

Crown Pastoral Land Tenure Review

Lease name: CASTLE DENT

Lease number: TR 167

Substantive Proposal - Part 14

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

July

08

CONSENT OF LESSEE

CASTLE DENT LIMITED being the lessee pursuant to a lease granted under section 83 of the Land Act 1948, such estate and interest being comprised and recorded in Identifier OT386/102 (Otago Registry),

1. consents to the within grant of rights from Her Majesty the Queen to TrustPower Limited;
2. acknowledges that it has received compensation from TrustPower Limited, and that such compensation has been paid in lieu of any payment that may be payable by Her Majesty the Queen pursuant to section 60(1) of the Land Act 1948;
3. waives its right to any compensation from Her Majesty the Queen in respect of the within grant of rights; and

but otherwise without prejudice to its rights and remedies under the said lease.

Dated

CASTLE DENT LIMITED by:

Signature of director

Name of director

Signature of director

Name of director

**Appendix 9: Form of a Deed Recording Grant of Access Right in favour of TrustPower Limited
"o1-p", "p-p1", "p1-p2", "p2-p4-p6-p8", "P4-p5", "p6-p7", "p8-f"**

COPY

HER MAJESTY THE QUEEN acting by and through
THE COMMISSIONER OF CROWN LANDS

A N D

TRUSTPOWER LIMITED

DEED RECORDING GRANT OF ACCESS RIGHT

THIS DEED is made the _____ day of _____ 2007

PARTIES HER MAJESTY THE QUEEN acting by and through THE
AND COMMISSIONER OF CROWN LANDS at Wellington pursuant to the Land
Act 1948 ("Grantor")

TRUSTPOWER LIMITED at Tauranga (hereinafter with successors and
permitted assigns ("Grantee"))

BACKGROUND

- A. The Grantor is the owner of the Grantor's Land.
- B. The Grantee is the owner of the Grantee's Land.
- C. The Grantor has granted to the Grantee an easement to convey water and an easement of right of way, as more particularly described in the Grant of Easements.
- D. Castle Dent Limited as the Pastoral Lessee of the Grantor's Land pursuant to Pastoral Lease and has consented to the Grant of Easements.
- E. The Grant of Easements also refers to the grant by the Grantor to the Grantee of a right of access over formed tracks/roads existing as at the date of this Deed, in order for the Grantee to have access to the areas over which the easement to convey water extends.
- F. The parties wish to record their agreement in this Deed.

TERMS OF THIS DEED

1. Definitions and Interpretations

1.1 In this Deed (including the Schedule):

"Access Right" means the right of access over the Access Roads granted by the Grantor to the Grantee pursuant to this Deed;

"Access Roads" means the formed tracks, roads, paths, access-ways and other areas used for the purpose of gaining access existing as at the date of this Deed giving access to the areas over which the Easement to Convey Water extends, including those areas shown marked "A" – "o" – "p" – "B" – "B1", "B" – "C" – "C1", "C" – "D" – "D1" in red on the attached Plan No. 5535/1, noting however that the part marked "A" – "o" includes legal road over which the Grantor has no proprietary rights but which the Grantee already has a right to use in common with members of the public and so the grant by the Grantor to the Grantee as contained herein shall be the grant of a right to use these parts of the Grantor's Land over which a road access has been formed extending from Gardners Track to "o" except those parts which have been dedicated as legal road;

"Deed" means this deed, the background and the Schedule;

"Easement to Convey Water" means the easement to convey water granted by the Grantor to the Grantee pursuant to the Grant of Easements;

"Grant of Easements" means the deed recording the grant by the Grantor to the Grantee of an easement to convey water and an easement of right of way dated the same date as this Deed, which deed is intended to be registered;

"Grantee" includes the Grantee's servants, agents, employees, workers, invitees, licensees, contractors, lessees or tenants;

"Grantee's Land" means the Land described in Clause 2 of the Schedule;

"Grantor's Land" means the Land described in Clause 1 of the Schedule;

"Pastoral Lease" means Pastoral Lease Number P196 affecting the Grantor's Land;

"Pastoral Lessee" means the lessee under the Pastoral Lease;

1.2 In the interpretation of this Deed unless the context otherwise requires:

- (a) the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Deed;
- (b) references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to and;
- (c) the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

2. **Grant of Access Right**

2.1 The Grantor grants to the Grantee, in perpetuity commencing on the date of the execution of this Deed the Access Right on the following terms:

- (a) The right to from time to time and at all times enter, exit, pass, re-pass and remain on, go over and along the Access Roads (including such parts of the Grantor's Land adjacent to the Access Roads as may be necessary for the purposes of upkeep and maintenance) as if the Access Right were a grant of a right of way as defined by Schedule 4 of the Land Transfer Regulations 2002 ("**Schedule 4**") together with all such rights and obligations that attach to such a right of way as contained in Schedule 4, and the Ninth Schedule of the Property Law Act 1952 ("**Ninth Schedule**"), with or without vehicles or machinery necessary for such purposes, except:
 - (i) Where there is a conflict between the terms of Schedule 4 and the Ninth Schedule, the terms of the latter shall prevail; and
 - (ii) where any rights and obligations under either Schedule 4 or the Ninth Schedule conflict with the terms of this Deed then the terms of this Deed shall prevail; and
 - (iii) all references to "servient tenement" shall be amended to refer to "Grantor's Land" and all references to "dominant tenement" shall be amended to "Grantee's Land"; and
 - (iv) the Access Right is not intended to be registered.
- (b) The provisions of Schedule 4 are modified by the addition of the following:

"Any maintenance repair or replacement of the Access Roads that is necessary because of any act or omission by the Grantor (which includes agents, employees, contractors, sub-contractors and invitees of the Grantor) must be carried out promptly by the Grantor at the Grantor's sole cost.

Any maintenance repair or replacement of the Access Roads that is necessary because of any act or omission by the Grantee (which includes agents, employees, contractors, sub-contractors and invitees of the Grantee) must be carried out promptly by the Grantee at the Grantee's sole cost.

Where an act or omission is the partial cause of the maintenance, repair or replacement the costs payable by the party responsible must be in proportion to the amount attributable to that act or omission (with the balance payable in accordance with clause 11 of Schedule 4)."

- (c) The Access Right granted under this Deed is non-exclusive and is exercisable in common with the Grantor and any other person having similar rights either now or in the future.

3. Consideration

- 3.1 The consideration of the grant of the Access Right is satisfied by the payment of the consideration under the Grant of Easements.

4. Payment of Compensation to Pastoral Lessee

- 4.1 The Grantee already holds an easement registered under Transfer 854992.3 from the Pastoral Lessee, which Transfer records receipt by the Pastoral Lessee of a payment from the Grantee in consideration of the grant of the easement (including access rights).
- 4.2 The Pastoral Lessee acknowledges that the payment is in lieu of the payment of any compensation by the Grantor pursuant to section 60(1) of the Land Act 1948, and waives its right to any compensation from the Grantor in respect of the grant of the Access Right in this Deed.

5. Obligations of the Grantee

- 5.1 The Grantee shall when on the Grantor's Land (subject to Clause 2.1 of this Deed):
 - (a) Wherever possible remain on the formed roads and tracks and when on those roads or tracks comply with all traffic laws and regulations as may be applicable.
 - (b) Immediately after passing through any gates, close such of them as were closed and lock such of them as were locked immediately before such passing through.
 - (c) ~~The Grantee shall not use any vehicles prohibited by the Grantor~~ **PROVIDED HOWEVER THAT** the Grantee may use such vehicles as may be necessary for the full and safe exercise of the Easement to Convey Water, including for the purpose of accessing and servicing, cleaning, repairing and maintaining of the Easement Facilities (as defined in the Grant of Easements) (including clearing blocking and slumping of the water races and water intakes), including diggers (such as 20 tonne diggers), bulldozers (such as D6 Dozers), four-wheel drive utility vehicles and other machinery.

