

Crown Pastoral Land Tenure Review

Lease name : Alphaburn

Lease number: Po 380

Report on public submissions

This document includes information on the public submissions received in response to an advertisement for submissions on the tenure review preliminary proposal. The analysis determines if an issue is accepted or not accepted as meeting the objectives of part 2 of the Crown Pastoral Land Act (CPLA) 1998, and if further consideration and consultation should be allowed or disallowed, as per Section 45 CPLA 1998.

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

January 02

DECISION OF THE COMMISSIONER OF CROWN LANDS

ALPHA BURN

(1) Details of lease:

Lease Name: Alpha Burn
Location: Lake Wanaka
Lessee: Donald Withell McRae and Victoria Clare McRae

(2) Public notice of preliminary proposal:

Date, publication and location advertised:

Saturday – 2 March 2002:

- The Press Christchurch
- Otago Daily Times Dunedin
- Southland Times Invercargill

Wednesday – 6 March 2002:

- The Press Christchurch
- Otago Daily Times Dunedin
- Southland Times Invercargill

Closing date for submissions:

1 May 2002

(3) Details of submissions received:

A total of 69 submissions were received. A list of submitters is attached as Table 1.

Submissions were received after the closing date from Wakatipu Tramping and Mountaineering Club and Royal Forest and Bird Protection Society, Southern Branch. These submissions are included in the analysis.

(4) Analysis of submissions:

4.1 Introduction:

Symbols and abbreviated terms:

The symbols and abbreviations used in this report are as set out in the Crown Pastoral Land Standard 8 for Preliminary Proposal for tenure review issued by the office of the Chief Crown Property Office, 13 March 2000.

Explanation of Analysis:

Each of the submissions received has been reviewed in order to identify the points raised and these have been numbered accordingly. Where submitters have made similar points, these have been given the same number. An annotated copy of the submissions recording the points made is attached as Appendix II. Table 1 lists the submitters with a reference to the points raised that are summarised in Table 2.

The following analysis summarises each of the points raised along with the recorded number of the submitters making the point. A discussion is included on the point raised and an explanation of the decision of the Commissioner in accepting/not accepting or allowing/disallowing the point.

The following approach has been adopted when making a decision:

(i) To accept/not accept:

It has been decided that the decision be to "accept" the point made by submitters where the matter raised is a relevant matter for the Commissioner to consider when making decisions in the context of the Crown Pastoral Land Act 1998. Conversely, where the matter raised is not relevant in terms of the Commissioner's consideration, it has been decided that the decision be to "not accept".

(ii) To allow/disallow:

Where the decision is to accept, a further decision has been made as to whether the point made should be "allowed" or "disallowed". It has been decided that the decision be to "allow" if the matter raised should be considered further. Where the matter has previously been decided by the Commissioner and there is no justification for further consideration the decision is to "disallow". Further justification for the decision has been made in the discussion paragraph showing the summary for each point.

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4.2 Analysis:

Point	Summary of Point Raised	Sub Nos	Decision	
1	<p>Oppose freeholding of the two proposed covenant areas.</p> <ul style="list-style-type: none"> - They contain significant inherent values similar to adjoining area. - It is not ecologically sustainable to graze these areas. 	7	Accept	Allow so that further consultation can occur with the DGC delegate.

Discussion:

As the submissions deal with a decision concerning designations under Section 35 CPL Act the point is accepted. Although this matter has been widely traversed in consultation with the holder and the DGC delegate the information provided in the conservation resources report along with the content and scope of public submissions warrant that it be considered further in consultation with the holder.

Point	Summary of Point Raised	Sub Nos	Decision	
2	Generally support proposal subject to some changes.	11	Accept	Disallow

Discussion:

Support is noted as are the conditions. As the submissions deal with a decision made under the CPL Act the point is accepted. The submissions with respect to this point do not provide additional information and do not affect decisions made by the Commissioner. The conditions under which support is provided are varied and are dealt with elsewhere in this report. The submissions with respect to this point is therefore disallowed.

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Point	Summary of Point Raised	Sub Nos	Decision	
3	<p>Object to closure of access easement to Roys Peak over lambing.</p> <ul style="list-style-type: none"> - As this is the main access route to the conservation area. - The ongoing closure over lambing will become unsustainable in the face of increasing usage. - A clause should be included in the easement providing for year round use where area not being used for lambing/sunset clause allowing closure at lambing. 	4	Accept	Disallow

Discussion:

As access is a relevant matter under Section 24 (c) (i) CPL Act the point is accepted. The proposal provides for the transferor to close the easement during the period 1 October to 10 November for lambing. This issue was traversed in considerable detail in consultation with the holder and the DGC delegate. Furthermore, as the temporary suspension of access is a statutory provision under the Conservation Act it is not a matter that can be allowed. Accordingly the point is disallowed.

