

# **Crown Pastoral Land Tenure Review**

**Lease name: EASTBURN & WAITIRI**

**Lease number: PO 257 & PO 270**

## **Substantive Proposal - Part 1**

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

**November**

**05**

**EXECUTION COPY**

## **Substantive Proposal**

**relating to**

Tenure Review of Eastburn and Waitiri Pastoral Leases  
under the Crown Pastoral Land Act 1998

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

(as the **Commissioner**)

**and**

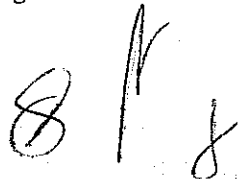
**Lake District Trust Limited**

(as the **Holder**)

**Date** 13 December 2002

***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 Eastburn and Waitiri Pastoral Leases under the Crown Pastoral Land Act 1998.

---

### 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 Eastburn and Waitiri pastoral leases, being Lake District Trust Limited (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 leases granted under the Land Act 1948 (the **Lease Land**) and to certain conservation land (together with the Lease Land, the **Land**).

### 3. Synopsis of the Substantive Proposal for the Eastburn/Waitiri Pastoral Leases

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

- 5202 hectares (approximately) to be designated as land to be restored to Crown control under section 35(2)(b)(i) of the Act as conservation area; subject to the easement concessions outlined in this Substantive Proposal;
- 10 hectares (approximately) to be designated as land to be restored to full Crown ownership and control under section 35(2)(a)(ii) of the Act as recreation reserve;
- 9 hectares (approximately) to be designated as land to be restored to full Crown ownership and control under section 35(2)(a)(ii) of the Act as historic reserve;
- 5860 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, section 11 of the Crown Minerals Act 1991 and the easement outlined in this Substantive Proposal; and
- 2428m<sup>2</sup> (approximately) to be disposed of to the Holder by way of exchange with part of the Lease Land under section 37(1)(c) of the Act.

### 4. Separate 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

RELEASED UNDER THE OFFICIAL INFORMATION ACT

- obtain and include 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.

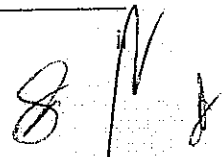
The Holder is to provide a Solicitor's Certificate (in a form satisfactory to the Commissioner) from the Holder's solicitors certifying as to certain matters relating to the Holder's acceptance of this Substantive Proposal.

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 16 December 2002 the Holder will, under the Act, be deemed to have rejected this Substantive Proposal.



Contents

---

1. Interpretation ..... 1

2. Substantive Proposal ..... 6

3. Conservation Act ..... 8

4. Acceptance by Holder ..... 8

5. Implementation of Substantive Proposal ..... 9

6. Commissioner's considerations ..... 12

7. Discontinuance of Tenure Review ..... 13

8. Survey ..... 13

9. Settlement ..... 13

10. GST ..... 15

11. Commissioner's Payment ..... 16

12. Default ..... 16

13. Lowest price ..... 16

14. Consents ..... 16

15. Access and stock ..... 17

16. Costs ..... 18

17. No nomination or assignment ..... 18

18. General ..... 18

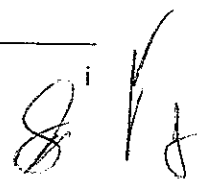
Schedule One: Provisions relating to the Schedule One Land ..... 20

Schedule Two: Provisions relating to the Schedule Two Land ..... 22

Schedule Three: Provisions relating to the Schedule Three Land ..... 24

Appendix 1: Plan A ..... 27

Appendix 2: Form for Public Access Easement ..... 28



Appendix 3: Form for Farm Management Easement Concession..... 29

Appendix 4: Form for Airstrip Easement Concession ..... 30

Appendix 5: Plan B - Fencing ..... 31

Appendix 6: Fencing requirements ..... 32

Execution Section..... 35

Consents ..... 37

*[Handwritten initials/signature]*

RELEASED UNDER THE OFFICIAL INFORMATION ACT

This **Substantive Proposal** is made on 13 December 2002

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

and (2) **Lake District Trust Limited (as the Holder).**

## Introduction

- A. The Holder is the lessee under the Leases.
- B. On the written invitation of the Holder, the Commissioner is undertaking Tenure Review of the Land. The Tenure Review process comprises four stages.
- C. On 20 December 2000 the Commissioner provided the Holder with a draft of the Preliminary Proposal for consultation purposes. The Holder returned a completed Holder's Acknowledgement relating to the draft of the Preliminary Proposal to the Commissioner. This completed stage one of the Tenure Review.
- D. By letter dated 25 May 2001, the Commissioner put the Preliminary Proposal to the Holder under section 34 of the Act. This completed stage two of the Tenure Review.
- E. By letter dated 17 May 2002 the Commissioner provided the Holder with a draft of the Substantive Proposal for consultation purposes. The Holder returned a completed Holder's Acknowledgement dated 14 June 2002 relating to the draft of the Substantive Proposal to the Commissioner. This completed stage three of the Tenure Review.
- F. The Commissioner puts this Substantive Proposal to the Holder as Stage Four of the Tenure Review.

