

Crown Pastoral Land Tenure Review

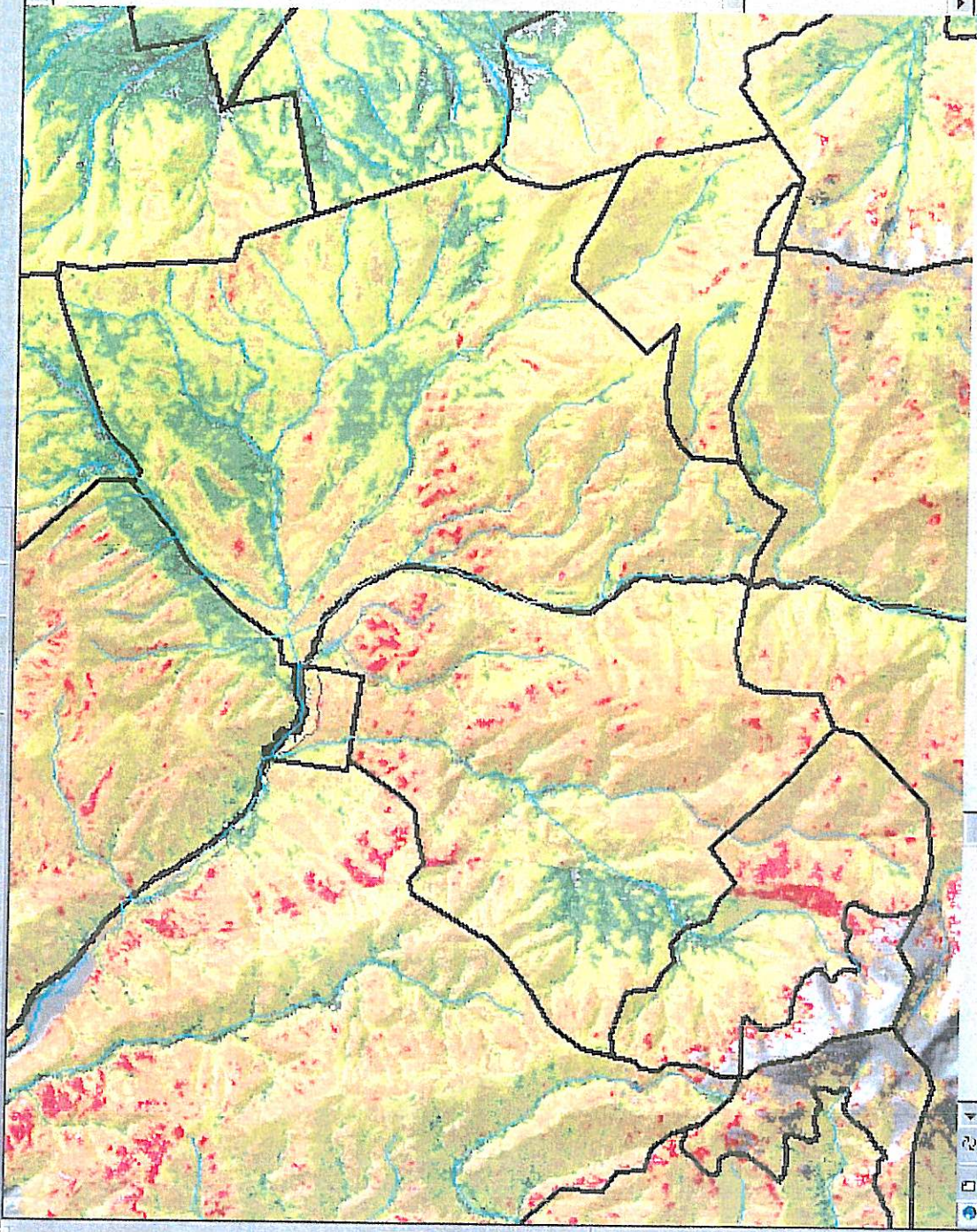
Lease name: KIRKLISTON

Lease number: PT 119

Public Submissions - Part 4

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

February 06



Layers

- Rivers
- Roads
- index polygon
- parcel polygon
- LUC class (ex NZLR1)
 - flats_region.img
 - I39D.TIF
 - I39B.TIF
 - I39A.TIF
 - I39C.TIF
- % Living on land above 600m asl

value
1 - 40
41 - 60
61 - 80
81 - 90
91 - 100
- pc_living_veg_etm77.img
- hillshade.img

THE NORTH OTAGO FOUR WHEEL DRIVE CLUB INC

P O Box 202

OAMARU

17 January 2005

5
19 JAN 2005

The Commissioner of Crown Lands
C/o DTZ New Zealand Ltd
P O Box 564
TIMARU

Dear Sir

RE: Crown Pastoral Land Act 1998

Part Run 329 Rural Section 41303 Mackenzie, Hewlings and Dalzell Survey Districts
As detailed in the High Country Herald 3/11/04

