its former condition (except for the existence of the driveway).
- (3) That right of person A is subject to person B's right, in accordance with clause 2(d), to receive a reasonable contribution towards the cost of the work.

## **B. LAND TRANSFER REGULATIONS 2018**

The following are rights and powers implied in easements as set out in Schedule 5 of the Land Transfer Regulations 2018. The Regulation Schedule applies to all classes of easement and so it is only the specific provisions which relate to the class of easement dealt with in this Concession which apply, along with those that apply to all forms of easement.

The rights and powers implied in all classes of easement in clauses 10, 11 and 12 of the Regulations below are subject to Schedule 2 and Schedule 3.

This Schedule does not include clauses 13 and 14 of Schedule 5 of the Regulations as they are deleted and replaced by the specific default and dispute provisions of this Concession.

Refer to Schedule 3 special condition 2 of this Concession for changes to these implied rights and powers.

### **1 Interpretation**

In this schedule, unless the context otherwise requires,—

**benefited land**, in relation to an easement that benefits land, means the land that takes the benefit of the easement and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document

**burdened land**, in relation to an easement,—

- (a) means the land over which the easement is registered and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document; and
- (b) includes the easement area

**easement area**, in relation to an easement, means an area that—

- (a) is shown on a plan in Schedule 4; and
- (b) is referred to in the relevant easement instrument, transfer instrument, or deposit document as the area to which the easement applies

**easement facility**,—

- (a) for a right to convey water, means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution;
- (b) for a right to convey electricity or a right to convey telecommunications, means wires, cables (containing wire or other media conducting materials), ducts, surface boxes, towers, poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution;





- (c) for a right of way, means the surface of the land described as the easement area, including any driveway:
- (d) for a right to drain water, means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (e) for a right to drain sewage, means pipes, conduits, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (f) for a right to convey gas, means pipes, conduits, valves, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution

**grantee and grantor—**

- (a) have the meanings given by section 107 of the Act; and
- (b) in clauses 3 to 9 and 12(1), include those persons' agents, employees, contractors, tenants, licensees, and invitees

*\* Note: under Schedule 3 special condition 2, all references to "grantee" are deleted and replaced with "Concessionaire"*

**repair and maintenance**, in relation to an easement facility, includes the replacement of the easement facility

**telecommunication** means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not.

## **2 Classes of easements**

For the purposes of regulation 21, easements are classified by reference to the following rights:

- (a) a right to convey water:
- (b) a right to drain water:
- (c) a right to drain sewage:
- (d) a right of way:
- (e) a right to convey electricity:
- (f) a right to convey telecommunications:
- (g) a right to convey gas.

*Rights and powers implied in easements granting certain rights*

## **3 Right to convey water**

3(1) to 3(4) deleted as not relevant.

## **4 Right to drain water**

4(1) to 4(3) deleted as not relevant.

**5 Right to drain sewage**

5(1) to 5(3) deleted as not relevant.

**6 Rights of way**

- (1) A right of way includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to go over and along the easement facility.
- (2) The right to go over and along the easement facility includes the right to go over and along the easement facility with or without any kind of—
  - (a) vehicle, machinery, or implement; or
  - (b) domestic animal or (if the burdened land is rural land) farm animal.
- (3) A right of way includes the right to have the easement facility kept 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 facility.
- (4) The right to go over and along the easement facility, and to have the easement facility kept clear, is limited to the extent required by any period of necessary repair or maintenance of the easement facility.
- (5) The easement facility for the relevant easement is the surface of the land described as the easement area, including any easement facility laid or to be laid along the easement area in accordance with clause 10(1).

**7 Right to convey electricity**

7(1) to 7(3) deleted as not relevant

**8 Right to convey telecommunications**

8(1) to 8(3) deleted as not relevant.

**9 Right to convey gas**

9(1) to 9(3) deleted as not relevant.

*Rights and powers implied in all classes of easement*

**10 General rights**

- (1) All the easements referred to in this schedule include—
  - (a) the right to use any easement facility already situated in the easement area for the purpose of the easement granted; and



- (b) if no suitable easement facility exists in the easement area, the right to lay, install, and construct in the easement area (including the right to excavate land for the purpose of that construction) an easement facility that the grantee reasonably requires and for which the grantor has given prior consent; and
  - (c) the right to repair and maintain the easement facility.
- (2) The grantor must not unreasonably withhold consent under subclause (1)(b).
- (3) The grantor must not do and must not allow to be done on the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.
- (4) The grantee must not do and must not allow to be done on the benefited land (if any) or the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.
- (5) To avoid doubt, all the easements referred to in this schedule (other than for a right to convey electricity) include the right to convey electricity necessary to operate a pump or other equipment that is part of the easement facility.

#### **11 Repair, maintenance, and costs**

- (1) If the 1 or more grantees have exclusive use of the easement facility, each grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.
- (2) Deleted.
- (3) If the easement is in gross, the grantee bears the cost of all work done outside the burdened land.
- (4) The parties responsible for maintenance under subclause (1) [deleted] or (5) (as the case may be) must meet any associated requirements of the relevant local authority.
- (5) Any repair or maintenance of the easement facility that is attributable solely to an act or omission by the grantor or the grantee must be promptly carried out by that grantor or grantee at their sole cost.
- (6) However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the grantor or grantee,—
  - (a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and
  - (b) the balance of those costs is payable in accordance with subclause (2).
- (7) The costs of any electricity used for the conveyance of water must be apportioned between users of the water in proportion to their usage of the water.

## **12 Rights of entry**

- (1) The grantee may, for the purpose of exercising any right or power, or performing any related duty, implied in an easement by these regulations,—
  - (a) enter upon the burdened land by a reasonable route and with all necessary tools, vehicles, and equipment; and
  - (b) remain on the burdened land for a reasonable time for the sole purpose of completing the necessary work; and
  - (c) leave any vehicles or equipment on the burdened land for a reasonable time if work is proceeding.
- (2) However, the grantee must first give reasonable notice to the grantor.
- (3) The grantee must ensure that as little damage or disturbance as possible is caused to the burdened land or to the grantor.
- (4) The grantee must ensure that all work is performed properly.
- (5) The grantee must ensure that all work is completed promptly.
- (6) The grantee must immediately make good any damage done to the burdened land by restoring the surface of the land as nearly as possible to its former condition.
- (7) The grantee must compensate the grantor for all damage caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the burdened land.

## **13 Default**

Deleted.

## **14 Disputes**

Deleted.





**Appendix 7: Form of concessions licence in favour of Simons Pass Station Limited to be created**

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### Concession Document (Licence)

**THIS CONCESSION** is made this      day of

#### **PARTIES:**

**Minister of Conservation** (the Grantor)

**Simons Pass Station Limited** (the Concessionaire)

#### **BACKGROUND**

- A. The Department of Conservation ("Department") Te Papa Atawhai is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B. The land described in Item 1 of Schedule 1 as the Land is a Conservation Area or a Reserve under the management of the Grantor.
- C. Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- D. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Concession.
- E. The parties wish to record the terms and conditions of this Concession and its Schedules.

#### **OPERATIVE PARTS**

1. In exercise of the Grantor's powers under the Crown Pastoral Land Act 1998, and the Conservation Act 1987 or the Reserves Act 1977 as relevant, 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 Concession and its Schedules.



<p>SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate]</p> <p>acting under delegated authority in the presence of:</p> <p>Witness Signature: _____</p> <p>Witness Name: _____</p> <p>Witness Occupation: _____</p> <p>Witness Address: _____</p> <p>A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.</p>	<p>SIGNED for <b>Simons Pass Station Limited</b> by:</p> <p>_____</p> <p>Signature</p> <p>Director: Barbara Hirji Valentine</p> <p>_____</p> <p>Signature</p> <p>Director: Murray Graham Valentine</p>
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## SCHEDULE 1

1.	<b>Land</b> (Schedule 4)	<p>As marked on the Proposed Designations plan attached in Schedule 4 being the area labelled as CA3:</p> <p><i>Physical Description/Common Name: Dryland Recovery Area</i></p> <p><i>Land Status: TBA</i></p> <p><i>Area: 1464 ha approximately</i></p> <p><i>Legal Description: TBA</i></p>
2.	<b>Concession Activity</b> (clause 2)	<p>Restoration and maintenance of the land as required to meet the conditions of the Canterbury Regional Council resource consent CRC176720 (and any replacement consent to the same or similar effect). Permitted activities on the Land include:</p> <ul style="list-style-type: none"> <li>a) erection and maintenance of rabbit proof fencing on the boundaries of the Land</li> <li>b) annual control of mammalian and plant pests</li> <li>c) establishment and maintenance of local native divaricating shrubs where required to buffer the outer edge of pivot circles adjoining the Land</li> <li>d) actions to promote restoration management for indigenous dryland ecosystems</li> <li>e) any further actions as required to be undertaken to meet the requirements of the Dryland Recovery Management Plan (DRMP) under CRC176720</li> <li>f) access on and to the Land with motor vehicles and machinery, and with implements and tools including firearms, and with horses and dogs, as required to undertake the activities in paragraphs a) – e) inclusive.</li> </ul>
3.	<b>Term</b> (clause 3)	<p>Commencing on the date that an approved plan is registered vesting the Land in the Crown as a conservation area or reserve (the commencement date) and ending on 30 April 2025 being the date that CRC176720 expires,</p> <p>PROVIDED that if the Canterbury Regional Council issues a replacement resource consent for CRC176720 to the same or similar effect then the expiry date shall become the expiry date of that new resource consent,</p> <p>SUBJECT that in any event the final expiry date of this concession shall be the 30<sup>th</sup> anniversary of the commencement date.</p>
4.	<b>Renewal(s)</b> (clause 3)	None

Concessionaire's initials		Grantor's initials	
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5.	<b>Final Expiry Date</b> (clause 3)	If the Concession has not previously expired in accordance with Item 3 above, it shall expire on the 30 <sup>th</sup> anniversary of the Commencement Date.				
6.	<b>Concession Fee</b> (clause 4)	Not applicable – waived on the basis that a conservation benefit is being gained from the Concession Activity				
7.	<b>Concession Fee Payment Instalments</b> (clause 4)	Not applicable				
8.	<b>Concession Fee Payment Date(s)</b> (clause 4)	Not applicable				
9.	<b>Penalty Interest Rate</b> (clause 4)	Not applicable				
10.	<b>Concession Fee Review Date(s)</b> (clause 5)	On the third anniversary of the date of commencement of this Concession as set out in item 3 above and the corresponding date every 3 years thereafter until the expiry of the term, noting the concession activity provides a conservation benefit to the Land.				
11.	<b>Health and Safety</b> (clause 12)	Safety Plan: Required				
12.	<b>Insurance</b> (To be obtained by Concessionaire) (clause 11)	Types and amounts: Public Liability Insurance for: (a) General indemnity for an amount no less than \$1,000,000.00; and (b) Third party vehicle liability for an amount no less than \$500,000.00. Subject to review on each Concession Fee Review Date				
13.	<b>Addresses for Notices</b> (clause 22)	The Grantor’s address is: Department of Conservation Level 1, John Wickcliffe House 265 Princes Street Dunedin 9016 New Zealand  Postal Address: PO Box 5244 Dunedin 9054 New Zealand Phone: +64 (0)3 477 0677 Email: permissionsdunedin@doc.govt.nz				
		<table><tr><td>Concessionaire’s initials</td><td></td><td>Grantor’s initials</td><td></td></tr></table>	Concessionaire’s initials		Grantor’s initials	
Concessionaire’s initials		Grantor’s initials				

		<p>The Concessionaire's address in New Zealand is:</p> <p>Murray Valentine</p> <p>C/- Jackson Valentine</p> <p>258 Stuart Street</p> <p>Dunedin</p> <p>Phone: (03) 474 0900</p> <p>Cell: 021 425 034</p> <p>Email: mgv@jacksonv.co.nz</p>
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Note: The clause references are to the Minister of Conservation's Standard Terms and Conditions for Licences set out in Schedule 2.

<i>Concessionaire's initials</i>		<i>Grantor's initials</i>	
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## SCHEDULE 2

### STANDARD TERMS AND CONDITIONS FOR LICENCES

#### 1. Interpretation

##### 1.1 In this Concession, unless the context otherwise requires:

**"Background"** means the matters referred to under the heading 'Background' on the first page of this Document, and words used in the Background have the meaning given to them in this clause 1.1.

**"Commencement date"** means the date that an approved plan is registered vesting the Land in the Crown as a conservation area.

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

**"Concession Activity"** means the activity described in Item 2 of Schedule 1.

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

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

**"Land"** means the land described in Item 1 of Schedule 1.

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

**"Structure"** includes a bridge, a culvert, and a fence, but not a temporary electric fence.

**"Term"** means the period of time specified in Item 5 of Schedule 1 during which this Concession operates.

- 1.2 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land), as if the breach had been committed by the Concessionaire.

#### 2. What is being authorised?

- 2.1 The Concessionaire is only allowed to use the Land for the Concession Activity.

#### 3. How long is the Concession for - the Term?

- 3.1 This Concession commences on the date set out in Item 3 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.
- 3.2 No renewals of this Concession are permitted.

