

Crown Pastoral Land Tenure Review

Lease name: Kyeburn

Lease number: PO 197

Substantive Proposal - Part 4

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

October

08

Appendix 6: Form of Easement Concession to be Created

Concession number: _____

DATED _____

Between

MINISTER OF CONSERVATION
("the Grantor")

and

KYEBURN PASTORAL CO LIMITED
("the Concessionaire")

EASEMENT CONCESSION
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation
Te Papa Atawhai

THIS DOCUMENT is made this day of

PARTIES:

1. **MINISTER OF CONSERVATION**, ("the Grantor")

2. **KYEBURN PASTORAL CO LIMITED**
 ("the Concessionaire")

BACKGROUND

- A. The land described in Item 1 of Schedule 1 as the Servient Land is a Conservation Area or a Reserve under the management of the Grantor.

- B. The land described in Item 2 of Schedule 1 as the Dominant Land is freehold land of the Concessionaire.

- C. Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).

- D. The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Document.

- E. The Grantor has agreed to grant the Concessionaire an Easement appurtenant to the Dominant Land over that part of the Servient Land specified as the Easement Area.

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

- “**Background**” means the matters referred to under the heading ‘Background’ on page 2 of this Document.
- “**Compensation**” means the amount specified in Item 6 of Schedule 1 and required by the Grantor under section 53 of the Crown Pastoral Land Act 1988 and section 17X of the Conservation Act 1987 for the adverse effects of the Concession Activity on the Crown’s or public’s interest in the Easement Area.
- “**Concession**” means a concession as defined in section 2 of the Conservation Act 1987.
- “**Concessionaire**” means the registered proprietor for the time being of the Dominant Land and includes the Concessionaire’s successors, assigns, executors, and administrators.
- “**Concession Activity**” means the use of the Easement Area by the Concessionaire for purposes specified in Item 4 of Schedule 1.
- “**Conservation Area**” has the same meaning as “Conservation area” in section 2 of the Conservation Act 1987.
- “**Director-General**” means the Director-General of Conservation.
- “**Document**” means this document and any subsequent amendments and all schedules, annexures, and plans attached to it.

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

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

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

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

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

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

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

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

1.2 In this Document unless the context otherwise requires:

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

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

2.0 GRANT OF APPURTENANT EASEMENT

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

3.0 TERM

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

4.0 COMPENSATION

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

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

5.0 OTHER CHARGES

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

6.0 CONCESSION ACTIVITY

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

7.0 COMPLIANCE

7.1 The Concessionaire will comply where relevant:

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

8.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

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

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

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

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

9.0 PROTECTION OF THE ENVIRONMENT

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

- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Easement Area; or

- (b) bring any plants, or animals (except those stipulated in Item 4 of Schedule 1) on to the Easement Area; or
 - (c) deposit on the Easement Area debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Easement Area; or
 - (d) pile or store materials in any place on the Easement Area where they may obstruct the public or create a nuisance; or
 - (e) conduct any noxious, noisome, dangerous or offensive activity on the Easement Area; or
 - (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Easement Area; or
 - (g) disturb or allow stock to disturb any stream or watercourse on the Easement Area; or
 - (h) light any fire on the Easement Area.
- 9.2 The Concessionaire, must at the Concessionaire's expense:
- (a) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Easement Area or any Structure or facility on the Easement Area;
 - (b) comply strictly with the provisions of the Biosecurity Act 1993.
- 9.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 9
- 9.4 The Concessionaire may bring firearms on to the Easement Area for use in connection with the Concession Activity and pest control operations.
- 9.5 The Concessionaire may for purposes of the Concession Activity take onto or use vehicles on the Easement Area on existing formed access tracks only.
- 10. TEMPORARY SUSPENSION**
- 10.1 The Grantor may, at any time in exercise of the Grantor's powers, close all or part of the Easement Area for such period as she/he considers necessary.
- 11.0 TERMINATION**
- 11.1 The Grantor may terminate this Document by notice in writing to the Concessionaire if:
- (a) the Concessionaire breaches any terms of this Document; and
 - (b) the Grantor has notified the Concessionaire in writing of the breach; and
 - (c) the Concessionaire does not rectify the breach within 28 days of receiving notification.
- 11.2 Immediately on termination the Concessionaire must execute a surrender of this Document if the Grantor so requires it.
- 12.0 INDEMNITIES AND INSURANCE**
- 12.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, agents, contractors, licensees or invitees

or otherwise caused as a result of its use of the Easement Area or the Concessionaire's carrying out of the Concession Activity on the Easement Area.

