

THIS AGREEMENT made the _____ day of _____ 2008

BETWEEN WELLINGTON REGIONAL COUNCIL a Council under the Local Government Act 2002 ("the Council")

AND EQM FARMING LIMITED ("the Owner").

BACKGROUND

- (a) The Council is registered as proprietor of the land described in clause 1.1.4 of the Agreement (the "Council's Land").
- (b) The Owner is registered as proprietors of the land described in clause 1.1.5 of this Agreement ("the Owner's Land").
- (c) The Owner wishes to undertake a subdivision of the owner's land into residential allotments ("the Subdivision"). One of the requirements to be imposed by the Porirua City Council on the Subdivision is reticulated water supply to the Lots created by the Subdivision. For that purpose, the Owner needs to construct or make provision for a reservoir and for the reservoir site to vest in the Porirua City Council.
- (d) The Council wishes to acquire two parcels of land from the Owner for the purposes of a booster pump station and a walking track respectively. The Owner has land suitable for those purposes.
- (e) The Owner is agreeable to transferring parts of the Owner's Land to the Council in exchange for the Council's Land as more particularly described in this Agreement being transferred to the Porirua City Council for the purpose of a reservoir.
- (f) The Owner and the Council wish to enter into an agreement to transfer their respective lands free of any encumbrances.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions

- 1.1 In this Agreement, including the recitals unless the context otherwise requires.
 - 1.1.1 "Council" means Wellington Regional Council and its successors.
 - 1.1.2 "PCC" means Porirua City Council and its successors.
 - 1.1.3 "Owner" means EQM Farming Limited and its successors.
 - 1.1.4 "Council's Land" means the land acquired by the Council from Landcorp Farming Limited being estate in fee simple of 2.1207

hectares more or less being Section 2 on Survey Office Plan 378280 (title yet to issue).

- 1.1.5 "Owner's Land" means the land of the Owner being Lot 1 Deposited Plan 312987 and Lot 5 DP 86077 being parts of the land in Certificate of Title 319610.
 - 1.1.6 "Area A" means that part of the Owner's Land within Lot 1 DP 312987 of approximately 300 m² and marked as "Pump Station Site" on the attached Plan.
 - 1.1.7 "Area B" means that part of the Owner's Land within Lot 5 DP 86077 of approximately 5.4 hectares and marked "Land for Access to Belmont Regional Park" on the attached Plan.
- 1.2 In this Agreement including the recitals unless the context otherwise requires:
- 1.2.1 References to clauses, subclauses, and schedules are to be clauses, subclauses and the schedules to this Agreement.
 - 1.2.2 Words denoting the singular number include the plural number and vice versa.
 - 1.2.3 Words denoting a gender include all genders.
 - 1.2.4 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
 - 1.2.5 A reference to any part of this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.
 - 1.2.6 A reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry including the inquiry which a reasonable person would have determined to make by reason of knowledge of a fact or omission brought to the notice of that person.

2. **Agreements of the Owner**

- 2.1 In consideration of the transfer of land referred to in clause 3 of this Agreement, the Owner agree to transfer Areas A and B to the Council on completion date.
- 2.2 The Owner shall at its own cost, as a part of the Subdivision, arrange for the preparation and completion of all survey plans necessary to define Areas A and B, and if required, the rights of way referred to in clause 2.5, by a registered surveyor nominated by the Owner.
- 2.3 Pending completion of the Owner's Subdivision and the completion of this Agreement, the Owner hereby grants to the Council a right of way or right of access over existing roads/access ways on the Owner's Land to and from Areas A and B. Such rights shall be upon the terms and conditions implied

by Schedule 4 of the Land Transfer Regulations 2002 in respect to right of way easements, except that the Council shall have no obligation to construct any physical works or have to contribute towards the costs of any physical works relating to the right of access.

- 2.4 The Owner and the Council agree that members of the public shall not have access rights over the owner's land, roads and accessways to and from areas A and B prior to completion date.
- 2.5 The Owner shall complete its Subdivision in such a manner that Areas A and B shall each have full access by way of either public or private road. In the event that access is by way of private road, the Owner shall grant to the Council and members of the public right of way easements in gross of a route reasonably acceptable to the Council. The said easement shall be upon the terms and conditions implied by Schedule 4 of the Land Transfer Regulations 2002 in respect to right of way easements, except that neither the Council nor members of the public have the obligation to construct any physical works nor have to contribute towards the costs of any physical works relating to the right of way.
- 2.6 Any reservoir developed on the Council's Land shall be constructed into the hillside and kept below the skyline to minimise the visual impact on the environment.
- 2.7 The boundaries to the Council's Land and any access created to the Council's Land shall, at the time the reservoir is constructed, be fully fenced (so as to be stock proof) and secured by way of locked gates by and at the cost of the Owner.

