

Crown Pastoral Land Tenure Review

Lease name: KYEBURN

Lease number: PO 197

Preliminary Proposal - Part 2

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

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

February

06

Appendix 5: Form of Recreation Concession to be Created

Concession number: PAC

DATED _____

Between

MINISTER OF CONSERVATION
("the Grantor")

and

KYEBURN PASTORAL CO LIMITED
("the Concessionaire")

CONCESSION DOCUMENT
(LICENCE)



Department of Conservation
Te Papa Atawhai

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THIS LICENCE is made this day of

PARTIES:

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **KYEBURN PASTORAL CO LIMITED** ("the Concessionaire")

BACKGROUND

- A. The Grantor manages the Conservation Area described in Schedule 1 as the Land;
- B. Section 17Q(1) of the Conservation Act 1987 authorises the Grantor to grant a Concession in respect of an Activity in a Conservation Area;
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.
- D. The Grantor is satisfied that the requirements of Part III B of the Conservation Act 1987 have been met

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

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

“**Access**” means the right, in common with others, to pass and repass over the Land and any roads of the Grantor for ingress to and egress from the Site as is reasonably necessary for the Concessionaire to exercise its rights under this Licence. Access includes helicopter access to the Site if specified in Schedule 2

“**Background**” means the matters referred to under the heading ‘Background’ on p2 of this Document.

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

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

“**Concession Fee**” means the amount specified in Item 5 of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Site. It includes any variation in that amount following a Concession Fee Review.

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

“**Concession Fee Review**” means a review of the Concession Fee determined in accordance with clause 7 of this Document.

“**Concession Fee Review Date**” means the date specified in Item 9 of Schedule 1 on which the Concession Fee Review occurs being at 3 year intervals calculated from the date of commencement of this Document.

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

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

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

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

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

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

“**Final Expiry Date**” means the date specified in Item 4 of Schedule 1.

“**Guarantor**”, where relevant, means the person guaranteeing this Document under clause 35.

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

“**Park**” means a national park constituted under the National Parks Act 1980.

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

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

“**Reserve**” means a reserve vested in the Grantor under the Reserves Act 1977.

“**Site**” means, where relevant, part of the Land the details of which are more particularly shown on the plan attached to Schedule 2.

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

“**Working Days**” means days on which the registered banks are open for general banking business in Wellington.

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document and includes that party's successors in title;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;

- (e) a reference to a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, or an agency of State or of the Crown (in each case whether or not having separate legal personality);
- (f) words in a singular number include the plural and vice versa;
- (g) words importing a gender include all other genders;
- (h) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (i) where the Grantor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

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

2.0 GRANT OF LICENCE

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

2.2 In exercise of the Grantor's powers under section 59A of the Reserves Act 1977 the Grantor **GRANTS** to the Concessionaire a **LICENCE** to carry out the Concession Activity on the Site subject to the terms and conditions contained in this Document.

3.0 TERM

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

3.2 The Term and all renewals, if any, end on the Final Expiry Date specified in Item 4 of Schedule 1.

4.0 SURRENDER OF DOCUMENT

- 4.1 If the Concessionaire wishes to terminate this Document before the expiry of the Term the Concessionaire must give the Grantor 3 months' notice in writing.
- 4.2 The Grantor must accept the Concessionaire's notice of termination but in doing so may impose whatever terms and conditions the Grantor considers appropriate, including the matters referred to in clause 6.2.

5.0 CONCESSION FEE

- 5.1 The Concessionaire must pay to the Grantor in advance and in the manner directed by the Grantor the Concession Fee plus GST in the instalments and on the Concession Fee Payment Dates specified in Items 5, 6 and 7 of Schedule 1.
- 5.2 If the Concessionaire defaults in payment of the Concession Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

6.0 OTHER CHARGES

- 6.1 In addition to the Concession Fee the Concessionaire must pay the following charges ("Other Charges") on demand and in the manner directed by the Grantor:
- (a) all rates, levies, taxes, duties, assessments, charges and other outgoings which may be charged, levied or reasonably assessed or which may become payable by virtue of the Concessionaire's use of the Site or the carrying on of the Concession Activity;
 - (b) all costs in relation to the supply of water, sewage, drainage and rubbish disposal which are not otherwise included in any charges or assessments made by any authority or by the Grantor;
 - (c) all costs incurred by the Grantor in providing an annual building warrant of fitness to any territorial authority, including any costs paid to an independent qualified person for any report establishing or re-establishing compliance with a compliance schedule. If any work is required to any structure or facility of the Grantor's on the Site in order to obtain a new building warrant of fitness, the Grantor is to pay the cost of that work subject to the Concessionaire's obligations under clause 10.
- 6.2 If the Concessionaire surrenders this Document with the consent of the Grantor, the Concessionaire will continue to be liable for and must pay to the Grantor on demand in respect of its use of the Site and its conduct of the Concession Activity all Other Charges which may be due for the current payment period even though that this period may not expire until after the date of surrender.

- 6.3 Where the Grantor or Director-General has provided a community service, benefit or facility for the benefit of the Concessionaire under section 17ZH of the Conservation Act 1987, the Concessionaire must pay the Grantor whatever contribution the Grantor determines as specified in Schedule 2.
- 6.4 The Concessionaire must pay all charges for electric power, water supply, geothermal energy, telephone rental and other utilities supplied to the Site. The Grantor will not be liable for any cost incurred in re-establishing the supply of any of these utilities in the event of any of them becoming unavailable for any reason.

