

Crown Pastoral Land Tenure Review

Lease name:

CATTLE FLAT (SOUTHLAND)

Lease number: PS 071

Public Submissions - Part 2

These submissions were received as a result of the public advertising of the Preliminary Proposal for Tenure Review.

May

05

25 March 2005

Commissioner of Crown Lands

CATTLE FLAT PASTORAL LEASE & THE HENROOST SPECIAL LEASE TENURE REVIEW SUBMISSION BY CROWN MINERALS

Background

1. The Commissioner of Crown Lands has invited submissions on a preliminary proposal for tenure review to G A Young and Company Limited as lessees of the Cattle Flat (Southland) Pastoral Lease and The Henroost Special Lease.
2. The Crown Pastoral Land Act 1998 provides a framework for tenure review of high country land in the South Island. In order to gain ownership of the land leaseholders may request that their lease be considered for tenure review.
3. The Cattle Flat/Henroost tenure review involves a total of some 5,384 hectares of land centred over the Mataura Range, some 10 to 20 km northeast of Lumsden in Southland. The lease area is flanked on its eastern boundary by the Mataura River, to the north by Dome Creek, and the southwest by Tomogalak Stream. The area comprises the Cattle Flat (Southland) Run of 3,263 hectares and The Henroost Special Lease of 2,120 hectares.
4. It is proposed that 185 hectares be designated as land to be restored or retained in Crown control as Scenic Reserve, 12 hectares to be restored or retained in Crown control as Conservation Area, and 5,187 hectares to be passed into freehold ownership subject to some protective mechanisms.

Crown Minerals

5. Crown Minerals is the government agency that manages New Zealand's state owned oil, gas, mineral and coal resources known as the Crown mineral estate. Crown Minerals is responsible for the efficient allocation of prospecting, exploration and mining rights, the promotion of the mineral estate to investors, and ensuring that the Crown receives a fair financial return on the mineral estate.
6. The Crown (on behalf of all New Zealanders) owns all in-ground petroleum, gold and silver and approximately half of the in-ground coal, non-metallic and other metallic minerals including industrial rocks and building stones.

Tenure Review

7. The Associate Minister of Energy and Crown Minerals have previously registered their concern to both the Minister of Land Information and LINZ officials that the

land tenure review process gives no consideration to the land's mineral value and potential for mineral development and that it does not recognise that existing mineral permit and licence holders have an interest in the land. As a consequence of the ongoing review of pastoral leases, some land that is highly prospective for mineral development is passing into the Conservation estate, or into private ownership, where it will be extremely difficult, if not impossible in some cases, for individuals and companies to gain access to this land for the purpose of exploration and mining. This represents a significant loss of economic development opportunity.

8. The objectives of tenure review are set out in section 24 of the Crown Pastoral Land Act and include "*enabling reviewable land capable of economic use to be freed from the management constraints (direct and indirect) resulting from its tenure under reviewable instrument*".
9. The economic benefits from mineral development can be substantial and should not be overlooked. If the land has high mineral potential and/or significant mineral content, then consideration should be given to the mineral value when determining future ownership and use of such land.
10. The purpose of this submission is to bring to your attention the known and potential mineral wealth of the land subject to the Cattle Flat (Southland) and The Henroost tenure review and to request that this be taken into consideration when making a final decision on the review.

Geology

11. The southern part of Cattle Flat/Henroost consists of rocks of the Caples Terrane with non-schistose sandstone and mudstone adjacent to the Livinstone Fault in the west grading northeast into semischists of the Haast Schist series. The Caples Terrane is a volcanoclastic sequence of predominantly andesitic lithology but with more felsic rocks in the east.
12. The northern part of Cattle Flat also comprises rock units of the Caples Terrane and contains significant areas recognised as andesitic flows, pillow lavas and hyalocrystalline breccias but they have been overprinted by two generations of foliation and stratigraphy has been mostly destroyed. These northern rocks show a northward transition between chlorite schist textural subzone II and III of the Haast Schist series. The rocks show increasing signs northward of mesothermal ore forming processes and quartz veining is increasingly common northward across Garvey Ridge, through the Garvey Mountains and into the Carrick Mountains where there is a recognised concentration of gold-bearing veins in the Carrick goldfield. The area shows significant northwest-to southeast-trending compressional folding and numerous macroscopic recumbent folds and nappes representing multiple generations of synmetamorphic deformation.

Past Exploration and Mining

13. There are no known significant quartz reef exposures or records of alluvial gold, coal or base metals having been mined on Cattle Flat Pastoral Lease or The

Henroost Special Lease. While Crown Minerals does not hold any reports of mineralization in the area under review, the Nokomai River, a gold mining area for almost 100 years, is located just to the north. There is therefore a strong possibility that alluvial gold mining activities may have been undertaken along river terraces within the area.

Current Activity

14. At the present time there is a large granted prospecting permit (PP 39 259), which lies predominantly over the Nevis Valley and the Garvie Mountains, that overlaps with the northern part of the Cattle Flat Pastoral Lease, refer Map 1 attached. The purpose of a prospecting permit is to allow for a relatively brief reconnaissance for minerals over a large area using low impact work methods. The object being to undertake preliminary investigations or studies aimed at identifying land likely to contain mineral deposits. If successful, exploration and mining may follow.
15. Prospecting permit 39 259 is held by HPD New Zealand Limited, a United Kingdom based gold exploration company that has been active in New Zealand for the past three years. The permit was granted on 12 March 2004 over an area of 461 square kilometres for a term of two years with a right to apply for an extension of term for a further two years.
16. Some 22 square kilometres of the permit overlaps with the northern part of Cattle Flat Pastoral Lease. The area of overlap, refer Map 2 which is appended, is bounded by the Matuara River to the east, by Dome Creek to the west and by the boundary of the Henroost Special Lease to the south. The preliminary proposal recommends that this area be disposed of by freehold disposal to G A Young and Company Limited.
17. HPD has been attracted to the Otago/Southland region because of the history of gold mining and what the company views as highly prospective geology. HPD is currently undertaking field studies on the permit area with the aim of delineating target mineralisation. It is expected that, on the basis of encouraging results, HPD will apply for an exploration permit in order to carry out exploration drilling.

