

Crown Pastoral Land Tenure Review

Lease name: KYEBURN

Lease number: PO 197

Final Report on Public Submissions part 1

This document builds on the Preliminary Report on public submissions. The analysis determines if an issue that was allowed, and further consulted on, is accepted or not accepted for inclusion in the Substantive Proposal and to what extent. The report complies with the requirements of Section 45 Crown Pastoral Land Act 1998.

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

October

08

FINAL ANALYSIS OF PUBLIC SUBMISSIONS

Statement Pursuant To Sec 45(a)(iii) Crown Pastoral Land Act 1998 (for Part 2 reviews, or Sec 88(d) for Part 3 reviews)

KYEBURN TENURE REVIEW

Details of lease

Lease name: Kyeburn

Location: Home block is located on the Maniototo Plains 4 kilometres southeast of Naseby and the Run block on hill country 10 kilometres northeast of Naseby.

Lessee: Kyeburn Pastoral Co Limited.

Public notice of preliminary proposal

Date advertised: Saturday 4 March 2006

Newspapers advertised in:

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

Closing date for submissions: 5 May 2006

*41 days
(excl: public holidays)*

Details of submissions received

A total of 24 submissions were received. Details of submitters are in Appendix 1.

Number of late submissions refused/other: nil

ANALYSIS OF SUBMISSIONS

Introduction

Methodology:

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 the appended tables) of the submitter(s) making the point.
- Discussion of the point.
- Records the decision made as to whether or not to allow for further consultation.
- Records further consultation undertaken on the allowed points.
- Recommends whether or not to accept the allowed points.

The following approach was adopted when making the decision to allow for further consultation:

The points raised were analysed to assess whether they were matters that could be dealt with under the Crown Pastoral Land Act 1998 (CPLA). Where it was considered that they were, the decision was to allow them.

Conversely where the matter raised is not a matter that can be dealt with under the CPLA, the decision is to disallow. The Process stops at this point for those points disallowed.

Further consultation with both the Director General of Conservation's delegate and the leaseholders has been completed on all those points that were allowed.

A recommendation to accept or not accept the point is made taking into account the views of all parties consulted and any other matters relevant to the review, balanced against the objects and matters to be taken into account in the Crown Pastoral Lands Act 1998 (Sections 24 and 25 of the Act).

The outcome of an accept decision will be that the point is included in the draft substantive proposal, conversely the outcome of a not accept decision is will be that the point is not included in the draft substantive proposal.

Analysis

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
1	Support for conservation areas CA1 endorsement of the formal protection and eventual inclusion of CA1 in the St Mary's Range Conservation Area.	1,2,3,4,7, 13, 18,19, 22, 23 & 24	Allow ✓	Accept ✓

Rationale

All submitters supported the proposal as outlined.

Submitter 7 also comments that the proposal to designate the Run Block as Conservation Area will provide a very good outcome for soil and water conservation in the headwaters of the Otematata river catchment ✓

Allow/Disallow

The Preliminary Proposal is considered to be an acceptable outcome and to this extent it is regarded as meeting the objects of Part 2 of the Crown Pastoral Land Act. The point should therefore be allowed. ✓

Accept or Not Accept

Following consultation with the DGC's delegate and the holder the proposed designations have been retained intact.

The point is accepted and the preliminary proposal designations are retained for a draft substantive proposal. ✓

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
2	Support for conservation areas CA2	1,19,& 23	Allow ✓	Not accept ✓

Rationale

The submitters support the proposal although submitter 23 also suggest inclusion of the terrace tops within CA2 (as outlined in related Point 35).