Point	Summary of Point Raised	Sub Nos	Decision	
4	<p>Need for additional access routes to proposed conservation areas.</p> <ul style="list-style-type: none"> - Suggest easement for public access from Motatapu Road to proposed conservation area. - Need for public access to conservation area within the Fernburn. 	7	Accept	Allow

Discussion:

As the point relates to public access it is a relevant matter under Section 24 (c) (i) of the CPL Act and is accepted. The matter of the provision of public access up the Fern Burn was not considered previously. Accordingly the submissions on this point is allowed.

Point	Summary of Point Raised	Sub Nos	Decision	
5	Object to the proposed grazing concession the problem of destocking should be addressed now.	1	Accept	Disallow

Discussion:

The submissions deal with a decision concerning the designation of the land in terms of Section 35 CPL Act and therefore the point is accepted. The purpose of the concession is to provide for incidental stock trespass and not for deliberate ongoing grazing by the holder. No new information is provided by the submission. Accordingly the submission is disallowed.

Point	Summary of Point Raised	Sub Nos	Decision	
6	<p>An area at Damper Bay should be retained in Crown ownership for recreation purposes.</p> <ul style="list-style-type: none"> - There is a lack of public land in the area easily accessible for activities such as walking, fishing, biking. - Lakeside shrubland at Damper Bay should be included in conservation area. - Western end of Damper Bay 40 – 50 ha should be reserved as scenic reserve. - The area of manuka shrubland in Damper Bay constitutes a significant inherent value and is identified by DoC Conservation Resources Report. - DGC delegate's advice to the Commissioner has been coloured by the lessee's objection to the Crown retaining this area. - DGC delegate's advice to the Commissioner should not be coloured by the desire or not to administer an area. 	17	Accept	Allow so that further consultation can take place with the DGC delegate and the holder.

Discussion:

The point raised in the submissions is a relevant matter under Section 35 CPL Act and therefore is accepted. This aspect of the proposal was the subject of consultation with the holder. The weight of public submissions on this issue and an expansion of the information base warrants the Commissioner consulting further with the holder over this point. Accordingly the submissions is allowed to enable further consultation.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>
7	<p>Object to the freeholding of area between Damper Bay and Glendhu Bay. Should be retained as conservation area due to significant inherent values being present in the form of outstanding landscape and recreation values.</p> <ul style="list-style-type: none"> - At least 100 ha surrounding lagoon should be protected from grazing. - Area retained by Crown around Scaiffes Lagoon should be larger to allow for walkway, protection of seepage area. - Proposal fails to make provision for reserve along the lakeshore. 	14	<p>Accept</p> <p>Allow so that further consultation can take place with the DGC delegate and the holder.</p>

Discussion:

The matter is a relevant matter under Section 35 CPL Act and therefore is accepted. There have been no new attributes on the land additional to "outstanding landscape" identified by the submitters. The number of submissions received on this point confirm that there is a strongly held view in the public that "outstanding landscapes" such as this do constitute a significant inherent value which should be protected under the CPLA. The point is therefore allowed so that further consultation can take place with the DGC delegate and the holder.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>
8	<p>Oppose the Upper Clutha Environment Society submission for land between road and lake to become reserve.</p>	32	<p>Not accept</p>

Discussion:

The submission of a third party is not a relevant matter for the Commissioner to consider under the CPL Act. Accordingly the point is disallowed.

Point	Summary of Point Raised	Sub Nos	Decision	
9	Support the proposal unconditionally. - See benefit to landscape and tourism by maintaining a farming use of the area between road and lake.	37	Accept	Disallow

Discussion:

The support of the proposal as advertised is noted. The submissions deal with decisions made under the CPL Act and therefore are accepted. As the submissions do not provide new information and do not affect decisions made by the Commissioner the point is disallowed.

Point	Summary of Point Raised	Sub Nos	Decision	
10	Support the proposed public access easement proposed between Damper Bay and Glendhu Bay.	15	Accept	Disallow

Discussion:

Support for this aspect of the proposal is noted. As the submissions deals with a decision made under the CPL Act the point is accepted. As the submissions do not provide new information and do not affect decisions made by the Commissioner they are disallowed.

