

# **Crown Pastoral Land Tenure Review**

**Lease name: Mt Cook**

**Lease number: PT 132**

## **Substantive Proposal - Part 1**

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

**November 08**

PROPOSAL FOR REVIEW OF CROWN LAND  
Under Part 2 of the Crown Pastoral Land Act 1998

Date: 18 December 2007

**Parties**

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**Holder:** Donald Mount Cook Burnett  
Mount Cook Station  
PO Box 3  
LAKE TEKAPO

EXECUTION  
COPY

**Commissioner of Crown Lands:**

C/-Opus International Consultants Limited  
PO Box 1482  
Christchurch  
  
Attn: Tim Broad

**The Land**

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**Lease:** Mount Cook

**Legal Description:** Part Run 341, situated in Blocks V, X, XI, XV, and XVI, Cass and I,II, VI, Jollie Survey Districts

**Area:** 2462.1400 hectares more or less

**Certificate of Title/Unique Identifier:** CB 15F/1376 Part Cancelled

**Summary of Designations**

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Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown edged in pink on the Plan) is to be restored to, or retained by, the Crown as set out in Schedules One and Two; and
- (b) The Freehold Land (shown edged in green on the Plan) is to be disposed by freehold disposal to the Holder as set out in Schedule Three.

1 The Plan

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**2 Conditions**

- 2.1 This Proposal, and any agreement arising therefrom, is subject to the conditions contained in Schedule Four (if any).

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**3 Settlement**

- 3.1 Unless otherwise agreed by the parties, the Settlement Date for the disposal of the Freehold Land to the Holder by freehold disposal will be the day that is TEN (10) working days following the day on which Land Information New Zealand notifies the Commissioner that the Final Plan and a copy of this Proposal are registered in accordance with the Act.
- 3.2 The Freehold Land will be disposed of to the Holder under the Land Act 1948.

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**4 Holder's Payment**

- 4.1 By 3.00 p.m. on the Settlement Date, the Holder must pay the Holder's Payment and all other money payable to the Commissioner or the duly appointed agent of the Commissioner by bank cheque without set-off or deduction of any kind in accordance with the settlement requirements of the Commissioner.
- 4.2 If the Holder fails to pay the Holder's Payment or any part of it or any other money to the Commissioner or to the duly appointed agent of the Commissioner on the Settlement Date clause 19 will apply.

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**5 Commissioner's Payment**

- 5.1 The Commissioner shall pay the Commissioner's Payment to the Holder on the Settlement Date.
- 5.2 No interest shall be payable to the Holder by the Commissioner in respect of the Commissioner's Payment, including (without limitation) for the period from the Vesting Date to the Settlement Date.

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**6 Vesting of Crown Land**

- 6.1 The Crown Land will vest in the Crown on the Vesting Date.

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**7 Issue of Certificate of Title**

- 7.1 Notwithstanding any other provision in this Proposal, the Commissioner will not request that the Surveyor-General issue a certificate to the Registrar pursuant to section 116 of the Land Act 1948 (to enable a certificate of title to issue for the Freehold Land) unless and until:
- (a) the Commissioner has received the Holder's Payment from the Holder under clause 4, and all other money payable by the Holder under this Proposal and the Notice;
  - (b) the Holder has provided to the Commissioner duplicate copies of the certificate of title relating to the Lease (if any) and/or the Lease if requested by the Commissioner;
  - (c) the Holder has signed and returned to the Commissioner all documents required by the Commissioner to be signed by the Holder to give effect to this Proposal (including, without limitation, any permit, covenant, easement and/or any other document); and
  - (d) the Holder has procured a registrable discharge of any Mortgage and provided this to the Commissioner together with any new mortgage documents to be registered against the Freehold Land.

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**8 Registration of Documents**

- 8.1 Subject to clause 7, the Commissioner will lodge all documents necessary to give effect to this Proposal (including, without limitation any easement, covenant, discharge of mortgage, and/or duplicate copy of the Lease) and any new mortgage documents to be registered against the certificate of title to be issued for the Freehold Land so that the certificate of title for the

Freehold Land will issue subject to the encumbrances provided in this Proposal. Any new mortgage will be registered after any other encumbrances such as any easements and/or covenants are registered.

