

Crown Pastoral Land Tenure Review

Property: Mt Oxford

Public submissions

These submissions were received as a result of the public advertising of the preliminary proposal for tenure review.

September 03

A SUBMISSION FOR FMC ON THE PRELIMINARY PROPOSAL FOR TENURE REVIEW OF
THE FORMER MOUNT OXFORD PASTORAL LEASE AND LICENCE TO GRAZE

INTRODUCTION

FMC prepared an early warning report on this property. This was supplied to the tenure review contractor and Department of Conservation on 20th February 2003. This submission should be read in conjunction with our earlier report. That report gives our views and knowledge on the significant inherent values of the land and in particular its recreational values. This submission addresses the specific details of the Proposal. It is interesting to note that both FMC and DOC came to similar conclusions about an appropriate division of the land although we were unaware of the DOC designations at the time of writing our report. We also note this review has been conducted in an objective manner without the semi-adversarial process that results when a lessee's interests are involved.

THE PROPOSED DESIGNATIONS

FMC supports the proposed designations into Crown land to be retained as conservation land and land suitable for disposal in fee simple. We consider this a rational division of the land in terms of its recreational values. However we comment below on some other significant inherent values of this land.

1 ✓

There are areas of regenerating shrublands in the southern tributaries of Big Ben Stream. These are recorded in DOC's Conservation Resources Report and its attached values map but no action was proposed. They are within the proposed freehold and should be protected by a conservation covenant.

2 ✓

The area under review has important natural landscape values. There are substantial areas of exotic production forest on freehold land to the south of Big Ben Saddle. This does not intrude visually on the land under discussion but a forestry company has stated an interest in buying the former pastoral lease land. We consider that if afforestation "spills over" on to the potential freehold it would modify the natural landscape of the upper Ashley Gorge and the Mt Oxford plateau to a much greater degree than the traditional grassland farming. We suggest that the land be covenanted prior to disposal so that forestry is prevented.

3 ✓
12 ✓

PUBLIC ACCESS

Access across proposed freehold

We agree with the location and routes of public access proposed over the new freehold. However the High Country Coalition (of which FMC is a member) is becoming increasingly concerned by the practice of using easements as the main form of public access under tenure review. These are of doubtful legal security and can be extinguished or varied without public process. We submit that these routes should be made more secure by dedication as roads. Research by our kindred NGO, Public Access New Zealand, shows that roads can be dedicated without survey on an identifiable route. Also the dedication can be for particular purposes such as

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foot and horse traffic and does not imply provision of vehicle access or a requirement for maintenance.

Marginal Strips

We note that the information re marginal strips provided in the summary of the Preliminary Proposal is incorrect and misleading. The map provided indicates that marginal strips exist along most of Big Ben Stream. In fact these have not yet been laid off. SO19023 (dated 21.6.93) shows a plan of Big Ben Stream without strips but with a notation stating "Subject to Section 24 (9) Conservation Act (marginal strips) upon the renewal of the pastoral lease under the Land Act, 1948 (both sides of waterway)" The lease was renewed in 1994 but the strips were not implemented. It appears this failure to lay off the strips was because the lessee objected. If this is correct, this is a significant tampering with public process and record to suit an interested party.

4 ✓

The strips still need to be implemented. The Commissioner's view is that marginal strips are not part of tenure review and it is DOC's duty to require them as part of the disposal of the land subsequent to tenure review. Clearly it is necessary to ensure that they are laid off when this occurs.

Access to the land under Review

The principal public access to the land under review is via Sladden's Bush Road which approaches Big Ben Saddle from the south. This starts as a formed road and changes gradually to a 4WD track. The Due Diligence Report records that "the track on the Sladden's Road route has been washed out in some areas and that a new track has been formed that would provide access to the Run boundary". This track is not on the legal roadline and was formed by the adjoining freehold owner and the forestry company.

The recommendations of the DDR notes "a potential liability To provide both practical and legal access to the property as an extension to an existing access arrangement with adjoining landowners"

The DOC recommendations record this issue principally in terms of their own management access but also state "Walking, mountain biking and horse riding access for the public is also very desirable."

The summary of the Preliminary Proposal supplied by the LINZ contractor states "this proposal does not deal with the provision of public access over a formed track that crosses adjoining land."

20 ✓

Despite all this collective awareness, the Proposal document does not offer a solution.

The CPLA, S.24, Objects includes "to make easier ... the securing of public access to and enjoyment of reviewable land".

