Politics, Economics and Pastoral Land Management in New Zealand: Tenures for the Times

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Preface

The span of this report encompasses major changes in terminology and in units of measure. Unless otherwise indicated, terminology and measures have been used in forms appropriate to their historical context. New Zealand changed to decimal currency in 1967 at which time $2 = £1 (=20s=240d). For all practical purposes land-based activities, such as farming, adopted International System (SI) units by 1974. The colonial terms 'pasturage,' 'pastoral land,' 'pastoralism' and 'pastoralist' are generally synonymous with the American terms 'range,' 'rangeland,' 'grazing' and 'rancher.' The payment made by Crown tenants for the use of Crown land, and commonly referred to as rent, is herein described by the term 'annual rental.'

Part of this report is developed from an unpublished paper by Rodney P. Hide and Peter Ackroyd titled 'The Freehold Option' and presented to the High Country Committee of Federated Farmers' Annual Conference, Timaru, June 1989.
Acknowledgements

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The report has benefited from discussion with many people with an interest in the use and management of pastoral land resources. Included here are Dr Alastair McArthur (Economics and Marketing Department, Lincoln University), Messrs Chris Kerr and Brian Robertson (formerly of the New Zealand Mountain Lands Institute, Lincoln University), Errol Costello (Educational Services Unit, Lincoln University), Peter Harris (Grassland and Livestock Consultant, Christchurch). Acknowledgement is also made to high country runholders and representatives from conservation and recreation groups who have helped the author to learn something of the developments and opportunities in pastoral land use.

Particular thanks are due to Rodney Hide (formerly of the Economics and Marketing Department, Lincoln University) for an introduction to the economic way of thinking, to Professor Kevin O'Connor (Chair of Range Management, Lincoln University) for an appreciation of the complexity and diversity of high country land management, to Drs Robert Bartlett (Purdue University) and Basil Sharp (Auckland University) for reviewing manuscript drafts, and to Dr John Hayward for providing the opportunity and encouragement to undertake multi-disciplinary research.

Notwithstanding their generous assistance the aforementioned people and organisations are not responsible for any errors of omission or fact, or for the analysis and conclusions contained herein. Responsibility for the report rests with the author alone.
CHAPTER 1

Introduction

In common with international experience there is growing debate over the use and management of extensive pastoral (range) lands in the South Island of New Zealand. Concern for the sustainability of extensive grazing systems is matched by an equal concern over access for alternative uses. Moreover, the debate has intensified in recent years with the appearance of seemingly intractable land management problems brought about by weed and pest invasions, the implementation of administrative procedures aimed at nature conservation, and the burgeoning interest in outdoor recreation opportunities.

The debate, however, has generated more heat than light. Few people would argue against the need to ensure long-term sustainable use of grazing systems, the need to control weeds and pests, or the need to provide for alternative uses. What remains uncertain are the management systems necessary to achieve the objectives sought. Attention to date has concentrated on administrative processes for categorising land, deciding management, and allocating rights accordingly.

The proposition to be put forward in this paper is that the current approach to the use and management of pastoral land is misdirected. In particular, historical experience on the use and management of New Zealand’s pastoral land provides valuable insights on how current and future arrangements for the use and management of pastoral land should be structured.

In short, this historical experience suggests that improved resource management outcomes depend on greater accountability by landholders and interest groups for the use made of pastoral land resources. Rights to pastoral land that do not test preferences on the use and management of pastoral land resources are unlikely to secure sound resource management.
Pastoralism in New Zealand recalls the romance of a pioneering history. European settlement from 1840 onwards, coupled with demand for wool from Great Britain, led to rapid occupation of open scrub and grassland for extensive sheep grazing. In these early years of settlement extensive sheep grazing was a very lucrative endeavour and landholders soon became the colonial elite.\footnote{Stevan Eldred-Grigg, A Southern Gentry (1980). Up until the mid-1860s a 25\% rate of return was looked on as being reasonable; L.G.D. Acland, The Early Canterbury Runs, at 29 (4th ed. 1975).}

The later decades of the nineteenth century saw closer settlement and intensification of farming on the plains and downlands. This change in land use, coupled with changing fortunes in the demand for wool, confined extensive grazing systems to the inland basins and ranges, a region known popularly as the 'high country'. Figure 2.1 below depicts the areas occupied under extensive pastoral grazing tenures in colonial and near recent times.

Even within the high country extensive grazing systems have changed and continue to do so. The trend is towards more intensive farming systems. Changes include closer subdivision of grazing blocks, improvement and topdressing of the indigenous tussock grasslands, and diversification of properties away from reliance on wool production as the main source of income.

Today's high country properties, or pastoral runs, comprise land held under an assemblage of titles. The important tenure is a Crown (government) lease known as the pastoral lease (PL). Properties may also include lesser areas both as freehold and as miscellaneous licence tenures, for example the pastoral occupation licence (POL).\footnote{As at 31 March 1987 there were 2.73 million hectares held as Pastoral Lease and 0.13 million hectares held under Pastoral Occupation Licence; the total annual rental payable to the crown was $346,521 and $5,626 respectively: Report of the Department of Lands and Survey, 31 March 1987 at 24.} Typically a pastoral run is some 10,000 hectares and carries 9,000 stock...
units at one stock unit to the hectare. Fine wool sheep are the dominant stock carried with wool still the main source of income. Some three million sheep are grazed on some 300 properties.

Figure 2.1 Area under extensive grazing tenures, South Island, New Zealand.
Adapted from O'Connor and Kerr, infra note 27, Figure 2; Kevin F. O'Connor, The Use of Mountains: A Review of New Zealand Experience, in A. Grant Anderson (ED), The Land Our Future, Figure 12.1 (1980) and 94 N.Z. Official Yearbook (1990) at 88. Former Provincial Council boundaries have been retained, with minor alterations, as statistical and administrative boundaries.

Current tenures entitle the holder to exclusive rights of pasturage but give no right to the soil and no right to the freehold. A pastoral lease has a tenure of 33 years with perpetual right of renewal for the same term. The government charges a statutory annual rental of either 1.5 or 2.25% of the value of the land exclusive of improvements (LEI) according to the currency of the lease. A pastoral occupation licence is for a non-renewable term, not exceeding 21 years, and at such annual rent as the government agency responsible for administering pastoral land determines.

Extensive pastoralism in the South Island high country has had a chequered history. A rigorous climate with heavy winter snowfalls has in the past contributed to catastrophic sheep losses. The reliance on the fortunes of a single crop makes the system very sensitive to changes in product prices and has contributed to economic instability. Native grasslands have proved susceptible to overgrazing and destruction by fire. Rabbits have been, and are now, a major threat to the maintenance of any vegetative cover, and introduced weeds are in places swamping the grassland sward. The potential for pastoral land management practices to exacerbate erosion on steeper slopes has also been considered a major, if possibly exaggerated, threat.

Notwithstanding the physical and economic challenge, extensive pastoralism is currently the most profitable of New Zealand’s farming systems; profits before tax of around $118,000 are at least 2.5 times that of other farming systems. However, the use of high country grasslands for extensive grazing systems is being challenged. Claims to high country resources have come from government agencies, conservationists, recreation interests, and Maori:

The land covered by pastoral leases and licences contains areas with significant production values and areas of important conservation values and these areas often coincide. The Crown has an interest in this land and does not wish to divest this interest until the important conservation values have been identified and protected.