**9 Consents**

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- 9.1 The Holder must obtain the written consent to the Holder's acceptance of this Proposal from all persons having an interest in the Land (other than the Holder), including, but not limited to:
- (a) any Mortgagee(s);
  - (b) any party entitled to the benefit of a land improvement agreement registered against the Lease and/or the Land; and
  - (c) any other person that the Commissioner reasonably believes has an interest in the Land or who the Holder reasonably believes has an interest in the Land, whether registered or not.
- 9.2 The consents required under clause 9.1 must be in a form acceptable to the Commissioner in all respects and be returned to the Commissioner with this Proposal on its acceptance by the Holder. Examples of the form of consents required under clause 9.1 are set out in Appendix 1.
- 9.3 The Holder must also obtain, and provide to the Commissioner if requested, all consents necessary for the Holder to accept this Proposal including (without limitation) any:
- (a) corporate and/or trustee consents; and
  - (b) consent required under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005.
- 9.4 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 as set out in clause 8.
- 9.5 If required by the Mortgagee, the Commissioner will provide an undertaking that, subject to the provisions of clause 7 being satisfied, the Commissioner will register the discharge of the Mortgage and register any new mortgage against the certificate of title for Freehold Land at the same time as the certificate of title for the Freehold Land issues.

**10 Continuation of Lease**

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- 10.1 The Lease will remain in full force and effect until a certificate of title issues for the Freehold Land. Notwithstanding when Settlement Date occurs, until a certificate of title issues for the Freehold Land the Holder will duly and punctually comply with all obligations on its part under the Lease (other than as set out at clause 12.1 (b)) and the Lease will remain in full force and effect.
- 10.2 From the date that a certificate of title is issued for the Freehold Land the Lease is deemed to be surrendered and, subject to clause 10.3, the Commissioner releases and discharges the Holder from the performance and observance of all covenants, conditions and obligations under the Lease.
- 10.3 The release and discharge in clause 10.2 is without prejudice to:
- (a) the rights, remedies and powers of the Commissioner contained in the Lease (except as varied in accordance with clause 12.1(b)); and
  - (b) will not release or discharge the Holder from any liability under the Lease, arising prior to the date that the certificate of title for the Freehold Land is issued, under any statute or by any reason where such liability is due to the fault of the Holder.
- 10.4 As from the Vesting Date, 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 Crown Land (subject to the provisions of any permit, easement, concession, other encumbrance or document provided under this Proposal). 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 Crown Land as at the Vesting Date.

## **11 Fencing and Construction**

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- 11.1 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, the Commissioner will, at its cost, erect new fencing approximately along the line marked as such on the Plan (if any).
- 11.2 The Commissioner will erect the fencing referred to in clause 11.1 according to the specifications in Appendix 3. The ongoing maintenance of the fencing referred to in clause 11.1 will be under the terms of the Fencing Act 1978.
- 11.3 If the Commissioner has not completed any fencing as set out in Appendix 3 by the Settlement Date, the Holder agrees that the Commissioner may register a covenant, on terms entirely satisfactory to the Commissioner (in the Commissioner's sole discretion), over the Freehold Land to enable the Commissioner to complete such fencing. The Holder will do all things necessary (including signing any document) to enable the Commissioner to register such a covenant.
- 11.4 If the Holder has accepted this Proposal and that acceptance has taken effect pursuant to the Act, the parties will (or the relevant will (as the case may be)) undertake the construction works set out in Appendix 3 on the terms and conditions set out in Appendix 3.