Members of the above Club have met and discussed the implications relating to the Tenure Review processes as it relates to Haldon Station and the Kirkliston Pastoral Lease. As a Club we have enjoyed a good and continuing relationship with the Land Owners as lessees - this has enabled us on a periodic basis to be able to have trips into the high country areas

We wish to be able to continue to have such accesses for the Club trips so that Members and Friends can experience the attractions of these areas. The Club along with other Four Wheel Drive Clubs have a policy of respecting the environment and ecosystems and embraces a policy of "treading lightly." As an example and in support of this e.g. to keeping to defined tracks and ensuring that any requirements a Landowner may have are adhered to, e.g. gate opening and closing and keeping areas travelled over "as found" to the satisfaction of the owners.

We view with real concern that some accesses are being completely denied except to a select few e.g. hikers and able bodied people who choose to visit such areas. A notable exception appears to be made to officers of the Crown who may use motorised access. We see this as being unduly restrictive and a departure from what has been historically a good and responsible use of land access. The Club has and still enjoys a good relationship with Landowners and have been able to clear tracks where access had become difficult using equipment Club Members carry. This kind of policy then is mutually beneficial - it would be a great shame to lose this.

In conclusion we do support retaining accesses to high country areas on a negotiated basis. We do not support the actions of a few who tear up sensitive areas and leave gouge marks where they have gone off the defined tracks. We believe that our high country areas are there for all to enjoy providing that accesses are able to be done on an agreed upon basis. This then ensures that the environment is able to be enjoyed and in some cases our Club along with other Clubs have been able to provide transport and back up in times of emergency e.g. Search and Rescue.

I enclose a copy of our Club's policies which we give to Landowners and the Department of Conservation when seeking access.

Yours sincerely


Ron Sim
SECRETARY

THE NORTH-OTAGO FOUR WHEEL DRIVE CLUB Inc

P O Box 202

OAMARU

President Curly Carrodus 434-8190

Vice President Stan Dorsey 437-1122

Secretary Ron Sim 434 8783

29 July 2004

19 JAN 2005

Information for Landowners and Department of Conservation

The Club has a membership of 85 - this number has been increasing steadily. The membership comes from the Otago and Canterbury areas with the majority of the membership being in the Oamaru area. The Club is an incorporated society which operates under a Constitution and rules. The Club's policies are designed to encourage the responsible use of FWD vehicles, to train members in driving techniques on and off road. Each member is required to carry a good range of equipment including 1st aid kits to help ensure that trips are conducted with a good safety margin and the necessary equipment for recovery purposes is carried.

Members are actively discouraged from deviating from established tracks and to respect the wilderness areas so that the environment is not damaged by careless and inappropriate use of vehicles. Prior to taking a group over an area the Club seeks permission, then trip leaders travel over the planned area to assess the tracks to ensure that the area is suitable for the various types of fwd vehicles. A description of the tracks to be travelled over including river and stream crossings, steepness of ascents, whether road tyres are suitable or heavier types of tyres are more suitable. In some cases the trip sheet will stipulate only high clearance fwd's with hi-lo ratios are made so that light fwd's are not driven over tracks they are not suited to. A description of what the proposed trip entails is then published in the Club's monthly newsletter so that those who plan to go on the trip are aware of what the trip will entail. Chains are usually carried as a precaution in case a sudden weather change makes for dangerous track surfaces.

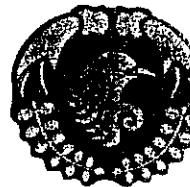
Prior to the commencement of each trip the trip leader(s) gives a briefing as to what the participants can expect and of any requirements which may be made. Each trip has a trip leader, a "tail end charlie" who liaises with the trip leader (by CB radios) to co-ordinate the trip. There are usually a number of CB radios on the various FWDs to keep in contact with each other. Gate opening procedures are made in such a way that the person who opens the gate also closes the gate so that this important procedure is done effectively. Gates are given a final check by "the tail end Charlie" to ensure they are secure.

Any requirements which the Landowner or DOC makes are adhered to. e.g. if rain has created a dangerous situation and the landowner or DOC does not want tracks damaged the Club Leader or Trip leader can be phoned to either postpone or arrange an alternative trip

Ron Sim

SECRETARY

6



FOREST
& BIRD

ROYAL FOREST AND
BIRD PROTECTION
SOCIETY OF
NEW ZEALAND INC

South Canterbury Branch
Royal Forest and Bird Protection Society of NZ Inc
29a Nile St
Timaru

17.01.05

The Commissioner of Crown Lands
C/- DTZ NZ Ltd
P.O.Box 564
Timaru

20 JAN 2005

Dear Sir

Re: Kirkliston Tenure Review Preliminary Proposal

Thankyou for sending the Branch a copy of the proposal, from DTZ NZ, dated 4.11.04.

