

Crown Pastoral Land Tenure Review

Lease name : Glen Nevis

Lease number: Po 201

Report on public submissions

This document includes information on the public submissions received in response to an advertisement for submissions on the tenure review preliminary proposal. The analysis determines if an issue is accepted or not accepted as meeting the objectives of part 2 of the Crown Pastoral Land Act (CPLA) 1998, and if further consideration and consultation should be allowed or disallowed, as per Section 45 CPLA 1998.

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

January 02

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(1) Details of lease:

Lease Name: Glen Nevis
Location: Kingston
Lessee: Lachlan James Taylor and Fiona Jillian Taylor

(2) Public notice of preliminary proposal:

Date, publication and location advertised:

Saturday 7 April 2001:

- The Press Christchurch
- Otago Daily Times Dunedin
- Southland Times Invercargill

Closing date for submissions:

13 June 2001

(3) Details of submissions received:

A total of 71 submissions were received by the closing date and 1 late submission was received.

(4) Analysis of submission:

4.1 Introduction:

Explanation of Analysis:

Each of the submissions received has been reviewed in order to identify the points raised and these have been numbered accordingly. Where submitters have made similar points, these have been given the same number.

The following analysis summarises each of the points raised along with the recorded number (*shown in Section 3*) of the submitter(s) making the point. Discussion of the point and the CCL decisions whether or not accept/not accept or allow/disallow the point.

The following approach has been adopted when making the decision:

- (i) To accept/not accept:

The decision to "accept" the point made by submitters is on the basis that the matter raised is a relevant matter for the Commissioner to consider when making decisions in the context of the Crown Pastoral Land Act 1998. Conversely, where the matter raised is not relevant in terms of the Commissioner's consideration, the decision is to "not accept".

- (ii) To allow/disallow:

Where the decision has been made to accept, a further decision has been made as to whether the point made should be "allowed" or "disallowed". The decision has been made to "allow" if the point raises new information and should be considered further. Where the matter has previously been decided by the Commissioner, and there is no justification for further consideration then the decision is to "disallow". Further justification for the Decision has been made in the discussion paragraph showing the summary for each point.

4.2 Analysis:

Point	Summary of Point Raised	No of Subs	Decision	
1	General objection to freeholding alpine lands "with high inherent values"	25	Accept	Allow – to the extent that further consultation is required

Discussion:

The Commissioner must take into account the objects of the Crown Pastoral Land Act 1998 in formulating a tenure review proposal to be put to a holder. One of the objects is to enable the protection of the significant inherent values of reviewable land—

- (i) By the creation of protective mechanisms; or (preferably)
- (ii) By the restoration of the land concerned to full Crown ownership and control.

The point made in this submission relates to the way in which significant inherent values of the land in tenure review are to be protected according to the Preliminary Proposal, and the submission is therefore relevant to the extent that it concerns the objects of the Act and should be accepted.

This submission has not identified any new resource information to be considered by the Commissioner. However, those making the submission have expressed strong views that the land should be restored to full Crown ownership and control (rather than, as is presently proposed in the Preliminary Proposal, be freeholded subject to the creation of a conservation covenant over a discrete area of high altitude land.).

The Director General of Conservation originally expressed the same view through his delegate, but modified his view in the statutory consultation with the Commissioner. The holder was consulted at the same time.

The DGC's modification of the view originally held was based not only on the information made available in the consultation but also on the approach taken in the Crown Pastoral Land Act to the protection of significant inherent values. The Act does allow for protection of significant inherent values by way of conservation covenant as a protective mechanism in addition to protection by restoration of the land to full Crown ownership and control.

The Commissioner has so far been provided with diverging views on the approach to be taken to the protection of the significant inherent values which have been identified for the Glen Nevis land. Given the strength of the views, the Commissioner has exercised his statutory discretion by balancing these views and arriving at a decision which is solely based on the views and information most recently advised by the DGC's delegate.

However, given the strength of the views communicated in this submission, the submissions is allowed so that the Commissioner can further consult with the DGC on this issue. The Commissioner will also further consult with the holder.

The submission is allowed therefore to the extent that further consultation can take place, and not because any new information has been made available which would require further consideration of the Commissioner's decision.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
2	That the covenant area should become conservation land.	27	Accept	Allow - to the extent that further consultation required

Discussion:

The point raised is similar to that discussed in relation to Point 1 above.

A number of submitters strongly make the point that they do not believe the conservation gains on the eastern side of the Hector Mountains (by the restoration of the land concerned to full Crown ownership and control) are sufficient to justify a lesser form of protection on the western faces. This submission does not identify any new information; the Commissioner has already considered this matter and in formulating the designations in the proposal has taken into account not only the information referred to in this submission but the views expressed to him about the proposed designations in the consultation process.

One of the objects of Part 2 of the Act is to:

- (i) Promote the management of reviewable land in a way that is ecologically sustainable, and

- (ii) Subject to subparagraph (i), enable reviewable land capable of economic use to be freed from the management constraints (direct and indirect) resulting from its tenure under reviewable instrument.

Some submitters believe that by proposing a conservation covenant over land to be disposed of by freehold disposal, this object, with particular regard to the ecologically sustainable management of the land, will not be met. This is set out in particular in submissions 51 and 68.

