

## **Crown Pastoral Land Tenure Review**

**Lease name : Silverbirch**

**Lease number : Po 290**

### **Due diligence report (including status report)**

This report and attachments results from a pre tenure review assessment of the pastoral lease for the purpose of confirming land available for tenure review and any issues, rights or obligations attaching to it. The information is gathered from files and other sources available to the LINZ contractor.

Part of the information relates to research on the status of the land, resulting in a status report that is signed off by a LINZ approving officer. The remainder of the information is not analysed for relevancy or possible action until required, and LINZ does not guarantee its accuracy or completeness as presented.

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

**Copied August 2003**

## DUE DILIGENCE REPORT

### CPL PRE TENURE REVIEW ASSESSMENT STANDARD 6:

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File Ref:	Po290	Report No:	AT0071	Report Date:	24 May 2000
Office of Agent:	Alexandra	LINZ Case No:		Date sent to LINZ:	


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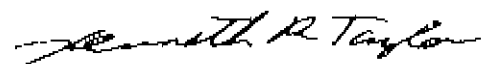
#### RECOMMENDATIONS:

- (1) That the Commissioner of Crown Lands or his delegate note this Due Diligence Report which has been prepared in accordance with the PRE Tenure Review Assessment Standard.
- (2) That the Commissioner of Crown Lands or his delegate note the following incomplete actions which require action by the Manager of Crown Property Contracts
  - (a) The weir, intake and pipeline of the Moa Flat Water Supply Scheme administered by the Clutha District Council is taken from Timber Creek within the pastoral lease. No authorisation for it has ever been applied for. The Clutha District Council holds a current water permit from the Otago Regional Council for the water extraction but approval or easement for it across the lease has never been granted.

Signed by Knight Frank (NZ) Limited:

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Name: 24 / 5 / 2000

  
Manager: 24 / 5 / 2000

Approved/Declined by:

\_\_\_\_\_  
Name:  
Date of decision:

(1) **Details of lease:**

**Lease Name:** Silverbirch Station

**Location:** The property is located on the headwaters of the Timber Creek, a tributary of the Pomahaka River, on the summit and eastern faces of the Bengier Range, 8 kms from Ettrick in Central Otago. The homestead and buildings are located on an adjoining lower freehold block that runs down the lower faces to State Highway 8.

**Lessee:** Paul Benson Johnston and Blair Reginald Johnston (*tenants in common in equal shares*).

**Tenure:** Pastoral lease under the Land Act 1948 and Crown Pastoral Land Act 1998. Pastoral Lease No 290.

**Term:** 33 years from 1 July 1996 to 30 June 2024

**Annual Rent:** \$847.50 (*plus GST*)

**Rental Value:** \$56,500

**Date of Next Review:** 1 July 2007

**Land Registry Folio Ref:** CL A2/1312 (*Otago Registry*)

**Legal Description:** Run 593A Wart Hill Survey District being all that land contained in CL A2/1312 (*Otago Registry*).

**Area:** 1011.7141 hectares

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(2) **File Search:**

**Files held by Agent on behalf of LINZ:**

<i>File Reference</i>	<i>Volume</i>	<i>First Folio</i>	<i>Date</i>	<i>Last Folio</i>	<i>Date</i>
Po290	1	1	10/11/1961	147	23/2/2000

**Other relevant files held by LINZ:**

<i>File Reference</i>	<i>Volume</i>	<i>First Folio</i>	<i>Date</i>	<i>Last Folio</i>	<i>Date</i>
5400 D14 S13 DNO		1	30/6/1996	10	18/12/1996
7900/04/P290/1DDN 1	1	1	1/5/1995	1	1/5/1995
CPL04/11/12553ZCH	1	1	1/9/1998	34	20/10/1999
PR1974 ( <i>Milford House DN</i> )	1	1	24/11/1920	138	13/10/1961

**Summary of lease document:**

With the exception of a very few missing folios the records are complete. Confidence is held that all important data has been searched.

