

Transfer Deed

Her Majesty the Queen acting by and through the Chief Executive of the Ministry of Business Innovation and Employment

Queenstown Lakes District Council

Kawarau Falls Bridge, Queenstown

Date:

PARTIES

Her Majesty the Queen acting by and through the Chief Executive of the Ministry of Business Innovation and Employment (*MBIE*)

Queenstown Lakes District Council (*QLDC*)

BACKGROUND

- A MBIE is the owner of the Bridge.
- B The Bridge is located on the Existing Road and MBIE's predecessor, the Ministry for Economic Development, leased the Bridge to Transit New Zealand (NZTA's predecessor) pursuant to a Deed of Lease dated 1 July 2007 (*Lease*) for use as part of State Highway 6. The Lease has now expired.
- C Following the construction by NZTA of a new replacement two-lane Kawarau Falls bridge immediately to the north-west, the Existing Road, including the Bridge, are no longer required by NZTA for State Highway purposes. The parties acknowledge that:
- (a) NZTA will be arranging for the revocation of the State highway status from the Existing Road;
 - (b) on revocation of the State highway status of the Existing Road:
 - (i) the Existing Road will become a local road with ownership and control of the Existing Road transferring to QLDC; and
 - (ii) QLDC will have control of the Bridge given that it forms part of the local road; and
 - (c) until the State highway status of the Existing Road is revoked, NZTA has control of, and remains responsible for the maintenance of, the Bridge.
- D As QLDC will have control of the Existing Road including the Bridge following the revocation of the State highway status, MBIE has agreed to transfer ownership of the Bridge to QLDC in accordance with the provisions of this Deed.
- E The parties have decided to enter into this Deed to record their agreement in relation to the transfer of ownership of the Bridge from MBIE to QLDC.

OPERATIVE PART

1 Definitions and Interpretation

1.1 In this Deed:

- (a) *Bridge* means the one-lane bridge on the Existing Road located at Kawarau Falls, Queenstown, and includes the bridge structure and all ancillary structures, including the beams, poles, piles or any other bracing or structure used to support the bridge, carriageway, abutments, piers and water control gates existing as at the date of the Deed, as outlined on the plan attached at Schedule 1;

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- (b) *Existing Road* means the existing section of road comprising part of State Highway 6, on which the Bridge is located, that is no longer required for State highway purposes following the construction of the new replacement two-lane Kawarau Falls bridge;
- (c) *Land* means that part of the lake bed of Lake Wakatipu and the Kawarau River where the Bridge is located, owned by the Crown and administered through LINZ;
- (d) *LINZ* means Land Information New Zealand;
- (e) *LTMA* means the Land Transport Management Act 2003;
- (f) *NZTA* means New Zealand Transport Authority;
- (g) *Purchase Price* means \$1.00 plus GST, if demanded;
- (h) *Security Interest* means any security interest (as that term is defined in the Personal Property Securities Act 1999);
- (i) *Transfer Date* means the date of the publication in the New Zealand Gazette of the revocation of the State highway status of the Existing Road; and
- (j) *Working Day* means a day of the week other than:
 - (i) Saturday and Sunday;
 - (ii) Waitangi Day, Good Friday, Easter Monday, Anzac Day, Queens Birthday and Labour Day;
 - (iii) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - (iv) a day in the period commencing with 25 December in any year and ending with 14 January in the following year (both days inclusive); and
 - (v) Wellington Anniversary Day and the anniversary day celebrated in the locality in which the Bridge is situated.

