

# **Crown Pastoral Land Tenure Review**

**Lease name: CAIRNHILL &  
THE KNOBBIES**

**Lease number: PO 083 & PO 129**

**Substantive Proposal**

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

**December**

**05**

# **Substantive Proposal**

**relating to**

Tenure Review of the Cairnhill and The  
Knobbies Pastoral Leases under the Crown  
Pastoral Land Act 1998

**Commissioner of Crown Lands acting under  
the Crown Pastoral Land Act 1998**

(the **Commissioner**)

**and**

**Andrew Ritchie McNeish, Kathryn Mara  
McNeish, and Kathryn Mara McNeish and  
Douglas James Harvie**

(the **Holder**)

**DATE**

***Important***

*It is recommended that the Holder seek legal advice  
regarding the effect and consequences of this  
Substantive Proposal and the accompanying documents.*

## **Executive Summary for the Substantive Proposal for the Tenure Review of the Cairnhill and The Knobbies Pastoral Leases under the Crown Pastoral Land Act 1998.**

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### **1. Putting of Substantive Proposal**

In accordance with the Tenure Review process currently being undertaken by the Commissioner of Crown Lands (the **Commissioner**), the Commissioner puts this Substantive Proposal to the holder of the Cairnhill and The Knobbies Pastoral Leases, being Andrew Ritchie McNeish, Kathryn Mara McNeish, and Kathryn Mara McNeish and Douglas James Harvie (the **Holder**).

### **2. Substantive Proposal under Crown Pastoral Land Act**

This Substantive Proposal is put under the provisions of the Crown Pastoral Land Act 1998 (the **Act**). It takes into account the objects of Part 2 of the Act. This Substantive Proposal relates to the land held under the Holder's Crown pastoral lease granted under the Land Act 1948 (the **Lease Land**).

### **3. Synopsis of the Substantive Proposal for the Cairnhill and The Knobbies Pastoral Leases**

Under this Substantive Proposal the Commissioner proposes the following designations in respect of the Lease Land:

- 1728.0077 hectares (approximately) to be designated as land to be restored to full Crown ownership and control under section 35(2)(a)(i) of the Act as conservation area;
- 6089.7804 hectares (approximately) to be designated as land to be disposed of by freehold disposal to the Holder under section 35(3) of the Act, subject to Part IVA of the Conservation Act 1987 and section 11 of the Crown Minerals Act 1991.

### **4. Separate draft Notice**

Accompanying, but not forming part of, this Substantive Proposal is a Notice that sets out the proposed amounts that will be payable under this Substantive Proposal.

### **5. Holder's Acceptance**

This Substantive Proposal, when accepted by the Holder, will constitute a contract between the Holder and the Commissioner.

To accept this Substantive Proposal the Holder must:

- sign two "Execution Copies" of this Substantive Proposal where provided in the Execution Section; and
- obtain and have endorsed in the Execution Section the written consent of all persons having an interest in the Lease Land subject to the Tenure Review, as required by clause 14.1 of this Substantive Proposal.

An original signed Execution Copy of this Substantive Proposal must be returned to the Commissioner. The Holder's acceptance of this Substantive Proposal will be irrevocable.

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The Holder is to provide a Solicitor's Certificate (in a form satisfactory to the Commissioner) from the Holder's solicitors certifying as to certain matters relating to the Holder's acceptance of this Substantive Proposal.

The original signed Execution Copy of this Substantive Proposal and the completed Solicitor's Certificate is to be delivered by courier or by post to the Commissioner at the following address:

Commissioner of Crown Lands  
Land Information New Zealand  
Lambton House  
160 Lambton Quay  
Private Box 5501  
**WELLINGTON**

Attention: Jean Greedy

If the Commissioner does not receive acceptance of this Substantive Proposal within three months of the Holder will, under the Act, be deemed to have rejected this Substantive Proposal.

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This **Substantive Proposal** is made on 2003

**between** (1) **Commissioner of Crown Lands acting under the Crown Pastoral Land Act 1998 (the Commissioner)**

**and** (2) **Andrew Ritchie McNeish, Kathryn Mara McNeish, and Kathryn Mara McNeish and Douglas James Harvie (the Holder)**

## Introduction

- A. The Holder is the lessee under the Lease.
- B. On the written invitation of the Holder, the Commissioner is undertaking Tenure Review of the Lease Land. The Tenure Review process comprises three stages.
- C. On 1 May 2000, the Commissioner provided the Holder with a draft of the Preliminary Proposal for consultation purposes. The Holder returned a completed Holder's Acknowledgement dated 10 July 2001 relating to the draft of the Preliminary Proposal to the Commissioner. This completed stage one of the Tenure Review.
- D. On 30 January 2002, the Commissioner put the Preliminary Proposal to the Holder under section 34 of the Act. This completed stage two of the Tenure Review.
- E. The Commissioner puts this Substantive Proposal to the Holder as stage three of the Tenure Review.