The South Canterbury Branch, generally supports the submission of our national Society, the Royal Forest and Bird Protection Society of NZ Inc, dated 07.01.05, prepared by Tony Lockwood - Field Officer - a copy is attached.

Some of our Branch members have inspected the property, in April 1995 and found there were landscapes of high significance and areas with good conservation values, such as the landscapes of the Haldon Downs and associated tussock grasslands.

And, we also noted that much of the vegetation cover had been severely depleted, due, most likely, to heavy grazing pressure by stock and rabbits. Land management regimes need to be much more sensitive to sustaining the environmental values, especially soils and vegetation cover.

The Branch notes, as has the Society, that the Director General of Conservation has refused to give his consent to this preliminary proposal, because some of the necessary objectives have not been met. The apparent failure to meet important objectives is of serious concern to us.

Regarding the *Proposed C Area, CA1*, while the Branch fully supports the retention of this area in Crown Control for conservation, we also support the stance by the Society, that the area should be much greater in extent and include such areas as the only stand of red tussock on the property and to make use of existing fence lines as a practical boundary for this Conservation Area.

Regarding the *Proposed C Area CA2*, again the retention of this area in Crown Control is fully supported, but we ask, as has the Society in its submission, that the area be increased, to adequately protect all the significant conservation values. And, the boundary be

extended much lower down, to include more conservation values such as the interesting fellfield on the southern boundary of this proposed area CA2.

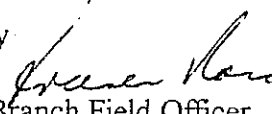
The landscapes values are considered by the Branch to be very high, especially the Haldon Downs as has been pointed out in the Society's submission. While the Society has asked for the inclusion of a landscape protection covenant to prevent, subdivision, cultivation, new farm buildings or the construction of new roads or tracks, the Branch also asks that the planting of trees and plantation forestry be included as well. But the area of the Haldon Downs, when viewed during our inspection - April 1995, appeared to have good tussock/snow grass cover and it was considered then to warrant a high level of protection. Unless the area has changed significantly, the Branch would like to see the area of the Haldon Downs, with good tussock cover, retained by the Crown as Conservation lands.

In general the Branch supports the submission of the Society and would like to see the same decisions made that it has sought. But, unless the vegetation cover has changed significantly we have reservations about the freeholding of the Haldon Downs which we feel should be retained in Crown control. However, if this area is to be freeholded, then there should be a landscape covenant, preventing adverse development activities, including tree and forestry planting.

The Branch also supports the Society's request, that if negotiations with the leaseholder fail to secure significant gains for conservation, recreation and landscape outcomes, that the Crown withdraw from this tenure review exercise.

In conclusion, the Branch appreciates the opportunity to make a submission on the Kirkliston Tenure Review Preliminary Proposal.

Yours sincerely


Fraser Ross - Branch Field Officer

Attached, copy of the Society's Submission.

Royal Forest and Bird Protection Society
PO Box 2516
Christchurch Mail Centre

Ph 03 366 0655

7 January 2005

The Commissioner of Crown Lands
C/o DTZ New Zealand Limited
PO Box 564
Timaru

Dear Sir

Submission on Preliminary Tenure Review Proposal for Kirkliston Pastoral Lease

Introduction

The Royal Forest and Bird Protection Society (Forest and Bird) is New Zealand's oldest and most active voluntary conservation organisation. Formed in 1923 the Society has around 38,000 members in 56 branches around New Zealand. This submission is on behalf of the Central Office. The Society's constitution requires it to:

"take all reasonable steps within the power of the Society for the preservation and protection of indigenous flora and fauna and natural features of New Zealand for the benefit of the public including future generations."

"Protection of natural heritage includes indigenous forests, mountains, lakes, tussocklands, wetlands, coastline, marine areas, offshore islands and the plants and wildlife found in those areas."

This submission is based on a thorough analysis of the "Summary of the Preliminary Proposal for Tenure Review of Kirkliston Pastoral Lease", the Department of Conservation's "Conservation Resources Report" for the property and other associated documents, as well as a field inspection of the property undertaken in December 2004.

