

Crown Pastoral Land Tenure Review

Lease name: GLENFELLAN

Lease number: PS 038

Analysis of Public Submissions

This document includes information on the public submissions received in response to an advertisement for submissions on the Preliminary Proposal. The report identifies if each issue raised is allowed or disallowed pursuant to the Crown Pastoral Land Act. If allowed the issue will be subject to further consultation with Department of Conservation, or other relevant party.

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

September 09

ANALYSIS OF PUBLIC SUBMISSIONS ON PRELIMINARY PROPOSAL FOR TENURE REVIEW

Report in accordance with Tenure Review Process Phase 8_7.5

GLENFELLAN

File Ref: CON/50344/12487 (TR348) Submission No: AT9018 Submission Date: 25 August 2009

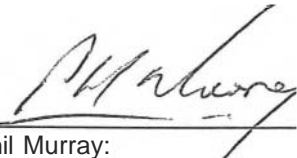
Contractor's Office: Alexandra L1NZ Case No: *TR09172* Date sent to L1NZ: *18/6/09*

RECOMMENDATIONS:

1. That the Commissioner of Crown Lands (*or his delegate*) note the public submissions *received* and approve the preliminary analysis of submissions attached as Appendix 1.
2. That the Commissioner of Crown Lands (*or his delegate*) approve consultation with the DGC delegate and the Holder on the preparation of a draft substantive proposal for Glenfellan on the basis of the attached analysis.

I recommend approval
K M Lee

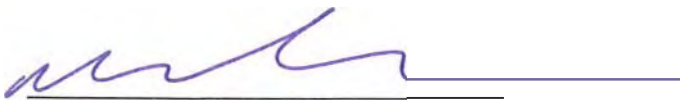
Signed for DTZ Limited:



Phil Murray:

KARYN MICHELLE LEE
PORTFOLIO MANAGER
CROWN PROPERTY MANAGEMENT
C/- UNZ, CHRISTCHURCH

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



Name:
Date of decision: *14-9-09*

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

APPENDIX 1:

ANALYSIS OF SUBMISSIONS

STATEMENT PURSUANT TO SECTION 45(a)(iii) CROWN PASTORAL LANDS ACT 1998

ANALYSIS OF PUBLIC SUBMISSIONS

Statement Pursuant To Sec 45(a)(iii) Crown Pastoral Land Act 1998

GLENFELLAN TENURE REVIEW NO TR240

Details of lease

Lease name	Glenfellan
Location	Garston, Northern Southland
Lessee	Glenfellan Forests Limited

Public notice of preliminary proposal

Date advertised
14th February 2009

Newspapers advertised in
Otago Daily Times
The Southland Times
The Press

Closing date for submissions
15th April 2009

Details of submissions received

Number received by closing date
12 submissions were received by closing date

Cross-section of groups/individuals represented by submissions
5 submissions were received from Conservation and recreation groups
4 from institutions representing specific interests
3 from individuals

Number of late submissions refused/other
None

ANALYSIS OF SUBMISSIONS

Introduction

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.

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; and

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

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

Is a statement of support for aspects of the Preliminary Proposal which can be considered by the Commissioner when formulating the designations for a Substantive Proposal.

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.

Analysis

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
1	Opposed to the designation of area CC as Conservation Covenant. Area should be designated as land to be retained in full Crown ownership and control as Conservation Area	1	Allow	Accept

Rationale for Allow:

The point concerns the protection of significant inherent values which is a relevant matter for the Commissioner to consider under Section 24(b) CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

The area CC has been identified as containing SIV's that arise from botanical and landscape values. Although no new information is provided in the submission and the point highlights issues previously considered, it does articulate reasons why the submitter prefers an alternative outcome under the CPL Act 1998. Designating the area as land to be retained in full Crown ownership and control as conservation area is a potential designation. The point is therefore accepted for consideration in formulating the substantive proposal.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
2	Oppose the condition in the proposed Conservation covenant providing for the planting of species such as Eucalyptus.	1,3	Allow	Not Accept

Rationale for Allow:

The point concerns conditions in the covenant aimed to protect significant inherent values. This is a relevant matter for the Commissioner to consider under Section 24(b) CPL Act 1998. The point is therefore allowed.