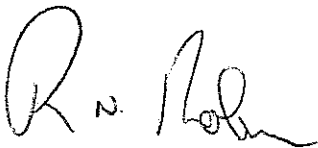
Comment

18. Prospecting is a relatively high risk business and the very nature of mineral exploration means that a company starts with a large area of land and with time it reduces the area after eliminating areas of no interest. Where early reconnaissance work under a prospecting permit justifies further exploration expenditure, a company will apply for an exploration permit. Progressively the size of the area will be reduced to only a fraction of the original area and more often than not, a company will fail to identify economic mineralisation and the ground will be surrendered or the permit allowed to expire. Modern day prospecting and exploration techniques present little threat to the environment and yet the ultimate outcome of exploration can be the development of a mine with numerous economic spin-offs for the local economy.

19. Crown Minerals acknowledges that the freeholding of the majority of Cattle Flat Pastoral Lease to the lease holders does not preclude access to the land for the purpose of prospecting, exploration and mining. A permit holder can enter land to carry out minimum impact activities¹ by giving 10 working days written notice to every landowner and occupier of the land. For other than minimum impact activities, permit holders can apply to the new landowner for an access arrangement under section 54 of the Crown Minerals Act, however, if an agreement cannot be reached between the two parties access to the land can be denied and, unless otherwise agreed with the landowner, the matter cannot be taken to an arbitrator for resolution.

Conclusion

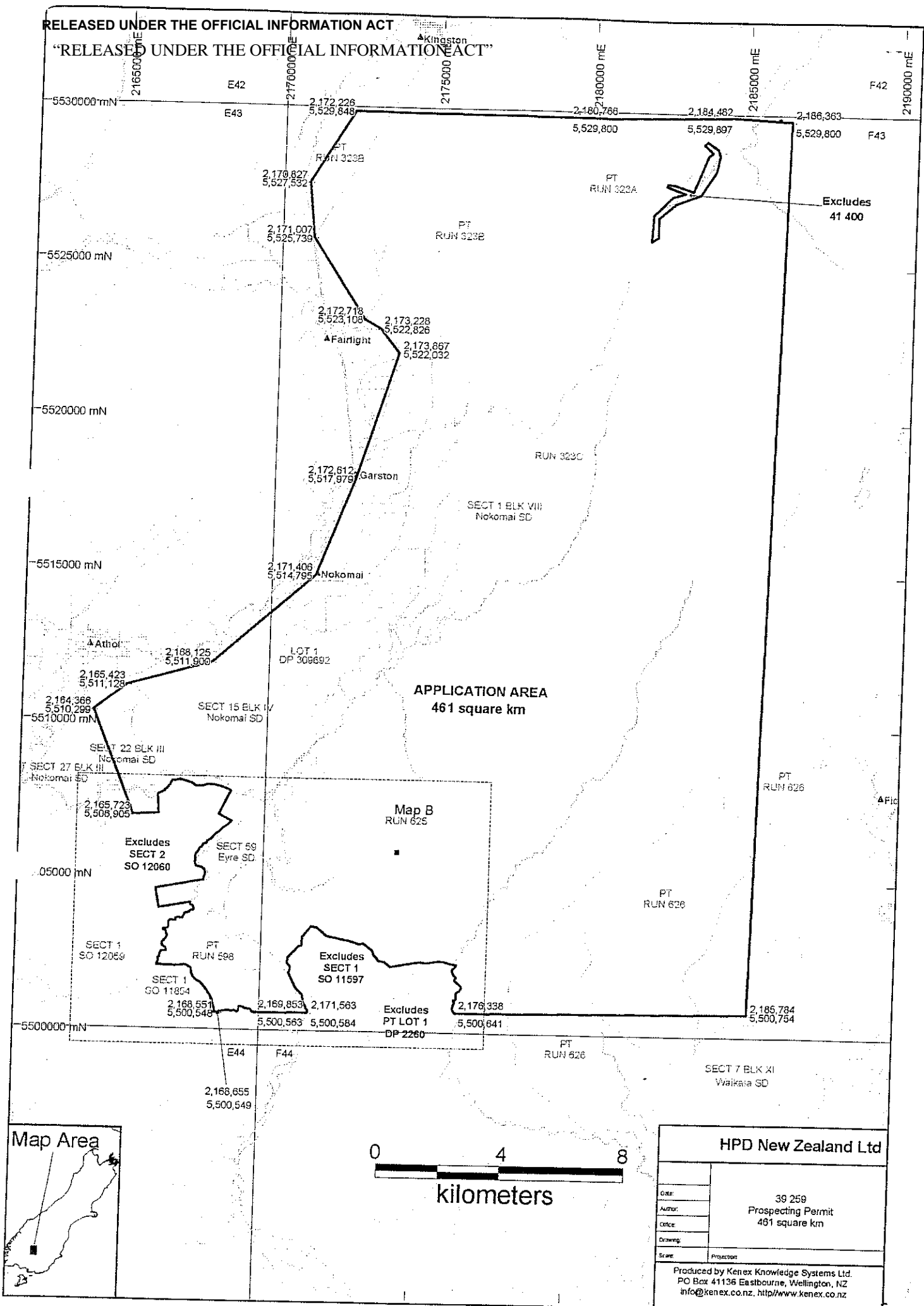
20. HPD's current prospecting activity highlights the new interest being shown to assess the mineral potential of northern part of Cattle Flat Pastoral Lease and the surrounding area, and testifies to the economic mineral potential of the area.
21. The area of Cattle Flat Pastoral Lease to the north of both Henroost Special Lease and the Mataura Range Scenic Reserve should be recognised as being prospective for minerals. To further assess the mineral potential of the area it is critical that exploration and mining companies get ongoing access to this land. Whatever the outcome of the tenure review, Crown Minerals would want to see provision made to allow for mineral exploration activities to continue to be undertaken.
22. Crown Minerals requests that the Commissioner of Crown Lands takes notice of the mineral potential of the land to the north of both Henroost Special Lease and the Mataura Range Scenic Reserve, as highlighted on the map 3 attached, when deciding the final outcome of the Cattle Flat tenure review. Consideration should be given to the merits of some form of transitional provisions to ensure that future explorers and developers have a right to access to this land on reasonable terms for the purpose of carrying out exploration and mining activities and also any exploration or mining permit activities under subsequent permits granted in accordance with section 32 of the Crown Minerals Act.