7.0 CONCESSION FEE REVIEW

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

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

Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and

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

8.0 CONCESSION ACTIVITY

8.1 The Concessionaire is not to use the Site for any purpose other than the Concession Activity.

8.2 The Concessionaire must, as a condition of this Document:

- (a) take out and maintain and pay all fees for all permits, licences, authorisations, consents (including resource consents under the provisions of the Resource Management Act 1991), and renewals ("the Permissions") as may be necessary for the proper conduct of the Concession Activity;
- (b) not do or suffer to be done any act whereby these Permissions may be forfeited or suspended or refused.

9.0 SUPPLY OF INFORMATION

9.1 At the Grantor's request the Concessionaire must supply the Grantor with a complete statement of audited financial accounts.

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

10.0 COMPLIANCE

10.1 The Concessionaire will comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan as required by section 17W(7) of the Conservation Act 1987 pursuant to Part IIIA of the Conservation Act 1987 or Part IIA of the Reserves Act 1977 or any general policy statement or management plan under section 44 or 45 of the National Parks Act 1980, which ever is appropriate to the Site, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Site, or affecting or

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relating to the Concession Activity, including any bylaws made under the Reserves Act 1977 or the National Parks Act 1980.

- 10.2 The Concessionaire must comply with all conditions imposed by the Grantor in granting this Document.
- 10.3 (a) A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or general policy statement will be deemed to be a breach of this Document.
- (b) A breach or contravention by the Concessionaire of the Legislation affecting or relating to the Site or affecting or relating to the Concession Activity will be deemed to be a breach of this Document.
- 10.4 If the Legislation requires the Grantor to spend money on the Grantor's own structures, facilities or alterations on the Site, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% of the amount spent by the Grantor.
- 10.5 If the Legislation requires the Grantor to spend any money on structures, facilities or alterations on the Site which the Grantor considers unreasonable, the Grantor may determine this Document and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 27.

11.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 11.1 The Concessionaire must not erect or bring on to the Site any structure, install any facility or alter the Site in any way without the prior written consent of the Grantor.
- 11.2 In giving approval under clause 11.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.
- 11.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.
- 11.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before :
- (a) erecting or altering any structure on the Site;
- (b) bringing any structure on to the Site;
- (c) installing any facilities on the Site; or

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(d) altering the Site in any way.

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

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

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

12.0 CONCESSIONAIRE'S FURTHER OBLIGATIONS

12.1 The Concessionaire must at the Concessionaire's expense:

(a) if required by the Grantor take all steps necessary to control any pest, insect or rodent infestation occurring in or emanating from the Site or any structure or facility on the Site, and if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor;

(b) comply strictly with the provisions of the Biosecurity Act 1993;

(c) comply with all requirements of any competent authority regarding sanitation and with all relevant bylaws and fire safety requirements;

(d) at all times display a copy of the relevant current building warrant of fitness under the Building Act 1991 showing the location of the compliance schedule in a place in each building (as defined in that Act) on the Site to which users of the building have ready access;

(e) keep and maintain all building systems and any structure on the Site in accordance with the requirements of any compliance schedule;

(f) retain and make available to any territorial authority and any other person with a right to inspect any structures on the Site under the Building Act 1991 a copy of the compliance schedule together with the written reports relating to compliance with the compliance schedule over the previous two year period.

13.0 PROTECTION OF THE ENVIRONMENT

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

(a) interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Site; or

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- (b) bring any plants, animals, or firearms on to the Site; or
 - (c) deposit on the Site debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Site; or
 - (d) pile or store materials in any place on the Site where it may obstruct the public or create a nuisance; or
 - (e) conduct any noxious, noisome, dangerous or offensive activity on the Site;
- 13.2 The Concessionaire will keep the Site in a clean and tidy condition and free of weeds and all organisms specified as pests in a relevant pest management strategy.
- 13.3 The Concessionaire must make adequate provision for suitable sanitary facilities for the Site if required by the Grantor and for the disposal of all refuse material and is to comply with the reasonable directions of the Grantor in regard to these matters.
- 13.4 The Concessionaire will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably required by the Grantor the Concessionaire will paint all structures and facilities in colours specified in writing by the Grantor and with paints of a type approved in writing by the Grantor.
- 13.5 If, during the Term, the Concessionaire removes a structure or facility from the Site the Concessionaire will, unless the Grantor indicates otherwise in writing, repair and make good at its own expense all damage which may have been done by the removal and will leave the Site in a clean and tidy condition.
- 13.6 Should the Concessionaire fail to repair and restore the damage within 6 months of the removal of a structure or facility or such further time as the Grantor may approve in writing, the Grantor may undertake whatever works and operations are necessary to effect the same and may recover from the Concessionaire any costs and expenses incurred in doing it as a debt due by the Concessionaire to the Grantor.
- 13.7 The Concessionaire must:
- (a) take all reasonable precautions to ensure no fire hazards arise from its carrying out of the Concession Activity or from any act or neglect of its employees, contractors, invitees or agents;
 - (b) not light or permit to be lit any fire on the Site without the written permission of the Grantor in which event the following provisions are to apply:
 - (i) the Concessionaire may light or use at a campsite a fire in the open air if the fire is an approved camp fire and is fuelled by dead wood only;
 - (ii) an approved camp fire is any fire lit for the purpose of camping, cooking, comfort, or warmth;
 - (iii) an approved camp fire may not be lit:

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- (aa) within 3 metres of a tree or place underneath overhanging vegetation;
 - (bb) within 3 metres of a log or dry vegetation;
 - (cc) unless the Concessionaire clears all combustible material away from around the base of the approved camp fire before lighting it;
 - (dd) where there are notices or other advertising limiting the lighting of fires to a particular receptacle or to a particular place;
 - (ee) during a prohibited fire season
- (iv) for the purpose of this paragraph "open air" has the same meaning ascribed to it in the Forest and Rural Fires Act 1977
- (c) not store or permit to be stored fuels or other combustible materials on the Site without the written permission of the Grantor. In that event storage of fuels and combustible materials must be in accordance with the provisions of the Dangerous Goods Act 1974;
 - (d) comply with the Grantor's requirements for fire warning and safety equipment and for fire fighting equipment to be kept on the Site at all times.

13.8 The Concessionaire must ensure that its employees, clients and invitees do not carry out any acts prohibited under clause 13.

13.9 The Concessionaire must immediately report to the Grantor any act in contravention of clause 13 and wherever possible the names and addresses of any person carrying out such acts; and must provide the Grantor with details of the circumstances surrounding such incidents.

14.0 ADVERTISING

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

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

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

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

15.0 EMPLOYMENT OF STAFF

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

16.0 HEALTH AND SAFETY

- 16.1 The Concessionaire is to carry out the Concession Activity on the Site in a safe and reliable manner and must comply with:
- (a) the Health and Safety in Employment Act 1992 and its regulations; and
 - (b) all other statutes, regulations and bylaws and all notices and requisitions of any competent authority relating to the conduct of the Concession Activity.
- 16.2 The Concessionaire must notify the Grantor of any natural events or activities on the Site or the surrounding area which may endanger the public or the environment.
- 16.3 The Concessionaire must:
- (a) take all reasonable steps to protect the safety of all persons present on the Site and must, where necessary, erect protective signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
 - (b) take all reasonable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware.
- 16.4 Before commencing the Concession Activity the Concessionaire must, if required by the Grantor, prepare a safety plan and have it audited by a suitably qualified person approved by the Grantor.
- 16.5 The Concessionaire must not commence the Concession Activity until:
- (a) the person appointed to audit the safety plan has certified the safety plan is suitable for the Concession Activity; and
 - (b) the Concessionaire supplies the Grantor with a copy of the safety plan certified under clause 16.5(a).

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

17.0 TEMPORARY SUSPENSION

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

18.0 ASSIGNMENT

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

- 18.3 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document.
- 18.4 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 18.5 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

19.0 TERMINATION

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

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natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Document on the part of the Concessionaire.

19.2 If the Grantor terminates the Concession under this clause all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.

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

20.0 GRANTOR MAY REMEDY CONCESSIONAIRE'S DEFAULT

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

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

21.0 GRANTOR'S DIRECTIONS

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

22.0 POWERS, RIGHTS AND AUTHORITIES

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

23.0 INDEMNITIES AND INSURANCE

- 23.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, agents, contractors, or clients or otherwise caused as a result of its carrying out the Concession Activity on the Site.
- 23.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.
- 23.3 Without prejudice to or in any way limiting its liability under clause 23.1 the Concessionaire must take out and keep in force during the Term:
- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Site and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and
 - (b) statutory liability for the amount specified in Item 12 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.
- 23.4 With respect to clause 23.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.
- 23.5 (a) Without prejudice to any other provision of this Document the Concessionaire will indemnify the Grantor against all damage or loss resulting from any act or omission on the part of the Concessionaire or the Concessionaire's employees, agents, contractors, clients, or invitees;
- (b) The Concessionaire is to recompense the Grantor for all expenses incurred by the Grantor in making good any damage to the Site or the property of the Grantor resulting from such act or omission.

- 23.6 (a) The Grantor will not be liable and does not accept any responsibility for damage to or interference with the Concession Activity or to the structures or facilities on the Site or any other indirect or consequential damage due to any natural disaster, vandalism, sabotage, fire or exposure to the elements except where, subject to the clause 23.6(b), such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors;
- (b) Where the Grantor is found to be liable due to a wilful act or omission, the total extent of the Grantor's liability is limited to _____ in respect of the Concessionaire's structures and facilities.
- 23.7 Notwithstanding anything else in clause 23 the Grantor is not liable for any indirect or consequential loss howsoever caused.

24.0 ENVIRONMENTAL MONITORING AND LAND REHABILITATION

- 24.1 The Concessionaire must, during the Term, if the Grantor so requests in writing, design in consultation with the Grantor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of the Site and conduct of the Concession Activity on the Site.
- 24.2 If the Grantor does not make a request under clause 24.1 the Concessionaire must, during the Term if the Grantor so requests in writing, pay to the Grantor the annual environmental monitoring contribution specified in Item 14 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's conduct of the Concession Activity on the Site.
- 24.3 Subject to any conditions imposed by the Grantor and set out in Schedule 3, at the expiry, surrender or termination of this Document, the Concessionaire must reinstate the Site to its condition at the commencement of the Term and replant the Site with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

25.0 EXPIRY OF LICENCE

- 25.1 If the parties have not entered into a new agreement by the Final Expiry Date the Concessionaire accepts that the Grantor has no liability whatsoever for any costs incurred by the Concessionaire as a result of the expiry of this Document.
- 25.2 Upon the expiry or earlier termination of the Term the Grantor will not be liable to pay compensation for any structure, facility or land alteration of the Concessionaire, all of which, subject to clause 25.4 are to remain the property of the Concessionaire and will be deemed not to have become fixtures on the Site.

