

# A CRITIQUE OF THE PROTECTED NATURAL AREA PROGRAMME (A FARMER'S PERSPECTIVE)

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A critique of the protected natural area programme - a farmers perspective



Gentians at 4000ft on Pastoral Lease Class 7 EC Lands - Old Man Range 15.03.93

*Compiled for the  
Kellogg Rural Leadership Course 1997*

G.M. Eckhoff, Coal Creek, Roxburgh

It is an heroic assumption that the state will manage the nation's resources better than those who live, work and benefit from the practice of conservation in their daily lives.

# ABSTRACT

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The aim of this study is to review the Protected Natural Area scheme from a farmers perspective.

A holistic approach was used to allow for an overview of the many implications that the PNA programme has. The issues of property rights, management responsibility, compensation and the need to invoke a conservation ethic, are all part of the PNA scheme.

Case studies of Little Valley Station and The Herons, provide invaluable insight into the publics acceptance of, the need for, and the methods by which our nations natural features, flora and fauna can be conserved.

An evaluation of the Protected Natural Area programme reveals the need for careful consideration to the given be all facets of the many values that abound in New Zealand.

As the culture of development at all costs evolved, it is argued that much of our natural heritage was lost.

This study examines the PNA scheme from its inception to the present day and makes recommendations on how the controversy that surrounds the scheme could be avoided.

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# ACKNOWLEDGEMENTS

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This study has been greatly enhanced by the contribution of the Miller and Sanders families.

Both families have been 'through the mill' of the PNA scheme. New Zealand's rural community owe them a debt of gratitude.

## ABREVIATIONS

|      |                               |
|------|-------------------------------|
| PNA  | Protected Natural Area        |
| RAP  | Recommend Area for Protection |
| DOC  | Department of Conservation    |
| SIHC | South Island High Country     |

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*This project attempts to determine whether the PNA programme has been a success.*

*The question of conserving our natural resources or managing them in a sustainable way is not an issue.*

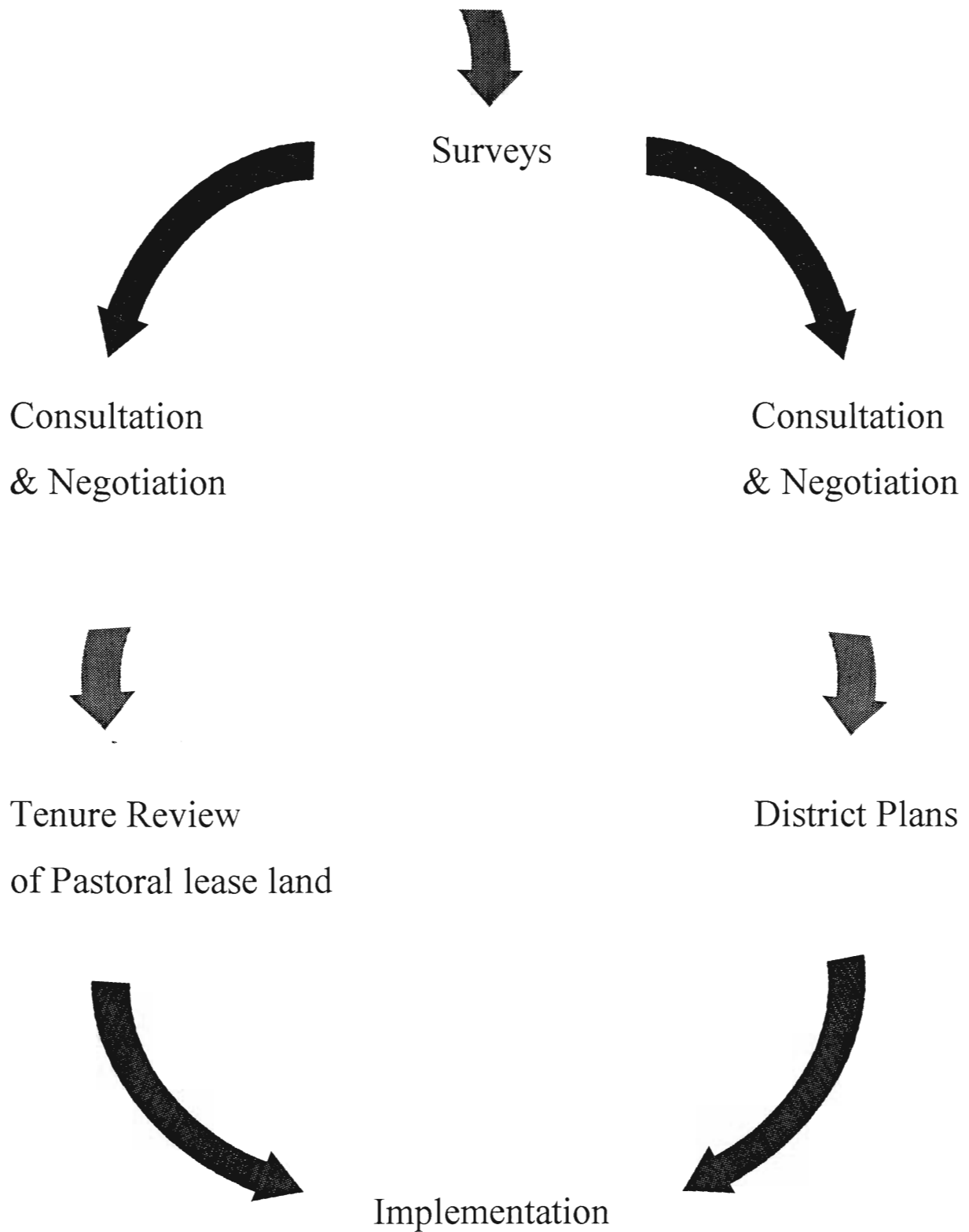
*Who is there amongst us in a thinking society that denies the value of conservation?*

*Who amongst us fails to recognise the necessity of ensuring that the values that we hold dearly to, should not also be available to future generations?*

*And who amongst us fails to recognise the need to implement environmental policy that delivers justice and equity to all ?*

# PNA PROGRAMME

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## 1.0 INTRODUCTION

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Described as one of the most important conservation initiatives of the 1980's, the Protected Natural Area (PNA) Programme began with concerns being expressed by scientists at New Zealand's rapidly diminishing natural ecosystems.

The Land Development Encouragement Loans amounted to \$151.6 million between 1978 and 1982, (McSweeney 1984), (940,000 hectare in 5 years).

The DSIR in 1980 stated little more than 26% of New Zealand remains in indigenous cover.

In 1982, the Biological Resources Centre convened a scientific working party - The Technical Advisory Group, which set out an administration and operational structure for the PNA Programme . (Kelly and Park)

New Zealand was subdivided into 268 ecological districts.

In effect, the programme was to identify the 'best of what remains' and to educate the public as to the value of nature conservation.

A Protected Natural Area is a legally protected area characterised by indigenous species or ecosystems in which the principal purpose of management is the retention of the indigenous state. (Lands Survey 1984)

Few would disagree with these laudable aims.

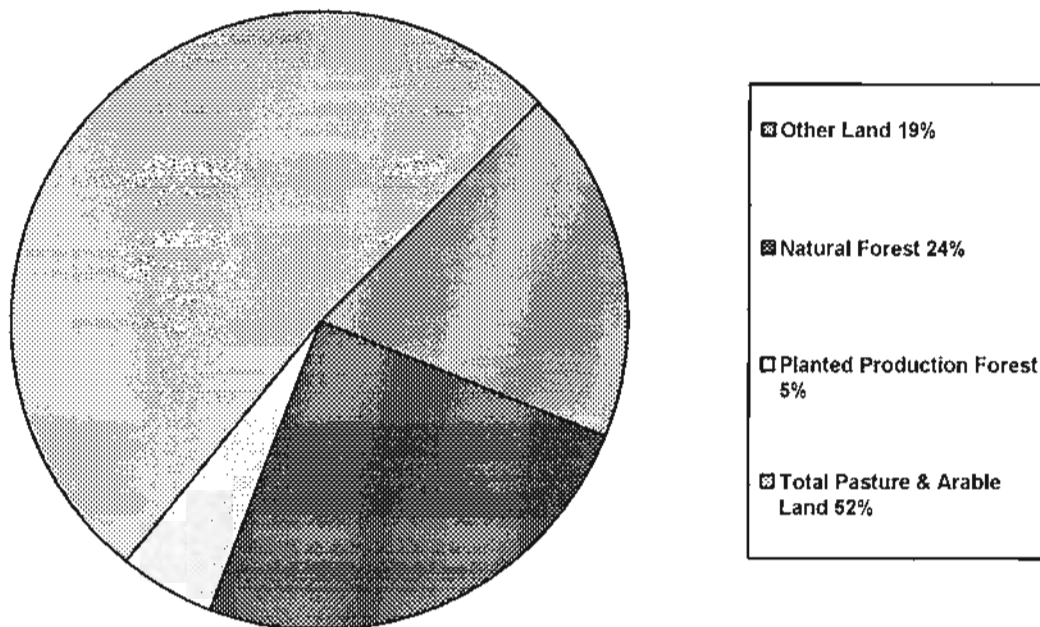
|                                      |          |              |
|--------------------------------------|----------|--------------|
| Four pilot studies were implemented: | Rodney   | North Island |
|                                      | Motu     | North Island |
|                                      | McKenzie | South Island |
|                                      | Old Man  | South Island |

**LAND USE** - The Department of Conservation administers the majority of publicly owned land in New Zealand that is protected for scenic, scientific, historic and cultural reasons, or set aside for recreational purposes. More than 8 million hectares - nearly 30% of the nations total area - are administered by DOC.

There are: 12 national parks, covering 2 million hectares,  
 20 forest parks covering 1.8 million hectares,  
 4000 reserves covering 1.5 million hectares,  
 61 000 hectares of protected private land and land subject to covenants that has been set aside for scenic, scientific or ecological reasons.

Scenic Reserves:

Some 981 in 1976 have increased to now 1200 in 1996. (NZ Year Book 1996, Statistics Department, Dunedin).



|                       |                       |
|-----------------------|-----------------------|
| Total Forest Land     | 7.8 million hectares  |
| Pasture & Arable Land | 14.1 million hectares |
| Other Land            | 5.2 million hectares  |
|                       | 27.1 million hectares |

(Ministry of Forestry)

## 2.0 SURVEYS

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Perhaps the most critical phase of the PNA programme was in the need for a comprehensive, yet relatively speedy survey of the 268 districts. The perception that the natural values were being lost on almost a daily basis, heightened the urgency for rapid surveys.

The Pisa Ecological District of some 84,750 hectares was surveyed in 3 months. (Johnston Whitney)

Funding was by way of a Government special employment scheme and private sources of finance such as the Hellaby Indigenous Grasslands Research Trust. Responses to requests for access to private land (freehold and pastoral lease) was very positive, as the farming community recognised the benefits to themselves and the wider community. Indeed, traditional rural hospitality extended to offering accommodation to the botanists and other personnel conducting during the survey in many cases.

A pool of unemployed graduates and graduate students were used in the early 1980's, usually headed by an experienced botanist.

The view that the rapid loss of New Zealand's indigenous flora and fauna would go on unabated needs to be challenged. Clearly the loss of subsidies and falling community prices was a major factor in slowing and indeed halting the development ethos.

The PNA survey teams in reality had time on their side.

There is quite major criticism that some surveys, (especially in the Rodney District), were done from a car window, or from a map.

A strong belief that out of date information was used where access could not be gained, added to a growing unease that the surveys conducted were not

thorough and that duplication of values in differing ecological districts were duplicated resulting in the unnecessary identification of values on some sites

The failure to rank nationally the values found during a survey and compare with other neighbouring ecological districts, was also deemed unwise.

The survey undertaken on the Mt Benger property at Coal Creek near Roxburgh revealed an area of freehold land worthy of a Priority 1 status Recommended Area for Protection (RAP).

A subsequent survey identified species not found during the first survey, that are of 'national importance'.

*(a) Ischnocarpus novae - zealandiae*

*(b) Korthalsella salicornioides*

(Appendix 1)

The question arises as to whether an in depth survey should not be undertaken of all RAP's as further species could well be identified. Was there a race to get as many areas identified so as to include them in district schemes?

The timing of surveys is also important as many species may not be present due to weather conditions - the time of the year and perhaps recent grazing by feral or domestic stock.

## 3.0 IMPLEMENTATION OF THE PNA PROGRAMME

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### 3.1 THE THEORY.

The report of Kelly & Park - The Protected Natural Area Programme, A Scientific Focus was designed to serve as an authoritative statement on the PNA Programme. (Kelly & Park, Page 10)

It is reasonable to assume therefore, that sentiments expressed in their publication are to be accepted as the 'official' intent of the PNA Programme.

David Thom, Chairman, National Parks and Reserves Authority, wrote in the preface to Kelly & Park - "...it is of paramount importance that a scientifically sound, administratively efficient and *socially* acceptable PNA Programme is in place, ready to be implemented by agencies involved, especially the Department of Conservation.

For the programme to work successfully, it must be taken up enthusiastically by all sections of society, *especially* those who *administer* and *own* the land on which our natural heritage depends".

David Thom's words are even more relevant today as they were in 1986, given recent events in the Far North District over their district plan.

Other quotes from the Kelly & Park include - "much greater commitment to generate an understanding of conservation principles is needed to correct the current situation. This commitment will be more effective and long lasting if it comes from the hearts of New Zealanders rather than *imposed by regulation.*"

(Kelly & Park)

"Action by land owners, managers, politicians and administrators to implement the recommendations of PNA surveys in a manner which

minimises expense and disruption, but maximises the viability of priority areas and promotes their values to the nation... These objectives would be better achieved through *personal interest and commitment rather than imposition.*" (Kelly & Park)

If it can be accepted that the farming community generally understand and agree with the concept of the PNA Programme, the question must be asked as to why the vital phase of implementation appears to have been given so little consideration.

