HIGH COUNTRY PASTORAL LEASES REVIEW 2005-2007

A REVIEW OF PASTORAL LEASE RENTAL AND TENURE REVIEW VALUATION METHODOLOGIES AND OUTCOMES ASSOCIATED WITH PASTORAL LANDS THROUGHOUT THE SOUTH ISLAND OF NEW ZEALAND

Prepared at the request of

Land Information New Zealand

By

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THE REVIEW TEAM

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ABBREVIATIONS

CCL	Commissioner of Crown Land
CPLA	Crown Pastoral Land Act 1998
CRL	Crown Renewable Lease
DCF	Discounted cash flow
DOC	Department of Conservation
DTZ	DTZ (Property & Valuation Company)
GST	Goods & services tax
HCA	High Country Accord
HCFF	High Country Federated Farmers
LA	Land Act 1948
LEI	Land exclusive of improvements
LINZ	Land Information New Zealand
LSB	Land Settlement Board
NGO	Non government organisation
NZMWB	NZ Meat & Wool Board
PL	Pastoral lease
PNA	Protected natural area
POL	Pastoral occupational licence
QV	Quotable Value Ltd
RMA	Resource Management Act 1991
SIV	Significant inherent value
SU	Stock Unit
TOR	Terms of Reference

Preliminaries

1. INTRODUCTION

1.1. Land Information New Zealand (LINZ), at the request of the Minister for Land Information, sought a review of both the valuation methodology and outcomes of reviews of rentals and tenure review processes being applied to a large number of pastoral leases throughout the South Island Hill Country as currently being determined under the governing legislation.

1.2. The Terms of Reference (TOR) including the project objectives are attached as **APPENDIX 1**.

1.3. The review team was established as a result of a request from senior management of LINZ seeking assistance with the review.

1.4. The review team was structured to provide skills in valuation and farm management along with specialist knowledge and understanding of leasehold tenure and the farm management issues associated with the high country pastoral land. The review was carried out over the period August to December 2005. An "Interim Report of the High Country Pastoral Lease Review 2005",[1] dated December 2005 was provided to Land Information New Zealand (LINZ) on 13 February 2006 and publicly released 13 October 2006.

1.5. A "Preliminary Government Response"[2] and a press statement were released at the same time. The response sets out the process whereby representatives from LINZ, Ministry of Agriculture and Forestry (MAF) and Department of Conservation (DOC) s were to meet with representatives of the leaseholders and other key stakeholders. Interested parties were invited to make submissions by 15 December 2006. The date for a submission was subsequently extended to 15 February 2007.

1.6. The review team was initially advised that copies of those submissions would be made available to enable it to complete the agreed project objectives. By agreement with LINZ and in order to meet the requirements of the TOR it was agreed that following the release of the interim report the review team would meet with leaseholders and representative

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1 Interim Report - High Country Pastoral Releases Review 2005
http://www.linz.govt.nz/core/crownproperty/highcountry/valuationreview/index.html

2 Preliminary Government Response to Report of the High Country Pastoral Releases Review 2006
http://www.linz.govt.nz/docs/crownproperty/highcountry/prelim-govt-response-to-hcpl-rpt-101006.pdf

groups to hear submissions prior to the final report being completed. However, following discussions between LINZ and the review team, this process was modified with the review team being provided with only a synopsis of submissions. This synopsis of the submissions was forwarded to the review team in May 2007 for comment and response in this final report.

1.7. The review team has now reviewed the matters set out in the synopsis, as provided by LINZ, and attach a copy of that and the review team's comments as **APPENDIX 6**.

1.8. The review team did not meet with any of these submitters to the interim report. Neither did it know who were the authors or specific organisations making those submissions (except where named). Submissions were summarised (by LINZ) into subject groups.

1.9. As far as is possible the review team has endeavoured to limit comments to the issues traversed in the interim report. This has not been entirely possible as submitters responded to both the interim report and the Preliminary Government Response, and, in some instances, matters canvassed widely in the media by interested stakeholders.

1.10. The review team has, however, endeavoured to limit its comments on submissions raised in relation to the Preliminary Government Response (and other matters) in respect of where the review team considers wrong conclusions and misleading statements have been made in the submissions.

1.11. The review team's findings are now set out with its comments and recommendations in line with the project objectives. These findings and recommendations take account of and recognise the contractual nature of pastoral leases, the long history of pastoral farming in the South Island high country and the continuing occupation of this special land class by pastoral farmers. These matters are considered whilst also recognising the special place that this land has in relation to the wider public. The governing legislation seeks to ensure that the public can at least maintain and preferably improve access to pastoral land areas for recreational use and that the "special values" associated with the high country land uses are protected for future generations.

2. PROJECT OBJECTIVES

2.1. These project objectives as set out in the TOR have been interpreted to consider "value," both in terms of the financial outcomes of rental reviews and tenure reviews along with other values arising from the outcome of both renewed rentals and changes in the land tenure. The objectives as provided to the review team are:

In the context of the Government's objectives for the South Island high country (notably a fair financial return to the Crown on its high country assets) report on whether the:

1. *Current methodology for valuing lessor and lessee interests in tenure review is delivering accurate and fair outcomes and recommend changes to the methodology (if appropriate) to better meet those outcomes; and*
2. *Rent set by legislation accurately and fairly reflect open market levels and the options available if changes need to be made to ensure rent is set at a market level including*

a) an assessment of the implications of introducing market rents for pastoral leases and;

b) consideration of the extent to which charges for recreation permits and easements contribute towards the objective of obtaining a fair financial return to the Crown on its high country land assets

2.2. In order to respond to the project objectives, the review team has inevitably necessitated a broad enquiry including research into the history of pastoral leases. The review team has considered the legislation governing pastoral leases, financial returns to both the lessor (Crown) and lessees (pastoral farmers), along with the rights and expectations of the wider public who seek to use and enjoy the recreational and iconic values of the land held under perpetually renewable pastoral leases.

2.3. The review team interprets the words "open market levels" and "market rents" under the TOR in the context of the 'market' as it relates to pastoral properties. These open market levels are reviewed as they relate to Crown Pastoral Lease tenures recognising the legislative construct of this tenure and the constraints that apply.

3. SCOPE OF REVIEW

3.1. The review focuses on those properties subject to high country pastoral leases from the Crown, administered by LINZ under the Crown Pastoral Land Act 1998 (CPLA). The review undertaken in relation to the valuation issues on these properties includes:

3.1.1. A comprehensive review of the tenure review methodology used in determining the lessor and lessee interests as used for determining the exchange of interests arising out of Tenure Review and an investigation of how this methodology is being applied;

3.1.2. An assessment of all of the rights associated with pastoral leases and how these should be valued in terms of existing pastoral lease agreements;

3.1.3. An assessment of completed tenure reviews and recent sales of pastoral leases to explain the current precedents and review process and identify the strengths and weaknesses of the process and legislative regime;

3.1.4. Consultations with Government officials responsible for tenure review and administration of pastoral leases; organisations contracted by LINZ to value tenure reviews; and pastoral leases, stakeholder organisations, and lessees.

4. OVERVIEW AND ISSUES

4.1. It is useful to take an overview of the land held under pastoral leases and consider a brief history of pastoral land tenure.

4.2. As at 2003/2004 there were 304 pastoral leases comprising approximately 2.2 million hectares of a total pastoral land area of approximately 6.36 million hectares. These leases are located throughout the South Island of New Zealand and are predominantly located in the Canterbury and Otago land districts. There are some leases in Marlborough/Nelson, Westland and Southland.

See* APPENDIX 2 *for complete list

Land District	Number	Area/ha
Canterbury	**112**	**868,559**
Westland	**2**	**2,590**
Nelson / Marlborough	**15**	**110,853**
Otago	**155**	**948,947**
Southland	**20**	**228,193**
TOTAL	**304**	**2,158,692**

4.3. As at 31 October 2005 we are advised that the following statistics apply:

Status of lease portfolio as at 31 October 2005	**No.**	**Crown** *Hectares*	**Freehold** *Hectares*	**Total** *Hectares*
Not in Tenure Review	112	-	-	956,646
Information Gathering for Preliminary Proposal	50	-	-	352,528
Consultation with Lessee for Preliminary Proposal	72	-	-	449,907
Preliminary Proposals Advertised	21	73,844	70,892	144,736
% of total		*51.0%*	*49.0%*	
Substantive Proposals Put to Lessee *(but not yet accepted)*	2	11,232	8,000	19,232
% of total		*58.0%*	*42.0%*	
Substantive Proposals Accepted by Lessee	22	44,558	69,196	113,754
% of total		*39.0%*	*61.0%*	
Review complete / Crown conservation purchase	**25**	71,755	69,012	140,767
% of total		*51%*	*49%*	
Sub Total		**201,390**	**217,102**	
% of total		*48.0%*	*52.0%*	
Total	**304**			**2,177,570**

4.4. Pastoral leases (PLs) were established under the Land Act 1948 (LA). Prior to that pastoral land was generally held in Pastoral Occupational Licences (POLs) that had their genesis in the original land grants promoted by both central and provincial governments in the nineteenth century to encourage the occupation and pastoral farming of vast areas

of unoccupied land. These POLs were for a fixed term, usually 21 years. No renewable right of occupation perpetual or otherwise was provided. In the LA the tenure was changed from POL to PL with a perpetual renewal of the 33yr term. The LA did not prescribe any rate or method for rent fixation but merely stated that the Land Settlement Board (The Board) (LSB) should fix a fair annual rent.[3]

4.5. The LA was amended in 1970 to provide for 11 year rental review periods but with no change to the basis upon which the rentals were assessed. This matter was set out in s 66(4) of the Land Amendment Act 1970 as amended which stated

"The yearly rent payable during the first 11 years of the first term of a pastoral lease shall be as determined by the Board"

4.6. s 4(A) then made reference to Part 8 LA which sets out the review process. More importantly, s 66 (4A) required *"a fair annual rent shall be fixed."*

4.7. In the early 1970's consideration was being given to the basis of future rentals[4] .The outcome of a review set up by the Director–General of Lands saw the Land Amendment Act 1979 which established Land Exclusive of Improvements (LEI) as the basis for fixing pastoral rentals. New s 66 and 66A LA were accordingly substituted for the existing s 66.

4.8. The rental rates for pastoral leases were prescribed at 2.25% of the LEI value (1.5% for the first 11 years of the first 33yr term).

4.9. Whilst the 1979 Act changed the rental determination process away from the control of the LSB to a prescriptive basis, it did not alter the provisions of 1970 amendments to the Act as set out in Part 8. In particular s 131 (1) (ii) requires that in relation to Capital Value, Value of Improvements and value of the Land Exclusive of Improvements (LEI):

"The values shall be ascertained on an equitable basis having regard to the relationship between the lessor and the lessee"

4.10. Part 1 of the CPLA 1998 reaffirms the provisions of the LA and its amendments in relation to tenure and rental. Part 2 makes provision for tenure review setting out details of the objectives for tenure review and the process required to achieve those objectives.

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3 Land Settlement Board Paper (undated), "Stock Limitation as a Basis for Rental of Pastoral Leases".

4 See Special Publication No 13: Tussock Grasslands and Mountain Institute, page 14.

4.11. These objectives for tenure review are:

Objects of Part 2 – The objects of this Part are –

(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

4.12. The tenure review process has attracted the attention of many interested parties, especially non governmental organisations (NGOs) who, along with some members of the public, consider that tenure review is being inequitably applied in that the Crown is being financially disadvantaged in the process. This alleged inequity relates to claims that "pastoral lessees" are being over-paid for their lessee's interest. This stance relates to a perception that the significant inherent values (SIV's) belong to the Crown, not to the lessees. On the other hand, in some instances, pastoral lessees consider the Crown or agencies of the Crown are using the process to unreasonably extend the Crown's total control of pastoral land. It is contended that the Crown is taking back more land than is necessary for the conservation estate, leaving the farming business in both a less viable and less economically flexible state. Further, it is claimed that the land acquired by the Department of Conservation (DOC) in the process will not be properly managed.

4.13. s 60 of the LA, provides:

(1) The Board [now the Commissioner of Crown Lands] may from time to time grant or reserve any right of way, . . ., or other easements over or under any Crown land:

Provided that where that Crown land is held under lease or licence the lessee or licensee shall be entitled to compensation for any reduction in the value of his lease or licence by reason of the grant of any such easement.

4.14. The provision of s 60, above, puts Crown Pastoral Leases in the same status as any other lease or indeed freehold tenure with respect to the Crowns powers of resumption and thus payment for compensation for acquisition of property rights.[5]

4.15. The Crown therefore needs to recognise the value of the Crown Pastoral Lessees' interests when undertaking both rental reviews and tenure review.

4.16. We observe an emerging environment of mistrust between a small number of non-farming interests and the participants in tenure review.

4.17. We now turn to addressing the project objectives as set out in Section 2 of this report, but in reverse order, as we believe that the **key issue** is *Rental Review*, from which most of the Tenure Review problems emanate.

[5] Except as provided for under Sections 117 and 167 of the CPLA.

5. MATTERS ARISING FROM SUBMISSIONS TO THE INTERIM REPORT

5.1. The review team is concerned about the confusion (both in the submissions and LINZ media statements) surrounding the use of the expression "amenity values", "inherent values" and "significant inherent values" (SIVs). The morphing of these value components needs to be addressed and clarified to ensure that all parties to the issues surrounding both rental reviews and tenure reviews are correctly addressing the same components of value. For guidance we offer our interpretation as to how we have differentiated these important value components of pastoral lease land.

5.2. **Amenity Values:** – Valuation practice and precedent recognises amenity value as "the amenities available in the location that enhance the value of the property". Usually, those amenities provide services to the farming business and supporting the welfare and wellbeing of the people living and working on the property. Such amenities are usually *extrinsic* to the property and are "community conferred benefits", i.e. the cost has been incurred by the Crown, local or regional authority, ad hoc authority, utility supplier, or investment by other property owners.

5.3. Examples of amenities in the high country include roading, bridges, flood protection, power supply, water supply, telecommunications, and other rural infrastructure and services such as rural fire services, ambulance, hospitals and medical clinics, search & rescue, rural schools, transportation (including school bus) rural mail delivery, shops, town centres, local service centres, sale yards and amenities in the local rural or tourist towns.. The *added-value* of these, to the extent that the value is not exhausted or too remote, **is and always has** been indirectly included in the LEI.

5.4. However, *views*, for example, from the pastoral leased property **do not** constitute amenities, nor contribute to amenity value. Views are usually an *extrinsic* influence on value that frequently increases the value of land, particularly urban and lifestyle land but in the case of a pastoral property will only increase the value of part of the LEI – in terms of the homestead site value and curtilage, or possibly added value resulting from views or vantage points accessible by tracks, or from huts or other accommodation buildings. The views enjoyed are usually of topographical features such as lakes, river valleys, mountain ranges, and bush lands. Part of such views may be within the pastoral land itself and thus intrinsic or inherent to the land being valued or a combination of both to some greater or lesser extent. The views per se add nothing to the pasturage value or the economics of

farming of the land and can be appreciated only by the pastoral lessee and staff, guests or visitors, subject to weather and visibility.

5.5. **Inherent Values** : – This terminology is relatively new to valuation practice, but is only a *synonym* for *intrinsic value* which has been long established in valuation vocabulary and accepted by the Courts as those factors contributing to value arising from within the boundaries of the land as distinct from extrinsic factors arising from outside the boundaries of the land. They are now defined as far as applicable to pastoral leases, in s 2 CPLA as special forms under a list of specific attributes or characteristics that have **subjective** "value" and should be confined to that definition[6]. There is *nothing new* about those attributes of pastoral land from a valuation methodological viewpoint – only that special attention is drawn to defining them as a sub-set in terms of the CPLA.

5.6. **Special Inherent Values** (SIV's): – The term SIV has been has been "adopted" in the CPLA to recognise those inherent values (that do not improve or contribute to the income earning capacity of the pastoral property), enhancing the market potential of certain properties, both lessee's interest values and freehold values of **those properties** benefiting, particularly by the presence of significant inherent values (SIVs) but only **on or in** the land. These are **not** "amenity values". Much confusion has abounded by the incorrect application of these terms as is evident in the frequent misuse of them in the submissions.

5.7. In contrast to "**amenity values**", "***significant inherent values***" (SIVs) are those things forming part of, and being inherent **in or on** the land leased, that have such exceptional historic, cultural, ecological, recreational, or scientific attributes, that the land deserves the *special protection of management* under the Reserves Act 1977 or the Conservation Act 1987 as defined in s 2 CPLA[7].

5.8. Examples may include swamps with special fauna and or wildlife, caves, limestone cliff formations, stands of native bush, lakes, tarns, and mountain peaks. Or they may be historic places, buildings, or other improvements, cultural or ecological sites, or have

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[6] **Inherent value**, in relation to any land, means 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 the land.

[7] Reference is made to the definition in s 2 CPLA where *significant inherent values* are defined differently as:
Significant inherent value, in relation to any land, means 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.

recreational or scientific attributes, or be resources of such importance, rarity, nature, or quality that they are considered so special they require statutory protection.

5.9. The value of these different types of inherent attributes cannot be separated from the land and are never separately traded, nor can they be measured by normal valuation comparisons from market evidence. Now, under the Government's response and directive to their valuers, they are proposed **not** to be excluded from the LEI as was the practice up to the change in the interpretation as now being implemented.

5.10. A problem arises as to how a valuer can know of some SIVs existence (except the visible and most obvious topographical ones) and allow for their value, especially if the pastoral lease has not entered TR and does not have the benefit of any environmental audit and assessment of those SIVs which would have been made had the property been in TR. How the SIVs can be separated from and treated differently from inherent values belies credible assessment for lease rental purposes as now proposed by the Crown. In theory this does not create a valuation problem as the values are to be based for rental purposes on the full LEI, but a practical valuation problem arises out of making a fair and equitable apportionment of the improvements (including those that are SIVs) and the LEI to meet the requirements of equity under s 131 LA as required by s 8 CPLA.

5.11. The extent to which SIVs, **on or in** the subject land held under each lease, would contribute to *added-value* from the views of them, from **within the leased land** will be extraordinarily difficult to assess.

5.12. Where such SIV's *are on the subject property*, and by definition are specific to that property, they will have to be assessed *as they relate to that property*. It is unlikely that similar comparable SIV's can be found in the same circumstances on a property which is or could be used as a market reference or in valuation terms is a "comparable".

5.13. Views of the same SIVs *from another property* cannot be included **in that** property's LEI as SIVs because they are **not on or in** *that leased land* as required under s 2 CPLA.

5.14. It is most improbable that SIVs can *add any value* to the right of *pasturage*. The review team cannot perceive how SIVs particularly relating to views of SIVs ***in or on*** *the property* and such other SIVs as caves and underground stream systems or ecosystems associated with swamps, or residual primeval forest can in any way enhance the value of the pasturage use rental value of a property.

5.15. The CPLA defines SIV's that relate to those inherent values **on or in** the land. It is silent on "inherent values" which are located *on or in other land off the* property as

extrinsic values. In many instances such "values" are significant drivers to the value of the property but do not contribute *to the value of the pasturage* available to the lessee.

5.16. In recent years some high country properties have become sought after with premiums paid above pasturage use values by both the Crown and the public. These premiums arise due to the property being located in or close to the South Island Alpine area and are paid for attributes of those properties which do not relate to the value of the pasturage, but reflect the "location". Sometimes the more remote they are the more attractive they become to some purchasers, mainly for those non-pasturage attributes. This has more to do with "access" to the iconic features of the high country creating an "X" factor rather than merely relating to "views". Being able to "be there" rather than "looking at something there" is the major difference and is the subjective market value driver but has no relevance to assessing a rental for the right of pasturage use over the land.

6. WHO OWNS THE SIGNIFICANT INHERANT VALUES? – WHO SHOULD PAY FOR THEM?

6.1. Significant inherent values (SIVs) are not driven by pastoral farming uses that have been the basis of farming the high country for the past 150 years. Over that past period SIV values were not recognised or at issue. The premia high country property prices are reflecting an "X" factor (including but not solely due to intrinsic and extrinsic SIVs) that are a relatively recent phenomenon.

6.2. SIV values are now recognised and must continue to be recognised in the tenure review process. They cannot, in the review team's opinion, form any part of the rental review determination so long as the lessee is restricted under the lease to derive its income solely from *the exclusive right of pasturage over the land* as provided in s 2 CPLA. The Government's Preliminary Response assumed the opposite view. It rejected the review team's interim recommendation.

6.3. It is long established Crown policy that pastoral lessees are restricted in the stocking levels that they may carry on the leased land and continue to be so under s 8 CPLA. This policy was for many years administered by the Commissioner of Crown Land (CCL) along with the Land Settlement Board (LSB). It is now continued by the CCL. The review team notes a letter[8] dated in 1956 (see **APPENDIX 5)**, from the CCL to pastoral lessees reinforcing that fundamental restriction and the serious breach of those conditions that run holders face if not compliant with that restricted use. These restrictions have since been codified into the CPLA, the current governing legislation. If anything, with the increasing environmental sensitivity of the high country these controls have become and will continue to become more important and restrictive.[9]

6.4. In recent years a "market" has emerged that is primarily for the rights of occupation to some of these properties, rather than for the pasturage use rights. As the leaseholders own the "tenure rights" to occupation by virtue of the renewal provisions in the lease, the premium payments have rightly gone to the holder of those rights (the lessee) and not to the land owner (the Crown).

6.5. If this was not the case, the lessor could claim the value of those rights from purchasers of those leases, when approving transfers of pastoral leases to new lessees.

[8] As submitted to the review team in the course of its investigations.

This does not happen, as there is no provision for such payments from purchasers of the leases to the Crown when granting consent to a transfer. Such transfers cannot be unreasonably withheld. The Crown itself has to pay those values whether buying pastoral leases to add to the conservation estate or via the TR provisions of the CPLA. If it did try to make such claims then the current pastoral lessee (as a vendor of a PL) could seek compensation from the Crown for loss of tenure rights (as do any dispossessed owners of freehold or leasehold land) when the Crown exercises the ultimate prerogative of resumption of property rights, when and where legally entitled to do so.[10]

6.6. For the Crown to now to begin charging the pastoral lessee a rental on the SIV element of the LEI, (and back dating to rental reviews unresolved from 2005/6) is equivalent to claiming ownership of those long established tenure access rights recognised historically as being owned and capable of being sold by lessees.

6.7. If the correctness of the LEI interpretation is upheld by judicial process as being correct in terms of rental reviews, the effects of this change of interpretation will impact significantly on tenure review outcomes and could lead to claims for compensation.

6.8. The Government's Preliminary Response (supported by some submitters) is, in effect, claiming those "rights" back, not via consideration being paid for them, but by increasing the rental from current and future rental reviews **from the lessees.** This premise is based upon its interpretation that they rightfully belong to the Crown, as part of the LEI. If this interpretation of the legislation is correct, it therefore must acknowledge that the Crown has been wrongly administering the provisions of the leases in the past.

6.9. So, long as the lease is in place, the Crown has no access to those rights of occupation and so long as the lessee complies with the terms of the lease, the Crown cannot, in the review team's opinion, require the lessee to pay a rental for anything other than the limited rights to the pasturage, which has historically and continues to be restricted under the provisions of the lease. Such provisions could compromise the economic viability of the lease, and would be inconsistent with the statutory requirement to be a "rental having regard to an equitable relationship between the lessee and the lessor".

6.10. The issue can now only be resolved by judicial process and/or possible legislative changes.

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[9] These *restrictions* are the essential characteristics of PLs and are paramount in their "raison d'être"– without them they would be indistinguishable from any *normal* Crown ground lease under the Land Act 1948 and Amendments

[10] Those tenure rights are protected by legislation and common law derived from the *Magna Carta* and also protected by the *United Nations* ***Universal Declaration of Human Rights*** (Articles 2, 17 and 30).

6.11. Pastoral lessees have the right to enjoy the presence of any SIVs on the land leased, but not to use them nor benefit commercially from access to them, unless they have a special commercial lease, as is the case with an eco tourism ventures or skiing club licences or any other recreational concessions or easements over the land. This non-commercial "enjoyment" is limited to the extent that pastoral lessees hold exclusive "right of access" to the leased lands, subject to any specific easements or other concessions that grant rights to the public or other licensees. Such leases determine the *use of those rights* under perpetual renewals of the lease. This benefit is not reflected in the farming profitability. As one submitter stated, "*Lessees cannot pay farm workers lower wages because these workers 'benefit' from the amenity value whilst working on pastoral leases*". Sheep do not grow more or better quality wool; nor do other farm animals thrive any better by grazing on pastoral land with views of or the presence of other SIVs.

6.12. Rights to the *ultimate* or allodial[11] ownership of the SIVs (which belong to the Crown) do not pass to the lessees. The lessees rights include exclusive access that prevents others, including the lessor, from enjoying or obtaining access to, or charging rentals on, the use of SIVs that exist in or on the land, for the term of the lease. In accordance with the obligations under the lease and by virtue of the perpetual rights of renewal, benefits will accrue to the leasehold ownership of those rights incidental to the pasturage use. This is clearly demonstrated in the market.