4 Land Act 1948 ss. 66, 66AA.

5 Economic Service supra note 3 at 36.

6 The Land Corporation Limited and the Department of Conservation, Memorandum of Agreement on Pastoral Leases and Licences, 6 October 1986.
The Crown still owns considerable areas of the lands that were unjustly taken from Ngai Tahu over a century ago. Much of it is still rented out as Crown Pastoral Lease Lands. Without disturbing the leaseholders’ legal rights, which include the right to continued occupation, the ownership of these lease Lands should now be restored to Ngai Tahu in recognition of the fact that the Crown obtained them dishonourably in the first place.7

The need for recreational assessments in the high country could not have been more apparent than during the recent debate over moves to alienate pastoral leases from state control. . . . History demonstrates that alienation of the public interest is rarely, if ever, reversed. The risk is greater while natural and recreational values remain undocumented, and not widely recognised within government or the community at large.8

These passages convey something of the controversy surrounding management of high country land in New Zealand. Moreover, the political claims to pastoral land have reportedly had an adverse effect on traditional uses:

We [High Country Committee of Federated Farmers] now believe that the uncertainty of who will eventually hold title to this [pastoral] land is affecting the value of the lessees’ equity, their ability to borrow money, their attitude to further development, and their general morale in an already difficult time for farming.9

 Politicians, for their part, have indicated a readiness to resolve policy and constitutional dilemmas by intervening in the allocation of rights to pastoral land.10 Pastoral land management in New Zealand raises fundamental questions regarding the attributes of the resource, the specification of rights to the resource, and the nature of the public interest. The following sections explain the political and economic forces determining resource use, the property rights that evolved, the management outcomes, and future prospects.

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10 Peter Tapsell, High country pastoral leases and the need for natural, historic and environmental protection. Address to the North Canterbury section of Federated Farmers by the Minister of Lands, Mt White Station, 29 March 1989.
CHAPTER 3

Securing rights to grazing: 1840-1877

Grazing rights on pastoral land developed out of colonial land disposal laws. British governance over New Zealand was established with the signing of the Treaty of Waitangi in 1840 by representatives of Queen Victoria and the indigenous Maori tribes. In exchange for accepting British governance the Treaty guaranteed Maori ownership and control of their resources and equal economic and political rights with Europeans.

The legitimising of centralised governance was followed by extensive purchase of land by the Crown from Maori. Between 1844 and 1860 the bulk of the South Island was purchased from the Ngai Tahu in a series of controversial agreements that left Maori feeling disadvantaged.

British governance in turn enabled the cash sale of land as freehold. In 1846 a minimum price for the sale of rural Crown lands was set at £1 per acre. Government enactments in 1849 and 1851 also allowed occupation of land under grazing licence. These licences had a 14 year term; an annual fee of £5 plus £1 for each 1000 sheep above the first 5000, a pre-emptive right to purchase an 80 acre homestead block, and compensation for improvements in the event of sale of the land as freehold.

Alongside central government’s plans for the disposal of land were those of private settlement companies. Nevertheless, a common objective in land settlement policies was that intensive agriculture based on freehold title would be the basis of settlement. Occupation of land under licence for the purposes of extensive pastoralism did not fit this pattern.

Between 1850 and 1852 the Canterbury Association undertook the initial settlement of Canterbury, on the east coast of the South Island. Under the Canterbury

11 Royal Instructions 1840 cl. 44.
12 Royal Instructions 1846 cts. 26, 32, 33.
Association scheme land was sold at £3 an acre, the plan being that the land would be taken up for agricultural purposes. Given the rudimentary circumstances little land could be sold and the planned pattern of settlement was slow to emerge. Moreover, Canterbury’s singular attribute was an extensive area of native grasslands, tailor-made for pastoralism.

Of necessity unsold land was opened to grazing under licence. People who bought land from the Association were eligible for a transferable grazing licence at a rental of 16s 8d per 100 acres and with a pre-emptive right of purchase. Non-landowners were eligible for a non-transferable licence that carried no pre-emptive rights and a rental of 20s per 100 acres. In neither case was there to be any right of compensation for improvements. Licences were granted with the proviso that the land was open to freehold purchase at any time and that the licence could be taken back by the Association after one month’s notice.

A form of federalism was introduced to New Zealand with the introduction of provincial governance in 1852. Provincial governance supplanted private settlement schemes and pasturage licences issued by a provincial council became the usual tenure under which land was occupied for grazing. The intention remained that land held under licence would eventually be sold for agricultural purposes at a set price.

In 1853 government lowered the price of Crown land (that is, unsold land not controlled by provincial governments) to 10s and 5s an acre to encourage the uptake of land by settler-farmers. The initiative proved counter-productive. Crown land most suited to intensive settlement was already held under licence and pastoralists rapidly bought up that land to protect their estates.

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15 Initially the Governor of New Zealand issued land regulations on behalf of a provincial council. In 1858 provincial councils assumed control of land disposal subject to the approval of the Governor. See Constitution Act 1852; JOURDAIN supra note 13, 16-20.

16 See J.B. CONDLIFFE, NEW ZEALAND IN THE MAKING, 115-116 (2nd ed. 1959). The aggregation of land that took place at this time soured future relations between government and pastoralists. Under later legislation (Land for Settlements Acts 1892, 1894, 1908) government was to repurchase much of the land and make it available for closer settlement under Crown lease tenures.
Plans to dispose of the freehold at a set price denied the realities of a colonial economy. Agricultural development was limited by the difficulty of storing produce and the lack of a domestic market. Wool on the other hand could be stored for a long time and was extremely remunerative. Although colonial administrators regarded pastoralism as a temporary measure pending more intensive settlement, pastoralism was the major economic activity. The uptake of land under grazing licence greatly exceeded that for freehold title. Table 3.1 records the available data on the disposal of land throughout New Zealand under colonial governance.

Uptake of land for grazing was greatest in the South Island. The South Island, especially to the east of the axial mountains, encompassed extensive tracts of tussock grasslands ready made for pastoralism. The North Island, on the other hand, was extensively forested and dissected. About 1866 pastoralism reached its greatest extent. Of the 15,574,420 acres held under pasturage licence, only 619,279 acres were in the North Island. In the South Island the major pastoral provinces were Canterbury (5,756,448 acres) and Otago (6,321,926 acres).  

Table 3.1 Uptake of land under colonial land disposal laws 1852 - 1877 (cumulative acres).*

<table>
<thead>
<tr>
<th>Year</th>
<th>Land sold or granted (acres)</th>
<th>Land held under pasturage licence (acres)</th>
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<tr>
<td>1852</td>
<td>(70,000)</td>
<td>(&gt;1,000,000)</td>
</tr>
<tr>
<td>1856</td>
<td>(&gt;3,000,000)</td>
<td>(&gt;5,000,000)</td>
</tr>
<tr>
<td>1866</td>
<td>(8,000,000)</td>
<td>15,574,420</td>
</tr>
<tr>
<td>1868</td>
<td>(9,000,000)</td>
<td>14,802,454</td>
</tr>
<tr>
<td>1877</td>
<td>13,122,753</td>
<td>13,520,339</td>
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* Numbers in parentheses are estimates. For details of source data see Appendix 1.

17 Data after Appendices to the Journals of the House of Representatives, C3-3 (1866). [Hereinafter A.J.H.R.]. The 15.5 million acres held under pasturage licence comprised about 23% of New Zealand's land area. For the South Island alone the figure increased to 39.5% and for Canterbury, the most specifically pastoral province, 66%.
Under provincial governance, grazing rights were moulded to reflect the prevailing economic realities. In so doing the structure of the rights confounded political objectives for closer settlement. Again, the situation that developed in Canterbury best illustrates this tension between the economics and politics of land use.

