

Crown Pastoral Land Tenure Review

Lease name : OBELISK

Lease number : PO 264

Due Diligence Report (including Status Report) - Part 5

This report and attachments results from a pre-Tenure Review assessment of the pastoral lease for the purpose of confirming land available for Tenure Review and any issues, rights or obligations attaching to it. The information is gathered from files and other sources available to the LINZ contractor.

Part of the information relates to research on the status of the land, resulting in a Status Report that is signed off by a LINZ approving officer. The remainder of the information is not analysed for relevancy or possible action until required, and LINZ does not guarantee its accuracy or completeness as presented.

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

July 09

Copied for purposes of CPL
tenure review due diligence from
file: P264 Vol 3 423

Our Ref: P264



9 December 1992

Professor A F Mark
Professor of Botany
University of Otago
P O Box 56
DUNEDIN

Dear Alan

Thank you for your letter of 19 November 1992.

As previously discussed I am very keen to see the monitoring on Obelisk continue. I have therefore forwarded your letter to Caroline Mason of our Environmental Consultancy Group to seek her assistance. If she is able to help I have asked her to contact you directly to establish the processes.

I will also maintain close contact with this as I am very interested in the outcome.

Yours sincerely

A handwritten signature in dark ink, appearing to be "K R Taylor".

K R Taylor
Manager, Alexandra
LANDCORP PROPERTY LIMITED

Caroline Mason
Christchurch

For your consideration please.

A handwritten signature in dark ink, appearing to be "K R Taylor".

ALEXANDRA OFFICE
4 LIMERICK STREET
PO BOX 27
ALEXANDRA NZ
PHONE 03-440 6935
FAX 03-440 9099



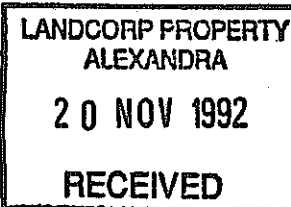
BOTANY DEPARTMENT

University of Otago

P.O. Box 56, Dunedin, New Zealand
Tel 64 3 479 7573
Fax 64 3 479 7583

19 November 1992

Mr Ken Taylor
Regional Manager
Land Corporation
Private Bag
ALEXANDRA



Dear Ken

You are aware that the current lessees of Obelisk Station, Messrs Sanders, have denied me access to the long-term monitoring sites established at six adjacent sites at c 1220 m elevation in the early 1960s to follow the long-term effects of burning on the dominant narrow-leaved snow tussock, *Chionochloa rigida*. These studies were initiated and maintained up until 1974 with the support of the previous lessee Mr J McCambridge Senior and Junior.

My relationship with Messrs Sanders was not improved by the hearings conducted by the Otago Regional Council earlier this year on burning permit applications for Obelisk Station and three other properties, for which I lodged formal objections based on the findings of studies to date (covering the period up to 1973). Given the general desire to improve the information base on the ecological effects of burning snow tussock grassland it seemed appropriate to further sample the snow tussocks with known burning histories as reported on in research papers published in 1978 (Payton and Brasch; Growth and nonstructural carbohydrate reserves in *Chionochloa rigida* and *C. macra*, and their short-term response to fire. N.Z.J. Botany 16: 435-460); 1979 (Payton and Mark; Long-term effects of burning on growth, flowering and carbohydrate reserves in narrow-leaved snow tussock (*Chionochloa rigida*). N.Z.J. Botany 17: 43-54); and 1986 (Payton, Lee, Dolby and Mark; Nutrient concentrations in narrow-leaved snow tussock (*Chionochloa rigida*) after spring burning. N.Z. J. Botany 24: 529-537).

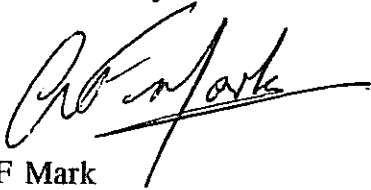
Despite the fact that the Sanders gained approval for their burning application (with one condition imposed by the Regional Council that best endeavours be exercised to prevent burning of my monitoring plots) a discussion with Mr Neil Sanders this week indicates no change in their refusal of my access to the monitoring sites to resample the tussocks in January next. This being the case, I formally seek the support of Landcorp to enable the necessary sampling to be conducted, being five tussocks (or portions of tussocks with a count of the total number of tillers in the subsampled plants) from each of six treatments. Desirably I would require the plants in early January (6th to 9th) so they could be subdivided (into root, stem and leaf) and prepared for analyses (dried and ground) while I have student assistance available. One day would be adequate and I would be available to assist on a day suitable to Landcorp staff for this exercise.

Since Landcorp may wish to be formally involved in the analyses of nutrients (N, P, K) and total non-structural carbohydrates (starch, sucrose, hexoses) consistent with the earlier results, the Corporation may wish to meet half the costs of the analyses which are likely to amount

to \$20,000. The Hellaby Indigenous Grasslands Research Trust would be prepared to meet the other half of this cost. Landcorp may also wish to be involved in analyses and interpretation of the results from this phase of the study.

I await your response with interest and concern.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A F Mark', with a long horizontal stroke extending to the right.

A F Mark
Professor of Botany and
Hellaby Trust Research Advisor

P: 264

Copied for purposes of CPL
tenure review due diligence from
file: P 264 Vol. 3 (13)

430



CONSERVATION
TE PAPA ATAWHAI

DEPARTMENT OF CONSERVATION ALEXANDRIA
RECEIVED
3 APR 1992
A/PM ALEXANDRIA

2 April 1992

The Managing Consultant
Landcorp Ltd
Box 27
ALEXANDRIA

ATTENTION Ken Taylor

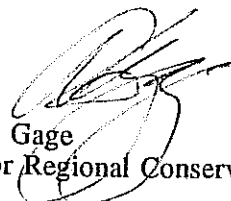
Dear Sir

**"OBELISK" : BURNING APPLICATION
A C SANDERS & SONS**

Further to your discussions with Tony Perrett and I on 27 March 1992, the Department of Conservation's recommendation is as follows:

- 1 We have no objection to the burning of the matagouri or of the snow tussock below the snowline fence.
- 2 On the grounds that burning and subsequent grazing of snow tussock at this altitude (above 3000') is detrimental to the tussock grassland, we recommend that consent be declined to burn the area above the snowline fence identified as of particularly high value, that is, RAP 2/3 - Butchers Creek catchment.
- 3 While we consider it undesirable in the long term, we do not at present have ecological evidence to recommend a decline on the area of snow tussock south of Symes Road being burned.
- 4 In the event that any of the area above the snowline fence is burned we recommend it be spelled for a minimum of 12 months. This may well require postponing the burn for one year until the lower country has recovered from burning.
- 5 That no burning above the snowline fence be carried out until after any acquisition negotiations with DOC and Landcorp have been concluded.
- 6 As the monitoring sites at 1220 metres are very important and due for remeasuring by Alan Mark, we recommend that if consent to burn is given, it be conditional on measurements on these sites being carried out first. This again may require a postponement for one season.
- 7 On the day of inspection Sanders mentioned the intention of topdressing and oversowing following burning. If a request for consent to sow seed is received, we would recommend it be declined for the area above the snowline fence within the RAP on the grounds of undesirable modification to a relatively intact area of high conservation value.

Yours faithfully



D Gage
for Regional Conservator

DEPARTMENT OF CONSERVATION
Otago Conservancy
P.O. Box 5244 Moray Place Dunedin
77 Stuart Street Dunedin New Zealand
Telephone (03) 4770 677 Fax (03) 4778 626



CONSERVATION
TE PAPA ATAWHAI

Our ref: RAP OM 1/7/2
P 264

DEPARTMENT OF CONSERVATION
TE PAPA ATAWHAI
RESOURCE
29 MAY 1992
A/PM ALEXANDRA

29 May 1992

Managing Consultant
Landcorp
Box 27
ALEXANDRA

ATTENTION Ken Taylor

Dear Sir

BURNING CONSENT - OBELISK PASTORAL LEASE

As you are aware, the departmental advice to Landcorp on this particular application was to recommend decline of consent over that part of the application which includes part of the Old Man Range RAP OM 1/7.

DOC has also objected to the Otago Regional Council on this application for a resource consent. The outcome of this consent application is not known at this stage.

I have discussed the Land Act consent recently with Geoff Heward, Landcorp to ascertain what the Landcorp decision will be on the Land Act application. He advised me that Landcorp is likely to grant this consent as no land management concerns exist so long as appropriate spelling and AOSTD conditions are met by the applicant. The implication was clearly made that DOC advice in this instance will be disregarded.

If this is in fact the outcome of the Landcorp consideration of this application, there are serious implications for retention of the conservation features of the RAP. I would therefore request that DOC receives early notification of the Landcorp decision prior to the consent being issued to the applicant.

It is very likely that DOC will request the Commissioner of Crown Lands to review the Landcorp decision if due regard is not taken of DOC advice on this issue.

Yours faithfully

T Perrett
for Regional Conservator

P.see discuss.

John

COPY TO:

~~DG~~
~~HEAD OFFICE~~

~~ATTENTION S McRae~~

LAND CORPORATION LTD.
DUNEDIN
29 APR 1992
REC'D

LAND CORPORATION ALEXANDRA
RECEIVED
30 APR 1992
A/PM ALEXANDRA

~~FCM~~
~~ALEXANDRA~~

geoff Heward
landcorp

~~Dunedin~~ ALEXANDRA

copy for your information

Nid Smith
for Regional Conservator.