## It is declared

### 1. Interpretation

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#### 1.1 Definitions

In this Substantive Proposal unless the context otherwise requires:

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

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

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

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

**Conservation Act** means the Conservation Act 1987;

**Crown** means the Crown as defined in section 2 of the Public Finance Act 1989;

**Default GST** means any additional GST, penalty or other sum levied against either the Commissioner or the Holder under the GST Act or the Tax Administration Act 1994 by reason of either the Commissioner or the Holder failing to pay GST as required by the Substantive Proposal. It does not include any sum levied against the Commissioner or the Holder by reason of a default by the Commissioner after payment of GST to the Commissioner by the Holder or by reason of a default by the Holder after payment of GST to the Holder by the Commissioner (in each instance, as the case may be);

**Default Rate** means the floating rate agreement mid-point thirty day bank bill rate as at 10.45 a.m. on Reuters' page BKBM on the date on which the relevant payment becomes due and payable plus 500 basis points and compounded monthly;

**Director-General** means the Director-General of Conservation and refers to the Director-General's consultative function under the Act;

**Draft Preliminary Proposal** means the draft of the Preliminary Proposal that the Commissioner provided to the Holder for consultation purposes under the Act on 1 May 2000, and includes all schedules, parts, plans, appendices and annexures attached to that draft of the preliminary proposal;

**Execution Copies** means the two copies of this Substantive Proposal each labelled "Execution Copy";

**Execution Section** means the section at the end of this Substantive Proposal containing the Commissioner's signature and evidencing the Holder's acceptance of this Substantive Proposal and containing the consent of any person having an interest in the Lease Land;

**Final Plan** means the final plan for the Lease Land, prepared and submitted by the Commissioner to the Surveyor General under section 62(4)(c) and (d) of the Act;

**GST** means all goods and services tax payable by the Commissioner or the Holder under the GST Act in respect of their respective supplies evidenced by this Substantive Proposal;

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

**Holder** means Andrew Ritchie McNeish (as to a 1/3 share), Kathryn Mara McNeish (as to a 1/3 share), and Kathryn Mara McNeish and Douglas James Harvie (jointly inter-se, as to a 1/3 share) as tenants in common in those shares, being lessee of the Lease Land;

**Holder's Acknowledgement** means, where not inconsistent with the context, the Holder's Acknowledgement that accompanied, but did not form part of, the Draft Preliminary Proposal and the Preliminary Proposal;

**Holder's Consideration** means the amount payable by the Holder to the Commissioner by equality of exchange for the freehold of the Schedule Two Land, as specified in the Notice;

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

**Holder's Payment** means the balance of the consideration payable by the Holder to the Commissioner by equality of exchange for the freehold of the Schedule Two Land, as specified in the Notice;

**Holder's solicitors** means the solicitor, or solicitors, if any, acting for the Holder;

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**Leases** means:

- (a) the lease comprised and described in folio number OT 386/18 issued under the Land Act 1948, and includes all variations and renewals of that lease; and
- (b) the lease comprised and described in folio number OT 386/24 issued under the Land Act 1948, and includes all variations and renewals of that lease;

**Lease Land** means:

- (a) 2919.0684 hectares being Part Run 570 Blocks XIII and XIV Cairnhill Survey District, Run 262F Blocks XIV and XV Cairnhill Survey District and Block XIII Teviot Survey District, Run 262I Block XIV and XV Cairnhill Survey District and Blocks XIII and XIV Teviot Survey District, being the land comprised and described in Computer Interest Register OT 386/18;
- (b) 4898.7197 hectares being Run 810 Long Valley Survey District, Runs 262G and 262J Teviot Survey District, Run 262E and Part Run 262C Cairnhill and Teviot Survey Districts, being the land comprised and described in Computer Interest Register OT 386/24;

**Minister** means the Minister of Conservation;

**Mortgage** means mortgage, if any, registered against the Leases;

**Mortgagee** means the mortgagee of the Leases, or one of the Leases, under the Mortgage;

**Notice** means the notice to the Holder setting out:

- (a) the Holder's Consideration;
- (b) the Commissioner's Consideration;
- (c) the Holder's Payment; and
- (d) when the Holder's Payment will be payable,

which includes amounts proposed to be paid by way of equality of exchange and accompanies this Substantive Proposal, but is not part of this Substantive Proposal;

**Plan** means the plan of the Lease Land showing all designations attached as Appendix 1;

**Preliminary Proposal** means the preliminary proposal, that the Commissioner put to the Holder under, and subject to, section 34 of the Act on 30 January 2002 and includes all schedules, parts, plans, appendices and annexures attached to the preliminary proposal;