Rob Robson
Manager Petroleum and Minerals Policy
Crown Minerals

¹ Minimum impact activities are defined in section 2 of the Act. They include sampling and surveying by hand held means, aerial surveying and any activities that do not result in other than minimum scale impacts.

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MAP 1: Prospecting Permit 39 259 held by HPD New Zealand Limited

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HPD New Zealand Ltd

Map B
Enlargement of SW
section of PP
Application 39 259

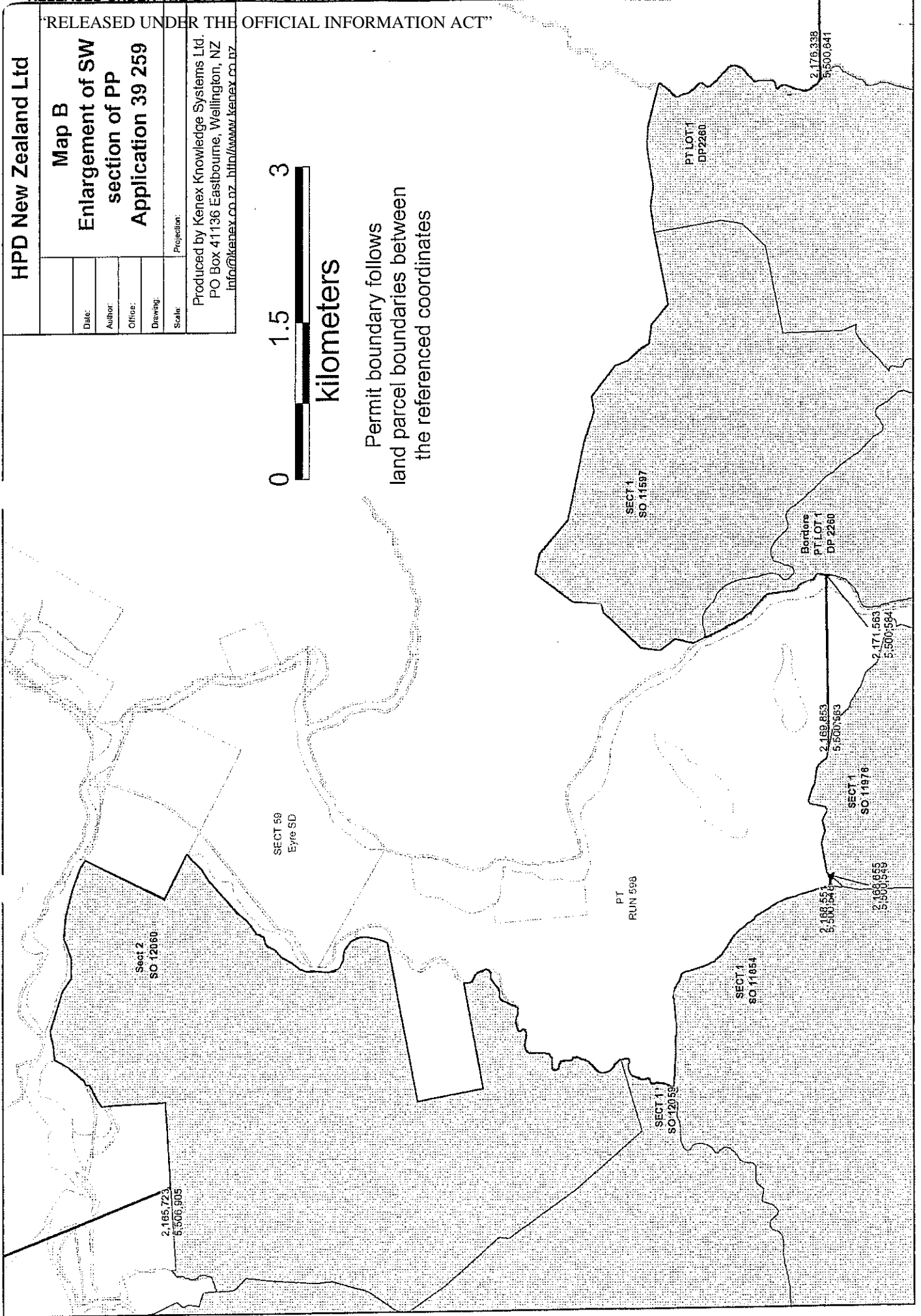
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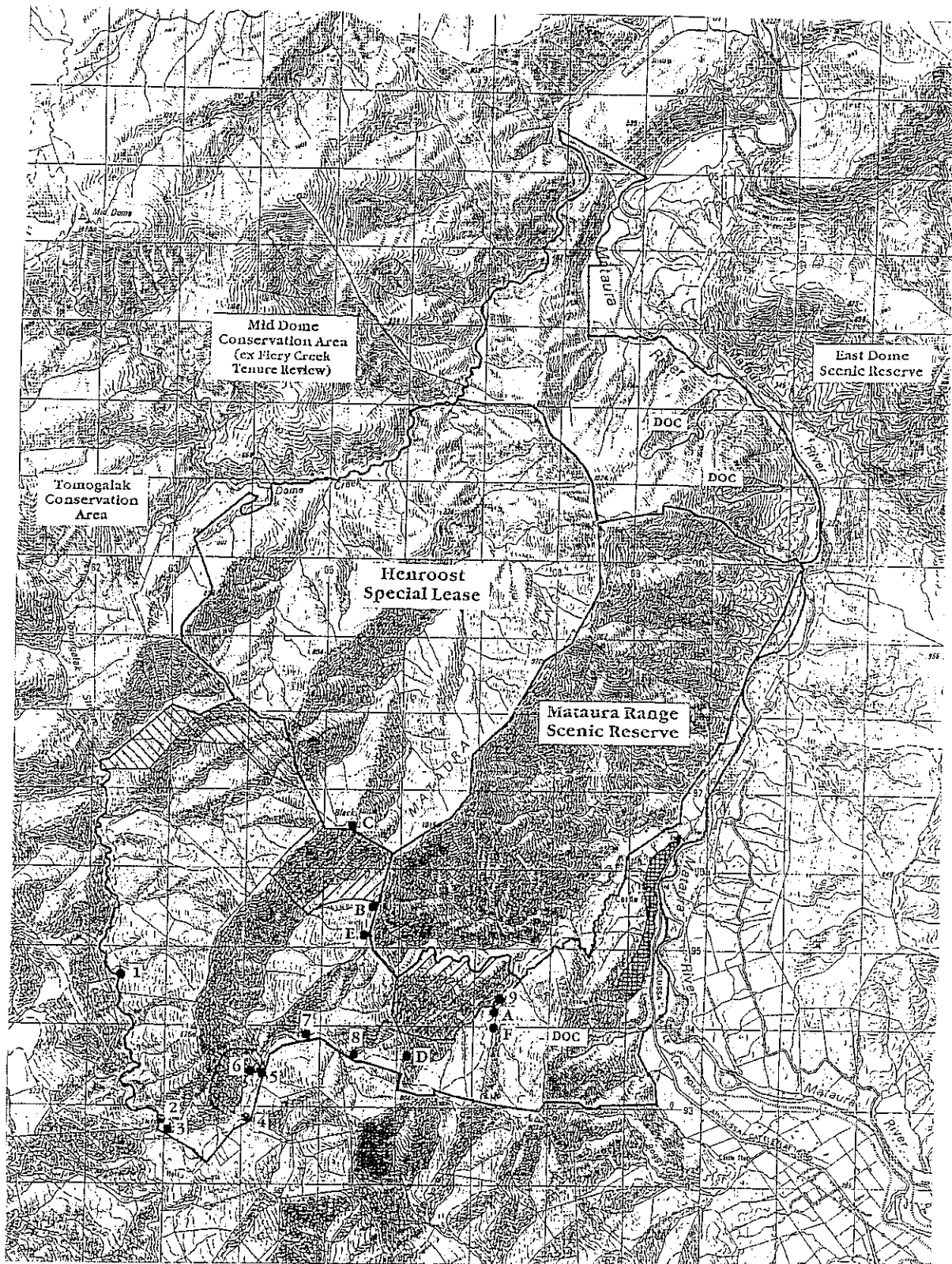