6.13. For the Crown to require a rental to be paid on the basis of the LEI, inclusive of non pastoral values, along with the value of the SIVs, on one hand, whilst on the other hand, restricting the lessee's use of those SIVs under the restrictive provisions of the lease, appears to be a significant conflict with the equity provisions set out in s 131 LA. If, however, the Crown was to allow the pastoral lessee to commercially use the access to those SIVs, as well as remove the restrictive provisions of the lease then some of the equity requirements under s 131 of the LA and 1970 Amendments might be met.

6.14. This is the **crux** of the debate since the release of the Government's Preliminary Response. Much of it lacks understanding of the meaning and proper use of the terms "amenity value", "inherent value" and "significant inherent value" in relation to high country pastoral lands, rentals, and values of the land exclusive of improvements (LEI).

6.15. Reference is made to the review team's earlier discussion on the ownership of SIVs in the interim report that is now contained in Section 19 of this final report.

7. EQUITY AND COMMON LAW

7.1. Common law is clear, as established in the Courts' judgements[12], in that where the lessee is subject to the limitations of restricted use covenants and/or other obligations and constraints in the lease; these must be taken into account in any rental determination.

7.2. This principle also applies to ground leases. The ground rental must be based on that restricted use and not on any other uses or potential values otherwise available to a freehold owner-occupier. That principle is already included in s 60 LA and s 8 CPLA and merely requires extension by logic and common law interpretation to include SIVs as an exclusion, as has been the pragmatic valuation practice in the high country. If this approach is not upheld then a law change needs to be made to ensure that rental reviews comply with common law principles upon which that approach has been based.

8. SUBMISSIONS FROM PUBLIC TO THE INTERIM REPORT AND GOVERNMENT RESPONSE IN RESPECT OF RENT REVIEWS INCLUDING PUBLIC ACCESS OUTCOMES

The review team summarises and notes the issues made in the public submissions:-

8.1. The submissions may be divided into two categories

8.1.1. **Firstly**, those submitted by pastoral lessee interests that focus on the perceived unfairness of charging a rental on those SIVs, wrongly referred to as 'amenity values' on one hand; and

8.1.2. **Secondly,** the environmental lobbyists and NGO's that hold the contrary view that pastoral lessees are not entitled to what they see as being “peppercorn rentals” for the land and then making "huge" capital gains from occupying the Crown's land, when they sell those interests to another lessee. Some form of negotiated concessional rental is seen as a means of the compensating the lessee for giving up those rights and providing public access and enjoyment of the high country

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[11] From *allodium* – Estate held in absolute ownership, without acknowledgement to a superior – i.e. entire property. (Concise Oxford Dictionary (1958)

[12] For example, *Continieau Investments Ltd v Telecom Corporation of New Zealand Ltd*, High Court CP740/91, 20 October 1993, and *Manukau City Council v Fencible Court Howick Ltd*, Court of Appeal, 192/89, 18 April 1991 1 NZ ConvC 190,871 and other common law principles in respect of rental being fixed under the terms of leases in Thomas Bates & Son Ltd v Wyndham's (Lingerie) Ltd [1981] 1 All ER 1077 ; Lear & Anor v Blizzard [1983] 3 All ER 662 ; Jefferies v Dimock [1987] 1 NZLR 419 ; Sextant Holdings Ltd v New Zealand Railways Corporation (1993) 2 NZ ConvC 191,556 ; Ricciardello v Caltex Oil Australia [1991] ANZ ConvR 445 ; United Sharebrokers Ltd v Landsborough Estates Ltd & Anor (HC, Christchurch, CP 298-89, 18 May 1990, Tipping J)

"amenities" including SIVs. How such concessions could be calculated is not addressed by these submitters.

8.2. The review team has considered all the submissions and responded to the extent that they have been summarised and categorised by LINZ and as set out with the review team's comments in **APPENDIX 6**. The submissions are extensive and the review team's responses have been directed at answering and/or commenting on those that relate to the issues, findings, and recommendations in the interim report. Thus references are to that interim report – though all those items are contained in the corresponding Sections of this final report. We have also tried to correct what the review team considers are misunderstandings in terms of terminology or erroneous interpretations and conclusions arising from our interim report.

8.3. Due to the submissions having been made on the Government's Response mixed with responses to the interim report, some reference is now necessary to briefly distinguish and give the review team's response as follows.

8.4. The Government's response needs to be tested in the Courts, especially as to the interpretation of the LA and CPLA that includes the SIVs in the pasturage use rental value of the land. If upheld, it will:

8.4.1. Reduce the value of the lessees' interests and increase the value of the Crown's interests.

8.4.2. Reduce the viability of pastoral leases that will put some leases with SIVs of material value at increased risk.

8.4.3. The cost to the Crown of achieving their TR objectives will be reduced, if the TR process is completed.

8.4.4. The "net exchange value" to the Crown from the lessee of obtaining freehold title to the remainder of the land will increase.

8.4.5. To some lessees, rentals will be become unaffordable and they will not be able to proceed with TR due to the reduction in the value of their lessee's interest and thus the increased cost of freeholding the remainder from the Crown affecting the viability of farming that freehold land.

8.4.6. This will reduce the number of lessees completing TR.

8.4.7. Those remaining PLs, where SIVs exist, could become uneconomic. Some lessees may not be able to continue farming the land due to lack of viability.

8.4.8. In the latter circumstances lessees may be forced to consider one of three options:

i) offer the lease for sale (if a buyer can be found)

ii) abandon the lease; or (less likely).

iii) wait until the next 33 year renewal date and not seek a renewal. Then seek to recover the value of their improvements under S 136 of the LA from a new lessee, (if a new lessee can be found to take up the lease on the same terms and conditions)

8.4.9. Some pastoral lessees may continue to lease the land for other than economic reasons.

8.4.10. Failure by lessees to pay rentals and/or comply with conditions of the leases would ultimately provide the Crown rights to distrain under s 84 (4) of the LA.

8.4.11. The review team cannot find any provision for compensation for the improvements value to the lessee if no new lessee is prepared to take up the renewal of the lease at the proposed renewal rental, and pay the value of the improvements to the outgoing lessee.

8.4.12. Where lessees struggle to remain on the land for other than economic farming reasons paying rentals based upon non-productive value components, the consequences of such outcomes would significantly affect the TR process and both the lessors' and the lessees' assets may be put at risk.

Part A – Rental Reviews

9. PASTORAL RENTAL REVIEWS

9.1. Rentals for pastoral leases were restricted by the provisions of s 66 (2) of the LA as amended in 1979:

"A pastoral lease shall entitle the holder to the exclusive right of pasturage over the land comprised in the lease and a perpetual right of renewal for terms of 33 years but shall give him no right to the soil and no right to acquire the fee simple." This was replaced by an equivalent provision in Part 1 s 4 CPLA. This now provides for:

4 Tenure

A pastoral lease gives the holder—

(a) The exclusive right of pasturage over the land:

(b) A perpetual right of renewal for terms of 33 years:

(c) No right to the soil:

(d) No right to acquire the fee simple of any of the land.

[Compare: s 64 and s 66(2) LA (1948)]

9.2. The CPLA does not give the lessee any right to acquire the fee simple of the land held under any pastoral lease. However, it provides the opportunity under Part 2 to enter into a process of tenure review that may result in the freehold disposal of some of the pastoral lease to the lessee.

9.3. The pastoral lease provides the lessee a right of continuing occupation by virtue of the provision for the perpetual right of renewal for terms of 33 years.

9.4. The pastoral lease has provisions that differentiate it from typical open market rural leases. In particular it:

i) Requires the rental to be based on a prescribed percentage of the value of the land exclusive of improvements (LEI)

ii) Has restrictive covenants precluding the lessee realising any potential for subdivisions for building purposes or for any commercial or industrial use (see s 6 (a) CPLA 1988 [previously s 66 (7) LA].

iii) Has restrictive land use controls under s 15 to s 18 CPLA that sets out a wide ranging land use consent process that requires consents to be obtained from the lessor (Crown) for almost all land management activities.

9.5. It is therefore necessary, when assessing "market rentals" for pastoral leases, to take into account all of the conditions in the lease. This includes provisions of the original s 66 (2) LA that provides the lessee with the rights to pasturage only and now subject to the CPLA 1998 additional restrictions as noted above.

9.6. A CPLA pastoral lease is an unusual form of tenure.

Firstly it is a ground leasehold (arising out of the requirement to pay a prescriptive rental for only the pasturage).

Secondly, it is an unconventional "free-leasehold" recognising that the lessee is not required to pay a rental for the added possession rights due to the rental reflecting the provisions of s 4. This tenure gives exclusive added access and enjoyment benefits arising out of the land's inherent geographical, environmental, and locational attributes, as these are recognised in the market.

9.7. Before moving to discuss these issues in more detail, we turn to consider the marketability of these perpetual rights of renewal benefits and ownership.

10. MARKETABILITY OF PASTORAL LEASES

10.1. The perpetual right of renewal gives the lessee an exclusive and continuing right of occupation of the land as a consequence of the rights to the pasturage. This occupation right is highly marketable, especially where that right of possession gives exclusive access to the enjoyment of the iconic features or SIVs associated with or on the land. While the lessee is required to pay a rental for the "exclusive right of pasturage", there is no provision in the CPLA or the LA to require any rental to be paid for the additional rights. The Crown did not directly restrict those additional rights. When the Crown changed the tenure from pastoral occupational licences to a pastoral leases in 1948 those rights were bundled with the granting of a pastoral lease and arose inherently free to the lessee. For many years there was no significance in or market value attached to those rights. However, during the past 15 years, and particularly the last 5 years, a strong market has emerged for some pastoral lease properties with these iconic SIVs.[13]

10.2. This market was first observed approximately 15 years ago with "above pastoral market" prices being paid for properties initially around Lake Wakatipu and more recently in other locations throughout the high country. In some transactions the iconic and SIV premia dominate the transactions with prices paid for some pastoral leases not relating in any way to the value of the pasturage in either LEI or its developed state. This market may now be compared with the coastal land market that has been similarly differentiated from other land. Coastal premium has existed for a much longer period of time than the premium for high country properties and is well established and accepted in the market.

10.3. Following our discussions with Crown Law and other government agencies, it is our conclusion that the Crown didn't specifically but inherently lost its rights to this potential pastoral land market premia values when it granted pastoral lessees the perpetual rights of renewal with 33 year leases in 1948. Those rights or interests in the land are perceived and recognised as being "owned" by the lessee. In a number of high profile sales the price of the leasehold interests do not relate in any way to the values arising purely from pastoral farming use only of the pasturage growing on the land.

[13] Now, since the Government's Preliminary Response, the debate has **shifted** to the Crown's interpretation of the CPLA and the Land Act in that those SIVs are part of the LEI and therefore, due to the prescriptive provisions of the rental fixing formula, are charging rentals to the pastoral lessee including those SIVs – values that add nothing to the restricted "pasturage use only" of the land.

10.4. Some of these pastoral leases could be considered to be no more than large lifestyle blocks where pastoral farming as a means of generating income is secondary to the occupation of the property and requirement to maintain the land in its pastoral use. These leases preserve both the exclusive rights and enjoyment of the landscapes and access to iconic attributes at the relatively minor cost of LEI based pastoral rentals.

10.5. It is these high profile multi-million dollar sales of certain iconic pastoral leases that have inflamed the public comment epitomised by the statement from one interviewee who submitted to us that *"Run holders are big fellows with massive amounts of money. They are dripping with cash compared with little old ladies running out of electricity in the cities."*

> *"Understandably there are several paramount issues which are repeatedly the common concern of lessees. The two most common would be firstly the adequacy of the value attributed to the lessee's improvement and secondly the envisaged condition of the land at the point its value is assessed as and exclusive of improvements"*
>
> Murray Mander, Valuer-General, Paper to South Island High Country Conference, Timaru, June 1980

10.6. The Crown has itself contributed to and thus confirmed these high prices by paying excessively (in the view of some people) for purchasing some pastoral properties, in particular Birchwood Station. We do not accept that view. The Crown purchased those properties on behalf of the public at the market values. Had the Crown not made these purchases, it is highly likely that other parties would have matched or exceeded the prices paid by the Crown.

10.7. The only criticism of the Crown, which is easy to make in retrospect, is that it "gave away" the major driver to this market premia for the land's inherent values [due to the right of exclusive access being restricted to the pastoral lessees under the provisions of the "exclusive use" provisions of the lease]. This is (now) reflected in the lessee's interest, when it provided for a perpetual right of renewal of these leases in 1948. The intention at that time, we understand, was to provide lessees with certainty of occupation and exclusivity of control of the land to enable lessees to farm these properties on a basis that met the requirements of the LA and the Land Settlement Board. The policy was to ensure sustainable farming and maintenance of the pastoral ecology in a similar manner of control to the provisions now set out in the CPLA.

10.8. We do not agree with certain submissions made at our interviews that these premia values do not belong to the lessees and should be paid back on sale in some manner or form to the Crown. Such a condition would require legislative change and expose the Crown to a substantial claim for compensation. The Crown accepted a similar liability in

principle, when it made changes to tenure and rental provisions under the Maori Reserved Land Amendment Act 1997 s 16 *Compensation payable to lessees* and in particular affecting certain Taranaki West Coast leases. In the event that the Crown chose to make changes to the CPLA to take away the lessees' rights to the market premia resulting from the rights of renewal of the Pastoral Lease then the compensation liability would be much greater than that which arose in relation to the Taranaki West Coast Leases.

10.9. We are of the view that the assessment of a "market rental" for a pastoral lease cannot therefore include any value associated with a premium that a potential purchaser would pay for the 'X" factor protected by the perpetual right of occupation of that lease. By implication the rental value (LEI) cannot include any non-pastoral value associated with the iconic or significant inherent values (SIVs). Had that been anticipated, then the LA and the CPLA should have made specific provision for it in the same way as , under s 6 (a) CPLA (i) and (ii) subdivision for building purposes and commercial or industrial uses are excluded. In practice, though not similarly specified, the potential and increased value of the land for non-pastoral uses are also excluded such as intensive farming for horticulture, viticulture and tourist development.[14]

[14] In the panel's recommendations any non-pastoral uses should be explicitly excluded by way of legislative amendment, if our recommendations as to fixing market rentals on a stock unit (SU) basis is not adopted.

11. PROBLEMS WITH LEI VALUATION METHODOLOGY

11.1. The “rental" now discussed is required, under the controlling legislation to be made on the basis of the pasturage on the property in its LEI state, as hypothetically available on the property as at the date of the rental review. In effect it is the “value” or rental that a well informed but not over anxious lessee would offer to the lessor.

11.2. To that end, we believe that there is a conflict between the LA and the CPLA as they are currently drafted. These Acts require the lease rental to be set upon the basis of the *unfettered* LEI, whereas s 4 CPLA provides for the lessee to have a *restricted use only*, i.e. the exclusive right of pasturage over the land and potential restrictions on farming activities and excluding the added-value of the land if non-farming activities as specified in s 8 CPLA at a rental review after the first 11 years would otherwise increase the LEI.

11.3. The rental review provisions of the LA that are carried through to the CPLA appear to presume that there is a good correlation between the right to pasturage, the LEI value and a rental fixed at 2.25%[15] of that value for an 11 year review period. Furthermore, both Acts require the parties under the provisions of Part VIII, s 131 (1) (ii) LA, to establish the values on an equitable basis having regard to the relationship between the lessor and the lessee (as referred back to the LA in s 8 CPLA).

11.4. The problems facing the parties to rental reviews have been clearly identified in our interviews and a review of a sample of valuations and rental assessments. The problems relate to the requirement to establish an unfettered LEI value to which the prescribed rental rate of 2.25% is applied.

11.5. At the same time the provisions of s 131 (1) (ii) must apply relating that LEI to the market value as it applies to the assessment of the capital values. The latter by definition must be based on sales of freehold pastoral land, analysis of sales of lessee’s interest and market evidence of rentals being paid for fee simple pastoral land. The only statutory allowance for the "fettered" use provision (pastoral use only) is reflected solely in the prescriptive 2.25% rate compared to a 4.5%[16] rate, for non-pastoral Crown land leases as it applied in 1979 when those prescriptive rates were legislated.

[15] Reducible by 0.25% (i.e. to 2% p.a. net) for prompt payment (within one month of due date)
[16] Reducible by 0.50% (i.e. to 4% p.a. net) for prompt payment (within one month of due date)

11.6. Part VIII of the LA is essentially transported into the CPLA and requires the parties to ascertain the:

i) value of improvements which are then in existence and unexhausted on the land;

ii) value of the land included in the lease exclusive of the improvements; and

iii) the addition of these two components should, as required under the provisions of s 131 (1) (iii) be equal to the Capital Value of the land, as set out in s 131 (2) LA.

iv) "*Capital value means the sum which the land and improvements thereon might be expected to realise at the time of valuation if offered for sale unencumbered by any mortgage or other charge thereon on such reasonable terms and conditions as a bona fide seller might be expected to require"*

11.7. In making these assessments the parties, by virtue of the provisions of both Acts have to exclude any potential for:

i) Subdivision for building purposes, or

ii) For commercial or industrial use

11.8. The LA and CPLA, as previously noted, do not anticipate the situation that has emerged in the market where extraordinarily high prices are being paid for some pastoral leases (land) with an "X" factor because those leases enjoy SIVs and provide the purchaser with a perpetually renewable right of occupation.

> *"...to determine rentals, LINZ and its consultants exclude important factors such as location value, and rents are kept well below market value. But when undertaking tenure review the Crown has to pay full market rates based on valuations, which include, and are often significantly inflated by, location value.*
> *...This dual system of valuing the Crown's interest works so that leaseholders gain the advantage every time.*
> *...LINZ should not be practicing two apparently contradictory methods of valuing pastoral leases".*
>
> Sue Maturin, Royal Forest & Bird Society, Dec.2004

11.9. The strict interpretation of the provisions of Part VIII LA, when applied to these very high sales brought about by what has been variously described as iconic SIVs or an "X" factor, incorporates these premia into the LEI.

11.10. When the prescribed rental rate of 2.25% is applied to a rental value that includes such SIV premia, this will produce a rental that may bear no relationship to the value of the use of the pasturage and in a number of instances could be close to, or higher than, the gross income generated from pastoral farming of the property.

11.11. To overcome this problem, the parties and their valuation advisors pragmatically endeavour to make their valuation assessments exclusive of the market premium for SIVs

or "X" factor. However, this arrives at a capital value that does not comply with the provisions of s 131 (2) LA. That value in many instances will only be a relatively small portion of the freehold market value of the property.

11.12. Such common sense and pragmatic valuation practices are in danger of not complying with the strict provisions of the Act and could be set aside by the Court if found to be so. Such values have inevitably been based to a significant degree on *subjective* assessments of excluding the component of the SIVs or "X" factor relating to the property and results in inconsistencies in the rental assessments on a property by property comparability basis.

11.13. Such "machinations" of sales evidence, analysis, and valuation applications to pastoral lease LEI rental values may still not result in rentals which are based on productive pasturage value-based LEIs. When the prescribed 2.25% p.a. rate is applied to such LEIs the resulting rental may not reflect the fettered pastoral only use of the land. A "credibility" gap exists and is being exacerbated by different valuation contractors (to LINZ) making *different subjective* judgements.

11.14. Whilst valuers engaged by lessees have similar problems of interpretation they appear to be more consistently endeavouring to arrive at an *affordable* rental based on the pastoral use. However they are "backing into" the LEI by capitalising a "pastoral use only" market comparison or subjectively determined affordable rental at 2.25% p.a. to arrive at the LEI to satisfy the CPLA prescriptive LEI basis of rental determination. The latter is achieved, not by compliance with the legislative provisions and requirements, but by a rather broad interpretation of fairness and "equity" between "lessor and lessee" provision transferred from the apportionment of capital value to a rental determination. This appears a pragmatic attempt to recognise the provisions of s 4 CPLA in relationship to pasturage use only.

11.15. We recognise the problem these valuers are facing but are concerned that the methodology being applied may not withstand legal scrutiny.

11.16. Such an ad hoc and utilitarian valuation methodology could be subject to criticism. The valuers involved are not complying with the strict provisions of the legislation and overriding those provisions with a practical and logical approach to the assessment. The real danger is that when challenged, the Courts may well (and probably correctly) determine that those LEI valuations and the rentals do not comply with the CPLA. If so, this would place pastoral lessees in a situation where they would be severely and unfairly disadvantaged and would require legislative intervention to ensure the continued viability

of many pastoral leases. It is also this fear that contributes to the uncertainty facing pastoral lessees and in effect is forcing them to consider tenure review to protect the viability of their estates.

11.17. We conclude that the pastoral lease LEI valuation methodology is even more difficult and, with the best will in the world is fraught with irresolvable problems that will continue to produce inconsistent assessments across the portfolio of pastoral leases

12. PASTORAL LEASE LEI RENTAL ASSESSMENT

12.1. It is important to review the rental assessment process taking into account the objectives of the LA as amended and the CPLA 1998.

12.2. In the first instance, the LA and subsequently CPLA only anticipated that the lessee would have the rights to pasturage over the land in its LEI state. It is from that right of pasturage that farmers established businesses. To do so, over time, they had to spend considerable sums of money to develop their business. This expenditure is represented by the improvements on the land including, land development such as clearing, grassing and fertility improvements along with structural improvements, such as buildings, fences, tracks, bridges etc, which are a necessary part of the farming infrastructure. The right to pasturage on the LEI only provided the platform upon which the farming business was established. The development of the farming business has always been "controlled" or "fettered" under provisions of the LA and currently additionally by the CPLA.

12.3. The valuers reviewing pastoral lease rentals have, therefore, to assess the condition of the land in its hypothetical state, exclusive of the value of any improvements. This assessment is relatively easy to make in relation to structural improvements, but more difficult with invisible land development improvements.

12.4. These invisible improvements to soil and productivity are not totally related to expenditure of development capital. They have to be assessed reflecting the overall value of improvements to the soil and fertility, or similarly any degradation that has occurred over time. Such an assessment requires a high level of farm management experience along with valuation skills and will inevitably be based to a large extent on subjective judgement.

12.5. Furthermore, in many instances current restraints under the CPLA and the Resource Management Act (RMA) might well, now and into the future, restrict the development of the land from LEI condition. In some instances it may not be possible to carry out the development that historically took place.

12.6. We have noted concerns of interested parties, reflecting their divergent interests, that the provisions of the CPLA are not being interpreted in a way that achieves equity between the lessor and the lessee. This indicates conflict in interpreting the legislation that seeks to protect the ecological and recreational values of the land, versus the exclusive rights of the lessees' access to the pasturage.

12.7. In making valuations and assessments of LEI for PLs under s 4 CPLA and thus rentals, parties must recognise the limitations and attributes of the pastoral properties being assessed. To make such assessments, it is accepted practice to use a productivity measure based on a common dominator of stock units (SUs). As "the rental value of the land ascertained under Part VIII s 131 LA not including any potential value that the land may have — " for non-pasturage uses, rural valuers generally have experience in using this methodology for comparative purposes.

12.8. However, pastoral land value assessment is one of the more difficult to make even on developed properties, but particularly so when land has to be considered in its hypothetical LEI state. In making these assessments the valuer must be able to assess the property relative to the climatic and physical limitations of the farm.

12.9. There are many situations on pastoral properties where it is important to be able to recognise the complementarity of different land classes one to another, particularly how that land contributes to the total livestock carrying capacity and productivity of the property. It is not unusual for certain land areas to contribute much more to the total productivity than that part of the land would be able to carry if it was farmed in isolation on a year round basis. We observed some inconsistencies in this productivity assessment approach in the limited number of rental valuation reports that we were able to review. This factor is a concern. If land is incorrectly assessed in terms of its carrying capacity, it follows that both the value and the rental assessments will also be incorrect.

13. INTERPRETATION OF PASTORAL LEASE MARKET RENTALS

13.1. Historically, s 66 (4) (a) LA provided for a fair annual rental to be fixed (subsequently repealed in 1979). A fair annual rental is one that is fair to both parties to the contract and is representative of rentals for similar properties under the same tenure in the market at the time of review. The pastoral lessee owns the leasehold interest with restrictive conditions which only gives it the benefit of the pasturage over the land as if it was an estate exclusive of the improvements carried out on that land by the lessee or its predecessors.

13.2. The Crown as lessor also has only a limited bundle of property rights. The Crown's ownership rights consist of controlling the use of the undeveloped land as if no improvements had ever been carried out and restrictions in the lease as to what the lessee can do to that land without prior approval. In granting the approval to carry out such improvements to the land, the lessor is required under s 18 (3) of the CPLA 1988 to consult with the Director General of Conservation before taking any discretionary action. The Crown also has powers under s 60 LA to grant easements over the pastoral leased land as discussed in Sections 4.12 to 4.14 of this final report. Additionally, under s 66A LA as well as under ss 15 and 16 of the CPLA the CCL has control over the lessee's activities and requires the granting of permission and consents to do things that do not similarly affect the unfettered normal pastoral use of comparable land held by freehold pastoral farmers.