RESOURCE MANAGEMENT ACT 1991

TO: Otago Regional Council
SUBMISSION ON: Land Use Consent for Burning Application No. QB 037
by A C Sanders
NAME: Denis William Anson Marshall
ADDRESS: Parliament Buildings
Molesworth Street
WELLINGTON

STATEMENT OF SUBMISSION BY THE MINISTER OF CONSERVATION

Pursuant to section 96(1) of the Resource Management Act 1991, I, Jeff Connell, Regional Conservator (Otago) of the Department of Conservation, acting under delegated authority for the Minister of Conservation, oppose the above application for a land use consent for burning.

My submission is that the exercise of the consent sought:

- 1 would result in damage to RAP 2/3 which has been assessed as having high conservation values under PNA;
- 2 could adversely effect regeneration of vegetation in other areas above the snowline fence; and
- 3 would largely negate the value of the important vegetation monitoring site, if a critical measurement which is now due was not carried out first.

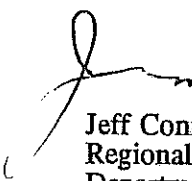
I seek the following decision from the regional council:

- 1 That no burning be permitted above the snowline fence within the RAP 2/3, Butchers Creek catchment.
- 2 That the following conditions be imposed on any consent granted to burn other areas within the application:
 - a That any burned areas above the snowline fence be spelled from grazing for at least 12 months following burning.
 - b That measurements be taken at the Otago University vegetation monitoring site at approximately 1220 m, before burning is carried out.

I wish to be heard in support of this submission.

A copy of the Instrument of Delegation may be inspected at the Office of the Director-General of Conservation, Wellington.

Dated at Dunedin this 28 day of April 1992.


Jeff Connell
Regional Conservator
Department of Conservation
acting pursuant to delegated
authority on behalf of
Denis Marshall
Minister of Conservation

Address for Service:
Regional Conservator
Department of Conservation
Box 5244
Moray Place
Dunedin
Telephone: (03) 477 0677
Fax: (03) 477 8626



**CONSERVATION
TE PAPA ATAWHAI**

Our ref: RMA 14/1

27 April 1992

The Resource Administration Manager
Otago Regional Council
Private Bag
DUNEDIN

Dear Sir

RESOURCE MANAGEMENT ACT 1991

**APPLICATION FOR LAND USE CONSENT FOR BURNING NO. QB 037
BY A C SANDERS
SUBMISSION BY THE MINISTER OF CONSERVATION**

I refer to the application by A C Sanders to burn 1520 hectares of tussock grassland, on Obelisk Station.

Enclosed is my submission to this land use application.

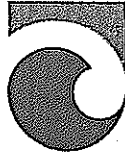
The regional conservator, Department of Conservation, Otago will provide representation at the council's hearing of submissions. Please notify the Dunedin office of the department directly of the time and date of the hearing.

Yours faithfully

Jeff Connell
Regional Conservator
Department of Conservation
acting pursuant to delegated
authority on behalf of
Denis Marshall
Minister of Conservation

Address for Service:
Regional Conservator
Department of Conservation
Box 5244
Moray Place
Dunedin
Telephone: (03) 477 0677
Fax: (03) 477 8626

DEPARTMENT OF CONSERVATION
Otago Conservancy
P.O.Box 5244 Moray Place Dunedin
77 Stuart Street Dunedin New Zealand
Telephone (03) 4770 677 Fax (03) 4778 626



**CONSERVATION
TE PAPA ATAWHAI**

Our ref: RMA 14/1

27 April 1992

Mr A C Sanders
RD 5
ALEXANDRA

Dear Sir

**SUBMISSION ON LAND USE CONSENT
FOR BURNING NO. QB 037**

The regional conservator, Jeff Connell, has lodged a submission to your application for a land use consent for burning No. QB 037 to burn 1520 hectares of tussock grassland. This submission objects to the area above the snowline fence of RAP 2/3 being burned and asks for conditions to be imposed on other areas that are burned above the snowline fence. A copy of his submission is enclosed.

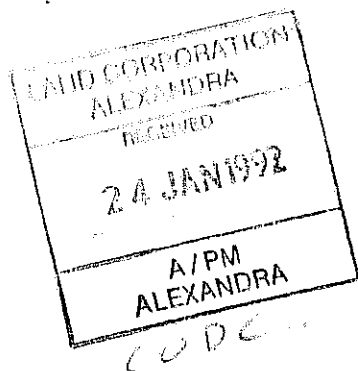
Should you wish to discuss this further, please contact me at the address below.

Yours faithfully

Vivienne M Smith
Viv Smith (Ms)
for Regional Conservator

Our Ref: P 264

New



Mark Breen
Otago Regional Council
Private Bag
DUNEDIN

Dear Sir

I wish to burn areas of my Pastoral lease/licence during the 1992 burning season, being:

- * New Application
- * Renewal of 1991 - in part
- in full
- * I do not intend burning on my Pastoral lease/licence.

[* Please delete as appropriate]

I return my property map showing the areas I wish to apply for, and the dominant vegetation involved; viz:

- (a) Matagouri
- (b) Other native shrubs (name species if known)
- (c) Snow tussock
- (d) Other vegetation (eg, briar)

Reason for application is:

- (a) Development
- (b) Stock Access
- (c) Better utilization of Native Vegetation
- (d) Other

Has area previously been oversown and topdressed and regularly maintained?

Yes/No. *by previous owner*

Yours faithfully

.....
Lessee

(This permit application has been recorded earlier (see?))

P. 264 OBELISK.
 A.C. SANDERS & SONS.
 LITTLE VALLEY
 2 RD
 ALEXANDRIA



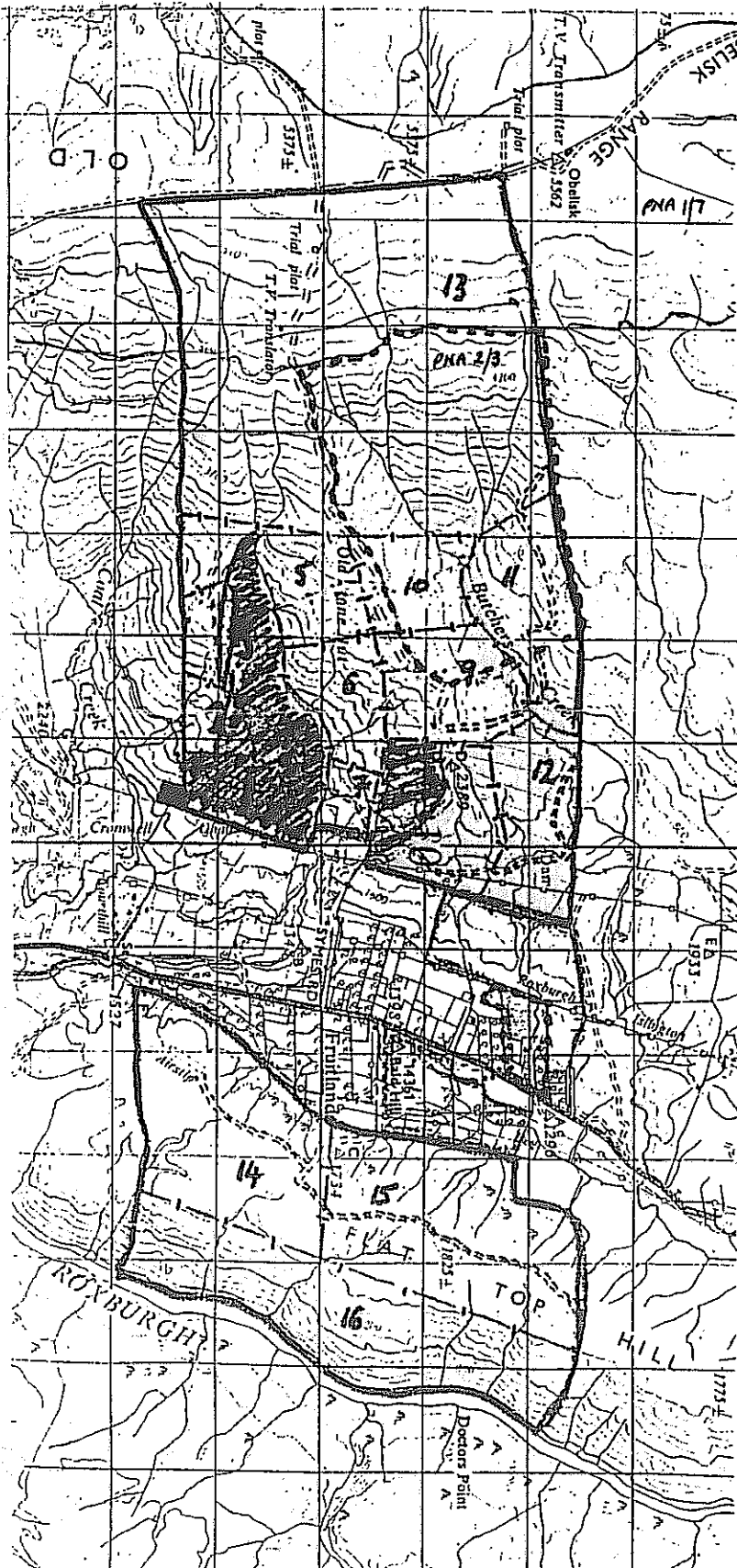
- HOSTD
- |-|- Fencing
 - Tracks
 - Pastoral lease boundary
 - Freehold boundary.