Point	Summary of Point Raised	Sub Nos	Decision	
11	Proposed easement Damper Bay to Glendhu Bay should be defined on a practical route on the ground. - Route should follow direct line from Damper Bay to Point B on plan.	4	Accept	Disallow

Discussion:

The submissions deal with public access which is a relevant matter under Section 24 (c) (i) CPL Act and therefore is accepted. The proposed Damper Bay to Glendhu Bay easement has been defined and GPS'd on a practical route on the ground. The route of the easement has been traversed fully in consultation with the holder and DGC delegate. The submissions provide no new information on this point. Accordingly the submissions are disallowed.

Released under the Official
Information Act

Point	Summary of Point Raised	Sub Nos	Decision	
12	Damper Bay Recreation Reserve should be extended along the lake frontage to Glendhu Bay.	1	Accept	Allow so that further consultation can occur with the DGC delegate.

Discussion:

As the submission deals with a relevant matter under Section 35 CPL Act the point is accepted. The submission provides no new evidence to support the submission. No consultation has occurred with the DGC delegate on this point. A marginal strip presently exists along the lake shore. In light of there being no previous consideration given to this point and the weight of submissions there is justification for the Commissioner to consider this point further. Accordingly the submission is allowed.

Point	Summary of Point Raised	Sub Nos	Decision	
13	Public foot access should be provided from Wanaka Mount Aspiring Road to Damper Bay to meet Section 24 (2) (1) objective adequately. - The DoC Conservation Resources Report identifies this route as being desirable. - This route links the lakeshore with the Roys Peak Track.	8	Accept	Allow so that further consultation can take place with the DGC delegate and the holder.

Discussion:

The submissions deal with a relevant matter under Section 24 (c) (i) CPL Act and therefore is allowed. A public access route from the Wanaka Mount Aspiring Road to Damper Bay was identified as being desirable by the DGC delegate. It is related to submissions proposing the Crown retain ownership of an area for reserve at Damper Bay, which have been allowed. This fact along with the weight of submissions justifies that this aspect of the proposal be revisited. Accordingly the submissions are allowed on this point to enable further consultation.

Released under the Official Information Act

Point	Summary of Point Raised	Sub Nos	Decision	
14	<p>The entire Mount Roy face should be protected by a landscape covenant to protect the important landscape values present.</p> <ul style="list-style-type: none"> - The District Plan under the RMA will not provide sufficiently robust or durable protection. - Agent justification for not protecting important landscape values identified in DoC report, that role of protecting landscape values should be with the territorial authority, is not a valid justification for not protecting inherent values identified under the CPLA. 	7	Accept	Allow so that further consultation can take place with the DGC delegate and the holder.

Discussion:

The submissions deal with a relevant matter under Section 24 (b) (i) and Section 40 (2) (a) CPL Act and therefore are accepted. The DGC delegate identified in the Conservation Resources Report the Mount Roy face as being "an area of high landscape value". There has been no evidence presented to the Commissioner that would suggest this constitutes a "significant inherent value". However, the weight of submissions gives support to a public view on the importance of this landscape. Accordingly the submissions are allowed with regard to this point so that further consultation can take place with the DGC delegate and the holder.

Point	Summary of Point Raised	Sub Nos	Decision	
15	Land between Mount Aspiring Road and Lake Wanaka is not suitable for economic use for pastoral purposes as claimed.	1	Accept	Disallow

Discussion:

This submission raises a relevant matter in relation to Section 24 (a) (ii) CPL Act and therefore is accepted. The submission provides no new information to support its contention. The economic use of this area has previously been considered by the Commissioner and he has determined that the existing use of pastoral farming is in fact an economic use the land is capable of. There has been no evidence presented to justify the Commissioner reconsidering this matter. Accordingly, the submission is disallowed in respect of this point.

Point	Summary of Point Raised	Sub Nos	Decision
16	All land above 1000 metres should be retained in Crown ownership.	1	Not accept

Discussion:

Altitude is not a relevant matter that the Commissioner can consider in isolation in determining designations under Section 35 CPL Act. Accordingly the submission is disallowed on this point.

Point	Summary of Point Raised	Sub Nos	Decision
17	The wetland close to Damper Bay should be protected.	2	Not accept

Discussion:

The wetland referred to is not within the reviewable land, consequently it is not a relevant matter the Commissioner can consider within this review. Accordingly the submissions are not accepted on this point.

Point	Summary of Point Raised	Sub Nos	Decision
18	The proposed freehold boundary is too high and should be lowered to the 800 metre contour on the spur north of Waterfall Creek. - Fencing on eastern faces should be in line with conservation area resulting from Hillend review to maintain landscape integrity.	3	Accept
			Allow so that further consultation can take place with the DGC delegate and the holder.

