

Crown Pastoral Land Tenure Review

Lease name: CLOUDY PEAK

Lease number: PO 104

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.

July

09

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

Report in accordance with Tenure Review Process

CLOUDY PEAK

File Ref: 12458 (Po104/1)

Report No: AT9013

Submission Date: 15 May 2009

Contractor's Office: Alexandra


LINZ Case No: *TR09/06*

Date sent to LINZ: *22/5/09*


RECOMMENDATIONS:

1. That the Commissioner of Crown Lands (*or his delegate*) **notes** the submissions received and **approve** the final analysis of public submissions.


Signed by DTZ:


Ken Taylor

Approved/Declined (*pursuant to a delegation from the Commissioner of Crown Lands*) **by:**


Name:
Date of decision: *29/6/09*

**Mathew Clark (Manager Pastoral)
Land Information New Zealand
Under delegated authority of the
Commissioner of Crown Lands.**

I recommend approval

**DR STEPHEN CHARLES URLICH
TECH LEAD TENURE REVIEW
CROWN PROPERTY MANAGEMENT
c/o LINZ, CHRISTCHURCH**
29/06/09

FINAL ANALYSIS OF SUBMISSIONS

CLOUDY PEAK TENURE REVIEW

1. Details of lease:

Lease name: Cloudy Peak

Location: Ardgour Road, Tarras

Lessee: Cloudy Peak Limited

2. Public notice of preliminary proposal:

Date, publication and location advertised:

Saturday 21 June 2008:

Otago Daily Times	Dunedin
The Press	Christchurch
The Southland Times	Invercargill

Closing date for submissions:

18 August 2006

3. Details of submissions:

A total of 8 submissions were received by the closing date. Two late submissions were received on 19 and 21 August 2008.

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:

1. Summarises each of the points raised along with the recorded number (shown in the appended tables) of the submitter(s) making the point.
2. Discusses each point.
3. Recommends whether or not to **allow** the point for further consideration.
4. If the point is **allowed**, recommends whether to **accept** or **not accept** the point for further consideration.

The points raised have been analysed to assess whether they are matters that are validly-made, relevant to the tenure review and can be properly considered under the Crown Pastoral Land Act 1998 (CPLA). Where it is considered that they are the decision is to **allow** them. Further analysis is then undertaken as to whether to **accept** or **not accept** them.

Conversely where the matter raised is not a matter that is validly-made or relevant or can be properly considered under the CPLA, the decision is to **disallow**. The process stops at this point for those points disallowed; i.e., they are **not accepted** for further consultation.

The outcome of an **accept** decision will be that the point is considered further in formulation of the draft SP. To arrive at this decision the point must be evaluated with respect to the following:

The objects and matters to be taken into account in the CPLA;

Whether the point introduces new information or a perspective not previously considered;

Where the point highlights issues previously considered but articulates reasons why the submitter prefers an alternative outcome under the CPLA.

How those accepted points have been considered will be the subject of a Report on Public Submissions which will be made available to the public. This will be done once the Commissioner of Crown Lands has considered all matters raised in the public submissions in formulating a Substantive Proposal.

4.2 Analysis:

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
1	Questions whether five year grazing concession promotes ecological sustainability	1	Allow	Not Accept

Rationale for Allow or Disallow:

The submitter has questioned whether or not the five year grazing concession promotes ecological sustainability. As outlined in Section 24(a)(i) CPL Act one of the objects of tenure review is to promote the management of reviewable land in a way that is ecologically sustainable. This point therefore is allowed.

Rationale for Accept or Not Accept:

In a situation where the property is very dependent on land to be surrendered following tenure review there must be a period of adjustment to allow the holders business to be restructured. It is therefore concluded that the five year grazing concession is not unreasonable and given that it is a finite concession with a specific stock limit it achieves the expected outcome of promoting ecological sustainability in the medium term. Therefore the point is not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
2	Questions whether freeholding promotes ecological sustainability	1,5,6,7	Allow	Not Accept

Rationale for Allow or Disallow:

The submitter questions whether freeholding promotes ecological sustainability. Section 24(a)(i) CPL Act requires tenure review proposals to promote the management of reviewable land in a way that is ecologically sustainable. Therefore this point is allowed.