After 1856 all rural lands in Canterbury were open for sale at a uniform price of forty shillings (£2) but until sold, granted, or reserved for public purposes could be occupied for grazing. No term was stated to the licence; it could be renewed annually and fees were not liable to be altered until 1870. The licentsee or any person could buy the freehold of all or part of the run at any time. The run had to be stocked within 12 months at the rate of one sheep to 20 acres or one cow to 120 acres. This set stocking load was to be maintained for the first four years, to double in the next three years, and to be trebled in any subsequent period. The licence could be forfeited for non-fulfilment of conditions. Rent was assessed at a farthing (¼d) per acre for the first two years, a half penny for the next two, and three farthings thereafter. Special pre-emptive rights gave licensees (popularly known as runholders) a prior claim to a 250 acre homestead block and 50 acres adjacent to any improvements.

As with the Canterbury Association scheme, land proved difficult to sell at the set price; agriculture was simply uneconomic. The viability of the Canterbury settlement depended on continued investment in the pastoral industry, and the occupation of land under licence pending its eventual sale. The rights to pastoral land sought to reconcile these conflicting goals. Whereas licence tenure preserved future options for the disposal of land, pre-emptive rights gave the security needed for investment.

What provincial legislators had not counted on in attempting to reconcile immediate and future options, was the impact of new technology. Use of fencing wire revolutionised the management of pastoral land just as it had the management of rangelands in the American west. In particular, the combination of fencing wire and pre-emptive rights tilted the balance in favour of pastoralism.

Every 40 chains of fencing resulted in an improvement pre-emptive right over 50 acres of adjacent land. A pastoral licensee could use his, and rarely her, pre-
emptive rights to lock up the land along a mile of road for the cost of the fencing, say £60, when to buy the same land outright would cost a settler £600.19

Not surprisingly the gains from claiming pre-emptive rights were exploited to the full. Rumour had it that in some cases huts and fences would be erected to obtain a pre-emptive right over the adjacent land after which they were pulled down and put up elsewhere to enable fresh claims to be made.20 Pre-emptive rights not only secured investment, they secured title.

Continued immigration, and disturbances with Maori in the North Island during the 1860s and 1870s, contributed to increasing demand for settlement land in the South Island. Whereas previously runholders had been content with the protection afforded by the pre-emptive right, and had bought little land, two new strategies were now employed to protect pastoral estates.

The first strategy consisted of 'gridironing' whereby a series of 20 acre blocks would be bought along a frontage and so spaced as to leave between them sections of less than 20 acres.21 Under the land regulations of the time no section of less than 20 acres could be bought except through auction. Few people would go through the procedural detail involved in such a process. The second method, known as 'spotting' involved buying isolated sections all over a run. Gridironing and spotting enabled landholders to prevent or hinder large land purchases by other parties.

Not all runholders went in for gridironing or spotting and much buying was done in self defence; if runholders did not purchase strategic areas on their runs, speculators would do it for them.22 The contest for land between runholder and speculator resulted in the settler apparently losing out. Better quality land was simply no longer available, except at a premium.

19 BURDON supra note 14, 119-125. In 1866 a total of 204,695 acres in the Canterbury Province were held under pre-emptive rights.

20 Ibid.

21 See for example GARDNER supra note 14 plate 35.

22 To pre-empt any sale of their estates runholders kept a close watch on any strangers who might be interested in acquiring land. “A man wanting a bit of land had to take as many precautions as he would in Scotland to stalk a stag in a well preserved deer forest.” After J.E. LE ROSSIGNOL & W.D. STEWART, STATE SOCIALISM IN NEW ZEALAND, at 37 (1910).
Rather than the vision of intensive agriculture, pre-emptive rights and strategic freeholding enabled a small number of landholders to control large areas under licence. By 1859 some five million acres of Canterbury's indigenous grasslands had been divided up into 200 great estates. In 1866 15 million acres in the South Island were held under licence; the average size of holdings was about 20,000 acres but several properties were in excess of 100,000 acres.

Pre-emptive rights and the strategic purchase of land effectively conferred on pastoral runs most of the attributes of freehold title but at substantially less cost to the landholder. Unoccupied land in Canterbury could be taken up under licence for about £1 per 1,000 acres. By 1859-1860, when unoccupied land was no longer readily available, the market price of unimproved runs was about £100 for every 1,000 acres exclusive of stock, a twentieth of the price set for the sale of the land as freehold.

Meanwhile, economic forces were marshalling against pastoralists. By the mid-1860s the pastoral boom was over and runholding had become a precarious enterprise. Up to two thirds of Canterbury's sheep runs were at this time sold or mortgaged such that their owners lost equity. Pastoralism now began a dramatic decline. The change in the fortunes of runholding was a function of the price of wool, the price of stock and the maintenance of the pasturage.

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23 Data from Appendices to the Journals of the House of Representatives, 1866 C3-3; Eldred-Grigg supra note 1 at 28.

24 Ibid.

25 Samuel Butler, A First Year in Canterbury Settlement, at 42 (1964 ed.; First publ. 1863). Sheep were then worth about £1 to 30s a head.


27 The eruptive growth and dramatic decline of pastoralism records a history of resource over-exploitation at the expense of future productivity. The decline in stocking loads lasted for 70 years and for at least part of the high country this decline was to a level only 10 per cent of that in 1880. Of particular note is that calculated stocking load on unimproved land fell by 60 per cent in the 25 years from 1880 and at a slower rate during this century. The impact of extensive pastoralism on the ecology of pastoral lands is detailed by K.F. O'Connor, The Implications of Past Exploitation and Current Developments to the Conservation of South Island Tussock Grasslands, 5 N.Z. J. Ecol. 100 (1982); K.F. O'Connor & I.G.C. Kerr, The History and Present Pattern of Pastoral Range Production in New Zealand, Proc. First Intl. Rangelands Cong. at 106 (1978).
Up until the mid-1860s there was strong demand for sheep and a poor supply. In 1862 about 40% of a runholder’s income could be from the sale of surplus stock. The demand for stock was such that sheep were often grazed on terms; that is in partnership with investors. Over a period of years investors received an agreed payment in lieu of wool, and a percentage of the natural increase.\(^{28}\)

In the second half of the 1860s natural increase in sheep relieved the shortage and stock became cheap. Also, in 1866 a crash on the London markets reinforced a period of low wool prices. The average value of exported wool decreased by a third between 1862 and 1870 and surplus stock, worth up to 30s in 1862, were almost worthless in 1868.\(^{29}\) Investment decisions made on the expected future value of sheep were confounded. Although the expectation of a 25% rate of return might have remained, to get any return at all was sometimes the best that could be expected. The drop in wool and stock prices dried up investment, ruined pastoralists, and made many pastoral runs simply uneconomic.

Moreover, the adverse effects of high stocking loads on natural vegetation compounded the financial difficulties. Sheep numbers in New Zealand had risen rapidly from the early 1850s to reach 8.4 million by 1870; Canterbury and Otago sharing two thirds of the total.\(^{30}\) However, the growth in stock numbers over-exploited the agronomically limited native grasslands.\(^{31}\) And the grasslands were not exploited solely by stock. Rabbits were beginning to compete with sheep for what useful feed remained.

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28 For more detail see BUTLER supra note 25, 39-42.


30 O’Connor & Kerr supra note 27 at 104.

31 The limitations of the native grasslands were apparent from an early time. BUTLER supra note 25, 42-45 refers to the constraints the available feed placed on stock numbers and the ability of improved pastures to carry increased stock numbers. Butler’s contemporaries also recognised the adverse effects of overgrazing on stock husbandry and hence economic welfare; MARY ANNE (LADY) BARKER, STATION AMUSEMENTS IN NEW ZEALAND, 77-78 (N.Z. ed. 1933). First publ. 1873.
CHAPTER 4

Government control and insecure tenure: 1877-1948

Economics was not the only factor affecting the viability of pastoral enterprises. The politics of land administration also turned against pastoralists. The control of large areas of land by pastoralists was not a situation that could survive unquestioned. Politicians were hostile towards pastoralists for undermining the pattern of settlement. Moreover, the status quo was preserved largely through the provincial system of governance that enabled pastoral provinces, and pastoralists in particular, to wield considerable political and economic influence. At a national level the perception remained one of private interests in pastoralism benefitting at the expense of a wider public interest. The apparent need for central government to direct the use of pastoral land in socially desirable ways came to dominate political decisions relating to the use and management of pastoral land.