- 12.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.
- 12.3 Without prejudice to or in any way limiting its liability under clause 12.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:
- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Easement Area and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 7 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 8 of Schedule 1; and
 - (b) statutory liability insurance for the amount specified in Item 9 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 10 of Schedule 1.
- 12.4 With respect to clause 12.3 the Concessionaire must before commencing the Concession Activity and on each renewal of insurance, provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

13.0 ASSIGNMENT

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

14.0 DISPUTE RESOLUTION AND ARBITRATION

- 14.1 If any dispute arises between the parties in connection with this Document, the parties must, without prejudice to any other rights they have under this Document, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.
- 14.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to mediation with a mediator agreed between the parties.
- 14.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Easement Area is located is to appoint the mediator.

- 14.4 In the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions of the Arbitration Act 1996 will apply.
- 14.5 Notwithstanding any provision to the contrary in the Arbitration Act 1996, if the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the District Law Society in the region in which the Easement Area is located is to appoint the arbitrator. The arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 14.6 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 14.7 The parties agree that the results of any arbitration are to be binding on the parties.

15.0 NOTICES

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

16.0 RELATIONSHIP OF PARTIES

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

17.0 SPECIAL CONDITIONS

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

Signed by :

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

Witness:

Occupation:
Address:

Signed by :

as Concessionaire
in the presence of :

Witness :
Occupation :
Address :

SCHEDULE 1

1. **Servient Land:** Proposed Conservation Land identified in the tenure review Designations Plan as marginal strip along Spec Creek to be created on disposition. *(see definition of Servient Land in clause 1.1)*
2. **Dominant Land:** Proposed freehold land identified in the tenure review Designations Plan. *(see definition of Dominant Land in clause 1.1)*
3. **Easement Area:** Shown as GPS points labelled 1-14 which constitute the centre of the 10m easements which cross the marginal strip. The pumphouse is shown as point 15. An irrigation water take point and associated works is shown as point 16.
4. **Concession Activity:**
Horse, foot, vehicles, implements, stock and dog access over route for farm management purposes. The occupation of a pumphouse, along with associated intake pipes and power supply. The transport of water from ORC approved water intake (NZMS I41: 923-967.Spec Creek) *(see definition of Concession Activity in clause 1.1.)*
5. **Term:** 60 years *(see clause 3.1)*
6. **Compensation:** 10 cents if requested. *(see clause 4.1)*
(payable on date of execution of this Document)
7. **Public Liability General Indemnity Cover:** *(see clause 12.3)*
for \$1,000,000.00
8. **Public Liability Forest & Rural Fire Act Extension:** *(see clause 12.3)*
for \$1,000,000.00
9. **Statutory Liability Insurance** *(see clause 12.3)*
for \$20,000.00
10. **Other Types of Insurance:** *(see clauses 12.3)*
for \$ NA
11. **Address for Notices (including facsimile number):** *(see clause 15)*
 - (a) Grantor: C/- PO Box 5244, Dunedin. Fax (03) 4778 626
 - (b) Concessionaire: KYEBURN PASTORAL CO LIMITED Fax (03) 444 9055

SCHEDULE 2

Special Conditions

1. Clause 4.2 is deleted.
2. The Concessionaire may complete minor earthworks or vegetation clearing to keep open crossing points on Spec Creek.

Appendix 7: Form of Conservation Covenant to be Created CC1

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

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

1.2 For avoidance of doubt:

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

2. OBJECTIVE OF THE COVENANT

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

3. THE OWNER’S OBLIGATIONS

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

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

4. THE MINISTER'S OBLIGATIONS

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

5. IMPLEMENTATION OF OBJECTIVES

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

6. DURATION OF COVENANT

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

7. OBLIGATIONS ON SALE OF LAND

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

8. MISCELLANEOUS MATTERS

8.1 Rights

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

8.2 Trespass Act:

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

8.3 Reserves Act

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

8.4 Titles

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

8.5 Acceptance of Covenant

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

8.6 Fire

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

9. NOTICES

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

10. DEFAULT

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

11. DISPUTE RESOLUTION PROCESSES

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

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

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

12. JOINT OBLIGATIONS

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

13. SPECIAL CONDITIONS

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

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

Executed as a Deed

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

Witness: _____

Address : _____

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

Currently shaded yellow and labelled CCI (approximately 32 ha) on the Designations Plan.

2. Address for Service¹

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

C/- Box 5244
DUNEDIN

Fax (03) 477 8626

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

Kyeburn Pastoral Co Limited, 3RD, Ranfurly.