However, during the consultation with the DGC's delegate and the holder on the Draft Preliminary Proposal this matter was traversed at some length. As already stated, the Commissioner's decision to propose a conservation covenant was made on the basis of the information provided to him in the consultation. This decision was made so that the Preliminary Proposal would accommodate the varying views that emerged in the consultation process. In making this decision, the Commissioner balanced both the elements of the first object of Part 2.

While no new information has been identified, in light of the strength of the views expressed in the submissions concerning the proposal to freehold high altitude land in the review and protect significant inherent values on that area of land by the grant of a conservation covenant rather than by restoring the land to full Crown ownership and control, and the Commissioner's decision to undertake further consultation, the submission should be allowed on the same qualified basis as for Point 1.

Submitters have also placed a precedent value on the Commissioner's decision to propose the covenant. They say that the inclusion of this covenant may set a precedent for other reviews.

However, the Commissioner has not given this argument significant weight. This is because his decision-making is undertaken with regard to the objects of the Act and according to the law. To the extent permitted by the law, the Commissioner must consider each tenure review on its individual merits and with regard to the circumstances applying for each specific area of land being reviewed. He does not propose to use prior decisions as grounds for decisions to be made in the future unless there are lawful reasons for doing so.

Some of those making submissions have made it clear that this is an issue which they will make a political statement over. The Commissioner must also take this point into consideration only to the extent permitted by law; thus he must consider the merits of the argument that a protective mechanism is not the appropriate means of protecting the significant inherent values of the land concerned and not the consequences if he makes a decision which is not acceptable to some of those who are making submissions in the public consultation process.

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Point	Summary of Point Raised	No of Subs	Decision
3	This deal may result in a freehold enclave within a future Remarkables Conservation Park.	28	Accepted - to the extent that further consultation required

Discussion:

The submitters referred to the proposal for a conservation park including this property and adjoining lands as suggested by the Conservation Management Strategy for the Otago region.

The submission addresses a matter which has been taken into account by the Commissioner in making decisions about the tenure review under the Crown Pastoral Land Act and should be accepted.

It should be noted that the conservation covenant which has been included in the Preliminary Proposal does provide for the creation of a Remarkables Conservation Park. Clause 3.6 of the covenant provides that the parties:

agree and acknowledge that the land subject to the covenant will be managed with objectives consistent with the objectives of the Remarkables Conservation Park when it is created and consistent with any conservation management plan for that Park.

The status of clause 3.6 and the authority for a clause of this nature under the Crown Pastoral Land Act requires further consultation with the DGC and comprehensive legal analysis.

There is currently no Conservation Management Plan in place and therefore the holder is being asked to sign up to a provision which is uncertain and may be unenforceable.

Part of the consultation process entails the production by the DGC of a Conservation Resources Report which should address those matters arising in the tenure review that can be properly considered under the Crown Pastoral Land Act. There is nothing to prevent the DGC from raising, as part of the Conservation Resources Report, any matter such as the proposal for a Conservation Management Strategy for the Otago region, if it is a matter which is relevant according to the terms of the Crown Pastoral Land Act.

However the anomaly between the DGC's views as expressed in the statutory consultation process with the Commissioner and the proposals in the Conservation Management Strategy identified by this submission have not been explained and need to be. This represents an introduction of new information which requires consideration by the Commissioner. To this end, further consultation with the Commissioner is proposed so that he can consider any relevant information and views in the Conservation Management Strategy which should be given further consideration in this tenure review according to the objects of Part 2 of the Crown Pastoral Land Act.

Point	Summary of Point Raised	No of Submissions	Decision
4	No confidence in a conservation covenant to deliver the required outcomes.	34	Allow - out to the extent that further consultati on required

Discussion:

The submitters claim that the covenant is flawed in a number of areas. These areas include the assertion that the covenant is contrary to section 40 of the Crown Pastoral Land Act 1998 in that the covenant does not provide for sustainable management. This raises a matter which is relevant for the Commissioner to consider when making decision in the context of the Crown Pastoral Land Act and the submission should therefore be accepted.

The Commissioner decided to include the conservation covenant in the Preliminary Proposal after assessing the information and views received during the consultation and having considered the to the scope and effect of section 40 with particular regard to its relevance in deciding on the appropriate means of protecting significant inherent values.

Section 40 allows the Commissioner to designate land in tenure review to be disposed of subject to the creation of a protective mechanism (or more than one protective mechanism).

Included amongst the instruments which are defined as protective mechanisms by the Crown Pastoral Land Act are covenants under section 27 of the Conservation Act.

A conservation covenant must, according to the Conservation Act, be for conservation purposes, namely for the purposes of preserving and protecting natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public and safeguarding the options of future generations.

Any section 27 conservation covenant proposed under section 40 must not only comply with the requirements of the Conservation Act, it must also relate to at least one of these matters:

- The protection of a significant inherent value of the land concerned;
- The management of the land concerned in a way that is ecologically sustainable;
- Public access across or to the land concerned;
- Public enjoyment of the land concerned.

These matters are not set out in any hierarchy in the Crown Pastoral Land Act and they are not inclusive. They do however need to be considered in light of the objects of the Act.

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The conservation covenant in question:

- expressly states that the objective of continued economic use of the land is subject to the management of the land in a manner that is ecologically sustainable;
- expressly states activities which the owner cannot carry out on the land;
- expressly allows the Minister access to the land to assess the condition of the land;
- sets out the requirements for public access over the land.