3. **Agreement of the Council**

- 3.1 In consideration of the transfer of land referred to in clause 2 of this Agreement, the Council agrees to transfer the Council's Land to the PCC as a Utility Reserve on completion date.

4. **Survey of Area A and B**

- 4.1 The parties acknowledge that the shape, size and boundaries of Areas A and B as shown in the attached Plan are approximate and are subject to:
 - 4.1.1 Agreement between the parties at joint site meetings as to its boundaries.
 - 4.1.2 Final survey.
- 4.2 The parties acknowledge and anticipate that there may be variations and differences in the final survey plan for areas A and B. The Owner agrees to submit the draft survey plan for areas A and B to the Council for its consideration and approval. The parties agree that in the event of any such variations and differences the parties shall meet, discuss and make every reasonable endeavour to agree to the appropriate and acceptable variations. Failing such agreement, the parties agree that the provisions of clause 8.1 of this Agreement shall apply. In any event no party shall be entitled to cancellation or rescission of this Agreement and to any compensation or

damages against any other party arising from variations and differences in the final survey plan for areas A and B.

- 4.3 The parties agree to negotiate in good faith to establish the new boundaries in accordance with the spirit and intent of this Agreement.

5. **Consents**

- 5.1 This Agreement is conditional upon all relevant consents being obtained for the transfer of land including:

5.1.1 All necessary Resource Consents being obtained pursuant to Resource Management Act 1991 for the Subdivision, the transfers of land and grant of rights of way easements (if any) contemplated by this Agreement.

- 5.2 In the event that the consents referred to in clause 5.1 are not satisfied within 5 years of the date of this Agreement or such an extended period or periods as may be agreed by the parties, then either party may on written notice to the other party terminate this Agreement. In the event of such termination, then neither party shall be required to pay compensation or damages under this agreement to any other party.

6. **General**

- 6.1 The exchange of land contemplated by this Agreement shall be deemed to be equal value to each party, and no party shall be entitled to any equality or balancing payments from any other party.

- 6.2 Except as is expressly provided in this Agreement, the parties shall meet their own costs incurred in the negotiation, execution and meeting of their respective obligations under this Agreement.

- 6.3 The parties agree to complete such documents and obligations required of them under this Agreement in a timely fashion and undertake to execute promptly all documents and plans when required.

- 6.4 Until completion date:

6.4.1 The Owner shall keep and maintain the land and all improvements on Areas A and B in good order and repair.

6.4.2 The Council shall keep and maintain the land and all improvements on Council's Land in good order and repair.

6.4.3 The Owner shall not damage, destroy or cut down any trees or bush nor carry out any construction, excavation or drainage work on Areas A and B.

6.4.4 The Council shall not damage, destroy or cut down any trees or bush nor carry out any construction, excavation or drainage work on Council's Land.

7. **Completion date**

- 7.1 The completion date of this Agreement shall be 20 working days from the date all survey plans necessary to implement the transfer of Area A and B and the transfer of the Council's Land have been approved as to survey by Land Information New Zealand, whichever is the later.
- 7.2 On completion date, the Owner shall provide to the solicitor for the Council the following:
- 7.2.1 Signed Transfer for Areas A and B.
 - 7.2.2 Discharges or releases of all registered interests and encumbrances on Areas A and B.
 - 7.2.3 If necessary, a signed Order for new Computer Registers for Areas A and B and the issue of a new title for the balance of the Owner's Land.
 - 7.2.4 The Owner shall not be obliged to provide the documents referred to above until the Owner has had adequate opportunity to peruse and approve the documents referred to in clause 7.3 below. Council shall provide copies of such documents to the Owner's solicitor for approval not less than five working days prior to the completion date.
- 7.3 On completion date the Council shall provide to the solicitor for the Owner the following:
- 7.3.1 Signed Transfer for Council's Land.
 - 7.3.2 Discharges or releases of all leases, encumbrances and registered interests affecting the Council's Land (if not discharged prior to completion date).
 - 7.3.3 If necessary, a signed Order for new Computer Register for issue of a new title for of the Council's Land.
- 7.4 If clauses 7.2 and 7.3 could be completed electronically by way of an e-dealing, then the parties shall sign such authorities as may be necessary to enable the solicitors of each party to provide the necessary undertakings and certifications to implement the exchange.
- 7.5 The parties agree that no apportionments of outgoings shall be required on completion date. The parties shall continue to pay all current and future rates assessment notices from the local Council in respect of the land transferred until such time as the local Council has issued a separate rating account for such land in the name of the transferee.
8. **Dispute resolution**
- 8.1 The parties agree that all differences and disputes which may arise between the parties as to this Agreement or any act or thing done, or omission, or the interpretation of this Agreement shall be dealt with in the following manner:
- 8.1.1 The difference or dispute shall be submitted to a process of Alternative Dispute Resolution (in the manner usually conducted within the Wellington region) with the intent that the matter be

resolved as expeditiously as possible and to the mutual benefit of both parties.