Fax (03) 444 9055

3. Values of Land to be Preserved

The dry hillslopes facing Spec Gully support tall shrubland on relatively stable substrates and dwarf shrubland/herbfield on actively eroding slopes with much bare ground. Tall shrubland is comprised of matagouri and *Carmichaelia petriei* often in conjunction with the sprawling liane *Muehlenbeckia complexa*. Some grassy clearings amongst shrubland have the dwarf broom *Carmichaelia corrugata*. The dwarf shrubland/herbfield contains *Carmichaelia nana*, *C. nana* x *C. petriei* hybrids, *Melicytus alpinus*, occasional *C. vexillata*, *Muehlenbeckia axillaris*, *Oxalis exilis*, *Leucopogon fraseri*, *Dichondra brevifolia*, and *Carex resectans*. Mouse-ear hawkweed is a common weed of this community. Native grasses present include hard tussock, silver tussock, plume grass (*Dichelachne crinita*) and *Elymus* sp.

¹ State street address not Post Office Box number.

SCHEDULE 2

Special Conditions

1. The Minister will pay to the Owner a proportionate share of the following:
 - 1.2 the cost of any work under clause 3.2 if the Minister has first approved the work.
2. The proportionate share payable by the Minister is to be calculated having regard to the purpose of the expenditure with the intent that:
 - 2.1 the Minister will bear the cost of work essential for purposes of nature conservation;
 - 2.2 the Owner will bear the cost of work essential for farming purposes;
 - 2.3 when the expenditure is partly for nature conservation and partly for farming purposes, the parties will bear the costs equally or in such other proportion as they may agree, and failing agreement, as may be determined under clause 11.
3. Clause 3.1.1 is deleted. Sheep may be grazed within the Covenant area.
4. The Owner hereby acknowledges that if, in the opinion of the Minister, the composition and structure of the indigenous vegetation within the covenant area is being damaged as a result of grazing, the Minister may limit or prohibit grazing within the covenant area completely.
5. Monitoring will be established at the expense of the Minister to provide base line vegetation information for the area. It may be remonitored at intervals determined by the Minister.
6. The Minister will be responsible for the control of exotic broom within the Covenant area, but the cost of such control will be borne by both parties equally.
7. A management plan for the control of weeds and pests and for the management of the values may be completed by the Minister in consultation with the Owner.
8. The Owner will be responsible for the cost and erection of a new rabbit proof fence on the boundaries of the Covenant. This will be completed within 12 months of the settlement date of the tenure review of P 197 - Kyeburn PL.
9. Clause 3.1.5 is amended to allow for topdressing.
10. The Owner is permitted to clear and keep clear vegetation within 10m of the boundary fence of the Covenant area to provide a fire break and to facilitate stock access.

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

Solicitor for the Minister

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

COMMISSIONER OF CROWN
LANDS

to

MINISTER OF CONSERVATION

Solicitor
Department of Conservation
DUNEDIN/CHRISTCHURCH

Appendix 8: Deed of Grant of Easement in favour of OtagoNet Limited

DEED OF GRANT OF EASEMENT

FINAL
14 July 2004

Parties
COMMISSIONER OF CROWN LANDS
(the Grantor)

OTAGONET LIMITED
(the Grantee)

COPY

DEED OF GRANT OF EASEMENT

 **Chapman Tripp**
Barristers & Solicitors NEW ZEALAND

DEED OF GRANT OF EASEMENT

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 \$5000 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.

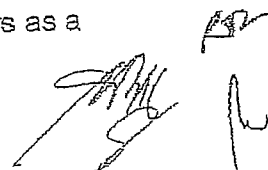
- 4.2 The Grantee shall have the right to convey, send and transmit electricity and communications and all associated signals, waves or impulses over, in, across and through the Line.

- 4.3 The Grantee shall have the right to allow the Line to hang freely over the Easement Land.

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, including a large signature and the initials 'AM' 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).

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

Handwritten signature and initials in the bottom right corner of the page.

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.

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

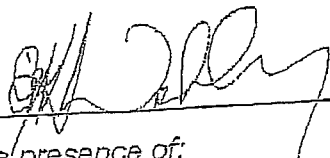
REBECCA JANE GILLESPIE



pursuant to a delegation from the

Commissioner of Crown Lands

In the presence of:



in the presence of:

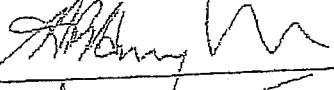
Name:	GRANT KASPER WEBLEY
Occupation:	PORTFOLIO MANAGER
Address:	CROWN PROPERTY MANAGEMENT C/- LINZ, CHRISTCHURCH



