



Date: 4 March 2021
To: Director-General
CC: Judi Brennan, Kay Booth, Mark Davies, Jonty Somers
From: Natasha Hayward, Director Planning Permissions and Land

Subject: Cowan application for a reconsideration of the fencing conditions on the proposed grazing concession granted on 10 February 2020 – second decision

1.0 Purpose

1.1 To seek your decision on whether to grant or decline Mr Cowan's application for a reconsideration of the fencing conditions on the true right of the Haast river.

2.0 Context

2.1 On 10 February 2020, Dr Kay Booth acting under delegation granted Mr Cowan's application for a grazing concession in the Haast Valley subject to fencing conditions on both the true left and true right banks of the Haast river. The term granted was until October 2023 to align with the expiry of other concessions Mr Cowan holds in the Haast valley. The decision letter is attached as Appendix 1.

2.2 The fencing conditions are set out below for ease of reference.

Fencing	<p>The Concessionaire must at its cost ensure that stock is adequately contained within the land.</p> <p>For clarity, this shall include the construction of a fence along the true left boundary of the land to ensure that stock is not able to enter the adjoining National Park and appropriate fencing on the true right of the river</p> <p>The initial location and works to establish these fences shall not occur until the design, location and methodology of fencing has been agreed with the Operations Manager, South Westland. This will involve a site visit.</p> <p>Any further approvals required for works undertaken outside of the land shall be obtained prior to this work commencing.</p>
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	<p>The Concessionaire must at its cost maintain all fences, gates, stiles, bridges, culverts and drains in good condition. The concessionaire shall report on the condition of any fences following any large rain event within the Haast Valley.</p> <p>The Concessionaire must place on a prominent position on any electric fence placed on the Land a warning sign advising that the fence is electric.</p> <p>The Concessionaire must fence existing stands of ribbonwood and coprosma wallii located upon the grazing flats. The fencing shall be undertaken in a manner that prevents stock being able to graze the vegetation and allows regeneration. Locations of required fencing and fencing shall be to the satisfaction of the Grantor and subject to a site visit prior to construction.</p>
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- 2.3 We did not hear from Mr Cowan for some time. Following a phone conversation on 19 March, we then wrote to him on 8 April 2020 putting him on notice that he was required to sign the proposed concession document within 1 month as set out in s17ZD(1) Conservation Act. Note this section provides that if a concession document is not executed within the required time, the Minister may cancel the grant.
- 2.4 On 20 April 2020, Mr George Ivey acting as Mr Cowan’s agent, wrote saying that he did not wish to sign the document until he understood the requirements of the fencing conditions. Mr Ivey was advised that the conditions were specifically written to allow for discussion and approval of the proposed fencing methodology. Staff advised that there was no discretion in relation to the requirement to fence and if that was disputed, then a reconsideration process or a decision not to execute the concession were the two courses of action available.
- 2.5 On 7 May 2020, Mr George Ivey sought a reconsideration of the fencing conditions. Further discussions occurred with Department staff and confirmed that the reconsideration related to imposing fencing conditions on the true right of the Haast River.
- 3.0 **Process**
- 3.1 Section 17ZJ(b) of the Conservation Act provides that, upon application by an applicant for a concession where the Minister has decided to grant a proposed concession to the applicant, the Minister may reconsider any decision made by the Minister in relation to the proposed concession if the application is made before the proposed concession is executed.
- Two decision points
- 3.2 Section 17ZJ(b) contains two decision points.
- (a) The first is to make a decision whether to accept or decline the application (‘the first decision’).