kilometers

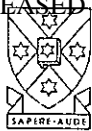
Permit boundary follows
land parcel boundaries between
the referenced coordinates



MAP 2: Area of Overlap between PP 39 259 and Cattle Flat Pastoral Lease



MAP 3: Area within Cattle Flat Run to be recognised as having mineral potential

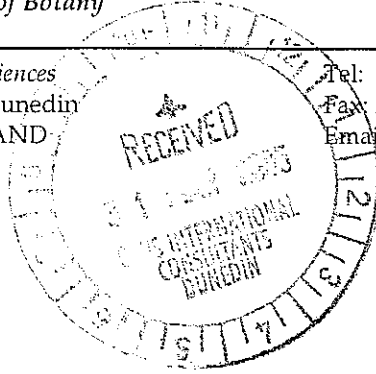


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March 22, 2005.

Property Manager,
Opus International Ltd.,
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DUNEDIN.

**SUBMISSION ON PROPOSED TENURE REVIEW: CATTLE FLAT PASTORAL LEASE
and THE HENROOST SPECIAL LEASE**

Dear Sir,

Thank you for sending me a copy of this document and I appreciate the opportunity to comment on it, based on my knowledge of the area involved which has been gained over many years of ecological and botanical research on the tussock grasslands and associated mountain lands, including the Nokomai Ecological District where these areas are located.

I am fully conversant with the Crown Pastoral Land Act which drives the tenure review process and also with the more recently announced complementary government objectives and policy for the South Island high country which is relevant to the review of the Cattle Flat Pastoral Lease and The Henroost Special Lease.

Parts of this property are substantially modified and degraded, and wilding pine (*P. contorta*) infestation is a very serious problem in the general area which is currently being addressed by Environment Southland and the Department of Conservation. Nevertheless, it contains some areas of high conservation value, complementary to the values of the adjoining Mataura Gorge Scenic Reserve.

The preliminary proposal for these properties, being to allocate some 185 hectares to conservation in three separate parcels, and 5187 ha for freehold disposal with certain protective measures, specifically, a "sustainable management covenant" covering the 2120ha area of The Henroost Special Lease and certain easements to provide access for the public as well as management purposes. This represents a highly disproportionate land allocation between the two categories of future land use.

