

Crown Pastoral Land Tenure Review

Lease name: CASTLE DENT

Lease number: PO 196

Preliminary Proposal - Part 1

A Preliminary Proposal is advertised for public submissions as per Section 43 of the Crown Pastoral Land Act 1998.

The report attached is released under the Official Information Act 1982.

August

05

PROPOSAL FOR REVIEW OF CROWN LAND
Under Part 2 of the Crown Pastoral Land Act 1998

Date:

Parties

Holder: Castle Dent Limited
C/- Mr A C MacDonald and Mr R C MacDonald
Bowlers Creek
RD 1
Lawrence

Commissioner of Crown Lands:

C/- The Manager for Tenure Review
Quotable Value New Zealand Limited
PO Box 13-443
Christchurch

The Land

Lease: Castle Dent

Legal Description: Part Run 527 Beaumont, Hedgehope Tuapeka West and Tuapeka East Survey Districts, Run 524A Beaumont Survey District, Sections 97 and 109 Block III Tuapeka West Survey District, Sections 3, 6, 7 and 9 Block VIII Beaumont Survey District, Part Section 16A and Section 18A Bellamy Settlement and Section 1 Survey Office Plan 24152.

Area: 4172.5348 hectares

Certificate of Title/Unique Identifier: OT386/102

Summary of Designations

Under this Proposal, the Land is designated as follows:

- (a) The Crown Land (shown edged 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 edged in green on the Plan) is to be disposed by freehold disposal to the Holder as set out in Schedule Three.

1 **The Plan**

2 Conditions

- 2.1 This Proposal, and any agreement arising therefrom, is subject to the conditions contained in Schedule Four (if any).

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.

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.

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.

6 Vesting of Crown Land

- 6.1 The Crown Land will vest in the Crown on the Vesting Date.

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.

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

- 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 1973 and the Overseas Investment Regulations 1995.
- 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

- 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 is without prejudice to:
- (a) 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

- 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 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

- 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

- 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

- 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 Acknowledgements

- 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 1991; 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

- 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

- 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

- 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

- 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

- 20.1 The Commissioner and the Holder warrant to each other that they are registered for GST purposes.
- 20.2 On the 10th 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 10th 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.

21 Lowest price

- 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 EH 48(3)(a) of the Income Tax Act 1994 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 EH 48(3)(a) of the Income Tax Act 1994 is equal to the Commissioner's Consideration.

22 Costs

- 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.

23 No nomination or assignment

- 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.

24 Recreation Permit

- 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.

25 General

- 25.1 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.
- 25.2 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.
- 25.3 The Holder must comply with the Commissioner's requirements for the implementation and settlement of the Tenure Review contemplated by this Proposal.
- 25.4 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.
- 25.5 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.
- 25.6 The illegality, invalidity or unenforceability of any provision in this Proposal will not affect the legality, validity or enforceability of any other provision.
- 25.7 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).

26 Interpretation

26.1 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 section 24AA of the Land Act 1948;

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 floating rate agreement mid-point thirty day bank bill rate as at 10.45 a.m. on Reuters' page BKBM on the date on which the relevant payment becomes due and payable plus 500 basis points and compounded monthly;

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 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 pursuant to section 4 of the Land Transfer Act 1952;

Settlement Date means the settlement date defined in clause 3.1;

Surveyor-General means the Surveyor-General appointed under section 5 of the Cadastral Survey Act 2002;

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 15th day of the following January or a day which is a provincial holiday in the place where the obligation is to be performed.

26.2 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

1 Details of Designation

- 1.1 Under this Proposal the land shown edged in pink and labelled "R1(Scenic)" on the Plan, being 130 hectares (approximately), is designated as land to be restored to or retained in full Crown ownership and control as scenic reserve.
- 1.2 Under this Proposal the land shown marked in pink and labelled "CA3" on the Plan, being 4 hectares (approximately), is designated as land to be restored to or retained in full Crown ownership and control as conservation area.

2 Schedule Two: Provisions relating to the Schedule Two Land

1 Details of designation

1.1 Under this Proposal the land shown edged in pink and labelled:

- (a) "CA2" on the Plan, being 150 hectares (approximately), is designated as land to be restored to or retained in Crown control as conservation area subject to the granting of an easement concession (shown marked on the Plan in dark green and labelled "v-w" in "CA2") substantially as set out in Appendix 4.
- (b) "CA1" on the Plan, being 2,113 hectares (approximately), is designated as land to be restored to or retained in Crown control as conservation area subject to:
 - (i) the granting of an easement concession (shown marked on the Plan in dark green and labelled "o-p") substantially as set out in Appendix 5.
 - (ii) the continuation in force of a right to convey water in favour of Trust Power Generation Limited, over the area marked on the Plan in blue and labelled "q-r" and "s-t", pursuant to section 36(3)(c) Crown Pastoral Land Act 1998.