## **12 Apportionments**

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- 12.1 Rent payable under the Lease in respect of the Freehold Land shall be apportioned as follows:
- (a) Rent paid or payable will be apportioned on the Settlement Date as at the Settlement Date and either deducted from or added to (as the case may be) the amount required to settle.
  - (b) Notwithstanding that the Lease continues in effect until a certificate of title issues for the Freehold Land, the Holder shall not be required to pay any rent under the Lease for the Freehold Land from the Settlement Date.
- 12.2 Rent paid or payable under the Lease for the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.
- 12.3 All rates, levies, and all other incomings and outgoings and other charges receivable from or charged upon the Freehold Land will, unless otherwise agreed by the parties, be apportioned on the Settlement Date as at the Settlement Date.
- 12.4 All rates, levies and all other incomings and outgoings and other charges receivable from or charged upon the Crown Land will be apportioned on the Settlement Date as at the Vesting Date and either deducted from or added to (as the case may be) the amount required to settle.
- 12.5 Following the date that a certificate of title issues for the Freehold Land, the Commissioner will undertake a final apportionment and either the Commissioner will pay to the Holder, or the Holder will pay to the Commissioner, any additional amounts due because of any payments made or received by one party on behalf of the other for the period from the Settlement Date to the date on which a new certificate of title issues for the Freehold Land.

## **13 Risk**

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- 13.1 On and with effect from the Unconditional Date all risk of any nature in respect of the Freehold Land will pass from the Commissioner to the Holder. For the avoidance of doubt, the Holder's current risk in respect of matters arising under the Lease, including, without limitation, the Holder's risk in respect of all improvements, buildings, fencing, fixtures, fittings and chattels, will continue to remain with the Holder until the Lease is deemed to be surrendered under clause 10.2.
- 13.2 The Holder will be required to comply with its settlement obligations under this Proposal irrespective of any damage to, or destruction of, the Freehold Land prior to the Settlement Date.

## **14 Survey**

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- 14.1 All areas of the Land forming part of this Proposal and delineated on the Plan are approximate and subject to preparation of the Final Plan. The measurements of the areas may therefore alter on the Final Plan.
- 14.2 No error, misdescription or amendment of any part of the Land will annul, vary, or derogate from this Proposal, or the Holder's acceptance of this Proposal.
- 14.3 For the avoidance of doubt, the Holder will not be entitled to cancel or withdraw its acceptance of this Proposal, nor will the Holder, or any successor in title of the Holder or any party with an interest in the 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 Proposal.
- 14.4 The Commissioner does not warrant that any existing fence is erected on, or that any new fence to be erected will be on, any boundaries of the Land or any part of the Land as outlined on the Plan or the Final Plan.

## **15 Holder's Acknowledgments**

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- 15.1 If the Holder accepts this Proposal and that acceptance takes effect under the Act, the Holder acknowledges that:
- (a) it is obtaining the freehold interest in the Freehold Land:
    - (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 Freehold Land which the Holder considers necessary to satisfy itself as to all matters relating to the Freehold Land;
  - (c) the Holder, at its cost, is entirely responsible for all work to ensure that the Freehold Land complies with all applicable laws including (without limitation):
    - (i) the Resource Management Act 1991; and
    - (ii) any rule in any plan, resource consent or other requirement issued under the Resource Management Act 1991, and
    - (iii) the Building Act 2004; andthe 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 clause 15;
  - (d) nothing in this 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; and
  - (e) the Holder has no claim (and will not have any claim) whatsoever against the Crown and/or Commissioner in relation to the Tenure Review and/or this Proposal, including (without limitation) any claim for any misrepresentation or for any loss or damage suffered whether in contract, tort (including negligence) or otherwise.

## **16 No Representations or Warranties by the Commissioner**

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- 16.1 The Commissioner gives no representations or warranties of any nature in respect of the Freehold Land. Without limitation, the Commissioner does not warrant:
- (a) the accuracy of any matter in the Notice or this Proposal or in any notice, or any correspondence or other information provided to the Holder by the Commissioner or by any agent, contractor or employee of the Commissioner; or
  - (b) that the Freehold Land is or will remain suitable for the Holder's use; or
  - (c) that the Freehold Land complies with all or any statutory, territorial authority or any other legal requirements affecting or relevant to the Freehold Land.

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**17 Acceptance**

- 17.1 The Holder's acceptance of this Proposal is irrevocable and constitutes a binding agreement between the Commissioner and the Holder.
- 17.2 If the Commissioner does not receive an acceptance to this Proposal from the Holder within three (3) months of putting it (in its substantive form) to the Holder, the Holder is deemed to have rejected this Proposal.