The inclusion of these matters in the covenant is consistent with the requirements of section 40(2) and with the objects of the Act.

An analysis of the covenant shows that:

- (a) the submission is not correct to the extent that it asserts that the covenant does not provide for sustainable management;
- (b) the submission is not correct to the extent that it makes the claim that the covenant is contrary to section 40 of the Crown Pastoral Land Act.

The Commissioner has acted within the terms of section 40 of the Crown Pastoral Land Act in including this conservation covenant as a protective mechanism.

In light of the relationship between this Point and Point 2, this Point should be allowed to the extent that further consultation can be undertaken although it should also be noted that this submission does not contain any new information which requires further consideration by the Commissioner.

The consideration of this point should be undertaken in conjunction with the submission referred to in Point 37 which relates to grazing at high altitude.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
5	Support for proposed conservation area	24	Accept	Allow

Discussion:

A significant number of submitters expressed support for the proposed conservation areas resulting from this review. The majority merely indicated support, but additional information was provided in submissions 2 and 11.

The return of land to full Crown ownership and control as a conservation area is a consideration of tenure review under the Crown Pastoral Land Act and the additional information should be considered by the Commissioner if the designations are reconsidered as a result of further consultation.

Point	Summary of Point Raised	No of Subs	Decision	
6	Lack of a fenceline on the range crest is unacceptable and will provide inadequate protection.	18	Not accept	

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Discussion:

The submitters have expressed the view that fencing of boundaries between conservation land and other land is a desirable outcome. However fencing is not a matter addressed in the Crown Pastoral Land Act and on this basis the submission should not be accepted.

Point	Summary of Point Raised	No of Subs	Decision	
7	Suggests emergency grazing 1 year in 10 on the Remarkables Face.	1	Accept	Disallow

Discussion:

The submitter in this case provides an alternative to the conservation covenant in recommending emergency grazing be allowed on the land currently proposed for covenant. While the submission relates to relevant matters in terms of the Commissioner's decision making discretion under the Crown pastoral Land Act, and should be accepted, the submitter has provided no new information in the submission. As this matter was previously considered by the Commissioner and was not then considered a valid option, the submission should be disallowed.

Point	Summary of Point Raised	No of Subs	Decision	
8	Objects to any freeholding of pastoral lease land particularly in this vicinity on the basis that all such land deserves conservation protection and should not be alienated from public ownership.	24	Not Accept	

Discussion:

The basis for the submissions in this case is that there is sufficient freehold land in New Zealand already and that further land should not be freeholded and made available for the development by individuals. The submission fails to take into account the policy and objects of the Crown Pastoral Land Act. Land undergoes tenure review under the Crown Pastoral Land Act as an outcome of the voluntary invitation and acceptance provided for in the Act. This process respects the interest in the land that holders have pursuant to crown pastoral leases. All decisions that flow from the decision to invite a holder to put the pastoral lease into tenure review, and the acceptance of that invitation by the holder, must be made within the framework of the Crown Pastoral Land Act.

These submissions are made on the basis that the Crown Pastoral Land Act gives the Commissioner a discretion to make decisions which is at odds with the objects of the Act. This is not a relevant consideration and on this basis the submissions should not be accepted.

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<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
9	Object to restriction on horse trekking on historic Pack Tracks.	4	Not accept	

Discussion:

The historic Pack Tracks referred to lie within proposed conservation lands. Future management of conservation land is not a matter for the Commissioner to consider in terms of the Crown Pastoral Land Act. As the submission raises matters which are not relevant for consideration when making decisions in the context of the Crown pastoral Land Act, the submission should not be accepted. The admittance of horses to conservation land is a matter to be addressed pursuant to the Conservation Act 1987.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
10	Opposes any retirement of land unless such land is reserved as an open range deer park.	2	Not accept	

Discussion:

The proposals raised by the 2 submitters in this case lie outside the objects of the Crown Pastoral Land Act 1998 and should not be accepted. Creation of deer parks may be a recreation activity which is an inherent value but in this particular location it could not be regarded as significant and is therefore not a determinant for the restoration of land to Crown ownership and control. The provision of hunting access may be a matter for the DGC to consider in any future management.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
11	Supports freehold of land below snowline fence.	8	Accept	Disallow

Discussion:

As the freeholding of appropriate land is one of the objects of the Crown Pastoral Land Act 1998, these submissions are relevant and should be accepted.

The submitters have provided additional relevant information here but that information supports the position previously adopted in relation to this area and therefore has no impact on the decision the Commissioner has already made.

As there is no requirement to reconsider the decision the Commissioner has already made on the basis that the additional information supports the Commissioner's decision the submission should be disallowed.

This submission should be treated in the same manner as Point 18.

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<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
12	Proposal fails to secure adequate public access, particularly access from State Highway 6 up the western flank of the Hector Mountains.	34	Accept	Allow – to the extent necessary for further consultation to take place

Discussion:

The provision of public access is an object of the Crown Pastoral Land Act. Therefore the submissions are relevant and should be accepted. While the Commissioner has previously considered the provision of access on this face the submitters have provided additional relevant information. This information should be assessed by the Commissioner before progressing this review.

