

# Matangi Station Public Easement Outline Draft Document

V8 – 01/02/2024

## 1. Interpretation –

- 1.1 '*Accidental Discovery Protocol*' is the attached Protocol with that heading.
- 1.2 '*Additional Tracks*' mean the additional tracks finalised under clause 4.10(b).
- 1.3 '*Car Parks*' mean the:
- (a) 'Main car park'; and
  - (b) 'Jump and skills car park';
- including entrances/exits, shown on the Map together with any additional, or relocated, car park consented to by the Lessee and Grantor.
- 1.4 '*Commercial User*' means an entity using the Easement Area for, or incidental to, the purposes of their business, including:
- (a) a business earning money by taking people to or on the Easement Area (such as a cycle tour or guide business or skills instructor) and includes that business' employees and clients;
  - (b) a shuttle bus operator;
  - (c) filmmakers filming any Easement activity.
- A '*Commercial User*' does not include:
- (d) a not-for-profit or charity group/organisation running programmes on the Easement Area for the benefit and well-being of their members and participants;
  - (e) a filmmaker filming activities on the Lessee's Land;
  - (f) The Grantor or the Lessee.
- 1.5 '*Drink Station*' means a freshwater drinking station for the Public users of the Tracks comprising of either or both of:
- (a) plastic water containers, sitting on the ground or a stand installed at the site;
  - (b) 500 or 1000 L water tanks which may sit on a wooden platform installed at the site.
- 1.6 '*Easement*' means the easement created by this Instrument.
- 1.7 '*Easement Area*' means the footprint of the Easement Facilities.
- 1.8 '*Easement Facilities*' mean the Car Parks, stiles, culverts, boardwalks, picnic tables, bike maintenance stations, Drink Stations, toilets and signage, authorised under section 4, and Tracks.
- 1.9 '*Easement Purpose and Principles*' are described in section 2.
- 1.10 '*Emergency Stocking Event*' means an unexpected and extreme natural event (including human created fire), or extreme stock health event subject to government control, which presents an immediate, real and unplanned risk to the Lessee's livestock, requiring the Lessee to immediately muster stock into, or out of, the Lessee's Land.
- 1.11 '*Event*' means
- (a) an organised competition between people on foot or mountain bike over a course on the Tracks; or

- (b) an organised group recreational activity on foot or mountain bike, on the Tracks and which people pay to participate in:
  - (i) by more than 19 participants; or
  - (ii) generating more than 6 vehicles parked adjacent to Tracks and not in the Car Parks.

1.12 '*Event Car Parking*' means off-road car parking on the Lessee's Land at the location of the Event, to accommodate the Event activity vehicles.

1.13 '*Event Personnel*' mean the Event organisers, safety and support people (including media, filmmakers and refreshments suppliers), participants and spectators.

1.14 '*Existing Tracks*' mean the tracks identified as such on the Map and will include Proposed Tracks and Additional Tracks once they are formed. Existing Tracks include any retaining walls.

1.15 '*Grantee*' is *{the legal entity which holds the public access rights and obligations}* and any:

- (a) authorised transferees;
- (b) Grantee's Delegate; and
- (c) when the context admits, Grantee's employees, personnel, volunteers, contractors, agents, licensees and invitees.

A reference to the 'Grantee' per se does not extend to include the 'Public'.

1.16 '*Grantee's Delegate*' is a delegate appointed under section 13.

1.17 '*Grantor*' is His Majesty the King acting by and through the Commissioner of Crown Lands (under the Land Act 1948) and any transferee, and when the context admits, includes the Grantor's employees, agents, contractors and authorised invitees.

1.18 '*Instrument*' means this Easement Instrument.

1.19 '*Jump and Skills Park*' means the area shown on the Map with this notation, where the Grantee may construct the Jump and Skills Tracks;

1.20 '*Jump and Skills Tracks*' mean mountain bike jumps and/or skills features, incorporating tracks, constructed pursuant to clause 4.9 *{talk to Phil Oliver about any required further description in clauses 1.20 and 4.9}*.

1.21 '*Lessee*' means the registered proprietor for the time being of the Lessee's Land and any successive freehold or leasehold estate of that land, and when the context admits, includes the Lessee's employees, agents and contractors.

1.22 '*Lessee's Land*' means the Lessee's leasehold interest in that part of *{legal description}* comprising of the Easement Area together with the land adjoining, or in the vicinity of, the Easement Area.

1.23 '*Map*' means the attached map depicting the sites and area covered by this instrument.

1.24 '*Mountain bike*' is restricted to:

- (a) a muscular only pedal powered bicycle and unicycle;
- (b) a bicycle with the muscular pedal power assisted by an electric motor of no more than 300 watts total power, without a throttle;
- (c) a special needs adaptive muscular only powered cycle with more than two wheels, designed to provide extra support and assistance for sitting, pedalling and steering, and only to be ridden on those Tracks designated by the Grantee as suitable for these cycles.

1.25 '*Other Members of the Public*' mean all members of the public other than the general public, and includes:

- (a) any organisation, group, body corporate or unincorporated body (including not-for-profit and charity);
- (b) government departments;
- (c) local authorities;
- (d) Commercial Users;
- (e) Event Personnel;

authorised by the Grantee under section 6 to have access to the Easement Area.