	40
1 Holding	78
2 Reid Bottom	49
3 Reid Top	63 ✓
4 Obelisk	66 ✓
5 Top mine	122 ✓
6 Bottom mine	75 ✓?
7 House Block	15
8 DAM	145 ✓
9 Middle Side Butchers	132 ✓
10 Top Side Butchers	75 ✓
11 Bell and Bow	136
12 Bottom Butchers	107 ✓
13 Top Block.	895 ✓
14 South Side 12 mile	268
15 North Side 12 mile	254
16 River FACE.	288
	2774 ha
FREEHOLD	197 ha

P 264

OBELISK. -

Extended Area for 1992



J H M^cLambridge.

AOSTD

-|-| Fencing

--- Tracks

— Pastoral lease boundary

— Freehold boundary

PNA 1/3

... PNA 2/3

== Approx area sold 3/88 (24.9 ha)

== Area sold 87 3-3794 ha

1	Holding	78
2	Reid Bottom	49
3	Reid Top	63
4	Obelisk	66
5	Top Mine	122
6	Bottom Mine	78
7	House Block	15
8	Dam	145
9	Middle Side Butchers	132
10	Top Side Butchers	75
11	Bell and Bow	136
12	Bottom Butchers	107
13	Top Block.	895
14	South Side 12 mile	268
15	North Side 12 mile	254
16	River FACE.	288
		<hr/>
		2774 ha

FREEHOLD

197 ha

Holding
 268 - 1992
 197 ha

INFORMATION RECEIVED 24 JUN 1991 A/PM ALEXANDRA

P264
OBELISK

"Matangi" Station,
 Little Valley,
 No. 2 R.D.,
 Alexandra,
 21st June, 1991.

NEW

1992 BURNING APPLICATION.

Mr. K. Taylor,
 Landcorp,
 Limerick Street,
ALEXANDRA.

Dear Sir,

Re our recent purchase of the property of Mr. J. McCambridge
Fruitlands.

On a recent closer inspection of the above property, we wish to apply for a Fire Permit as we consider there is an EXTREME FIRE RISK, as well as harbouring rabbits.

The areas we urge you to consider are:-

{ Parts of Top
 { Top Mine
 { Bottom Mine - Tussock.

(Part of Top Reids Tussock
 (Part of Middle Butchers
 (Holding Block
 (Obelisk Face Matagouri.
 (Bottom Reids
 (Part of Dam Block

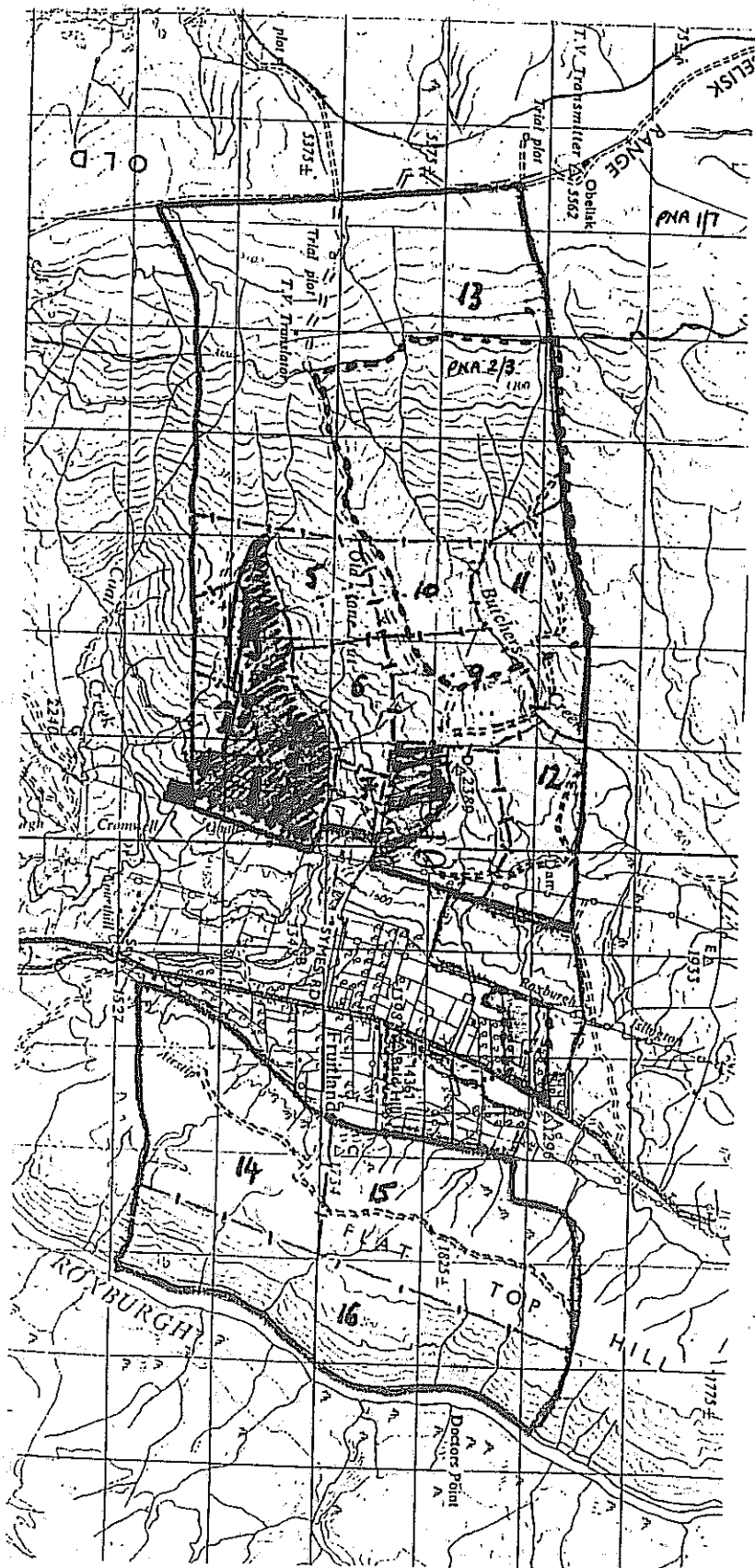
We trust you will give our application favourable consideration.

Yours faithfully,

A. C. SANDERS & SONS.

A. C. Sanders
Linda Sanders

P 264 OBELISK. -



J H M^cLambridge.

AOSTD

—|—|— Fencing

--- Tracks

— Pastoral Lease Boundary

— Freehold Boundary

PNA 1/7

... PNA 2/3

— Approx area sold 3/88 (24.9 ha)

— Area sold 87 3.3794 ha

	<u>40</u>
1 Holding	78
2 Reid Bottom	49
3 Reid Top	63
4 Obelisk	66
5 Top Mine	122
6 Bottom Mine	78
7 House Block	15
8 Dam	145
9 Middle Side Butchers	132
10 Top Side Butchers	78
11 Bell and Bow	136
12 Bottom Butchers	107
13 Top Block.	895
14 South Side 12 mile	268
15 North Side 12 mile	254
16 River FACE.	288

2774 ha

FREEHOLD

187 ha

Holdings
 1000
 1/10

Checketts McKay
Lawyers Central Otago

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Ken Taylor
COPY FOR YOUR
INFORMATION

LAND CORPORATION
LTD.
Trust Account
20 AUG 1992
CHRISTCHURCH

Alexandra Office
22 Centennial Avenue, Alexandra
P.O. Box 41, Alexandra, New Zealand
Phone (03) 448 6969
Fax (03) 448 8960
BNZ 020916 0007675 00
30 317 955

Please ask for:

John Williamson

19 August 1992

The Manager
Land Corporation Ltd
PO Box 142
CHRISTCHURCH

Ken *✓*
Philip
Dave *D*
Paul *MLP*
Geoff *SWH*
Suzanne
Ross
Library
File *P264*

LAND CORPORATION
ALEXANDRA
RECEIVED
24 AUG 1992
A/PM
ALEXANDRA

FOR: MR KIT MOUAT

Copied for purposes of CPL
tenure review due diligence from
file: *P264 Vol 42*

Dear Kit

RE: A C SANDERS & SONS - APPLICATION FOR BURN AND OVERSOWING
CONSENT

I enclose a copy of the Submission to the Commissioner and a copy of our letter to the Commissioner.

Unless you or the Commissioner come up with something which I have not considered, I feel that Landcorp does not have the lawful delegated authority to exercise the Commissioner's discretion under Sections 106 and 108.

As I understand the procedure, the Commissioner needs your comments on the Submission. He will also obtain his Department's lawyer's comments and will then refer the information to Crown Law for an opinion. With time running short, your urgent attention to completing your side of the process would be appreciated.

If a burn and oversowing of the "Decline Area" is not able to be undertaken by our clients because an approval is not received in time by the Commissioner, you should understand that our clients will incur immediate production losses in the following season, in terms of wool and lambing reductions and over the longer term will incur substantially greater losses.

You should understand that if we are able to dispose of the Planning Tribunal appeals, which are also an impediment to the burn, within sufficient time to burn this season and if the burn is prevented by a failure of the Commissioner to correctly perform his statutory duty and a failure by the Crown to perform its contractual duty under the Land Act, our clients propose to file a claim against the Crown based on both contractual breach and negligence, with a view to recovering all of our clients anticipated losses, which will be substantial. In this regard, it is relevant to note, that with respect to the Planning Tribunal

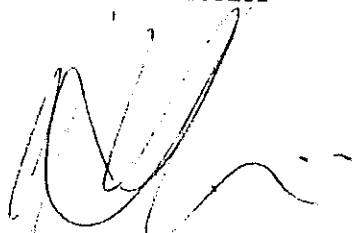
.../2

- 2 -

appeals we have obtained an urgent hearing before Judge Skelton of the Planning Tribunal, which will take place next Monday 24 August, to hear a preliminary issue of standing. This may enable the appeals to be disposed of at that point which would leave the Commissioner and the Crown liable for damages, if the outstanding issues with the Commissioner are not able to be completely resolved and a permit granted, within sufficient time to enable a burn to take place before the end of this 1992 season.

