

Crown Pastoral Land Tenure Review

Lease name : Ben Ohau

Lease number : Pt 128

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

1. Details of lease

Lease Name: Ben Ohau
Location: Twizel
Lessee: Ben Ohau Station Ltd

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2. Public Notification of preliminary proposal

Date, publication and location advertised:

Wednesday 14 June 2000: The Press, Christchurch
Otago Daily Times, Dunedin
High Country Herald, Timaru

Saturday 17 June 2000: Timaru Herald, Timaru

Closing date for submissions: 14 August 2000

3. Details of submissions received

SUB.NO.	SUBMITTER	DATE RECEIVED	POINTS
1	Federated Mountain Clubs	26 June 2000	1
2	Concerned Recreation Action Groups of South Canterbury	12 July 2000	1
3	Back Country Skiers Alliance	18 July 2000	2
4	SC Tramping Club	19 July 2000	1
5		4 August 2000	3,4,5
6	Bendrose Station	8 August 2000	6
7		8 August 2000	7,8,9
8	Mackenzie District Council	11 August 2000	10
9	Royal Forest & Bird Protection Society of NZ South Canterbury Branch	14 August 2000	11,1,12 13, 14
10	Public Access New Zealand	11 August 2000	4, 15, 16, 17, 18, 19, 20
11	Glentanner Station Ltd	14 August 2000	21
12	Otago Tramping & Mountaineering Club	14 August 2000	21
13	Meridian Energy	14 August 2000	22, 23, 24
14	Regional Office, Royal Forest & Bird Protection Society of NZ Inc Note: Includes amended document received 29 August 2000.	15 August 2000	3, 4, 5, 9, 13, 14, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

4. *Analysis of submissions*

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INTRODUCTION

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 2.

The table in Section 3 records details of each submission received and lists the points made by each submitter.

The following tables summarise each of the points raised along with the recorded number (shown in section 3) of the submitter(s) making the point, discussion of the point and the recommendations as to whether to accept/not accept or allow/disallow the point.

The following approach has been adopted when making recommendations;

(i) to accept/not accept

It has been recommended that the decision on points made by submitters be to 'accept' where the matters raised are, in our view, relevant matters for the Commissioner to consider when making decisions in the context of the Crown Pastoral Land Act. Conversely, where matters raised are (in our view) irrelevant in terms of the Commissioner's consideration, it has been recommended that the decision be to 'not accept'.

(ii) to allow/disallow

Where it has been recommended that points raised be accepted, a further recommendation has been made as to whether the points made should be 'allowed' or 'disallowed'. It has been recommended that the decision be to 'allow' if, (in our view) it should be considered further and where the matter has previously been considered and there is no justification for further consideration that it be to 'dis-allow'. Further justification for the recommendations has been made in the discussion paragraph following the summary table for each point.

ANALYSIS

POINT	SUMMARY OF POINT RAISED	SUB NO.	RECOMMENDATION	
1	Provision of parking well off the State Highway 8	1	Accept	Dis Allow
		2		
		4		
		9		

Discussion:

While the point can be accepted as being a relevant matter it should be disallowed as adequate provision has been made for parking in the proposal.

Note:

At the northern end the proposed designation for conservation extends to the highway which would allow the DGC to provide off road parking. Reference was made in one submission for the need for

extension of the easement to provide for pedestrian access to the proposed conservation land. The proposal plan shows the easement to provide access as requested.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
2	That access be available all year round and be clearly marked	3	Accept	Dis Allow

Discussion:

The point is a relevant matter and can be accepted.

The draft easement allows access at all times day and night therefore it is recommended that the point be disallowed.

Note:

Marking is a matter for the DGC.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
3	Weed species to be controlled on the area to be restored to Crown control subject to a concession are not clearly specified. The term 'Noxious plants' is not helpful any more. Need to specify certain plants.	5, 9, 14	Accept	Allow

Discussion:

Future weed control on the above area is a matter for the DGC. It is however a valid concern in relevance to sustainability of the land (Sec 24 (a) (i) CPL Act) therefore the submission should be allowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
4	Hectares stated in the concession do not correspond with those in the Preliminary Proposal	5, 9, 10,14	Accept	Allow

Discussion:

It is noted there is a discrepancy in the areas stated in the proposal and the concession attached to it and it is recommended the point should therefore be accepted and allowed..

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
5	That the responsibility for and cost of monitoring of the concession be clarified. The tenure review states the DGC will set up a monitoring system and the concession agreement gives the concession holder the responsibility. Clarify who pays for the monitoring.	5, 9, 14	Not Accept	

Discussion:

The points raised being matters of management are not considered relevant to the Commissioner under the CPL Act therefore it is recommended they should not be accepted.

Note:

The matter may be relevant to the Minister of Conservation.

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POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
6	Recognition of the right to water for development. Need to source increased water supplies being either open water-race or pipeline through the proposed designation (Pukaki Flat area east of SH8) to be restored to Crown control for conservation. The submitter states that in the 1950's Bendrose Station along with other neighbouring property owners established a stock water race from the headwaters of the Twizel River which runs through the Pukaki Flat to the Bendrose property.	6	Accept	Allow

Discussion:

The point raises the possibility of another interest therefore it is considered relevant and should be accepted. As further investigation may be required the point should be allowed.

Note: The matter is the right to convey water across land as opposed to a 'water right' under the Resource Management Act.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
7	De-stock the Pukaki Flat (to be designated as land to be restored to Crown control subject to a concession). "...I see no justification noted for continued grazing of the area..."	7	Accept	Dis- Allow

Discussion:

The point raises an issue relevant under the CPL Act and should be accepted.

The submitter puts the premise that the area be de-stocked unless science shows that it should continue to be stocked and quotes other unrelated areas as examples. No "science" is offered to support his contention.

Continued grazing has been accepted by the DGC's delegate as an ecologically sustainable means to protect the inherent values. The point should be disallowed on the basis that no new information is provided which warrants reconsideration of the matter.

(Note: Grazing trials currently being carried out on the land for the DGC will assist the DGC in determining future management).

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
8	Protection of tall native gentian west of Pukaki canal.	7	Accept	Allow

Discussion:

The submission identifies tall native gentian as being locally common in an area referred to as "poor native tussock" which is a relevant matter. No mention of this occurs in the Conservation report in relation to the area identified. As the submitter appears to introduce new material it is therefore recommended that the point be allowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
9	Retain the lands between State Highway 8 and the Twizel River due to its fragile nature and complimenting the Pukaki flats to the east across the highway. OR provide for a Sec. 97 covenant and controls on grazing and other measures to improve indigenous vegetation cover and prevent soil erosion.	7, 14	Accept	Dis Allow

Discussion:

The point is relevant to the objects of Part 2 CPL Act and should therefore be accepted.

During the course of preparing the Preliminary Proposal, consideration has been given to proposing a designation which would retain the area in full Crown ownership and control. This option was discounted on the basis that the inherent values are well represented elsewhere including across the Highway on Pukaki Flat. Having given consideration to this matter already it is recommended that the point be disallowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
10	The Mackenzie District Council have obtained a designation and airport zoning under the Resource Management Act over an area adjacent to Highway 8 which is partly in the tenure review designation to freehold and partly in the designation to restore to Crown control for conservation. The Council request that all the area of Ben Ohau covered by the airport designation be included in the tenure review designation to freehold. They submit that land use controls to now applying through the Proposed Mackenzie District Plan and the Resource Management Act 1991 are directly relevant to tenure review because they limit the future use of land. They say the tenure review process should reflect the District Plan controls in order to avoid the Crown acquiring land that is subject to significant development constraints and to simplify acquisition of the land for its designated purpose because all of the designated area would fall within a single certificate of title.	8	Not Accept	

Discussion:

The submitter seeks the inclusion of all of the area covered by the Mackenzie District Council's airport designation in the proposed freehold and argues that the designation boundaries under tenure review should reflect the District plan controls. Reasons given include the Crown avoiding the acquisition of land subject to development constraints and the simplification of future acquisition of the land (because it would be on one certificate of title).

These are not relevant considerations for the CCL in terms of the CPL Act process and therefore the submission should not be accepted.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
11	The Pyramid contains the only observed manuka community in the district. Because of its significance it should be protected either by remaining in Crown Control, or by protective covenants.	9	Accept	Allow

Discussion:

The point raised involves inherent values and is considered relevant therefore should be accepted.

It is noted that there is no reference to the manuka in the DGC's report so the issue raised appears to refer to new material and should be allowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
12	Protection of "Mossy Hollow" and seep areas that contribute to the Ben Ohau swamp	9, 14	Accept	Dis Allow

Discussion:

The point is relevant to inherent values and should be accepted.

Wetlands are a sensitive issue in a dry area and the matter has been raised in two submissions, both by the same organisation. The level of protection is, however, a judgement issue. Although the area is described in the DGC's report it does not feature in the recommendations. In the preparation of the Preliminary Proposal, the issue of protection of wetlands has been considered and the recommendations regarding designations made accordingly. It is therefore recommended that this point be disallowed. See also point 25.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
13	The point raises the issue that a greater area of the Pukaki Flat should be retained by the Crown and that the airport designation should not be an issue. Reference is made to conservation values which they consider further justify protection of a greater area of the Pukaki Flat.	9, 14	Accept	Allow

Discussion:

The point raised is relevant to the CPL Act and should be accepted. As the submitters appear to introduce new material, it is recommended that the point be allowed.

Note:

The submitter states there are significant values that have not been fully considered and asked that all areas of short tussock in good condition become conservation land saying the airport should be confined to the south western corner. Information is introduced that warrants further investigation.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
14	That all river margins should be fenced.	9, 14	Accept	Dis Allow

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Discussion:

The submitters are unsure if some river margins are currently fenced but they make the statement that all river margins should be fenced. The Preliminary Proposal specifies fencing between the proposed designations but does not specify fencing between existing marginal strips and the proposed designation for freehold disposition. Consideration has been given to fencing when developing the PP and as the status quo will remain it is recommended that the point be disallowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
15	Reference to access in the concession document, "...to have access across the area..." should be expanded to, "...to have access across and recreational use of the conservation area...".	10	Accept	Allow

Discussion:

The matter raised is relevant to Sec 24 (c) (ii) CPL Act and should be accepted. It is considered that a valid point is raised that should be allowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
16	Indicate what the intended status of wetlands and extended river margins will be once transferred to DOC's administration	10	Not Accept	

Discussion:

The status of land once "transferred" to MoC is not a matter the CCL needs to consider other than as set out in the CPL Act. As the proposal clearly sets out the requirements of the Act it is recommended the point not be accepted.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
17	No width is specified in the easements. Suggest it be 20m to coincide with the legal road it adjoins.	10	Accept	Allow

Discussion:

A relevant point has been raised and should be accepted.

The width of easements should be considered therefore it is recommended that the point be allowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
18	Whether easements be appurtenant or in gross. If appurtenant then the submitter contends the use is at the pleasure of the owner/occupier.	10	Accept	Allow

Discussion:

A relevant point has been raised and should be accepted.

The submitter appears to raise an important issue involving public access and it is recommended it be allowed.

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POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
			Not Accept	
19	If an easement is to be appurtenant then it a title is required over the land designated for conservation.	10	Not Accept	

Discussion:

The matter is not considered relevant to the Commissioner's considerations under the CPL Act and therefore it is recommended that it not be accepted.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
			Accept	Allow
20	That the easement document variously refers to "non-motorised bicycle access" or "non-motorised vehicles". The former could deny certain types of "vehicles" eg perambulators.	10	Accept	Allow

Discussion:

A relevant point is raised about public access therefore it should be accepted. It should also be allowed as to allow the point would give the opportunity to consult further.

Note: The drafting instructions referred to the easements as follows;
"An easement under section 7(2) Conservation Act 1987 to provide public access from the Pukaki Canal westward to the legal road along the south-western boundary of the area along the route marked 'B' on the diagram in Appendix I as follows;

(B.1) Public access at all times for persons on foot (pedestrians), on or accompanied by horses, or on non-motorised vehicles powered by a person or persons (to included but not limited to bicycles, perambulators and wheelchairs).

The document produced in the Annexure Schedule represented the instruction more or less but under the heading "Estate or Interest or Easement to be Created" referred to "non-motorised bicycle...". The document has through its varies revision retained the wording as set out above.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
			Accept	Allow
21	Support for the Preliminary Proposal	11, 12	Accept	Allow

Discussion:

Recommend that the point be accepted and allowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
			Not Accept	
22	As owners of the adjoining land it was expected that an adjoining owner should have been informed of the review rather than rely on a newspaper advertisement.	13	Not Accept	

Discussion:

As far as your agent is aware, there is no statutory requirement for the CCL to notify the owners of adjoining land of the putting of a preliminary proposal. The point raised should therefore not be accepted.

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POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
			Accept	Allow
23	On the true right bank of the Pukaki Canal only the tar seal strip is operated as road by the Mackenzie District Council. Public access over Meridian Energy core land cannot be taken for granted.	13	Accept	Allow

Discussion:

A relevant point has been raised in relation to access and should be accepted and allowed accordingly.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
			Not Accept	
24	Lake Poaka is Crown Land and is not part of the Ben Ohau Station.	13	Not Accept	

Discussion:

The point is not relevant as the Crown Land part of Lake Poaka is not in the tenure review. It should therefore not be accepted.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
			Accept	Dis Allow
25	Restore to full Crown ownership and control all wetlands/seeps and cushion bogs in Darts Bush catchment, The Pyramid, Mossy Hollow and the wetland on the true right of Dry Stream, around the outer margin of Ben Ohau wetlands/swampy area and/or ensure that the conservation area is extended to include all seeps and wet areas which feed or have hydrological connection to this wetland sequence.	14	Accept	Dis Allow

Discussion:

The point is relevant to inherent values and should be accepted.

Wetlands are a sensitive issue in a dry area and the matter has been raised in two submissions, both by the same organisation. The level of protection is, however, a judgement issue. Although the area is described in the DGC's report it does not feature in the recommendations. In the preparation of the Preliminary Proposal, the issue of protection of wetlands has been considered and the recommendations regarding designations made accordingly. It is therefore recommended that this point be disallowed. See also point 12.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
			Accept	Dis Allow
26	Provide fencing around the southern part of the Ben Ohau wetland and buffer zone.	14	Accept	Dis Allow

Discussion:

The point is relevant to inherent values and should be accepted.

The southern area requested to be fenced is very small and a fence currently exists within a few meters. The balance goes from dry land to very swampy land where livestock are unlikely to enter the wetland therefore it is recommend that the point be disallowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
27	Do not freehold the red tussock grassland on the true left of Lower Darts Bush Stream.	14	Accept	Dis Allow

Discussion:

The matter of inherent values is relevant therefore the point can be accepted but the area referred to is not designated to be disposed of as freehold. The area is proposed to be designated to be retained for conservation therefore the point should be disallowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
28	Provide for widening of marginal strips on the Lower Darts Bush Stream and Fraser Stream to include all riparian shrub lands and the area of red tussock grassland including feeder flushes and seeps.	14	Accept	Dis Allow

Discussion:

The matter of inherent values is relevant therefore the point should be accepted.

The Preliminary Proposal provides for the true left bank of the Lower Darts Bush Stream and Fraser Stream down to the Pukaki Canal to be designated for conservation. Below the canal the DGC's Delegate did not recommend any area be restored to the Crown. The area had been considered for restoration to the Crown but discounted because the area is infested with broom.

A Marginal Strip exists and reliance has been placed on the extent of the existing marginal strip along the true right bank which is better defined and also merges into the Ben Ohau wetland along part of its length. See also point 25.

It is recommended the point be disallowed on the basis that the matter has been considered during the course of preparing the Preliminary Proposal.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
29	Widen the marginal strips along the entire length of Dry Steam and the Twizel River.	14	Not Accept	

Discussion:

The marginal strips currently exist and were not included in the review. The point should therefore not be accepted as it is not relevant.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
30	Expand the area to be retained around Lake Poaka.	14	Accept	Dis Allow

Discussion:

The matter of inherent values is relevant therefore the point should be accepted.

From the submission made it would appear that the submitter is not familiar with the area, Lake Poaka itself is not in the tenure review and all the land surrounding it that has wildlife value is proposed to be designated for conservation. The point raised should therefore be disallowed.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
31	Include Lake Merino, inflowing streamlets and wet soakages plus a 50-100m buffer in the area proposed to be designated for conservation.	14	Accept	Dis Allow

Discussion:

The point is relevant to inherent values and should be accepted.

Lake Merino is a man made borrow pit left from water power development. Although this area was described in the DGC's report, it was not recommended for restoration to crown control by the DGC's delegate. It is therefore considered that this point should be disallowed on the basis that the matter has already been considered in the course of preparation of the Preliminary Proposal.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
32	Include Mountain Beech remnant, Darts Bush Stream	14	Not Accept	

Discussion:

This point is not considered to be relevant as the Mountain Beech is within the marginal strip beside Dart Bush Stream and not in the review area. Recommend the point be not accepted.

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
33	Move boundary of the proposed conservation area on the Pukaki Flats further east to the true right bank of the Pukaki River. The submitter claims the lease boundary is further east than shown on proposal plans.	14	Not Accept	

Discussion:

The point is not considered to be relevant because the status check plan (as supplied to the submitter) shows the correct boundary with the result that the area identified by the submitter is outside the land included in the tenure review. The point should therefore not be accepted

(Note: The area referred to by the submitter was taken for water power and excluded from the lease).

POINT	SUMMARY OF POINT RAISED	SUB NO	RECOMMENDATION	
34	Clarify objectives of Grazing Concession	14	Accept	Allow

Discussion:

The point is relevant to inherent values and should be accepted.

The submitter has sought clarification on the objectives of the Grazing Concession and clarification of other matters in the concession document. It is considered the points raised require further consideration and therefore recommend that the point be allowed.

5. Discussion and Conclusions

Discussion relevant to the particular point has been made above under each point for simplicity and clarity. The only conclusion that can be drawn is that most submitters require more land for their particular interest, and do not necessarily take into consideration all the objects of Part II of the Crown Pastoral Land Act. It is believed that the analysis, in a suitable format, has been provided so that the Commissioner or his delegate can decide to accept or allow the points raised in submissions, and where allowed, issue instructions to enable him to review or consider the matter raised.