It follows that the Commissioner has a duty to pursue the provision of secure access. The ideal solution would be legalising the line of the track where it departs from the existing legal road. Our comments above (in the section on

access across the proposed freehold) re the ability to dedicate roads without survey are equally applicable here.

Our early warning reports notes the there is a sign on the public road close to the Adams Memorial Hut stating "Private Property – Trespassers will be Prosecuted". Once access has been secured along the road line this sign should be removed. A DOC sign should be installed at this location explaining public rights and mapping the access.

2 ✓

SUMMARY OF RECOMMENDATIONS

1. Proposed division of the land is supported.
2. Shrublands within the freehold land need to be protected and potential forestry prevented – both by covenant.
3. Public access within the new freehold is supported but should be given more secure status.
4. Marginal strips still need to be implemented on Big Ben Stream.
5. Public access via Sladden's Bush Road needs to be secured and signposted when secure.

David Henson
FMC Tenure Review Co-ordinator, North Canterbury

26.6.03

(2)

Tenure Review of Mt. Oxford "Other Crown Land"

Submission by George and Jennifer Jason Smith
Mountain House
110 Mountain Road
Coopers Creek RD1
OXFORD

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email: Mt.House@xtra.co.nz

We would welcome an opportunity to discuss our submission in person.

1. This area borders the Oxford Forest. Kea and kaka are present in the bush and kereru and bellbirds are common. On land to the east and west of the blocks in question rare native orchids have been found and there is significant regeneration of totara and rimu with some matai also present. The land proposed for disposal as "fee simple" is poor quality when compared with other land in the Waimakariri District and at only 320ha with no fences and no recent fertiliser history is unlikely to produce an significant return to the Crown when sold. It is one of the few remaining areas of tussock in the area and as such has its own conservation values.

2. This land would be farmed with great difficulty under the proposed boundaries. It will be even more difficult to do so under our suggested "recreational value" boundaries. A good reliable source of stock water will be hard to find, although there are many very small springs within the area. As the area gains popularity with trampers' and bikers, stock will be continually disturbed, not to mention the difficulties caused by hunters who will be ever-present. The Department of Conservation (DoC) publicly acknowledges that Mt. Oxford contains the most popular "front country" tracks in Canterbury.

5 ✓

3. We submit that this land has little productive value in its present state and that a far better and more practical solution is to keep the whole area in Crown (DoC) ownership and develop it for recreational and conservation uses, especially by mountain bikes, freeing the Rydes Falls track of these hazards and providing a return to all citizens.

4. Should freeholding be pursued we submit that:

a. A poled route is required off Mt. Oxford into the Ashley Saddle. As the north-west face of Big Ben is too steep for comfortable tramping and the views from the top are very worth-while, and different from those obtainable from the top of Mt. Oxford, the track should run from the Ashley Saddle over the top of Big Ben. The proposed boundary should be relocated clear of the ridge-line and clear of the summit leaving these features clear for the best walking tracks.

✓
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b. We are opposed to the physical separation of Run 225 and RS 42115 as together they form one feature and the best and most practical routes between the Coopers Creek carpark and Big Ben. If there are very good reasons why these titles cannot be "joined" then an easement should be established down Big Ben between Run 225 and RS 42115.

7 ✓

c. There is a locked gate is on the legal road leading up to area RS42115 from Payton Lodge. This gate is protecting pine trees planted about 10 years ago. It should be noted the formed track after this gate divides off the paper road which in fact runs straight up the hill. The Crown should ensure, as part of this development, that access to the southern boundaries of the Big Ben Block (i.e. RS42115 and Run 225) are secured.

20 ✓

d. If horses are to be permitted or encouraged to use this area careful planning will be required and the end of Sladdens Bush Road will be the only place they will be able to access the area. Permission will not be given for horses to cross our land at the Coopers Creek Car Park. This area is small and already overcrowded with trampers' cars and there is no room for horse-floats.

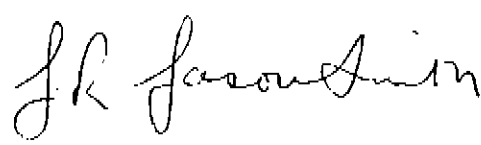
2 ✓

e. The boundary down Big Ben stream to the Ashley River should be defined and a track formed from Big Ben Saddle to the Middle Bridge on the Lees Valley Road this would establish a very worthwhile circuit track via Lees Valley Road for trampers, mountain-bikers and horses. A track had been pushed along the ridge line many years ago but gorse was head high 4 years ago.

