

Crown Pastoral Land Tenure Review

Lease name : BEN NEVIS

Lease number : PO 241

Due diligence report (including status report) - Pt 1

This report and attachments results from a pre tenure review assessment of the pastoral lease for the purpose of confirming land available for tenure review and any issues, rights or obligations attaching to it. The information is gathered from files and other sources available to the LINZ contractor.

Part of the information relates to research on the status of the land, resulting in a status report that is signed off by a LINZ approving officer. The remainder of the information is not analysed for relevancy or possible action until required, and LINZ does not guarantee its accuracy or completeness as presented.

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

August 04

DUE DILIGENCE REPORT

CPL PRE TENURE REVIEW ASSESSMENT STANDARD 6:

File Ref: Po 241 **Report No:** AT2009 **Report Date:** 30 April 2002
LINZ Ref: 12522
Office of Agent: Alexandra **LINZ Case No:** TK 02/451 **Date sent to LINZ:** 1 May 2002

RECOMMENDATIONS:

- (1) That the Commissioner of Crown Lands or his delegate **note** this Due Diligence Report which has been prepared in accordance with the Pre-Tenure Review Assessment Standard.
- (2) That the Commissioner of Crown Lands or his delegate **note** the following incomplete actions which require action by the Manager of Crown Property Management.

- 2.1 Telecom New Zealand was granted consent to establish a transmission site (Cmar) on a ridge in the lower Nevis (*Part Run 345B*) and an easement to secure the site. Telecom New Zealand also reached agreement with Mr and Mr Adie to site a second transmitter on land they occupied (*but hold no title to*). The CCL also consented to an easement for that site which remains within the pastoral lease. No easements have been registered.
- 2.2 The two DoC administered cemetery sites within the lease (*Section 2 and 12 Block III Nevis Survey District*) have no legal access.
- 2.3 At least three sites have been identified within the pastoral lease that are occupied by people who appear to have no legal tenancy.

Mr and Mrs Adie have been applying for title to their residence on Part Run 345A over a long period. The length of occupancy (*since the 1950's*) and their paying of rates over a long period may give them some moral claim. Much file data related to their claim was not available for search, having been transferred to other files or removed by the Adies themselves.

File notes on folio 24 CON/50180/09/12517/A-ZNO indicates a Colin Clyne is occupying a cottage on Section 16 Block XIII Nevis Survey District and a Russell Brown is occupying a cottage on Section 36 Block III Nevis Survey District. Both these are within the pastoral lease.

- 2.4 A variation for reduction of rental by \$3.20 was to be registered by Land Settlement Board Case 77/650 (*Po241 - SDN-02 -Folio 340*). This was never carried out. A matter of minor historical correctness only.

Signed by DTZ New Zealand Limited:



P Diver:

Approved/Declined *(pursuant to a delegation from the Commissioner of Crown Lands)* **by:**

Name:
Date of decision:

(1) Details of lease:

Lease Name: Ben Nevis

Location: This pastoral lease is located on the eastern flank of the Remarkables Range, running from the range top down to the Nevis River in the Nevis Valley and contains most of the catchments of Commissioners, Schoolhouse Creeks and Nevis Burn and Part of Doolans Creek. The farm buildings and yards are located on the Nevis flats adjacent to the only access road that services the area from Cromwell to Garston.

Cromwell some 40 km distance (*but one hours travel over a mostly gravel road that reaches a height of 1250 metres and often closed in the winter*) is the local service centre. Dunedin some 3.5 hours travel is the nearest major centre.

Lessee: Lakeland Heights Limited

Tenure: Crown Land subject to the Land Act 1948. Pastoral Lease No 241

Term: 33 years from 1 July 1992

Annual Rent: \$5,550 (*plus GST*)

Rental Value: \$370,000

Date of Next Review: 1 July 2003

Land Registry Folio Ref: OT A2/1215

Legal Description: Part Section 1, Section 15 and Section 18 Block I Nevis Survey District, Section 6 and Section 13A Section 32 and Section 35 and Section 36 Block III Nevis Survey District, Section 16 Block XIII Nevis Survey District, Part Run 345A, Run 345B Nevis Survey District being all the land contained in CIR OT A2/1215.

Area: 14560.7589 ha

(1) File Search:

Files held by LINZ Christchurch:

<i>File Reference</i>	<i>Volume</i>	<i>First Folio</i>	<i>Date</i>	<i>Last Folio</i>	<i>Date</i>
Po241-SDN-01	1	1	1/6/1910	206	19/4/1962
Po241-SDN-02	2	207	30/5/1962	354	12/6/1978
Po241-SDN-03	3	355	31/5/1978	434	22/3/1984
CON/50180/09/12522/ A-ZNO	1	1	5/12/1994	13	19/10/1995
CON/50180/09/12517/ A-ZNO	2	14	19/10/1995	31	14/4/1999

Files held by Agent in Alexandra on behalf of LINZ:

<i>File Reference</i>	<i>Volume</i>	<i>First Folio</i>	<i>Date</i>	<i>Last Folio</i>	<i>Date</i>
Po241-SDN-04	4	435	10/10/1984	57	6/10/1997
Po241-SDN-05	5	1	29/12/1997	46	22/2/2000
CON/50213/09/12522A -ZNO	1	1	24/11/2000	32	7/12/2000

Mr George Scott was issued Pastoral Run License 1359 over Run 345A (17800 acres) for 14 years from the 1 March 1910.

In 1913 a 2 acre school site on the north side of Cemetery Creek was taken from the license.

In 1916 the local mining community (some 40 adults and 35 children) who had historically run a few cattle for personal use on the area including neighboring licenses had a dispute with Scott who objected to some people selling cattle. They were directed to come to a grazing fee arrangement with Scott who was deemed to hold all grazing rights under his license.

In 1917 Scott sold the license for Run 345A to the Ben Nevis Pastoral Company.

Run 345B, held by a Robert Scott, and was also purchased at the same time by Hilda Kane wife of Wolsey Kain, Director of the same company. Both runs were worked together as one.

The license for Run 345A was to be extended in 1922 for 14 years from 1 March 1924 but due to increased rent was declined and the license allowed to expire in 1924.

The licenses were renewed for 35 years from 1 March 1924 with rent going to arbitration.

Mr James Ritchie applied in 1925 to take 91 acres of the Run 345A license to add to his 9 acres already fenced out associated with his 1 acre mining site right. He was informed nothing could be done without Kain's consent.

Agitation for a community grazing block of 500 acres to be taken continued. The omission of reservation of such a block at license renewal led to further friction, as Kane demanded retrospective grazing fees. An earlier reservation of 500 acres of communal grazing land had been set aside but was on the opposite side of the river and thus not considered accessible. (*Folio 75 contains a good summary*). Considerable pressure was applied to Kain that resulted in him agreeing to surrender to allow Ritchie to have his 9 fenced acres and allow resident miners to graze, free of charge, 1 horse, 2 cows, and 2 calves (*folio 79*).

Mr Ritchie was granted an annual license over the 9 acres.

A Mr Dickey applied for 1000 acres in 1926 but was turned down.

An area of 1 acre (*Section 35 Block II Nevis Survey District*) was gazetted in 1928 from Run 345A for a library site.

During the 1930's files contain much correspondence on rent payments, remissions, penalties etc as the property struggled to stay afloat financially.

In 1950 the 2 acre school site was declared not required by the Education Board.

The license over Run 345B was transferred from Mrs Kain to the Ben Nevis Pastoral Company in 1951.

In 1954 both school sites (*Section 6 and 32 Block III Nevis Survey District*) a total of 12 acres, were reincorporated into the license.

The library site (*Section 35 Block II Nevis Survey District*) was approved for re-incorporation into Run 345A. Investigation into incorporation of 7 blocks of unoccupied land in the area into the runs was undertaken (*folio 175B*). The Cemetery Reserve (*Section 12 Block III*) was not considered for amalgamation.

Ben Nevis Pastoral Company held a RFL176 over Section 13A Block III Nevis Survey District - 6 acres 3 roods 30 perches.

The pastoral lease was issued for 33 years from 1 July 1959 over the combined Run 345A and Run 345B, Part Section 1, Sections 15 - 18 Block I, Sections 6, 13A, 32 and 35 Block III and Section 16 Block XIII Nevis Survey District a total of 35980 acres 1 rood and 27 perches. A stock limitation of 5500 wethers plus 10% was set. A special condition to allow resumption of land with no compensation for national parks was included. The RFL was surrendered and incorporated into the pastoral lease.

In 1962 an investigation into stocking levels was undertaken after a statutory declaration that 7000 sheep were being run. This uncovered the unauthorized communal (*half share between Kain and S Jolly (Po233)*) running of 150 cows and calves in the valley. F Clark, lessee of Carrick Station, also applied to enter this arrangement.

Inspections and discussions were held and an agreement reached on the total number of cattle that could be run (260) and the percentage split between the three properties (*folio 244*). This arrangement was approved by the Land settlement Board (*folio 266*) at no increase in annual rent. 130 cattle were allowed for Ben Nevis.

In 1964 a Mrs H Nesbit and Miss H Rea who occupied a hut and deer shot and gold mined near Galvins Creek applied for tenancy. No tenancy was granted but their continued use at the lessee's discretion advised.

In 1966 the lease was sold to W R Brown Trust.

Mr Brown applied to dissolve the communal cattle grazing in the Nevis Valley in 1969.

He undertook to cattle fence his boundary at his own expense. A cattle limitation of 130 cattle (*including not more than 90 breeding cows*) was set for Ben Nevis (*folio 271*). The 12 km boundary cattle fence was erected with grant assistance from a catchment board single subsidy work.

In 1973 12 km of firebreak access tracks up each of the main ridges was approved under catchment board single subsidy. A Rural Bank loan was taken out in 1974 to finance the transfer from the Trust to R W Brown (*the beneficiary*) and a small development programme, mainly fencing.

In 1975 approval was given to cultivate 121 ha and increase in personal stock exemption to 6500 sheep (*including not more than 450 breeding ewes*) and 350 cattle (*including not more than 270 breeding cows*).

In 1975 R Brown proposed a large-scale development program under Catchment Board Farm Plan and Rural Bank loan. Concern was expressed at the scale of the work and the levels of debt but the program was not opposed.

The works under the plan were completed on rapid time (*2 years*) and Mr Brown ran into liquidity problems. A Land Settlement Board inspection was undertaken in 1977 where the debt problem was recognized and the need to postpone future development expenditure recommended. A personal stock exemption was granted for 8200 sheep (*including not more than 1600 breeding ewes*) and 350 cattle (*including not more than 270 breeding cows*).

By 1978 the debt situation was such that the Rural Bank refused an application for a further loan. He then applied for a marginal lands loan but this was refused, as the situation appeared hopeless. For the next few years the stock firm carried the debt load without selling up to recoup debts. In 1980 and again in 1982 the Rural Bank refinanced the debt.

In 1980 the MWD took 27.952 ha of land by proclamation for mining shale on run 345A. The Land Settlement Board agreed to this and reduced rental on the pastoral lease by \$3.20. **A Variation for reduction of rental was directed. (Folio 340).** The Land Settlement Board agreed to a condition that the land be returned to Ben Nevis when mining finished. The MWD gave Brown a 21 year lease of the area at a 10c per annum rental.

In 1981 a personal stock exemption was granted for 1000 sheep (*including not more than 2600 breeding ewes*) and 250 cattle (*including not more than 170 breeding cows*) as well as approval for an airstrip and upgrading existing tracks.

Mr Brown applied for permission to mine coal on the property in 1981 and was eventually directed to apply for a mining license. He decided not to proceed.

In 1982 a personal stock exemption was granted for 1000 sheep (*including not more than 3000 breeding ewes*) and 250 cattle (*including not more than 170 breeding cows*).

A second stage soil and Water Conservation Plan was entered into in 1982 involving 16.5 km of erosion control fencing. No retirement was proposed but a block limit of less than 1330 su on the top blocks on an annual basis agreed.

The Adies residence Site License 733 was again brought up in 1983 where it appears that the area was definitely included in the pastoral lease issued (*the site license was surrendered prior to this in 1951*). The length of occupancy by the Adies and their paying of rates over a long period does appear to give them some moral claim. Not a clear-cut case that could require a court decision to define (*see Po241-SDN-03 folio 421 for an analysis from Chief Surveyor*).

A License to Occupy to carry out survey on fault lines was approved for the MOW in connection with the Clutha Valley Hydro development in 1983.

A soil disturbance permit was incorrectly given at field officer level in 1983 for tracking, a hydro development pipeline, and a fertilizer bin. These were submitted to the CCL who approved them in 1984. A personal stock exemption was also granted for 1100 sheep (*including not more than 4750 breeding ewes*) and 250 cattle (*including not more than 170 breeding cows*). A nil stock limit was placed on the top blocks.

A 1/10 share of the lease with an option to purchase another 4/10 was sold to a Family Trust in 1984.

The existence of a registered archeological site on the lease was notified by the New Zealand Historic Places Trust in 1985 being ovens/working floors site F42/7 (*folio 441*).

In 1985, 6 line transects and 5 photo point sites were established on the three top blocks by field officers and Lincoln staff to complement the existing Otago Catchment Board sites.

A further 1/10 share was transferred from Brown to the Family Trust in 1986.

A Catchment Board windbreak scheme (*six lines of trees*) for the property was approved and legal agreement registered in the lease document in 1987.

L & M Mining were granted a series of prospecting license over the river flats from 1984 to 1993.

The lease renewal offer (*LEI plus rent*) was accepted but a dispute re marginal strips arose (*detailed field maps folio 20 Volume 4 - revised Chief Surveyors report - Volume 4 folio 23*). Mr Brown refused to sign the renewal until his objection to the marginal strips was addressed. He relented and signed but registered his objection and the renewal was executed in 1995. The lease was renewed for 33 years from 1 July 1992 with rent for the first 11 years of \$5,500 plus GST based on a rental value of \$370,000.

The adjoining Craigroy property was purchased in 1994 by the company.

A 2 year recreation permit to operate a skidoo operation on parts of Craigroy and Carrick Stations was granted in 1995.

Telecom New Zealand was granted consent to establish a transmission site (*Cmar*) on a ridge in the lower Nevis but turned down on another site proposed alongside the road in the Lower Nevis. Telecom New Zealand reached agreement with Mr and Mrs Adie to site the second transmitter on the land they occupy (*this does not seem correct, as the Adie's had no title to that land*). Both were approved by CCL with easements to be established (*Po241 - SDN-04 Volume 4 folio 42*).

Central Electric Limited purchased both the Ben Nevis Run (*Po241*) and Craigroy (*Po233*) from the Browns in 1997 with the aim of securing the area for possible hydro development. Craigroy was sub-leased back to the Browns.

The transfer was approved with a new personal exemption for Ben Nevis of that sheep and cattle to be run on the property total not more than 8100 su.

Central Electric then transferred ownership of Ben Nevis to a wholly owned subsidiary company "Lakeland Heights Limited" in 1997.

A short-term recreation permit (*one day*) was granted to Silver Screen Production to film commercials on Ben Nevis in 1997.

Ben Nevis was subleased to Ben Nevis Station Limited (*R S and B A Perriam and C P and T P Heaney*) for 5 years from 1 January 1998 with a right of renewal for 3 years. The lease has a rent reduction agreement of various classes of country should tenure review remove land from the lease. The approval granted allowed for non-residence of the principle owner.

The boundary between Loch Linnhe and Ben Nevis on Commissioners Spur, historically by informal agreement, had Ben Nevis utilising a 338 ha block (*called "Bottom Commissioners"*) of Loch Linnhe. The new sub-lessee is faced with a new boundary fence on the correct line or a boundary adjustment.

Ken and Anne Adie applied to obtain freehold title on the land they occupy in 1998.

Consent to oversow and topdress all developed land was granted in 1998.

Consent to topdress, sow seed and cultivate was granted in 1999

In 1999 the 27.952 ha shale mining area taken by the MWD in 1980 was reincorporated into the lease.

Coleman Mining limited applied for consents to mine land in Schoolhouse Creek under a Mining Permit No 41-257 (*purchased from L & M Mining Limited*). This went to public notification under the District and Regional Council processes in 2001.

An access agreement was approved by the CCL for this operation.

The Adie House data and photos are contained in CON/50213/09/12522A-ZNO

Folio 9. Notes on folio 24 CON/50180/09/12517/A-ZNO suggest that two other people are also occupying other cottages on the lease.

Approval to relocate a land fill area of Pioneer Generation as directed by the Regional Council was approved in 2001.

Tenure review discussions have been carried out in 1994/95 with R Brown but agreement was not reached but many of the issues were identified. Lakeland Heights Limited submitted an application to undertake tenure review in 2001.

The Transitional and Proposed Central Otago District Scheme Plan Zones the area as Rural and has no issues that would affect tenure review. It identifies the archaeological midden/oven site on the lease (*Place No 275*). The cemetery above the road (*administered by DoC*) and the stone hotel (*on freehold Section 36 Block III Nevis Survey District*) are the only other sites marked.

(3) Summary of lease document:

Terms of lease:

The commencement date of the pastoral lease on Crown files is in agreement with the Lease Document (*OT A2/1215*).

The lease was issued on 1 July 1959 under the Land Act 1948 for a term of 33 years and renewed for a further 33 years commencing on 1 July 1992.

The lease contains three conditions related to company ownership, being consent required for share transfers, residence of approved person required and breaches of these conditions by the company or its shareholders deemed to be a breach of the lease.

One non-standard condition is recorded:

- (14) That the lessee covenants and agrees that if any time during the continuance of this lease or any renewal thereof the lessor shall require any portion or portions of the land included in the lease for the purpose of creation of a National Park the lessee shall not be entitled to any compensation or reduction in rental for any loss of grazing or any inconvenience arising from such resumption but not including any loss of substantial improvements.

Original Lease Stock Limit:

Wethers only 5500 plus 10% (*6050 wethers*).

Personal Stock Exemption:

Sheep and Cattle - not more than 8100 su.

Renewals and variations:

- 888963 Memorial renewing the term of the lease registered on 15 August 1995. *(Renewing the term for a further period of 33 years commencing on 1 July 1992 and fixing for the first 11 years the annual rent at \$5,550 calculated on a rental value of \$370, 000).*
- 937706.7 Memorandum varying the covenants, conditions and restrictions contained in the lease. *(Variation for CCL approval of company share transfers managers to reside and defining company breaches of lease conditions by shareholders and employees).*

Area adjustments:

Original lease area (<i>Run 689</i>)	14560.7589 ha	
Taken for gravel pit	27.9520 ha	<i>(Memorial 529620)</i>
Incorporated (<i>gravel pit</i>)	27.9520 ha	<i>(Memorial 970646.2)</i>
Total	14560.7589 ha	

The lease document and changes of area are in agreement with the area currently used in agent's files.

Registered interests:

Mortgages:

None

Other Interests:

- 464303 Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941 – 20 August 1976. *(Stage 1 farm plan involving 20km of conservation fences and only general restrictions on stocking of top blocks - no agreement to retirement or surrender of land).*
- 586242 Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941 – 18 November 1982. *(Stage 2 farm plan involving 16.5 km of conservation fences and only general restrictions on stocking of top blocks - being not to exceed 1330 su - no agreement to retirement or surrender of land).*
- 690798 Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941 – 13 November 1987. *(Windbreak scheme - trial planting - but not completed).*

Mining Permit embodied in Register OT9D/540 – 22 March 1996 (*Mining Permit 41 257 issued for 6 years from 6 March 1996 to L & M Mining for 627 ha on Ben Nevis. The area is currently being worked by Coleman Mining and Development limited*).

No electricity agreement is registered on the lease.

No recreation permits have been issued on Ben Nevis.

No Compensation Certificates are registered.

No Section 417 Certificates under the Resource Management Act are registered.

(3) Summarise any Government programmes for the lease:

The property has had involvement with the Otago Catchment Board since the 1970's.

Prior to any farm plan programme two single subsidy works were undertaken being 12 kms of firebreak access tracking (*all main leading ridges*) and 12 kms of boundary cattleproofing (*Nevis River boundary*).

A two stage farm plan was completed between 1975 - 1983 involving 36.5 kms of erosion control fencing. Both these contained only general restrictions on stocking of top blocks - being not to exceed 1330 su per annum. No agreement to retirement or surrender of land was involved.

Two legal agreements related to these were registered on the lease in 1976 and 1982 and remain undischarged. These contain no issues that would affect tenure review.

A Windbreak Scheme Plan was entered into in 1987 proposing six lines of windbreaks (*5.65 kms*). Trial plantings were carried out but these were not successful. Further plantings were cancelled. A legal agreement related to this was registered on the lease in 1987 and remains undischarged. This contains no issues that would affect tenure review.

The property was not involved in the Rabbit and Land Management Programme.

No other government programmes have been identified affecting the lease.

(5) Summary of Land Status Report:

Copy attached as Schedule A.

5.1 The Pastoral Lease:

The Land Status Report confirms the Crown Land Status under the Land Act 1948 and Crown Pastoral Land Act 1998 subject to PL registered as CIR OT A2/1215.

It records five encumbrances on the lease being:

464303 Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941.

586242 Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941.

690798 Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941.

Mining licence embodied in Register OT9D/540.

Subject to Part IVA Conservation Act 1987.

This agrees with the lease details section of this report.

The legal description is confirmed as that being used in this Due Diligence Report.

The Crown retains minerals ownership.

The area is confirmed as 14560.7589 ha.

The land is subject to marginal strips under Sections 12 (3), 24 (9) and 24 (f) of the Conservation Act 1987. These are defined on SO Plans 808 - 811.

The Status Check does not identify any recreation permits or DoC concessions on the lease.

The existence of Mining Licence (*OT 9D/540*) is noted expiring in 2002. Crown minerals reports that the area has four applications for a mineral permits being processed.

DoC administered land in the area was identified by a letter from their Christchurch office. (*Recognised in this report see Section 7 - Details of neighbouring Crown or Conservation land*).

Issues identified requiring possible future investigation at the Due Diligence stage were:

- The 1980 gazette taking of 27.952 ha for gravel pit and its subsequent re-incorporation back in 1999 is noted (*this report recognises that action but sees no issues to investigate*).
- That 9 acres was taken from Run 345B (*CT 336/61*) in 1929 but appears to have been re-incorporated back into Run 345B (*CT424/3*) at pastoral lease issue in 1959 as the original area of Run 345B is used. (*From files this 9 acres was taken from the run and leased on a year to year basis to James Ritchie and included his 1 acre Mining Residence site. The licence area marked on the lithos of the time (Po241 -SDN-01 - folio 99) have never appeared on any plans as surveyed out. It is assumed that when the mining site right expired and the area abandoned that the lease of the 9 acres was not renewed and then it was re-incorporated back into Run 345B at pastoral lease issue. See Po241-SDN-01 Folio 175B where the un-sectionised 9 acre area adjacent to Run 345B is proposed for addition to the lease. This area is most likely the 9 acre licence area originally granted to Ritchie. This report concurs with the Status Check analysis of the change*).

5.2 Other Land:

The Status Check reports on three other land parcels within Run 345A.

Section 37 Block III Nevis Survey District (*OT 9A/1270*).

This 4047 sq.m. site area is held in fee simple currently owned by Gordon and Graeme Stewart as ½ share each.

Section 2 Block III Nevis Survey District.

This 4047 sq.m. Cemetery Reserve is Crown land administered by the Department of Conservation under Section 62 of the Conservation Act 1987.

Section 12 Block III Nevis Survey District.

This 4047 sq.m. is a public cemetery pursuant to Section 236 Land Act 1892, subject to the Reserves Act 1977 and administered by the Department of Conservation.

(6) Review of topographical and cadastral data:

The topographical map:

A formed, gravel, unfenced, legal road called "Nevis Road" starting from the Nevis crossing travels southwards up the valley for the length of the lease. It has four fords and one bridge marked. It appears to be very close to its legal line along most of its length with one deviation near Schoolhouse Creek. From this a formed gravel road is shown ascending to a ridge top containing a fertiliser bin and airstrip near the homestead. No legal road is shown on this line.

A second airstrip is shown on schoolhouse flat between the Nevis road and the River.

Extensive internal access tracks are shown across the lower faces of Run 345B and up the centre spurs of all major ridges on both runs to terminate at around 1800 m.a.s.l.

Water races marked "disused" are marked southwards from the Nevis Burn, northwards from Schoolhouse Creek and Commissioners Creek.

A short water race is marked around the airstrip on Schoolhouse flat to the Nevis River.

A water race is shown from a tributary of the Nevis Burn, passing the hill airstrip, to link up with a pipeline that feeds a powerhouse linked by transmission wire to the homestead. This is known to be the private hydroelectric scheme that services the property.

No transmission sites are marked. Neither of the Telecom transmission sites on Run 345B nor at the Adie house site are marked.

Only one "hut" is marked in the historic township are being on section 13A Block III Nevis Survey District. Other building or ruins are marked as simple square dots. The cemetery above the Nevis Road (*Section 12 Block III Nevis Survey District*) is marked.

The flats and low hills have a large number of old mining sites marked along its length.

No other relevant features are noted.

The Cadastral map:

Marginal strips are marked on the boundary of the lease on Doolans Creek (F42036) and for the full length of the Nevis River (F42014). Within the lease marginal strips exist for the full length of the Nevis Burn, almost the entire length of Stewarts (or Schoolhouse) Creek and half the distance of Commissioners Creek.

A formed, gravel, unfenced, legal road called “Nevis Road” starting from the Nevis crossing travels southwards up the valley for the length of the lease. It appears to be very close to its legal line for most of its length, with one deviation near Schoolhouse Creek.

A legal road travels northward from the Nevis crossing across the lower foothills of Run 345B to exit into Doolans Creek, eventually linking up through the Coal Pit Saddle with Gibbston. An access track very generally follows this direction, although hardly ever on the legal line.

Two legal roads off the Nevis Road link Sections 15 and 18 Block I Nevis Survey District. These are both within the lease and from the topographical map are not shown as formed.

A short legal road is shown in the old township from the Nevis Road crossing the Nevis River to the east. The District Council Planning maps show this road as unformed.

The two DoC administered cemetery sites (Section 2 and 12 Block III Nevis Survey District) have no legal access.

From the cadastral and topographical maps most of the fenced boundaries appear to follow their legal line. One major deviation noted on files, but not shown on either of the above two maps, is the boundary on the lower Commissioners Spur where a 338 ha block of Loch Linnhe Station was fenced in and utilised by Ben Nevis. No boundary fence exists on the legal boundary.

(7) Details of neighbouring Crown or Conservation land:

Conservation Land (part of the Remarkables Conservation Area - F42032- Loch Linnhe) bounds the western boundary along the Remarkable Range top. This 4377 ha overlooks Lake Wakatipu to the range top and has landscape, recreational and botanical values.

Conservation Land (part of the Remarkables Conservation Area - F42041-Wentworth) adjoins north-western corner of the lease on the range top and half way down Doolans Creek. This 3745 ha area contains the upper catchment of Doolans Creek and was gazetted in 1998. It has landscape, recreational and botanical values.

Section 2 Blk III Nevis Survey District:

This 4047 sq.m. Cemetery Reserve (F42017) is Crown Land administered by the Department of Conservation under Section 62 of the Conservation Act 1987. This is located below the road on Part Run 345A near the historic township.

Section 12 Block III Nevis Survey District:

This 4047 sq.m. public cemetery (F42016) pursuant to Section 236 Land Act 1892, is subject to the Reserves Act 1977 and administered by the Department of Conservation. This is located above the road on Part Run 345A near the historic township.

Part Section 1 Block 1 Nevis Survey District - 1.6483 ha (F42018) located near the lower Nevis road crossing are identified as bridge abutments with historic values and is conservation land administered by DoC.

Section 4 Block 1 - 1.7149 ha (F42019) located near the lower Nevis road crossing is identified as bridge reserve with no specified purpose and the Otago Conservation Land inventory states it is available for disposal or exchange. F42019 is composed of three small parts and is Conservation Land administered by DoC.

Marginal strips have been identified from the Status Check maps on the boundary of the lease on Doolans Creek (F42036) and for the full length of the Nevis River (F42014).

Within the lease marginal strips exist for the full length of the Nevis Burn, almost the entire length of Stewarts (or Schoolhouse) Creek and half the distance of Commissioners Creek.

The Chief Surveyors report is contained in Po241 - SDN-0 folio 23 with maps in folio 20.

These are in agreement with the Status Check.

The map supplied by DoC Christchurch and the Otago Conservation Land Inventory do not identify marginal strips on Stewarts (or Schoolhouse) Creek and Commissioners Creek.

(8) Summary of uncompleted actions or potential liabilities:

- 8.1 Telecom New Zealand was granted consent to establish a transmission site (Cmar) on a ridge in the lower Nevis (Part Run 345B) and an easement to secure the site. Telecom New Zealand also reached agreement with Mr and Mr Adie to site a second transmitter on land they occupied (but hold no title to). The CCL also consented to an easement for that site which remains within the pastoral lease (see Attachment 3). No easements have been registered.
- 8.2 The two DoC administered cemetery sites within the lease (Section 2 and 12 Block III Nevis Survey District) have no legal access.
- 8.3 At least three sites have been identified within the pastoral lease that are occupied by people who appear to have no legal tenancy.

Mr and Mrs Adie have been applying for title to their residence on Part Run 345A over a long period. The length of occupancy (since the 1950's) and their paying of rates over a long period may give them some moral claim. Much file data related to their claim was not available for search, having been transferred to other files or removed by the Adies themselves.

File notes on folio 24 CON/50180/09/12517/A-ZNO (*see Attachment 2*) indicates a Colin Clyne is occupying a cottage on Section 16 Block XIII Nevis Survey District and a Russell Brown is occupying a cottage on Section 36 Block III Nevis Survey District. Both these are within the pastoral lease.

Freehold CT A2/1215
Freehold CT 3A/99907

- 8.4 A Variation for reduction of rental by \$3.20 was to be registered by Land Settlement Board Case 77/650 (*Po241 - SDN-02 -Folio 340*). This was never carried out. A matter of minor historical correctness only (*see Attachment 4*).

The following issues are brought to your attention to note only:

A special condition to allow resumption of land with no compensation for national parks is contained in the lease document.

The marginal strips defined at lease renewal on Stewarts (*or Schoolhouse*) Creek and Commissioners Creek appear not to be recognised on DoC inventory data or Conservation Resource Reports.

On the boundary between Loch Linnhe Station and Ben Nevis on “Commissioners Spur” a 338 ha block (*called “Bottom Commissioners”*) of Loch Linnhe Station has historically, by informal agreement, been utilised by Ben Nevis. This agreement appears to have terminated and the current holders of Ben Nevis are faced with erecting a new boundary fence on the correct line or applying for a boundary adjustment, if they can obtain agreement to do so, from the holders of Loch Linnhe.

The existence of Mining Licence (*OT 9D/540*) expiring in 2002 is noted. Crown minerals reports that the area has four applications for minerals permits being processed.

The existence of a registered archeological site on the lease was notified by the New Zealand Historic Places Trust in 1985 being Ovens/working floors site F42/7 (*Folio 441*). This site is also marked in the Proposed Central Otago District Scheme.

ATTACHMENTS:

- Schedule A. - Status Check.
- Attachment 1 - Recent copy of lease document OT A2/1215.
- Attachment 2 - File note on occupancy of cottages on lease.
- Attachment 3 - Consent for Telecom Easements.
- Attachment 4 - LSB case 77/650– Rent reduction variation.

SCHEDULE A:

Status Check.

KNIGHT FRANK (NZ) LIMITED

Appendix A

This report has been prepared on the instruction of Land Information New Zealand in terms of the contract number 50268 dated September 2001 and is undertaken for the purposes of the Crown Pastoral Leases Act 1998.

LAND STATUS REPORT for BEN NEVIS				[LIPS ref.12522]
Property	1	of	1	

Land District	Otago
Legal Description	Part Section 1, Section 15 and Section 18 Block I Nevis Survey District, Section 6, Section 13A, Section 32, 35 and Section 36, Block III Nevis Survey District, Section 16 Block XIII Nevis Survey District, Part Run 345A and Run 345B.
Area	14,560.7589 hectares.
Status	Crown land subject to The Land Act 1948.
Instrument of lease	Balance CIR OT A2/1215.
Encumbrances	Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941. No. 464303. Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941. No. 586242. Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941. No. 690798. Mining Licence embodied in Register OT 9D/540. Subject to Part IVA of Conservation Act 1987.
Mineral Ownership	Minerals remain with the Crown as the land has never been alienated since its acquisition for settlement purposes from the former Maori owners under the Kemp Deed of Purchase (1848).
Statute	Land Act 1948 & Crown Pastoral Land Act 1998.

Data Correct as at	7 March 2002.
(Certification Attached)	Yes

Prepared by	Murray Bradley 
Crown Accredited Agent	Knight Frank (NZ) Limited

KNIGHT FRANK (NZ) LIMITED


Appendix B

This land status report has been prepared on the instruction of Land Information New Zealand in terms of the contract number 50268 dated September 2001 and is undertaken for the purposes of the Crown Pastoral Leases Act 1998.

LAND STATUS REPORT for BEN NEVIS		<i>[LIPS ref. 12522]</i>	
Property	1	of	1

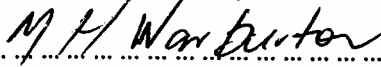
Land District	Otago
Legal Description	Part Section 1, Section 15 and Section 18 Block I Nevis Survey District, Section 6, Section 13A, Section 32, 35 and Section 36, Block III Nevis Survey District, Section 16 Block XIII Nevis Survey District, Part Run 345A and Run 345B.
Area	14,560.7589 hectares.
Status	Crown Land subject to the Land Act 1948.
Instrument of lease	Balance CIR OT A2/1215.
Encumbrances	Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941. No. 464303. Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941. No. 586242. Land Improvement Agreement pursuant to Section 30A Soil Conservation and Rivers Control Act 1941. No. 690798. Mining Licence embodied in Register OT 9D/540.
Statute	Subject to Part IVA of Conservation Act 1987. Land Act 1948 & Crown Pastoral Land Act 1998.

Data Correct as at	7 March 2002.
[Certification Attached]	Yes

Prepared by	Murray Bradley 
Crown Accredited Agent	Knight Frank (NZ) Limited

Certification:

Pursuant to section 11(1)(l) of the Survey Act 1986 and acting under delegated authority of the Surveyor-General pursuant to section 11 (2) of that act, I hereby certify that the land described above is; Crown Land subject to the Land Act 1948.


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Date *16/3* / *02* / 2002

Max Warburton, Chief Surveyor
Land Information New Zealand, Dunedin

BEN NEVIS RESEARCH - Property 1 of 1

<p>Notes : This information does not affect the status of the land but was identified as possibly requiring further investigation at the due diligence stage : See Crown Pastoral Standard 6 paragraph 6</p>	<p>(i) Part Section 1 and Part Run 345B Nevis Survey District, 27.952 ha was taken from the pastoral lease for a gravel pit in 1980 under Gazette Notice No. 529620. It was subsequently incorporated back in to the lease in 1999 under Section 113 of the Land Act 1948 under Certificate of Incorporation No. 970646.2.</p> <p>(ii) We note that an area of 9 acres was surrendered from CT 336/61 on the 24 April 1929, reducing the area of run 345B to 18,161 acres. However, it appears that this area was reincorporated in Run 345B when CT 424/3 was issued on the 1 March 1959 because the area of 345B was shown as 18,170 acres, being the original area contained in CT 336/61.</p>
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LAND STATUS REPORT for BEN NEVIS				[LIPS ref.12522]
Property	1	of	1	

Research Data: *Some Items may be not applicable*

Property	1	of	1	Yes
SDI Print Obtained				Yes
NZMS 261 Ref				F42.
Local Authority				Central Otago District Council.
Crown Acquisition Map				Kemp Deed of Purchase.
SO Plan				SO 808 (1909) – Defines Run 345B. SO 809 (1909) – Defines Run 345B. SO 810 (1909) – Defines Run 345A. SO 811 (1909) – Defines Run 345A. SO 5932 (1875) – Defines Part Section 1 Block I Nevis Survey District. SO 5936 (1883) – Defines Section 6 Block III Nevis Survey District. SO 5958 (1900) – Defines Section 13A Block III Nevis Survey District. SO 5962 (1905) – Defines Section 16 Bock XIII Nevis Survey District. SO 5965 (1906) – Defines Section 15 Block I Nevis Survey District. SO 5967 (1909) – Defines Section 18 Block I Nevis Survey District. SO 5976 (1914) – Defines Section 32 Block III Nevis Survey District. SO 5979 (1922) – Defines Section 35 Block III Nevis Survey District. SO 15907 (1966) – Defines Section 36 Block III Nevis Survey District (formerly part of Run 345A). SO 19394 and SO 19395 (1979) – Defines the area to be incorporated in CT A2/1215.
Relevant Gazette Notices				N/A
CT Ref / Lease Ref				Balance CIR OT A2/1215.
Legalisation Cards				SO Plan No's 808, 809, 810 and 811. The legalisation cards record that Runs 345A and 345B are subject to the provisions of marginal strips pursuant to Section 24 of The Conservation Act 1987. SO 19394. The legalisation card records that the leasehold estate was taken for a gravel pit under Gazette Notice No 529620 and that there was an amendment to the legal description under corrigendum no. 531233. Also, the land was declared Crown Land under Gazette Notice 1999 Page 1610. SO 19395. The legalisation card records that SO

	<p>Plan 19395 is an enlargement of SO 19394.</p> <p>There are no legalisation cards for SO Plan No's 5932, 5936, 5958, 5962, 5965, 5967, 5976, 5979, 15907, 19394 and 19395.</p>
CLR	<p>The Crown land register records the SO Plans and the area. The area is as follows: 35,980 acres 1 rood 27 perches = 14,560.7589 ha.</p>
Allocation Maps (if applicable)	<p>A check of the SOE/DOC/UCL Allocation Maps revealed no allocations within the boundaries of the pastoral lease.</p>
VNZ Ref - if known	<p>28441 - 13200.</p>
Crown Grant Maps	<p>The Crown Grant Map for the Nevis Survey District identifies Runs 345A and 345B.</p>
<p>If Subject land Marginal Strip:</p> <p>a) Type [Sec 24(9) or Sec 58]</p> <p>b) Date Created</p> <p>c) Plan Reference</p>	<p>(a) Subject to Section 24(3), 24(9) and 24(F) of The Conservation Act 1987 (Lease renewed for a further term of 33 years from 1 July 1992).</p> <p>(b) 1 July 1992.</p> <p>(c) SO Plan No's 808, 809, 810, 811.</p>

LAND STATUS REPORT for BEN NEVIS				[LIPS ref. 12522]
Property	1	of	1	

Research – continued

Property	1	Of	1	
If Crown land – Check Irrigation Maps.				N/A
Mining Maps				There is one currently granted and four application permits for the relevant area of F42. Please refer to the attached correspondence from the Ministry of Economic Development dated 28 February 2002.
If Road				Crown grant and Section 110A Public Works Act 1928.
a) Is it created on a Block Plan - Section 43(1)(d) Transit NZ Act 1989				
b) By Proc				
c) Plan No				
Other Relevant Information				
a) Concessions - Advice from DOC or Knight Frank.				<p>a) Please refer to the attached correspondence from the Department of Conservation dated 6 March 2002.</p> <p>There are a number of areas of public conservation land included within the boundaries of the lease.</p> <p>They are shown on the attached plans as:</p> <p style="padding-left: 40px;">F42 018 F42 019 F42 016 F42 017</p> <p>There are also marginal strips located within the lease and on the boundary of the lease.</p>
b) Subject to any provisions of the Ngai Tahu Claims Settlement Act 1998.				b) Subject to Part 9 of the Ngai Tahu Claims Settlement Act 1998.
c) Mineral Ownership				c) Mines and minerals are owned by the Crown because the land has never been alienated since its acquisition for settlement purposes from the former Maori owners under the Kemp Deed of Purchase (1848).

<p>(d) Other Information</p>	<p>Contained in (provide evidence):</p> <p>CT No's 336/60, 336/61, 107/123 and 424/3 being the earliest leases issued after the establishment of Runs in the Otago Land District.</p> <p>d)(i) Part Section 1 and Part Run 345B Nevis Survey District, 27.952 ha was taken from the pastoral lease for a gravel pit in 1980 under Gazette Notice No. 529620. It was subsequently incorporated back in to the lease in 1999 under Section 113 of the Land Act 1948 under Certificate of Incorporation No. 970646.2.</p> <p>(ii) We note that an area of 9 acres was surrendered from CT 336/61 on the 24 April 1929, reducing the area of run 345B to 18,161 acres. However, it appears that this area was reincorporated in Run 345B when CT 424/3 was issued on the 1 March 1959 because the area of 345B was shown as 18,170 acres, being the original area contained in CT 336/61.</p>
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