It would seem that the tenure of the land, especially in the McKenzie and Old Man Ecological Districts, played an important role.

Quote: "*More over many of these 33 year perpetually renewable leases were reaching the end of their first term, and it was thus felt that the time was opportune to negotiate for key areas to be set aside for conservation.*" (AF Mark, K Dickenson)

The excellent relationship between the pastoralist and the Government (landlord), resulted in a mutual feeling of trust. The privileges to oversow grass seed, fence, track or burn, were rarely denied. This is similar to the privileges given to the public by owners for access to rivers, streams, and popular walking areas such as the Greenstone Valley. These privileges have almost become rights with the passage of time. The PNA implementation phase soured that relationship.

Unfortunately, the rights of the landowner - lessee seem to have been set aside to achieve suitable outcomes for preservation. The perception was that pastoral Lease land was publicly owned land and therefore open to the requirements of the PNA Programme.

Over 50% of two properties on the Old Man Range were identified as RAP's. Not only was the productive capacity to be affected but the commercial value of those properties was also severely compromised. Consider the effect of Maori claims over land. There is effectively an unofficial lien over the property.

On the 2<sup>nd</sup> or 3<sup>rd</sup> December, 1988, a meeting of the Otago National Parks and Reserves Board was held. In reply to a question, Mr Tony Perrett, PNA manager, Otago, stated that among the constraints of the Department, (DOC), in its PNA implementation procedures, were the following :

1. The Government had decreed that the protection of Recommended Areas for Protection (RAP's) would be achieved by negotiation only.
2. The choice of protective mechanism rested with the land owner/run holder.
3. RAP's are used as a starting point from which appropriate protection measures could be explored and not a formal delineation of proposed reserve boundaries.

The implementation phase had stalled.

As one of the farmers involved in the survey of the Umbrella Ecological District, I was under the very clear impression that the PNA survey on our property would be non-threatening to our property rights and indeed would enhance the value of the property. The team leader of the ecologists surveying the southern region, Professor A.F. Mark, personally assured me quote: "We merely wish to identify the values on your property for inclusion in a national register - if found." Fortunately the values found were on freehold land, not our pastoral lease land. Clearly, the most vexing problem of the implementation phase of the PNA programme was, and is the negotiation with the land owner/lessee.

### 3.2 THE RESOURCE MANAGEMENT ACT

The advent of the Resource Management Act (RMA) in 1991, has added another dimension to the implementation of the PNA Programme. Section 6 of the RMA requires matters of national importance to be recognised and provided for.

Significant indigenous vegetation and fauna along with natural landscapes, encompass most of rural New Zealand. Just what is significant and to whom, is a matter for debate and consultation. Clearly this has not happened in any meaningful way, as the furore over district plans up and down the country demonstrates.

Whether or not the spirit and intent of the PNA Programme has been conveniently overlooked with the requirement of the RMA, is a moot point. The Central Otago District Council appears to be the only district council in New Zealand, to have accepted that wish lists from the environment lobby cannot be included without extensive consultation, negotiation and agreement with the affected land owner. The Department of Conservation as the entity responsible for the conservation of our natural heritage, is responsible for that negotiation. DOC's own paper to itself containing guidelines on advocacy under the RMA, had identified the PNA programme as a 'source of tension' - quote: "access for surveys already undertaken was given on the understanding that there would be negotiation, not compulsion over the protection of areas identified."

(SIHC - Guidelines for DOC Advocacy Under the RMA).

### **3.3 THE PRACTICE**

It is said that the road to hell is paved with good intentions.

Few would deny the value of conservation - even preservation, yet the PNA programme in practice met with general acceptance in the early stages only to be condemned as a land grab once the full implications were realised.

Two properties - 'The Herons' at Shingle Creek between Roxburgh and Alexandra, and 'Little Valley Station' near Alexandra illustrate the failure of some botanists to recognise that land of high heritage value, also has very practical farming values as well.

'The Herons' is the Miller family property of approximately 2000 hectares on the Old Man Range. This property had 1000 hectares identified in the PNA survey as being a priority Recommended Area for Protection.

Apparently an incredible metamorphosis had occurred since 1979 when an Otago Catchment Board report on the property to the Commissioner of Crown Lands (March 3 1978), stated that the property was mismanaged and there was a problem with soil erosion.

Four years later the property was regarded as the 'best of what remains' in the Ecological District.

After intensive consultation between the parties, (DOC & Millers), no agreement could be reached as the commercial viability of the property would be severely compromised, eg; A landscape assessment forming part of the PNA survey recommended for:

1. Land over 4000 feet;

(a) Maintain and enhance indigenous ground cover with complete retirement from grazing, although over an interim period some sheep grazing may be permitted to help control exotic grasses. This grazing should be seen as a management tool only with stock numbers being reduced annually as exotic species become less competitive.

(b) No burn offs permitted.

(c) Control of both pasture and tree weeds.

(d) Oppose all development, especially buildings and communications

installations.

- (e) Future maintenance of Waikaia Bush Road follows guidelines to ensure the road does not have a detrimental effect on the surrounding natural environment.

2. Land down to 2000 feet

- (a) No shelter belt planting
- (b) The existing appearance of tussock grassland to be maintained  
Belts or patches of green to be avoided.
- (c) Earth disturbances including mining and tracking - as below.
- (d) Buildings and structures - each application to be assessed with respect to its impact on conservation values.

(Petrie - landscape architect)

While the above were recommendations only to DOC, they clearly formed part of the negotiations.

Secure in the knowledge and assurances given earlier by the survey head, Dr R B Allen, that ownership or status of the land involved will not change, (ODT, 9 Nov 1983), the Miller family was appalled when a moratorium was placed on the RAP. The moratorium prohibited development as well as requesting that no topdressing be applied,(29 August 1986).

In a proposal from Land Settlement Board staff and endorsed by DOC, the moratorium, quote - "was to be open ended as a finite term would remove a significant encouragement to a lessee to negotiate an acceptable agreement for protection of an area. "This appears to fly in the face of all expressed intent of the PNA Programme as stated in Kelly and Park. The farming community saw the moratorium as a gross breach of faith.

Even more disturbing was the thinly veiled attempt to exclude from the Protected Areas Scientific Advisory Committee (PASAC), those scientists whose knowledge and understanding of the wider implications of the PNA programme was seen as a threat to the exclusive focus which was to be nature conservation.

Professor Kevin O'Connor, (Emeritus Professor of Range Land Studies), recognised that little would be achieved if land owners perceived the PNA programme to be a threat to their present or planned farm management.

The setting up of the Protected Areas Scientific Advisory Committee, (PASAC) seemed to offer an auditory process as completed surveys were to be assessed to ensure consistent quality. PASAC was also seen as an independent body to whom the landowners could seek advice as to the perceived value of an RAP.

A letter to the Director General of Conservation on 13<sup>th</sup> April 1987 from R B Allen, C F Brumley and A F Mark, (botanists), and signed by all three, questioned the role of scientists in PASAC who may have the capacity to look beyond the immediate task of identification of areas of significance for conservation. Perhaps the PNA programme would have achieved much more if a holistic approach was taken by those botanists seeking to achieve laudable outcomes, but unable to see the wider picture.

### **3.4 DESIGNATION - LITTLE VALLEY**

The Little Valley saga could be described as how not to go about the preservation of natural values such as Tussock species.

Much has been written and spoken on this subject. The Ministerial requirement for a designation on the red tussock block at Little Valley Station, taken under the RMA, has cost tax payers an estimated \$700 000 to protect 307 hectares. It also cost the nation much more in terms of conservation and attitudes towards DOC, the RMA and the PNA programme. (Appendix 2)

### **3.5 NEGOTIATIONS**

Negotiation is defined as being - to “confer (with another) for the purpose of arranging some matter by *mutual* agreement”.

In many cases in Otago, negotiation with landowners has been successful (Appendix), however where no result can be achieved by both parties it is clear, especially in the Otago conservancy, that the use of coercive or “police” power

by way of a requirement for a designation from the Minister of Conservation is an acceptable way of achieving outcomes.

The use of moratoria over pastoral lease land was also seen as a legitimate negotiation tool by the Government.

As one farmer said, "I now know how a rat feels while being stalked by a ferret."

The advent of Tenure Review has eased the burden of negotiation with pastoral lessees, who wish to freehold the land they lease from the Crown. However for freehold landowners and those lessees who do not wish to relinquish control over their land, a problem occurs.

How can the Crown with all its resources, along with its 'police power', to acquire land in the 'public interest' be seen as an equal at the negotiation table.

The sword of Damocles hangs over the landowner if he/she fails to agree with the Crown agents. The use of moratoria on pastoral lease land has been tried to the coorse agreements. The Public Works Act is being threatened on freehold land. It is also an extremely difficult task for DOC to negotiate a fair settlement if they are not funded to compensate land owners at market value and better.

If it is in the nations interests to protect our indigenous species and landforms it surely follows that the nation should bear the cost of that protection.

The debacle in South Westland, where ancient Rimu trees were felled to force the Government to accept they must pay fair compensation for privately owned assets, shows up a failure by the Government to value conservation of private land.

A "designation" according to the Resource Management Act means -

A provision made in a district plan to give effect to a requirement made by a requiring authority under section 168 of the RMA.

The Minister of Conservation is such a requiring authority.

It is however, a very bold interpretation of the Ministers power to place a requirement for a designation over private property for conservation purposes, which is described as a 'public work'.

The use of designation powers over private land by the Minister of Conservation will no doubt have its supporters and detractors.

The question of whether protection of the environment by such means is appropriate, needs to be addressed immediately. It is not too difficult to foresee a situation where works of art will be subject to compulsory acquisition by the state, in order to 'protect' their place in New Zealand's history.

The designation of Mr R Sinclair's property in Otago and the events that led to the land being acquired by the state perhaps best confirms the huge gulf between the land owning public and those who seek to protect land at any price. The threat of the Public Works Act can be described as an abuse of 'power'. Ironically, the state seems willing to use 'police power' against those who have conserved their land, while recognising the need to ensure the natural environment survives. (Appendix 3)

*"Methinks something is rotten in the state of Denmark."*

With the Department of Conservation having a dual role - advocacy - as well as its other statutory obligations - it is in the Gilbertain situation of giving advice to itself. One could perhaps be forgiven for believing DOC will rarely ignore its own advice, thereby perpetuating environmental welfare, ie that the state should always be responsible for environmental values.

## 4.0 THE PNA PROGRAMME AND PROPERTY RIGHTS

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The issue of property rights is an emotive one. Years of investment in a property which may well include the protection and management of remnants of native forest by individuals is a source of tremendous pride by the owner concerned.

The management of snow tussock in the South Island High Country, (SIHC), to ensure a vigorous and healthy cover is equally a source of pride to the run holder.

The farmer should see that property rights also bring property obligations. It is respect for both that leads to sustainability.

Robert L Carlton states that conflicts have arisen because of failure to consider and answer such basic questions as *how* species should be preserved and *who* should bear the costs of preservation efforts.

He asks three questions:

1. Property Rights - Can protection of species be achieved while honouring moral, constitutional and legislative safeguards on property rights?
2. Fairness - Can means to save species be devised that will fairly distribute the costs of such efforts?
3. Effectiveness - Can measures to save species be made more effective by removing disincentives towards compliance.

“It is necessary to develop and give serious consideration to alternative strategies for the preservation of species. This does not mean forgoing ‘thou shalt not’ approaches including prohibitions on takings.

Such negative approaches, however, can free species from the threat of extinction only if they operate within a general climate in which the majority of those capable of affecting the well being of threatened species, recognise them as having value. In other words, immediate incentives (economic and otherwise) to comply with preservation measures must be provided for those who can

effect endangered species. Values, that can be realised only in the distant future, if ever, will not be sufficient.

The decision to preserve species is not imposed by biology or economics. It is a political decision. Emotion, environmental concerns and economic concerns combine to create an atmosphere, receptive to a political decision to undertake a preservationist policy. But the preservation of species is a public good and it is unfair that the burden of the political decision to preserve species should fall disproportionately upon property owners who discover, or are informed that the presence of endangered species on their lands restricts them from uses of their property not normally considered harmful to the public.”

(Robert L Carton - Property Rights and Incentives in the Preservation of Species)

The question for the New Zealand Government is:

1. Do they exercise their ‘police power’ and is protection of endangered species a legitimate use of such power.
2. Does the Government exercise its right of ‘eminent domain’ where compensation for the loss of property rights must be paid to affected landowners.

“The important role of the state is to determine through the judicature who has what rights, this is quite distinct from the political process deciding who should have what rights”. (Hide & Anderson)

Perhaps the state must also ask itself whether it is *willing* to pay compensation to landowners. The *ability* to pay is not a factor.

It can only be concluded that the atmosphere generated by the PNA programme under the RMA will achieve little or any attitudinal changes that are deemed so necessary by landlords and environmentalists to ensure the present and future preservation of New Zealand indigenous flora and fauna. Property rights are an integral part of sustaining endangered species.

