

TRANSFER –Right of Way in Gross for Motor Vehicles Access: Right to Use Airstrip

Land Transfer Act 1952

This page does not form part of the Transfer



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 -- Insert only when part or Stratum, CT

All

Transferor Surnames must be underlined or in CAPITALS

MINISTER OF CONSERVATION

Transferee Surnames must be underlined or in CAPITALS

LAKE DISTRICT TRUST LIMITED

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

Right of way easement in gross for motor vehicles access and the right to use the airstrip (continued on pages 1-8 annexure schedule)

Consideration

The various considerations set out in a substantive proposal accepted under the Crown Pastoral Land Act 1998 on the day of 2000

Operative Clause

For the above consideration (receipt of which is acknowledged) the TRANSFEROR TRANSFERS to the TRANSFEREE all the transferor's estate and interest described above 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 2000

Attestation

Signed in my presence by the Transferor
Signature of Witness

SIGNED for and on behalf of the MINISTER OF CONSERVATION by Ian Robert Hugh Whitwell Community Relations Manager
(Continued on page 6 annexure schedule)

Witness to complete in BLOCK letters
(unless typewritten or legibly stamped)

Witness name

Occupation

Address

Signature or common seal of Transferor

BACKGROUND

- A. The land described in Item 1 of Schedule 1 as the Servient Land is a Conservation Area under the management of the Transferor.
- B. Section 66 of the Crown Pastoral Land Act 1998 authorises the Transferor to grant a Concession for a Concession Activity in a Conservation Area under section 17Q(1) of the Conservation Act 1987;
- C. The Transferee wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Document.
- D. The Transferor has agreed to grant the Transferee an easement in gross over that part of the Servient Land specified as the Easement Area.

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

"Background" means the matters referred to under the heading "Background" on page 2 of this Document.

"Concession" means a concession as defined in section 2 of the Conservation Act 1987.

"Concession Activity" means the use of the Easement Area by the Transferee for purposes specified in Item 4 of Schedule 1.

"Concession Fee" means the amount specified in Item 5 of Schedule 1 and charged by the Transferor for the Transferee's right to carry out the Concession Activity on the Easement Area.

"Conservation Area" has the same meaning as "Conservation area" in section 2 of the Conservation Act 1987.

"Director-General" means the Director-General of Conservation.

"Document" means this Easement and any subsequent amendments and all schedules, annexures, and plans attached to it.

"Easement" means the easement in gross granted under this Document by the Transferor to the Transferee under section 17Q of the Conservation Act 1987.

"Easement Area" means that part of the Servient Land specified in Item 2 of Schedule 1.

"Servient Land" means a Conservation Area being the area more particularly described in Item 1 of Schedule 1.

"Structures" includes bridges, culverts, and fences.

"Term" means the period of time specified in Item 4 of Schedule 1 during which this Document operates.

"Working Days" means the period between any one midnight and the next excluding Saturdays, Sundays and Statutory holidays in the place where the Concession Activity is being carried out.

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.

Annexure Schedule



Insert how

"Mortgage", "Transfer", "Lease" etc

Transfer

Dated

Page 2 of 8 Pages

1.1 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document and includes that party's successors in title;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;
- (e) words in a singular number include the plural and vice versa;
- (f) words importing a gender include other genders;
- (g) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (h) where the Transferor's consent or approval is expressly required under a provision of this Document, the Transferee must seek the consent or approval of the Transferor for each separate occasion it is required notwithstanding that the Transferor has granted consent or approval for a like purpose on a prior occasion.

1.2 Words used in the Background to this Document have the same meaning given to them in clause 1.1.

2.0 GRANT OF EASEMENT IN GROSS

2.1 In exercise of the Transferor's powers under section 66 of the Crown Pastoral Land Act 1998 the Transferor **GRANTS** to the Transferee an **EASEMENT IN GROSS** under section 17Q(1) of the Conservation Act 1987 to carry out the Concession Activity on the Easement Area subject to the terms and conditions contained in this Document.

3.0 TERM

3.1 The Easement is for the Term specified in Item 4 of Schedule 1.

4.0 CONCESSION FEE

4.1 The Transferee must pay to the Transferor in the manner specified by the Transferor the Concession Fee specified in Item 5 of Schedule 1.

5.0 CONCESSION ACTIVITY

5.1 The Transferee is not to use the Easement Area for any purpose other than the Concession Activity.

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Annexure Schedule



Insert Below
"Mortgage", "Transfer", "Lease" etc

Transfer

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6.0 COMPLIANCE

6.1 The Transferee will comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan as required by section 17W(7) of the Conservation Act 1987 together with any amendment or review of any strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
- (b) with the Conservation Act 1987 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Easement Area or affecting or relating to the Concession Activity.

7.0 TRANSFEREE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

7.1 The Transferee must not erect or bring on to the Easement Area any Structure, install any facility, or alter the Land in any way without the prior written consent of the Transferor.

7.2 The Transferee must keep and maintain any Structures, and facilities on and alterations to the Easement Area in good repair.

7.3 On expiry or early termination of this Document either as to the whole or any part of the Easement Area, the Transferee will not be entitled to compensation for any improvements and any Structures or facilities remaining on the Easement Area are to become the property of the Transferor.

