



New Zealand
Historic Places Trust *Pouhere Taonga*

SUSTAINABLE MANAGEMENT OF HISTORIC HERITAGE

Discussion Paper No. 5

HIGH COUNTRY TENURE REVIEW – IMPLICATIONS FOR HISTORIC HERITAGE AND LANDSCAPES IN THE SOUTH ISLAND HIGH COUNTRY



3 August 2007

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Sustainable Management of Historic Heritage Guidelines

Discussion Paper No.5

High Country Tenure Review – Implications for Historic Heritage and Landscapes in the South Island High Country

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While the NZHPT acknowledges the contribution of other agencies and organisations, the opinions and views expressed in this guide are those of the NZHPT only.

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Summary

The South Island High Country is a special and important cultural landscape. It is changing in response to a number of variables, including tenure review as provided for by the Crown Pastoral Land Act 1998 (Crown Pastoral Land Act 1998).

'High Country' (or South Island High Country) is the term used to describe the predominantly tussock-covered sub-alpine, upper river valley and inter-montane basin country to the east of the South Island's Main Divide. This includes 304 pastoral leases totalling 2.17 million hectares. Such agreements operate on the basis of 33 year perpetually renewable leases to graze, in return for annual rentals based on 2.25% of unimproved land value.

Tenure review is the process by which pastoral lease tenure will be phased out. The lessees can freehold much of the more productive lower altitude areas in exchange for the surrender of the higher altitude areas and other lands of significant inherent value (i.e. identified as possessing conservation, heritage, landscape and recreational values worthy of protection) back to the Crown. The surrendered lands pass into the conservation estate.

Tenure reviews are undertaken on a per lease basis, involving information gathering, preliminary (first cut) and substantive (decision-time) proposals, and implementation. This can take around four years to work through. The process is managed by Land Information New Zealand (LINZ) for and on behalf of the Commissioner of Crown Lands (the Commissioner) and typically involves the use of consultants. Financial details of settlements are confidential to LINZ and the lessee.

As at 30 September 2006, settlement had been reached on 59 of the 304 leases (20%), progress was underway on a further 144 (47%), with 101 yet to enter the process (33%). It is anticipated that once concluded, the process should result in 40% of the area concerned passing to the conservation estate with 60% freeholded. The process is a voluntary one, with lessees able to refuse to participate and request discontinuance of a review at any time.

The Department of Conservation (DOC) is responsible for protecting the Crown's interest, through the preparation of conservation resource reports and proposals for designation reports, identifying areas which should be surrendered back to the Crown. The New Zealand Historic Places Trust Pouhere Taonga (NZHPT) is able to submit on preliminary proposals, but otherwise has no greater right of participation in the process than other submitters. The process itself affords no right of hearing or appeal to the Environment Court as appeal to the High Court is possible, but on points of law only.

Te Runanga O Ngai Tahu (TRONT), a body corporate instituted pursuant to the Te Runanga O Ngai Tahu Act 1996, has negotiated terms for active participation in the review process which includes Iwi inspections, cultural value reports, negotiations with LINZ and Ngai Tahu submissions. Whilst LINZ is prepared to recognise the importance of Ngai Tahu cultural heritage in the tenure review process, it should be noted that little time is devoted to and few resources provided for these inspections.

The tenure review process has failed to ascertain any clear goals in terms of heritage landscape protection specifically and High Country landscape protection generally. Areas of freehold land are particularly vulnerable to subdivision and development, associated with more intensive agriculture, tourism and lifestyle holdings. It appears that DOC's guidelines on significant inherent values afford highest priority to natural (pre-human) landscapes, with lower priority afforded to historic (working) landscapes. Consequently, the tenure review process is failing to adequately protect High Country heritage.

The inherent approach of separating protected from productive lands is being called into serious question as a result of outcomes thus far. The NZHPT's concern in this regard is from an historic heritage perspective, but the issue also has relevance to natural heritage.

It is extremely doubtful that the RMA process alone can be relied upon to protect historic heritage at site-specific and certainly landscape levels. Areas of freehold land, as a result of tenure review, are subject to private property rights and inevitable pressure to develop in response to market demands. Tools such as heritage orders and covenanting in its various forms are also insufficient to protect heritage at a landscape level.

An approach more sympathetic to integrating protective and productive land uses is the *Protected Landscapes* concept as developed by the World Conservation Union. Based on experiences primarily in Europe, it seeks to integrate, rather than separate, such land uses, recognising that the protection of nature and human resource use can co-exist successfully. The adoption of such an approach in the High Country would require a significant shift in New Zealand policy affecting land management, but is an approach that should be considered as part of the PCE's review.

Because tenure review presents an effective one-off opportunity to protect the High Country's heritage features and landscape, it is important that the regional and local communities and organisations such as NZHPT is able to better inform the goals of the process and landscape change in general. This requires the development of a new policy framework that would compliment the current set of policy and plans under the RMA.

The current tenure review process is not consistent with best practice in resource management and sustainable development. Major landscape change processes must be informed by a public policy framework that is managed at a level closest to the communities of interests. For this purpose, this report proposes amendment of the Crown tenure legislation to provide for regional landscape strategies and local landscape structure plans. Such tools have proved effective in managing other issues such as regional transport and urban design.

Introduction: The South Island High Country: A Special Cultural and Heritage Landscape

The South Island High Country is home to the relatively few who have learned to live with its challenging climate, and is visited by many more who are drawn by its scenic beauty and recreational challenges. Its snow and rock outcrops, broad rivers and tussock basins continue to inspire the talented in music and literature, while reassuring many others that a remote and very different part of New Zealand exists beyond the throngs of lowland greenery and urban society. Will indeed the High Country landscape, that so many have known and cherished, be lost to progress? To be revisited only in the

photographs, books, songs and other memories it has inspired? With horticulture and tourism has come intensification of land use and urban growth, accelerating the pace of change in a landscape that was never static, and always dynamic. Inevitably it is increasing change, rather than change itself, which causes one to fear the loss of something for so long taken for granted.

Probably because it has been perceived as so unchanging for so long, yet now obviously is changing, it is all too easy to term the High Country landscape a natural one. That is perhaps accentuated somewhat by the fact that New Zealand is a relatively sparsely populated, yet highly urbanised nation, allowing significant areas of the country to be largely uninhabited. That makes it all too easy, for example, to think of a farm on the Canterbury Plains as 'natural' relative to the 'man-made' city of Christchurch. But landscapes are constantly evolving, forever changing, it simply being that certain forms of change are more noticeable than others. It is incorrect to perceive the High Country as a *natural* landscape, certainly in its entirety.

The extent to which the tectonically, glacially, water and wind-induced erosion processes which have shaped much of the High Country landscape of today have been human-accelerated over the past thousand or more years remains an issue of debate. There seems reasonable agreement that such natural processes remain dominant in such a geologically active part of the world, exposed to such climatic extremes. There can be little doubt, however, that burning and grazing, at times to excess, have accentuated the affect of such processes, and so contributed to the High Country landscape of today. There now appears little doubt that the tussocks still dominating much of lower range, river flat and basin country in fact resulted principally from fires lit by Maori, no doubt site-specific in intent, but which all too easily got out of control to impact on far greater expanses of what was initially forested country. With the Pakeha came the merino sheep, and with it further burning, a host of introduced plant and other animal species including the much maligned rabbit, and roads, railways and towns. No doubt because they came and went so fast, the gold miners and the impacts they caused have been all too easily overlooked, their endeavours confined to legend and the tailings they created all too easily perceived as part of the natural landscape. Mining itself was a dramatic impact on the landscape at the time, but one that came and went so quickly that it was soon forgotten in all but the history books and the few interpreted towns, mine sites and memorials dotting much of Central Otago today. The present changes give every indication of being more permanent, inspiring the call to preserve what is seen and used to, and what is feared could be lost forever. But the High Country is not a natural, but a *heritage* landscape, embracing as it does both the natural features and human influences of years, decades, even centuries past.

All landscape is perceived in a cultural lens by people holding particular social and cultural values. In addition, all landscapes have history or historical associations and histories of human occupation over time. Therefore, the entire New Zealand islands could be classified as a cultural landscape and the regions of New Zealand have a particular regional cultural identity and landscape.

The High Country can be perceived as part of the cultural landscape of New Zealand and part of the regional cultural landscape of Otago and Canterbury.

The term heritage landscape defines a landscape or network of sites which has heritage significance to communities, Tangata whenua and/or the nation.¹ Heritage landscapes are particular areas of land (and/or water) within the broader term of landscape.

The heritage landscapes of the High Country sit within the broader national and regional cultural landscape. Heritage landscapes are parts of the High Country that have been identified (in the same way that a historic building is identified) as having particular heritage values.

Heritage landscapes values associated with parts of the High Country may include values associated with tangata whenua, pastoral farming and stations, mining, and recreation. Many places are of distinct significance to Maori communities and a fundamental component of what it means to be Ngai Tahu in Te Wahipounamu. The inland plains linking the eastern and western coastlines from north to south were heavily traversed by early Maori communities, including the iwi of Waitaha, Ngati Mamoe and Ngai Tahu. The principal attraction of the High Country was the abundance of natural resources and mahinga kai (traditional food and other natural resource gathering sites). The landscape contains various trails and traditions designed to remind people of the often hostile and inhospitable nature of the environment. Early Maori settlement of the High Country is evidenced by the plethora of inland rock art sites, remnants of pa, nohoanga (places to sit), umu, midden, urupa and trails.

Since the 1850s, much of the High Country has been farmed extensively under some form of lease arrangement. Its snow-capped mountains and tussock basins have been home to run holders and the hardy merino sheep for decades. Its rugged, challenging terrain has drawn adventurers, with its scenic beauty inspiring artists and writers, and welcoming tourists. For decades, the seemingly changeless landscape has been something New Zealanders have almost taken for granted.

In recent decades the High Country has attracted new layers of values. As the once sought after fine merino wool has lost its appeal relative to cheaper fibres and fabrics, run holders have come under pressure to diversify hitherto near mono-product farming operations in response to market forces. Modern transport and communications have significantly eroded the High Country's isolation, bringing it within access of more New Zealanders and an increasing number of foreign and domestic visitors. Recreation is a critical value and is resulting in the growth of public biking trails, heli-visiting, jet boating, fishing and tramping.

New markets and technological advances have suddenly made what was for years considered a tough virtual wasteland, wonderful to visit but a place in which only the most hardy and determined could live permanently, an attractive place in which to invest and even reside. Growth in horticulture and viticulture, deer and other livestock operations and the ever diversifying tourism industry, both relative to and at the expense of extensive pastoralism, have brought with them an increase in population. Urban areas are expanding with rural population growth also on the rise. Communities once dominated by families with links to the land through several generations, now home to increasing numbers of new immigrants, both working and retired, including New Zealanders and visitors.