1.26 '*Proposed Tracks*' mean the tracks identified as such on the Map.

1.27 '*Public*' mean:

- (a) the general public comprising of individuals and includes their social groups; and
- (b) 'Other Members of the Public'.

1.28 '*Tracks*' mean the Proposed Tracks and Additional Tracks, once they are formed, Existing Tracks and Jump and Skills Tracks and excludes any track removed under clause 4.13.

1.29 '*Track Construction Specification*' means the attached document with this heading, as may be amended from time to time by the Grantee with the written consents of the Grantor and Lessee *{carefully review this Specification with Phil Oliver in terms of its current application to Proposed Tracks and Additional Tracks and check with Phil if we should add culverts and boardwalks}*.

1.30 '*Upgrade the Jump and Skills Tracks*' mean *{clarify with Phil Oliver}*.

1.31 '*Upgrade the Tracks*' means to upgrade the Tracks by rock placement with or without dry cement, soil placement, re-surfacing with natural materials, drainage including by pipe, improve the track surface, improve the track width, required retaining wall construction, and track realignment; to improve the continuity, safety or enjoyment of the tracks and protect the stability, integrity and durability of the tracks.

1.32 When the Grantee requires consent under this Instrument from the Grantor, for any work or activity, the consent must be in writing (which may be communication by electronic means) and obtained before carrying out the work or activity requiring the consent.

1.33 When consent is required under this Instrument between the Grantee and Lessee, for any work or activity:

- (a) the consent must be obtained before carrying out the work or activity requiring the consent; and
- (b) subject to the following paragraph (c), the consent must be in writing.
- (c) If the Grantee or Lessee does not return a written decision, either one way or the other, within 15 working days of a written request for consent, then consent is deemed to have been given. The 15 working day period shall be extended for such reasonable time, if within the 15 working days, the party requested to give consent, reasonably seeks:
  - (i) further information; or
  - (ii) an extension of time to make a decision.
- (d) '*Writing*' and '*written*' includes communication by electronic means.

1.34 Where this Instrument is silent on who meets the cost of doing work required or authorised under this Instrument, the party required or authorised to do the work, shall meet the cost of doing that work.

1.35 A reference in this Instrument to any enactment includes any amendment and enactments passed in substitution.

1.36 A requirement for a party not to do an act shall include a requirement not to suffer, cause or permit another person to do such act.

1.37 A reference in this Instrument to:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes every gender.

## **2. Easement context, purpose and principles –**

2.1 This Easement gives access to world-class mountain bike terrain, and running and walking tracks, surrounded by an outstanding landscape, and characterised by a sense of peace, isolation and ambience. The landscape incorporates significant natural and historic values. The Easement Area is within a working pastoral farm. This clause 2.1 informs clauses 2.2 and 2.4.

2.2 The purpose of the Easement is to provide mountain bike and foot access over the Easement Area for the Public's use, enjoyment, learning, and health and physical well-being, whilst:

- (a) enabling the Lessee to properly farm the land adjacent to the Easement Area, which activity, by necessity, overlaps into the Easement Area when authorised by this Instrument;
- (b) minimising any adverse impact on the livestock on or adjacent to the Easement Area; and
- (c) addressing section 4 of the Crown Pastoral Land Act 1998.

2.3 To assist achieving the purpose under clause 2.2, this Instrument permits Other Members of the Public to have mountain bike and foot access over the Easement Area:

- (a) to the extent permitted and controlled by the Grantee; and
- (b) able to be charged for by the Grantee, to provide the Grantee with revenue to help fund the Grantee's costs incurred in giving effect to its rights and obligations under this Instrument.

2.4 The principles underpinning this Instrument are that the Grantor, Lessee and Grantee must act reasonably and responsibly when exercising their respective rights and powers under this Instrument, and where a right is subject to consent by the Grantor, Lessee or Grantee, consent shall not be unreasonably withheld and may be given subject to reasonable conditions to be complied with.

2.5 The terms of this Instrument shall be interpreted and applied as between the Grantor, Grantee and Lessee to give best effect to:

- (a) the purpose of the easement described in clause 2.2, in the context described in clauses 2.1 and 2.3; and
- (b) the principles described in clause 2.4.

## **3. Easement area and public access –**

3.1 This Instrument is entered into pursuant to section 60 of the Land Act 1948 and section 109 of the Land Transfer Act 2017.

3.2 The Grantor grants to the Grantee a right of way easement in gross for the Grantee and Public to go, pass and re-pass, on foot or by mountain bike, on:

- (a) the Existing Tracks,
- (b) the Proposed Tracks,

- (c) the Additional Tracks, and
  - (d) Jump and Skills Tracks;
  - (e) together with the incidental rights detailed in section 4;  
on the terms of this Instrument.
- 3.3 This Easement gives the Grantee (incorporating the Public in accordance with the terms of this Instrument) the exclusive and unobstructed use of the Easement Area subject to the terms of this Instrument.
- 3.4 The Grantee and Public's access rights are, except where expressly restricted under this Instrument, exercisable at all times but not outside the period 6 am to 10 pm. The Grantee and Public may have access on the Easement Area outside this period:
- (a) with the consent of the Lessee; or
  - (b) for an authorised Event planned to run outside that period.
- 3.5 The rights and powers implied under Schedule 5 of the Land Transfer Regulations 2018 and Schedule 5 of the Property Law Act 2007 are negated.

