

Crown Pastoral Land Tenure Review

Lease name: BEN MORE

Lease number: PC 109

Final Report on Public Submissions

This document builds on the Preliminary Report on public submissions. The analysis determines if an issue that was allowed, and further consulted on, is accepted or not accepted for inclusion in the Substantive Proposal and to what extent. The report complies with the requirements of Section 45 Crown Pastoral Land Act 1998.

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

August

05

Report in Accordance with Contract 50346

Final Analysis of Public Submissions for Preliminary Proposal

File Ref: CON/50000/16/12772/A-ZNO-04 Submission No: QVV 645 Submission Date: 13/5/2005

Office of Agent: Christchurch LINZ Case No: *TR 04/142* Date sent to LINZ: 9/8/2005

RECOMMENDATIONS

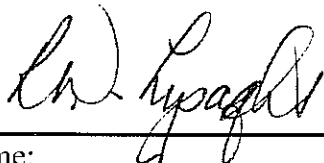
- (1) That the Commissioner of Crown Lands approves this report for tenure review of Pc 109 Ben More Pastoral Lease.

Signed by Contractor:



Barry Dench
Team Leader for Tenure Review

Approved/Declined by:



Name:
Date of decision: / /

(1) Details of lease:

Lease Name: Ben More
Location: West Coast Road, Springfield
Lessee: Ben More Graziers [1989] Limited

(2) Public notice of preliminary proposal:

Date, publication and location advertised:

3 April 2004

- The Press Christchurch
- Otago Daily Times Dunedin

Closing date for submissions:

31 May 2004.

(3) Details of submissions received:

A total of seven submissions were received, six by the closing date and one after the closing date.

(4) Analysis of submission:

4.1 Introduction:

Explanation of Analysis:

This is a final analysis of submissions. The purpose of this final analysis is to determine whether to accept or not accept the points raised in submissions for inclusion in the substantive proposal.

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.

The following analysis:

- Summarises each of the points raised along with the submission number of those submitters making that point.

- Provides a discussion of the point.
- Records the CCL decision whether or not to allow/not allow the point for further consultation.
- Records the CCL decision whether to accept the point for inclusion in the proposal.

The following approach has been adopted when making the decision:

(i) To allow / not allow for further consultation:

The decision to “**Allow**” the point made by submitters is on the basis that the matter raised is a matter than can be dealt with under the Crown Pastoral Land Act 1998. Conversely, where the matter raised is not a matter that can be dealt with under the Crown Pastoral Land Act, the decision is to “**Not Allow**”. Those points that are ‘allowed’ will be given further consideration with respect to the proposal.

It should be noted that points relating to the Conservation Act, or any other statutory authority outside of the Crown Pastoral Land Act 1998 are not able to be considered by the Commissioner of Crown Lands.

(ii) To accept/ not accept:

The outcome of an “**Accept**” decision will be that the point is included in the draft Substantive Proposal. To arrive at this decision the point must be evaluated with respect to the following criteria:

- The objectives and matters to be taken into account in the Crown Pastoral Land Act (sections 24 & 25) and;
- The views of all parties consulted and any other matters relevant to the review, balanced against the objectives and matters to be taken into account in the Crown Pastoral Land Act 1998.

4.2 Analysis:

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
1	General support for the proposal and the allocation of land for full Crown ownership and control.	Nos. 5 and 6	Allow	Accept

Two submissions were received which indicated support for the proposed allocation of land to be restored to or retained in full Crown ownership and control.

As the retention of land in full Crown ownership is enabled by the Crown Pastoral Land Act 1998, after due consideration of all views, the point supported by the submitters will be included in the proposal.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
2	Support for the proposal of the freeholding of pastoral lease land.	Nos. 6	Allow	Accept

One submission was received which supported the proposal of the freeholding of pastoral lease land.

As the disposal of land is enabled by the Crown Pastoral Land Act 1998 after due consideration of all views, the point supported by the submitter will be included in the proposal.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
3	Provision of easements for public access and DoC management purposes	Nos. 2, 3, 4, 5, 6 and 7	Allow	Accept in Part

Six submissions were received which related to public access easements.

Submitter 2 indicated it would be desirable if a public walking easement continued down the main spur within land for disposal back to Thirteen Mile Bush Stream, a distance of approximately 1 kilometre. This appeared to apply from around 800 metre ASL to the southern boundary near Thirteen Mile Bush Stream.