¹ J Stephenson, H Bauchop and P Petchey, *Bannockburn Heritage Landscape Study: Science for Conservation 244*, Wellington, Department of Conservation, 2004, p 14

Identification and the sustainable management of heritage landscapes is the most challenging of exercises that confront the High Country in terms of both the Crown Pastoral Land Act and the RMA. It requires the identification and management of the historic fabric, the land, stories and aspects such as important views. For example, views of an old shepherd's hut on an isolated sheep station may form part of a heritage landscape. Preservation of the heritage landscape associated with the old shepherd's hut will require careful management of the hut (fabric conservation), the landscape (natural conservation), the stories associated with the hut (i.e. log books), and important views and access routes if possible from public vantage points.

The identification and sustainable management of heritage landscapes is threatened by the accelerated pace of change in the High Country. Many once extensively farmed basin areas and river valleys are now intensively planted in various crops or grazed by numerous livestock. A number of sheep stations themselves are now dotted with accommodation buildings, air strips and other facilities to take advantage of the booming adventure tourism industry. With population growth has come expansion in residential subdivision, developments in particularly Queenstown and Wanaka over recent decades having been nothing short of spectacular. Preliminary figures for the 2006 census indicate that between 2001 and 2006, the Queenstown Lakes District's population grew by 29.2 per cent, making it easily the country's fastest growing territorial local authority.²

This largely unregulated development appears to be destroying the very scenic values and lifestyle opportunities that attracted people to the High Country in the first place.³ Many are becoming concerned at the pace of development, and the impact this is having on the High Country they know, appreciate, and wish to preserve. Conservationists and the outdoor recreation lobby are being steadily joined by the new settlers, fearing the awe-inspiring scenery which drew them in the first place could be destroyed as more and more seek a slice of lakeside paradise. Concerned to are New Zealanders living elsewhere, sensing the vistas gracing many a coffee table book could be all too easily swallowed up by vineyards, golf courses, houses and condominiums. Such fear is heightened by the realisation that development itself is becoming more and more driven by overseas investment and control. Even run holders themselves are worried, fearing the phasing out of extensive pastoralism as they and their ancestors have known it will inevitably bring with it an end to the High Country lifestyle they love.

Somewhat concurrent with the above economically induced change has been a politically induced initiative. That is the process known as High Country (or Crown lands or pastoral lease) tenure review. Touted as a 'win-win' for conservationist and runholder alike at its genesis in the 1990s, increasing procedural difficulties and mounting debate over its outcomes have encouraged the Parliamentary Commissioner for the Environment to review the process. This provides a welcome opportunity to assess the effectiveness of the tenure review process in terms of fostering the desired level of historic heritage protection. It should do this in the contexts of individual historic places, archaeological sites, buildings and objects, and heritage landscapes, offering informed comment to the review in terms of how its interests could be better represented.

² Department of Statistics, '2006 Census of Population and Dwellings – Provisional Counts 2006', 29 May 2006:

<http://www.stats.govt.nz/products-and-services/hot-off-the-press/2006-census/2006-census-provisional-counts-2006-hotp.htm>

³ M. White, 'High Country Hijack', *North and South*, Nov 2006, pp 45-47

The High Country: What Is It?

The Land

The Term High Country (or South Island High Country) is the name popularly assigned to the interior mountains and inter-montane basins of the South Island. To many, this includes the Main Divide (of the Southern Alps) and other mountain ranges, but while many of the pastoral leases extend high into such areas, much of the snow and bare rock is in fact a 'backdrop' (of Department of Conservation (DOC)-administered land or conservation estate) to what are predominantly tussock-covered lower range, basin and upper river valley landforms east of the Divide itself. Severe climate and infertile soils dominate an area principally suited to extensive grazing (or pastoralism) by hardy stock (principally the fine wool-producing merino) only, although the better sheltered, more fertile basin areas and river flats can support more diverse, intensive land uses.

Heritage places within the High Country include numerous archaeological sites (from agricultural, mining and associated residential activities), Maori rock art, pounamu and mahinga kai trails, nohoanga sites, statutory acknowledgements and Topuni areas, as provided for by the Ngai Tahu Claims Settlement Act 1998, numerous Maori place names, wai Maori (freshwater resources), maunga, wahi pounamu and traditional settlements. While often perceived as natural landscape, the High Country landscape bears the cultural impacts of Maori and Pakeha. The tussock grasslands of today, for instance, resulted from early Maori burning and have been modified further by grazing and other agricultural practices.

In strictly mathematical terms, the Crown owns 2.37 million hectares of High Country land, mostly above 600 metres in altitude, which it leases for such grazing. Such leases (also popularly referred to as stations or runs) vary significantly in size, but average 7,000 hectares. They extend from Marlborough through to Southland, but are concentrated primarily within Inland Canterbury and Central Otago (see Appendix 1). There are presently 304 pastoral leases covering 2.17 million hectares; the remaining 0.20 million hectares comprised of the now DOC-administered Molesworth Station (0.18 million hectares) and five pastoral occupation licences (total area 0.02 million hectares).⁴ This paper is essentially concerned with the pastoral leases; Molesworth not subject to tenure review and the pastoral occupation licences eligible for a somewhat modified form of it.

The Leases

Crown leasing of the High Country for extensive grazing dates back to the 1850s, with significant history in terms of early European exploration and settlement attached to many of the leases. Mesopotamia Station, for example, was leased by Samuel Butler in the early 1860s, the property's location on the south side of the remote and scenic Upper Rangitata inspiring his famous novel *Erewhon* (after which a station on the north side of the river is now named). The pastoral and other historic significance of the High Country

⁴ Hon J. Tamihere, 'Objectives for the South Island High Country: Media Statement', 18 August 2006: <http://www.beehive.govt.nz/print/PrintDocument.aspx?DocumentID=17584>, p 2

stations is perhaps best captured in Peter Newton's *Big Country of the South Island: North of the Rangitata* (1973) and *Sixty Thousand on the Hoof: Big Country South of the Rangitata* (1975); he covering 50 stations in the first-mentioned and 59 in the second-mentioned.⁵ More recent publications, including *New Zealand High Country Four Seasons* (1983) by Gordon Roberts and Brian Turner and Philip Holden's *Station Country: The Collection* (2004) and *Station Life* (2004) focus somewhat more on present experiences and photography, but pay considerable respect to the history of exploration, farming and settlement inherent in the stations covered.⁶ Pastoral leasing had its origins in the search for new grazing lands once the Canterbury Plains and other areas east of the foothills had been taken up. Discoveries of gold in Central Otago, and subsequently on the West Coast, intensified exploration of the South Island's interior, in search of more pasture, suitable transport routes, and precious minerals.

The existing pastoral lease system was consolidated under the Land Act 1948. This granted lessees (commonly referred to as station owners or runholders) 33 year perpetually renewable leases, providing rights to exclusive occupation of the land, in terms of quiet enjoyment (i.e. exclusion of others without permission first obtained) and pasturage (i.e. the right to graze stock at stocking rates agreed to by the Crown as lessor). Nominal rents of up to 2.25% of unimproved land value (typically referred to as land exclusive of improvements) are payable, (with remissions to 2% for prompt payment, and a 1.5% rate historically struck for the first 11 years of the lease).⁷

This recognises the fact that such leases confer no right of ownership (hence to subdivide and/or develop the land) or rights to the soil (i.e. to use the land for crops or trees, clear or burn vegetation, or undertake other activities involving soil disturbance, without consent granted by the Commissioner of Crown Lands, as Crown agent responsible for pastoral leases). Crown authorisation, by way of a recreation permit, is also required to use the land for tourism-related activities involving pecuniary gain. It should be noted that the granting of any discretionary consent or recreation permit by the Crown (to undertake an activity not otherwise permitted by the lease) does not exempt the lessee from the requirement to obtain the necessary resource consent from the local authority, should the activity itself not be permitted by a regional or district plan. Rents are reviewed every 11 years, while the entire rent fixing system is presently subject to a valuation review by Government. The lessee cannot sell the land; the popular reference to a station or run being sold (or owned) in fact referring to the lease, not the land itself, having been sold (or being owned).

Pastoral lessees are expected to reside on the land unless exempted by the Crown. In turn, the Crown does not withhold consent to the construction of sufficient dwellings and other buildings essential to farming operations. In practice, many pastoral leases include freehold areas on which homesteads and concentrations of farm buildings are located. Particularly in recent decades, a degree of leniency has enabled lessees to selectively crop flats and other less erosion-prone areas, often to provide winter feed, particularly when and where reduced grazing in higher altitudes may have been required by the lessor.

⁵ P. Newton, *Big Country of the South Island: North of the Rangitata*, Wellington, AH and AW Reed Ltd, 1973 and P. Newton, *Sixty Thousand on the Hoof: Big Country South of the Rangitata*, Wellington, AH and AW Reed Ltd, 1975

⁶ G. Roberts and B. Turner, *New Zealand High Country Four Seasons*, Wellington, Millwood Press, 1973, P. Holden, *Station Country: The Collection*, Auckland, Hodder Moa Beckett Publishers Ltd, 2004 and P. Holden, *Station Life*, Christchurch, Moleskin Press, 2004

⁷ Tamihere, p 2

High Country Tenure Review: What is It?

Tenure Review: History and Principles

Tenure review had its genesis in the environmental restructuring of the 1980s. The rushed nature of this restructuring saw the pastoral leases somewhat forgotten about initially. When Government announced it intended to pass over responsibility for them from the then Department of Lands and Survey to Land Corporation Limited (established to undertake the former Department's farming and other non-protected area property management functions on a commercial basis), protest was forthcoming from the environmental and conservation lobbies, fearing severe compromises to conservation values and public access could result as a consequence.

While keen to divest itself of the Crown land administration responsibility, the Government acknowledged an instant, absolute handover of responsibility to a development-oriented organisation was impractical. Instead it placed overall responsibility with a transitional Department of Lands (subsequently incorporated into Land Information New Zealand (LINZ), agreeing that Land Corporation (subsequently Knight Frank, now DTZ New Zealand Ltd) would act as the Crown's agent, managing the pastoral leases in the interim.

Consistent with the restructuring's overall intention of separating the Crown estate protection and production functions, it was also agreed that the agent would co-ordinate the process whereby areas of so-called conservation and/or recreational value would pass to DOC, with the remainder of so-called productive farmland able to be freeholded to lessees. Tenure Review effectively began, therefore, in the early 1990s, under the Land Act 1948. Deals were concluded between Crown and lessor in a Heads of Agreement document for leases concerned.

