

## **Crown Pastoral Land Tenure Review**

**Lease name: Cattleflat (Otago)**

**Lease number: Po 352**

### **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.

**September 03**

## ANALYSIS OF SUBMISSIONS

### CATTLE FLAT TENURE REVIEW

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

*Lease Name:* Cattle Flat

*Location:* Matukituki Valley, Wanaka

*Lessees:* Charlton George Ewing, Melanie Ruth Ewing and the Trustees Executors and Agency Company of New Zealand Limited.

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

##### *Date, publication and location advertised:*

*Saturday 17 May 2003:*

- The Press Christchurch
- Otago Daily Times Dunedin
- The Mirror Central Otago
- Southland Times Invercargill

A copy of the notice is attached as Appendix 1.

##### *Closing date for submissions:*

14 July 2003

#### 3. *Details of submissions received:*

A total of 12 submissions were received. One submission was received outside the closing date, being received on 15 July 2003. A list of submitters is attached as Appendix 3 that references the submitters to the points raised in their submission.

#### 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 summarises 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 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. 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>	
1.1	Public access provisions in the proposal are inadequate. - Public access on Treble Cone Road should be 12 months of the year.	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12	Accept	Allow

#### *Discussion:*

The point concerns public access which is a relevant matter under Section 24 (c)(i) CPL Act and is therefore accepted.

The point is raised by the majority of the submissions. The Treble Cone Skifield road is Crown land administered by the Department of Conservation that could potentially be included in the review. The holder is one party to an agreement that confines public access by and use of the Treble Cone road to five months, 1 May to 30 September. The Treble Cone road could provide a convenient and practical year round public access route to the proposed conservation area within the reviewable land. The DGC delegate has previously recommended that the Crown land surrounding the Treble Cone road be included in the review, however the CCL delegate made a decision not to include the land.

In light of the number of submissions on this point and owing to the fact that the road may form the most desirable public access route to the reviewable land, the CCL delegate may wish to review his decision regarding the inclusion of this land in the review. Accordingly, the point is allowed for further consultation.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
1.2	Public access provisions in the proposal are inadequate: - Need to provide public access to the lowest points of proposed conservation areas CA1, CA2 and CA3.	1, 3, 7, 9, 12	Accept	Allow

*Discussion:*

The point concerns the provision of public access which is a relevant matter under Section 24 (c)(i) CPL Act. The point is therefore accepted.

Several of the submissions submit that provision for public foot access is required from the Motatapu marginal strip up the southern boundary of the proposed freehold to give access to the proposed conservation area surrounding End Peak. Submitter 12 submitted that the marginal strips on Twin Falls Stream and Carmel Burn do not extend to the proposed conservation area and that an easement is necessary to provide access here. This point could be considered in light of the total provision of public access to proposed conservation area within the review and in light of point 20 concerning fencing of marginal strips. The number of submissions on this issue also justifies the point's further consideration. Accordingly, the point is allowed for further consultation.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
1.3	Public access provisions in the proposal are inadequate: - There is a need for provision of public access to the Matukituki River at the northern end of the reviewable land.	4, 6, 7, 8, 9, 12	Accept	Allow

*Discussion:*

The point concerns the provision of public access which is a relevant matter under Section 24 (c)(i) CPL Act. The point is therefore accepted.

The submissions raise the need for public access from the Wanaka-Mt Aspiring road to the Matukituki River for recreation proposes including fishing, tramping and jet boating. Submitters have also raised the need for a public car parking area. Some submissions have submitted that vehicle access to the river should be provided for. This issue has not been previously considered by the CCL delegate and justifies further consideration. Accordingly, the point is allowed for further consultation.

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<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.</i>	<i>Decision</i>	
			Accept	Disallow
2	Propose a Landscape Covenant over proposed freehold land on the front faces.	3, 7, 9	Accept	Disallow

*Discussion:*

The point concerns the protection of significant inherent values in the form of natural landscapes which is a relevant matter for the Commissioner to consider under Section 24 (b) CPL Act. The point is therefore accepted.

The issue of the protection of natural landscapes within the proposed freehold and whether such landscape constitutes a significant inherent value has been specifically considered by the CCL delegate and a decision made that it did not constitute a significant inherent value that justifies protection under the CPLA. No new information has been provided by the submissions. There is therefore no justification for the Commissioner's delegate considering this matter further and accordingly the point is disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.</i>	<i>Decision</i>	
3.1	Object to the proposed grazing concession for area CA2.	3, 7, 9	Accept	Disallow
	- Lower boundary of proposed conservation area CA2 should be fenced.			

*Discussion:*

The point concerns the protection of significant inherent values by virtue of the effect of ongoing grazing within proposed conservation area which is a relevant matter for the Commissioner to consider under Section 24 (b) CPL Act. The point is therefore accepted.