General Comments

For the vast majority of this property the land management practices of the previous 100 years or more have resulted in massive degradation of the ecological values. The most dominant plant species on the property is now *heracium pilosella*, which occurs in almost unbroken mats along with bare earth and rock between widely spaced tussocks, over large areas of the property. Heavy grazing by stock and rabbits, repeated burning, natural erosion of the disturbed ground surface and aggressive invasion by heracium following disturbance and erosion, have reduced the density of tussocks and completely removed the indigenous inter-tussock species.

Management practices need to change dramatically to ensure this degradation is halted. Continued burning, heavy grazing and high rabbit numbers will not only result in the loss of all indigenous flora and fauna but also pose a very real threat to soil and water conservation. Management practices that have resulted in the land shown in Fig 1 cannot be interpreted as being "ecologically sustainable" and hence do not meet the objectives of Part 2 of the Act (sec 24(a)(i) CPLA).

To ensure the recovery of the indigenous vegetation and reverse its creeping dominance by heracium it is essential that the land is retired from pastoralism and managed for conservation purposes. The land above 1100 – 1200m is particularly susceptible to weed invasion and soil disturbance because of the fragility of the indigenous plant communities and the extreme climatic conditions at that altitude.

We note that the Director General of Conservation has refused to give his consent to this preliminary proposal as notified, stating that in his view the proposal does not meet either the objectives of Part 2 of the CPLA or the government's objectives for the South Island high country. We are very concerned that LINZ has chosen to disregard the advice of a government department with a statutory responsibility to advise the Crown, Ministers and other government departments on conservation matters.

It appears that no independent alternative conservation advice from a similarly qualified individual or organisation has been used to refute the department's position. In fact no rationale at all has been provided for the decision to proceed with the preliminary proposal and disregard the department's advice that it is contrary to the objectives of the Act.

Proposed Conservation Area CA1

Forest and Bird supports the creation of this conservation area, but considers it is not large enough to protect the significant inherent values of the upper Basin Stream catchment. In both the eastern and western branch valleys the conservation values increase with altitude. From about 1200m the density of tussocks increases and heracium becomes less dominant in the inter-tussock gaps with indigenous herbs and mosses becoming more prevalent. In the western branch of Basin stream there are large areas of red tussock grassland, where the tussocks themselves are dense and in relatively healthy condition, although the inter-tussock gaps tend to be dominated by introduced pasture grasses.

We submit that a greater proportion of these upper valleys and basins warrant protection to ensure their ecological sustainability. Fig 2 contrasts sharply with fig 1 and shows the vegetation in the upper east branch of Basin Stream. Only full Crown ownership and control will ensure it does not resemble fig 1 in another 50 years.

A logical new boundary is the existing fence line descending the slope from point 1323 to the valley floor then ascending the other side of the valley to point 1254. This boundary is shown on the attached map. This boundary ensures adequate protection of

Figure 2: Relatively intact indigenous vegetation community within CA1
Proposed Conservation Area CA2

Again Forest and Bird supports the creation of this conservation area but submits that it is not large enough to adequately protect the conservation values. From about the 1250m contour and higher vegetation patterns become dominated by indigenous species in many areas. The density of snow and fescue tussocks becomes greater and there is a greater diversity of native herbs, lichens and cushion vegetation with heracium less abundant.

The fellfield at the southern boundary of CA2 retains a high degree of naturalness and certainly warrants protection and we support its inclusion in CA2, however we consider the boundaries of the conservation area need to be extended much lower to include some of the values described above. The attached map shows a proposed boundary that makes logical use of ridgelines spurs and catchment boundaries to protect land at higher altitudes.

Again we are concerned that continuation of the current management regime on land at this altitude is not ecologically sustainable and will over time result in the vegetation patterns shown in figure 1 unless the area is retired and managed for conservation purposes.

the best areas of indigenous vegetation, including the only red tussock on the property, and makes use of an existing fence line.

Haldon Downs (F1)

The Haldon Downs have very high landscape values. The gentle rolling hills with relatively steep and incised valleys all inclined in a consistent westerly direction are a relatively unique landform and contrast strikingly with the steeper, higher and bulkier ranges that are the norm in the area and in New Zealand as a whole. Although the tussock grasslands are hugely modified and their ecological value is compromised, they still have value in the contribution they make to the landscape when viewed from a distance. The tawny yellow and brown colours are outstanding and are currently unbroken by visible farm tracks, roads or a multitude of glaring silver iron farming buildings.

The views from the high points of Kirkliston will be one of the highlights of visitors to the property in the future. They include stunning panoramas of the main divide with Aoraki dominant above Lake Pukaki just across the Mackenzie basin. They will also include views of the Haldon Downs from above. This landscape should be protected from inappropriate development.

