

Crown Pastoral Land Tenure Review

Lease name : Peak Hill

Lease number: Pc 058

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

ANALYSIS OF PUBLIC SUBMISSIONS
ON PRELIMINARY PROPOSAL FOR TENURE REVIEW

1. Details of lease

Lease Name: Peak Hill
Location: Lake Coleridge
Lessee: MG, AM & SM Millar

2. Public Notification of preliminary proposal

Date, publication and location advertised:

25 July 2001, 28 July 2001, 1 August 2001: The Press, Christchurch
25 July 2001, 28 July 2001: Otago Daily Times, Dunedin

Closing date for submissions: 28 September 2001, extended to 26 October 2001 for NGO's.

3. Analysis of submissions

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 and grouped by topic.

The following tables summarise each of the points raised along with the number of submitters making the point, discussion of the point and the decisions as to whether to accept/not accept or allow/disallow the point. The points are grouped into 5 general issues.

The following approach has been adopted by the Commissioner of Crown Lands when making decisions:

(i) to accept/not accept

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

(ii) to allow/disallow for further consideration

Where the decision is to accept, a further decision has been made as to whether the point made should be 'allowed' or 'disallowed'. The decision has been to 'allow' the point if relevant new information or ideas have been raised that may require further consideration. Where the Commissioner has previously considered the information raised in reaching a decision on the matter, the decision has been to 'disallow'. Expressions of support for the proposal that do not require further consideration have therefore been disallowed.

Further explanation of the decision has been provided in the paragraph following the summary table for each point.

3.1 Public Access

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
1	Easements for access must be 'real' and not 'paper easements'	1	Accept	Disallow

Discussion:

The point is accepted because it concerns public access, which is relevant under Section 24(c)(i) CPLA. The wording of this statement is open to a number of interpretations and the submitter has provided no explanation. For this reason the point is disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
2	Possible easement from point (B) of ridge top easement along the fenceline down to the Algidus Road.	3	Accept	Allow

Discussion:

The point is accepted because it concerns public access, which is relevant under Section 24(c)(i) CPLA. Submitters 3 and 4 support an easement down this route but submitter 5b opposes the idea.

The Holder, Knight Frank's consultant and the DGC's delegate considered an easement along this route at an early stage but rejected it as not being a worthwhile option. The risk of trespass along the proposed route was raised in Knight Frank's report of 20 December 1999 to the Commissioner, but the 'rejected' idea of an easement was not specifically discussed. It is therefore new information and the point is allowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
3	Would like marked practical access from Algidus Road to Rakaia River along existing legal road.	2	Not accept	

Discussion:

The legal road is not a reviewable instrument under the CPLA and is not part of this tenure review. The point is therefore not accepted, as the matter raised is not a relevant matter for the Commissioner to consider when making decisions in the context of the Crown Pastoral Land Act.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
4	Easements should be signposted	1	Accept	Disallow

Discussion:

The point is accepted because it concerns public access, which is relevant under Section 24(c)(i) CPLA. However, the submitter is in error. Clause (8.3) of the proposed easement already provides

for the transferee to erect and maintain signs. Therefore the Commissioner has already considered the matter and the point is disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
5	Easements stiles should be provided	1	Accept	Disallow

Discussion:

The point is accepted because it concerns public access, which is relevant under Section 24(c)(i) CPLA. However, the submitter is in error. Clause (8.3) of the proposed easement already provides for the transferee to erect and maintain stiles. Therefore the Commissioner has already considered the matter and the point is disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
6	Support easement A subject to public input into any revocation or amendment	1	Accept	Allow

Discussion:

Under Section 24(c)(i) CPLA, it is appropriate that the Commissioner considers the adequacy of the public access provided by easements.