Incidentally, you will note that in our letter to the Commissioner, we have referred to the fact that we have not received notification of the Commissioner's formal position on the rehearing.

Yours faithfully
CHECKETTS MCKAY

A handwritten signature in black ink, appearing to be 'John Williamson', written over a faint, illegible stamp or background.

John Williamson LLB
Lawyer

AJ1-08171
Encl

Copied for purposes of CPL
tenure review due diligence from
file: P 264 Vol 3/432

so that decision to be submitted to the applicant for comment
prior to my decision to ensure natural justice requirements were
met.

Yours faithfully

Ker Taylor, Alexandra

**COPY FOR YOUR
INFORMATION**

LANDCORP PROPERTY
LTD.
- 9 NOV 1992
CHRISTCHURCH

241

Johnny Edmonds
Commissioner of Crown Lands

LANDCORP PROPERTY
ALEXANDRA
19 NOV 1992
RECEIVED

cc Regional Manager
Landcorp Property Limited
PO Box 142
CHRISTCHURCH

Bullen

*O'Sullivan sent
@ file*



OFFICE OF CROWN LANDS

Your Reference:

Our Reference: 5200-D14-S05
1950-02

Charles Fergusson Building
Bowen Street
Private Box 170
Wellington
New Zealand
Phone: 0-4-473 5022
Fax: 0-4-472 2244

6 November, 1992

Ms S Maturin
Regional Conservation Officer
Southern Office
Royal Forest and Bird
Protection Society
Box 6230
DUNEDIN

Dear Madam

OFFICIAL INFORMATION REQUEST

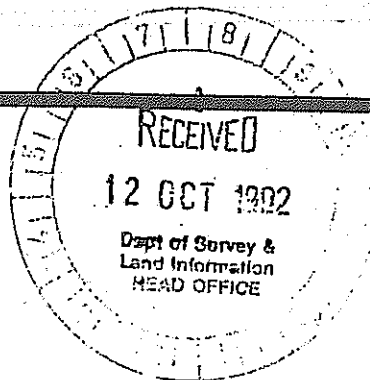
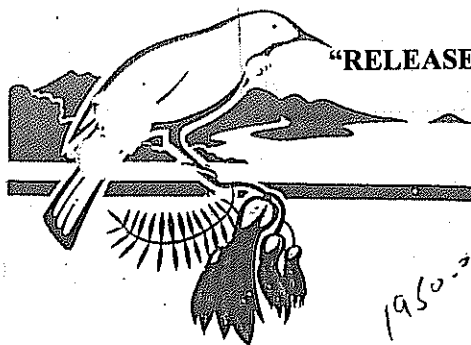
You wrote to me on 7 October 1992 seeking official information, in particular the legal opinion I obtained in relation to the application for consent to burn on Obelisk Station and the conditions attaching to the consent issued by me.

I enclose a copy of the conditions relating to the consent. The consent is for a two year period.

I am withholding the Crown Law opinion as provided for under section 9(2)(h) of the Official Information Act 1982, ie maintain legal professional privilege. Crown Counsel is engaged to advise me on further legal issues which may arise from the decision I have taken and it is necessary for client/lawyer privilege to be maintained. I am seeking to protect the Crown's position where litigation may ensue from previous similar cases.

In respect of your query as to why I did not decline the application on the grounds of good husbandry as it relates to soil and water considerations. Those were relevant considerations I took into account in reaching my decision to give consent. It is appropriate to advise then that I am satisfied that the burn and post burn management will not detrimentally impact on the land and its continuing use for pastoral farming.

You should also note that the application to burn was previously declined by Landcorp on nature conservation grounds. My consideration of the application required all reports relating



Southern Office
764 Cumberland Street
Box 6230
Dunedin
Ph (03) 477-9677
Fax (03) 4775-232

7.10.92

1950-92

The Commissioner Of Crown Lands
Private Box 170
Wellington

Attention Mr Dave Gullon

Dear Sir,

Urgent Official Information Request

Please could supply the following:

1. Copy of the legal opinion obtained by the Commissioner of Crown Lands in relation to the Obelisk burning consent.

We are requesting this under urgency due to the enormity of the decision and the high public interest in this matter. Forest and Bird needs to urgently consider our response to this decision which has the potential to result in irreparable damage to the high country and severely effect conservation values.

2. Copy of the conditions attached to the Obelisk burning permit.

Please could you also outline why the Commissioner did not decline the Obelisk burning permit on the grounds that burning is likely to be detrimental to the sustainability and health of the soil and tussock grassland ecosystem and the practice therefore does not constitute "good husbandry" as is required under S 99 (a), of the Land Act 1948?

Thank you for your attention to this matter.

Yours Sincerely

Sue Maturin
Regional Conservation Officer

For Director
Kevin Smith

BURNING PERMIT STANDARD CONDITIONS

1. A permit to burn must not be exercised unless public liability and fire suppression insurance is taken out by the applicant.
2. The holder of this permit shall notify the following persons and bodies of the proposed date and time of his commencing to burn vegetation before he begins such burning:
 - (a) All occupiers of land adjoining the land containing the area to be burnt;
 - (b) The Rural Fire Officer of the relevant Fire Authority;
 - (c) The District representative of the Director-General of Conservation, if the area to be burnt is situated within 1 kilometre of any State Area as defined by the Forest and Rural Fires Act 1977 (includes any conservation area, National Park, Crown reserve, and);
 - (d) The District Manager at the nearest N Z Timberlands Limited district office, if the area to be burnt is situated within 1 kilometre of any Forestry Corporation (N Z Timberlands Limited) Fire District; and
 - (e) All others as may be specified by way of any special condition of this permit.
 - (f) Landcorp Management Services Ltd, Alexandra
3. The holder of this permit shall take adequate measures to control the fire authorised and confine it to the area marked on the plan attached hereto.
4. No fire shall be lit while a strong wind is blowing or when conditions are such that the fire is likely to spread beyond the limits of the area the subject of this permit.
5. No fire shall be lit before 1.00pm unless other wise specified on this permit.
6. No fire shall be left unattended.
7. In the event of any fire moving outside the authorised area of burn off the holder of this permit shall as soon as practical advise the Principal Rural Fire Officer for the fire authority for the area, and shall co-operate fully in suppression of the fire.
8. When any order is issued by an officer of the Council authorised on its behalf suspending all or any permits to burn in respect of the area the subject of this permit, this permit shall be suspended for such period as may be specified in the order.
9. Otago Regional Council consent to this permit is given pursuant to Subclause 3.2.1 of the Otago Catchment Board and Regional Water Board Bylaw 1988 (now administered by Otago Regional Council).
10. *Commissioner of Crown Lands*
Landcorp consent to this permit is given under Section 106 of the Land Act 1948.

Notes

- A. A right of appeal exists under Clause 6.2 of the Otago Catchment Board and Regional Water Board Bylaw 1988 (now administered by Otago Regional Council) and, in the case of Crown lands, Section 17 of the Land Act 1948 against any term or condition of this permit. No right of appeal exists under the Forest and Rural Fires Act 1977 to any objection by a Rural Fire Authority.
- B. This permit shall cease to have any legal effect upon the issuance of any warning, order, or notice concerning the prohibition of fires during periods of extreme fire hazard or concerning any restricted or prohibited fire season, pursuant to the Forest and Rural Fires Act 1977.
- C. This permit shall not discharge any person from any liability for damage caused by any fire lit pursuant to this permit.
- D. Permit holders are warned that they will be held responsible for any damage to power or telephone lines resulting from fires lit by them and they are advised to contact the appropriate authority before lighting fires adjacent to such installations.
- E. "Open air" means not in a fireplace, incinerator, barbeque or other place duly approved in each case.
- F. It is an offence to light an open air fire without the appropriate permit, or to break permit conditions, or to let a fire spread to and injure a State area, forest area, or specially protected property, or to leave it unprotected against such spread.