- 8.1.2 In the event that the Alternative Dispute Resolution procedure is unsuccessful, the difference or disputes all be referred to arbitration in accordance with the Arbitration Act 1996 and any amendments and/or substitution to the said Act.

Signed by

WELLINGTON REGIONAL COUNCIL

by its authorised signatory

in the presence of:

Signed by *Lewis 7 Co (Director)*

EQM FARMING LIMITED

the Owner

in the presence of:

JCS
Jeremy Graham
Solicitor
Wellington

DATED this

day of

2008

BETWEEN

WELLINGTON REGIONAL COUNCIL

AND

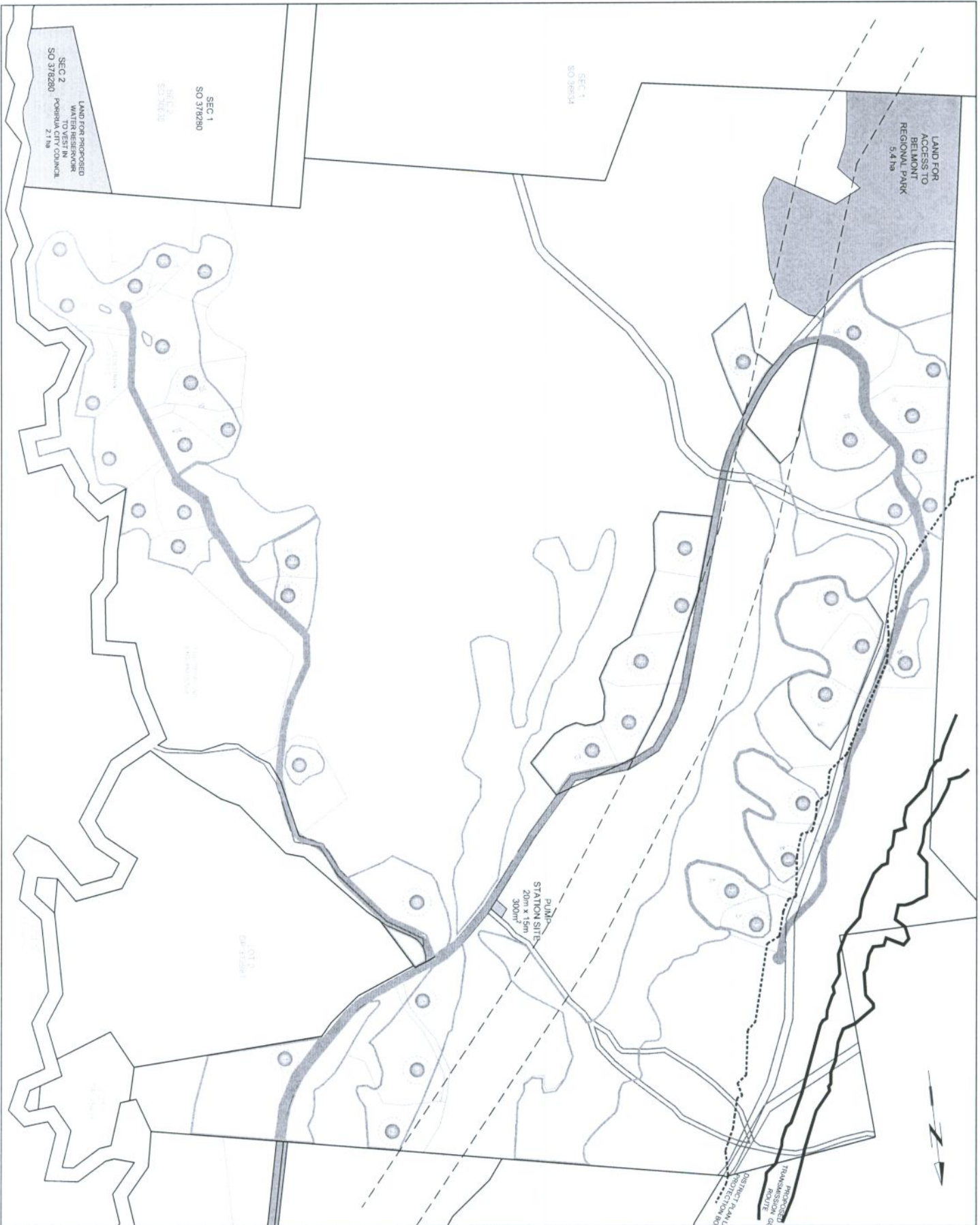
EQM FARMING LIMITED

AGREEMENT TO EXCHANGE LAND

OAKLEY MORAN

SOLICITORS

WELLINGTON



Handwritten signature or initials in blue ink.

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JUDGEFORD HILLS

LAND EXCHANGE PLAN
Greater Wellington Regional Council, Porirua City Council & EOM

Project	387-69	Drawing	C916
Scale	1:250 (A1)	Author	Architect
	1:500 (A0)		