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**18 Solicitors Certificate**

- 18.1 The Holder must procure 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 this Proposal and the Holder's execution of any documents required to give effect to this Proposal (including, without limitation any easement, protective mechanism and/or concession). An example of the form of solicitors certificate required is set out at Appendix 2.
- 18.2 The Holder must return the completed solicitor's certificate to the Commissioner with this Proposal on its acceptance by the Holder.

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**19 Default**

- 19.1 If from any cause whatever (except the default of the Commissioner) all or any part of the Holder's Payment or any other money payable by the Holder to the Commissioner is not paid on the due date the Holder will pay to the Commissioner interest at the Default Rate on the part of the Holder's Payment or any other money payable by the Holder to the Commissioner so unpaid from the due date until the date of actual payment in full.
- 19.2 The Commissioner's rights under this clause 19 are without prejudice to any other rights or remedies available to the Commissioner at law or in equity.

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**20 Goods and Services Tax**

- 20.1 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.
- 20.2 On the 10<sup>th</sup> 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.
- 20.3 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.
- 20.4 On the 10<sup>th</sup> 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.
- 20.5 The Commissioner will pay GST on the Commissioner's Consideration to the Holder on the Commissioner's GST Date, time being of the essence.
- 20.6 Where any GST is not paid to the Commissioner or to the Holder (as the case may be) in accordance with this clause 20, 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 until the date of payment of the unpaid GST; and
  - (b) any Default GST.

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**21 Lowest price**

- 21.1 The Holder's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Freehold Land under section EW 32(3) of the Income Tax Act 2004 is equal to the Holder's Consideration.



- 21.2 The Commissioner's Consideration does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the Crown Land under section EW 32(3) of the Income Tax Act 2004 is equal to the Commissioner's Consideration.

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**22 Costs**

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- 22.1 The Commissioner will meet the costs of the survey (if any) of the Land, including all designation areas, the Final Plan and for a certificate of title to issue for the Freehold Land.
- 22.2 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 Proposal), and all professional advice provided to or sought by the Holder.

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**23 No nomination or assignment**

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- 23.1 The Holder is not entitled to, and is expressly prohibited from, nominating another person to perform the Holder's obligations under this Proposal or assigning to another person the Holder's interest (or any part) under this Proposal.

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**24 Recreation Permit**

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- 24.1 Immediately on the registration of the Final Plan and a copy of the proposal to which it relates over the Land and pursuant to s64 of the Act, any recreation permit granted over the Land shall be determined.

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**25 General**

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- 25.1 This 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.
- 25.2 Each provision of this Proposal will continue in full force and effect to the extent that it is not fully performed at the Settlement Date.
- 25.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 25.4 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 Proposal.
- 25.5 This 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.
- 25.6 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 25.7 In relation to notices and other communications under this 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. Other than the address to which the Holder is to send its acceptance of this Proposal (which the Commissioner will specifically notify the Holder of) the address, person or office holder (if any) for each party is shown on the front page of this Proposal;
  - (b) no communication is to be effective until received. A communication will be deemed to be received by the addressee:

- (i) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. on a working day or, if despatched on a non-working day, on the next working day after the date of dispatch;
- (ii) in the case of personal delivery (including, but not limited to, courier by a duly authorised agent of the person sending the communication), on the working day on which it is delivered, or if delivery is not made on a working day, on the next working day after the date of delivery; and
- (iii) in the case of a letter, on the fifth working day after mailing (postage paid).