The matter of public input into any revocation or amendment of the easement has not previously been considered by the Commissioner and the point is therefore allowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
7	Support Easement B along ridgeline	1	Accept	Disallow

Discussion:

Under Section 24(c)(i) CPLA, it is appropriate that the Commissioner considers the adequacy of the public access provided by easements. The submission expresses support for the proposed easement and requires no further consideration. It is therefore disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
8	Would like additional 'return' foot access easement from western boundary of proposed conservation area down along the existing vehicle track to the Algidus Road.	1	Accept	Allow

Discussion:

The point is accepted because it concerns public access, which is a relevant matter for the Commissioner to consider under Section 24(c)(i) CPLA.

The matter of 'return' foot access has not been raised or been consulted on previously. The point is allowed because the Commissioner has not previously considered it.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
9	Whether Easement B should not be established until connecting easements are obtained over neighbouring Mt Oakden pastoral lease	1	Accept	Allow

Discussion:

The point is accepted because it concerns public access, which is relevant under Section 24(c)(i) CPLA.

Submitter 5b recommends that, provided an alternative return route is found, Easement B should not be established until connecting easements are obtained over neighbouring Mt Oakden pastoral lease. This would avoid the potential problem of walkers trespassing on reaching a dead end. Submitter 4 disagrees.

The potential trespass problem was foreshadowed in Knight Frank's report of 20 December 1999 and has been emphasised by submitters 3, 4 and 5b. In Knight Frank's report it was suggested that an agreement to provide an easement should be considered if the holder was not prepared to accept Easement B. The Holder did accept easement B but submitter 5b has now raised new information in support of delaying its establishment - the idea of offering an alternative route back from the summit. Point 9 warrants further consideration because of the new information raised by submitter 5b. It is therefore allowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
10	There should be a vehicle, foot and cycle access easement from Mt Algidus Road to Lake at southeastern extremity of lease.	1	Accept	Allow

Discussion:

The point is accepted because it concerns public access, which is relevant under Section 24(c)(i) CPLA.

Easement A already provides foot access to the lake by means of a short walk via the proposed conservation area. Knight Frank's report of 20 December 1999 and the Commissioner's first Draft Preliminary Proposal proposed an easement along the southeastern boundary to provide access to the proposed conservation area beside the lake. After consultation with the lessee, the Commissioner proposed that the lakeside corner should become freehold land and that the easement route should be altered to go more directly to the proposed conservation area. However, the Commissioner has not considered the potential for an easement along the southeastern boundary across the newly proposed freehold area to the edge of the lake. The point is therefore allowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
11	Vehicle access along legal road to Wilberforce River	1	Not accept	

Discussion:

The legal road is not a reviewable instrument under the CPLA and is not part of this tenure review. The point is therefore not accepted as it is not a relevant matter for the Commissioner to consider when making decisions in the context of the Crown Pastoral Land Act.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
12	Clarify existing alignment of legal road to Wilberforce River and redefine by survey if necessary	1	Not accept	

Discussion:

The legal road is not a reviewable instrument under the CPLA and is not part of this tenure review. The point is therefore not accepted as it is not a relevant matter for the Commissioner to consider when making decisions in the context of the Crown Pastoral Land Act.

3.2 Designations

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
13	Support designation boundaries	2	Accept	Disallow

Discussion:

The point is accepted because it is relevant under section 35 CPLA. The point simply expresses support for the proposed boundaries and is therefore disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
14	The Lake Coleridge boundary of proposed conservation area should be the water line rather than lease boundary shown on the plan in Appendix A of the PP.	2	Not accept	

Discussion:

The issue relates to the status of land that appears to lie between the lease boundary and the lake edge. The plan used is based on the plan provided to the Commissioner in the Land Status Report, which clearly portrays the lease boundary at variance with the topographic underlay. However the apparent discrepancy is likely to be the result of variations between the photogrammetry and the cadastral definition. The Land Status Report (page 2) clearly states that Run 274 (Peak Hill) is identified to have a common boundary with Lake Coleridge. Therefore there is no strip of other land between the pastoral lease and the lake. The point is therefore not relevant under the CPLA and is not accepted.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
15	Lakeside shrublands northwest of the proposed conservation area warrant protection because of their ecological, landscape, recreation and amenity values.	1	Accept	Disallow

Discussion:

The point is accepted because the protection of these values must be considered under Section 24(b) CPLA.