- (b) If the first decision is to accept the application, this triggers a further decision ("the second decision") on whether the fencing conditions relating to the true right of the river are appropriate and reasonable.
- 3.3 You made your first decision to accept the application in September 2020.
- 3.4 This memorandum relates to the second decision. You must reconsider the fencing conditions for the true right of the Haast River imposed on the proposed concession. If you decide that they are not appropriate or reasonable, you may impose other conditions. Alternatively, if you consider that there are no appropriate methods of containing the cattle within the licence area you may decide to withdraw or cancel the grant of the proposed concession of 10 February 2020 on the basis it was a requirement that the cattle would be confined within the licence area. The effect of this would be that without a concession in place Mr Cowan would need to remove his cattle from the licence area. This matter would then be brought to a close.
- 3.5 Whatever your decision, you should give reasons which will be forwarded to Mr Cowan.
- 4.0 **Previous context to the proposed concession decision**
- 4.1 The memo relating to your first decision, dated 25 August 2020, sets out the context for the original concession decision and consultation with the applicant on the first decision on the reconsideration. This is attached as Appendix 3.
- 4.2 Dr Booth granted the grazing application subject to special conditions on 10 February 2020. The fencing of the licence area was a key consideration. Her Decision Letter (attached as Appendix 1) summarised her decision as follows:
- In summary, I am granting your application subject to the following special conditions and those listed in Schedule 3 of the licence document:*
- a. *Stock must be contained within the licence area and appropriate fencing will therefore be required to a design and standard and within a timeframe agreed by the Department;*
 - b. *The local populations of Coprosma wallii and identified areas of ribbonwood must be fenced;*
 - c. *Fencing and its maintenance are to be at your cost.*
 - d. *The Department will collect baseline data and carry out appropriate monitoring on at least an annual basis and at other relevant times to monitor effects and to ensure compliance with these conditions at your cost.*
 - e. *The application is granted for a term to expire on 31 October 2023.*
- 4.3 Dr Booth set out her consideration of her decision within her letter. She summarised the Decision Support Document's (DSD) key issue as being adverse ecological effects of the grazing activity within and outside the licence area that were not able to be adequately mitigated.
- 4.4 The DSD advised that the proposed grazing would result in: Continued decline in plant species diversity within and outside the licence area; likely reduced resilience of local populations of Coprosma wallii, as well as reduced

growth and survival of other native plant species; and further degradation of wetlands. She then stated: "*I consider the first two matters can appropriately be dealt with by fencing of a design and standard to be agreed with the Department.*" Dr Booth imposed conditions requiring fencing of the true right as a result of a discussion with the applicant's representative, Mr Ivey, in which she understood that such fencing would be possible. Mr Ivey disputes this.

- 4.5 The conditions requiring fencing of the true left and right boundaries of the licence area, along with fencing of specific stands of vegetation were a critical method to mitigate the effects of the proposed grazing and a key aspect of Dr Booth's decision to grant the licence. But for the fencing conditions, she would not have granted the proposed concession.

5.0 The reconsideration application

- 5.1 Mr Cowan's application for reconsideration focuses solely on conditions relating to fencing on the true right of the Haast River. His reasons for the application are that the conditions:

- (a) Are against public sentiment;
- (b) Are impractical in many ways;
- (c) Raise animal welfare issues;
- (d) Are economically unviable; and
- (e) Are designed to ensure his cattle do not encroach onto public conservation land which has the status of stewardship area

6.0 Assessment – the matters advanced by Mr Cowan

a) Public sentiment

- 6.1 The DSD (Appendix 5) records that there is some public sentiment against fencing in an area such as the Haast river valley. However, submissions were also received in opposition to the presence of cattle within the riverbed at all. Public sentiment is not determinative, especially if the reason for fencing is to prevent cattle trespassing on adjacent public conservation land.

b) Impractical

- 6.2 Mr Cowan considers the requirement to fence the true right of the Haast river to be impractical. He notes the difficulty in constructed flood gates across tributary streams, the difficulty in accessing the true right, which is by horseback, boat or aurally only, and the maintenance required due to bush falling on the fence, flood damage, and deer damage. Mr Ivey noted that stock may track along the fence which may lead to stock following the fence until the edge of the licence, leading them into other areas, including the Landsborough Valley.

- 6.3 The Decision Support Document and Department ecological advice also noted potential difficulties in constructing and maintaining fences on an ongoing basis. Further independent assessment of fencing methods to contain stock within the licence is set out in section 7 below.