Rationale for Accept or Not Accept:

This is possibly the most complex matter relating to the tenure review of this property. The property exists in an arid environment with significant risks from rabbit infestation. Restoration to the Crown would shift control requirements to the Crown. The alternative of a sustainable management covenant were also considered however experience that this land is best left without constraints on it allowing the freedom to develop innovative programmes for achieving ecological sustainability. This has been evidenced elsewhere in the district with similar classes of land where innovative land uses have bypassed the previous effects of degradation. While the point is noted and has been reviewed at length it is concluded that the current proposal best meets the object and the point is not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
3	Suggests extension of CC1 to boundary for riparian protection	1	Allow	Not Accept

Rationale for Allow or Disallow:

Riparian protection could be considered a significant inherent value in relation to this tenure review. Section 24(b) identifies as an object of tenure review to enable the protection of significant inherent values of reviewable land either by creation of protective mechanisms or preferably by restoration of land concerned for Crown ownership and control. Therefore this point is allowed.

Rationale for Accept or Not Accept:

This point has been discussed at considerable length both in the consultation prior to the preparation of the preliminary proposal and also during the subsequent consultation. Expansion of the covenant downstream would include developed farm land as well as the dry scrubby face referred to previously. The latter in particular is very high maintenance land and requires active management of the vegetation as part of a wider pest management programme controlling rabbits. The general consensus during consultation was that the expansion of this covenant would achieve very little in terms of protecting SIVs or promoting any other value. The point is therefore not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
4	Seeks confirmation that easements will be available with guns, dogs and motorised vehicles to the holders of a DoC permit	2	Allow	Not Accept

Rational for Allow or Disallow:

The conditions relating to the proposed easement are part of the securing of public access to and enjoyment of reviewable land. This is an object of the CPL Act as set out in Section 24(c)(i). Therefore this point is allowed.

Rationale for Accept or Not Accept:

While there may be some merit in the public being allowed to traverse this easement with guns and dogs the negative effects on both farm management and pest management would be extreme. To allow guns and dogs in this environment would compromise both the activities of the farmer and also the Department of Conservation in managing the adjacent land.

Where hunting permits are granted into CA1 better public access with guns and dogs is available from Thompsons Gorge along the ridge crest to Mt Kamaka. The vehicle access is further discussed under Points 21 and 26.

The point is therefore not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
5	Suggests CC1 be fenced and/or recommends management plan	2,3,4,5,6,8	Allow	Not Accept

Rationale for Allow or Disallow:

While fencing of a conservation covenant and or the management plan relating to it may be considered management issues, it is nonetheless inherent in the covenant that the purpose is to protect significant inherent values. This protection of significant inherent values is an object of Part 2 CPL Act. The point is therefore allowed.

Rationale for Accept or Not Accept:

Fencing of the covenant area is not feasible due to the terrain. In relation to the management plan suggestion it is noted that this is part of the routine conservation management of such covenants anyway and therefore nothing specific needs to carry forward to the substantive proposal. The point is therefore not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
6	Suggests that proposed designation of CC1 be reviewed	2,5,8	Allow	Not Accept

Rationale for Allow or Disallow:

This point flows on from points 3 and 5 above and also related to the protection of significant inherent values. One of the objects of the CPL Act is the enable the protection of significant inherent values of reviewable land (Section 24(b)). The point is therefore allowed.

Rationale for Accept or Not Accept:

The DGC would agree with full conservation status for this area if it could be fenced. Fencing is not practical and the boundaries are largely self protecting. A covenant provides adequate protection for the SIVs identified without shifting management costs to the Crown. The point is therefore not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
7	Questions whether marginal strips have been assessed	2	Disallow	-

Rational for Allow or Disallow:

Marginal strips are a matter for consideration by the Director General of Conservation. It is noted that the property has been assessed for qualifying water bodies in relation to marginal strips and that the streams referred to by the submitters have not been deemed as qualifying for a marginal strip.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
8	Pleased with provision of altitudinal vegetation sequence	3	Allow	Accept

Rationale for Allow or Disallow:

The provision of an altitudinal sequence is in keeping with the protection of significant inherent values. Section 24(b) requires the protection of significant inherent values. Therefore this point is allowed.