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*Property must be stable, and must be fixed by general rules. Though in one instance the public be the sufferer, this momentary ill is amply compensated by the steady prosecution of the rule and by the peace and order which it establishes in society. And even every individual person must find himself a gainer on balancing the account; since without justice, society must immediately dissolve, and every one must fall into that savage and solitary condition that is infinitely worse than the worst situation that can possibly be supposed in society.*

*(David Hume, 1739)*

## 5.0 CONCLUSIONS

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“The principle of separating the conservation and production objectives of central Government has been widely supported. From a spatial perspective, however, the implementation of this approach to environmental management has entailed drawing riding boundaries between production and conservation land resources. An inevitable consequence of this is that the potential for promoting the multiple utilisation of resources in large areas of New Zealand does not exist to the same extent as it did before 1984”. (P Ali Memon)

The tragedy of the PNA schemes implementation as distinct from its intent, is that a partnership approach to the important objectives of conservation is being lost.

It does appear that the PNA programme has been steered into a confrontational approach to achieve its aim.

Mere lip service to the expressed intent of the PNA programme has resulted in unprecedented outrage by landowners the length and breadth of New Zealand.

(Appendix 4)

District Councils’ blind acceptance of wish lists given to them by environmentalists and DOC must result in major distrust of any environmental initiatives in the future. The Minister for the Environment Hon. Simon Upton made it perfectly clear in an address to the 10<sup>th</sup> Annual Conference of Local Government New Zealand in 1997 that he considered the approach taken by District Councils to section 6 of the RMA to be fundamentally flawed.

It is indeed an extraordinarily heroic assumption to make that the protection of indigenous flora and fauna will be achieved if a regulation is passed or an area is included in a district plan.

The goodwill of farmer representative body’s such as Federated Farmers was lost very early in the PNA implementation phase. Individual support was gone even earlier. Those that allowed PNA surveys to occur did so out of a lack of understanding as to the consequences.

Clearly Federated Farmers as the main body representing the rural community, failed to understand the significance of the PNA Programme in the late 1980's and early 1990's.

Despite numerous warnings by a few farmers at annual conferences, especially of the High Country Section of the Federated Farmers, it seemed to have been believed that Government departments were 'on our side'. Nothing could have been further from the truth. The days of production were over. The dawn of preservation had begun.

The rural community must shoulder some of the blame for current difficulties. Sadly the stable door was left unbolted for far too long.

Indeed the lessons of the Little Valley designation seemed to be ignored except in Central Otago.

It is only through involvement at the formative stages of district plans that rural New Zealand can hope to influence the outcomes. Submissions to the draft plans are too late by and large although some movement can be achieved. Appeals to the Environment Court are costly and result in winners or losers. Rural dwellers must learn to be totally involved in deciding directions for the future. It cannot be left to the 'other person'.

## 6.0 RECOMMENDATIONS

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The Protected Natural Area Programme must continue. There can be no question as to the absolute importance of ensuring that New Zealand indigenous flora and fauna survives and indeed flourishes. This should happen not only for the benefit of the scientific community, but for all people and for the generations to come. In spite of the current controversy surrounding the protection of our native species and outstanding natural features we can achieve the aims as advocated in the Protected Natural Area Programme - A Scientific Focus (Kelly and Park) by accepting the following, in part or in whole.

An unequivocal statement from the Parliament of New Zealand that :

1. No alienated land can be resumed by the Crown or its agent for conservation or preservation purposes without the uncoerced agreement of the landowner.
2. Compensation paid to landowners / occupiers must reflect the high value the Government of New Zealand places on the efforts of landowners in ensuring preservation of New Zealand's indigenous flora and fauna.
3. An objective ranking in order of importance of all RAP's must be drawn up to ensure wish lists and personal agendas don't dominate the limited resources available.
4. The belief that conservation and production are mutually exclusive needs to be re-examined.
5. Incentives, whether economic or otherwise need to be assessed, eg, direct payments - tax incentives - rate relief - *management fees to landowners / occupiers to retain the values identified.*
6. Attitudinal changes must occur within both productive and conservation lobby's. It is not unreasonable to expect landowners to recognise and respect indigenous species nor is it unreasonable to expect environmentalists to respect the place of clover and ryegrass in our ecosystems.
7. It is of paramount importance that the populace understand and accept the importance of the role of the individual in conservation. Failure to promote self

responsibility to ensure New Zealand's heritage prevails will result in *environmental welfare*. The state is always responsible. Such an attitude will doom the species down a silent path of destruction.

8. An examination of the most cost effective way of protection of the environment should be given urgency. Land owners live 'on site'. They are the obvious managers and should be rewarded for doing so - eg, Possum control on bush remnants.

*Conservation of flora and fauna; protection of natural values must be seen by landowners - land managers as enhancing their asset base, not increasing their liabilities.*

## **7.0 CORRESPONDENCE**

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The replies to my letters from the Minister of Conservation and the Minister of Lands both studiously ignore the guiding principle behind the PNA programme which clearly advocates negotiation rather than regulation to achieve protection of 'natural areas'.

It is clear that the Government is now relying on the Tenure Review process in the South Island High Country to achieve their objectives. Freehold land will clearly offer a far greater challenge as it was referred to as 'inviolable' by a leading environmental activist - Professor A Mark. This does not seem to have affected DOC's unseemly haste to impose requirements for designations on freehold land. The most recent example being at Waihola near Dunedin where the freehold landowner (Sinclair) claimed he was threatened with the Public Works Act. The property rights of landowners appear to be subjugated to conservation. This is of course politically correct and very fashionable.

I have enclosed a letter of complaint to the Privacy Commissioner. This is as a result of my opinion that a gross breach of faith and trust has occurred to those who have allowed PNA surveys to take place without being informed of the true purpose of the surveys.

Any replies will be included in this report when they come to hand.

Mt Bengier,  
Coal Creek,  
Roxburgh.

3<sup>rd</sup> October 1997

The Privacy Commissioner.

Dear Sir/ Madam,

I wish to lodge a complaint pursuant to S67 of the Privacy Act 1993. The events which give rise to my complaint are as follows.

In 1986 I was requested to give access to my farming property in the Roxburgh district to a botanist, Dr Kath Dickenson, to collect information about my property's flora and fauna. Access was given on the clear understanding that information gathered was to be used only for the purpose of being added to a national register of flora and fauna. The words "we merely wish to identify" were clearly expressed and heard.

I am now greatly concerned that the information gathered from my property and other farmers' properties throughout New Zealand, is being given to District Councils to impose regulations as to land use. This is a gross breach of the trust and faith the farming community placed with D.O.C. especially.

The values on my property could not be readily identified without my permission for access.

Under the Protected Natural Area Programme which was under the control of D.O.C. since approximately 1986, there was a very precise understanding that changes would only occur through negotiation and perhaps compensation if required.

The placement of private information in the hands of District Councils has led to an abuse of that understanding.

Landowners are now faced with major costs in fighting to maintain their basic farming practice. Is not the ownership of the ground cover on a farm as much an asset as money in the bank? To identify to the world, my property and its flora and fauna, is as much an invasion of my privacy as to reveal my financial status. Surely a Government Department is only entitled to use information gathered for the purpose for which permission was given.

I am also told by the Central Otago District Council that they receive information from D.O.C. which is unsolicited.

I look forward to hearing from you in due course.

Yours sincerely,

G.M. Eckhoff.



Privacy Commissioner  
Te Mana Matapono Matatapu

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Office of the Privacy Commissioner

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A2043

15 October 1997

G M Eckhoff  
Mt Benger  
Coal Creek  
**ROXBURGH**

Dear Mr Eckhoff

**PRIVACY COMPLAINT: DEPARTMENT OF CONSERVATION**

The Privacy Commissioner has asked me to acknowledge your letter of 3 October 1997 in which you make a complaint about the actions of the Department of Conservation.

Due to significant demands on the resources of this Office, it is not possible to take up the investigation of your complaint immediately. However, the file will be allocated to one of our Investigating Officers as soon as one becomes available, at which time we will contact you again and commence an investigation. This is unlikely to be before February 1998.

In the meantime, the Department of Conservation's Director-General, Hugh Logan, P O Box 10420, Wellington, has been informed of your complaint. If you are able to advance the matter by dealing directly with the Department of Conservation, or if the situation changes for some other reason, please write to me to update the position as you see fit.

Yours sincerely

A handwritten signature in cursive script that reads "D Marshall".

Deborah Marshall (Mrs)  
**Manager, Investigations**  
**Auckland**  
**Direct Dial: 09-3028-683**

q/a2043/q/c1

**GERRY ECKHOFF**

Mt Benger  
Coal Creek,  
ROXBURGH.  
NEW ZEALAND  
Fax [03] 4468 - 750  
Home Phone [03] 4468 - 450

27th August, 1997

Hon N. Smith,  
Minister of Conservation,  
Parliament Buildings,  
**WELLINGTON.**

Dear Sir,

I am currently a participant in the Kellogg Rural Leadership course (Lincoln University). Part of that course is to undertake a project/paper of your choice.

I am writing my paper on the Protected Natural Area Programme. I would be grateful for your view on the following:-

1. Does the Department concur with the original aims of the PNA programme?
2. Does the Department accept the statements of the PNA programme - A Scientific Focus (Park & Kelly) as being an accurate account of how the programme should function. e.g. Chapter 6 - Conclusions.?
3. How does the Department rationalize the current conflict between land owners and District Councils throughout New Zealand?
4. As data collected by DOC staff and others was with the good will of land owners and leasees', was the information therefore still the "property" of the land owner and subject to the provisions of the Privacy Act,  
(Quote Prof A. Mark) "We merely wish to identify and survey the botanical values on your property".
5. How does the Department see the future of the PNA programme given that most land owners see the programme as an abuse of their property rights.

Thank you, in anticipation of your assistance in this matter,

Yours sincerely,

**G. M. ECKHOFF**



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## Hon. Dr Nick Smith

M.P. for Nelson  
Minister of Conservation  
Associate Minister of Education  
Associate Minister of Social Welfare

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13 OCT 1997

Mr Gerry Eckhoff  
Mt Bengier  
Coal Creek  
Roxburgh

Dear Mr Eckhoff

Thank you for your letter of 27 August 1997, in which you ask a number of questions about the protected natural area programme, to assist you in your Kellogg Rural Leadership project. First of all, please allow me to wish you all the best in participating in this course, which enhances the vital role the rural sector plays in the life of New Zealand. Congratulations on being selected for the course.

You have asked me about some big and important issues and my response is necessarily quite long, but I am pleased to provide my views about them for you.

### 1. The future of the PNA Programme.

#### Background to the PNA Programme

The goal of the PNA programme is: *to identify and protect representative examples of the full range of indigenous biological and landscape features in New Zealand, and thus maintain the distinctive character of the country* (Technical Advisory Group, PNA Programme 1986). The programme was designed to implement the requirement of the Reserves Act 1977 for the preservation of representative samples of all classes of natural ecosystems and landscapes—i.e. those that are common or extensive, as well as those that are unique or special—which originally gave New Zealand its own recognisable character (section 3b). Protection is achieved through DoC and other protection and funding agencies (e.g. QEII Trust, Forest Heritage Fund, Nga Whenua Rahui).

The PNA programme is not about protecting all natural areas in New Zealand—just the best examples of areas that are under-represented in the network of protected natural areas (PNAs). Protection of representative examples is seen as a “bottom line” and not the final goal for protecting New Zealand’s biodiversity.

It is important to appreciate, however, that, in addition to identifying RAPs, PNA programme surveys also:

- i. provide an enormous amount of information about natural areas generally
- ii. improve knowledge of the distribution of species, communities and populations, including threatened ones
- iii. lead to the identification of new plant species
- iv. support the development of positive relationships between DoC and rural landholders, especially through the sharing of advice about how to care for natural areas
- v. help councils in their preparation of district plans and assessment of resource consent applications
- vi. help rural landholders and councils to achieve rural subdivision, through the protection of RAPs in subdivisions
- vii. provide informative details about natural areas to rural landholders
- viii. provide a foundation for research.

### **Progress to date**

So far, 58 of the 268 ecological districts of New Zealand have been surveyed and described in 35 published PNA programme survey reports. Survey and report writing is currently underway covering a further 29 ecological districts. 180 ecological districts have not been surveyed; but approximately 50 of these have good networks of protected natural areas.

Surveys and reports have been carried-out and prepared by DoC staff, as well as regional councils and private consultants. As you will be aware, many surveys in the South Island high country have been supported by the Miss EL Hellaby Indigenous Grasslands Research Trust, which has supported survey work by students and staff of the University of Otago.

Approximately 80 RAPs throughout New Zealand have been fully or partly protected.

### **Department's position**

My department's position is that it supports the goals of the PNA programme (which was already in place when the department was established in 1987) and the methodology of rapid ecological survey used, and it intends to complete the survey of each ecological district of New Zealand.

In 1997/98, \$248,000 was allocated to support PNA survey work and report writing in conservancies. The future level of funding that will be allocated to the programme will depend on completion of the department's strategic business plan later this year, and on a land holding strategy next year. Just like any business, the department does not have unlimited funds, and must prioritise the PNA programme against all its other activities.

**2. The relevance of the publication “The Protected Natural Areas Programme: a Scientific Focus” (Technical Advisory Group 1986) to current PNA Programme surveys.**

The publication that you referred to is still an excellent reference about how the PNA programme should function, and on the general format of survey reports.

The department has nearly completed a review of the survey and report writing components of the programme. The purpose of the review was to examine whether or not survey reports needed to be modified to provide information about more natural areas within an ecological district, not just RAPs, without significantly delaying the survey and report writing process. Some recent survey reports have already included an appendix of brief descriptions of other natural areas that were not selected as RAPs. The review has examined the need for and practicalities of whether or not such areas could be given greater prominence in survey reports.

This does not, however, represent a significant departure from the standard PNA methodology because, in many cases, information about many other natural areas that are not selected as RAPs will have been recorded during the field survey. This information is held at conservancy offices, and available to be used by anyone. The review has concluded that more of this information can probably be made available in survey reports.