Regarding each of the three areas proposed for allocation to full Crown management and control:

1. the 70 ha area proposed as a Scenic Reserve (Reserve 1). I am concerned with the boundary proposed along its northern side where a strip of freehold land is proposed, with an easement ("p-q") across the reserve at its northeastern end. I recommend that this strip of freehold land be removed and the boundary be along the proposed easement "G-k" which would allow the proposed scenic reserve to be continuous with the existing Mataura Range Scenic Reserve along its full length. This would obviate the need for easement "p-q" and the proposed new fence between points "H" and "G"; a much shorter fence along the line "G-k" would then be needed.
2. the proposed Scenic Reserve (Reserve 2) of 115 ha is endorsed, together with its fenced boundary, as proposed. This area would increase and complement the conservation and biodiversity values of the adjoining Mataura Range Scenic Reserve, particularly in relation to the shrublands in the gullies and the stand of narrow-leaved snow tussock on the upper slopes.
3. the proposed Conservation Area of 12 ha (CA 1) on part of the southwestern tributary of the Tomagalak Stream is supported, in recognition of the stand of beech forest and remnant shrublands, as well as native fish in the stream. The eight crossing points proposed ("s,t,u,v,w,x,y,z) for farm management purposes seems excessive along such a relatively small length of stream, of recognised conservation value. I recommend no more than four crossings be permitted here, to be agreed in consultation with the owner.

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In relation to the proposal to freehold much of the Cattle Flat pastoral lease I endorse this proposal, subject to adjustment to the proposed northern boundary of Scenic Reserve R1, as outlined above.

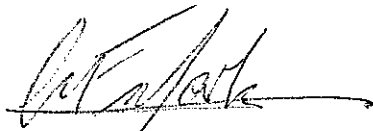
However, I believe there is strong justification for allocating The Henroost block of 2120 ha to full Crown ownership and control, in relation to the generally highly vulnerable nature of its plant and soil cover over most of this block. This vulnerability is clearly recognised in the detailed conditions in the "Sustainable Management Covenant" proposed for this block. Despite the very limited number of stock permitted to be carried on this block (300 sheep at any time and 150 cattle for no longer than four months between June and September), there is provision for this to be varied either way (increased or decreased) at the discretion of the Commissioner of Crown Lands "at any time". I am very concerned to see that burning of "tussock/scrub or grass" on this block might be entertained, at the discretion of the Commissioner. Moreover, the control of wild animals and "all noxious weeds and wilding conifers" are further conditions to be imposed.

In this context, I feel obliged to here express my serious reservation regarding the powers vested in the Commissioner on such issues, particularly in this area, given the situation that the Commissioner apparently has not yet contributed to the cost of any wilding tree control on the adjacent Mid Dome area even though LINZ is responsible for a substantial part of the planted area of *Pinus contorta* on Mid Dome where the other two responsible agencies (Environment Southland and Dept of Conservation) have both invested considerable funds and effort in the recent eradication exercise there. Moreover the Commissioner apparently also recently approved the planting of Douglas fir on the adjacent Glenfellen Pastoral Lease which has caused great concern among all stakeholder groups as to the inevitable wilding tree problems this planting will create. Although these issues are outside those being addressed in this submission, they are relevant in relation to one's confidence in the Commissioner addressing responsibilities vested in him on The Henroost Block.

I trust that my recommendations will be seriously considered since they would improve the ability to manage conservation land in the area and also achieve a more sustainable future for The Henroost block which currently is in a highly vulnerable state and, I believe, ecologically incapable of sustainable use for the grazing of any number of domestic stock. Complete retirement and careful conservation management is the only responsible decision for this block, consistent with the purpose of the Crown Pastoral Land Act.

I thank you for the opportunity to comment on this proposed tenure review.

Yours sincerely,



Alan F Mark FRSNZ.
Emeritus Professor.

Public Access New Zealand

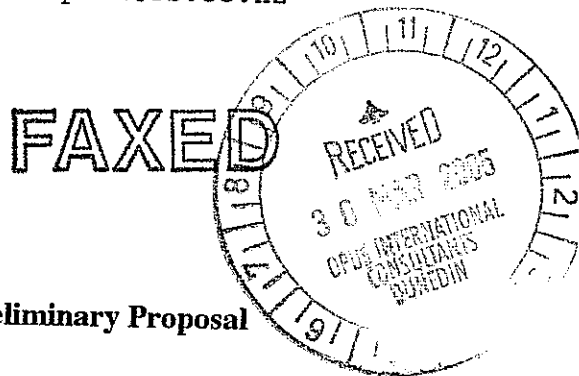
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28 March 2005

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Submission: Cattle Flat Tenure Review Preliminary Proposal

Summary of Proposal

- The 3263 hectare Cattle Flat pastoral lease and 2120 hectare Henroost Special Lease be subdivided with—
 - 185 ha becoming reserves as two additions to the existing Mataura Range Scenic Reserve
 - 12 ha becoming conservation area along Tomogalic Stream.
 - Both areas of public land subject to easements for farm management purposes
 - 5187 ha becoming freehold
- A Sustainable Management Covenant over the freeholded 2120 ha Henroost
- A public access easement as a loop around the Mataura Range Scenic Reserve for foot and mountain bike. Closure 1 September to 31 November, and Tuesdays, Wednesdays and Thursdays the rest of the year.
- Foot only access easement along the Mataura Flats with closure 1 September to before Labour Weekend and Tuesdays, Wednesdays and Thursdays the rest of the year.
- 4WD access for fishing licence holders only for 1.5 km from end of Cattle Flat Road up Mataura Flats the period the Friday before Labour Weekend to 30 April
- DOC management purposes easements over freehold.

Overview

If this proceeds this proposal will result in a very poor outcome for the Crown, and in particular for public recreation. 96 per cent of the combined properties will be freeholded, with only 197 hectares publicly reserved. While it may be argued that this comprises almost all land with "significant inherent value" and this is all that can be reasonably returned to full Crown ownership, the Crown's interest could have been greatly enhanced by far superior provision for public access to the existing Mataura Range Scenic Reserve, and the nationally important Mataura River. There is also scope for landscape protection outside of areas to be returned to Crown ownership, however no such provision has been made.