The effect of a non fenced boundary on the significant inherent values within the proposed conservation area in relation to the practicality and cost of fencing the boundary has been previously considered by the Commissioner's delegate and a decision made. Although the submissions raise valid points about the risk to the protection of significant inherent values due to changes in future farming practices and stock types, they do not provide new information on this issue. There is therefore insufficient justification for this matter to be considered further. The point is accordingly disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.</i>	<i>Decision</i>	
3.2	Object to the 30 year term proposed for grazing concession on area CA2, prefer a 5 year term.	3, 7, 8, 9	Accept	Allow

*Discussion:*

The point concerns the protection of significant inherent values in light of the effect of ongoing grazing within proposed conservation area which is a relevant matter to be considered under Section 24 (b) CPL Act. The point is therefore accepted.

The submissions on this point emphasise the risk associated with a 30 year concession term and the possible event that stock trespass is greater than anticipated with the consequent effects on significant inherent values. They argue that a 5 year term would provide the opportunity to review this arrangement and consider other options if stock trespass is greater than expected. This is a valid point that has not previously been considered which justifies further consideration in consultation with the DGC delegate and the holder. Accordingly, the point is allowed for further consultation.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
4	Object to proposed grazing concession for area CA3: - Top boundary of CA3 to be fenced and area to be included in freehold. - or no Concession to be granted and area to be included in CA2. - or concession term to be reduced to 5 years.	3, 7, 8, 9	Accept	Allow

*Discussion:*

These point relates to the protection of significant inherent values which is a relevant matter under Section 24 (b) CPL Act. The point is therefore accepted.

The submissions express concern about the potential risk of stock trespass beyond the proposed concession boundary and the adverse effect this may have on significant inherent values. A preference is expressed for no grazing and the area being returned to full Crown ownership and control with area CA1. Suggestions for mitigating the potential adverse effects are to construct a boundary fence along the top of the concession area CA3, reducing the term of the concession to 5 years or not granting a grazing concession at all. Although these issues have been traversed previously in consultation, the submissions do reflect a concern amongst the public about the risk to adjoining conservation area of ongoing grazing rights that justifies further consultation on this matter. Accordingly, the point is allowed for further consultation.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
5	Need for additional fencing to protect significant inherent values on lower boundary of Area CA1.	5	Accept	Disallow

*Discussion:*

The point concerns affecting the protection of significant inherent values which is a relevant matter in terms of Section 24 (b) CPL Act. The point is therefore accepted.

The submission expresses concern about new fencing being proposed for only the upper portion of the southern boundary of Area CA1. Previous inspections and reporting has concluded that an adequate physical boundary exists below the proposed new fence B-C and along the bush edge above the creek. The submission provides no new information on this matter. There is therefore insufficient justification for further consideration of this matter and accordingly the point is disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
6	Grazing concessions for areas CA2 CA3 require additional condition requiring holder to actively discourage stock trespass.	5	Accept	Allow

*Discussion:*

The point concerns the protection of significant inherent values and is relevant in terms of Section 24 (b) CPL Act. The point is therefore accepted.

The submitter has suggested that a clause be inserted in the concession document requiring positive actions such as the use of salt blocks on adjacent freehold to discourage stock moving higher up into the Conservation Area. The suggestion has merit and has not previously been considered by the Commissioner's delegate. It therefore justifies further consideration and the point is allowed for further consultation.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
7	Grazing concession for area CA2 requires a condition prohibiting burning.	5	Accept	Disallow

*Discussion:*

The point concerns the protection of significant inherent values and is relevant in terms of Section 24 (b) CPL Act. The point is therefore accepted.

The grazing concession for area CA2 specifically prohibits burning of vegetation within the concession area. There is therefore no justification for further consideration of this matter. The point is therefore disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
8	A no burning clause should be added to the proposed Conservation Covenant.	5	Accept	Disallow

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*Discussion:*

The point concerns the protection of significant inherent values which is a relevant matter in terms of Section 24 (b) CPL Act. The point is therefore accepted.

A clause is included in the proposed covenant document that prohibits burning unless agreed in writing by the Minister of Conservation. While not prohibiting burning, this clause is adequate for the protection of significant inherent values within this area. There is therefore no justification for further consideration of this matter. The point is therefore disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
9	Monitoring of the proposed conservation covenant area should be formalised as part of the proposal.	5, 8	Accept	Disallow

*Discussion:*

The point concerns the protection of significant inherent values which is a relevant matter in terms of Section 24 (b) CPL Act. The point is therefore accepted.