It was not until the passing of the Crown Pastoral Land Act 1998 that the process itself became formalised in legislation. This Act now provides for tenure review as well as the management of pastoral leases generally. The objectives (or objects as section-headed in the Act) of tenure review are defined in Section 24 of the Act, these being:

- (a) To –
 - (i) Promote the management of reviewable land in a way that is ecologically sustainable;
 - (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; and
- (b) 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; and
- (c) Subject to paragraphs (a) and (b), to make easier –
 - (i) The securing of public access to and enjoyment of reviewable land; and
 - (ii) The freehold disposal of reviewable land.

The Crown Pastoral Land Act 1998 establishes the role of the Commissioner of Crown Lands in co-ordinating tenure reviews of pastoral leases. In practice, the commissioner is assisted by other LINZ staff, while the co-ordination responsibility for individual tenure reviews (i.e. of specific pastoral leases) is contracted out to consultants, including DTZ New Zealand, Quotable Value NZ Ltd and Opus International Consultants. The Act also establishes DOC as the principal resource protection advocate in terms of tenure review and pastoral lease management generally. DOC must be consulted over Crown decisions permitting pastoral lessees to burn vegetation, disturb soil, create easements, undertake tourism activities by means of a recreation permit and use the land for production forestry.

In terms of tenure review specifically, DOC is responsible for advising the commissioner on conservation, landscape, heritage and recreational values of pastoral leases, principally by preparing conservation resources reports and proposals for designation reports for properties concerned. Standard instructions for completing such reports have been prepared by DOC and are available on the DOC website.⁸ The purpose of a Commissioner is to identify those areas of a pastoral lease which should be retired from grazing and pass into the conservation estate. Such areas will typically be:

- Higher altitude, more erosion prone country, identified as having severe limitations to productive farming use, including extensive pastoralism. Such lands are typically classified VII and VIII in terms of land use capability under the Landcare Research-managed New Zealand Land Resource Inventory database; and
- Lands identified as possessing significant inherent values.

Section 2 of the Crown Pastoral Land Act 1998 defines significant inherent value as:

[An] inherent value of such importance, nature, quality or rarity that the land deserves the protection of management under the Reserves Act 1977 or the Conservation Act 1987.

Inherent value is defined in the Act as meaning:

A value arising from:

- (a) A cultural, ecological, historical, recreational or scientific attribute or characteristic of a natural resource in, on, forming part of, or existing by virtue of the conformation of, the land; or
- (b) A cultural, historical, recreational, or scientific attribute or characteristic of a historic place on or forming part of that land.

In practice, most of the higher altitude land will initially become stewardship land pursuant to the Conservation Act 1987, possible addition to a national park or other contiguous area being subsequently considered if practical. When and where areas of significant inherent value are typically small and/or identified at lower altitude (and thus likely to be small land units within predominantly productive areas earmarked for freeholding), reserve status under the Reserves Act 1977 would be more appropriate.

⁸ Department of Conservation, *Tenure Review Pastoral Manual*, 24 October 2006 (www.doc.govt.nz)

DOC also seeks to negotiate effective public access to the conservation estate through areas earmarked for freeholding, particularly when and where such access is the only practical means available.

The proposal for designation report is what sets out the areas to be protected, the means of protecting (and/or accessing) them, and the justification for such recommendations; this essentially being the report underpinning DOC's advice to the Commissioner of Crown Lands. Other agencies with a statutory responsibility in respect of tenure review include Fish and Game New Zealand (Fish and Game) and Te Runanga O Ngai Tahu (TRONT). The former is by virtue of its responsibility for managing sports fish and game pursuant to the Conservation Act 1987, with the latter provided for by section 44 of the Act. Section 43 of the Act requires the Commissioner to publicly notify preliminary proposals; Section 45 requiring DOC to be provided with copies of the submissions themselves plus their analysis by the commissioner.

Tenure Review: The Mechanics

The process of tenure review is provided for in Part II (Sections 24-82) of the Crown Pastoral Land Act 1998. What is mechanically a somewhat complex process is available from the LINZ website.⁹ Essentially it involves the following four stages:¹⁰

- Information gathering (or start of the review). The lessee invites the commissioner to undertake the tenure review. The Commissioner in turn advises DOC, Fish and Game and TRONT of the review, and contracts a consultant to co-ordinate the negotiations. This would typically take up to four months;
- Preliminary proposal (or first cut). DOC prepares the conservation resources report then proposal for designation report, consulting interested parties over particularly the latter (given this effectively recommends which areas should revert to the Crown as conservation estate, what routes of public access should be provided, what areas reverting to the Crown could continue to be grazed and under what special conditions, and which areas should be freeholded). The contractor then consults with DOC, Fish and Game, TRONT and the lessee. Discussions with the last-mentioned include payments, in terms of both purchase of land to be freeholded and compensation for land to be resumed by the Crown. Once agreement has been reached, the proposal is publicly notified. Approximately 20 months should be allowed for this stage;
- Substantive proposal (or decision time). The Commissioner consults DOC and the lessee over issues raised in public submissions, coming up with what is essentially a second cut or final proposal. The lessee then has 90 calendar days to accept or reject the proposal. Approximately 12 months should be allowed for this stage; and
- Implementation (essentially the formalisation). Land is exchanged with financial transactions settled. Registration, surveying and fencing (if required) and title-issuing logistics are attended to. This could take up to twelve months.

⁹ Land Information New Zealand, *Tenure Review Public Submission Process*, 13 November 2006 (www.linz.govt.nz)

¹⁰ Land Information New Zealand, *Tenure Review: A Detailed Guide*, Wellington, Land Information New Zealand, 2004, pp 3-7

The time involved at any stage will obviously depend upon the pastoral lease and issues involved. The following points should be born in mind:

- Tenure review is a voluntary, not compulsory process. The Commissioner can only commission a review at the request of the lessee, and must discontinue such a review if at any stage requested to by the lessee. The Commissioner may also decide to discontinue a review and has powers of prioritising demands relative to resources;
- Beyond the requirement to publicly notify preliminary proposals, significant discretion is afforded the Commissioner in terms of public participation. To facilitate the process, LINZ will typically provide submitters with an information pack on the proposal, and maintain a record of developments on its website www.linz.govt.nz. DOC must be given copies of any submissions received, but it is the Commissioner's decision whether or not submitters can speak in support of comments made; and
- DOC similarly has discretion in terms of who the interested parties are, when it comes to consulting over its reports. Obviously because they are legally part of the process, Fish and Game, TRONT and the lessee can expect to be consulted over at least the proposal for designation report. There is no obligation, however, to consult with other parties.

In a strictly technical sense, therefore, the NZHPT or another third party organisation cannot demand the right to be involved in any tenure review, certainly beyond making submissions on preliminary proposals once advertised. At the same time, the Act recognises DOC as the defender of conservation, landscape, heritage and recreation values in the process. It is over to the NZHPT and others to approach DOC (and DOC to agree) on how it can participate in the process, beyond making submissions on preliminary proposals, when and where the protection of heritage sites and/or landscapes is of concern.

High Country Tenure Review: Progress and Perspectives

Tenure Review: The Statistics

As at 30 September 2006, tenure review activity on Crown pastoral leases was as follows:¹¹

Activity State	Number	Percent
Review completed/lease disposal effected	33	11
Substantive proposals accepted by lessee	26	9
Substantive proposals put to (but not yet accepted by) lessee	0	0
Preliminary proposals advertised	22	7
Consultation with lessee for preliminary proposal	74	24
Information gathering for preliminary proposal	48	16
Not in tenure review	101	33
Total	304	100

These figures would suggest that in terms of the 304 pastoral leases, settlement has effectively been reached on 59, progress is underway on 144, with 101 yet to enter the process. Ruth Littlewood (former Heritage Adviser, Planning, at the NZHPT's Otago/Southland Area Office) quoting August 2006 figures referred to 119 farmers as having opted out.¹² The above figures would suggest that subsequent to this, a further 18 have now opted in or (perhaps more realistically), the tenure review process is something not all pastoral lessees are keen to participate in, with a number carefully weighing up their options before doing so.

Debate similarly exists over the intended outcome. A 50:50 land area split, in terms of surrender to conservation estate/right to freehold, was discussed about at instigation of the process, but no evidence exists of any mathematical analysis being undertaken at the time. In 2003, the Government estimated a 60:40 outcome in favour of land passing to the conservation estate, but recent developments suggest that should be reversed to 40:60.¹³

Those closer to the Main Divide are typically larger and dominated by more rugged, less productive country, while those further east are typically smaller and possess proportionately greater areas of productive inland basin and river flat country. It is understandable that a greater proportion of the former will be surrendered back to the Crown, while a greater proportion of the latter will be freeholded. As at 30 September 2006, it was estimated that 128,593 hectares of pastoral lease land had passed into the

¹¹ LINZ 'Crown Pastoral Lease Tenure Review Activity as at 30 September 2006' 30 September 2006: <http://www.linz.govt.nz/core/crownproperty/tractivitygraph/index.html>

¹² Ibid and R. Littlewood, 'Tenure Review of Pastoral Leases: Fact Sheet' (Internal Paper), Dunedin, NZHPT, 25 October 2006, p 3

¹³ Littlewood, 2006, p 4 and White, 2006, p 52

conservation estate with 174,419 hectares freeholded as a result of tenure review, this representing a 42% surrender: 58% freehold split.¹⁴

Arguments similarly exist about financial transactions. A 2006 *Dominion Post* article alleges the above-mentioned 42:58 split has come at a net \$16.1 million cost to the Crown; it paying lessees \$26.6 million in compensation for surrendered land with the lessees themselves freeholding their share at a cost of \$10.5 million.¹⁵ This is consistent with the research of Lincoln University Fulbright Scholar, Dr Ann Brower, who estimated a \$15.5 million deficit to the Crown as at February 2006.¹⁶ Brower's research itself ignited significant debate; the High Country Accord (established to represent the interests of High Country farmers generally) alleging such figures do not tell the entire truth.¹⁷ It must be acknowledged that the Crown also has available to it the DOC-administered Nature Heritage Fund; it having already used this to purchase significant areas of High Country land in the Waimakariri Inter Montane Basin, as well as the entire Birchwood Station in the Ahuriri Valley. Concern is also mounting about how much the tenure review process is costing the Government. In the four years to June 2006, for instance, it is estimated that LINZ spent \$15 million on contractors, and to that needs to be added figures of its own and DOC staff for their time involved.¹⁸

It is neither possible nor indeed the purpose of this paper to argue the financial merits or otherwise of the system. It is worth highlighting, however, several specific settlements which have been seemingly instrumental in suggesting a rethink over the success or otherwise of the tenure review programme is warranted. These include:¹⁹

- Glendene Station, between Lakes Hawea and Wanaka, offering views of both Lakes. 2,136 hectares (26%) passed to DOC, with 6,021 hectares (74%) freeholded. The lessee was paid \$377,000 in compensation for the land surrendered, while receiving some 30 kilometres of prime lakeshore frontage;
- Dingleburn Station on Lake Hawea. The lessee was paid \$5.5 million in compensation for the 18,000 hectares surrendered, yet was given freehold title to 7,000 hectares on the lakeshore; and
- Glendhu Station on the shores of Lake Wanaka. Only 280 hectares (8%) was surrendered, while the remaining 2936 hectares (92%) was freeholded, with \$5,000 compensation paid for the loss of the 280 hectares.