Public Access New Zealand is a charitable trust formed in 1992. PANZ's objects are the preservation and improvement of public access to public lands, waters, and the countryside, through retention in public ownership of resources of value for recreation. PANZ draws support from a diverse range of land, freshwater, marine, and conservation interests representing approximately 200,000 people from throughout New Zealand. We are committed to resist private predation of the public estate

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A potentially valuable loop track for foot and mountain bike use, to and around the Mataura Range Scenic Reserve, is substantially negated by extensive provisions for closure to the public. This loop will be closed for 164 days or 45 per cent of the year. Similarly foot, and a foot and mountain bike access, is limited over a section of the Mataura Flats ('g-h') over which 4WD access is also available “for members of the public holding a current sports fishing licence” for 6 months per year. This latter provision sets a dangerous, and we believe unlawful, precedent whereby specified licensees or a group is granted access rights not available to the public at large. What next? Access only for Scouts, kayakers, clubs, or card-carrying members of the Labour Party? We believe this provision to be a travesty of the objects of the Crown Pastoral Land Act and must not proceed. We have consulted within our angler supporters and there is no support for this proposal.

The proposal fails to make provision for continuous public access along the true Right Bank of the Mataura River, thereby negating a major potential benefit from tenure review. The access that is provided is confined to foot only, whereas there is long established demand for cycle and horse passage.

Crown Pastoral Land Act

Section 24 sets out the objects for tenure review, including-

(c) (i) “The securing of public access to and enjoyment of reviewable land”.

There is no statutory definition of ‘public’ in this or any other statute, however judicial practice is to refer to major English dictionaries for meaning.

The *Concise Oxford*, Seventh Edition defines ‘public’ as-
“...of or concerning *the people as a whole*”...”open to or shared by *all the people*”, citing public bath, lavatory, library, meeting, and road as examples (our emphasis).

Clearly rights bestowed on fishing licensees alone do not constitute “*the people as a whole*” or “*all the people*” and are no more than private rights.

The closest any statute gets to defining public verses private rights in relation to a right of way is section 22 Summary Offences Act 1981-

“Public way” means every road, street, path, mall, arcade, or other way over which the public has the right to pass and repass.

Therefore any way without a public right to pass and repass is not a public way, and is not for an otherwise public way for the duration that such rights are absent.

The Crown has plenty of opportunities to grant easements over Crown land in favour of private interests if it so wishes, independently of the provisions of the CPLA. In contrast, during tenure review, the CPLA provides a clear direction that is ‘public’ rather than private access that is to be secured as the overriding Crown objective.

The second component of section 24 (c) (i) is to “secure” that access. In official papers supplied to us on this tenure review it is perversely argued that “certainty of closure” means “security for the public” or falsely claiming that there will be “full and free” access. The obligations under s 24 (c) (i) are a

direction to secure access, not closure. Closure for 45 per cent of the year is an abject failure to comply with the Act and is totally unacceptable.

Specific terms of access easements

We refer to the express terms of the draft easement documents-

Exclusion of schedules.

Whilst the Ninth Schedule of the Property Law Act 1952 is expressly excluded from the terms of the easement, section 126G of that Act is not. Section 126G allows modification or extinguishment of easements through the courts, at the initiative of either party to their creation or one alone. There is no ability for public notification or objection. This omission constitutes a fundamental failure to 'secure' public rights of passage, as required by the CPLA.

Temporary suspension.

Under the easements "the Transferee (not being a member of the Public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary".

The absence of any cited legal authority for closure is of great concern. If there are lawful powers of closure applicable they should be expressly cited. Without such there can be no accountability for DOC's future actions, and therefore no certainty of public access for the limited time these are planned to be available for the public.

We submit that the above easements, even with amendment, cannot meet the test of securing public access as required by the CPLA.

We also note that the proposed easements don't prevent incompatible use granted by the owner. For instance the lessee has raised the possibility of organised trail bike events. This would greatly discourage use by walkers and cyclists for the duration of such events, and possibly create safety issues. The latter may then give rise to further closures.

Anglers 4WD access

In addition to the issue of establishing private 'licensee' rights of access, in the guise of being "public", we note that if Fish and Game Southland request extinguishment of this easement, it will be terminated. Therefore there is no security in this arrangement. It totally fails the test of securing access as required by CPLA s24 (c) (i).

Non-complete access up Mataura

There is a pressing need for continuous public access up the true right bank of the Mataura that would not only enable recreational use of the adjoining river, but provide scope for future extension through Nokomai Station.

Section 112 is freehold to the same owner as that of the Cattle Flat pastoral lease but is not included in this tenure review. The proposed public easement stops at the downstream end of section 112 despite the leasehold extending further upstream. In addition to the other major deficiencies in access

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provision on the bottom line for any other provision should be continuous access up river, for cycle and horse use in addition to walkers.

Marginal Strips

There are fixed position and discontinuous marginal strips along segments of the Mataura, and along Tomogalic Stream, and Dome Creek (but not along boundary with special lease).

All qualifying water ways must have marginal strips established along their banks, and most importantly, shown on relevant plans as required by part IVA Conservation Act. In the case of the Mataura, we submit that all existing strips on the true right bank be exchanged for new movable strips, so that there is assured public passage up the bank. It appears that this would connect on to a public road along the river boundary of section 112, which appears usable. However upstream of this, until the Nokomai boundary, there appears to be Crown land that has been developed as part of Cattle Flat, but is not part of the pastoral lease. No provision has been made for public access through this section.

We wonder why this has been excluded from tenure review and why no public access provision has been made? It is essential that the public interest in recreational access be secured. We would object most strongly if there is a side deal underway over this land that may lead to freeholding.

