

# **Crown Pastoral Land Tenure Review**

Lease name: Pisgah Downs

Lease number: PO 248

## **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:

**Parties**

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**Holder:** Pisgah Downs Limited

C/-Jack McKenzie  
Pisgah Downs  
12C RD  
OAMARU

**Commissioner of Crown Lands:**

C/- OPUS International Consultants Limited  
197 Rattray Street  
Private Bag 1913  
Dunedin  
(Attention: Simon de Lautour)

**The Land**

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**Lease:** Po 248 PISGAH DOWNS

**Legal Description:** Part Section 1, Block I, Part Section 2, Block II, Section I and Section 3, Block III, Section 1, Block VII, Part Section 1 and Section 2, Block VIII, Kakanui Survey District, and Section 2, Block XIV, Kyeburn Survey District.

**Area:** 4,279.9554 hectares

**Certificate of Title/Unique Identifier:** OT386/139

**Summary of Designations**

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Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown marked 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 marked 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:
- (a) is without prejudice to 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 party 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.

**17 Acceptance**

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- 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.

**18 Solicitors Certificate**

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- 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.

**19 Default**

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- 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.

**20 Goods and Services Tax**

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- 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**

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- 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 Discretionary Actions**

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- 25.1 If the Holder has been granted a consent by the Commissioner to do an activity on the land under s18 of the Act, and the area over which the consent is exercised is designated in the proposal as Crown Land then the Holder agrees to act in good faith whilst exercising the terms of consent and not damage or destroy the Crown Land.

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**26 General**

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- 26.1 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.
- 26.2 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.
- 26.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 26.4 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.
- 26.5 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.

- 26.6 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 26.7 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).

## 27 Interpretation

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### 27.1 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 the State Sector Act 1988;

**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 the holder shown on the front page of this Proposal (being the lessee under the Lease);

**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 under the State Sector Act 1988;

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

**Surveyor-General** means the Surveyor-General appointed under the State Sector Act 1988;

**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;

**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.

## 27.2 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 marked in pink and shown as CA1 and CA2 on the Plan, being 1833 hectares (approximately) is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

**2 Schedule One Improvements**

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Not applicable

Schedule Two: Provisions relating to the Schedule Two Land

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1 Details of designation

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Not applicable

[2 Information Concerning Proposed Concession ]

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2.1 Not applicable

**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 marked in green on the Plan, being 2447 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) An easement for:
    - (i) access for management purpose, on foot, or accompanied by horses, or by motor vehicles, with or without machinery or implements of any kind along the lines shown orange and marked "a-b-c", "b-d", "j-k" on the Plan; and
    - (ii) public access on foot, or accompanied by horses, or by non-motorised vehicle powered by person or persons along the line shown orange and marked "b-d", "j-k" on the Plan;substantially as set out in Appendix 4; and
  - (d) an easement for:
    - (i) access for management purpose, on foot, or accompanied by horses, or by motor vehicles, with or without machinery or implements of any kind along the lines shown orange and marked "e-f-g-h" and "g-i" on the Plan; and
    - (ii) public access on foot, or accompanied by horses, or by non-motorised vehicle powered by person or persons, or by motor vehicles along the line shown orange and marked "e-f" on the Plan;
    - (iii) public access on foot, or accompanied by horses, or by non-motorised vehicle powered by person or persons along the line shown orange and marked "f-g-h" on the Plan;substantially as set out in Appendix 5; and
  - (e) a conservation covenant being 120 hectares (approximately) shown in yellow and marked as CC on the Plan substantially as set out in Appendix 6.

**Schedule Four: Conditions**

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- 1 The Commissioner is under no obligation, and may decide, in its sole discretion, not to proceed further with the Tenure Review unless and until:
  - (a) the Director General of Conservation has completed all actions required under Part IVA of the Conservation Act 1987;



**Appendix 1: Consents – Example of Mortgagee Consent**

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[ ] as Mortgagee under Mortgage [ ] ("the Mortgage"), hereby:

- (a) consents to acceptance of the Proposal dated [ ] ("the Proposal") by [the Holder] ("the Holder") pursuant to the Crown Pastoral Land Act 1998 and agrees and consents to the registration of the documents affecting the Freehold Land referenced in the Proposal prior to the registration of any new mortgage to be granted in its favour over the Freehold Land ; and
- (b) agrees to sign and execute all deeds, agreements, schedules and other documents and do all acts and things as may be reasonably required by the Holder or the Commissioner to register a discharge of the Mortgage and any new mortgage over the Freehold Land.