#### 4. What are the fees and when are they to be paid?

- 4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee (which includes the Annual Activity Fees, the Management Fee, and the Environmental Monitoring Fee) plus GST in the instalments and on the Concession Fee Payment Dates specified in Items 6, 7 and 8 of Schedule 1.

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- 4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then 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 9 of Schedule 1.

**5. When can the fees be reviewed?**

- 5.1 The Grantor is to review the Concession Fee on the Concession Fee Review Date stated in Item 10 of Schedule 1. The new Concession Fee is to be the market value of the Concession Activity carried out on the Land having regard to the matters set out in section 17Y(2) of the Conservation Act 1987.
- 5.2 Both parties are to agree on the new fee within 30 working days of the Grantor giving the Concessionaire written notice of the review.
- 5.3 If the parties cannot so agree then each party is to appoint a Registered Valuer who must meet and agree on the new fee. If the Registered Valuers fail to reach agreement the new fee is to be determined by an umpire appointed by the two Registered Valuers. Each party is to bear that party's own costs and half the costs of the umpire (if any).

**6. Are there any other charges?**

- 6.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Land or for the services provided to the Land which relate to the Concessionaire's use of the Land or the carrying on of the Concession Activity. Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 9 of Schedule 1.

**7. When can the Concession be assigned?**

- 7.1 The Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.
- 7.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 7.1.
- 7.3 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.
- 7.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.



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

7.6 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.

**8. What are the obligations to protect the environment?**

8.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land; or light any fire on the Land without the prior consent of the Grantor.

8.2 The Concessionaire must use and manage the Land in a good and husband like manner, and not impoverish or waste its soil.

8.3 The Concessionaire must keep the Land free from plant and animal pests and must comply with the Biosecurity Act 1993 and relevant pest management strategies.

8.4 The Concessionaire must not bury

(a) any toilet waste within 50 metres of a water source on the Land; or

(b) any animal or fish or any part thereof within 50 metres of any water body, water source or public road or track.

**9. When can structures be erected?**

9.1 The Concessionaire must not place any Structure on the Land nor alter the Land without the prior written consent of the Grantor.

9.2 The Concessionaire must keep all Structures, gates, stiles, cattle stops drains and other physical improvements now or hereafter upon the Land, in good order, condition and repair and must keep the land in a clean and tidy condition and must not store hazardous materials on the Land, or store other materials on the Land where they may obstruct the public or create a nuisance.

**10. What if the Concessionaire wishes to surrender the Concession?**

10.1 If the Concessionaire wishes to surrender this Concession during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

**11. What are the liabilities and who insures?**

11.1 The Concessionaire agrees to use the Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land.

11.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor

may become liable arising from the Concessionaire's performance of the Concession Activity.

- 11.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 11.4 Without prejudice to or in any way limiting its liability under this clause 11 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums stated in Item 12 of Schedule 1 with a substantial and reputable insurer.
- 11.5 The Grantor may on each Concession Fee Review Date on giving 10 working day's notice to the Concessionaire alter the amounts of insurance required under clause 11.4. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 11.6 The Concessionaire must, provide to the Grantor within 5 working days of the Grantor so requesting:
  - (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
  - (b) a copy of the current certificate of such policies.

## **12. What about Health and Safety?**

- 12.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with its safety plan (if one is required in Item 11 of Schedule 1), and with any safety directions of the Grantor.
- 12.2 Before commencing the Concession Activity the Concessionaire must, if required by Item 11 of Schedule 1 prepare a safety plan;
- 12.3 The Grantor may at any time request the Concessionaire to provide the Grantor with a copy of the current safety plan in which case the Concessionaire must provide the copy within 10 working days of receiving the request.
- 12.4 The Concessionaire must notify the Grantor of any natural events or activities on the Land or surrounding area which may endanger the public or the environment.

## **13. What are the compliance obligations of the Concessionaire?**

- 13.1 The Concessionaire must comply where relevant:
  - (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part 2A of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, National Parks Act 1980, Reserves Act 1977, or the Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and



- (b) with the Conservation Act 1987, the Reserves Act 1977, National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977; and
  - (c) with all notices and requisitions of any competent authority affecting or relating to the land or affecting or relating to the conduct of the Concession Activity.
- 13.2 The Concessionaire must comply with this Concession.
- 13.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 13.1 (a) is deemed to be a breach of this Concession.
- 13.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.
- 14. **When can the Concession be suspended?**
- 14.1 If, in the Grantor's opinion, there is a temporary risk to any natural or historic resource on or in the vicinity of the Land or to public safety whether arising from natural events 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 Concession on the part of the Concessionaire, then the Grantor may suspend this Concession.
- 14.2 If, in the Grantor's opinion, the activities of the Concessionaire is having or may have an adverse effect on the natural, historic or cultural values or resources of the Land and the Grantor considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, then the Grantor may suspend this Concession until the Concessionaire avoids, remedies or mitigates the adverse effect to the Grantor's satisfaction.
- 14.3 The Grantor may suspend the Concession for such period as the Grantor determines where the Concessionaire has breached any terms of this Concession.
- 14.4 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 14.1 and 14.2 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.
- 14.5 The word "investigates" in clause 14.4 includes the laying of charges and awaiting the decision of the Court.
- 14.6 During any period of temporary suspension arising under clauses 14.1 or 14.2 the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 14.7 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 this clause 14 including loss of profits.



15. **When can the Concession be terminated?**

15.1 If:

- (a) the Concessionaire breaches any of the conditions of this Concession; or
- (b) the whole or any part of the Land is required for the Grantor's use

The Grantor may terminate this Concession at any time in respect of the whole or any part of the Land. Before so terminating the Grantor must give the Concessionaire either

- (c) one calendar month's notice in writing; or
- (d) such other time period which in the sole opinion of the Grantor appears reasonable and necessary

of the Grantor's intention so to terminate this Concession. If this Concession is terminated then the Grantor, at the Grantor's sole discretion, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

16. **What are the Grantor's Rights to remedy defaults?**

- 16.1 The Grantor may choose to remedy at any time without notice any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default.

17. **What happens on termination or expiry of the Concession?**

- 17.1 On expiry or termination of this Concession, either as to all or part of the Land, the Concessionaire is not entitled to compensation for any Structures or other improvements placed or carried out by the Concessionaire on the Land.

- 17.2 The Concessionaire may, with the Grantor's written consent, remove any specified Structures, gates, drains and other physical improvements erected or placed on the land by the Concessionaire on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land in a clean and tidy condition.

- 17.3 The Concessionaire must, if the Grantor gives written notice, remove any specified Structures, gates, drains and other physical improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land in a clean and tidy condition.



**18. When is the Grantor's consent required?**

18.1 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek such consent or approval for each separate time it is required, even though the Grantor may have given such consent or approval for a like purpose on a prior occasion. Any such consent or approval may be made on such reasonable conditions as the Grantor considers appropriate and the Concessionaire must comply with the Grantor's conditions.

18.2 Where the Grantor's consent or approval is required under this Concession, such consent must not be unreasonably withheld.

**19. Are there limitations on public access and closure?**

19.1 The Concessionaire acknowledges that the Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.

**20. What about other concessions?**

20.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

**21. How will disputes be resolved?**

21.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, 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.

21.2 If the dispute cannot be resolved 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.

21.3 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.

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

21.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.



**22. How are notices sent and when are they received?**

22.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, fax, by pre paid post or email to the receiving party at the address, fax number or email address specified in Item 13 of Schedule 1. Any such notice is to be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of fax, on the date of dispatch;
- (c) in the case of post, on the 3rd working day after posting;
- (d) in the case of email, notice will be deemed to have been received on the day on which it is emailed if that is a working day or, if dispatched after 5.00pm, on the next working day after the date of email.

22.2 If either party's details stated out in Item 13 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

**23. What about the payment of costs?**

23.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing any variation of this Concession.

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

**24. When can the conditions of the Concession be varied?**

24.1 The Grantor may on each Concession Fee Review Date, after first consulting with the Concessionaire, vary any condition of this Concession to make the condition more effective in addressing any adverse effects resulting from the Concession Activity.

24.2 Nothing in clause 24.1 otherwise affects the Grantor's rights to vary the Concession under section 17ZC of the Conservation Act 1987.

**25. What are the Special Conditions?**

25.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

**26. The Law**

26.1 This Concession is to be governed by, and interpreted in accordance with, the laws of New Zealand.



## **SCHEDULE 3**

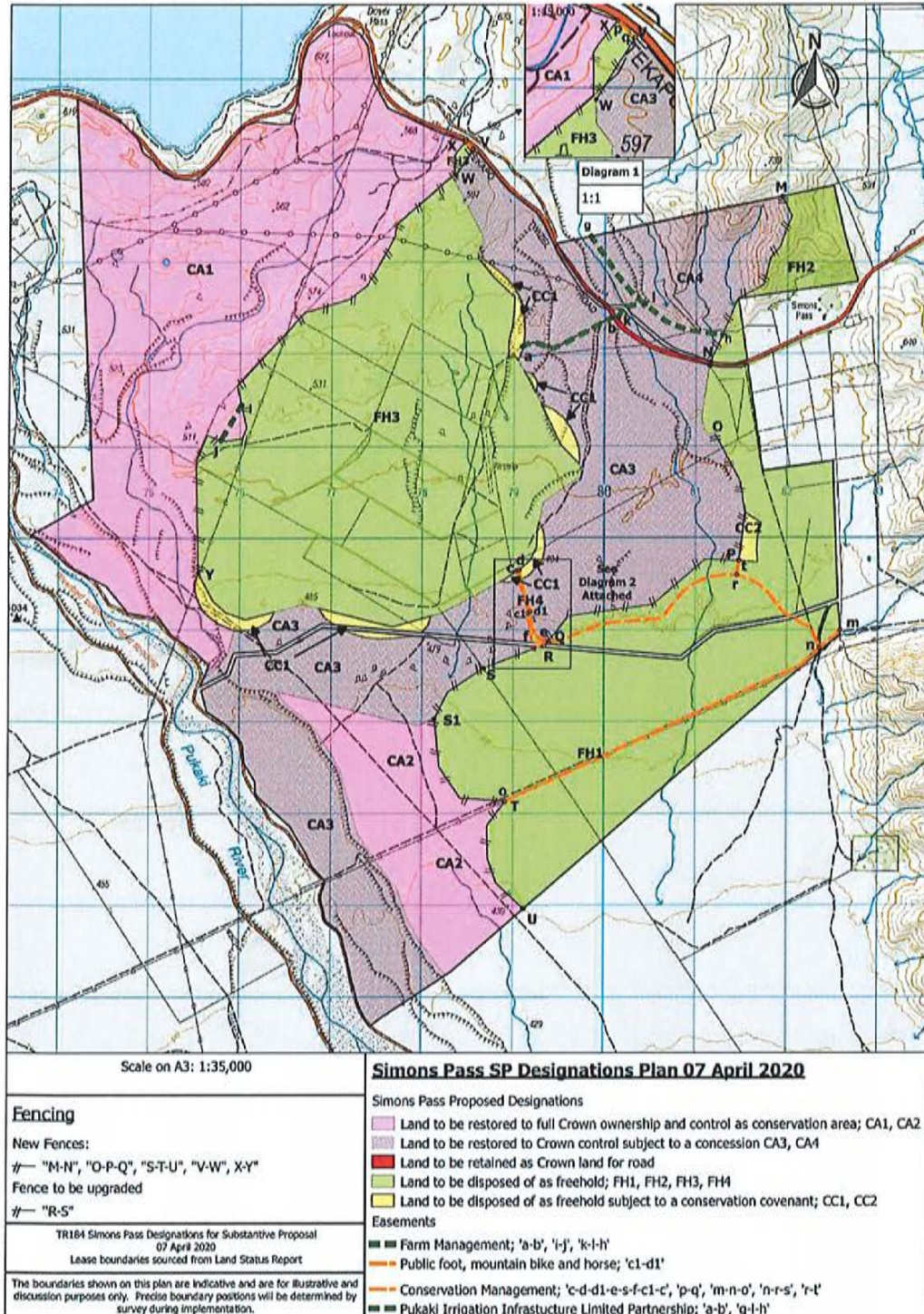
### **SPECIAL CONDITIONS**

1. Notwithstanding clause 7 in Schedule 2, the consent of the Grantor shall not be required for the transfer or assignment of the Concessionaire's interest under this Concession if the transfer or assignment is required as result of the transfer of CRC 176720 or any replacement resource consent to the same or similar effect issued by Canterbury Regional Council with the intent that the Concession will be held by the current holder of that consent. In any such case and prior to any transfer of CRC 176720 or its replacement, the current Concessionaire shall give notice to the Grantor of the transfer of the Concession and advise the Grantor of the name and contact details for the new Concessionaire.
2. Schedule 2 clauses 8.1, 8.2, 8.3, and 9.3 do not apply to the extent that they are inconsistent with the Concession Activity. Notwithstanding clause 8.3 in Schedule 2, the Concessionaire will work with the Grantor to ensure the Concession Activity does not hinder the Grantor's obligations to comply with the Biosecurity Act and any regional pest management strategy.
3. Having regard to the conservation values of the Land the Concessionaire shall take all reasonably practicable steps to ensure the concession activity minimises damage or disturbance to soils or vegetation (except weeds) on the Land. The Concessionaire shall consult with the Grantor about appropriate routes to be used for any vehicles or machinery required to undertake the Concession Activity on and through the Land and shall comply with the Grantor's reasonable directions.