## It is declared

### 1. Interpretation

---

#### 1.1 Definitions

In this Substantive Proposal unless the context otherwise requires:

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

**Airstrip Easement Concession** means the easement concession granted to the Holder under section 36(1)(a) of the Act over that part of the Land labelled as route "i-j" and marked in pink on Plan A for the purposes of vehicle access to, and the use of, the airstrip and in the form attached as Appendix 4;

**Area A** means 5202 hectares, being part of the Schedule One Land, as outlined in pink and marked "Area A" on Plan A;

**Area B** means 9 hectares, being part of the Schedule One Land, as outlined in pink with black cross-hatching and marked "Area B" on Plan A;

RELEASED UNDER THE OFFICIAL INFORMATION ACT

**Area C** means 10 hectares, being part of the Schedule One Land, as outlined in pink with black cross-hatching and marked "Area C" on Plan A;

**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 Leases 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;

**Commissioner's Payment** means the balance of the consideration payable by the Commissioner to the Holder by equality of exchange for surrender of the leasehold interest in the Leases in respect of the Schedule One Land, as specified in the Notice;

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

**Conservation Land** means 2428 square metres being Section 5 Block VI Kawarau Survey District being the land to be exchanged with part of the Lease Land under the Conservation Act and under section 37(1)(c) of the Act, which land also forms part of the land outlined in green on Plan A;

**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;

**Draft Preliminary Proposal** means the draft of the Preliminary Proposal that the Commissioner provided to the Holder for consultation purposes under the Act on 20 December 2000; and includes all schedules, parts, plans, appendices and annexures attached to that draft of the Preliminary Proposal;

**Draft Substantive Proposal** means the draft of this Substantive Proposal that the Commissioner provided to the Holder for consultation purposes under the Act by letter dated 17 May 2002; and includes all schedules, parts, plans, appendices and annexures attached to that draft of this Substantive Proposal;

**Easement** means the Public Access Easement;

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



RELEASED UNDER THE OFFICIAL INFORMATION ACT

**Easement Concessions** means, collectively, the:

- (a) Farm Management Easement Concession; and
- (b) Airstrip Easement Concession;

**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 Land;

**Farm Management Easement Concession** means the easement concession granted to the Holder under section 36(1)(a) of the Act over that part of the Land labelled as routes "c-d, d-e, d-f, f-g and f-h" and marked pink on Plan A for stock and vehicle access for farm management purposes, and in the form attached as Appendix 3;

**Final Plan** means the final plan for the 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 Lake District Trust Limited, 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, the Preliminary Proposal and the Draft Substantive 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 and Three 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 solicitors** means the solicitor, or solicitors, if any, acting for the Holder;

**Land** means the Lease Land and the Conservation Land;

**Leases** means the leases comprised and described in folio number OTA2/1318 and folio number OTA2/1110 (Otago Land Registry) issued under the Land Act 1948, and includes all variations and renewals of the leases;

**Lease Land** means:

- (a) 5080.9078 hectares being Part Run 632 and Section 70 Block 1 Kawarau Survey District and being the land comprised and described in folio number OTA2/1318 (Otago Land Registry) and in this Substantive Proposal referred to as the **Eastburn Lease**, subject to:

RELEASED UNDER THE OFFICIAL INFORMATION ACT

- (i) Mortgage;
  - (ii) transfer 682921.10;
  - (iii) transfer 751423;
  - (iv) right of way easement created by Gazette notice 922922.1;
  - (v) deed of easement OT15C/568;
  - (vi) Gazette notice 5002654.1; and
- (b) 6000.6191 hectares being part Run 726, and Section 6 Block VI Kawarau Survey District being the land comprised and described in folio number OTA2/1110 (Otago Land Registry) and in this Substantive Proposal referred to as the **Waitiri Lease**, subject to:
- (i) Mortgage;
  - (ii) land improvement agreement 831936;
  - (iii) transfer 871466.1;
  - (iv) compensation certificate 5142665.1;
  - (v) compensation certificate 5142665.2;
  - (vi) deed of easement 5408146.3; and
  - (vii) deed of easement 5408146.4;

**Minister** means the Minister of Conservation;

**Mortgage** means mortgage 5035459.3 (Otago Land Registry) registered against the Leases;

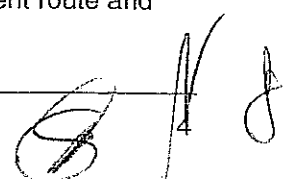
**Mortgagee** means TEA Custodians Limited, the mortgagee under the Mortgage;