#### **4. Incidental rights associated with the rights of access –**

##### 4.1 Car parking –

- (a) The Grantee and Public have the right, in common with the Lessee, to use the Car Parks for parking their vehicles. The Grantee's and Public's use of the Car Parks is solely for the purpose of using the Tracks. The Lessee's use of the Car Parks is solely for farming purposes.
- (b) The Grantee shall maintain the Car Parks subject to paragraph (c) below.
- (c) The Lessee shall promptly carry out the repair required to remedy any damage to a Car Park caused by the Lessee other than from fair wear and tear. If the damage has been due to, or contributed by, wet conditions, the repair will be delayed until the conditions are suitable for repair work.
- (d) The Grantee and Public may use Event Car Parking consented to by the Lessee.

##### 4.2 Stiles –

- (a) The Grantee may situate the existing stiles at the locations shown on the Map.
- (b) The Grantee may construct new stiles over fences crossing the Tracks, where required. The Grantee must first consult with the Lessee on the location and construction of any proposed new stile and will comply with any practical and reasonable requirements of the Lessee.
- (c) The Grantee may replace the existing stiles.
- (d) The stiles shall be designed and built to enable the Public, with mountain bikes, to cross over a fence in a practical manner. The design of the Easement Area stiles existing at the date of this Instrument, meets the requirements of this paragraph and the requirements of the Lessee.
- (e) The stiles may clear the fence, or be cut into the fence to reduce the stile gradient and enable them to be bikeable. If a stile is cut into a wire fence, the stile structure must support the strain of the wire fence.
- (f) All stiles shall be stock proof, and where located within a pest proof fence, shall match the pest proofing effect of the fence.

- (g) A cattle stop may be substituted for a stile with the consent of the Lessee and in that case, a reference in this instrument to a 'stile' includes an authorised cattle stop.
- 4.3 The Grantee may construct culverts or boardwalks to bridge wet areas of the Tracks in consultation with the Lessee and the Grantee shall comply with any practical and reasonable requirements of the Lessee.
- 4.4 Picnic tables and bike maintenance stations –
- (a) The locations of the existing picnic tables and bike maintenance station are shown on the Map.
  - (b) The Grantee may situate further picnic tables and bike maintenance stations, or relocate the existing ones, on the Lessee's Land adjacent to the Easement Area, when desirable for the better enjoyment by the Public of the Easement Area.
  - (c) The site of any new, or relocated, picnic tables and bike maintenance station shall be determined in consultation with the Lessee and the Grantee shall comply with any practical and reasonable requirements of the Lessee.
  - (d) The Grantee and Public shall have the right to use these picnic tables and bike maintenance station.
- 4.5 Drink Station –
- (a) The Grantee may situate up to two Drink Stations on the Lessee's Land adjacent to the Easement Area.
  - (b) The Drink Stations may be located at the two sites shown on the Map.
  - (c) The Drink Stations may be located at other locations determined by the Grantee in consultation with the Lessee and the Grantee shall comply with any practical and reasonable requirements of the Lessee.
  - (d) The Grantee and Public shall have the right to use the Drink Stations.
- 4.6 Toilets –
- (a) The Grantee may situate toilets at either or both location shown on the Map and may, subject to paragraph (b) below, situate toilets at up to two additional locations on the Lessee's Land adjacent to the Easement Area.
  - (b) The Grantee must first consult with the Lessee on any location for toilets other than as shown on the Map and will comply with any practical and reasonable requirements of the Lessee.
  - (c) If an access gate is required to be installed in a fence, to give the Grantee access to a toilet, the Grantee may install a locked gate, with the consent of the Lessee. The Grantee shall provide the Lessee with a key to the locked gate.
  - (d) The toilets shall be of the Norski NFP Fibreglass toilet type or similar with a pumpable chamber or holding tank, or be composting.
  - (e) The Grantee must empty and clean the toilets when appropriate.
  - (f) The Grantee may have access over the Lessee's farm tracks for the following purposes:
    - (i) to install and replace the toilets;
    - (ii) to empty the toilets; and
    - (iii) to maintain the toilets.
  - (g) The Grantee and Public shall have the right to use these toilets.

#### 4.7 Signage:

- (a) The Grantee may situate at the locations shown on the Map, information panels containing information relevant to the Public's use of the Easement Area. This information shall include the Public's responsibilities to the Lessee detailed in clause 5. This information may include a map of the Tracks and other Easement Facilities and other appropriate information relating to the implementation and enjoyment of this Easement.
- (b) The Grantee may, with the consent of the Lessee, situate additional information panels on the Lessee's Land adjacent to the Easement Area, containing any of the information referred to in paragraph (a) above and may include matters of natural history, historic or cultural interest.
- (c) The Grantee may situate track signs on the Tracks.
- (d) The Grantee may situate at the Car Parks an entrance sign and speed restriction sign.
- (e) The Grantee may situate the international bike parks sign at its current location.