2 Information Concerning Proposed Concessions

2.1 Description of proposed activity:

The two easement concessions, being o-p and v-w, permit stock access, the use of farm dogs, motor vehicles and implements associated with farming the land to which it provides access. v-w also allows the periodic clearing, by hand only, of regenerating kanuka.

2.2 Description of place(s) where proposed activity to be carried out and proposed status:

- (a) The proposed concession easement o-p is to cater for farm access and stock movement along an existing four-wheel drive track. The track starts at the junction of Medwin Road and Gardeners Track and continues northwards along Gardeners Track to Trig C (height 758m). At this point practical access is available to the proposed freehold land; and
- (b) The proposed concession easement v-w is to cater for farm access and stock movement along an existing fence line. It is approximately 500m in length and will require the periodic clearing, by hand only, of regenerating kanuka. The purpose of this easement is to enable the concessionaire to avoid having to move stock through several sets of gates.

2.3 Description of potential effects of proposed activity and any actions proposed to avoid, mitigate or remedy any adverse effect:

- (a) With regards to concession easement o-p the driving of stock along the easement may lead to some minor grazing of native vegetation on the periphery of the track, however, it is considered that the easement terms contain sufficient controls to avoid, mitigate or remedy any such adverse effects. The easement contains clauses dealing with the protection of the environment, interference with natural features, storage of noxious substances and the obstruction of the public enjoyment of the area.
- (b) With regards to concession easement v-w the periodic clearing by hand only of regenerating kanuka and the driving of stock along the easement will logically lead

to the removal of some indigenous vegetation and to some minor grazing of native vegetation on the periphery of the track, however, it is considered that the easement terms contain sufficient controls to avoid, mitigate or remedy any such adverse effects. The easement contains clauses dealing with the protection of the environment, interference with natural features, storage of noxious substances and the obstruction of the public enjoyment of the area.

DOC staff will periodically visit both relevant areas of proposed conservation land for a range of activities including surveillance and control of wild animals and weeds and will therefore be aware if the either concession activity is having any negative effects.

2.4 Details of the proposed type of concession:

Both Concessions (easements) will be under Section 17Q Conservation Act 1987.

2.5 Proposed duration of concession and reasons for proposed duration:

- (a) Proposed duration –both easements shall be forever appurtenant to the land of the transferee to which it provides access. A perpetual term is therefore required;
- (b) Reasons for proposed duration –
 - (i) The track over which o-p is being granted provides access to the balance of the property that is proposed to be freeholded and is an essential part of the Castle Dent farming operation.
 - (ii) The area over which v-w is being granted provides an effective and practical linkage between areas proposed to be freeholded.

2.6 Relevant information about the proposed Concessionaire including information relevant to the Concessionaire's ability to carry out the proposed activity:

- (a) Proposed grantee – Castle Dent Limited
- (b) Relevant information –
 - (i) The proposed concessionaire currently uses the formed track over which the easement o-p is proposed. No negative effects associated with the current use of the track have been noted.
 - (ii) Given that the proposed concessionaire has consistently worked well with the department in a wide variety of circumstances previously there is little doubt that this relationship (with regards to easement v-w) will not continue into the future.

Schedule Three: Provisions relating to the Schedule Three Land

1 Details of designation

- 1.1 Under this Proposal the land shown edged in light green on the Plan, being 1,776 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;
 - (b) Section 11 of the Crown Minerals Act 1991;
 - (c) the creation of the easements substantially as set out in Appendices 6 and 7; and
 - (d) the creation of the covenant over the area shown shaded in yellow and labelled "CC1" on the Plan substantially as set out in Appendix 8.
 - (e) the continuation force of a right to convey water in favour of Trust Power Generation Limited, over the area marked on the Plan in blue and labelled "r-s", pursuant to section 36(3)(c) Crown Pastoral Land Act 1998.