**Registrar** means the Registrar-General of Land appointed pursuant to section 4 of the Land Transfer Act 1952;

**RM Act** means the Resource Management Act 1991;

**Schedule One Land** means 1728.0077 hectares of the Lease Land, as outlined in pink on the Plan;

**Schedule Two Land** means 6089.7804 hectares of the Lease Land, as outlined in green on the Plan;

**Settlement Date** means the settlement date defined in clause 9.1;

**Solicitor's Certificate** means the certificate provided by the Holder's solicitors addressed to the Commissioner, in a form acceptable to the Commissioner, certifying as to certain matters relating to the Holder's acceptance of this Substantive Proposal;

**Stage Three of the Tenure Review** means the process set out in clause 2;

**Substantive Proposal** means this substantive proposal that the Commissioner puts to the Holder under, and subject to, section 46 of the Act, and includes all schedules, parts, plans, appendices and annexures attached to this substantive proposal;

**Surveyor General** means the Surveyor General appointed under section 5 of the Cadastral Survey Act 2002;

**Tenure Review** means the tenure review of the Lease Land being undertaken by the Commissioner under Part 2 of the Act;

**Unconditional Date** means the date that the Commissioner receives from the Holder an Execution Copy of this Substantive Proposal signed by the Holder and containing the consents of all persons having an interest in the Lease Land to the Holder's acceptance of this Substantive Proposal which results in the acceptance taking effect under section 60(4) of the Act;

**working day** means a day that is not a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, or a day during the period commencing on any Christmas Day and ending with the 15<sup>th</sup> day of the following January or a day which is a provincial holiday in the place where the obligation is to be performed.

## 1.2 Construction of certain references

In this Substantive Proposal, unless inconsistent with the context:

- (a) words importing a gender include all other genders;
- (b) reference to a statute includes reference to all enactments that amend or are passed in substitution for the relevant statute;
- (c) words in the singular number include the plural and vice versa;
- (d) reference to a month means a calendar month;
- (e) reference to a person means an individual, a body corporate, an association of persons (whether corporate or not), a trust or a state or agency of a state (in each case, whether or not having separate legal personality);
- (f) references to sections, clauses, sub-clauses, parts, annexures, attachments, appendices, schedules, paragraphs and sub-paragraphs are references to such as they appear in this Substantive Proposal and form part of this Substantive Proposal;
- (g) headings are included for ease of reference only and will not affect the construction or interpretation of this Substantive Proposal;

- (h) all monetary amounts are expressed in New Zealand currency;
- (i) references to obligations includes reference to covenants, undertakings, warranties and, generally, obligations or liabilities of any nature properly arising whether directly or indirectly, under or in respect of the relevant contract, agreement or arrangement;
- (j) all references to times are references to times in New Zealand;
- (k) if the Unconditional Date or the Settlement Date falls on a day that is not a working day, the Unconditional Date or the Settlement Date will be the next working day after the day so nominated; and
- (l) if the Holder comprises more than one person, each of those person's obligations, as Holder, will be both joint and several.

1.3 The illegality, invalidity or unenforceability of any provision in this Substantive Proposal will not affect the legality, validity or enforceability of any other provision.

## 2. Substantive Proposal

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2.1 The Commissioner having:

- (a) considered, under section 47 of the Act:
  - (i) all matters raised by the Iwi authority concerned during the consultation on the Preliminary Proposal; and
  - (ii) all written submissions relating to the Preliminary Proposal received by the Commissioner (from any person or organisation) on or before the day specified in the notice given under section 43 of the Act at the address specified in that notice;
- (b) consulted with the Director-General under section 26 of the Act about putting this Substantive Proposal to the Holder;
- (c) obtained the prior written consent of the Minister to this Substantive Proposal; and
- (d) ensured that the Crown has completed all statutory clearance and other actions that the Crown is required to complete in relation to the Lease Land,

put this Substantive Proposal to the Holder under section 46 of the Act.

2.2 Under this Substantive Proposal, the Commissioner designates that the:

- (a) Schedule One Land be restored to full Crown ownership and control as conservation area under section 35(2)(a)(i) of the Act, and the provisions of Schedule One apply to this designation;
- (b) Schedule Two Land be disposed of to the Holder by freehold disposal under section 35(3) of the Act, subject to:
  - (i) Part IVA of the Conservation Act; and
  - (ii) Section 11 of the Crown Minerals Act 1991;

and the provisions of Schedule Two apply to this designation.

- 2.3 Notwithstanding any other clause and subject to clause 12, the Schedule Two Land to be disposed of in accordance with clause 2.2(b) may be also subject to the provisions of section 114 of the Land Act 1948.
- 2.4 A Notice under section 46(4) of the Act accompanies this Substantive Proposal.

### 3. **Conservation Act**

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As required by section 24 of the Conservation Act, the Commissioner has notified the Director-General of the disposition of Crown land contemplated by this Substantive Proposal.