Against a background of mounting ecological and economic instability, government set in train a programme for clawing back control over pastoral land and making it available for settlement. The immediate problem facing government was twofold; first it had to unravel the bundle of rights now attached to pastoral land, and second, it had to provide for the disposal of that land within the framework of government plans.

Changes in political institutions were the first step to overturning the status quo. New Zealand's experiment with federalism came to an end in 1876 when provincial councils were abolished and central governance re-established. A major objective for central government was the consolidation of the numerous rules and regulations governing the administration of land.

New and comprehensive land legislation was enacted as the Land Act 1877. The over-riding goal was to enable land to be acquired for settlement by men of small means upon holdings of land sufficient in size to afford them a livelihood, but not

32 See for example 27 N.Z. PARLIAMENTARY DEBATES 607 (1877).

33 ELDRED-GRIGG supra note 1, 57-74.
large enough to constitute aggregation of land to an undesirable extent.\textsuperscript{34} Legislators were also exposed to new economic theories that favoured the state retaining ownership of the land and using it for the benefit of the community as a whole.\textsuperscript{35}

The new legislation abandoned the set price for land as a means for furthering the uptake of land by settler-farmers. Instead, provision was made for lands to be sold on deferred payment or to be disposed of under a homestead system with residency and improvement criteria in lieu of payment for land.\textsuperscript{36}

Provisions in the \textit{Land Act 1877} emphasised the intention to make pastoral land available for closer settlement at some future date. Under the \textit{Land Act 1877} a pasturage licence entitled the holder to the exclusive right of pasturage over the run, but gave no right to the soil (i.e. no cultivation), timber, or minerals.\textsuperscript{37} The licence term was ten years and could be resumed by the Crown, without compensation, at 12 months notice for sale as pastoral or agricultural land.\textsuperscript{38} The Act granted a single pre-emptive right to 320 acres for a homestead and allowed deferred payment purchases of designated blocks of pastoral land (where less than 5,000 acres) at £1 per acre.\textsuperscript{39}

Although runholders were not entitled to compensation if the Act was altered or repealed, fencing, buildings, and other improvements could be removed when the lease was terminated or if the land was purchased by another person.\textsuperscript{40}

\textsuperscript{34} \textsc{Jourdain supra} note 13 at 25.

\textsuperscript{35} The economic arguments of the day, including the case for the state retaining ownership of land, are outlined in 18 N.Z. \textsc{Parliamentary Debates} 353-360 (1875). For discussion of later debate over the pros and cons of disposal of Crown lands by freehold or leasehold tenures; see J.A.B. O'Keefe, \textsc{The Law Relating to Crown Land in New Zealand}, 113-116 (1967).

\textsuperscript{36} The area of land able to be freeholded under these arrangements was generally restricted to less than 320 acres; \textsc{Jourdain supra} note 13 at 233.

\textsuperscript{37} \textit{Land Act 1877} s. 125

\textsuperscript{38} \textit{Ibid.} s.121.

\textsuperscript{39} \textit{Ibid.} ss. 76, 77, 131.

\textsuperscript{40} \textit{Ibid.} s. 113.
Central government administrators were given responsibility for pastoral lands within designated land districts approximating the old provinces. Pastoral licences were classified to determine annual rentals; in Canterbury the annual rental could be assessed between 9d and 24d per head for sheep and 48d and 120d per head for cattle.

Subject to the provisions of existing rights, auction of licences at expiry became mandatory. Runs offered for auction were limited to carry 5,000 sheep or 1,000 head of cattle. Auctioning of licences served the dual purpose of making rights to pastoral land contestable while extracting the expected rent from the resource as revenue for government. Both the minimum price at which the run was auctioned, and the area, would henceforth be determined by the Land Board.

Opportunity to control large areas of land through pre-emptive rights was removed; in Canterbury anyone who had not exercised a right of purchase by May 1880 would lose that right. The practice of strategic freeholding was less easily dealt with. Simply raising the price of land would harm settlers as well as speculators and runholders. Hence the move to limit the amount of freehold able to be held by one person, as in the deferred payment and homestead schemes.

Uptake of small freehold blocks of land was bound to be limited as a means for the disposal of Crown land. New Zealand's small population meant these tenures could only be viable close to population centres. For the bulk of the sparsely populated Crown lands intensive agricultural activity based on small freehold blocks remained but a vision.

In order to reconcile the political objectives for settlement, and the need to provide for viable economic activity, government introduced a new tenure; a lease of up to

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41 Ibid. s. 10.
42 Ibid. s. 98.
43 Ibid. s. 122.
44 Ibid. s. 119.
45 Ibid. s. 112.
640 acres of rural land with a perpetual right of renewal (hence Perpetual Lease). This new leasehold tenure allowed settlers low cost access to land but retained that land in state ownership. Table 4.1 below illustrates the rapid shift from the disposal of the freehold of the land to disposal as Crown lease tenures.

Nevertheless, for the pastoral lands of the South Island the immediate prospects for switching from pastoral licences to some alternative, and politically acceptable, tenure remained elusive. In these areas reserving options over the future disposal of pastoral land posed a dilemma for government.

On the one hand government remained concerned that control over land did not confer any long-term advantage on land occupiers. A sharp distinction was drawn between the use of land for the accumulation of wealth and the use of land for bona fide settlement:

This was just the species of land on which to plant resident families devoted to pastoral pursuits, and to plant them in such numbers as to insure not wealth, but comfort and independence - steady industry and small profits for those who can appreciate such blessings.

On the other hand, restricting alienation of pastoral land in the interests of future settlement meant forgoing the extra revenue that would be gained from a ‘contented tenantry’ with a ‘reasonably long tenure of the land.’ The need for revenue, if not concern for a ‘contented tenantry,’ proved persuasive.

46 Land Act Amendment Act 1882. The Perpetual Lease was abolished by the Land Act 1892 that introduced a Lease in Perpetuity for 999 years. The Lease in Perpetuity was in turn abolished in 1907 and replaced by a Renewable Lease. Another important tenure was the Small Grazing Run established under the Land Act 1885. These runs, initially restricted to areas of less than 5,000 acres, had a 21 year term with right of renewal. Problems with the viability of these runs meant that after 1887 the area could be increased to 20,000 acres.

47 42 N.Z. PARLIAMENTARY DEBATES 403 (1882).

48 42 N.Z. PARLIAMENTARY DEBATES 171 (1882). For further comment see also 37 N.Z. PARLIAMENTARY DEBATES 428-446 (1880).

49 Government expenditure increased rapidly after 1870 when an ambitious public works programme and immigration policy were introduced; LE ROSSIGNOL & STEWART supra note 22, 6-7.
Government now sought to make conditions on the use of pastoral land less restrictive. The *Land Amendment Act 1882* increased the term of the pastoral licence to 21 years.\(^50\) Further changes were incorporated within a completely revised *Land Act 1885*. The total allowable area of a run was increased to that sufficient to carry 20,000 sheep or 4,000 cattle,\(^51\) and the licensee could be compensated for improvements (buildings, plantations, fences, and drains).\(^52\) A proviso was that the value of the improvements was less than three times the annual rent.\(^53\) The licensee could also freehold a 150 acre homestead site on the run.\(^54\)

In easing the restrictions placed on pastoral tenants government sought to regulate for wise land use. In 1892 good husbandry conditions prohibited the burning of forest, required the control of gorse, broom and sweet brier, and the destruction of rabbits.\(^55\) A licence could be forfeited for violation of these conditions.\(^56\)

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\(^{50}\) *Land Amendment Act 1882* s. 66.