Rationale for Not Accept:

There is no condition in the conservation covenant providing for the planting of species such as Eucalyptus. Clause 3.1.3 of proposed Conservation covenant requires the Minister of Conservation's consent for the planting of any species of tree, shrub or other plant. The reference made to eucalyptus in the report is a reference to rules under the Southland District Council Operative District Plan which prohibits the planting of conifers but would allow planting of eucalyptus species. This applies to land designated for freehold disposal that is not subject to the proposed Conservation covenant. The point provides no new information on this issue and is therefore not accepted.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
3	Alignment of the Nevis Road formation should be legalised prior to the tenure review being implemented.	2,4,5,6,8,10	Disallow	

3.1	Or alternatively an easement to be registered over the road alignment to provide for public vehicle, foot and horse access.	5,6,10	Disallow
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Point 3 & 3.1

Rationale for Disallow:

Issues related to roading are not matters the Commissioner can consider under the CPL Act 1998. This is a matter to be addressed by the local Council under the Public Works Act. The point is therefore disallowed.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
4	Generally supports the proposal	1,2,3,4,5,6,8,12	Allow	Accept
4.1	Supports the designation concerning restoration to full Crown ownership and control of this Conservation area.	5,6,8,10		
4.2	Supports the designation concerning the disposal as freehold subject to a protective mechanism.	5,6,8		
4.3	Supports proposed Conservation covenant.	5,6,7,8		
4.4	Supports proposed public access.	6,8,10		

Rationale for Allow:

The points concern the designation of the reviewable land related to protection of significant inherent values and securing of public access to and enjoyment of reviewable land which are relevant matters for the Commissioner to consider under Section 24 CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

The points support all or certain aspects of the designations in the proposal. Statements of support can be considered by the Commissioner in formulating a Substantive Proposal. The point is therefore accepted.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
5	Expresses concern that no financial provision is made in the review for the cost of removing the forest.	3	Disallow	

Rationale for Disallow:

Section 24(b) requires that the proposal **enables** the protection of significant inherent values of the reviewable land. Matters of finance to effect this protection is a matter for the Department of Conservation following implementation of the review and is not a matter the Commissioner can consider under the review. The point is therefore disallowed.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
6	The Conservation covenant should be amended to provide for public access to the Diggers Creek water race.	5,6,8,9,10	Allow	Accept

Rationale for Allow:

The point concerns the securing of public access to an enjoyment of reviewable land which is a relevant matter for the Commissioner to consider under Section 24(c)(i) CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

The point highlights issues previously considered but articulates reasons why the submitter prefers an alternative outcome under the CPLA. The number of submissions received on this point also highlights the fact that there is a strong desire amongst the public for access along the water race and that it form part of a walkway that links with the water race within proposed conservation area. This suggests that an alternative outcome may better secure the objects with respect to Section 24(c)(i) CPL Act 1998. The point is therefore accepted for consideration in formulating the substantive proposal.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
7	Public access over route a-b should be in reference to access from the road alignment, not from the existing legal road.	5,8,10	Allow	Not Accept

Rationale for Allow:

The point concerns the securing of public access to and enjoyment of the reviewable land which is a relevant matter for the Commissioner to consider under 24(c)(i) CPL Act 1998. The point is therefore allowed.

Rationale for Not Accept:

The issue of whether a formed road is a legal access is not one the Commissioner has the statutory authority to deal with. The formation of the road is considered to be legal by virtue of implied dedication because it is regularly used by the public as a road and the road is maintained by the district council. The point is therefore not accepted.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
8	Proposes that the boundary of the Conservation area above the Nevis Road south of point a-b on the designations plan be amended to include an area of approximately 20 hectares as Conservation area to protect views from the road.	5	Allow	Accept

Rationale for Allow:

The point concerns the protection of significant inherent values in the form of landscape which is a relevant matter for the Commissioner to consider under Section 24(b) CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

The Conservation Resources Report identifies the land between the Nevis-Garston Road and the ridgeline to the south of point a-b as containing high visual values. The issue of how best to protect these values has previously been considered however the submitter articulates

reasons why they prefer an alternative outcome under the CPLA. The point is therefore accepted for further consideration.

Point	Summary of point raised	Submission numbers	Allow or disallow	Acceptor not accept
9	The boundary of the proposed Conservation <i>covenant</i> should be amended to include the area <i>above</i> the Nevis Road between point a-b and the existing boundary of the <i>covenant</i> shown as CC on the designations plan. - Schedule 1, Clause 3 of the <i>covenant</i> should be amended to describe the outstanding natural landscape of the land adjacent to the Nevis Road within proposed freehold.	6,10	Allow	Accept

Rationale for Allow:

The point concerns the protection of significant inherent values in the form of landscape which is a relevant matter for the Commissioner to consider under Section 24(b) CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

As for point 8 it is recognized that high visual values *have* been identified between the road formation and the ridgeline to the east. The point highlights issues previously considered but articulates reasons why the submitter prefers an alternative outcome under the CPLA. It is therefore considered appropriate that consideration be given for protection of these values by way of covenant and that this area may be included within area CC. Both points are therefore accepted for consideration in formulating the substantive proposal.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
10	The covenant should provide for monitoring of the condition of the <i>vegetation above</i> 850 metres asl.	6,8,10	Allow	Not Accept

Rationale for Allow:

The point concerns both the protection of significant inherent values and the promotion of ecologically sustainable land management which are relevant matters for the Commissioner to consider under Sections 24(b) and 24(a)(i) CPL Act 1998. The point is therefore allowed.