Allow/Disallow

The Preliminary Proposal is considered to be an acceptable outcome and to this extent it is regarded as meeting the objects of Part 2 of the Crown Pastoral Land Act. The point should therefore be allowed ✓

Accept or Not Accept

Following consultation with the holder and the DGC's delegate the proposed designation in the preliminary proposal has not been retained. ✓

This resulted from the holders not being prepared to relinquish any additional land with grazing potential following recent confirmation by survey that Spec Gully Stream represents a qualifying waterway triggering the requirement for marginal strips to be created on disposition. That is, the holders now consider a conservation covenant to be a preferable option as it enables continued grazing of the land involved and this in their view offsets the potential loss of ✓

the marginal strip to the farming operation. The holders have also now expressed a strong interest in retaining an active involvement in the ongoing conservation management of the area to ensure in particular exotic broom is adequately controlled. ✓

It is relevant to note that in consultation just prior to the Preliminary Proposal designations being agreed, the use of a conservation covenant was proposed and accepted by all parties as being an acceptable mechanism to provide for the protection of significant inherent botanical values within this area. At that time the holders requested the change in designation to Crown ownership and control which was accepted. As stated above survey confirmation that Spec Gully Stream qualifies for a marginal strip and the potential loss of that area for grazing in the future has caused them to reconsider their position. ✓

The DGCs delegate has confirmed support for the use of a covenant. He has advised that the size and isolation from other conservation land suggests that this area is within the current policy that supports the covenanting of small discrete areas where there is no expectation of public access. ✓

Following a detailed reinspection of the area by the DGCs delegate, DoC's botanist, DoC Local Area Office biosecurity officers and the holders, the proposed boundaries of the covenant area have also been amended slightly to those proposed for CA2 within the Preliminary Proposal. The main amendments to the proposed boundaries relate to:

- Realignment of the northern boundary resulting in exclusion of approximately 3 hectares adjacent to the Kyeburn – Naseby Road. The vegetation within this area was found to comprise of mainly exotic broom and pasture species with very little evidence of any indigenous broom or other indigenous shrubland species. ✓
- Realignment of the southern and south western boundaries resulting in exclusion of approximately 5 hectares of the terrace. It was found that the indigenous shrublands do not extend very far beyond the top of the terrace riser. The vegetation of the excluded area on the terrace was found to comprise of almost entirely brown top dominated pasture. ✓

The terms of the proposed conservation covenant have been agreed in consultation with the holders. This followed receipt of further technical advice from DoC and resulted in the inclusion of provision for sheep grazing which importantly is able to be suspended if DoC considers the composition and structure of the indigenous vegetation within the covenant area is being damaged as a result of grazing. It also provides for joint management responsibility in respect to weed and pest control. ✓

The inclusion of the terrace tops within CA2 as suggested by submitter 23 has not been achieved and the reasons for this are outlined under point 35. ✓

The point is not accepted as the preliminary proposal designations have not been retained for a draft substantive proposal for the reasons outlined above. ✓

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
3	The proposed grazing concession is supported in its present form.	1, 3, 13, 18, 19, 23	Allow	Accept in part

Rationale

All submitters support the proposal. Submitter 3 however qualifies their support by stating so long as the three year term is adhered to.

Allow/Disallow

The proposed grazing concession is considered to be an acceptable outcome and to this extent it is regarded as meeting the objects of Part 2 of the Crown Pastoral Land Act. The point should therefore be allowed.

Accept or Not Accept

Following consultation with the DGC's delegate and the holder the proposed grazing concession has been amended mainly to more accurately reflect the holder's current grazing regime.

The amendment results in the permitted stocking rate being reduced from 6000 ewes to 4500 ewes as the holder clarified he had no intention of running higher numbers of stock than permitted under the stock limitation currently applying to his pastoral lease.

An amendment was also made to clarify the three year concession term commences on settlement of the Substantive Proposal. This was considered necessary to avoid any confusion regarding payment of a concession fee and a pastoral lease rental in the period between acceptance of the substantive proposal and settlement. It was also considered necessary to ensure the holders were provided with an adequate period of phase out grazing to enable them to undertake the capital expenditure and other adjustments to their farming operation required to assist offset the total loss of the run block.