#### 4.8 Ownership and removal of works –

- (a) The stiles, culverts, boardwalks, picnic tables, bike maintenance stations, Drink Stations, toilets, signs and Jump and Skills Tracks of the Grantee situated in the Easement Area (in this clause referred to as 'the structures') will remain the property of the Grantee and shall not be a land fixture.
- (b) If this Instrument is extinguished, the Grantee shall, within 3 months of this Instrument being extinguished, remove the structures from the Easement Area and restore the Easement Area as nearly as reasonably possible to the condition that it was in at the commencement of this Instrument.
- (c) If the Grantee has not complied with paragraph (b) above, the Grantor or Lessee may carry out the work described in paragraph (b) above and recover from the Grantee all costs incurred.

#### 4.9 Jump and Skills Tracks –

- (a) The Grantee may, with the consent of the Grantor and Lessee, construct dirt jumps and skills features, incorporating tracks, for mountain bikes, at the Jump and Skills Park.
- (b) The dirt jumps shall be built to a design and specification provided by an appropriately qualified person.
- (c) The Grantee shall maintain the Jump and Skills Tracks in a reasonable condition.
- (d) The Grantee may Upgrade the Jump and Skills Tracks.
- (e) Any work to be carried out under paragraphs (a) to (d) above using machinery, must be consented to by the Grantor and Lessee.

#### 4.10 New tracks –

- (a) The Grantee may construct the Proposed Tracks with the consent of the Grantor.
- (b) The Grantee may construct Additional Tracks but only if:
  - (i) the additional tracks are within the farm blocks shaded blue on the Map;
  - (ii) the additional tracks are constructed by hand and hand mechanical and battery tools unless the Grantor and Lessee consent to the Grantee using machinery;
  - (iii) the additional tracks will not have a material adverse effect on the Lessee's pastoral farming operation on the land;

- (iv) the Lessee and Grantor consent.
  - (c) The construction of any Proposed Tracks and Additional Tracks must comply with the Track Construction Specification and any applicable resource consent.
  - (d) The Grantee and Lessee may agree that any new track will be constructed jointly by them for a joint use farm four-wheel-drive track and Easement track; sharing the costs of construction and maintenance on terms agreed between them.
- 4.11 The Grantee shall maintain (including replacement when reasonably required) the Easement Facilities other than the Tracks, in a reasonable condition.
- 4.12 The Grantee shall maintain the Tracks other than the Jump and Skills Tracks, in substantially the same condition they are in at the date of this Instrument and may maintain them to a higher standard. This right of maintenance authorises reinstating rock work moved by usage, clearing exotic vegetation, trimming native shrubs but to the minimum extent necessary, fixing blocked or damaged track drainage and remedying wear and tear and weather sustained damage. The maintenance shall be by hand and spraying, using hand tools including hand mechanical and battery tools, but may be by machinery if the Grantor and Lessee consent to the Grantee using machinery.
- 4.13 The Grantee may remove any track from the definition of 'Tracks' by notice of removal to the Grantor and Lessee and shall:
- (a) remove any associated Easement Facility;
  - (b) make any consequential changes to the signage reflecting the removal of the track.
  - (c) If a Jump and Skills Track is removed, the site of the removed feature shall be restored as nearly as reasonably possible to its condition before the construction of the Jump and Skills Track.
- 4.14 The Grantee may Upgrade the Tracks, provided:
- (a) the work complies with the Track Construction Specifications;
  - (b) the work is by hand and using hand tools including hand mechanical and battery tools, unless the Grantor and Lessee consent to the Grantee using machinery; and
  - (c) any realignment of sections of the track is within 20 meters of the Existing Track.
- 4.15 Machinery work –
- (a) The Grantee may, with the consent of the Grantor and Lessee, use machinery for constructing improved track drainage, water management or slip clearance when appropriate.
  - (b) The Grantee shall have access over the Lessee's Land and farm tracks, by the most practical route, to transport or drive the machinery to the Easement Area worksite.
  - (c) The Grantee must first consult with the Lessee regarding the proposed access and will comply with any practical and reasonable requirements of the Lessee;
  - (d) The machinery and any transport vehicle must be equipped with a fire extinguisher and fitted with a spark arrester;
  - (e) The machinery and any transport vehicle must first be cleaned (including underneath) so that they will not convey any weed seeds onto the Lessee's Land or Easement Area.
- 4.16 The Grantee has vehicle access over the Lessee's farm tracks, by the most practical route, subject to the following:
- (a) This access is solely for the purposes of:



- (i) the Grantee carrying out work on the Easement Facilities, authorised by this Instrument; or
  - (ii) the Grantee running Events;
- (b) Except in the event of an emergency requiring immediate vehicle access, the Grantee must first consult with the Lessee regarding the proposed access and will comply with any practical and reasonable requirements of the Lessee;
  - (c) All vehicles to be equipped with a fire extinguisher and fitted with a spark arrester;
  - (d) The vehicles must first be cleaned (including underneath) so that they will not convey any weed seeds into the Lessee's Land or Easement Area.
- 4.17 In the event of an authorised user under this Instrument being injured or having a medical event, preventing the user from exiting the Easement Area using the Tracks:
- (a) the authorised user plus support people may exit by foot over the most practical direct route of exit over the Lessee's Land;
  - (b) emergency services may access the injured/sick person by vehicle over the most practical route, utilising farm tracks within the Easement Area and/or Lessee's Land.

