

Crown Pastoral Land Tenure Review

Lease name: CASTLE DENT

Lease number: TR 167

Substantive Proposal - Part 10

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

July

08

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.
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- 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:

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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:** 10 metres wide along the existing farm track (marked on the designation plan "o-p", "p1-p2" and "p2-p3") being 5 metres by 5 metres on either side of the track's centre line.
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)*
for \$1,000,000
8. **Public Liability Forest & Rural Fire Act Extension:** *(see clause 12.3)*
for \$1,000,000
9. **Statutory Liability Insurance** *(see clause 12.3)*
for \$250,000
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. 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.
3. Clause 13.2 is deleted in its entirety.
4. 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.

Appendix 6: Form of Easement in Gross to be created for Public Access purposes "f-e-d-g",
"d-w", "m-n" and "p-p1"

RELEASED UNDER THE OFFICIAL INFORMATION ACT
Transfer Instrument

Section 90, Land Transfer Act 1952

If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.

Land Registration District

OTAGO

Unique Identifier(s) All/Part Area/description of part or stratum
or C/T(s)

	ALL	
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Transferor

Surname(s) must be underlined

COMMISSIONER OF CROWN LANDS, acting pursuant to section 80 of the Crown Pastoral Land Act 1998

Transferee

Surname(s) must be underlined

HER MAJESTY THE QUEEN, acting by and through the Minister of Conservation

Estate or Interest to be transferred, or easement(s) or *profit(s) à prendre* to be created
State if fencing covenant imposed.

Public Access Easement in Gross under section 12 of the Reserves Act 1977 (continued on pages 2, 3 and 4 of Annexure Schedule).

Operative Clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or *profit à prendre* is described above, that easement or *profit à prendre* is granted or created.

Dated this day of

Attestation

If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule.

	Signed in my presence by the Transferor _____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name Occupation Address
Signature [common seal] of Transferor	

Certified correct for the purposes of the Land Transfer Act 1952

[Solicitor for] the Transferee

Annexure Schedule

Transfer Instrument Dated Page of Pages

Definitions

1. In this transfer unless the context otherwise requires:
 - 1.1 "Easement Area" means that part of the Servient Land (*marked f-e-d-g, d-w, m-n & p-p1 on the designation plan*) being [5] metres wide which is marked "[]" on S.O. Plan No [].
 - 1.2 "Servient Land" means the land owned by the Transferor and described on page 1.
 - 1.3 "Transferee" means Her Majesty the Queen acting by and through the Minister of Conservation and includes the Transferee's tenants, agents, contractors, and licensees; and any employee or contractor of the Director-General of Conservation; and any member of the public.
 - 1.4 "Transferor" means the owner of the Servient Land described on page 1 and includes the Transferor's tenants and invitees.

Standard Easement Terms

Access

- 2.1 The Transferee has the right in common with the Transferor to pass and re-pass at any time over and along the Easement Area on foot, or on or accompanied by horses, or by non-motorised vehicle powered by a person or persons.
- 2.2 The Transferor must keep the Easement Area clear at all times of obstructions whether caused by parked vehicles, deposit of materials or unreasonable impediment to the use and enjoyment of the Easement Area.

Exclusion of Implied Rights and Powers

3. The rights and powers contained in Schedule 4 of the Land Transfer Regulations 2002 and the Ninth Schedule of the Property Law Act 1952 are expressly negated.

Term

4. The easement created by this transfer is to be in perpetuity.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Transfer Instrument Dated Page of Pages

Temporary Suspension

5. The Transferee may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary.

Dispute Resolution

6.1 If a dispute arises between the Transferor and Transferee concerning the rights created by this transfer the parties are to enter into negotiations in good faith to resolve it.

6.2 If the dispute is not resolved within 14 days of written notice by one party to the other it is to be referred to mediation.

6.3 If the dispute is not resolved within 21 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Servient Land is situated:

6.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

Notice

7.1 A notice to be given under this transfer by one party to the other is to be in writing and must:

 (a) be hand delivered to the receiving party; or

 (b) be sent by ordinary post to the receiving party; or

 (c) be sent by facsimile to the receiving party.

7.2 If clause 7.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Transfer Instrument Dated Page of Pages

7.3 If clause 7.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

Special Easement Terms

8.1 The standard easement terms contained above must be read subject to any special easement terms set out below.

8.2 Clause 2.1 is deleted and replaced with the following clause:

The Transferee has the right in common with the Transferor to pass and re-pass at any time over and along the Easement Area;

- a) on foot, on or accompanied by horses, or by non-motorised vehicle powered by person or persons,
- b) marked p-p1 only, by motorised vehicle,
- c) with or without guns and dogs, if they have a hunting permit for adjoining land managed by the Minister,

8.3 Clause 5 is deleted and replaced with the following clause:

The Transferee (not being a member of the public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary.

8.4 Clause 6.1 is deleted and replaced with the following clause:

If a dispute arises between the Transferor and Transferee (not being a member of the public) concerning the rights created by this transfer the parties are to enter into negotiations in good faith to resolve it.

8.5 The Transferee (not being a member of the public) has the right:

- 8.5.1 To mark the Easement Area as appropriate
- 8.5.2 To erect and maintain stiles
- 8.5.3 To erect and maintain signs informing the public of
 - a) the location of land managed by the Crown and available for public access and recreation; and
 - b) their rights and responsibilities in relation to the Easement Area.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Transfer Instrument Dated Page of Pages

8.5.4 To use whatever reasonable means of access the Minister thinks fit over and along the Easement Area to carryout the works described in clauses 8.5.1- 8.5.3.

Continuation of "Attestation"

Signed for and on behalf of)
Her Majesty the Queen by)
Jeffrey Edward Connell)
under a written designation in the)
presence of:)

Witness (Signature)

Name _____

Address _____

Occupation _____

All signing parties and either their witnesses or solicitors must sign or initial in this box.

**Appendix 7: Form of Easement in Gross for Minister of Conservation Management Purposes
"a-b", "c-d-e-f", "d-g", "d-w", "e-h", "i-j-k", "j-l", "m-n" and "p-p1"**