## 26 Interpretation

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### 26.1 Definitions

In this Proposal unless the context otherwise requires:

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

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

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

**Commissioner's GST Date** means the earlier of Settlement Date or 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 Proposal;

**Commissioner's Payment** means the balance of the Commissioner's Consideration payable by the Commissioner to the Holder by equality of exchange for the Crown Land, as specified in the Notice (if any);

**Crown Land** means the land (including any improvements) set out in Schedule One and the land (including any improvements) set out in Schedule Two (if any);

**Default GST** means any additional GST, penalty or other sum levied against either the Commissioner or the Holder under the Goods and Services Tax Act 1985 or the Tax Administration Act 1994 by reason of either the Commissioner or the Holder failing to pay GST as required by this 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;

**Default Rate** means the rate of 11 per cent per annum;

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

**Freehold Land** means the land set out in Schedule Three;

**GST** means all goods and services tax payable by the Commissioner or the Holder under the Goods and Services Tax Act 1985 in respect of their respective supplies evidenced by this Proposal;

**Holder** means holder shown on the front page of this Proposal (being the lessee under the Lease) and includes the Holder's successors, executors, administrators and assigns;

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

**Holder's Payment** means the balance of the Holder's Consideration payable by the Holder to the Commissioner by equality of exchange for the freehold of the Freehold Land, as specified in the Notice (if any);

**Land** means the land subject to the Tenure Review identified on the front page of this Proposal;

**Lease** means the lease described on the front page of this Proposal;

**Mortgage** means any mortgage (registered or unregistered) over the Land;

**Mortgagee** means the holder of any Mortgage;

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

- (a) the Holder's Consideration;
- (b) the Commissioner's Consideration; and
- (c) the Holder's Payment or the Commissioner's Payment (as the case may be);

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

**Plan** means the plan of the Land showing all designations on page 2 of this Proposal;

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

**Settlement Date** means the settlement date defined in clause 3.1;

**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 the Act;

**Unconditional Date** means the date that the Commissioner receives from the Holder an executed copy of this Proposal signed by the Holder containing the signed consents of all persons having an interest in the Land to the Holder's acceptance of this Proposal which results in the acceptance taking effect under the Act;

**Valuer** means a registered valuer;

**Vesting Date** means the date on which the Crown Land vests in the Crown pursuant to 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.

## 26.2 Construction of certain references

In this Proposal, unless inconsistent with the context:

- (a) a reference to a certificate of title includes a reference to a computer register;
- (b) words importing a gender include all genders;
- (c) reference to a statute includes reference to all enactments that amend or are passed in substitution for the relevant statute and to all regulations relating to that statute;
- (d) words in the singular include the plural and vice versa;
- (e) reference to a month means a calendar month;
- (f) 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);
- (g) references to sections, clauses, sub-clauses, parts, annexures, attachments, appendices, schedules, paragraphs and sub-paragraphs are references to such as they appear in this Proposal and form part of this Proposal;
- (h) headings are included for ease of reference only and will not affect the construction or interpretation of this Proposal;
- (i) all monetary amounts are expressed in New Zealand currency;

- (j) 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;
- (k) all references to times are references to times in New Zealand;
- (l) if the Holder comprises more than one person, each of those person's obligations, as Holder, will be both joint and several.

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

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**1 Details of Designation**

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- 1.1 Under this Proposal the land shown edged in pink and labelled CA1 on the Plan, being 1156.5900 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area
- 1.2 Under this Proposal the land shown edged in pink and labelled CA2 on the Plan, being 345 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area

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

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**1 Details of designation**

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1.1 Under this Proposal the land shown shaded in pink and labelled CA3 on the Plan, being 110 hectares (approximately) is designated as land to be restored to or retained in Crown ownership and control as conservation area, subject to

- (a) the creation of an easement concession marked blue and labelled as 'b-c-d, c-e' on the Plan and substantially as set out in Appendix 4;

**2 Information Concerning Proposed Easement Concession**

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2.1 Description of the proposed activity:

Easement Concession for the adjoining landholder along an existing track for farm management purposes and stock access.

2.2 Description of area where proposed activity to be carried out and proposed status:

The easement area marked on the plan starts from the legal road along the Tasman River and follows the existing access track from there across the river flats to Andrews Creek. The easement is for farm management purposes and stock access and will be across a proposed Conservation Area being from an access track across the riverbed from an area of existing freehold land to an area of proposed freehold land.

2.3 Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse affect

The concession over the easement area marked is to allow for stock access and associated farm management purposes. It connects the legal road and the existing access track across the Tasman riverbed leading from an area of existing freehold land to an area of proposed freehold land using an existing access track between the two areas. The existing access track is across an area designated as Conservation Area. Access will be confined to a 4wd track and any effects will be mitigated by the terms of the concession including restrictions on earth disturbance, depositing of materials, lighting of fires and disturbance of waterways.