Rationale for Not Accept:

While the covenant does not provide specifically for monitoring being carried out, Clause 3.2.5 of the document provides that the owner grant to the Minister or authorised agent or employee of the DGC a right to access the land to examine and record the condition or to carry out protection or maintenance work or to ascertain whether the provisions of the covenant are being observed. It is therefore at the discretion of the DGC and his managers as to whether monitoring is carried out and what form this should take. It is therefore considered unnecessary to prescribe monitoring in the covenant document. The point provides no new information. The point is therefore not accepted.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
11	The covenant should be amended to increase the width of protected land along the Diggers Creek water race. <ul style="list-style-type: none"> To at least 15 metres To 30 metres 	6,9,10	Allow	Accept

Rationale for Allow:

The point concerns the protection of significant inherent values which is a relevant matter for the Commissioner to consider under Section 24(b) CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

The point highlights issues previously considered but articulates reasons why the submitter prefers an alternative outcome under the CPLA. The point is therefore accepted for further consideration.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
12	Do not support the review in its present form as oppose the restoration of land within Fosters Creek below 850-900metres to full Crown ownership and control as Conservation area	7		
12.1	Because the inherent values do not warrant it.		Allow	Accept
12.2	Because the economic benefit would warrant the cost of separating it from the balance.		Disallow	
12.3	Does not warrant the cost of compensation plus tree removal.		Disallow	
12.4	Because the best economic and sustainable use of the land is farming.		Allow	Accept

Rationale for Allow:

Point 12.1 concerns the protection of significant inherent values on the land which is a relevant matter for the Commissioner to consider under Section 24(b) CPL Act 1998. This point is therefore allowed.

Points 12.2 and 12.3 concern financial matters related to the proposal which is not a matter the Commissioner can consider under the review. These points are therefore disallowed.

Point 12.4 concerns the economic and ecologically sustainable use of the land which is a relevant matter for the Commissioner to consider under Sections 24(a)(i) and 24(a)(ii) CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

The submitter introduces reasons why they prefer an alternative outcome and a perspective not previously considered. Points 12.1 and 12.4 are therefore accepted.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
13	The area below 850-900m asl in Fosters Creek could be set aside in anticipation of adjoining tenure reviews.	7	Disallow	

Rationale for Disallow:

The point requires that the Commissioner defer a decision on designating this portion of the reviewable land until some later date. This is not provided for in the CPL Act and does not meet within the objects of the Act. The point is therefore disallowed.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
14	The Conservation covenant should be amended to restrict grazing to sheep only to avoid damage to Diggers Creek water race.	8,9,10	Allow	Not Accept

Rationale for Allow:

The point concerns the protection of significant inherent values which is a relevant matter under Section 24(b) CPL Act 1998. The point is therefore allowed.

Rationale for Not Accept:

The issue of cattle grazing and the potential damage to the water race has previously been considered and the submission provides no new information on this matter. The area in which Diggers Creek water race exists has been subjected to pastoral farming including cattle grazing for many decades. There is no evidence that cattle grazing has resulted in damage to the race structure. The point is therefore not accepted.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
15	A thorough field based archeological assessment should be undertaken within the proposed freehold to properly locate, assess and recommend appropriate levels of protection for all historic heritage values.	9	Allow	Accept

Rationale for Allow:

The point concerns the protection of significant inherent values which is a relevant matter under 24(b) CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

The submitter highlights issues previously considered but articulates reasons why they believe additional information should be sought. The point is therefore accepted for further consideration in formulating a substantive proposal.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
16	The proposed covenant should make reference to the fact that Diggers Creek water race is an archeological site pursuant to the Historic Places Act 1993 and that it is an offence to modify, damage or destroy any archeological site.	9	Allow	Accept

Rationale for Allow:

The point concerns the protection of significant inherent values which is a relevant matter under 24(b) CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

This is a new perspective that has previously not been considered. The point is therefore accepted for consideration in formulating a substantive proposal.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
17	The covenant should include a clause that sets a stock limit to ensure ecological sustainable land management.	10	Allow	Not Accept

Rationale for Allow:

The point concerns the promotion of ecologically sustainable land management which is a relevant matter under 24(a)(i) CPL Act 1998. The point is therefore allowed.