Henroost Special Lease

We disagree with DOC's conservation resources assessment that sees no recreational value over this large block of high country. I have previously visited this area and am of the view that Black Hill and the leading ridge from the Mataura Range in particular has high appeal for ridge-top walking and viewing the extensive high country towards Mid Dome. I do not believe that the minimal extensions planned for the Mataura Range Scenic Reserve fully meet the needs for public recreation.

In the recent past the recreational potential of this area has been officially recognised, as evidenced by clauses 32 and 35 of the special lease:

Clause 32: “lessee shall allow the public free unrestricted access over the said land”

Clause 35: Crown's right of determination “if required for recreation, National Park or other like purpose”.

Now it is proposed to give it all away with no provision for public recreation. This highlights just what a poor deal this tenure review is and the need for the Crown to withdraw its offer to the holder.

The Crown's sole attempt to protect the public interest is a **Sustainable Management Covenant**. However this has confused and conflicting objectives that are guaranteed to provide the landholder with scope for avoiding stock reductions:

“14. The Grantor and the Commissioner shall jointly undertake a programme of vegetation monitoring to manage the vegetation within the Land so as to **maintain or enhance the existing cover**. To meet *this* goal grazing levels and management will be adjusted, should this be necessary” (our emphasis).

“Maintenance and Enhancement are quite different objectives, and are not a singular goal as this clause states. Quite different outcomes, in terms of vegetative cover, will result from application of “maintain *or* enhance”. As a result of past gross mismanagement this area is severely eroded and depleted. The only responsible course for the Crown is to seek enhanced cover, however the terms of this Clayton’s covenant provides certainty that such will never be attained.

Conclusion

There is so little that the Crown and the public is gaining out of this deal that it would be far preferable that there is no deal. Cabinet has recently announced its willingness to be a lessor indefinitely in cases where doing so is consistent with its high country objectives. Our position on this matter is consistent with Government policy which mirrors CPLA s24 (c) (i). The Crown, and the public interest, can afford to wait until far better outcomes can be negotiated in the future.

An appalling precedent would be established by the so-called “public 4WD access” easement. We believe that Government is duty bound not to proceed with such.

Yours faithfully



Bruce Mason
Spokesman and Researcher

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Public Access New Zealand

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28 March 2005

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FXED

29/3/05 10.20am

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A potentially valuable loop track for foot and mountain bike use, to and around the Matura Range Scenic Reserve, is substantially negated by extensive provisions for closure to the public. This loop will be closed for 164 days or 45 per cent of the year. Similarly foot, and a foot and mountain bike access, is limited over a section of the Matura Flats ('g-h') over which 4WD access is also available "for members of the public holding a current sports fishing licence" for 6 months per year. This latter provision sets a dangerous, and we believe unlawful, precedent whereby specified licensees or a group is granted access rights not available to the public at large. What next? Access only for Scouts, kayakers, clubs, or card-carrying members of the Labour Party? We believe this provision to be a travesty of the objects of the Crown Pastoral Land Act and must not proceed. We have consulted within our angler supporters and there is no support for this proposal.

The proposal fails to make provision for continuous public access along the true Right Bank of the Matura River, thereby negating a major potential benefit from tenure review. The access that is provided is confined to foot only, whereas there is long established demand for cycle and horse passage.

Crown Pastoral Land Act

Section 24 sets out the objects for tenure review, including-

(c) (i) "The securing of public access to and enjoyment of reviewable land".

There is no statutory definition of 'public' in this or any other statute, however judicial practice is to refer to major English dictionaries for meaning.

The *Concise Oxford*, Seventh Edition defines 'public' as-

"...of or concerning *the people as a whole*"..."open to or shared by *all the people*", citing public bath, lavatory, library, meeting, and road as examples (our emphasis).

Clearly rights bestowed on fishing licensees alone do not constitute "*the people as a whole*" or "*all the people*" and are no more than private rights.

The closest any statute gets to defining public verses private rights in relation to a right of way is section 22 Summary Offences Act 1981-

"Public way" means every road, street, path, mall, arcade, or other way over which the public has the right to pass and repass.

Therefore any way without a public right to pass and repass is not a public way, and is not for an otherwise public way for the duration that such rights are absent.

The Crown has plenty of opportunities to grant easements over Crown land in favour of private interests if it so wishes, independently of the provisions of the CPLA. In contrast, during tenure review, the CPLA provides a clear direction that is 'public' rather than private access that is to be secured as the overriding Crown objective.

The second component of section 24 (c) (i) is to "secure" that access. In official papers supplied to us

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direction to secure access, not closure. Closure for 45 per cent of the year is an object failure to comply with the Act and is totally unacceptable.

Specific terms of access easements

We refer to the express terms of the draft easement documents-

Exclusion of schedules.

Whilst the Ninth Schedule of the Property Law Act 1952 is expressly excluded from the terms of the easement, section 126G of that Act is not. Section 126G allows modification or extinguishment of easements through the courts, at the initiative of either party to their creation or one alone. There is no ability for public notification or objection. This omission constitutes a fundamental failure to 'secure' public rights of passage, as required by the CPLA.

Temporary suspension.

Under the easements "the Transferee (not being a member of the Public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary".

The absence of any cited legal authority for closure is of great concern. If there are lawful powers of closure applicable they should be expressly cited. Without such there can be no accountability for DOC's future actions, and therefore no certainty of public access for the limited time these are planned to be available for the public.

We submit that the above easements, even with amendment, cannot meet the test of securing public access as required by the CPLA.

We also note that the proposed easements don't prevent incompatible use granted by the owner. For instance the lessee has raised the possibility of organised trail bike events. This would greatly discourage use by walkers and cyclists for the duration of such events, and possibly create safety issues. The latter may then give rise to further closures.