**3. The relationship between land holders and district councils regarding district plans.**

Under the Resource Management Act, councils are the primary agents to lead, deliver, adjudicate and mediate on sustainable management, in order to meet the Government’s goal of a sustainable future. The role of a council includes sustaining indigenous flora and fauna. The protection of natural areas is simply not a matter that can be passed over and left to more ‘natural places’ like Fiordland. The Act requires that each district identify and protect those places which capture the natural heritage of that district.

It is the council’s role to determine what is an appropriate level of intervention to achieve the sustainable management of areas identified as significant natural areas, and to work in a collaborative way with landholders. The department’s role is as a provider of advice, a protector of Crown property rights, and as an advocate for the conservation of natural and historic heritage. The responsibilities, roles and processes for policy and plan implementation under the Act, were clarified by a protocol between the department and Local Government New Zealand, in December 1996.

My observation is that conflict between councils and landholders occurs most frequently where communication about plans has not been established in the early stages of plan development or has not been maintained.

#### **4. Publication of information gathered during PNA Programme and other ecological surveys.**

One of the recurring issues in conservation management is a lack of information about New Zealand's natural heritage. This is very apparent in regard to natural areas, especially those that are outside the network of protected natural areas. It is by publishing or otherwise making such information available that all members of society can participate in making decisions that reflect common goals, including additions to the network of protected natural areas. This is why the department goes to considerable effort to publish PNA programme survey reports.

From a legal perspective, the department can publish, or otherwise make available, information gathered with the permission of the landholder through on-site surveys carried-out on private land. The power comes from section 53(1) of the Conservation Act 1987, which provides the Director-General of Conservation with all powers that are reasonable necessary or expedient to enable the department to perform its functions.

In addition, the department has the power under section 4(1) of the Reserves Act 1977, and section 53(2) of the Conservation Act, to carry out off-site survey work, without the permission of the landholder. By analogy, any landholder (rural or urban) cannot stop bypassers surveying the scenery as they walk past their properties. Section 53(1) of the Conservation Act also give the department the power to publish information gathered during such off-site surveys which are made without the permission of the landholders, provided that the information is published without identifying whose land it is on (doing so otherwise, would breach the Privacy Act 1990, unless the landholder consented to his/her name being given).

#### **5. Attitudes of landholders to the PNA Programme.**

Experience suggests that the attitudes of landholders towards the PNA programme varies between ecological districts and between landholders. This variability is influenced by several factors:

- i. degree of naturalness of the ecological district
- ii. type of land ownership
- iii. survey methodology or type of information collected
- iv. use of PNA programme survey information in regional and district plans
- v. type of rural land use
- vi. level of political activity in a regional/local community
- vii. presence of protected natural areas on the landholder's property or on adjacent properties
- viii. quality of advocacy/liaison carried out before, during and after the PNA programme survey
- ix. quality of advocacy/carried out by local councils during the preparation of district plans

- x. previous negative interactions between landholders with central or local government about any issue.

In the department's experience:

- i. only a very small percentage of rural landholders have refused access to PNA surveyors.
- ii. most rural landholders do not provide an opinion either way about the goal of the PNA programme.
- iii. many rural landholders are openly supportive of the PNA programme; they provide transport and refreshments for survey teams, suggest areas on their properties and locally for survey; and appreciate the opportunity to learn the values of natural areas on their properties, and how to protect them better.
- iv. there is, however, a general lack of support for the PNA programme throughout much of the South Island high country and on Maori land. Most of the influences listed above apply in these situations.
- v. some rural landholders have disputed the validity of the descriptions of natural areas and evaluations of their conservation value, particularly when councils choose to use this information as the basis for listing areas in district plans. After discussions with the landholders, sometimes including site visits, most landholders are happy with the descriptions and evaluations.
- vi. in some cases, however, the descriptions in survey reports are incorrect owing to modifications between the time of survey and report publication, or to mistakes.
- vii. some rural landholders have been surprised by DoC's advocacy for areas additional to RAPs as "significant indigenous vegetation and significant habitats of indigenous fauna" in terms of section 6 of the Resource Management Act (RMA). This ongoing misunderstanding occurs despite strenuous efforts by DoC to clarify the goal of the PNA programme, through liaison with landholders and councils, public education material, and in the final survey reports.
- viii. in a few instances, despite strenuous liaison efforts by DoC staff, rural landholders have claimed not to have been informed of the results or the implications of surveys, or have mischievously spread misinformation.
- ix. some rural landholders disagree in principle with the listing of information about natural areas, collected during PNA and other ecological surveys, by councils in district plans, with rules on the use of these areas, because of concerns about the impacts on private property rights.

- x. some rural landholders are critical of DoC's slow progress in implementing protection for RAPs. The rate of progress is tied to the availability of the necessary resources. Legal and fencing costs, for example, do not come cheap!

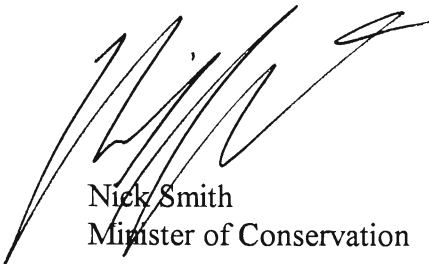
In summary, the PNA programme is only a tool to help us maintain the distinctive natural character of New Zealand. This is a goal that I fully support, and I believe that most New Zealanders do as well. RAPs in survey reports of ecological districts in the South Island high country, or any other part of New Zealand, are recommendations for helping us all to achieve that goal.

I believe that, despite tight funding, the PNA Programme has achieved a lot since its inception. I acknowledge some problems, but that is not surprising given the range of influencing factors that I described earlier, the amount of country that has been surveyed, and the number of ecological surveyors/report writers and landholders that have been involved.

Finally, I would like to acknowledge that landholders have contributed enormously to the protection of natural areas in the past, and that their vital role in the future needs to be maintained.

I trust that I have fully answered your questions. Good luck with your assignment.

Yours sincerely



Nick Smith  
Minister of Conservation

#### Reference

Technical Advisory Group, PNA Programme 1986 *The New Zealand Protected Natural Areas Programme: a scientific focus. New Zealand Department of Scientific and Industrial Research, New Zealand Biological Resources Centre publication 4.* Edited by GC Kelly and GN Park. 68p.

**GERRY ECKHOFF**

Mt Benger  
Coal Creek,  
ROXBURGH.  
NEW ZEALAND  
Fax [03] 4468 - 750  
Home Phone [03] 4468 - 450

27th August, 1997.

Attention Mr Jeff Connell,  
Department of Conservation,  
P.O. Box 5244,  
**DUNEDIN.**

Dear Jeff,

I am currently a participant in the Kellogg Rural Leadership course (Lincoln University). Part of that course is to undertake a project/paper of your choice.

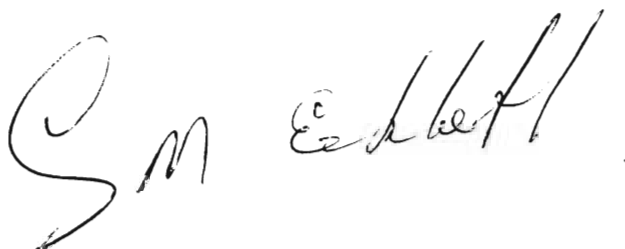
I am writing my paper on the Protected Natural Area Programme. I would be grateful for your departments view on the following:-

1. Does your regional office consider the scheme to be a success in the Otago District?
2. How many areas have been successfully negotiated as per the stated aim of the PNA scheme - Scientific Focus Page 52 Conclusions.
3. Does DOC (Otago) now rely on the scheme to be implemented by regulation as for district schemes or by mutual agreement with the land owner?
4. How would DOC (Otago) view a partnership approach to the laudable aim of protecting important values both botanical and "natural", between land owners and the Department of Conservation?

Thank you, in anticipation of your assistance in this matter,

Yours sincerely,

**G. M. ECKHOFF.**

A handwritten signature in black ink, appearing to read 'G M Eckhoff', written in a cursive style.



Department of Conservation  
*Te Papa Atawhai*

Our ref:

7 October, 1997

Mr Gerry Eckhoff  
Mt Benger  
Coal Creek  
ROXBURGH

Dear Mr Eckhoff

**PROTECTED NATURAL AREAS PROGRAMME**

I refer to your enquiry regarding protection implemented on areas identified under the Protected Natural Areas programme.

The following areas in Otago and Southland are either protected or have signed agreements to protect. Agreements arising from the pastoral lease tenure review cases have been excluded.

| <b>Name of the Area</b> | <b>Protection</b> | <b>Area</b> | <b>Owner</b>   |
|-------------------------|-------------------|-------------|----------------|
| Bains Block             | Conservation area | 4200 ha     | DOC            |
| Hospital Creek          | Covenant          | 230 ha      | Mt Grand       |
| Lagoon Creek            | Reserve           | 20 ha       | DOC            |
| Serpentine              | Reserve           | 750 ha      | DOC            |
| Timber Creek            | Covenant          | 10 ha       | W Frame        |
| Mt Iron                 | Reserve           | 35 ha       | DOC            |
| Old Man Range           | Reserve           | 134 ha      | DOC            |
| Lauder                  | Reserve           | 1400 ha     | DOC            |
| Glenlappa               | Covenant          | 130 ha      | C Smaill       |
| Glenlappa               | Reserve           | 730 ha      | DOC            |
| Blackmore               | Covenant          | 1000 ha     | D O'Brien      |
| Devils Gorge            | Covenant          | 7 ha        | N Hazlett      |
| Awatere                 | Agreement         | 22 ha       | A J Dickson    |
| Stalker Plateau         | Covenant          | 240 ha      | Mt Stalker     |
| Maori Gully             | Covenant          | 60 ha       | P Harrex       |
| Nature Gully            | Covenant          | 25 ha       | McKnight       |
| Galloway                | Covenant          | 35 ha       | A Preston      |
| Mt Pisa                 | Covenant          | 2000 ha     | Mt Pisa        |
| Little Pomahaka         | Reserve           | 400 ha      | DOC            |
| McKay Creek             | Reserve           | 55 ha       | DOC            |
| Old Man Obelisk         | Covenant          | 140 ha      | P Dunbier      |
| Flagstaff               | Covenant          | 270 ha      | B Hore         |
| Mataura Range           | Reserve           | 830 ha      | DOC            |
| Upper Mataura           | Conservation area | 400 ha      | DOC            |
| Mid Dome                | Reserve           | 850 ha      | DOC            |
| Little Valley           | Covenant          | 400 ha      | Sanders Family |
| Kakanui Peak            | Conservation area | 690 ha      | DOC            |

**Otago Conservancy**

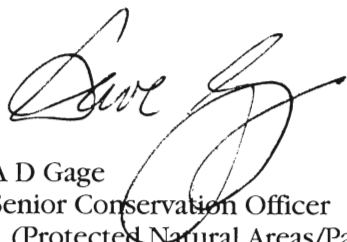
P.O. Box 5244, 77 Stuart Street, Dunedin, New Zealand  
Telephone 03-477 0677, Fax 03-477 8626

|                 |                   |         |               |
|-----------------|-------------------|---------|---------------|
| Allan Peaks     | Conservation area | 1413 ha | DOC           |
| Kirkwoods Creek | Conservation area | 7600 ha | DOC           |
| Castle Dent     | Conservation area | 920 ha  | DOC           |
| Waikaia Tors    | Covenant          | 50 ha   | Glenaray      |
| Chapman Road    | Reserve           | 8 ha    | DOC           |
| Cairnmuir       | Conservation area | 3492 ha | DOC           |
| Lammerlaw Creek | Covenant          | 600 ha  | Thomas Family |

Attached is a copy of the report done by Brian Patrick and others on Elbow Creek.

During one of our restructurings some of our heirlooms have been lost and I am unable to locate any of the PNA posters which I recall but have not seen for some time.

Yours sincerely



A D Gage  
Senior Conservation Officer  
(Protected Natural Areas/Pastoral)  
for Regional Conservator

Mt Benger,  
Coal Creek,  
Roxburgh.

3<sup>rd</sup> October 1997.

The Chief Executive Officer,  
Central Otago District Council,  
P.O. Box 122,  
Alexandra.

Dear Mr Green,

I am currently a participant in the Kellogg Rural Leadership course at Lincoln University. Part of that course is to undertake a paper of your choice. I am writing a paper on the Protected Natural Area Programme.

I would be most grateful if you could give the Council's approach to the requirement under the R.M.A. Section 6 (A) (B) (C).

Also section 35 requires monitoring of (A) The state of the whole or any part of the environment of its region or district to the extent that is appropriate to enable the local authority to effectively carry out its functions under the Act.

Has the Council estimated the cost to the ratepayer of all monitoring of the environment, especially the areas of natural values as identified under the Protected Natural Areas Programme.

Thank you, in anticipation of your assistance in this matter.

Yours sincerely,

G. Eckhoff.

A handwritten signature in black ink, appearing to read 'G M Eckhoff', written in a cursive style.



50/11  
William Fraser Building  
1 Dunoring Street  
Alexandra, NZ

Post Box 122, Alexandra

Telephone (03) 448 6979  
Facsimile (03) 448 9196

16 October 1997

My Reference  
6/3/1  
WDW:VJT

Mr G N Eckhoff  
Mt Benger  
Coal Creek  
ROXBURGH

Dear Sir

### RESOURCE MANAGEMENT ACT

Thank you for your letter of 3 October 1997 which sought information with respect to the Council's approach to matters of national importance and monitoring in terms of sections 6 and 35 of the Resource Management Act 1991.