1.2 In this Deed, unless the context requires otherwise:

- (a) a reference to a clause or a schedule is a reference to a clause of or a schedule to this Deed;
- (b) words importing one gender include the other genders;
- (c) words importing the singular include the plural and vice versa;
- (d) the words “includes” or “including” do not imply any limitation;
- (e) references to a party includes references to that party’s:
 - (i) successors and permitted assigns; and

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- (ii) employees, contractors, subcontractors, agents, representatives and invitees;
- (f) any schedules to this Deed have the same effect as if set out in the main body of this Deed;
- (g) headings are for ease of reference only;
- (h) derivations of a defined term have similar meanings to the defined term;
- (i) any provision to be performed by two or more persons binds those persons jointly and severally;
- (j) a reference to a statute or regulation includes all amendments to that statute or regulation and any substitute statute or regulation;
- (k) a reference to a statute includes all regulations, bylaws, orders, notices and other instruments made under that statute;
- (l) a “person” includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, estate, government, agency of state, municipal authority or statutory body, whether or not having separate legal identity; and
- (m) a prohibition against doing any thing also includes a reference not to permit, suffer or cause that thing to be done.

2 Acknowledgement

2.1 MBIE and QLDC acknowledge:

- (a) as at the date of this Deed, the Existing Road remains a “State highway” for the purposes of the LTMA;
- (b) on NZTA revoking the State highway status of the Existing Road under section 103(4) of the LTMA, the Existing Road will, in accordance with section 103(5) of the LTMA, become a “local road” for the purposes of the LTMA or any other Act, with control and ownership of the Existing Road vesting in QLDC;
- (c) QLDC’s rights to control the Existing Road following the revocation of the State highway status will extend to the Bridge (in accordance with the definition of “road” under section 315 of the Local Government Act 1974 which includes all bridges lying upon the line of a road);
- (d) consistent with QLDC having control of the Existing Road including the Bridge following the revocation of the State highway status, MBIE has agreed to transfer ownership of the Bridge to QLDC in accordance with this Deed; and
- (e) until such time that the State highway status of the Existing Road is revoked under section 103(4) of the LTMA, NZTA remains responsible for the maintenance of the Existing Road (including the Bridge).

3 **Transfer of Ownership of Bridge**

- 3.1 MBIE agrees to transfer ownership of the Bridge to QLDC on the Transfer Date free from any Security Interests.

4 **Purchase Price and Transfer**

- 4.1 QLDC will pay to MBIE the Purchase Price on the Transfer Date (if demanded).
- 4.2 The transfer of ownership of the Bridge under clause 3.1 will take effect at 4pm on the Transfer Date.
- 4.3 QLDC will be responsible for all rates and other outgoings which relate to the Bridge as and from the Transfer Date.
- 4.4 The parties record that where in relation to this Deed it is necessary to determine the acquisition price for the purposes of Sections EW32 and EZ48 of the Income Tax Act 2007, the consideration payable pursuant to this Deed is the lowest price that they would have agreed upon for the transfer of the ownership of the Bridge in terms of subparagraph (c) in the definition of core acquisition price in Section EZ of the Income Tax Act 2007.

5 **No Warranty**

- 5.1 QLDC acknowledges that:
- (a) QLDC has had a full opportunity to inspect and carry out its own enquiries in respect of the Bridge and that it has made the decision to enter into this Deed solely in reliance upon its own judgment after making such enquiries;
 - (b) QLDC has not relied on any representations, warranties or statements made by MBIE or its agents and all express, implied or other representations or warranties are hereby expressly excluded; and
 - (c) ownership of the Bridge is being transferred to QLDC on an “as is, where is” basis.
- 5.2 Without limited the generality of clause 5.1, no warranty or representation expressed or implied has been made by MBIE that:
- (a) the Bridge is suitable or will remain suitable or adequate for use by QLDC; and
 - (b) that any use of the Bridge will comply with the requirements of any statutes (including but not limited to the Resource Management Act 1991), regulations, by-laws, ordinances or other requirements of any authority having jurisdiction.

6 **No Assignment or Nomination**

- 6.1 QLDC must not assign its interest in this Deed or nominate a third party to complete the transfer of ownership of the Bridge.

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7 Announcements

- 7.1 Neither party will make any announcement or disclosure regarding this Deed or its subject matter except:
- (a) in a form and manner and at such time as the parties agree; or
 - (b) as may be required by law or by any rule of any stock exchange which applies to that party.

