

# Internal memo

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Subject	Balmoral Tekapo – Deed of Easement
To	James Holborow, Manager Pastoral As delegate of the Commissioner of Crown Lands
CC	Karyn Lee, Senior Portfolio Manager
From	Mike Sherman, Portfolio Manager
Date	22/08/2023
Objective reference	A5612711

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## Purpose

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The purpose of this memo is to:

- a. Inform the Commissioner of Crown Lands (CCL) of an application for an easement for the generation of electricity purposes (solar) pursuant to Section 60(1) Land Act 1948, over Balmoral Tekapo pastoral lease; and
- b. Recommend consent be granted.

## References

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- Section 60(1) Land Act 1948 (LA)
- Section 18(3)(a) Crown Pastoral Land Act 1998 (CPLA)
- LINZS45002 – Standard for purchase, alienation and administration of Crown Land

Note: This application received in November 2021 is processed in accordance with Schedule 1AA, clause 4 of the Crown Pastoral Land Act 1998, which requires the Commissioner to deal with the application as if the amendment Act had not been enacted.

## Attachments

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These documents may be released at a later date.

- G/. Site Photographs, Layout Plans and Infrastructure
- H/. Specific Detail of Solar Array for Phase A and B
- I/. Assessment of Landscape Effects (ALE) – Boffa Miskell Report from Applicant
- J/. Ecological Impact Assessment (EIA) – Boffa Miskell Report from Applicant

## Context

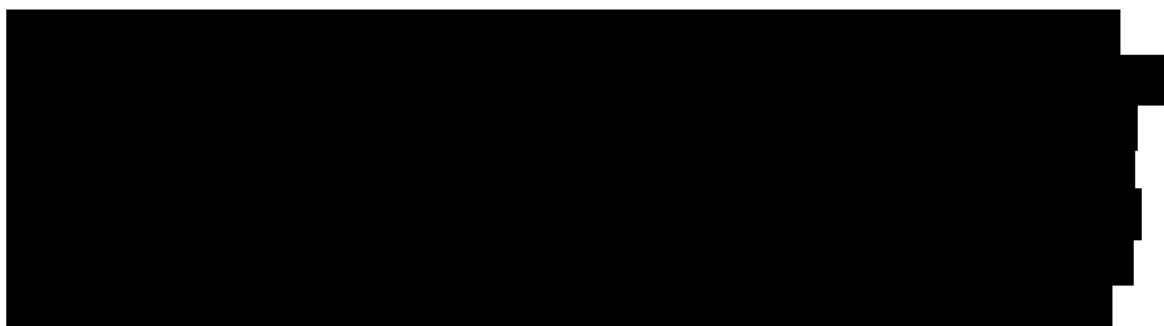
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### Background

Balmoral Tekapo is a medium sized pastoral lease of 6,486 hectares (ha) located 10 km south-west of Tekapo within the Mackenzie Basin. The lease is run in conjunction with 2,700 ha of adjoining freehold land and the nearby Mt Hay pastoral lease. The lessee is Andrew and Karen Simpson, who are also the applicant of this easement application request. The applicant has a diverse portfolio of investments within the region including high country farming, tourism and land development. We have been advised that these are the initial applicants, but ultimately the easement may be transferred to a joint venture in the future as set out in the deed which may also include a different family entity.

### Application

The applicant in November 2021 advised Toitū Te Whenua LINZ (LINZ) that they had been actively working with a solar array specialist company to find a suitable location for a proposed array on their freehold land. The site locations identified on their freehold land however were not suitable being more open landscapes, prone to strong prevailing winds or too far away from suitable transmission line infrastructure. Further investigations by the applicants revealed a 113 ha area of the Balmoral Tekapo pastoral lease to be the most suitable location.



In November 2021 LINZ received the easement application outlining a proposed two Phase 113 ha solar array facility on the pastoral lease.

### Location

The location of the proposed easement facility is adjacent to Braemar Road on the northern boundary of the Balmoral pastoral lease and is approximately 113 ha in size (Attachment G). The easement site has been carefully selected due to the flat contour and already modified state of the land. An existing 33kV electricity line is also directly adjacent to the easement area to the north where the solar array will connect into.