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

- (a) the Holder's Consideration;
- (b) the Commissioner's Consideration;
- (c) the Commissioner's Payment; and
- (d) when the Commissioner'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 A** means the plan of the Land showing all designations and the Easement route and the Easement Concession routes attached as Appendix 1;



RELEASED UNDER THE OFFICIAL INFORMATION ACT

**Plan B** means the plan showing the new fencing and the fencing to be upgraded attached as Appendix 5;

**Preliminary Proposal** means the preliminary proposal, that the Commissioner put to the Holder under, and subject to, section 34 of the Act by letter dated 25 May 2001 and includes all schedules, parts, plans, appendices and annexures attached to the preliminary proposal;

**Public Access Easement** means an easement to provide public access for persons on foot over that part of the Land labelled route "a-b" and marked green on Plan A, in the form attached as Appendix 2;

**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 Area A, Area B and Area C;

**Schedule Two Land** means 2428 square metres being the Conservation Land which land also forms part of the land outlined in green on Plan A;

**Schedule Three Land** means 5860 hectares of the Land, as outlined in green on Plan A;

**Schedule Two and Three Land** means the Schedule Two Land and the Schedule Three Land;

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

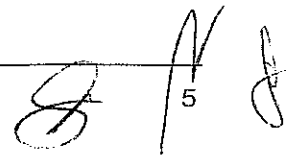
**Substantive Proposal** means this substantive proposal that the Commissioner puts to the Holder under, and subject to, section 46 of the Act, and includes all schedules, parts, plans, appendices and annexures attached to this substantive proposal;

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

**Tenure Review** means the tenure review of the 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 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.

 5

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**

---

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

RELEASED UNDER THE OFFICIAL INFORMATION ACT

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 (including, the Minister's consent under section 56 of the Act to the disposal of the Schedule Two Land by way of exchange under the Conservation Act); and
- (d) ensured that the Crown has completed all statutory clearances and other actions and obtained all statutory or regulatory consents that the Crown is required to complete and obtain in relation to the Lease Land,

puts 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:
  - (i) Crown control as conservation area subject to the Easement Concessions under sections 35(2)(b)(i) and 36(1)(a) of the Act in respect of Area A;
  - (ii) full Crown ownership and control as historic reserve under section 35(2)(a)(ii) of the Act in respect of Area B; and
  - (iii) full Crown ownership and control as recreation reserve under section 35(2)(a)(ii) of the Act in respect of Area C;

and the provisions of Schedule One apply to this designation;

- (b) Schedule Two Land be disposed of to the Holder by way of exchange with part of the Lease Land under section 37(1)(c) 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; and

- (c) Schedule Three 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;
  - (ii) Section 11 of the Crown Minerals Act 1991; and
  - (iii) the Easement,

and the provisions of Schedule Three apply to this designation.

2.3 Notwithstanding any other clause in this Substantive Proposal and subject to clause 14:

RELEASED UNDER THE OFFICIAL INFORMATION ACT

- (a) the Schedule Three Land to be disposed of in accordance with clause 2.2(c) may also be subject to the provisions of section 114 of the Land Act 1948; and
- (b) the Schedule Two Land to be disposed of in accordance with clause 2.2(b) may also be disposed of to the Holder subject to, and together with, all encumbrances (where appropriate) to be registered against the Schedule Three Land.

2.4 This Substantive Proposal is a modified version of the Draft Substantive Proposal.

2.5 This Substantive Proposal is accompanied by a Notice under section 46(4) of the Act.

### 3. Conservation Act

---

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

---

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**

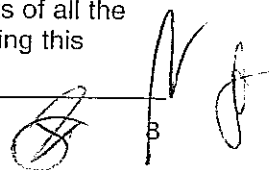
Attention: Jean Greedy

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 14.1 of this Substantive Proposal. These consents must be included 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 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 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

---

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 – 5.17.

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 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 Land needs to be surveyed before this Substantive Proposal can be given effect to; and
- (b) give the Commissioner written notice:
  - (i) of the Land or parts of the Land (including, but not limited to, all Easement areas and Easement Concession areas) that need to be surveyed; or

RELEASED UNDER THE OFFICIAL INFORMATION ACT

(ii) that none of the Land needs to be surveyed.

5.6 Under section 62 of the Act, if the Commissioner is notified by the Surveyor-General that any of the 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 Land needs to be surveyed,

the Commissioner must prepare a Final Plan of the 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;
- (b) its designation by this Substantive Proposal; and
- (c) for areas designated as land to be restored to Crown ownership and control as a reserve, the purpose of each reserve; 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,

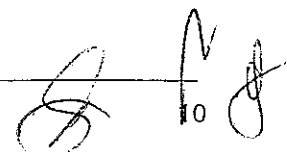
accurately reflect this Substantive Proposal,

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 Land to which the Final Plan and this Substantive Proposal relate.