- c) Animal Welfare issues
- 6.4 Concerns were raised that fencing cattle into the licence would prevent their ability to move out into the surrounding higher ground outside of the concession during flood events and lead to stock drowning. The Haast River is subject to high rainfall and “bank to bank” floods at least annually. It is not immediately apparent why this concern is not expressed in relation to conditions to fence the true left boundary where Mr Cowan is not seeking a reconsideration of fencing conditions. Why this should be the case on the true right of the river and not on the true left where Mr Cowan has agreed to a fence, is not explained.
- d) Economically unviable
- 6.5 Mr Cowan estimates that the construction of the fence on the true right will cost in the vicinity of \$50,000 to \$70,000 to construct a three-wire electric fence over nine kilometres in length. Floodgates over streams and ongoing maintenance following regular floods would be in addition to this figure. It is noted that the conditions provided for discussion around the type of fence required to contain stock and how this would be constructed.
- 6.6 It is accepted that the construction of such a length of fence will come at a significant cost to the concessionaire and would need to be balanced against the benefit of conducting the activity upon public conservation land. As a condition of the approved concession, the condition was imposed by the decision maker to mitigate adverse effects. The cost of compliance with a concession condition should inform whether a concessionaire chooses to execute the concession, rather than a decision on whether to impose the condition or not.
- e) Conditions are designed to prevent cattle wandering onto adjacent stewardship area.
- 6.7 The fencing conditions were specifically designed to prevent stock access into adjoining land. It is noted that Mr Cowan acknowledges the need to construct and maintain the true left, Mount Aspiring National Park boundary. However, this is then complicated by the other aspects of fence construction discussed above. The Department’s view is that Mr Cowan has an obligation to prevent cattle trespassing onto public conservation land over which he does not hold a concession. The Conservation General Policy requires that grazing activities are contained within the boundaries of their licence.

7. **Assessment – Ability to fence the True Right**

- 7.1. As part of your first decision to accept the reconsideration for processing, you directed staff to engage independent advice on the possible methodologies to contain the stock within the licence area.
- 7.2. Wayne Allan of Allan Agricultural Consulting, a registered farm consultant, was engaged and undertook a site visit on 18 November 2020. He was accompanied by George Ivey, on behalf of the applicant, Operations Manager Wayne Costello and Senior Ranger Rachel Norton.
- 7.3. Mr Allan’s report is attached as Appendix 4. Mr Allan observed on his site visit that stock pushed into the bush, particularly beside tributaries and scree fans. He concluded:

At this time, there are only a limited number of methods for containing stock. They include natural barriers such as dense bush, bluffs or banks, or significant waterways; or artificial barriers such as fencing. Virtual fencing is

a concept still in development and may provide a solution in the future; however, cannot be considered as a practical alternative at this time.

The only available option for replacing the natural barriers currently relied on, is the erection of fencing. While the erection of a fence is possible, in my opinion it would not be any more effective than the existing natural barriers.

There are a number of reasons why fencing is not considered practical:

- a. Variability of the terrain along the 14.5 km true right concession boundary. Fencing in places would be relatively easy, following the dripline of the bush. In areas of scree fan, the fencing would be more difficult with a requirement for floodgates over an ever-shifting water course. Fencing where the bush overhangs banks would be difficult, particularly when the next flood event could erode more of the bank or redirect the river channel.*
- b. The continually changing river channels would require the true right boundary to be entirely fenced; perhaps with the exception of the gorge area at the downstream end of the concession. Any change in channels could mean that areas previously inaccessible to stock become accessible; as stock enter these areas they could easily get behind the fence-line and would effectively then be fenced out of the concession rather than fenced into it.*
- c. Flood damage to fencing. The fences could be expected to be lost on the scree fans and other low lying areas every time flood events occur. The high intensity of rainfall, combined with steep or large catchments, generate powerful flood events, sometimes meters in depth. Even brief events could destroy fence-lines and wash debris downstream.*
- d. Lack of safe refuge from cattle from flooding. Cattle would no longer have the opportunity to easily retreat from rising floodwaters. This could result in the significant loss of stock. Mustering prior to flood events is not considered practical or safe due to the scale of the area and potential for rapidly rising floodwaters which are often not well predicted in advance.*
- e. Maintaining power to the fence. Keeping vegetation off the boundary fence would be an ongoing issue, with flood debris and windfall of branches, particularly in low lying areas or where the Concession boundary is located within the bush.*

In summary, it is considered that the fencing of the entire boundary is impractical, and the partial fencing of the boundary to be ineffective.