Rationale for Not Accept:

The purpose of a Conservation covenant is to protect SIVs. The appropriate mechanism for promoting ecologically sustainable land management under the CPL Act 1998 is a sustainable management covenant under Section 97 CPL Act 1998.

The issue of whether a sustainable management covenant is necessary over the proposed freehold has previously been considered. The submission provides no new information on this matter. The proposed freehold land up to approximately 850m is capable of economically and ecologically sustaining pastoral farming being Class VI land of relatively easy terrain suitable for oversowing and topdressing. There is a relatively small area of land within proposed freehold that has very limited potential for ecologically sustainable use for pastoral farming being land above 850m having a cover of snow tussock. The main threat to ecological sustainable use of this area is burning. Burning of this area is prohibited without the MoC consent by the proposed Conservation covenant. There is therefore unlikely to be any significant threat to the ecologically sustainable use of this area that would justify a SLM covenant. The point is therefore not accepted.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
18	The proposed freehold should be subject to a sustainable management covenant that includes a clause requiring control of wildings.	10	Allow	Not Accept

Rationale for Allow:

The point concerns the promotion of ecologically sustainable land management which is a relevant matter under 24(a)(i) CPL Act 1998. The point is therefore allowed.

Rationale for Not Accept:

The spread of wilding trees is more directly a threat to SIV's and not to sustainable land management. The appropriate mechanism for acquiring the control of wilding trees to protect SIV's would be a conservation covenant under Section 40(1)(b) and 40(2)(a) CPL Act 1998.

The issue of wilding tree control as a threat to SIV's can however be considered under this point. Land within the proposed freehold below 850m is likely to be developed in the future for pastoral farming where stocking rates will tend to control the spread of wilding trees. Above 850m where the stocking rate may not control spread a Conservation covenant will apply which requires the land owner to remove wilding trees (clause 3.2.3). Consequently there is insufficient justification for applying a covenant to protect SIV's over the whole property for the purpose of requiring wilding tree control.

With respect to promoting ecological sustainability, exotic forest cover is not necessarily considered ecologically unsustainable. Trees in many circumstances can stop soil loss and increase life supporting capacity of the soils by increasing available soil nutrients. Their role in sequestering carbon may promote ecologically sustainable land management of the reviewable land by combating global climate change which may affect ecological sustainability. These matters have previously been considered and the point is therefore not accepted.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
19	The reviewable land should be recognized as being prospective for minerals and provision made to allow for mineral prospecting activities to continue, possibly by way of some form of transitional provision to ensure explorers and developers have a right to access Crown land on reasonable terms and conditions.	11	Disallow	

Rationale for Disallow:

The point concerns the matter of access to Crown land for mineral exploration and mining. This matter is provided for under the Crown Minerals Act and is not a matter that can be considered under the CPL Act 1998. The point is therefore disallowed.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
20	The planting of Eucalypts as allowed under the District Plan would have an adverse affect on landscape values within proposed freehold.	6	Allow	Accept

Rationale for Allow:

The point concerns the protection of SIV's in the form of natural landscapes which is a relevant matter under Section 24(b) CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

The point introduces a perspective not previously considered. The point is therefore accepted for consideration in formulating a substantive proposal.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
21	The submitter opposes public access along the Diggers Creek water race within proposed freehold as it conflicts with the farming operation.	7	Allow	Accept

Rationale for Allow:

The point concerns the securing of public access which is a relevant matter under Section 24(c)(i) CPL Act 1998. The point is therefore allowed.

Rationale for Accept:

The point introduces a perspective not previously considered. The point is therefore accepted for consideration in formulating a substantive proposal.

Summary and Conclusion

Overview of analysis

There was a total of 12 submissions received. Within these submissions 21 points were identified with an additional nine sub points that related to the principle points. The majority of submissions generally support the proposal while raising specific issues of concern. One submission opposed the proposal. The points that attracted the most submissions were points concerning road access and the legalisation of the Nevis Garston road, and public walking access along Diggers Creek water race.

Generic issues

The proposal raises the issue of timing of the legalisation of existing road formations in relation to the putting of a preliminary proposal.

Gaps identified in the proposal or tenure review process

Legalising road formations within the reviewable land is a matter that preferably should be dealt with prior to putting a preliminary proposal.

Risks identified

None

General trends in the submitters' comments

Provision of public access was the most common issue raised along with a general expression of support for the proposal. The majority of the submissions were from recreation and conservation groups with few comments from individuals suggesting that this review is not widely perceived as being contentious.