### 4. **Acceptance by Holder**

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- 4.1 The Holder may accept this Substantive Proposal by completing the Execution Section at the end of this Substantive Proposal and returning one original signed Execution Copy of this Substantive Proposal to the Commissioner. The original signed Execution Copy of this Substantive Proposal must be delivered by courier or by post to the Commissioner at the following address:

Commissioner of Crown Lands  
Land Information New Zealand  
Lambton House  
160 Lambton Quay  
Private Box 5501  
**Wellington**

Attention: Jean Greedy

- 4.2 The Holder must arrange for the Mortgagee and any other person having an interest in the Lease Land to consent to the Holder's acceptance of this Substantive Proposal as required by clause 12.1 of this Substantive Proposal. These consents must be endorsed in the Execution Section of the Execution Copy of this Substantive Proposal that is to be returned to the Commissioner.
- 4.3 Under section 60(5) of the Act, the Holder's acceptance of this Substantive Proposal is irrevocable and has the effect as an irrevocable authority to, and obligation on, the Commissioner to take the appropriate actions required by Part 2 of the Act. The Holder's acceptance of this Substantive Proposal constitutes a binding contract between the Commissioner and the Holder.
- 4.4 The Holder must procure the Holder's solicitors to provide the Solicitor's Certificate and the Holder must return the executed Solicitor's Certificate to the Commissioner with the Execution Copy of this Substantive Proposal (signed by the Holder and including the written consents of all the persons referred to in clause 4.2).
- 4.5 If the Commissioner does not receive the Execution Copy of this Substantive Proposal referred to in clause 4.1 (signed by the Holder and including the written consents of all the persons referred to in clause 4.2) within three months of the Commissioner putting this Substantive Proposal to the Holder, then the Holder is deemed to have rejected this Substantive Proposal.

- 4.6 The Holder acknowledges that:
- (a) under section 61(4) of the Act, every person who, after the notice referred to in clause 5.2 has been registered, acquires an estate or interest in the Lease Land, will be bound by the Holder's acceptance of this Substantive Proposal to the same extent as the Holder; and
  - (b) under section 61(5) of the Act, if a person acquires an estate or interest in the Lease Land:
    - (i) after the Holder has accepted this Substantive Proposal; and
    - (ii) before the notice referred to in clause 5.2 has been lodged for registration,then Part 2 of the Act has effect as if the Holder had rejected this entire Substantive Proposal.

## 5. Implementation of Substantive Proposal

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- 5.1 If:
- (a) the Holder accepts this Substantive Proposal in accordance with clause 4; and
  - (b) the acceptance has taken effect under section 60(4) of the Act,
- then the parties will proceed to implement this Substantive Proposal in accordance with clauses 5.2 – 5.15.
- 5.2 Under section 61 of the Act, once the Commissioner receives the Execution Copy of this Substantive Proposal completed by the Holder and containing the requisite consents, the Commissioner must sign and forward to the Registrar a written notice of the Holder's acceptance of this Substantive Proposal, describing this Substantive Proposal in general terms.
- 5.3 Under section 61 of the Act, the Registrar must register the notice referred to in clause 5.2 against every instrument of title to the Lease Land to which this Substantive Proposal relates.
- 5.4 Under section 62 of the Act, once the Holder's acceptance of this Substantive Proposal takes effect, the Commissioner must give the Surveyor General written notice of the Holder's acceptance, attaching a copy of this Substantive Proposal.
- 5.5 Under section 62 of the Act, as soon as is practicable after receiving the Commissioner's notice referred to in clause 5.4, the Surveyor General must:
- (a) determine whether any of the Lease Land needs to be surveyed before this Substantive Proposal can be given effect to; and
  - (b) give the Commissioner written notice:
    - (i) of the Lease Land or parts of the Lease Land that need to be surveyed; or
    - (ii) that none of the Lease Land needs to be surveyed.