You will be aware that section 6 requires the Council to recognise and provide for the matters of national importance listed in that section. These include -

- “(a) The preservation of the natural character of ... wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:*
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:”*

These matters are currently being had regard to in the context of the Transitional District Plan which comprises district schemes formulated by the various county and borough councils which were the predecessors to the Central Otago District Council. In essence section 6 matters must be recognised and provided for when considering applications for resource consent or plan changes which may be initiated by the Council or private individuals.

Section 6 matters must also be recognised and provided for as the new Central Otago District Plan is prepared. You will be aware that a consultative draft has recently been made available for public comment and I encourage you to study the consultative draft if you require any information in addition to the contents of this letter.

Section 6(a) (that relates to wetlands, lakes and rivers and their margins) is primarily addressed in the consultative draft through the esplanade mechanism. The plan expresses a strong preference for

esplanade strips rather than esplanade reserves and includes a list of waterways where such esplanade strips are to be provided at the time of subdivision.

Section 6(b) (outstanding natural features and landscapes) is addressed by identifying areas of landscape that are deemed to be "outstanding". These areas have been previously identified in discussion documents released for public comment in 1995 and in some cases have been protected by earlier district schemes. In addition land over a stated elevation (currently 700 metres) is deemed to be a "significant" landscape. Some of these elevated areas will also be "outstanding" but will not be separately delineated as such on the planning maps. Please be aware that the 700 metre elevation is likely to be amended following consideration of the comments lodged in response to the consultative draft.

You have advised that your paper is on the Protected Natural Area Programme. Section 6(c) is particularly relevant to the PNA Programme as this requires the protection of areas of significant indigenous vegetation and habitats of indigenous fauna. The Council proposes to identify significant areas in the plan, these being areas which are held in the conservation estate. The tenure review programme is progressively identifying and setting aside areas with conservation values throughout Central Otago. These areas that have been subject to agreement with the occupier will be identified in the plan.

The Councils position is that the plan will not be used as an instrument to protect Recommended Areas for Protection (RAP's) identified in the PNA programme. Previous experience has demonstrated to the Council that this programme has fundamental flaws, not least of which is that a comprehensive and authoritative survey of the significant indigenous values of Central Otago has not been completed. The Council also recognises that the tenure review programme is proceeding and that it is inappropriate to apply rules affecting private land until the full spectrum of values to be protected through the tenure review process is known.

You have also sought clarification with respect to the monitoring provisions of section 35 of the Act. Monitoring is undertaken on a low key basis at present. Council is particularly responsive to complaints from members of the public with respect to the exercise of resource consents and the effects of land use activities being undertaken within the district. This is simply part of the Councils overall resource management responsibilities and an allocation of \$7,000 has been made for monitoring (particularly with a view to determine whether enforcement action is necessary) in the 1997/98 Annual Plan. I would stress that this monitoring is not directed to indigenous values identified under the PNA programme as no formal recognition has been given to this programme by the Council for the reasons state above.

I trust that this fully satisfies your enquiry.

Yours faithfully

STEPHEN GREEN  
CHIEF EXECUTIVE

## REFERENCES

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*Mc Sweeney, G 1984*

The impact of land clearance agricultural subsidies on natural areas  
NZ Environment 44 : 11-14

*DSIR 1980 Landscape and Native Conservation*

*Kelly & Park, 1986*

The New Zealand Protected Natural Areas Programme  
A Scientific Focus

*Lands & Survey 1984*

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*New Zealand Year book 1996*

The PNA Programme - A Progress Report

A.F Mark & K.J.M Dickenson - ANZAAS 1988  
Volume 19 No 4 July/August 1988

*Johnston Whitney 1997*

Submission to Queenstown Lakes District Council  
RE District Plan Provisions - Indigenous Vegetation

*Department of Conservation*

South Island High Country Guidelines for DOC Advocacy under the RMA

***Robert L Carlton***

Property Rights and Incentives in the Preservation of Species

The Value of Biological Diversity - edited by Bryan G Norton 1986

***Anderson & Hide***

Bromley on Property Rights

A Critique of Property Rights and the Environmental Reforms

***J & A Miller, Shingle Creek***

Personal correspondence and information obtained under the Official Information Act

# APPENDIX 1

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**UMBRELLA 10 RAP  
ELBOW CREEK/LAKE ROXBURGH SHRUBLANDS**

An inspection of RAP 10 in the Umbrella Ecological District was carried out by John Barkla, Brian Patrick and Bruce Kyle on 28 July 1997. The RAP was entered via the top portion of Elbow Creek east of the State highway, and followed down to where its confluence with Lake Roxburgh could be observed. A traverse was made from there through the north facing slopes of the RAP above the lake.

Our visit largely confirmed the vegetation description of Dickinson (1988) although two notable plant additions were made.

a. *Ischnocarpus novae-zelandiae*

A cress, which has a national threat category of 'vulnerable,' was discovered on a narrow ledge among rocky cliffs approximately 3 metres above Elbow Creek. Thirteen plants were recorded making this one of the larger, and therefore more significant sites for this species nationally. More intensive survey of likely habitat in Elbow Creek could be expected to lead to further discoveries of *Ischnocarpus*.

b. *Korthalsella salicornioides*

Many plants of this dwarf mistletoe were discovered growing parasitically on kanuka overhanging Elbow Creek. It has a conservation status of 'Insufficiently known' which means it is suspected of being a threatened species and requires more study.

The vegetation is in best condition close to Elbow stream where generally steep terrain is largely preventing sheep access. There is good regeneration of the main shrub species and particular abundance of *Helichrysum aggregatum*, an important host species for several insects.

Around on the mid slopes above the lake the shrub cover is more fragmented with significant areas dominated by pasture grasses and thyme. Immediately above the lake, and in the top third of the slope, good kanuka shrublands persist in and around steep rock bluffs. A strong population of the local broom, *Carmichaelia compacta*, was noted here in contrast to the single plant observed by Dickinson. Native species diversity in this part of the RAP is lower than that in Elbow Creek.

Evidence of rabbit damage appeared confined to the easy terrain within the RAP near the top fence and in localised patches through the grassed areas above the lake. Their impact on key conservation values is low. A few goats are present; these may pose a threat to conservation values if numbers are not tightly controlled.

**Summary of ecological values**

1. All communities are in very good condition with published values still present.

2. Regeneration is evident over the whole RAP but is particularly strong in Elbow Creek portion of RAP. There are large numbers of seedlings of shrubs (*Helichrysum aggregatum*, *Coprosma* spp., etc) and trees (*Sophora microphylla*, etc) and lianes.
3. The RAP is important habitat for two threatened plant species (*Ischnocarpus novae-zelandiae* and *Korthalsella salicornioides*) not previously recorded at the site.
4. Invertebrate habitat is particularly important in the Elbow Creek catchment with significant areas being rockfaces, riparian shrubland, in-stream communities and shrublands generally with lianes covering them.

### **Discussion**

It is clear that the Elbow Creek area has very high conservation values and is a compact, stand-a-lone area, not farmable for the most part.

In contrast, the open sunny shrublands of the Lake Roxburgh faces, have only moderate conservation value and are a valuable farming resource. Periodic sheep grazing is unlikely to compromise these values. It is not necessary to have the same management for an entire RAP under implementation.

A low level of rabbit and goat control in the entire RAP would be desirable in maintaining values present. Repairs to the rabbit fence (\$500/km) would help maximise benefits from any control undertaken.

UMB 10

Lake Roxburgh Shrubland

S143 140 213

SN 8215 B/4

Kanuka shrubland )  
 Kowhai shrubland )

on and between rockbluffs and  
 along creek margins

### Vegetation and flora

A kanuka (*Kunzea (Leptospermum) ericoides*) dominated shrubland 3-4 m tall, of patchy density with kowhai (*Sophora microphylla*) c. 4-5 m tall locally dominant. A relatively species-rich (c. 107) mosaic with a number of species occurring here which were not recorded elsewhere in the District, for example the ferns, *Cheilanthes sieberi* (occasional) and *Pellaea rotundifolia* (occasional), the shrub *Hebe pimeleoides* var. *rupestris* (occasional), the herbs *Raoulia australis*, *Chenopodium allanii* (rare), *Calystegia tuguriorum* (occasional), and the grass *Rytidosperma racemosa* (occasional). Species recorded elsewhere in the District but of limited distribution were the shrubs *Carmichaelia compacta* (rare: see Sect. 4.1), *Melicope simplex* (rare), and the climber *Scandia geniculata* (occasional).

Abundant species were the shrubs matagouri (*Discaria toumatou*), sweet brier (*Rosa rubiginosa*), *Coprosma propinqua*, *Helichrysum aggregatum* and wild thyme (*Thymus vulgaris*), the climbers *Rubus schmidelioides* and *Muehlenbeckia complexa*, plus bracken fern (*Pteridium esculentum*). Occasional species included cabbage tree (*Cordyline australis*), the shrubs *Hymenanchera alpina*, koromiko (*Hebe salicifolia*), *Carmichaelia virgata*, *Coprosma parviflora* and *Olearia avicenniifolia*, the climber *Clematis marata*, and the herbs toetoe (*Cortaderia richardii*), fescue tussock (*Festuca novae-zelandiae*), *Dichelachne crinita*, *Polystichum richardii*, a spleenwort (*Asplenium richardii*), blue tussock (*Poa colensoi*) and *Oreomyrrhis ramosa*. Species which occurred only rarely included the shrub *Olearia lineata* and the herbs *Asplenium bulbiferum*, *A. terrestre*, *A. richardii*, *Blechnum chambersii* and *Epilobium pubens*.

Lichens are particularly abundant and diverse on these rock bluffs.

### Landform

The most extensive rock bluffs occupy the upper valley slopes above the Clutha River, now dammed to form the hydro-electric impoundment, Lake Roxburgh. Elbow Creek enters Lake Roxburgh from a deeply incised, gorge-like valley flanked by rock bluffs. Differential weathering of the schistose rock has, in places, formed caves above where Elbow Creek flows into Lake Roxburgh. The creek flows over a flat area of deposited alluvial material prior to entering the lake.

Soils are predominantly derived from schist and loess and form an intergrade between brown-grey and yellow-grey earths (Roxburgh steepland soils).

### Fauna

Birds observed were fantail, grey warbler, black shag, rock pigeon, spur-winged plover and southern black-backed gull. The caves showed some evidence of use as nesting and perching sites.



### Discussion

Kanuka would have been a dominant in the pre-European scrublands occurring in the Clutha Valley at least between Roxburgh Dam and Beaumont (Johnson 1983a). In many places it has been invaded or replaced by scrub weeds such as broom (*Cytisus scoparius*) and gorse (*Ulex europaeus*). However, it still commonly forms localised woodlands or low thickets mostly on the hill crests and upper hill faces (Johnson 1983a).

Despite the abundance of adventive species, the area identified here contains the most extensive area of kanuka shrubland, and the largest groves of kowhai recorded in the District. The rock bluffs harbour many of the species only recorded here in the District and are the locality for an apparently rich lichen flora.

The greatest number and abundance of native species are present on the margins of Elbow Creek. However, adventive species are common throughout the identified area, particularly sweet brier. There is widespread evidence of stock damage in all except the rocky and steep areas.

The bluffs themselves are separated by pasture, or shrubland with a pasture understorey, but the area of this recommended area for protection (RAP) is too limited to warrant exclusion of these highly modified portions. The long and sinuous nature of the RAP would be far from ideal as a protected natural area. However, gradation into heavily grazed pasture in all southerly directions is extremely abrupt.

The degree of modification within this reserve recommendation substantially detracts from its natural values. Nonetheless, the vegetation contained herein is representative of an indigenous ecosystem once widespread and typical of the dry, lowland valley areas in the District and in central and eastern Otago generally. Therefore, the area is assigned Priority 1 status; there is no adequate area suitable for Priority 2 assignation.

|                |  |
|----------------|--|
| Area           | c. 40 ha   |
| Altitude range | 150-240 m  |
| Aspect         | The slopes above Elbow Creek are of both easterly and westerly aspects, whereas Lake Roxburgh bluffs are predominantly north-facing. |
| Plot cards     | 011  |
| References     | Johnson (1983a)  |
| Tenure         | Freehold   |

## APPENDIX 2

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# *Little Valley Station*

*Little Valley, R.D. 2, Alexandra*  
*Ph (03) 448-6575 Fax (03) 448-8069*

26 June 1997

Dear Gerry

## **Red Tussock Designation**

Late last year after three long years of negotiation the Department of Conservation finally reached agreement with us over the Designation. The agreement was substantially in our favour and we are now just tidying up a few loose ends.

The final settlement was a joint covenant with the Minister of Conservation over 307ha of the original 1,970ha the Department sought to acquire.

We thought you might be interested in the details of the covenant and have attached a condensed version of the main points.

We received payment of \$207,400 excl. gst which is a refund of all our legal costs and scientific consultants fees and also includes compensation for loss of production, reduction in the value of the covenanted land etc.

It was heartening to feel the support of the local community and particularly that of the High Country Trustees. The early months before and during the District Council hearing were particularly stressful and you all gave us strength and encouragement. Please accept this small gift as a token of our appreciation for the support and time you gave to us.

Yours faithfully



Lindon & Jenni Sanders  
for A.C. Sanders & Sons

## **Main Points of Conservation Covenant between Little Valley Station and Minister of Conservation**

References to the "Minister" means his agents (we will actually deal directly with the Department in regards to management of the covenant).

The covenanted area has been referred to in the covenant as the "Core Land"

This covenant is over 307ha (subject to survey) of the original 1970ha sought by the Department of Conservation. The ownership of the land remains with the lessee of the Pastoral Lease.