- (d) Take all reasonable precautions for guarding against danger (including, but without limitation, fire, physical damage or disease), and in particular shall (but without limiting the general obligation to take full and proper precautions pursuant to this clause 5.1(d)) comply with all the conditions that may be imposed from time to time by any lawful authority.
 - (e) Consult with the Grantor prior to carrying out any earthworks or physical construction of access tracks on the Grantor's Land.
 - (f) Ensure that as little damage or disturbance as possible is caused to the surface of the Grantor's Land and that the surface is restored as nearly as possible to its former condition and any other damage done by reason of the activities permitted on the Access Roads by this Deed is similarly restored.
 - (g) At the conclusion of any works, the Grantee will carry out restoration works to prevent erosion on the Grantor's Land which might arise as a result of the Grantee's activities. The restoration works shall be carried out with the objective of restoring the area disturbed to a standard comparable with the surrounding area. Any dispute as to the adequacy of any restoration works shall be settled by arbitration in accordance with the terms contained in Schedule 4.
 - (h) The Grantee may enter onto the Grantor's Land pursuant to this Deed at all times for routine inspections **PROVIDED HOWEVER THAT** the Grantee shall notify the Grantor and the Pastoral Lessee should the Grantee wish to bring machinery on to the Grantor's Land to undertake works on the Access Roads or any Easement Facilities constructed pursuant to the terms of the Easement to Convey Water **EXCEPT** in an emergency where the Grantee may enter without notice if necessary provided that subsequent notice is given to the Grantor and the Pastoral Lessee as soon as practicable.
 - (i) The Grantee shall, at its cost, repair to the satisfaction of the Grantor any part of the Grantor's Land, including the Access Roads, fences, gates, drains, buildings or other structures, which is damaged directly by the Grantee. It is noted that the Access Roads may often be damaged by third party access by four wheel drive vehicles. The Grantee shall be liable only to undertake such repairs as are necessary to enable the Grantee to have access.
- 5.2 The Grantee shall compensate the Grantor for any loss suffered by the Grantor resulting directly from the actions of the Grantee.
- 5.3 The Grantee shall at all times in the exercise of the rights set out in this Deed not obstruct or hamper the Grantor, or any agents, employees and contractors of the Grantor or the Pastoral Lessee, in their respective normal or reasonable use of the Grantor's Land.
- 5.4 The Grantee shall not at any time except with the prior written approval of the Grantor carry out any activity which is not included within clause 2 of this Deed on the Grantor's Land, or do any other thing which would affect the ability of the Grantor to use the Grantor's Land.
- 5.5 The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed.

6. **Costs**

6.1 The Grantee shall bear all reasonable costs and expenses (including the Grantor's legal costs) in relation to the preparation and enforcement of any provisions in this Deed.

7. **Indemnity**

7.1 The Grantee hereby indemnifies the Grantor against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor in connection with this Deed or as a direct result of any breach by the Grantee of its obligations, undertakings or warranties contained or implied in this Deed.

8. **Grantor not to interfere with Grantee's Rights and Limitation of Grantor's Liability**

8.1 The Grantor shall not at any time do, permit or suffer to be done any act whereby the rights, powers, licences and liberties granted to the Grantee maybe interfered with or affected in any way.

8.2 Subject to clause 8.1, the Grantor will not be liable in contract, tort, or otherwise to the Grantee for any expense, costs, loss, injury, or damage whether consequential or otherwise, that may be suffered or incurred by or resulting to the Grantee, other than as a result of the Grantor's breach of the terms of this Deed or any deliberate or negligent act or omission on the Grantor's part or any activity undertaken by the Grantor on the Grantor's Land in derogation of the grant of the rights under this Deed.

8.3 The Grantee acknowledges that the Grantor's Land is subject to the Pastoral Lease in favour of the Pastoral Lessee and that, for the avoidance of doubt, the Grantor shall have no liability in accordance with clause 8.1 in relation to any act or omission of the Pastoral Lessee or any activity undertaken on any part of the Grantor's Land by the Pastoral Lessee.

9. **Termination**

9.1 The Grantor may terminate the Access Right if the Grantee breaches any of the terms of this Deed and the breach remains unrectified following written notice to the Grantee specifying the breach and seeking rectification within 90 days or such other time as may be agreed by the parties acting reasonably (having regard to circumstances beyond the Grantee's reasonable control, such as inclement weather).

9.2 If the breach remains unrectified (or is unable to be rectified) then termination must be by 90 days' written notice from the Grantor.

9.3 Upon termination (for whatever reason) of the grant of the Access Right all rights of the Grantee shall immediately cease but the Grantee shall not be released from any liability to pay consideration or other moneys up to the date of termination.

10. **Delegation**

10.1 All rights, benefits and obligations of the Grantor arising under this Deed may be exercised by any person duly appointed by the Grantor **PROVIDED THAT** the exercise of any such rights, benefits or obligations by that person shall not limit the liability of the Grantor in the performance of observance of the provisions of this Deed.