2.4 Details of the proposed type of concession:

An easement concession under S. 17Q (1) Conservation Act 1987.

2.5 Proposed duration of concession and reason for proposed duration.

Proposed duration: in perpetuity.

The farm management easement concession is essential to the running of the farming operation and the period of the concession will allow surety for the ongoing operation of the farm.

2.6 Relevant information:

Mt Cook Station has entered into this review voluntarily. The proposed easement concession is essential for ongoing management of the farm and there will be minimal effect on the area which the easement is to cross.

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

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**1 Details of designation**

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- 1.1 Under this Proposal the land shown edged in green on the Plan, being 850.5500 hectares (approximately) is designated as land to be disposed of by freehold disposal to the Holder subject to:
- (a) Part IVA of the Conservation Act 1987;
  - (b) Section 11 of the Crown Minerals Act 1991;
  - (c) the easement marked as an orange line and labelled a-b on the Plan and substantially as set out in Appendix 5; and
  - (d) The Conservation Covenant over approximately 142 hectares shown on the Plan shaded in yellow and marked 'CC1' and substantially as set out in Appendix 6.
  - (e) The Conservation Covenant over approximately 708.55 hectares shown on the Plan shaded in yellow and marked 'CC2' and substantially as set out in Appendix 6
  - (f) the terms and conditions set out in Schedule 4.

**Schedule Four: Provisions relating to the land shown shaded in yellow and labelled "CC1" on the Plan**

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**1 Details of designation**

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- 1.1 Under this Proposal the land shown shaded in yellow and labelled "CC1" on the Plan, being 142 hectares (approximately):
- (a) is part of the Freehold Land;
  - (b) will be surveyed, as a discrete part of the Freehold Land, in accordance with clause 14 of this Proposal; and
  - (c) is subject to the following provisions of this Schedule Four (in which it is referred to as "CC1").

**2 No Subdivision**

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- 2.1 The Holder shall at no time cause or allow:
- (a) any subdivision of CC1; or
  - (b) any amalgamation of the whole or any part of CC1 with any other land;
- to the intent that CC1 shall always be a discrete parcel of land for title purposes.

**3 Right of First Refusal to Purchase – Sale of CC1 by itself**

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- 3.1 If at any time the Holder wishes to sell CC1 by itself, the Holder shall deliver written notice ("the Holder's Notice") to the Commissioner specifying the terms and conditions upon which the Holder is prepared to sell CC1.
- 3.2 The Commissioner shall have 20 working days from receipt of the Holder's Notice to advise by written notice ("the Commissioner's Notice") to the Holder whether the Commissioner wishes to purchase CC1 on the terms and conditions specified in the Holder's Notice.
- 3.3 If the Commissioner's Notice states that the Commissioner does wish to purchase CC1 on the terms and conditions specified in the Holder's Notice, then from receipt by the Holder of the Commissioner's Notice a binding agreement shall exist for the sale and purchase of CC1.
- 3.4 If:
- (a) the Commissioner does not respond to the Holder's Notice within the period specified in clause 3.2; or
  - (b) the Commissioner's Notice states that the Commissioner does not wish to purchase CC1 on the terms and conditions specified in the Holder's Notice;

then at any time within 12 months after the date of the Holder's Notice the Holder may sell CC1 by itself to any other party on terms and conditions no more favourable to that party than those specified in clause 3.1, subject however to clause 6.1. If within such period the Holder wishes to offer more favourable terms and conditions of sale, the Holder shall re-offer CC1 by



itself to the Commissioner under clause 3.1, but for the purposes of clause 3.2 the Commissioner shall have only 10 working days in which to respond. Any sale of CC1 by itself after such 12 month period will be subject to clauses 3.1 to 3.4.