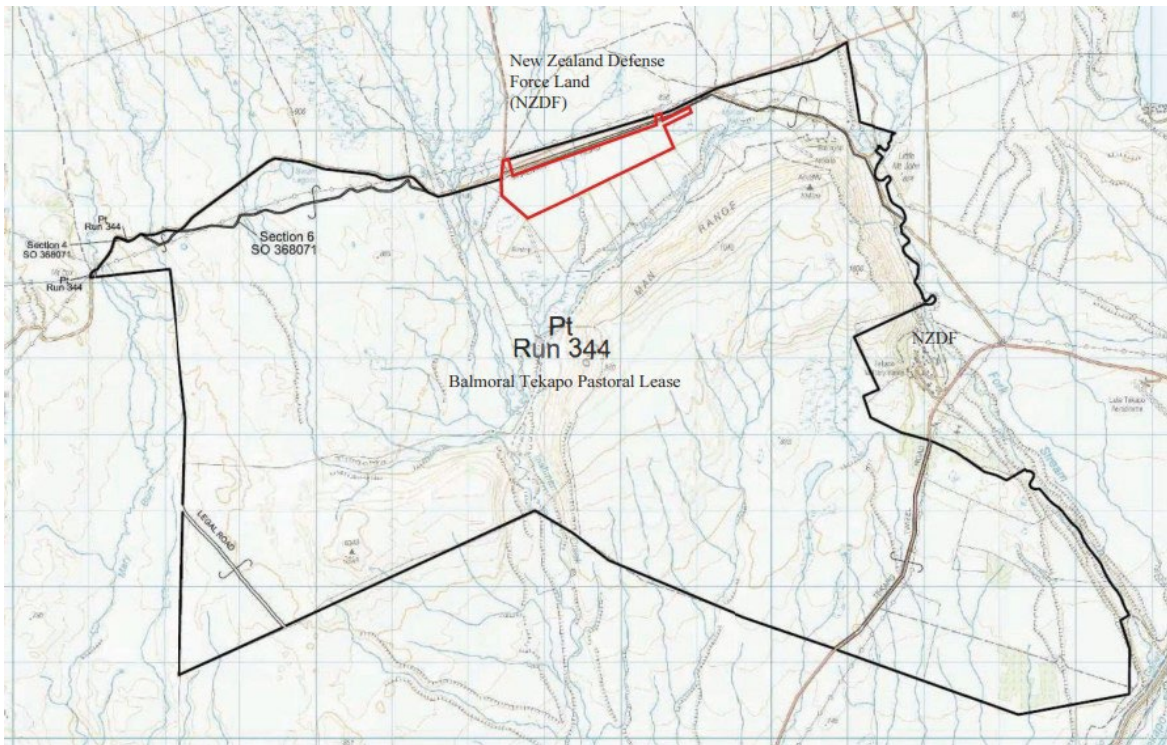


Fig 1.(a) Easement Area Location Plan (Red) & Balmoral Tekapo Pastoral Lease (Black)

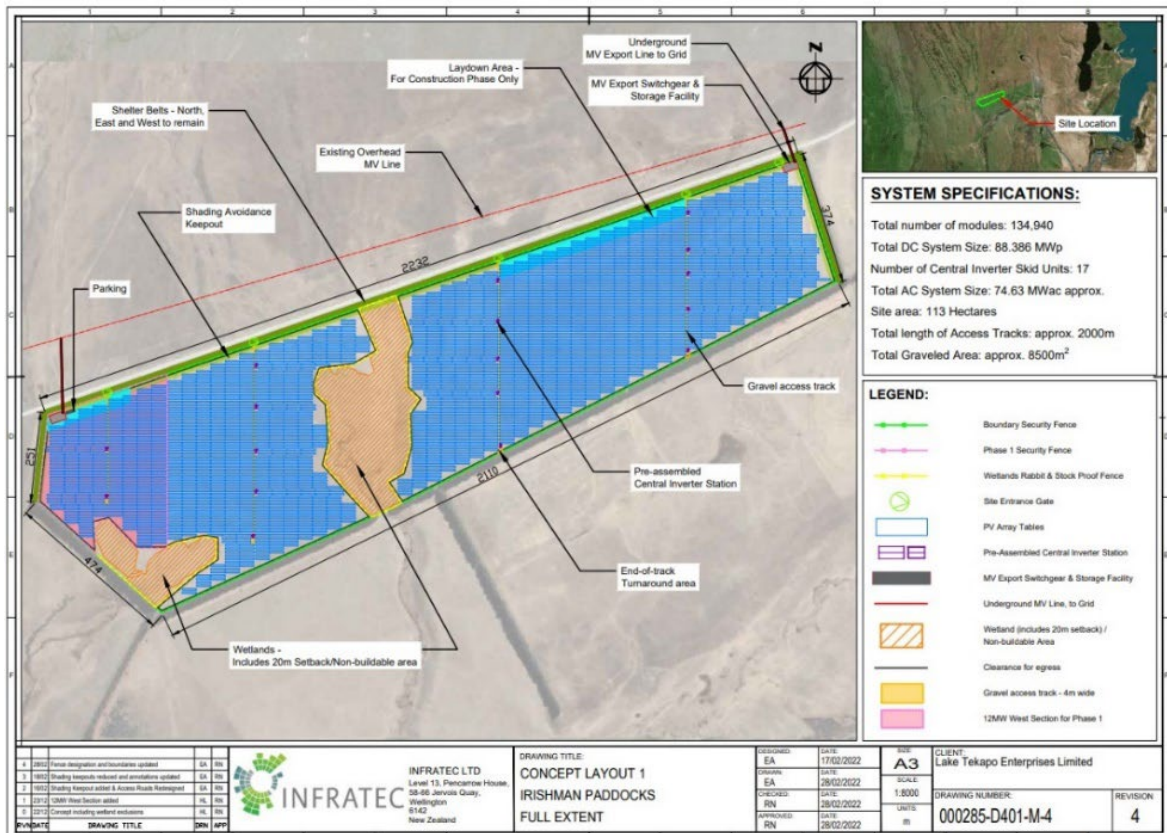


Fig 1.(b) Easement Area - Concept Completion Plan (refer Attachment G. p.2)

Braemar Road is classified as a low use side road and the easement area is surrounded by semi-mature conifer shelter belt trees. This results in the proposed array not being easily seen from the public road or other public vantage points. The vegetation cover within the site is predominantly oversown and top-dressed exotic and native fescue tussock grassland, interspersed with native flora and mouse-ear hawkweed. There are two identified wetlands located within the site identified in the applicant's specialist reports. These are proposed to be excluded from the solar array development and grazing. The proposed solar array site is within an area designated Outstanding Natural Landscape (ONL) under the Mackenzie District Plan. The whole Mackenzie Basin is assessed as ONL in the District Plan aside from the townships of Tekapo and Twizel. The Mackenzie district is already modified by long-standing hydroelectric power generation infrastructure including dams, canals and raised lakes so the generation of green energy in the Mackenzie District is not new. New Zealand Defence land (Tekapo Military Training Area) is located directly north of the pastoral lease and proposed easement area as shown in Fig 1.(a).