13.3. The Crown's exercise of those rights is held exclusively by the CCL but, to some extent, has the potential of being determined by another party (DOC). The market values of those rights are fettered by those provisions and consist essentially of the present value of the current and prospective rentals on review under the prescriptive provisions of the pastoral lease legislation.

13.4. Unlike an open market lease between two private parties, the lessee in negotiating a lease rental has to consider what actions the lessor (CCL) might take in terms of the discretionary activities as prescribed in the lease. At the same time the lessee must weigh up how the commissioner’s action may be influenced by the advice of the Director of Conservation.

13.5. This level of uncertainty facing the lessee when contemplating paying a rental for the lessor’s LEI land is considerably greater than that of a lessee making an offer to lease

land from a private person. The private lessor does not have to consult with a third party prior to approving certain work to be carried out on the land being leased.

13.6. It is within the context of these restrictions that the valuers engaged by the parties to a review of the rental of pastoral lease land have to determine a LEI value, an improvements value, as well as a capital value. A rental is required on an equitable basis acknowledging the relationship between the lessor and lessee and also, in our view, in relation to rentals being paid in the market for similar properties. Making the latter assessment is thus problematic relying on subjective, not objective criteria,

13.7. These issues were discussed in a 1983 High Court case reported as *Assistant Commissioner of Crown Lands v Associated Taverns Limited*. [See **APPENDIX 4** for reference] This case was an appeal against the findings of the Land Valuation Tribunal (LVT) relating to fixing values under the LA. Whilst it relates to an urban Crown lease freeholding situation, the principles enunciated in that decision setting out the relationship of the parties applies equally to rural land. In particular we note the Court's comments:

> *"we consider that a lease under the Land Act is essentially an agreement between two parties to carry on a business of which the Crown in this case provides the land (for which it receives a rent) and the company provides the capital (for which it receives an income less rent)".*

The Court then further comments:

> *"Inequality would result where the value of either parties resources produce an unduly large or small share of the total income available now and in the foreseeable future."*

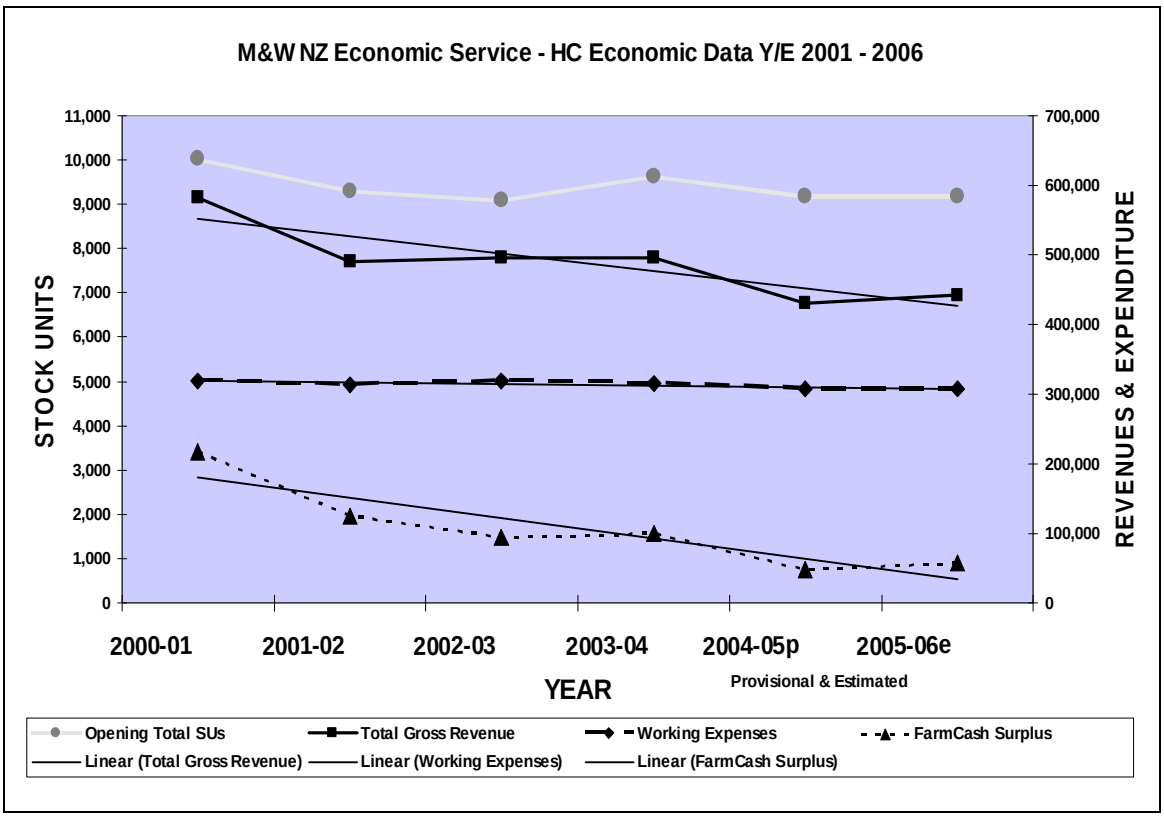
13.8. The Court in making these comments confirm the direction of the LA and CPLA to ensure that there is equity between the parties, i.e. a subjective assessment. It is therefore important for the valuers when making a rental assessment to be fully aware of the economics of the pastoral farming industry and how the market is measuring the rental potential for similar properties. They then have to ensure that the rental that they are recommending does comply with the provisions of the Act and the findings of the High Court.

13.9. The review team's conclusion is that for equitable and fair rentals to be assessed for pastoral leases under the CPLA the basis for fixing the rental should reflect the limited use potential provided for under s 4(a) CPLA i.e. only "right of pasturage over the land". If the CPLA remains, as currently, in providing under s 4 a prescriptive percentage rate

on the basis of "the rental value of the land" (LEI) under s 131 LA, then the definition of "rental value" should exclude all non-pastoral uses including the potential of SIVs **on or in** the land. To the extent that the current legislation is not clear (which in the review team's opinion it is **not**) the CPLA needs changing to make the position clear in directing the valuers in this matter.

14. HIGH COUNTRY FARMING RETURNS

14.1. We have reviewed statistical data (see chart below) relating to the income trends for pastoral farming businesses, particularly over the past five years. We note that the financial performance of this sector (high country) has been declining. This is in contrast to other farming sectors that, until the year ended June 2005, have had the benefit of increasing real returns.



14.2. The data which has been reviewed has been independently prepared by the Meat and Wool N Z Economic Service that annually prepares financial performance data of all New Zealand farm types. We observe that the fortunes of the high country farming sector is largely depend on the returns obtained for fine wool. That commodity has now been at relatively low levels for some time with little or no expectation for improvement in the short to medium term. Likewise we note that a large number of pastoral farmers have diversified their farming businesses into deer. That industry has over the past three years seen catastrophic reductions in returns and like fine wool, the medium to short term prospects do not indicate any significant increase in returns.

15. MARKET RENTALS

15.1. We now consider whether or not the rentals being assessed and paid on review under the current legislation provide a satisfactory financial return on the Crown's asset. We also now consider whether or not a change from the current prescriptive basis to a to a "market rental" basis would better achieve a fair outcome for both lessees and the lessor.

15.2. We have reviewed rentals that are currently paid in the market for pastoral properties. These rentals generally indicate a range from $15 p.a./SU to $20 p.a./SU with some exceptions at each end of that range. These rentals are for the *whole* of the land estate, i.e. the capital value of the land including all improvements to that land. These leases do not have many of the restrictions of pastoral leases. They are usually for terms of at three to six years, some with rights of renewal at the lessor's option. The rentals are generally reviewable at two or three yearly intervals. The rental yields on the current market value of the land are generally below 5% p.a. predominantly in the range of 2% to 3% per annum. To apply a $/SU p.a. rental basis to PLs, further adjustments are required to exclude the "value of the lessee's improvements", i.e. on a LEI basis for pasturage use only as discussed under our findings in Section 26 and recommendations in Section 27 of this report.

15.3. This analysis of market rental evidence is an important valuation benchmark. The above $ p.a./SU rental rates are observed to be consistent with a New Zealand wide range reflecting different locations and relative profitability.

15.4. When applying market evidence to LEI rental assessments, it is necessary to adjust the rental rates of developed land to exclude the value of improvements. Such improvements are subject to depreciation, redundancy, and obsolescence. They also incur maintenance costs, both in terms of structural and land improvements. These costs are a major component reflected in market rental rates that do not apply to LEI rentals.

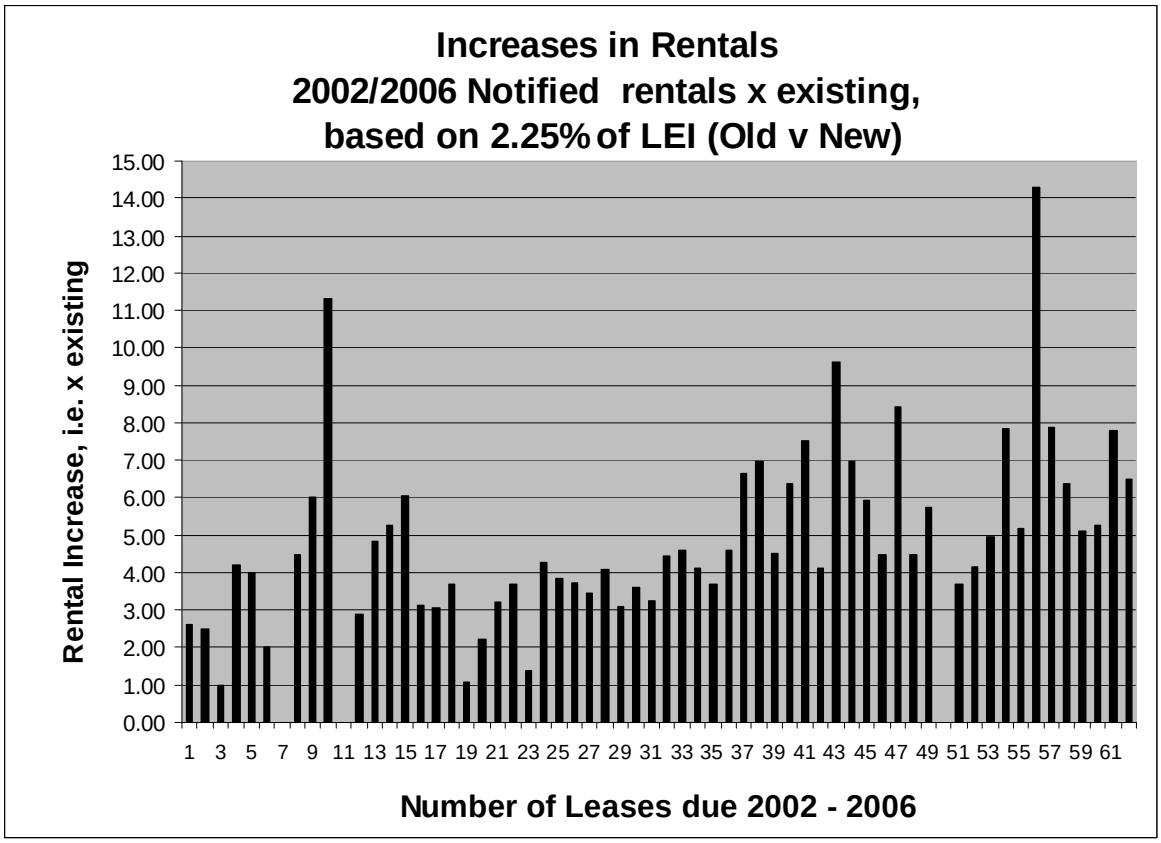
15.5. We have reviewed sample valuations and rental assessments for both lessees and for the Crown. We have interviewed some lessees who have been notified of reviewed rentals none of whom were prepared to accept the notified rental. In almost every instance they intended to appeal these rentals. We are advised that a number of the previously notified rentals have been accepted.

15.6. In discussions with LINZ valuation contractors it became clear that, in the first instance, they are endeavouring to follow the prescriptive process of establishing an LEI

value and applying the prescribed 2.25% rental rate to that value. They then appear to be making some adjustments to minimise the prescriptive rental outcome so that it more closely reflects market rentals. We have been unable to ascertain just how these adjustments between the market and prescriptive LEI rental assessment are made.

15.7. However, we note that that the valuers recognise that they have to make some adjustment (as they are required to do under s 131 (1) (ii) LA in terms of equity).

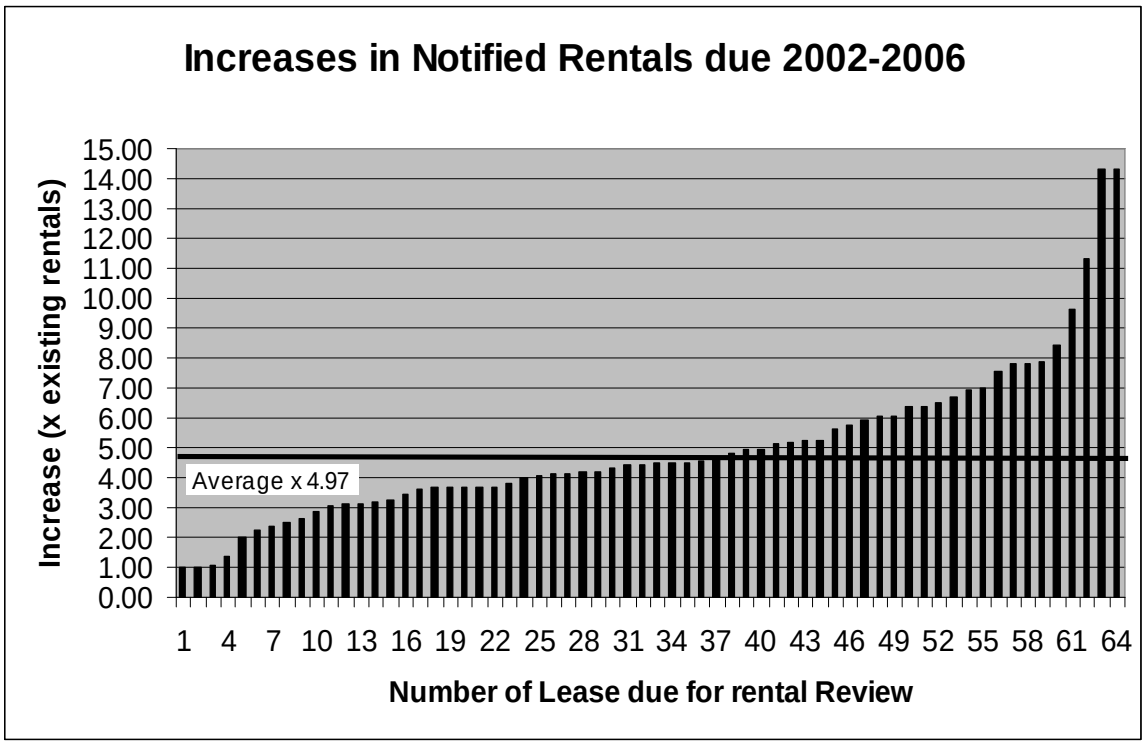
15.8. The following chart shows the range of rental increases as assessed by LINZ valuation contractors applying to 59 rental reviews effective over the period July 2002 to July 2006. The notified new rentals range from approx 1 times (i.e. no change) to 14 times the existing rentals, with an average of 4.9 times the existing rental set 11 years ago (when normalised to a 2.25% prescribed basis)[17]. One outlier (75 times existing rental) and two other special cases are excluded (as column gaps) in the chart.



15.9. The middle 50% of the notified rentals range in increases from 3.6 to 6 times the existing rentals or LEIs on which they are based, averaging 4.97 times. These rentals show compounded growth rates of between 12.35% p.a. and 17.75% p.a. averaging 14.7% p.a.

[17] 23 of these leases were fixed on the basis of 1.5% for the first 11 year tem of new 33 year leases, and therefore those actual increases are greater than their increases shown in the chart – which is a one-off adjustment..

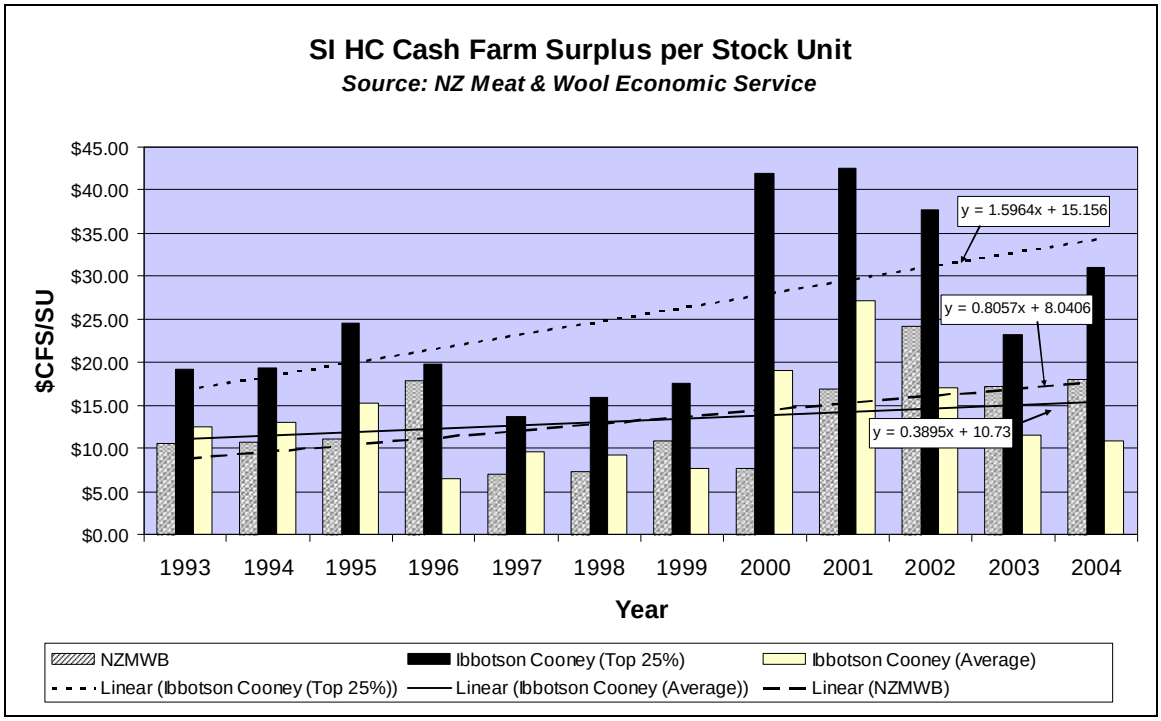
15.10. These increases show major inconsistencies in the outcomes of the rental valuation process and are of concern. This inconsistency highlights the difficulty of endeavouring to exclude non-pastoral values (SIVs or "X" factors) from the LEI assessment. We would expect increases in rentals of pastoral land should fall within a much narrower range more closely related to market rentals of pastoral land that reflect farm profitability.



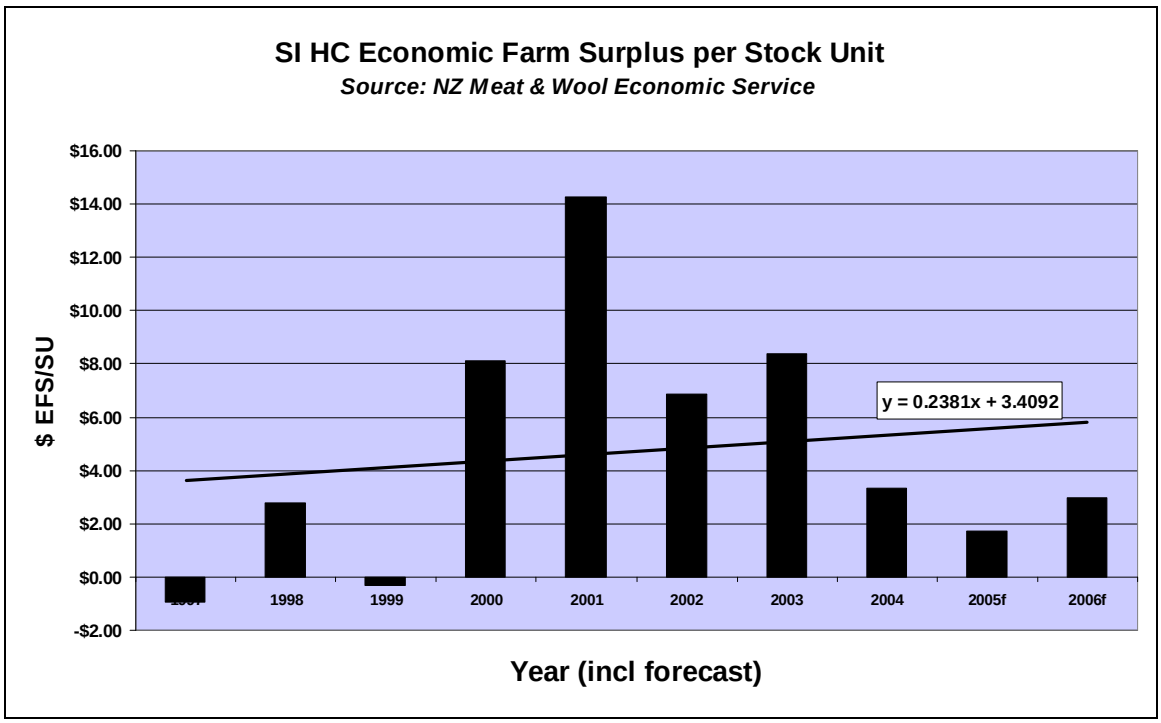
15.11. A table follows that compares the 11 year increases in the notified LEI rentals with the South Island High Country Farm profitability statistics sourced from the New Zealand Meat and Wool Board (NZMWB) and also from Farm Accounts Analysts, Ibbotson Cooney Ltd., over the period 1993 to 2004 which shows the great disparity between the increase in rentals and increase in relative affordability..

1993/2004	Growth in SI HC Cash Farm Surpluses		
	Ave Annual	over 11 years	x Start
NZMWB	1.07% p.a.	12.36%	1.12
Ibbotson Cooney (Top 25%)	10.55% p.a.	201.34%	3.01
Ibbotson Cooney (Average)	0.36% p.a.	4.07%	1.04
1993/2004	Growth in Economic Farm Surplus		
NZMWB	6.98% p.a.	110.14%	2.10
11 Year increases ex 1992-1995	Increase in LEI based notified rentals		
top 25%	20.86% p.a.	703.81%	8.04
Middle 50%	14.70% p.a.	352.02%	4.52
Average	15.58% p.a.	391.75%	4.92
Maximum	27.35% p.a.	1328.57%	14.29
Minimum	0.00% p.a.	0.00%	1.00

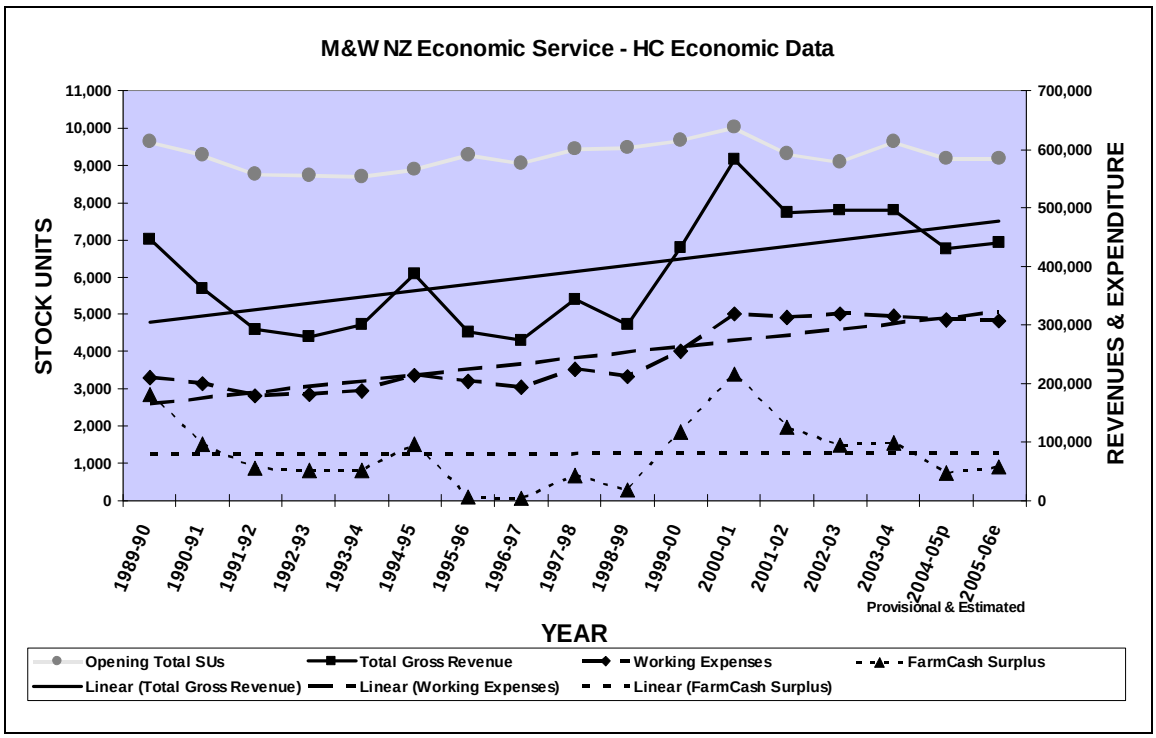
15.12. A Chart of the Cash Farm Surpluses with trend lines added follows:



15.13. The above does not allow for wages of management, plant replacement provision or return to livestock, which gives the economic farm surpluses as follows.



