

[EXTRACT FROM CONFIRMED MINUTES
OF OTAGO CONSERVATION BOARD MEETING¹⁹
HELD ON 1-2 DECEMBER 2000]

During the field trip of parts of Waioarau Station on 2 December 2000, the board passed the following resolution after discussing aspects of the Waioarau tenure review agreement.

RESOLVED

That with regard to the Waioarau Tenure review agreement, the board:

- 1 welcomes the agreement as a pleasing outcome for conservation, with around 4000 hectares of high country on the Pisa Range earmarked to become public conservation land;
- 2 notes that it had no direct influence on the agreement and no effective role in the tenure review process, but that it was kept informed by the Department of Conservation in confidence during the past few years;
- 3 expresses its concerns about the large scale of earth disturbance on the property at high altitude, as well as the potential for serious erosion and siltation of the upland bogs, streams and headwaters of the Roaring Meg Stream;
- 4 expresses its further concerns about the consent processes which were followed to obtain authorisation for the earthworks;
- 5 investigates the above consent processes used by local councils and the Commissioner of Crown Lands to find out whether statutory requirements were met;
- 6 issues a press release conveying the above points following the meeting;
- 7 sends a letter to John and Mary Lee, asking them to make a commitment to revegetate the habitats associated with the earthworks within five years.

Sutherland/Beattie

Extract from confirmed Minutes of Otago Conservation Board
held at Waiorau Snow Farm 1 December 2000

RECORD OF PUBLIC FORUM HELD IN THE CONFERENCE ROOM
WAIORAU SNOW FARM, CARURONGA, ON FRIDAY 1 DECEMBER 2000 STARTING
AT 1.30 PM

On behalf of the board, I Cleveland welcomed four members of the public and three members of the press to the public forum. He invited them to share any views or comments they had on conservation in Otago.

Mike Floate (FMC Executive Committee member and former board member) referred to the board's decision to not send a representative to the recent FMC Wild Lands Conference, and explained that he had attended such conferences as an FMC Executive Committee member as well as a board member. He asked what progress the department had made towards the creation of the seven new conservation parks foreshadowed by the Otago CMS.

J Connell said that the department and the board had agreed that the proposed Te Papanui Conservation Park on the Lammermoor and Lammerlaw Ranges should be the first of the Otago conservation park proposals to go through the relevant statutory process. A large area in Rocklands Station was going to be surrendered and gazetted as conservation land in the next few months. This would enable work on the formal process to get underway. Elsewhere in Otago there had been insufficient progress to allow the other proposed parks to take shape, including delays caused by a suspension of tenure review negotiations while adjustments relating to the Crown Pastoral Lands Act process and standards were made.

M Floate then expressed concern about some aspects of the concession application by Whitney Thurlow (Wild Walks), including the proposed use of Rabbit Pass in the East Matukituki and proposed aircraft landings at Jumboland in the Wilkin.

I Whitwell said that the department would be requiring this applicant to use existing concessionaires for air access.

J Connell said that he was not familiar with the details of the application and would not be able to respond or make any comments about it in the board's presence until the next board meeting.

M Clark undertook to send a copy of the application to M Floate.

Turning to the tenure review agreement involving Waiorau Station, M Floate recalled that in 1998, he had expressed to the board his serious concerns about the severe maltreatment of the landscape in the ski and vehicle testing areas. He enquired whether any resource consents had been obtained for this work and how it could have been permitted in an area to be protected under a landscape covenant. He felt that the scale of the work was such that it must be in breach of the Land Act, the Resource Management Act or the covenant. He asked whether any sanctions had been placed on the lessees as a result of these extensive earthworks, and what could be done to ensure that such flagrant violations of the rules did not happen again.

J Connell said that the Waiorau tenure review agreement had been renegotiated because the parties did not consider that the first agreement was binding any longer. All litigation associated with the first agreement had now been settled. He reminded those present that both agreements were between the Commissioner of Crown Lands and the lessees. Since conservation values were affected by the outcome however, he had been keeping the board informed of developments in the public excluded sections of board meetings. Board members and associated departmental staff would be having a good look at the area in question during the field trip tomorrow. The board would then be in a better position to form its own view on the issue of the impact of the earthworks.