The Commissioner will thereby have the opportunity to assess the significance of the historic use of this face identified by the submitters. He has not yet received any advice on or assessed the information in this submission in terms of the Crown Pastoral Land Act. The consultation process to be undertaken will also make it possible for the Commissioner to ensure that his decisions about the designations in the Preliminary Proposal take account of and give appropriate weight to the new information provided in these submissions. The submissions should therefore be allowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
13	Request for covenant protection below the snowline fence.	2	Not accept	

Discussion:

The basis for these submissions is that the faces of the Hector Mountains are a significant landscape as part of the scenic corridor associated with State Highway 6. While landscape is an inherent value to be considered by the Commissioner the requirements for landscape protection in relation to State Highway 6 is not and therefore the submissions are not able to be accepted. One of the submitters suggests that the reason for making such a submission relates to inadequacies within the Queenstown-Lakes District Plan. These inadequacies are not a matter for the Commissioner to consider.

Point	Summary of Point Raised	No of Subs	Decision
14	The correct alignment of the Nevis-Garston Road is questioned.	3	Not accept

Discussion:

The alignment of legal roads is not a matter for the Commissioner to consider under the Crown Pastoral Land Act 1998. While the Commissioner is required to consider public access as one of the objects of the Act this matter has been considered and it was determined that the legal alignment of the Nevis-Garston Road does provide for adequate public access. This road lies outside the boundaries of the tenure review and for this reason also these submissions cannot be accepted.

Point	Summary of Point Raised	No of Subs	Decision
15	A request to retain existing cottage on proposed conservation land.	2	Not accept

As part of the tenure review process the Commissioner undertakes a due diligence assessment of each property in tenure review to obtain a full understanding of the current use and legal status of the property.

The due diligence report for Glen Nevis identified the existence of the squatters cottages on the Nevis side of the property. However according to the report the users of the cottages have no enforceable rights in respect of these cottages.

The Crown Pastoral Land Act does recognise that at specific points in the tenure review process the legally enforceable rights of those with an interest in the land should be addressed. However, as the users of the squatters cottages have no legally enforceable rights, any interests they may assert are not able to be considered by the Commissioner under the Crown Pastoral Land Act.

On this basis these submissions do not raise relevant matters for the Commissioner to consider when making decision in the context of the Crown Pastoral Land Act and should not be accepted.

A related submission has been made in Point 19 and should be treated in the same way.

Point	Summary of Point Raised	No of Subs	Decision
16	Request to retain existing fence within the proposed conservation land.	1	Not accept

Discussion:

The submitter identifies that an existing fence between his property and Glen Nevis is not on the legal boundary and lies within land proposed for restoration to full Crown

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ownership and control. The submitter has described this fence as a boundary fence despite the fact that it lies within the area of the pastoral lease in the tenure review.

The existence of any fence relied upon by an owner of adjoining land, and the use of that fence by that adjoining owner, is not a matter the Commissioner may take into account in making any decision about a tenure review under the Crown Pastoral Land Act 1998.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
17	That if the current holder does not wish to retain cattle grazing on the Nevis flats this should be made available to an adjoining landholder.	1	Not accept	Disallow

Discussion:

The submitter in this case identifies that cattle grazing is available on the Nevis flats and believes that ongoing utilisation of this grazing would be positive for all parties involved.

However, the objects of the Crown Pastoral Land Act are not framed to create any rights in the land in tenure review to be exercised by adjoining owners. The matter raised is not therefore a relevant matter for the Commissioner to consider when making decisions in the context of the Crown Pastoral Land Act.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
18	Full support for the proposal.	4	Accept	Disallow

Discussion:

The 4 submitters confirm that the Preliminary Proposal for this property is an acceptable outcome and to this extent it is noted that the proposal meets the objects of the Crown Pastoral Land Act. The submissions should therefore be accepted.

The submitters have provided additional relevant information here but that information supports the position previously adopted and therefore has no impact on the decision the Commissioner has already made.

As there is no requirement to reconsider the decision the Commissioner has already made on the basis that the additional information supports the Commissioner's decision the submission should be disallowed.

This submission should be treated in the same manner as Point 11.

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<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
19	No support for current hut occupiers.	1	Not	accept

Discussion:

This submission is from the holder and is in relation to the squatters huts currently on the Nevis flats. The submitter notes that these huts are not there by his authority and he does not support their retention.

As is the case for the submissions in Point 15, the existence of the squatters cottages is not a relevant matter for the Commissioner to consider under the Crown Pastoral Land Act. For this reason the submission should not be accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
20	That the tenure review should not allow for grazing of the Nevis Valley for 3 months during summer.	1	Not	accept

Discussion:

The summary of the Preliminary Proposal released to the public and the Preliminary Proposal itself do not allow for this grazing. (The possibility of grazing was raised at an earlier stage in the tenure review but not pursued by the Commissioner.)

As the Preliminary Proposal makes no reference to grazing, the submission that has been made does not address a matter for consideration by the Commissioner under the Crown Pastoral Land Act and should not be accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
21	Neighbours have expressed concerns regards stock access, co-operation during mustering and maintenance of boundary fences.	2	Not	accept

Discussion:

The Crown Pastoral Land Act does not deal with issues relating to relationships between neighbours and future conservation lands. As these submissions do not address matters which are relevant in terms of the Crown Pastoral Land Act, or introduce any relevant information not previously considered by the Commissioner, they should not be accepted.

These submissions do raise issues which would be relevant from a land management perspective for land vested in the Crown as conservation land subject to the Conservation Act after implementation of a substantive proposal.