22 ✓

f. It will be an interesting exercise keeping motorised vehicles that are not part of the management component out of the area. This area has been a very popular hunting destination for many years, and quad bikes etc. are ideally suited to the present track system. Has any thought been given to this?

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Public Access New Zealand

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Tuesday, 5 August 2003

Commissioner of Crown Lands
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Christchurch
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Submission on Mt Oxford Tenure Review Preliminary Proposal

Public Access New Zealand has not inspected the property and has been unable to consult local recreational interests before preparation of this submission. We therefore do not have a view on the adequacy of the conservation areas proposed for Crown retention, nor on the practicality of the access proposals.

After examination of official documentation provided to PANZ, and with a background of extensive experience with tenure review, we wish to confine our commentary to the following points—

Marginal strips

We note the existing section 58 marginal strips along the Ashley River. As these will be abutted by conservation area we see no need for further action to enhance public access along these river margins.

However we are most disappointed that the Crown succumbed to pressure from the former lessee, and did not formally lay off marginal strips at the time of lease renewal in 1993. This gives cause to wonder how many other lease renewals in Canterbury in which the requirements of Part IVA of the Conservation Act have not been complied with.

On Mt Oxford, SO 19023 records that new strips are only intended along Big Ben Stream but these will only apply "at future disposition". Given past official failure to comply with the law, what assurance is there at this final disposition (i.e. freeholding) will marginal strips be created?

Public Access New Zealand is a charitable trust formed in 1992. 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 is supported by a diverse range of land, freshwater, marine, and conservation groups and individuals.

PANZ is committed to resist private predation of the public estate.

This instance provides yet another good reason for marginal strips being dealt with as an integral part of tenure review. If this matter is continues to be left as an after-thought, in the absence of any transparency for official action or inaction, there is no assurance that those essential access provisions will be enacted. This is entirely unsatisfactory.

Although LINZ has disallowed from consideration during tenure review the matter of marginal strips, we believe such direction to be wrong in law. Not to consider marginal strip provision and associated rights of public access, is a material failure to comply with the objects of the Crown Pastoral Land Act (CPLA), in particular section 83(c)(i), "the securing of public access to and enjoyment of Crown land".

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Proposed public access easements

There are two easements proposed a-b-c and b-d. These are for foot, horse and cycle access. There is no prescribed width stated in the easement document. A minimum of 10 metres is necessary for the intended modes of passage.

From the official papers supplied to us there is some doubt whether section a-b is on legal road or not. If it is road it is not legally possible to create easements as everyone at common law already have rights of passage. The effect of an erroneous registration of an easement over a public road would be an effective 'stopping' and privatisation of the soil to the subservient tenement.

The proposed access should be confined to lands of the Crown and proposed freehold. The exact status of the alignment a-b must be first determined.

Terms of public access easements

The objects of Part 3 of the CPLA include a duty under section 83(c)(i), "to secure public access to and enjoyment of Crown land". 'Securing' entails more than passive or inadequate provision of public access. Whilst no definition of 'securing' 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 mechanisms' in the form of public easements pursuant to section 80 CPLA and section 7(2) Conservation Act fail to be "safe against attack, impregnable, reliable, certain not to fail or give way, having sure prospect...from interruption".

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 easements, 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

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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.

"The Transferee 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 total absence of any cited legal authorities for closure is of great concern. If there are lawful powers of closure applicable they must be expressly stated. Without such there can be no accountability for DOC's future actions, and therefore no certainty of secure 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.

Dispute resolution.

Despite the "Transferee" being defined to include "any member of the public", there are no provisions for public involvement in resolving any disputes between the Transferee (meaning DOC) and the freehold landowner. This means that "any member of the public" is totally dependent on DOC to uphold the public interest. There has to be provision for DOC being held publicly accountable for its handling of disputes if there is to be any confidence that access will not become insecure as a result of secret negotiations.

Another 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 are private lands notwithstanding any public privileges granted. This is in marked contrast to the protections and certain rights afforded by public roads which are wholly public property.

We therefore submit that the proposed easements do not meet the requirements of "securing" access, as required by section 83 (c)(i) CPLA and should not proceed.

Retention of Crown ownership and 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 for securing access. The remedies available are removal of obstructions, suing the obstructing party, or both. No such remedies exist for obstructed public easements. Experience from earlier tenure reviews has demonstrated that no reliance can be placed on DOC to uphold the public interest when access easements are obstructed.

There are statutory abilities to temporarily close or to 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 easements.