### Infrastructure

The proposed solar array consists of east-west rows of solar panels facing north at 9.5m wide intervals that are raised off the ground to allow ongoing sheep grazing and access beneath (refer to Fig 1.(b) array concept plan). The figure 2 below depicts the proposed array elevation layout that consists of multiple rows of 2.4m x 1.3m solar photovoltaic (PV) panels mounted on steel framing at heights of 0.5m to 3.5m above ground level. These will be supported with cabling on the frames and buried leading to 17 inverter/transformer facilities, and subsequently two substations before feeding via buried cable to the distribution network. Site disturbance will involve piles driven into the ground at 4m intervals along each row, 17 inverter stations on concrete pads each 2.5m x 8m, 2 substations each 5m x 12m, cable trenching, plus approximately 1600m of gravelled access track and parking.

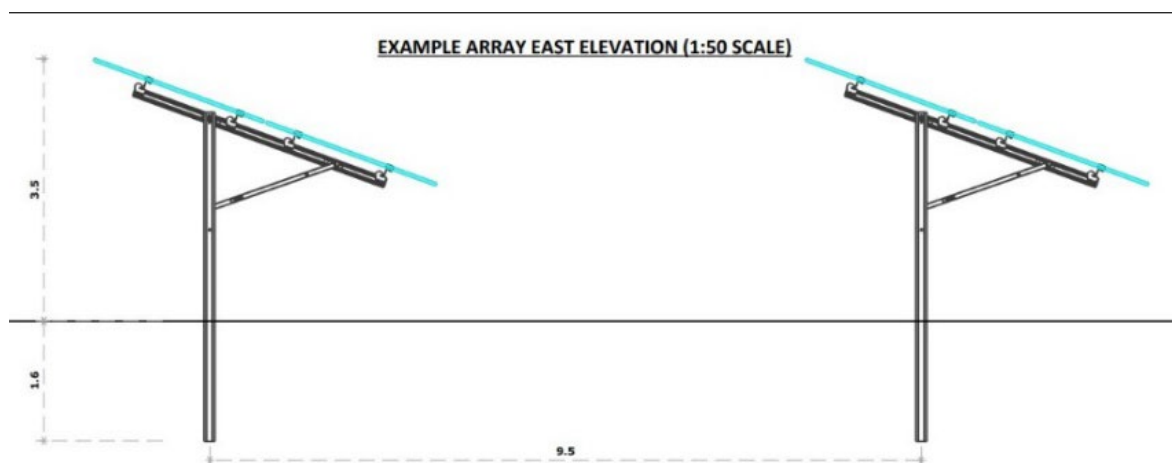


Fig 2. Proposed Elevation Layout (sheep grazing to remain in between arrays)

Phase A comprising approximately 10 ha including approximately 20,000 panels, two inverter stations, one substation and some tracking will be installed once the required consents are obtained, with the balance installed progressively over time. Phase A alone is expected to generate around 18,000MWh of electricity, or put in context, sufficient generation to meet the electricity needs of up to 5,000 households. Phase B is proposed later when grid and supply upgrades are completed or when required in the future.

### Site Inspection

The easement area was inspected on 9 February 2022 by [REDACTED] the service provider, [REDACTED] (Department of Conservation (DOC)), [REDACTED] (DOC), Mike Sherman (LINZ), Andy Perry (General Manager for Applicant), the applicant who is also the lessee, Andrew Simpson and his daughter Amanda.

The easement area, including specific areas identified by DOC were all able to be viewed on the day. The undersigned and LINZ colleague Rachel Peach also reinspected part of the proposed easement area in March 2023 to further assess the site from Braemar Road in terms of the public visibility and landscape values.

### Easement Area Development & History

As noted under the previous location section of this memo, the proposed easement area is surrounded by semi-mature conifer shelter belts and has a long history of consented pastoral improvement modification. This includes the oversowing of exotic pasture species by traditional and direct drilling methods and top-dressing with fertiliser. The vegetation comprises predominately non-native exotic pasture species, the pest plant mouse-ear hawkweed and native fescue tussock grassland. The lessee currently uses the sheltered paddocks for safe rotational cattle and sheep grazing all year round.



Fig 3. Proposed Easement Area (typical ground cover and shelter belts in the distance)

## Summary of the Application

The application is for a deed of easement pursuant to section 60 Land Act 1948, for the purposes of generating electricity from sunlight, storing electricity, and conveying electricity to the local electricity network. It also enables the installation, operation, maintaining and upgrading of the infrastructure overtime. This application is processed under the old CPLA rules (pre-November 17, 2022). An easement is the mechanism confirmed appropriate for this type of activity. The applicant is currently also the lessee, and as lessee has waived their right to compensation under the Public Works Act.

## Additional Information Provided by the Applicant

The applicant has also provided LINZ with additional draft and final third party specialist information including solar array infrastructure and site development plans, farm management plan, landscape, and ecological assessment reports. The relevant additional information received is listed below:

- ALE Report. Associate Principal Landscape Architect, Emma McRae, Boffa Miskell (Attachment I).
- EIA Report. Dr Jaz Morris, Boffa Miskell (Attachment J).
- Balmoral Tekapo Solar Array Development Proposal Information. Infratec Consultants Ltd.
- Balmoral Tekapo pastoral lease Farm Management Plan (2020-2025).
- Aoraki Environmental Consultancy (Te Runaga O Arowhenua Society Inc). Letter of support for the solar array proposal.

## Further Discussion – Specialist Environmental Advice Provided by the Applicant

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### Assessment of Environmental Effects

The applicant contracted Boffa Miskell to undertake ALE (Attachment I) and EIA (Attachment J) reports and these have been provided to our service provider and LINZ. The reports have been specifically undertaken by the applicant to inform their resource consent applications. However, these reports and other information provided by the applicant have been reviewed by the undersigned for a wider environmental context specific to this site. A summary of the findings and points noted from the ALE and EIA reports are set out below:

### ALE Report Summary

- The site adjoins Braemar Road along its northern boundary, so has good access for construction and maintenance vehicles.
- A 33kV line (part of the local line network) runs down the opposite site of Braemar Road, meaning the site has excellent proximity to a grid connection point.