15.14. Analysis of long-term high country farm profitability as analysed from Meat & Wool New Zealand Economic Service for the period 1989-1990 to 2006-2006 is shown in the following chart.

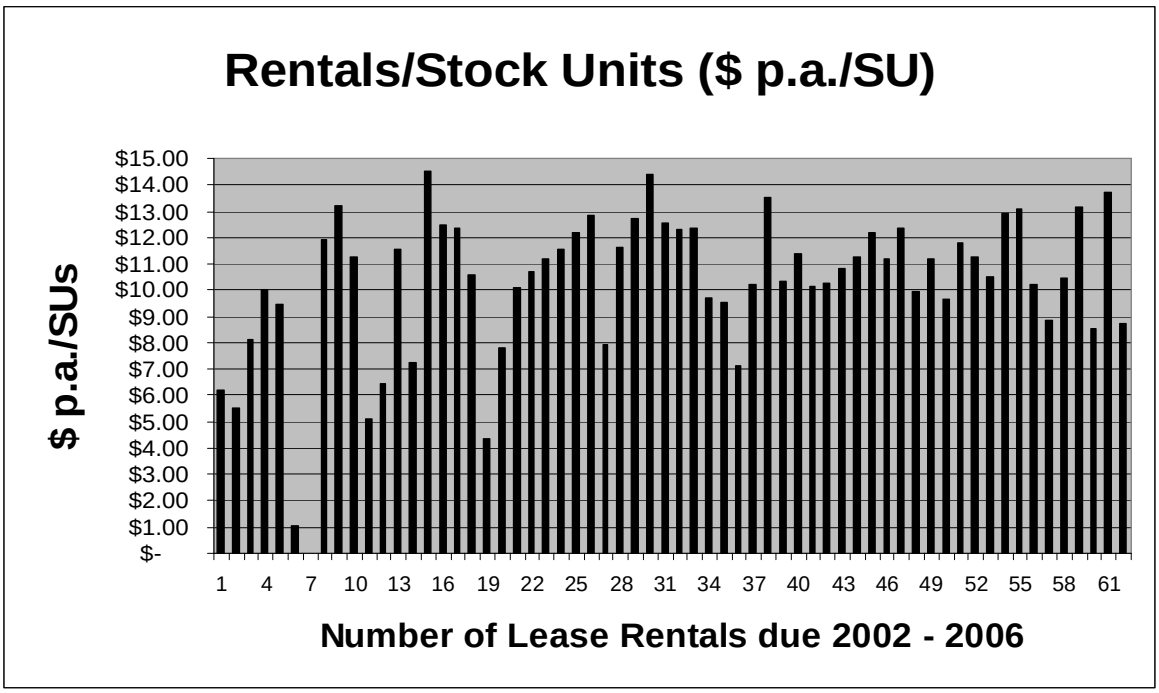


15.15. The above chart shows relatively long-term growth trends in gross farm revenue. When coupled with the increasing trend in total working expenses this shows a static farm cash surplus over the period including forecast to Y/E June 2006. This data gives no support for the currently notified levels of increase in rentals over the relevant 11 year review periods involved.

15.16. The ability of Crown pastoral lessees to pay a higher rental was challenged by one of the valuers employed by the lessees. This valuer, with a wide experience in pastoral lease valuations, submitted an economic analysis of a "modal" high country farm property. His conclusion is: *"...the present rental rate of 2% net for the LEI of a Pastoral Lease is not affordable by the average Pastoral Lease and it is not justified by market rental data."*

15.17. This conclusion is consistent with analyses of published farm financial performance data. These data demonstrate declining cash farm surpluses from 2001. This situation, when considered in terms of s 131 (1) (ii) LA, questions of the validity of the rental increases that are currently being notified to lessees.

15.18. The Project Objectives require consideration of the implications of introducing "market" rents for pastoral leases. Our investigations indicate that rents currently being proposed for most properties are on average well in excess of what be considered fair market rents just for the LEI pasturage. Furthermore, when analysed on an LEI SU carrying capacity basis, (as determined by the valuers) there is an unacceptably wide range of proposed rentals, as shown in the chart below.



15.19. LINZ provided the review team with 62 rentals due 2002-2006 that have been notified to lessees 16 are being referred to the Land Valuation Tribunal, one has been accepted, and 45 may or may not be accepted by lessees.

15.20. An analysis these proposed rentals reveals the following;

Per Stock unit rental range	$1.02 to $14.52
Average per SU of	$10.42
Standard Deviation of	±$2.52
This indicates that 68% of the rentals fall within a range of	$7.84 – $13.00

15.21. This analysis shows an alarming inconsistency in the notified rentals. The average rental at $10.42/SU should be considerably less reflecting the issues discussed above which refute the claim by some NGOs that lessees are paying "peppercorn" rentals that should be increased "to match market rates."

> *"Part of the problem here may lie with the peppercorn rentals paid by lessees – often much lower than the market rate (these are 2.5% of the value of the land, exclusive of modifications or its value for subdivision, commercial or industrial use). If rentals were increased to match market rates, this could provide added incentive for lessees to enter the tenure review process".*
>
> Federated Mountain Clubs, Sept.03

15.22. This clearly shows the failure of the prescribed LEI construct and methodology to provide a rental that complies with both the provisions of the governing legislation and at the same time fairly reflecting the market for pastoral rentals.

15.23. We find that the prescribed rental review process under the governing legislation is failing to deliver accurate and fair outcomes.

16. RECREATION PERMITS AND EASEMENTS

16.1. We are also required under the terms of reference to give consideration to the extent to which charges for recreation permits and easements contribute towards the objective of obtaining a fair financial return to the Crown for its high country assets.

16.2. We understand that such permits and easements provide pastoral lessees with an alternative, higher and better use for parts of the pastoral lease based on a commercial rental rate (e.g. eco tourism). Such fees usually relate to the income that the holder of the permits or easement will generate from the enterprise.

16.3. We have only limited information on these matters but believe that this process does provide a fair financial return or has the ability to do so if properly set up.

16.4. Such permits and easements must reflect the balance between the value to the licensee holding the recreation or access easement, and the detrimental effect that that may have on the pastoral farming by the lessee. In most cases it is most unlikely that such permits or easements could in any way enhance the pasturage use value, such arrangements are more likely to reduce it, thus reducing the rental value of the land (and any improvements value detrimentally affected) and thus the rental under s 4 CPLA as provided under s 60 LA (see Section 4.12 of this report).

16.5. It may be that in some cases the detrimental effect might result in a reduction of the pastoral rental by more than the licence fees or other rentals obtained from the recreation permit holders. In any particular case the effects, overall may be different and partly offsetting. This could affect the financial return to the Crown .It is not possible for the review team to prejudge any such outcomes in terms of the TOR.

16.6. Where the permit, concession, or licence is held by parties other than the pastoral lessee, i.e. an eco tourist operator, then the rental should reflect the commercial and/or occupational use rights provided in terms of those arrangements.

16.7. In respect of the Crown's achievement of a fair financial return on the value of the high country assets from such arrangements – that issue is problematic, as pointed out in Section 20 of this final report.

Part B – Tenure Reviews

17. UNDERSTANDING "FREEHOLDING" – THE PASTORAL LEASED LAND V. THAT TRANSFERRED TO THE CROWN IN TENURE REVIEW

17.1. The value of pastoral lease interests are established in the market and the Crown has to pay market value to "buy back" the lessee's estate in tenure review. The purpose being to "enable the protection of the significant inherent values of reviewable land" in terms ss 24 (b) CPLA; and "By the restoration of the land concerned to full ownership and control" in terms ss 24 (b) (ii) CPLA; to make easier "The securing of public access to and enjoyment of reviewable land" under ss 24 (c) (i) CPLA. Thus, mainly to gain access to the high country and to transfer the ex pastoral leased land into the up the value of their leased land – being offset in *net* exchange by the added value to the lessee of freeholding smaller areas of their ex pastoral lease. In other instances the reverse applies, and some lessees pay sums of money to the Crown resulting from the lessee freeholding areas of their ex pastoral leased land, which would be expected to be of better quality for farming purposes than that given up, and being offset in *net* exchange by the greater added value to the lessee as freehold than value of the lessee's interest in the ex pastoral leased land with significant SIVs being acquired by the Crown.

17.2. Each property is unique and the balance of *net* exchange consideration is also affected by the improvements owned and originally paid for by the lessee acquired from the lessee on the land taken into full Crown ownership.

17.3. Analyses, particularly by some academics (on both sides of this debate), on the basis of only the aggregate exchange prices paid and received as between pastoral lessees and the Crown in tenure review has been misinterpreted as being LEI only, as explained by examples in (now) Section 18.10 of this final report.

17.4. Of vital importance and frequently overlooked by some commentators is that in TR the Crown pays for the "lessee's improvements" as defined under the LA (1979 Amendment) and specifically as an "Improvement" as further defined under s 2 CPLA in and on the land transferred to "full Crown ownership and control." This includes both *visible* and *invisible* "lessees' improvements".

17.5. *Visible* improvements include, for example, tracks, roading, water troughs, some bridges (others may be invisible pipes or culverts), water supply tanks, visible dams

(others may be invisible physically constructed depressions in the topography), and obvious buildings, fences and other structures above the surface of the ground.

17.6. *Invisible* improvements include, for example, clearing, cultivation, improved fertility from fertiliser, weed and pest control and pastoral management over time.

17.7. Some SIVs, as defined in the CPLA, may in fact be lessee's improvements – (historic irrigation works, tunnels, disused hydro schemes, mines, quarries, bridges, huts, protected exotic research forests and buildings, etc.) constructed and paid for by current or former pastoral lessees. Some may be Crown improvements specifically excluded from the LEI.

17.8. In addition, the Crown acquires in TR the substantial pastoral lessee's interest in the LEI including the unexpired term of the current lease and the "perpetual right of renewal" which includes the "exclusive right of pasturage over the land." These are very valuable rights.

17.9. When the lessee "freeholds" the balance of the ex pastoral land, it acquires only the additional previously "fettered" use potentials, subject to normal (and existing) use controls under the RMA and is released from the CCL's restrictions and controls of the pastoral use. This transfers additional valuable use rights to the new freehold owner including new development potentials in some cases. The value of these rights is recognised in the TR valuation and negotiation process.

17.10. However, the lessee *already has the perpetual rights to the use of the pasturage* and only gets the benefit of not having to pay rent for that use in the perpetually renewable terms provided for in the lease.

17.11. No specific payment is made to the Crown for the value of the "lessee's improvements" in and on the land freeholded – as they have already been paid for by the lessee and are also recognised in the exchange transaction.

17.12. What the lessee acquires *in effect* is the Crown's lessor's interest in that portion of the land it receives in the exchange process. This lessor's interest is the present value of the right to receive the pasturage use only based rental for the balance of the current term and the rights of renewal. The lessee does not pay for the right of exclusive access which the lessee already owns as part of the lessee's interest and has been recognised in the valuation of that interest and the exchange calculations.

17.13. Further, the lessee through valuation and negotiation process, gets the benefit (if any) of any new boundary fence erected (by the Crown) along the new boundary between the land freeholded and the land being returned to Crown ownership.

17.14. Thus the *net* exchange consideration paid[18] in settling the TR reflects the **net** effect of all these offsetting values and is often weighted in terms of the money changing hands in exchange to the lessee's *net compensation* receipt due to the dispossessed lessee giving up the bulk of their interest in the LEI *and the improvements* on that land; in exchange for the Crown's lessor's interest benefits in freeholding the residue of the former lessee's pastoral lease. This is fair *net compensation* paid to the lessee – its not a hand-out to acquire the Crown's freehold land – the Crown does not have a freehold interest to sell in the land only a lessor's interest.

17.15. The opposite exchange is not infrequent – where weighted in terms of the money changing hands in *net* exchange to the lessor, the Crown. This situation arises where the Crown's lessor's interest in ex pastoral leased land retained by the lessee, i.e. freeholded, is usually larger and more valuable than the lessee's interest in the ex pastoral leased land transferred to the Crown's estate in exchange. That too is "fair net compensation" to the Crown for transferring the greater value of its lessor's estate than the lessee's interest it is receiving in land retained by the Crown.

17.16. It is not surprising at all that there are more of the former than the latter outcomes to date from TR as lessees in aggregate (i.e. in total, when added together) have been giving up more valuable "land rights" in the LEI and improvements than the Crown has acquired to date despite the (apparent) disequilibrium in the areas (in hectares) of land being exchanged. This may change in the future with different pastoral lease TRs being concluded. To suggest otherwise shows a lack of understanding of the valuation principles and transfers of "tenure rights" involved.

17.17. Thus no conclusions at all can be made from the net exchange consideration in relation to the areas of land acquired by the former lessee or acquired by the Crown either in individual TRs or in aggregate exchange figures.

17.18. To do so by analysing such net exchange figures on a per hectare basis and then to come to any conclusion as to the fairness of the TR outcomes or the relative cost to or benefits obtained by either party in these TR transactions in this manner is fallacious.

[18] The price paid in exchange for acquiring or "freeholding" the ex pastoral leased land is *very* different from the value of that "freehold" land, or the LEI portion of it. This factual distinction is missing in most of the submissions and arguments, including research publications and comments based on those in the submissions.

Certainly one cannot accurately conclude, as some claim in recent publications referred to in the submissions, and recent media that "Tenure Review Sells Public Interest Short" without detailed knowledge of all the facts and circumstances in each individual TR. Such “research based” conclusions so made are misleading and ill foundered and are reflected in some of the submissions.

17.19. All aspects of these ownership transfers of interests and improvements and the added value or detriments of easements and access rights, etc., affecting the land freeholded are properly taken into account under the "before" and "after" valuation methodology employed in these TR valuations. The subsequent negotiations leading to commercial agreements and settlements of the *net* difference in value as paid in money in *net* exchange as fully explained in Section 18.10 of this report.

17.20. The review team did have the benefit of reviewing files of a number of confidential tenure review transactions. These were examined in detail and therefore we believe we are in the uniquely independent position of being able base our conclusions on the recorded facts rather than assumptions based on 'net exchange payments' and presumptions as to land values based on the land area involved.

17.21. Without access to the confidential breakdown of the components of the comparative prices paid for the lessee's interest and for the freehold land in exchange, including the relative inclusion and value of value of improvements, adjustments for easements, concessions, marginal strips and fencing of boundaries (paid for by the Crown) – one cannot come to any informative or valid conclusions as to the fairness of those transactions either individually and certainly not in aggregate.

18. TENURE REVIEW – CRITICISM OF UNFAIR OUTCOMES

18.1. We are required to report as to whether or not the current methodology of valuing lessor's and lessee's interest in tenure review is delivering accurate and fair outcomes. We are also required to recommend changes to methodology (if appropriate) to better meet those outcomes.

18.2. The ability to enter tenure review arose from the passing of the CPLA. Part 2, s 24, of the Act, sets out the objects of the provision to review the tenure of pastoral leases:

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

18.3. The decision of Government to review the valuation methodology in tenure review appears to have arisen from public comment and some criticism that leaseholders completing tenure review are being overpaid and the government is not getting value for money. Such comments were made during the interview process.

18.4. They reflect the concerns expressed by a number of interviewees, and are useful as a basis for identifying the public perception that tenure review is not providing a fair return to the Crown.

18.5. Some submitters have concluded there is an inequitable outcome for the Crown. This view is based on their analysis of $/per hectare (ha) prices paid by Crown for land going to the DOC estate and/or being paid by lessees to obtain freehold title to residual land.

18.6. We note an analysis submitted by one NGO, based on published LINZ combined net exchange of interest figures:

	Land Allocation	Equalisation Payments	$ per ha equivalents*
Crown	49,213 ha	$11,734,000	$238
Leaseholders	93,740	$5,180,000	$55

* These are over simplified as they assume equal value over the entire land area and mask the financial implications of covenants and easements on freehold land and grazing licences and easements on conservation land. The LINZ Annual Report does not reveal the actual area of land or types of land covered by equalisation payments

18.7. This submission went on to claim that:

"*These figures indicate that while the Crown is relinquishing its interest in nearly 70% of the most valuable and productive land it is paying four times as much for only half the amount of less valuable land. On the face of it tenure review financial settlements appear to be significantly favouring the leaseholders, while the conservation outcomes are tending against the Crown.*"

18.8. Such an approach is excusable given the lack of transactional detail available from the public record, but nevertheless is erroneous and misleading. The calculation based on this limited data incorrectly interprets the transactions that have taken place. An analysis of equalisation payments on a $/per ha basis, as in Section 18.6 above does not provide an accurate method from which to judge the fairness of tenure review outcomes, particularly on an aggregated basis. Even analysing an individual property tenure review transaction one needs to know the components of the transaction to make a meaningful judgement. This required information is confidential under s 43(2) CPLA.

Peppercorn Rentals: A major bone of contention of the public has been the lessees' ability to achieve peppercorn rentals from the Crown. The rentals set in 1948 were significant, but they were held at those sums for 33 years, being reduced to farcical levels by inflation. In 1979, when the Clayton Committee reviewed the rentals, they averaged 7 cents/hectare. Today, 15 years later, they average just over 40 cents/hectare, not a markedly different amount when inflation is taken into account. One concludes the Clayton Committee was aptly named. Rentals are still assessed on 2% of unimproved land value, when all other Government farm rentals are assessed at 4% and Conservation Department leases are at market rates and set every three years. One can compare these grossly concessional rates with the excessive rentals of $200,000/hectare that DOC is proposing for similar land for the club huts on Mt Ruapehu, for licences which were similarly first let in 1948. Equally, in most instances where the Crown grants additional concessions e.g. to till the soil, or change the land use of a lease, it charges for them. This is not the case for pastoral leases. It is apparent that there is one law for pastoral lessees and another for the rest of us.

Pastoral Leases – *The Last Great Public Land Carve Up – your support is vital* by Hugh Barr Federated Mountain Clubs Bulletin, December 1994

18.9. Additional errors arise in making such comparisons based on equalisation payments in that the values being quoted are capital values and not LEI values. Different values for

improvements and land classes relate to different parts of the each property. In many cases the value of improvements (on a "per ha" basis) to the land retained by the Crown is considerably less than the value of improvements on the land freeholded by the lessee. The exchange allows for those lessee's improvements remaining on the land retained by the Crown. In addition, the half cost of any new shared boundary fencing (paid for by the Crown) is added to the payment made by the leaseholder and vice versa deducted from any differential payment by the Crown to the lessee. In addition any adjustments for the impact of CCL consents, easements and covenants, commercial potential and subdivisional potential will have a significant impact on the marginal or differential value and exchange.

18.10. That such erroneous comparisons have been made using the published equalisation figures rather than the (unpublished) actual negotiated total transactions identifies the problems of transactional transparency. This is due to the confidentiality of the final tenure exchange values and the basis of establishing those values. To show the erroneous basis of these claims, some simple examples follow that show one cannot use equalisation payments in this way.

Examples based on actual Tenure Review Settlements			
Example 1:	**Area**	**Value**	**Value/ha**
Before Pastoral Lease	12,000 ha	$ 5,500,000	$458 /ha
After Freehold Residual land	3,500 ha	$ 3,500,000	$1,000 /ha
Equalisation Payment	8,500 ha	$ 2,000,000	$235 /ha
After Crown's Conservation Estate	8,500 ha	$ 2,500,000	$294 /ha
Example 2:	**Area**	**Value**	**Value/ha**
Before Pastoral Lease	6,800 ha	$ 1,242,000	$183 /ha
After Freehold Residual land	4,800 ha	$ 1,100,000	$229 /ha
Equalisation Payment	2,000 ha	$ 142,000	$71 /ha
After Crown's Conservation Estate	2,000 ha	$ 130,000	$65 /ha
Example 3:	**Area**	**Value**	**Value/ha**
Before Pastoral Lease	6500 ha	$ 3,400,000	$523 /ha
After Freehold Residual land	6000 ha	$ 3,500,000	$583 /ha
Equalisation Payment	500 ha	– $ 100,000	-$200 /ha
After Crown's Conservation Estate	500 ha	$ 350,000	$700 /ha

18.11. This table shows quite different outcomes, based on agreed capital values before and after the Tenure Review settlement. The above analysis demonstrates more clearly the different values resulting in the equalisation payments. However, it still does not show the variation due to differences in land class, improvements, or other components (e.g.

easements). The equalisation payment is merely a differential from which no valid conclusion on equity or fairness can be drawn. Every case is quite different.

18.12. We conclude that the lack of transactional transparency coupled with a lack of understanding of valuation methodology and process (by some members of the public) has exacerbated this problem leading to criticism of the equity of the tenure review process.

19. OWNERSHIP OF THE SIGNIFICANT INHERENT VALUES (SIVs)

19.1. One NGO submitted that the SIVs belong to the Crown and should be paid for in the LEI rental and/or recouped from the leaseholder when sold.

19.2. These submissions reflect the concerns expressed by a number of interviewees, and are useful as a basis for identifying the public perception that Tenure Review is not providing a fair return to the Crown.

19.3. This submitter's interpretation of the respective interests of the lessees and lessors is.

19.4. The leaseholders have rights to:

- exclusive occupation/quiet enjoyment,
- the perpetual renewal of the lease,
- use of the land for pastoral purposes, and
- fixed rentals reviewable only every 11 years.

The lessor has rights to:

- the ongoing rental stream,
- issue or decline discretionary consent applications for farming activities that disturb the soil or vegetation,
- issue or decline applications for non-pastoral economic activities, including commercial recreation, and tourism,
- agree to any freeholding,
- significant inherent values, and
- all values associated with the soil and the land, other than pasturage.

19.5. We agree with the interpretation on all of the heads of rights set out above except for their view that the SIVs "belong" to the Crown as lessor. This may be a matter of interpretation because whilst it may be that they do belong to the Crown, the Crown has no access to them due to the lessees' right of perpetual occupation, quiet enjoyment, exclusive use and the right of perpetual renewal of the lease.

19.6. With no access to these SIVs in perpetuity, (that is while the land is held in a pastoral lease) they can be of no value to the Crown. Furthermore, because pastoral rentals are required to be based on the ability of the property to provide pasturage to a lessee and SIVs do not normally contribute to pasturage no rental can logically, sustainably or fairly be charged to the PL for those SIVs [despite what the legislation may appear to provide].

19.7. The market, however, is recognising these SIVs and (in some instances) is paying what is perceived to be very high prices for lessees' interests including a market premium for access to SIVs. The implication is that the Crown's interest in these properties is very small (being only the present value of the future net rental stream). There is a perception that this is unfair to the Crown.

19.8. In the valuation of the respective interests in pastoral leases for tenure review, the lessee's interest has to be purchased by the Crown to enable it to obtain the rights of access to SIVs in perpetuity. That market premium is recognised in the tenure review process when the lessees' interests are valued, based on the market evidence.

20. VALUATION OF LESSOR'S AND LESSEE'S INTEREST IN THE EXCHANGE OF INTERESTS

20.1. Our terms of reference requires us to examine and report on the validity the valuation methodology used as to whether the:

"*Current methodology for valuing lessor and lessee interests in tenure review is delivering accurate and fair outcomes and recommend changes to the methodology (if appropriate) to better meet those outcomes; and…"*

20.2. The scope of work requires us to undertake:

- *A comprehensive review of the tenure review methodology used in determining the lessor and lessee interests as used for determining the exchange of interests in tenure review and an investigation of how this methodology is being applied;*
- *An assessment of all of the rights associated with pastoral leases and how these should be valued in terms of existing pastoral lease agreements;*

20.3. In assessing the value of the respective interests in the pastoral lease, it is necessary to have an understanding as to what property rights are held by each party and what benefits those parties obtain from their ownership of those rights. Guidance on the principles involved and the relationship between the lessor and lessee can be taken from the High Court in the *Associated Taverns* case:

"we consider that a lease under the Land Act is essentially an agreement between two parties to carry on a business, of which the Crown in this case provides the land (for which it receives rent) and the company provides the capital (for which it receives the income less the rent).

20.4. The value of the respective interests arising out of pastoral lease contracts in pure land economic terms should be able to be assessed based on the present value of the net cash flow benefits that each party receives from their interest in the property. In addition, there are the benefits of perpetually renewable occupation of the land and that possession adding value including enjoyment of the mere possession and access to the "X" factors associated with the land.

20.5. As previously discussed, the Crown in effect gave away any potential to access and thus realise the value for SIVs or "X" factor premiums when it gave the lessee a perpetual right of renewal. Continuing possession through occupation is assured by virtue of the

provisions of s 4 CPLA. This requires a rental to be fixed in s 8 CPLA based on the rental value of the land (LEI) for those "exclusive right of pasturage over the land" with no right to the soil (in or on which those SIVs are fixed), and under the provisions of s 131 (1) (ii) LA which requires that equity must be established between the two parties in relation to the contract rental. In this respect, therefore, a pastoral lease differs from a lease in other property sectors that can be valued based on the respective parties' cash flow benefits.