Rationale for Accept or Not Accept:

Support for the proposal is acknowledged and no change to the proposal is required therefore the point is accepted as a matter to be incorporated in the substantive proposal.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
9	Support for Conservation area CA1	3,4,5,6,7,8	Allow	Accept

Rationale for Allow or Disallow:

The support for conservation area CA1 is noted. As CA1 relates to the protection of significant inherent values and this is an object as set out in Section 24(b) CPL Act the point is allowed.

Rationale for Accept or Not Accept:

Support for the proposal is acknowledged and no change to the proposal is required therefore the point is accepted as a matter to be incorporated in the substantive proposal.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
10	Support for Conservation Area CA2	3,4,5,6,7,8	Allow	Accept

Rationale for Allow or Disallow:

The support for conservation area CA2 is noted. As CA2 relates to the protection of significant inherent values and this is an object as set out in Section 24(b) CPL Act the point is allowed.

Rationale for Accept or Not Accept:

Support for the proposal is acknowledged and no change to the proposal is required therefore the point is accepted as a matter to be incorporated in the substantive proposal.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
11	No objection to proposed easement concessions and conditional acceptance of proposed grazing concession (subject to conditions being clarified especially re stock numbers and class)	3,4,5,6,7,8	Allow	Accept

Rationale for Allow or Disallow:

The submitters note that they have no objection to proposed concessions being granted over the proposed conservation area subject to the clarification of concession conditions. The granting of specified concessions is a matter considered under Section 36 CPL Act and therefore the point is allowed.

Rationale for Accept or Not Accept:

Support for the proposal is acknowledged and no change to the proposal is required therefore the point is accepted as a matter to be incorporated in the substantive proposal. The final concession document will be worded appropriately. Therefore the point is accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
12	Conditional support for proposed freehold	3	Allow	Accept

Rationale for Allow or Disallow:

Freehold disposal of reviewable land is an option pursuant to Section 24(c)(ii) Crown Pastoral Land Act. Therefore this point is allowed.

Rationale for Accept or Not Accept:

The point as raised by the submitters and the view of the comment of the DGC recognises that this is a difficult environment for land management. It is agreed that the outcome to some extent reflects the practicality of pest management control on this property and the level of investment required to achieve this. Such investment is only feasible under unencumbered freehold title. It is noted in this context that there are ongoing concerns both by the Department of Conservation and the holder as to the ability for adequate pest management within Conservation Area CA2 at a time of restricted funding.

The conditions of support will be covered by the proposal, therefore the point is accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
13	Considers that the linkage between CA1 and CA2 should be restored to the Crown	3,4,7,10	Allow	Not Accept

Rationale for Allow or Disallow:

The submitters have noted that they believe that there are significant inherent values lying between conservation areas CA1 and CA2 and also have raised questions as to whether or not freehold

disposal of this area promotes ecological sustainability. The protection of significant inherent values is an object of Part 2 CPL Act under Section 24(b) and the promotion of ecological sustainability is required under Section 24(a)(i). Therefore this point is allowed.

Rationale for Accept or Not Accept:

The linkage of the areas between CA1 and CA2 was considered at length during consultation leading the preliminary proposal and further reviewed as part of the field inspections since the public comments were received. It is observed that if travelling up the Dry Stream Valley one would get a false impression of what the values of the area between CA1 and CA2 are. At the lower levels seen from the Dry Creek Valley are induced shrublands whereas above are some of the better areas of oversown and topdressed pasture on the property. It is an observation that the linkage is largely to aid the reserve design as opposed to specific values that may exist between the two areas. The point is therefore not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
14	Support for Conservation Covenant CC1	3,4	Allow	Accept

Rationale for Allow or Disallow:

The support for conservation area CC1 is noted. As CC2 relates to the protection of significant inherent values and this is an object as set out in Section 24(b) CPL Act the point is allowed.