5.10 Under sections 65, 66, 69 and 77 of the Act, upon registration of the Final Plan and this Substantive Proposal under section 64 of the Act:

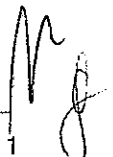

- (a) the Schedule One Land will be restored to:





RELEASED UNDER THE OFFICIAL INFORMATION ACT

- (i) Crown control as conservation area subject to the Easement Concessions under sections 35(2)(b)(i) and 36(1)(a) of the Act in respect of Area A;
  - (ii) full Crown ownership and control as historic reserve under section 35(2)(a)(ii) of the Act in respect of Area B; and
  - (iii) full Crown ownership and control as recreation reserve under section 35(2)(a)(ii) of the Act in respect of Area C;
- (b) subject to clause 5.15, the Schedule Two Land will be disposed of to the Holder by way of exchange with part of the Lease Land under the Conservation Act and under section 77 of the Act, subject to the encumbrances specified in paragraph 1.1 of Schedule Two; and
- (c) subject to clause 5.15, the Commissioner will dispose of the Schedule Three Land to the Holder (subject to the encumbrances specified in paragraph 1.1 of Schedule Three) 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 Registrar issue a certificate of title for the Schedule Two and Three Land in the name of the Holder.
- 5.11 The Schedule One Land (subject to the Easement Concessions in respect of Area A) 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 Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Schedule Two and Three Land.
- 5.13 The Leases will remain in force until a certificate of title is issued for the Schedule Two and Three Land, and at this time the Leases will, under section 69(2) of the Act, be deemed to be surrendered in respect of the Lease Land.
- 5.14 Following registration of the Final Plan and this Substantive Proposal, the Commissioner must promptly:
- (a) prepare execution documents for the Easement and the Easement Concessions, in the forms attached to this Substantive Proposal and forward the execution documents to the relevant parties to be signed;
  - (b) under section 66 of the Act, give the Minister written notice that Area A has vested in the Crown subject to the granting of the Easement Concessions and the Minister must promptly, under this Substantive Proposal, grant the Easement Concessions to the Holder by signing and returning to the Commissioner the execution documents for the Easement Concessions;
  - (c) under section 80 of the Act, give the Director-General the Easement on the terms and conditions specified in this Substantive Proposal and the Director-General must sign the execution copies of the Easement and return these to the Commissioner;
  - (d) under section 77 of the Act, give the Minister a copy of the Final Plan and the Minister must promptly do all things necessary to dispose of the Schedule Two Land in accordance with the Substantive Proposal, and section 16(A)(6) to (8) of the Conservation Act apply to the disposal of the Schedule Two Land, as if it were part of an exchange authorised under that section of the Conservation Act;



- (e) sign the execution documents for the Easement;
- (f) provide to the Holder and the Holder must sign the execution documents for the Easement Concessions; and
- (g) lodge the documents for the Easement and, at the Commissioner's sole discretion, the Easement Concessions for registration at the Otago Land Registry once the documents are signed (as the case may be) by the Commissioner, the Holder, the Minister and the Director-General.

5.15 Notwithstanding any other provision in this Substantive Proposal, the Commissioner will not request that the Surveyor-General issue a certificate under clause 5.10(c) unless and until:

- (a) the Commissioner has received all money payable by the Holder under this Substantive Proposal;
- (b) the Holder has provided to the Commissioner the duplicate of the Leases (if the Holder has these documents) and the Holder has signed and returned to the Commissioner the execution documents for the Easement Concessions and any other 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 Leases, the Holder has procured the Mortgagee to allow the Holder to provide the Leases to the Commissioner and the Holder has provided these documents to the Commissioner.

5.16 Subject to clause 5.15, the Commissioner will lodge the Easement, the discharge of the Mortgage, the duplicate of the Leases, 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 and Three Land, so that the certificate of title for the Schedule Two and Three Land will issue subject to the Easement and any new mortgage. The new mortgage will be registered after the Easement is registered.

5.17 The Commissioner, may in its sole discretion, lodge the Easement Concessions for registration under the Land Act 1948 at the Otago Land Registry against the folium on the register for Area A, being part of the Schedule One Land.

## 6. Commissioner's considerations

---

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

---

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

---

- 8.1 All areas of the Land forming part of this Substantive Proposal and delineated on Plan A 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 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 and Three Land, be entitled to payment of any compensation, should any area of the 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:
  - (a) any existing fence is erected on; or
  - (b) any new fence to be erected will be on;any boundaries of the Land or any part of the Land as outlined on Plan A, Plan B or the Final Plan.