## SCHEDULE 4

### Proposed Designations Plan



C:\Users\ccarson\Objective\Objects\TR184 Simons Pass Substantive Proposal App 07 Concession Licence SPL.doc

This map dated 7 April 2020 is replaced with the map dated 23 April 2020  
Refer to the Plan on Page 2 of this Proposal

2



**Appendix 8: Form of pipeline easement in favour of Pukaki Irrigation Infrastructure Limited Partnership to be created**

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### Concession Document (Easement)

**THIS CONCESSION** is made this      day of

#### **PARTIES:**

**Minister of Conservation** (the Grantor)

**Pukaki Irrigation Infrastructure Limited Partnership** (the Concessionaire)

#### **BACKGROUND**

- A. The Department of Conservation ("Department") Te Papa Atawhai is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B. The land described in Item 1 of Schedule 1 as the Burdened Land is a Conservation Area or a Reserve under the management of the Grantor.
- C. Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- D. The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Concession.
- E. The Grantor has agreed to grant the Concessionaire an Easement over that part of the Burdened Land specified as the Easement Area.

#### **OPERATIVE PARTS**

1. In exercise of the Grantor's powers under the Crown Pastoral Land Act 1998, and the Conservation Act 1987 or the Reserves Act 1977 as relevant, the Grantor **GRANTS** to the Concessionaire an **EASEMENT IN GROSS** to carry out the Concession Activity on the Easement Area subject to the terms and conditions contained in this Concession and its Schedules.

SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate]

acting under delegated authority  
in the presence of:

Witness Signature: \_\_\_\_\_  
Witness Name: \_\_\_\_\_  
Witness Occupation: \_\_\_\_\_  
Witness Address: \_\_\_\_\_

SIGNED for **Pukaki Irrigation Infrastructure Limited Partnership** by:

\_\_\_\_\_  
General Partner

Or



A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.

\_\_\_\_\_  
[Name] being a natural person acting under authority of the Limited Partnership

in the presence of:

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

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

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

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



# **SCHEDULE 1**

<b>1.</b>	<b>Burdened Land</b> (Schedule 4)	As marked on the Proposed Designations plan attached in Schedule 4 being the area marked in pink and labelled CA4:  <i>Physical Description/Common Name:</i> <i>Land Status:</i> <i>Area:</i> <i>Legal Description:</i>
<b>2.</b>	<b>Benefited Land</b> (Schedule 4)	Not applicable – Easement in gross  <i>Physical Description/Common Name:</i> <i>Land Status:</i> <i>Area:</i> <i>Legal Description:</i>
<b>3.</b>	<b>Easement Area</b> (Schedule 4)	As marked on the Proposed Designations Plan attached in Schedule 4 being the areas shown by the green dashed lines between the points: a) g-l-h having a width of 30 metres  <i>Legal Description:</i>
<b>4.</b>	<b>Concession Activity</b> (clause 2)	A right to convey water by means of an underground pipeline under the Easement Area.
<b>5.</b>	<b>Term</b> (clause 3)	199 years from the Commencement Date
<b>6.</b>	<b>Final Expiry Date</b> (clause 3)	The One Hundred and Ninety Ninth Anniversary of the Commencement Date.
<b>7.</b>	<b>Concession Fee</b> (clause 4)	A one-off fee has (in effect) been accounted for on behalf of the Grantor as part of the substantive proposal put by the Commissioner of Crown Lands and accepted by the Concessionaire and for which an approved plan has been registered on [date] pursuant to section 65 of the Crown Pastoral Land Act 1998.
<b>8.</b>	<b>Concession Fee Payment Date</b> (clause 4)	Not applicable – see item 7 above.
<b>9.</b>	<b>Penalty Interest Rate</b> (clause 4)	Not applicable – see item 7 above
<b>10.</b>	<b>Insurance</b>	<u>Types and amounts:</u>

Concessionaire's initials

Grantor's initials



	(To be obtained by Concessionaire) (clause 9)	Public Liability Insurance for general indemnity for an amount no less than \$10,000,000; and Third party vehicle liability for an amount no less than \$500,000.00 Insurance amounts subject to review (clause 9)
<b>11.</b>	<b>Addresses for Notices</b> (clause 18)	The Grantor's address is: Department of Conservation Level 1 John Wickliffe House 265 Princes Street Dunedin 9016 Phone: (03) 477 0677 Email: permissionsdunedin@doc.govt.nz
		The Concessionaire's address in New Zealand is: Murray Valentine C/- Jackson Valentine 258 Stuart Street Dunedin Phone: (03) 474 0900 Cell: 021 425 034 Email: mgv@jacksonv.co.nz Phone: Email: <i>NB: Insert street address and postal address including post code</i>

Note: The clause references are to the Grantor's Standard Terms and Conditions set out in Schedule 2.

Note: Please initial each page of Schedule 1

Concessionaire's initials

Grantor's initials

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concession PIILP.doc

## SCHEDULE 2

### STANDARD TERMS AND CONDITIONS

#### 1. Interpretation

1.1 In this Concession, unless the context otherwise requires:

**"Background"** means the matters referred to under the heading 'Background' on the first page of this Document, and words used in the Background have the meaning given to them in this clause 1.1.

**"Benefited Land"** means the land specified in Item 2 of Schedule 1.

**"Burdened Land"** means a Conservation Area or Reserve being the land more particularly described in Item 1 of Schedule 1.

**"Commencement Date"** means the date that an approved plan is registered vesting the Burdened Land in the Crown as conservation area or reserve.

**"Concession Fee"** means the amount specified in Item 7 of Schedule 1 and required by the Grantor under section 53 of the Crown Pastoral Land Act 1998 and section 17X of the Conservation Act 1987 for the adverse effects of the Concession Activity on the Crown's or public's interest in the Easement Area.

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

**"Concessionaire"** means the party named as the Concessionaire on page 1 and includes the Concessionaire's successors, assigns, executors, and administrators.

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

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

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

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

**"Easement Area"** means that part of the Burdened Land specified in Item 3 of 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 5 of Schedule 1 during which this Document operates.

1.2 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients, tenants and invitees (excluding other members of the public accessing the Easement Area). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Area), as if the breach had been committed by the Concessionaire.

1.3 In this Concession unless the context otherwise requires:



- (a) a reference to a party is a reference to a party to this Concession;
- (b) words appearing in this Concession which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (c) a provision of this Concession to be performed by two or more persons binds those persons jointly and severally;
- (d) words in a singular number include the plural and vice versa;
- (e) words importing a gender include other genders;
- (f) 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 Concession;

**2. What is being authorised?**

- 2.1 The Concessionaire is only allowed to use the Easement Area for the Concession Activity.

**3. How long is the Concession for - the Term?**

- 3.1 This Concession commences on the date specified in Item 5 of Schedule 1 and ends on the Final Expiry Date specified in Item 6 of Schedule 1.

**4. What are the fees and when are they to be paid?**

- 4.1 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 7 and 8 of Schedule 1.
- 4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then 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 9 of Schedule 1.

**5. Are there any other charges?**

- 5.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Easement Area or for the services provided to the Easement Area which relate to the Concessionaire's use of the Easement Area or the carrying on of the Concession Activity. Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 9 of Schedule 1.

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**6. What are the obligations to protect the environment?**

- 6.1 Without the prior written consent of the Grantor, the Concessionaire must not allow or carry out any of the following on the Easement Area:
- (a) cut down or damage any vegetation;
  - (b) bring any animals onto the easement area other than those specified in item 4 of Schedule 1;
  - (c) disturb, or allow any stock to disturb any stream or watercourse;
  - (d) undertake any earthworks or disturbance to the ground, other than as required for repair or maintenance;
  - (e) damage any natural feature or historic resource;
  - (f) light any fire on the Easement Area.
- 6.2 The Concessionaire must at its cost keep the easement facility (as defined in Schedule 5) now or hereafter upon the Easement Area, in good order, condition and repair and must keep the Easement Area in a clean and tidy condition and must not store hazardous materials on the Easement Area nor store other materials on the Easement Area where they may obstruct the public or create a nuisance.
- 6.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 6.
- 6.4 The Concessionaire may bring firearms on to the Easement Area for use in connection with the Concession Activity and pest control operations.
- 6.5 For the purposes of the Concession Activity, the Concessionaire may take onto or use vehicles on the Easement Area on existing formed access tracks only.

**7. When can structures be erected?**

- 7.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Area without the prior consent of the Grantor.
- 7.2 The Concessionaire must keep and maintain and structures and facilities on and alterations to the Easement Area in good repair.

**8. What if the Concessionaire wishes to surrender the Concession?**

- 8.1 If the Concessionaire wishes to surrender this Concession or any part of it during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

**9. What are the liabilities and who insures?**

- 9.1 The Concessionaire agrees to use the Easement Area at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Easement Area.



- 9.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 9.3 This indemnity is to continue after the surrender, expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its surrender, expiry or termination.
- 9.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 9.5 Despite anything else in clause 9 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 9.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Area, the Concession Activity, or to any structures, equipment or facilities on the Easement Area or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 9.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 9.7 Where the Grantor is found to be liable in accordance with clause 9.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 9.8 Despite anything else in clause 9 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 9.9 Without prejudice to or in any way limiting its liability under this clause 9 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 10 of Schedule 1 with a substantial and reputable insurer.
- 9.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 9.9. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 9.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
- (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
  - (b) a copy of the current certificate of such policies.

## **10. What about Health and Safety?**

- 10.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority

relating to the exercise of this Concession. The Concessionaire must comply with any safety directions of the Grantor.

## **11. What are the compliance obligations of the Concessionaire?**

### **11.1 The Concessionaire must comply where relevant:**

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part 2A of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Burdened Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, the Wildlife Act 1953, the Biosecurity Act 1993, the Resource Management Act 1991 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Burdened Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and the Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Burdened Land or affecting or relating to the conduct of the Concession Activity; and
- (d) unless previously agreed in writing with the Grantor, with all Department signs and notices placed on or affecting the Easement Area.

### **11.2 The Concessionaire must comply with this Concession.**

### **11.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 11.1.(a) is deemed to be a breach of this Concession.**

### **11.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Burdened Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.**

## **12. When can the Concession be terminated?**

### **12.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Area. Before so terminating the Grantor must give the Concessionaire either:**

- (a) one calendar month's notice in writing; or
- (b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession.



- 12.2 The Grantor may choose to remedy at any time any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default. Before electing to so remedy in accordance with this clause the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.

**13. What happens on termination or expiry of the Concession?**

- 13.1 On expiry or termination of this Concession, either as to all or part of the Easement Area, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Area.
- 13.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement Area. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Area and other public conservation land affected by the removal in a clean and tidy condition.
- 13.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement Area. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Area, Burdened Land and other public conservation land affected by the removal in a clean and tidy condition, and replant the Burdened Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

**14. When is the Grantor's consent required?**

- 14.1 Where the Grantor's consent or approval is required, such consent or approval must not be unreasonably withheld. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.
- 14.2 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion.

**15. Are there limitations on public access and closure?**

- 15.1 The Concessionaire acknowledges that the Easement Area is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.

**16. What about other concessions?**

- 16.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

**17. How will disputes be resolved?**

- 17.1 If a dispute arises between the parties in connection with this Concession the parties

must, without prejudice to any other rights or entitlements they may have, 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.

- 17.2 If the dispute cannot be resolved by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties
- 17.3 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 17.4 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.
- 17.5 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.
- 17.6 The arbitrator must include in the arbitration award reasons for the determination.
- 17.7 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

**18. How are notices sent and when are they received?**

- 18.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, by pre paid post or by email to the receiving party at the address or email address specified in Item 11 of Schedule 1. Any such notice is to be deemed to have been received:
  - (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of post, on the 3<sup>rd</sup> working day after posting;
  - (c) in the case of email, notice will be deemed to have been received on the day on which it is emailed if that is a working day or, if dispatched after 5.00pm, on the next working day after the date of email.
- 18.2 If either party's details specified in Item 11 of Schedule 1 change then the party whose details change must provide the other party with the changed details within 5 working days of such change.

**19. What about the payment of costs?**

- 19.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing any variation of this Concession, including a partial surrender.
- 19.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the



Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

**20. What about the powers implied by statute?**

- 20.1 The rights and powers implied in the relevant easements by the 5<sup>th</sup> Schedule to the Property Law Act 2007 and the 5th Schedule to the Land Transfer Regulations 2018 (as set out in Schedule 5 of this Concession) apply to this easement **EXCEPT** to the extent set out in Schedule 3 of this Concession.

**21. What about Co-Siting?**

- 21.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Area by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.
- 21.2 The Concessionaire must not allow Co-Siting on the Easement Area without the prior written consent of the Grantor.
- 21.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Easement Area.
- 21.4 In addition, the Grantor must withhold consent if:
- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Area; or
  - (b) the Grantor considers the change to be detrimental to the environment of the Easement Area.
- 21.5 Subject to clause 21.4 the Concessionaire must, if required by the Grantor, allow Co-Siting on the Easement Area.
- 21.6 Where the Concessionaire maintains that Co-Siting by a third party on the Easement Area would:
- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Area; or
  - (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
  - (c) obstruct or impair the Concessionaire's ability effectively to operate from the Easement Area; or
  - (d) interfere with or prevent future forecast works of the Concessionaire,
- the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 21.6. The Grantor must not grant a concession to a third party where the report confirms that the

proposed concession would give rise to one or more of the matters specified in this clause 21.6.