Dated:

SIGNED by [ ] ) \_\_\_\_\_  
in the presence of: [ ] ) \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Witness Name:  
Occupation:  
Address:

**Appendix 1: Consents (continued) - Example of "Other" Consent**

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[ ], being the party entitled to the benefit of [ ] registered against Lease [ ], hereby consents to the acceptance of the Proposal dated [ ] by [the Holder] pursuant to the Crown Pastoral Land Act 1998.

Dated:

SIGNED for and on behalf of )  
[ ] )  
in the presence of: )

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Witness Signature:

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Witness Name:  
Occupation:  
Address:

Appendix 2: Example of Solicitors Certificate

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Certifications

I [ ] hereby certify as follows:

1. Pisgah Downs Limited ("the Holder") is a duly incorporated company under the Companies Act 1993. The Holder's entry into and performance of its obligations under the Proposal dated [ ] ("the Proposal") have been duly authorised by the directors and, if required, by the shareholders of the Holder. The Holder has executed the Proposal in accordance with its constitution.] **OR**

The entry into the Proposal dated [ ] ("the Proposal") by [insert name of Holder] ("the Holder") and performance of the Holder's obligations under the Proposal have been duly authorised by the trustees of the [insert name of trust] in accordance with its trust deed **OR**

[insert name of Holder] ("the Holder") has delegated responsibility for signing the Proposal on its behalf to an attorney in accordance with its constitution. The attorney of the Holder has properly executed the Proposal in accordance with this power of attorney and in accordance with the Holder's constitution and a certificate of non-revocation is enclosed.]

2. The consent of each person that has an interest (registered or unregistered) in the Land (as that term is defined in the Proposal), to the Holder's acceptance of the Proposal has been obtained and included in the copy of the Proposal, signed by the Holder, that has been provided to the Commissioner.
3. [No consent, licence, approval or authorisation by any court, regulatory authority or governmental agency is required to enable the Holder to accept the Proposal, perform the Holder's obligations under the Proposal and to acquire the freehold interest in the Land (as defined in the Proposal).] **OR**

[All necessary consents, licences, approvals and authorisations required to enable the Holder to accept the Proposal, perform its obligations under it and to acquire the freehold interest in the Land (as defined in the Proposal) have been obtained. Evidence of the consents, licences, approvals and authorisations are attached to this letter.]

Yours faithfully  
[signed by principal of law firm]

### Appendix 3: Indicative Fencing and Construction Requirements

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#### Fenceline

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##### Length and location:

New fences are required along the lines shown on the designations plan:

- |                           |  |
|---------------------------|--|
| A-B (2550m approximately) | Gate across track near A<br>Gate beside existing fence at B<br>Two Gates between A and B |
| C-D (250m approximately)  | Gate at C  |
| E-F (2250m approximately) | Gate beside Ben Ledi boundary at E<br>Gate at F  |

H-I (30m approximately of wing fence beside car park) Gate at I across track

##### **Fence upgrade is required along the line:**

F-G (800m approximately)

Gates: total of eight 4.3 meter steel gates

#### Historic Water Races

- Pisgah Downs Pastoral Lease contains a network of historic water races protected under the Historic Places Act 1993.
- The LINZ implementation contractor must notify the Historic Places Trust (HPT) of the proposal to construct new fencing on the lease.
- The fencing contractor must identify any water races which may be impacted on by the construction of new fencing and must notify the LINZ implementation contractor of the location and impact of any proposed work.
- Where any fencing construction is likely to disturb, modify, damage or effect the profile or formation of a water race the contractor must not undertake any work until the LINZ implementation contractor obtains consent from the HPT. The contractor must comply with any conditions imposed by HPT's consent.

#### Seven wire fences with T Irons or posts

- 2.4 metre x 125mm treated timber posts or T irons to be used at 20m gaps or on appropriate high and low points.
- Warratahs, back to back, may be used instead of posts on high spots and on corners with tiebacks on tussock country.
- All strainers, to be driven or dug in and rammed and footed with acceptable footing material. No. 8 wire to be used on foots. All dips and hollows to be tied down.
- Netting to be hung on creek crossings and left to swing.
- All strainers and angles to be mortised stayed and blocked. Stays to be one-third of the way up posts.
- Tie-backs are permitted on both sides of the fence.
- Post staples to be 50 x 4mm galvanized slice pointed barb and be driven well in but allow the wire to run through.

