Wednesday, June 16, 1993

The Manager
Landcorp Property Ltd.,
P O Box 27,
ALEXANDRA.

Dear Ken Taylor,

Fax: (03) 448 9099

WAIORAU TENURE REVIEW

Thanks for the extension of time for the PANZ submission.

Adequacy of Information on Proposals

In several respects the information supplied to us and the public was wrong and misleading.

(1) Your reply of 11 May to my concern over the statement in the released discussion document that "commercial activities are undertaken on the (Pisa) range which are neither sanctioned nor prevented under the Land Act or either (pastoral lease or recreation permit) occupancy rights" provides inadequate justification for the above statement. You claim legal opinion available to you is that "vehicle testing" does not fit the definition of a "commercial recreation permit."

Section 66A(1) provides for the issuing of recreation permits for "<u>any commercial undertaking</u> involving the use of the land for any recreational, tourist, accommodation, safari, <u>or other purpose</u> that, in the opinion of the Board, may be properly undertaken in that land" (my emphasis). Vehicle testing may well fall within the scope of subsection (1); the apparently unauthorised commercial horse trekking occurring on the pastoral lease certainly does.

Subsection (7) reads: "Every holder of a pastoral lease or a pastoral occupation licence who uses or permits to be used any part of the land comprised in the lease or licence for any purpose for which a recreation permit may be issued under this section commits a breach of the lease or licence, rendering the lease or licence liable to forfeiture in accordance with the provisions of this Act, unless he is the holder of a recreation permit authorising the use of the land for that purpose".

I believe that the statement contained in the discussion paper, presented as a statement of fact, is not supported by judicial ruling or by subsection (7), and is therefore highly misleading. The implication arising from the statement is that this particular lessee can lawfully undertake unauthorised commercial activities on the lease and has more rights of use than those provided by the pastoral lease. This has the effect of unjustifiably enhancing the lessee's bargaining position relative to that of the Crown .

What in fact we believe to be the situation is that representatives and agents of the Crown are unwilling to assert their lawful jurisdictions in terms of the Land Act. The public's interest in pastoral lands quite unwarrantably suffers as a result. This is a position in regard to this and other pastoral lands which PANZ deplores.

(2) Details of covenants and proposed recreation permit excluded from the discussion paper. In several respects details in the covenant and permit contradict statements in the discussion paper however it is the former which will have legal standing. I comment on these discrepancies below.

It took repeated requests to the Department of Conservation to obtain, at a very late stage, details of covenants and permits. It was not possible to properly evaluate the proposals until this information was made available. As a consequence our view of the proposals is significantly different from our earlier impressions gained from the discussion paper. Most other submissioners probably have not had access to this crucial information and could have very different reactions to the proposals if they did.

We believe that the supply and release of information has been tardy with the appearance of information manipulation. This aspect gives us further cause for lack of confidence in the conduct of this or other current high country tenure reviews.

Review Approach

The proposals are titled "proposed tenure review". However nowhere in the discussion paper is there reference to the legal framework under which the Crown is obliged to conduct any review of tenure. In our view if it is not legally possible to implement the proposals then the only course that is open is to seek amendment to the Land Act We believe that it is a constitutional outrage that statutory requirements are being ignored by officials and agents with a duty for their implementation.

The basis on which we hold the above views was presented to the Commissioner of Crown Lands a month ago, with our particular concern about Waiorau noted. No response has been received.

We believe that the only lawful way that this and comparable tenure reviews can occur is by way of reclassification in terms of the requirements and criteria set out under section 51 of the Land Act, but with provision for submissions from the public

WE SUBMIT that the current proposals, without major amendment, do not proceed. Our specific concerns (not exhaustive) are as follows—

Proposed 'Reservation':

This does not comprise all the recreation and conservation values that should be retained in Crown ownership. The RAP is merely a 'representative area'. There are extensive values in area 'B', part area 'A' and along ridge crest and upper front faces deserving formal protection under Crown jurisdiction (see below).

The terms of the proposed recreation permit make it clear that an unencumbered public reserve is not what is planned. These intentions conflict with the claim in the discussion document that public access (over) these lands will be provided.

Our concerns about the terms of the proposed recreation permit are—

• That it will issue firstly over pastoral leasehold. This is completely unnecessary as the activities are provided for under the existing permit which will apply or can be

extended until such time as the leasehold is terminated. The proposed provision contradicts the key element of surrender in total of the pastoral lease as a precondition to the offering of freehold over other areas. It raises the spectre of freeholding, without completion of all the terms of an agreement between the Crown and present lessee, and the perpetration of pastoral leasehold over the balance, but with commercial recreation rights and no incentive to surrender the land. We are mindful of many supposedly binding Land Improvement Agreements requiring surrender of land that have not been honoured.

• That it will issue to Mr & Mrs Lee rather than to Nordic Ski Area Ltd. Whoever it issues to, it should be the same legal entity.

• The term of 30 years is excessive, and provides a major encumbrance on the land and its future management as a supposedly public area.

• Its terms imply more than a permit to use the land for specified purposes. It also conveys occupancy obligations and rights which are inconsistent with the purposes of a recreation permit: eg: controlling access by vehicles, grazing of the land, ensuring the land is not grazed by stock, provisions for entry onto the land by the Commissioner or Conservator — unnecessary if this was to be a truly public area and the State was the manager. There are no comparable terms for public access. The terms of the permit, not its title, indicate the intent to convey an interest in the land and occupancy rights overall. We are firmly of the view that occupancy rights must be confined to buildings only.

This will be a 'Claytons reserve; in reality a private estate rather than a public area.