We submit that the inclusion of a landscape protection covenant preventing subdivision, cultivation, new farm buildings or the construction of new roads or tracks would provide the necessary protection. We support the freeholding of the downs providing the covenant is in place. The proposed covenant is shown on the attached map as F1 and is bounded by the 900m contour, the northern boundary of CA2 and part of Pringle Stream.

Figure 3: The west sloping incline of the rolling Haldon Downs Lower Slopes and Valleys and Pringle and Hay Stream Flats (F2)

The area shown as F2 on the attached map is dominated by introduced pasture grasses at lower altitude or highly modified short tussock grasslands on the higher slopes. It has little conservation value and is capable of economic use in a way that is ecologically sustainable. Forest and Bird supports the freeholding of this area.

Recreation Access

Forest and Bird fully supports the creation of the easement a,b,c,d,e to provide access to the new conservation areas. This is the most practical line for access and also provides access to adjoining conservation lands and the Hakataramea valley from the Mackenzie Basin providing opportunities for extended mountain bike rides and horse treks in the region.

Decision Sought

1. That the amended and enlarged areas marked CA1 and CA2 on the attached map are retained in full Crown ownership and control for conservation purposes to protect significant ecological, recreational and landscape values.
2. That the areas marked F1 and F2 on the attached map are disposed of as freehold title to the leaseholder.

3. That the area marked F1 has a landscape protection covenant established to prevent subdivision, cultivation, new farm buildings or the construction of new roads or tracks on the Haldon Downs above 900m in altitude.
4. That the easements and marginal strips contained in the preliminary proposal are retained.

If negotiations with the leaseholder fail to secure significant gains in terms of the conservation, recreation and landscape outcomes suggested in this submission Forest and Bird strongly urges that the Crown withdraw from negotiations and the property continue as a pastoral lease.

Thank you for the opportunity to make a submission.

Tony Lockwood
Field Officer
For Conservation Manager



**COMBINED
4WD CLUBS
P O BOX 5457
CHRISTCHURCH**

7.

By Fax

20th January 2005

The Manager
DTZ New Zealand Ltd
Land Resources Division
Fax Number 03-6880407
TIMARU

RE Kirkliston Preliminary Proposal

Dear Sirs

Combined 4WD Clubs Inc which represents over 500 family members of our 8 member clubs wishes to make a submission to this Tenure Review preliminary proposal for Kirkliston.

Kirkliston is an important property from our point of view, as it has a good legal road leading to it; it has strong recreational opportunities in its own right, admittedly not large but still important; it had a good existing 4WD track infrastructure, and it is central to other properties.

Our Submission: -

- 1 Stoney Creek Road
 - 1.1 Public vehicle access to Kirkliston is by a public road Stoney River Road. This road is an easily driven road, but in the main better used by 4WD vehicle rather than a 2WD car, due to its terrain. Vehicles using the road require higher ground clearance, especially as the road can get easily rutted, and some care is need at crossing fords.
This road needs to retain its status.
 - 1.2 There is a 'gap' in the legal road at the point 'a' on the Diagram A. While the Crown Pastoral Act does not cater for the creation of public roads, (*as we understand the act*) we believe that consideration should be made to link the public road here, so that there is then a continuous public road through that extends to Hall Creek and beyond. Therefore for completeness we recommend that this be investigated, as there must some mechanism that can allow this to occur.
 - 1.3 The status of the legal road continuing from point 'a' along Hay Stream and beyond to the boundary remain at its current status.
- 2 Easement 'a-b-c' & 'd-e'
We recommend that the terms of the easement be amended so that section 'a-b' only as part of the easement have 'public vehicle access' added to it. This would allow easy 4WD vehicle access to point 'b' the remaining parts of the easement can remain.

Reasoning: -

Because of the location of Kirkliston, and the fact that legal roads go to and through the property, and it's somewhat remoteness vehicle access for recreational purposes is important, Just as important as it is for farming, maintenance and land management purposes.

Vehicle access is important for the following reasons: -

- 1 By limiting vehicle access adds time to those who want to really get to the out door experience, trampers, fishers, hunters mountain bikers and the like can be a barrier to recreation, as most want to travel to the nearest point from which to start their activity.
- 2 Most recreational persons recreate in weekends only and therefore only have a two day and or two night window, and want to be able to use as much of that time recreating.
- 3 Schools and educational institutions who use the out of doors for outdoor activities field trips and the like, also need to use that time economically, and good vehicle access to start points is important.
- 4 The existing infrastructure of a legal road and good 4WD tracks are sufficient for the type of recreation that this area does and in the future will attract.
- 5 Elderly people, disabled people and those with special needs can also enjoy the area where as to travel on foot or similar means would make recreating impossible for them, and they should be allowed equal opportunity.
- 6 The area is suitable for organised groups and Clubs to use for recreational purposes, either just on Kirkliston or as passage through and to adjoining properties. (subject of course to adjoining property land holders consent)
- 7 Access to conservation areas CA1 and CA2 would be more convenient, safer and easier.
- 8 Kirkliston is a hub of tracks that also allow vehicle and general access to neighbouring properties and allows easy transit for those wishing to.