While it would appear that DOC does not want the public having unfettered access to the boundaries of land it administers, much like some private landowners, it is not DOC's wishes that must prevail in this case. It is the objects of the CPLA that must be observed. In regard to provision of public access the objects are clear - "secure access to and enjoyment of Crown land".

17 ✓

PANZ submits that secure public access must be provided along the alignments of proposed access but through designation of strips of land pursuant to section 85(5)(a)(iii)(2) for the specified Crown purpose of "public highway". These roads should be dedicated by the Commissioner of Crown Lands as public highways for foot, horse and cycle passage, with animus dedicandi being fulfilled by public acceptance and use. Section 93 provides for implementation once the Commissioner has adopted a Substantive Proposal.

16 ✓

While there are several options open in regard to the administration of any Crown purpose roads, the CPLA provides the ability to retain in full Crown ownership and control assets which further the objects of the Act. Those assets can include roads. In this case we submit that there is an obligation for the Crown to retain ownership of the currently proposed 'easement areas', but instead as public roads. This is the only proven means of fulfilling the CPLA's object of "securing public access and enjoyment of Crown land". The alternatives offered are clearly inadequate.

Yours faithfully



Bruce Mason
Researcher & Co-Spokesman

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**FOREST
& BIRD**

ROYAL FOREST AND
BIRD PROTECTION
SOCIETY OF
NEW ZEALAND INC

Regional Office (Northern South Island)
PO Box 2516
Christchurch Mail Centre
Christchurch.

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17 AUG 2003
NEW ZEALAND

Quotable Value (Valuations)
Team Leader Tenure Review
PO Box 13443
CHRISTCHURCH

7 August 2003

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Submission on proposal for Mt Oxford

1. Introduction

The Royal Forest and Bird Protection Society Inc. (Forest and Bird) has campaigned for 80 years for the protection of New Zealand's native species and the habitats on which they depend. Around 38,000 New Zealanders in 56 branches nation wide belong to Forest and Bird, supporting the Society's objectives of secure protection for native species, ecosystems, and landforms.

This submission is on behalf of the Central Office of the Society.

2. The preliminary proposal

Forest and Bird understands the preliminary proposal to be:

- The restoration to full Crown ownership and control as conservation land of approximately 1460 hectares
- The freehold disposal of approximately 320 hectares south of Big Ben Stream. (including an easement for public and conservation management access. (s 40(2)(b) & (c). of the CPLA))

3. Decision sought

Forest and Bird supports the proposed designations. However we wish to see:

- A section 97 sustainable management covenant to prevent a change of land use to exotic forestry (in order to protect the significant inherent landscape value of neighboring crown land)
- A section 97 sustainable management covenant to protect the regenerating shrub lands in the southern tributaries of Big Ben Stream

1/3 ✓

1/2 ✓

- The realignment of and rededication public roads from Sladdens Bush Road and Mountain Road to Big Ben Saddle instead of easements to fully secure public access (an object of a Part III CPLA process, s 88(c)(1)).

120 ✓
16 ✓

Forest and Bird fully supports the FMC submission of 24 June 2003

Thank you for your consideration.

Yours sincerely



Simon Johnson
Field Officer

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271 Centaurus Rd
Christchurch 8002
6 August 2003

Commissioner of Crown Lands
c/- Quotable Value New Zealand Ltd
PO Box 13-443
CHRISTCHURCH

REFUSED UNDER THE
OFFICIAL INFORMATION ACT

Dear Sir

**RE: PRELIMINARY PROPOSAL FOR TENURE REVIEW OF
MT OXFORD "OTHER CROWN LAND"**

This submission is presented by the Peninsula Tramping Club (Inc). We are one of the larger tramping clubs in Christchurch, with approximately 200 members. We organise over 100 tramps every year, of which a large proportion visit high country pastoral leases. We very regularly visit the foothills in the vicinity of Mt Oxford, and have occasionally tramped on its western boundary, in the Big Ben and Ashley Saddle areas.

We view the land on Mt Oxford as being of high recreation value, providing a variety of interesting routes between the Oxford Hill / Ashley Saddle area and the Ashley River. As a link between Oxford Hill and the Ashley River, it has the potential to be a vital part of an almost contiguous zone of Crown Land in the North Canterbury foothills. Such a zone would significantly expand the opportunities for recreationists in the area.