- 21.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 17 of Schedule 2.
- 21.8 Where the Concessionaire is required under clause 21.5 to allow Co-Siting on the Easement Area, the Concessionaire is, subject to clause 21.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Area and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement Area. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:
- (a) any written comments or submissions of the Concessionaire and third party;
  - (b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
  - (c) any other matters the Grantor considers relevant.
- 21.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 17 of Schedule 2.
- 21.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement Area must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Easement Area. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Area.
- 21.11 The Grantor must not authorise the third party to commence work on the Easement Area until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.

## **22. Are there any Special Conditions?**

- 22.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

## **23. The Law**

- 23.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.



## SCHEDULE 3

### SPECIAL CONDITIONS

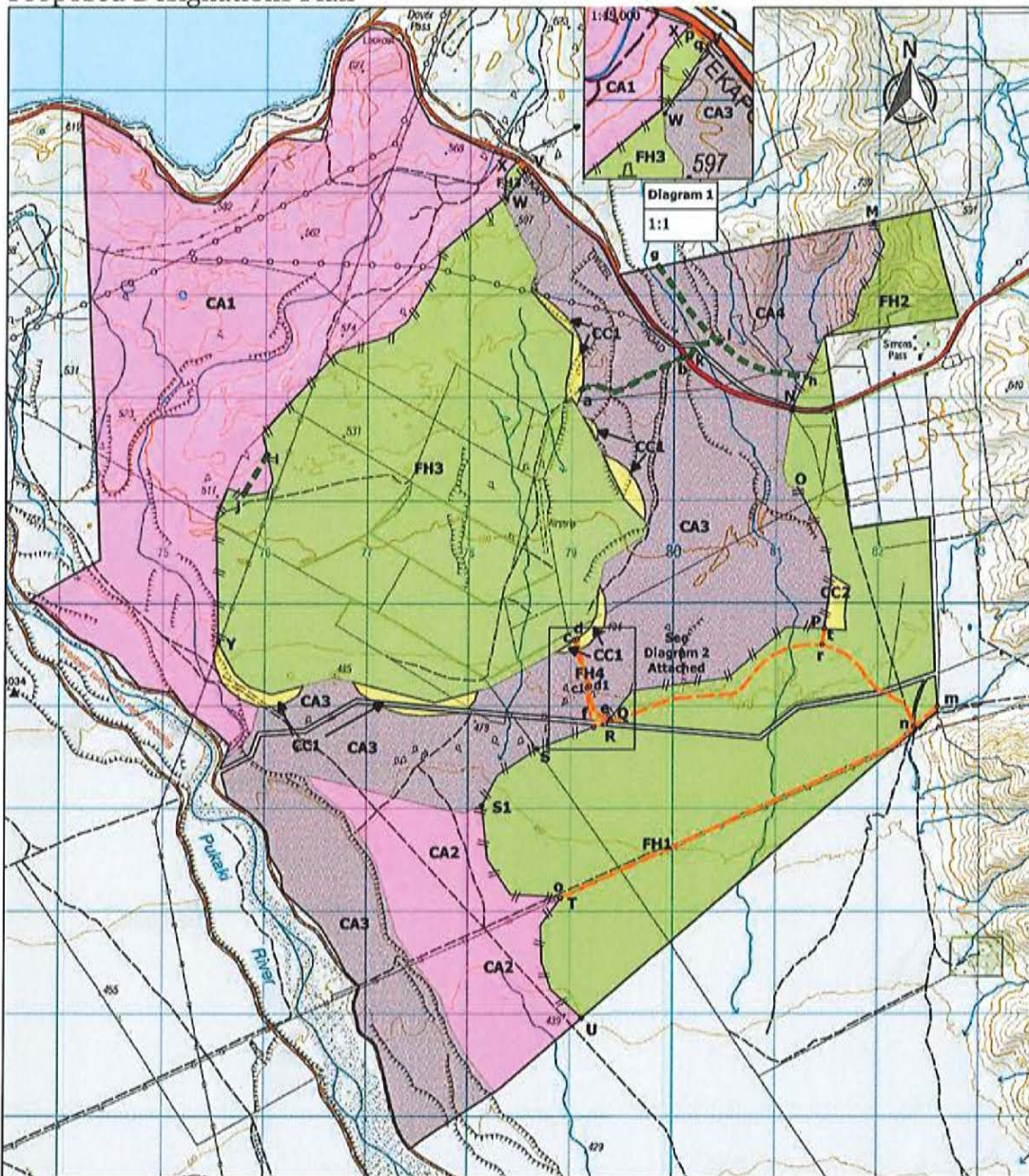
1. The Rights and Powers implied in easements under the 5<sup>th</sup> Schedule of the Land Transfer Regulations 2018 as set out in Schedule 5, Part B of this Concession are varied as follows:
  - (a) Clause 1 is amended by replacing the word, "grantee" with "Concessionaire"
  - (b) Clause 10(1)(b) is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor as required in clauses 6 and 7 of Schedule 2 of this easement."
  - (c) Clause 11(2) is deleted and sub clause (4) is amended by deleting the reference to sub clause (2).
  - (d) Clauses 13 and 14 are deleted.
2. The Concessionaire must take all reasonable care to avoid any archaeological values on the Easement Area. If any archaeological evidence is uncovered, the Concessionaire must stop all works immediately and notify the Twizel Operations Manager. Works may not recommence until authorised by the Twizel Operations Manager to do so.
3. Nothing contained or implied in this easement requires the Grantor or the Concessionaire to supply services on or under the Easement Area or entitles the Concessionaire to interfere with the services of any other user of the Easement Area.
4. Nothing contained or implied in this easement enables the Concessionaire whether by subdivision or by any means whatsoever to have the within easement be available to or for additional users.
5. Before any establishment, maintenance or repair of the existing pipeline or ancillary services within the Easement Area involving disturbance of the soil, or earthworks, the Concessionaire must seek the prior written approval of the Grantor (which must not be unreasonably withheld) for such works and comply with the Grantor's reasonable directions.
6. Subject to special condition 5, the Concessionaire may access the land on foot or by motor vehicle, with or without machinery, in order to maintain the existing underground pipeline and ancillary services located on the easement area.
7. In carrying out the Concession Activity the Concessionaire must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.
8. The cost of maintaining the pipeline and ancillary services within the Easement Area shall be at the sole cost of the Concessionaire.





## SCHEDULE 4

### Proposed Designations Plan



Scale on A3: 1:35,000

#### Simons Pass SP Designations Plan 07 April 2020

##### Simons Pass Proposed Designations

- Land to be restored to full Crown ownership and control as conservation area; CA1, CA2
- Land to be restored to Crown control subject to a concession CA3, CA4
- Land to be retained as Crown land for road
- Land to be disposed of as freehold; FH1, FH2, FH3, FH4
- Land to be disposed of as freehold subject to a conservation covenant; CC1, CC2

##### Easements

- Farm Management; 'a-b', 'i-j', 'k-l-h'
- Public foot, mountain bike and horse; 'c1-d1'
- Conservation Management; 'c-d-d1-e-s-f-c1-c', 'p-q', 'm-n-o', 'n-r-s', 'r-t'
- Pukaki Irrigation Infrastructure Limited Partnership; 'a-b', 'g-i-h'

#### Fencing

##### New Fences:

#— "M-N", "O-P-Q", "S-T-U", "V-W", "X-Y"

Fence to be upgraded

#— "R-S"

TR184 Simons Pass Designations for Substantive Proposal  
07 April 2020  
Lease boundaries sourced from Land Status Report

The boundaries shown on this plan are indicative and are for illustrative and discussion purposes only. Precise boundary positions will be determined by survey during implementation.

*This map dated 7 April 2020 is replaced with the map dated 23 April 2020  
Refer to the Plan on page 2 of this Proposal*



## **SCHEDULE 5**

### **RIGHTS AND POWERS IMPLIED IN EASEMENTS**

#### **A. FIFTH SCHEDULE PROPERTY LAW ACT 2007**

##### **Rights implied in easements of vehicular right of way**

*Part A Deleted as not relevant to the Concession Activity of Easement to convey water.*

## **B. LAND TRANSFER REGULATIONS 2018**

The following are rights and powers implied in easements as set out in Schedule 5 of the Land Transfer Regulations 2018. The Regulation Schedule applies to all classes of easement and so it is only the specific provisions which relate to the class of easement dealt with in this Concession which apply, along with those that apply to all forms of easement.

The rights and powers implied in all classes of easement in clauses 10, 11 and 12 of the Regulations below are subject to Schedule 2 and Schedule 3.

This Schedule does not include clauses 13 and 14 of Schedule 5 of the Regulations as they are deleted and replaced by the specific default and dispute provisions of this Concession.

Refer to Schedule 3 special condition 1 of this Concession for changes to these implied rights and powers.

### **1 Interpretation**

In this schedule, unless the context otherwise requires,—

**benefited land**, in relation to an easement that benefits land, means the land that takes the benefit of the easement and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document

**burdened land**, in relation to an easement,—

- (a) means the land over which the easement is registered and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document; and
- (b) includes the easement area

**easement area**, in relation to an easement, means an area that—

- (a) is shown on a plan in Schedule 4; and
- (b) is referred to in the relevant easement instrument, transfer instrument, or deposit document as the area to which the easement applies

**easement facility**,—

- (a) for a right to convey water, means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (b) for a right to convey electricity or a right to convey telecommunications, means wires, cables (containing wire or other media conducting materials), ducts, surface boxes, towers, poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (c) for a right of way, means the surface of the land described as the easement area, including any driveway:
- (d) for a right to drain water, means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:



- (e) for a right to drain sewage, means pipes, conduits, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (f) for a right to convey gas, means pipes, conduits, valves, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution

**grantee and grantor—**

- (a) have the meanings given by section 107 of the Act; and
- (b) in clauses 3 to 9 and 12(1), include those persons' agents, employees, contractors, tenants, licensees, and invitees

*\* Note: under Schedule 3 special condition 1, all references to "grantee" are deleted and replaced with "Concessionaire"*

**repair and maintenance**, in relation to an easement facility, includes the replacement of the easement facility

**telecommunication** means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not.

## 2 **Classes of easements**

For the purposes of regulation 21, easements are classified by reference to the following rights:

- (a) a right to convey water:
- (b) a right to drain water:
- (c) a right to drain sewage:
- (d) a right of way:
- (e) a right to convey electricity:
- (f) a right to convey telecommunications:
- (g) a right to convey gas.

*Rights and powers implied in easements granting certain rights*

## 3 **Right to convey water**

- (1) A right to convey water includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to take and convey water in free and unimpeded flow from the source of supply or point of entry through the easement facility and over the easement area and (for an easement that benefits land) to the benefited land.
- (2) The right to take and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.
- (3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

- (4) The grantor must not do and must not allow to be done anything on the burdened land that may cause the purity or flow of water in the water supply system to be polluted or diminished.

**4 Right to drain water**

4(1) to 4(3) deleted as not relevant.

**5 Right to drain sewage**

5(1) to 5(3) deleted as not relevant.

**6 Rights of way**

6(1) to 6(5) deleted as not relevant

**7 Right to convey electricity**

7(1) to 7(3) deleted as not relevant

**8 Right to convey telecommunications**

8(1) to 8(3) deleted as not relevant.

**9 Right to convey gas**

9(1) to 9(3) deleted as not relevant.

*Rights and powers implied in all classes of easement*

**10 General rights**

- (1) All the easements referred to in this schedule include—
- (a) the right to use any easement facility already situated in the easement area for the purpose of the easement granted; and
  - (b) if no suitable easement facility exists in the easement area, the right to lay, install, and construct in the easement area (including the right to excavate land for the purpose of that construction) an easement facility that the grantee reasonably requires and for which the grantor has given prior consent; and
  - (c) the right to repair and maintain the easement facility.
- (2) The grantor must not unreasonably withhold consent under subclause (1)(b).
- (3) The grantor must not do and must not allow to be done on the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.
- (4) The grantee must not do and must not allow to be done on the benefited land (if any) or the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.





- (5) To avoid doubt, all the easements referred to in this schedule (other than for a right to convey electricity) include the right to convey electricity necessary to operate a pump or other equipment that is part of the easement facility.

## **11 Repair, maintenance, and costs**

- (1) If the 1 or more grantees have exclusive use of the easement facility, each grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.
- (2) Deleted.
- (3) If the easement is in gross, the grantee bears the cost of all work done outside the burdened land.
- (4) The parties responsible for maintenance under subclause (1) [deleted] or (5) (as the case may be) must meet any associated requirements of the relevant local authority.
- (5) Any repair or maintenance of the easement facility that is attributable solely to an act or omission by the grantor or the grantee must be promptly carried out by that grantor or grantee at their sole cost.
- (6) However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the grantor or grantee,—
- (a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and
- (b) the balance of those costs is payable in accordance with subclause (2).
- (7) The costs of any electricity used for the conveyance of water must be apportioned between users of the water in proportion to their usage of the water.