Permit Area: 1040 hectares

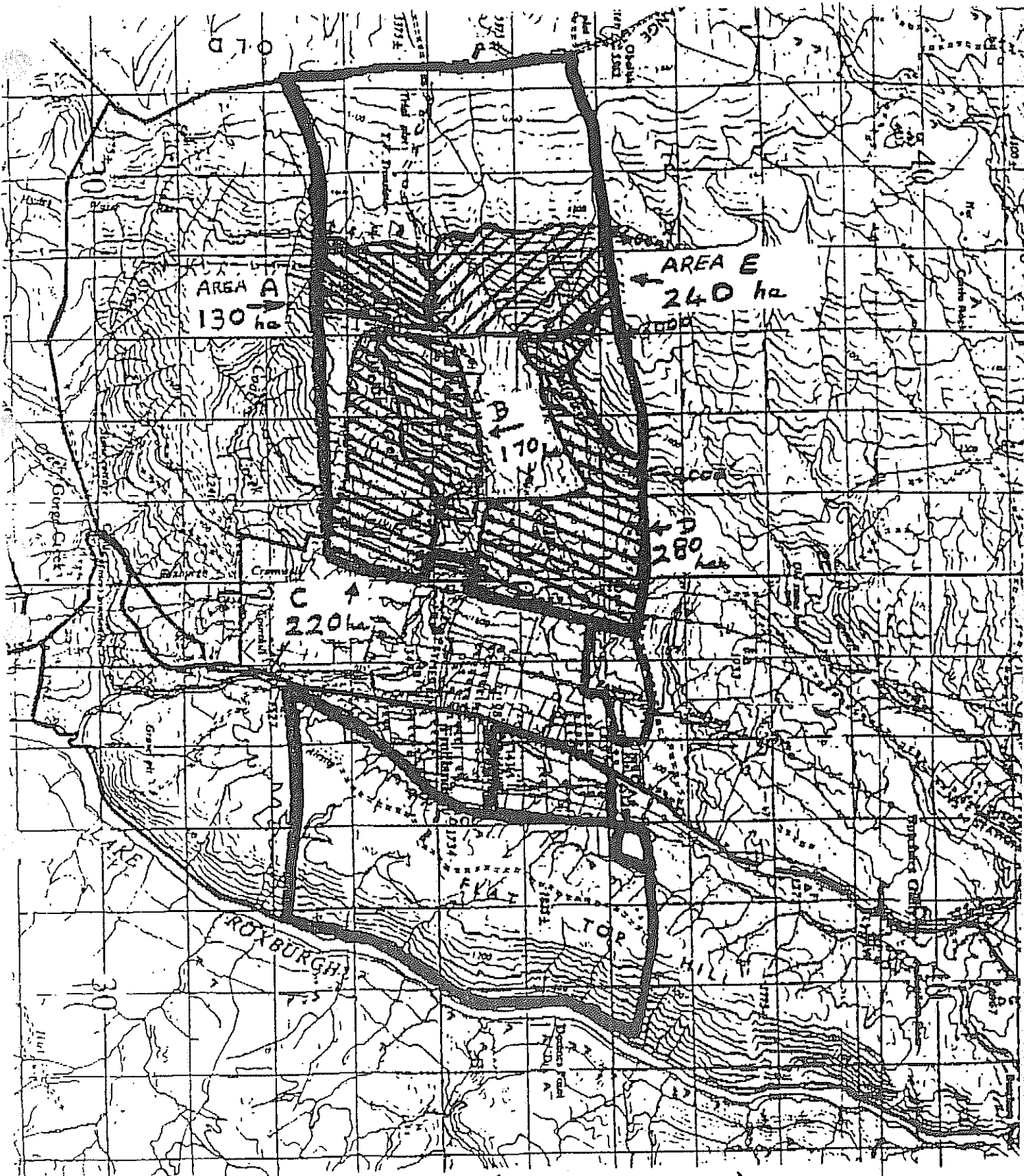
Special Conditions:

- 1 That all reasonable measures be taken to prevent the fire from extending beyond 1250m (4100 ft) above sea level.
- 2 That, notwithstanding standard condition 3, the time of lighting the fires may be before 1.00 pm if and as agreed by an authorised officer of the Otago Regional Council.
- 3 That, notwithstanding the period for burning specified above, this term may be extended to 30 September in the year of burning at the discretion of an authorised officer of the Otago Regional Council.
- 4 That a minimum of three persons be present at all times during burning.
- 5 Area A and E to be AOSTD and maintenance fertiliser to be applied regularly as necessary up to 1250m (4100 ft).
- 6 Area A and E to be spelled from grazing until 28 February following burning.
- 7 Area A and E to be subject to light grazing only in first year post burning.

NOTE: Assistance with firebreaking may be available from the Department of Conservation, Alexandra.

"RELEASED UNDER THE OFFICIAL INFORMATION ACT"

P. 264 OBELISK



(F F F = fire break.)

Mr NEIL SANDERS.
 OBELISK STN
 FRUITLANDS
 NO 4 R.D ALEXANDRA.

1992-1993
 BURNING CONSENT AREAS //
 Burning Declined ///

Copied for purposes of CPL
tenure review due diligence from
file: P264 Vol 3426

Regional Manager, Christchurch
Copy for your information/action
from Dmgr Alexandra

Obelisk burn-off approved

By John Fridd

Alexandra. — A farming family has won approval to burn vegetation and oversow part of its property on the Old Man Range above Fruitlands.

A. C. Sanders and Sons originally applied to an Otago Regional Council consents panel for permission to burn vegetation on Obelisk Station and was successful, along with three other Central Otago landholders wanting to burn on land above 1000m.

Appeals against the Obelisk decision by the Royal Forest and Bird Protection Society and Department of Conservation failed.

However, Landcorp, acting for the Commissioner of Crown Lands, then declined to approve part of the Obelisk burning, after taking advice from DOC.

Mr John Williamson, the Alex-

andra lawyer acting for the applicant, said yesterday the Sanders family then asked for a rehearing of the case by commissioner, lodging "extensive submissions".

"Part of the submissions challenged the legality of the Department of Conservation's influence in such decisions," he said.

Mr Williamson said the family welcomed the commissioner's decision this week that all the area applied for could be burned and oversowed as a "statement in common sense which will enable them to carry out important burning, oversowing and topdressing which is essential to the long-term and environmentally sustainable farming of the Obelisk property".

He said when the burning was done would depend on snow conditions.

- Ken CR
- Philip M
- Dave D
- Paul M
- Geoff S
- Suzanne
- Ross
- Library
- File P26

Using appeal process to stop burning

ALEXANDRA. — The Department of Conservation is using the Planning Tribunal appeal process to prevent high-country tussock burning on an area of the Old Man Range this winter, according to the lawyer representing farmers on the burning-permits issue.

DOC has appealed to the tribunal against the decision of an Otago Regional Council consents panel to grant a permit to A. C. Sanders and Sons so they can burn tussock on the top part of their recently acquired Obelisk run above Fruitlands.

John Williamson, the Alexandra lawyer who coordinated and presented the farmers' cases for the four permit applications heard by the consents panel, said this week it appeared DOC could

be using the appeal process to delay the matter and prevent burning this season.

Mr Williamson said the appeal would cost the Sanders money which would be better put into developing the farm and fighting rabbits.

He disagreed with some of the statements made about the Obelisk burning application last week by DOC Otago regional conservator Jeff Connell. Mr Connell said the Minister had originally lodged submissions against 19 burning applications but "in all except the Obelisk case, negotiations had led to satisfactory conditions being agreed to."

Mr Williamson said the Minister had only opposed one application, the Sanders one, and he also rebutted the DOC claim that burning and grazing depleted nutrients.

He said the proposed burning, oversowing and top-dressing on the top part of the Obelisk run would not degrade the tussock grasslands "but rather in-

duce biodiversity and nutrient replenishment."

"The Sanders family need the area in question for summer grazing. Without it, the total property cannot support the proposed rabbit control work and development and the property as a whole would be uneconomic to farm."

Mr Williamson added it appeared DOC could be "using the appeal process to apply pressure to the Sanders family to force a concession."

"The Ministry of Conservation has already purchased other properties for the purpose of acquiring tussock grasslands. They should continue with that policy of acquiring properties desirable to them rather than the ominous practice of attempted indirect compulsory retirement of farmland via the Resource Management Act and the appeal process," Mr Williamson said.

The Forest and Bird Society has also appealed the Obelisk application, along with permits for V. G.

Waldron's Dunstanburn run and P. J. Hore's Glenshee property.

Mr Williamson said he believed that both DOC and the Forest and Bird Society had no legal standing to object against the burning permits because of the Resource Management Act transitional regulations currently in force and he will certainly be arguing this at the appeal.

Neil Sanders, who

manages the Obelisk run, said the action would most likely prevent burning on the top part of the property this winter, putting back for another year plans to develop the run.

He confirmed that Landcorp, acting under the Land Act, had also declined permission for burning on the top block, but added he was applying to Landcorp for a rehearing.

DOC said in its press

release last week the higher altitude areas on the property had the "highest conservation values" and the department was keen to protect them.

"Tall tussock grasslands, such as that found here, are Central Otago's equivalent of a forest. There is a dense canopy of snow tussock covering a diverse understorey of blue tussock and plants such as alpine daisies.

"This tussock 'forest' is home to an array of invertebrate animals such as grasshoppers, flies, moths and beetles, many of which feed on decomposing tussock leaf litter," Mr Connell said.

He added the area was also important for its scenic values and the department had tried to negotiate with the Sanders to protect it.

- Ken
 - Philip
 - Dave D
 - Paul
 - Geoff
 - Suzanne
 - Ross
 - Library
 - File
- (263)

Regional Manager, Christchurch
Copy for your information/action
from DMgr Alexandra

Copied for purposes of CPL
tenure review due diligence from
file: P260 Vol 3/427

CONFIDENTIAL

P264
419



LANDCORP
LANDCORP PROPERTY LIMITED

ALEXANDRA OFFICE
P O BOX 27, ALEXANDRA
PHONE 0-3-448-6935 FAX 0-3-448-9099

Copied for purposes of CPL
tenure review due diligence from
file: P264 Vol 3/419.

FACSIMILE TRANSMISSION SHEET

COMPANY:	Office of Crown Lands	FAX NO:	
ATTENTION:	David Gullen		
FROM:	Ken Taylor		
DATE:	21/9/92	NO. OF PAGES: (INCLUDING THIS HEADER)	6
SUBJECT:	Obelisk		

PLEASE ADVISE IMMEDIATELY IF ANY PART OF THIS TRANSMISSION WAS NOT RECEIVED

- ① Copy of consent currently on issue
- ② Conditions recommended for full area
- ③ Article from today's ODT.