Rationale for Accept or Not Accept:

Support for the proposal is acknowledged and no change to the proposal is required therefore the point is accepted as a matter to be incorporated in the substantive proposal.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
15	Supports proposed easements	3,4,5,6,8	Allow	Accept

Rationale for Allow or Disallow:

The support for the proposed easements is noted and this fits in the context of Section 24(c)(i) relating to the securing of public access to an enjoyment of reviewable land. The point is therefore allowed.

Rationale for Accept or Not Accept:

The proposed easement routes and the conditions relating to the easements were subject of significant dialogue and represent an adequate provision of public access to the Conservation areas and beyond. These will carry through to the proposal, therefore the point is accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
16	No objection to continuation of existing easement	3,5,6	Allow	Accept

Rationale for Allow or Disallow:

The continuation of existing easements is a matter for consideration under Section 36(3)(c) CPL Act. Therefore the point is allowed.

Rationale for Accept or Not Accept:

The continuation of the existing easement is taken as read and no further dialogue required. This will carry through to the proposal, therefore the point is accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
17	Considers proposal to be a good or reasonable outcome	3,4,8	Allow	Accept

Rationale for Allow or Disallow:

The support for the proposal is noted it is therefore assumed that the submitters believe that the objects of Part 2 as set out on Section 24 CPL Act have been met. The point is therefore allowed.

Rationale for Accept or Not Accept:

Support for the proposal is acknowledged and no change to the proposal is required therefore the point is accepted as a matter to be incorporated in the substantive proposal.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
18	Considers description of CC1 should be expanded	7,8	Allow	Accept

Rationale for Allow or Disallow:

This point relates to the identification and protection of significant inherent values. As the protection of significant inherent values is identified as an object of Part 2 under Section 24(b) the point is allowed.

Rationale for Accept or Not Accept:

The point is accepted and the DGC has agreed that the definition in the covenant document will be enhanced.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
19	Suggests that lambing closure provision in easements should be removed if there is a change to alternative land use	7	Allow	Accept

Rationale for Allow or Disallow:

This point relates to the provision of public access and enjoyment of the reviewable land. This is considered in the context of Section 24(c)(i). While the point is on the margin between the provision or access and subsequent management the point is however allowed for consideration.

Rationale for Accept or Not Accept:

It was agreed in consultation that this was a reasonable point. The point is therefore accepted and the easement document will be amended accordingly.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
20	Requests public access on Burma track ("e-k")	7,8	Allow	Not Accept

Rationale for Allow or Disallow:

This point relates to the securing of public access to and enjoyment of reviewable land as set out in Section 24(c)(i). Therefore the point is allowed.

Rationale for Accept or Not Accept:

This access point has been considered at some length and it is noted that both the holder and the DGC have concerns about public safety. It was therefore a conscious decision to create good access by better gradient within CA2. This achieves the same point on the ridge line leading to CA1 by a safe and less strenuous route. Access to CA1 is also available from the Thompson Gorge Road via Mt Kamaka. Not granting public access on the Burma Track does not in any way disadvantage the public. The point is therefore not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
21	Requests vehicle access on easement "a-f"	7	Allow	Not Accept

Rationale for Allow or Disallow:

This point relates to the securing of public access to and enjoyment of reviewable land as set out in Section 24(c)(i). Therefore the point is allowed.

Rationale for Accept or Not Accept:

This access was reviewed in consultation, DoC who advised that they could not defend the provision of public vehicle access on this route. They did not believe there were significant advantages to the public and that establishment and ongoing maintenance costs would not justify the results. Vehicle

use would also compromise adjacent land use making it inappropriate. Good access is provided by other means. This point is therefore not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
22	Does not believe the proposal meets the objects of the CPL Act	7	Allow	Not Accept

Rationale for Allow or Disallow:

Tenure review proposals are required to meet the objects of Section 24 CPL Act. The submitter believes that the proposal falls short of this and therefore further investigation is required. The point is therefore allowed.