Mr Alexandra Graham took up the 2500 acre Run 529A under Pastoral Licence PR1974 for 21 years from 1 March 1921 and renewed it for a further 21 years from 1 March 1942. The run was farmed in conjunction with a number of special tenure leases (*Sections 11S to 13S, 18S, and 1 of 15S Westcott Settlement*) amounting to approximately 500 acres on the lower hill country. The small run was basically used as summer runoff. Early history is routine with files containing matters of rent payments, and burning administration.

In 1946 the licence over Run 429A was transferred to his widow T S Graham. In 1955 it was transferred to his son Thomas Edmond Alexandra Graham.

As Thomas was eligible for an ex-serviceman's rental concession a reduced rental was applied.

The pastoral licence expired 28 February 1963 and a Pastoral Lease (*No 290*) was issued from 1 July 1963 for 33 years. The stock limitations on the previous pastoral licence contained an overall stock limitation over both freehold and leasehold but the pastoral lease was issued with a limitation on the run only with times and class of stock detailed.

Over the next 20 years little of note occurred. Three variations of personal stock exemption were processed and approved.

The Umbrella Ecological District Protected Area Study was carried out in 1986/87 and identified a PNA in Timber Creek on the run. The moratorium placed on development or burning of the PNA at that time caused hostility from the holder.

In 1987 an escaped fire from the neighbours property burnt 285 ha of Silverbirch that had been a subject of the PNA moratorium. A large number of reports relate to the disciplinary action to be taken as regards to the fire. It appears that Mr Graham may have been involved in the burn and that it could have been deliberate. These involved the Benger Conservation Committee, the Otago Catchment Board, and the Department of Conservation and Landcorp. Landcorp expressed its disappointment with the lack of disciplinary action over the matter. A report in 1987 recommended that the personal stock exemption is revised downward but this was not approved.

Paul Benson and Blair Reginald Johnston purchased the lease in 1995 along with the 515 ha of adjoining freehold land.

The lease was renewed in 1996 for 33 years with no change in conditions. Marginal strips were ascertained, as not being required (*LINZ files Dunedin*) on Timber creek, being the only significant waterway on the lease.

Property reports make reference to the fact that a fence does not separate the lower boundary between the run and the freehold land. A lower margin of freehold land appears to be fenced into the lease land. This may still be the case.

A burning consent application in 1997 to burn a large section of the run including a large portion of the RAP in Timber Creek was made and withdrawn but reapplied for in 1999. This caused notification by the Clutha District Council that they were interested to secure the position of the Moa Flat Water Scheme, which is taken from Timber Creek on Run 529A. A water permit was granted by the Otago Regional Council (*see attachment 4*) on 23 March 1999 to expire in 1 December 2018 to the Clutha District Council from Timber Creek to supply the scheme (*the holder had lodged a submission opposing its granting to the Regional Council*).

The Clutha District Council contracted Opus International Consultants to negotiate the purchase of the run or an appropriate sub-lease. During the processing of the burning consent the Clutha District Council was consulted as an "affected party". This was challenged as incorrect as the purchase had not proceeded with and they were not authorised under Section 18 of the CPL Act.

The application was put on hold by the applicant and response to the Clutha District Council and DoC submissions on the proposed burn requested to be deferred. This was treated as a withdrawal of application. An official information request was received and processed for all file data related to burning on Silverbirch.

No approval for the water extraction pipeline (*and track*) for the Moa Flat Water Supply Scheme could be identified on files.

No recreation permits are identified on files.

Overall the file search identified one issue being the existence of the Moa Flat Water Supply Scheme intake and pipeline on the lease that appears to have no authorisation.

**(4) Summary of lease document:**

**Terms of lease:**

The commencement date of the pastoral lease on Crown files is in agreement with the Instrument of Title (*A2/1312 Otago Registry*).

The lease was issued on 1 March 1963 under the Land Act 1948 for a term of 33 years from 1 July 1963 and contains no non-standard conditions.

**Lease Stock Limit:**

1200	Breeding ewes February - March - April
300	Wethers January - February - March - April and December
500	Hoggets mid January to mid April

**Stock Limit Exemption:**

800	Sheep ( <i>on pastoral lease</i> )
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*Overall (including 515 ha other land):*

- 2500 Sheep (including not more than 1700 breeding ewes)
- 140 Cattle (including not more than 85 breeding cows)

Memorial of renewal registered on lease document.