M Floate remarked that if the Waiorau tenure review represented a 'net conservation gain', then that net gain had been achieved at an unacceptable environmental cost. The scarring of the landscape was clearly visible from the Queenstown to Christchurch flight path.

A Mark thanked M Floate for raising this issue. He was amazed that the Commissioner of Crown Lands had permitted earth disturbance on the scale which was evident around the buildings, but acknowledged that, as a general rule, it was better not to see winter resorts in summer.

J Beattie suggested that if a site was going to be used for skiing at all, it was better to make maximum use of a small area rather than spread significant impacts over a larger area.

J Lee said that the major impact of the developments was limited to 40 hectares around the base buildings.

P Sutherland expressed concern about the time sequence of the developments vis-a-vis any related consents which were obtained.

I Cleveland observed that the question of how to prevent such developments from happening again should be addressed to the Commissioner of Crown Lands and the local authorities which were involved. The board might decide to follow up along these lines following tomorrow's field trip.

Bruce Mason (Public Access New Zealand) said that he wanted to draw the board's attention to problems associated with tenure review, marginal strips, DOC's perceived attitudes towards recreation and tourism, and damage by 4WD vehicles to back-country roads.

Tenure Review

He said that he was bitterly disappointed that the tenure review process had stalled with the introduction of the Crown Pastoral Lands Act. There were some fundamental structural problems with the existing process, including the fact that DOC was effectively sidelined when the final deals were negotiated. LINZ (Land Information New Zealand) had been turned into an SOB

(State-Owned Enterprise) and apparently no longer considered that it had a 'public good' role with regard to the disposal of Crown Land. He believed that there was still a need for a residual Department of Lands. LINZ was now using contractors to handle tenure review work. While some of the staff of Knight Frank had a good background knowledge of tenure review and associated issues, other contractors clearly did not. He suggested that in the wider public interest, the Minister of Land Information should be asked to address these problems.

Turning to the tenure review agreement for the Waiorau pastoral lease, he said that whenever problems arose in the negotiating phase, the final outcome for public access rights seemed to get worse. He had been involved in early consultation on this proposal, but the Commissioner of Crown Lands had not responded to his recent enquiries, so he had been forced to speculate on the final outcome. In his view, the way in which it was handled had brought tenure review into disrepute.

Breaches of tenure review agreements were another significant concern. For example, the agreement involving Glencreag Station allowed for free public access throughout the year. However, this arrangement had changed as a result of a change in the DOC position with regard to public access in an application for a resource consent. He tabled the relevant papers. Fiery Creek provided another example.

J Connell said that he was not aware of such changes in public access arrangements. He undertook to check the situation on Glencreag Station and he noted the reference to Fiery Creek in Southland. In a few cases, access rights across freehold land were obtained for the purposes of DOC management only, but this did not apply to Glencreag.

Marginal Strips

B Mason explained that the law required marginal strips to be created when pastoral leases were renewed, but this had not happened in some cases (eg. Birchwood, Glenhope).

J Connell said that as far as he was aware, this situation had not occurred in the Otago Conservancy.

Recreation and Tourism in Public Conservation Lands

B Mason said that many NGO's felt that DOC was currently "fostering" tourism and "allowing" recreation, rather than "foster[ing] ... recreation, and ... allow[ing] ... tourism" as required by the Conservation Act 1987. (Section 6(e) refers). There were now very few areas where natural quiet could be enjoyed, largely because of ever-increasing aircraft activity. Much of this activity was associated with tourist concessions granted by DOC. He believed that the department should place the interests of recreationists ahead of the interests of commercial tourist operators, in accordance with the wording of the legislation.