Without doubt, however, the agreement reached for Richmond Station has been the most controversial. The 31 August 2006 settlement for this 9,567 hectare lease, extending along the eastern shore of Lake Tekapo back to the Richmond Range, has freeholded over 5800 hectares (60% of the lease), including nine kilometres of lakeshore

¹⁴ S. Boyd, 'Now for the Condos', *The Dominion Post*, 14 October 2006, p E2 and White, 2006, p 43

¹⁵ Boyd, 2006 p E2

¹⁶ Ibid, p E2 and White, 2006, p 43

¹⁷ High Country Accord, 'Critique of Brower Report on Land Tenure Review: Feb 06', 16 October 2006: http://www.highcountryaccord.co.nz/downloads/Critique_of_Brower_Report.doc and 'Report by Ann Brower Concerning the Politics of Tenure Reform-February 2006', 16 October 2006: http://www.highcountryaccord.co.nz/downloads/The_Politics_of_Tenure_Review_ABrower.doc

¹⁸ White, 2006, p 44

¹⁹ Boyd, 2006, p E2, Littlewood, 2006, p 3 and White, 2006, pp 44-45

frontage, with \$325,000 paid in compensation for loss of grazing rights.²⁰ DOC, Environment Canterbury, and particularly the Royal Forest and Bird Protection Society of New Zealand (Forest and Bird) have concerns about the Richmond settlement, realising that a process that gained its initial momentum in Otago is now beginning to pick up speed in Canterbury.

Because financial details of settlements are commercially sensitive, the above (consequentially somewhat selectively obtained figures) must be treated with a degree of caution. Of significance, however, is the fact that all of these settlements include the freeholding of potentially prime real estate along some of New Zealand's most iconic lakes. Somewhat frightening to conservationists and others with an interest in protecting these 'jewels in the scenic crown' is the realisation that the development boom affecting Queenstown, Wanaka and the Central Otago/Southern Lakes area generally has (to an extent in response to consequential increasing land values there) now jumped north over the Lindis Pass to threaten Inland South Canterbury; the pace of development in Twizel and especially Lake Tekapo now accelerating significantly.

Tenure Review: The Intentions and Realisations

It is apparent that, as a process, tenure review has not altogether delivered the results anticipated. This is arguably for two reasons, specifically:

- Similar to many aspects of the environmental restructuring, it was somewhat hastily developed, with greater thought arguably needing to be given to finalising technicalities relative to dynamics; and
- The economic and social dynamics have changed and it was not foreseen at the time the results of freeholding, subdivision and associated leisure-based development. Such an experience itself suggests that the absolute separation of protective from productive land uses is not necessarily the best approach.

Hindsight is a wonderful thing, and what should have been done and how it should have been thought through can be argued endlessly. At the time tenure review was instigated, however, there were essentially two principal interest groups involved, their perspectives being as follows:

- The conservation/recreation lobby, represented principally by Forest and Bird, Fish and Game and Federated Mountain Clubs of New Zealand. The last mentioned is the umbrella organisation of outdoor recreation clubs, established principally to promote 'freedom of the hills' and other member club interests. At the heart of such organisations' concerns was better protecting the natural values of and enhancing recreational access to the High Country. Tenure review would, it was advocated, free up extensive areas of the High Country from private (albeit leasehold) ownership, while providing better access to these and other areas already in the conservation estate by securing more formal means of public access through those areas subsequently freeholded. At the same time, it was argued, land unsuitable for grazing (due to either physical limitations, higher conservation values or a combination of both) should be retired from such

²⁰ Boyd, 2006, p.E2 and White, 2006, p 45

practices and placed 'where it belongs' in the conservation estate. DOC itself was seen as the organisation best placed to oversee how such outcomes would be effected; and

- High Country pastoral lessees themselves. Ascertaining a position for this group is somewhat more difficult. Some no doubt welcomed the opportunity, realising the demand for fine merino wool was already on the decline, this and technological advances making diversified use of the lower country a potentially lucrative option. Some also, no doubt aware of the burgeoning growth in tourism and settlement, particularly in the Queenstown/Wanaka area, foresaw other opportunities which could surely be more easily realised on freehold property. At the same time, however, many feared that with tenure review would come the passing of the High Country lifestyle. They also feared a perceived land grab by the then relatively new and somewhat under-funded DOC. DOC, they alleged, could not control weeds and pests on its own land, so how would it cope with an increase in the size of its estate? As it is, many now allege, over 30% of New Zealand is already locked up in conservation estate, and is that better managing the land or even properly managing it at all?²¹

To an extent such feelings remain, and are arguably still dominant to an extent. They have, however, been somewhat infiltrated over time by new perspectives and even interest groups. Some lessees may well feel themselves being forced into tenure review for fear, if they don't co-operate, the Government will respond by raising rents. As it is, the system of pastoral lease rentals is presently under review;

Critical to extensive pastoralism in many High Country areas has been the transhumance, or movement of stock between higher and lower ground on a seasonal basis. Would much of the lower country now be able to withstand the obvious intensification of use inevitably resulting from loss of the higher areas? That argument obviously depends on location, some basin areas and river flats having proven well suited to intensive grazing and even cropping (this to some extent aided by advances in agricultural research and technology), but such an experience is by no means universal;

Wilding pines (self seeding of exotic trees) has become an ongoing management problem in a number of High Country areas. The source includes plantation forestry on both pastoral leases and the conservation estate, the latter areas being those hitherto managed by the former New Zealand Forest Service as multiple use land units. In a few cases, quite extensive areas were planted and are now managed by private forestry companies. Such planting was touted as offering a 'win-win' solution to High Country problems of soil erosion and fluctuating wool prices in the 1970s and 1980s. Such trees, it was advocated, would stabilise slopes and provide timber as an alternative source of income. Little thought was given, however to the fact that frequent high winds in many High Country areas provide an easy means of seed dispersal, particularly if trees themselves are not subject to proper forestry management regimes. Species especially prone to wilding spread include Lodgepole Pine (*Pinus contorta*), Swiss Mountain Pine (*Pinus mugo*), Dwarf Mountain Pine (*Pinus uncinata*) and Scots pine (*Pinus sylvestris*). Particularly where cost effective harvesting has proved impractical, trees have simply been left to go to seed. DOC, enthusiastic volunteers and lessees now devote significant resources to controlling wilding pines. Handing over extensive areas of higher country

²¹ White, 2006, pp 49-51

infested with wilding pines will arguably present DOC with yet more on-estate weed control problems;

Exotic tree planting itself is likely to appeal as an option on certain areas of freeholded lower country. This will inevitably place greater demands on territorial local authorities to grant consent to such activities. Although district plans typically now prohibit or severely restrict the use of potentially wilding species, plantation forestry generally can impact significantly on High Country landscape values. This is particularly the case when and where the plantation/harvesting regime is unsympathetic with terrain and visual amenity;

With the growth in adventure tourism has come the desire for greater commercial access to the High Country. DOC, via the commercial concessions system applying to its own estate, has been typically reluctant to grant exclusive rights to operators. Pastoral leasehold land has always been potentially available to such operators, but subject to consent of the lessee being previously obtained. To some lessees, the options of either transforming the existing lease into an adventure tourism-type park, or if lacking the capital to do so, selling the lease to someone financially equipped to do so, has obvious appeal. The latter outcome is allegedly seeing increasing foreign ownership of the pastoral leases, with some fearing a High Country sell out to overseas interests; and

It is not necessarily the case that the higher conservation values are found at higher altitudes. In fact, the reverse often applies. The higher altitude areas may be of greater recreational than conservation significance, conservation values themselves in fact typically higher in lower altitude areas. To be sure, the Act provides for protection of such areas and values via the identification of significant inherent values, and their subsequent reservation under the Reserves Act. A range of covenanting options is also available to DOC, the Queen Elizabeth the Second National Trust, and territorial local authorities, while the New Zealand Landcare Trust is active in a number of High Country areas. Inevitably, however, there is the feeling that tenure review is potentially seeing many lower altitude conservation values traded off in return for securing additions to the conservation estate at higher altitude. This is itself further weighting representation of alpine and sub-alpine biodiversity, relative to that of the hill country, lowland and marine areas, in the New Zealand protected natural areas system. The poor representation of lower altitude and marine indigenous ecosystems in the New Zealand biodiversity system, both absolutely and relatively, is itself recognised by DOC and international environmental agencies as a significant conservation concern for New Zealand.

On 11 August 2003, Cabinet agreed to the following objectives for the High Country, (these deriving from the Act):²²

- To promote the management of the Crown's high country land in a manner that is ecologically sustainable;
- To enable reviewable land that is capable of economic use to be freed of current management constraints;

²² Tamihere, 2006, pp 1-2

- To protect significant inherent values of reviewable land by the creation of protective measures; or preferably by restoration of the land concerned to full Crown ownership and control;
- To secure public access to enjoyment of high country land;
- To take into account the principles of the Treaty of Waitangi; and
- To take into account any particular purpose for which the Crown uses or intends to use the land.

The following new (somewhat complementary to the Act) objectives were also agreed to:

- To ensure that conservation outcomes for the High Country are consistent with the New Zealand Biodiversity Strategy;
- To progressively establish a network of high country parks and reserves;
- To foster sustainability of communities, infrastructure and economic growth, and the contribution of the High Country to the economy of New Zealand; and
- To obtain a fair financial return to the Crown on its high country land assets.

High Country Tenure Review: Historic Heritage and Its Protection

Legislation and Policy

There is little doubt that most (though not necessarily all) historic places on High Country pastoral leases are found at lower altitudes. This is to be expected, given the presence of such sites is typically a function of human influence, which is obviously greater in the basin and river flat areas than on the scree slopes and ridge lines. It is essential, therefore, that a conscious effort is made to identify historic features as areas of significant inherent value, and ensure that these are either reserved out of the freeholded areas or protected by means of covenanting. In terms of the latter, Section 6 of the Historic Places Act 1993 provides for Heritage covenants, while a variety of covenanting options are available under the Conservation Act 1987, Reserves Act 1977 and Queen Elizabeth the Second National Trust Act 1977. Covenanting is also possible via the resource consent process as provided for in the RMA.

In actual fact, a significant number of historic features, such as homesteads and concentrations of farm buildings are on land already freeholded. As previously discussed, such freeholding typically took place a number of years ago, consistent with the notion that pastoral leasehold is a system based on land exclusive of improvements. Freeholding rights were seldom withheld in terms of small areas on which residences, farm facilities and other improvements were concentrated. Protection of such features is outside the tenure review process, and something which the NZHPT or local authority must negotiate directly with the landowner.