912242 Memorandum renewing the term of the within lease for a further period of 33 years commencing on 1 July 1996 and fixing for the first 11 years the annual rent at \$847.50 (plus GST) calculated on a rental value to \$56,500, 17 July 1996.

No rights of way are registered.

No Compensation Certificates exist on the lease document.

All documentation on the lease appears in order.

***Area adjustments.***

No area adjustments have occurred on the lease since issue. The area remains 1011.7141 ha.

***Registered interests:***

876984/10 Mortgage to Trust Bank Otago Limited - 1 March 1995.

876984/11 Mortgage to Thomas Edmond Alexandra Graham - 1 March 1995.

***Unregistered interests:***

As referred to in the file search section an unregistered interest being the weir and water supply pipe of the Moa Flat Water Supply Scheme exists on the lease.

No other unregistered easements or recreation permits are known to exist. Unregistered mortgages may exist between family members but none are known of.

**(5) *Summarise any Government programmes for the lease:***

No Run Plans have been carried out on the property.

The property was not involved in the Rabbit and Land Management Programme.

There are no Government approved programmes that would affect tenure review.

**(6) *Summary of Land Status Report:***

Copy attached as Schedule A.

The Land Status Report confirms the Crown Land Status under the Land Act 1948 subject to pastoral lease registered as A2/1312.

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It records no encumbrances on the lease.

The area is confirmed as 1011.7141 ha.

No marginal strips are recognised.

No issues were identified.

**(7) Review of topographical and Cadastral data:**

*Cadastral Maps:*

NZMS 261 G43

*Topographical Maps:*

NZMS 260 G 43

No communication sites or National Grid power transmission lines are marked on the above maps. No huts or transmitter sites are identified.

The Cadastral map shows no marginal strip for Timber Creek. The marginal strips for the property were processed at lease renewal but none were required (*see file search section*).

A weir pipe intake and pipeline (*track?*) are shown on the topographical map exiting from Timber Creek southward on the lease (*this is known to be The Moa Flat Water Supply Scheme*).

The fenced and legal boundaries appear to be reasonably close with one exception.

It is known that the eastern boundary fence between the lease and the freehold appears to be outside the legal boundary on freehold land (*this does not show on the topographical map*). (*See attachment 3*).

The lease has two legal roads affecting it. The main access road being the Bengier Road follows the main ridgeline through the lease. The existing road is gravelled, unfenced and is hardly ever on its legal line. A second legal road off the Bengier Road is shown crossing the headwaters of Timber creek going westwards but is unformed. A formed road (*rough track*) however does skirt the headwaters of Timber Creek to end at approximately at the same spot (*see attachment 3*).

Within the lease no historic sites are shown.

**(8) Details of neighbouring Crown or conservation land:**

No neighbouring Crown or conservation land was identified.

Marginal strips under part IVA Conservation Act 1987 were assessed in 1993 by the Chief Surveyor. None were identified.

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**(9) Summary any uncompleted actions or potential liabilities:**

- (A) The weir, intake and pipeline of the Moa Flat Water Supply Scheme administered by the Clutha District Council is taken from Timber Creek within the pastoral lease. No authorisation for it has ever been applied for. The Clutha District Council holds a current water permit from the Otago Regional Council for the extraction but approval or easement for it across the lease has never been granted.
- (B) Attention is drawn to the fact that the fenced boundaries of the lease include a margin of freehold land in the eastern boundary (*see attachment 3*).
- (C) It should be noted that the two formed roads that cross the lease vary greatly from their legal line (*see attachment 3*).

**ATTACHMENTS:**

- (1) Schedule A - Land Status Report.
- (2) Copy of recent Instrument of Title searched.
- (3) Legal road and eastern fenced boundary variations.
- (4) Otago Regional Council Water permit for Moa Flat Water Supply Scheme.

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**OPUS INTERNATIONAL CONSULTANTS LIMITED  
DUNEDIN OFFICE**

Project number

This report has been prepared on the instruction of Land Information New Zealand in terms of Contract No: 50177 dated September 1999 and is undertaken for the purposes of the Crown Pastoral Land Act 1998.



