

Crown Pastoral Land Tenure Review

Lease name: Stonehurst

Lease number: PO 276

Final report on public submissions

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.

August 04

ANALYSIS OF SUBMISSIONS
STONEHURST TENURE REVIEW

1. Details of lease:

Lease Name: Stonehurst
Location: Middlemarch
Lessee: John Charles Fredrick James

2. Public notice of preliminary proposal:

Date, publication and location advertised:

Saturday – 6 July 2002:

- Otago Daily Times Dunedin
- The Press Christchurch

Tuesday – 9 July 2002:

- Taieri Herald Mosgiel

Closing date for submissions:

30 August 2002

3. Details of submissions:

A total of 6 submissions were received by the closing date. A further 3 submissions were received by 9 September 2002.

4. Analysis of submissions:

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 Appendix 3*) of the submitter(s) making the point. Discussion of the point and the decision whether or not to accept/not accept or to allow/disallow the point follows.

The following approach has been adopted when making recommendations:

- (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 not justification for the 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:

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|--|----------------|-----------------|----------|
| 1 | That the area currently proposed for protection by way of a conservation covenant be restored to full Crown ownership and control. | 1,7,8,9 | Accept | Disallow |

Discussion:

The protection of significant inherent values is a matter for the Commissioner to consider in terms of Section 24 (b) CPL Act. Further Section 24 (b) notes that the preferred protection for significant inherent values is by way of restoration to full Crown ownership and control. For these reasons the point is accepted.

The significant inherent values of this area were identified in the preparation of the Conservation Resources Report and subsequently considered by the Commissioner in putting a Preliminary Proposal. The area referred to has previously been identified as containing a transition from farmland at the lower levels through to significant inherent values at the upper levels. While there is a transition throughout the block the significant inherent values became more dominant of over approximately 900 metres. It has previously been determined that fencing at this level is not desirable and therefore the protected area needed to include the entire management unit.

During consultation with the holder the Commissioner accepted that as this was a transition area where both inherent values and farming values needed to be considered a conservation covenant was the appropriate protective mechanism. The submitters have largely relied information gleaned from the same reports that the Commissioner has available and no new information has been provided. For these reasons the point has been disallowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|---|----------------|-----------------|----------|
| 2 | The submitter notes that the easement arrangements are satisfactory for access to Stonehurst. | 1 | Accept | Disallow |

Discussion:

The provision of public access is a matter for the Commissioner to consider under Section 24 (c) (i) CPL Act. The point is therefore accepted.

The support of the submitter for the proposed easement is noted but as no new information is provided the point is disallowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|---|----------------|-----------------|----------|
| 3 | That 4WD access be available on the proposed easements and also that portion of the track which runs along the Rock and Pillar crest which lies within the proposed freehold. | 2,4 | Accept | Disallow |

Discussion:

The securing of public access and enjoyment of reviewable land is an object of the Crown Pastoral Land Act (*Section 24 (c) (i)*). The point is therefore accepted.

The question of public access was carefully considered by the Commissioner during consultation with the holder and in the preparation of the Preliminary Proposal. The tracks referred to are of a nature that unrestricted public access would be unwise and create significant public risk. The opportunity still exists for organised clubs to arrange specific access with the holder when appropriate. The submitters have not provided new information in relation to this aspect therefore the point is disallowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|--|----------------|-----------------|----------|
| 4 | That there are sufficient inherent values on this property to justify full Crown purchase. | 3,5,8,9 | Accept | Disallow |

Discussion:

The protection of significant inherent values is one of the objects of the Crown Pastoral Land Act (*Section 24 (b)*). Where significant inherent values exist the preference is for these to be restored to full Crown ownership and control, although protective mechanism may also be considered. The designations provisions of the Act do not prevent an entire property being designated as land to be restored to full Crown ownership and control and therefore the point is accepted.