The point is accepted in part and the grazing concession is retained for a draft substantive proposal with only minor modifications as outlined above.

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
4	The Recreation Concession should be reduced from 10 years to 5.	1	Allow	Not accept

Rationale

The submitter believes that 5 years is a more reasonable period for the concession to run. ✓

Allow/Disallow

The term of a Recreation Concession is a matter that can be dealt with under the Tenure Review process and is therefore considered to relevant matter in terms of the objects of Part 2 of the Crown Pastoral Land Act. The point should therefore be allowed ✓

Accept or Not Accept

The DGC's delegate was consulted on whether the duration of the proposed recreation concession should be reviewed. The advice received was that the 10 year term is consistent with the term DoC have accepted in other tenure review proposals and that there is no real justification for adopting a lesser term in this instance. ✓

Based on the advice received from the DGC's delegate a reduction in the term of the proposed recreation concession is not considered to be justified and therefore the point raised is not allowed. ✓

Point	Summary of point raised	Submission number	Allow or disallow	Accept or not accept
5	Endorsement of the continuation of the existing Easements in favour of Otago Net Limited	1	Allow	Accept

Rationale

The submitter is also in favour of Otago Net Limited continuing to be able to access transmission lines on the property.

Allow/Disallow

The continuation in force of existing registered easements over the reviewable land is a matter that can be dealt with under the Tenure Review process and is therefore considered to be a relevant matter in terms of the objects of Part 2 of the Crown Pastoral Land Act. The point should therefore be allowed. ✓

Accept or Not Accept

The point is accepted and the provision for continuation in force of existing easements in favour of Otago Net Limited is to be retained within a draft substantive proposal. ✓

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
6	It is hoped that conservation area CA1 will be incorporated into the Oteake Conservation Park.	2	Disallow ✓	N/A ✓

Rationale

Allow/Disallow

Future management options for the proposed conservation area CA1 is not considered to be a relevant matter for consideration in terms of the Crown Pastoral Land Act. The point should therefore be disallowed. ✓

Point	Summary of point raised	Submission number	Allow or disallow	Accept or not accept
7	Would prefer a limit set on the number of horse treks per day under the Horse trekking concession	2 & 23	Allow ✓	Accept ✓

Rationale

The submitters believe that the number of horse treks should be controlled, rather than under an open ended concession.

Submitter 23 also suggests the area will be managed as “Backcountry” once returned to full Crown ownership and accordingly the appropriate overnight guided party size is twelve, plus the guide or restricted to the number that represents 50% of the available bunks.

This point is also related to Point 8

Allow/Disallow

The terms of a Recreation Concession is a matter that can be dealt with under the Tenure Review process and is therefore considered to be a relevant matter in terms of the objects of Part 2 of the Crown Pastoral Land Act. The point should therefore be allowed. ✓

Accept or Not Accept

It was recognised that the main concern of the submitter who raised this point and also a number of other submitters who raised related points was associated with the impact of the activity on public use of the huts within the proposed conservation area.

It is accepted that the lack of a formal concession application prepared by the holder prior to the Preliminary Proposal left some details regarding proposed usage of huts unclear. In consultation the holder has now clarified that huts will not be used for commercial over night use and there will not be more than six clients and two guides taken on each trip and the number of trips is limited to one per day. These details have now been included within the concession document and as such it is considered the core concerns behind this point have been addressed. ✓

The point is accepted and the proposed Recreation Concession is to be retained within a draft substantive proposal with minor amendments to clarify restrictions in respect to usage of huts and the maximum number of persons taken on each trip. ✓

Point	Summary of point raised	Submission number	Allow or disallow	Accept or not accept
8	Horse trek concessionaires use of huts should be non exclusive and limited to occupancy of 50% of hut beds at any given time.	2 ,23&24	Allow ✓	Accept in part ✓

Rationale

Submitters point out that the huts are public facilities, and should be managed according to standards set by the Department of Conservation. ✓

Submitter 23 suggests the area will be managed as “Backcountry” once returned to full Crown ownership and accordingly the appropriate overnight guided party size is twelve, plus the guide or restricted to the number that represents 50% of the available bunks. They further state that Clauses 36.1 a and b should be deleted as they provide all embracing exceptions for the general requirement for concessionaires to allow Co-Siting which is counter to the philosophy of 50% sharing. ✓

This point is related to point 7.

