

## **Crown Pastoral Land Tenure Review**

**Lease name : Clayton**

**Lease number: Pt 011**

### **Report on public submissions**

This document includes information on the public submissions received in response to an advertisement for submissions on the tenure review preliminary proposal. The analysis determines if an issue is accepted or not accepted as meeting the objectives of part 2 of the Crown Pastoral Land Act (CPLA) 1998, and if further consideration and consultation should be allowed or disallowed, as per Section 45 CPLA 1998.

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

**January 02**

**ANALYSIS OF PUBLIC SUBMISSIONS ON PRELIMINARY PROPOSAL FOR TENURE  
REVIEW**

**1. *Details of lease***

**Lease Name:** Clayton  
**Location:** Fairlie, South Canterbury  
**Lessee:** Clayton Farming Company Limited

**2. *Public Notification of preliminary proposal***

**Date, publication and location advertised:**

Saturday 21 July 2001: Timaru Herald  
Wednesday 25 July 2001: The Press, Christchurch  
Otago Daily Times, Dunedin  
High Country Herald, Timaru  
  
Saturday 28 July 2001: The Press, Christchurch  
Otago Daily Times, Dunedin

**Closing date for submissions:**

Date in the public notice 21 September 2001. The CCL extended the date to 19 October 2001 for Public Access NZ and the Royal Forest and Bird Protection Society of NZ.

**3. *Details of submissions received***

A total of eight submissions were received by the extended closing date and one late submission was received.

**4 *Analysis of submissions:***

**4.1 *Introduction:***

*Symbols and Abbreviated Terms*

The symbols and abbreviations used in this report are as set out in the Crown Pastoral Land Standard 8 for Preliminary Proposal for Tenure Review issued by the Office of the Chief Crown Property Officer 13 March 2000.

*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. A copy of the submissions is attached.

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The following analysis summarises each of the points raised, and the Commissioner of Crown Lands decision to accept/not accept or allow/disallow the point.

The following approach has been adopted by the Commissioner when making decisions:

(i) *To accept/not accept:*

The decision has been made to “accept” the point made by submitters where 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 has been to “not accept”.

(ii) *To allow/disallow:*

Where the decision has been to accept, a further decision has been made as to whether the point made should be “allowed” or “disallowed”. The decision has been to “allow” if the point should be considered further, and where the matter has previously been decided by the Commissioner and there is no justification for further consideration, that it be to “disallow”. Further justification for the decision has been made in the discussion paragraph showing the summary for each point.

4.2 Analysis:

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
1	Agree with the proposed designations	2	Accept	Disallow

**Discussion:** Support is noted. As the submissions deal with decisions made under the CPL Act the point is accepted. As the submissions do not provide new information and do not affect decisions made by the CCL they are disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
2	That marginal strips will be provided down the Opuha River below Pt Sec 1 SO 19589	2	Not Accept	

**Discussion:** The provision of marginal strips is not a matter for the CCL to consider under the CPL Act.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
3	Negotiate an easement, where no marginal strip, from point (d) down the Orari River to the Lochaber Road.	5	Accept	Disallow

**Discussion:** As access is a relevant matter under Section 24(c)(i) of the CPL Act the point is accepted. Access for a “round trip” was discussed in the consultation undertaken by the Commissioner with the holder and the Commissioner decided to exclude it in the Preliminary Proposal after that consultation. Therefore the point is disallowed as no new information has been provided.

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Note: The route proposed by submitters is not necessarily exactly the same, but is similar, to that discussed in the draft Preliminary proposals in that it provided a round route.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
4	Concerned at the effect, including boundary issues, of proposed Conservation Land bounding Ben McLeod Pastoral Lease and that the Lessee had not been personally consulted.	1	Not Accept	

**Discussion:** The lessee of the adjoining pastoral lease has made a submission as part of the public notification process under s 43. While the lessee has noted concerns arising from the perceived affect of one of the designations in the Preliminary Proposal, these concerns have been directed towards the possibility of impact on an adjoining area of land which has not been included in the tenure review. No detail about the possible impact of the designations is provided. The Commissioner is not obliged to address those concerns within the framework of Part 2 of the CPLA. On this basis the submission is not accepted.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
5	That the proposed easement b – b be available for vehicles (assume the submitter intends motorised)	1	Accept	Disallow

**Discussion:** The matter of access is relevant under CPL Act, Part 2, Section 24(c)(i) and therefore is accepted.

The Commissioner approved the included access on the basis of “...*non-motorised vehicles powered by a person or persons...*” in the Preliminary Proposal. It is apparent, however, that in making this decision, the Commissioner decided not to extend access to alternative types of vehicle (motorised or non-motorised). The CCL made that decision on the basis of advice and information received in his consultation with the Director-General of Conservation. As the matter has already been considered by the CCL and no new information has been provided the submission is disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
6	Query whether there has been equitable allocation between the Crown and the holder.	1	Not Accept	

