



Federated Farmers of New Zealand

SOUTH ISLAND HIGH COUNTRY COMMITTEE

3rd July 2005

Dear Lessee

Following some recent issues with activities on pastoral lease land which require discretionary consents, the Commissioner of Crown Lands (CCL) and the South Island High Country Committee have worked together to help clarify the consents process.

For most of you, the need for CCL consents and the processes involved in relation to CCL consents are well known. There have however been enough issues recently with these consents that this letter is deemed necessary.

A pastoral lease provides the lessee with the exclusive right of pasturage over the land but provides no right to the soil. Activities which include (a) affecting or disturbing soil or (b) the burning of vegetation are activities that require the prior written consent of the CCL. The statutory provisions which govern CCL consents are sections 15 to 19 of the Crown Pastoral Land Act, 1998 (CPLA)

Clearing or felling any bush or scrub, (including by way of spraying) top-dressing and sowing seed, planting trees or forming tracks are included among activities deemed to "affect or disturb" the soil.

Leaseholders wanting to undertake such activities can apply to the CCL for consent to do so. In determining whether to give consent, the CCL is obliged to take into account "the desirability of making it easier to use the land concerned for farming" as well as the protection of inherent values (other than recreation values).

Applications for consent to undertake any of these activities are to be made directly to a contractor engaged for that purpose on behalf of the CCL. Separate forms are required for different activities:

Refer www.linz.govt.nz/rcs/linz/6304/discretionary.pdf for more details.

On-going maintenance of some consented works or activities is provided for in Section 16 but to avoid any confusion or potential conflict the South Island High Country Committee of Federated Farmers (SIHCC) has always recommended that all applications for consent cover on-going maintenance and incorporate all potential current and future activities.

Following representations by SIHCC and the CCL's own investigation in consultation with Department of Conservation officials, it was agreed in 1999 that a single, blanket consent be granted to all pastoral lessees to undertake the range of activities specified below:

1. All earthworks, tree planting, tree felling, sowing of seed or topdressing being carried out within the area enclosed by fence around the homestead located on pastoral lease (i.e. the curtilage area).
2. Activities involving use of hand held shovel or spade comprising:
 - Clearing of existing vehicle or stock tracks
 - Digging in posts, anchors, piles or supports
 - Clearing drains or water races or culverts
 - Laying electric fence cables under gates
 - Burying dead animals
 - Clearing humps or filling hollows along fence lines
 - Digging rabbit warrens
 - Digging long drops
 - Wild flood irrigation
3. Maintenance of drains, irrigation races, stock water races less than 1 m wide by 1 m deep
4. Laying of water pipes underground using ripper and mounted cable layer
5. Laying power cables or telephone cables underground from main source of supply to existing buildings on leasehold land for farm-related activities
6. Digging of offal pits, dead stock holes or domestic rubbish holes
7. Driving posts or poles
8. Felling exotic wilding trees
9. Laying gravel in gateways and on tracks
10. Removing tree stumps

This means that leaseholders have a standing consent to undertake these activities, although the consent is granted subject to the condition that all the relevant requirements of the Resource Management Act 1991 and all appropriate District or Regional Plans, including in relation to historic structures and notable trees are complied with.

When granting further consents, the CCL may attach conditions. These will be designed to fulfil his obligation to take into account the desirability of protecting the inherent values of the land concerned and will have been balanced against the desirability of making it easier to use the land concerned for farming.

These conditions are an integral part of the consent and if you are not sure of any requirement it is important that you clarify it, through the CCL's contractor, before embarking on any activity.

The consents are for a fixed term so it is important to check your consents are still current before embarking on a discretionary activity.

If a consent is breached, the CCL has a process to follow to investigate that breach. The remedies available to CCL include pursuing damages of up to \$50 000 in the District Court, or terminating the pastoral lease (forfeiture).

An important issue is that any activities undertaken outside a consent (for whatever reason) are unauthorized activities, and the CCL is able to pursue the above remedies.

The advice offered in the August 1999 SIHCC newsletter is still relevant today;

"It is in your own best interests to gain the necessary consents, so that you can legally carry on your farming activities on your pastoral lease.

"Compliance generally involves less hassle than non-compliance.

"If you have a history of comprehensive compliance and unintentionally miss out an activity when applying for consents, it must assist your case for no action under the penalty clauses in the Act, versus blatant disregard.

"If you have all of the appropriate consents, your position under tenure review will be strengthened.

"When a property is offered for sale a prudent purchaser is more likely to pay a premium, when a comprehensive package of consents comes with the property, otherwise there is an air of uncertainty created in regard to the availability of consents, the time and cost taken to obtain them."

Finally, many leaseholders will have consents running during the course of a tenure review. It would be a matter of good communication if leaseholders informed the tenure review contractor of their intended activities with those consents, so that there are no misunderstandings. All activities occurring before the point of grant of freehold title in tenure review remain subject to the terms of the lease and the consent. The CCL can pursue the remedies noted previously in relation to any breach of a consent, or activity undertaken outside a consent, irrespective of the progress of a tenure review or whether a substantive proposal has been signed.

Ben Todhunter
Chairman South Island High Country Committee of
Federated Farmers.