\(^{51}\) *Land Act 1885* s. 169.

\(^{52}\) Ibid. s. 180.

\(^{53}\) Ibid.

\(^{54}\) Ibid. s. 185.

\(^{55}\) *Land Act 1892* s. 199.
The need for good husbandry provisions indicated all was not well with the management of pastoral land. A great rabbit scourge in the 1880s coincided with the period of maximum stocking loads. The surge in the rabbit population, and indeed the rabbit threat to the viability of pastoralism, was probably exacerbated by the reduction in available herbage.\(^{57}\) The effect of the rabbit plague on pastoral properties was disastrous. Despite huge kills of rabbits both the quantity and quality of wool suffered.

These losses in production, coupled with the costs of rabbit control, contributed to the declining fortunes of pastoralism and the abandonment of many runs.\(^{58}\) Southland and Otago were the first provinces to bear the brunt of the rabbit problem. Table 4.2 below records the abandonment of runs in Otago about this time.

**Table 4.2 Runs abandoned in Otago 1877 - 1884.\(^1\)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1877</td>
<td>10</td>
<td>318,600</td>
</tr>
<tr>
<td>1878</td>
<td>3</td>
<td>154,000</td>
</tr>
<tr>
<td>1879</td>
<td>19</td>
<td>254,000</td>
</tr>
<tr>
<td>1880</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1881</td>
<td>2</td>
<td>90,000</td>
</tr>
<tr>
<td>1882</td>
<td>11</td>
<td>279,510</td>
</tr>
<tr>
<td>1883</td>
<td>18</td>
<td>290,780</td>
</tr>
<tr>
<td>1884</td>
<td>12</td>
<td>145,620</td>
</tr>
</tbody>
</table>

\(^1\) Data after 1 A.J.H.R. C-9 (1885).

\(^{56}\) *Ibid.* s. 200.

\(^{57}\) O'Connor *supra* note 27 at 102.

\(^{58}\) The term 'abandonment' is misleading as runs were invariably relet. For example, in 1877 Run 15 in the Wakatipu district comprised 10,500 acres at a rental of £315. It was abandoned in November 1877 and relet from 1st January 1878 at the same rental. It was abandoned again in October 1879 and relet from 1st March 1880 at £45. A further abandonment occurred in June 1884 after which it was grouped with three other runs (to 60,000 acres). The amalgamated unit was relet at progressive rentals of £50 for the first seven years, £100 for the second seven years and £150 for the third seven years; see 1 A.J.H.R. C-9 (1885).
Control of rabbits meant licensees faced extra costs. Yet licensees were unable to secure the future benefits of investment in rabbit control. The situation facing runholders was well recognised by the legislators of the day:

As far as the pastoral tenants in Otago and Southland were concerned, it was absurd to expect that they should alone contribute to the extermination of this pest without any assistance whatever from the crown, which held the freehold of the land. These pastoral leases had only a short time to run, and it was a matter of calculation with the lessees whether it was desirable to spend annually a large sum of money in the destruction of rabbit, or whether they should not feed what sheep they could on those lands and in the end deliver up their runs to the Crown as huge rabbit warrens.\(^{59}\)

A key feature of government's plan for breaking up the big runs remained. The old provincial pasturage licences had been extended under the Land Act 1877 and first expired about 1890. On expiry these licences were offered at auction, for terms varying from seven to 21 years according to the Lands Board's decisions on the use of the land for closer settlement. A good deal of land was taken for closer settlement but most of the old tenants got their runs back at auction. There was, however, considerable apprehension among runholders that when runs were put up for auction they would be outbid for the lease.\(^{60}\)

In 1905 a Royal Commission was charged with reporting on the settlement and tenure of all Crown lands. The evidence presented to that Commission reveals runholders' appreciation of the depletion of native pasture and the need to undertake substantial improvements on their runs. A particular concern of runholders was the disincentive to effect such improvements:

*If we put on £1000 worth of improvements and we are paying £100 a year in rent we can only claim £300 for those improvements, and the prospective tenant has got that margin of £700 to work on in making his offer for the run.*\(^{61}\)

\(^{59}\) 23 N.Z. PARLIAMENTARY DEBATES 197 (1876). The debate records how on one 70,000 acre run rabbits were being killed at the rate of 4,000 per week at a cost of £1,500 per year, sheep numbers dropped from 45,000 to 29,000 in three years, and overall costs of rabbit control and lost production were about £5,000 a year.

\(^{60}\) An auction of southern runs was held in May 1889. Several established runholders lost their runs, one after seeing the annual rental increase by £400. Others retained their runs but faced rental increases of up to £300; see BURDON supra note 14 at 148. A counter strategy by runholders was to put in nominees ('dummyism') to bid at auctions; see for comment 46 N.Z. PARLIAMENTARY DEBATES 146-151 (1883).

\(^{61}\) 2 A.J.H.R. C-4 508 (1905). See also supra note 53.
In effect, the more a run was improved the less chance there was of getting it back and the worse it was farmed the better the chance of getting a reduction in the annual rental. The runholders clearly understood the logic of the situation as indicated by their assertions that: (i) practically no grasses were being sown in the hill country despite the native pastures being eaten out, (ii) towards the end of a tenure the licensee, knowing that he may lose the licence, would exhaust the land by overgrazing, and (iii) pastoralism as an industry was reverting, as evident from the decrease in rents and stock numbers.62

Nor were runholders being unnecessarily alarmist. Table 4.3 below shows how annual rentals for occupation of pastoral land decreased markedly about the turn of the century.

Table 4.3 Pastoral land returns 1880 - 1905.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of runs</th>
<th>Acreage</th>
<th>Rentals paid £</th>
</tr>
</thead>
<tbody>
<tr>
<td>1880</td>
<td>997</td>
<td>12,025,013</td>
<td>102,215</td>
</tr>
<tr>
<td>1885</td>
<td>1,232</td>
<td>11,384,603</td>
<td>167,889</td>
</tr>
<tr>
<td>1890</td>
<td>1,429</td>
<td>11,357,020</td>
<td>153,399</td>
</tr>
<tr>
<td>1895</td>
<td>892</td>
<td>10,845,558</td>
<td>101,938</td>
</tr>
<tr>
<td>1900</td>
<td>966</td>
<td>11,339,071</td>
<td>72,914</td>
</tr>
<tr>
<td>1905</td>
<td>860</td>
<td>11,386,416</td>
<td>71,402</td>
</tr>
</tbody>
</table>

1 Data after 1 AJ.H.R. 1880 Cl 5; 1 AJ.H.R. 1885 Cl 15; 1 AJ.H.R. 1890 Cl 18; 1 AJ.H.R. 1895 Cl 126; 1 AJ.H.R. 1900 Cl 174; 1 AJ.H.R. 1905 Cl 17

Against this evidence of a diminishing resource base, government’s policy of actively encouraging closer settlement of pastoral land continued. The bulk of the pastoral licences granted in 1890 expired by 1909-11 and before expiry were reported on by Land Classification Commissioners as to their suitability for subdivision. Except in extraordinary circumstances no run was to be larger than was sufficient to carry 20,000 sheep or 4,000 head of cattle. A considerable amount of subdivision took place. Many of the new subdivisions proved uneconomic and were soon re-amalgamated into larger properties.63

62 Ibid. 1594.

63 K.F. O’Connor, L. Lochhead & I.G.C. Kerr, Administrative and Managerial Responses to Changes in Economic and Ecological Conditions in New Zealand Tussock Grasslands, PROC. SEC. INTL. RANGELANDS CONG. 99 (1986). The 1910 Pastoral Lands Commission recommended subdivision of nine of 18 runs in the Mackenzie country, a 500,000 hectare inter-montane basin in inland Canterbury. The effect of these subdivisions, together with
Both the 1905 and 1911 commissions had highlighted the difficulties of reconciling government's land settlement policies with long-term management systems. One Commissioner reporting on those Canterbury pastoral runs that were due for renewal in 1911 emphasised the necessity of security of tenure to effect improvements in pastoral land management. In so doing he neatly articulated the economic theory much later identified as contributing to the over-exploitation of natural resources.  