11. **Disputes**

11.1 If any dispute arises between the Grantor and the Grantee concerning the rights created by this Deed the parties shall enter into negotiations in good faith to resolve their dispute. If the dispute is not resolved within one month of the date on which the parties begin their negotiations the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Grantor's Land is situated. Such arbitration shall in accordance with the Arbitration Act 1996 **PROVIDED THAT** this clause shall be subject in all respects to the provisions of section 17 of the Land Act 1948.

12. **Notices**

12.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the address in writing to the other party.

- (a) The Grantor's Address as set out in Clause 3 of the Schedule.
- (b) The Grantee's Address as set out in Clause 4 of the Schedule.
- (c) Any notice posted shall be deemed to be served three (3) working days after the date of posting.

13. **Severability**

13.1 If any part of this Deed is held by any court or administration body of competent jurisdiction to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

IN WITNESS WHEREOF these presents have been executed the day and year hereinbefore written.

SIGNED by **THE COMMISSIONER OF CROWN LANDS** in the presence of:

Signature of witness

Name of witness

Occupation of witness

City/town of residence

TRUSTPOWER LIMITED by:

Signature of director

Name of director

Signature of director

Name of director

SCHEDULE

1. **GRANTOR'S LAND:**

The land contained in Identifier OT386/102 (Otago Land Registry)

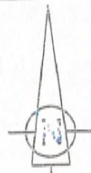
2. **GRANTEE'S LAND:**

The land contained in Identifier OT2C/1162 (Otago Land Registry)

3. **GRANTOR'S ADDRESS:** c/- Land Information New Zealand, Private Bag 4721, Christchurch (Attention: Crown Property Management)

4. **GRANTEE'S ADDRESS:** TrustPower Limited, Private Bag 12023, Tauranga (Attention: Ian Lees)

PLAN NO. 5535/1

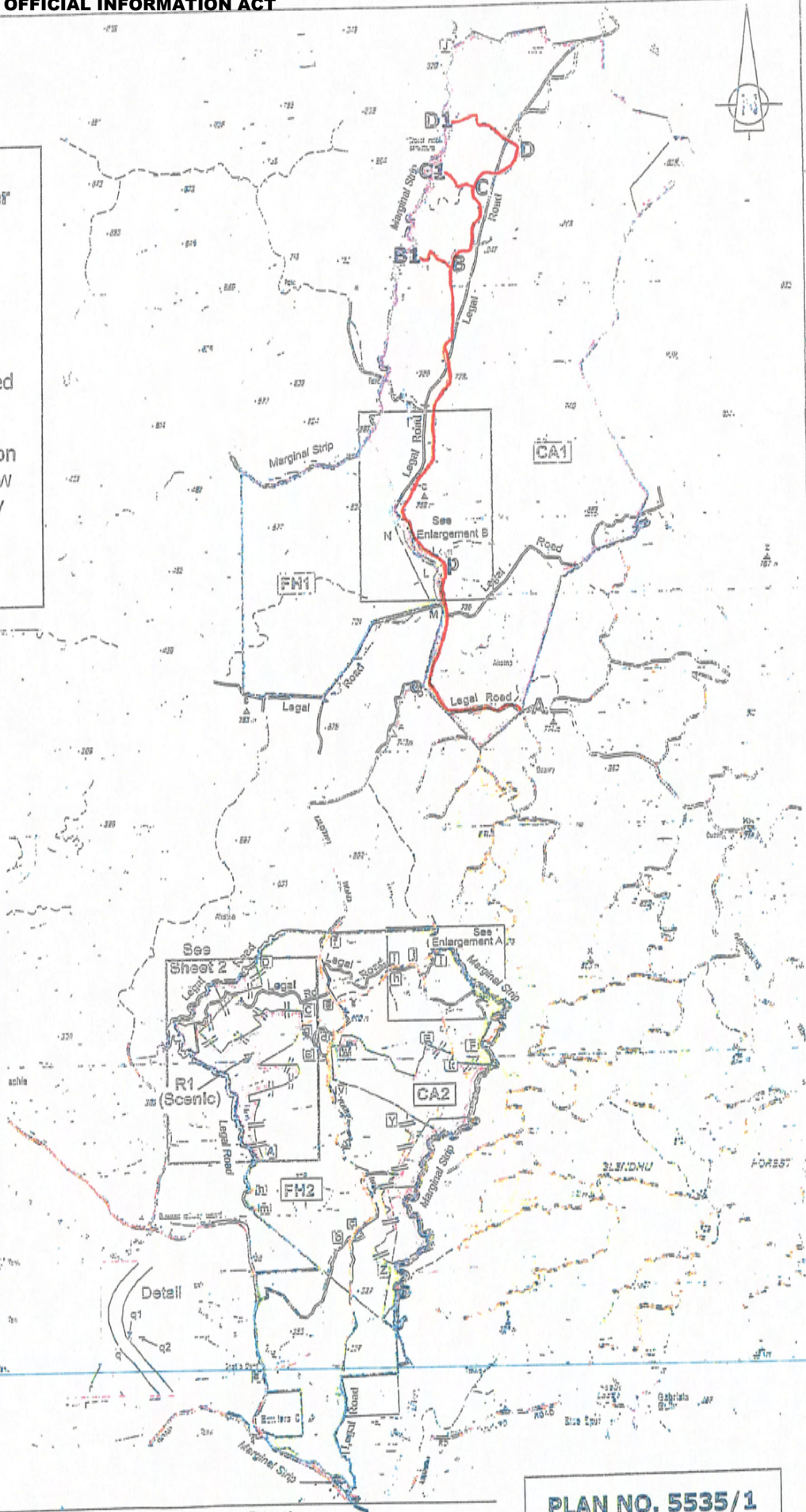
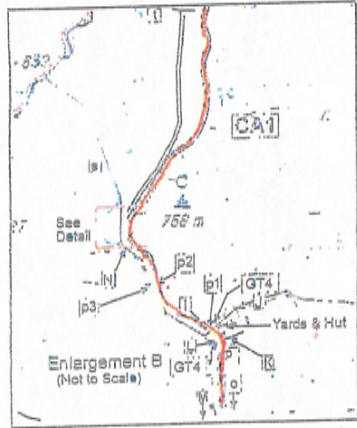
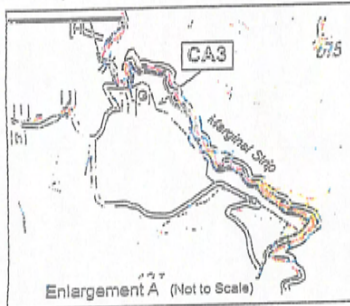