- 25.3 Subject to any conditions set out on Schedule 3, at the expiry, surrender or termination of the Term the Concessionaire must remove all the Concessionaire's structures and facilities on the Site unless the Grantor approves otherwise in writing.
- 25.4 If the Concessionaire does not remove the structures and facilities as required by clause 25.3, or as otherwise approved by the Grantor, the structures and facilities remaining on the Site will be deemed to have become fixtures and ownership in them will vest absolutely in the Grantor.
- 25.5 In that case the Grantor will not be liable to pay any compensation to the Concessionaire for the structures and facilities and may, at the Grantor's option, remove or destroy or otherwise dispose of them and recover the costs and expenses of the removal or destruction from the Concessionaire as a debt due to the Grantor.

26.0 FORCE MAJEURE

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

27.0 DISPUTE RESOLUTION AND ARBITRATION

- 27.1 If a dispute arises between the parties in connection with this Document including without limitation the interpretation, validity, breach or termination of any of its provisions, the parties will, without prejudice to any other rights or entitlements they may have under this Document or otherwise, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.
- 27.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 27.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 27.4 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

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

28.0 NOTICES

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

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

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

29.0 COSTS

29.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and executing this Document or any extension or variation of this Document.

29.2 The Concessionaire must pay in full immediately on demand all costs and fees (including but not limited to solicitors' costs and the fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor:

- (a) to enforce or attempt to enforce the Grantor's rights and powers under this Document if the Concessionaire is in breach or default;
- (b) to recover outstanding money owed to the Grantor.

30.0 RELATIONSHIP OF PARTIES

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

- (a) constituting the parties as partners or joint venturers;
- (b) conferring on the Concessionaire any right of exclusive occupation or use of the Site;
- (c) granting any estate or interest in the Site to the Concessionaire;
- (d) preventing the Grantor from granting other concessions, whether similar or not, to other persons;

- (e) derogating from the rights of the Grantor and the public to have access across the Site or the Land.

31.0 OFFENCES

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

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

32.0 SEVERABILITY

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

33.0 ENTIRE UNDERSTANDING

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

34.0 VARIATIONS

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

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

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

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

35.0 GUARANTEE

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

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

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

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

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

36.0 CO-SITING

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

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

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

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

Signed by _____ :

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

Witness (signature) _____

Witness (print name) _____

Occupation _____

Address _____

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Signed for and on behalf of **KYEBURN PASTORAL CO LIMITED**
as Concessionaire:

_____ Director

_____ Director

in the presence of :

Witness (signature) _____

Witness (print name) :

Occupation :

Address :

SCHEDULE 1

1. **Land:** Land show on the tenure review designations plan as "CA1"
(see definition of Land in clause 1.1)
2. **Concession Activity:** Guided horse trekking trips including use of Stone and Provens Huts.
(see definition of Concession Activity in clause 1.1)
3. **Term:** 10 years commencing on the beginning of the month following surrender of the pastoral lease P197.
(see clause 3.1)
4. **Final Expiry Date:** (see clause 3.2)
5. **Concession Fee:**
 - (1) Concession Management Fee of \$:
 - AND
 - (2) Concession Activity Fee:
plus GST per adult client guided per full day (defined as a period of more than 4 hours but less than 24 hours on the Land) and plus GST per adult client guided per half day or part thereof (a half day being defined as less than 4 hours on the Land).

The Concession Activity Fee for a child is half the adult client Concession Activity Fee, if children are charged less than adults for the Concession Activity. For the purposes of this provision, a child is a person who has not left school.

If huts are to be used for overnight accommodation, additional hut fees are to be paid.
(see clause 5.1)
6. **Concession Fee Instalments:**
 - (1) Concession Management Fee: due annually in advance, with the first payment being due on the commencement date specified in clause 3 of this schedule and annually thereafter.
 - (2) Concession Activity Fee: (see clause 5.1)
See special condition 8

7. **Concession Fee Payment Date:**
See special condition 9 in schedule 3 *(see clause 5.1)*
8. **Penalty Interest Rate:**
Double the Grantor's bank's current highest 90 day bank bill buy rate *(see clause 5.2)*
9. **Concession Fee Review Date:** _____ *(see clause 7.1)*
10. **Public Liability General Indemnity Cover:** *(see clause 23.3)*
11. **Public Liability Forest & Rural Fire Extension:** *(see clause 23.3)*
12. **Statutory Liability:** *(see clause 23.3)*
- 13(a) **Other Types of Insurance:** not applicable *(see clause 23.3)*
- 13(b) **Amounts Insured for Other Types of Insurances:** not applicable *(see clause 23.3)*
14. **Environmental Monitoring Contribution:** not applicable *(see clause 24.2)*
15. **Address for Notices:** *(see clause 28)*
 - (a) Grantor Box 5244 fax (03) 477 8626
DUNEDIN
 - (b) Concessionaire C/- N.S. Mckenzie, 3RD, Ranfurly.
fax (03)