The Commissioner has reviewed the significant inherent values of this lease and has identified significant inherent values over the majority of it. The possibility of purchasing the entire lessee’s interest was giving consideration by the Commissioner however this proposal did not proceed and the holder was not prepared to sell his entire interest. The submitters have not provided new information to support a total purchase and therefore the point is disallowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|---|----------------|-----------------|-------|
| 5 | That the area of land north of the access track and above an altitude of 300 metres be restored to full Crown ownership and control as it contains a significant shrubland. | 3,6,8,9 | Accept | Allow |

Discussion:

The protection of significant inherent values is one of the objects of the CPL Act (*Section 24 (b)*). The point is therefore accepted.

A review of the information previous considered by the Commissioner has not identified any reference to this area of shrubland. Protection of this area has not previously been considered. The submitters in this case have provided new information which could be considered before proceeding with the tenure review. The point has therefore been allowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|--|----------------|-----------------|----------|
| 6 | That the high conservation and landscape values south of the access track and above 300 m.a.s.l. be protected by way of a conservation covenant. | 3 | Accept | Disallow |

Discussion:

The protection of significant inherent values is a matter for the Commission to consider pursuant to (*Section 24 (b) CPL Act*). The point is therefore accepted.

The landscape values associated with this lease have previously been considered by the Commissioner. As a result of this consideration protection of this particular area was not considered necessary. The submitters have not provided any new information in relation to the landscape nor any specific information in relation to other significant inherent values that may exist within this area. In the absence of new information the point has been disallowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|---|----------------|-----------------|----------|
| 7 | That all land above 900 metres should be restored to full Crown ownership and control as conservation area. | 3 | Accept | Disallow |

Discussion:

The protection of significant inherent values is a matter for the Commissioner to consider pursuant to Section 24 (b) CPL Act. The point is therefore accepted.

This point is a slight variation on Point 1 discussed above. In this case the submitter proposes that only the land above 900 metres within the currently proposed conservation covenant be restored to full Crown ownership and control. In preparing the Preliminary Proposal and during consultation with the holder the Commissioner noted that it was not practical or desirable to fence across this property at 900 metres. This would create an undue disturbance to the landscape. The Commissioner therefore decided to protect the land above and below the 900 metre contour by way of conservation covenant. The submitters have not provided any new information in relation to the inherent values of this area and therefore the point is disallowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|--|----------------|-----------------|--|
| 8 | That opportunities for recreational users to park and walk adjacent to the Old Dunstan Road and that signage be constructed explaining the highlights of the area. | 4 | Not accept | |

Discussion:

While the provision of public access to reviewable land is a matter for the Commissioner to consider pursuant to Section 24 (c) (i) CPL Act the matters raised by the submitter are not directly related to the provision of access. These are matters relating to the management of proposed conservation land which is a matter for the Director General of Conservation to contemplate in the future. While the point is noted it cannot be accepted as it does not directly relate to the matters that the Commissioner is able to consider.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|---|----------------|-----------------|----------|
| 9 | The submitters support the area proposed for restoration to full Crown ownership and control. | 6,8 | Accept | Disallow |

Discussion:

The area recommended for restoration to full Crown ownership and control has been decided by the Commissioner to meet the objects of Part 2 of the CPL Act. The point is therefore accepted.

Support for this aspect of the proposal is acknowledged. The submitters have not provided new information in relation to this and therefore the point is disallowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|---|----------------|-----------------|-------|
| 10 | That access be made available to the shrublands north of the current access easement. | 6 | Accept | Allow |

Discussion:

The securing of public access and enjoyment of reviewable land is an object of the CPL Act (*Section 24 (c) (i)*). The point is therefore accepted.

This point is to some extent related to other submissions seeking protection of these shrublands north of the track. While there is a linkage the two do not necessarily have to be considered jointly. The nature of the shrublands and access to them is new information not previously considered in the context of this tenure review and therefore the point has been allowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|--|----------------|-----------------|-------|
| 11 | That carparking be considered at the commencement of the public access easement. | 6 | Accept | Allow |

Discussion:

Carparking could be deemed to be related to the securing of public access and enjoyment of the reviewable land, which is an object of the CPL Act (*Section 24 (c) (i)*). The point is therefore accepted.