## 9. Settlement

---

- 9.1 The Settlement Date for payment of the Commissioner's Payment and the apportionments payable under clauses 9.3, 9.4, 9.5 and 9.6 will be the day that is 20 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 and Three Land, the Holder will duly and punctually comply with all obligations on its part under the Leases, and the Leases will remain in full force and effect.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

- 9.3 (a) Rent paid or payable under the Leases for the Schedule Three Land will be apportioned on the Settlement Date as at the date that a certificate of title issues for the Schedule Two and Three Land and either deducted from or added to (as the case may be) the amount required to settle.
- (b) Rent payable under the Leases for the Schedule Three Land from the date that the Final Plan and a copy of the Substantive Proposal are registered to the date a certificate of title issues for the Schedule Two and Three Land shall bear the same proportion to the total rent payable under the Leases as the Schedule Three Land area bears to the total area of the Lease Land.
- (c) Any apportionments for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Two and Three Land (should a certificate of title issue after Settlement Date) will be estimated in the settlement statement which will be prepared by the Commissioner. If a certificate of title issues for the Schedule Two and Three Land after the Settlement Date, then following the date that a certificate of title issues for the Schedule Two and Three Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will refund to the Commissioner any additional amounts due because of the final apportionment.
- 9.4 Rent paid or payable under the Leases for the Schedule One Land will be apportioned (on a pro rata basis) on the Settlement Date as at the date that the Final Plan and a copy of this Substantive Proposal are registered 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, outgoings and other charges receivable from or charged upon the Schedule Two and Three 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 and Three Land.
- (b) The rates, levies, incomings, outgoings and other charges described in this clause 9.5 payable in respect of the Schedule Two and Three Land from the date that the Final Plan and a copy of this Substantive Proposal are registered to the date a certificate of title issues for the Schedule Two and Three Land shall, if not separately assessed, bear the same proportion to the total charges payable in respect of the Land as the area of the Schedule Two and Three Land bears to the total area of the 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) If a certificate of title issues for the Schedule Two and Three Land after the Settlement Date, any apportionments for rates, levies, and all other incomings, outgoings and other charges receivable from or charged upon the Schedule Two and Three Land for the period between the Settlement Date and the date that a certificate of title issues for the Schedule Two and Three Land will be estimated by the Commissioner in its settlement statement. Following the date that a certificate of title issues for the Schedule Two and Three Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will refund to the Commissioner any additional amounts due because of the final apportionment.
- 9.6 All rates, levies and all other incomings, 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 Land if they cannot be separately assessed) on the Settlement Date as at the date that the Final Plan and a copy of this Substantive Proposal are registered and either deducted from or added to (as the case may be) the amount required to settle.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

- 9.7 From the date that a certificate of title is issued for the Schedule Two and Three Land, under section 69(2) of the Act, each 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 each 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 Leases and will not release or discharge the Holder from any liability under the Leases arising prior to the date that the certificate of title for the Schedule Two and Three 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, (subject to the provisions of the Easement Concessions (in respect of Area A), if applicable). 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, (subject to the provisions of the Easement Concessions (in respect of Area A)) 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 as the Holder's execution of the Easement Concessions and the execution and registrability of any new mortgage in favour of the Mortgagee.

10. **GST**

---

- 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. Commissioner's Payment

---

By 3.00 p.m. on the Settlement Date, the Commissioner must pay the Commissioner's Payment to the Holder or to the Holder's solicitors in cash or by bank cheque without set-off or deduction.

## 12. Default

---

If from any cause whatever (save the default of the Commissioner) any money payable by the Holder to the Commissioner is not paid on the due date:

- (a) the Holder will pay to the Commissioner interest at the Default Rate on any money payable by the Holder to the Commissioner so unpaid from the due date until payment in full; and
- (b) the Commissioner's rights under this clause 12 are without prejudice to any other rights or remedies available to the Commissioner at law or in equity.

## 13. Lowest price

---

13.1 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 and Three Land under section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Holder's Consideration.

13.2 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 under section EH 48(3)(a) of the Income Tax Act 1994 is equal to the Commissioner's Consideration.

## 14. Consents

---

14.1 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;
- (b) the grantee under land improvement agreement 831936 registered against the Waitiri Lease;
- (c) the grantee under transfer 871466.1 registered against the Waitiri Lease;

RELEASED UNDER THE OFFICIAL INFORMATION ACT

- (d) the registered proprietors of the dominant tenements under transfers 682921.10 and 751423 registered against the Eastburn Lease;
- (e) the party entitled to the benefit of compensation certificates 5142665.1 and 5142665.2 registered against the Waitiri Lease;
- (f) the grantee under the deed of easement OT15C/568 registered against the Eastburn Lease;
- (g) the grantee under deeds of easement 5408146.3 and 5408146.4 creating certain telecommunications and electricity easements registered against the Waitiri Lease;
- (h) the party entitled to the benefit of the easement created by Gazette notice 922922.1 registered against the Eastburn Lease; and
- (i) 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.

14.2 In addition to obtaining the consents of the persons outlined in clause 14.1, 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.

14.3 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 and Three Land issues.