It is arguably not so much the framework for the process, but implementation of it which works to the disadvantage of historic heritage. The Act and DOC's Tenure Review Pastoral Manual are both clear that significant inherent values include historic features. However, DOC has a broad public interest role with respect to High Country tenure review, including landscape, heritage and recreation, as well as conservation. The extent to which each of these values should dominate relative to the others offers scope for endless debate. As it is, a degree of subjectivity exists as to what constitutes such values, and the extent of inclusivity and exclusivity of the terms relative to each other. Section 6(b) of the Conservation Act 1987 requires DOC:

To advocate the conservation of natural and historic resources generally;

Section 6(c) of the Act requiring it:

To promote the benefits to present and future generations of –

- (i) The conservation of natural and historic resources generally, and the natural and historic resources of New Zealand in particular.

Particularly since the Historic Heritage Management Review of the late 1990s, however, DOC's approach has typically (but not exclusively) been that its responsibility with respect to historic heritage is to protect such values on the conservation estate, with the NZHPT responsible for advocating such protection elsewhere. Put another way, DOC's advocacy function is largely a natural (as opposed to historic) heritage one. For DOC, tenure review is a somewhat difficult process when it comes to balancing such functions. Passing of the higher altitude lands into the DOC estate presents little if any problem with respect to historic heritage. Such areas become part of the conservation estate, thereby triggering DOC's on-estate historic heritage management responsibility.

In terms of landscape, let alone heritage landscape, there appears as yet some doubt as to just what if any values, historic or otherwise, are intended to be (or perhaps more to the point can be) protected by the tenure review process. Surely if the High Country landscape as it exists is to be protected, then the land tenure is arguably better left as it is. By transforming a contiguous pastoral leasehold entity into separate areas of protection and production, then the landscape as it is presently known will change. While it may take time, higher altitude areas no longer subject to grazing will inevitably change in appearance as they become subject to consequential overgrowth by existing and potentially new species no longer checked by grazing. It is certainly unrealistic to expect that lower altitude land hitherto extensively grazed only will not change in appearance due to changes in land use, if not in its entirety then certainly to some extent. Be this by means of more intensive agricultural use or residential and/or other non-agricultural use, then the question is surely more one of extent to which, rather than whether or not, change will result.

In summary, it is apparent that the tenure review process as it exists is struggling to adequately protect historic features. It also appears somewhat undefined in terms of the type of landscape it is seeking to preserve or create. In fact it has arguably as yet failed to determine any effective landscape goal. Both of these matters will be elaborated on further in the following sections.

Outcomes: Is the Tenure Review Process Adequately Protecting the High Country Landscape?

In October 2003, Di Lucas (then President of the New Zealand Institute of Landscape Architects (NZILA)) asserted that the tenure review process is failing in this regard, drawing particular attention to the following outcomes:²³

- More accessible lakeshore, riverside and mountain pass areas being “traded off” in return for protection of the less accessible sub-alpine and montane areas;
- Officials from DOC and LINZ tending to ignore landscape values in their identification of areas containing significant inherent values;
- The Government consequently abandoning significant tracts of spectacular High Country (well loved by New Zealanders and tourists, and an inspiration to painters, photographers, poets, authors and song writers) to private ownership and development;
- The consequential loss of Crown pastoral leasing as a hitherto effective High Country landscape protection mechanism in checking undesirable land uses;
- A somewhat foolhardy belief that the RMA will offer equal security in this regard, with Councils and communities already struggling to prevent development of hitherto “sacrosanct” alpine and lakeshore areas; and
- The fact that foreign investment is increasingly fuelling such undesirable development.

This followed release of the document *The New Objectives and Tenure Review as Agents for Change in the South Island High Country Landscape: A Report to the Ministers of Lands and Conservation from the High Country Landscape Group* (September 2003).²⁴ The High Country Landscape Group is an NZILA Working Group established in June 2003, in response to the above-mentioned concerns. Its members are particularly frustrated by the Government’s seeming willingness to abandon protection of the High Country landscape through a tenure review process that fails to give due attention to landscape values. The High Country Landscape Group undertook an audit of 10 pastoral leases nearing the conclusion of their tenure reviews, in order to assess their success or otherwise in affording sufficient landscape protection. Findings of the audit were as follows:²⁵

- Variable understanding exists between DOC and LINZ (and amongst their staff) about what “landscape values” are. A somewhat limited understanding of the concept, based principally on visual values only, was apparent;

²³ D. Lucas, ‘Government Abandons Precious Landscapes’ (NZILA Press Release) 20 October 2003: <http://lucas.chch@xtra.co.nz>

²⁴ D. Lucas, ‘The New Objectives and Tenure Review as Agents for Change in the South Island High Country Landscape’ (Report to the Ministers of Lands and Conservation from the High Country Landscape Group), September 2003: http://www.nzila.co.nz/membonly_wg_hclg.asp

²⁵ Ibid, pp 2-3

- The present two-fold (conservation estate or freehold property) outcome should be expanded to include a third (or intermediate) category. Such lands could be protected to the extent necessary consistent with their use for compatible productive purposes. Licensed grazing by DOC or covenanting areas of the farm would be appropriate management regimes;
- Further expansion to a fourth category is desirable. This would provide an appropriate management regime for land with neither conservation nor production values;
- There is a failure to consider use of other protective mechanisms (i.e. a variety of covenanting options and possibly strengthening provisions in district plans) as part of future management options. District plan provisions as they exist offer little landscape protection;
- The process as it exists addresses the economic potential of the land, but not its conservation values adequately;
- The process lacks any transparent, strategic evaluation in terms of assessing conservation resources at a landscape scale. Rather, tenure reviews are undertaken at a lease-specific level, in which economic considerations predominate in determining outcomes;
- There is no accountability or transparency in the process as stipulated by the Act, in terms of DOC in its preparation of conservation resource reports and proposals for designation reports and the commissioner's agent in managing the negotiations. This is considered grossly inadequate for a process dealing with extensive areas of public land, yet providing no right of review or appeal on decisions;
- The absence of review or appeal provisions itself makes the public submission process of questionable effectiveness. Indications are submissions are only considered to add value when new information is provided, they otherwise being largely ignored;
- The process lacks any inherent negotiation strategy, with neither a formula nor the team dynamics to develop one;
- Conservation resource reports typically don't scope the full extent of conditions, meaning specialist expertise is not always apparent when these are drawn up by DOC in the proposals for designation reports; and
- The division of proposed freehold land from proposed conservation lands all too often adopts pragmatic boundaries (typically based on existing fence lines). Such boundaries don't necessarily make ecological, landscape, or even sustainability sense. Practical agreements (e.g. existing fence line until it needs repairing, repaired fence then follows the new boundary agreed to) should be incorporated into agreements.

Properties sampled were in the Upper Rakaia, Omarama-Lindis Pass and Lake Wanaka areas, meaning a good geographical representation was attained. Concerned that tenure

review is being economically driven, the High Country Landscape Group has requested its objectives be comprehensively reviewed and consistently applied. It has recommended further freeholding of land via the process be suspended, until such time as an adequate level of landscape protection can be guaranteed.²⁶ Principally for ecological reasons, but also concerned at the extensive freeholding of land generally, Forest and Bird has called for an immediate moratorium on tenure review, arguing a stocktake on what's happening is essential given mounting concerns by interest groups and the public generally.²⁷

High Country farmers have also entered the landscape debate, with the High Country Accord commissioning the report *Tenure Review- Identifying and Protecting Significant Landscape Values in the High Country* by Alan Rackham (Landscape Architect with Boffa Miskell) in April 2004.²⁸ This sought to provide an overview of landscape values as they apply to the tenure review process, particularly in terms of the identification of, priorities for and means of landscape protection. Rackham concluded:

This review confirms that there is considerable dissatisfaction with the tenure review process. High Country pastoral farmers, the High Country Landscape Group, Forest and Bird and others express concern that the current process will not achieve effective protection of the High Country landscape.²⁹

Rackham describes landscape as a term that means very different things to different people and an evolving, complex and elusive concept.³⁰ Pointing to Environment Court debates on the concept, he notes that its breadth of meaning may encompass:³¹

- Natural science factors;
- Aesthetics;
- Legibility;
- Transience;
- Shared and recognised values;
- Takata whenua; and
- Historical associations.

Rackham recommended that the Accord:³²

²⁶ Ibid, p 4

²⁷ White, 2006, pp 47-48

²⁸ A Rackham 'Tenure Review – Identifying and Protecting Significant Landscape Values in the South Island High Country: prepared for the High Country Accord', April 2004: http://www.highcountryaccord.co.nz/downloads/Alan_Rackham_Boffa_Miskell_2004_0617.pdf

²⁹ Ibid, p 1

³⁰ Ibid, p 2

³¹ Ibid, p 3

³² Ibid, pp 13-14

- Request a comprehensive statement from the Commissioner and DOC, setting out regional landscape contexts in which tenure reviews occur, and Crown visions for regional landscapes;
- Request the commissioner (via DOC and using appropriate expertise) to prepare an explicit and robust landscape methodology, clearly stating how inherent landscape values are determined and how their significance will be assessed;
- Seek representation on the assessment methodology panel;
- Articulate clearly its understanding of how continued grazing and other management practices can help to sustain specific characteristics of the High Country landscape; and
- Continue to explore potential protection mechanisms for the “grey areas” that don’t comfortably fall into conservation estate or freehold title.

Section 2-A, Appendix 5 of DOC’s *Tenure Review Pastoral Manual* prescribes specific standards to be applied as guidelines in the identification and assessment of significant inherent values. Criteria have been specifically developed with respect to natural resources, historic places and cultural resources, and public access. Those for landscape specifically are somewhat scattered under the first two of these headings, and include the following:³³

- Areas which alone or collectively sustain the special natural quality and integrity of the High Country landscape, especially the indigenous component;
- Areas which sustain the most culturally valued attributes (e.g. scenic, aesthetic, recreational and historic) and their context within a natural High Country landscape; and
- Historic places and cultural resources which form an important part of the wider historic and cultural complexes and landscapes of the High Country.

DOC’s own guidelines on significant inherent values tend to afford highest priority to pre-human (typically higher altitude) landscapes, with working (typically pastoral farming) landscapes ranked lowest in priority for protection.³⁴ Without a reappraisal of such ranking, natural and scenic values will retain significant pre-eminence over historic heritage when it comes to assessing landscape values as part of the tenure review process.