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<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
22	The loss of summer grazing will penalise the viability of the residual Glen Nevis property.	1	Accept	Disallow

Discussion:

This submission does not introduce any new information to a matter the Commissioner has already considered, namely the possibility of summer grazing within the area of land to be restored to full Crown ownership and control. Therefore, while the submission addresses a relevant matter within the context of the Crown pastoral Land Act and should be accepted, it is also a matter which has previously been decided by the Commissioner and there is no further justification for further consideration. On this basis the submission should be disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
23	Suggest emergency grazing in the Nevis Valley.	1	Not accept	

Discussion:

While the Commissioner can and does consider the provision of grazing on proposed conservation lands as part of tenure review this is not a specific object of the Crown Pastoral Land Act 1998. Should such a matter arise during consultation with the holder provision can on occasion be made. However, as this lies outside the matters considered by the Commissioner in this review the submission is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
24	Concerns in relation to fire suppression.	4	Not accept	

Discussion:

Fire suppression is an important management issue for land managers to consider and address with regard to the statutory scheme provided by the Forest and Rural Fires Act 1977. However fire suppression is not a matter for the Commissioner to consider in terms of the Crown Pastoral Land Act when undertaking tenure review of a pastoral lease. ON this basis the submission should not be accepted.

Point	Summary of Point Raised	No of Subs	Decision	
			Accept	Not allow
25	Restore all land above 650 metre contour to the Crown.	2	Accept	Not allow

Discussion:

The Commissioner of Crown Lands is required to consider all significant inherent values when undertaking tenure review. This is a requirement of the Crown Pastoral Land Act. To this extent the submission is relevant and should be accepted.

The submitters contend that there are significant inherent values at all altitudes above 650 metres. However, the Crown Pastoral Land Act is neutral on the question of altitude in the identification of significant inherent values. The Commissioner has already undertaken an assessment of the significant inherent values for this property and made a decision on the basis of the information available to him. That decision is not consistent with the submissions received on this point.

As these submissions do not make available any new information which would justify a reconsideration of the Commissioner's decision, these submissions are not allowed.

Point	Summary of Point Raised	No of Subs	Decision	
			Accept	Allow - to the extent that further consultation is to be undertaken
26	That rather than a covenant over the high altitude lands on the western faces of the Hector Mountains a grazing concession should cater for any proposed grazing.	2	Accept	Allow - to the extent that further consultation is to be undertaken

Discussion:

The Commissioner of Crown Lands may consider grazing concessions in terms of the Crown Pastoral Land Act 1998. The submitters suggest that a grazing concession over the land returned to Crown control would be an alternative to a conservation covenant over freeholded lands. This would meet the objects of returning land with significant inherent values to the Crown. As this lies within the matters to be considered by the Commissioner the submission should be accepted.

As already indicated in this report, and particularly in relation to Point 1, the Commissioner has decided to undertake further consultation with the Director General of Conservation about the conservation covenant for this part of the property. That consultation will incorporate an investigation of the alternatives available under the Crown Pastoral Land Act, and those alternatives include including the grant of a grazing concession should the Commissioner decide to designate the land differently.

The Point made in these submissions is related to the submissions made in Point 38.

Point	Summary of Point Raised	No of Subs	Decision
27	Oppose fence on range crest.	4	Not accept

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Discussion:

The points raised by the submitters are noted and in part relate to a misunderstanding of the preliminary proposal.

Fencing of proposed boundaries between proposed designations is a management issue which the Commissioner does consider. It is however not a requirement of the Crown Pastoral Land Act 1998 and the submission should therefore not be accepted.

Point	Summary of Point Raised	No of Subs	Decision	
28	Inadequate information was provided with the public notice.	2	Accept	Disallow

Discussion:

The submitters have proposed that all the information relating to tenure review should be made available to the public. This would include all Conservation Resources Reports and all Draft Preliminary Proposals and subsequent reports on consultation as well as the full version of the Preliminary Proposal.

Section 43 of the Crown Pastoral Land Act 1998 sets out the requirement for notification of preliminary proposals and states what information must be included in each notice. According to section 43(1), the Commissioner must:

- Specify the land, a day for receiving submissions, and an address
- Describe the proposal in general terms
- Indicate that submissions may be given or sent to the Commissioner.

The Commissioner has met these requirements. These submissions propose the availability of information about the tenure review beyond the requirements of section 43. Therefore these submissions raise a matter which is addressed in the context of the Crown Pastoral Land Act and should be accepted. However, in light of the fact that no further information is identified which would result in any reconsideration of the Commissioner's decisions relating to the notification requirements, the submission should be disallowed.

There are other legal avenues open to those seeking information, and these have been used in the tenure review process, including the tenure review process for this particular property. Official Information Act requests for information relating to this tenure review have been received and replied to by the Commissioner in accordance with statutory requirements. These legal avenues are not specifically referred to in the Crown Pastoral Land Act but they do not need to be.

Point	Summary of Point Raised	No of Subs	Decision	
29	Basic support for original Draft Preliminary Proposal.	1	Accept	Disallow

Discussion:

For this submission the submitter obtained and referred to the Draft Preliminary Proposal (DPP) under the Official Information Act. A DPP is produced at an earlier stage in the tenure review process for the purpose of consultation with the DGC and the holder. To this extent the DPP is a relevant part of the tenure review process and its relevance for the purposes of the Crown Pastoral Land Act is derived from its use in the statutory consultation process.