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SCHEDULE 2

Community Service Contribution

SCHEDULE 3

Special Conditions

1. The Concessionaire will ensure that the New Zealand Environmental Care Code (attached as Schedule 4) is explained to clients and guides before all trips.
2. The Grantor reserves the right to apply restrictions on the operation of the concession activity (including but not limited to restricting the frequency of trips or reducing the maximum party size) or withdraw all or any part or parts of the Land from the concession if in the Grantor's opinion the activity concerned is having, or may have, an adverse effect on the physical or social environment and the effect cannot be avoided remedied or mitigated to an extent satisfactory to the Grantor. The Concessionaire shall not be entitled to compensation in the event of such action being taken.
3. The Grantor may send, free of charge, any officer of the Department of Conservation on the activity authorised for the purpose of assessing the impact of the activity, and whether the terms and conditions of the licence are being observed. The Concessionaire shall pay to the Grantor the costs of such assessment on or before the date specified on the invoice for same.
4. Not more than _ clients and _ guides will be taken on each trip and not more than _ trips per day will be conducted.
5. The Concessionaire shall ensure that horses are fed on weed free fodder and pastures wherever practicable. The Concessionaire will clear the horse dung off the trails used by the public for walking at regular intervals.
6. The Concessionaire will ensure that no smoking is permitted during trips.
7. The Concessionaire shall prepare a safety plan and have it audited by a suitably qualified person approved by the Grantor.
8. No later than 13 months after commencement and annually thereafter, the Concessionaire shall forward to the Conservator, Department of Conservation, Dunedin an annual return showing the number of clients guided on a monthly basis during the last year (with a split between adults and children) and shall at the same time forward the Concession fee and the completed client activity return form and declaration attached as schedule 6.
9. The Concessionaire shall indemnify the Grantor, the Director-General of Conservation, and Her Majesty the Queen against all and any action, claim, injury, damage or loss which may arise as a result of the granting of this licence.

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10. The Concessionaire shall ensure that horses do not travel outside specified routes on the Buster Diggings and shall at all times ensure that there is no damage done to historic huts, artifacts, sluicings or sluice faces.
11. The huts that are situated on the land described in this concession have not been assessed by DOC to establish their safety, historic significance, structural soundness, current and future maintenance requirements. Until the Department has assessed these factors and confirmed whether or not the huts are available for use, the concessionaire may not use them in association with the concession activity. If it is determined by DOC that the huts are available for use then they will become available for use in association with the concession activity and the additional concession fee described in paragraph five of Schedule 1 will be payable by the concessionaire.

Appendix 6: Deed of Grant of Easement in favour of OtagoNet Limited

FINAL
14 July 2004

COPY

Parties
COMMISSIONER OF CROWN LANDS
(the Grantor)

OTAGONET LIMITED
(the Grantee)

DEED OF GRANT OF EASEMENT

 **Chapman Tripp**
Barristers & Solicitors NEW ZEALAND

Date: 13th September 2004.

PARTIES

- (1) COMMISSIONER OF CROWN LANDS appointed pursuant to the Land Act 1948 (*the Grantor*)
- (2) OTAGONET LIMITED (*the Grantee*)

BACKGROUND

- A The parcel of land described in the Schedule 1 to this Deed is vested in the Grantor pursuant to the Land Act 1948 (*the Grantor's Land*).
- B The Grantee wishes to establish a new electricity transmission line which passes over the Grantor's Land (*the Line*) as shown on the Schedule 2.
- C In order to enable the Grantee to establish the Line the Grantor has agreed to grant a right to convey electricity over those parts of the Grantor's Land described in the Schedule 1 (*the Easement Land*).

BY THIS DEED the parties agree as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined Terms

In this Deed (including the Background), unless the context requires otherwise:

Commencement Date means the date of this Deed;

Deed means this Deed of Grant of Easement as it may be amended, modified, novated or added to from time to time;

Easement Land means the land vested in the Grantor pursuant to the Land Act 1948 and being the area described in the Schedule 1 over which the Line is intended to pass and on which structures are to be erected;

Grantee means the Grantee, its servants, agents, employees, workers and contractors, and any licensee, lessee or tenant of the Grantee;

Grantor's Land means that parcel of land vested in the Grantor pursuant to the Land Act 1948 and described in the Schedule 1;

Lessee means the lessee of the Grantor's Land as detailed in the Schedule 1;

Pastoral Lease means pastoral lease P197 recorded in the register book ad Volume 386 folio 89 (Otago Land District) and as more particularly delineated in the plan drawn thereon.

1.2 Construction

In the construction of this Deed, unless the context requires otherwise:

Clauses and Schedules: references to a Clause or a Schedule is to a clause or schedule of this Deed;

Headings: headings and subheadings appear as a matter of convenience and shall not affect the construction of this Deed;

Person: a reference to any person includes a reference to the person or representatives, successors and permitted assigns of that person;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing any gender include the other gender;

Statutes: references to any statute include any modification or re-enactment of that statute, any legislation enacted in substitution for that statute, and all regulations, orders-in-counsel and other instruments from time to time issued or made under that statute;

Writing: references to "written" and "in writing" include any means of visible reproduction.

2 GRANT OF EASEMENT

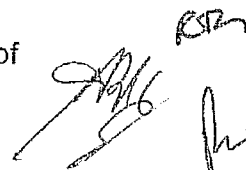
2.1 In consideration of:

2.1.1 the sum of: | paid to the Grantor by the Grantee; and

2.1.2 the Grantee's adherence to the terms of this Deed,

the Grantor grants to the Grantee the right in perpetuity, to convey electricity (*the Easement*) over the Easement Land, commencing on the Commencement Date.