**Discussion:** The objects of Part 2 of the CPL Act include “To enable the protection of the significant inherent values”. The decision of the Commissioner to designate the land in terms of the Preliminary Proposal is consistent with this object. However, the CPLA does not oblige the Commissioner to give consideration to an “equitable” allocation. On this basis the submission is not accepted as it raises an issue which is outside the scope of the CPLA. It should also be noted that the CPLA does not provide for an allocation process; rather it enables the Commissioner to consult with the holder and put forward a proposal which will reflect the objects of the CPLA.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
7	Confirmation that the Clayton Wetlands will be protected under another process.	1	Not Accept	

**Discussion:** The CCL on 20 April 2000 made a decision not to include other land in the Clayton Tenure Review (Section 29 CPL Act). The area known as the Clayton Wetlands was surrendered from the Lease and is not part of the Tenure Review, therefore the point is not accepted. Also there is no provision under the CPL Act to confirm or deny actions under other legislation.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
8	Concern that the road from Lochaber Road (beside the true left bank of the North Opuha River) is a private road therefore does not give legal access to the proposed easement, except via the Opuha Riverbed, and that an easement should be negotiated over the road.	2	Accept	Disallow

**Discussion:** This point is concerned with the legalisation of roads, which is not a matter to be considered when undertaking a tenure review pursuant to Part 2 of the CPLA. However the point raised also concerns access to reviewable land which is relevant in terms of Part 2 of the CPLA. Therefore on the basis that the matter of access is relevant under Section 24 (c)(i) CPL Act the point is accepted.

In consulting with the holder the Commissioner considered the question of access from the end of the Lochaber Road and the Opuha River to the land proposed to be designated to be restored to or retained in full Crown ownership and control as conservation area and the possibility that an easement might be required. The Commissioner has received recent advice that, with regard to the land beside the true left bank of the North Opuha River a Legal Road extends over its entire length from Lochaber Road to where the proposed easement will commence on the existing lease boundary. The road (whether formed or not) beside the Opuha River over a distance of approximately 3 kms from Lochaber Road, known as the Fox Peak Skifield Road, is legal road, thereby giving a legal access to the start of the proposed easement. While the submitters have provided information that may have raised doubts about the legality of the road, or the continuity of legal road, and therefore the issue of public access, the advice provided to the Commissioner clearly indicates that there is legal road for the whole length from the formed Lochaber public road to the boundary of the lease. While it is possible that, in some small part the actual single lane formation deviates to some minor extent, there is, from inspection and GPS location, such close proximity that the CCL can be assured that there is legal access. The terrace on which the formation sits is of sufficient width to allow adequate passage inclusive of vehicles.

The point is therefore disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
9	That easements must be real and not paper easements.	1	Accept	Disallow

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**Discussion:** Public access is relevant under CPL Act, Part 2, Section 24 (c)(i) and therefore the submission is accepted.

The Commissioner made a decision to include the easement in the form proposed in the Preliminary Proposal. The location of the easement has also been determined as part of the consultation process and provides for practical access. No new information has been provided and the point is therefore disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
10	That the northern and western portions of the Low Claytons be designated for conservation purposes.	1	Accept	Disallow

**Discussion:** The point raises an issue relevant under Section 24(b) CPL Act and can be accepted.

The Commissioner proposed an area be designated for return to full Crown ownership and control. That area included part of the Low Claytons referred to by the submitter. The Commissioner consulted with the holder on this proposal. The Commissioner then decided to remove the Low Claytons area from the area of land designated for return to full Crown ownership and control. No new information has been included in this submission. The submission is disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
11	That an indicative plan be prepared showing the location and width of existing marginal strips, and all additional strips required including bank to bank distances. Also to note intentions to waive, reduce or increase the width, or to appoint managers of marginal strips.	1	Not Accept	

**Discussion:** This submission refers to the issue of designation of land as marginal strip land. This is not a matter to be addressed within Part 2 of the CPLA. Existing marginal strips are not included in tenure review. Land which may be designated marginal strip under Part IVA of the Conservation Act is not a matter for tenure review.