[Handwritten signature]

JOINT FIRE PERMIT

Office use only
Permit No:
Date of Issue:

Name: Mr Neil Sanders

Address: Obelisk Station, Fruitlands
R D 4, Alexandra

Phone: 449-2067

Locality: Symes Road

Rural Fire Authority: Central Otago District Council

Location and Area of Burn: that area edged PURPLE on the plan attached hereto, being an area not exceeding 800 ha.

MATERIAL: Snowgrass, Matagouri

BURNING SHALL BE CARRIED OUT UNTIL 26 SEPTEMBER 1992 OR 1 JUNE 1993 TO 15 SEPTEMBER 1993.

Standard Conditions: (see reverse of this sheet)

Special Conditions:

1. That all reasonable measures be taken to prevent the fire from extending beyond 1250m (4100 ft) above sea level.
2. That trial plots in or near the area to be burnt be given all practicable protection from fire, including a suitable margin around the plots.
3. That, notwithstanding standard condition 4, the time of lighting the fires may be before 1.00 pm if and as agreed by an authorised officer of the Otago Regional Council.
4. That notwithstanding the period for burning specified above, this term may be extended to 30 September in the year of burning at the discretion of an authorised officer of the Otago Regional Council.
5. That a minimum of three persons be present at all times during burning.
6. Area A to be AOSTD and maintenance fertiliser to be applied regularly as necessary up to 1250m (4100 ft).
7. Area A to be spelled from grazing until 28 February following burning.

FURTHER SPECIAL CONDITIONS ATTACHED

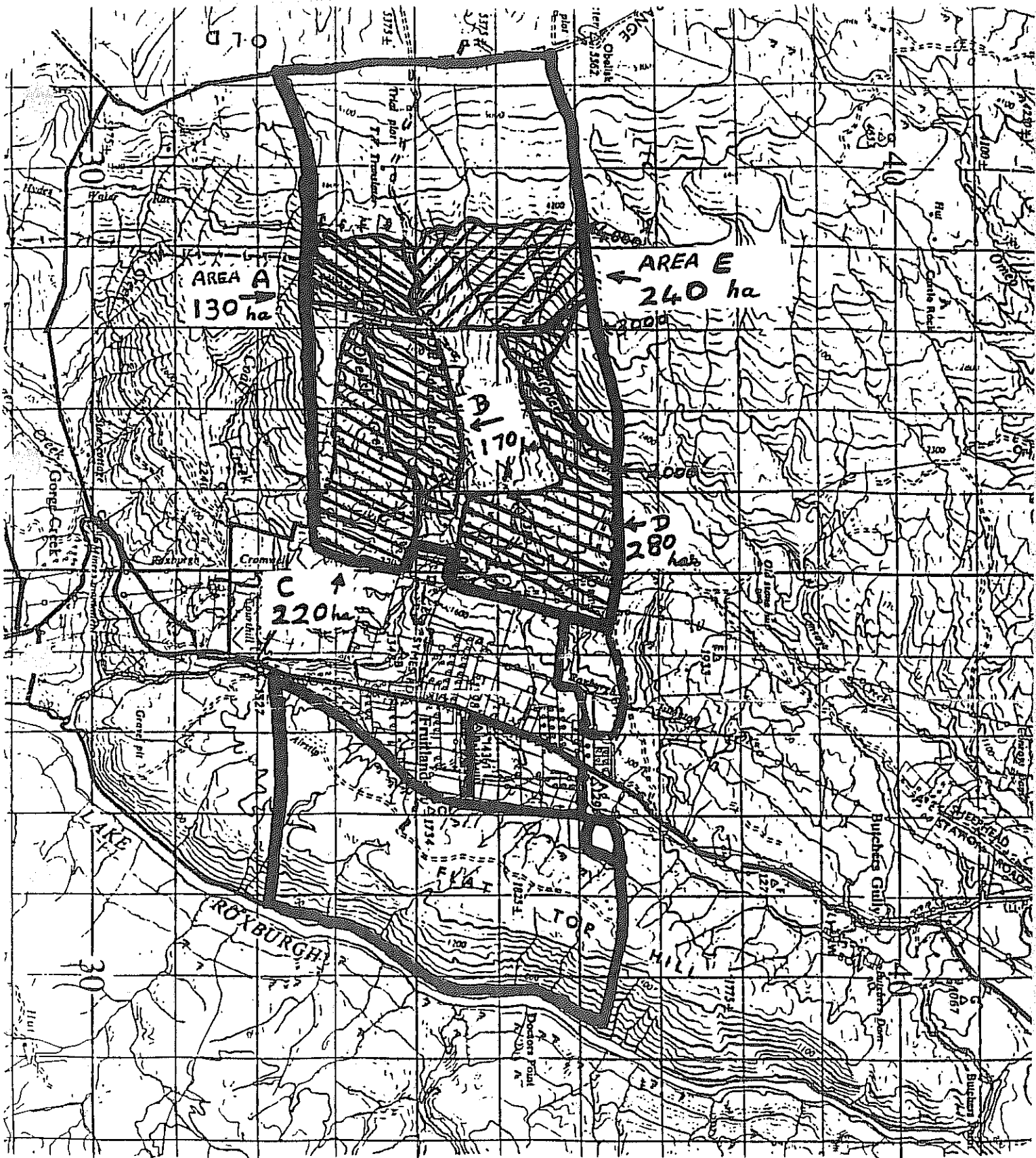
Signed	Designation	Phone	Date
Rural Fire Authority: _____	PRFO/Deputy:	448-6979	
Regional Council: P R Diver (ah 448-6741)		448-8063	
Landcorp: <u>G. Heward</u>	Consultant	448-6935	
Other: _____			

IF AN EXTENSION OF TIME IS REQUIRED PLEASE CONTACT THE OTAGO REGIONAL COUNCIL, DUNEDIN
PHONE (03) 474-0827 OR ALEXANDRA 448-8063

SPECIAL CONDITIONS CONTINUED

8. Area A to be subject to light grazing only in first year post burning.
9. A 100m buffer around Mitchells Mine and old stone hut extending to the Symes Road not be burnt in order to retain historic landscape setting. (To be implemented as far as is practicable).



NOTE: Assistance with firebreaking maybe available from the Department of Conservation, Alexandra.




(f & f = fire break.)

M- NEIL SANDERS.
 OBELISK STN
 FRUITLANDS
 NO 4 R.D ALEXANDRA.

1992-1993

BURNING CONSENT AREAS 
 Burning Declined 

 Property Boundary.

Permit Area: 1040 hectares

Special Conditions:

1. That all reasonable measures be taken to prevent the fire from extending beyond 1250m (4100 ft) above sea level.
2. That trial plots in or near the area to be burnt be given all practicable protection from fire, including a suitable margin around the plots.
3. That, notwithstanding standard condition 4, the time of lighting the fires may be before 1.00 pm if and as agreed by an authorised officer of the Otago Regional Council.
4. That, notwithstanding the period for burning specified above, this term may be extended to 30 September in the year of burning at the discretion of an authorised officer of the Otago Regional Council.
5. That a minimum of three persons be present at all times during burning.
6. Area A and E to be AOSTD and maintenance fertiliser to be applied regularly as necessary up to 1250m (4100 ft).
7. Area A and E to be spelled from grazing until 28 February following burning.
8. Area A and E to be subject to light grazing only in first year post burning.
9. A 100m buffer around Mitchells Mine and old stone hut extending to the Symes road not be burnt in order to retain historic landscape setting. (To be implemented as far as practicable).

NOTE: Assistance with firebreaking maybe available from the Department of Conservation, Alexandra.

published at

Dunedin

on [date]

21/9/92

SUBJECT:

Farm burn-offs await High Court decision

Wanaka (Alpnews). — Aspects of Landcorp's overturning of a regional council burning permit for the Obelisk Station are awaiting a test in the High Court.

The Commissioner of Crown Lands was considering the matter which could temporarily halt all farm burn-offs above the snowline if it went to court, the Otago regional conservator, Mr Jeff Connell, told a meeting of the Otago Conservation Board last week.

The chairman of the board, Mr Les Cleveland, said a panel of three Otago Regional Council members had granted a burn-off licence to the Obelisk Station lessee.

Landcorp had over-ruled the decision on the advice of the Department of Conservation. Officials felt burning could damage high-altitude vegetation.

The lessee's lawyer wanted the application re-heard and some matters tested in the High Court.

Prof Alan Mark said it would be an important test case in relation to the Land Act.

He said he was concerned about runholder criticism of DOC, which was "much unjustified", and urged the department to develop a fire policy for tussock grasslands to counter this.

On management of the Bain conservation area, Prof Mark said notices to educate the public about the value of highly-vulnerable tussock country were needed.

Vehicles should have to keep to roads to prevent damage. Some wetlands on one farm near Roxburgh had been "nearly annihilated" by trail bikes, he said.

Mr Cleveland was elected unopposed for the rest of the board's term.

Mrs Rachel Perkins said she had had complaints of jet boats operating illegally in Mount Aspiring National Park.

Mr Ian Withwell, of DOC, said commercial operators were making extensive use of the Dart River to ferry tourists to the park boundary for walks. About 10,000 people a year were being taken into what is classified as a low impact zone in the draft management plan for the park. He suggested considering a change in designation to moderate impact.

A conservation management strategy document for the Coronet Peak recreation reserve has struck a technical hitch. DOC officials in Wellington want the whole process repeated because they maintain their Dunedin office lacked delegated approval to call for public comment.

Board members contended a re-hearing would be a waste of time and money and the process should be completed because there had been no objection to the original proposals.