20.6. In theory, the Crown as lessor obtains “momentary” possession of the land at each 33-year renewal, it instantaneously, is bound to grant another 33-year lease term to the lessee if the lessee has exercised their rights of renewal, and so on, in perpetuity.

20.7. The parties to tenure review have recognised this situation and have adopted a commercial and pragmatic approach to assessing the respective interests in the land. In the first stage, an assessment is made of the lessee’s interest in the property, which is notionally sold to the Commissioner of Crown Land (CCL) and then merges with the Crown’s interest to become “freehold”. The CCL then notionally owns the unencumbered land. Then the CCL “sells” part of the land back to the lessee as freehold (fee simple land) and transfers the balance to the DOC conservation estate. This is the legal process taking place.

20.8. To fully understand this process it is helpful to consider the parties to the tenure review transactions in sequence:

1. The CCL as the Lessor and resumptive Crown owner
2. DOC as a nominal purchaser
3. The lessee as purchaser of the freehold balance

20.9. This tri-partite approach is presently being partially applied to overcome the problem of assessing the SIV and/or “X" factor component of the property that would have to be separately assessed if an approach that strictly follows the requirement to assess “the equality of exchange” under s 34 (3) (a) and s 46 (3) (a) CPLA. This requires an apportionment of the net exchange of interest into the respective lessee’s and lessor’s interests. Currently this latter calculation is being carried out after sequence 1 and 2 above have been negotiated.

20.10. This approach appears to be working and providing an apportionment of the total value of the property for settlement of the exchange of interests. To support that approach we reviewed valuation assessments made on one property where upon

agreement being reached (and before transfer was complete) the freeholded estate has been put up for sale on the open market. The freehold property has sold some months after the Tenure Review agreement at a figure very close to the confidential assessments made during the Tenure Review negotiation. This test in the market confirms the valuations used, in this instance, and should engender confidence in the valuation process being used.

20.11. As previously noted our major concern relates to the levels of rental being proposed for these properties and the consequential effect that an incorrect rental has in valuing the existing and proposed cash flow arising from those rentals. We note that the lessor's interest in pastoral leases does and will continue to represent only a small but varying component of the total value of the property, depending on the ratio of the LEI and Capital Value of the land and the rental term to run to the next review..

20.12. Without transactional evidence of LEI lessor's interest sales valuations for Tenure Review have no option other than to be based on a discounted cash flow (DCF) approach to valuing the lessor's interest. The lessee's interest however can be relatively easily assessed using comparable transactional evidence which in a number of instances correctly includes the market value of the rights in perpetuity to the SIVs or other non-pastoral values that are being identified for this type of property.

20.13. The approach taken by the valuers as discussed above in the first instance values the lessee's interest (as a *before* value), the land going back to the lessee as freehold (the lessee's *after* value), the land going to DOC as freehold (Crown's *after* value) and the adopted process, to attempt to comply with the CPLA, then assesses the net cost of the exchange of interests between the parties,

20.14. The lessor's interest is then calculated using a DCF type technique, based on the present value of the Crown's cash flow consisting of the existing contract rental until the next review, then the estimated future rentals based on an assumed future escalation in the LEI and a series of future tranches of 11 years reviews discounted to present value. Deducted from the sum of these present values is an allowance for a capitalised cost of management. The net figure is taken as the lessor's interest.

20.15. The value of that lessor's interest is then apportioned between the land going to the lessee and land going to DOC based on a pro-rata apportionment the assessed current market land values (not LEIs) of the respective areas being acquired.

20.16. This apportioned Lessor's interest is built into the exchange of interests from which an equalisation payment is made by one of the parties to the other based on this value differential. However, a separate lessee's interest is not independently assessed and treated as purely a residual, by deducting the lessor's interest from the freehold value. Such a "residual" methodology is contrary to good valuation practice, assuming that "the sum of the parts equals the whole" which when applied to property interests and fractional interests in particular is erroneous. The LA (1970 Amendment) makes a statutory construct that the sum of the two interests must add up to the Capital Value, for freeholding of farm and urban Crown perpetually renewable leases in s 122 LA. This was ensured by the definition of the method of calculation of the lessee's "goodwill" to be deducted from the Capital Value to determine the freeholding price. However, the latter was not a lessor's interest. That of the LA does not apply to Tenure Review under the CPLA[19].

20.17. It is necessary to value each of the separate "ownership" interests separately. This may result in the sum of the interests being more or less than the total freehold value before the exchange takes place. In addition, new additional interests are created during the tenure review that have either positive or negative effects on the respective interests and resulting separate freehold values from the easements, concessions, marginal strips, access, covenants and different configurations and scale of the lands involved. In effect both a subdivision of the physical land and the respective interests are concurrently being carried out. Therefore, the sum of the *before* interests (lessor's and lessee's interests) will in most cases be expected to be different from the sum of the *after* freehold subdivided land interests of the freeholder's and the Crown's (DOC) conservation estate.

20.18. It appears from our enquiries, and copies of the Excel spreadsheet models used that whilst the two LINZ valuation contractors use similar methods they are not the same. One contractor allows for the cost of management (by a form of capitalisation using a "net of inflation" rate (6%) for which there is no explanation) and the other contractor does not make any allowance for lessor's costs. Both contractors use a questionable form of Discounted Cash Flow (DCF) valuation methodology that calculates the present values

[19] Even if it did, it would require a separate valuation of both interests and the apportionment of the freehold value in proportion to the sums of those separate interests the land value. The only other Statutory precedent was the basis used under the (repealed) Section 45 of the Valuation of land Act 1951 where the assessment of the lessor's and lessee's interests in the land for land tax assessment (or other purposes) was deemed to add up to the Land Value – to ensure equity of the apportionment of land tax related to the whole property. The method of calculation defined in that section ensured that was the result as both the rental rate and the discount rate applied to both the lessor's and lessee's cash flow was the same and there was further no allowance for the value of any right of renewal.

(PVs) of rentals. One calculates these cash flows annually in arrears, whereas they are payable six-monthly in advance. Both allow for the 0.25% discount for prompt payments. Neither allow for the cash flows to be received in perpetuity but only over a large number of rental tranches (up to 13 periods of 11 years) from the next review. Both use a pre-tax discount rate of 8% p.a. or 8.25% p.a. including an allowance of 2% p.a. or 2.5% p.a. respectively for land inflation. In this context inflation is misnamed as it should be "growth" and not to be confused with general inflation which is built into discount rates.

20.19. By the residual methodology used, this implies that the discount rate for pastoral lessees' cost of capital is the same 8% p.a. or 8.25% p.a. for discounting the present cost of rental benefits or future rentals. We consider the latter implied assumption to be in error. A pastoral lessee has increased risk compared with a passive lessor for perpetually renewable leased land and the discount rate should be higher to recognise that risk. The lessor has a very high security that offers protection of the future rental cash flows and has very low risk of loss.

20.20. The Crown appointed negotiators, when interviewed, could not provide any support for the 8% p.a. or 8.25% p.a. discount rates being adopted. There appears to be no market justification used for the discount rates and we were informed that it was given by LINZ and that the valuers were instructed to use that rate. This is unsatisfactory and the discount rates used needs to be justified if fair outcomes are to result.

20.21. The application of this methodology will not achieve an accurate valuation of the lessor's and thus the lessee's interests being exchanged. The degree of error may not be material so we cannot be certain that the outcomes are unfair for the Crown and/or the lessees in this respect. We have reworked a sample of these calculations on a more precise and defensible basis. This indicates that there are some offsetting errors involved but the effect is that consistently the lessee's interests could be overvalued and the lessor's interest understated. Each lease will differ, depending on the lease terms. In terms of the total *before* and *after* values involved the differences are probably immaterial, but in terms of the exchange in interests values the differences could be significant. We have had insufficient time and access to a enough tenure review valuation reports (examining only a sample of completed tenure reviews) to be confident to come to a firm conclusion as to the current lessee's and lessor's interest valuation methodology providing *accurate and fair outcomes.*

20.22. However, as we are required to consider whether a change in methodology is required, we recommend that, if continuing the current process, the LINZ valuers use a more defensible and accurate method of calculation of both the lessor's and lessee's interests when calculating the exchange of interests. This will involve using: correct valuation models that calculate the rental on the basis of actual rental payment frequency and timing; adequately allowing for management costs to the lessors; a differential discount rate that reflects the difference in risk and return between the lessor's; lessee's required rates of return; and proper adjustment for these different valuations in the exchange of interests calculation.

20.23. As indicated by LINZ valuation contractors during interviews, an examination of a sample of Tenure Reviews completed prior to the end of 2004 confirms that valuations were made of both the lessor's and lessee's interests in both the *before* values and *after* values. These were used in calculating the exchange of values up to that time. This general methodology is more compliant with the requirements of the CPLA, i.e. to provide an exchange of interests, than the methodology adopted after mid 2004.

The equality of exchange

"The difference between the Crown's payment and the Leaseholder's payment results in a financial settlement in favour of one party or the other.
The net result of Tenure Review is the same as what would happen if the Crown purchased the lease on the open market and then sold part of the land back to the landholder as freehold. This net result is the equality of exchange"

LINZ Information Fact Sheet

20.24. A change in methodology was adopted after mid 2003 as a result of an inquiry carried out by Mr John Larmer that resulted from three major reports[20] reviewing the valuation methodology over the period 2000 to 2003. A workshop held in 2003 involving LINZ staff and contracted valuation providers agreed to use a common methodology that was intended to improve the transparency in the valuation process. A template was agreed for the Tenure Review valuations which started from a less complicated *before* and *after* basis, being more understandable to the parties involved.

20.25. This changed methodology is in effect a short-cut method, based not dissimilarly to valuations undertaken under the provisions of the Public Works Act 1981 and Amendments where by a *before* and *after* valuation methodology is used for partial takings of land for public works.

[20] See – APPENDIX 4 – *Larmer's Valuation Methodology Reports* (2000, 2001, 2003)

20.26. This valuation approach involves assessing the market value of the pastoral lease for which market sales evidence is used. In general these valuations are relatively straight forward though differences in valuation opinion and sales analyses do give rise to differences of value between the LINZ valuation contractors and pastoral lessee's ideas of value and that of their valuation consultants.

20.27. In a number of cases the pastoral lessees have not sought independent valuation advice but negotiate either directly or by using experienced tenure review negotiators as intermediaries. In a few cases we have investigated, a copy of the lessee's valuer's report is on the LINZ Tenure Review records. In other cases, lessees may have commissioned a valuation report but it is not disclosed in negotiations. In these cases there is no evidence on file of differences in either valuations or methodologies. In a number of cases the valuations carried out by LINZ valuation contractors have been relied on by both LINZ and lessees or their negotiators. In a number of cases the valuation has not been the major issue but negotiations have concentrated on other issues such as boundaries, concessions, easements, and covenants to remain on the land to be freeholded.

20.28. The methodology being used by LINZ contractors (and lessee's valuers we have talked to or seen reports of) actually does more than the strict requirement under the CPLA. The respective interests of the lessor and lessee, are not valued as only a *before* and *after* valuation is arrived at based initially on the preliminary proposal and then revised after the substantive proposal is agreed upon.

20.29. The difference between these two (*before* and *after*) values is the net exchange value. Basically that is all that is required and follows what notionally takes place, as discussed earlier. In effect the Crown buys back the lessee's interest in the pastoral lease. Then the Crown as freehold owner subdivides the land between that required to go into the DOC conservation estate and into marginal strips, with the residue land sold to the previous lessee subject to any negotiated covenants, easements, and concessions etc. The fact that this is a contemporaneous transaction on settlement means that the *difference* between that leasehold property sold to the Crown and that freehold property purchased back from the Crown is the *net exchange value* – i.e. the money changing hands – either from the freeholder to the Crown or vice-versa. In some case we have seen the net exchange is zero.

20.30. The process taking place is an attempt to then apportion that net exchange of interests to achieve *three* things:

Firstly; to calculate the change in asset values in the Crown's books for the requirements of the Public Finance Act. The lessor's interest is apportioned between that relating to the land previously held under the pastoral lease and that going into the DOC estate offsetting the added cost of new fencing. Then there is an apportionment of the added-value acquired in the previous lessee's improvements that are left on the land (in effect acquired from the lessee). This, together with any added-value and/or detriment to the DOC estate of concessions and easements given to the freehold land acquired are allowed. This exercise is in effect a short-cut accounting calculation to arrive at the net added-value to the Crown's residual asset.

Secondly; offsetting the above is a calculation of the value of the lessor's interest that is apportioned to that land previously held under the pastoral lease. This, together with a share of the fencing cost along the boundary that is transferred to the freehold owner (that the Crown pays) for is made. Similarly the lessor's interest is apportioned to that land retained by the Crown and adjusted for added-value and/or detriment to the residual value of the land being transferred to the DOC conservation estate. This exercise is in effect a short-cut accounting calculation to arrive at the net added-value of the freeholder's residual asset including the change in tenure from leasehold to freehold. If this sounds complicated – it is.

Thirdly, to create two GST invoices for the exchange of interests to equate to the net exchange of interest. This is based on the apportioned lessee's interest value of the leasehold property on *the assumption that only that ex leasehold land is taken back by the Crown; in exchange for the lessor's interest apportioned to the land freeholded on the assumption that only that ex-leasehold land is acquired from the Crown.*

20.31. The above calculations are very complicated and done on what the LINZ tenure review managers call a "link sheet." This does in a pragmatic way achieve those objectives and provides a methodology that ostensibly can be followed by the lessee. One can see why it is done, and essentially is required by the CPLA, but is considered to be unnecessarily complicated.

20.32. The underlying weakness in the whole process tracks back to the necessity to have to use the contract rental and assumed future rent review rentals to assess the lessor's interest. If those contract and future rentals - as we believe they are - do not properly

reflect a fair market value for the pasturage and in most instances may be too high, it follows then that the lessor's interest as calculated in the process discussed above will also be too high and the Crown will be being overpaid for its lessor's interest in the properties. If the discount rate used is too low that would add to the over-valuation of the lessor's interest used.

20.33. As set out in our conclusions and recommendation later in this report, we believe that the CPLA needs to be amended to give effect to and simply reflect the reality of the two transactions – the purchase of the whole pastoral leasehold interest by the Crown (the *before* value); and the sale of the residual freehold land to the freeholder or ex-lessee (the *after* value). This would simplify the transaction and the GST should follow that transaction and be paid on each of the two transactions. GST would offset as both input and output payments in both the leaseholder's (becoming the freeholders accounts) – with the counter transaction for the Crown as lessor in the resumption of the freehold.

20.34. How the Crown accounts for this should be simple – the added-value of the Crown's asset is offset by the sale of the freehold, less the costs (i.e. fencing and the other costs of achieving Tenure Review). The need for the link sheet and the complex lessor's interest calculation and lessee's interest apportionment would become redundant, providing transparency to the negotiated transactions.

20.35. If the Act is not amended to provide for the short-cut method actually and pragmatically applied, then LINZ needs to ensure consistency and accuracy in the leasehold valuation methodology used by its contractors to value the interests of the lessor and lessee.

21. TENURE REVIEW 'DRIVERS'

21.1. We have sought to understand why there has been such a large uptake by lessees to enter the Tenure Review process.

21.2. Our analysis of pastoral lease tenure (under current CPLA terms) when compared with that of freehold tenure (estate in fee simple) is that, in fundamental terms, there is not a great apparent difference between the two forms of ownership. The market confirms this, as evidenced by sales of both pastoral leases and freehold high country farms. When comparing freehold and leasehold sales, using comparable analysis on a basis of similar land quality, there are only marginal differences in levels of value

21.3. Valuation practice has been to estimate the difference between the freehold and pastoral leasehold as the capitalised cost (or discounted present value) to the lessee of the current and estimated future rentals (future reviews related solely to the LEI). This pragmatic approach may not properly reflect the difference in market values.

21.4. It should be noted that this differential in price between pastoral leasehold and freehold pastoral land is not indicative of the lessor's or Crown's interest. Nor is this differential equivalent to the calculable lessor's interests.

21.5. As discussed above, both forms of tenure, give the landowner the ability to benefit from the increase in transactional value arising from certain non-farming value increases relating to SIVs or "X" factor. Both tenures give the landowners similar property rights in terms of quiet enjoyment of the land. The other points of difference are:

i) The pastoral lease gives the lessee a perpetually renewable right of occupancy, whilst the freehold gives perpetual occupancy. The major difference is that the pastoral lease is subject to an obligation to pay a rental prescribed as a percentage of the LEI reviewable every 11 years with uncertainty as to that future outcome.

ii) The pastoral lease has a restrictive process controlling land use management that requires consents from the lessor which involves DOC as a third party.

iii) The lease review process is prescriptive as to the rental rate and requires subjective assessment in establishing the rental value for the property.

iv) Pastoral leases do not allow land to be subdivided for higher or better use.

v) With the exception of the fourth point noted above, the three points of difference between freehold and pastoral lease tenure should not result in onerous conditions.

21.6. If properly implemented, a good consultative process should result in satisfactory rental reviews and land use conditions.

21.7. When the LA was first established in 1948 and until the 1979 amendment, there was little demand to freehold pastoral land. Occasionally lessees would apply for change in classification to "farm" land to allow a conversion to a Crown renewable lease. This lease could then be freeholded.

21.8. We ascertain the motivation for Tenure Review appears to fall into four categories:

Firstly, a successful review of tenure for some lessees will gain access to land that has a higher and better use than pastoral farming. Such land includes areas suitable for viticulture and/or subdivision for residential, lifestyle or holiday accommodation. Pastoral leases with these potentials are probably small in number. For this reason it is not a major driver for Tenure Review. However such properties are the target of vocal critics of Tenure Review, especially where properties adjoin lakes or have potential for urban expansion. These matters are adequately allowed for in the valuations made of the respective interests.

Secondly, one of the major drivers of Tenure Review is the lessees' fear of ongoing future rental increases. Uninformed publicity and criticisms claim lessees are not paying "market rentals" for pastoral land. These types of claims cause concern amongst lessees particularly when coupled with the restrictive provisions of the CPLA as outlined above. This has led a majority of lessees to the view that they will in future be required to pay rentals that could render their farm business uneconomic. This concern and the potential for further land use constraints exacerbate the uncertainty of their future farming viability.

Thirdly, perceived uncertainties are clearly able to be resolved by obtaining the freehold title for as much of their farm as is possible. Whether or not that outcome provides sufficient freehold land for viable farming or other land use on the residual freehold land – could determine the pastoral lessee's decision to proceed with Tenure Review.

Fourthly, a number of farmers, when questioned on these issues, advise that they would not have entered into Tenure Review had they had confidence in the process of both rental reviews and obtaining discretionary land use consents. These uncertainties

and apprehensions are major drivers for Tenure Review. These concerns could lead to land use outcomes that will not comply with the original objectives of the LA to maintain balanced pastoral and ecological values on these properties.

21.9. In some instances Tenure Review, as currently being implemented under the provisions of the CPLA, is resulting in adverse effects on land uses. This could result in residual freehold farms being uneconomic forcing intensification with possible degradation of the land and environment...

22. LAND AREAS AND BOUNDARIES

22.1. We understand that in the process of Tenure Review the parties endeavour to mutually agree on appropriate subdivisional boundaries for land, which the lessee will acquire as fee simple freehold. The Crown will acquire land from the pastoral lease to be taken into the conservation estate and administered by DOC.

22.2. There is a suspicion by many farming interests that the objectives and criteria used to determine the boundaries is too focused on land which is to be transferred to DOC (Crown). Thus it is contended by some interviewees that the viability and sustainability of the subdivided lands are not fully taken into account in the process.

22.3. There is some concern expressed that there may be instances where the Crown is taking an intransigent approach over boundary issues and that issues raised by lessees are secondary to those proposed by DOC. Furthermore, there does not appear to be any process for a third party mediation to resolve differences.

22.4. Notwithstanding, there have as of 31 October 2005 been 25 substantive proposals accepted by lessees involving a total of 140,767ha of which 71,755ha (51%) has gone to Crown ownership and 69,012 ha (49%) has been freeholded by lessees.

*"***Is pastoral farming vital for tussock grassland protection?**
Our tussock grasslands are modified and depleted, and will continue to be exposed to new and ongoing threats. Past farming practices, particularly repeated burning and overgrazing, have had major impacts.
Despite today's knowledge and understanding, pastoral farming is still perceived as an ongoing villain. To value and protect what remains of our tussock grasslands, conservationists and users must work together, co-operatively and proactively."
Landcare Research, Nov.2000

23. POST TENURE REVIEW MANAGEMENT ISSUES

23.1. In the course of our interviews we have identified some issues that we believe may not allow the objectives of the legislation to be delivered and provide long term value for the Crown. In particular we note:

23.1.1. On two properties, (both of which are relatively well known to two of the members of the review team) we discussed the outcomes of tenure review with the owners. For both of those properties the Crown/DOC was proposing a major fencing programme to define the agreed new boundaries. In both instances the area of land being transferred to the conservation estate has had very limited grazing in recent years. In one property in particular the owner indicated that the cost of fencing would be close to $1,000,000 and that the actual grazing on the area over the past 15 to 20 years had been no more than 200 to 300 sheep per year.

23.1.2. Of greater concern, the proposed boundary fence line is in a very high snow risk zone. It will not only require extraordinarily high maintenance but has the potential to be severely damaged by the first significant snow fall. We question the logic behind a decision to construct such a fence at very high cost, high risk of damage, and so little benefit.

23.1.3. Of equal concern, we understand that the adjoining lessee owner is not proceeding with tenure review. As a consequence, some livestock could move onto the land acquired by the Crown from that adjoining property. It would seem more prudent for the Crown to reserve the right to erect a fence in the future if and when it was deemed to be necessary. A similar situation exists on another high country run in a different location. It would appear that on these two properties alone close to $2,000,000 is to be spent when there may be a more prudent alternative.

23.2. **Land Management Plan**: We have not investigated whether or not DOC has a management plan for its new conservation land. (This would appear to fall outside out TOR). However, in submissions to the review team there was criticism of government for acquiring too much pastoral land and allegedly not having a plan to adequately manage it and to achieve the conservation objectives of the Act.

23.2.1. Some groups of pastoral lessees believe that they can manage this land on a more cost effective, sustainable, and ecological basis than a government department. They also claim that the objectives of protecting the special inherent values of

certain parts of the high country could be met by means of covenants, easements and/or a land management agreement with the lessees.

23.2.2. However, the CPLA at 24 (b) (i) and (ii) makes a distinct preference that the land concerned is restored to full Crown ownership and control. There is a significant opinion that with the best of intentions in the world DOC cannot and will not be able to manage this land on an optimal basis

23.2.3. There is a public perception that DOC's intention, is to fence off and lock up the conservation estate from any form of pastoral use. If this is the case, that approach will satisfy some ecological objectives, but there is well supported alternative evidence that occasional and limited grazing may well better preserve the conservation values of the land. This view is held by practical farming lessees and supported by scientists.

> *"…we are at this stage in history set to have much greater mischief wrought on high country landscapes by peri-urban subdivision and development, second-homing, recreational, and touristic developments …than was ever likely to come from merino wethers.*
> *…we should be using land resource and landscape evaluation and social study of landscape perception and valuation as instruments enabling rural communities of earlier origin along with new arrivals to promote the development of landships for the care of their own landscapes."*
>
> Kevin O'Connor,
> Emeritus Professor of Range Management,
> Lincoln University - High Country Landscape Management Forum, September 2005.

23.2.4. One consideration would be to initiate a more transparent process of land management for pastoral land taken into the conservation estate. For example, land management plans could be formulated and/or approved by a representative group who would ensure that biased and narrowly focused views would not necessarily prevail.

24. MARGINAL STRIPS

24.1. Marginal strips as defined under s 58 LA are created when the 33 year term of any pastoral lease is renewed, or the freehold is transferred at tenure Review under Part 4A of the Conservation Act 1987. We understand that all pastoral leases are now in the second term. The establishment of a new term is deemed to be a disposition of land. Marginal strips along qualifying lakes, rivers and streams will have legally been set aside. We understand that where such disposition has taken place no adjustments have been made to the pastoral lease title areas nor have the marginal strips been transferred from the pastoral lease into the conservation estate.

24.2. We are advised that this problem has been discussed by government agencies who are endeavouring to identify a process whereby marginal strips can be determined and recorded. Many valuations for both rental and tenure reviews will be inaccurate where marginal strips have not been taken into consideration. It would appear that no government agency is actively moving these strips out of pastoral leases or fencing them out of farming. There are significant risks and a contingent liability arising from that action. The exclusion of lakes, river and stream frontages from a lessee's pastoral use would have significant farm management implications on a day to day basis (in terms of stock movement and control, loss of productive land, and restricted access to stock-water). This is an important issue that needs further clarification in relation to both rental and tenure reviews, as it may affect both the lessees and lessor.