8 Dispute resolution

- 8.1 If any dispute or difference arises between the parties in relation to, or arising out of, this Deed the parties will seek to resolve the dispute or difference amicably by direct negotiations between them.
- 8.2 If the dispute or difference is not settled by negotiation under clause 8.1 within 10 Working Days of the dispute or difference arising, then it will be referred to the chief executive of each of the parties for resolution.
- 8.3 If the dispute or difference is not settled under clause 8.2 within 10 Working Days of the dispute or difference being referred to the parties' chief executives, then either party may refer to the dispute or difference to mediation by giving the other notice in writing. The mediator:
- (a) will be agreed by the parties or, if the parties do not agree within 10 Working Days of commencing discussions, appointed by the President or his/her nominee of the New Zealand Law Society;
 - (b) will not be deemed to be acting as an expert or as an arbitrator; and
 - (c) will determine the procedure and timetable for the mediation.
- 8.4 The cost of the mediation will be shared equally between the parties.
- 8.5 If the dispute or difference is not settled by mediation within 20 Working Days of the dispute or difference being referred to mediation under clause 8.3 then the dispute will be referred to arbitration by a sole arbitrator. The arbitrator will be agreed by the parties or, if the parties do not agree within 10 Working Days of commencing discussions, appointed by the President or his/her nominee of the New Zealand Law Society. The arbitration will be conducted in accordance with the Arbitration Act 1996. The decision of the arbitrator will be final except on questions of law.
- 8.6 Neither party may issue legal proceedings (other than for urgent interim relief) in respect of any dispute or difference unless that party has first taken all reasonable steps to comply with clauses 8.1 to 8.5.

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9 **Notices**

9.1 Notices under this Deed must be given in writing and addressed to the recipient of the notice at the address or email address from time to time notified by that party in writing to each other party. Until a change is so notified, the address and email address of each party is:

MBIE

Ministry of Business, Innovation and Employment
PO Box 1473, Wellington 6140
Wellington
Attention: [Name]
Email: []

QLDC

[Address]
[Town]
Attention: [Name]
Email: []

9.2 A notice will be deemed to have been received:

- (a) in the case of hand delivery, at the time of actual delivery to the recipient’s address;
- (b) in the case of delivery by pre-paid post, on the third Working Day after posting; and
- (c) in the case of delivery by email, on receiving a response to the notice from the addressee (not being an automatically-generated response such as an out of office notification or read receipt).

9.3 A notice received or deemed to have been received after 5pm on a Working Day in the place to which it is sent, or on a day which is not a Working Day in that place, it will be deemed not to have been received until 9am on the next Working Day in that place.

10 **Further Assurances**

10.1 MBIE and QLDC will each sign, execute, deliver and do all deeds, schedules, acts, documents and things as may be reasonably required by the other party to effectively carry out, and give effect to, the terms and intentions of this Deed.

11 **Entire Agreement**

11.1 This Deed constitutes the entire agreement of the parties relating to the transfer of ownership of the Bridge, and this Deed supersedes all prior discussions, negotiations, representations, warranties, understandings and agreements between the parties relating to the transfer of ownership of the Bridge.

12 **Amendments**

12.1 No amendment to this Deed will be effective unless it is in writing and executed by all parties.

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13 **Warranty Regarding Execution**

13.1 Where a party is a company, partnership, trust or other entity, whether incorporated or not, that party warrants that the signatory or signatories of that party has or have the full authority of that party to bind that party to this Deed.

14 **Counterparts**

14.1 This Deed may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

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EXECUTION

Signed by Her Majesty the Queen acting by and through the Chief Executive of the Ministry of Business Innovation and Employment by [its duly authorised signatory] in the presence of:

.....
[Authorised Signatory]

.....
Witness signature

.....
Full name (please print)

.....
Occupation (please print)

.....
Address (please print)

Signed by Queenstown Lakes District Council by [its duly authorised signatory] in the presence of:

.....
Authorised Signatory

.....
Witness signature

.....
Full name (please print)

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Full name (please print)

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Address (please print)

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Schedule 1 – Plan

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