Board members said the Queenstown-Lakes District Council should peg out the paper road through the Mount Aurum reserve so the private group given permission to build access would have "no excuse" for not following the legal route.

Applications by NZ Nomad Safaris (J. Heyward) and St Bathans Trail Rides (P. Wright) were approved.

A decision was deferred on a bid by MacKenzie Fishing and Adventure Co (J. Fielding) because it would involve helicopter flights into the Dingle Burn. This was said to be an aerial access issue at present being reconsidered.

Address: 32 Centennial Avenue, Alexandra,
Post: P.O. Box 41, Alexandra, New Zealand
Phone: (03) 448-6969
Fax: (03) 448-8960
Trust Account: BNZ 020916 0007675 00
G.S.T. Number: 30-317-955

COPY

FA NUMBER (03) 448 8960

Please ask for:

7 August 1992

Copied for purposes of CPL
tenure review due diligence from
file: P264 Vol3 1414

John Williamson
Ken Taylor Alexandra

COPY FOR YOUR
INFORMATION

FAX MESSAGE

URGENT

TO COMMISSIONER OF CROWN LANDS

FOR MR DAVID GULLAN

FAX NUMBER (04) 472 2244

CLIENT REFERENCE 7104.1

NUMBER OF PAGES SENT 2

SUBJECT A C SANDERS & SONS - APPLICATION FOR BURN CONSENT AND TO OVERSOW

LAND CORPORATION
ALEXANDRA
RECEIVED
12 AUG 1992
A/PM
ALEXANDRA

MESSAGE

① Geoff
② P264

When I spoke with you on 29 July you indicated that we should be receiving a letter from the Commissioner of Crown Lands within the next few days following that discussion. We have been waiting on this letter to use it as a basis for our legal claim so that both sides of the argument can be documented. It is disappointing that we have not yet received this letter. As I will be working on finalising our submission today and tomorrow, I would appreciate it if you could fax to us the letter today.

We have already informed Landcorp of the urgency of this permit and the importance that this issue be resolved within sufficient time to permit a burn to take place before 15 September, if the decision is in our clients' favour. We are extremely unhappy at the present delays in receiving the letter from you and are hopeful that this is not an indication of any future delays which will be suffered in relation to this matter.

We point out that in our opinion the decision on the application by A C Sanders & Sons is wrong at law. With respect, we suggest that this is a breach of the Land Act and as the pastoral lease requires both the Crown and the lessee to adhere to the Land Act, the breach is therefore a contractual breach under the pastoral lease. The situation is therefore that if the final decision is in our clients' favour but this prevents a burn from taking place this 1992 year, because on your contractual breach our client has a right to claim damages. We would furthermore argue that the incorrect administration of the Land Act also constitutes negligence which raises remedies of damages.

.../2

- 2 -

Our clients would much prefer to have the legal issues and rehearing determined so that our clients can burn this year if the outcome is in their favour rather than be left with the only remedy of seeking to recover damages from the Crown. This matter is extremely important to our clients in terms of potential detriment to be suffered and requires extreme urgency.

Yours faithfully
CHECKETTS MCKAY

John Williamson LLB
Lawyer

AJ1-08065

FAXED



File Ref: 241

Mgr ALEXANDRA

9 July 1992

COPY FOR YOUR INFORMATION

Copied for purposes of CPL
tenure review due diligence from
file: P 264 Vol 3/112

Commissioner of Crown Lands
Office of Crown Lands
Dept Survey & Land Information
CPO Box 170
WELLINGTON

Attention: David Gullen

Ken
Phillip
Dave
Paul
Geoff
Suzanne
Ross
Library
File P 264
and 3/29

LAND CORPORATION
ALEXANDRA
RECEIVED
13 JUL 1992
A/PM
ALEXANDRA

Dear Sir

HIGH COUNTRY TRUSTEES (SOUTHERN) AND A.C. SANDERS & SONS - PASTORAL LEASES - CONSERVATION VALUES

John Williamson's letter of 12 June 1992 to our Alexandra Office refers. In summary of that letter I agree that "the relationship between the Crown and the pastoral lessees is a combination of part statutory (the Land Act) and part contractual (the pastoral lease)." I also agree that the terms of the lease cannot be inconsistent with the Act.

The issue has been expressed as:

"The Commissioner does not have the legal authority under the Land Act or under the pastoral lease to introduce conservation issues in the exercise of this discretion or wording of any conditions and does not have the legal authority to impose conservation issues on the Lessee."

If there is no legal authority then the rules of administrative action and the exercise of a discretion will apply.

In the Sanders application Butchers Creek has been declined on the grounds "that damage would result to RAP Old Man 2/3 which has been assessed as having high conservation values under the Protected Natural Areas Programme." Mr Williamson asserts that our "... obligations under the Management Agreement, with respect to the conservation issues and having to have regard to DOC's advice on such issues, is in conflict with the Land Act and consequently is legally impossible to perform." He earlier cited clauses 3.3 and 3.4 of the Agreement. Those clauses require Landcorp to consult with and have regard to DOC's advice on conservation issues. That advice is essential when regard is had to the provisions of clause 4.1. Under that clause Landcorp is to observe Relevant Government Policies. Those Policies are listed in the First Schedule.

In opening I agreed that the relationship between the Crown is in part determined by the provisions of the Land Act. Mr Williamson listed some of those provisions. I think it is important to also understand the Policies as it is from those Policies that DOC is involved. I consider that those Policies were soundly based on legal authority.

INCORPORATING LANDCORP INVESTMENTS LIMITED & LANDCORP MANAGEMENT SERVICES LIMITED



Christchurch District Office
76 Cashel Street
P O Box 142
DX 16835
CHRISTCHURCH, NZ

Tel (03) 799-787
Fax (03) 798-440

Section 12

Established the Land Settlement Board. The Chairman of that Board was the Minister of Lands.

Section 13

The duties of the Board are listed in S.13(1) to include the protection and care of Crown land. Crown land is defined in S.2 to include a Pastoral Lease.

S.13(2) provided that the Board would have "regard to" representations made by the Minister and that it shall "give effect to" Government decisions conveyed to it in writing by the Minister. One such decision conveyed to the Board in writing was the High Mountain Reserves Policy of 19 November 1979. The Preface to that "decision" states"

"PREFACE

Government recognises that the nature of New Zealand's mountain land and high country requires careful management. This statement sets out Government policy with respect to the use of the resources of high mountain areas and provides the basis from which more specific policies for particular aspects of resource use can be prepared or existing policies revised.

The statement should be used as a guide by all agencies and individuals who are required to make decisions from time to time about the use of resources falling within the high mountain zone.

I have chosen this one as an example as it is referred to in the First Schedule of the Agreement and covers matters now in issue.

Section 17

This section provides for rehearing of a matter where a person is aggrieved by any decision or "determination of an administrative nature." That is the only avenue available to a Lessee where the Lessee considers extraneous matters have been taken into account. I recognise that Mr Williamson's point would be that the "conclusion was so extraordinary that the only proper inference is that the power itself must have been misused" - Hawkins v Minister of Justice [1991] 2 NZLR 530 per Richardson J. at 538. I do not consider that the decision is so extraordinary to bring it within the review of the Court.

Section 18

Provides for appeal to the High Court against a decision. 18(1) contains a proviso:

"Provided that no such appeal shall lie -

...

(d) Where the Board has made a determination of an administrative nature."

Section 167

This gives DOC, with Lands consent, the power to acquire Crown land for reserve. S.167(3) provides that the land may be reserved *"notwithstanding it is subject to a pastoral lease."* If there is something of great value then DOC must be in a position to consider if it shall be reserved or burnt. I do not agree with Mr Williamson's point 4 that *"there is no statutory reference to conservation values."* S.167(3) is such a reference.

I feel that the important provision was contained in S.13(2) whereby we shall *"give effect to"* Government decisions. The section is now repealed but the policy in the administration of a pastoral lease in my view still applies. The High Mountain Resource Policy of 19 November 1979 followed from a Lincoln conference in November 1977 to test the draft ecological guidelines for balanced land use and development in high mountains prepared by the IUCN. The policy document under the heading *"OBJECTIVES"* at para 5 states:

"5. Pastoral, Agricultural & Forestry Uses

These should encourage:

...

(e) *The maintenance and improvement of landscape quality:*

(i) *by ensuring that landscape evaluation is a component of all pastoral, agricultural and forestry planning and development;"*

The Land Settlement Board's High Country Policy refers to the High Mountain Resources document in its introduction at para 1.2 and states:

"The policy statements following have been drawn up by the board after extensive consultation with lessees, users and agencies involved in the high country. ... The statements represent the board's proposals for implementation of Government policy in respect to those areas of the high country under the board's control."

The issue now before us is well covered in the High Country Policy. I will not refer to specifics but the introductory statement in para 1.4 clearly focused on the increasing need to consider the conservation values when it said

"1.4 The productive role of the high country has long been recognised, and settlement and pastoral use developed early in the country's history. This productive role will continue into the future, but there is an increasing need to integrate the productive role with the other values of the high country, such as its landscape quality and its importance for conservation and recreation."

The Land Settlement Board policies have been included in our Pastoral Agreement under the heading of *"Relevant Government Policies"*. In 1986 several issues required Government approval pending the demise of the LSB and the Dept of Lands & Survey. The issue of pastoral management was considered in several Cabinet papers (I don't have them all) and it became a directive that:

"Existing Land Settlement Board policies with environmental implications are to be adopted by Landcorp in its management of these (pastoral) leases and licences and implemented in consultation with DOC."