Discussion:

The matter of landscape can constitute a significant inherent value which is a relevant matter under Section 24 (b) CPL Act and therefore is accepted. The matter of landscape protection is to be further considered by the Commissioner. Consequently the submissions to alter the proposed freehold boundary on the basis of maintaining landscape integrity are allowed.

Released under the Official Information Act

Point	Summary of Point Raised	Sub Nos	Decision	
19	Oppose length of grazing concession (20 years) and submit in favour of a 5 year term.	4	Accept	Disallow

Discussion:

The term of the grazing concession is a relevant matter in terms of Section 24 (b) (ii) CPL Act and therefore the submissions are accepted. The submissions provide no new information for the Commissioner to consider on this matter. The justification for the concession is to accommodate incidental stock trespass due to difficulties in fencing. Its purpose is not to provide for ongoing deliberate grazing by the holder. There are no grounds for reconsideration in light of these submissions and accordingly the submissions are disallowed with regard to this point.

Point	Summary of Point Raised	Sub Nos	Decision	
20	A condition should be included in the easement prohibiting activities being carried out on the land that would deter users of easement.	1	Accept	Disallow

Discussion:

The submission is relevant in terms of Section 24 (c) (i) CPL Act and therefore are accepted. Clause 3 of the proposed easement provides that "the transferor must keep the easement area clear at all times of "..... unreasonable impediment to use and enjoyment of the easement area". The existing proposal would therefore appear to satisfy the submission. Accordingly the submission is disallowed.

Point	Summary of Point Raised	Sub Nos	Decision	
21	<p>Condition of Damper Bay to Glendhu easement should provide for the formation and maintenance of the track with machinery.</p> <ul style="list-style-type: none"> - The extension of the existing lakeside walkway track would be at the landowners discretion in the current form of easement. - The easement should be created after the track is formed. 	2	Accept	Allow so that further consultation can take place with the DGC delegate and the holder.

Discussion:

The matter is a relevant matter under Section 24 (c) (i) CPL Act and therefore are accepted. The easement as proposed does not appear to provide for the construction of the track. This matter should therefore be raised in further consultation under the CPLA. Accordingly the submission is allowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>	
22	The lagoon proposed as conservation area (<i>Scaiffes Lagoon</i>) should be named <i>Glendhu Lagoon</i> as traditionally.	1	Not accept	

Discussion:

The naming of a lagoon is not a relevant matter under the CPL Act and therefore the submission is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>	
23	Oppose area between lake and road being reserve as: <ul style="list-style-type: none"> - Has been modified by grazing. - Will become "waste land" and a fire risk. - Landscape will be protected by RMA. - Access is not a problem. 	2	Accept	Disallow

Discussion:

The matter of the designation of the reviewable land is a relevant matter under the CPL Act and therefore is accepted. With the exception of *Scaiffes Lagoon* the area between the road and the lake is not being proposed as a reserve. The Commissioner has nothing further to consider with respect to this submission. Accordingly the submission is disallowed.

Point	Summary of Point Raised	Sub Nos	Decision	
24	Need to know how DoC propose to manage hieracium.	1	Not accept	

Discussion:

Hieracium or the future management of a conservation area is not a relevant matter under the CPLA. The submission draws no relationship between hieracium and matters relevant to the Commissioner's consideration under the CPLA. Accordingly the submission is not accepted.

Point	Summary of Point Raised	Sub Nos	Decision	
25	Need to include an easement clause requiring sharing of maintenance cost of tracks on which easements located.	1	Not accept	

Discussion:

The submission raises the issue of maintenance costs of tracks in the context of DoC making a contribution to the holder for maintenance. As the matter of maintenance cost is a statutory provision under the Conservation Act it is not a matter that can be accepted.

Point	Summary of Point Raised	Sub Nos	Decision	
26	Covenant deed confusing due to schedule cancelling conditions that are included in document.	1	Not accept	

Discussion:

The submission is noted, however it is not a relevant matter for the Commissioner in making decisions under the CPL Act as it does not materially effect the nature of the decisions made. Accordingly the submission is not accepted.

Point	Summary of Point Raised	Sub Nos	Decision	
27	Clause 11.2 of the grazing concession should be amended by adding "of which they are aware".	1	Accept	Allow

Discussion:

As this is a relevant matter for the Commissioner to consider in making decisions under the CPL Act the point is accepted. This matter concerns drafting detail which the Commissioner wishes to consider further with his advisors. Accordingly the condition is allowed.