- The site is relatively flat, meaning that earthworks are likely to be limited in scale and extent.
- The site is bordered by a mature shelterbelt (15-20m in height) which may limit views of the site from Braemar Road, and its position behind Old Man Range means that it is unlikely to be visible from public viewing points such as Mt John and State Highway 8 (SH8).
- Due to the historic use of the site and activities on it (cultivation, application of fertiliser, sowing of seed and planting of a shelter belt) there may be a dominance of exotic/pasture species.
- The proposed solar panels and ancillary development have been located within an area of the Mackenzie Basin where human influence, in the form an existing mature pine shelterbelt, and the fertilising of the land to obtain improved pasture, has modified the character of the Mackenzie Basin landscape. The well contained nature of the site limits the potential for adverse effects on the Outstanding Natural Landscape, creating only localised low-level effects.
- In landscape terms, the implementation of the solar farm will represent a localised temporary disruption of an existing modified area. The proposed solar farm layout has been designed to avoid any disruption of the existing wetland areas and maintains the existing pine shelterbelt which forms a part of the existing landscape context. Grazing sheep will continue to manage the pasture underneath the panels and frames. The sheep will be excluded from the wetland areas by fencing. The presence of farm animals will maintain a sense of the existing rural character of the site.
- Any views will remain very localised, being limited to the corridor of Braemar Road which provides transient views and generates only low-level effects with the exception of the location of the access tracks at the site boundary which offer near views into the site. There are no private views towards the proposed development, and the proposal is not visible from the key scenic viewing areas of SH8 and Mt John as noted above.
- The easement area topography is gently undulating with hummocks and low-lying areas where water is retained after heavy rainfall events. There is one central wetland area which divides the site into two parts. This wetland connects to the Old Man Wetland located to the south of the site. A further wetland area is in the southwest corner of the site.
- The pine shelter belt forms a part of the existing modified character of this part of the Mackenzie Basin and it is proposed to maintain this for the life of the solar farm. The proposed solar panels will have a low

profile in the context of the existing landform and the surrounding shelter belt, and any effects on landscape character would be very localised.

### EIA Report Summary

- The EIA Report identifies that the site is actively farmed, and that the original (pre-European) vegetation of the area has been modified for pastoral improvement, but the site is not fully cleared of indigenous vegetation.
- To the immediate north of Braemar Road, the land is used by the New Zealand Defence Force and is designated for this purpose. Land to the south of the site falls away to become lower lying with the Old Man Wetland to the south, before the land rises steeply to the Old Man Range, a distinctive rounded feature in the immediate area.
- To the east of the site, the Braemar Road Rock Glacier is recognised as a site of Geological Significance in the MacKenzie District Plan. Balmoral Station lies to the southeast of this, also accessible from Braemar Road.
- The indigenous plant species remaining at the site comprises of mainly fescue and copper tussock grasslands, a range of other locally common and widespread inter-tussock species and herbfields. These remain prevalent across the main easement area of the site where solar panel arrays and other infrastructure would be constructed.
- Some dry raised areas in the easement area are dominated by exotic mouse-ear hawkweed.
- A limited range of fauna currently uses the main easement area, with a small number of indigenous bird, lizard and invertebrate species noted as likely to occupy the site in low numbers.

The proposed recommendations to reduce potential landscape effects noted in the EIA are:

- The materials and colour of onsite infrastructure will, where practical, be non-reflective and in keeping with the materials and colouring of existing infrastructure or of a colour that will blend with the landscape, as outlined in Appendix K of the Mackenzie District Plan.
- Where practical proposed new single story buildings will be non-reflective and in coloured in a natural range of browns, greens and greys to complement the tones found in the rural surroundings, as outlined in Appendix K of the Mackenzie District Plan.
- Visible foundations shall be avoided where possible, keeping the floor of buildings/structures close to ground level.



- Fencing shall follow the inside of the shelter belt boundary and be in accordance with the recommendations outlined for fencing in Appendix K of the Mackenzie District Plan.
- Areas of soil disturbed by the project would be rehabilitated progressively or immediately post-construction, reducing views of bare soil.

### EIA Report Invertebrate Summary

- The Boffa Miskell Report advises invertebrate species incidentally observed during the survey included the butterflies New Zealand blue (*Zizania* sp.), boulder copper butterfly (*Lycaena bolderanum*), common tussock butterfly (*Argyrophenga antipodum*), various unidentified moths (likely including *Scoparia* sp., *Tingena* sp., and *Eudonia* sp.), mānuka beetle (*Pyronota* sp.), spiders, a harvestman, and grasshoppers (likely *Sigauss australis* and possibly one other species).
- The site is not considered likely to provide important or distinct habitat for terrestrial invertebrates. This is due to the likely relatively high degree of soil compaction due to cattle grazing (compared generally to surrounding more intact habitats), the relatively low cover of indigenous inter-tussock species (including the near absence of creeping pōhuehue, a particularly important host for native butterfly species), and the generally modified nature of the plant communities present.
- No species observed that could be positively identified to species level are classified as nationally Threatened or At Risk. Due to the modified invertebrate habitats in the main paddock area, it is considered unlikely that any such species are present.

The above specialist advice provided by the applicant has been reviewed in conjunction with the advice prepared by the LINZ service provider and the DGC. Further detail of how this advice has been considered is provided in the Assessment Recommendations and Mitigations section of this memo.