Allow/Disallow

The terms of a Recreation Concession is a matter that can be dealt with under the Tenure Review process and is therefore considered to be a relevant matter in terms of the objects of Part 2 of the Crown Pastoral Land Act. The point should therefore be allowed. ✓

Accept or Not Accept

As noted in point 7 above it is accepted that the lack of a formal concession application prepared by the holder prior to the Preliminary Proposal left some details regarding proposed usage of huts unclear. It has now been clarified that huts will available for day use only and hence there is no requirement to place limits on hut occupancy associated with the concession activity. ✓

The DGC's delegate was also consulted regarding the sub point concerning co-siting. The advice received outlined that the current provisions within the concession relating to co-siting are associated with another concessionaire undertaking the same activity on the same site. The clauses within the concession are considered to be appropriate for dealing with this eventuality in a fair and reasonable manner. The DGC's delegate advised that no amendment to the document is required as a result of the submission. ✓

The point is accepted in part in that the proposed Recreation Concession is to be retained within a draft substantive proposal with minor amendments to clarify restrictions concerning usage of huts and the maximum number of persons taken on each trip. The suggested amendment relating to co-siting is not accepted. ✓

Point	Summary of point raised	Submission number	Allow or disallow	Accept or not accept
9	The formed access road to and across CA1 should be deemed legal road where it deviates from the legal alignment so that vehicle and 4WD access into CA1 is available to the public. Also, all existing roads in the lease should be retained and maintained, and no unformed legal roads in the lease should be stopped or disposed of.	2, 10, 11, 13, 15, 18,19, 20, 22, 23 & 24	Allow in part	Not accept ✓

Rationale

The submitters are concerned that the formed alignment of the formed road to and across CA1 should be legalised on its current alignment. In addition individual submitters have made several related sub points concerning public access within CA1.

The sub points relating to access within or across the reviewable land are as follows:

1. imperative that vehicle access is maintained for anglers and game bird hunters. Access for these uses is required over the summer only (October to April inclusive) – submitter 10. ✓
2. the legal road should be thereafter maintained by the Crown – submitter 11. ✓
3. provision is included for an easement to allow movement of stock and associated personnel and vehicles along the historic droving route (within CA1) to the grazing land in the Waitaki catchment – submitter 11. ✓
4. provision for 4WD access for members of the public is important via the Mt Buster Road- submitter 13. ✓
5. motorbike and quad bike access should not be encouraged – submitter 13. ✓
6. vehicle access is a requirement both simply for practical access and for the safety of being able to retreat in event of sudden bad weather – submitter 15 ✓
7. no unformed legal roads on the property should be stopped or disposed of – submitter 15. ✓
8. access by vehicle would be self limiting activity, based on season and road conditions – submitter 15 ✓
9. access on existing road/track network would be open to foot, bike, horse and motorised vehicles and nature of ground will enable steady use over a long season – submitter 15. ✓
10. landowners should be able to lock the gate at the entrance to the property for the purposes of safety on the same dates that the Central Otago District Council operates its winter closure of damageable roads – submitter 15. ✓
11. the Mt Buster Road should be resurveyed to ensure that it is on the present alignment and remain in the hands of the local authority – submitter 18. ✓

12. in order to ensure that the Mt Buster Road remains a public road to provide secure public access, it is important the existing formation becomes the existing legal road – submitter 23. ✓