Schedule Four: Conditions

- 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;
 - (b) the Commissioner has reviewed, and is satisfied, that the issue of whether or not the existing easement to convey water over the Land in favour of Waipori Power Generation Limited (now Trust Power Generation Limited) registered over the leasehold estate under number 854992.5 is to be replaced and brought down onto the certificates of title for the land to be transferred to the Holder and the land to be restored to or retained in Crown control and has been resolved and consented to by the necessary parties. If the replacement easement is not in the interim created and registered pursuant to the Land Act 1948 with the consent of the Commissioner of Crown Lands prior to completion of the tenure review the land will transfer variously to the Department of Conservation and Castle Dent Limited without the easement.

Appendix 1: Consents – Example of Mortgagee Consent

[] 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

[], 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:)

Witness Signature:

Witness Name:
Occupation:
Address:

Appendix 2: Example of Solicitors Certificate

Certifications

I [] hereby certify as follows:

1. [[insert name of Holder] ("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

Specifications:

1. Indicative Fencing Requirements:

The fencing specifications calls for the erection of a post and seven wire fence to the following indicative requirements:

- 1.1 Five x 2.5 mm galvanised high tensile wires, one bottom x 4 mm galvanised mild steel and the top wire being galvanised barb wire.
- 1.2 2.4 metre x 200 mm treated timber strainer posts with 2.4 metres x 125 mm stay posts to be used for gateways and end of strains.
- 1.3 1.8 metre x 125 mm treated intermediate posts to be used at no greater than 21 metre gaps or at lesser intervals on appropriate high and low points as required. 117 cm (46") to remain out of the ground. Galvanised T Irons may be used on rocky ground in lieu of timber posts where appropriate.
- 1.4 Six steel Y stakes per 21 metres to be used with T Irons on high spots where appropriate. Y stakes will be mostly 1.5 metre (5') and 1.7 metre (5'6") to be used on soft ground.
- 1.5 Two x 3 metre "Taranaki" gates to be erected at easement exit points to proposed Scenic Reserve (R1(Scenic)) labelled "n" and "g".
- 1.6 Two x 4.25 metre swung gates to be erected at easement concession entry points to proposed conservation area (CA2) labelled "v" and "w".
- 1.7 The fence line will require hand clearing, if applicable.

2. Length and location:

Fence is to be erected along the line A-B, C-D (approximately 4000 metres) and E-F, G-H (approximately 1000 metres).

The length between C-D will require bush and scrub clearance in places.

3. Preliminary and General Matters

3.1 New Materials

All materials forming a permanent part of the fence shall be new and shall conform to any relevant New Zealand or international standard.

3.2 Standards

Materials forming a permanent part of the specified fence shall conform to the applicable standard on the label or certificate from the supplier or manufacturer shall be supplied stating the materials have been manufactured in a process that has been tested and which conforms to that standard.

Current standards that apply to fencing materials include but may not be limited to:

- 3471:1974 (NZS) Specifications for galvanised steel fencing wire plain and barbed.
- 3607:1989 (NZS) Specifications for round and part round timber fence posts.
- 3640:1992 (NZMP) Specifications of the minimum requirements of the NZ Timber Preservation Council Inc.
- D360:1986 (NZS/ASTM) Creosote Treatment
- 4534:1998 (AS/NZS) Zinc and zinc/aluminum alloy coating on steel wire

- 4680:1999 (AS/NZS) Hot dip galvanised (zinc) coating on fabricated ferrous articles

Where no applicable standard exists then materials shall be of best quality as generally accepted in the New Zealand farming and fencing industries. Documentation would be required of:

- Manufacturers (or suppliers) warranties and test certificates where applicable.
- Guarantee certificates that transfer to the owners of the completed fences.
- Remedies available under the guarantee.
- Installation instructions for hardware where applicable to the warrantee and guarantee.

3.3 Blasting

Any blasting required to loosen or remove rock shall be undertaken using electric detonators to reduce the risk of fire.

3.4 Drilling

Any rock drilling will be undertaken with a rock drill no larger than 40mm in diameter.

3.5 Spiking

Where placement of posts requires spiking, the spike shall be 90mm or more diameter.

3.6 Lacing

The top wire is to be laced to the top of the steel Y stake with 3.15 mm (9 gauge) wire.

4. **Materials General**

To be used except where these have been specifically modified by the provisions of Clause 5 which shall take precedence.

4.1 Wire

Fence wire will be 2.5mm galvanised high tensile steel wires, 4mm galvanised mild steel and galvanised barb wire all of which are to be of good quality. Tie-downs and tie-backs will be 4mm galvanised mild steel.