I should like to place on record the fact of what was, to anyone interested in the welfare of the Dominion, a very sad sight — viz., so many abandoned homesteads, and so little — so very little — improvement put on these Crown lands after an occupancy of fifty years and more. . . . And why, where thirty years ago there were many comfortable smiling homesteads, should there be now only the ruins left to mark the spot, with generally a patch of fruit-trees showing, through all this decay, a vigorous growth and good promise of plenty? Is this state of affairs the fault of the lessees of these runs? In my opinion it is not. Owing to the insecurity of tenure under which this class of country is held, the lessees are doing as every one else would do under the same conditions, taking all out of the land and putting as little as possible back.

Criticism of government's administration resulted in further legislative initiatives to encourage management systems compatible with long-term maintenance of pastoral land. Cultivation of crops not for sale was allowed subject to Land Board approval and allowances to outgoing licensees for improvements were extended. A further concession enabled licences to be extended for stock losses caused by snowfalls.

three further subdivisions about 1917-20, was that the original 24 runs in the Mackenzie multiplied to 45. By 1969 amalgamation and partition had reduced the number to 37, five of the management units being absorbed in the period 1910-1919; K.F. O'Connor, Evolution of a High Country Pastoral Community, in DAVID C. PITT (ed.), SOCIETY AND ENVIRONMENT - THE CRISIS IN THE MOUNTAINS, 193 (1978).


65 1 A.J.H.R. C-12C, 1 (1910).

66 Land Laws Amendment Act 1907 s.55; Land Act 1908 ss. 244, 245.

67 Land Laws Amendment Act 1912 s. 27.
A major shift in government policy towards the disposal of pastoral land came in 1913 when licensees were given a right of renewal with a rent assessed by government but subject to arbitration.\textsuperscript{68} The initiative not only legitimised long-term occupation of land for pastoral purposes but also signalled the limitations of pastoral land as a source of immediate revenue for government. The move reflected growing concern in government over the drop in value of pastoral lands and the attributing of this drop in value to insufficient encouragement being provided for improvements.\textsuperscript{69}

Critical comment on tenure conditions by yet another Royal Commission, set up in 1920 to report on southern pastoral lands,\textsuperscript{70} led to further extensions in tenures and conditional freeholding. These initiatives included a maximum term for a pastoral licence of 35 years and the granting of conditional freehold rights.\textsuperscript{71} Provisions for remission of annual rentals and extension of the term of the licence in times of severe adversity were also introduced at this time.\textsuperscript{72}

The net result of all these changes was that by 1922 pastoral licensees had gained equivalent rights to those granted much earlier to other Crown tenants. Government policy had now swung completely from reserving options for future settlement to securing the livelihood of the existing occupiers.

Despite these legislative reforms the management of pastoral land remained a problem. Between 1912 and 1950, at a time when government was improving the security of pastoral tenants, the monetary value of high country runs followed a steady decline, principally in the unimproved value of the land.\textsuperscript{73}

\begin{itemize}
  \item \textsuperscript{68} \textit{Land Laws Amendment Act} 1913 s. 56.
  \item \textsuperscript{69} 164 N.Z. PARLIAMENTARY DEBATES 475 (1913).
  \item \textsuperscript{70} 1 A.J.H.R. C-15, 8-12 (1920).
  \item \textsuperscript{71} The right to freehold pastoral land applied: 1) where a pastoral run was held for a term of not less than 14 years; 2) where seven years of the term had expired; 3) subject to the recommendations of the Land Board and the approval of the Minister; 4) subject to "no area to be acquired in freehold more than sufficient for the maintenance of the licensee and his family." \textit{Land Laws Amendment Act} 1921-22, ss. 10,11.
  \item \textsuperscript{72} \textit{Land Laws Amendment Act} 1921-22, ss. 7, 8.
  \item \textsuperscript{73} O'Connor \textit{supra} note 63 at 204 records a 44.5% decrease in capital value of high country runs in the Mackenzie country over this period.
\end{itemize}
Pastoralism's decline compromised key economic and political objectives of the licence tenure. The plan to raise government revenue by capturing the rent of the land proved unsustainable. Indeed, annual rentals had by now ceased to have any practical relevance to government economic planning. Furthermore, plans to use pastoral land for future settlement saw few settlers benefit. Reserving options for future settlers encouraged the tendency for short-term management. Against a background of insecure tenure, diminished profitability and resource depletion, settlement schemes often proved unviable.

In summary, the period 1877 to 1948 first saw central government attenuate the rights attached to pastoral land. Administrative decision-making increasingly directed the use and management of pastoral land. The need to reconcile political objectives with land management outcomes later led to a progressive re-securing of pastoralism within a legislative framework. From being a temporary expedience, extensive pastoralism became a legitimate, albeit intractable, land use.
CHAPTER 5

Securing pastoralism: the Land Act 1948

In 1948 a major consolidation of the land laws resulted in the Land Act 1948. The Act was a milestone event in that it radically reformed the complex array of Crown tenures as well as granting exceptionally wide freeholding rights to most Crown tenants. The move towards granting the freehold of Crown lease tenures stands in marked contrast to earlier political initiatives to retain public ownership of land.

Significantly, the right to freehold did not extend to pastoral land. Indeed, the conditional right to freehold granted under the Land Laws Amendment Act 1921-22 was removed. Instead the Land Act 1948 substituted a perpetually renewable lease for the previous licence tenure. Excluding the right to freehold pastoral leases under the new legislation was a consequence of government’s concern over erosion in the high country.

That pastoral land management practices such as burning could contribute to depletion of native grasslands had been long recognised. However, in the 1930s and 1940s a causal relationship was proposed between aggradation in rivers, soil erosion, and the depletion of high country vegetation. Furthermore, in 1940 a Sheep Farming Commission recommended action to stop land deterioration on pastoral lands. As a result of both formal and informal comment on the effects of prevailing land management practices, statutory and administrative measures were implemented for a centrally-directed programme of soil conservation.

74 Land Act 1948 s. 122. See also O'Keeffe supra note 35, 120-126.
75 O'Keeffe supra note 35 at 146.
76 V.D. Zotov, Survey of the Tussock Grasslands of the South Island, New Zealand, A20 N. Z. J. SCI. TECH. 212 (1938); Committee of Inquiry, Maintenance of Vegetative Cover in New Zealand, with Special Reference to Land Erosion, DEPT. SCI. IND. RES. BULL. 77 (1939); H.S. Gibbs & J.D. Raeside, Soil Erosion in the High Country of the South Island, DEPT. SCI. IND. RES. BULL. 92 (1945); K.B. Cumberland, Soil Erosion in New Zealand 62-78, 114 (1944). See also L.W. McCaskill, Hold this Land, 22-23 (1973).
77 3 AJ.H.R. H-29A, 6-7 (1940).
78 Soil Conservation and Rivers Control Act 1941.
The *Land Act 1948* integrated measures for protecting Crown land with the new soil conservation legislation. The retention of Crown ownership of pastoral land was deemed necessary to ensure that where the risk of erosion made suitability of land for alienation doubtful, then state control could facilitate soil conservation, prevent erosion, and allow for regeneration.79

Excluding the right to freehold pastoral land did not automatically disadvantage runholders. Traditionally there had been little interest among runholders in freeholding their pastoral enterprises. Between 1921 and 1948, when the opportunity was available, only ten properties became freehold.80 Experience of both physical and financial adversity had made runholders more concerned with flexibility in the terms and conditions of their occupation of the land. Runholders, therefore, were well satisfied with the granting of a perpetually renewable lease, new arrangements for a ‘fair’ annual rental based on the carrying capacity of the run, and rights to compensation for improvements on disposal.81

Moreover, economic conditions now favoured extensive pastoralism. Secure tenure and a boom in wool prices in the early 1950s saw investment directed into new opportunities for pasture improvement.82 Together, the change in political and economic conditions indicated a secure and profitable future for pastoralism.