Rationale for Accept or Not Accept:

This is a complex property for tenure review requiring a mix of outcomes. The majority of the SIVs are protected within the proposal. The Commissioner is also required to consider wider objects of the Crown Pastoral Land Act, especially promoting ecological sustainability. The alternative of a sustainable management covenant was also considered however experience shows that this land is best left without the constraints on it allowing the freedom to develop innovative programmes for achieving ecological sustainability. Public access and the removal of the constraints on land capable of economic use are not achieved. As an overall review the objects are met therefore the point is not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
23	Requests marking of exact boundary of CA2 to facilitate placement of rabbit fences	8	Allow	Accept

Rationale for Allow or Disallow:

While the marking of boundaries and subsequent fencing is a management issue to be followed post tenure review, appropriate fencing is important in the protection of SIVs. As the protection of significant inherent values is identified as an object of Part 2 under Section 24(b) the point is allowed.

Rationale for Accept or Not Accept:

Boundary marking is yet to occur in relation to this tenure review and it is noted that the boundaries identified at that point will be derived to ensure good fence placement. The point is accepted and will carry through to implementation of the review.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
24	Access route to CA2, acceptable	9	Allow	Accept

Rationale for Allow or Disallow:

The support for the proposed access route is noted and it is therefore assumed that this meets the object of Section 24(c)(i) CPL Act. The point is therefore allowed.

Rationale for Accept or Not Accept:

Support for the proposal is acknowledged and no change to the proposal is required therefore the point is accepted as a matter to be incorporated in the substantive proposal.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
25	Requests public access on "m-h-l"	9	Allow	Not Accept

Rationale for Allow or Disallow:

The request for additional public access must be carefully considered in terms of Section 24(c)(i) CPL Act. The point is therefore allowed.

Rationale for Accept or Not Accept:

It is considered the preferred public access is available via a new track within CA2. This is of better gradient and does not conflict with other land use. This may not have been totally clear in the information released to the public. Public access on route "m-h-l" would not be beneficial. Therefore the point is not accepted.

Point	Summary of Point Raised	Sub No	Allow or Disallow	Accept or not accept
26	Requests vehicle access with a range of options for extent and parking areas	10	Allow	Not Accept

Rationale for Allow or Disallow:

The request for additional public access must be carefully considered in terms of Section 24(c)(i) CPL Act. The point is therefore allowed.

Rationale for Accept or Not Accept

This access was reviewed in consultation, DoC who advised that they could not defend the provision of public vehicle access on this route. They did not believe there were significant advantages to the public and that establishment and ongoing maintenance costs would not justify the results. Vehicle use would also compromise adjacent land use making it inappropriate. Good access is provided by other means. This point is therefore not accepted.

5. Discussion and conclusions:

The ten submitters have raised 26 points in relation to this review. Twenty five of the points have been "allowed" as they relate to matters to be considered in a tenure review under Part 2 Crown Pastoral Land Act.

Ten of the 25 points allowed relate to support for all or parts of the proposal as advertised. Six points are access related seeking either further access or clarification of access provisions. Eight points relate to the appropriateness of the designations, with four of these specifically applying to the riparian protection in Wainui Creek.

The 25 points allowed formed the basis of further consultation with the Director General of Conservation and the holders and then critically assessed in light of that consultation. As a result 13 of the points were accepted and will be reflected in the substantive proposal.

The points that were not accepted represented a balance between the differing views of submitters and also recognised the practicalities of translating the point to on ground action. Through the development of the preliminary proposal, consideration of public submissions and subsequent consultation principles of promoting ecological sustainable use are recognised in the proposal, SIVs are protected, productive land is freeholded and good public access is provided. The only major point raised by submitters and not carried into the proposal is public vehicle access. This is due to the excellent other forms of access provided and the recognised impact on what will become an intensive business operation.