Public 4WD Access on Backcountry Roads

B Mason tabled a press release on this topic by Public Access New Zealand. Among other things it stated that 4WD users did not have "an absolute right to use and to damage backcountry roads". There needed to be "greater awareness among 4WD owners of their rights and limitations to those rights".

There was no time for discussion of this issue, but L Cleveland said that the Board would be following up on it.

A Mark congratulated Public Access New Zealand on its success in relation to the issue of public access on Mt Hikurangi.

L Cleveland thanked everyone for their comments and for the papers which had been tabled.

CONFIRMED MINUTES OF OTAGO
CONSERVATION BOARD

RECORD OF FIELD INSPECTION OF SEEDS
ON THE PISA RANGE ON 2 DECEMBER 2000

The inspection party comprised board members L Cleveland, J Beattie, R Jebson, L McIntosh, A Mark, R Mitchell, F Sutherland and G van Reenen; J Connell, I Whitwell and M Clark from the DOC Otago Conservancy office; and P Hellebrekers (Wanaka Area Manager) and C Eden (Wakatipu Area Manager).

J Connell briefed party members on the second Waiorau tenure review agreement, before John and Mary Lee showed everyone the developments and facilities associated with winter vehicle testing and nordic skiing. The Lees said that they intended to use native plants to revegetate the bare surfaces resulting from their developments, but they realised that it would take a long time.

The original intention was to traverse the range, but because of snow lie and cloud, it was decided to go no farther than the proposed conservation area boundary in the headwaters of the Roaring Meg.

A Mark drew attention to the impressive patterned mires near the road leading to the crest of the range and noted that they were still in surprisingly good condition. Nevertheless, the potential for serious erosion and the siltation of upland waterways still existed, particularly in connection with the many batters alongside the roads and tracks.

Before the party left the developed area, L Cleveland thanked the Lees for their hospitality and for showing board members and associated departmental staff around their facilities.

At a point overlooking the lower part of Waiorau Station, there was discussion about the rights of the public to use the access road to the ski area, and beyond to the proposed conservation area. J Connell said that it was felt appropriate to provide for as-of-right foot and mountain-biking access on the Tuohy's Gully track, and not on the road. Nonetheless, the road could be walked or biked with permission. Most board members considered that as-of-right walking and biking access should have been permitted along the road.

J Beattie pointed out that safety would have been an important consideration in the decision to limit use of the road to vehicles.

On behalf of the board, L Cleveland noted that there was an increasing interest in mountain biking, and asked the department to be mindful of seeking other opportunities for mountain bike access to the top of the Pisa Range as other tenure review proposals came up for consideration.

Board members complimented the department on its effective wilding tree and wild animal control on the Pisa Range.

After a short stop at Tuohys Saddle, P Hellebrekers led the party to the Roaring Meg Hut, which had become the department's responsibility under the recent Waiorau tenure review agreement. A small but impressive part of the proposed conservation area could be seen across the Roaring Meg Stream.

A Mark was pleased to see that the large clump of pines near the hut had already been poisoned.

Following lunch, L Cleveland reconvened the board meeting inside the hut and said that the board should form a view on what it had seen and heard with regard to the Waiorau tenure review agreement.

J Connell explained the main differences between the new agreement and the original agreement. The original agreement included a landscape covenant and allowed for some trail development in the proposed conservation area. The new agreement did not include a landscape covenant, but it transferred the Roaring Meg and Bob Lee fluts to the department, and it prohibited any trail development in the proposed conservation area.

The conclusions and concerns raised by board members and the agreed follow-up action are summarised in the resolution under item 17A Waiorau Tenure Review Agreement on page 19 of the minutes of the board meeting held on 1 December 2000.

On the return journey some party members visited a property near Wanaka to see evidence of the natural dieback of sweet briar.

Our ref. OCB 34

30 January 2001

Chief Executive
Otago Regional Council
Private Bag 1954
DUNEDIN

Dear Sir

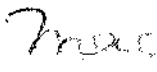
EARTHWORKS ON WAIORAU STATION

On 1-2 December 2000, this board held a board meeting at the Waiorau Snow Farm near Cardrona, Otago, and inspected the extensive earthworks carried out by John and Mary Lee for winter vehicle testing and nordic skiing.