The directives included our obligation to consult with and have regard to DOC's advice. It is clear to me that the LSB policies now form part of the Relevant Government Policies.

When the policies came into effect the matter was dealt with by the LSB through officers of Lands & Survey. With Lands & Survey there were "farming" officers and "conservation" officers. The farming officers consulted with and had regard to the advice of the conservation officers. In 1987 the farming officers became Landcorp employees and the conservation officers became DOC employees. The "system" to implement Government policy is essentially the same. It may appear that DOC now have more say but it is my view that this perception has come about, not by a greater say, but rather that what is said is now more to the fore - "towards open Government".

Coming back to the issue of exercising a discretion under the Land Act, can we introduce conservation issues? My answer is yes as it is a matter of Government policy properly considered and formulated over a period of time that conservation matters are to be considered and that we must give effect to that policy. To properly give effect Landcorp require expert advice and obtain that from DOC.

I consider that it is important to note that in S.106(1) the Lessee "shall not burn" any tussock, scrub, fern, or grass" unless prior written consent is given. It is somewhat different to the words of S.108(1) where the Lessee "may with the prior consent" do certain things. He may, for example,

"clear ... by ... burning bush and scrub and sow in grass the land so cleared" - S.108(1)(d).

You will note that he may burn bush and scrub to clear land. It does not say he may burn tussock, fern and grass which is prohibited by S.106. There must be good reason therefore to burn tussock.

As to Judicial Review I have considered an article on recent developments and trends in the recent issue of the New Zealand Law Journal (1992 NZLJ 200). The writer at p.201 said

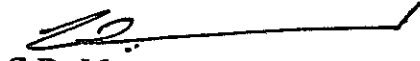
"We appear to be nearing the point where it can definitively be stated that the availability of judicial review depends not on characterisation of the precise legal nature of the source of power of the administrative or executive decision or action taken, but rather on the overall nature and subject matter of the power or action in question and the other relevant surrounding circumstances, including, it is submitted, the relevant matters of complaint."

Having regard to that statement and the definition of "Statutory power of decision" in S.3 Judicature Amendment Act 1972 it may be that the Lessee could seek a review. We know what the "overall nature and subject matter of the action" is and also "the relevant matters of complaint". The complaint is that there is no legal authority to involve DOC. My view is that there is legal authority by virtue of the particular wording of S.13(2) (as it was when the decisions (policy) of Government were made) and that the policies have been in place for some time and are essential ingredients in the decision-making process. If there were no policies then the decision-makers would have difficulty in considering DOC's views.

The article then refers to recent decisions. I have read *Hawkins v Minister of Justice* [1991] 2 NZLR 530 and *Petrocorp v Minister of Energy* [1991] 1 NZLR 641. From those cases Richardson, J. made the point to view these matters "as a straight-forward question of statutory interpretation" - *Hawkins* at p.536; and in *Petrocorp* at 655 "the whole thrust of the legislation is to subject the resource and its development and exploitation to the control of the Minister." If we look at the Land Act then the thrust of it with regard to a Pastoral Lease is that the Lessee has the right to pasturage, he has no right to the soil and that modification to the land (soil) is controlled by the LSB (now Commissioner). The LSB was required, under S.13, to protect and care for the land and was required to give effect

Government decisions (policies). The care and protection policies were carefully considered after debate on IUCN drafts and extensive consultation with Lessees. Those policies are part of the consent process. Those policies have been directed by Government to Landcorp to administer and that as part of the policy concerns conservation values, Government directed that DOC be consulted. Those matters are properly allowed within the terms of the Land Act at the time they were made. They are still valid. My opinion is that on review it would be found that a decision based on advice from DOC is within the terms of the Land Act. There is legal authority to introduce conservation issues.

Yours faithfully



C.D. Mouat
CORPORATE SOLICITOR

Extract from "0.10.7"

"Newspaper"

Published at _____, on [date] _____

18/7/92

SUBJECT: _____

Regional Manager, Christchurch

Copied for purposes of CPL
tenure review due diligence from
file: P264 Vol 3/410

Copy for your information/action
from DMr Alexandra

Appeals suspend tussock burning

By John Fridd

Alexandra. — One of the Central Otago farmers whose burning permit application is being taken to the Planning Tribunal conceded yesterday the appeals would probably stop him from burning some of his high-country tussock this winter.

Both the Department of Conservation and the Royal Forest and Bird Protection Society have appealed to the Planning Tribunal against the granting of a burning permit to A. C. Sanders and Sons for the top part of their recently purchased Obelisk run on the Old Man Range, above Fruitlands.

A special Otago Regional Council consents panel granted the application last month. At the same time it approved burning permits for V. G. Waldron (Dunstanburn station, Becks), P. J. Hore (Glenshee station, Dansey Pass) and S. R. Norman (Gem Lake, Ettrick).

The Forest and Bird Society has also appealed the Dunstanburn and Glenshee permits under the Resource Management Act.

Mr Neil Sanders, who manages the Obelisk run, said yesterday the action would most likely stymie burning on the top part of the property this winter, putting back for another year plans to develop the property.

He confirmed that Landcorp, acting under the Land Act, had also declined permission for burning on

the top block, but said yesterday he was applying to Landcorp for a rehearing.

DOC said in a press release this week the higher altitude areas on the property had the "highest conservation values" and the department was keen to protect them.

"Tall tussock grasslands, such as that found here, are Central Otago's equivalent of a forest. There is a dense canopy of snow tussock covering a diverse understorey of blue tussock and plants such as alpine daisies.

"This tussock 'forest' is home to an array of invertebrate animals, such as grasshoppers, flies, moths and beetles, many of which feed on decomposing tussock leaf litter," said the Otago regional conservator, Mr Jeff Connell. The area was also important for its scenic values and the department had tried to negotiate with the Sanders to protect it.

Mr Connell said the Minister of Conservation had originally lodged submissions on 19 high country burning permits but "in all cases, except the Obelisk, negotiations led to satisfactory conditions being agreed to".

- Ken
- Philip
- Dave
- Paul
- Geoff
- Suzanne
- Ross
- Library
- File 3/177

P64
P26

MEMORANDUM
FILE: 2416
TO: Manager, Alexandra
FROM: SI Assets Manager
DATE: 20 July 1972
RE: BURNING REHEARING APPLICATION : A.C. SANDERS & SONS

Copied for purposes of CPL
tenure review due diligence from
file: P264 Vol3 402

I will be talking to the CCL this week regarding action in this case.

Obviously John Williamson is looking to have the "nature conservation" policy tested in the High Court and does not really want to go through the re-hearing process.

The options for us and OCL at the moment are:

1. Decline the re-hearing application if we believe that Justice does not require it.
2. Agree to re-hear and do so under Section 17 Land Act and in a manner to be decided.
3. Allow the matter to be referred direct to the Court under Section 19.

Please do not discuss further with either the lessees or with John Williamson at this stage as the statutory process has been put in place. Please ensure that your staff understand this.

Your only action at this time should be to acknowledge receipt of the Williamson application.

John Williamson should receive the letter from the CCL containing Kit's opinion on the nature conservation issue within the next few days.

I will advise you further of action to take following discussion with OCL and Corporate Solicitor.

N.W. Ellis
SI Assets Manager

Checketts McKay
Lawyers Central Otago

Alexandra Office:
Address 32 Centennial Avenue, Alexandra.
Post P.O. Box 41, Alexandra, New Zealand.
Phone (03) 448-6969
Fax (03) 448-8960
Trust Account BNZ 020916 0007675 00
G.S.T. Number 30-317-955

16 July 1992

Please ask for:
John Williamson

Mr K R Taylor
Manager
Landcorp Management Services Ltd
4 Limerick Street
ALEXANDRA

Dear Sir

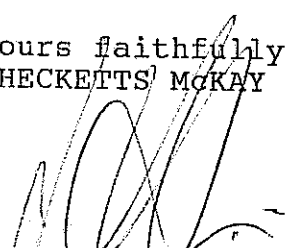
RE: BURNING CONSENT APPLICATION - A C SANDERS & SONS - P264,
OBELISK STATION

We enclose our client's application for a rehearing.

Would you kindly acknowledge receipt by signing and dating the duplicate letter herewith.

You will understand that the burning and development of the area declined, is part of an essential development program of the total property which our clients wish to undertake this year. It is therefore important that the rehearing takes place and a decision is made, within sufficient time to permit a burn to take place this year in the event of the decision outcome being favourable to our clients. We note that Section 17 of the Land Act provides for the Board to grant the rehearing within "one month after receiving the application". It is important that this rehearing does take place as soon as is possible. It would be appreciated if you could expedite the decision on the rehearing and provide us with as much notice as is possible of the rehearing date.

Yours faithfully
CHECKETTS' MCKAY


John Williamson LLB
Lawyer

AJ1-07164
Encl

IN THE MATTER OF Section 17 of
the Land Act 1948

A N D

IN THE MATTER OF an application
by A C SANDERS & SONS for burning
consent - P264, Obelisk

APPLICATION FOR REHEARING

TO: The Commissioner of Crown Lands
C/- Land Corporation Limited
4 Limerick Street
ALEXANDRA

A C SANDERS & SONS, the Applicants of a 1992 burning consent application with respect to Obelisk Station hereby apply for a rehearing of the decision on this application.

The parts of your decision which we object to are:

- (a) Your decline of the burn application with respect to the Butchers Creek portion of Top Block located north of Symes Road; and
- (b) Your decline of our proposed development by seeding the RAP area.

A C Sanders & Sons by their duly
authorised Solicitor and Agent

.....