### LINZ Operational Processes

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#### Interagency Protocol

#### Mackenzie Interagency Group

The Mackenzie Interagency Group were advised of this application request initially in late 2021 when a meeting was held as part of our interagency sharing of information protocol

for the Mackenzie Basin. In early 2022, LINZ also sent the group a summary of the application detail and both the Mackenzie District Council (MDC) and Canterbury Regional Council (ECAN) advised that they were aware of the solar array proposal and had received the applicant's resource consent and land use consent application requests. We also connected with the MDC's consultant planner, [REDACTED], on three separate occasions in 2022 to share our respective processing steps and information on the solar array application. Senior Portfolio Manager, Karyn Lee, also attends the monthly interagency group meetings to keep up to date on this and other joint applications in the Mackenzie District. The applicant's resource consent applications under other enactments that we are aware of are listed below:

#### MDC Resource Consent (RM220048):

- To construct and operate a solar array on the application site with a maximum generation capacity of approximately 88MW to be undertaken in two phases. The proposal will include both temporary and permanent buildings, fencing, earthworks, formation of access, internal tracks and hardstand, the laying of underground cables, storage of hazardous substances and vegetation clearance.

#### ECAN Resource Consent:

- CRC224567 – to undertake a total volume of 13,074m<sup>3</sup> of earthworks over a total area of 27,372m<sup>2</sup> (2.74 ha or 2.4% of the application site) associated with the construction of a solar array.
- CRC230898 – to discharge operational stormwater from panels, buildings and facilities forming a solar array to ground using swales or similar features. A consent duration of 35 years is sought.

At the time of writing this memo, the MDC and ECAN consent decisions are still underway. The CCL's decision-making is separate to decisions made under any other enactments. However, if the easement is granted by the CCL, it does not authorise the activity to be undertaken without the required permissions under any other enactment. LINZ includes a clause in all Notices of Decisions issued under the CPLA and LA to advise consent applicants of this requirement. LINZ will highlight this requirement when the decision is notified to the applicant too if the easement is approved.

#### **LINZ Iwi Discussion**

Te Rūnanga o Ngāi Tahu were advised of the proposed easement application on the 18 May 2022 and to date a response has not been received. Te Rūnanga o Arowhenua hold mana whenua over the easement area location and therefore the applicant initially

consulted with Te Rūnanga o Arowhenua and Te Rūnanga o Waihao on the proposed solar array. The applicant was advised that Aoraki Environmental Consultancy Limited (AECL) would be representing both rūnanga on the solar array proposal. AECL attended the Boffa Miskell botanical survey and initial lizard survey and a joint hui was held on the 26 April 2022 to discuss any recommendations or concerns AECL had. This developed into a working protocol agreement with AECL and the applicant if successful in obtaining all of the relevant consents and approvals required to undertake the solar array.

The protocol agreement for information context purposes is outlined below:

- *The Consent Holder shall undertake regular (6 monthly) weed surveillance and control (particularly for Russell lupin, broom and wilding conifer) across the Site, commencing 6 months after construction works start and finishing 24 months following the completion of each stage of construction works.*
- *Within 5 years of constructing the central wetlands fencing and southwest wetlands fencing, the Consent Holder shall engage a suitably qualified expert with over 5 years' experience to conduct botanical surveys in order to provide advice on whether a non-interference approach remains appropriate, or whether targeted wetland plantings and / or additional enhancement steps including weed control are required or would be of benefit to achieve the assumed benefit in wetland condition. A report containing the findings of the survey and any required changes to the management of the wetland area shall be provided to Mackenzie District Council and Te Rūnanga o Arowhenua.*

## Comment

The protocol agreement between the easement consent holder and local rūnanga seeks to ensure that during and after the construction phases, pest weeds particularly are not inadvertently brought onto the site by machinery. In our Notice of Decision, the consent holder must also undertake on-going wilding control within the site. The lessee is also required to ensure the terms of the pastoral lease continue to be met in this area including pest animal and weed control.

## Analysis

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### Formal Consultation

#### Director-General of Conservation (DGC)

LINZ specifically obtains its conservation advice on easement requests from the DGC as part of the consultation process. Consultation with the DGC began on 13 December 2021 and was completed on the 28 February 2022. The DGC advises it is desirable to protect for conservation reasons, a number of inherent values which occur in the easement area

affected by the proposed discretionary action (Attachment E). A description of the inherent values as advised by the DGC is listed below:

Rare and threatened ecosystems

*Glacial moraine:*

- *A threatened habitat that typically hosts festuca tussock dryland ecosystems. The site has been drilled in the past, yet retains some of its natural values. The predominant native cover is festuca tussock (Festuca novae-zealandiae) and blue tussock (Poa colensoi), ground cover is predominantly non-native; clover (Trifolium repens), brown top (Agrostis capillaris) and sweet vernal (Anthoxanthum odoratum) being the dominant species. Wilding pines are also found occasionally throughout the site. However, although rare on the site, numerous native low growing species were present, many of which are threatened.*
- *Two wetland areas have been previously identified on site and are already added as exclusion zones to the solar array operational area by the landowner and contractors Boffa Miskell. These wetlands are located in the south-west and central regions of the application area, with a proposed setback of 20 metres. The perimeters of these areas were surveyed to ensure the proposed setbacks were sufficient in protecting the wetland values and any dryland values that may be nearby. The south-west wetland was mostly degraded with Eleocharis acuta and Rumex flexuosus the only native species found in the area. The central wetlands were more diverse and extensive, Schoenus pauciflorus was dominant, Carex coriacea and Eleocharis acuta were also noted, threatened taxa found here was Aciphylla subflabellata (At Risk – Declining).*