4.2 Infill Posts

Infill posts will be steel Y stakes or galvanised T irons for use on high spots.

4.3 Intermediate Posts

All posts used will be round and ground treated.

4.4 Stay Block

12 x 2 x 24 ground treat.

4.5 Staples

Staples will be 50mm x 4mm barbed galvanised steel.

4.6 Permanent Wire Strainers

Permanent wire strainers are to be of the yoke and reel type with a sprung loaded locking bar.

4.7 Cross Netting

Netting on creek crossings will be 7 wire galvanised sheep netting.

4.8 Gates

Will be 3.0m "Taranaki" gates and 4.25m swung gates. The swung gates shall be manufactured of 32mm 2.6wt galvanised steel pipe frame, suitable braced to

withstand normal pressure by beef cattle and fully covered with 50mm chain mesh manufactured from 3.15mm gauge wire and attached with 2.24mm galvanised lacing wire.

4.9 Gate Chains

Gate chains will be galvanised steel chain and staple type.

4.10 Gate Gudgeons

Gudgeons are to be of galvanised steel. Top gudgeon is to be lock through type and the bottom gudgeon a bolt through type.

5. Best Practice

5.1 Best fencing practice must be adhered to on all occasions.

5.2 Strains

Length of strains to be determined by the territory but to not exceed 300 metres. To conform to best practice and if applicable the wire manufacturing recommendations. Strain to account for weather conditions at time of strain.

5.3 Placement of timber strainers, posts and stays

Under no circumstances are any strainers, stays or posts to be shortened either prior to or subsequent to their placement in the ground.

All strainers are to be dug in or driven and rammed and footed. No.8 (4 mm) galvanised wire is to be used on foots. Stays are to be 1/3 of the way up posts.

5.4 Placement of wires

Wires are to be located on the grazing side of the boundary with the bottom wire to be 100 mm above the ground.

Post staples are to be driven well in but allow the wire to run through.

Barbed wire is to be stapled to timber posts and laced to steel Y stakes or steel T irons.

All wires are to be securely and neatly tied off and strained evenly. Figure 8 knots are to be used in all joins.

5.5 Gates

Gates must close against a post and be able to fully open back against the fence.

Taranaki gates are to be built to good practice standard.

5.6 Netting at creek crossings

Netting to be hung at creek crossings and left to swing.

5.7 Tie Downs

Tie downs are to consist of half or full steel Y stakes according to conditions and the tie down is to be with 4mm galvanised soft wire (which is to remain above ground). If a post is a tie down, it is to be fixed to the Y stake by a 150mm x 6mm galvanised nail.

All dips and hollows are to be tied down.

5.8 Tie backs

Tie backs can be used on angle posts or T irons and are permitted on both sides of the fence.

5.9 T Irons

T Irons are to be mused on all corners and on the end of all strains with tie-backs on them except on the gateways where conventional block and stays are to be used.

Appendix 4: Form of Easement Concession "v-w" to be Granted

Concession number: _____

DATED _____

Between

MINISTER OF CONSERVATION
("the Grantor")

and

CASTLE DENT LIMITED
("the Concessionaire")

EASEMENT CONCESSION
UNDER CROWN PASTORAL LAND ACT 1998



Department of Conservation
Te Papa Atawhai

THIS DOCUMENT is made this day of

PARTIES:

1. **MINISTER OF CONSERVATION**, ("the Grantor")

2. **CASTLE DENT LIMITED** ("the Concessionaire")

BACKGROUND

- A. The land described in Item 1 of Schedule 1 as the Servient Land is a Conservation Area or a Reserve under the management of the Grantor.

- B. The land described in Item 2 of Schedule 1 as the Dominant Land is freehold land of the Concessionaire.

- C. Sections 66 and 68 of the Crown Pastoral Land Act 1998 authorise the Grantor to grant a Concession for a Concession Activity in a Conservation Area and a Reserve under section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).

- D. The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Document.