The DPP for this tenure review identified significant inherent values and proposed designations consistent with the Crown Pastoral Land Act. The Preliminary Proposal for this tenure review is developed from the DPP. As the contents of the DPP were drafted for the purposes of consultation in the Crown Pastoral Land Act, and reflect the requirements of that Act, the submission should be accepted.

However, in moving from the DPP to the Preliminary Proposal through a process of consultation the Commissioner has previously considered the information necessary in putting the preliminary proposal to the holder. As this information has already been considered and no new information is provided, the submission should be disallowed.

Point	Summary of Point Raised	No of Subs	Decision	
30	That the proposal does not meet the requirements of Section 2 Crown Pastoral Land Act 1998 particularly in regards to ecological sustainability.	9	Accept	Allow

Discussion:

The objects of Part 2 of the Crown Pastoral Land Act include the promotion of the management of reviewable land in a way that is ecologically sustainable. The Commissioner of Crown Lands must take this object into account in making decisions about every tenure review. A submission concerning the ecological sustainability of the proposal should therefore be accepted by the Commissioner.

The submitters provide substantial information in relation to this aspect of the review. This includes specific reference to on-site investigation. Scientific papers relative to ecological sustainability and a detailed assessment of site factors which relate to ecological sustainability are included in the submissions.

While the Commissioner has previously considered the aspect of ecological sustainability in relation to the overall review there is important new information provided by the submitters which should be considered and therefore the submission should be allowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
31	That the use of a conservation covenant is contrary to Government policy.	1	Not accept	

Discussion:

The designation of reviewable land subject to protective mechanisms such as conservation covenants pursuant to the Conservation Act is specifically provided for in the Crown Pastoral Land Act. The suggestion that a conservation covenant is contrary to Government policy is not reflected by the scheme of the Crown Pastoral Land Act and this submission raises a matter that is not relevant for the Commissioner when making decisions in the context of the Crown Pastoral Land Act. On this basis the submission should not be accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
32	That land lying between State Highway 6 and Lake Wakatipu should be restored to the Crown.	1	Accept	Disallow

Discussion:

The submitter considers the land in question should be designated a recreation reserve by being restored to full Crown ownership and control. This submission is relevant to the extent that it relates to the scheme of designations in the Crown Pastoral Land Act. The submission should therefore be accepted.

However, as the submission does not introduce any new information which requires further consideration by the Commissioner, the submission should be disallowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
33	That the covenant/freehold boundary be fenced.	1	Not accept	

Discussion:

The submitter asserts that the boundary between the two areas should be fenced. This submission raises an issue that is not within the statutory framework of the Crown Pastoral Land Act. Fencing is not provided for in the Act. On this basis the submission should not be accepted.

Furthermore, the submission is based on a misunderstanding or misinformation. The boundary referred to is currently fenced.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
34	That an annual inspection of the covenant should be made with the findings made public.	1	Accept	

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Discussion:

The terms of any covenant or other protective mechanisms proposed in the context of a designation under the Crown Pastoral Land Act is a matter for the Commissioner of Crown Lands to consider when making decisions about a tenure review pursuant to the Act. On this basis the submission should be accepted.

While the proposal that findings on actions taking in the administration should be made public is not a matter which has previously been considered by the Commissioner and is one that justifies allowing the submission, the Commissioner has already indicated that the designation of the land and the inclusion of the conservation covenant is a matter for further consultation with the DGC on the grounds outlined in the analysis of Point 1 of this report. Because of this, the Decision is qualified to the extent that the Commissioner will include in his consultation with the DGC a discussion about the possibility of formal provision for public disclosure of findings made as an outcome of the management activities provided for in the conservation covenant.

It should also be noted that the Crown Pastoral Land Act requires the provisional consent of the Minister of Conservation to any designation of land as land to be disposed of to a specified person subject to the creation of a protective mechanism.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
35	There should be public consultation if any changes are proposed to the covenant.	1	Accept	Allow

Discussion:

This submission relates again to the terms of the conservation covenant. It therefore raises issues closely related to those addressed in respect of Point 34.

The terms of any covenant or other protective mechanism proposed in the context of a designation under the Crown Pastoral Land Act is a matter for the Commissioner of Crown Lands to consider when making decisions about a tenure review pursuant to the Act. On this basis the submission should be accepted.

While the proposal that there should be public consultation if any changes are proposed to the covenant is not a matter which has previously been considered by the Commissioner and is one that justifies allowing the submission, the Commissioner has already indicated that the designation of the land and the inclusion of the conservation covenant is a matter for further consultation with the DGC on the grounds outlined in the analysis of Point 1 of this report. Because of this, the Decision is qualified to the extent that the Commissioner will include in his consultation with the DGC a discussion about the possibility of formal provision for public consultation

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if any changes to the conservation covenant are proposed in the conservation covenant.

It should also be noted that the Crown Pastoral Land Act requires the provisional consent of the Minister of Conservation to any designation of land as land to be disposed of to a specified person subject to the creation of a protective mechanism.

Point	Summary of Point Raised	No of Subs	Decision	
			Accept	Disallow
36	That only lowland areas which support sustainable production or small discreet areas for tourist or other development should be freeholded.	1	Accept	Disallow

Discussion:

The Commissioner is required to make decisions about the designations proposed for each tenure review, including the freeholding of Crown pastoral land, on the basis of the objects of the Crown Pastoral Land Act.