Point	Summary of Point Raised	Sub Nos	Decision	Decision
28	Oppose designation of Scaiffes Lagoon as Government purpose reserve. Should be designated as conservation area.	1	Accept	Disallow

Discussion:

The designation under which the land is held by the Crown is a relevant matter for the Commissioner to consider under the CPL Act. The point is accepted. The submission provides no new information to support the point. Accordingly the submission is disallowed.

Point	Summary of Point Raised	Sub Nos	Decision	Decision
29	<p>Area at western end of Damper Bay, Glendhu Bay proposed easement (adjacent to Carpark A) should be retained as conservation area.</p> <ul style="list-style-type: none"> - 20 - 30 ha contains significant inherent values arising from native vegetation and should be retained as reserve. - The proposed carpark area needs to be larger to provide for a viewing area. - Area of significant inherent value comprising 5 ha at the western end of the proposed easement walkway at Glendhu Bay (near Point A) identified by the DoC Conservation Resources Report as of conservation interest. - The Conservation Resources Report identifies the desirability of extending the existing Glendhu Bay Recreation Reserve so that a larger area is available for picnicking and boating. 	3	Accept	Allow so that further consultation can take place with the DGC delegate and the holder.

Released under the Official
Information Act

Discussion:

The designation of land at the western end of the Damper Bay Glendhu Bay easement is a relevant matter for the Commissioner to consider under the CPL Act. Accordingly the submissions are accepted. The Conservation Resources Report identifies this area as being of conservation interest. These submissions supports this view and contend that the vegetation within this area combined with the recreation value constitute significant inherent values worthy of protection under Crown ownership. This matter has not previously been considered by the Commissioner. The information provided by the submissions received justifies the Commissioner reconsidering the matter. Accordingly the submissions are allowed so that further consultation can take place with the DGC delegate and the holder.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>	
30	All land north of Wanaka Mount Aspiring Road should be protected by a landscape covenant to protect the significant inherent values that arise from the outstanding landscape.	4	Accept	Disallow

Discussion:

As the protection of significant inherent values that arise from natural landscapes is a relevant matter for the Commissioner to consider under the CPL Act the submission is accepted. The submissions present evidence in the form of the assessment made by DoC in the Conservation Resources Report identifying the area as "an area of high landscape value" to support their submission. Notwithstanding this evidence the matter has been considered by the Commissioner and a decision made not to include protection of the landscape in the proposal. Accordingly the submission is disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>	
31	Support the Mount Roy public access easement.	4	Accept	Disallow

Discussion:

The submission is noted. As public access is a relevant matter for the Commissioner to consider under the CPL Act the submission is accepted. As the submissions do not provide new information and do not affect decisions made by the Commissioner the point is disallowed.

Point	Summary of Point Raised	Sub Nos	Decision	
32	The closure provisions in the easement documents under Section 12 Reserves Act are ultra vires as the land is not a reserve.	1	Accept	Disallow

Discussion:

As the point is pertinent to public access that is a relevant matter for the Commissioner to consider under the CPL Act the submission is accepted. The point raised by the submission is a generic matter to the tenure review process that the Commissioner does not intend to address in the analysis of submissions under section 45 of the CPL Act. Accordingly the submission is disallowed.

Point	Summary of Point Raised	Sub Nos	Decision	
33	There is the generic problem with the marginal strip issue being separated from tenure review in that submitters have no certainty as to whether a marginal strip will be created.	1	Not accept	

Discussion:

Marginal strips are not a matter relevant to decisions made under the CPL Act. The statutory process for designating marginal strips is undertaken separately from tenure review and therefore the submission cannot be accepted.

(5) Discussion and conclusions:

A total of 69 submissions were received. This is a large number relative to that received for other tenure reviews.

Discussion relevant to each particular point has been made under Section 4.2 of this submission. The retention of an additional conservation area in Damper Bay, public access to Damper Bay from Wanaka Mount Aspiring Road and protection of landscape values on the lake faces and terraces were some of the main issues raised. There were a large number of submission that opposed the Upper Clutha Environment Society submission at the same time as supporting the existing proposal. Many of these submissions were similarly worded and appear to be the result of a campaign in opposition to the Upper Clutha Environment Society. Many of these submissions are signed by several individuals. The Environment Court had been considering the issue of landscape protection in the District Plan at the time submissions were being received. This may explain why landscape protection was raised by many submitters. Several submissions raised the discrepancy between the values identified as important for nature conservation in the Conservation Resources Report and the proposal for the protection of significant inherent values in the Preliminary Proposal.