- 7.4. Mr Allan's conclusions reflect the assertion of Mr Cowan in his reconsideration request: that fencing the true right is impractical. Mr Allan also agreed with Mr Cowan that fencing the licence would prevent stock retreating from floodwaters.
- 7.5. Virtual fencing, referred to by Mr Allan in his report and quote above, relates to technology under development which seeks to utilise GPS collars to contain stock within 'virtual' geo-fenced boundaries that therefore do not require physical fencing. As stated by Mr Allan, trials are continuing and this method is not yet publicly available or a current alternative.
- 7.6. Although the focus of the site visit and this reconsideration was on the true right, the report identified that fencing required on the true left boundary with Mount Aspiring National Park has not occurred. This condition is not a specific

focus of the reconsideration request and will be required to occur if the grazing is to continue.

- 7.7. Mr Allan states a view that cattle are contained within the area by natural features within the wider valley although outside the concession boundary. The report identifies that this includes stock wandering 200-300 metres outside the licence area up a tributary margin or 50 metres within the bush margin.
- 7.8. Mr Allan's independent conclusion is clearly that fencing is not practical or effective as a method to contain stock within the licence. This agrees with statements in the reconsideration request and the Decision Support Document. The conditions requiring fencing of the true right of the licence area should therefore be removed as a condition of the concession.

8. **Effect on the decision to grant the proposed concession**

- 8.1. If you conclude that the fencing of the true right is not practicable or effective then you must consider if there are other appropriate conditions to continue to meet the intent of the proposed concession as the purpose of the previous decision was to ensure that the fencing conditions met the requirements of the Conservation General Policy, the CMS and the Conservation Act. Mr Allan's report identifies no alternative practical methods exists to contain the stock within the licence area.
- 8.2. As set out in section 4, Dr Booth was clear in her decision that fencing was a key aspect to mitigate the effects of the proposed grazing. She imposed conditions on her understanding, although now clarified by further information, that fencing would be possible. These conditions combined with others, led Dr Booth to consider that the effects of the proposal were appropriate and able to be approved under the Conservation Act. If fencing cannot now be undertaken, then the outcomes noted by Dr Booth are no longer mitigated leaving the activity to result in adverse effects including continued decline in plant species diversity outside the licence area.
- 8.3. The original Decision Support Document recommended that the concession be declined based on the concession being inconsistent with the provisions of the Conservation General Policy, the West Coast Te Tai o Poutini Conservation Management Strategy and should therefore be declined under section 17U(2)(b), 17U(3) and 17W(1) of the Conservation Act.
- 8.4. The conclusion within the original DSD considered by Dr Booth states:
- It has been established that the proposed grazing activity creates adverse effects on natural values that are not able to be avoided, remedied or mitigated through conditions. Given this, the proposal is contrary to the purpose for which the land is held.*
- The adverse effects of the proposal referred to above, would not result in the desired outcomes or management of the Haast Valley, a priority biodiversity site and it is inconsistent with the CMS and the Conservation General Policy.*
- The application should therefore be declined under sections 17U(2)(b), 17U(3) and 17W(1).*
- It is understood that to decline a longstanding grazing licence will create uncertainty for others who graze upon public conservation land on the West Coast. There may be concerns about precedent effect for a number of other existing concessions. All applications must be considered on their merits. It is*

noted that there are very specific aspects of this application that this recommendation hinge upon:

- The Haast valley is a priority site for biodiversity management and immediately adjoins the Landsborough Valley. The vision within the CMS involves the “mountains to the sea” management of the valley with the protection and enhancement of natural values. The 2020 vision for the Haast valley references the regeneration of natural values and the removal of human processes.*
- Technical staff have identified adverse ecological effects on the environment from the previously approved concession and the proposed activity including effects on the coprosma wallii, a species declining nationally.*
- The application does not relate to the grazing of the National Park but stock are known to move outside of the grazing area both within the National Park and adjoining conservation areas. There are practical difficulties in fencing the boundaries of the proposed grazing licence area. The Department is unable to approve a concession for an area larger than that applied for, and unable to grant an activity that cannot be complied with.*

It is clear through the policy assessment that the CMS requires a case by case assessment of the effects of the grazing proposed. The policy relating to grazing is effects based and any further grazing proposals will be considered on their merits.