2.2 The Easement will permit but not compel the Grantee to erect and maintain electric power lines and supporting structures for the purpose of conveying electric power over the Easement Land.



2. Once power lines and supporting structures have been erected the actual area of the Easement Land and route of the Line will be deemed to be the route agreed by the Grantor and the Grantee.

3 PAYMENT OF COMPENSATION TO LESSEE

- 3.1 The Grantee confirms that it has, prior to the date of this Deed, entered into an agreement with the Lessee recording receipt by the Lessee of a payment from the Grantee, which amount is acknowledged by the Lessee to be paid in lieu of the payment of any compensation by the Grantor pursuant to section 60(1) of the Land Act 1948.
- 3.2 The agreement recording the matters set out in clause 3.1 above contains an acknowledgement by the Lessee of its waiver of any right it may have to any compensation from the Grantor in respect of the grant of the Easement.

4 EASEMENT COVENANTS

- 4.1 The Grantee shall have the right from time to time and at all times to:
 - 4.1.1 maintain, repair, operate, use, renew, inspect, upgrade, construct, change the size and capacity of, remove and replace;
 - 4.1.2 survey and investigate in respect of:

the Line or part of the Line over or under the Easement Land.

For the purposes of this Deed the term "*Line*" includes any wire or conductor used for the transmission of electricity and includes, without limitation, any insulator, tower, pole, ground stay, supporting structure, cross-arm, foundation, casing, tube, tunnel, fixture or other equipment or materials used for supporting securing, enclosing, surrounding and protecting the Line and also includes, without limitation any tower or pole mounted transformers, fuses, fuse holder, automatic switches, voltage regulators, capacitors or other instrument or device used in association with the Line for the purposes of facilitating the transmission of electricity through the Line.

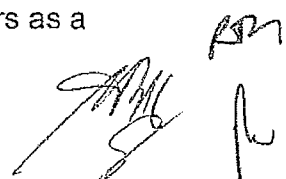
- 4.2 The Grantee shall have the right to convey, send and transmit electricity and communications and all associated signals, waves or impulses over, in, across and through the Line.
- 4.3 The Grantee shall have the right to allow the Line to hang freely over the Easement Land.

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4. The Grantee shall have the right to free and unfettered access over and through the Easement Land for the purpose of carrying on its electricity generation business from time to time and shall at all times have the right of access to and from any part of the Easement Land over the Grantor's Land for the purpose of exercising any of the powers granted under this Deed at any time and with or without any vehicles, machinery or equipment, tools, cables, and materials of any kind, provided such vehicles are not prohibited by the Grantor, acting reasonably.
- 4.5 The Grantee shall have the right to construct and shall be required to maintain on the Easement Land all such tracks deemed necessary by the Grantee for the exercise of its rights and interests granted under this Deed and causing the minimum of disturbance to the Grantor, its land, forestry and other property in doing so. Where such tracks are constructed, the Grantee shall, as far as practicable ensure that it remains on such tracks when passing over the Easement Land. The Grantee shall comply with any reasonable requests of the Grantor in relation to the appropriate level of maintenance and repair to be carried out on such tracks.
- 4.6 The Grantee may (at the Grantee's cost) cut or trim any such trees or vegetation encroaching onto or over the Easement Land to the extent necessary to keep the Line and supporting structures free from interference where such vegetation or trees impede the Grantee's access over the Easement Land.
- 4.7 Neither the Grantor or the Grantee shall at any time do permit or suffer to be done any act whereby the rights powers licences and liberties of the other party hereto may be interfered with or affected in any way.
- 4.8 The Grantee shall use all reasonable endeavours to cause as little disturbance and disruption to the carrying on of the normal business operations of the Grantor although the Grantor accepts that this provision shall not prevent, restrict or hinder the Grantee from carrying out its business in a normal manner consistent with the rights granted to it in this Deed.

5 ADDITIONAL OBLIGATIONS OF THE GRANTEE

- 5.1 The Grantee will at all times ensure that whenever it opens and/or unlocks gates on the Grantor's Land it will ensure when leaving the Grantor's Land that such gates are closed, and where applicable, locked.
- 5.2 In the event that damage or disturbance to the Grantor's Land occurs as a result of the Grantee's permitted activity on the Grantor's Land, the

Handwritten signatures and initials in the bottom right corner of the page. There are several overlapping signatures, including one that appears to be 'AMG' and another that looks like 'R'. There are also some initials that look like 'BM' and 'R'.

Grantee will restore, as far as practicable, the Grantor's Land to its former condition.

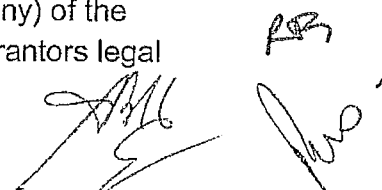
- 5.3 The Grantee shall make good any damage caused by it to tracks, fences, gates, drains, buildings or other structures on the Grantor's Land.
- 5.4 The Grantee is obliged to compensate the Grantor to the extent of the Grantor's loss if there is any damage to stock on the Grantor's Land caused by the Grantee's acts or omissions.
- 5.5 In exercise of the rights contained in this Deed, the Grantee will at all times have due regard to the use by the Grantor of the Grantor's Land and will not unduly interfere with stock, crops, trees, fences or other structures or otherwise unduly obstruct the Grantor in its use of the Grantor's Land. While the approval of the Grantor will be obtained in all practical cases prior to the Grantee entering upon the Grantor's Land, the Grantor acknowledges that in emergency or fault conditions, this may not always be possible.
- 5.6 The Grantee shall not enter onto the Grantor's Land for any purpose other than that permitted by this Deed.