14.4 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 and Three Land at the same time as the certificate of title for the Schedule Two and Three Land issues.

## 15. Access and stock

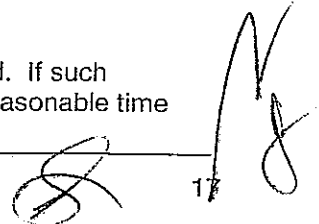
---

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

15.2 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, except in accordance with the Easement Concessions.

15.3 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, except in accordance with the Farm Management Easement Concession in respect of Area A.

15.4 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



17

after the Holder becomes aware of the straying or after being requested by the Minister to remove the straying stock.

## 16. **Costs**

---

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.

## 17. **No nomination or assignment**

---

17.1 The Holder is currently the lessee under the Leases.

17.2 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.

## 18. **General**

---

18.1 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.

18.2 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.

18.3 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.

18.4 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 18.4(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;



RELEASED UNDER THE OFFICIAL INFORMATION ACT

- (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:**

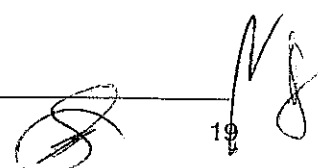
Commissioner of Crown Lands  
c/- The Manager  
DTZ New Zealand Limited  
P O Box 27  
41-43 Tarbert Street  
Alexandra

Fax No.: (03) 488 9099

**The Holder:**

Lake District Trust Limited  
C/- R G Hamilton  
Lower Shotover  
RD 1  
Queenstown

- 18.5 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.
- 18.6 For the avoidance of doubt, neither the Draft Preliminary Proposal, nor the Preliminary Proposal nor the Draft Substantive Proposal, constitutes or could constitute a binding agreement between the parties.



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

---

### 1. Details of designation

---

- 1.1 The Schedule One Land will be designated as land to be restored to:
- (i) Crown control as conservation area subject to the Easement Concessions under sections 35(2)(b)(i) and 36(1)(a) of the Act in respect of Area A;
  - (ii) full Crown ownership and control as historic reserve under section 35(2)(a)(ii) of the Act in respect of Area B; and
  - (iii) full Crown ownership and control as recreation reserve under section 35(2)(a)(ii) of the Act in respect of Area C.
- 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).

### 2. Details of Farm Management Easement Concession

---

- 2.1 The terms and conditions of the Farm Management Easement Concession are specified in the document attached as Appendix 3.
- 2.2 The activity involved in the Farm Management Easement Concession is stock access and vehicle access on existing tracks which are located on Area A which, is to be designated as conservation area. The easement concession permits access by foot, horses, motor vehicles, machinery implements, farm dogs and stock for the purposes of farm management.
- 2.3 The easement area comprises existing formed tracks of approximately 12 km on Area A.
- 2.4 The tracks have existed and been used for some years and no significant adverse effects have occurred to date. The area will be seen frequently by the Minister's staff and the term is only five years minimising the likelihood of any adverse features developing.
- 2.5 The Farm Management Easement Concession is an easement under section 17Q of the Conservation Act.
- 2.6 The term of the Farm Management Easement Concession will be five years. The Holder's circumstances are likely to have changed by then and if continued access is still required any necessary adjustments can be considered at the time of a new application.
- 2.7 The grantee of the Farm Management Easement Concession will be Lake District Trust Limited, the current holder of the leasehold interest under the Leases.
- 2.8 Lake District Trust Limited employs a resident manager, who is well experienced, has spent considerable time on the subject property and is fully capable of supervising the activities.

### 3. Details of Airstrip Easement Concession

---

- 3.1 The terms and conditions of the Airstrip Easement Concession are specified in the document attached as Appendix 4.
- 3.2 The activity involved in the Airstrip Easement Concession is vehicle access over an existing track and the right to use the airstrip which are located on Area A which, is to be designated as conservation area. The easement concession permits the use of motor vehicles, machinery and implements and the use of the airstrip for the aerial application of seed and/or fertiliser.
- 3.3 The easement area comprises an existing formed track of approximately 1 km between the Crown Range Road and an existing airstrip plus the airstrip itself.
- 3.4 The track and airstrip have existed and been used for some years. Use only occurs on infrequent occasions (two or three times per year) and no significant adverse effects have occurred to date. The area will be seen frequently by the Minister's staff and the term is only five years minimising the likelihood of any adverse features developing.
- 3.5 The Airstrip Easement Concession is an easement under section 17Q of the Conservation Act.
- 3.6 The term of the Airstrip Easement Concession will be five years. The Holder's circumstances are likely to have changed by then and if continued access and use is still required any necessary adjustments can be considered at the time of a new application.
- 3.7 The grantee of the Airstrip Easement Concession will be Lake District Trust Limited, the current holder of the leasehold interest under the Leases.
- 3.8 Lake District Trust Limited employs a resident manager who is well experienced, has spent considerable time on the subject property and is fully capable of supervising the activities.