## **5. Restrictions associated with the rights of access and incidental rights –**

- 5.1 The Grantee and Public shall not do anything on the Easement Area and Lessee's Land unless expressly authorised by this Instrument.
- 5.2 The Grantee and Public shall not access the Lessee's Land beyond what is expressly authorised under this Instrument.
- 5.3 The Grantee and Public shall not take, or be accompanied by, dogs within the Easement Area or Lessee's Land.
- 5.4 The Grantee and Public shall not take guns or other hunting weapons within the Easement Area or Lessee's Land.
- 5.5 The Grantee and Public shall not have an e-cigarette or lighted cigarette within the Easement Area or Lessee's Land.
- 5.6 The Grantee and Public shall not light fires or use cookers within the Easement Area or Lessee's Land.
- 5.7 The Grantee and Public shall not camp within the Easement Area or Lessee's Land.
- 5.8 The Grantee and Public shall not leave any rubbish on the Easement Area or Lessee's Land.
- 5.9 The Grantee and Public, when carrying out their authorised activities on the Easement Area or Lessee's Land, shall only defecate in the Grantee's toilets.
- 5.10 The Grantee and Public shall not interfere with or obstruct the Grantor or Lessee, in carrying out their lawful activities on the Easement Area, except to the extent expressly authorised by this Instrument.
- 5.11 The Grantee and Public, when carrying out their activities on the Easement Area, shall not obstruct any farm gate or track accessing the Lessee's property.
- 5.12 The Grantee shall take all reasonable steps to prevent the Public from breaching clauses 5.1 to 5.11.
- 5.13 The Grantee shall take all reasonable precautions, in relation to any authorised motor vehicles, authorised machinery, generators and/or mechanical or battery tools used, to prevent the

accidental starting, or spread, of any fire, particularly at a time of high fire danger. This clause is in addition to clauses 4.15(d) and 4.16(c).

5.14 When carrying out work or activities authorised by this Instrument, the Grantee shall ensure that:

- (a) the work is performed properly;
- (b) as little damage or disturbance as reasonably possible is caused to the servient land;
- (c) if any damage is done to the servient land, by reason of the work or activities permitted on the servient land by this Instrument being carried out in other than a proper manner, the servient land shall be restored as nearly as reasonably possible to its condition before the work or activity;
- (d) as little disturbance as reasonably possible is caused to the Lessee, the Lessee's stock and the Grantor.

5.15 The Grantee shall, at its expense, make good any damage caused by the Grantee to any structures and fences of the Lessee or Grantor.

5.16 The Grantee shall take all reasonable steps to avoid introducing weeds to the Easement Area including cleaning all equipment, hand and mechanical tools and materials, of plant matter, seeds and soil prior to entering the Easement Area or Lessee's Land. This clause is in addition to clauses 4.15(e) and 4.16(d).

5.17 The Grantee shall:

- (a) during construction of tracks and during maintenance, monitor the worksite and adjacent disturbed and rehabilitated areas, to detect any accidental introduction of invasive exotic pest plants and shall remove those pest plants; and
- (b) take all reasonable steps to remove any invasive exotic pest plants and wilding trees on the Tracks used by the Public. In this paragraph (b) 'Tracks used by the Public' means the tracks signposted and marked on the Easement Area map made available by the Grantee to the Public, showing the tracks available for Public use.

5.18 Water and diesel containers and other construction materials, equipment and machinery, shall be stored at appropriate locations to avoid, or minimise, damage to any surrounding native vegetation.

5.19 Archaeological protection –

- (a) The Grantee shall avoid damaging any archaeological sites and if damage cannot be avoided, the Grantee must obtain an Archaeological Authority from Heritage New Zealand to carry out the work, before such work damages any archaeological site.
- (b) In the event of an accidental discovery of any archaeological site, the Grantee must comply with the Accidental Discovery Protocol.
- (c) The Grantee shall give the Lessee notice of any application by the Grantee for an Archaeological Authority under paragraph (a) above and any accidental discovery by the Grantee under paragraph (b) above.

5.20 The Grantee shall inform all of its contractors, employees, personnel and volunteers of the applicable terms of this Instrument before they carry out any work under this Instrument.

## **6. Grantee right to control Public use of the Easement Area –**

6.1 The Grantee may control, restrict, suspend or stop the Public's use of the Easement Area to:

- (a) protect the Easement Facilities;
- (b) manage the needs of mountain biking while accommodating foot access;

- (c) maximise the enjoyment by the general public of the Easement Area;
- (d) generally give effect to the terms of this Instrument including section 7.

6.2 In giving effect to clause 6.1 and without limiting that clause:

- (a) The Grantee may:
  - (i) require that:
    1. certain Tracks are exclusively used by mountain bikers;
    2. certain Tracks are exclusively used by foot traffic;
    3. on certain Tracks, mountain bikers give way to foot traffic;
    4. on certain Tracks, foot traffic gives way to mountain bikers;
  - (ii) close the Tracks, or sections of them, to Public use when conditions such as saturation from rain, or softening during frost thaw, render the Tracks vulnerable to damage;
  - (iii) control, limit or prevent access to the Easement Area by any sector or individual of the Public.
- (b) Other Members of the Public shall only have access to the Easement Area with the consent of the Grantee and on terms prescribed by the Grantee.
- (c) If the Other Members of the Public require access to the Easement Area for study, assessment, monitoring, investigation or inspection, the Grantee shall obtain consent to the access from the Lessee before giving consent to the access.