Enclosed is an extract from the unconfirmed minutes of that meeting. The board was very concerned about the large scale of the earth disturbance at high altitude, and the potential for serious erosion and siltation of the upland bogs, streams and headwaters of the Roaring Meg Stream.

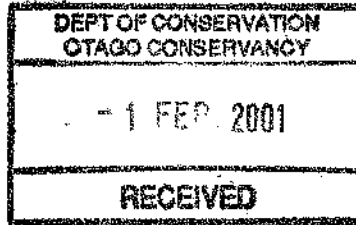
Could you please tell the board what consents you gave for these earthworks and whether the conditions of those consents have been met by the Lees. If any of the works in question were carried out without the proper consents being obtained, or if any conditions were breached, please advise what action you took by way of follow-up.

Yours faithfully


P P

Les Cleveland
Chairperson

P/F OCB 34
AGENDA ITEM **15.6**



Our reference:

MC020/535992

31 January 2001

The Chairperson
Otago Conservation Board
P O Box 5244
Dunedin

Attn: Les Cleveland


Dear Sir

Earthworks on Waiorau Station – Waiorau Snow Farm near Cardrona, Otago

Further to your correspondence dated 30 January 2001, please be advised that we hold no records/consents regarding the above earthworks. If any of the works in question doesn't affect any watercourse, then it is the territorial local authority, in this case, Queenstown Lakes District Council who deals with them,

Ring Colin Walker of our Queenstown office on 03 442 5681 should you have any queries relating to this.

Yours faithfully


Gloria Buchanan
Consent Administration Officer



Our ref. OCB 34

30 January 2001

Chief Executive
Queenstown Lakes District Council
Private Bag 50072
QUEENSTOWN

Dear Sir

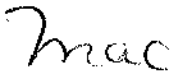
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Yours faithfully



P P.

Les Cleveland
Chairperson



Civic Corporation Limited
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site: http://www.civiccorp.co.nz

Fax Transmission

Attention: Mr Mark Clark
Pages:
Company: DOC
Fax Number: 03-477-8628
From: Steven Waterhouse
Dated: Wednesday, 2 May 2001
Subject: WAIORAU SNOW FARM

No. of
1

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Mark,

In response to your request for information regarding the above, I have found no evidence that the earthworks associated with the vehicle test track or nordic ski facilities have a resource consent. Given the extended history at the site (approximately 16 years) it is difficult to ascertain at this point, if consent under the Town and Country Planning Act 1977 was required.

I will continue to research the matter and get back to you in a timely manner.

Regards,

Steven Waterhouse
PLANNER/COMPLIANCE

9 2 2
m 3/5

Our ref. OCB 34

30 January 2001

Commissioner of Crown Lands
Land Information New Zealand
Private Bag 5014
WELLINGTON

Dear Sir

TENURE REVIEW OF WAIORAU PASTORAL LEASE

On 1-2 December 2000, this board held a board meeting at the Waiorau Snow Farm near Cardrona, Otago, and inspected the extensive earthworks carried out by John and Mary Lee for winter vehicle testing and nordic skiing.

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Yours faithfully

Mac

P P.

Les Cleveland
Chairperson

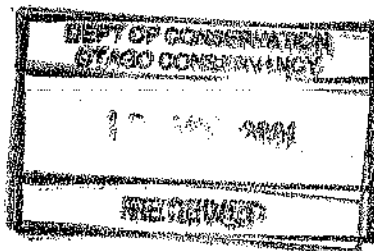
Our Ref: CPR 01/09/01/29

Your Ref:



9 April 2001

Mr Les Cleveland
Chairperson
Otago Conservation Board
Box 5244
DUNEDIN



Dear Les

CONSENTS FOR EARTHWORKS ON WAIORAU STATION

You wrote to me on 30 January 2001 about the earthworks carried out on the Waiorau Pastoral Lease by the lessee.