## **12 Rights of entry**

- (1) The grantee may, for the purpose of exercising any right or power, or performing any related duty, implied in an easement by these regulations,—
- (a) enter upon the burdened land by a reasonable route and with all necessary tools, vehicles, and equipment; and
- (b) remain on the burdened land for a reasonable time for the sole purpose of completing the necessary work; and
- (c) leave any vehicles or equipment on the burdened land for a reasonable time if work is proceeding.
- (2) However, the grantee must first give reasonable notice to the grantor.
- (3) The grantee must ensure that as little damage or disturbance as possible is caused to the burdened land or to the grantor.
- (4) The grantee must ensure that all work is performed properly.
- (5) The grantee must ensure that all work is completed promptly.



- (6) The grantee must immediately make good any damage done to the burdened land by restoring the surface of the land as nearly as possible to its former condition.
- (7) The grantee must compensate the grantor for all damage caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the burdened land.

**13 Default**

Deleted.

**14 Disputes**

Deleted.





## Appendix 9: Form of grazing concession to be created

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**Concession Document (Grazing Licence)**

**THIS CONCESSION** is made this \_\_\_\_\_ day of \_\_\_\_\_

**PARTIES:**

**Minister of Conservation** (the Grantor)

**Murray Valentine**, (the Concessionaire)

**BACKGROUND**

- A.** The Department of Conservation ("Department") Te Papa Atawhai is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B.** The land described in Item 1 of Schedule 1 as the Land is a Conservation Area or a Reserve under the management of the Grantor.
- C.** Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).
- D.** The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Concession.
- E.** The parties wish to record the terms and conditions of this Concession and its Schedules.

**OPERATIVE PARTS**

In exercise of the Grantor's powers under the Crown Pastoral Land Act 1998, and the Conservation Act 1987 or the Reserves Act 1977 as relevant, the Grantor **GRANTS** to the Concessionaire a **GRAZING LICENCE** to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Concession and its Schedules.

SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate]

acting under delegated authority  
in the presence of:

Witness Signature: \_\_\_\_\_  
Witness Name: \_\_\_\_\_  
Witness Occupation: \_\_\_\_\_  
Witness Address: \_\_\_\_\_

A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.

SIGNED by **Murray Graham Valentine** in the presence of:

Witness Signature: \_\_\_\_\_  
Witness Name: \_\_\_\_\_  
Witness Occupation: \_\_\_\_\_  
Witness Address: \_\_\_\_\_





## SCHEDULE 1

1.	<b>Land</b> (Schedule 4)	As marked on the Proposed Designations plan as CA4 attached in Schedule 4  <i>Physical description/ Common name:</i>  <i>Land Status:</i>  <i>Area:</i> 252 hectares  <i>Legal description:</i>
2.	<b>Concession Activity</b> (clause 2)	Grazing on the Land for up to 750 Stock Units (SU) sheep annually.
3.	<b>Term</b> (clause 3)	5 years commencing on the Commencement date.
4.	<b>Renewal(s)</b> (clause 3)	None.
5.	<b>Final Expiry Date</b> (clause 3)	The 5 <sup>th</sup> anniversary of the commencement date.
6.	<b>Concession Fee</b> (clause 4 and Schedule 5)	<b>Concession Activity Fee</b>  An activity fee will be calculated on the basis of \$10 per stock unit per annum plus GST, on an annualised basis, for the sheep run on the Land for that year.  In order that the activity fee may be calculated, the Concessionaire will file a return of stock in the form in Schedule 5 to the Grantor by 30 June in each year showing the stock carried on the Land over the preceding 12 months.  If a return is not made by this date, the activity fee will be charged assuming the maximum stock numbers had been run for the total permitted period.  <b>Annual Management Fee:</b> \$500.00 per annum plus GST <b>Annual Environmental Monitoring Fee</b> Not required
7.	<b>Concession Fee Payment Instalments</b> (clause 4)	Annually

Concessionaire's initials

Grantor's initials



8.	<b>Concession Fee Payment Date(s)</b> (clause 4)	On 30 September in each year of the term
9.	<b>Penalty Interest Rate</b> (clause 4)	Double the current Official Cash Rate (OCR). <a href="#">See Reserve Bank of New Zealand website</a>
10.	<b>Concession Fee Review Date(s)</b> (clause 5)	On the third anniversary of the date of commencement of this Concession as set out in item 3 above and the corresponding date every 3 years thereafter until the expiry of the term.
11.	<b>Health and Safety</b> (clause 12)	Safety Plan: Not required
12.	<b>Insurance</b> (To be obtained by Concessionaire) (clause 11)	Types and amounts: Public Liability Insurance for: (a) General indemnity for an amount no less than \$1,000,000.00; and (b) Forest and Rural Fires Act extension for an amount no less than \$250,000.00; and Third party vehicle liability for an amount no less than \$500,000.00. Subject to review on each Concession Fee Review Date
13.	<b>Addresses for Notices</b> (clause 21)	The Grantor's address is: Department of Conservation Level 1 John Wickliffe House 265 Princes Street Dunedin 9016 Phone: (03) 477 0677 Email: permissionsdunedin@doc.govt.nz post code.
		The Concessionaire's address in New Zealand is: Murray Valentine C/- Jackson Valentine 258 Stuart Street Dunedin Phone: (03) 474 0900 Cell: 021 425 034 Email: mgv@jacksonv.co.nz

Concessionaire's initials

Grantor's initials

Note: The clause references are to the Minister of Conservation's Standard Terms and Conditions for Grazing Licences set out in Schedule 2.

Note: Please initial each page of Schedule 1

<i>Concessionaire's initials</i>		<i>Grantor's initials</i>	
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## SCHEDULE 2

### STANDARD TERMS AND CONDITIONS FOR GRAZING LICENCES

#### 1. Interpretation

##### 1.1 In this Concession, unless the context otherwise requires:

**"Background"** means the matters referred to under the heading 'Background' on the first page of this Document, and words used in the Background have the meaning given to them in this clause 1.1.

**"Commencement date"** means the date that an approved plan is registered vesting the Land in the Crown as a conservation area.

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

**"Concession Activity"** means the activity described in Item 2 of Schedule 1.

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

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

**"Land"** means the land described in Item 1 of Schedule 1.

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

**"Structure"** includes a bridge, a culvert, and a fence, but not a temporary electric fence.

**"Term"** means the period of time specified in Item 5 of Schedule 1 during which this Concession operates.

##### 1.2 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land), as if the breach had been committed by the Concessionaire.

#### 1. What is being authorised?

##### 1.1 The Concessionaire is only allowed to use the Land for the Concession Activity.

#### 2. How long is the Concession for - the Term?

##### 2.1 This Concession commences on the date set out in Item 3 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.

##### 2.2 No renewals of this Concession are permitted.

#### 3. What are the fees and when are they to be paid?

##### 4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee (which includes the Annual Activity Fees, the Management Fee, and the Environmental Monitoring Fee) plus GST in the instalments and on the Concession Fee Payment Dates specified in Items 6, 7 and 8 of Schedule 1.

- 4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then 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 9 of Schedule 1.

**4. When can the fees be reviewed?**

- 5.1 The Grantor is to review the Concession Fee on the Concession Fee Review Date stated in Item 10 of Schedule 1. The new Concession Fee is to be the market value of the Concession Activity carried out on the Land having regard to the matters set out in section 17Y(2) of the Conservation Act 1987.
- 5.2 Both parties are to agree on the new fee within 30 working days of the Grantor giving the Concessionaire written notice of the review.
- 5.3 If the parties cannot so agree then each party is to appoint a Registered Valuer who must meet and agree on the new fee. If the Registered Valuers fail to reach agreement the new fee is to be determined by an umpire appointed by the two Registered Valuers. Each party is to bear that party's own costs and half the costs of the umpire (if any).

**6. Are there any other charges?**

- 6.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Land or for the services provided to the Land which relate to the Concessionaire's use of the Land or the carrying on of the Concession Activity. Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 9 of Schedule 1.

**7. When can the Concession be assigned?**

- 7.1 The Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.
- 7.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 7.1.
- 7.3 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.
- 7.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.
- 7.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.



- 7.6 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.

**8. What are the obligations to protect the environment?**

- 8.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land; or light any fire on the Land without the prior consent of the Grantor.
- 8.2 The Concessionaire must use and manage the Land in a good and husband like manner, and not impoverish or waste its soil.
- 8.3 The Concessionaire must keep the Land free from plant and animal pests and must comply with the Biosecurity Act 1993 and relevant pest management strategies.
- 8.4 The Concessionaire must not bury
- (a) any toilet waste within 50 metres of a water source on the Land; or
  - (b) any animal or fish or any part thereof within 50 metres of any water body, water source or public road or track.

**9. When can structures be erected?**

- 9.1 The Concessionaire must not place any Structure on the Land nor alter the Land without the prior written consent of the Grantor.
- 9.2 The Concessionaire must keep all Structures, gates, stiles, cattle stops drains and other physical improvements now or hereafter upon the Land, in good order, condition and repair and must keep the land in a clean and tidy condition and must not store hazardous materials on the Land, or store other materials on the Land where they may obstruct the public or create a nuisance.
- 9.3 Despite clause 9.1, where there are existing tracks on the Land, the Concessionaire may maintain these tracks within their existing alignment at its own cost, without obtaining the prior written consent of the Grantor.

**10. What if the Concessionaire wishes to surrender the Concession?**

- 10.1 If the Concessionaire wishes to surrender this Concession during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

## **11. What are the liabilities and who insures?**

- 11.1 The Concessionaire agrees to use the Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land.
- 11.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 11.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 11.4 Without prejudice to or in any way limiting its liability under this clause 12 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums stated in Item 12 of Schedule 1 with a substantial and reputable insurer.
- 11.5 The Grantor may on each Concession Fee Review Date on giving 10 working day's notice to the Concessionaire alter the amounts of insurance required under clause 11.4. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 11.6 The Concessionaire must, provide to the Grantor within 5 working days of the Grantor so requesting:
- (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
  - (b) a copy of the current certificate of such policies.

## **12. What about Health and Safety?**

- 12.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with its safety plan (if one is required in Item 11 of Schedule 1), and with any safety directions of the Grantor.
- 12.2 Before commencing the Concession Activity the Concessionaire must, if required by Item 11 of Schedule 1 prepare a safety plan;
- 12.3 The Grantor may at any time request the Concessionaire to provide the Grantor with a copy of the current safety plan in which case the Concessionaire must provide the copy within 10 working days of receiving the request.
- 12.4 The Concessionaire must notify the Grantor of any natural events or activities on the Land or surrounding area which may endanger the public or the environment.



**13. What are the compliance obligations of the Concessionaire?**

**13.1 The Concessionaire must comply where relevant:**

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part 2A of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, National Parks Act 1980, Reserves Act 1977, or the Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the land or affecting or relating to the conduct of the Concession Activity.

**13.2 The Concessionaire must comply with this Concession.**

**13.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 13.1 (a) is deemed to be a breach of this Concession.**

**13.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.**

**14. When can the Concession be suspended?**

**14.1 If, in the Grantor's opinion, there is a temporary risk to any natural or historic resource on or in the vicinity of the Land or to public safety whether arising from natural events 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 Concession on the part of the Concessionaire, then the Grantor may suspend this Concession.**

**14.2 If, in the Grantor's opinion, the activities of the Concessionaire is having or may have an adverse effect on the natural, historic or cultural values or resources of the Land and the Grantor considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, then the Grantor may suspend this Concession until the Concessionaire avoids, remedies or mitigates the adverse effect to the Grantor's satisfaction.**

**14.3 The Grantor may suspend the Concession for such period as the Grantor determines where the Concessionaire has breached any terms of this Concession.**

**14.4 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 14.1 and 14.2 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.

- 14.5 The word "investigates" in clause 14.4 includes the laying of charges and awaiting the decision of the Court.
- 14.6 During any period of temporary suspension arising under clauses 14.1 or 14.2 the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 14.7 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 this clause 14 including loss of profits.

**15. When can the Concession be terminated?**

- 15.1 If:
- (a) the Concessionaire breaches any of the conditions of this Concession; or
  - (b) the whole or any part of the Land is required for the Grantor's use
- the Grantor may terminate this Concession at any time in respect of the whole or any part of the Land. Before so terminating the Grantor must give the Concessionaire either
- (c) one calendar month's notice in writing; or
  - (d) such other time period which in the sole opinion of the Grantor appears reasonable and necessary
- of the Grantor's intention so to terminate this Concession. If this Concession is terminated then the Grantor, at the Grantor's sole discretion, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

**16. What are the Grantor's Rights to remedy defaults?**

- 16.1 The Grantor may choose to remedy at any time without notice any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default.

**17. What happens on termination or expiry of the Concession?**

- 17.1 On expiry or termination of this Concession, either as to all or part of the Land, the Concessionaire is not entitled to compensation for any Structures or other improvements placed or carried out by the Concessionaire on the Land.
- 17.2 The Concessionaire may, with the Grantor's written consent, remove any specified Structures, gates, drains and other physical improvements erected or placed on the land by the Concessionaire on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land in a clean and tidy condition.
- 17.3 The Concessionaire must, if the Grantor gives written notice, remove any specified Structures, gates, drains and other physical improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the



Concessionaire is to make good any damage and leave the Land in a clean and tidy condition.

**18. When is the Grantor's consent required?**

- 18.1 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.