79 284 N.Z. PARLIAMENTARY DEBATES 3999 (1948). Reports prior to the implementation of the Act no doubt influenced the policy decision to preclude acquisition of the freehold. CUMBERLAND supra note 76 at 114, specifically refers to the necessity for national control of the indigenous mountain grasslands of the South Island in order to implement soil conservation practices. Gibbs & Raeside supra note 76 at 6, implicitly link “much speculation and imprudent short-sighted management” with the “dangerous power” of the right to purchase the freehold. Soil conservation continued to be seen as determining tenure after the passage of the Act. A.L. WALLS, LAND TENURE IN THE CANTERBURY HIGH COUNTRY, 21 (1966) argued that the “effects of deterioration of the high country are too significant for the land to be freehold; the Crown leasehold system must protect and if possible ensure development of the land.” See also Committee of Inquiry, Crown Pastoral Leases and Leases in Perpetuity, 10-12 (1982). [Hereinafter Pastoral Committee].

80 O’Connor, Lochhead & Kerr supra note 63 at 99. Total numbers of pastoral properties fluctuated from year to year according to administrative rulings on their status. In 1921, 694 properties were classified as pastoral runs; 1 A.J.H.R. C-1 at 41 (1921-22).

81 The ‘fair’ annual rental was assessed mainly on the basis of a standard charge per number of stock units. Statutory rentals as a percentage of LEI were introduced in 1979; Pastoral Committee supra note 79, 34-35; Land Amendment Act 1979.

82 O’Connor & Kerr supra note 27 at 106.
Government administration of pastoral land now operated at two levels. First was the policy of the new land administering agency, the Land Settlement Board (LSB). Second was the policy of agencies with statutory responsibilities under the new soil conservation legislation. Land Settlement Board policy was to orientate management towards sustained production from the high country, but with regard to other relevant legislation and government policies.83 One of the Board's goals was to retire pastoral land not suited to long term grazing. The decision on suitability of land for grazing would, however, be determined by soil conservation agencies.

Reconciling pastoral objectives and the objectives of soil conservation agencies initially proved difficult. In 1949, another government commission was appointed to enquire into the sheep industry. In submissions to that commission, runholders vigorously defended themselves against the prevailing impression that they were responsible for the deterioration and depletion of pastoral land.84

The Commission took up the runholders' case; one government report into erosion in the high country was labelled as misleading propaganda and, furthermore, the Commission recommended the abolition of catchment boards.85 Catchment boards had been set up in 1941 as the operational arm of soil conservation legislation. A protracted and somewhat heated debate ensued as the respective interests sought political advantage.

One of the major worries for runholders was that the statutory obligations placed on soil conservation agencies to control erosion could result in the loss of part of their leases without compensation. Much of the heat went out of the debate with the establishment of a process for compensation. The argument that downstream interests benefited from prevention of erosion in the high country suggested in turn that the wider public should contribute to that protection. Identification of an external benefit in pastoral land management became the justification for sharing


85 Royal Commission to Inquire into and Report upon the Sheep Farming Industry in New Zealand: Report, 64-67 (1949).
the expense of soil conservation between landowners and the general taxpayer, including subsidies for conservation works as compensation for land retired from grazing.86

Land inventory and land capability data were to provide the basis for catchment control schemes and for conservation planning on farms. The land capability system divided all land into one of eight classes. Each of these classes indicated the maximum intensity of use that could be practised safely in a permanent system of farm management.87 Much of the high country was classified as Class VII (non-arable land which can sustain primary production but which has severe physical limitations), and Class VIII (land having such extreme physical limitations that it is unsuitable for sustained primary production).

A main goal of soil conservation policy in the South Island high country was the destocking and retirement from grazing of all eroded high altitude Class VII and Class VIII lands.88 The objective was to ensure that use of such land was primarily for erosion control and water management purposes.

Destocking has primarily been accomplished through Soil and Water Conservation Plans (SWCPs) that are promoted and administered by catchment authorities and provide financial incentives for approved works and for adjustments in management. From 1959 through to March 1985 catchment authorities prepared 113 SWCPs (run plans) on pastoral leases that involved destocking and retirement of 483,000 hectares.89 Lands held under pastoral lease or pastoral occupation licence, and designated for retirement, were to be surrendered before soil conservation subsidies were made available.90

86 See McCASKILL, supra note 76, 188-207. Runholders had also argued that responsibility for the causes, effects and remedies of land management problems were the responsibility of the ‘community as a whole’: Commission Evidence supra note 84, Vol. 2, L1.

87 MINISTRY OF WORKS, LAND USE CAPABILITY SURVEY HANDBOOK, 21-36 (2nd ed. 1971).

88 NWASCA & LSB, supra note 83 at 25.

89 Ibid. at 4.

90 Apparently large areas of retired lands remained in lessees’ control due to the reluctance of administering agencies to accept management responsibility; see FED. MTN. CLUBS BULL. 83, at 11 (1985). The difficulty of government agencies managing retired-land is alluded to in Land Settlement Board policy; see NWASCA & LSB supra note 83, 22-23.
Underpinning this planning process was the premise that special arrangements were needed to protect pastoral land. That premise was challenged in the 1970s as earlier scientific theories on high country landforms and erosion processes, and particularly the link between high country land management practices and downstream aggradation, were in part refuted. The new research led to a much greater appreciation of the naturalness of landscape features and erosion rates on high country land. Government advisors now argued that 'much of the monetary and manpower effort in combating soil erosion has been based more on good intentions than good science.'

A reassessment of strategies for achieving soil conservation objectives in the high country followed this criticism. The emphasis shifted from the need for a special tenure to protect pastoral land. The focus for soil conservation policy, as for all land, became the comprehensive goal of maintaining the resource base; 'that is, managing the land in such a manner as to avoid soil erosion and loss of fertility.' Type of tenure also became less relevant as a basis for land administration. Legislative amendments blurred the distinction between pastoral leases and other farm tenures. Under the Land Act 1948 Crown land could be classified into farm land, urban land, commercial or industrial land, or pastoral land. Crown land, other than pastoral land, could be held under renewable lease or purchased for cash or on deferred payments. Crown lessees had the right to acquire the fee simple of renewable leases. Originally the Land Act 1948 did not allow the reclassification of a pastoral lease as a renewable lease. In 1965 such exchanges became possible. This reclassification of pastoral lands opened a loophole that again enabled pastoral leases to be freeholded.

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91 See for comment A.S. Mather, The Changing Perception of Soil Erosion in New Zealand, 148 GEOG. J. 207 (1982); Ian E. Whitehouse, Erosion in the Eastern South Island High Country - A Changing Perspective, 42 REVIEW 3 (1984). Mather op. cit. argues that the eventual acceptance by runholders of soil conservation policies may be interpreted as either a changed perception on the part of the agricultural community or it may merely reflect that soil conservation measures involve farmers in few costs and some benefits.