The remainder of the easement through points 'b-c', 'c-d' and 'd-e' we recommended be left unchanged as standard easement conditions, as we believe that on these parts of the easement the terrain is not suitable for public 4WD use. Access by foot, mountain bike, or horse would be more suitable. Those wishing to reach the conservation areas (CA1 & CA2) would then find access convenient and interesting by being able to have vehicle access to point 'b' via the easement, or via Hay Creek along the from of the public road at Hay Creek giving access to points 'd' or 'e' via the standard easement conditions.

We support and agree the proposal in general, and support the values as outlined in the proposal, in particular the opportunities for recreation are possible with improved access as we outline.

Past use of the area for recreation:-

We note from the proposal (section 3.2) that there is relatively low use of the area for recreation. We would agree, and for the record 4WD Clubs have been frequent but low volume recreational users historically.

With the proposed change of ownership our ongoing use will probably remain unchanged.

Our Member Clubs have had access (with run holders consent) and have used Kirkliston and other adjoining properties since the 1960's. Kirkliston and the area in general, are ideal for recreational 4WD trips, the property has good tracks, has access to tops that afford good views and the area is also a hub of tracks when travelling to from and through the neighbouring properties.

21 JAN 2005

THE GERALDINE TRAMPING CLUB

76 PYE Rd, RD21,
GERALDINE,
20th, JANUARY 2005.

THE MANAGER,
DTZ NEW ZEALAND,
P.O. BOX 564,
TIMARU.

Dear Sir,

KIRKLISTON TENURE REVIEW PRELIMINARY PROPOSAL

Thank you for the opportunity to comment on the proposed review of Kirkliston. The Club has looked at the items as outlined in your document of 04 November 2004, and is contented with these proposals.

Yours faithfully,

F.D. Thomas,
The Geraldine Tramping Club.

Public Access New Zealand

9.

INCORPORATED

R D 1 Omakau 9182 Central Otago New Zealand
www.publicaccessnewzealand.org

Phone & Fax 64-3-447 3554
panz@es.co.nz

21 January 2005

DTZ New Zealand
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Fax (03) 688 0407

FAXED

11am 21/1/05

Submission: Kirkliston Tenure Review Preliminary Proposal

In summary the proposal entails freeholding 5965 hectares and retaining 1556 hectares in Crown ownership as Conservation Area. Public access for foot, cycle or horse use, as easements over freehold, is proposed to reach two proposed conservation areas.

In terms of the minimal area proposed for Crown retention despite well documented 'significant inherent values', freeholding of a large tract that is clearly unsustainable for pastoral farming, and the absence of security of public access, the proposal is in breach of the objects of the Crown Pastoral Land Act (CPLA). We submit that it should not proceed.

Proposed Freeholding

Despite the primary object of the CPLA (s24) being to "promote the management of reviewable land in a way that is ecologically sustainable" there is no justification in any of the official papers supplied to us for freeholding almost 6000 hectares of highly depleted, semi-arid high country. There is nothing recording that these lands are capable of sustainable farming. This should be the paramount test for all decision-making under the CPLA.

Conversely DOC records that "the entire property is badly degraded yet is still being grazed...grazing of severely depleted vegetation was observed in several localities...this is not considered to be sustainable. For reasons of sustainability (both soil, and existing modified communities), the bulk of the property should not be freeholded or available for continued pastoral use".

A low degree of naturalness (and hence qualification for conservation area status) is cited as a justification for freeholding however this does not preclude retention in Crown ownership other than under the jurisdiction of DOC. The argument in the Summary of the Preliminary Proposal that the

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

area "is not heavily utilised for recreational purposes" is a specious justification for freeholding given that there are no legal rights of use now. Tenure review could and should create rights and opportunities absent to date. Freeholding will permanently preclude such opportunities.

As an illustration of selective argument, the retention of the minimal areas in Crown ownership is in part justified by the presence of 'mauri' or 'life force of water' as being important to Maori. "The headwaters of the Pringle and Basin Streams have mauri and are located on the land proposed to be designated as Crown land". However the fact that 3.8 times this area also has 'mauri' but is proposed to be freeholded seems to have escaped the attention of the authors of the Preliminary Proposal. Or perhaps the reference to 'mauri' is merely politically correct pap. It hardly qualifies as a 'principle of the Treaty of Waitangi' to which due regard is required (CPLA s. 25(b)).