**19. Are there limitations on public access and closure?**

- 19.1 The Concessionaire acknowledges that the Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.

**20. How will disputes be resolved?**

- 20.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, 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.
- 20.2 If the dispute cannot be resolved 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.
- 20.3 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.
- 20.4 The arbitrator must include in the arbitration award reasons for the determination.
- 20.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

**21. How are notices sent and when are they received?**

- 21.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, fax, by pre paid post or email to the receiving party at the address, fax number or email address specified in Item 13 of Schedule 1. Any such notice is to be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of fax, on the date of dispatch;
  - (c) in the case of post, on the 3rd working day after posting;

- (d) in the case of email, notice will be deemed to have been received on the day on which it is emailed if that is a working day or, if dispatched after 5.00pm, on the next working day after the date of email.

- 21.2 If either party's details stated out in Item 13 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

**22. What about the payment of costs?**

- 22.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing any variation of this Concession.

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

**23. When can the conditions of the Concession be varied?**

- 23.1 The Grantor may on each Concession Fee Review Date, after first consulting with the Concessionaire, vary any condition of this Concession to make the condition more effective in addressing any adverse effects resulting from the Concession Activity.
- 23.2 Nothing in clause 23.1 otherwise affects the Grantor's rights to vary the Concession under section 17ZC of the Conservation Act 1987.

**24. What are the Special Conditions?**

- 24.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

**25. The Law**

- 25.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.



### SCHEDULE 3

#### SPECIAL CONDITIONS – Note: Please initial each page of Schedule 3

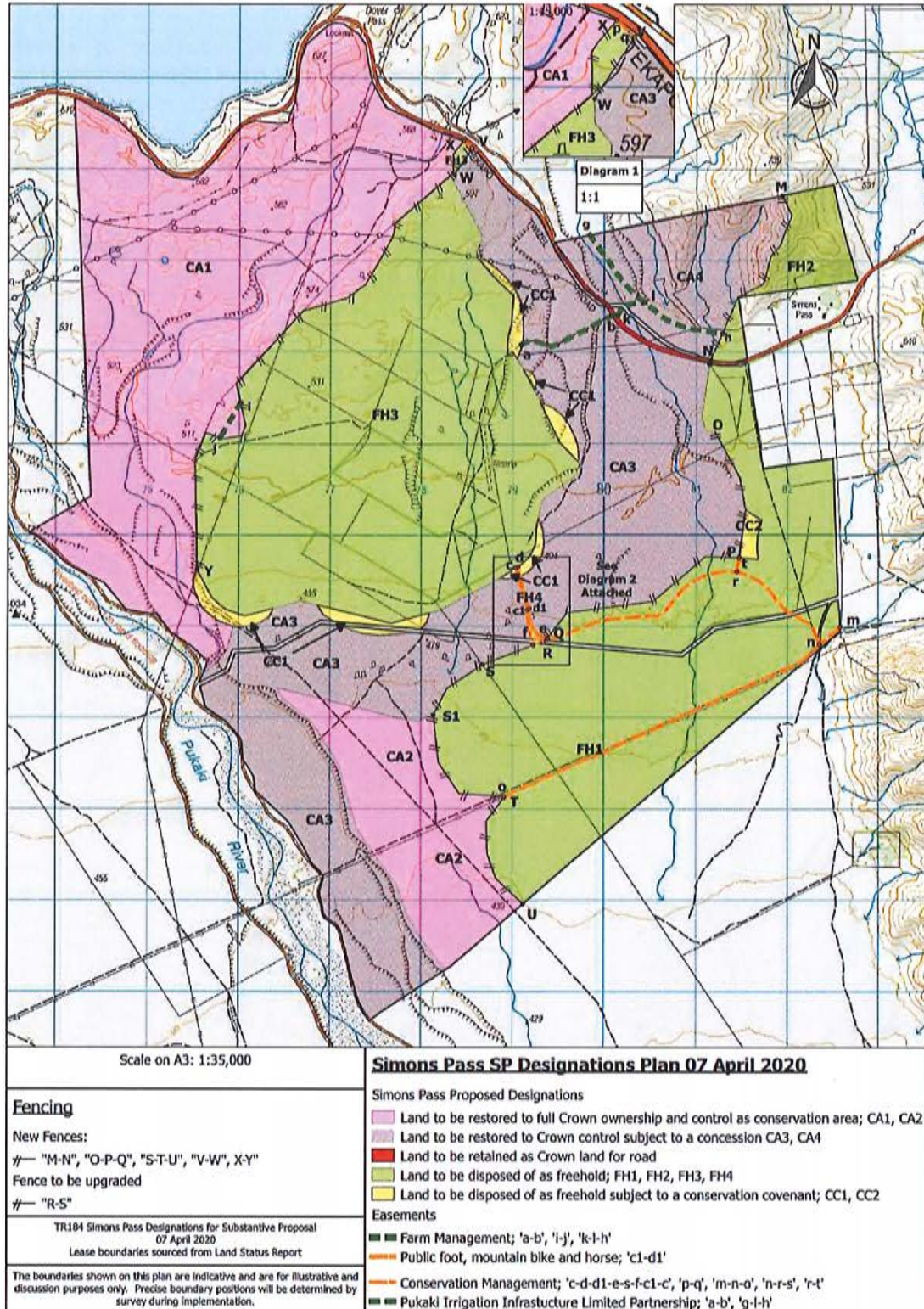
1.	Stock matters	<p>The Concessionaire must monitor stock at regular intervals to ensure that:</p> <ul style="list-style-type: none"><li>(a) they are contained within the Land; and</li><li>(b) there is sufficient feed available on the Land to discourage stock from grazing other land administered by the Grantor and not part of this Concession; and</li><li>(c) they do not graze to a level resulting in damage to, or pugging of, the Land.</li></ul> <p>The Concessionaire must not develop wintering pads, stand off pads or silage pits on the Land.</p> <p>The Concessionaire must not graze, nor permit to be grazed on the Land, any stock, which the Concessionaire knows or ought to have reasonably known, would be dangerous to any person entering the Land.</p>
2.	Farm vehicles	<p>The Concessionaire may use farm vehicles for the purposes of the Concession Activity and for pest management on existing formed tracks on the Land.</p>
3.	Firearms	<p>The Concessionaire may not use firearms.</p>
4.	Dogs and horses	<p>The Concessionaire may use dogs and horses on the Land for the purposes of the Concession Activity.</p>
5.	Fencing	<p>The Concessionaire must at its cost ensure that stock is adequately contained within the land.</p>
6.	Gates	<p>The Concessionaire may lock any gates located on the Land. Where gates are to be so locked the Concessionaire must give the Grantor a key so where necessary the Grantor can unlock the gates. Where any gate is so locked the Grantor may require the Concessionaire to erect a stile near the locked gate</p>
7.	Adverse effects	<p>If, in the opinion of the Grantor, the Concession Activity is having or may have an adverse effect on the Land or adjoining bush or riparian margins administered by the Grantor, the Grantor may require the Concessionaire to comply with all reasonable notices and directions by the Grantor concerning the activities conducted by the Concessionaire including but not limited to notices or</p>

		directions regarding the numbers of stock that may be grazed on the Land or any part of the Land. The Grantor, at the sole discretion of the Grantor, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.
8.	Changes in Concessionaire's shareholding	Notwithstanding clause 7.6 in Schedule 2, where any change in the shareholding of the Concessionaire involves the same shareholders or immediate family members of the shareholders in the Concessionaire, the Grantor's consent is not required.
9.	Tracks and Fences	The Concessionaire may maintain existing tracks and fences within the Land.



## SCHEDULE 4

Plan or map



C:\Users\ccarson\Objective\Objects\TR184 Simons Pass Substantive Proposal App 09 Grazing Concession MGV.doc

This map dated 7 April 2020 is replaced with the Map dated 23 April 2020  
Refer to the Plan on page 2 of this Proposal

ad

## SCHEDULE 5

### Activity Return

*It would be useful to put a Table in here, perhaps as follows:*

Stock type (if more than one type available)	Numbers	Date stock placed on Land	Date stock removed from land	Total weeks Land grazed (not exceeding xx)	Price per stock unit per annum	Total annual activity fee





**Appendix 10: 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*



**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 the Minister agree as follows:

### **1. INTERPRETATION**

#### **1.1** In this Covenant unless the context otherwise requires:

- |                           |   |
|---------------------------|---|
| <b>"Act"</b>              | means the Reserves Act 1977.  |
| <b>"Covenant"</b>         | means this Deed of Covenant made under section 77 of the Act.                                   |
| <b>"Director-General"</b> | means the Director-General of Conservation.   |
| <b>"Fence"</b>            | includes a gate.  |
| <b>"Land"</b>             | means the land described in Schedule 1.   |
| <b>"Minerals"</b>         | means any mineral that is a Crown owned mineral under section 2 of the Crown Minerals Act 1991. |
| <b>"Minister"</b>         | means the Minister of Conservation.   |
| <b>"Natural Water"</b>    | includes water contained in streams the banks of which have, from time to time, been realigned. |



<b>“Owner”</b>	means the person or persons who from time to time is or are registered as the proprietor(s) of the Land.
<b>“Party” or “Parties”</b>	means either the Minister or the Owner or both.
<b>“Values”</b>	means any or all of the Land’s natural environment, landscape amenity, wildlife habitat, freshwater life habitat, marine life habitat or historic values as specified in Schedule 1.
<b>“Working Day”</b>	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 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;
- 1.2.3 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;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 words importing one gender include the other gender;
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

**2. OBJECTIVE OF THE COVENANT**

- 2.1 The objective is for the Land to be managed so as to preserve the Values.

**3. THE OWNER’S OBLIGATIONS**

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



- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;
- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
- 3.1.10 any other activity which might have an adverse effect on the Values.
- 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
- 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must:
  - 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
  - 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
  - 3.2.3 keep the Land free from exotic tree species;
  - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 grant to the Minister or authorised agent of the Minister or any employee or contractor of the Director-General, a right of access at all times on and to the Land, with or without motor vehicles, machinery, and implements of any kind, for purposes associated with the management of this Covenant;
  - 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 objectives specified in clause 2.1;



- 5.1.3 prepare, in consultation with the Owner, a monitoring plan to assist the parties to meet the objectives 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, ASSIGNMENT OR OTHER DEPOSAL OF LAND**

- 7.1 If the Owner sells, leases, or parts with possession of the Land, or hands over control of the Land to any other person, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, assignee or manager to comply with the terms of this Covenant, including any agreement by the purchaser, lessee, assignee or manager to ensure that on any subsequent sale, lease, assignment, or change in control of the Land, any subsequent purchaser, lessee, assignee or manager must also comply with the terms of this Covenant including this clause.
- 7.2 A Transferee of the Land will at law be bound by the registered Covenant. Such transfer is deemed to provide the agreement to comply with the terms of this Covenant required by Clause 7.1

## **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, notwithstanding that the Land may from time to time be sold or otherwise disposed of.

### **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, Fire and Emergency New Zealand (FENZ) and the Minister if fire threatens the Land;



8.6.2 the Minister will render assistance to FENZ in suppressing the fire if:

8.6.2.1 requested to do so; or

8.6.2.2 there is an agreement in place between the Minister and FENZ to render such assistance under section 147 of the Fire and Emergency New Zealand Act 2017.

## **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 email addressed to the receiving party at the address or email address 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 email, on the day on which it is dispatched if that is a Working Day or, if it is not a Working Day or if it is dispatched after 5.00pm, on the next Working Day after the date of dispatch.

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

## **10. DEFAULT**

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

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

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

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

10.2.1 advise the defaulting party of the default;

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

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

## **11. DISPUTE RESOLUTION PROCESSES**

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

## **11.2 Mediation**

- 11.2.1 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;
- 11.2.2 if the parties do not agree on a mediator, the President of the New Zealand Law Society 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 New Zealand Law Society;
- 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. FURTHER AGREEMENT AND APPROVAL**

- 13.1 Where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.
- 13.2 Where clauses in this Covenant require the approval of the Minister such approval must not be unreasonably withheld.

## **14. SPECIAL CONDITIONS**

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



Executed as a Deed

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

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

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

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

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

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

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

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



## SCHEDULE 1

### 1. Description of Land

The pieces of land shown as CC1 being approximately 57 hectares and CC2 being approximately 9 hectares, which are shaded yellow on the designations plan.

### 2. Address for Service

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

Department of Conservation  
Level 1  
John Wickliffe House  
265 Princes Street  
Dunedin 9016

Ph: (03) 477 0677

Email: [permissionsdunedin@doc.govt.nz](mailto:permissionsdunedin@doc.govt.nz)

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

C/- Jackson Valentine  
258 Stuart Street  
PO Box 5546  
Dunedin

Ph: (03) 474 0900

Cell: 021 425 034

Email: [mgv@jacksonv.co.nz](mailto:mgv@jacksonv.co.nz)

### 3. Values of Land to be Preserved (Section 77, Reserves Act 1977) – natural environment, landscape amenity and wildlife habitat

The covenant areas encompass part of a dryland recovery area (DRA) required to meet the conditions of Canterbury Regional Council resource consent CRC176720.

CC1:


Comprises six small areas at the fringes of moraine terraces and is contiguous with proposed conservation areas to the east and south.

The areas form a component of the Mackenzie basin landscape.