The conservation objectives of the Core Land are:

- i. Protecting the character of the Core Land, natural ecosystem, flora, fauna, and their relationships with earth substrate, water courses and the atmosphere.
- ii. Protecting and maintaining the Core Land and its vegetation as an area representative of the Manorburn Ecological District.
- iii. Protecting and maintaining the landscape characteristics of the Core Land as an open treeless area of red tussock grassland, with wetlands and streams.

A condensed version of the Terms of the Deed are as follows:

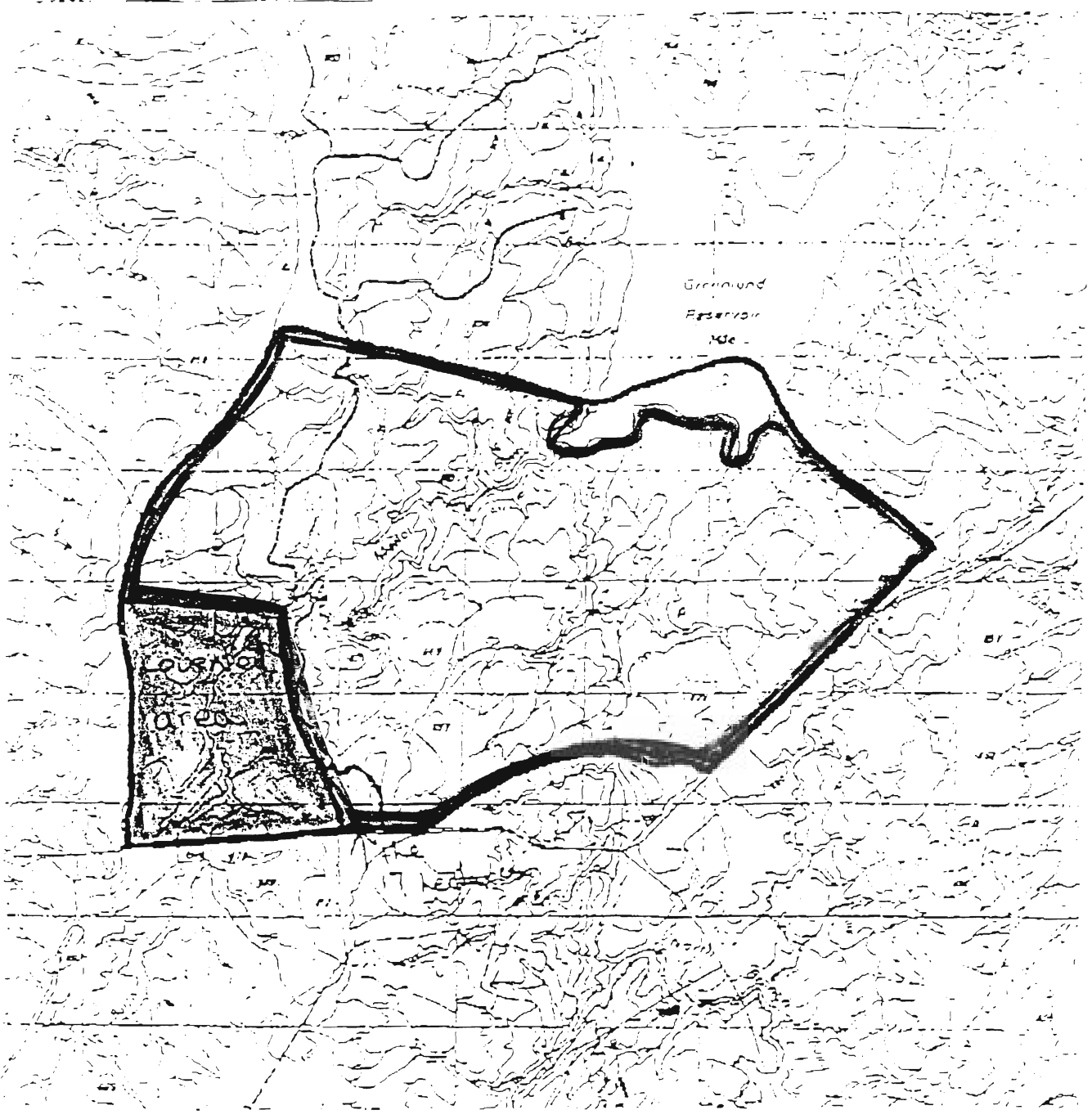
1. The landholders shall not interfere with the objectives of the covenant, particularly, no grazing, no burning, disturbance of vegetation or soil, and as far as practicable avoid topdressing or seeding of the Core Land.
2. The Minister pays the cost of the fencing and the firebreak surrounding the Core Land, and pays the cost of major repairs to the fence, minor repairs are our cost and responsibility.
4. When we carry out the burning of the back country we have to notify the Department and allow a reasonable number of their staff on site for the purposes of safeguarding the Core Land. Only staff qualified or training as fire-fighters have access (*this cuts out media and sightseers*).
5. The Minister has agreed that no fire safety margin can be imposed surrounding the Core Land (*i.e. no 1km safety margin of State areas or any other that may apply.*) The Minister also agrees that any fire safety margin surrounding the Manorburn Conservation Area (ex Moir land) cannot be imposed on our property for the purposes of preventing us from burning it, in an attempt to protect vegetation on our property for conservation purposes.
6. The Minister has a right of access to carry out research and monitoring but must still consult with us before entering the property. They have no right of access through our property and have to use the Manorburn Conservation Area as access. There is no right of access to the general public and we still have full trespass right to refuse entry where we see fit.
7. The Minister will erect a notice between the Manorburn Conservation Area and our property advising the Core Land is private property and there is no access.

8. The Minister has to take all reasonable and practicable action to manage the Core Land, particularly weed and pest control, remove any exotic tree species and meet any obligations we may have at law regarding that land.
9. Clause 11b of the covenant contains the words "In the event that a fee simple title to the Core Land is granted to the landholders..." *(This recognises that freeholding of the area is a possibility and certainly not entirely precluded under tenure review).*
10. The Minister will consult with us about the management of the Core Land and any proposed departure from such management proposals and shall have proper regard to all reasonable requests made by us.
11. The Minister is liable for any costs as a consequence of his management of the land or any costs related to the area which is normally the landholders responsibility by law.
12. We are entitled to carry out our own monitoring. Any monitoring carried out by either ourselves or the Minister shall be provided to the other party.
13. The Minister meets the costs of surveying and registering this Deed.

**Attached to the covenant is a "statement of intent" which we consider extremely important to the future of Little Valley Station in terms of management and ownership. It reads:**

- a. *The parties acknowledge that the Area outlined in red on the plan attached (called "the Area") (which is outside the Core Land under this Deed) is an essential integral part of the Landholders' total farming operation. This Area also has ecological and landscape values.*
- b. *Subject to giving full effect to their farming operation as the primary purpose, the Landholders shall consider the ecological and landscape values of the Area when making management decisions.*

*There is a further part to this clause where we have allowed the area marked in yellow on the attached plan to be fenced into the Core Land but it is not part of the covenant and will not be surveyed. This is an area we set aside as a benchmark area for monitoring and remains in our control.*



SCALE 0 1 2 3 4 kilometres

GR CENTRE : G43 445230  
 AREA : 1970 hectares  
 ALTITUDE RANGE : 750m - 920mm  
 NATURE : Pastoral Lease  
 SAMPLE SITES : 32 - 61

0007

GEORGE MCKILLAN

FAX 04 4 204 7227

27/08/96 10:00

NWS  
 Apts. 22

## APPENDIX 3

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Our Ref: \_\_\_\_\_ Your Ref: \_\_\_\_\_

Partners:  
John David McKewen, B.A., LL.B.  
Lachlan Angus Ross, LL.B.

DATE 24 October 1997

Associates:  
Devon Miller, LL.B.  
Paula Amanda West, LL.B.

FROM Devon Miller

TO Gerry Eckhoff, Roxburgh

FAX NO 03 4468750

TOTAL NO OF PAGES (including this cover sheet) One

**URGENT / ROUTINE****STATEMENT OF CONFIDENTIALITY**

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**(Please advise immediately if all pages not received)****RE: R W SINCLAIR**

Thank you for your letter of 17 October 1997. On 25 October 1994 Department of Conservation issued two separate "notices of requirement" to Mr R W Sinclair, a farmer living at Waihola. Mr Sinclair has small land holdings around Waihola and the Taieri Gorge area. The titles, having been inherited from his father who bought the land in the 1920's. All land is free hold title.

The notice issued was a notice of requirement for a designation under section 168 of the resource management act 1991. A notice was issued in respect of two separate pieces of land. The first was 142.5 hectares, being steep sided bush clad gully on the Taieri Gorge. The second was approximately 85 hectares of low lying semi-developed wetlands adjacent to the Waipori River near the upper end of Lake Waihola.

The purpose of the designation in respect of the Taieri Gorge land was a scenic reserve while the purpose in respect of the Waihola wetlands was a Wildlife Reserve. Mr Sinclair opposed the making of both designations. In respect of the Taieri Mouth block the effect of the designation was to prevent him clearing gorse and scrub from the block in order to maintain grazing on the tops of gullies. In respect of the wetlands the designation meant that Mr Sinclair would have been unable to maintain flood banks which protected his cultivated land from Lake Waihola. The effect of the designation was that the land would eventually returned to swamp and be totally unsuitable for pasturable use.

The hearing of the two requirements issued by the Department of Conservation in the respect of Mr Sinclair's land was heard by the Clutha District Council between August 21 & 25 1995. Objections to the requirement included Mr Sinclair and Federated Farmers. The department called extensive evidence as to the scenic and wildlife values of both areas. In his defense Mr Sinclair called Mr Keith Thompson, a senior lecturer at the University of Waikato, specialising in Wetland Management. The basic thrust of Mr Thompson's evidence was that it is possible to maintain wetland values, the conservation values of a wetland in conjunction with farming operations and that in fact this can be advantageous to the overall health of the wetland system.

In respect of the Taieri Gorge block Mr Sinclair called Mr Warren Burke, a Botanist, who gave evidence on the scenic and botanical values of the native species contained on the land and Mr Harold Heath, a Forestry Management expert, who gave evidence on the economic value of the forestry contained on the land

On the 24 November 1995 the Clutha Distric Council recommended to the Minister of Conservation that the designation be confirmed in respect of both areas of land. The Council went on to say, the designation shall lapse if either of the following condition presidents have not been met:

- a) A full management plan of the designated area shall be submitted to the Clutha District Council not later the 1 December 1996.
- b) The Minister of Conservation has not acquired before the 1st December 1997, the free old interest of R W Sinclair property subject to the designation.

The effect of this was that the council were putting the Minister of Conservation on notice that they had approximately two years to negotiate an arrangement with Mr Sinclair for them to purchase his interest in the property, otherwise they would allow both designations to lapse. Under the Resource Management Act the council's decision is only a recommendation which the Minister of Conservation can then either accept, vary or decline to accept

The next step is for the Minister of Conservation to consider the council's recommendation. On 30 January 1996 the Minister of Conservation advised his decision. The decision of the Minister was to accept the recommendation of the council, together with the conditions that the council had placed on the recommendation. However, the Minister went on to say "Please note that due to the condition that the designated area be acquired before 1 December 1997, the Minister may have to acquire the designated area under the Public Works Act 1981."

Upon the receipt of this letter by the parties (Clutha District Council and Mr Sinclair) a negotiation process commenced between Mr Sinclair and the Department of Conservation. The Department of Conservation employed an independent negotiator to act on their behalf in attempting to reach a satisfactory arrangement with Mr Sinclair. Negotiations continued throughout 1996 and explored various options such as, covenanting specific areas of land, compensating Mr Sinclair for loss of profit and purchasing the land. Conditional agreement for the sale of the designated land to the Department of Conservation was reached on 16 September 1997. The terms and conditions of that agreement are required to remain confidential as the result of a confidentiality clause included in the agreement. However, the Department of Conservation have subsequently issued press releases stating that the land has been purchased by the Minister of Conservation with the purpose that the Waihola area will become part of the Waihola Wildlife Reserve and the Taieri Gorge will become a scenic reserve

As you have correctly observed from press statements made by Mr Sinclair, although he has agreed to sell the land in question to the Minister of Conservation he still has deep feelings regarding the process he has been put through and the fact that land that has been in his family name for over 70 years has now been sold to the crown. He is a person who places great value in his environment and it is indeed for this reason that the land was so desired by the Department of Conservation.

We trust the above information is of assistance to you. Please contact the writer if you require any further information.

Yours faithfully

SOLOMONS

  
DEVON MILLER

## **APPENDIX 4**

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# Author disagrees with forcing plan

**F**ARMERS should not have conservation protection areas forced on them in the Banks Peninsula District Plan, says the author of an ecological document.

Hugh Wilson, who runs a 1000ha nature reserve on the peninsula, says consultation, negotiation and incentive should be the key elements in establishing conservation areas.

Mr Wilson produced *Banks Ecological Region* in 1992 which identified areas of conservation significance in the area. He never intended it to be completely transformed into a district plan.

"In that report I stressed if conservation gains are to be made there should be no coercion to achieve it. That has been ignored. All of us must accept an obligation to ourselves, the landscape and the community. Many farmers in Banks Peninsula already have a conservation thrust. Many have set aside reserves on their own initiative. There are some appalling things that have happened as well. Some of

the things I see I regard as vandalism so there is both sides."

Mr Wilson, who has made a submission to the plan, says areas with high conservation values should be identified and individual land owners consulted one on one.

"I know that costs, but it's better than

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## Level of opposition to the plan has surprised the district council

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telling them what they can and cannot do."

He says the level of opposition to the plan has surprised the district council. "It's shown they are a little out of touch."