#### **4 Right of First Refusal to Purchase – Sale of CC1 and Other Land**

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- 4.1 If at any time the Holder wishes to sell CC1 in conjunction with other land (together referred to in this Schedule Four as "the Sale Land"), the Holder shall deliver written notice ("the Holder's Notice") to the Commissioner specifying the terms and conditions upon which the Holder is prepared to sell the Sale Land.
- 4.2 The Commissioner shall have 20 working days from receipt of the Holder's Notice to advise by written notice ("the Commissioner's Notice") to the Holder whether the Commissioner wishes to purchase that part of the Sale Land comprising CC1, at a price and with a settlement date to be determined in accordance with clause 5, but otherwise on the terms and conditions specified in the Holder's Notice.
- 4.3 If the Commissioner's Notice states that the Commissioner does wish to purchase CC1 on the terms and conditions referred to in clause 4.2, then from receipt by the Holder of the Commissioner's Notice a binding agreement shall exist for the sale and purchase of CC1.
- 4.4 If:
- (a) the Commissioner does not respond to the Holder's Notice within the period specified in clause 4.2; or
  - (b) the Commissioner's Notice states that the Commissioner does not wish to purchase CC1 on the terms and conditions referred to in clause 4.2;

then at any time within 12 months after the date of the Holder's Notice the Holder may sell the Sale Land to any other party on terms and conditions no more favourable to that party than those specified in clause 4.1, subject however to clause 6.1. If within such period the Holder wishes to offer more favourable terms and conditions of sale the Holder shall re-offer the Sale Land to the Commissioner under clause 4.1, but for the purposes of clause 4.2 the Commissioner shall have only 10 working days in which to respond. Any sale of CC1 in conjunction with other land after such 12 month period will be subject to clauses 4.1 to 4.4.

#### **5 Valuation of CC1 Land and Settlement Date**

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- 5.1 Where a Commissioner's Notice is given pursuant to clause 4.2, the price to be paid by the Commissioner for CC1 shall be the current market value of CC1 as at the date of receipt by the Holder of the Commissioner's Notice ("the Price"). The Price shall be agreed between the parties or, in the absence of such agreement, determined as follows:
- (a) Each party shall appoint a valuer and give written notice of the appointment to the other party within 10 working days of receipt by the Holder of the Commissioner's Notice.
  - (b) If only one party complies with clause 5.1(a), that party's valuer shall determine the Price. Such determination shall be binding on both parties.
  - (c) Before commencing their determination, the valuers shall appoint a third valuer to act as an umpire ("the Umpire").

- (d) The valuers appointed by the parties shall determine the Price, but if they fail to agree on the Price within 25 working days of receipt by the Holder of the Commissioner's Notice, they shall instruct the Umpire to determine the Price within 45 working days of receipt by the Holder of the Commissioner's Notice.
  - (e) Each party may make written or oral representations to the Umpire, subject to such reasonable time or other limits as the Umpire may prescribe.
  - (f) When the Umpire has determined the Price, the Umpire shall give written notice to the parties of the Price. Such determination shall be binding on both parties.
- 5.2 For the purposes of clause 5.1, the Holder shall promptly supply to the valuers and the Umpire details of improvements and farming activities on CC1, and such other relevant information that may be reasonably requested.
- 5.3 The Umpire's costs shall be paid for by the Commissioner. Each party shall otherwise pay its own costs and those of its own valuer.
- 5.4 The settlement date for the sale of CC1 shall be the 10<sup>th</sup> working day following the determination of the Price pursuant to clause 5.1.

## **6 Both Rights of First Refusal**

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- 6.1 The terms and conditions of a sale of CC1 to any other party in terms of clauses 3.4 or 4.4 may, notwithstanding those clauses, differ from those terms and conditions specified in the relevant Holder's Notice to the extent that the differences are reasonable or necessary having regard to the fact that the sale will be to a different purchaser. These differences may include, for example, differences in relation to:
- (a) the details of the tenancy or tenancies to which any sale is subject;
  - (b) the GST aspects of the sale; and
  - (c) liability for any agent's commission.
- 6.2 If the Commissioner purchases CC1:
- (a) any easements in favour of the Crown shall, to the extent that they relate to CC1, be surrendered; and
  - (b) any easements in favour of the Crown shall, to the extent that they relate to other land, remain.