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- 5.6 Under section 62 of the Act, if the Commissioner is notified by the Surveyor General that any of the Lease Land needs to be surveyed, the Commissioner is to have it surveyed, and to have a plan or plans of it prepared and approved under the Cadastral Survey Act 2002.
- 5.7 Under section 62 of the Act, once the Commissioner:
- (a) has complied with clause 5.6; or
  - (b) has been notified that none of the Lease Land needs to be surveyed,
- the Commissioner must prepare a Final Plan of the Lease Land to which this Substantive Proposal relates, showing the various areas to which it relates, and in respect of each area giving:
- (a) a legal description; and
  - (b) its designation by this Substantive Proposal; and
- submit two copies of the Final Plan to the Surveyor General.
- 5.8 Under section 63 of the Act, if (and only if) the Surveyor General is satisfied that:
- (a) the boundaries of the various areas shown on the Final Plan submitted under clause 5.7 are, in light of any discovered imprecisions in the boundaries shown or described in the accepted Substantive Proposal concerned, as close as may reasonably practicably be achieved to the boundaries shown or described in this Substantive Proposal; and
  - (b) to the extent allowed by the position of the boundaries shown on the Final Plan:
    - (i) the areas they define; and
    - (ii) the designations of those areas,accurately reflect this Substantive Proposal,
- the Surveyor General must sign and date on both copies of the Final Plan a written notice approving it for the purposes of the Act, and return one copy of the Final Plan to the Commissioner.
- 5.9 Under section 64 of the Act, once the Commissioner receives the approved Final Plan, the Commissioner must lodge the Final Plan and a copy of this Substantive Proposal with the Registrar, and the Registrar must register them against every instrument of title to the Lease Land to which the Final Plan and this Substantive Proposal relate.
- 5.10 Under sections 65 and 69 of the Act, upon registration of the Final Plan and this Substantive Proposal under section 64 of the Act:
- (a) the Schedule One Land will be restored to full Crown ownership and control as conservation area;
  - (b) subject to clause 5.15, the Commissioner will dispose of the Schedule Two Land to the Holder (subject to the encumbrances specified in paragraph 1.1 of Schedule Two) under the provisions of the Land Act 1948 by requesting that the Surveyor General issue a certificate under section 116 of the Land Act 1948 to the Registrar and that the

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Registrar issue a certificate of title for the Schedule Two Land in the name of the Holder;

- 5.11 The Schedule One Land will vest in the Crown freed and discharged from all mortgages, charges, claims, estates and interests.
- 5.12 The Commissioner will meet the costs for the survey (if any) of the Lease Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Schedule Two Land.
- 5.13 The Lease will remain in force until a certificate of title is issued for the Schedule Two Land, and at this time the Lease will, under section 69(2) of the Act, be deemed to be surrendered in respect of the Lease Land.
- 5.14 Notwithstanding any other provision in this Substantive Proposal, the Commissioner will not request that the Surveyor General issue a certificate under clause 5.10(b) unless and until:
- (a) the Commissioner has received all other money payable by the Holder under this Substantive Proposal;
  - (b) the Holder has provided to the Commissioner the duplicate of the Lease (if the Holder has this document) and the Holder has signed and returned to the Commissioner any documents reasonably required by the Commissioner to be signed by the Holder to give effect to this Substantive Proposal; and
  - (c) the Holder has procured the Mortgagee's execution of a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder has executed registrable new mortgage documents and if the Mortgagee holds the duplicate of the Lease, the Holder has procured the Mortgagee to allow the Holder to provide the Lease to the Commissioner and the Holder has provided these documents to the Commissioner.
- 5.15 Subject to clause 5.14, the Commissioner will lodge the discharge of the Mortgage, the duplicate of the Lease, and any new mortgage documents at the Otago Land Registry, to be registered against the certificate of title to be issued under the Land Transfer Act 1952 for the Schedule Two Land, so that the certificate of title for the Schedule Two Land will issue subject to any new mortgage.

## 6. Commissioner's considerations

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- 6.1 Under section 25 of the Act, in acting under Part 2 of the Act, the Commissioner must (to the extent that those matters are applicable), take into account:
- (a) the objects of Part 2 of the Act;
  - (b) the principles of the Treaty of Waitangi; and
  - (c) in acting in relation to land used or intended to be used by the Crown for any particular purpose, that purpose.
- 6.2 Under section 25 of the Act, in acting under Part 2 of the Act in relation to any part of the Lease Land, the Commissioner must take into account the objects of Part 2 of the Act in the light of:
- (a) their application to all of the Lease Land held under the Leases; rather than
  - (b) their application to that part of the Lease Land alone.

## 7. Discontinuance of Tenure Review

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Under section 33 of the Act, at any time before the Holder accepts this Substantive Proposal, in accordance with clause 4, the Commissioner:

- (a) may discontinue the Tenure Review; and
- (b) must discontinue the Tenure Review if asked in writing by the Holder to do so.

## 8. Survey

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

## 9. Settlement

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- 9.1 The Settlement Date for the disposal of the Schedule Two Land to the Holder by freehold disposal will be the day that is five working days following the day that the Final Plan and a copy of this Substantive Proposal are registered at the Otago Land Registry under section 64 of the Act.
- 9.2 Notwithstanding when Settlement Date occurs, until a certificate of title issues for the Schedule Two Land, the Holder will duly and punctually comply with all obligations on its part under the Lease, and the Lease will remain in full force and effect.
- 9.3
  - (a) Rent paid or payable under the Lease for the Schedule Two Land will be apportioned on the Settlement Date as at the date that a certificate of title issues for the Schedule Two Land and either deducted from or added to (as the case may be) the amount required to settle.
  - (c) Rent payable under the Lease for the Schedule Two Land from the Settlement Date to the date a certificate of title issues for the Schedule Two Land shall bear the same proportion to the total rent payable under the Lease as the Schedule Two Land area bears to the total area of the Lease Land.
  - (c) Any apportionments for rent for the Schedule Two Land for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Two Land will be estimated by the Commissioner in its settlement statement. Following the date that a certificate of title issues for the Schedule Two Land, the Commissioner will undertake a final apportionment and either the Commissioner will refund to the Holder,

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or the Holder will pay to the Commissioner any additional amounts due because of the final apportionment.