*Threatened plant species on the affected grassland area:*

- *Multiple threatened plant species are found within the easement area (threat category according to de Lange et al. 2017): Aciphylla subflabellata (At Risk – Declining), Leucopogon nanum (At Risk – Declining), Raoulia parkii (At Risk – Declining), Rytidosperma exiguum (At Risk-Declining), Pterostylis tanypoda (At Risk – Declining), Pterostylis tristis (At Risk – Declining), Sonchus novaezealandiae (Threatened – Nationally Vulnerable).*

The DGC also advises:

- *The effects of solar panels and therefore the introduction of shade in tussock lands is largely unknown. Studies in the Mackenzie have been conducted from 2008 – 2015 to show the effects of artificial shade cover and grazing removal on degraded tussock lands (Norton D. A. and Young L. M, 2016) a study has also been conducted on the effects of soil moisture (Payne T. and Norton D. A, 2010). These studies have shown that the introduction of shade will show a significant increase in exotic grasses such as Anthoxanthum odoratum and native forbs such as Wahlenbergia albomarginata and a decrease in bare ground, lichen and Polytrichum juniperinum. The studies also show an increase in soil moisture which favours non-native grasses and forb species as mentioned. Overall, the introduction of shade would show a shift away from the dryland ecosystem and therefore a decrease in the habitat of the threatened species mentioned in the assessment. However, the proposed sheep grazing continued in the area will aid in the mitigation of this transition.*
- *I consider the following conditions or restrictions (on any consent to the discretionary action) would be reasonable and, if made by the CCL, will avoid, remedy or mitigate all the adverse effects of this particular activity:*
  - *Follow setbacks as per updated application discussed during the inspection (especially from all wetlands (20m) and between rows of panels (6m)).*
  - *Continued sheep grazing throughout the area to reduce exotic grasses.*
  - *Continued control of any wilding pines in the area.*
  - *Annual monitoring of vegetation with focus on threatened plant species to understand effects of introducing shade to festuca tussock land.*

## **Farming Benefits**

The service provider advises that the development of the solar array will further diversify the business interests of the current lessee while the ongoing availability of grazing, albeit

reduced, will maintain the farming operation. The opportunity for ongoing return on investment of the solar array by the lessee will also assist financially with ongoing pest rabbit and wilding control on the lease. Wilding pines in particular are a major threat to landscape values both on the lease and Mackenzie District overall.

### **Affected Parties**

There are no affected parties as part of this request other than the lessee if the easement application is granted.

### **Impact on the Crown's Interest in the Land**

The service provider advises that the proposed activity will alter the utilisation of the Crown pastoral land and therefore impacts on the Crown's interest in the land. While the footprint is small relative to overall scale of the pastoral lease, the service provider determines enabling the easement will have a slight impact on the ability of the Crown to continue to lease the land for farming purposes.

### **Assessment of Whether an Easement is Needed to be Granted at this Time**

The service provider advises the easement is required at this time to enable the proposal to proceed on pastoral lease land. An easement application is determined to be the most appropriate mechanism for this type of proposal as noted by [REDACTED] LINZ Legal. Refer to the application section of this memo for further detail. The service provider also advise that aside from an easement, there are very few alternative mechanisms available to facilitate this consent request on pastoral lease land. Due to the high cost of investment, an easement provides additional security in terms of being able to registered as an interest on the leasehold title.

### **Easement Term**

The applicant has requested a perpetual term and the service provider advises a perpetual term is consistent with easements involving the generation, storage, and transmission of electricity. Easements are also always used for other renewable types of power generation and infrastructure around the country. The applicant has advised that as solar innovation and technology advances, the panels in particular would be upgraded and replaced with more efficient models overtime, in perpetuity.

### **Lessee Compensation**

The lessee has waived their right to compensation so there is no requirement to determine this by a registered valuation for this easement.

## Crown Consideration

A registered valuation fee assessment has been completed as required under the LA and I concur, a fee of [REDACTED] plus GST per annum with reviews every 5 years thereon is an appropriate and fair return to the Crown for the easement proposed. Refer to Attachment F for further detail regarding the valuation advice. The fee is recommended to be reviewed also if the CCL consents to a transfer and sub-licensing arrangement request from the Grantee in the future. This will ensure an appropriate level of compensation overtime is maintained.

## Consideration of Matters to be Taken into Account by the CCL (s18 CPLA)

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### Desirability of Protecting Inherent Values

The service provider has reviewed the application detail, the DGC advice, lease consent summary and advises the proposed easement is to establish significant electricity generation infrastructure on pastoral leasehold land. In assessing the DGC advice to the CCL (refer to the consultation section above) the service provider also notes landscape, water and soil values would be affected by the proposed easement. These are described in further detail below:

- In the areas of disturbance, physical removal of biota will occur including some of the species referred to.
- A development of this scale will have significant landscape implications.
- The site coverage of PV panels will increase water concentration.
- Soil values are unlikely to be adversely affected other than through the creation of tracks and structures.

### Assessment Recommendations and Mitigations

The service provider has considered the application for the grant of an easement over Balmoral Tekapo pastoral lease and consulted with the DGC as required under the CPLA. The level of adverse effects of the proposed activity on those inherent identified have been identified and considered as required under s18 of the CPLA. The DGC advised that there were a number of inherent values that could be adversely affected by granting the easement and advised the CCL of conditions to reduce the adverse effects. The service provider agrees with this advice but has also noted additional inherent values affected including soil, landscape, biota, and water concentration.