The objects of the Act do not differentiate between lowland and highland areas of land. This is not a relevant consideration in terms of the Act.

One of the objects of the Crown Pastoral Land Act is to enable reviewable land capable of economic use to be freed from the management constraints of (in this case) leasehold tenure but in considering this object the Commissioner must also take into account the promotion of the management of the land in a way that is ecologically sustainable. Thus while this object does not refer to specific economic use or development of the land, a broad reading of the object can incorporate a consideration of economic use capabilities of the land.

The point raised is therefore consistent with the Act to the extent that it relates to the economic use capabilities of the land. On this basis it should be accepted by the Commissioner.

However the matters raised have previously been considered by the Commissioner and the submission should be therefore be disallowed.

Point	Summary of Point Raised	No of Subs	Decision	
			Accept	Disallow
37	That grazing at high altitude is not acceptable and that adjustments to grazing based on monitoring are untested and unacceptable.	1	Accept	Allow – to the extent that further consultation is to be undertaken

Discussion:

This submission refers to the prospect of land at high altitude which would be freehold being grazed. As this area of land includes the land which would be subject to the conservation covenant, it relates in part to Point 4 in this Report.

As previously noted (see Points 34 and 35) the terms of a conservation covenant, including any monitoring of grazing areas are matters for the Commissioner to consider in terms of the Crown Pastoral Land Act 1998. To this extent the submission should be accepted, notwithstanding the fact that it refers to the altitude of the grazing, a matter which is not itself a relevant consideration within the terms of the Act.

While the submitter does not provide any new information in relation to the limitations of monitoring which would indicate that the point should not be allowed, the Commissioner will allow this submission on the basis that further consultation about the conservation covenant is proposed as outlined in Point 1, and that the consultation will extend to a consideration of the terms of the conservation covenant as outlined in Points 34 and 35.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
38	In proposing a grazing concession as an alternative to the conservation covenant, suggests that a fence should be constructed at 1300 metres as the upper level of the grazing concession.	1	Accept	Allow

Discussion:

This submission is in part similar to Point 26 above in that it proposes a grazing concession rather than a conservation covenant for a part of the land designated for freehold disposal in the Preliminary Proposal.

As covenants and concessions are matters to be considered by the Commissioner in terms of the Crown Pastoral Land Act 1998 the submission should be accepted.

The submitter suggests that the covenant be replaced by a grazing concession over conservation land but that the concession should be restricted to an altitude of 1300 metres by further fencing. The submitter provides further information and a proposition that has not previously been considered by the Commissioner therefore the point should be allowed.

It should be noted that the further consultation indicated in the analysis of Point 1 will provide the Commissioner with an opportunity to consult on this submission at the same time.

It should be further noted that the proposed construction of a fence is not a matter for consideration under the Crown Pastoral Land Act, which does not include fencing matters in the statutory scheme.

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Point	Summary of Point Raised	No of Subs	Decision	
39	Opposition to 4474 ha being returned to the Crown.	1	Accept	Disallow

Discussion:

The submitter does not take into account the objects of the Crown Pastoral Land Act in proposing that an area of the land in tenure review should not be restored to full Crown ownership and control. One of the objects of the Act is to enable the protection of the significant inherent values of the land by its restoration to full Crown ownership and control. This submission relates to the Commissioner's decision-making role in applying the objects of the Act in a tenure review and to this extent it should be accepted.

However, as the submission does not raise any further information which would require a reconsideration of the decision of the Commissioner to designate land for restoration to full Crown ownership and control it is disallowed.

Point	Summary of Point Raised	No of Subs	Decision	
40	Concerns about maintenance of the Nevis Road.	1	Not accept	

Discussion:

While the submitter provides documentation to support a programme of ongoing maintenance for the Nevis Road the Crown Pastoral Land Act does not extend to the consideration of the public roading system. The Nevis Road is not in the tenure review and is not a matter for the Commissioner to consider. On this basis the submission is not accepted.

Point	Summary of Point Raised	No of Subs	Decision	
41	Concerns that if the Nevis flats are not grazed then the tussock cover will be lost.	1	Accept	Disallow

Discussion:

An object of the Crown Pastoral Land Act 1998 is the protection of significant inherent values by either the creation of protective mechanisms or by restoration of the land to full Crown ownership and control. The points raised by the submitter are relevant to this object and on this basis the submission should be accepted. The submission does not however include any new information. As the Commissioner has already considered the matter of grazing in the protection of significant inherent values in this area the submission should not be allowed.

Point	Summary of Point Raised	No of Subs	Decision
42	That the proposal appears to allow for continued grazing of all the land in the tenure review including land with significant inherent values.	1	Accept

Discussion:

The point raised by the submitter may represent a misunderstanding of the Preliminary Proposal, if it is to be read as objecting to continued grazing of all of the land in the tenure review. To the extent that it represents an objection to the continued grazing of land which is designated as land to be restored to full Crown ownership and control, it relates to matters within the framework of the Crown Pastoral Land Act.

However, the Preliminary Proposal provides that all of the land in the tenure review east of the crest of the Hector Mountains is to be destocked and returned to full Crown ownership and control. It is intended that this designation will result in a discontinuation of the grazing of this area.