A clause is included in the Covenant document providing for access by the Minister or his authorised agents or employees for the purpose of examining or recording the condition of the land. It has been reported by the LINZ contractor that there was no evidence of adverse effects from grazing observed at the time of preparing the preliminary proposal. There is therefore insufficient justification for prescribing monitoring within the covenant document as opposed to allowing monitoring to be at the discretion of the Minister of Conservation. There has been no new information on this matter presented by the submissions. The point is therefore disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
10	Issue of preventing stock trespass onto Area CA2 on expiry of Concession after 30 years should be addressed in proposal.	10	Accept	Allow

*Discussion:*

The point concerns the protection of significant inherent values which is a relevant matter in terms of Section 24 (b) CPL Act. The point is therefore accepted.

This point relates to Point 3 that also relates to the protection of significant inherent values within area CA2 and the potential threat from stock trespass. This matter has not specifically been considered by the Commissioners delegate and justifies further consideration. The point is therefore allowed for further consultation.



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<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
11	Object to the proposed conservation covenant and proposed retention of this area in full Crown ownership and control.	9	Accept	Disallow

*Discussion:*

The point concerns the protection of significant inherent values which is a relevant matter in terms of Section 24 (b) CPL Act. The point is therefore accepted.

The submitter objects to the proposed covenant on the grounds that it believes a boundary fence would be possible along the lower boundary of the covenant. The submission is that grazing with both sheep and deer will have an adverse effect on the significant inherent values arising from the native vegetation. The practicality of fencing on a lower contour than that proposed was considered on the ground in some detail by the LINZ contractor and found to be not practicable. The matter has been considered by the Commissioner's delegate. The submission provides no new information on the matter. There is therefore inadequate justification for considering this matter further and accordingly the point is disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
12	The area proposed as recreation reserve is too small to meet future requirements.	9	Accept	Allow

*Discussion:*

The point concerns the securing of public access and the enjoyment of reviewable land for recreation which is a relevant matter in terms of Section 24 (c) (i) CPL Act. The point is therefore accepted.

The submission notes that while the retention in Crown control the rock climbing area near the Motatapu is very satisfactory, the area proposed for more passive recreation is too small to meet future requirements. While the adequacy of the area proposed is subjective, the point made is a valid one that justifies further consideration. The point is therefore allowed for further consultation.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
13	Consistency is required between the information report provided to submitters and the Concession document regarding the number of sheep allowed in proposed Concession Area CA3.	13	Not Accept	

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*Discussion:*

The point concerns a minor error in the report provided to submitters which records the stock limitation for Area CA3 to be 200 stock units when in fact the Concession document records a figure of 266 ewes on a year round basis for the first five years. The point is of a relatively minor nature that has little bearing on whether the proposal meets the objectives of the CPLA. It is therefore not a matter that justifies consideration by the Commissioner. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
14	The breed of sheep should be specified in the Concession documents.	10	Accept	Allow

*Discussion:*

The point concerns the protection of significant inherent values which is relevant in terms of Section 24 (b) CPL Act. The point is therefore accepted.

The submission makes the point that merino sheep have a tendency to wander more widely than Crossbred sheep. This point is a valid one and is related to Points 3 and 4. The point has not previously been considered by the Commissioners delegate and justifies further consideration. The point is therefore allowed for further consultation.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
15	Need provision in concession documents for reducing grazing on monitoring revealing deterioration in vegetation.	10	Accept	Allow

*Discussion:*

The point concerns the protection of significant inherent values which is a relevant matter in terms of Section 24 (b) CPL Act. The point is therefore accepted.

The point relates to managing the risk of potential adverse effects on significant inherent values resulting from grazing under the concessions. Such a clause would not be relevant for the proposed concession over Area CA2, as this concession does not include a stock limit. It is however relevant for area CA3. It is noted that while there is no provision in the concession document for reducing or terminating grazing on significant adverse effects on vegetation resulting from grazing, the concession does provide for a reduced grazing over time. The point is however valid in terms of providing greater security of protection of significant inherent values under concession grazing. The point is therefore allowed for further consultation.

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<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
16	Ski area boundaries need proper definition and the ski area preserved.	11	Not Accept	

*Discussion:*

The matter of the definition of the boundaries of the ski area and the preservation of the skifield as a use are not matters that the Commissioner can consider under the CPL Act as the skifield is not within the reviewable land. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
17	Areas within the lease adjoining or affecting the ski area should be designated to allow continuation of Treble Cone Investments Ltd right to enjoy their leasehold interest and for future enhancement and expansion of the skifield.	11	Accept in part	Allow in part

*Discussion:*

Where the point relates to the securing of public access to and enjoyment of the reviewable land is a relevant matter in terms of Section 24 (c)(i) CPL Act. The point is therefore accepted with regards this issue. However, the matter concerning Treble Cone Investments Limited's right to enjoy their leasehold interest is a due diligence matter that the Commissioner cannot consider as part of the review.