- E. The Grantor has agreed to grant the Concessionaire an Easement appurtenant to the Dominant Land 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.
- "**Compensation**" means the amount specified in Item 6 of Schedule 1 and required by the Grantor under section 53 of the Crown Pastoral Land Act 1988 and section 17X of the Conservation Act 1987 for the adverse effects of the Concession Activity on the Crown's or public's interest in the Easement Area.
- "**Concession**" means a concession as defined in section 2 of the Conservation Act 1987.
- "**Concessionaire**" means the registered proprietor for the time being of the Dominant Land and includes the Concessionaire's successors, assigns, executors, and administrators.
- "**Concession Activity**" means the use of the Easement Area by the Concessionaire for purposes specified in Item 4 of Schedule 1.
- "**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 document and any subsequent amendments and all schedules, annexures, and plans attached to it.
- "**Dominant Land**" means the land specified in Item 2 of Schedule 1.

“**Easement**” means the Appurtenant Easement granted under this Document by the Grantor to the Concessionaire under section 17Q of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances).

“**Easement Area**” means that part of the Servient Land specified in Item 3 of Schedule 1.

“**Reserve**” has the same meaning as “reserve” in section 59A of the Reserves Act 1977.

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

“**Structure**” includes a bridge, a culvert, and a fence.

“**Term**” means the period of time specified in Item 5 of Schedule 1 during which this Document operates.

“**Working Day**” 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.

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document;
- (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 Grantor’s consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

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

2.0 GRANT OF APPURTENANT EASEMENT

2.1 In exercise of the Grantor’s powers under either section 66 or section 68 of the Crown Pastoral Land Act 1998 (whichever is relevant in the circumstances) the Grantor **GRANTS** to the Concessionaire an **EASEMENT APPURTENANT** to the Dominant Land under either section 17Q(1) of the Conservation Act 1987 or section 59A of the Reserves Act 1977 (whichever is relevant in the circumstances) 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 5 of Schedule 1.

4.0 COMPENSATION

4.1 The Concessionaire must pay to the Grantor in the manner specified by the Grantor the Compensation specified in Item 6 of Schedule 1.

4.2 Under section 53 of the Crown Pastoral Land Act 1998 the Grantor waives any requirement for rent on the basis that the costs of setting and collecting the rent would exceed any rent which may be collected.

5.0 OTHER CHARGES

5.1 In addition to Compensation, the Concessionaire must pay all rates, levies, taxes, duties, assessments, charges, and other outgoings which may be charged, levied, or reasonably assessed, or which may become payable in relation to the Easement Area and which are attributable to the Concessionaire's use of or activity on the Easement Area.

6.0 CONCESSION ACTIVITY

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

7.0 COMPLIANCE

7.1 The Concessionaire will comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under Part IIIA 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, the Reserves Act 1977, the Resource Management Act 1991 and the Health and Safety in Employment Act 1992 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.

8.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

8.1 The Concessionaire 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 Grantor.

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

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

8.4 If requested by the Grantor, the Concessionaire must, within such time as the Grantor determines, remove all Structures, facilities or other improvements erected or installed by the Concessionaire and make good at the Concessionaire'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 Grantor.

9.0 PROTECTION OF THE ENVIRONMENT

9.1 Except as approved in writing by the Grantor the Concessionaire will not, whether by act or omission:

- (a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Easement Area; or
- (b) bring any plants, or animals (except those stipulated in Item 4 of Schedule 1) 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.

9.2 The Concessionaire, must at the Concessionaire's expense:

- (a) if required by the Grantor take all steps necessary to control any pest, insect, or rodent infestation occurring on or emanating from the Easement Area or any Structure or facility on the Easement Area;
- (b) comply strictly with the provisions of the Biosecurity Act 1993.

9.3 The Concessionaire must ensure that the Concessionaire's employees, agents, contractors, licensees and invitees comply with the obligations imposed on the Concessionaire under clause 9

9.4 The Concessionaire may bring firearms on to the Easement Area for use in connection with the Concession Activity and pest control operations.

9.5 The Concessionaire may for purposes of the Concession Activity take onto or use vehicles on the Easement Area on existing formed access tracks only.

10. TEMPORARY SUSPENSION

10.1 The Grantor may, at any time in exercise of the Grantor's powers, close all or part of the Easement Area for such period as she/he considers necessary.

11.0 TERMINATION

11.1 The Grantor may terminate this Document by notice in writing to the Concessionaire if:

- (a) the Concessionaire breaches any terms of this Document; and
- (b) the Grantor has notified the Concessionaire in writing of the breach; and
- (c) the Concessionaire does not rectify the breach within 28 days of receiving notification.

11.2 Immediately on termination the Concessionaire must execute a surrender of this Document if the Grantor so requires it.