Proposed Conservation Areas

There are two areas proposed - Mt Sutton and the Kirkliston Range.

On the NE faces of Mt Sutton the headwaters of Basin Stream are to be reserved. This is the uppermost extent of the Kirkliston Basin which DOC describes as "a feature of considerable landscape interest". Over half this area is required to be surrendered from the pastoral lease in accordance with a Soil and Water Conservation Plan which would occur irrespective of tenure review.

This is only half the area DOC recommended for Crown retention in their Conservation Resources Report. On the basis that significant inherent values exist they recommended retention of all the east faces of Basin Stream, with a short public access easement to the Stony River Road. This would have provided an easily accessible natural and recreational area with significant potential for public use. The current proposal is so constrained and distant that it is unlikely to receive any public use.

The Kirkliston Range block is at the northern extent of the range and will comprise an extension to the existing Kirkliston Range Conservation Area.

Terms of public access easement

The objects of Part 2 of the CPLA contain a duty under section 24(c)(i), to "secure public access to and enjoyment of reviewable land". 'Securing' entails more than passive or inadequate provision of public access. Whilst no definition of 'secure' is contained in section 2 CPLA it is normal judicial practice, in the absence of applicable statutory definition, to look at ordinary dictionary interpretations for meaning. The Concise Oxford, Seventh Edition, defines 'secure' as "safe against attack, impregnable, reliable, certain not to fail or give way, having sure prospect...from interruption".

We submit that in most respects, the proposed 'protective mechanism' in the form of a public easement pursuant to section 80 CPLA and section 7(2) Conservation Act fails to be "safe against attack, impregnable, reliable, certain not to fail or give way, having sure prospect...from interruption".

A factor not widely known is that under the Crimes Act (section 58) the public is liable to eviction notwithstanding rights under any easement. The reality is that these will be private lands notwithstanding any public privileges granted. This highlights the reality that this is freehold land and the right's granted are constrained and vulnerable. This is in marked contrast to the protections and certainty afforded by public roads which are wholly public property.

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

Exclusion of schedules.

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

Temporary suspension.

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

The absence of any cited legal authority for closure is of great concern. If there are lawful powers of closure applicable they should be expressly cited. Without such there can be no accountability for DOC's future actions, and therefore no certainty of public access. If genuine reasons for closure of conservation areas exist, these should be directly exercised over such areas, and not on access ways leading to such. Police and rural fire authorities have more than sufficient power of closure now without DOC attempting to extend its jurisdiction beyond the land it administers.

We submit that the above easement, even with amendment, cannot meet the test of securing public access as required by the CPLA, and should not be used. Public paths, dedicated as public roads, are required, as set out below.

Designation as 'public highway' required

The only form of secure public access in New Zealand is public road. At common law, every member of the public has a right to assert unhindered passage at all times. Such rights are vested in the public and not the roading authority. Over many centuries, such rights have proven to be very robust, notwithstanding inadequate and at times unlawful administration by roading authorities. The existence of direct public remedies against anyone whom obstructs passage is the key ingredient to securing access. The remedies available are removal of obstructions, suing the obstructing party, or both. No such remedies exist for obstructed public easements.

There are statutory abilities to temporarily close or permanently stop roads, however the grounds for such are very constrained. There are public processes and a large body of case law to ensure that the exercise of such powers is not unwarranted or unreasonable. The same cannot be said of the terms of the proposed easement.

PANZ submits that secure public access must be provided along all the routes proposed in the Preliminary Proposal. These routes should be designated as land pursuant to CPLA section 35(2)(a)(iii) for the specified Crown purpose of 'public highway'. These roads should be dedicated as public highways for foot, horse, and cycle passage, with animus dedicandi being fulfilled by public acceptance and use.

I cite the relevant sections of the CPLA:

Section 35(2)(a)(iii). Designation of land held under reviewable instrument, freehold land, and unused Crown land---

(2) A preliminary proposal may designate all or any part of any land to which this section applies as---

- (a) Land to be restored to or retained in full Crown ownership and control---
- (i) As conservation area; or
- (ii) As a reserve, to be held for a purpose specified in the proposal; or
- (iii) For some specified Crown purpose.

The specified Crown purpose should be "public highway".

In conclusion, the CPLA provides the ability to retain in Crown ownership and control assets which further the objects of the Act. The scope of Crown retention is not confined to conservation areas as this Preliminary Proposal effects. The assets can include roads whether formed, unformed, or usable by vehicle or not. In this case we submit that there is an obligation for the Crown to retain ownership of the currently proposed 'easement areas', but as public roads. This is the only proven means of fulfilling the CPLA's object of "securing public access and enjoyment of reviewable land". The alternative offered is seriously deficient.