6.3 Denying any member of the Public access –

- (a) The Grantee may deny any member of the Public who is in breach of the terms of this Instrument, from going on to the Easement Area for such period (including permanently), and may impose such conditions on their permitted return to the Easement Area, as the Grantee deems necessary or appropriate.
- (b) If a member of the Public goes on to the Easement Area when they are denied from doing so under paragraph (a) above, that member of the Public is trespassing on the Easement Area and the Grantee, as an occupier of the Easement Area, can exercise the powers under the Trespass Act 1980.

## **7. Charging for Public access and events –**

7.1 The Grantee may charge all the Public, or any section of the Public (for example business users, organisers of Events, and/or Commercial Users), for access to the Easement Area, but solely to fund the following costs:

- (a) Any required reimbursement of loans to the Grantee to fund the purchase costs of this Easement;
- (b) The costs incurred by the Grantee in meeting its obligations and exercising/implementing its rights and powers, under this Instrument including the cost of employees and contractors;
- (c) The administration costs (including labour costs) of the Grantee in charging the Public, or any section of the Public, for access and attending to the matters described in paragraphs (a) and (b) above;

7.2 Any member of the Public who is in default in paying the Grantee money owed under clause 7.1, is in breach of the terms of this Instrument.

7.3 A reference to the Grantee in clause 7.1 (b) and (c) includes the Grantee's Delegate. This is made clear for the avoidance of doubt and does not limit clause 1.15(b) and section 13.

## **8. Events –**

- 8.1 The Grantee shall control the number of Events and determine what Events can take place and when.
- 8.2 Before agreeing to the scheduling of an Event that may conflict with the Lessee's authorised use of the Easement Area or Lessee's Land, the Grantee must obtain the consent of the Lessee to the date/s for holding the Event. The Lessee will act reasonably to accommodate the needs of the Grantee and the Event organisers.
- 8.3 Any scheduling of an Event is subject to clause 9.6.
- 8.4 The Grantee may, for any of the purposes detailed in clause 7.1 (a) to (c), charge the organisers of any Event for holding the Event.

## **9. Lessee rights and obligations –**

- 9.1 The Lessee may graze the Easement Area, or muster stock across the Easement Area, upon the following terms:;
- (a) the grazing or muster is incidental to grazing or mustering the Lessee's Land adjoining the Easement Area;
  - (b) the grazing or muster is carried out in a good husband like manner;
  - (c) the right to graze or muster the Easement Area excludes:
    - (i) animals that by their nature are more territorial or aggressive, or have an exaggerated flight response, making them more likely to pose a danger to the Grantee and Public when exercising their rights under this Instrument; and
    - (ii) deer.
  - (d) Sheep, breeding cows and their young do not pose a danger within the meaning of paragraph (c) (i) above.
- 9.2 The Lessee is not liable for, or required to make good, any stock damage to the Easement Facilities caused by grazing and mustering the Easement Area in accordance with clause 9.1.
- 9.3 The Lessee may carry out usual farm management practices on the Lessee's Land and encroaching into the Easement Area when reasonably necessary, including:
- (a) weed and pest control including laying poison and applying pesticides;
  - (b) direct drilling;
  - (c) logging;
  - (d) fertiliser application.
- But in doing so, must:
- (e) comply with the legal requirements applying to the Lessee;
  - (f) make all reasonable endeavours not to lay stock feed across a Track; and
  - (g) make good any consequential damage to the Easement Facilities.
- 9.4 Temporarily closing sections of the Easement Area –
- (a) When the work detailed in paragraphs (a) to (d) of clause,9.3 will, or there is a reasonable risk that it may, encroach into sections of the Easement Area and this presents a health and safety risk to the users of the Easement Area: or

- (b) The Public using a Track would prevent the Lessee from practically mustering the Lessee's Land in that vicinity; then
- (c) The Lessee will give as much reasonable prior notice to the Grantee as practical, of the nature, location and time of the work or muster, sections of the Easement Area needing to be closed and the period that the sections of the Easement Area are required to be closed;
- (d) The Grantee shall then close those sections of the Easement area to the Public in accordance with the requirements of the notice given under paragraph (i) above;
- (e) The Lessee will, for the period required, place a track closed sign at entrance points to the Tracks that are closed and will remove the signs as soon as the work/muster affecting the Easement Area is concluded;
- (f) The Lessee will complete the work/muster and reopen the Easement Area as soon as practically possible; and
- (g) The Lessee will not close any section of the Easement Area when that would conflict with an Event to be held on a date consented to by the Lessee.

9.5 Closure for lambing –

- (a) The Lessee may close to access by the Grantee and Public, the eastern area of the Manorburn block coloured yellow on the Map, for two consecutive months in any year, for lambing in that block;
- (b) The Lessee will give reasonable prior notice to the Grantee of the required closure and closure dates;
- (c) The closure decision is at the exclusive discretion of the Lessee and clause 2.5 shall not apply to this closure decision;
- (d) The Grantee will place a track closed sign at the entrance points to the Tracks that are closed;
- (e) The Lessee may permit the Grantee to carry out maintenance work within the closed block, within the period of closure.