25. IMPROVING THE CROWN'S RELATIONSHIP WITH LESSEES AND PROVIDING PUBLIC INFORMATION

25.1. Under the LA, the Land Settlement Board (LSB) was established. The LSB formed a tripartite structure between the Crown as lessor, lessees, and representatives of the public who had an interest in this special class of land.

25.2. Membership of the LSB under s 12 LA included two members to be appointed by the Minister Lands. The LSB endured until its duties were taken over by the CCL following the restructuring of Government agencies in the 1980's.

25.3. The LSB administered the Act and along with pastoral lands field officers provided a liaison between the lessor and lessee, represented the Crown's interest in the land and acted as arbiter in administrative matters.

25.4. Under the current structure some of these duties are carried out by the CCL, and some are delegated. There is no ability to have independent resolution to points of difference relating to Tenure Review, rental reviews (apart from referral to the LVT), and other land administrative matters. Some members of the public may well be less critical of the Government's (Crown) management of pastoral leases if they had some representative access similar to the functions of the LSB.

25.5. One option to be considered may be to establish a "Board" of this nature; this could increase the transparency of the both rental reviews and Tenure Review process. This approach could diffuse public criticism of matters relating to pastoral leases. Likewise, the powers of such a Board could be extended to overview DOC's administration of the increasing conservation estate. This could assist in overcoming the perception that DOC lacks the skills and experience to effectively manage the high country.

25.6. There is ideological conflict between those who claim they are the best conservators or custodians of the High Country, i.e. pastoral lessees, DOC, or various NGOs.

25.7. Concern was expressed by a number of lessees that some (but not all) personnel involved in the regulatory process have little or no understanding of the implications of restricting the farming activity and the consequences of putting farming businesses in unsustainable economic state. In administering this land and the leases thereon, it is important for regulatory staff or the Crown's contractors to possess a good balance of

skills that provide them with the ability to properly assess both ecological, and farm management issues.

Part C – Findings & Recommendations

26. FINDINGS IN RESPECT OF RENTAL REVIEWS

26.1. The Project Objectives in relation to Rental Reviews are:-

In the context of the Government's objectives for the South Island high country (notably a fair financial return to the Crown on its high country assets), report on whether the:

Rent set by legislation accurately and fairly reflects open market levels and the options available if changes need to be made to ensure rent is set at a market level including

a) an assessment of the implications of introducing market rents for pastoral leases and;

b) consideration of the extent to which charges for recreation permits and easements contribute towards the objective of obtaining a fair financial return to the Crown on its high country land assets

26.2. Market Rental Conclusions:

26.2.1. Our principal conclusion is that the process required under existing legislation does not lead to appropriate market rentals for pastoral leases. There is no basis for claims that existing or proposed rentals are being set at a discount to the market. In fact, most recently reviewed rentals are in excess of fair market rentals for pastoral leases.

26.2.2. As there is no open market rental evidence of new lettings of Land Exclusive of Improvements (LEI) it is impossible to directly test for accuracy on a comparative market basis. More importantly, no new lettings of land with tenancies similar to Crown Pastoral Leases actually exist.

26.2.3. It is necessary to assess rental reviews taking account of the:

- nature of the pastoral lease;
- limitations imposed by the conditions of that lease;
- current and forecast financial performance of the pastoral farming industry; and
- requirement for equity between the lessor and lessee.

26.2.4. Having reviewed those issues we unanimously conclude that the basis for establishing the exclusive right only to pasturage as prescribed in s 4 CPLA has an

inherent contradiction with ascertaining the LEI under the provisions of s 131 (1) & (2) LA. The CPLA legislation also provides for additional restrictions on pastoral use. This contradiction will continue to cause significant confusion and inconsistencies in the rental review process and consequently, tenure review outcomes.

26.2.5. A number of recently notified reviewed rentals are clearly in excess of those that could be considered to be a fair and equitable under the provisions of a pastoral lease.

26.2.6. Rentals that are currently being assessed are compromised by the prescriptive nature of the governing legislation. Inevitably, there is heavy reliance on very subjective judgements of the value of land *exclusive of improvements* to which a prescribed rental rate is required to be applied. This process was established in 1979 and is no longer relevant in today's circumstances. The rentals that emerge from this process lack consistency and cannot avoid being influenced by an LEI value that includes non-pastoral components of the property upon which no rent can legally be charged.

26.2.7. The basis for determining rentals for these leases should be changed to ensure that rentals proposed by the Crown fairly reflect the wider rental market for pastoral properties.

26.3. Introducing "market rentals" for pastoral leases

26.3.1. Part 2 (a) of the Project Objectives seeks a review of the implications of introducing market rents for pastoral leases. We interpret this to mean whether or not the prescribed gross annual rental rate of 2.25% should be increased to a level similar to "market" ground rental rates (6% p.a. to 8% p.a.) applying in other property sectors. *There is no basis for, or validity in, applying those "market" rental rates to pastoral leases.*

26.3.2. The concept of LEI is outmoded (as was the concept of unimproved value) because there is no basis for establishing the value based on well-established valuation principles of comparable sales of similar land. As previously noted the same problem arose with unimproved value that was abandoned in favour of a more robust and supportable concept of land value.

26.3.3. We are not recommending that land value should be adopted in this process as that would then require the lessee to be paying rental on the value of some of its own improvements. Alternatively it would require the Crown to enter into a complex and convoluted process to acquire improvements to the land, which currently belong to the lessee.

> *"***Note re fixation of rent**
> *It was generally agreed that it is very difficult to work out any hard and fast system for the fixing of rent of high country. At the same time it was realised that some system is necessary if we are to maintain any degree of uniformity throughout the South Island. The suggested method finally agreed upon unanimously is one which has been in operation with a fair measure of success in Otago, viz. the assessing of rent on a "per ewe" basis. In other words rent has always been related to productive capacity."*
>
> 1950 Memo from CCL, Dunedin, to Head Office L&S, – Quoted in LSB paper (c1979) *Stock limitation as a basis for rental of pastoral leases*.

26.3.4. We do however conclude that the original pastoral occupational licences and pastoral leases up until 1979 adopted the correct approach in principle being a rental based on the pasturage to the property in its LEI state as set out in s 66 of LA and carried through into the CPLA.

26.3.5. To resolve the current problems in rental reviews of pastoral leases, we conclude that an amendment to the CPLA be made to provide, having regard to the limited uses provided for the pasturage only under s 4 CPLA, for assessment of market related rentals to be linked to *base stock carrying capacity* as dollars per annum per stock unit ($p.a./SU), as set out in our recommendations.

26.4. Charges for recreation permits and easements

26.4.1. Part 2 (b) of the Project Objectives seeks a review of the extent to which charges for recreation permits and easements contribute to achieving fair financial returns for the Crown's high country assets. The process available to the Crown has the ability to achieve fair financial returns for those particular assets. We believe that the contribution to the total portfolio from this additional income source is relatively small. We have no evidence to show that either party is being disadvantaged.

26.4.2. There is anecdotal comment that some pastoral lessees are operating schemes on a commercial basis without appropriate permits or easements. However, no substantive evidence was submitted in support of such claims. If they do exist it is a management issue that can be addressed by the lessor.

27. RECOMMENDATIONS FOR CHANGING TO MARKET RENTAL ASSESSMENTS

27.1. We recommend that rentals for pastoral leases should be established based on an agreed livestock carrying capacity for the property in its *Land Exclusive of Improvements* state.

27.2. LEI stock numbers will need to be agreed and converted to present day stock unit equivalents. This will account for productivity factors, e.g. kg wool per sheep and lambing percentage. These *base stock units* would remain constant for future reviews unless some technological or other changes leading to their modification.

27.3. We recommend that a small representative working party be established to review each pastoral lease and agree on base stock units. That agreed figure would become part of the lease documentation and would form the basis for all future rental reviews.

27.4. An annual market rental rate per stock unit ($p.a./SU) would then be applied to the base stock units for each property. That stock unit, rate would be derived from analysis of pastoral land rentals. These rental rates would cover a range of situations recognising such factors as location, soil types, climate, etc. These rental rates would cover a relatively narrow range accounting for the characteristics of individual pastoral leases. They would also reflect the need for LEI land to have minimum infrastructure (fencing, buildings ,stock water. etc.) paid for by the lessee just to operate the farm at the agreed base stock numbers. Accordingly, LEI $p.a./SU rental rates would require *downward* adjustment compared with rates applying to developed properties

27.5. The LEI $p.a./SU rental rates, both average and range would be set *every* year by a representative working party recognising changes in market rentals. These rates would be applied to leases under review in that particular year.

27.6. Market rentals follow the financial performance of pastoral farming. Given the history of these properties there is a market risk in fixing rentals over an eleven year period. Most farming leases have review periods of no more than three years

27.7. We recommend that three (3) year terms be adopted in conjunction with the review process outlined above.

27.8. These LEI $p.a./SU rental rates should increase or decrease to *accurately and fairly reflect open market levels.*

27.9. The Crown's asset in these pastoral leases is only the Lessor's interest that is derived from the present value of net rental returns. The income consists only of lease rentals and concessions, offset by on-going costs of administration. The costs are clearly significant and with some leases can exceed the income streams, resulting in negative lessor's interests.

27.10. The adoption of the above recommendations will not only remove most of the current anomalies, but also dramatically reduce costs of rental reviews and thus provide an improved and fair return on these Crown's assets.

28. FINDINGS IN RESPECT OF TENURE REVIEW

28.1. The Project Objective in relation to Tenure Review is to report on whether: -

The current methodology for valuing lessor and lessee interests in tenure reviews is delivering accurate and fair outcomes and recommend changes to the methodology (if appropriate) to better meet those outcomes.

28.2. Tenure Review Conclusions:

28.3. The current methodology has only been adopted in the past two years. This methodology *firstly* assesses the market value of the lessee's interest in the lease. This interest is "transferred" to the Crown.

28.4. *Secondly*, the freehold value of the subdivided residue land transferred to the leaseholder is valued. The difference is the "equality of exchange" required by s 34 (3) (a) and s 46 (3) (a) CPLA. In effect, this is a *before* and *after* valuation approach well recognised and commonly applied in the wider property market.

28.5. *Additionally*, for the purpose of transferring the balance of the land to go into the conservation estate an asset calculation using a "link sheet" is made. The details of this process are discussed in Section 20 of this report. This calculation is also done for GST accounting purposes.

28.6. This additional step may be unnecessary if our recommendations are adopted.

28.7. This methodology should deliver *accurate and fair outcomes* between landholders and the Crown. However, subsequent negotiations, independent of the valuers, may result in settlements that differ from the equality of exchange based on the valuations. While we cannot judge the *accuracy* of these final outcomes, they are negotiated commercial settlements that are common practice in these types of transactions. The parties are not locked into the process. Either party can withdraw at any time. To that extent, the result implies the outcomes are *fair*.

29. TENURE REVIEW RECOMMENDATIONS

29.1. The governing legislation should be amended to conform to the first two parts of the approach taken by valuers and negotiators

29.2. Such amendments would require:

firstly, a valuation of the lessee's interest in the pastoral lease; and

secondly, a valuation of the residual freehold land to retained by the "lessee".

The GST assessment should be based on these valuations or negotiated transfer prices.

Thirdly, a calculation of the cost of acquiring the subdivided freehold land to be retained by the Crown, for asset purposes if necessary.

29.3. There are secondary issues that we set out for discussion and consideration.

29.3.1. As in any other commercial property transaction, registering the transfer of the pastoral lease interest to the Crown should ensure normal transparency. The sale of the freehold to the landholder should be similarity registered. The transaction prices should be publicly available. We understand that the process of registration is that on tenure review the existing pastoral lease title is cancelled and a new freehold title is issued under s 116 LA. There is therefore no public record of the tenure review transactions, as would be normal if dealing with non-Crown land.

29.3.2. In respect of new boundary fencing we conclude that in some instances the Crown may not be obtaining value for the substantial costs incurred.

29.3.3. A management plan should be publicly available for the land entering into the DOC estate. Such a plan should be formulated with wide public participation.

30. RECOMMENDATIONS FOR IMPROVING RELATIONSHIPS BETWEEN THE CROWN, LESSEES AND THE PUBLIC

30.1. Government should consider setting up a variant of the previous LSB. This would comprise a small group, independently appointed who would have the power to review certain land administrative matters under the CPLA. It would also act as final arbiter on land management disputes and monitor Conservation estate issues.

30.2. Such a group would have skills in farm management and land administration. There would also need to be representation from the public.

Appendixes

APPENDIX 1 – TERMS OF REFERENCE – TENURE REVIEW AND PASTORAL LEASE VALUATION PROJECT PROPOSAL

Project Objectives

In the context of the Government's objectives for the South Island high country (notably a fair financial return to the Crown on its high country assets) report on whether the:

1) the current methodology for valuing lessor and lessee interests in tenure review is delivering accurate and fair outcomes and recommend changes to the methodology (if appropriate) to better meet those outcomes; and.
2) rent set by legislation accurately and fairly reflect open market levels and the options available if changes need to be made to ensure rent is set at a market level including:
    a) an assessment of the implications of introducing market rents for pastoral leases; and
    b) consideration of the extent to which charges for recreation permits and easements contribute towards the objective of obtaining a fair financial return to the Crown on its high country land assets.

Project Team and Responsibilities

Project team

- The work team will comprise the following valuation experts: Donn Armstrong, Rodney Jefferies, and Bob Engelbrecht.
- LINZ will provide suitable people to support the project

Responsibilities

- The valuation team will be responsible for undertaking the analysis and arriving at key findings and conclusions. The bulk of the work will be done by Donn Armstrong and Bob Engelbrecht, and Rodney Jefferies will provide quality assurance using his expertise in leasehold valuation methodology and experience in ground lease rental assessments.
- LINZ's representatives will provide administrative support, project management, and assist with writing up material.

Scope of the Work

The work will focus on those properties owned by the Crown subject to high country pastoral leases from the government, administered by Land Information New Zealand under the Crown Pastoral Land Act 1998. The work undertaken in relation to the valuation issues on these properties will include:

- a comprehensive review of the tenure review methodology used in determining the lessor and lessee interests as used for determining the exchange of interests in tenure review and an investigation of how this methodology is being applied;
- an assessment of all of the rights associated with pastoral leases and how these should be valued in terms of existing pastoral lease agreements;
- an assessment of completed tenure reviews and recent sales of pastoral leases to explain the current precedents and review process and identify the strengths and weaknesses of the process and legislative regime; and
- consultation with Government officials responsible for tenure review and administration of pastoral leases, organisations contracted by LINZ to value tenure reviews and pastoral leases, stakeholder organisations, and lessees.

APPENDIX 2 – 304 PASTORAL LEASES BEFORE TENURE REVIEW

Land District	Area (ha)	Lease Name
Canterbury	8,160	Mt Arrowsmith
	6,236	The Poplars
	2,835	Tenahaun
	20,831	Glynn Wye Station
	18,496	Upper Lake Heron
	8,167	Mt Pember
	10,990	Castle Hill
	5,083	Island Hills
	76,550	St James
	21,424	Mt Algidus
	10,396	Glenthorne
	5,059	Mt Olympus
	2,331	Mt Hutt
	879	Mt Alford
	7,420	Manuka Point
	3,484	Inverary
	1,747	Peak Hill
	9,119	Hakatere
	39,337	Mt White
	9,429	Hossack
	15,860	Eskhead
	5,921	Snowdale
	7,301	Lake Taylor
	3,464	Mt Oakden
	4,284	The Lakes
	12,181	Clent Hills
	10,001	Glenhope
	1,313	Ben More
	9,535	Winterslow
	2,040	Cora Lynn
	5,747	Barrosa
	2,070	Woodstock
	10,898	Glenfalloch
	3,304	Brooksdale
	7,810	Double Hill
	4,800	Glenariffe
	257	Bush Spurs
	7,012	Glenrock
	9,192	Redcliffe
	13,575	Erewhon
	9,692	Mt Potts

Land District	Area (ha)	Lease Name
Canterbury (Cont'd)	18,823	Glenmore Station
	2,136	Lilybank Station
	7,457	Mt Dalgety
	875	The Gorge
	5,990	Curraghmore
	4,403	Glentanner
	31,800	Glen Lyon
	8,610	The Wolds
	6,203	Mt Gerald
	4,244	Clayton
	13,777	Dry Creek
	7,632	Sawdon
	9,767	Irishman Creek
	14,493	Godley Peaks
	5,670	Simons Pass
	9,359	Balmoral
	16,057	The Grampians
	11,190	Te Akatarawa
	3,234	Shenley
	1,686	Cloudy Peaks
	2,893	Stoneleigh
	9,435	Blue Mountain
	8,489	Maryburn
	10,720	Grays Hills
	2,561	Ferintosh
	10,780	Mt Hay
	6,426	Simons Hill
	13,610	Ben McLeod
	2,840	Wairua Downs
	26,115	Mesopotamia
	9,937	Lochaber
	1,836	Rata Peaks
	19,320	Waitangi
	2,453	Mt Cecil
	1,886	Mt Studholme
	510	Scotsburn
	2,688	Hunter Hills
	3,894	Glenrock
	2,003	Bauchops Hill
	9,567	Richmond
	1,656	Airies
	1,246	Manahune
	7,559	Rhoboro Downs

Land District	Area (ha)	Lease Name
Canterbury (Cont'd)	1,816	Mt Nimrod
	1,495	Grange Hill
	5,927	Bendrose
	5,840	Streamlands
	791	Chetwynd
	1,141	Silver Hill
	6,860	Huxley Gorge
	1,098	West Hills
	2,619	Rollesby
	871	Three Springs
	3,256	Stew Point
	3,795	Kaiwarua
	7,640	Stony Creek
	7,942	Black Forest
	7,521	Kirkliston
	7,186	Holbrook
	15,216	Braemar
	5,706	Ben Ohau
	2,463	Mt Cook
	2,457	Invercroy
	2,084	Caberfeidh
	1,882	Waikari Hills
	2,870	Mt Peel
	7,042	Huxley Gorge
	2,102	Asheridge
	188	Omahau Downs
	2,392	Orchard Estate
	2,299	Omahau Hill
Total of 112 Canterbury Leases	**868,559**	
Westland	1,376	Lower Cascade
	1,214	Cascade
Total of 2 Westland Leases	**2,590**	
Nelson/Marlborough	17,920	Muzzle Station
	9,316	Cloudy Range
	6,880	Awapiri Station
	2,602	Compensation Run
	2,083	Raglan Run
	28,128	Muller Station
	3,218	Middle Hill Station
	2,346	Ramshead Run
	744	Rainbow Station

Land District	Area (ha)	Lease Name
Nelson/Marlborough (Cont'd)	3,172	Blairich
	7,675	Camden
	1,858	The Jordan
	8,154	Upcot Station
	11,420	Middlehurst
	5,337	Rainbow Station
Total of 15 Nelson/Marlborough Leases	**110,853**	
Otago	7,177	Hukarere Station
	12,352	Dunstan Downs
	15,058	Longslip Station
	6,224	The Dasher
	7,134	Mt Dasher
	817	Shingley Creek
	2,700	Deep Creek
	7,021	Hawksburn Station
	5,254	Earnslaw Station
	6,281	Branch Creek
	2,097	Geordie Hills
	1,703	Long Gully
	5,068	Dunstan Burn
	3,144	Cambrian Hills
	9,998	Mt Burke Station
	2,640	Eweburn
	23,783	Birchwood
	5,472	The Burgan
	2,919	Cairnhill
	7,935	Temple Peak Station
	2,293	Gorge Creek
	1,454	The Forks
	4,256	Cloudy Peak
	15,496	Mt Creighton Station
	12,844	Aviemore Station
	9,216	Mt St Bathans
	1,123	Coal Creek Station
	5,613	Gem Lake
	3,743	Crown Rock Station
	3,466	The Homestead
	4,899	The Knobbies
	7,800	Glen Dene Station
	1,992	The Herrons
	3,490	Patearoa Syndicate
	8,579	Glencoe Station

Land District	Area (ha)	Lease Name
Otago (Cont'd)	9,648	Rugged Ridges
	16,830	Motatapu Station
	23,707	Dingleburn Station
	1,038	Emerald Hills
	2,582	Dome Hills Station
	2,456	Leaning Rock
	1,068	The Beeches I
	1,590	Riverslea
	22,763	Hunter Valley Station
	11,275	Galloway Station
	12,355	Braeside
	3,341	Long Acre
	3,522	Shirlmar
	2,667	Merivale
	22,211	Coronet Peak
	4,173	Castle Dent
	6,586	Kyeburn Station
	7,861	Twinburn
	5,399	Ben Ledi
	5,376	Dunstan Peaks
	6,674	Glen Nevis
	7,163	West Wanaka Station
	3,533	Twin Peaks
	2,297	Bellamore
	4,825	Killermont
	6,970	Berwen Station
	3,045	Birdwood
	2,206	The Beeches II
	12,391	Cluden Station
	1,133	Waipiata Syndicate
	5,462	Forest Range
	9,048	Breast Hill
	3,318	Ahuriri Downs
	3,919	Ben Dhu Station
	11,058	Loch Linnhe
	9,677	Mt Aspiring Station
	4,432	Craigroy
	4,813	Kawarau Station
	5,132	Timburn Station
	14,533	Ben Nevis
	1,740	Mt Benger
	7,290	Ribbonwood
	4,280	Pisgah Downs Limited
	8,300	Ben Avon

Land District	Area (ha)	Lease Name
Otago (Cont'd)	3,735	Robrosa
	1,825	The Larches
	5,814	Lowburn Valley
	5,084	Eastburn
	2,496	Sunny Peaks
	2,084	Longlands Station
	4,831	Dome Hills II
	2,775	Obelisk
	4,511	Balmoral
	6,001	Waitiri Station
	3,800	Mt Pisa
	5,101	Mt Pisa I
	19,753	Minaret Station
	2,845	Stonehurst
	2,443	Kelvin Grove
	3,982	Mt Alexander
	11,327	Lake Hawea
	112	Silverbirch Station
	7,966	Dalrachney
	4,998	Shortlands Station
	11,942	Wyuna Station
	745	Grafton Hills
	12,780	Otematata Station
	12,787	Otematata Station
	3,096	Carrickmore
	1,019	Mt Hope
	2,185	Clover Flats
	3,554	Rostriever
	2,860	Bog Roy
	18,813	Rees Valley Station
	22,335	The Branches
	3,590	Moa Hills
	1,594	Sunset Farm
	11,931	Mt Albert Station
	2,339	Little Mt Ida
	3,602	Matakanui Station
	1,481	The Wandle
	8,478	Michael Peak
	1,821	Shag Valley Station
	3,133	Styx Run
	7,414	Quailburn
	272	Gorge Farm
	7,902	Mt Soho Station
	5,600	Mt Stalker

Land District	Area (ha)	Lease Name
Otago (Cont'd)	7,917	Otamatapaio
	2,042	Kinross
	1,975	Mt Grand
	1,797	Sandy Point
	6,290	Matukituki
	4,585	Cattle Flat
	5,281	Mt Difficulty
	10,823	Little Valley
	2,211	Caithness
	8,670	Mt Campbell
	9,250	Carrick Station
	14,198	Morven Hills
	2,360	Moutere Station
	3,278	Happy Valley
	21,137	Beaumont Station
	1,510	Islay Downs
	3,535	Glenfoyle
	2,233	Nine Mile Station
	1,900	Glencoe
	3,950	Bargour
	8,781	Omarama Station
	11,356	Matangi
	5,068	Riverside
	4,257	Whitecoomb
	982	Cambrian
	4,225	Lauder Station
	530	Obelisk Creek
	921	Courthill
	3,094	Glendhu Station
	4,556	Alphaburn
	3,357	Two Mile
	2,942	Home Hills
Total of 155 Otago Leases	**948,497**	
Southland	50,988	Glenaray Station
	13,356	Cecil Peak Station
	3,500	Waterloo Station
	11,510	Whitecomb
	5,240	Glenlapa
	3,278	Ardross Station
	16,734	Halfway Bay Station
	5,672	Kingston Station
	5,537	Lorne Peak
	1,563	Glenfellan

Land District	Area (ha)	Lease Name
Southland (Cont'd)	36,129	Mt Nicholas Station
	1,165	The Jollies
	13,780	Argyle Station
	4,165	Greenvale
	4,545	Allandale
	3,263	Cattle Flat
	33,184	Nokomai Station
	3,433	Mt Prospect
	7,851	Mataura Valley
	3,300	Beaumont Station
Total of 20 Southland Leases	**228,193**	
TOTAL of 304 Leases	**2,158,692**	

APPENDIX 3 – LIST OF INTERVIEWEES

Ministerial Senior Advisor
John Blincoe – Senior Advisor to Minister for Land Information

Commissioner of Crown Lands
David Gullen

LINZ Executive
Warwick Quinn
Brendan Boyle
Kevin Kelly
Brian Usherwood
Rachel Petrus

Department of Conservation
Hugh Logan – Director Department of Conservation
Allan McKenzie – Nature Heritage Trust
Jeff Connell – Regional Conservator Otago
Mike Clare – Field Officer, Christchurch

Crown Property Management
Paul Jackson – Manager Crown Property Management
Rebecca Gillespie – Portfolio Manager

Linz Regulatory
Warwick Quinn – General Manager.