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

---

### 1. Details of designation

---

1.1 Under section 37(1)(c) of the Act, the Schedule Two Land will be designated as land to be disposed of to the Holder by way of exchange with other Lease Land subject to:

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

and may also be subject to all encumbrances (where appropriate) to be registered against the Schedule Three Land.

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

---

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; or
  - (ii) any rule in any plan, resource consent or other requirement issued under the RM Act, and
- (d) 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.

**3. Risk**

---

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. 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**

---

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 Draft Substantive 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;
- (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.

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

---

### 1. Details of designation

---

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

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

The disposal of the Schedule Three 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 Three Land (as envisaged by clause 5 of this Substantive Proposal).

1.3 The Easement is a protective mechanism as defined in the Act.

### 2. Fencing

---

2.1 If:

- (a) the Holder has accepted this Substantive Proposal in accordance with clause 4; and
- (b) that acceptance has taken effect pursuant to section 60(4) of the Act,

then the parties will comply with paragraphs 2.2 – 2.5 of this Schedule Three.

2.2 The Commissioner will, at its cost, erect new fencing along the lines marked "A-B, C-D, E-F, G-H, I-J and I-S" on Plan B. The position of each fenceline has been identified by using satellite positioning technology (GPS) and by pegging.

2.3 The Commissioner will, at its cost, upgrade the fencing on the lines marked "K-A, C-R, J-P and M-N" on Plan B.

2.4 The Commissioner will erect the fencing referred to in paragraph 2.2 of this Schedule Three and upgrade the fencing referred to in paragraph 2.3 of this Schedule Three according to the specifications in Appendix 6.

2.5 The ongoing maintenance of the fencing referred to in paragraphs 2.2 and 2.3 of this Schedule Three will be under the terms of the Fencing Act 1978.

### 3. Holder's acknowledgements

---

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 Three 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 Three Land which the Holder considers necessary to satisfy itself as to the condition of the Schedule Three Land;
- (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Schedule Three 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 3; and

- (d) nothing in the Draft Preliminary Proposal, the Preliminary Proposal, the Draft Substantive Proposal 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 Land.

### 4. Risk

---

- 4.1 On and with effect from the Unconditional Date all risk of any nature in respect of the Schedule Three 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 Leases, 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.
- 4.2 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 Three Land prior to the Settlement Date.

5. **No representations or warranties by the Commissioner**

---

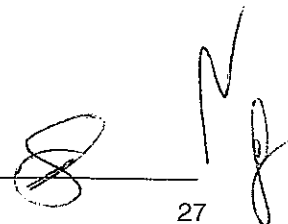
The Commissioner gives no representations or warranties of any nature in respect of the Schedule Three Land. Without limitation, the Commissioner does not warrant:

- (a) the accuracy of any matter in the Draft Preliminary Proposal, the Preliminary Proposal, the Draft Substantive 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 Three Land is or will remain suitable for the Holder's use; or
- (c) that the Schedule Three Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Schedule Three Land.



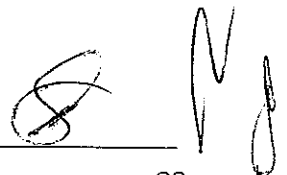
Appendix 1: Plan A

---

Handwritten signatures and initials in the bottom right corner of the page. There are two distinct signatures, one appearing to be a stylized 'S' and the other a more complex cursive signature. To the right of these is a large, bold letter 'M' with a vertical line through it, and another smaller signature below it.

## Appendix 2: Form for Public Access Easement

---

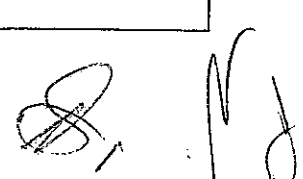
Handwritten initials or signature in the bottom right corner of the page.

Public Access Easement – New Zealand Walkways Act 1990  
Eastburn/Waitiri

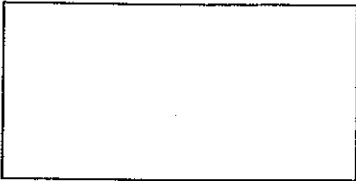
# TRANSFER GRANT OF EASEMENT

Public Access: New Zealand Walkways Act 1990

This page does not form part of the Transfer.