9.6 In the event of an Emergency Stocking Event, the Lessee may close those sections of the Easement Area to use by the Public, as reasonably required, to carry out the emergency muster.

9.7 The Lessee may use the Tracks when reasonably required for access to the Lessee's Land, as follows:

- (a) By foot;
- (b) By mountain bikes, motorbikes and all-terrain vehicles on single tracks;
- (c) By mountain bikes, motorbikes, all-terrain vehicles, 4WD vehicles, tractors and machinery on four-wheel drive farm tracks.
- (d) The Lessee:
  - (i) shall make good any damage to the Tracks, caused by the use under the preceding paragraphs (a) to (c), as soon as reasonable having regard to the Lessee's immediate and necessary stock management commitments;
  - (ii) shall first consult with the Grantee before carrying out such remedial work and comply with any practical and reasonable requirements of the Grantee; and
  - (iii) if the damage has been due to, or contributed by, wet conditions, the reinstatement will be delayed until the conditions are suitable for reinstatement work.
- (e) The Lessee shall not damage or alter any mountain bike features on the Tracks.

- (f) Notwithstanding paragraph(e) above, the Lessee may upgrade the Manorburn Track, and maintain that upgrade, to improve the 4WD access on that track, after first consulting with the Grantee before the upgrade or maintenance and shall comply with any practical and reasonable requirements of the Grantee.
- 9.8 The Lessee may authorise beekeepers to use any Track that is a four-wheel drive farm track for access for their beekeeping business after consulting with the Grantee and complying with any practical and reasonable requirements of the Grantee.
- 9.9 Fences –
- (a) The Lessee may maintain and replace (by an equivalent fence) the existing fences and gates across the Tracks.
- (b) The Lessee may construct and maintain new post and wire fences and gates that cross the Tracks at a different location to the existing fences, or that replace an existing fence but not by an equivalent fence, provided:
- (i) the Lessee first consults with the Grantee on the specification and location of the fence and gate and complies with any reasonable requirements of the Grantee on these matters;
- (ii) the Lessee must also install a stile (as described in clause 4.2(d) to 4.2(f)) over the new fence, or cattle stop rideable by mountain bike, at the places the new fence or gate crosses the Track. If the new fence replaces an existing fence with a stile, but crossing a Track in a different location, so that the old stile is redundant, the Lessee may use the redundant stile for the new fence Track crossing.
- (c) The Lessee will supply to the Grantee a cattle stop, rideable by mountain bike, to be installed by the Grantee in a good workmanlike manner, at the location of the Fabians Track shown on the Map.
- 9.10 Public vehicle barriers –
- (a) The Lessee may lock any gates within the Easement Area or the Lessee's Land.
- (b) The Lessee shall provide to the Grantee a key or combination number for any locked gates which the Lessee is authorised to have access through under this Instrument.
- (c) The Lessee may, with the consent of the Grantee, install within the Easement Area other types of vehicle barriers able to be practically navigated by mountain bike and foot.
- 9.11 The Lessee when carrying out the farming operations authorised by clauses 9.1 to 9.10 must:
- (a) do so in a good husband like manner and consistent with usual farm management practices;
- (b) comply with legal requirements applying to the Lessee.
- 9.12 Subject to clauses 9.1 to 9.10 the Lessee shall not interfere with or obstruct the Grantee's and Public's lawful use and enjoyment of the Easement Area.
- 9.13 The Lessee shall not carry out on the Lessee's Land, nor permit to be carried out on the Lessee's Land, activities that conflict with the Easement Purpose and Principles. This clause, and clause 2.5(a) do not prevent the Lessee from carrying out, or permit to be carried out, commercial non-motorised recreational activities on the Lessee's Land.
- 9.14 The Lessee shall make good any damage to the Easement Facilities caused by the Lessee's negligence or wilful act.
- 9.15 Lessee compensation –

- (a) The Lessee has entered into an agreement with the Grantee which provides for the Lessee to receive a payment from the Grantee in lieu of any compensation under section 60 (1) of the land act 1948.
- (b) The Lessee waves its entitlement to any compensation from the Grantor under section 60 (1) of the Land 1948.

**10. Cooperation to prevent vandalism –**

10.1 The Lessee and Grantee shall cooperate in an effort to prevent vandalism from taking place on the Lessee's Land or Easement Area.

**11. Grantor rights and obligations –**

11.1 If the Lessee's interest in the Lessee's Land merges with the Grantor's interest in that land, then the Grantor shall have the rights and obligations of the Lessee under section 9.

11.2 The Grantor may suspend the Grantee and Public rights under this Instrument until a default, by the Grantee or Public of their obligations under this Instrument, is remedied.

11.3 The Grantor may use the Tracks when reasonably required for access to the Lessee's Land or to inspect the Easement Area, as follows:

- (a) By foot;
- (b) By mountain bikes, motorbikes and all-terrain vehicles on single tracks;
- (c) By mountain bikes, motorbikes, all-terrain vehicles and 4WD vehicles, on four-wheel drive farm tracks.
- (d) The Grantor shall make good any damage to the Tracks other than ordinary wear and tear, caused by the use under the preceding paragraphs (a) to (c).

11.4 The Grantor shall not interfere with or obstruct the Grantee's and Public's lawful use and enjoyment of the Easement Area except to the extent authorised by this Instrument and at law.