- Strainers and angle posts to be dug in to such a depth that 117cm (46 inches) remains out of the ground.
- Under no circumstances are any strainers, posts or stays to be shortened either prior to or subsequent to their placement in the ground.
- Lightning droppers may be used where appropriate.
- No mechanical earth works are permitted, some minor line clearing of vegetation by hand and benching by hand is permitted when required.

**Construction**

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No construction is required other than the fencing outlined above.

Appendix 4: Form of Easement to be Created a-b-c, b-d, j-k

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**TRANSFER GRANT OF  
EASEMENT IN GROSS**

1. Public Access
2. Access for Management Purposes

**Land Transfer Act 1952**

**This page does not form part of the Transfer.**

RELEASED UNDER THE OFFICIAL INFORMATION ACT

TRANSFER

Land Transfer Act 1952

If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.

Land Registration District

OTAGO

Certificate of Title No.	All or Part?	Area and legal description – <i>Insert only when part or Stratum, CT</i>
	ALL	

Transferor Surnames must be underlined

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

Transferee Surnames must be underlined

HER MAJESTY THE QUEEN, acting by and through the Minister of Conservation

Estate or Interest or Easement to be created: *Insert e.g. Fee simple; Leasehold in Lease No. ....; Right of way etc.*

Public Access and Management Purposes Easement in Gross under section 7(2) of the Conservation Act 1987 (continued on pages 2, 3 and 4 of Annexure Schedule).

The various considerations set out in a substantive proposal accepted under the Crown Pastoral Land Act 1998 on the            day of

Operative Clause

For the above consideration (receipt of which is acknowledged) the TRANSFEROR TRANSFERS to the TRANSFEE all the transferor's estate and interest in the land in the above Certificate(s) of Title and if an easement is described above such is granted or created.

Dated this            day of

Attestation

Signed by acting under written delegation from the Commissioner of Crown Lands	Signed in my presence by the Transferor	(continued on page 4 of Annexure Schedule)
	Signature of Witness	
Signature, or common seal of Transferor	<b>Witness to complete in BLOCK letters</b> (unless typewritten or legibly stamped)	
	Witness name	
	Occupation	
	Address	

Certified correct for the purposes of the Land Transfer Act 1952 Certified that Part IIA of the Land Settlement Promotion and Land Acquisition Act 1952 does not apply

[Signature area]



Approved by Register-General of Land under No. 1995/5003

**Annexure Schedule**

Insert below

“Mortgage”, “Transfer”, “Lease”, etc

Dated

Page

of

Pages

**Definitions**

1. In this transfer unless the context otherwise requires:

1.1 “Easement Area” means that part of the Servient Land (*marked a-b-c, b-d, j-k on the designation plan*) being 10 metres wide which is marked “[ ]” on S.O. Plan No [ ].

1.2 “Management Purposes” means:

- the protection of a significant inherent value of the land managed by the Transferee (not being a member of the public), in the vicinity of the easement area.
- The management of the land administered by the Transferee (not being a member of the public) in a way that is ecologically sustainable.

1.3 “Servient Land” means the land owned by the Transferor and described on page 1.

1.4 “Transferee” means Her Majesty the Queen acting by and through the Minister of Conservation and, for purposes of clause 2.1, includes the Transferee’s tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public; but for the purposes of clause 2.2 means the Transferee’s tenants, agents, contractors, and invitees; and any employee or contractor of the Director-General of Conservation only.

1.5 “Transferor” means the owner of the Servient Land described on page 1 and includes the Transferor’s tenants and invitees.

**Standard Easement Terms**

Access

2. The Transferee has the right:

2.1 In common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.

2.2 To pass and re-pass at any time over and along the Easement on foot, or on or accompanied by horses, or by motor vehicle, with or without machinery and implements of any kind, or with or without guns and dogs, for Management Purposes.