Anglers 4WD access

In addition to the issue of establishing private 'licensee' rights of access, in the guise of being "public", we note that if Fish and Game Southland request extinguishment of this easement, it will be terminated. Therefore there is no security in this arrangement. It totally fails the test of securing access as required by CPLA s24 (c) (i).

Non-complete access up Mataura

There is a pressing need for continuous public access up the true right bank of the Mataura that would not only enable recreational use of the adjoining river, but provide scope for future extension through Nokomai Station.

Section 112 is freehold to the same owner as that of the Cattle Flat pastoral lease but is not included in this tenure review. The proposed public easement stops at the downstream end of section 112 despite the leasehold extending further upstream. In addition to the other major deficiencies in access

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provision, the bottom line for any tenure review should be continuous access up river, for cycle and horse use in addition to walkers.

Marginal Strips

There are fixed position and discontinuous marginal strips along segments of the Mataura, and along Tomogalic Stream, and Dome Creek (but not along boundary with special lease).

All qualifying water ways must have marginal strips established along their banks, and most importantly, shown on relevant plans as required by part IVA Conservation Act. In the case of the Mataura, we submit that all existing strips on the true right bank be exchanged for new movable strips, so that there is assured public passage up the bank. It appears that this would connect on to a public road along the river boundary of section 112, which appears usable. However upstream of this, until the Nokomai boundary, there appears to be Crown land that has been developed as part of Cattle Flat, but is not part of the pastoral lease. No provision has been made for public access through this section.

We wonder why this has been excluded from tenure review and why no public access provision has been made? It is essential that the public interest in recreational access be secured. We would object most strongly if there is a side deal underway over this land that may lead to freeholding.

Henroost Special Lease

We disagree with DOC's conservation resources assessment that sees no recreational value over this large block of high country. I have previously visited this area and am of the view that Black Hill and the leading ridge from the Mataura Range in particular has high appeal for ridge-top walking and viewing the extensive high country towards Mid Dome. I do not believe that the minimal extensions planned for the Mataura Range Scenic Reserve fully meet the needs for public recreation.

In the recent past the recreational potential of this area has been officially recognised, as evidenced by clauses 32 and 35 of the special lease:

Clause 32: "lessee shall allow the public free unrestricted access over the said land"

Clause 35: Crown's right of determination "if required for recreation, National Park or other like purpose".

Now it is proposed to give it all away with no provision for public recreation. This highlights just what a poor deal this tenure review is and the need for the Crown to withdraw its offer to the holder.

The Crown's sole attempt to protect the public interest is a **Sustainable Management Covenant**. However this has confused and conflicting objectives that are guaranteed to provide the landholder with scope for avoiding stock reductions:

"14. The Grantor and the Commissioner shall jointly undertake a programme of vegetation monitoring to manage the vegetation within the Land so as to **maintain or enhance the existing cover**. To meet *this* goal grazing levels and management will be adjusted, should this be necessary" (our emphasis).

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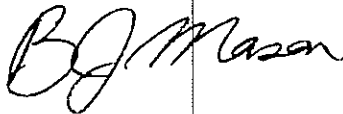
"Maintenance" and "enhancement" are quite different objectives, and are not a singular goal as this clause states. Quite different outcomes, in terms of vegetative cover, will result from application of "maintain or enhance". As a result of past gross mismanagement this area is severely eroded and depleted. The only responsible course for the Crown is to seek enhanced cover, however the terms of this Clayton's covenant provides certainty that such will never be attained.

Conclusion

There is so little that the Crown and the public is gaining out of this deal that it would be far preferable that there is no deal. Cabinet has recently announced its willingness to be a lessor indefinitely in cases where doing so is consistent with its high country objectives. Our position on this matter is consistent with Government policy which mirrors CPLA s24 (c) (i). The Crown, and the public interest, can afford to wait until far better outcomes can be negotiated in the future.

An appalling precedent would be established by the so-called "public 4WD access" easement. We believe that Government is duty bound not to proceed with such.

Yours faithfully



Bruce Mason
Spokesman and Researcher

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Tēnā koe Robin

Preliminary Proposal for Cattle Flat / Henroost Pastoral Lease

Thank you for the opportunity to provide a submission on the Preliminary Proposal for Cattle Flat and Henroost Pastoral Leases.

The Maitaura River

The Maitaura River is of immense cultural, historical and traditional significance to Ngāi Tahu and is a Statutory Acknowledgement under the Ngāi Tahu Claims Settlement Act 1998.

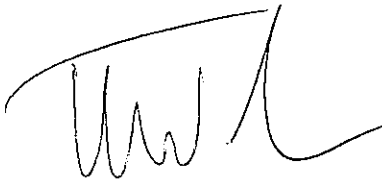
"The Maitaura was an important mahinga kai, noted for its indigenous fishery. The Maitaura Falls were particularly associated with the taking of kanakana (lamprey). The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of Maitaura, the relationship of the people with the river and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today".¹

Under the Preliminary Proposal a marginal strip is proposed for the Maitaura River as a protection and access mechanism. As outlined above the Maitaura River is of immense significance to Ngāi Tahu Whānui from a cultural and mahinga kai perspective.

While a marginal strip will provide some form of protection and access for the Maitaura River for Ngāi Tahu Whānui I would like to arrange a meeting to discuss the advantages and disadvantages of this marginal strip compared with other protection and access mechanisms for the Maitaura River available under the Crown Pastoral Land Act 1998 to ensure that there is adequate protection and access for the Maitaura River.

¹ Ngāi Tahu Claims Settlement Act 1998

Heoi anō



Takerei Norton
Kairuruku Pūrero Ngā Rawa Taiao
Natural Resources Unit Project Co-ordinator

cc Te Rūnaka o Awarua
 Te Rūnaka o Waihopai
 Te Rūnaka o Oraka-Aparima
 Te Rūnaka o Hokonui