The Department of Conservation report of October 1996 noted that the lakeside shrublands 'occupied a narrow zone on very steep cliffed slopes' in 'small localised patches'. In section 5.1 of Knight Frank's report of 20 December 1999, it was noted that there was a narrow strip of land along the lake-shore excluded from the proposed conservation area for the reason that it was not possible to achieve any practical boundary along this line. The DGC delegate's support for the concept of utilising existing fencelines was also recorded. In fact, much of the narrow strip will lie within marginal strip once the review is completed.

No relevant new information has been provided and the issue has been specifically considered and determined by the Commissioner. For this reason, the point is disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
16	Lakeside shrublands at southeastern extremity of the lease warrant protection and fencing because of their ecological, landscape, recreation and amenity values.	2	Accept	Disallow

Discussion:

The point is accepted because the protection of these values must be considered under Section 24(b) CPLA.

The submitters appear to believe that the proposed freehold includes the largest remnant area of shrublands on the lease because of statement in the DOC report of 1996. In fact, the area referred to is almost entirely within the proposed conservation area. The Commissioner initially proposed that the southeastern lakeside extremity of the lease become conservation area. However, as a result of consultation with the Holder, the Commissioner decided to allow the block to become freehold (refer to section 5.1 of Knight Frank's report C0073 14 November 2000). Furthermore, much of the lakeside vegetation will be within marginal strip. Legal access to the lake by stock will be limited by marginal strip. If lakeside fouling becomes a problem, the Department of Conservation, as owner of the marginal strip, will be able to take action.

No relevant new information has been provided, and this matter has already been considered and determined by the Commissioner after consultation with the lessee. For these reasons the point is disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
17	Continued farming of hieracium infested areas facing the lake is not ecologically sustainable.	1	Accept	Disallow

Discussion:

The point is accepted because it concerns matters relevant to Section 24(a) and Section 25(2)(a & b) CPLA.

Section 25(2)(a & b) requires the Commissioner, when acting in relation to part of the land, to take the objects of Part 2 CPLA into account in light of their application to all the land held under the instrument rather than their application to that part of the land alone. Section 24(a)(i) was comprehensively considered by the Commissioner in adopting Knight Frank's recommendations of 20 December 1999 which were based on an analysis of all parts of the lease. Knight Frank's report showed that the proposed designations would improve overall opportunities for more ecologically sustainable management of the land, especially within the proposed conservation area.

No relevant new information has been provided and the point is disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
18	No status suggested for land to become conservation land – it should become scenic reserve	1	Accept	Allow

Discussion:

The point is accepted because the designation of land to be restored to or retained in full Crown ownership and control as a reserve for a specified purpose is relevant under Section 35(2)(a)(ii) CPLA.

Contrary to submitter 4's assertion, the future status is defined in the Preliminary Proposal, it is designated as "Conservation Area". However, the Commissioner has not been asked to consider whether scenic reserve status would be appropriate, so the point is allowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
19	Landscape protection mechanism required along Lake Coleridge faces of proposed freehold	1	Accept	Disallow

Discussion:

The point is accepted because the protection of landscape values is a relevant consideration Section 24(b) CPLA.

The Conservation Resources Report described the landscape values of the area referred to by submitter 5b. but the DGC's delegate did not recommend protection for the higher slopes. He did propose that a narrow strip of shrubland above the lake edge should become conservation area, subject to the use of existing fences for boundaries. However, in the end, this strip was proposed to become freehold because of the absence of existing fences or other practical boundaries.

No relevant new information has been provided and the Commissioner has taken these landscape values into account in deciding that no protection is required. Therefore the point is disallowed.