As these matters are outside the scope of the CPLA, the point is not accepted.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
12	Terms of the Public Easement excludes the provisions of the Ninth Schedule of the Property Law Act but not Section 126G which enables modification or extinguishment of easements through the Courts. Requests that 126G also be excluded. Asks for Section 49 Conservation Act procedures whenever any change is proposed.	1	Accept	Disallow

**Discussion:** The Commissioner has included the public access easement in the Preliminary Proposal with regard to the objects of the CPLA and to this extent the submission can be said to address an aspect of the CPLA. However, the submission is not concerned with the issue of public access itself, but the terms on which the public access rights should be incorporated into the proposal. The Crown Pastoral Land Act does not regulate the terms on which public access should be incorporated into a tenure review proposal. That is a matter within the discretion of the Commissioner with regard to the statutory consultation undertaken by the Commissioner with the Director-General of Conservation. This submission has not, in proposing the exclusion of s 126G Property Law Act and express inclusion of s 49 Conservation Act, raised any new matters concerning the terms on which access should be incorporated into a tenure review proposal for the Commissioner to consider. On this basis the submission is disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
13	That no width is specified for the easement in the document.	1	Accept	Disallow

**Discussion:** The Commissioner has included the public access easement in the Preliminary Proposal with regard to the objects of the CPLA and to this extent the submission can be said to address an aspect of the CPLA. It is accepted because it raises a matter which is relevant within the terms of the CPLA.

However the Commissioner has considered the terms of the public access easement in consultation with the Director General of Conservation and made a decision not to specify the width of the easement in the easement document. As no new information is provided, the submission is disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
14	In the plan as proposed there is no direct access off the easement to Pt Section 1 SO 19589 (Clayton wetland to become Conservation Land under another process) where in close proximity.	1	Accept	Allow

**Discussion:** The Commissioner has included the public access easement in the Preliminary Proposal with regard to the objects of the CPLA and to this extent the submission can be said to address an aspect of the CPLA. It is accepted because it raises a matter which is relevant within the terms of the CPLA.

Pt Sec. 1 is not in the tenure review of the Clayton pastoral lease. However further access to that general area within the land under consideration in the tenure review is a relevant point which has not previously been considered. Provision of access off the proposed easement (b-b) prior to it ending at its northern end, not necessarily to Sec 1, is therefore a relevant point and is allowed.

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POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
15	That public access be provided from the end of the legal road on the true left bank of the Opuha River (Fox Peak Ski field road) to the bridge across the Opuha River some 500m upstream on the Fox Peak Ski Field (easement) Road to give public vehicle access to the Opuha River.	1	Not Accept	

**Discussion:** The CCL decided not to include other land in the Tenure Review (Section 29 CPL Act) on the basis of advice and information received. Public vehicle access is available from the legal road along the true left bank of the Opuha river from Lochaber Road to the boundary of the Pastoral Lease some 500 metres below the bridge being a distance of about 3 kms (see also point 8). Neither the Crown riverbed nor land across the river to which the bridge leads is in the tenure review therefore there is no need under the CPL Act to consider further access to that land. The point, being one which does not concern the objects of Part 2 of the CPLA, is not relevant and is not accepted.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
16	Assurance sought that all significant areas for conservation have been allocated to the Crown and that no land of conservation significance has been disposed of which should be in Crown ownership.	1	Accept	Disallow

**Discussion:** The submission addresses the designation of land for tenure review within the objects of Part 2 of the CPLA. To this extent the submission is relevant as it raises matters relevant to tenure review and is accepted.

However the Commissioner has incorporated proposals for designations in the Preliminary Proposal as an outcome of extensive consultation with the Director General of Conservation and the holder. The Commissioner has considered the information provided to him before putting forward the designations proposed in the Preliminary Proposal. This submission does not raise any new information and is therefore disallowed.

See also point 10.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS	DECISION	
17	It is suggested that there is no commitment to maintain the musterer's hut, which is considered by the submitter to have inherent value	1	Accept	Disallow

**Discussion:** Part 2 of the CPL Act provides for the protection of significant inherent values preferably by restoration to full Crown ownership and control. The point is therefore accepted. The Commissioner has given consideration to the hut in consultation with the Holder and the Director General of Conservation. The designation of the land on which the musterer's hut is located is land to be restored to full Crown ownership and control which is consistent with the objects of the CPLA. No new information is provided in the submission. The point is disallowed.

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5. *Discussion and Conclusions*

Discussion relevant to each particular point has been made under each point for simplicity and clarity. Most submitters appear to propose more land or access for their particular interest, and do not necessarily take into consideration all the objects of Part 2 of the Crown Pastoral Land Act 1998. The submission from Public Access New Zealand, went into particular depth on the process and included a treatise on Marginal Strips. This tenure review is not the vehicle for such generic matters. Therefore the analysis has been limited to matters applicable to the Clayton tenure review.

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