In summary, it is clear that considerable dissatisfaction exists with the tenure review process, in terms of its inability to adequately protect the High Country landscape. Such dissatisfaction appears to be mounting and shared by a range of interest groups, with the following shortcomings perceived to be apparent:

³³ Department of Conservation, ‘Section 2-A: How to Report on Conservation Resources in a Tenure Review Under Part 2 Crown Pastoral Land Act 1998 – Appendix 5: Standards to be Applied as Guidelines in the Identification and Assessment of Significant Inherent Values’, *Tenure Review Pastoral Manual*, 24 October 2006: <http://www.doc.govt.nz/Conservation/Land/Tenure-Review-Pastoral-Manual/002>

³⁴ Littlewood, ‘The Tenure Review Programme for Crown Pastoral Leases’, 2006, pp 2-3

- The lack of any clear definition of what the term High Country landscape actually means. There is consequently no common ground on what should be protected and no effective methodology to identify such values systematically; and
- A consequential lack of direction in terms of the means of protecting such values when identified. Particular concern exists that the RMA process alone is proving to be an inadequate mechanism in this regard.

In fact the inherent approach of separating protective from productive land uses as being the best approach to manage much of the High Country is clearly being called into question. A multiple outcomes approach is the alternative.

Outcomes: Can the RMA Process be relied Upon to Protect the High Country Landscape?

The effectiveness or otherwise of the RMA process in protecting the High Country landscape can be argued at length. The purpose of the RMA, as provided for in Section 5 of the Act, is:

To promote the sustainable management of natural and physical resources.

Sustainable management is defined in the Act as meaning:

Managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety while –

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) Avoiding, remedying and mitigating any adverse effects of activities on the environment.

Section 6 provides for matters of national importance to be recognised and provided for in the exercising of powers and functions under the Act. These include:

- The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development (Section 6(b)); and
- The protection of historic heritage from inappropriate subdivision, use and development (Section 6(f)).

Section 2(1) of the Act defines historic heritage as meaning:

Those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:

- (i) archaeological;
 - (ii) architectural;
 - (iii) cultural;
 - (iv) historic;
 - (v) scientific; and
 - (vi) technological
- and including –
- (i) historic sites, structures, places and areas;
 - (ii) archaeological sites;
 - (iii) sites of significance to Maori, including wahi tapu; and
 - (iv) surroundings associated with the natural and physical resources

Territorial local authorities must consider the provisions of Part II of the RMA (being Sections 5 to 8) plus relevant objectives, policies and rules of a hierarchy of planning documents in deciding whether or not to grant resource consent for subdivision or a land use not otherwise permitted. The definition of historic heritage, particularly its inclusion of “surroundings associated with natural and physical resources”, affords scope for the consideration of heritage at a landscape level.

In terms of planning documents, regional policy statements (providing an overview of resource management issues and seeking integrated management of natural and physical resources at the regional level) and district plans (essentially the documents by which territorial local authorities carry out their functions under the RMA) are of major significance.

In October 2006, the NZHPT commissioned Paulette Wallace, a postgraduate researcher, to review provisions to protect and manage rural landscapes in the Mackenzie, Queenstown/Lakes and Central Otago District Plans and Regional Policy Statements for Canterbury and Otago. It is apparent that both regional policy statements and the three district plans recognise the aesthetic and heritage significance of High Country landscapes in their areas of coverage, this being inherent in their objectives and policies. While the decision-making process cannot be based on district plan rules alone, these ultimately determine the status of an activity, in terms of whether it is permitted, controlled, restricted discretionary, discretionary, non-compliant or prohibited. That, and the perspective of Council, will realistically determine the ease or otherwise by which development proposals potentially threatening the High Country landscape will be able to proceed.

Interesting examples of the rules in the Mackenzie District Plan (2004) include:³⁵

- Rule 3.3.1.e, by which new buildings in the Rural Zone are not permitted in Sites of Natural Significance and Scenic Viewing Areas as identified in the Plan or areas above 900 metres (with the exception of musterers' huts less than 50m² in gross floor area). Such activities are discretionary, hence requiring a resource consent, in accordance with Rule 3.3.4. Exemptions are also offered for a series of covenanting options designed to protect significant *natural* values and sites of *natural* significance;

³⁵ Mackenzie District Council, *Mackenzie District Plan*, Christchurch, Davie Lovell Smith, 2004, pp 7-41 – 7-44, 12-15 and Map no 24

- The Plan sets aside a narrow (0.5 kilometres maximum) “Lakeside Protection Area”. Buildings or extensions to them within such areas are a discretionary activity in accordance with Rule 3.3.1; and
- The Plan’s subdivision rules provide for such a practice in the Rural Zone as a discretionary activity. Other than this, however, the only restriction imposed by Rule 7A is a minimum section frontage length of five metres.

The Central Otago District Plan (2000) imposes:³⁶

- Minimum lot sizes of 10 hectares in the Rural Resource Area (1) Zone as a controlled activity, under Rule 4.7.2(a)(i). The same Rule, however, affords similar status to subdivision down to minimum 1 hectare lots in the Rural Resource Area (2) Zone, set aside typically for residential and tourist accommodation purposes. Rule 4.7.5, makes minimum lot sizes of less than 8 hectares in the Rural Resource Area (1) zone a non-complying activity;
- In terms of the Rural Resource Area (2) Zone specifically, Rule 4.7.6 A(b) imposes requirements for minimum 45m² open spaces and 500m² landscaping on sites used for travellers accommodation. Breaching of such requirements is a discretionary activity in accordance with Rule 4.7.3(i); and
- In response to wilding tree spread, plantings of Scots Pine and Swiss Mountain Pine are now non-complying activities (Rule 4.7.5(vi)), with the planting of Lodgepole Pine now prohibited (Rule 4.7.5A(i)).

The Queenstown Lakes (partially operative) District Plan (2005) prefers to encourage landscape-sympathetic such activity by means of its *Good Practice Guide: Rural Subdivision* (undated). This offers advice in the design of lot layout and building location, maintenance of landscape and rural character, provision of roading and other access, undertaking of planting and earthworks, preservation of ecological values and infrastructural servicing.³⁷ Objective 4 of the Plan’s Chapter 15 Subdivision, Development and Financial Contributions provides for:

The recognition and protection of outstanding natural features, landscapes and nature conservation values.³⁸

Again, the emphasis on natural and scenic, relative to historic heritage, values is apparent. Council is, however, presently undertaking a heritage-related Plan Change. This will provide for better protection of the District’s heritage landscapes, including Skippers, Macetown, Seffertown, Moke Lake and Glenorchy-Wyuna. It also defines heritage landscape as:

³⁶ Central Otago District Council, *Central Otago District Plan*, Alexandra, Central Otago District Council, 2000, pp 4:42-4:43, and Variation 1

³⁷ Queenstown Lakes District Council and Civic Corporation Ltd, *Queenstown Lakes District: Good Practice Guide – Rural Subdivision*, Queenstown, Queenstown Lakes District Council and Civic Corporation Ltd, undated.

³⁸ Queenstown Lakes District Council, *Partially Operative District Plan*, Queenstown, Queenstown Lakes District Council, March 2005, p. 15-4

Land surfaces (which are defined by their value and significance to a group in society) that have been modified by human activity and define significant past patterns of land use, relationships and experiences of humans with their surroundings, which may include cultural, spiritual, historic, ecological and scientific values. Heritage landscapes may encompass natural terrain, physical structures and processes, pathways, habitats, and cultural meaning (beliefs and practices, histories and myths), with elements of these overlaying one-another over time.³⁹

In theory, a well-researched, proactively-implemented district plan should be able to offer a significant, if not sufficient, degree of protection to the High Country landscape. In practice, however, many RMA planning initiatives are reactionary, with rules implemented in response to undesirable development which has all too often set an equally undesirable precedent. Given such a precedent has been set, it is potentially very difficult for Councils to withhold consent to similar proposals, on grounds of consistency and fairness. This effectively means that even when implemented, such rules are not altogether successful in achieving their intended purpose.

For some time Queenstown Lakes has been struggling with issues relating to the management of the High Country environment. Mayor Clive Geddes acknowledges the Council has now implemented district rules to cope better with anticipated further growth, but only in response to difficulties encountered over the past 25 years. Notwithstanding such a “catch-up” by Council, he acknowledges that the District’s landscape will inevitably continue to change in response to development pressure that can only be curbed, not curtailed.⁴⁰ Growth has come somewhat later to, but is now significant in, Central Otago, its district plan having also been strengthened in response to this.

Such growth has now come to the Mackenzie Basin, many fearing the controversial Richmond Station settlement will be the catalyst for an end to the hitherto uncluttered postcard vista viewed from Lake Tekapo’s Church of the Good Shepherd. It is at best questionable whether the Mackenzie District Plan’s Lakeside Protection Area, Scenic Viewing Areas and Sites of Natural Significance will afford sufficient protection to the Basin’s heritage landscape. The first-mentioned is 0.5 kilometres wide at its maximum length, with consent already having been granted to build a house within the zone on the south side of the Lake. The second is a relatively small and the third a site-specific means only of affording protection to scenic vistas and natural heritage respectively. Inclusively, such overlays offer little if any effective protection to the heritage landscape. Council itself acknowledges that certainly beyond the immediate lakefront, there would be little to prevent the owner erecting tourism condominiums on the now freeholded area of Richmond if desired.⁴¹

It is apparent that the RMA process alone cannot be relied upon to protect the High Country landscape. Besides the time lag apparent in terms of enacting rules in response to pressure, the bottom line is that tenure review as a process freeholds hitherto Crown-owned land. So long as the Crown owned the land, it could effectively control what took

³⁹ Queenstown Lakes District Council, ‘Plan Change No. 3 Heritage (Part 2): Section 32 Report’ Queenstown: Queenstown Lakes District Council, 2006, p 33:
<http://www.qldc.govt.nz/Portal.asp?contentid=1478>

⁴⁰ White, 2006, pp 46-47

⁴¹ Ibid, p 45

place there; that is arguably why so much of the High Country retained its seemingly changeless appearance through many generations. In reality, however, the dynamics to effect change have been, are, and always will be there. Freeholding brings with it private property rights, the new landowners understandably keen to exercise these to the maximum, particularly after giving up occupation and use rights to higher country and other areas reserved for their significant inherent values. DOC itself has become reluctant to involve itself in resource consent applications affecting land freeholded via the tenure review process. This, DOC believes, is 'double dipping'; its position being that the Crown has already negotiated protection requirements at the time of review, "signing away" development rights on the freeholded land in return for these.

While it is true that site-specific mechanisms such as heritage orders and covenanting can be used to protect historic heritage at a site-specific level, such approaches have limited effect at a landscape scale, affording little or no buffering of impact beyond the site concerned. Sections 187 to 198 of the RMA provide for heritage orders, a heritage order being:

A provision made in a district plan to give effect to a requirement made by a heritage protection authority under Section 189 or Section 189A.