The “at risk” Buchanans Bidbid, New Zealand Wheatgrass, Desert Broom, Matagouri, Grassland Hypericum, Button Daisy, Mat Broom, Wood-sedge, Scabweed, Beauvard’s Mat Daisy and Celadon Mat Daisy have been noted. Birds of note include the Branded Dotterel and Black Fronted Tern.

CC2:

Comprises a small area of outwash surface between irrigated land to the east and conservation area to the west. The “nationally critical” plant Maniototo cress (*Lepidium solandri*) and “nationally vulnerable” native trailing bindweed (*Convolvulus verecundus*) has been identified in this area. While the dominant plant community is mouse-eared hawkweed herbfield-sweet vernal grassland-rockland, native species diversity is relatively high and includes patotara, mat daisies (scabweed, Celadon mat daisy, *Raoulia subsericea*, *R. apici-nigra*), patches of mat Coprosma and creeping pohuehue, tufts of blue wheat grass and desert poa; moss and lichens.





## SCHEDULE 2

### Special Conditions

1. Notwithstanding clause 3.1.1:
  - a) the Owner may move livestock through that part of the Land being 'CC2' when accessing other parts of the Owner's property
  - b) the Owner may actively drive livestock through that part of the Land being CC1 where there is a formed track connecting to easement 'a-b' and accessing other parts of the Owner's property,PROVIDED that in neither case may the Owner hold livestock on any part of the Land.
2. The Owner must seek the Minister's prior written approval before any establishment, maintenance or repair which could involve disturbance to the soil of the track connecting to easement 'a-b' shown on the Designations Plan in Schedule 4 on part of the Land being CC1. The Minister's approval must not be unreasonably withheld, and the Owner must comply with any reasonable conditions imposed by the Minister.
3. The Owner will at the Owner's cost fence populations of *Lepidium solandri* and any other nationally critical or vulnerable threatened plants where these are located on the Land as directed by the Minister and maintain any fences constructed for this purpose.
4. The Minister acknowledges the Land is adjacent to irrigated areas and that there will be some irrigation effects on the Land. The Owner must not deliberately irrigate directly onto the Land.
5. Notwithstanding clause 3.2.5, the Minister, authorised agents of the Minister or any employee or contractor of the Director-General of Conservation, may have access on and to the Land with or without motor vehicles, machinery and implements of any kind, for the purposes of undertaking weed and pest control work on the Land. Prior to accessing the Land, the Minister shall give the Owner at least 48 hours' notice by email (or such other mode of communication as agreed by the parties) and shall have regard to reasonable requests by the Owner relating to farm management issues.
6. Monitoring:
  - a) The Minister may undertake an ecological monitoring programme as set out in schedule 3.
  - b) For the area shown as CC2, any ecological monitoring programme shall be agreed between the parties with any disagreement to be resolved under the dispute resolution process.
7. Members of the public may access that part of the Land in CC1.
8. The Minister acknowledges that part of CC1 from the terminus of easement "a-b" (shown on the designations plan) provides access routes for Pukaki Irrigation Infrastructure Limited Partnership (PIILP) for the purpose of PIILP maintaining irrigation infrastructure owned by PIILP and located on adjoining land FH3 (shown in the designations plan). The Minister acknowledges the Owner may wish to grant a right of way easement to PIILP and provided such an easement is in similar terms to the right of way easement granted by the Minister to PIILP over easement "a-b" the Minister will consent to the easement and the use of that part of CC1 by the Owner and PIILP consistent with the easement.

9. The Owner may on the Land carry and use firearms for pest management and take or be accompanied by dogs and horses for farm management purposes.
10. The Parties acknowledge the Land is subject to Canterbury Regional Council resource consent CRC176720 until 30 April 2025. CRC176720 requires the Consent Holder to undertake certain actions on the Land, including the preparation of a Dryland Recovery Management Plan (DRMP) and undertaking actions to meet the requirements of the DRMP. The parties acknowledge the objective of the DRMP is consistent with the Objective of this covenant to manage the Land to preserve the Values.
11. While CRC176720 remains in effect, the Parties agree to work together to achieve both the Objective of the DRMP and the Objective of the Covenant.
12. Should the Owner wish to undertake actions on the Land to meet the requirements of CRC17620 and the DRMP which require the Minister's prior permission under the Covenant (e.g. restoration planting of indigenous species, and erection of rabbit-proof fencing, on the Land), the Minister must not withhold consent unreasonably. If the Minister considers there is good reason to withhold consent, the Minister shall advise the Owner, and request a meeting within 10 working days to discuss the Minister's concerns and to try and reach agreement on a way to meet both the Objective of this Covenant and the objective of the DRMP.
13. If the parties are unable to agree following any meeting, either party may invite Canterbury Regional Council to a further meeting to discuss their respective concerns, and how to best achieve the objective of the Covenant, and the objective of the DRMP under CRC176720.
14. The Owner may use farm vehicles for the purposes of the requirements of CRC176720 and the DRMP on existing formed tracks on the Land.
15. Should the Owner obtain a replacement resource consent for CRC176720 which requires similar actions on the Land consistent with the DRMP and the Objective of this Covenant, special conditions 10 to 14 inclusive will continue to apply until the expiry of that replacement resource consent.



### SCHEDULE 3

#### DESCRIPTION OF THE MONITORING PROGRAMME THAT MAY BE ESTABLISHED

**1. Responsibilities:**

- a) The Minister may establish a vegetation monitoring programme on the Land.

**2. Costs:**

- a) The Minister is responsible for the cost of establishing the monitoring and the initial baseline report.
- b) the Minister will be responsible for the cost of any repeat monitoring and subsequent report write up.

**3. Monitoring Results:**

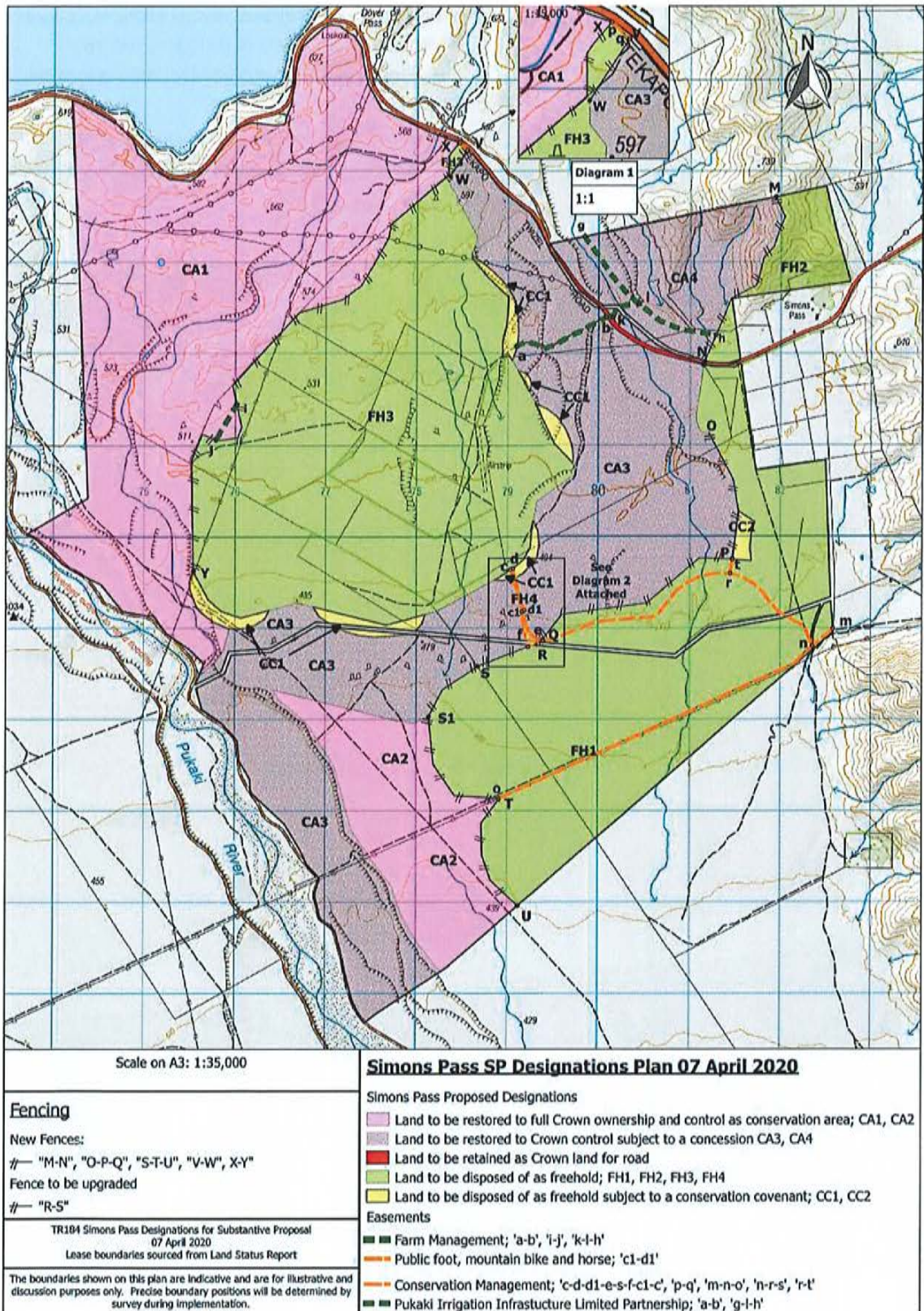
- a) The Minister will ensure the results of any monitoring are written up and provide a copy of the results in a report to the other Party as soon as reasonably possible after monitoring is completed. The reports are to be provided in the format nominated by the receiving Party.
- b) Following monitoring, the results will be discussed between the Owner and the Minister.
- c) In relation to that part of the Land being CC2 only: If in the opinion of the Minister the results show there has been deterioration in the Values on the part of the Land being CC2, the Minister will work with the Owner to assess whether any changes in the Owner's management of that part of the Land are necessary to achieve the objective of the Covenant. Such measures may include changes in the management of livestock movement on the Land and fencing. The Minister will liaise with the Owner in implementing any such changes and the Owner will cooperate in giving effect to any changes considered necessary by the Minister.





# SCHEDULE 4

## Plan

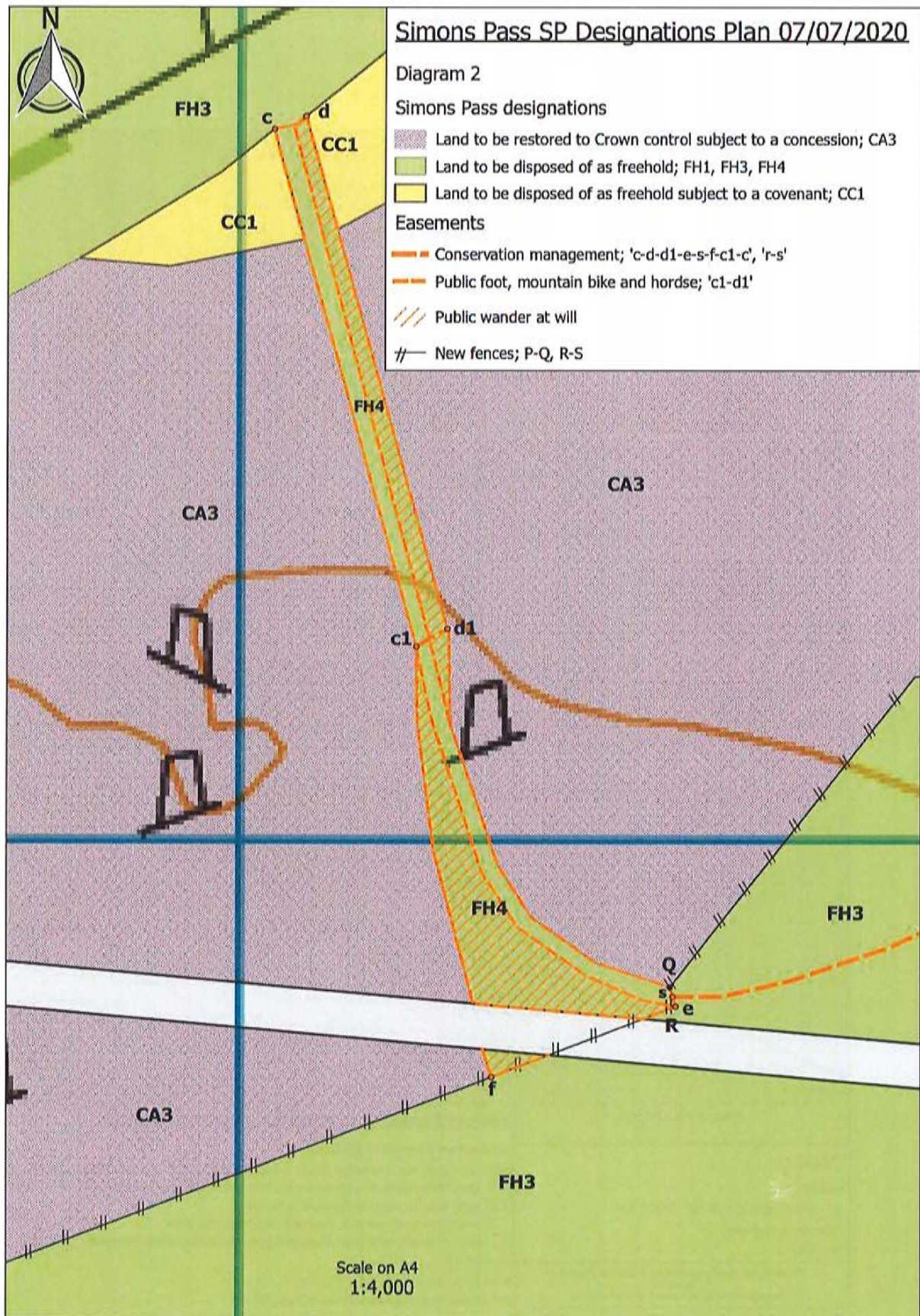


This map dated 7 April 2020 is replaced with the map dated 23 April 2020

Refer to the Plan on page 2 of this Proposal

2





This map dated 7 July 2020 is replaced by  
the map dated 23 April 2020 on page 3 of this  
Proposal.