The service provider has advised of the steps listed below to reduce the adverse effects of the proposed easement on inherent values. We have included some minor amendments (in italics and underlined>) after analysis of other easement conditions and discussion with

██████████, LINZ Legal ██████████. I have also incorporated two general conditions into the draft Notice of Decision as identified in the review of the applicant's specialist environmental advice as noted earlier being:

- *That any machinery used to undertake works within the easement area is free of pest weeds and any disturbed soil is reinstated and rehabilitated progressively post construction in a timely manner to avoid any potential soil erosion or views of bare soil.*
- *The solar array infrastructure proposed for painting, including gates and fences shall be painted in non-reflective, natural colour schemes including browns, greens and greys that will blend with the surrounding landscape.*

Draft Notice of Decision Conditions and Comments:

- The easement to be granted in perpetuity.
- The activities permitted by the easement are in accordance with Plan 1 & 2 attached to the Draft Notice of Decision (Attachment C).
- The payment of a consideration of ██████████ plus GST per annum to the Commissioner with the first payment due within one month of execution of the deed of easement and annually thereafter, *reviewable every five years, or if the easement is transferred and sub-licenced based on a market assessment by a Registered Valuer. The reviewed fee to be no less than the fee applied when the easement was granted.*

Comment: For the avoidance of doubt, the fee should also be reviewed if the easement is transferred and sub-licenced in the future. This has been identified at legal review.

- The two wetlands and a minimum 20 m margin being excluded from development (refer to shaded orange hatching Plan 2 attached).
- Follow the proposed layout keeping rows of panels spaced at 10.6 m centres (refer to Plan 2 attached).

Comment: The service provider considered a 9.5m panel centre spacing (4.9m width between panels) as applied for, adequate for the maintenance of vegetation and reduction of shading of the arrays. The DGC advised the width between panels should be slightly larger at 6m gaps or 10.6 centre spacings. As shading on ground cover species within the easement area is relatively unknown, at least until monitoring commences adopting a slightly larger width, as advised by the DGC is appropriate. LINZ has taken this advice into account and supports a wider space between panels of 10.6m.



- Sheep grazing to continue throughout the approved solar array development area to reduce exotic grasses.
- Control of any wilding conifers in the approved solar array development area.
- *That any machinery used to undertake works within the easement area is free of pest weeds and any disturbed soil is reinstated and rehabilitated progressively post construction in a timely manner to avoid any potential soil erosion or views of bare soil.*

Comment: This is a LINZ standard condition for the avoidance of doubt. Noting the applicant will likely be required to comply with any resource consent conditions if approved under other enactments. This was also identified in the Boffa Miskell EIA report so has been reworded and incorporated in the draft Notice of Decision.

- Where possible, existing shelter belt trees are to be retained at all times (aside from access crossing points) and existing gaps re-planted with like species as soon as practical. If the trees are destroyed by an unforeseen natural weather or fire event, they are to be replanted as soon as possible to ensure the solar array remains screened. The prior approval from the Commissioner of Crown Lands must be sought for any proposed shelter belt removal and or replanting.

Comment: There is an obligation in the deed where the CCL's prior consent is required to remove, cut, prune, clear trees. However, this specific condition ensures that gaps can be replanted with like species to mitigate any potential landscape issues, including any potential unforeseen events with the CCL's prior consent.

- An annual programme of vegetation monitoring by the grantee is to be undertaken by a suitably qualified ecologist with a focus on threatened plant species to understand the effects of introducing shade to fescue tussock land and provide this information to LINZ.

Comment: The service provider advises this will help to inform future planning, rather than necessarily leading to change in the current solar array development. The sharing of this information with LINZ will assist us with the monitoring of any impact to native vegetation.

- Limit disposition of spoil on adjacent areas during construction.

Comment: The limiting of spoil on adjacent areas was included by the service provider.

- *The solar array infrastructure proposed for painting, including gates and fences shall be painted in non-reflective, natural colour schemes including browns, greens and greys that will blend with the surrounding landscape.*
- Comment: This is a standard type of LINZ condition that has also been identified in the Boffa Miskell EIA report, so I recommend adding this condition to the Notice of Decision.
- *That any proposed invertebrate survey and ecological monitoring and enhancement plan is formalised and provide this information to LINZ.*
- The applicant has advised LINZ it is to formalise the two above mentioned reports to satisfy requirements under other enactments. The sharing of this information with LINZ will assist us with future planning and monitoring if required.

### Legal Review

The easement deed has been legally reviewed to determine whether it meets the requirements set out in LINZS45002. The service provider's solicitor advises that the easement document requires several amendments to meet the standard LINZS45002. The proposed recommended amendments to the draft deed are set out in a marked up easement deed (Attachment B) and in the Notice of Decision (Attachment C).

After a discussion with [REDACTED] (LINZ Legal [REDACTED]) on the potential for the future transfer and sub-licensing arrangements, we have included two changes to the deed outlined below to reflect our CCL consent process, without predetermination:

Clause 12.1: change the wording in blue and underlined after the word "sub-licensee" to read: *with the prior written consent of the Grantor, to be considered at the time and without predetermination,*

Clause 12.2: change the wording in blue and underlined after the word "Deed" to read: *with the prior written consent of the Grantor, to be considered at the time and without predetermination,*

The sum of changes to the deed will ensure the easement deed meets LINZ standard 45002 and assist in ensuring the Grantee is required to comply with those obligations when undertaking the activity at all times.

### Submission from the Service Provider

The submission from the service provider is in accordance with section 60 of the LA and section 18 of the CPLA. Consultation has been completed with the DGC and their conservation advice on the easement request has been received and assessed. A registered valuation has determined the consideration payable for the proposed activity and the lessee has waived their right to compensation.

The service provider has considered the application for an easement over Balmoral Tekapo pastoral lease and whether it should be granted at this time. They have fully assessed the application under the relevant sections of the LA, CPLA and in accordance with LINZS45002. A range of appropriate conditions are included in the Notice of Decision to ensure inherent values are protected.