As no further information is provided, and indeed no reconsideration of the Commissioner's decision regarding the designation of the land to be restored to full Crown ownership and control is required, the submission should not be allowed.

Point	Summary of Point Raised	No of Subs	Decision
43	That it is not clear how much of the land is to be freeholded is to be subject to the covenant because of a difference of areas given in various reports.	1	Not accept

Discussion:

In making this submission the submitter has referred to the information made available in the public notice provided pursuant to section 43 of the Crown Pastoral Land Act and the information in the Preliminary Proposal – the latter information having been obtained by the submitter pursuant to the Official Information Act.

The Commissioner has complied with the requirements of section 43 in publicly notifying the Preliminary Proposal and the Crown Pastoral Land Act does not require any specification of areas of land in the public notice. To this extent the submission does not raise an issue which is relevant for the Commissioner in making decisions under the Crown pastoral Land Act and is not accepted.

Two further points should also be noted in relation to this submission.

- The Preliminary Proposal and the public notice are consistent in the use of areas for this tenure review;
- The Commissioner is not required by the Crown Pastoral Land Act to specify the area of land to be subject to a protective mechanism.

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Point	Summary of Point Raised	No of Subs	Decision	
44	Does not support any concessions or covenants from snowline fence east.	1	Accept	Disallow

Discussion:

The grant of concessions or creation of protective mechanisms are relevant matters in terms of the Crown Pastoral Land Act, and an objection to these elements of a tenure review proposal are therefore within the scope of a relevant submission. For this reason the submission should be accepted. The submitter does not raise any new issues or provide new information for consideration by the Commissioner of Crown Lands. On this basis the submission should be disallowed.

Point	Summary of Point Raised	No of Subs	Decision	
45	That 4WD access should be maintained to historic sites along the Garston Nevis Road through the Nevis Valley.	1	Accept	Disallow

Discussion:

The securing of public access to land in tenure review is one of the objects of the Crown Pastoral Land Act. To this extent the submission raises matters relevant to the Crown Pastoral Land Act and should be accepted. However the point should be disallowed as the submitter does not provide any information which has not previously been considered by the Commissioner.

Point	Summary of Point Raised	No of Subs	Decision	
46	That additional fencing is required at the snowline fence.	1	Not accept	

Discussion:

While fencing of the boundary between areas of different designations is a matter the Commissioner may choose to address, it is not a requirement of the Crown Pastoral Land Act. To this extent this submission does not raise matters relevant to the decisions to be made by the Commissioner under the Crown pastoral Land Act.

It should be noted in relation to this submission that the advice provided to the Commissioner is that the snowline fence is in fact complete.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
47	That Land Use Capability should be considered as a reflection of inherent values.	2	Not accept	

Discussion:

Land Use Capability assessments are a tool used by Soil and Water Conservation organisations. They are not drafted for the purpose of the Crown Pastoral Land Act and do not reflect the significance or otherwise of inherent values in terms of the Crown Pastoral Land Act. Nor is their consideration provided for in the Act although there may be circumstances where the information provided by these assessments is relevant and, if made available to the Commissioner will be taken into account in making decisions under the Act – in the same way that information from Conservation Resources Reports provided to the Commissioner is taken into account.

This submission raises an issue which is not a matter the Commissioner should consider and should therefore not be accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
48	A request that these submissions be acknowledged.	6	Not accept	

Discussion:

The Crown Pastoral Land Act provides for public notification of Preliminary Proposals in section 43 and to this extent the submission is relevant because it relates to the statutory notification and submission-making process which the Commissioner is obliged to undertake as part of the tenure review process.

However the Crown Pastoral Land Act does not require the Commissioner to acknowledge the submissions.

The law relating to consultation does not impose any universal requirements as to form of consultation or procedural obligations on parties undertaking consultation. To this extent the Commissioner does not have any obligation to acknowledge submissions.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>No of Subs</i>	<i>Decision</i>	
49	A request to be heard in support of submissions.	6	Not accept	

Discussion:

Some of these submitters seeking to be heard have cited section 47 (2) Crown Pastoral Land Act. This section provides that nothing in subsection (1) prevents the Commissioner from considering any late or oral submission.

However, the Crown Pastoral Land Act does not impose upon the Commissioner an obligation to hear submissions. The subsection referred to is a protection for people seeking to make submissions who are not prevented from either presenting a written submission or making direct contact with the Commissioner after the day specified in the notice for written submissions has passed.

To this extent the submission does not raise a matter which is relevant for the Commissioner in making decisions under the Crown Pastoral Land Act and is not accepted.

(5) Discussion and conclusions:

Discussion relevant to the particular point has been made above under each point for simplicity and clarity. It is possible to conclude from the submissions received that there is strong opposition to freeholding of land above 1050 metres. A small number of submitters support this contention by representations that pastoral use of land above this altitude is not ecologically sustainable.

A second significant point is that there is very little trust in the community for the use of covenants to protect significant inherent values. There is a strong belief that covenants are inherently flawed and therefore not a reliable form of protection for significant inherent values.

However, it should also be noted that many of the submissions received were "pro forma", making the same or similar points on the basis of a pre planned scheme. The Commissioner may take account of the fact that a concerted effort is being made to bring the issues in these submissions to his attention as part of the submission process, but consider the submissions on their merits and not as part of any campaign.