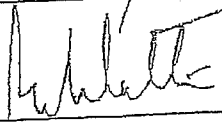
DEED OF GRANT OF EASEMENT

9

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

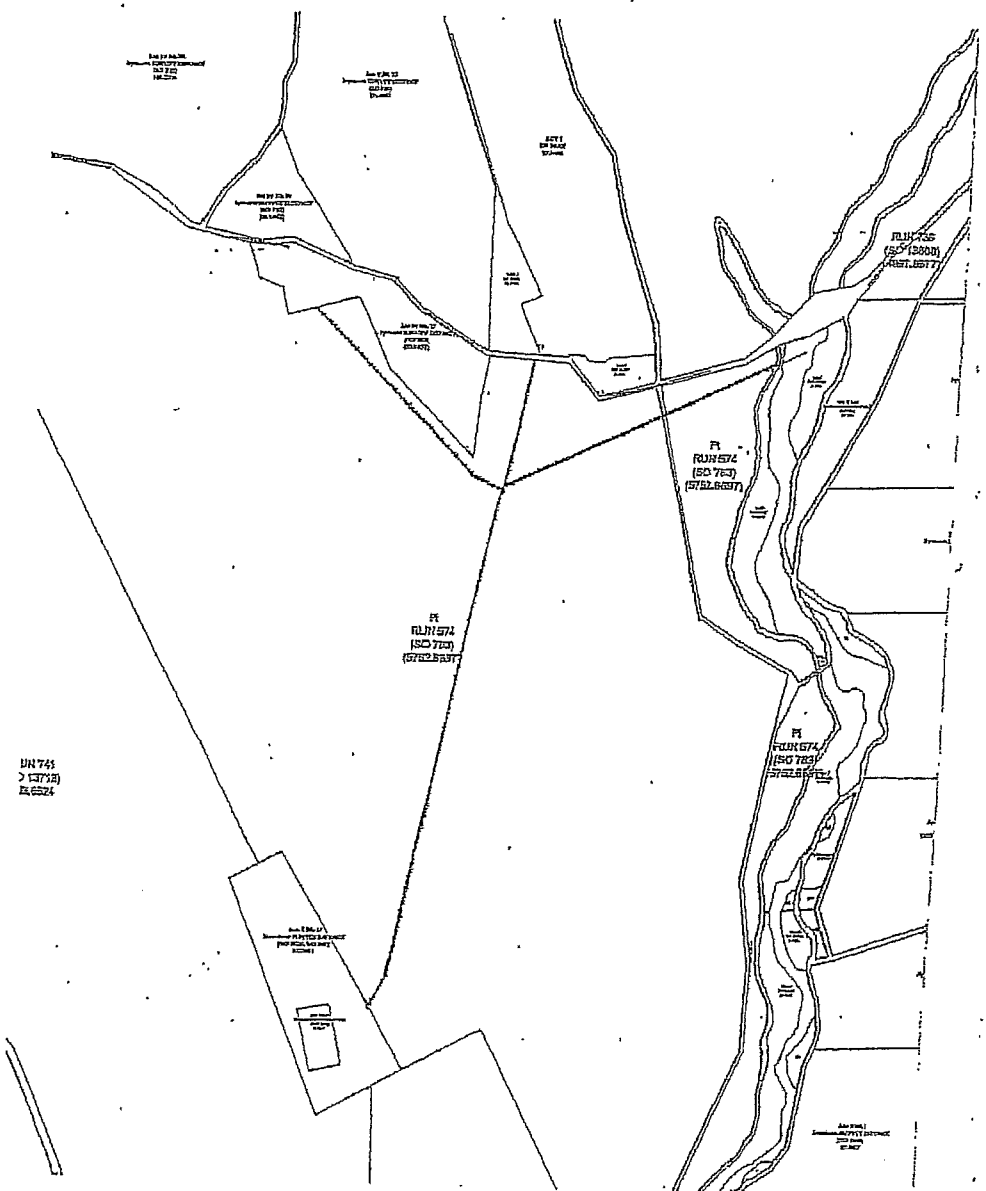
4. Details of Pastoral Lease:

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

Handwritten signatures and initials in the bottom right corner of the page.

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 **Brian John Usherwood** pursuant to delegation under the Crown Pastoral Land Act 1998 in the presence of:





Witness

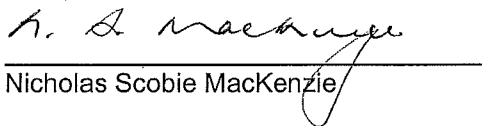


Occupation

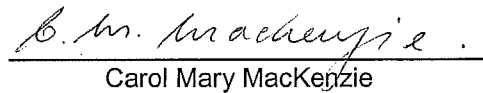


Address

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



Nicholas Scobie MacKenzie



Carol Mary MacKenzie

21 February 2008

Commissioner of Crown Lands
C/- Opus International Consultants Limited
Private Bag 1913
DUNEDIN

Dear Sir

TENURE REVIEW – KYEBURN PASTORAL CO LIMITED (“the Holder”)

We Gallaway Cook Allan hereby certify as follows:

1. 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 29 November 2007 (“the Proposal”) have been duly authorised by the directors of the Holder. The Holder has executed the Proposal in accordance with its constitution.
- 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).

Yours faithfully

GALLAWAY COOK ALLAN



Roger Macassey
Partner

Email: roger.macassey@gcalegal.co.nz