A heritage protection authority means:

- (a) Any Minister of the Crown including –
 - (i) The Minister of Conservation acting either on his or her own motion or on the recommendation of the New Zealand Conservation Authority, a local conservation board, the New Zealand Fish and Game Council or a Fish and Game Council
 - (ii) The Minister of Maori Affairs acting either on his or her motion or on the recommendation of an iwi authority; and
- (b) A local authority acting either on its own motion or on the recommendation of an iwi authority;
- (c) *The New Zealand Historic Places Trust in so far as it exercises its functions under the Historic Places Act 1993; or*
- (d) A body corporate that is approved as a heritage protection authority under Section 188.

Section 193 of the RMA states that:

Where a heritage order is included in a district plan then, regardless of the provisions of any plan or resource consent, no person may, without the prior written consent of the relevant heritage protection authority named in the plan in respect of the order, do anything including –

- (a) Undertaking any use of land described in Section 9(4);
- (b) Subdividing any land; and
- (c) Changing the character, intensity of scale of the use of any land –

that would wholly or partly nullify the effect of the heritage order.

The effect of a heritage order is, therefore, somewhat similar to that of a designation (that typically for a public work) in a district plan, in effectively “setting aside” the area concerned for heritage protection purposes. The process is somewhat complex, potentially costly and may involve land purchasing or other compensation expenses.

More cost-effective means of protection are typically achieved via covenanting. As mentioned previously, Section 6 of the Historic Places Act 1993 provides for heritage covenants, while a variety of options are available under the Conservation Act 1987, Reserves Act 1977 and Queen Elizabeth the Second National Trust Act 1977, as well as through territorial local authorities via the use of resource consent conditions. The latter options are typically used for nature conservation purposes, but historic features as well as landscape generally may also be factors in support of entering such covenants. Seldom, however, are the areas involved sufficient to afford any significant protection at a landscape scale. Such initiatives are also becoming increasingly used as “trade-offs”, in terms of being entered into on the basis of offering to protect native bush in return for Council granting development rights elsewhere on the property.

In April 2003, NZHPT convened a Heritage Landscapes Think Tank. Professor Dame Anne Salmond, Chairperson of the NZHPT, presented the 145 participants with five challenges, these being:⁴²

- Finding a philosophical framework;
- Establishing good ways of judging significance;
- Developing legislative frameworks in New Zealand;
- Developing practical ways of working together; and
- Finding positive ways of celebrating heritage sites and landscapes.

The gathering also noted the lack of any specific legislative provision by which heritage landscapes could be recognised or protected.

Environment Court Judge Shonagh Kenderdine took up particularly Dame Salmond’s second challenge and the Think Tank’s conclusion in her paper *Heritage Landscapes: Developing Legislative Frameworks Which Allow for Protection and Change*, presented to the NZILA’s 2005 Conference titled ‘Looking Forward to Heritage Landscapes’.⁴³ She also spoke to it at NZHPT’s own Heritage Management Conference later that year.

Judge Kenderdine notes:

⁴² Dame A. Salmond, ‘Heritage Landscapes: Opening Address to Heritage Landscapes Think Tank’ 7 April 2003: http://www.historic.org.nz/publications/think_tank.html, pp 2-3

⁴³ Judge S Kenderdine, ‘Heritage Landscapes: Developing Legislative Frameworks Which Allow for Protection and Change’ (Paper presented to NZILA Conference), 27 April 2005: http://www.nzila.co.nz/conf_archive_nzila.asp

In my view, the case for the protection of heritage landscapes, both rural and urban, is extremely urgent, as subdivision and development (particularly for lifestyle purposes in the rural areas) swallows up iconic sites. ... To achieve protection of heritage landscapes, the fundamental issue, as a matter of law, is that a mix of public and private lands and/or buildings need to be regulated and managed for their public/private interest.⁴⁴

The paper considers the existing legal framework, including the RMA, Historic Places Act 1993, and Queen Elizabeth the Second National Trust Act 1977, citing relevant examples from case law, and applies it to urban, vernacular (e.g. historic bach communities) and rural landscapes. In terms of the last mentioned, Judge Kenderdine notes that:

The value of “heritage landscapes” is that by definition it includes the ‘total historic environment of the past’ linked to the need to conserve representative evidence of a region’s total historic development pattern.⁴⁵

Although neither the Crown Pastoral Land Act 1998 specifically nor the High Country generally were considered, particular attention was drawn to challenges faced by the Queenstown-Wanaka area in terms of expanding viticulture and settlement and the Mackenzie Basin in terms of increased salmon farming on the canals constructed initially as part of hydro developments. Wilding pines, and the conversion of hitherto extensively farmed tussock areas to more intensively stocked pastures dominated by introduced grasses, are also noted threats to the landscape. Concept management plans, better use of the Nature Heritage Fund, registration, rating and other financial incentives, and better definition of the term heritage landscape in the context of overall (typically outstanding) landscape criteria are noted as initiatives worthy of pursuing in the quest to better protect heritage landscapes generally. Judge Kenderdine notes, however, that the answer to the challenge lies not so much in a ‘quick fix’ through new and or amended legislation. Rather:

To capture the heritage landscapes and provide them with added protection will require careful thought and some creativity, and careful integration of some of the key provisions of the HPA and RMA.⁴⁶

By inherently separating protected from productive land, the Crown Pastoral Land Act 1998 has arguably become the most significant agent of change in the High Country landscape. The mechanisms advocated by Judge Kenderdine are themselves unlikely to counteract this themselves. A careful reappraisal of the tenure review process should, however, provide the means by which such mechanisms can be more effective in protecting High Country heritage, both at site-specific and landscape levels.

In summary, even if the RMA process could be guaranteed to respond promptly and efficiently to development pressures and threats, a High Country landscape that passes from Crown pastoral lease to a combination of conservation estate and freehold land will inevitably change. That will be in response to both the change in land tenure and market

⁴⁴ Ibid, pp 5, 8

⁴⁵ Ibid, p 62

⁴⁶ Ibid, p 75

forces. If the High Country landscape is to be protected, certainly to an extent better than it presently is, alternative approaches to the tenure review process require consideration. Before settling on and proceeding with any alternative, however, the term High Country landscape requires better definition in terms of exactly what it is that needs to be protected. That should itself facilitate coming up with the best possible means of modifying or replacing the tenure review system.

A significant gap exists in terms of the tenure review process being able to protect historic heritage. The process has thus far failed to develop any inherent landscape goals, while the RMA system is struggling to keep pace with the pressure for development emanating from tenure review itself. There is consequently a huge “vacuum” in terms of protecting High Country heritage, at both site specific and landscape levels, once the land passes out of pastoral leasehold tenure. It is important, therefore, that attention be given to ascertaining what such values warrant protection and the best means of achieving this.

Other Models: Does the “Protected Landscapes” Concept Offer an Alternative Means of Managing the High Country?

When interviewed by Nick White in his November 2006 *North and South* feature article ‘High Country Hijack’, Morgan Williams (former Parliamentary Commissioner for the Environment) made the following statement:

We’re putting lines and fences across the landscape that have absolutely no ecological reality, when in fact the conservation and environmental outcomes we want off the land as a nation could be delivered in a private-land-owning model.⁴⁷

Fearing the iconic High Country landscapes could be lost as a consequence, many are questioning whether the tenure review process, with its inherent separation of protected and productive land uses is the right way to go. The concept of separating a state-owned conservation estate from unencumbered freehold land was at the heart of the environmental restructuring of the late 1980s. The former would be indefinitely protected for the people of New Zealand and visitors to the country, with owners of the latter given the unfettered rights of development.

In introducing the World Conservation Union’s (IUCN’s) Protected Landscapes concept, its Task Force leader, Jessica Brown, makes the following observation:

Thinking on protected areas is undergoing a fundamental shift. Whereas protected areas were once planned against people, now it is recognised that they need to be planned with local people, and often for and by them as well. Where once the emphasis was on setting places aside, we now look to develop linkages between strictly protected core areas and the areas around: economic links which benefit local people, and physical links via

⁴⁷ White, 2006, p 48

ecological corridors, to provide more space for species and natural processes.⁴⁸

In fact the concept had its origins in the Lake District Declaration of October 1987, as signed by participants at the International Symposium on Protected Landscapes. Ironically that was the very year in which New Zealand's new agencies resulting from its environmental restructuring came into being!

Five years later, the IUCN published *Protected Landscapes: A Guide for Policy-Makers and Planners*. This defined the purpose of a "Protected Landscape or Seascape" (IUCN Category V Protected Area) as being one recognised:

To maintain nationally significant natural landscapes which are characteristic of the harmonious interaction of people and land, while providing opportunities for public enjoyment through recreation and tourism within the normal life-style and economic activity of these areas.⁴⁹

This was slightly modified by the IUCN, when streamlining its protected area categorisation in 1994, to read:

Area of land, with coast and sea as appropriate, where the interaction of people and nature over time has produced an area of distinct character with significant aesthetic, ecological and/or cultural value, and often with high biological diversity. Safeguarding the integrity of this traditional interaction is vital to the protection, maintenance and evolution of such an area.⁵⁰

The intention is that such areas are concerned with people and the environment, and a range of natural and cultural values. The concept recognises the interaction between people and nature, and seeks to maintain both environmental and cultural values of areas so designated. It is consistent with both a new approach to protected area management involving greater recognition of community interest and participation, and the inclusion of cultural landscapes as a designation under the World Heritage Convention. The latter itself also recognises the interaction between humankind and the natural environment, but the difference is arguably in the fact that while *Cultural Landscapes* tends to emphasise the human element, *Protected Landscapes* emphasises natural features more.

The World Heritage Convention recognises three kinds of Cultural Landscape, specifically:⁵¹

- Landscapes designed and created intentionally by people (e.g. botanic gardens, urban parks);

⁴⁸ J. Brown 'Science and Management: Protected Landscapes Taskforce' 25 October 2006: <http://www.iucn.org/themes/wcpa/theme/landscapes/landscapes.html> , p 1

⁴⁹ P.H.C. Lucas, *Protected Landscapes: A Guide for Policy Makers and Planners*, London, Chapman and Hall, 1992, p 5

⁵⁰ A. Phillips, *Management Guidelines for IUCN Category V Protected Areas: Protected Landscapes/Seascapes*, Cambridge, IUCN Publications Unit, 2002, p 9

⁵¹ *ibid*, p 28

- Organically evolved landscapes, including fossil (evolutionary process ceased) and continuing (evolution process ongoing), involving natural and human-induced processes, but in which the latter are clearly dominant; and
- Associative cultural landscapes (in which religion, art, or culture has a strong association with the natural features).