**Access Easements
Required by TrustPower
over CA1**

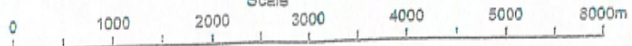
**A - o - p - B - C - D and
B - B1
C - C1
D - D1**

marked red on plan attached
numbered **5535/1**.

Annotation superimposed on
T L Survey's Tenure Review
Map dated 04/04/2006 by
Don Hatfield
Dip.Surv. FNZIS MPINZ
Surveying Consultant



Castle Dent Station



PLAN NO. 5535/1

CONSENT OF LESSEE

CASTLE DENT LIMITED being the lessee pursuant to a lease granted under section 83 of the Land Act 1948, such estate and interest being comprised and recorded in Identifier OT386/102 (Otago Registry),

1. consents to the within grant of rights from Her Majesty the Queen to TrustPower Limited;
2. acknowledges that it has received compensation from TrustPower Limited, and that such compensation has been paid in lieu of any payment that may be payable by Her Majesty the Queen pursuant to section 60(1) of the Land Act 1948;
3. waives its right to any compensation from Her Majesty the Queen in respect of the within grant of rights; and

but otherwise without prejudice to its rights and remedies under the said lease.

Dated

CASTLE DENT LIMITED by:

Signature of director

Name of director

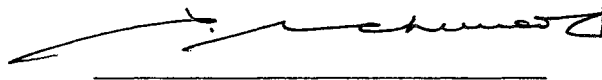
Signature of director

Name of director

Execution Section

This Proposal (including the schedules and appendices) is signed by the Commissioner and the Holder as a binding agreement.

SIGNED for and on behalf of the
Commissioner of Crown Lands
by Brian John Usherwood acting
pursuant to a delegated authority in
the presence of:



A M Puzna
Witness
Solicitor
Occupation
Wellington
Address

SIGNED for and on behalf of
CASTLE DENT LIMITED as
Holder by its directors:

~~Archibald Charles MacDonald~~

Raymond Charles MacDonald
Raymond Charles MacDonald

in the presence of



CASTLE DENT LIMITED
1000 WING