12.0 INDEMNITIES AND INSURANCE

12.1 The Concessionaire will indemnify and keep indemnified the Grantor 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 Concessionaire, its employees, agents, contractors, licensees or invitees or otherwise caused as a result of its use of the Easement Area or the Concessionaire's carrying out of the Concession Activity on the Easement Area.

- 12.2 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.
- 12.3 Without prejudice to or in any way limiting its liability under clause 12.1 the Concessionaire must take out and keep in force during the Term if required by the Grantor:
- (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 7 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 8 of Schedule 1; and
 - (b) statutory liability insurance for the amount specified in Item 9 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 10 of Schedule 1.
- 12.4 With respect to clause 12.3 the Concessionaire must before commencing the Concession Activity and on each renewal of insurance, provide the Grantor with certificates of insurance issued by the Concessionaire's insurer confirming the nature, amount and duration of cover.

13.0 ASSIGNMENT

- 13.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may, in the Grantor's discretion, decline to grant consent under this clause.
- 13.2 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document unless the Grantor otherwise provides in writing.
- 13.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 13.4 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

14.0 DISPUTE RESOLUTION AND ARBITRATION

- 14.1 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.
- 14.2 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 mediation with a mediator agreed between the parties.
- 14.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Easement Area is located is to appoint the mediator.
- 14.4 In the event that the dispute is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions of the Arbitration Act 1996 will apply.

14.5 Notwithstanding any provision to the contrary in the Arbitration Act 1996, 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 District Law Society in the region in which the Easement Area is located is to appoint the arbitrator. The arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

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

14.7 The parties agree that the results of any arbitration are to be binding on the parties.

15.0 NOTICES

15.1 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 11 of Schedule 1.

15.2 A notice given in accordance with clause 15.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;
- (c) in the case of facsimile, on the Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch.

16.0 RELATIONSHIP OF PARTIES

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

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

17.0 SPECIAL CONDITIONS

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

17.2 The standard conditions contained in this Document must be read subject to any special conditions.

Signed by : Jeffrey Edward Connell

for and on behalf of
the Minister of Conservation
pursuant to a written delegation (or designation as the case may be)
in the presence of :

Witness:
Occupation:
Address:

Signed by : Castle Dent Limited

as Concessionaire
in the presence of :

Witness :
Occupation :
Address :

SCHEDULE 1

1. **Servient Land:** *(see definition of Servient Land in clause 1.1)*
2. **Dominant Land:** *(see definition of Dominant Land in clause 1.1)*
3. **Easement Area:** A 10 metres wide strip, the western margin being the existing fence.
4. **Concession Activity:** For farm management purposes and access only by and/or with stock, foot, horse, motor vehicle, guns, farm dogs, machinery and implements through the Conservation Area.
5. **Term:** In perpetuity commencing on the date of the execution of this document.
6. **Compensation:** One peppercorn (if demanded) payable on the date of the execution of this document.
7. **Public Liability General Indemnity Cover:** *(see clause 12.3)*
8. **Public Liability Forest & Rural Fire Act Extension:** *(see clause 12.3)*
9. **Statutory Liability Insurance** *(see clause 12.3)*
10. **Other Types of Insurance:** *(see clauses 12.3)*
N/A
11. **Address for Notices (including facsimile number):** *(see clause 15)*
 - (a) Grantor
77 Stuart Street
PO Box 5244
DUNEDIN
Fax (03) 477 8626
 - (b) Concessionaire
Bowlers Creek
RD 1
LAWRENCE

SCHEDULE 2

Special Conditions

1. Clause 11.1 (a) is deleted and replaced with the following:
11.1 The Grantor may terminate this Document by notice in writing to the Concessionaire if:
(a) the Concessionaire breaches any material term of this Document; and
2. Clause 9.1(a) is deleted and replaced with the following:
(a) interfere with, remove, damage, or endanger the natural features, indigenous animals and plants, or historic resources on the Easement Area, except for the purpose of clearing and maintaining the easement area by hand only for the activities stipulated in Item 4 of Schedule 1
3. Clause 9.5 is deleted in its entirety.
4. The following clause, termed 13.5, is added to clause 13:
13.5 In exercising its discretion pursuant to clause 13.1 of the standard terms and conditions the Grantor agrees that its consent shall not be unreasonably withheld.
5. Clause 13.2 is deleted in its entirety.
6. In carrying out the Concession Activity the Concessionaire must take all reasonable care to avoid damage to the soil and vegetation on 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.