Hickory Bay farmer Kit Grigg says the manner in which Mr Wilson's research been imposed on the plan undoes 10 years of superb effort in raising the conservation awareness of the farming community.

"The plan has chosen to disregard any

existing privately instigated protected areas such as QEII covenants and has imposed its own protected areas unilaterally over top in a most intolerable manner."

A 4.9ha coastal frontage area of his farm had a covenant placed on it in 1984.

"This was an action we took at our own initiative and considered carefully the restrictions it would place on us. The council has now seen fit to overlay this with both the coastal protection area and an RAP, an action that we find unwarranted and disparaging of our own voluntary conservation efforts."

The definition of the landscape areas in which forestry is heavily controlled is based on a report prepared by Chris Glasson in 1991. Federated Farmers says the report has serious shortcomings and does not warrant status as a key reference document.

"It fails to recognise that the existing landscape is predominantly a farmed landscape with rural character," says district chair Pam Richardson.

# Farmer hits out at DOC

**By Tracie Barrett**  
**An Otago farmer claims he was forced to sell land to the Department of Conservation against his will.**

Minister of Conservation Nick Smith yesterday announced the purchase of a section of the Waipori-Waihola wetlands complex from Titri farmer Richard Sinclair, after more than 20 years of negotiation.

Known as the Sinclair Block, the 117ha have been in the Sinclair family for most of this century and has connections dating back even further.

"My grand-uncle built the bridge and banked the property in 1872, my uncle bought it in 1905 and my parents got it in 1921," Mr Sinclair said.

He said yesterday he had been forced to accept the department's offer.

"It wasn't my choice to sell but the designation put on it prevented me cultivating the land, draining it or making any improvements."

Mr Sinclair said he was also stopped from selling the land privately.

"I could have got far more on the open market and more again if they let me improve it with floodbanks. I could have planted 20 acres

of chicory and 100 acres of pasture and supplied all the food the wildfowl needed."

Mr Sinclair also sold the forested catchment of Muddy Gully, on the southern side of the lower Taieri Gorge, to the Department of Conservation. This 112ha purchase would increase the size of the Taieri River Scenic Reserve by about a third.

He said he was satisfied with the price paid for the gully, but the wetlands sale was against his will.

"The intimidating tactics and the fact that DOC line you up against the wall with the Public Works Act is a despicable thing to do."

4 DUNEDIN NEWS

17.10.97

## DOC denies farmer made to sell land

**By Tracie Barrett**

**Otago Conservator Jeff Connell yesterday took issue with a claim by a farmer, Richard Sinclair, that he had been forced to sell land near Waihola to the Department of Conservation.**

Mr Connell supported the purchase of the Sinclair Block, a section of the Waipori-Waihola wetlands complex south of Dunedin.

The former owner, Titri farmer Richard Sinclair, had said designations placed on the land by the Department of Conservation forced him to sell the land against his will.

Mr Connell said the wetland area was clearly going to be destroyed by its former owner and the designation was necessary to save it.

"I also find it strange that the owner is complaining about the wetland designation when he only appealed against part of it to the Environment Court," he said.

The Clutha District Council had supported the designation, Mr Connell said. It had also backed the forest designation of another block of land owned by Mr Sinclair — a forested catchment of Muddy Gully, on the southern side of the lower Taieri Gorge — but required the department to conclude negotiations on both blocks by December 1, 1997.

"It is in the interests of all

parties that long-standing issues like these do not drag on," Mr Connell said. "We have been negotiating with Mr Sinclair for many years. In the end, we met his asking price for the wetland area."

Conservation Minister Nick Smith announced the purchase of the 117-hectare wetland block and the 112ha forested catchment on Wednesday. The sales followed more than 20 years of negotiations. Mr Smith said the purchases represented important "biodiversity gains" for Otago.

"As a habitat for aquatic birds and native fish, the wetland is of immense value. The whole complex is the largest lowland freshwater wetland in the South Island and certainly the most important habitat for water birds in Otago.

"The Sinclair block is probably the most valuable area in the complex for wading birds such as South Island pied oystercatcher and pied stilt."

The complex also had at least 12 species of native freshwater fish, including the threatened giant kokopu.

# Betrayed farmers rally to fighting fund call

BY TERRY BROSNAHAN

The inclusion of private land with dubious conservation value in regional and district plans without landowners' consent, is one battle in which the Farmers' Fighting Fund could be used.

Farmers all over the country believe they have been betrayed by DOC when it broke the original agreement for the Protected Natural Areas programme which started in 1983. The aim of the programme was to save endangered indigenous vegetation and representative samples of natural ecosystems. Farmers were asked to help identify recommended areas for protection (RAPs). Only by negotiation between the landowner and the Crown, were RAPs to become

protected natural areas (PNAs).

However, with the introduction of the Resource Management Act (RMA), DOC supplied regional and district councils with lists of RAPs. Though many were inaccurate they were still included in draft plans as possessing significant conservation values. Landowners suddenly had restricted land uses forced upon them as the draft plan had status in law.

If councils ignore landowners' submissions and include un-negotiated RAPs in the final plan, farmers and their representatives, such as Federated Farmers, may be forced to take expensive legal action through the Environment Court.

Landholders were angry that DOC did not stick to the agreement on PNAs. DOC claimed it was re-

quired by the RMA to supply the lists. Even if that was so, farmers believed DOC should not have actively supported the inclusion of incorrect RAPs.

Mackenzie farmers Donald and Dawn France were reasonably happy with the original RAPs identified on their station, Glenrock. They were assured that if there was to be any changes in area or ownership, negotiations would take place between them and the Crown. They were prepared to negotiate if the Crown wanted to make the RAPs into PNAs.

"It is very unfair to gather information for RAPs and then use them for a different purpose," Mr France said.

The original RAPs were enlarged and in one case grew from 14 to about 2000 hectares.

Designations did not take account of fence lines. There were about eight recommended areas for protection in the corners of their paddocks. If the Frances decided to develop land it was unclear whose responsibility it was to erect fences around the RAPs.

In the Rakaia Gorge, more than a third of Lake Heron station, about 7000 hectares has been designated RAPs. Runholder Ben Todhunter was dismayed the original agreement was not adhered to and that the council had chosen to include them in the draft Ashburton District plan.

Neighbour, Ben Hutchinson of Double Hill Station was also unhappy with DOC breaching the agreement on RAPs. While at this stage the RAPs were not affecting

management of the station, he had not expected them to end up in a district plan.

Mr Hutchinson said the original idea was to pick the best areas for conservation, but instead they all went in without negotiation.

While listing RAPs in a district plan might not necessarily mean burdensome restrictions on landowners, they were still an invasion of private property rights.

As Mid Canterbury Federated Farmers high country branch chairman Murray Hawkes explained at a field day in the Gorge earlier this year, once designated as conservation areas in a district plan, they would be virtually impossible to remove. Farmers would be subject to consequent restrictions, irrespective of the areas scientific merit.

## Smith promises more landowner-friendly DOC

Conservation has suffered a major setback due to DOC's lack of consultation and negotiation with landowners. But conservation minister Nick Smith intends to win back lost ground with a restructured and more landowner-friendly department.

Farmers around the country were upset when DOC supplied inaccurate lists of recommended areas for protection (RAPs) for councils' district plans without consultation.

Mid Canterbury high country farmer and leading conservationist Hamish Ensor believed DOC's actions were an absolute betrayal of the original agreement. In his submission to the Ashburton District Plan he said DOC no longer had "mana" in the high country and could not expect co-operation with landowners. The former South Island High Country chairman had actively encouraged farmers to become involved in the protection of natural areas programme in the 1980s.

There had been a clear understanding only small areas dotted over the landscape were to be affected.

"You can imagine the surprise later when huge areas, up to one third of whole runs were included."

A former chairman of the Queen Elizabeth the Second National Trust and the Aoraki Conservation Board, Mr Ensor said landholders had placed many sites under covenants.

The high country community still had a strong conservation ethic despite DOC's best efforts to override promises of consultation and negotiation.

DOC claimed it was legally bound under the Resource Management Act to submit the RAPs to be classified in plans as areas of significant conservation value (ASCVs). Farmers were angry that DOC supplied inaccurate information and actively supported its inclusion.

Ashburton District Council planning officer Mike Singleton said DOC's list of sites was put into the plan to alert landowners. Otherwise a lot of people might not have realised their land was affected.

He said the whole process had been a learning experience for the council, DOC and Federated Farmers.

The key to the problem is in deciding what is significant.

DOC and farmers have differing views, it can be very subjective. Councils have hired independent consultants to verify some sites but the cost may be prohibitive for widespread use.

Mr Ensor said a site should be worthy of protection if the majority of the community understood why it was significant and was prepared to share in the cost of managing it.

Nick Smith told several Federated Farmers conferences recently there would in future be more consultation and less litigation from DOC.

He advocated a more flexible approach and closer liaisons with farmers and councils.

DOC's new southern manager John Cumberpatch said at the end of the day it was up to councils to decide what went into a plan. But DOC had picked up the message that it needed to consult more. Farmers did not trust DOC and it was affecting the high country land tenure review process.

"We have got to work to get on a better footing with farmers."

Mr Cumberpatch did not support the use of the Public Works Act to settle disputes.

"Using the Public Works Act would be too draconian. It would not advance the cause."

DOC administered a lot of land for the public. Staff and the public had to stop thinking it was DOC land.

Waitaki District Council planner Jack Chandra said DOC had wanted every site included and make farmers justify why they should not be included in a plan.

"We (council) would have become the owner of the problem."

He said areas of conservation did not need to be in a plan to be protected and satisfy the RMA.

It could be a private agreement between DOC and landowners.

His council had adopted a strategy based on a model designed by Federated Farmers and the Oamaru Landcare group in co-operation with DOC and the Ministry for the Environment.

## Farmers not being heard

BY DONALD REID

The Resource Management Act has forced many farmers to quickly become experts in the field of local government legislation.

One area that has been affected more than most is Banks Peninsula where stands of native trees and farming properties have become bargaining tools between the local council's conservationist motives and the pragmatic needs of farmers.

A great deal of time and money has been spent by the farmers defending their properties from a district plan which they say has been imposed without adequate consultation and doesn't recognise the role of the farming in the area.

Banks Peninsular farmer Andrew Dalglish, under the current district plan much of his property has been designated a Landscape Protection area, comprising a Coastal Protection Area, with the rest being classified as medium and high sensitivity protection areas. There is also a 76 ha Recommended Protection Area.

"Much of what the council has based their recommendations on comes from a 1993 document [Banks Peninsula Ecological Region by Hugh Wilson]. Those were totally voluntary recommendations, but the council has hijacked that document and has made recommendations legally binding."

Hugh Wilson himself has made a submission to the council and has said that "the provisions regarding RAPs and LAPs will be counterproductive to the stated goal."

"We've had a meeting with the mayor and tried to show her that we actually have a real case. Basically we wanted to show the council that we would be happy to meet and demonstrate how unworkable the plan is. Our position is simply that the plan is flawed in its interpretation of council's obligations under the RMA and that certain sections have to be rewritten from scratch."

While admitting there are flaws in the RMA itself, Mr Dalglish's main concern with the process is in the subjective nature of any given council's interpretation of the legislation.

"The councils appear to be able to create their own guidelines for the RMA. Some aspects of their interpretation is based purely on visual aspects of the land, which makes the process entirely subjective. And what happens when the employee who made that assessment leaves the council? Does that mean the interpretation changes? Any activity that is ruled discretionary or higher is also open to changing interpretation by the council."

The Banks Peninsula council is wading through the various submissions to their district plan and there is no fixed deadline as yet. Mr Dalglish says the Council are consistently calling for submissions to make the plan a better document, but they are yet to acknowledge the specific points farmers in the region are making. He says the Council has not discharged its legal obligations to the RMA under clause 3(b) - consultation or section 32 - the costs and benefits.

# Plans anger runholders

By Fiona Hill

South Island high country farmers believe district councils are using "excessive zeal" to protect natural resources on their runs.

The chairman of the South Island High Country committee of Federated Farmers, John Aspinall, said yesterday farmers accepted that areas of natural resources needed to be protected but believed many district councils, including Queenstown-Lakes, were taking things too far.

However, chairman of the Otago Conservation Board Prof Alan Mark said the councils were only doing what was legally required and other councils who acceded to the runholders' demands could face legal challenges in the future.

Mr Aspinall said in a state-

ment most farmers accepted that the Resource Management Act required councils to provide for protection of rare or threatened flora or fauna or outstanding natural features.

"However, many councils have gone much further in incorporating large areas of the rural environment with rules which will require costly resource consents for land management activities."

Farmers were disappointed there had been little or no consultation over the many zones and rules proposed in the councils' district plans, believing that

negotiations between the parties could result in long-term management agreements or covenants which would achieve the same thing at less cost.

"However, the method adopted so far by councils such as Queenstown-Lakes, Mackenzie, Ashburton, Selwyn and Hurunui has simply followed statutory process without a clear focus on the outcome.

"It has involved minimal consultation and been confrontational and adversarial through the submission process and ultimately the Environment Court, leading to a negative perception of con-

servation values."

Prof Mark said the matter was potentially highly controversial and more complicated.

Runholders, who for the most part leased their land from the Crown, had allowed the Department of Conservation to survey their runs for areas of conservation value on the undertaking any management issues would be subject to negotiation.

District councils, however, had used the resulting survey information as the basis of their plans and were now laying down rules to control use of the area in the most part without extensive negotiation.

## Land rights battle tough one to win

**S**ir, Land grabs are making headlines. It's great to see three articles on your Opinion page (May 22) relating to district plans and their effect on our property rights.