6 OWNERSHIP OF THE LINE

The Grantor acknowledges that the Line and all improvements shall remain the property of the Grantee. In the event that the Grantee fails to remove the Line and all improvements at the termination of the grant of the Easement, the Grantor shall be entitled to remove the Line and all improvements and reinstate the Easement Land to its original condition, all at the cost of the Grantee.

7 REGISTRATION

- 7.1 If the Grantee requires the Easement to be registered the Grantee will, at the Grantee's cost, cause a survey of the route of the Easement to be completed and will prepare an easement in registrable form incorporating the terms of this Deed.
- 7.2 The Grantor will sign all plans and documents necessary to register such easement and will make available the titles to the Grantor's Land to enable registration.
- 7.3 The grantee shall be solely responsible for the registration (if any) of the Deed and any associated costs and expenses (including the grantors legal costs).

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8 INDEMNITY

- 8.1 The Grantee indemnifies the Grantor against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor by reason of any act or omission of the Grantee in connection with this Deed, or any breach by the Grantee of its obligations, undertakings or warranties contained or implied by this Deed.
- 8.2 The Grantee shall enter into and keep current a public liability policy for any claims arising out of this indemnity.

9 EXCLUSION OF GRANTOR'S LIABILITY

The Grantor shall not be liable to the Grantee in contract, tort or otherwise in relation to any aspect of this Deed, regardless of whether such claim arises as a result of direct or consequential loss to the Grantee.

10 GRANTOR'S RIGHTS OF DELEGATION

All rights, benefits and obligations of the Grantor arising under this Deed may be exercised by any person duly appointed by the Grantor PROVIDED THAT the exercise of any such rights, benefits or obligations by that person shall not limit the liability of the Grantor in the performance or observance of the provisions of this Deed.

11 CAVEAT

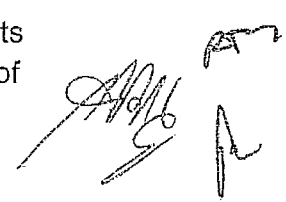
- 11.1 The Grantor agrees that pending registration of the Easement the Grantee may register a caveat over the Grantor's land to protect its rights under this Deed. The Grantee will remove the caveat immediately upon registration. The Grantee agrees to consent to any changes which the Grantor wishes to create over the Easement land.

12 SURRENDER

The Grantee shall be entitled at any time to surrender at its own cost all or any part of the Easement granted to it pursuant to this Deed. The Grantor shall, at the cost of the Grantee, execute any deed of surrender upon the request of the Grantee.

13 ASSIGNMENT

The grantee may not transfer lease assign or licence all or any part of its interest in the easement land and or the rights in this deed or any part of those rights without the prior written consent of the grantor. Any such



transfer lease assignment or licence shall be subject to the rights and obligations set out in this deed.

14 DISPUTE

14.1 In the event of any dispute arising between the parties in respect of or in connection with this Agreement, the parties shall, without prejudice to any other right or entitlement they may have under this Agreement or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).

14.2 In the event the dispute is not resolved within twenty eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1996.

15 NOTICES

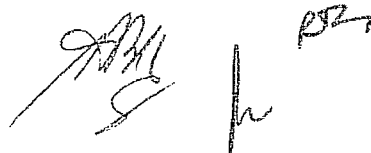
All notices and communications under this Deed shall be delivered personally, sent by prepaid post or by facsimile to the following addresses:

Grantor: Commissioner of Crown Lands
Land Information New Zealand
Private Bag 4721
CHRISTCHURCH
Telephone: 03 379 9793
Fax: 03 366 6422

Grantee: OTAGONET LIMITED
251 Racecourse Road
INVERCARGILL

Telephone: 03 211 1899
Fax: 03 211 1880

or to such other address as either party shall notify to the other. Delivery shall be deemed to have occurred when delivered personally or sent by registered mail or facsimile.

Handwritten signatures and initials in the bottom right corner of the page. There are two distinct signatures, one appearing to be 'J. Smith' and another 'P. J.', along with some other scribbles.

1 SEVERABILITY

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

17 NO WAIVER

17.1 A waiver of any provision of this Deed shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.

17.2 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

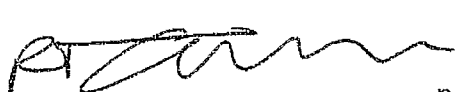
18 GOVERNING LAW

This Deed shall be governed by and construed in accordance with New Zealand law.