**12. Statutory compliance –**

12.1 The Grantor shall comply with the Health and Safety at Work Act 2015 in relation to his activities carried out in the Easement Area.

12.2 The Lessee shall comply with the Health and Safety at Work Act 2015:

- (a) in relation to its activities carried out in the Easement Area; or
- (b) in relation to its activities carried out on the Lessee's Land which could impact on the safety of the Grantee or Public when lawfully using the Easement Area.

12.3 The Grantee shall:

- (a) comply with the Health and Safety at Work Act 2015 in relation to its activities carried out in the Easement Area; and
- (b) request the organisers of authorised Events to comply with the Health and Safety at Work Act 2015 in the running of their Event.

12.4 The Grantee shall:

- (a) comply with all statutes, regulations, resource consents and other statutory approvals applying to; and
- (b) obtain all approvals, consents and authorisation as are necessary for;

conducting the Grantee's activities permitted by this Instrument.

**13. Grantee power to delegate –**

13.1 The Grantee may delegate to a legal entity or person ("Grantee's Delegate") part or all of the Grantee's rights and/or obligations under this Instrument, for any term decided by the Grantee.

13.2 The delegation must be by written agreement between the Grantee and Grantee's Delegate and have the consent of the Grantor and Lessee.

13.3 A delegation by the Grantee shall not release the Grantee from its responsibilities and liabilities under this Instrument.

**14. Grantor power to delegate –**

14.1 All rights, benefits and obligations of the Grantor arising under this Instrument 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 Instrument.

**15. Term –**

15.1 The Easement is in perpetuity.

15.2 To give effect to clause 15.1, there is no implied power for the Grantor to terminate the Easement for breach of any provision in this Instrument.

**16. Costs –**

16.1 The Grantee shall pay all reasonable costs and expenses of the Grantor, including legal costs, for the granting of the Easement and preparation of this Instrument.

16.2 The Grantee shall pay all reasonable costs, charges and expenses for which the Grantor becomes liable as a consequence of, or in connection with, any default by the Grantee in complying with the terms of this Instrument.

**17. Indemnity –**

17.1 The Grantee indemnifies the Grantor against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor as a result of the exercise by the Grantee of its rights under this Instrument, or any breach by the Grantee of its obligations, undertakings or warranties contained or implied in this Instrument.

**18. Grantor's liability excluded –**

18.1 Under no circumstances will the Grantor be liable in contract, tort, or otherwise to the Grantee for any expense, costs, loss, injury, or damage whether consequential or otherwise, arising directly or indirectly from this Instrument or any activity undertaken by the Grantor on the servient land, whether the expense, cost, loss, injury, or damage is the direct or indirect result of negligence or otherwise.

**19. Assignment –**

19.1 Except as expressly authorised under this Instrument, or with the Grantor's consent, the Grantee shall not transfer, assign or licence any of its interest and/or rights in this Instrument.



19.2 Any transfer, assignment or licence consented to by the Grantor shall be subject to the rights and obligations set out in this Instrument (and any such other rights and obligation as the Grantor may require).

**20. Notice –** *{To be in writing - John to obtain an up-to-date clause from Checketts McKay which incorporates written notices by electronic means in terms of the Contract and Commercial Law Act 2017}*

**21. Disputes –**

21.1 If any of the Grantor, Grantee and Lessee requires the resolution of a dispute between any of them in connection with this Instrument:

- (a) And if a rehearing under paragraph (b) below is not applicable for resolving the dispute, or the Grantee elects not to apply for a rehearing, the parties to the dispute shall, in good faith;
  - (i) seek to agree on a method to resolve the dispute through informal means, such as conciliation, or independent expert evaluation or determination, or mediation; and
  - (ii) seek to resolve the dispute.
  - (iii) The parties shall meet their own costs and share equally the cost of that dispute resolution process.
- (b) If the Grantee is aggrieved by any decision of the Grantor or any determination of an administrative nature by the Grantor, the Grantee may apply for a rehearing under section 17 of the Land Act 1948.
- (c) If the parties do not resolve the dispute under either paragraph (a) or (b) above, or cannot reach agreement on the dispute resolution process to be adopted under paragraph (a), and a party requires the dispute to be resolved, then:
  - (i) the dispute shall be referred to arbitration in accordance with the Arbitration Act 1996;
  - (ii) the arbitration shall be by one arbitrator chosen by the parties and if they cannot agree then to be chosen by the President of the New Zealand Law Society or the President's nominee; and
  - (iii) the arbitration award shall be final and binding on the parties.
- (d) Paragraph (c) above shall only apply if all parties to the dispute can be joined to and bound by the arbitration. If this is not the case, then the dispute may be referred to Court for determination.

21.2 Clause 21.1 shall not prevent a party from applying for urgent interlocutory relief.

**22. Registration –**

22.1 This instrument shall be registered against the record of title (leasehold) of the Grantor's Land.

22.2 This instrument shall be registered with the Registrar-General of Land under section 60 (4) of the Land Act 1948 *{and is it also under section 109 of the Land Transfer Act 2017 - check with LINZ}*.

22.3 The Grantee shall pay these registration costs.

22.4 All parties will do what is necessary for the registration of this instrument.