The public access easement provides access to the Rock and Pillar Range from Gladbrook Road. There is no information to suggest that the Commissioner has previously considered carparking in relation to this easement and the matter is therefore allowed to enable such consideration to be given.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|--|----------------|-----------------|--|
| 12 | That part Run 599 held by the Crown for irrigation purposes be included in the review and designated to public road. | 7 | Not accept | |

Discussion:

The CPL Act is not the mechanism for creating legal roads. This in an action under the Public Works Act. As this is not a matter for which the Commissioner has jurisdiction the point is not accepted.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|--|----------------|-----------------|----------|
| 13 | The submitter raises a number of issues regards the easement documents and believes that these need to be changed in relation to dispute resolution, exclusion of schedules, temporary closures/suspension, OSH and ACC. The submitter further suggests that public access be by way of dedicated public road or path rather than by easement. | 7 | Accept | Disallow |

Discussion:

Public access is a matter for the Commissioner to consider pursuant to Section 24 (c) (i) CPL Act. Therefore the point is accepted.

The terms and conditions of easement documents have been subject to wide review by the Commissioner, therefore the point is disallowed. This final part of this point suggests that to avoid potential OSH and ACC public access should be by way of “public road/path” rather than easements. This alternative mechanism does not appear in the CPL Act.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Sub Nos</i> | <i>Decision</i> | |
|--------------|--|----------------|-----------------|----------|
| 14 | This point has two components firstly that the easement should not be part of the covenant area and secondly that the restriction of public access to the easement will prevent public enjoyment of the range of significant inherent values present on the proposed covenant. | 7,8 | Accept | Disallow |

Discussion:

One of the object of tenure review is to consider the provision of public access to and for the enjoyment of reviewable land (*Section 24 (c) (i) CPL Act*). The point is therefore accepted.

The Commissioner actively considered the provision of public access within the proposed covenant area. During consultation the holder maintained that this access should be restricted to the existing track to avoid undue stock disturbance and also that the priority was to gain access to the larger area of land beyond. The submitters have not provided new information to support re-opening this consultation and therefore the point is disallowed.

5. Discussion and conclusion:

Discussion relative to the particular points have been made above under each point for simplicity and clarity.

There are three issues which arise through the public process for this review. Firstly that the Crown should contemplate the entire lease as there are significant inherent values over much of it. This aspect has previously been considered and the decision has been made not to pursue the matter further. Secondly a number of submitters identified an area of shrublands north of the access track at altitudes between 300 and 900 metres. These shrublands were not previously identified and therefore this point has been allowed to enable further consultation and review of this aspect. The third significant point raised was that the proposed covenant area should be restored to full Crown ownership and control as a conservation area. This was a matter which was considered in considerable depth during consultation with the holder previously and no new information has been provided to on which to base further consultation. This point has therefore been disallowed.

The points raised by the submitters have been carefully analysed and full consideration given to them.

ANALYSIS OF IWI SUBMISSION

STONEHURST TENURE REVIEW

1. *Details of lease:*

Lease Name: Stonehurst
Location: Middlemarch
Lessees: J C F James

2. *Details of submission:*

The Commissioner of Crown Lands advised iwi of the Preliminary Proposal for tenure review in accordance with Section 43 Crown Pastoral Land Act. A written response was received from the office of Te Runanga o Ngai Tahu on 13 September 2002. Six points were raised by iwi.

3. *Analysis of submissions:*

3.1 *Introduction:*

Explanation of Analysis:

The submission has been reviewed in order to identify the points raised and these have been numbered accordingly.

The following analysis summarises each of the points raised. Discussion of the point and the decision whether or not to accept/not accept or to allow/disallow the point follows.

The following approach has been adopted when making recommendations:

- (i) To accept/not accept:

The decision to “**accept**” the point made 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 not justification for further consideration then the decision is to “disallow”. Further justification for the decision has been made in the discussion paragraph following the summary for each point.