SIGNED for and on behalf of HER

MAJESTY THE QUEEN by

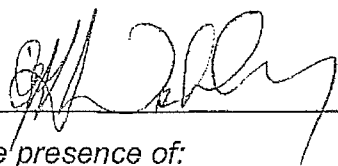
REBECCA JANE GILLESPIE



pursuant to a delegation from the

Commissioner of Crown Lands

In the presence of:

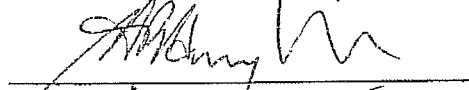


in the presence of:

Name:	GRANT KASPER WEBLEY
Occupation:	PORTFOLIO MANAGER
Address:	CROWN PROPERTY MANAGEMENT C/- LINZ, CHRISTCHURCH



C. AGONET LIMITED by:



Director



Director

SCHEDULE 1

1. Description of the Grantor's Land

RUN 741 BLOCK 1 KYEBURN SD BLOCK 4 MANIOTOTO SURVEY
DISTRICT PT RUN 574 KYEBURN KUROW MANIOTOTO MOUNT
BUSTER DOMET SURVEY DISTRICT

2. Description of the Easement Land

PT RUN 574

3. Details of Lessee

Hal Dillion Scobie Mackenzie
Nicolas Scobie Mackenzie
Carol Mary Mackenzie
Rodger Norman Macassey
Hamish Scobie Mackenzie
Marion Florence Mackenzie

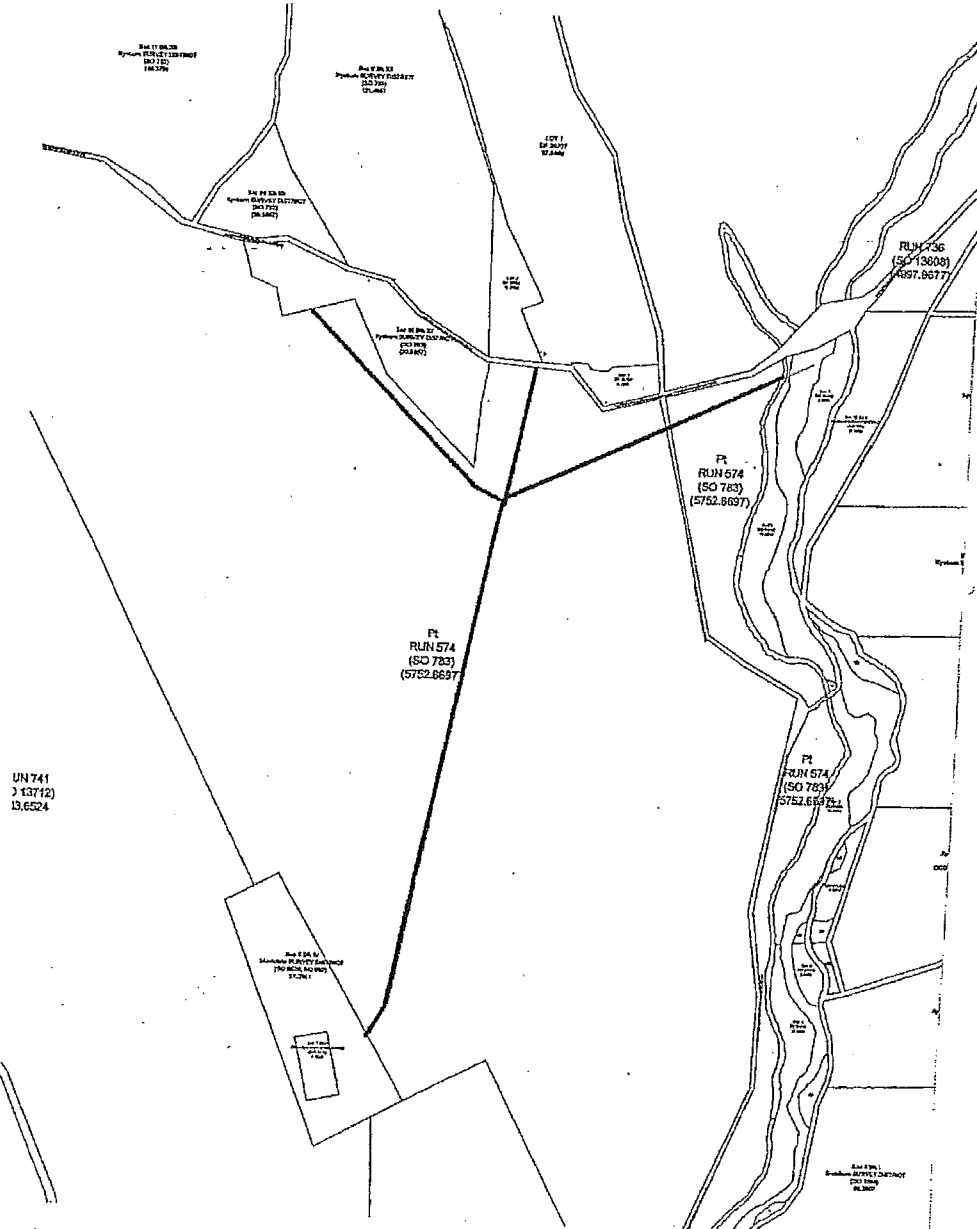
4. Details of Pastoral Lease:

Number:P197
Registration Details: 386/89
Land District: MANIOTOTO SURVEY DISTRICT

Handwritten signatures and initials in black ink, including a large signature that appears to be 'AM' and several smaller initials.

DEED OF GRANT OF EASEMENT

SCHEDULE 2



[Handwritten signatures and initials]

Execution Section

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

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

Witness

Occupation

Address

SIGNED for and on behalf of Kyeburn Pastoral Co Limited [the
Holder] by two of its directors:

Nicolas Scobie MacKenzie

Carol Mary MacKenzie