**Appendix 11: Form of public and conservation management easement to be created**

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GRANT of

Correct for the purposes of the  
Land Transfer Act 2017  
Solicitor for the Minister

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

COMMISSIONER OF CROWN  
LANDS

to

MINISTER OF CONSERVATION

---

Solicitor

Department of Conservation

DUNEDIN

# TRANSFER

Land Transfer Act 1952

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

Land Registration District

Canterbury

Certificate of Title No.

All or Part?

Area and legal description – *Insert only when part or Stratum, CT*

--	--	--

Grantor Surnames must be underlined

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

Grantee Surnames must be underlined

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

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

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

Consideration

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

Operative Clause

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

Dated this      day of

Attestation

Signed by  
acting under written delegation  
from the Commissioner of Crown  
Lands

Signature, or common seal of Grantor

Signed in my presence by the Grantor  
Signature of Witness

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

Witness name

Occupation

Address

(continued on page xx of Annexure Schedule)

Certified correct for the purposes of the Land Transfer Act 2018



## Annexure Schedule 1

Insert below  
"Mortgage", "Transfer", "Lease", etc

Transfer Easement

Dated

Page  of  Pages

### Definitions

1. In this transfer unless the context otherwise requires:

1.1 "Burdened Land" means the land owned by the Grantor and described on page 1.

1.2 "Easement Area" means:

- that part of the Burdened Land shown as orange hashed and marked as 'Public wander at will' on the plan in Annexure 2 for public access under clause 2.1;
- that part of the Burdened Land being 20 metres wide which is marked ["c1-d1" on the Plan for public access under clause 2.2;
- that part of the Burdened Land being 20 metres wide which is marked "c-d-e-s-f-c", "p-q", "m-n-o", and "n-r-s" on the Plan for management purposes access under clause 2.3; and
- that part of the Burdened Land being 5 metres wide which is marked "r-t" on the Plan for the Minister of Conservation management purposes under clause 2.3]

1.3 "Management Purposes" means:

- the protection of a significant inherent value of any land managed by the Grantee;
- the ecological sustainable management of any land managed by the Grantee.
- the management of the Easement Area consistent with the purposes for which the easement is held under the Conservation Act 1987 or the Reserves Act 1977. 1.4 "Grantee" means Her Majesty the Queen acting by and through the Minister of Conservation and includes tenants, agents, invitees, contractors, licensees and employees of the Minister of Conservation and the Director-General of Conservation; and for the purposes of clause 2.1 and 2.2 only, includes any member of the public.

1.5 "Grantor" means the owner of the Servient Land described on page 1 and includes the Grantor's tenants and invitees.

1.6 "Plan" means Deposited Plan/S.O. Plan No [  ]

1.7 "Working day" means the period between any one midnight and the next, excluding Saturdays, Sundays and statutory holidays in the place where the Servient Land is located.

### Standard Easement Terms

#### Access

2. The Grantee has the right in common with the Grantor:

2.1 To wander at will at any time **WITHIN** that part of the Easement Area shown as orange hashed and marked as 'Public wander at will' on the plan in Annexure 2 on

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.



foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.

2.2 To pass and repass at any time **ONLY** over and along that part of the Easement Area marked "c1-d1" on foot, on or accompanied by horses and by a non-motorised vehicle powered by a person or persons.

2.3 To pass and re-pass at any time over and along that part of the Easement Area marked "r-t" on foot only, and along those parts of the Easement Area marked "c-d-e-s-f-c", "c1-d1", "p-q", "m-n-o", and "n-r-s" on foot, or on or accompanied by horses, or by non-motorised vehicle, or by motor vehicle, with or without machinery and implements of any kind, with or without guns and accompanied by dogs, for Management Purposes.

3. The Grantor 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 Grantor.

#### Exclusion of Schedules

4. The rights and powers contained in Schedule 5 of the Land Transfer Regulations 2018 and the Fifth Schedule of the Property Law Act 2007 are expressly negated.

#### Term

5. The easement is to be in perpetuity.

#### Temporary Closure of Easement Area

6.1 The Grantee may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area to the public for such period as she/he considers necessary.

6.2 For the avoidance of doubt, it is stated that any such temporary closure by the Grantee of all or part of the Easement Area to the public in accordance with clause 6.1 does not affect the rights of the Grantor to continue to access and use the Easement Area.

#### Dispute Resolution

7.1 If a dispute arises between the Grantor and Grantee concerning the rights, management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.

7.2 If the dispute is not resolved within 14 days of written notice by one party to the other it is to be referred to mediation.

7.3 If the dispute is not resolved within 21 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the New Zealand Law Society.

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

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.



## Notice

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

## Gates

9. Where the Grantor wishes to erect fences across the Easement Area, the Grantor shall install a gate not less than 3 metres wide, and either:
- 9.1 Keep the gate unlocked at all times, or
  - 9.2 Ensure the Grantee is provided with a key to the gate; AND
  - 9.3 Install a stile or appropriate facility to allow for public access by foot, horse or non-motorised vehicle.
10. The Grantee (not being a member of the public) has the right:
- 10.1 To mark the Easement Area as appropriate.
  - 10.2 To erect and maintain stiles and/or gates.
  - 10.3 To erect and maintain signs informing the public:
    - (a) of the location of the land managed by the Crown and available for public access and recreation; and
    - (b) of their rights and responsibilities in relation to the Easement Area.
  - 10.4 From time to time to modify the surface of the Easement Area so that it becomes and remains fit for the purpose of clauses 2.1, 2.2 and 2.3.
  - 10.5 To use whatever reasonable means of access he/she thinks fit over the Easement Area to carry out the works in clause 10.1 to 10.4.

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**Continuation of "Attestation"**

Signed for and on behalf of \_\_\_\_\_ )  
Her Majesty the Queen by \_\_\_\_\_ )  
[name] \_\_\_\_\_ )  
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.*

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DOC-6237914 – Simons Pass – Public Access and DOC Management Purposes Easement

March 2020



### Special Easement Terms

The standard easement terms contained above must be read subject to any special easement terms set out below.

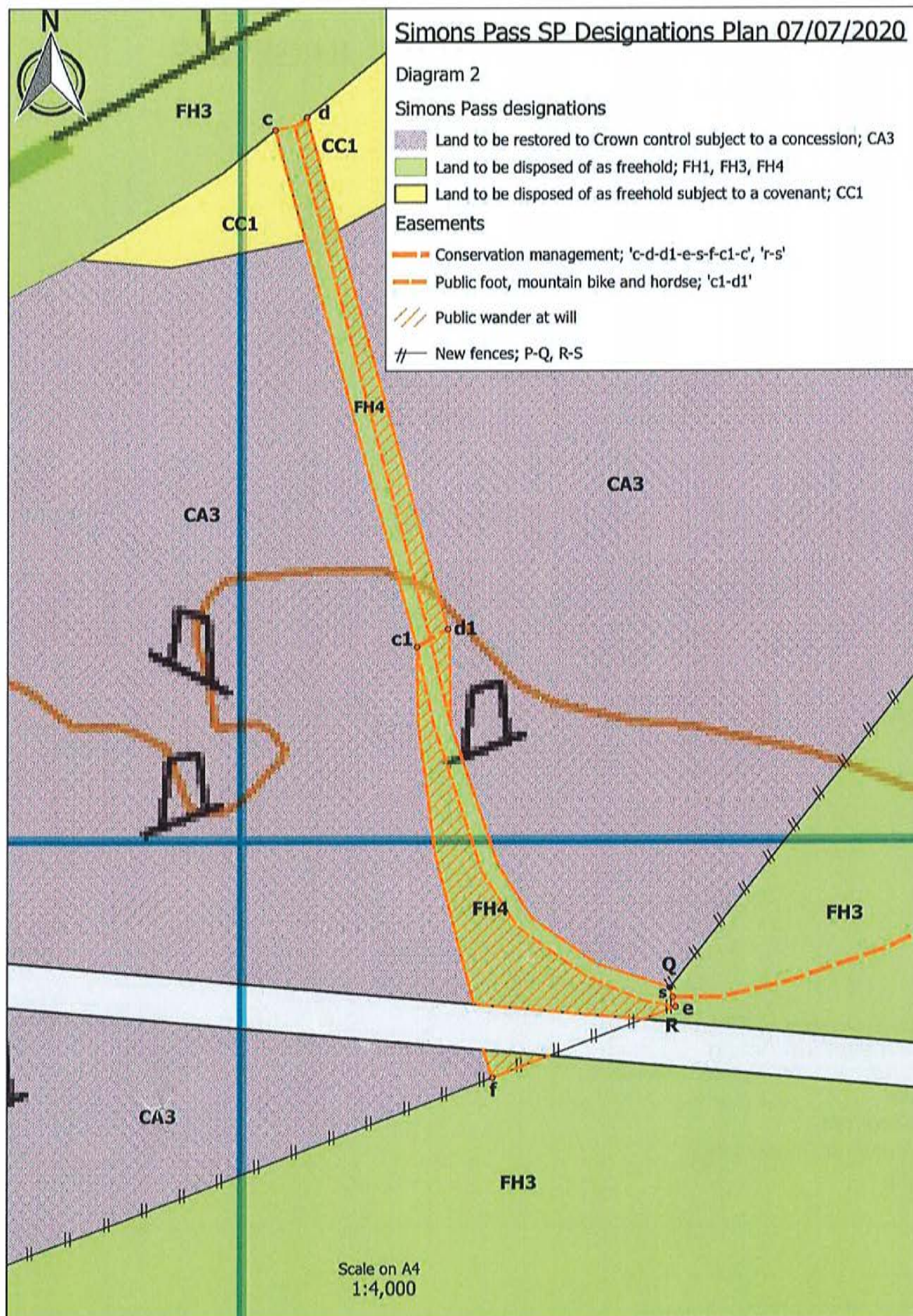
11. Members of the public may not take or be accompanied by dogs on any part of the Easement Area.
12. Clause 2.3 is amended by requiring that any dogs accompanying the Grantee (not being a member of the public) must be confined to motor vehicles while on any part of the Easement Area, and the Grantee (not being a member of the public) may also carry unloaded firearms in a motor vehicle on any part of the Easement Area.
13. For the avoidance of doubt no camping is permitted, nor may any fires be lit, by the Grantee on any part of the Easement Area.
14. The Grantor may request the Minister to temporarily close access by the Grantee (being a member of the public) for the purposes of clause 2.1 and 2.2, to all or part of an Easement Area, because of fire risk or the existence of a hazard.
15. Health and Safety on the Easement Area:
  - a) The Grantee is to comply with all health and safety practices reasonably required by the Grantor and notified to the Grantee
  - b) The Grantee acknowledges that the requirement at condition 15 a) does not release the Grantee from their obligation to take reasonable care when using the Easement Area, acknowledging that the Grantor may not be aware of hazards on the Easement Area or that it may be impassable.
  - c) The Grantee (not being a member of the public) is to erect and maintain signs at the likely most popular entrances to the Easement Area or adjoining conservation area, advising the public of known hazards on the Easement Area with the same information to be contained in all public information material produced by the Grantee for the area.
  - d) The Grantor and Grantee (not being a member of the public) must each advise the other party as soon as reasonably practicable of any health and safety matters for all or any part of the Easement Area that may arise from time to time and which that party becomes aware of.

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.





Annexure 2 – Plan of wander at will public access easement area under clause 2.1



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DOC-6237914 – Simons Pass – Public Access and DOC Management Purposes Easement

March 2020

This map dated 7 July 2020 is replaced by the map dated 23 April 2020  
Repl to the Plan on page 3 of this Proposal



# TRANSFER GRANT OF EASEMENT IN GROSS

For Public Access and Management Purposes

**Land Transfer Act 2018**

Law Firm Acting

Solicitor  
Legal Services  
Department of Conservation  
Dunedin

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

## Execution Section

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

**SIGNED** for and on behalf of the  
**Commissioner of Crown Lands**  
by Jerome Sheppard pursuant to a  
delegation under the Crown  
Pastoral Land Act 1998 in the  
presence of:

  
Jerome Sheppard  
Witness

C. DOYLAND  
Name

EXECUTIVE ASSISTANT  
Occupation

LINZ 155 THE TERRACE  
Address WELLINGTON

**SIGNED** by Murray Graham  
Valentine in the presence of:



M. Valentine  
Witness

Auson Soy Hall  
Name

Accountant  
Occupation

Dunedin  
Address