3.2 Analysis:

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Decision</i> | |
|--------------|--|-----------------|----------|
| 1 | <p>The presence of two plants of special cultural significance within the lease is emphasised, these being tikumu (<i>Celmisia spp.</i>) and taramea (<i>Aciphilla spp.</i>) These are prevalent in the higher altitudes contained within both the proposed Crown conservation area and the proposed freehold conservation covenant area.</p> <p>Runanga agree with the proposed 230 ha of land to be proposed as a conservation covenant under Section 40 (2) (b) of the proposed freehold land. However, Ngai Tahu has strong values relating to this area of land. The summit of Patearoa, Tetihio Mauka, is an area that is of utmost importance to Ngai Tahu. A recommendation of the submission is that Ngai Tahu is regularly informed of the management of this conservation covenant.</p> | Accept | Disallow |

Discussion:

The plants of special cultural significance are considered to be significant inherent values in terms of the Crown Pastoral Land Act. These are matters for the Commissioner to consider pursuant to Section 24 (b) CPL Act. The point is therefore accepted.

These cultural values are significant inherent values and have been considered in the preparation of the Preliminary Proposal. The matter of consultation with Ngai Tahu in the ongoing management of the conservation covenant is a matter for consideration by the Director General of Conservation. There are existing protocols in this regard further consultation at this point is not required and the point is disallowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Decision</i> | |
|--------------|---|-----------------|--|
| 2 | As there are a number of archaeological sites in the vicinity of this lease Ngai Tahu believe that there may be similar sites on the lease that have not yet been identified. Ngai Tahu are promoting an accidental find protocol in relation to land use in this area. | Not Accept | |

Discussion:

This point relates to values which have not yet been found to exist. The provisions of the CPL Act relate to the identification and protection of significant inherent values. Consultation with iwi is intended to further identify where such values exist. As no specific values have been identified then the point is not accepted.

It is further noted that the Resource Management Act and the Historic Places Act already provide requirements in relation to the subsequent identification of such values.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Decision</i> | |
|--------------|--|-----------------|----------|
| 3 | Ngai Tahu supports the proposed Crown retained areas to be managed with conservation purposes, especially since these areas provide adequate protection for the indigenous flora of the area, which were traditional sources of the Mahinga Kai. | Accept | Disallow |

Discussion:

The Commissioner has identified significant inherent values in relation to the area proposed for restoration to the Crown in accordance with Section 24 (b) CPL Act. The point is therefore accepted.

The support of Ngai Tahu for the restoration of this area to the Crown is appreciated. The submission does not however provide any new information for further consideration of these areas and therefore the point is disallowed.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Decision</i> | |
|--------------|--|-----------------|--|
| 4 | That McHardys Creek should be subject to a marginal strip. | Not Accept | |

Discussion:

Marginal strips are a matter for the Director General of Conservation to consider in terms of Part IVA Conservation Act 1987. The provision of marginal strips is not a matter covered by the Crown Pastoral Land Act 1998. This point is therefore not accepted.

It is further noted that McHardys Creek lies entirely within land proposed for restoration to the Crown as a conservation area therefore marginal strips would not be applicable.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Decision</i> | |
|--------------|---|-----------------|--|
| 5 | All Runanga have requested that ongoing management of the Crown retained areas contained in this proposal be developed and undertaken in conjunction with Nga Runanga for conservation and cultural purposes. | Not Accept | |

Discussion:

The consultation requested in relation to these areas is a matter for the Director General of Conservation to consider.

| <i>Point</i> | <i>Summary of Point Raised</i> | <i>Decision</i> | |
|--------------|---|-----------------|--|
| 6 | Protocol should be put in place, involving Ngai Tahu and the Crown/DoC, to enable appropriate resolution of any issues regarding naming of landscape features within the lease. | Not Accept | |

Discussion:

As with Point 5 above these protocols are really a matter for the Director General of Conservation. The point is therefore not accepted.