Freehold land should be included

We note that the pastoral lessee is also the freehold owner of Rural Section 33976. This adjoins the pastoral lease at Stony River and provides the only practical access to the property. Unfortunately Stony River Road is disjunctive at the boundary with a gap of about 50 metres before resuming to provide a very useful access up Hay Stream. Also the section of formed road through RS 33976 is on the true left bank whilst the legal alignment meanders across the river.

As the provision of secure and practical public access is an absolute necessity if any conservation areas resulting from tenure review are to have public worth, given the common ownership, this freehold section should be included in tenure review.

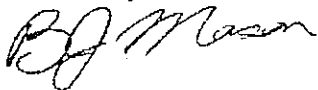
If there is a 'concurrent negotiation' between DOC and the owners, outside of tenure review, this and the proposed results should have been identified in the documents released for public consideration. However we suspect that the myopic directions of LINZ have prevailed. If so LINZ cannot then rely on any independent arrangements made by DOC as a justification for "their" tenure review. The latter can only be judged on the official published proposals, which remain woefully inadequate.

Absence of Marginal Strips

The absence of any indication in the proposals of existing marginal strips and of those streams that qualify for new strips is a grave deficiency. It is impossible to judge the adequacy for recreation of the Preliminary Proposal and to advocate alternative arrangements in their absence.

We do not agree with current administrative practice of dealing with marginal strips as an after-thought, post the final determinations of tenure review. The current policy of only identifying "obvious" marginal strips does not fulfil the legal requirements of Part IVA Conservation Act and is therefore unlawful.

Yours faithfully

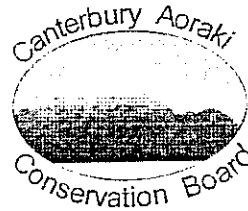


Bruce Mason

Spokesman and Researcher

24 JAN 2005

10.



21 January 2005

The Commissioner of Crown Lands
C/- The Manager
DTZ New Zealand Ltd
Land Resources Division
Box 564
Timaru.

Dear Sir

Re: Kirkliston Tenure Review Preliminary Proposal

The Board discussed this matter at its meeting at Aoraki/Mt Cook on December 7/8 2004. After hearing from the Canterbury Conservator, considering the Preliminary Proposal (PP) as advertised, and reading correspondence from DOC to LINZ and its agents.

The Board is of the view that this proposal should not go ahead in its present form. It believes the Preliminary Proposal should be either withdrawn, or thoroughly reviewed to better meet Government policy objectives regarding tenure review and the CPLA.

At present it appears from information the Board has received that, in this case, policy is being approved by the Government, but not applied by officials or its agents. We find this an unsatisfactory and undemocratic state of affairs.

Reasons for the Board's position:

- The proposal does not adequately take into account the CPLA. It also believes the additional complementary objectives for tenure review announced the Minister and LINZ in August 2003, after long discussions with Government departments, CRIs and Environmental NGOs, have largely been ignored. According to our information the PP appears to have only limited protection of SIVs at higher altitude, and no protection at lower altitude, completely negating protection of important altitudinal sequences and biodiversity values. This is despite consultation with the Department of Conservation's Tenure Review Manager and Twizel Area Manager on these matters.
- We note that concerns raised by the Department about this Proposal have been largely ignored. As a public advisory body to DOC we are unhappy that important information from the Department is being treated in this cavalier manner. This puts the Department in a difficult position with regard to the public and specific interest groups.

- Some members of the Board have expressed concerns about the fence lines being unsustainable at such high altitude. It is suggested that fence lines above 1000 metres are at risk of collapsing in heavy snow, and this is already a common occurrence on some properties. Some fences in this PP are at 1500 metres. The Board is concerned at the useless expense and maintenance costs if this is the case. In the Board's view there are two alternatives: put fence lines at a lower altitude where they are at less risk of collapsing because of snow, and manage grazing above these lines according to a lease agreement. Alternatively do not go ahead with TR, and manage high altitude grazing through the current lease agreement which has 27 years before renewal.

Yours sincerely

A handwritten signature in black ink, appearing to read "Alan Jolliffe". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Alan Jolliffe
Canterbury Aoraki Board Chairman

NGAI TAHU'S POSITION

On 8 November 1996 the holder's representatives were visited by Trevor Howse from Ngai Tahu, Mike Clare from DoC and Ray Ward-Smith from DTZ to discuss Ngai Tahu interests and the Conservation Resources Report.

Ngai Tahu were consulted by letter dated 4 November 2004 when the Preliminary Proposal was advertised. On 21 July 2005 verbal advice was received that Ngai Tahu had no concerns with the proposal, and that this advice would be confirmed in writing (file note at Appendix 18). Written advice has yet to be received.