Submitter 2 also indicated the provision of a small easement of about 300 metres across station land providing access to the upper reaches of Coach Stream... This appeared to relate to easement "s-t".

Submitters 3, 4 and 6 supported easement k-l, m-n, o-p and q-r for public access and DOC management purposes although Submitter 3 qualified this support "subject to weather and track conditions". Submission 3 requested that no signage be erected at the entrance to the main Ben More driveway off Highway 73, but erected further up the drive to lessen their concern about untoward behaviour from people while passing the farm homestead.

Submitter 5 supported marking a route similar to the existing access to ensure legal access for Thirteen Mile Bush Stream Route but this appeared to relate to the proposed Thirteen Mile Bush Stream easement.

Submissions 5 and 6 supported the provision of public access Easement s-t however one of the submissions contended that the Coach Stream route was not a suitable alternative to the Macfarlane Stream access. Submitter 3 requested easement s-t in the Coach Stream linking up DOC reserves to be closed for 7 weeks during 1 October - 20 November during lambing and calving periods.

Submitter 2 proposed a public walking easement approximately 1 kilometre long over the small saddle, from Coach Stream, just to the west of point 805 linking up with the marginal strip along MacFarlane Stream. An alternative route along a saddle with a fence line further down the highway exists if the first option was not feasible.

Submitter 4 also indicated the MacFarlane Stream route "a" to "h" should also be designated for public vehicular access, while Submitters 5 and 6 also indicated a wish to see easement route "a-b", "c-d" and "e-f-h" designated for public foot access.

Submitters 5 and 6 indicated that the proposed access via MacFarlane Stream is unsatisfactory in not including public access and in their opinion does not meet the requirements of section 24 (c) (i) of the Crown Pastoral Land Act. They note that the Proposed Designations Report proposed an easement along the farm access track for both public access and management purposes whereas the Preliminary Proposal reduces this to DOC management purposes access only.

Submitter 7 raised concern about the security of access to the Korowai-Torlesse Conservation Park, based on access along unformed roads adjacent to rivers, in the event that the rivers move.

After consideration of all views the point requesting public access including by motor vehicles be included in the Macfarlane Stream easement and secondly an easement linking Coach Stream with Macfarlane Stream as a round trip is not accepted. Public access via Coach Stream is seen as a satisfactory alternative to Macfarlane Stream, it links with the access off Porters Pass and gives access to the same area as the Macfarlane stream route. Also as the holders have noted an intention to develop the land in the Macfarlane Stream area as a deer safari park it is not considered appropriate to allow general public use of the track.

Concerns regarding security of access to the adjacent conservation park via unformed roads were considered but access will be over legal road, easement and part within the Thirteen Mile Bush Stream riverbed itself. Notwithstanding that the route may change from time to time, the parts within the easement should ensure access is available. For these reasons this point is not accepted. The point supporting the easement as part of access along Thirteen Mile Bush Stream is accepted and will be included in the proposal.

The point requesting no signage on West Coast Road is not accepted for inclusion in the proposal as this is a matter for the Department of Conservation to take up post tenure review, rather than coming under the Commissioners jurisdiction.

Submitter 2 proposal for public access from point labelled "Y" to Thirteen Mile Bush Stream was considered but as this has deer fencing creating problems for access and as satisfactory access is available in the existing conservation area the point has not been accepted and will not be included in the proposal.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
4	Spraying of gorse and land grazing	No. 1	Not allow	Not Accept

Submitter 1 proposed that gorse along the Ten Mile Bush Stream should be sprayed by DOC, and the land grazed by the farmer. Also along the main road.

As the neighbouring land is not within the boundary of the land being considered in this particular preliminary proposal it is not a matter that the Commissioner of Crown Land can take into consideration, rather the submitter is raising an issue covered by weed control procedures governed by other agencies.

Likewise if the gorse is within the reviewable land either proposed for retention by the Crown as conservation area or for freehold disposal it is a point related to future management of the land subsequent to the conclusion of the review but not to the objectives of the Crown Pastoral Land Act itself. It is therefore outside of the provisions of the Act.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
5	Ownership of the huts adjacent to West Coast Road	No. 2	Allow	Not Accept

Submitter 1 queried the ownership of the huts on the State Highway 100 metres before the climb up to Porters Pass. Who is responsible for them and do they come under review.

The huts are thought to be outside of the reviewable land and are therefore not a matter to be considered under tenure review. This point is therefore not accepted

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
6	Land below CA1 to be retained in Crown ownership	No. 1	Allow	Not Accept

Submitter 1 proposed that the area below the proposed CA1 should also be included in land returned to the Crown, as conservation area and has identified this as the area from point "Y" following the fence line towards the Thirteen Mile Bush Stream. Over half of the fencing is deer fenced which follows the ridgeline to the river below.

The submitter maintained that CA1 should be extended to take in land with a range of inherent values. These were based on the inclusion of a whole catchment, it forms a natural extension of Thirteen Mile-Bush catchment, it has the same significant inherent values as "CA1" and would form a buffer with land for disposal. The submitter noted however that this area is still an important grazing block and could be continued to be grazed for a further ten years.

After consideration of pertinent matters the suggestion to increase the area retained by the Crown is not accepted and will not be included in the proposal. The area in question has some significant inherent values including shrublands however these are dispersed within the lower part of the catchment, it is not visible from West Coast Road and does not the same level of landscape values as land in the upper part proposed for protection.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
7	Need for conservation covenant over all of the hill country	No. 1	Allow	Not Accept

Submitter 1 suggested the need for a conservation covenant over land coming into view from the West Coast Road. This assertion is justified by writing that "*From the Kowai River crossing to the bottom of the pass the view to the south is to say the least, very disappointing. The lack of native vegetation, the lack of variety, the blank face of the hills compared to the contrasts of the landscape to the north. The only point of interest to the south is the limited view of Thirteen Mile Bush. In the DoC pamphlet on the Korowai/Torlesse Park in the introduction they mention the increasing panoramic view of the park as you approach Porters Pass. There is not a more important exit from Canterbury and yet a conservation covenant is not recommended*"

After consideration of the point made the suggestion to have a conservation covenant is not accepted and will not be included in the proposal. The significant inherent values are limited to landscape and this value should be protected through District Plan requirements. Large areas of broom on the hills detract from the landscape value and

can be most readily fixed by allowing development for farming purposes without restrictions except those required by the District Plan.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
8	Clarification on fencing for the Conservation Covenant.	No. 3	Allow	Accept

Submitter 3 supports the Conservation Covenant "CC" as a means of preserving the land in its natural state and was not to be fenced. Clarification was sought whether fencing would be required as implied in Covenant Deed Schedule 2/ clause 1.1.1

The Department of Conservation was consulted regarding the intent of clauses in the covenant where fencing is mentioned. After study of the advice received and communication with the holder it is accepted that the intent of the fencing clauses are that in the event the Director-General of Conservation requires fencing to exclude stock from the area the Department will pay for its erection, if the holder wishes to erect fences for farming purposes then they will meet the costs and in other circumstances the parties will jointly pay for the cost of fence construction.

As this point supports the conservation covenant but sought clarification regarding fencing it is accepted and the covenant will be include in the proposal.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
9	Inclusion of CA1 land in the Freeholding	No. 3	Allow	Accepted in Part

The submitter wished to see the proposed conservation area "CA1" included in the Ben More freehold title, and to put the areas with significant inherent values into a Minister of Conservation covenant without fencing.

In making this suggestion the submission sets out a number of justifications including- approximately 6,000 hectares of Ben More has already gone into the conservation estate and the remaining area is small enough for this type of country, the submitter does not believe not all of CA1 has significant inherent values with the area having been oversown and topdressed and a large part is open pastoral grazing land and two other reasons citing a previous dealing with Ben More land. Further that freehold disposal would save on surveying the boundaries.

This area has significant inherent values both from a vegetation and landscape perspective with the key area being the western part having stronger landscape values whereas land east of the creek while it has

some significant inherent values also has potential for pastoral use under freehold ownership.

After consideration of pertinent matters the point requesting the whole area should be freeholded is not accepted but the proposal will be changed to include the eastern area only in land for freehold disposal. Land being retained in full Crown ownership and control will comprise the more western part. The point is therefore accepted in part.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
10	Request for farm management purposes access over adjacent DoC land	No. 3	Not allow	Not Accept

The submission requested vehicle and machinery access over land owned by Department of Conservation on the track leading from Highway 73 along the old Coach Road to point 's', by staff and management of Ben More and from the end of the MacFarlane Stream Easement point "h" through existing conservation land looping back to Ben More freeholded land.

As the neighbouring conservation area is outside of boundary of the land being considered in this particular proposal, notwithstanding that the purpose of the point is to secure practical farm management purposes access affecting the reviewable land it is not a matter that the Commissioner of Crown Land can take into consideration, rather the submitter is should take this up with the Department of Conservation.

Consequently the point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
11	Fencing of boundary of freeholded area with Conservation Park	No. 7	Not allow	Not Accept

This submission raises concern about the adequacy of fencing on the boundary with the Korowai-Torlesse Conservation Park in the event that deer are run on the adjacent area and argue that deer are a serious threat to forests and that the Park should not be used to harbour deer for trophy hunting. The submission requests that the common boundary with the Conservation Park be appropriately fenced before the review is completed.

Under the tenure review process new boundaries will be fenced by the Commissioner but existing boundaries between Ben More and conservation area will be a matter for the holder and Director-General of Conservation to deal with.

As the point relates to future management of the land subsequent to the conclusion of the review and as such is not a matter that can be dealt with under the Crown Pastoral Land Act 1998.

The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
12	Ecological sustainable management	No. 7	Not allow	Not Accept

The submission raises concern regarding the description of “ecological sustainable management” in one paragraph of the public information pack and notes “on page 6 of the proposal it is stated that “ – *ecologically sustainable management will be promoted on the area proposed for freehold disposal*”. What does this mean in terms of future agricultural use? This is vague in terms of future agricultural use, and the (name) has no basis for judgement as to whether the use will be a threat to adjacent public conservation land or not.

The full paragraph dealing with this item in the information pack reads “*Ecologically sustainable management will be promoted on the area proposed for freehold disposal to Ben More Graziers [1989] Limited by freeing the land from the management constraints as a result of its tenure as a pastoral lease and allowing a mix of land management practices that ensure ecological sustainability. The land has been farmed over a long period and can justify inputs of fertilizer and oversowing that allow the land to be more sustainable for pastoral production*”.

The submitter has raised the issue of the possible threat to adjacent conservation land from activities carried out on the freeholded area.

This is a new point but as the submitter appears to be bringing up a matter regarding future management of the land it is not a matter that can be dealt with under Crown Pastoral Land Act 1998.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
13	Public Health and Safety concerns regarding contact with deer	No. 7	Not Allow	Not Accept

The submission raises the issue of safety for the public while on the easements during periods when proximity to stags could be a risk and who would be responsible for meeting the cost of exclusion fences as a means of mitigating the risk. This point is made in the context of future use of the land where deer could possibly be run over a larger area than at present.

At present the easement routes do not enter deer paddocks. As the submission is raising concerns about risks should deer be run, in the future, on land that easements cross over this is a future management issue that the grantee and grantor will need to deal with. It is not an issue that exists at the moment and as such is not a matter that can be dealt with under the Crown Pastoral Land Act.

Discussion and conclusions:

Discussion relevant to each point has been made under each listed point for simplicity and clarity.

The submissions that come under the jurisdiction of the Crown Pastoral Land Act fall into several themes: Support for the allocation of land between the Crown and freehold disposal with a call for additional public access, support for additional land to be retained by the Crown at the south west corner of the reviewable land plus a landscape protection covenant over land in view of West Coast Road, with a contrary view where the submitter wished to see less land retained by the Crown. The latter was advocated by the present runholder.

Some of the points raised regarding public access have been taken into account in the easement documents and routes set out. One submission raised concern about the security of access should erosion from the rivers cut into the unformed roads.

Two points regarded land and structures outside of the pastoral lease boundaries and the point seeking farm management purposes access over adjacent conservation area are outside of the Commissioner of Land jurisdiction for tenure review.

One submission pointed out the possible effects of having deer run over a wider area if escapes into the adjacent forest park were to happen and secondly the need for adequate fencing to lessen the risk of escapes. This submitter also raised the issue of safety for the public while moving along easements in the presence of stags.

Consideration of the points raised in public submissions will result in one change being made to the proposal. Boundary of area designated for retention in full Crown ownership and control will be changed resulting in the area reducing from approximately 78 hectares to 31 hectares.

REPORT IN ACCORDANCE WITH CONTRACT 50346

Final Analysis of Iwi Submission for Preliminary Proposal

File Ref: CON/50000/16/12772/00/A-ZNO-04 Submission No: QVV 648 Submission Date: 13/5/2005
Office of Agent: Christchurch LINZ Case No: Date sent to LINZ: 9/8/2005

RECOMMENDATIONS

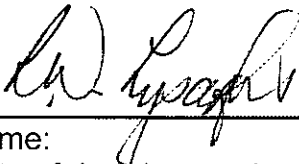
- (1) That the Commissioner of Crown Lands **notes** the receipt of this report for the review of Ben More pastoral lease..

Signed by Contractor:



Barry Dench
Team Leader for Tenure Review

Approved/Declined by:



Name:
Date of decision: / /

(1) Details of lease:

Name: Ben More

Location: West Coast Road, Springfield

Legal Description: .Section 1 SO 14996, Sections 1, 3, 4 and 5 SO 17298 & Parts Run 319 Kowai Survey District.

Area: 1309.7662 hectares

(2) Details of Iwi Submission:

Closing date: 31 May 2004

Received On: 8 July 2004

Received From: Takarei Norton
Natural Resources Unit Project Co-ordinator
Office of Te Runanga o Ngai Tahu

On Behalf Of: Te Runanga o Ngai Tahu and the relevant
Papatipu Runanga: Te Ngai Tuahuriri and Te
Taumutu

(3) Analysis of submission:**3.1 Introduction:***Explanation of Analysis:*

This is a final analysis of the submission received. The purpose of this final analysis is to determine whether to accept or not accept the points raised in the submission, to record the outcome of the consideration on each point and whether or not it has been approved for inclusion in the Substantive Proposal.

The following analysis:

- Summarises each of the points raised.
- Provides a discussion of the point.
- Records the CCL decision whether or not to allow/not allow the point for further consultation.
- Records the CCL decision whether to accept the point for inclusion in the proposal.

The following approach has been adopted when making the decision:

(i) To allow / not allow for further consultation;

The decision to “**Allow**” the point made by submitters is on the basis that the matter raised is a matter than can be dealt with under the Crown Pastoral Land Act 1998. Conversely, where the matter raised is not a matter that can be dealt with under the Crown Pastoral Land Act, the decision is to “**Not Allow**”. Those points that are ‘allowed’ will be given further consideration with respect to the proposal.

It should be noted that points relating to the Conservation Act, or any other statutory authority outside of the Crown Pastoral Land Act 1998 are not able to be considered by the Commissioner of Crown Lands.

(ii) To accept/ not accept: -

The outcome of an “**Accept**” decision will be that the point is included in the draft Substantive Proposal. To arrive at this decision the point must be evaluated with respect to the following criteria:

- o The objectives and matters to be taken into account in the Crown Pastoral Land Act (sections 24 & 25) and;
- o The views of all parties consulted and any other matters relevant to the review, balanced against the objectives and matters to be taken into account in the Crown Pastoral Land Act 1998.

3.2 Analysis:

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
1	Seek advice whether a marginal strip would be placed on the Kowai River and if not make a request for a protective mechanism for the River	Allow	Not Accept

Ngia Tahu requested protection of the Kowai River by the creation of a marginal strip and in the event of the river not meeting the criteria for a marginal strip, they sought some other form of protection mechanism.

These matters were further considered and checked. The Kowai River has a legal road adjacent to the major portion of the river on the boundary of Ben More Station. Any part of the river without a legal road on its margin would certainly qualify for a marginal strip as the river is much greater than 3 metres wide. After consideration it is felt that new marginal strips are likely to apply to small areas of the river and coupled with the present road reserve these will provide adequate protection. In this respect no additional measures are required.

As the setting off of marginal strips is undertaken at the conclusion of tenure review under the jurisdiction of the Director- General of Conservation it is not a matter that the Commissioner can deal with under the Crown Pastoral Land Act.

This point is therefore not accepted.

Discussion and Conclusions

Te Runanga o Ngai Tahu provided a submission that took into consideration the local Maori interest in the Ben More Preliminary Proposal. One point only was raised and is discussed in detail in this analysis. After consideration it is felt that no additional measures are required in the proposal.