3. The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area, where such event or outcome is caused by or under the control of the Transferor.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.  
OTACO-37213 Easement in Gross Templ.doc  
ODLDM-40635 (was olddm-460635 - Pisgah Downs P248 DOC Management/Public Access easement in gross a-b-c, b-d, j-k October 2006

**RELEASED UNDER THE OFFICIAL INFORMATION ACT**

4. The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the Easement Area and, in particular, avoid using the Easement Area when conditions such as softening during frost thaw render the Easement Area vulnerable to damage.

Exclusion of Schedules

5. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Ninth Schedule of the Property Law Act 1952 are expressly negated.

Term

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

Temporary Suspension

7. The Transferee (not being a member of the Public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary.

Dispute Resolution

- 8.1 If a dispute arises between the Transferor and Transferee (not being a member of the Public) concerning the rights, management and operation created by this transfer the parties are to enter into negotiations in good faith to resolve it.
- 8.2 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.
- 8.3 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.
- 8.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

- 9.1 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;
  - (c) be sent by facsimile to the receiving party.
- 9.2 If clause 9.1(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.
- 9.3 If clause 9.1(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.

**Special Easement Terms**

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

OTACO-37213 Easement in Gross Templ.doc

OLDDM-460635 (was olddm-460635 - Pisgah Downs P248 DOC Management/Public Access easement in gross a-b-c, b-d, j-k) October 2006

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

11 Clause 2.1 is deleted and replaced with the following clause:

In common with the Transferor to pass and re-pass at any time over and along the Easement Area marked j-k and b-d on the designation plan, on foot, on or accompanied by horses, or by non-motorised vehicle powered by a person or persons, with or without guns and dogs provided they have a hunting permit for adjoining land managed by the Minister.

12 The Transferee (not being a member of the public) has the right:

12.1 To mark the Easement Area as appropriate.

12.2 To erect and maintain stiles.

12.3 To erect and maintain signs informing the public of:

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

b) their rights and responsibilities in relation to the Easement Area.

12.4 To use whatever reasonable means of access the Minister thinks fit over the Easement Area to carryout the works in clause 12.1 to 12.3.

13 The section of the Easement Area marked a-b-c on the designation is permanently closed to members of the public.

14 That the Transferee will pay a proportion of the cost of maintenance of the Easement Area marked a-b-c on the designation plan which the parties determine is attributable to use of the Easement Area by the Transferee.

15 The section of the Easement Area marked b-d and j-k on the designation plan shall be closed to members of the public, for farming purposes only, between 1<sup>st</sup> September and 15 November (these dates are inclusive). These dates shall be reviewable every 10 years.

16 The Transferor will provide space for the parking of up to 6 cars at point j as marked on the designation plan.

17 The Transferee (not being a member of the public) is to provide the Transferor with prior notice detailing the identity, timing and management purpose of any proposed use of the section of the Easement Area marked a-b-c by invitees of the Transferee.

18 The Transferee accepts that if there is a persistent problem with members of the public trespassing off the easement area, camping, taking guns or dogs, depositing toilet waste or rubbish, she, acting through the Minister of Conservation, will in consultation with the Transferor develop a strategy to eliminate or ameliorate the problem. Possible remedies include erection of additional signage, strategic placement of fencing, erection of gates and stiles and publicity (including brochures and visitor centre information). The Transferee will meet capital costs associated with the strategy.

**Continuation of "Attestation"**

Signed for and on behalf of )  
Her Majesty the Queen by )  
Jeffrey Edward Connell )  
under a written delegation in the )  
presence of: )

OTACO-37213 Easement in Gross Templ.doc  
OLDDM-460635 (was olddm-460635 - Pisgah Downs P248 DOC Management/Public Access easement in gross a-b-c, b-d, j-  
kOctober 2006

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\_\_\_\_\_  
Witness (Signature)

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

*Footnote: In substitution of the SO Plan (which has yet to be prepared), the proposed easement described in clause 1 is marked on the Plan.*

OTACO-37213 Easement in Gross Templ.doc  
OLDDM-460635 (was olddm-460635 - Pisgah Downs P248 DOC Management/Public Access easement in gross a-b-c, b-d, j-  
kOctober 2006  
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Approved by Registrar-General  
of Land under No. 1995/1004

## TRANSFER GRANT OF EASEMENT IN GROSS

1. Public Access
2. Vehicles for Management Purposes

Land Transfer Act 1952

Law Firm Acting
Conservancy Solicitor Department of Conservation Dunedin

Auckland District Law Society  
REF:4135

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