- 9.4 Rent paid or payable under the Lease for the Schedule One will be apportioned (on a pro rata basis) on the Settlement Date as at the Settlement Date and either deducted from or added to (as the case may be) the amount required to settle.
- 9.5 (a) All rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Schedule Two Land will, unless otherwise agreed by the parties, be apportioned on the Settlement Date as at the date that a certificate of title issues for the Schedule Two Land.
- (c) The rates, levies, incomings, outgoings and other charges described in this clause 9.5 payable in respect of the Schedule Two Land from the Settlement Date to the date a certificate of title issues for the Schedule Two Land shall bear the same proportion to the total charges payable in respect of the Lease Land as the area of the Schedule Two Land bears to the total area of the Lease Land. The appropriate payments, if any, will be made on the Settlement Date by the Commissioner and the Holder, as the case may be.
- (c) Any apportionments for rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Schedule Two Land for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Two Land will be estimated by the Commissioner in its settlement statement. Following the date that a certificate of title issues for the Schedule Two Land, the Commissioner will undertake a final apportionment and either the Commissioner will refund to the Holder, or the Holder will pay to the Commissioner any additional amounts due because of the final apportionment.
- 9.6 All rates, levies and all other incomings and outgoings and other charges receivable from or charged upon the Schedule One Land will be apportioned (on a pro rata basis in respect of the Lease Land if they cannot be separately assessed) on the Settlement Date as at the Settlement Date and either deducted from or added to (as the case may be) the amount required to settle.
- 9.7 From the date that a certificate of title is issued for the Schedule Two Land, under section 69(2) of the Act, the Lease is deemed to be surrendered and subject to clause 9.8, the Commissioner releases and discharges the Holder from the performance and observance of all covenants, conditions and obligations under the Lease.
- 9.8 The release and discharge in clause 9.7 is without prejudice to the rights, remedies and powers of the Commissioner contained in the Lease and will not release or discharge the Holder from any liability under the Lease arising prior to the date that the certificate of title for the Schedule Two Land is issued or under any statute or by any reason where such liability is due to the fault of the Holder.
- 9.9 As from the date that the Final Plan and this Substantive Proposal are registered, the Holder will not have any estate, right or claim against any of the land, improvements, fencing, buildings, structures, fixtures, fittings or chattels on the Schedule One Land. The Holder will not be entitled to any compensation for any of its improvements, fencing, buildings, structures, fixtures, fittings or chattels which are on the Schedule One Land, on the date that the Final Plan and this Substantive Proposal are registered.
- 9.10 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Substantive Proposal. These requirements may involve procuring the Holder's solicitors to provide the Commissioner with a solicitor's certificate (in a form satisfactory to the Commissioner, in its reasonable opinion) relating to such matters the execution and registrability of any new mortgage in favour of the Mortgagee.

## 10. GST

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- 10.1 If:
- (a) the Holder has accepted this Substantive Proposal in accordance with clause 4; and
  - (b) the acceptance has taken effect under section 60(4) of the Act,
- then clauses 10.2 - 10.7 apply and will form part of this Substantive Proposal.
- 10.2 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.
- 10.3 On the working day following the Unconditional Date, the Commissioner will provide to the Holder a GST invoice in respect of the supply evidenced by the Holder's Consideration. The invoice will specify the Commissioner's GST Date.
- 10.4 The Holder will pay GST on the Holder's Consideration to the Commissioner by bank cheque on the Commissioner's GST Date, time being of the essence.
- 10.5 On the working day following the Unconditional Date, the Holder will provide to the Commissioner a GST invoice in respect of the supply evidenced by the Commissioner's Consideration. The invoice will specify the Holder's GST Date.
- 10.6 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Holder's GST Date, time being of the essence.
- 10.7 Where any GST is not so paid to the Commissioner or to the Holder (as the case may be), the Holder will pay to the Commissioner, or the Commissioner will pay to the Holder (as the case may be), upon demand and together with the unpaid GST:
- (a) interest, at the Default Rate, on the amount of the unpaid GST and which will accrue from the Commissioner's GST Date or the Holder's GST Date (as the case may be) until the date of payment of the unpaid GST; and
  - (b) any Default GST.