• The intention to make any future 'reserve' subject to the terms of the recreation permit is an abuse of our conservation legislation.

WE SUBMIT that the area become Scenic Reserve on surrender of pastoral leasehold. Our support for this status is conditional on there being no vesting of control or management of the reserve away from DOC.

WE SUBMIT that there be no licensing of commercial activities over this area under the Land Act. A new concession should be granted over the area of facilities only (s 56(1)(b) Reserves Act 1977). As required, temporary licences for grazing should be issued under s 74 Reserves Act.

WE SUBMIT that the terms and conditions of any lease or licence be subject to public notification and objection procedures (ss 119, 120 Reserves Act) as there has not been proper opportunity for the public to consider this aspect of the current proposals.

Proposed Conservation Covenant Area B

The terms of the covenant clearly establish that there are substantial nature conservation values within the area. In our view these are more than sufficient to warrant retention of Crown ownership. There is going to have to be substantial Crown input and expense under the terms of the covenant; this would be less if the Crown remained as lessor. We favour a special lease over this, and an extended area, under section 67(2) of the Land Act. We do not accept arguments that freehold is necessary for financial security for skiing development. There are multimillion dollar facilities operating on reserve, conservation areas, and national parks throughout New Zealand that prove the point beyond doubt. Freehold is clearly the preference of the pastoral lessee, however this consideration cannot be the

prevailing consideration of the Crown. It is bound to give effect to tenure changes in terms of s 51 of the Land Act.

We do not believe that the proposed covenant will be enforceable. Its terms are so broad a lawyer would have little difficulty driving a dozer through them.

The discussion document clearly established priorities for the area— the covenant is "to protect the natural values in a manner compatible with commercial use". The reverse presumption should apply.

We are completely opposed to freeholding of this area.

WE SUBMIT that an extended area be offered under lease via s 67(2) Land Act, with conditions allowing controlled commercial recreational use and development, grazing, and providing rights of public passage through the area.

Proposed Conservation Covenant Area B

The covenant may have merit in the lower reaches of Tuohys Gully; the upper reaches should stay in Crown ownership with guaranteed rights of public access through it at all times. The discussion paper claims that there will be "full access up an existing legal road...and available as of right". The covenants contradict this by only "permitting" members of the public access". This implies prior approaches will be necessary to the 'landholders' who will then permit access.

There is a legal road up this gully. The Crown or adjoining landholders cannot lawfully exercise any control over its use and it cannot form part of any deal between the parties.

Upper Front Faces and Ridge Crest

We do not believe that there is any farming or other legitimate justification for freeholding of these areas. They are class 7 lands with severe limitations for pastoral use. They are incapable of significant improvement for farming purposes. It is the Crown's obligation to ensure that land can be truly classified as 'farm land' before offering freehold or tenures with rights to acquire the fee simple. It is not the responsibility of DOC, or NGOs to make conservation or recreational justifications for retention of Crown ownership. In this case however there are vegetative characteristics within this area that are similar to that within the RAP, and extensive landscape and recreational values that require sensitive land use practices for their survival. We do not accept that private land ownership or the Resource Management Act can adequately provide the level of protection needed. This is a classic case of overlapping, nature conservation, landscape, grazing, commercial and public recreation values that should be managed under the Land Settlement Board's concept of co-operative management special leases.

WE SUBMIT that it would be ultra vires the Crown's powers to offer the fee simple over these lands. A suitably structured lease should be offered under section 67(2) of the Land Act. This lease should have public rights of passage across it as necessary to provide access to the 'reserve' area.

Public Access Provisions

We are not impressed at the feeble arrangements for public access. The 'provision' offered of foot access up legal road along the run's southern boundary, while of interest for tramping, is virtually useless for winter access. It is too far away from the snow and the best cross country skiing terrain to be a practical access. As a

public road, this cannot be regarded as part of an 'exchange of rights'. This is neither part of the Crown's or the lessee's property.

We are firmly of the view that both the Crown and the public need assured rights of access to the reserve via the most practical access —the existing road from the Cardrona Valley. We accept that this privately built 'farm track' was built at considerable expense to the lessee and Nordic Ski Area Ltd and that all users should pay a reasonable fee for its use. We propose that a solution similar to that used for the Remarkables ski field road be found. This should provide free foot access at all times and a private vehicle toll to be set by the lessee with the agreement of the Regional Conservator. This would apply as far as the ski area base. From there an easement should be provided, defined if necessary, for foot or ski passage at all times to the boundary of the 'reserve'.

We do not accept that there are insurmountable problems in separating and readily identifying users of commercial services and facilities from members of the public in transit to the reserve. We are totally opposed to the suggestion that there be a road toll as well as a field fee payable by those wishing to visit the reserve. That is a situation infinitely worse than the present arrangement.

WE SUBMIT that public access easements be laid off along the road on the terms suggested as well as to the reserve boundary in the upper Meg Valley.

Equality of exchange of interests

It appears to us that the exchange of rights between the Crown and pastoral lessee is highly inequitable. As a result the Crown stands to make a substantial profit from freeholding of an excessive area. This profit will be at the expense of the public by the effective nonexistence of assured pubic access over and to the proposed 'reserve' and the lack of adequate protection for natural values over the upper front faces and ridge crest areas.

Conclusion

We are of the view that the proposal is so seriously flawed that it should not proceed in its present form. This is for the sake of not only the area in question but to avoid an appalling precedent being set for the rest of the high country pastoral lands.

Yours faithfully,

Bruce Mason,
Trustee.

Copy to: Commissioner of Crown Lands