7.4 If requested by the Transferor, the Transferee must, within such time as the Transferor determines, remove all Structures, facilities or other improvements erected or installed by the Transferee and make good at the Transferee's own expense all damage done by the removal and must leave the Easement Area in a clean and tidy condition to the satisfaction of the Transferor.

8.0 PROTECTION OF THE ENVIRONMENT

8.1 Except as approved in writing by the Transferor the Transferee will not, whether by act or omission:

- (a) interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Easement Area; or
- (b) bring any plants, or animals (other than farm dogs and horses) on to the Easement Area; or
- (c) deposit on the Easement Area debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Easement Area; or
- (d) pile or store materials in any place on the Easement Area where they may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Easement Area; or
- (f) top-dress, burn, sow seed, or carry out earthworks (including tracking, drainage or ditching) on the Easement Area; or
- (g) disturb or allow stock to disturb any stream or watercourse on the Easement Area; or
- (h) light any fire on the Easement Area.

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Annexure Schedule



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8.2 The Transferee must ensure that the Transferee's employees and invitees do not carry out any acts prohibited under clause 8.1.

9.0 TERMINATION

9.1 The Transferor may terminate this Document by notice in writing to the Transferee if:

- (a) the Transferee breaches any terms of this Document; and
- (b) the Transferor has notified the Transferee in writing of the breach; and
- (c) the Transferee does not rectify the breach within 7 days of receiving notification.

9.2 Immediately on termination the Transferee must execute a surrender of this Document if the Transferor so requires it.

10.0 INDEMNITIES AND INSURANCE

10.1 The Transferee will indemnify and keep indemnified the Transferor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Transferee, its employees, agents, contractors, or clients or otherwise caused as a result of its use of the Easement Area or the Transferee's carrying out of the Concession Activity on the Easement Area.

10.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.

10.3 Without prejudice to or in any way limiting its liability under clause 10.1 the Transferee must take out and keep in force during the Term:

- (a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Easement Area and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 6 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 7 of Schedule 1; and
- (b) statutory liability for the amount specified in Item 8 of Schedule 1; and
- (c) such other policy or policies of insurance against any other liability and for such other sums which the Transferor specifies in Item 9 of Schedule 1.

10.4 With respect to clause 10.3 the Transferee must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.

11.0 DISPUTE RESOLUTION AND ARBITRATION

11.1 If any dispute arises between the parties in connection with this Document, the parties must, without prejudice to any other rights they have under this Document, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.

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Annexure Schedule



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11.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.

11.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.

11.4 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the local District Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

12.0 NOTICES

12.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 12 of Schedule 1. 10

12.2 A notice given in accordance with clause 12.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of a letter, on the third working day after posting;
- (c) in the case of facsimile, on the date of dispatch.

13.0 RELATIONSHIP OF PARTIES

13.1 Nothing expressed or implied in this Document shall be construed as:

- (a) conferring on the Transferee any right of exclusive occupation or use of the Easement Area;
- (b) preventing the Transferor from granting similar concessions to other persons;
- (c) derogating from the rights of the Transferor and the public to have access across the Easement Area.

14.0 SPECIAL CONDITIONS

14.1 Special conditions relating to this Document are set out in Schedule 2.

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Annexure Schedule



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Signed by :

for and on behalf of
the Minister of Conservation
pursuant to a written delegation
in the presence of :

Witness:
Occupation:
Address:

Signed by :

as Transferee
in the presence of :

Witness :
Occupation :
Address :

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Annexure Schedule



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SCHEDULE 1

1. **Servient Land:** *(see definition of Servient Land in clause 1.1)*
All the land in Certificate of Title Register No. [].
2. **Easement Area:** *(see definition of Easement Area in clause 1.1)*
Right of Way – the land marked “[]” on SO [] and right to use air strip – the land marked “[]” on SO [].
3. **Concession Activity:** *(see definition of Concession Activity in clause 1.1)*
To use the land marked “[]” on SO [] for motor vehicle access to the air strip.

To use the land marked “[]” on SO [] for the purpose of allowing aircraft to operate from that land for the purpose of carrying seed and fertiliser for use on the land in Certificate of Title [].
4. **Term:** 5 years commencing on [] *(see clause 3.1)*
5. **Concession Fee:** \$_____ + GST *(see clause 4.1)*
One peppercorn (if demanded).
6. **Public Liability General Indemnity Cover:** *(see clause 11.3)*
for \$200,000
7. **Public Liability Forest & Rural Fire Act Extension:** *(see clause 11.3)*
for \$500,000
8. **Statutory Liability** *(see clause 11.3)*
for \$20,000
9. **Other Types of Insurance:** *(see clauses 11.3)*
N/A
10. **Address for Notices:** *(see clause 13)*
 - (a) Transferor – C/- PO Box 5244, Dunedin
 - (b) Transferee – Lake District Trust Limited, []

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Annexure Schedule



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SCHEDULE 2

Special Conditions

The Transferee must take all reasonable care to avoid damage to the soil and vegetation of the motor vehicle access Easement Area and in particular will avoid using that area when conditions such as softening during frost thaw render the Easement Area particularly vulnerable to damage.

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DRAFT



TRANSFER

Land Transfer Act 1952

Law Firm Acting
Bell Gully PO Box 1291 Wellington

Auckland District Law Society
REF 4135/4