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

Section 90, Land Transfer Act 1952



Land registration district

Otago

Unique identifier(s)  
or C/T(s)

All/part

Area/description of part or stratum

All

Transferor

*Surname(s) must be underlined*

COMMISSIONER OF CROWN LANDS, acting pursuant to section 80 of the Crown Pastoral Land Act 1998

Transferee

*Surname(s) must be underlined*

HER MAJESTY THE QUEEN, acting by and through the Director-General of Conservation

Estate or interest to be transferred, or easement(s) or *profit(s) à prendre* to be created  
*State if fencing covenant imposed.*

Public Access Easement in gross granted under section 8 of the New Zealand Walkways Act 1990 (continued on pages 1, 2 and 3 of Annexure Schedule)

Operative clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or *profit à prendre* is described above, that easement or *profit à prendre* is granted or created.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2002

Attestation

*If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule.*

Signed by  
acting under written delegation from  
the Commissioner of Crown Lands

Signed in my presence by the Transferor

\_\_\_\_\_  
*Signature of witness*

(continued on page 3 Annexure  
Schedule)

*Witness to complete in BLOCK letters (unless legibly printed)*

Witness name

Occupation

Address

Signature of Transferor

Certified correct for the purposes of the Land Transfer Act 1952

\_\_\_\_\_  
*[Signature]*

**Definitions**

1. In this transfer unless the context otherwise requires:
  - 1.1 "Controlling authority" means the controlling authority of the Walkway appointed by the Minister of Conservation under section 11 of the New Zealand Walkways Act 1990.
  - 1.2 "Servient Land" means the land owned by the Transferor and described on page 1.
  - 1.3 "Transferee" means Her Majesty the Queen acting by and through the Director-General of Conservation and includes the Transferee's employees, tenants, agents, contractors, licensees and any member of the public.
  - 1.4 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.
  - 1.5 "Walkway" means that part of the Servient Land ten metres wide which is marked "[ ]" on S.O. Plan No. [ ].

**Standard Easement Terms**

Access

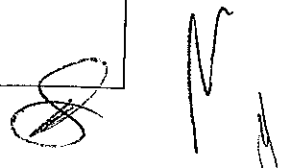
- 2.1 The Transferee has the right in common with the Transferor to pass and re-pass at any time over and along the Walkway on foot.
- 2.2 The Transferee may, for purposes only of carrying out work required for developing, improving or maintaining the Walkway or any extension, addition to or continuation of the Walkway, proceed along the Walkway by vehicular or other means of transport.

Obligations of Transferee

- 3.1 The Transferee will repair any damage to the Walkway which may be caused by the negligent or improper exercise of any right or power conferred on the Transferee by this easement.
- 3.2 The Transferee may improve the Walkway in any manner which the Transferee considers appropriate.
- 3.3 The Transferee will at all times use her best endeavours to keep the Walkway clean, tidy and free from all debris, rubbish, plants, pests, dry vegetation and other unsightly, offensive or inflammable matter.
- 3.4 The Transferee may erect and display suitable signs and warning notices and do all things necessary to protect the safety of the public and the property of the Transferor.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

WL023080198



Implied Rights and Powers

4. The rights and powers specified by regulation made under section 90D of the Land Transfer Act 1952 and contained in the Ninth Schedule of the Property Law Act 1952 are expressly negated and excluded.

Term

5. The easement created by this transfer is to be in perpetuity.

Temporary Suspension

6. The Controlling authority (or deemed Controlling authority) of the Walkway may close all or part of the Walkway if reasons of public safety or emergency require closure, or otherwise in accordance with the provisions of section 28 of the New Zealand Walkways Act 1990.

Dispute Resolution


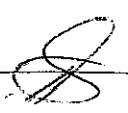
- 7.1 If a dispute arises between the Transferor and Transferee concerning the rights created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 7.2 If the dispute is not resolved within 14 days of written notice by one party to the other it is to be referred to mediation.
- 7.3 If the dispute is not resolved within 21 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated.
- 7.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

- 8.1 A notice to be given under this transfer by one party to the other is to be in writing and must:
- (a) be hand delivered to the receiving party; or
  - (b) be sent by ordinary post to the receiving party; or
  - (c) be sent by facsimile to the receiving party.
- 8.2 If clause 8.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.
- 8.3 If clause 8.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

WL023080198



General

9.1 The Transferor is under no obligation or liability to contribute to the cost of maintenance, repair, construction, or reconstruction of the Walkway.

**Special Easement terms**

The standard easement terms contained above must be read subject to any special easement terms set out below.

10. The Transferee has the right:

10.1 To mark the Walkway as appropriate.

10.2 To erect and maintain stiles.

10.3 To erect and maintain signs informing the public:

(a) of the location of the land managed by the Crown and available for public access and recreation; and

(b) of their rights and responsibilities in relation to the Walkway.

10.4 To use whatever reasonable means of access she thinks fit over the Walkway to carry out the works in clause 10.1 to 10.3

**Continuation of "Attestation"**

Signed for and on behalf of Her Majesty the Queen by Jeffrey Edward Connell under a written delegation	<b>Signed in my presence by the Transferee</b>  _____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> <b>Witness name</b> <b>Occupation</b> <b>Address</b>
<b>Signature of Transferee</b>	

All signing parties and either their witnesses or solicitors must sign or initial in this box.

WL023080198