## 11. Lowest price

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- 11.1 The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Schedule Two Land under section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Holder's Consideration.
- 11.2 The Commissioner's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Schedule One Land section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Commissioner's Consideration.

## 12. Consents

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- 12.1 Under section 60(4) of the Act the Holder must obtain the written consent to the Holder's acceptance of this Substantive Proposal from all persons having an interest in the Lease Land (other than the Holder), including, but not limited to:

- (a) the Mortgagee; and
- (b) any other person that the Commissioner reasonably believes has an interest in the Lease Land or who the Holder reasonably believes has an interest in the Lease Land.

12.2 In addition to obtaining the consents of the persons outlined in clause 12.1, the Holder must also obtain:

- (a) all corporate consents; and
- (b) if required, consent under the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995,

necessary for the Holder to accept this Substantive Proposal.

12.3 The Holder will procure the Mortgagee to execute a registrable discharge of the Mortgage and, if required by the Mortgagee, the Holder will execute registrable new mortgage documents and forward these to the Commissioner to be registered at the same time as the certificate of title for the Schedule Two Land issues.

12.4 The Commissioner will provide the Mortgagee with an undertaking that, subject to the provisions in clause 5.15 being satisfied, it will register the discharge of the Mortgage and register the new mortgage against the certificate of title for the Schedule Two Land at the same time as the certificate of title for the Schedule Two Land issues.

## 13. Access and stock

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13.1 The Commissioner will give, and the Holder will take, vacant possession of the Schedule Two Land on the Settlement Date.

13.2 The Holder will not, from and including the Settlement Date, enter on, pass through, or use or permit to be entered on, passed through, or used, the Schedule One Land for any purpose.

13.3 The Holder will not, from and including the Settlement Date, permit any of the Holder's stock to enter onto or graze on the Schedule One Land.

13.4 The Holder's stock may from time to time stray onto the Schedule One Land. If such straying occurs, the Holder will, at its own cost, remove the stock within a reasonable time after the Holder becomes aware of the straying or after being requested by the Minister to remove the straying stock.

## 14. Costs

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14.1 The Holder is responsible for all costs the Holder incurs in respect of and incidental to the Tenure Review. In particular, but without limitation, the Holder shall bear all its costs in relation to the review of all documentation forming part of the Tenure Review (including this Substantive Proposal), and all professional advice provided to or sought by the Holder.

14.2 Notwithstanding the foregoing, nothing in clause 14.1 shall affect or prejudice any agreement or financial arrangement that the Holder may have with the Commissioner or the Crown in relation to assistance with legal costs.

## 15. No nomination or assignment

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- 15.1 The Holder is currently the lessee under the Lease.
- 15.2 The Holder is not entitled to, and is expressly prohibited from:
- (a) nominating another person to perform the Holder's obligations under this Substantive Proposal; or
  - (b) assigning to another person the Holder's interest (or any part) under this Substantive Proposal.

## 16. General

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- 16.1 Each provision of this Substantive Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.
- 16.2 The Commissioner and the Holder will sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the other to effectively carry out and give effect to the terms and intentions of this Substantive Proposal.
- 16.3 This Substantive Proposal is governed by, and must be construed under, the laws of New Zealand and the Commissioner and the Holder irrevocably submit to the jurisdiction of the New Zealand courts or other New Zealand system of dispute resolution.
- 16.4 In relation to notices and other communications under this Substantive Proposal:
- (a) each notice or other communication is to be in writing, and sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for that purpose by the addressee to the other party. The initial facsimile number, address, person or office holder (if any) for each party is specified in clause 16.4(c);
  - (b) no communication is to be effective until received. A communication will be deemed to be received by the addressee:
    - (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
    - (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), when delivered; and
    - (iii) in the case of a letter, on the fifth working day after mailing; and
  - (c) the initial address details for the Commissioner and the Holder are:

**The Commissioner:**

Commissioner of Crown Lands  
c/- The Manager  
DTZ

**The Holder:**

AR McNeish, KM McNeish and DJ  
Harvie  
C/- AR McNeish

41-43 Tarbet Street  
PO Box 27  
**ALEXANDRA**

PO Box 18  
**ROXBURGH**

Fax No.: 03 448-9099

16.5 This Substantive Proposal and the Notice:

- (a) constitute the entire understanding and agreement between the Commissioner, the Crown and the Holder in relation to the Tenure Review; and
- (b) supersede and extinguish all prior agreements and understandings between the Crown, the Commissioner and the Holder relating to the Tenure Review.
- (c) For the avoidance of doubt, neither the Draft Preliminary Proposal nor the Preliminary Proposal, constitutes or could constitute a binding agreement between the parties.

## 17. Further Provisions

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17.1 Notwithstanding anything to the contrary, the Holder shall have the right to enter on to that part of the Lease Land known as the "Lake Onslow Block" and remove all internal fencing therefrom within 12 months from the Settlement Date.