3.3 *Legal Interpretation*

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
20	The legality of the lease is disputed on the grounds that it was 'extended' in 1988 rather than being 'renewed'.	1	Accept	Disallow

Discussion:

Under Section (27) CPLA, it is appropriate for the Commissioner to determine whether the land is a pastoral lease. The point is therefore accepted

However, this matter has been previously considered and determined by the Commissioner on the completion of the pre-tenure review assessment and the submitter has provided no new information. The point is therefore disallowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
21	Average width of waterway in disposition should determine 'point' limits of marginal strip.	1	Not accept	

Discussion:

The CPLA does not make provision for the laying off and or determining the width of marginal strips in tenure review. The point is not a matter which the Commissioner is required to determine. For this reason the point is not accepted.

3.4 *Marginal Strips*

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
22	A marginal strip should be provided along the Lake Coleridge boundary of proposed freehold.	1	Not accept	

Discussion:

The laying off of marginal strips is not a matter for the Commissioner to determine under the CPLA. For this reason the point is not be accepted.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
23	There should be a fence along the desired marginal strip along the Lake Coleridge boundary of the proposed freehold to prevent pollution of the lake by stock.	1	Not accept	

Discussion:

The protection of Lake Coleridge is not a relevant consideration under the CPLA because the lake is not included in the review. The point is therefore not accepted.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
24	Extension of pastoral lease to 66 years in 1988 was a wilful move to avoid laying off marginal strips that subverted the interests of Parliament and the public of NZ.	1	Not accept	

Discussion:

The laying off of marginal strips is not a matter for the Commissioner to determine under the CPLA. For this reason the point is not accepted.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
25	A plan of marginal strip proposals should be prepared and made subject to public submissions before the substantive proposal is adopted.	1	Not accept	

Discussion:

The laying off of marginal strips is not a matter for the Commissioner to determine under the CPLA. Therefore the Commissioner has no responsibility to prepare a plan showing future marginal strips. For this reason, the point is not accepted.

3.5 *Process*

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
26	Insufficient information provided to submitters	3	Accept	Disallow

Discussion:

The point is accepted because it is relevant to Section 43 CPLA. However, Section 43 (1)(b) only requires the proposal to be described in general terms and this was done. For this reason the point is disallowed. However, LINZ did provide additional information to these submitters on request.

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OFFICIAL INFORMATION ACT"

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
27	DOC's failure to gather information on the freshwater fishery resources of Cardinal Stream and other waterways could mean that fishery values have been inadequately protected.	1	Accept	Disallow

Discussion:

The point is accepted because it relates to the identification of significant inherent values (section 24(b) CPLA).

No relevant new information has been provided. The point is disallowed because the Commissioner was aware of the lack of information available about Cardinal Stream when deciding to put the Preliminary Proposal.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
28	Submitter 4 has requested copy of the Commissioner's decisions on public submissions	1	Accept	Allow

Discussion:

The point is accepted because the Commissioner may consult with any person or body about putting a preliminary or substantive proposal (Section 26 CPLA).

There is no obligation on the Commissioner to provide submitter 4 with any more information beyond that required under Section 43 CPLA. On the other hand, there does not appear to be any provision in the CPLA that prevents the Commissioner from granting the submitter's request. Furthermore, under Section 26 CPLA, the Commissioner could choose to consult submitter 4 again, although the submitter has not indicated a wish to comment on the Commissioner's decisions. This matter simply relates to the administrative process chosen by the Commissioner to undertake the Peak Hill tenure review.

No new information has been provided but it could be argued that the idea is new (see introductory comments in section 3(ii) above). The point is allowed.

POINT	SUMMARY OF POINT RAISED	NO OF SUBS.	DECISION	
29	All future tenure reviews to included marginal strip plan and proposals with preliminary proposal information for public submission	1	Not accept	

Discussion:

The point is a general one and is not relevant to the Preliminary Proposal for Peak Hill because it is not a 'future tenure review'. The Commissioner does not have the authority to determine the existence and location of future marginal strips and the point made does not refer to a matter within the scope of the CPLA.

The point is therefore not relevant for the Commissioner to consider, and is not accepted.