I am less optimistic than other writers about relying on submissions or an Section 32 analysis (assessment of alternative methods).

The point we must remember is that we can never win this battle on planners' terms. They have the ability to take property rights without costs.

Taking of management rights under district plans is also taking property rights. Without management rights why own property?

The submission process is necessary to conform with the law. Our major thrust must be to achieve compensation for the taking of property rights. Once you buy into the RMA they either do a Section 32 analysis and you've had it, or they consult with the same result. Or they take into account your submission from their point of view and then you're still right in it.

The only way to stop these people

controlling you is a law change making compensation mandatory for loss of property rights. Graham Pinnell is on the right track but leaves the position of Section 85 unclear relating to compensation.

### Council is avoiding mass of objections

**S**ir, As one who has met with council representatives and read your article, I feel council representatives are simply avoiding meeting our challenges, and are defending the principle of the document in the absence of reasoned explanations.

Planner Owen Byrne states there is "no prohibited (farming) act in the district plan". Given that the land I farm is completely covered in protection zones, how does he suggest I interpret the following statement: "There shall be no clearance of indigenous vegetation within a landscape Protection Area or a Recommended Area for Protection identified on the planning maps" — p.102, Proposed District Plan (PDP).

"There shall be no earthworks undertaken within the Landscape Protection (high sensitivity) Area — p.77-103, PDP.

landowners. The council may feel it has discharged its legal obligations to consultation (in the RMA clause 3b), through its submissions process. However, most farmers and landowners were completely unaware of the council's intentions, and are angry because the document simply doesn't reflect the values of the farming community.

● The district plan concedes that farming is a permitted activity. However, it seeks to control (through LPAs and RAPs) almost every

Section 85 is simply a variation of the submission process. The system means you can have property stolen and you have to fight to get it back without compensation — a double cost. The present system expressly forbids compensation. Period.

If compensation was mandatory councils and their planners could plan and consult for as long as they like but before they can take away property rights they have to compensate. End of problem. Roger Beattie R & N Beattie Partnership Banks Peninsula.

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John Christensen says it's a "proposed district plan"; this is misinterpreted because many people (including councillors) don't realise that it is a legal document: all activities requiring a consent must comply with the more difficult of the existing or proposed plan as of January 1997. He later states that they sidestepped the draft process.

His third point needs to be qualified.

Chris Glasson's report highlighted an area of the peninsula (at a glance 50% of land area) to be a Forestry Avoidance Zone — on the basis of visual qualities only.

Councillors will quickly point out that they de-rated this zoning to Medium and High Sensitivity Protection areas (and a swath around the coast became Coastal Protection Area).

While forestry is now a controlled activity in 50% of the area, the other 50% is either Discretionary (medium sensitivity/coastal) or non-complying /high sensitivity area.

The major concerns of farmers (and which have been well documented in the submissions) are as follows:

● There has been scant, if any, consultation with affected

landowners. The council may feel it has discharged its legal obligations to consultation (in the RMA clause 3b), through its issues/options process.

However, most farmers and landowners were completely unaware of the council's intentions, and are angry because the document simply doesn't reflect the values of the farming community.

● The district plan concedes that farming is a permitted activity. However, it seeks to control (through LPAs and RAPs) almost every



activity that we would regard as a legitimate farming practice.

● The plan simply does not recognise that farming is the predominant land use of the area, and just what this activity supports in terms of the economy, infrastructure and community.

To achieve a balance in all this, farmers are submitting that:

The council specifically "identify outstanding natural features of fauna and landscape", consulting with the private landowners concerned and formulating a management plan specific to each area and each parties' needs. If any costs arise outside the landowners' legitimate needs then those should be met by the council and/or the public at large.

We seek to make controls effect-based rather than ruling each activity.

While council representatives quoted in your articles constantly call for submissions to make the district plan a better document, it remains to be seen how the council responds to the weight of well-researched, well-reasoned and articulated submissions from farmers and associated land-use interests.

Andrew Dalglish Eastwood, Le Bons Bay Banks Peninsula.

● Editor's note: This letter was edited.

# Land grab claim from peninsula

By SEAN STEPHENS

**BANKS Peninsula farmers are standing united in their vehement opposition to their district council's proposed district plan.**

They say the plan, which creates huge environmental protection areas across private land, threatens the viability of some farming operations.

"This plan is a land grab, pure and simple," says Roger Beattie, who with wife Nicki farms the 364ha Kowhai Vale property near Wainui.

"The enormity of what has happened has just started to dawn on people. If you take the liberal interpretation of this plan you can't even dig your own garden without a resource consent.

"Management rights to the land are being stolen under this plan. If you don't own the management rights why own the property?"

"Present owners and potential buyers see land values dropping. It's not good business to buy a depreciating asset."

He says 90% of his property comes under a protected area in the proposed plan, drawn up by Auckland consultants Connell Wagner.

"The arrogance of the whole thing staggers me. The plan has probably been drawn up by some born-again socialist or greenie who has probably never seen the peninsula, but has worked off lines on a map.

"Yet they fundamentally affect people's lives without a care in the world."

The issue has resulted in a resurgence of the Banks Peninsula branch of Federated Farmers, which is championing the fight for farmers.

Branch chairperson Pam Richardson says she's never seen farmers in the area so united.

She terms it an uprising of opposition, and says if the council keeps moving down this path Banks Peninsula won't survive in its present form.

"They seem to forget that we have to live and work here."

Le Bons Bay farmer Andrew Dalglish was one of a group of farmers who

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organised a mail drop to ensure there was wide knowledge of the plan and its ramifications.

They have urged all farmers to make submissions to the scheme, and hope the sheer weight of opposition to it will force a change. The closing date for submissions has been extended from last Friday to the end of the month.

Mr Dalglish says the proposed plan, which is presently a legally binding document, has taken most, if not all, farmers in the district by surprise.

The plan has designated 80 Recommended Areas for Protection (RAPs), some of which are of more than 400ha. Those areas cannot be touched in any way.

Huge areas of clear, high class, peninsula farmland have also been included in the Coastal Protection Area and Landscape Protection Areas.

"Clearing native vegetation is prohibited, while other activities such as earthworks, tracks, fencelines, shelter belts, woodlots, replacement or erection of buildings requires a resource consent.

"Those are the very things the 1992 snows proved are vital.

"Having to get resource consents is simply a tariff on legitimate farming practices. All those costs fall on the private landholder."

Mr Dalglish, whose family owns 400ha and leases another 200ha, says the plan doesn't recognise farming as the predominant land use on the peninsula.

"In my own case it will make farming here untenable.

"A lot of the present landowners here today are descendants of the earliest European settlers. They've been living and farming here ever since, and have high environmental values.

"They are stunned they are now being told this is the way they have to do it, and pay for it."

# Hot debate at latest Hurunui district moves

By DIANNA LESLIE

**CONCESSIONS** in the Hurunui District Plan have been cold comfort for angry farmers planning to appeal the document.

The North Canterbury council is the first in Canterbury to confirm its decisions and, despite concessions since the initial drafts and proposed plans, farmers remain unconvinced and uneasy.

Roughly two-thirds of listed under significant or outstanding landscape, and at a meeting at Waipara on Monday farmers were not complacent. Landscape issues brought hot debate.

One farmer likened the plan to nasella tussock, saying it was spreading all over the district. Concern was also raised about forestry. Dick Davison, a Culverden farmer, says things change.

"In terms of forestry, you're saying just about everybody is going to need a consent," he says.

"You say that is fine. No problem, all very easy. We will have another council in three, five, or 10 years. We will have other planners who will interpret this plan. They may not be quite as forgiving as you appear to be.

"What worries me is that what you regard as easy, cheap, and no hassle may be interpreted by the other people as a pain in the butt.

"All of us have experience of words being written into rules and regulations and interpreted in a slightly different way by somebody else. It becomes

expensive and very difficult to deal with."

Ross Little, North Canterbury president, tempered the feeling of the meeting by acknowledging several big changes council had made since the draft plan, but said there were still serious concerns.

Wellington planning consultant, Robert Schofield, assured farmers the document was living, flexible, and open to change.

"The plan has to have bottom-line standards," he says. "The council is

trying to promote good farming through methods, not rules.

"It is a big land mass and in the day-to-day farming practices they won't notice a difference. The council has a deliberate policy to avoid prohibitive policy."

Hurunui Mayor John Chaffey agreed. "What we have done is to make a genuine effort to get something out of this business to protect this district in the long term, he says.

"You might not agree with us, and that is your prerogative, but none of this plan says 'no' about anything."

The full plan was unavailable for scrutiny because of a computer glitch. Farmers were able to sight decisions on their properties, but appeals will be certain when the council's decisions hit the mailboxes.



# Council does not trust the farmers

**A SECTION** of the Hurunui District plan suggests farmers are not to be trusted, says North Canterbury Federated Farmers' policy analyst, Ali Undorf-Lay.

Ms Undorf-Lay says the council's secondary schedule, which has been heralded as a valuable olive branch between the farming community and officials, is a case in point.

The secondary schedule gives landowners and the council two years to negotiate what will happen on the properties.

"The secondary schedule is not a compromise," said Ms Undorf-Lay. "It is probably because the council doesn't have the information, and has not visited many of the sites, to justify putting them in."

"They obviously don't trust their farming community to continue to look after the sites, as they have done for years, until an agreement can be reached.

"In fact a lot of the concessions they are claiming are plain common sense, which should have been used in the first instance."

Ms Undorf-Lay has not seen the complete plan because a computer

glitch had held up its release, but she predicted Federated Farmers would appeal on a number of issues, including landscape, coastal environment, and secondary schedule issues.

"The council has released the decisions through the media over the last three weeks, which is unusual.

"The rules should be common sense, and I don't think the council's argument is robust enough to justify the huge restrictions they are placing on farmers who are trying to farm in a businesslike way."

Robert Schofield, a Wellington planning consultant, says trust has nothing to do with the secondary schedule.

He says it was put in place to give the Department of Conservation and farmers time to justify sites. There have been significant changes in the landscape and natural environment sections of the plan.

He says the council has deliberately avoided prohibitive policy, and the consents were required only where activities could harm the area.

Farmers have 15 working days to appeal decisions, and each appeal costs \$55.

## PUBLIC AS ENFORCERS

# Secret police talk about district plan

By STEVE MACMILLAN

FAR NORTH farmers are among residents expected to enforce the proposed Far North District Plan.

There is growing public opposition to the plan which Far North residents want scrapped.

But the plan states the council is empowering the public with the responsibility of enforcing the document's by-laws.

The council is effectively calling on residents to do in neighbours flouting plan requirements. It has brought a stern warning from Northland Federated Farmers president Ian Walker.

"Next time you talk to a neighbour or chat with a shop owner down the road be careful what you say, they could be the council's secret police and you may find a council investigator on your doorstep," says Mr Walker.

And he has backing from town planning expert Owen McShane who has studied the multi-million dollar plan.

Mr McShane spoke at a public meeting last week, claiming the plan is so badly flawed it should be withdrawn and started again.

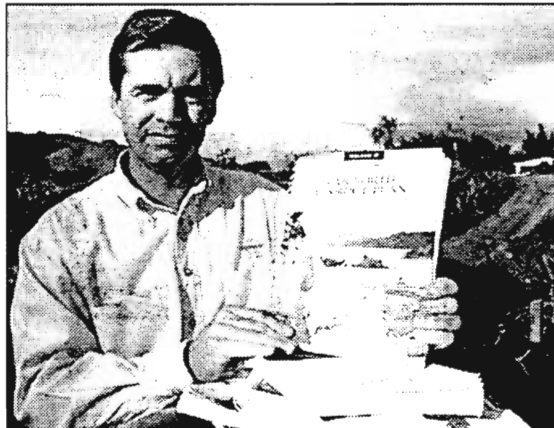
He says it will seriously effect the Far North economy and be highly inflationary.

"It is so difficult to read or understand that it is impossible to operate effectively as a working district document," says Mr McShane.

He says the land market in New Zealand is more regulated than ever.

"Studies around the world show the worst situation is where most things are deregulated and one sector highly regulated. It introduces masses of distortion into the economy."

"I am stunned at the problems that have been invented in the Far North. I had no idea 57,000 residents are



Northland's Ian Walker: "Next time you talk to a neighbour be careful what you say."

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running round horrified they can see satellite dishes in people's houses."

The council can now hand out instant fines for breaches of the plan, including satellite dishes being visible from roads.

"I am trying to figure out why someone would sit in an office and write such rules. There are hundreds of problems in the plan which don't exist and I don't think any planner should write a plan, if they don't live among you. You wouldn't get this nonsense."

Mr McShane says innovation and change should be encouraged, but the council maintains in the plan that a productive farm unit can't be run on a small piece of land.

"The traditional pastoral farming, as we all get rich and the currency gets stronger, means that as a commodity trader it is harder to survive. This plan is destroying your asset base so you can't even finance change and risk-taking."

The council has created an environment where some farmers have now have negative equity, mainly through inventing significant natural areas (SNAs).

The plan also states once a tree is a certain height it doesn't belong to the farmer or landowner anymore.

"All of these rules to protect the environment are counter-productive. The plan destroys economic assets, makes economic change more difficult and turns environmental assets into liabilities. The other aspect of these SNAs is that the concept is a lie.

"The notion there are stakes of nature untouched by mankind is not true. All around the world the problem with environmental law is when to stop."

The plan also mentions cultural and spiritual values, but Mr McShane says these don't exist in the Resource Management Act. He sees this as another mistake by the council.

"Some cultural values are deeply imbedded in us. They are called freedom, property rights and the right to live life in the pursuit of happiness — in our own time, on our own land."