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

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### 1. Details of Designation

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- 1.1 Under section 35(2)(a)(i) of the Act, the Schedule One Land will be designated as land to be restored to full Crown ownership and control as conservation area.
- 1.2 Subject to the Holder accepting this Substantive Proposal in accordance with clause 4 and that acceptance taking effect under section 60(4) of the Act, the Commissioner will implement the designation of the Schedule One Land (as envisaged by clause 5 of this Substantive Proposal).

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

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### 1. Details of designation

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1.1 Under section 35(3) of the Act, the Schedule Two Land will be disposed of by freehold disposal to the Holder subject to:

- (a) Part IVA of the Conservation Act; and
- (b) Section 11 of the Crown Minerals Act 1991.

The disposal of the Schedule Two Land to the Holder may also be subject to the provisions of section 114 of the Land Act 1948.

1.2 Subject to the Holder accepting this Substantive Proposal in accordance with clause 4 and that acceptance taking effect under section 60(4) of the Act, and subject to clause 5.15, the Commissioner will implement the designation of the Schedule Two Land (as envisaged by clause 5 of this Substantive Proposal).

### 2. Holder's acknowledgements

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If the Holder accepts this Substantive Proposal in accordance with the provisions set out in clause 4 and that acceptance takes effect under section 60(4) of the Act, the Holder acknowledges that:

- (a) it is obtaining the freehold in the Schedule Two Land to be disposed of to the Holder:
  - (i) "as is", solely in reliance on its own investigations and judgement; and
  - (ii) not in reliance on any representation or warranty made by the Commissioner, its employees, agents or any other person or persons directly or indirectly associated with the Commissioner;
- (b) the Holder has carried out all inspections of the Schedule Two Land which the Holder considers necessary to satisfy itself as to the condition of the Schedule Two Land;
- (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Schedule Two Land complies with:
  - (i) the RM Act and its amendments and regulations; and
  - (ii) any rule in any plan, resource consent or other requirement issued under the RM Act, and

the Holder hereby indemnifies and will indemnify the Commissioner against all losses, damages and expenses incurred by the Commissioner and against all claims made against the Commissioner in respect of any work or costs for which the Holder is liable under this paragraph 2; and

- (d) nothing in the Draft Preliminary Proposal, the Preliminary or this Substantive Proposal is affected by, and the Commissioner has no liability of any nature in respect of, the

existence or terms of any leases, licences or other occupation rights of any nature (if any) granted by the Holder in respect of the Lease Land.

### 3. Risk

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

### 4. No representations or warranties by the Commissioner

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The Commissioner gives no representations or warranties of any nature in respect of the Schedule Two Land. Without limitation, the Commissioner does not warrant:

- (a) the accuracy of any matter in the Draft Preliminary Proposal, the Preliminary Proposal, the Notice or this Substantive Proposal or in any notice, or any correspondence or other information provided to the Holder by the Commissioner or by any agent or employee of the Commissioner; or
- (b) that the Schedule Two Land is or will remain suitable for the Holder's use; or
- (c) that the Schedule Two Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Schedule Two Land.

## Appendix 1: Plan

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## Execution Section

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

**SIGNED** by the **Commissioner of Crown Lands**  
in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

In signing this Substantive Proposal (including the schedules and appendices), the Holder:

1. accepts and agrees that:
  - (a) the Holder accepts this Substantive Proposal under section 60 of the Act and that, subject to subsections (3) and (4) of section 60 of the Act, the Holder's acceptance of this Substantive Proposal is irrevocable, and has effect as an irrevocable authority to and obligation on the Commissioner to take the appropriate actions required by the Act;
  - (b) the Holder is bound by the provisions of this Substantive Proposal;
  - (c) the Holder is also bound by the provisions of the Notice and must pay the Holder's Payment and all other money payable by the Holder in accordance with the provisions of the Notice and this Substantive Proposal; and
  - (d) when the Final Plan is registered under section 64 of the Act, the Notice has effect as a binding contract between the Crown and the Holder according to its tenor under section 46(4) of the Act; and
2. acknowledges that:
  - (a) the Holder has obtained the written consent of the Mortgagee, [insert name of mortgagee] and has also obtained the written consent of any other person having an interest in the Lease Land, to the Holder's acceptance of this Substantive Proposal; and
  - (b) the relevant consent is or consents are endorsed on or attached to the completed Execution Copy of this Substantive Proposal.

**RELEASED UNDER THE OFFICIAL INFORMATION ACT**

**SIGNED by Andrew Ritchie McNeish** )  
)

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:

Occupation:

Address:

**SIGNED by Kathryn Mara McNeish** )  
)

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:

Occupation:

Address:

**SIGNED by Douglas James Harvie** )  
)

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:

Occupation:

Address: