

# **Crown Pastoral Land Tenure Review**

**Lease name: Braeside**

**Lease number: PO 181**

## **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 04**

## ANALYSIS OF IWI SUBMISSION

### BRAESIDE TENURE REVIEW

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#### 1. **Details of lease:**

*Lease Name :* Braeside

*Location :* Ida Valley and Hawkdun Range

*Lessees:* Graham Matthew McKnight and Alistair John McKnight

#### 2. **Details of submission:**

Land Information New Zealand advised iwi of the Preliminary Proposal for tenure review in accordance with Section 43 Crown Pastoral Land Act. A written response was received from the Office of Te Runanga o Ngai Tahu on 17 June 2003. Seven points were raised by iwi.

#### 3. **Analysis of submissions:**

##### 3.1 **Introduction**

*Explanation of Analysis:*

The submission has been reviewed in order to identify the points raised and these have been numbered accordingly.

The following analysis summarises each of the points raised. Discussion of the point and the decision whether or not to accept/not accept or to allow/disallow the point follows.

The following approach has been adopted when making recommendations:

(i) To accept/ not accept:

The decision to **“accept”** the point is made on the basis that the matter raised is a relevant matter for the Commissioner to consider when making decisions in the contest of the Crown Pastoral Land Act 1998. Conversely, where the matter raised is not relevant in terms of the Commissioner’s consideration, the decision is to **“not accept”**.

(ii) To allow /disallow:

Where the decision has been made to accept, a further decision has been made as to whether the point made should be “allowed” or “disallowed”. The decision has been made to **“allow”** if the point raises new information and should be considered further.

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Where the matter has previously been decided by the Commissioner, and there is not justification for further consideration then the decision is to “**disallow**”. Further justification for the decision has been made in the discussion paragraph following the summary for each point.

3.2 *Analysis:*

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
1	Ngai Tahu supports the proposed conservation area outlined in the Preliminary Proposal for Braeside, especially as this provides protection over an area containing indigenous vegetation, which were traditional sources of mahinga kai.	Accept	Disallow

*Discussion:*

The Commissioner has identified significant inherent values in relation to the area proposed for restoration to the Crown in accordance with Section 24 (b) CPL Act. The point is therefore accepted.

The support of Ngai Tahu for the restoration of this area to the Crown is appreciated. The submission does not however provide any new information for further consideration of these areas and therefore the point is disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
2	The presence of two plants of special cultural significant within the lease has been identified, these being tikumu and taramea.  Ngai Tahu support the access into the proposed conservation area as it provides excellent access to this cultural resource. However, Ngai Tahu have requested that where the Department of Conservation has vehicle access for management purposes, Ngai Tahu would also like vehicle access for management and access to mahinga kai.	Accept	Allow

*Discussion:*

Access to this cultural resource is a matter for the Commissioner to consider pursuant to Section 24 (c) CPL Act. Therefore this point is accepted.

The support for the proposed easement by Ngai Tahu is appreciated. Vehicle access is a matter to consider and the point is therefore allowed. This may be possible in conjunction with Department of Conservation management.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
3	Ngai Tahu seek formal protection over any waterway or wetland that transcends onto freehold land to protect mahinga kai.	Accept	Allow

*Discussion:*

The protection of significant inherent values is a matter for the Commissioner to consider pursuant to Section 24(b) CPL Act. The protection of mahinga kai is considered a significant inherent value and therefore the point is accepted.

The iwi submission gave a brief outline of the importance of waterways to Ngai Tahu, and especially the importance of begin able to collect mahinga kai from such waterways. The submission identifies significant inherent values in relation to mahinga kai that have not previously been considered. Therefore this point is allowed to enable the Commissioner to consider additional information and consult further with iwi, and with the Director General of Conservation delegate and the holder in this regard.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
4	Ngai Tahu seek marginal strip protection over Johnstons Creek	Not accept	

*Discussion:*

Marginal strips and esplanade reserves are matters for the Director General of Conservation to consider in terms of Part IVA Conservation Act 1987. The provision of marginal strips is not a matter covered by the Crown Pastoral Land Act 1998. This point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
5	Ngai Tahu seek access to some parts of Johnstons Creek which is currently not provided.	Accept	Allow

*Discussion:*

The provision of access is a matter for the Commissioner to consider pursuant to Section 24 (c) CPL Act. Therefore this point is accepted.

Public access has been secured to parts of Johnstons Creek and there are also two legal roads within the proposed freehold boundary that provide access. Access may also in the future be available if marginal strips are laid off under the Conservation Act 1987.

However the Commissioner of Crown Lands’ delegate has allowed this point to enable further consultation with iwi about their access requirements.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
6	Protocol should be in place, involving Ngai Tahu and the Crown/DoC, to enable appropriate resolution of any issues regarding naming of landscape features within the lease.	Not Accept	

*Discussion:*

The protocols requested are not a matter for the Commissioner to consider under the CPL Act. These matters are for the Director General of Conservation to consider. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
7	As there are a number of archaeological sites in the vicinity of this lease, Ngai Tahu believe that there may be similar sites on the lease that have not yet been identified. Ngai Tahu are promoting the establishment of documentation and relationships between current and future lessees and Ngai Tahu to allow future access to any discovered sites. They also seek to establish protocols for any modification to potential sites.	Not Accept	

*Discussion:*

This point relates to values which have not yet been found to exist. The provisions of the CPL Act relate to the identification and protection of significant inherent values. As no specific values have been identified the point is not accepted.

The establishment of documentation and protocol is also not a matter for the Commissioner to consider pursuant to the CPL Act but is a matter for the Director General of Conservation to consider.

It is further noted that the Resource Management Act and the Historic Places Act provide requirement in relation to the subsequent identification of such values.

## ANALYSIS OF SUBMISSIONS

### BRAESIDE TENURE REVIEW

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**1. Details of lease:**

*Lease name:* Braeside

*Location:* Ida Valley and Hawkdun Range

*Lessees:* Graham Matthew McKnight and Alistair John McKnight

**2. Public notice of preliminary proposal:**

*Date, publication and location advertised:*

*Saturday 5 April 2003:*

Otago Daily Times	Dunedin
The Press	Christchurch
Southland Times	Invercargill

*Closing date for submissions:*

4 June 2003

**3. Details of submissions:**

A total of 7 submissions were received by the closing date. A further 6 submissions were received by 9 June 2003.

**4. Analysis of Submissions:**

**4.1 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.

The following analysis summarised each of the points raised along with the recorded number (*shown in Appendix 3*) of the submitter(s) making the point. Discussion of the point and the decision whether or not to accept/ not accept or to allow/disallow the point follows.

The following approach has been adopted when making recommendations:

- (i) To accept/not accept:

The decision to “**accept**” the point made by submitters is on the basis that the matter raised is a relevant matter for the Commissioner to consider when making decisions in the context of the Crown Pastoral Land Act `998. Conversely, where the matter raised is not relevant in terms of the Commissioner’s consideration, the decision is to “**not accept**”.

- (ii) To allow/disallow:

Where the decision has been made to accept, a further decision has been made as to whether the point made should be “allowed” or “disallowed”. The decision has been made to “**allow**” if the point raises new information and should be considered further. Where the matter has previously been decided by the Commissioner, and there is not justification for the further consideration then the decision is to “**disallow**”. Further justification for the decision has been made in the discussion paragraph showing the summary for each point.

**4.2 Analysis:**

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
1	The shrublands on proposed freehold land are significant and should be protected.	1,4,5,10, 13	Accept	Allow

*Discussion:*

The protection of significant inherent values is a matter for the Commissioner to consider in terms of Section 24 (b) CPL Act. For this reason the point is accepted.

The values identified by the submitters were identified in the preparation of the Conservation Resources Report and subsequently considered by the Commissioner in putting a Preliminary Proposal. The area referred to has undergone significant modification and pastoral use. The shrublands within this area were not believed to be sufficiently significant as to require restoration to the Crown. The submitters provided some information which may not have been fully considered. Therefore the Commissioner of Crown Lands’ delegate has allowed this point to enable further consideration of the matter.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
2	The area proposed for freehold contains Red Tussocklands not identified within the Conservation Resources Report, which are a significant inherent value. This area needs re-examined to identify the extent of the red tussocklands.	1, 3,4,5,6, 9,10,11, 12,13	Accept	Allow

*Discussion:*

The protection of significant inherent values is a matter for the Commissioner to consider in terms of Section 24 (b) CPL Act. For this reason the point is accepted.

A review of the information previously considered by the Commissioner has not identified any reference to this area of red tussock. Protection of this area has not been previously considered. The submitters in this case have provided new information which could be considered before proceeding with the tenure review. The point has therefore been allowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
3	The submitters note that the easement “a-b” is satisfactory and provides sufficient and easy access to the proposed conservation area.	2, 4, 5,6, 9,10,13	Accept	Disallow

*Discussion:*

The provision of public access is a matter for the Commissioner to consider under Section 24 (c) (i) CPL Act. The point is therefore accepted.

The support of the submitters for the proposed easement is noted but as no new information has been provided the point is disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
4	The legal access is unclear and this needs to be clarified to ensure public access.	2, 4, 5, 8,9,10	Accept	Disallow



*Discussion:*

The provision of public access is a matter for the Commissioner to consider under Section 24(c) (i) CPL Act. While the CPL Act is not the mechanism for clarifying legal roads, the submitters were concerned that access would not be secure where the track deviates from the legal road. The point is therefore accepted.

Public access is a matter to be considered but access to the proposed conservation land via legal roads and access easement “a-b” is sufficient. Therefore, public access is secure. The clarification of the legal road is not a matter to be considered and, because public access is adequately provided for, this point has been disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
5	The provision for marginal strips needs to be incorporated into the proposal.	4, 5	Not Accept	

*Discussion:*

Marginal strips where appropriate will be created on the disposition of land, but this is a matter for the Director General of Conservation in terms of Part IV of the Conservation Act. The Commissioner does not have jurisdiction in relation to marginal strips and therefore this point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
6	Public access to Water Race Road is sought.	4, 5	Accept	Allow

*Discussion:*

Public access is a matter for the Commissioner to consider pursuant to Section 24(c) (i) CPL Act. Therefore the point is accepted.

Access on Water Race Road is not a matter that has previously been discussed and considered. The submitters have requested access on this road and the Commissioner of Crown Lands’ delegate has allowed this point to enable further consideration.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
7	There is a case against the proposed freehold on the basis of ecological sustainability and that the area contains significant inherent values.	4, 5	Accept	Disallow

*Discussion:*

The management of reviewable land in a manner that is ecologically sustainable is a matter for the Commissioner to consider pursuant to Section 24 (a) (i) CPL Act. Further, the protection of significant inherent values is also a matter for the Commissioner to consider under Section 24 (b) CPL Act. Therefore this point is accepted.

The submitters raised this point in relation to the values identified in point 1. The land proposed for freehold disposal is lower altitude land with more fertile soil. Grazing of cattle and sheep is a sustainable use of this land. This will be aided by inputs of fertiliser and improved pasture seed on land capable of development. The goal of ecological sustainability is not compromised under this proposal. Additionally, management systems such as reduced stocking rates and seasonal spelling from grazing will promote sustainable use of those areas of land less suited for development. This submission has not raised any new information that would call into question the ecological sustainability of the area proposed for freehold, and therefore this point is disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
8	The submitters support the area proposed for restoration to full Crown ownership and control.	6, 10, 11	Accept	Disallow

*Discussion:*

The area recommended for restoration to full Crown ownership and control has been decided by the Commissioner to meet the objects of Part 2 of the CPL Act. The point is therefore accepted.

Support for this aspect of the proposal is acknowledged. However the submitters have not provided new information in relation to this and therefore the point is disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
9	The boundary between the Department of Conservation and the lessee should be shifted above the water race to allow an easement for irrigation to be maintained.	7	Not Accept	

*Discussion:*

This submission is made by the Hawkdun Idaburn Irrigation Company who currently hold an easement over portions of the land in review. The maintenance of the easement for the irrigation company, and the management tools used for this maintenance, are not matters for the Commissioner to consider under the CPL Act. Therefore this point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
10	The submitters feel that easement “a-b” should be dedicated as a public highway.	9, 13	Not Accept	

*Discussion:*

The provision of public access is a matter for the Commissioner to consider pursuant to Section 24 (c) (i) CPL Act. However, public access is secure under the proposal and the designation of legal roads is not within the ambit of the CPL Act. Therefore this point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
11	Access easement “a-b” appears to only allow motorised access. By inference, this means that it excludes non motorised vehicles powered by a person or person(s).	9	Accept	Disallow

*Discussion:*

Public access is a matter for the Commissioner to consider pursuant to Section 24 (c) (i) CPL Act. Therefore this point is accepted.

The submitter has indicated that the words “non” or “powered by a person or persons” have been struck out of the easement document, implying that non motorised vehicle

access has not been provided. This however is not the case as the easement allows unrestricted public access by foot, horse, non motorised vehicle powered by a person or persons, and vehicle access. The submitter has provided no new information and this point is therefore disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
12	The protective mechanism on Braeside is ‘ <i>ultra vires</i> ’ under the CPL Act.	9	Accept	Disallow

*Discussion:*

The provision of public access is a matter for the Commissioner to consider pursuant to Section 24 (c) (i) CPL Act. Therefore this point is accepted.

The provision of public access through the protective mechanism easement pursuant to Section 36 (3)(b) CPL Act, has followed due process. It has been considered fully by the Commissioner and considered correct in terms of the CPL Act. As the submitter has not provided new information this point is disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
13	The property contains an altitudinal sequence of plants that ranges from the valley floor to the top of the Hawkdun Ranges. This should be protected.	12,13	Accept	Allow

*Discussion:*

The protection of significant inherent values is a matter for the Commissioner to consider pursuant to Section 24 (b) CPL Act. Therefore this point is accepted.

This point relates in part to the identification of red tussock in point 2 above. A review of the information the Commissioner has considered to date has not identified any reference to the altitudinal sequencing. The protection of this has not been previously considered. The submitters have provided new information which could be considered before proceeding with tenure review. This point has therefore been allowed.

**5. Discussion and conclusions:**

Discussion relative to the particular points have been made above, under each point, for simplicity and clarity.

There are four issues which arise through the public process for this review. Three of these points overlap slightly. The first is that there is an area of Red Tussockland that has

not been identified and subsequently protected. Red Tussock is relatively uncommon at the altitudes suggested in the submissions and as such, this point needs further investigation. The second point for further consideration is that, with the presence of the red tussock, there is an opportunity to protect an altitudinal sequence that runs from the valley floor to the top of the range. The quality of the shrublands and other values present is of a condition that such protection would provide an excellent example of such a sequence. For this reason, further investigation is needed to examine the values within the alluvial flats and this point has been allowed. The third point is the protection of the shrublands on the proposed freehold land. While this has been considered during consultation, the submitters may have provided some new information that was not previously considered and consequently this point has been allowed by the Commissioner of Crown Lands' delegate to enable further consultation. The final point included for further consultation concerns access to Water Race Road. Public access is a matter for the Commissioner to consider and while access has been provided, the delegate has allowed this point to clarify the exact location of Water Race Road and to allow consultation on this point.

The points raised by the submitters have been carefully analysed and full consideration given to them.