By contrast, the following management principles are at the heart of the protected landscapes concept:⁵²

- Conserving landscape, biodiversity and cultural values;
- Focussing on the point of interaction between people and nature;
- Seeing people as stewards of the landscape;
- Management with, through, for and by local people;
- Co-operative approaches, such as co-management and multi-stakeholder equity;
- A supportive political and economic environment;
- Concern with protection and enhancement;
- Priority given to retaining special qualities of the area;
- Locating activities not needing to take place within the Protected Landscape outside of it;
- Business-like and professional management;
- Flexible and adaptive management; and
- Measurement of success in environmental and social terms.

The Natchitoches Declaration on Heritage Landscapes, adopted 27 March 2004 (at the United States/International Council on Monuments and Sites (ICOMOS) International Symposium at Natchitoches, Louisiana, USA), seeks to establish a degree of common ground between the World Heritage Council and IUCN-developed concepts. It recognises that ICOMOS and IUCN should collaborate more closely over the concept of heritage landscapes, recognising that natural and cultural values are converging, their separation for too long hindering, rather than facilitating effective landscape protection.⁵³ This initiative was followed up by ICOMOS in the Xi'an Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas (adopted at its 15th General Assembly at Xi'an, China, in October 2005). This acknowledges the important contribution that setting makes to the heritage significance of specific sites, structures and other features, landscape an important dimension in this regard.⁵⁴

⁵² *ibid*, pp 39-42

⁵³ Natchitoches Declaration on Heritage Landscapes, 27 March 2004: http://www.icomos.org.us/icomos/Symposium/SYMP04/Natchitoches_Declaration.htm

⁵⁴ Xi'an Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas (Adopted by the 15th General Assembly of ICOMOS), Xi'an, China, 21 October 2005

In practice, the protected landscapes concept is a principally European-developed one. That is because in contrast to many parts of the world such as New Zealand, a number of European countries lack certainly extensive areas in which strong human influence of some kind, past or present, is not evident. In the United Kingdom, for instance, the 143,830 hectares Peak District National Park has experienced human influences over 100,000 years, has a resident population of 38,000 within its boundaries (of which over 12,500 work there), has 15.7 million people within an hours drive of the Park, and experiences 22 million visitors per year.⁵⁵ The Park and its surrounding areas are effectively managed by a relatively centralised and highly integrated planning system, involving national, regional and local authorities, both resource protection-specific and resource management-oriented.

It is relatively easy to dismiss the protected landscapes concept as something that would work well in England, but never in New Zealand. When reporting on its investigation into the Peak District in April 2003, the Office of the PCE drew careful attention to cultural differences. The relatively centralised English planning system, genuine cultural acceptance of foregoing economic opportunity in the interests of landscape protection and the fact that the District has a long, continuous history of human habitation obviously contrasts strongly with New Zealand's relatively decentralised planning system under the RMA, strong ethic of private property rights, and fact that it can and does set aside over 30 per cent of the country in a protected areas network largely devoid of human influence or presence.⁵⁶ The concept is, however, an international one that affords a significant degree of variation to suit national conditions.

Achieving Sustainable Landscape Management in the High Country: A proposal for legislative change

For New Zealand to adopt the protected landscapes approach as adopted overseas would require a major shift in New Zealand public policy. Since the environmental restructuring of the late 1980s, and in fact since the Reserves Act was passed in 1977, the New Zealand approach to land use has been one of separating seemingly incompatible uses in favour of predominant land uses or values. The protected landscapes approach, on the other hand, is a multiple-use, multiple-outcome approach. New Zealand's approach to land management thus far has been based on a philosophy of dualism; nature as separate from humanity, and nature at its best with humanity excluded. The protected landscapes approach on the other hand recognises nature and humanity as inherently in interaction.

There is room, however, for confusion in the use of the term since for many New Zealanders 'protected landscapes' would imply the 'conservation estate'. For this reason, the use of cultural or heritage landscape is preferred.

⁵⁵ Office of the Parliamentary Commissioner for the Environment, *Superb or Suburb? International Case Studies in Management of Icon Landscapes*, Wellington: Office of the Parliamentary Commissioner for the Environment, 2003, p 42

⁵⁶ *Ibid*, p 56

One approach is enhance protective mechanisms under the RMA by the development of a national policy statement for High Country landscapes under the RMA and the amendment of the existing set of policy statements and plans to provide for the cultural and heritage landscape. While these measures would improve protection and management under the RMA, the tenure review process would remain separate from the land management regulatory framework.

The NZHPT suggests that that legislative change is required to promote more effectively the sustainable management of the High Country. The tenure review process requires a policy framework that is informed by the regional and district communities of interest to provide direction for the negotiation of individual reviews. In other words, there must be a process by which regional and local community perspectives can have a say in the management of incremental and cumulative change in the environment resulting from the tenure reviews by identifying the strategic outcomes to be achieved. Such a regime should close the legislative and policy gap between tenure change and regulation (between the Crown Pastoral Land Act and the RMA).

For example, the Crown Pastoral Land Act 1998 could be amended to become the *Crown Pastoral Landscape Act*. Such an Act would have, as its purpose, the sustainable management and development of the High Country in Otago and Canterbury. It is essential that sustainable management and development is a clear objective and outcome rather than legislation that is procedurally-biased towards tenure change.

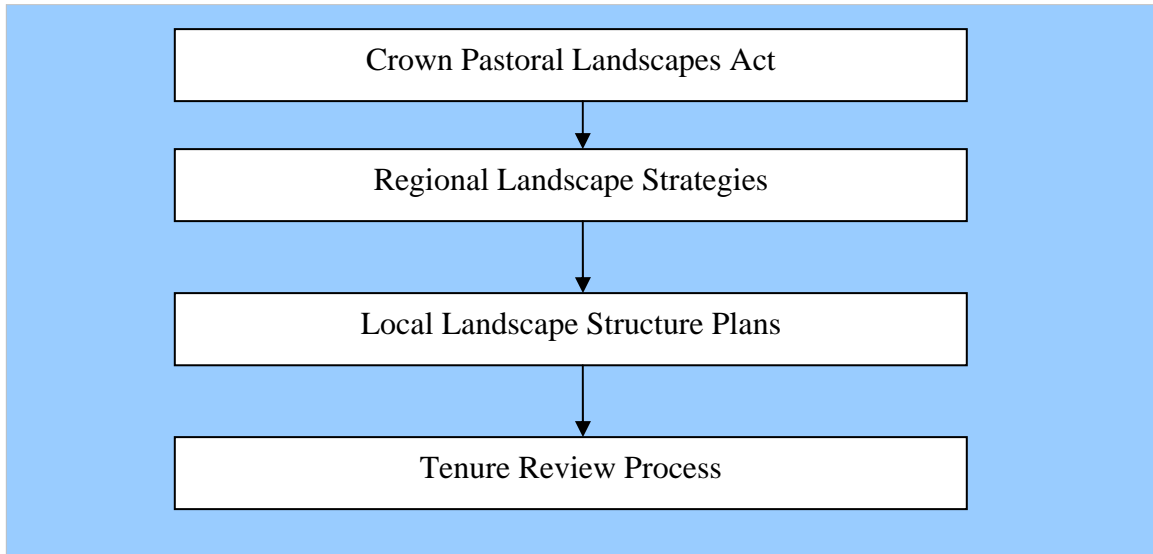
Within this new legislation, there could be provision for the establishment of *regional landscape strategies* (for each region) designed to provide the regional landscape policy framework (and which would complement the current regional policy statements provided for under the RMA and have status under the RMA). These strategies, prepared by regional councils, would take a similar role to existing regional pest management strategies and regional transport plans that are complimentary to plans prepared under the RMA.

Underneath the regional landscape strategies, there would be a set of *local landscape structure plans*. Structure plans, prepared by each relevant affected territorial authority, can provide guidance, identification and coordination for all anticipated land uses within a defined area. Structure planning is a tool used by many local authorities around New Zealand and has been especially effective in managing large-scale changes and urban design issues. Guidance on structure planning is available on the MFE Quality Planning website.⁵⁷

A regional landscape strategy would provide overall objectives for the region and may identify priority areas in the region for the preparation of local landscape structure plans. The structure plans, in turn, would identify areas of significant heritage and conservation value; areas requiring research and landscape investigation; public access, transport and vegetation management issues; areas for absolute protection (i.e. to be added to the conservation estate); areas to be protected by covenants; and other amenity issues. Any regulations proposed in a structure plan could be provided for by a change to a district plan under the RMA.

⁵⁷ <http://www.qualityplanning.org.nz/plan-topics/structure-planning.php>

Both the regional landscape strategies and the local landscape structure plans would be prepared with community consultation and would guide the negotiation of individual reviews. This framework would enable the creation of a policy system that would provide direction for individual tenure reviews and also provide direction of regulatory intervention under the RMA, consistent with current best practice in other areas of resource management and sustainable development.



Proposed framework under new Crown Pastoral Landscapes legislation

Conclusions

New Zealand is a cultural landscape, a place that has a natural and cultural history. The country is formed by a number of distinctive regions which have their own identity, their own natural and cultural history. The South Island High Country forms a major part of the Otago, Canterbury regions. It is a special place – an iconic cultural landscape.

Within the cultural landscape, are important heritage landscapes. These places are marked by historic sites and areas, archaeological sites, historic tracks, open tussock lands, and important views. It is the historic places, the associated stories, and their surroundings that create this heritage landscape. These places are of particular value to local communities and to a growing number of people for their recreational and scenic values.

The High Country is experiencing change more rapid and potentially more lasting than at any time in its history. This change is been driven by economic and social development that is built on the cultural capital of both the natural and historic resource. This cultural capital, however, is a finite resource – the environment can be damaged beyond repair. Change must be managed in a way that sustainably manages the environment for present and future generations.

The tenure review process is a process of ownership change. With ownership change, a process of land use change is accelerated and new social and economic opportunities are

capitalised. Without sufficient national, regional, or local direction and policy, the RMA is struggling to cope with the pace of development.

Clearly, the tenure review process can be improved to better provide for cultural and heritage landscape values. This could be done with improved identification and consultative processes at the beginning of the reviews. There are suggestions in this paper about a more certain process for organisations for the NZHPT and the preparation of assessments by landscape architects.

However, it is at the regional and district level where decisions about landscape change should be made. Communities should feel empowered that they can influence outcomes in their own environment. This will require the tenure review process to be established within a new policy framework that provides for community consultation. To this end the NZHPT has suggested the adoption of the 'protected landscape' concept used in Europe and new legislation that will provide regional landscape strategies and local landscape structure plans. This framework will ensure the special quantities of the High Country regions will be identified and provided for in both the RMA and the individual tenure review negotiations.

To achieve this, a public policy framework for High Country Tenure Review is required, consistent with current best practice in other aspects of resource management and sustainable development. Provision should be made for regional landscape strategies to provide the regional landscape policy framework, prepared by regional councils, and a set of local landscape structure plans, prepared by territorial authorities. These documents would provide the guidance and co-ordination necessary to direct the tenure review process in the public interest.

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