My predecessor entered into a tenure review agreement with the lessee on 27 August 1994. The agreement was administered for financial settlement of the transaction to occur before actual completion of land conveyancing actions. Matters would cease to operate under the lease (including consents) and matters from thereon in would be handled through the tenure review agreement.

The conveyancing work proceeded through to early 1998 when the Commissioner learnt that the lessee had caused significant environmental damage to an area that was agreed was to be the subject of a conservation covenant. I am presuming that is the damage you have described in your letter.

The lessee's action caused the Commissioner to withdraw from the tenure review agreement. The lessee sued the Commissioner in the High Court for damages of \$0.5million because of the Commissioner's action in withdrawing from the agreement.

A re-negotiation of the Waiorau tenure review which in all respects favoured the Commissioner, occurred and the lessee was presented with a new tenure review early last year. The Department of Conservation had input into that re-negotiation. I executed the new tenure review agreement on 29 September 2000.


I also wish to advise that in my role as Principal Adviser to the Primary Production Selection Committee 1995-1998 on the Crown Pastoral Land Bill, I reported the circumstances of this case to the committee. Whilst Select Committee confidentiality precludes my disclosure of select committee proceedings, I can point out significant statutory provision in the new Act which will in future provide ready redress for the Commissioner against lessees who fail to meet contractual obligations under the lease and after their acceptance of a tenure review substantive proposal.

These matters of course do not have the best practise opportunity unless you have full access to the means of legal enforceability and associated professional expertise. My legal advisers who are responsible for the drafting and the legal enforceability of tenure review agreements under the Crown Pastoral Land Act are a nationally renowned legal firm with the right credentials. You have seen the damage in the Waiorau case and will understand my approach to the management of any future risk of unauthorised activity.

In respect of the Waiorau case, you will note the outcomes for the lessee, ie. additional concessions to the Crown, a significantly protracted delay in getting title, (with attendant costs) and significant litigation costs.

I expect the new Waiorau tenure review agreement to be fully implemented later this year. The conveyancing work is being carried out for my department by the law firm, Wilkinson and Adams in Dunedin.

Yours faithfully


David Gullen
Commissioner of Crown Lands

MEETING HELD ON 2 MARCH 2001

15.6 Consents for Earthworks on Waiorau Station (OCB 34)

A letter of 31 January 2000 from the Otago Regional Council had been circulated.

M Clark said that responses had yet to be received from the Queenstown Lakes District Council and the Commissioner of Crown Lands.

RESOLVED

That the letter be received and be copied to the Queenstown Lakes District Council and the Commissioner of Crown Lands, with a reminder that the board has requested responses from those agencies.

Mark/Mitchell

↓ (4 MAY 2001) ↓

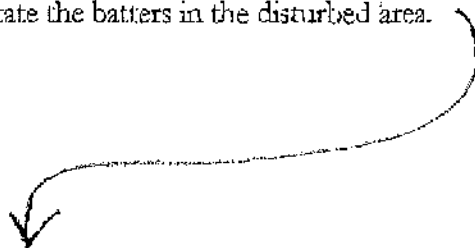
15.6 Consents for Earthworks on Waiorau Station (OCB 34)

(UNCONFIRM)

A letter of 9 April 2001 from the Commissioner of Crown Lands had been circulated, and a faxed letter of 2 May 2001 from CivicCorp was tabled.

J Conneil suggested that it would not be productive for the board to pursue the matter of the lack of consents for the earthworks now that the tenure review agreement had been executed.

I. Cleveland agreed that it would be more worthwhile to follow up on the commitment by the Lees to revegetate the batters in the disturbed area.



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RESOLVED

That the board:

- 1 receives the letters;
- 2 sends a letter to the Lees (with a copy of the previous letter) inquiring about their plans for revegetation;
- 3 asks M Clark to follow up on its original enquiry to CivicCorp.

McIntosh/Mitchell