We make the following points:

- Our club is generally satisfied with the delineation of areas proposed for full Crown ownership and freehold respectively. | 1 ✓
- We support the provision for protected public access between points a-b-c and b-d. However we question why, given external access is via a legal road from Sladdens Bush Road to the boundary, why the above access provisions couldn't be through extensions of the legal road rather than through easements. | 15 ✓
| 16 ✓
- We understand that access to Mt Oxford via the legal road from Sladdens Bush Road has been made more complicated for the public by the appearance of 'Trespassers Prosecuted' signage and by washouts across the road. We ask that all issues relating to this access be resolved as part of this review. | 20 ✓

Thanking you for the opportunity to make this submission.



Terry Thomsen
on behalf of Peninsula Tramping Club (Inc.)

6

Fasc # Q. V. Valuations (03) 3411635 Fasc
Attention, Barry Dunch.

From Robert Johnston. (03) 3123085 Fasc.

Date 8/8/03

Subject MIT Oxford Tenure Review.

Following and attached is submission
on the above subject & process.

No of Pages 5 (including this one.)

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Quotable Value, N.Z.

MT. Oxford "Other Crown Land"

Tenure Review.

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Submission to the Process

Submitter - Robert King Johnston
Ashley Lodge, Oxford,
Phone 03 3124166
Fax 03 1223085
Email robert.johnston@ecan.govt.nz

1. I own a farm Ashley Lodge Station which has a common boundary with both (a) Other Crown Land to be retained in full Crown ownership (b) Other Crown Land to be disposed of on fee simple.
2. The boundary is the Eastern margin from the Ashley River up to just past the 756 metre trig point where it meets with land owned & occupied by John Sartin.
3. Boundary fence in bush.
This fence was broken through in 4 places some years ago by ~~put~~ previous tenant Mark Fealy when putting his bulldozed tracks in place. If the land is to become the responsibility of Dept of Conservation then clearly this fence needs to be restored to its former state as there will be

no further need for the track in the future

4 The cost for this would lie with the owner of the land or their agent (previous) Mr Feary

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I don't believe many (if any) of my sheep do get through it now for it is well down on the track which doesn't get grazed but the fence needs to be restored to its original state

5 If DOC wish to retain the track for access purposes then there clearly needs to be discussion between the Dept & myself as part of this track is on my land and unauthorised

6 From time to time I need to know my block and wish to advise that I intend to do so in the future

7 If DOC is to take over the land on the West side of ~~the~~ our boundary, I need to know what the Dept's plans & policies might be going forward as to the future management of those grasslands and reverting scrub & shrublands
8 I would submit that if they wish to retain grassland areas as grassland

Then they need to have an active fire & burn off plan in place for that to be accomplished.

9. If it is not, then I would submit over time the whole area will revert to scrub & shrubland. i.e. the area to be retained by the Brown

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10. Re Public Access

20. Can DOC clarify the access points from Adams that at the start of their "public access routes" marked with a line orange.

Clearly DOC intend taking an access easement over that area destined to be sold.

The question is — Is access up to that point secure and unencumbered

11. Is it intended (by DOC) to get foot, or horse, or bike access to the tracks from the eastern point down at the Ashby River?

12. Is it intended (by DOC) to seek some access to their new estate through my property?

13. Could I be advised as to what sale process might be employed

13 ✓

by the Crown in its divestment by ⁽⁴⁾
13 | sale in fee simple of 320 ha (approx)
+ And what the time lines for this
sales process might be.

14 I look forward to your reply

15 I would be more than happy to
engage in a submission process and/or
further discussion / clarification of
the points raised in this submission.

signed

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Robert Hugh Johnston
"Ashby Lodge"
Oxford.

8/8/03.

7

Karyn Mudaliar

From: cpearson86@aol.com
Sent: Sunday, 10 August 2003 13:50
To: Karyn Mudaliar
Subject: Mt Oxford UCL

To:
Tenure Review Team Leader
Quotable Value New Zealand Limited
P O Box 13 443
CHRISTCHURCH
Ph: (03) 341-1634
Fax: (03) 341-1635

I have reviewed the Mt Oxford UCL proposal and I would like to give my strong support to the proposed action. I am familiar with this area through my use of the Mt Oxford trig and for earth deformation surveys and through viewing the property with a PhD student from Canterbury. I know that the area has high conservation values and in addition shows evidence of active and ancient faulting and folding which makes it a valuable natural laboratory. I strongly support DOC ownership for the bulk of the lease however I suggest that provision be made for access for earth scientists to carry out research.

11
/14

Dr Chris Pearson
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PS I am 2/3 of the way through a 3 year posting in the US. We will be back in about a year though and I am watching the tenure review scene.