<b>LAND STATUS REPORT for Silverbirch</b>	LIPS Ref 12533
Property 1 of 1	

<b>Land District</b>	Otago
<b>Legal Description</b>	Run 592A Wart Hill SD
<b>Area</b>	1011.7141 ha
<b>Status</b>	Crown Land under the Land Act 1948 subject to Pastoral Lease P 290.
<b>Instrument of title / lease</b>	CL A2/1312
<b>Encumbrances</b>	None on lease.
<b>Mineral Ownership</b>	Mines and Minerals are owned by the Crown because the land has never been alienated from the Crown since its acquisition for settlement purposes from the former Maori owners under the 1848 Kemp Purchase.
<b>Statute</b>	Land Act 1948 and Crown Pastoral Land Act 1998.

<b>Data Correct as at</b>	13 October 1999
[Certification Attached]	

<b>Prepared by</b>	G Patrick
<b>Crown Accredited Agent</b>	Opus International Consultants Ltd, Dunedin

**Certification – as to status**

Pursuant to Section 11(1)(l) of the Survey Act 1986 and acting under delegated authority of the Surveyor-General pursuant to Section 11(2) of that Act, I hereby certify that the land described above is Crown Land under the Land Act 1948 subject to Pastoral Lease registered as A2/1312.

**Max Haydn Warburton  
Chief Surveyor  
Land Information New Zealand, Dunedin.**

18 / 10 / 1999

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**LAND STATUS REPORT for Silverbirch**

LIPS Ref 12533

Property 1 of 1

**Notes** This information does not affect the status of the land but was identified as possibly requiring further investigation at the due diligence stage : See Crown Pastoral Standard 6 paragraph 6.

Nothing noted on file.

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<b>LAND STATUS REPORT for Silverbirch</b>				LIPS Ref 12533
Property	1	of	1	

**Research Data: Some Items may be not applicable**

SDI Print Obtained	Yes / No
NZMS 261 Ref	G43
Local Authority	Central Otago District Council
Crown Acquisition Map	Kemp
SO Plan	SO 2018 approved August 1918 being a plan of Runs 592, 593, 594 and pt 595.
Relevant Gazette Notices	None found.
CT Ref / Lease Ref	<ol style="list-style-type: none"> <li>1. A2/1312 [live]</li> <li>2. Sighted but not copied prior reference CL 337/171 - pastoral tenure 1/3/1942. This was a renewal of Licence 1631 - not found. SO 2018 notes occupation since at least 1921.</li> <li>3. Memo of Renewal registered as 912242.</li> </ol>
Plan Index	Attached.
Legalisation Cards	SO 2018 - no card.
CLR	Confirms pastoral status.
Allocation Maps (if applicable)	G43 - DOC, SOE & Proposed SOE Land Claims - nothing found.
VNZ Ref - if known	28472/30400.
Crown Grant Maps	Not searched.
<b>If Subject land Marginal Strip :</b>	
a) Type [Sec 24(9) or Sec 58]	a) Not applicable.
b) Date Created	b)
c) Plan Reference	c)

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**LAND STATUS REPORT for Silverbirch**

LIPS Ref 12533

Property 1 of 1

**Research - continued**

<p>If Crown land - Check Irrigation Maps.</p>	<p>Nothing found.</p>
<p>Mining Maps</p>	<p>Nothing found.</p>
<p><b>If Road</b>  <b>a) Is it created on a Block Plan - Section 43(1)(d) Transit NZ Act 1989</b>   <b>b) By Proc</b></p>	<p>a) SO Plan - Not applicable.                   b) Proc Plan                   c) Gazette Ref</p>
<p><b>Other Relevant Information</b>                  a) Concessions - Advice from DOC or Knight Frank.                   b) Subject to any provisions of the Ngai Tahu Claims Settlement Act 1998                   c) Mineral Ownership                   d) Other Info</p>	<p>a) Knight Frank Ltd advised 24/9/99 that property not subject to any recreation permits.                   b)                   c) Either   <input checked="" type="checkbox"/> Mines and Minerals are owned by the Crown because the land has never been alienated from the Crown since its acquisition for settlement purposes from the former Maori owners under the 1848 Kemp Purchase.   <input type="checkbox"/> Contained in [provide evidence]                   d)</p>

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