Registered Valuers Contractors to LINZ
Allan Bilborough – Registered Valuer DTZ
Kerry Keenan – Registered Valuer DTZ
Ken Taylor – Registered Valuer DTZ
Barry Dench – Registered Valuer QV
Ray Ward-Smith – Registered Valuer DTZ
John Larmer – Registered valuer Consultant adviser to LINZ
Michael Mossman – Registered Valuer
Dick Davison – Registered Valuer

Registered Valuers acting for Lessees
Tom Marks – Valuer for Lessees and adviser to High Country Accord
Paul Mills – Valuer for Lessees and adviser to High Country Accord
Bruce Halliburton – Valuer for Lessees Registered Valuers
Ranald Gordon – Registered Valuer, Staples Rodway, Hawera
Bill Harrington – Registered Valuer – Valuation Assessor to the High Court
Alex Laing – Registered Valuer – Landward Management Ltd

High Country Committee of Federated Farmers
Ben Todhunter – Chairman
Peter Patterson – Vice Chairman
Don Aubrey – Vice Chairman
Geoffrey Thompson
Bob Douglas – Policy Support HC Federated farmers

High Country Accord

Ben Todhunter – Co Chairman
Rodney Patterson – Adviser to the HCA
Geoffrey Thompson – Co Chairman
Russel Emmerson
Kit Mowat – Legal Adviser

High Country Trustees

Val Waldron
Peter Hore
Guy Mead

Fish and Game New Zealand (Otago)

Niall Watson
John Barlow
John Hollows

Other Interviewees

Grant McFadden – ex MAF
Glen Greer – Agriculture and Economics Research Unit – Lincoln University)
Don Ross – NZ Landcare Trust
Ian McNabb – Property Manager from Ngai Tahu.
Dr Hugh Barr – Council of Outdoor Recreation of N. Z. (CORANZ) & N. Z. Deerstalkers Assn
John Crone – N. Z. Deerstalkers Assn
Malcolm Parker – Crown Law Office Wellington
Ray Macleod – Landward Management Ltd
Prof Kevin O'Connor – Past director of Tussock Grasslands and Mountain lands Institute

Royal Forest and Bird Protection Society

Eugenie Sage – Regional Field Officer Royal Forest and Bird Protection Society, Canterbury.
Sue Maturin – Forest and Bird Protection Society Otago

Lessees Interviewed

- Jim Murray – Glenmore
- Brian Beattie – Dry Creek
- Justin Wills – Irishman Creek
- John Murray – The Wolds
- Rob Allen – Sawdon
- Michael Guerin – Mt Dalgety
- Alistair Munro – Airies
- Michael Burtscher – Mt Gerald
- Oskar Rieder – Richmond
- Duncan and Hamish MacKenzie – Braemar
- Tim and Geva Innes – Dunstan Downs
- Rob Glover – Godley Peaks
- Ian Morrison – Silver Hill
- Gerry Eckhoff & son David – Mt Benger Station
- John Acland – Mt Peel
- Bill Shaw and, Gerald Fitzgerald – Mt Creighton Station Limited

Lessees Interviewed (Cont'd)

- Murray Hawke & Jeanette McLennon – Mt Alford Station
- Andrew Simpson – Balmoral Station
- Alastair Ensor – Glenariffe Station, and Tenure Review Consultant
- Gerry McSweeney – Castle Hill Station Nature Heritage Fund. Royal Forest and Bird Protection Society of N Z
- Jenny Sanders – Little Valley Station
- Chas Todhunter – Glenfalloch Station
- Rick King – Middle Hill Station
- Mark Urquhurt – Grays Hills Station

APPENDIX 4 – PASTORAL LEASE LITERATURE REVIEW MATERIAL

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Walker v CCL (1992) LVCB 959

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Crown Pastoral Land Tenure Review, Economic Analysis, Office of Minister of Land, (undated early papers)

Crown Pastoral Land Tenure Review, Proposed Amendments to the Land Act 1948, Office of Minister of Land, (undated early papers)

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Demographic Profile of the Pastoral Lease Population (South Island High Country), MAF, 2003, November 2000

Department of Conservation's approach to Tenure Review, November 2003

Department of Conservation's Peer Review of Lincoln University's "Economic benefits and costs of freehold versus crown ownership of high natural value land with economic (or productive) values" report – by Geoff Butcher. Plus other information supplied by DOC – 25 October 2005

Economic benefits and costs of freehold versus crown ownership of high natural value land with economic (or productive) values – Lincoln University, Date: 12 April 2005

Economics benefits and cost of freehold versus Crown ownership of high natural value land with economic (or productive) values, Report prepared for High Country Accord by Lincoln University April 2005,

Effectiveness of the Government's Strategy for Achieving its Goals for the High Country, Hyndman M, April 2004

Fixation of Rent for Pastoral Leases, A series of Papers Compiled by the High Country Accord and the South Island High Country Committee, April 2005.

Freedom of the Hills – Unlocking High Country Recreation Federated Mountain Clubs, September 2003

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Ground Lessor's Interests Investment Yield: An Empirical Study, Jefferies R L, NZVJ, Paper Presented to the PRRES Conference, Palmerston North, Jan 1997

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Guidance Notes for Peer Reviewers, LINZ, March 2005

Instructions to Undertake a Valuation for Tenure Review, LINZ, June 2004

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Land Amendment Act 1970, Maclachlan R J, Director-General of Lands, NZVJ Sept 1971.

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APPENDIX 5 – LETTER FROM CCL TO PASTORAL LESSEES SEPT 1956

Copy of circular sent to lessees, under covering letter from C.C.L., Sept 1956

Head Office
Department of Land and Survey
WELLINGTON

Dear Sirs

South Island High Country – Stock Limitations on Pastoral Runs

As you are aware, in recent years rabbits have been brought under control in most districts, thanks to the intensive operations carried out by Rabbit Boards with the support and guidance of the Rabbit Destruction Council.

As a result, there has been a marked improvement in vegetative cover, and a tendency has been observed in isolated instances for run-holders to increase their stock numbers to cope with this extra feed. The Land Settlement Board is concerned at the possibility of the rabbits that have been destroyed being replaced by sheep to the extent that the grazing intensity is no less severe than it was with heavy rabbit infestation.

The extra cover that is coming on the high country is an asset of inestimable value and it should not be lightly destroyed. Years of light stocking will be necessary before there can be any assurance that the extra cover will be permanent.

This circular letter is designed to enlist your co-operation in seeing that this improvement in cover is maintained and extended.

Runholders are permitted, in terms of their leases, to carry a specified number of sheep which includes a tolerance of 10% above the number on which the rent is based and provision is made for a further increase with the consent of the Commissioner of Crown Lands. Consent has already been given to several applications for such further increases and future applications will be dealt with on their merits. Consent will not, however, be given unless the Pastoral Lands Officer is satisfied that the increased numbers can be carried without any detriment to the continued improvement of the cover.

Some confusion appears to exist as to whether the stock numbers permitted refer to the winter period only or cover the whole year.

In general, the numbers specified in the stock limitation clause refer to capital stock carried through the winter. Summer numbers will fluctuate from year to year, according to varying rates of natural increase and of deaths, but the winter numbers as specified, should not be exceeded in any winter.

Runholders generally now have the benefit of a secure tenure with reasonable rentals closely related to the stock numbers permitted. The Land Settlement Board looks to the runholders to keep faith and adhere to the stock limitations imposed, and wishes it to be widely known that overstocking will be viewed as a serious breach of the conditions of the lease.

If you are in any doubt as to the stock numbers you may carry you should communicate with the Commissioner of Crown Lands or the Pastoral Lands Office who will be very ready to make the position clear.

Yours faithfully,

D.M Craig
Director-General of Lands

APPENDIX 6 – REVIEW TEAM'S RESPONSE TO SUBMISSIONS

Summary of comments made in submissions on the 2006 Preliminary Government Response to Report of the High Country Pastoral Leases Review and Review Team s' Response to Submissions.

ISSUE RAISED OR POINT SUBMITTED	No	REVIEW TEAM 'S COMMENTS References are to Sections of the Interim Report[21], though these sections are now found in this final report under corresponding but different numbered sections (see index)
Rentals based on pasturage		
1.Rents should be based on stock unit / pasturage capacity	21	Agree, the term should be the LEI SU market rate – see Para 22 Interim Report
2.It is inequitable to assess rent for a value that has no pastoral value	10	Agree, ref to S.66 LA and 4 CPLA – see Para 21.2 & 21.3 Interim Report
3.Rental based on amenity values has no relation to returns from pastoral farming	11	Agree, see Para f) Final Report
4.Rent is for pastoral activity only – lessees should not be forced into other activities to pay the rent	3	Agree, lessees only have rights to the pasturage, see Para 9.9 Interim Report and see Para g) iii) Final Report. Lessees have no rights to other activities. They can only be carried out at discretion of CCL, requiring a permits and licences with appropriate market rentals related to that activity – see Para 12 Interim Report
5.LEI should exclude all amenity or intrinsic values that are not related to the pastoral use	1	LEI should be based on terms of the lease for pastoral farming use only, see Paras 8 & 9 Interim Report See later comment re confusion between "amenity" and "intrinsic" (SIVs) values.
6.Govt should waive any review in methodology for pastoral leases that are still used for primary production	1	Intent of submissions is unclear. A uniform basis should apply to all pastoral leases, see Para 8 & 9 Interim Report
7.Rents should **not** be based on original stock unit capacity	4	Original or recorded stock numbers, from which stock units (SUs) may be calculated) provide a guide to which current farm management methodology may be applied. Rentals should be based on agreed SU capacity of LEI see Para 22 Interim Report and Para g) iii) of Final Report

[21] Interim Report - High Country Pastoral Releases Review 2005 http://www.linz.govt.nz/core/crownproperty/highcountry/valuationreview/index.html

Comments about amenity value		
8.Current high amenity value is the result of land management over time, investment in weed control etc by lessees; lessees are good custodians; lessees should not be charged for the amenity they have created.	17	Submitter confuses "amenities" with "on farm improvements". Amenities external to the property will be reflected in the LEI value and therefore the rental. On farm improvements belong to the lessee, and do not form part of the LEI as defined in the Land Act.
9.Increased rent will reduce the resources available for investment in capital assets and pest management, leading to a decline in amenity value and economic return	11	Not if the "increased rent" is a fair market LEI based rental within the terms of the lease
10.Lessees do not control weeds and pests adequately under status quo	2	A generalisation. Lessees have an obligation under the terms of the pastoral lease.
11.Growth of vegetation on land returned to Crown under TR is putting land at risk of fire, weeds and pests.	2	This a Crown "land management" policy issue.
12.Increased rent will lead farmers to run more stock resulting in overgrazing, or engage in other activities that have adverse effects on the environment	4	This is possible, but lessees must comply with the use provisions including limitation on stocking in the terms of the lease.
13. Lessees will/could cease enhancing or degrade SIVs in order to decrease amenity value and therefore minimise rent increase.	6	The submitters appear to be confused. The value of SIVs are largely independent of lessee's activities – if they comply with the terms of the lease and RMA controls – especially the conservation obligations.
14. Lessees should not have to pay rent for amenity values as well as paying for recreation permits.	3	Agreed, these are separate issues. Refer to earlier comment and Interim Report Para 12.
15. Lessees are under pressure to provide an unreasonable level of access to amenities	3	Reasonableness is a matter of opinion. Covenants, easements and permits are negotiated between CCL and lessees and reflect degree of access and thus rentals paid or adjusted accordingly.
16. Amenity values are a negative to pastoral lessees	2	Here, "amenity" values are, again, confused with SIVs. SIVs are defined in the CPLA and form part of the unfettered LEI – but not part of the fettered (restricted) "pastoral use …exclusive of improvements"
17. Questioning inclusion of scenery etc in definition of "amenity" – previously understood to mean access to infrastructure and services	7	Agreed – "Amenity" value relates to extrinsic locational infrastructure and community assets not "intrinsic" values such as SIVs inherent in or on the leased land as defined in the CPLA. See Final Report para f) i).
18. Account should also be taken of reduced/negative amenity value – eg schools closed, community services reduced, Upper Waitaki hydro development, poor roads and services.	6	Agree, see above. These types of community conferred benefits create added-value that are reflected in the LEI.

19. Lessees may increase charges for public access if they are charged rent for amenities.	3	Submitters are confusing issues – see above. Public access is a different and controversial policy issue. LEI assumes the exclusive right of access to the land under the CPLA. Any diminution in that right and negative effect(s) on the pastoral use – should be reflected in any allowance for public easements, covenants or other provisions under the CPLA.
20. Enjoyment of amenities (landscapes) is not exclusive – why should lessees pay when others get it for free?	8	Landscape view is not an amenity, see above. An extrinsic view is an element of unfettered LEI value of pastoral land and is different from the landscape element of exclusive SIVs **in or on the land** and which can only be enjoyed by that lessee's exclusive access (i.e. access to caves, limestone pinnacles, lakes, fishing accesses, hunting grounds, ski slopes, rafting river valleys, mountains). See below.
21. Lessees control access to amenities so should be charged rent for them	1	See above, income from those exclusive access benefits are covered by recreation permits and rentals paid. See Interim Report para 12
22. The Crown paying at or above market rates for purchase of leases sets precedent that amenities do belong to the lessee	1	Again submitter confuses "amenities " with SIVs. In terms of SIVs e agree. See Interim Report paras 6.6 & 14.7, e.g. recent purchase of Michael Peak Station by Crown.
23. Benefit of a rent rise, if done carefully, would be to set a legal precedent for asserting the Crown's rights as owner of amenity values	1	Methodology or process does not set **legal** precedent – latter is sole prerogative of the Courts. Recent reassessment upwards of previously notified (lower) rentals to lessees needs to be tested in the Courts as to validity. See Interim Report para 7.12, 1.16, & 9.8.
24. Amenity values are too subjective / need to be defined	5	See earlier response and Final Report para f) i).
Improved administration and monitoring of lessees' discretionary consents is needed to protect landscape values	1	Agreed. This is an administrative, not a valuation or TR issue. See Interim Report para 25.
25. Economic value of pastoral farming is only a small proportion of value of pastoral leases – economic value of ecosystem services and tourism is now greater than farming	1	This may be true but the lessee only has the right to pasturage and that statutory limitation has to be recognised in the rental assessment. A generalised statement – possibly gratuitous – PLs and their control include the ecosystem. There is debate as to who is best to manage the ecosystem. Tourism activities require permission of the CCL and come under the provisions of separate negotiated licences and agreements – i.e. recreation permits see Interim Report para 12.
26. The opportunities and constraints on land use where there are amenity values (e.g. absence of RMA policies in some areas) need to be taken into account in determining value	1	See earlier comment re "amenity values" / SIVs. This is normal valuation practice in determining LEI and in valuations for TR.

Affordability / viability of high country farming		
27. Land use restrictions should not be eased to address affordability as this could have bad biodiversity/environmental effects	1	Affordability has been discussed in a number of cases relating to ground leases and the common law is quite clear on how this issue is treated. The test is one of which relate to the market for similar types of leases, in this instance leases of land for pastoral purposes. If market rentals are properly based on pastoral lease terms and conditions recognising other restrictions and constraints there should be no issue of affordability.
28. Lessees will cease farm development activities like irrigation because of financial uncertainty	4	Agreed this **may** happen., see Interim Report Paras 7.16, 9.15, 16.9.3.
29. If market rents are charged, lessees will need to diversify, or sell – affordability should not be central criterion for setting rents.	3	Disagree, the statute limits them to pastoral farming. Diversification on most PLs is a myth. Diversification is precluded by the terms of the PL which restricts use to pastoral farming There is confusion over what "market rents" mean. The term properly refers to a rental between a *willing lessor and a willing lessee*. By implication this will be fair and reasonable to both parties and "affordable".
30. Increased rents will adversely affect the viability of high country pastoral leases, and impact on high country communities.	6	This depends on what increase! Excessively high rentals that are not – market related will affect the viability of pastoral leases.
31, Increased rents will affect the viability of the merino wool industry / high country farming	8	Ditto, the effect on the Merino wool industry will be affected as it is the main type of pastoral farming engaged in the HC.
32. High rents will push farmers out, leading to loss of expertise etc	3	Ditto, depends on degree of "highness". "High" is both a matter of opinion and measurement against a market rental and sustainable affordable rental over the 11 year review term of the lease.
33. It is unfair to make lessees apply to govt for rent reduction because of unaffordability	2	If the rents were/are fairly set at market rates then such provisions would not be required. The remissions or deferment provisions of s 138 of the Land Act applies under restricted conditions – not just because rents may be "high" – i.e. "Where any lessee or licensee is unable at any time, by reason of natural disaster, abnormal climatic conditions, stock epidemic, illness of or accident to the lessee or licensee, or other cause sufficient in the opinion of the Board, to pay the rent due"

34. Distinction between potential value and pastoral value needed in setting rental (i.e. two tier valuation – one for rental and one for TR)	5	It is not "two tier" – rather two different valuation bases for different purposes. For **rental** one must follow the requirements, currently of the Land Act and CPLA provisions, for which the review team recommends a change to rental based on stock unit capacity and market rentals – See Section C para 21.3 of Interim Report . For **TR** market valuations of the lessee's interest and the freehold land to be acquired are required – where LEI is not at issue – See Section C para 23.2 of Interim Report.
35. Concessionary rentals are effectively a subsidy to pastoral lessees and inconsistent with govt policy on assistance to agriculture	2	Not true. Pastoral lease rentals, properly set, are not concessionary – nor should they be other than fair rentals in terms of the pastoral use of the land. Such rentals are consistent with Government agricultural policy.
36. If merino farming is not viable at market rents it should not be given special protection	2	The viability of Merino or other pastoral farming does not need "special protection" only fair and reasonable rentals to be assessed (see above)
37. If market rents make farming uneconomic, there could be benefits for conservation	1	Benefits for conservation are best achieved under a PL if market rentals are properly set and reflect the conditions including conservation management covenants and obligations – see above
38. Deferring rent increase until sale is administratively cumbersome and denies Crown the use of that money	1	Not recommended, nor necessary – if fair rentals set under the terms of pastoral use LEIs or market rentals based on SU capacity
39. It is important that the Crown considers affordability if it includes amenities in LEI	1	See above for comment on "amenity value" v SIVs – these issues already covered.
Points about negotiating affordable rents		
40. Lessees should not be given a concessionary rent in return for "good husbandry" as this is already a requirement of the lease	1	Agreed – see above
41, Lessees could exchange exclusive rights or maintain conservation values in return for lower rents	7	These submissions are irrelevant if rentals properly set under the provisions of s 131 of the Land Act 1948 (and Amendments). These provisions require the rental to be ascertained on an equitable basis between lessor and lessee. See Section paras 4.9, 7.3, 7.5, 11.7, 11.17, 15.5, & 21.2.4, of Interim Report.
42. Any lessee's sustainable management plan in exchange for rent concession needs to be transparent and publicly accountable – and monitored.	1	Any introduction of new terms and condition above the significant controls already available to the CCL would need new statutory provisions in the LA and CPLA and the effect reflected in the rental paid. Not considered necessary.

43. The basis for calculating any rent discount is unclear – should be on an individual property basis	1	See earlier in reference to s 138 LA. Special individual circumstances – not general ones need to be present.
44. Public Access – leaseholders could be unwilling to grant freely if it is a bargaining chip	1	Public access requires consent and permission of lessee. Any concessions or public access provisions within the CPLA provisions require a negotiated arrangement, easement, or covenant. Transparency in such dealings is required and rental adjustments may be required to be fair. LINZ proposals for rents including SIV values will potentially cause lessees to revisit traditional attitudes to allow free public assess.
Fair return to the Crown		
45. Govt should consider (compare) financial returns (or taxpayer commitment) from land returned to Crown for conservation.	1	Measurement of the "return" to the Crown of land returned through TR to the Crown's conservation estate is outside the review team's TOR. One measure carried out in the TR process is a valuation of the lessor's interest given up in respect of the land freeholded and the added value (as if freehold) of the land transferred to the DOC estate. See Interim Report Section B esp. paras 15.13 to 15.17
46. The Crown undervalues improvements when calculating LEI	2	The CPLA by virtue s 131 LA requires the value of the improvements to be valued equitably as between the lessor and lessee – see reference earlier (above).
47. Assessment of "fair return" to the Crown should include stewardship of land, pest control etc as well as rent – govt already gets a fair return	3	The value of the return to the Crown was dealt with extensively in the Interim Report Section 1 paras 11 and 12.
48. The normal valuation principle of highest and best does not apply, but rather actual (constrained) use as permitted	1	Agreed, see previous response re affordable rentals for the fettered pastoral use of the land.
49. If the market value of some properties is beyond their farming production capacity, the Crown should gain the benefit of that value	1	The market value of the lessees' interests' in PLs is determined by market forces and the Crown's interest is only the present value of the rentals received along with some potential added-value in TR. (e.g. obtaining increased value for unrestricted use of freehold land sold). The Crown acknowledges this when buying lessee's interest both in the market and in TR.
50. Lessees gain massively from lease capital gains, and so should the Crown	2	See above. Both parties share capital growth consistent with the provisions of the lease

51. The current formula in the legislation, if interpreted correctly, (i.e. including amenity values)will accurately and fairly reflect market values	3	The issue of amenity "value" and SIVs "value" being included in the LEI for rental determination purposes is at the heart of the dispute and requires judicial determination as recommended by the review team The problem appears to be the submitters' interpretation of the statutory formula in the Land Act.
52. The more accurately the rents are set according to the formula in the legislation, the better the Crown's outcomes will be in tenure review	1	See above. The review team's recommendation was to establish fair market rentals. The formula set out in s131 of the LA in the legislation, if it includes SIVs in the LEI, cannot fairly and accurately provide a basis for the rental for the **pasturage use** as provided for under S 66 of the LA and s 4 of the CPLA. In TR the outcomes are set by market valuations carried out by valuers for both lessor and lessee based on market transactions in which the Crown continues to participate itself in setting prices , i.e. Birchwood and Michael Peak Stations
53. The nature of pastoral leasing is changing with pastoral farming no longer the dominant function – rentals should take account of this	1	Pastoral farming is changing with technology and modern farming management practices, but inherently is little different to previous generations. These changes will reflect in increases pastoral land use values and thus rentals made affordable by those changes. There has been no change to the legislated pastoral lease contracts and rentals must reflect the intention of those leases which is to charge rentals for the pasturage only.
Partnership		
54. Importance of partnership relationship between govt and lessees. Deterioration in this relationship.	16	This is required to be recognised in the "valuation for calculation of renewal rent" under S 131 (c)(ii) of the LA requires that "the values shall be ascertained on an equitable basis, having regard to the relationship between lessor and lessee". The central issue "between lessor and lessee" is that the current rental proposals are regarded as being inequitable in that the value of the SIVs are included in the statutory definition of the LEI. Thus rentals so calculated create an inequity between the parties as it does not reflect the pasturage use only as prescribed under S 4 the CPLA and S 66 of the LA. See paras 4.9, 7.3, 11.7, 11.17 & 21.2.4 of the Interim Report.

55. Govt should acknowledge beneficial role lessees have played in the HC, also spiritual and intergenerational attachment to the land, etc	5	See above re relationship between lessor and lessee under the terms of the lease. See also para 9.6, 9.7 & 15.3 of the Interim Report.
56. Lessee bears the risks of pastoral farming whereas Crown risk is small	1	The risks of farming are taken entirely by the lessee. The risks of the Crown are very low. Refer to paras 15.19, 15.22 & 22.6 of the Interim Report.
Breach of contract		
57. Increasing rents to cover amenity values is a breach of contract	19	Again, the submitters confuse "amenity" values and SIVs. Breach of contract needs to be determined by the Courts. Our view is that SIVs cannot be included in the value of the LEI for rental under the current statutory entitlement of lessee to the pasturage only. See paras 7 & 8 of Interim Report.
Tenure review process		
58. It is important to consider what effects rent increases will have on tenure review	2	Fair market rents should have no effect on tenure review. If the proposed Government response results in including "amenity" values (i.e. SIVs) in LEI for the purpose of calculating pastoral use rentals, then that will reduce the values of the lessee's interests and increase the value of the Crowns' interests. Such an outcome will reduce the cost of acquisition of leasehold land returned to the Crown under TR, to the extent that the market reflects the impact of that changed basis and resulting rentals on the respective lessors' and lessees' interest.
59. Changes should not be introduced part way through the tenure review process – those who are penalised by the changes will need compensation.	1	See above. If the Crown are able to achieve the outcome proposed under the law then there will no grounds for compensation. If at the end of a 33 year lease term the lessee exercises their right to surrender the lease the statutory right to receive payment for the improvements value only is payable under S 136 of the LA.
60. Rental increases decrease the value of pastoral leases, and increase the value of freehold.	6	See above. The freehold value is independent of the rental, the lessees' or lessors' interests. The lessee's interest is not affected if rentals are set at a level which reflects a fair market rental. If pastoral lease rentals are set at above "market" levels, then the lessee's interest will decrease.
61. Govt response undermines the lessees' negotiating position in TR	3	This response, in "changing the interpretation of the legislation" will encourage lessees into TR (provided this option is still open to them) to avoid "inequitable" rentals in terms of S131 of the LA.
62. Rent review could change the power dynamic in TR negotiations	1	Agree, in respect of excessive rental outcomes.