Approving grazing within a waterway where the grazing is causing adverse effects and is known to be providing uncontrolled access to the National Park would not be consistent with the Act, the purposes for which the land is held and the CMS.

In the longer term, when the review of the CMS is underway, it could provide further direction in relation to grazing activities in the large South Westland rivers if continuation of grazing activities is considered appropriate.

9. Applicant comments

- 9.1. A draft of this memo was provided to Mr Cowan’s representative George Ivey for comment on 17 February 2020. Mr Ivey provided the following final statement on 1 March 2021:

“I can confirm I have read all the material and understood it.

The only thing I would like to further stress is this:

The cattle are contained by the land in the same way they have been for the last 160 years. Area B is not unique. The issues here are consistent throughout the Haast valley concessions and throughout all concessions in South Westland.”

- 9.2. As set out within section 8.4 above, all grazing applications will be assessed on their merits, the West Coast Te Tai o Poutini Conservation Management Strategy, Conservation General Policy and the Conservation Act. The three other licences held by Mr Cowan will undergo assessment when they expire in October 2023.
- 9.3. In this instance, stock are unable to be contained within their licence, there are adverse effects caused by the grazing activity in a priority site for biodiversity management and these effects have not been able to be avoided


remedied or mitigated. This reconsideration has further established that fencing conditions previously imposed as a method to mitigate effects and comply with the relevant legislation is not effective in this case.

10. Your decision

- 10.1. As indicated at the outset, you need to decide if the conditions relating to the fencing of the true right of the Haast River are appropriate. It is recommended that you agree that additional information has now been received by the Department confirming fencing of the true right is not practicable or effective and there are no suggested alternative practical methods to contain stock within the licence area.
- 10.2. You must then consider if the inability to comply with the conditions relating to the fencing of the true right has a material effect on the substantive decision to grant the proposed concession.
- 10.3. It is considered that without alternative conditions to ensure the stock are contained within the licence area, cattle will not be able to be contained within the licence area and effects of the grazing cannot be mitigated.
- 10.4. As there are no practical means of giving effect to the fencing condition on the true right the grant of the proposed concession to Mr Cowan should be withdrawn or cancelled on the basis that it is now inconsistent with the CMS, the Conservation General Policy and the Conservation Act.

11. **Recommendation**

11.1. It is recommended that you:

a.	Note that Mr Cowan has sought a reconsideration of fencing conditions on the true right of the Haast.	Yes / No
b.	Note that an independent agricultural consultant has stated that fencing conditions would be theoretically possible but not practical. No alternative methods to contain stock within the licence area were identified.	Yes / No
c.	Note that fencing was considered by Dr Booth as a key method of mitigating effects of the proposed grazing. Without it she would not have made the offer of the proposed concession.	Yes / No
d.	Agree or disagree that the fencing condition relating to the true right of the river in the proposed concession cannot practically be given effect to.	Agree / Disagree
e.	Agree or disagree that the effects of the proposed concession are no longer able to be mitigated by remaining conditions of the proposed concession and stock is unable to be contained within the licence area.	Agree / Disagree
f.	Agree or disagree that the proposed concession without fencing of the true right of river is inconsistent with the CMS, the Conservation General Policy and the Conservation Act	Agree / Disagree
g.	Agree or disagree to withdraw or cancel the grant of the proposed concession 63919-GRA	Agree / Disagree
h.	Agree or disagree to inform the applicant that, the grant of the proposed concession 63919-GRA is withdrawn or cancelled and he must remove his cattle within one month <i>90 days</i> from the date of your decision.	Agree / Disagree
i.	Signature and Date: 	<i>25-5-21</i>

Nga mihi:

Natasha Hayward
Director, Planning Permissions and Land