The service provider accepts the conservation advice provided by the DGC and has identified and assessed additional inherent values. The easement deed has been legally reviewed to meet our operating standard LINZS45002 with recommended amendments set out in the Notice of Decision (Attachment C). Having considered the matters that are required to be considered under the LA and CPLA, the service provider recommends that the CCL grant the easement in gross subject to the conditions imposed in the Notice of Decision and changes to the easement deed required.

### Risks

The service provider advises that while the activity will be largely screened from public view by existing shelter belts, the public will become aware of the solar array development activity. The activity is also a significant undertaking and includes a change of current landuse. This could lead to criticism from the public and environmental interest groups. The service provider further advises that the continuation of pastoral grazing (sheep only) is set to continue if the application is granted. The ongoing grazing will however exclude the two fenced off wetland areas that are located between the array panels. The DGC has been consulted on the proposed easement application request and consultation is complete. The DGC has advised that by imposing appropriate conditions, the effects on inherent values effected will be avoided, remedied or avoided. The conditions advised by the DGC have been incorporated into the recommendations and decision making by the CCL and are reflected in our Notice of Decision.

I concur with the service provider's advice. Although there are risks from a public perception with solar power generation, there is also considerable public appetite for alternative renewable energy sources. The solar array proposal resource consent has been publicly notified via a consent process separate to this easement process. Therefore interest groups and the public will have had the opportunity to make submissions under the Resource Management Act 1991 process accordingly.

The current easement proposal location has been selected strategically within a modified part of the lease. It is largely surrounded by mature shelter belts. The nearest house is 2 km away and is owned by the applicant/lessee. The public do not currently have, nor would they have in the future, any access to the easement area without the permission of the lessee and the grantee. Deed of easements are quite common on LINZ pastoral lease

and Crown land as they provide a mechanism to enable the generation, storage and transmission of electricity that can be registered on the title.

In summary, the service provider has determined that there is a low to moderate risk of adverse public reaction if the request is granted at this time. Whilst I concur with this assessment, given the information and analysis contained above, and elsewhere in this memo, I consider that the corporate risk to LINZ is moderate to high. This is due to the application request being located within the Mackenzie Basin. As with some of the CCL's and LINZ's other consent decisions, ensuring a LINZ communication's plan is developed will assist with informing the public of the CCL's decision and may avoid or mitigate any potential adverse public or media reaction.

## Summary

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I concur with the service provider's assessment, the obligations as imposed in the deed of easement and the specific conditions as set out in the Notice of Decision (Attachment C) are appropriate. We have considered and taken into account the advice provided by the DGC who supports the development activity subject to conditions imposed.

Having considered the matters that must be considered under the CPLA and LA, I also concur with the service provider that it is appropriate for the CCL to grant an easement in gross to Andrew William Simpson and Karen Frances Simpson at this time. Appropriate conditions for an easement have been imposed in the Notice of Decision. The Notice of Decision has also been strengthened further with the inclusion of additional conditions to take account of specialist landscape and ecological advice put forward by the applicant. This includes a monitoring condition imposed to have a specialist review the effect of array panel shading on the indigenous vegetation identified and this information will be provided to LINZ for review. The recommended changes in the deed will reduce or avoid any adverse impacts to inherent values identified and place controls on the development activity.

## Recommendations

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I recommend that you:

- a. Note the content of this memo and attachments;
- b. Agree to the draft Notice of Decision and conditions imposed;
- c. Grant consent to the easement as requested; and
- d. Sign to indicate your approval.

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## Delegate Decision

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Grant / Decline

### **Delegate commentary on the decision**

*The development of a solar array over 113 hectares on Balmoral Tekapo pastoral lease will diversify the income and business interests, and the ongoing investment will contribute to making the land easier to farm.*

*The site relatively modified and consists of two paddocks of oversown and topdressed fescue tussock grassland surrounded by a conifer shelterbelt.*

*The advice put forward by the DGC has been fully considered. Appropriate measures including setbacks, continued grazing, and monitoring have been included in the conditions.*

*The application received support from mana whenua, Te Rūnanga o Arowhenua and Te Rūnanga o Waiho, through their representatives (Aoraki Environmental Consultancy Limited).*

*There has been significant interest in the potential development of the solar array from several external parties (for e.g., Forest & Bird; Environmental Defence Society), with a particular focus on indigenous biodiversity values and the Outstanding Natural Landscape in the Mackenzie.*

*After the public notification of the Resource Management (RM) application for the development, the Environmental Defence Society (EDS) advised the Commissioner of Crown Lands that there was additional information that they believed was relevant to the CCL's decision on the Balmoral solar array. EDS said the information related to the effects of the development on outstanding natural landscapes and an incomplete invertebrate assessment. The CCL contacted the applicant with a view to obtaining that information in order to assess the relevance of the information to any decision on an easement for the solar array.*

*In response, the applicant provided additional information on a planned baseline survey of indigenous invertebrates, and the development of an Ecological Monitoring and Enhancement Plan to improve habitat condition in wetland and setback areas. The applicant noted that, while EDS did not submit on landscape effects, the applicant has committed to enhanced landscape mitigations through the RM process.*

*Further to the above, I am supportive of the Portfolio Manager's recommendation to include additional measures in the NOD from the Boffa Miskell report that minimise the impact on landscape values. The applicants have also advised that they have volunteered additional measures as part of their Resource Management consents to enhance mitigation of landscape effects.*

**Items to follow up**

- 1. I note that QV state there are significant landscape implications from the development in 7.1.3. However, QV do not address landscape in their mitigations (7.1.4). This oversight should be included in the feedback to QV.*
- 2. Add an additional condition to formalise the applicant's proposed invertebrate survey and the development of an Ecological Monitoring and Enhancement Plan.*



20.09.2023

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James Holborow, Manager Pastoral  
Under Delegated Authority of the  
Commissioner of Crown Lands

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Date