63. Rent increases and uncertainty pressure lessees into tenure review	8	Different lessees will react in different ways depending on the increase and individual circumstances.
64. Deferring rents until sale may be a disincentive to enter tenure review	1	Agree, as above; similar issues.
65. Uncertainty will impede the tenure review process	2	Agreed
66. Not applying market rents has a flow on effect on TR valuations	1	Fair market pastoral rents should not adversely affect tenure review valuations.
67. Neither the Armstrong report nor the govt response have considered tenure review valuation methodology even though it was in the TOR	1	The TR valuation methodology is extensively discussed in the Interim Report, in terms of the TOR, see Section B & C The Govt. response only dealt with the rental issue.
68. The value of development rights on pastoral leases needs to be quantified / acknowledged in TR equalisation payments	2	They don't need to be quantified as they should be accounted for in the "before" and "after" valuation assessment. See para 15 Interim Report.
69. Lessees wishing to diversify from pastoral farming e.g. into windfarms or carbon sequestration, should have to go through TR, and not be given permits to do these activities within their pastoral lease	1	Pastoral leases have no provision for non-pastoral activity. Any non-pastoral activity requires the approval of the CCL and a commercial lease, licence or trading concession to be negotiated.
70. It is unlikely that increasing rents will affect relative prices paid by Crown and leaseholder in tenure review	3	This is only true if the rents are fairly set at pastoral market rates
71. If lessees fail to control pests and weeds this should count against their equity in TR	1	It will. Such infestations will be reflected in the value of the lessee's interest.
72. Rationale for and administration of TR needs to be publicly clarified	1	This is a policy matter. This matter is in our Terms of Reference.
73. Deficiencies in the TR process are increasingly polarising the parties involved.	1	No comment.
Legal review		
74. Lessees' only option is to seek a determination about methodology in Court	1	Lessees have rights of appeal to the Courts under the provisions of S 140 of the LA, i.e. to seek judicial interpretation and determination of the rental.
75. Govt should bear the costs of an approved lessee organisation in seeking a judicial interpretation on valuation methodology	2	As above.
76. Any judicial review needs to clearly define development rights and amenity values to avoid the risk of setting a precedent of alienating development rights (v enjoyment rights) via perpetual lease.	1	A judicial review (inter alia) would need to consider the issues relating to the assessment of fair market rentals for the rights to the pasturage, recognising the limitations imposed upon the parties by the lease.
Amend legislation		
77. Govt should amend the Land Act to clarify the rent setting process, define LEI, and take account of changed govt objectives for the high country	2	Agree, see our recommendation in para 21.3.5 & 22 of the Interim Report.
78. Land Act definition of "improvements" (clearing bush, draining swamps) is in conflict with CPLA protection of SIVs. Needs to be amended to cover only buildings, fences etc.	1	This is not correct. The improvements mean all work done to the land and has to properly include both structural and "invisible" improvements, see definition of "Improvements" in S 2 of the LA.
Other comments		

79. Don't allow / do discourage foreign ownership of pastoral leases	3	Policy matter not in our TOR.
80. High country farmers do not tend to use or support high country communities, i.e. local towns and schools are not dependent on lessees	1	In our observation, this not true.
81. Increased tourism in the high country, made necessary by higher rents, will put infrastructure under pressure and flood the tourism market – and therefore be unsustainable	1	First part of submissions is incorrect. Tourism use is unrelated to the pastoral rentals. Tourism use is covered by separate licences or concessions – see S 48 -55 CPLA. Second part of submission irrelevant to our TOR.
82. Objection to DOC attendance at consultation meetings	1	Policy matter not related to TOR.

SUMMARY OF KEY POINTS MADE IN SUBMISSIONS

SUMMARY OF KEY POINTS MADE IN SUBMISSIONS	**COMMENTS**
Lessees points:	**Comments of Review Team**
• Lessee submissions were opposed to the Response and supported the Armstrong report.	• No Comment
• Lessees provided various analyses of the Land Act and CPLA.	• No Comment
Lessees points on implications of the affordability of rent from pastoral income	
Impact on farm management	**Comments of Review Team**
• Increased rent will reduce the farm resources available for investment in capital assets and sustainable land management, jeopardising gains made by past 'good husbandry' activities such as pest and weed management, as well as future activities, thereby leading to a decline in amenity value and economic return from HC farms.	• This will only apply if the rentals are set at non-pastoral land market levels. • See our earlier comments re confusion between "amenity value" and SIVs. • Most SIVs are unaffected by farm management practices.
• Increased rent could lead to running of extra stock, resulting in overgrazing which would undo sustainable land management undertaken over the history of the pastoral lease.	• Stocking limits are controlled by the CCL under the provisions of the lease.
• Lessees have abided by the terms of the lease to provide the required environmental outcomes, which has resulted in the retention and enhancement of the significant inherent values (SIVs) by lessees. The implication is that lessees will decrease these activities to reduce the amenity value.	• The lessees are bound by the provisions of the lease and the RMA, and would be foolish to adopt such an approach. • See our earlier comments re confusion between "amenity value" and SIVs.
• Following the Response, lessees have halted farm development activities e.g. irrigation, due to the uncertainty and the fact that profits will be consumed by the rental increase.	• Uncertainty will remain until the issue is resolved. • The effects are problematic but identifies what is likely to arise in applying increases above pastoral market rentals.

Value of amenity to lessees	**Comments of Review Team**
• Lessees have also had 'amenity values' destroyed/decreased through activity such as hydro-schemes development. Lessees consider that the implication is that the rent will decrease in these cases and lessee compensation will be provided for 'loss of amenity value'.	• Unable to comment • See our earlier comments re confusion between "amenity value" and SIVs.
• A large part of the amenity value on many high country properties is the beautiful views they enjoy. In many cases these views are of other pastoral lease properties. If a rental on amenity values was established it would almost be like a rental on a rental i.e. I'm charged amenity rental to look at the farm across the lake and it's charged amenity rental to look at me. There seems to be a "double dipping" element there.	• See our earlier comments re confusion between "amenity value" and SIVs.
• Lessees cannot pay farm workers lower wages because these workers 'benefit' from the amenity value whilst working on pastoral leases.	• See our earlier comments re confusion between "amenity value" and SIVs.
• The 'adverse amenity' which affects the pastoral activity (and cannot be avoided in many cases) should also be factored into the Response – drought, snows, utility failures, LINZ compliance requirements (that are not required of freeholders), decline over time in community services/resources provided by Government e.g. school closures.	• Such amenity and environmental factors, positive or negative are reflected in the values.
Impact on Public Access	**Comments of Review Team**
• Some owners of pastoral leases also own freehold land. The implication is that present public walkways on this freehold land could potentially be used (or downgraded etc) by these freeholder/pastoral lease holders to trade for a rent reduction.	• This is only an opinion – no comment.
• An exchange of a public walkway/access (on pastoral leases) for rent reduction could also impact on tenure review ie it reduces the lessees bargaining position in tenure review and acts as a disincentive to entering tenure review.	• This concern will not apply if market related pastoral rentals are adopted as recommended by the review team
• Many pastoral leases have marginal strips, public roads, and unformed legal roads for public access, as well as public riverbeds and public airspace above – so the exclusive enjoyment is a myth. The implication is that lessees will be reluctant to provide this public access (e.g. put up barriers, reduce goodwill) if they are rented for 'exclusive enjoyment' which does not actually exist.	• See above.

• Where a lessee permits public access, the valuation methodology must reflect the loss of quiet enjoyment of the amenity value and landscape. Where right of access is not permitted, the valuation should correctly include the amenity and landscape values.	• See our earlier comments re confusion between "amenity value" and SIVs. • Right of access is at discretion of lessee or by formal arrangement.
• If the Government is intending to charge the pastoral lessees for the exclusive use of the amenity values, this may create the necessity to pass this charge on to the public who share these values; or result in the exclusion of such land to the public.	• This concern will not apply if market related pastoral rentals are adopted as recommended by the review team
Impact on SIHC Communities	**Comments of Review Team**
• If market value of high country leases fall, due to unaffordable rent, then this will affect the sustainability of the high country and its communities.	• This concern will not apply if market related pastoral rentals are adopted as recommended by the review team
• Viable healthy high country businesses provide tax returns to the government and downstream benefits beyond the farm gate. They also fund local government with rates far in excess of the services provided to the rural communities by urban based councils.	• Agree, but irrelevant to the TOR.
Impact on Tenure Review	**Comments of Review Team**
• The Response is pressuring lessees into freeholding through tenure review.	• This concern will not apply if market related pastoral rentals are adopted as recommended by the review team
• Support for tighter controls so that overseas buyers don't push up the price of high country farms when freeholded.	• No comment. • This is a policy matter.
• Rental increases will mean that value of pastoral lease land declines relative to the value of the comparable freehold land.	• The value of pastoral land (LEI) is independent of the rentals – the latter is based on the former. • If rentals are increased above pastoral market levels then the lessee's interest in a pastoral lease will be reduced.
• Where pastoralism remains the sole use after tenure review, the cost of freeholding (in tenure review) will mean that freehold pastoral activity becomes uneconomic (i.e. subdivision more likely).	• Once the land is freeholded the owner has more options but has to comply with RMA issues
• Tenure review/ sale of pastoral leases will result in an exodus of pastoral leaseholders and their expertise, an increase in absentee leaseholders and a decline in access compared with that provided by present high country farmers.	• This submission is problematic and speculative.
Public and lessee benefits from Amenity Value	**Comments of Review Team**
• An amenity value cannot be singled out for one property, as it is clearly part of the much larger landscape which is enjoyed by the public as well as the lessee.	• See our earlier comments re confusion between "amenity value" and SIVs.

• Exclusive enjoyment - At present views of pastoral lease properties (and DOC land and freehold land) appear on film sets, paintings, postcards, advertisements, calendars, books, brochures etc. The people promoting these products are generating income from the landscapes at no cost to themselves. It is not equitable to charge lessees for landscape which cannot be used commercially while others commercialise it for free. It is not possible for lessees to charge people for views of pastoral lease from public places and not feasible to catch up with those who may photograph a pastoral lease feature/landscape from a location off pastoral lease property.	• Interesting issue but not an exclusive HC problem – applies also to urban properties. • Not included in our TOR.
• All/Some of the amenity values associated with some properties are (because of views to land) owned by the Nature Heritage Fund/ DOC, so it is not appropriate to charge the lessee for the amenity value.	• Not exclusive to the HC.
• The tourism industry today benefits from the historical and current input of high country farmers to the high country land. For example, pest and weed management, as well as access provided on tracks across pastoral leases constructed by lessees.	• Not exclusive to the HC.
• The fair financial return to the Crown arises from rentals as well as stewardship and care of the land by lessees.	• Agreed. That is why the CPLA and LA provide for rentals at prescribed rates on the LEI.
• Lessees contribute indirectly to the tourist potential of the nation, capitalized by other businesses, in the form of their unique way of life, farming operations etc which are a vital component of the New Zealand culture and heritage.	• Not exclusive to the HC.
• Lessees' contributions to the nations farming returns, especially the Merino section of the wool industry have added substantially to overseas funds, taxation returns to the government and tourist advertising.	• Not exclusive to the HC.
Recreation permits	**Comments of Review Team**
• Lessees and others do have opportunity to make commercial use of landscapes and other non pastoral values. But they must first obtain a recreational permit from the Commissioner and are charged an additional rental for this use. This is where the Crown obtains its fair return for commercial use of non farming values.	• Agreed
• If rent includes amenity value, then Government t should remove fees for Recreation Permits so they are not double dipping. However, if lessees are engaged in other, non pastoral activities, they should pay for the use of the amenity value through recreation permits.	• See our earlier comments re confusion between "amenity value" and SIVs. • Recreation permits are the proper way in which the Crown can access these added returns on SIVs. See para 12 of Interim Report.

Judicial determination	**Comments of Review Team**
• Implications of uncertainty during the legal process of judicial determination– pest and weed management on hold, farming investment (impacts on farming support businesses) on hold, farming families will be stressed, rents will be deferred.	• Agreed. • Inevitable until judicial determination made.
Lessee Comments on Possible Policy Options	
Deferring rent until sale	**Comments of Review Team**
• This proposed option demonstrates no real consideration and is generally unacceptable. If this was the policy i.e. to defer rent payments and accumulate debts, then the past improvements/ sustainable land management/ and access provision need to be recognised and used to offset any rent i.e. not just new improvements and access.	• We do not believe that this option would comply with the provisions of the Statute. • We do not support rental deferment. • It potentially has too many "pit falls" and administrative complexities.
Rent remittance in exchange for 'improvements/ sustainable land management/ access'	**Comments of Review Team**
• Many lessees already provide these above the level required of the pastoral lease or other legislation, at the sole cost to the leaseholder. This option acts as a perverse incentive for landowners not to be generous with access, so that they can 'trade' access for reduced rent i.e. it is likely to lead to a reduction in access rather than an increase.	• Agreed.
• Rent subsidies should be applied to those with existing and those prepared to have new public walk ways on their leases.	• A policy matter outside our TOR
Rent Relief	**Comments of Review Team**
• Rent relief cannot be provided through s138 because it does not apply to rent increases.	• Agreed.
Adjusting restrictions on land use and grandparenting the existing rental process for genuine pastoral farmers–	**Comments of Review Team**
• These options require more detail before comment can be made, but 'a fair, durable rent' has more appeal than a bureaucratic procedure.	• Agreed, in as much as we recommend market related pastoral rentals.
• Government should waive any review in methodology for pastoral lease properties that are still used for primary production purposes.	• Current methodology used by LINZ contracted valuers is unsatisfactory. See para 22 Interim Report.

Environmental Non-Government Organisations (ENGOs) and other Non-Lessee Comments	
ENGOs and Other Points	**Comments of Review Team**
• ENGOs submissions supported the Response and opposed the Armstrong report.	• No Comment
• ENGOs provided various analyses of the Land Act and Crown Pastoral Land Act (CPLA).	• No Comment
ENGOs and Other points on Implications of the affordability of rent from pastoral income	
Economic activity in the SIHC	**Comments of Review Team**
• Rentals should take account of amenity values because of the changing nature of pastoral leases. Pastoral farming is no longer their dominant function or market value. Increasingly, they are very desirable trophy lifestyle and investment properties for wealthy non-farming New Zealand and overseas interests.	• Rentals should reflect the allowable uses under the pastoral lease. • The high prices paid for "trophy lifestyle" leasehold properties by Crown and others (as approved by the CCL) is a reflection of the property rights only available under the lease and the limited property rights available to the Crown.
• The Armstrong Report and MAF farm models indicate that the financial viability of high country farming is marginal for many stations. This is a market reality. Land prices are driving land use change through out New Zealand, so that intensified dairying, hobby farms, life style blocks, and vineyards etc., are replacing traditional sheep and beef farming.	• These types of potential uses relate to only a small number of properties with suitable soil types, locations and climatic conditions. • Most pastoral leases are unsuitable for the alternative land uses mentioned in this submission. • The majority of PLs can only be farmed on a traditional pastoral basis where profitability is frequently very marginal.
• The economic returns from pastoral farming are likely to comprise a very small part of the real economic value of pastoral leases. The economic value of ecosystem services and of non-extractive uses of amenity values, such as tourism, are likely to be substantially greater. International tourism, not agriculture is now New Zealand's single largest earner of foreign exchange and is a key driver of regional economies in Canterbury and Otago.	• Refer to above comment • Tourism is not a solution to the problems facing pastoral lease properties.
• The continued subsidies to pastoral lessees through generous concessionary rentals are inconsistent with NZ agricultural policies elsewhere.	• Disagree. • Panel's research did not find any concessional rentals for pastoral uses under these leases.
• Many of the high country communities are largely no longer dependent on the surrounding high country runs, but on tourists, visitors, and recreational visitors.	• Disagree

Impact on farm management	**Comments of Review Team**
• An implication of rental increases could be that good stewardship is compromised. If so, the lease value degrades, then this decrease should be deducted from the lessees equity in the capital value of their lease.	• Excessive non market rentals will compromise good steward ship of pastoral land
• Market rents which take account of amenity values may encourage leaseholders to clear indigenous vegetation and undertake earthworks, to reduce amenity and inherent values on the property and therefore reduce their potential rent. LINZ will need to significantly increase its monitoring of lease management and condition.	• Lessees are not able to embark on this type of development ,they are constrained by the lease and the RMA
• If leaseholders find rent unaffordable, they could diversify into non-pastoral uses or sell their lease.	• Non pastoral uses would contravene the statute. S.66 of the LA and S 4 of the CPLA
Impact on tenure review	**Comments of Review Team**
• The Response will improve the Crowns outcomes from tenure review including public access outcomes.	• The Government's response needs to be tested in the Courts • If upheld, this will reduce the value of lessees' interests and increase the value of the Crown's interests. • The viability of those leases will be at increased risk. • The cost to the Crown of achieving their TR objectives will be reduced, if the TR process is completed. • Increased "net exchange value" to the Crown from the lessee of obtaining freehold title to the remainder of the land will increase. • To some lessees, that will be unaffordable and they will not proceed with TR. • This will reduce the number of lessees completing TR. • Those remaining PLs, where SIVs exist, could become uneconomic. Some lessees may not be able to continue farming the land due to lack of viability. • This may force lessees to consider one of three options: i) to offer the lease for sale (if a buyer can be found) ii) to abandon the lease; or (less likely). iii) to wait until the next 33 year renewal date (up to 22 years as most in 2nd 11 year review period) and seek the value of their improvements under S 136 of the LA from a new lessee. (If a new lessee can be found to take up the lease on the same terms and conditions)

	• Failure by lessees to pay rentals and/or comply with the conditions of the leases would give the Crown rights under s 84 (4) of the LA to distrain. • We cannot find any provision for compensation for the improvements value to the lessee if no new lessee is prepared to take up the renewal of the lease at the rental, and pay the value of the improvements, both fixed under the Act. • The consequences of such outcomes would significantly affect the TR process and where lessees struggle to remain on the land paying rentals based upon non productive value components both the lessors' and the lessees' assets will be put at risk. • **The policy consequences need to be very carefully thought through.**
• Forest and Bird is not confident, however, that this would substantially change the outcome of tenure review negotiations. Cite that Dr Ann Brower has indicated that statistically rents do not drive tenure review prices so that it is unlikely that increasing rents would substantially affect the relative prices paid in the exchange of value by the Crown and the leaseholder in tenure review. [Dr Brower -The equalization payments in tenure review are far more significant. But rents don't drive equalization payments. Raising rent is highly unlikely to raise the value of the Crown's interest in tenure review].	• It appears that Forest and Bird and Dr Ann Brower do not understand the valuation, common law, and contractual principles surrounding these issues. • We refer to the incorrect use of and erroneous conclusions drawn by using "equalisation payments" in para 13.9 -13.11 of the Interm Report. • The conclusion attributed to Dr Brower, that increased rents "don't drive tenure review prices" is incorrect (see comment on previous submission) and that raising rent "is highly unlikely to raise the value of the Crown's interest in tenure review" is flawed.
• Improved public interest outcomes will result from a change in the balance of interests between the Crown and the lessee in favour of the Crown through the setting of market rents.	• The public interest outcome is debatable. • The definition of "market rental" is clear and misunderstood in this submission. • The LA and CPLA require equity as between the lessor and lessee in fixing values for rental assessment purposes. See paras 4.9, 7.3, 11.7, 11.17 & 21.2.4 of the Interim Report.
• Amenity is only one facet of value included in the LEI.	• Agree.

ENGOs and Other Submitters Comments on Policy Options	
Rent remittance in exchange for 'improvements/ sustainable land management/ access'	**Comments of Review Team**
• If rent remittance exchanges were calculated on an individual property basis this could take account of the individual financial positions of lessees and recognise the extent to which SIVs are protected and public access allowed on each property. The SIV protection outcomes sought by the Crown are likely to differ according to the property.	• Rentals cannot be fixed relative to individual financial circumstances. Valuation case law requires a hypothetical construct of well informed parties that would proxy the "average efficient farmer". The proposal as set out would favour the poor performing lessee. • This would have negative outcomes for the Crown decreasing the returns to the Crown and have no effect on protection of SIVs. • SIVs, as defined in the CPLA, are **inherent in the land**, and independent of any lessee's personal circumstances.
• Rent remittance exchanges may discourage lessees from selling their pastoral lease or entering tenure review.	• Outcome is problematic and cannot be forecast.
• If rent remittance exchanges are offered, this should be conditional on:	
• Rent remittance exchanges being separated from and having no influence on tenure review, to prevent the Crown's interest being reduced.	• This ignores fundamental economic and financial valuation principles that link rentals to values of the Crown's interest in the lease of the land and thus on the TR outcomes.
• Some substantial benefits to the Crown in return, such as improved public access over the property except for the homestead area and around farm building and/or secure protection from grazing, burning and other disturbance of areas with SIVs. This could be achieved by requiring leaseholders to prepare a management plan for the lease, and approved by CCL and DOC which identifies how ecologically sustainable management is to be promoted. The plan would need to be approved before the concessionary rental took effect. These need to be transparent and be publicly accountable.	• This is outside our TOR • We understand that access issues have been addressed in a separate report (Acland Report).
• ENGO recognises that in some instances extensive light pastoral grazing by merinos, provided it is not accompanied by burning, clearance of or damage to SIVs, unsightly tracking and sub divisional fencing; can provide public goods and ecosystem services. In these instances rent remittance in return for lessees undertaking ecological management for conservation and ecosystem services, beyond their existing legal requirements, could be considered. However there are many issues that need to be thoroughly assessed before committing to this.	• Any alteration to the terms of PLs will require either: o Negotiation between the parties; or o Legislative change.

• One ENGO proposed a policy of rent levels for leases that acknowledge the stewardship-for-public-values (e.g. maintaining conservation values, views or landscape character) that in the past has maintained high country landscape values, and that is sought to be sustained. Rent remittance exchanges would be appropriate to recognise individual lessees' commitment to management for natural landscape protection, and also separately for enabling public rights of access. Where such management intent is secured, greater concessions would be appropriate.	• Any alteration to the terms of PLs will require either: o Negotiation between the parties; or o Legislative change.
• Improved public access would need to be along routes to points agreed to by DOC and be freely available.	• Se comment above – re Acland Report
• Market rentals being recovered from holders of commercial recreation permits.	• This is status quo position
Adjusting restrictions on land use	**Comments of Review Team**
• Proposals to address rent affordability by removing or relaxing restrictions on lessees' land use (under the Land Act and CPLA) are opposed because:	• Rental affordability would not be an issue if 's recommendation for changing basis of rental assessment determination was adopted. See para 22 Interim Report.
• It would provide a very strong incentive for farm development and associated destruction of indigenous vegetation and habitat. They would lead to further loss of indigenous biodiversity, destruction of SIVs, and reduction of the Crown's interest.	• As above
• It would contrary to the New Zealand's Biodiversity Strategy and Government's stated commitment to sustainability.	• As above
• It abandons any notion of Government having a leadership role in sustainable land management.	• As above
• It would significantly reduce the amount and ability to protect land for conservation through tenure review. Lessees would have every incentive to destroy SIVs to be able to freehold the entire lease.	• As above
• It overstates the ability of the first generation of plans under the Resource Management Act to maintain and protect indigenous biodiversity. District and regional plans are highly variable.	• As above
• However, some ENGOs did support diversification of lessee activities (but did not indicate why).	• CPLA is quite restrictive allowing only some forms of pastoral farming. • Other uses require either permits or entering into TR to obtain freehold on suitable land.

• An option to help reduce land prices and facilitate the merino industry is to discourage overseas investment in pastoral leases.	• A policy issue.
Affordability Options suggestions	**Comments of Review Team**
1. Two Tier rentals – the first tier of rents set would have regard to farming viability (this obviously includes current rentals). The second tier of rents would be based on the Crowns assessment of rents according to the Response and would only become operative for the purpose of calculating the lessees and the Crowns interest at the time of transfer or sale of the lease or on tenure review	• "Two-tier" rentals is an oxymoron and impossible to properly determine or base on market or affordable rentals. • "Second tier" rentals as indicated can only be theoretical and administratively a "nightmare," as well as bringing uncertainty into PLs and TR process. • We disagree with this principle..
2. Swap – of existing pastoral lease for leases with lesser market values by excluding current lease conditions (eg. Right of exclusive occupation). Such lease could become a third option in tenure review between land retained by the Crown and freehold land.	• Proposal is predicated on an assumption that the Government's response can be justified and judicially supported by the Courts. • If imposed, any swap of PLs for other more restricted leases would require new legislation and compensation paid to the lessee.
Judicial Determination	**Comments of Review Team**
• Court Action will confirm the Government's position in response to the Armstrong Report, and will in turn raise issues of how to best provide for the sustainability of high country farming where desirable.	• Agreed.