Allow/Disallow

Public access to CA1 involves consideration of the legal status of roads that are located outside of the reviewable land. This sub point is therefore not a matter able to be dealt with by the Crown Pastoral Land Act and it is disallowed. The comments of the submitters will however be referred to DoC to for them to consider addressing outside of the tenure review process. ✓

Sub points relating to the provision and maintenance of recreational access within CA1 are considered to be post tenure review matters for DoC to consider and not the Commissioner of Crown Lands. They are not matters able to be dealt with by the Crown Pastoral Land Act and are therefore disallowed. The comments of the submitters will however be referred to DoC for consideration in terms of the Department's management of the Conservation Area. ✓

The sub point relating to retention of unformed legal roads is also not a matter for consideration under the Crown Pastoral Land Act and therefore this sub point is disallowed. ✓

The sub point relating to the requirement for provision of an easement to allow movement of stock and associated personnel and vehicles along the historic droving route is interpreted as relating to a possible existing unregistered public access interest within the reviewable land. It is therefore a relevant matter in terms of Section 24 (c)(i) of the Crown Pastoral Land Act and is allowed. ✓

In summary, sub point 3 above is allowed while sub points 1 and 2 and 4 to 12 are not allowed for the reasons outlined.

Accept or Not Accept

Consultation with the DGC's delegate and the holder confirmed that the allowed sub point can only relate to the droving activity undertaken by the two neighbouring Crown lease Syndicate properties. The holder also confirmed that there is no formal easement or third party agreement for that activity. ✓

LINZ Statutory Land Management Contractor DTZ also confirmed that they have no record of any formal arrangements for stock droving or other access over the Kyeburn run block in favour of the Syndicates or other parties. ✓

It is concluded that if stock access, either on a permanent or intermittent basis is required to the syndicate properties via the proposed conservation area CA1, then that is a matter that should most appropriately be addressed by DoC in terms of the Department's management of the Conservation Area. ✓

The sub point is therefore not accepted and no change in the preliminary proposal designations are proposed in regard to this issue in the draft substantive proposal.

Point	Summary of point raised	Submission number	Allow or disallow	Accept or not accept
10	Adequate signage should be installed at the bottom of Mt Buster.	3	Disallow	N/A

Rationale

Allow/Disallow

The submitter suggests that the signage would be to mark the end of 2WD access.

Signage is considered to be a post Tenure Review land management issue for DoC and not a relevant matter able to be dealt with by the Crown Pastoral Land Act. The point should therefore be disallowed. The comments of the submitter will however be referred to DoC to assist in their consideration of management requirements at the appropriate time.

Point	Summary of point raised	Submission number	Allow or disallow	Accept or not accept
11	A small area should be allowed for car parking at the bottom of the Mt Buster Road.	3	Allow	Not accept

Rationale

The submitter's point is interpreted as being that a small car parking area is required to be located on the reviewable land just inside the boundary of CA1 at the end of 2WD access near the bottom of the Mt Buster Road.

Allow/Disallow

While this matter could be considered to be a post Tenure Review land management issue the provision of an area for car parking may also make public access easier.

Making public access easier is an objective of the Crown Pastoral Land Act and the point is therefore allowed.

Accept or Not Accept

Following consultation with the DGC's delegate and the holder it was agreed that an area suitable for car parking could readily be achieved in the location within CA1 suggested by the submitter. As such, this is considered to be a post tenure review management issue for DoC to address. ✓

The point is therefore not accepted and no change in the preliminary proposal designations are proposed in regard to this issue in the draft substantive proposal. ✓

	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
12	The Horse trekking concession is supported	3, 13, 18 & 19	Allow	Accept

Rationale

The submitters generally support the horse trekking concession so long as it doesn't impact on public use of the area. ✓

Submitter 13 supports the proposal provided that concession holders do not view the granting of the concession as an exclusive use opportunity. The submitter is concerned that horse trekkers could view the concession as giving them exclusive use, without regard for people who wish to travel on foot, bike, horse or 4WD vehicle.