The ski area adjoins the reviewable land and caters for a popular recreation pursuit. It is at least arguable that designating land adjacent to the ski area for retention in full Crown ownership and control could provide for the access to and enjoyment of the reviewable land by providing for the expansion of Treble Cone ski area. This issue has not specifically been considered by the Commissioner's delegate and justifies consideration. The point is therefore allowed in part for further consultation.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
18	Undertakings given by previous lessee to grant easements across the reviewable land for power, telephone and a possible cable-car would need to be honoured.	11	Not Accept	

*Discussion:*

This is a due diligence matter that is required to be addressed by the parties prior to entering into a Substantive Proposal. It is not a matter that the Commissioner can consider as part of the review. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
19	A Conservation Covenant should apply on land adjacent to the skifield road as proposed in the CRR.	11	Not Accept	

*Discussion:*

The submission refers to the expansion of activities on the skifield road and the ability to provide additional services as the reason for a Conservation Covenant. These are not valid justifications for a covenant under the Reserves or Conservation Acts. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
20	Object to marginal strips on the Twin Falls Stream and Carmel Burn being deer fenced.  - Deer fences should be removed.	12	Not Accept	

*Discussion:*

Although the suitability and practicality of using marginal strips as access routes to the reviewable land should be considered in terms of the overall proposal meeting the objects in terms of Section 24 (c) (i) CPL Act, issues surrounding marginal strips cannot be addressed under the CPL Act. The point is therefore not accepted. It is however appropriate that this information be brought to the DGC delegates notice in consultation.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
21	DoC should negotiate exchange of fixed marginal strips with new Section 24 Conservation Act strips.	12	Not Accept	

*Discussion:*

Marginal strips and their exchange for existing strips is not a matter the Commissioner can consider under the CPL Act. The point is therefore not accepted. This matter may however be considered by the DGC on disposition.

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<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
22	The proposed Reserve R3 should include the total area between the Motatapu River and the existing fence.	12	Accept	Disallow

*Discussion:*

The point concerns the securing of public access and the enjoyment of the reviewable land which is a relevant matter in terms of Section 24 (c) (i) CPL Act. The point is therefore allowed.

The area of reserve R3 proposed in the Preliminary Proposal does in-fact include the total area between the Motatapu River and the existing fence to the south. This matter does not therefore warrant further consideration by the Commissioner's delegate. The point is therefore disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No</i>	<i>Decision</i>	
23	The flat at the base of the rock climbing bluffs in proposed reserve R2 should be included in the reserve.	12	Accept	Disallow

*Discussion:*

The point concerns the securing of public access and enjoyment reviewable land which is a relevant matter under Section 24 (c) (i) CPL Act. The point is therefore accepted.

The flat at the base of the rock climbing bluffs within Area R2 is in fact either included in the proposed reserve or is marginal strip. There is no further consideration required of the Commissioner's delegate on this matter. The point is therefore disallowed.

**5. Discussion and conclusions:**

A total of 11 submissions were received within the required time with one late submission. Submissions raised 26 points on 23 issues. Public access to the proposed conservation areas and the matter of proposed grazing concessions were the two main issues submitted on. In relation to public access, a majority of submissions submitted that the Crown land area contained in the Treble Cone Road should be included in the tenure review with the aim of expanding the conditions of public access of the road to 12 months of the year. Consideration of this matter may require a decision of the Commissioners delegate to include the ski area road in the review. Further consultation with the DGC delegate is recommended for 11 of the 26 points raised in submissions.

LIST OF SUBMITTERS

<i>Sub No</i>	<i>Name of Submitter</i>	<i>Points Raised</i>
1	Dr R F Entwistle	1.1, 1.2
2	Wakatipu Tramping & Mountaineering Club	1.1
3	Federated Mountain Clubs of New Zealand	1.1, 1.2, 2, 3.1, 3.2, 4
4	Queenstown Lakes District Council	1.1, 1.3
5	Professor A F Mark	1.1, 5, 6, 7, 8, 9, 10
6	The Wanaka Residents Association	1.3
7	Upper Clutha Environmental Society	1.1, 1.2, 1.3, 2, 3.1, 3.2, 4
8	John Douglas	1.1, 1.3, 3.2, 4
9	Royal Forest & Bird Protection Society Upper Clutha Branch	1.1, 1.2, 1.3, 2, 3.1, 3.2, 4, 11, 12
10	Otago Conservation Board	1.1, 8, 9, 13, 14, 15
11	Treble Cone Investments Limited	1.1, 16, 17, 18, 19
12	Public Access New Zealand ( <i>late submission</i> )	1.1, 1.2, 1.3, 20, 21, 22, 23