Allow/Disallow

The terms of a Recreation Concession is a matter that can be dealt with under the Tenure Review process and is therefore considered to be a relevant matter in terms of the objects of Part 2 of the Crown Pastoral Land Act. This point is therefore allowed. ✓

Accept or Not Accept

As noted in points 7 & 8 above the lack of a formal concession application prepared by the holder prior to the Preliminary Proposal left some details regarding proposed usage of huts and overall scale of the activity unclear. Further consultation with the holder has resulted in the amendments outlined under points 7 & 8. ✓

The point is accepted and the horse trekking concession is retained for a draft substantive proposal but with some amendments which place additional restrictions on the concession activity. ✓

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
13	Expected creation of marginal strips along the margins of Spec Creek in the Home Block should be made a definite outcome of the tenure review.	4	Disallow	N/A

Rationale

Submitter 4 states that creation of marginal strips should be identified as a specific outcome of tenure review and they refer to the recent issues associated with the Fern Burn in another tenure review which in their opinion might have been more straight forward if the marginal strip had been more clearly identified as a specific outcome at the public notification stage.

Allow/Disallow

While it is expected Spec Creek will qualify for the creation of a marginal strip on freeholding or earlier disposition this is a Conservation Act consideration and not a matter able to be considered under the Crown Pastoral Land Act. Therefore this point is disallowed.

Point	Summary of point raised	Submission number	Allow or disallow	Accept or not accept
14	The current lease is a well balanced unit and this needs to be taken into account in considering the tenure review.	5,9&17	Allow	Not Accept

Rationale

Submitter 5 indicates that the holders have already voluntarily surrendered a large amount of land and that the tenure review should take into account that the current lease is a well balanced unit.

Submitter 9 also comments that any further reduction in size of the property not only reduces the ability of the holders to farm effectively and sustainably, but also puts pressure on conservation values remaining within the freehold, particularly short tussock grassland/shrubland.

Submitter 17 believes that taking the Run Block out of the lease will leave the lessee with a farm that will be vulnerable, and the viability of the farm in the future will be marginal. ✓

Allow/Disallow

The point is interpreted as relating to the effect of tenure review proposals on economic use and ecological sustainability of possible agricultural development of part of the reviewable land and as such it is considered to be a relevant matter in terms of Sections 24 (a)(i) & (ii) of the Crown Pastoral Land Act. It is therefore allowed for further consideration. ✓

Accept or Not Accept

In consultation, the holders confirmed that the farming operation will definitely be brittle post tenure review particularly in drought conditions as the home block has limited irrigation. They also believe however that the earlier retirement and surrender of land from the pastoral lease dealt with sustainability issues on the property relating to soil and water conservation. ✓

It is clear that the proposed freehold land is capable of economic use as evidenced by the long history of farming activity plus the physical attributes of the land, which are flat to undulating contour, moderate altitude and generally medium to high natural fertility soils. This is also supported by land use capability classification information. ✓

It is accepted that the property is subject to droughts and there will be changes in the current farming operation as a consequence of the loss of the Run Block which provided important summer grazing, particularly in drought years. It is not accepted however that those changes necessarily automatically translate to the proposed freehold land being degraded or farmed in an unsustainable manner post tenure review. There is clearly a range of options for the holders post tenure review, including the acquisition of additional land that would enable the land to farmed in a sustainable manner. ✓

It is also reasonable to expect continued prudent management of the proposed freehold land post tenure review. Therefore it is considered there are no particular sustainability issues that need to be addressed on the proposed freehold and therefore the point is not accepted. ✓

Point	Summary of point raised	Submission numbers	Allow or disallow	Accept or not accept
15	The holders have a good record of allowing the public access onto the property.	5&9	Allow ✓	Accept ✓