93 W. Gibson, High Country and Conservation, 18 SOIL & WATER (No.1) at 23 (1982).

94 Land Act 1948 s. 126A.
Pastoral leases were by now freehold in all but name anyway. Technological advances in grazing systems (subdivision, aerial oversowing and topdressing, heavy discing) effectively transformed much pastoral land into ordinary farmland. Between 1950 and 1976 the mean LEI of pastoral leases doubled in real terms.\(^{95}\) Runs now exchanged hands at freehold prices.

But the intensity of development, especially from the 1960s on, revealed anomalies in the continued treatment of pastoral land as a special case.\(^{96}\) Although development conferred the same benefits on Crown pastoral leases as on Crown farm leases, the latter were held as renewable leases at a somewhat increased rental.

The changes in farming systems meant the administratively determined ‘fair’ annual rental advantaged pastoral lease properties. Annual rentals on pastoral leases actually declined as a percentage of the unimproved value.\(^{97}\) Table 5.1 below records total annual rentals paid in the period 1960 to 1985. Rentals recovered by government have been less than the costs of administering the leases.\(^{98}\)

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\(^{96}\) The move towards development was driven by government policy decisions aimed at improving export earnings. As from 1963 government introduced a range of incentives designed to increase pastoral output including subsidies on the transport and price of fertiliser. Stock retention payments, introduced in the early 1970s to counter the effects of depressed product prices, evolved into a Supplementary Minimum Price Scheme (SMP) for all pastoral products. A Livestock Incentive Scheme (LIS) introduced in 1976 offered loan and tax rebates if livestock expansion targets were met. A Land Development Encouragement Loan (LDEL) introduced in 1978 included interest-free and suspensory loans for farmers if certain land development targets were met. These schemes have now terminated; see Laurence Tyler & Ralph Lattimore, *Assistance to Agriculture*, in RON SANDREY & RUSSELL REYNOLDS (eds), *Farming without Subsidies*, 60-79 (1990).

\(^{97}\) Kerr, Frizzel & Ross *supra* note 95 at 13. Mean annual rentals as a percentage of unimproved value declined from greater than 4% in 1950 to less than 1% in 1975.

\(^{98}\) Although the rentals recovered from pastoral leases are a matter of record, the cost of administering the leases has long been treated by government as confidential information. This information was first made public in late August 1992. At that time it was disclosed that the leases brought in $931,311 annually in rent but cost the government $2.6 million to administer; Otago Daily Times, Dunedin, 4 September 1992 at 11.
Table 5.1  Pastoral land returns 1960 - 1985.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of P.L.s¹</th>
<th>Area (ha)²</th>
<th>Total Annual rental ($)³</th>
<th>No. of P.O.L.s</th>
<th>Area ha²</th>
<th>Total Annual rental $³</th>
<th>Consumer Price Index (CPI)⁴</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>563</td>
<td>3,322,329</td>
<td>186,424</td>
<td>42</td>
<td>104,545</td>
<td>4,126</td>
<td>127</td>
</tr>
<tr>
<td>1965</td>
<td>528</td>
<td>3,186,173</td>
<td>199,662</td>
<td>56</td>
<td>159,546</td>
<td>7,480</td>
<td>144</td>
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<tr>
<td>1970</td>
<td>512</td>
<td>3,090,472</td>
<td>207,610</td>
<td>47</td>
<td>114,589</td>
<td>3,703</td>
<td>180</td>
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<tr>
<td>1975</td>
<td>485</td>
<td>2,939,917</td>
<td>200,386</td>
<td>54</td>
<td>167,551</td>
<td>6,345</td>
<td>285</td>
</tr>
<tr>
<td>1980</td>
<td>455</td>
<td>2,769,394</td>
<td>190,974</td>
<td>49</td>
<td>184,810</td>
<td>5,688</td>
<td>567</td>
</tr>
<tr>
<td>1985</td>
<td>369</td>
<td>2,518,765</td>
<td>174,095</td>
<td>40</td>
<td>165,905</td>
<td>5,418</td>
<td>1000</td>
</tr>
</tbody>
</table>

Notes:  
1  Total includes terminating Pastoral Run Licences issued prior to the Land Act 1948.  
2  Pre-1975 source data in acres converted to hectares (x.405)  
3  Pre-1970 source data in £ converted to $ (x2). Not shown here are more recent increases in annual rentals arising from revaluations of leases as they become due for the first 33-year renewal. For the year ended 30 June 1990 annual rentals for P.L.s and P.O.L.s were $660,863 and $9,070 respectively.  
4  1985 base year equals 1000.  

Sources:  
2 A.J.H.R. Cl-42,43 (1960); 2 A.J.H.R. Cl-33, 34 (1965);  
2 A.J.H.R. Cl-44, 45 (1970); 2 A.J.H.R. Cl-37 (1978);  
2 A.J.H.R. Cl-25 (1980); 4 A.J.H.R. Cl-32 (1985);  
Report of the Department of Survey and Land Information, 30 June 1990 at 23.  
New Zealand Department of Statistics, CPI indices, 13 January 1993.

In 1978 the Land Settlement Board decided on an active reclassification programme for land districts with pastoral leases, a decision supported by the government of the day.99 Pastoral land was reclassified as farm land where the land comprised an economic unit and did not need the protection of a pastoral lease for soil conservation purposes. Reclassification resulted in a fifth of the pastoral lands being freeholded between 1975 and 1984, with 250,000 acres being freeholded in the years 1981-82.100

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99  Pastoral Committee supra note 79; 23-24.

100  G. Hutching, High Country, High Drama, 112 LISTENER (No.2402), 1 March 1986 at 15; FED. MTN. CLUBS BULL. 83 at 10 (1985).
CHAPTER 6

Government as resource manager: complexity, confusion and conflict

Major reassessment of pastoral land administration followed changes to soil conservation and land administration policies. In particular, increased public interest in the use of high country land highlighted the potential for alternative uses:

*Since the bulk of this high altitude land is Crown land of different tenures, the opportunity for the implementation of integrated land use policies is considerable, provided the administering agencies collaborate and use available scientific information on the land and the dynamic processes which contribute to its fragility.*

The pastoral lease was not designed with alternative uses in mind. To a certain extent alternative uses have been informally accommodated within the pastoral tenure. For example, subject to the usual courtesies, the public have few problems with access onto pastoral land, despite landholders having trespass rights.

More recently some pastoral lessees have diversified into non-traditional land uses such as safari hunting, tourism, and recreation. This diversification has been despite the requirement for consent procedures under the *Land Act 1948* and the constraints of LSB policy that, 'where approval to alternative uses of land other than those traditionally associated with the high country is sought, the Board, may renegotiate rental or tenure.*

The *Land Act 1948* determines that the provision

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101 MOLLOY, *supra* note 92 at 163.

102 Land Settlement Board, High Country Policy, at 31 (1980). An application of this policy involved a permit for a pastoral lessee to develop a cross-country ski area on the Pisa Range in Central Otago. The permit was originally made subject to the lessee agreeing to surrender from his lease the high land unsuitable for grazing and to provide guaranteed public foot access up the approach road. These conditions were considered unreasonable by the runholder and the conditions placed on the permit were later reversed; see The Press, Christchurch, 23 May 1988 at 3. Cultivation of crops for sale and afforestation for the purposes of sale have been allowed subject to administrative approvals only since 1977; Pastoral Committee *supra* note 79 at 7.
of recreational services on pastoral land is subject to the preference accorded pastoral uses. 103

In 1982, difficulties and anomalies in the reclassification programme saw a government committee review the classification of Crown land. That review was also charged with recommending any changes in legislation or policy for pastoral lease lands. One of the principal conclusions was:

That pastoral leasehold tenure, like the classification of pastoral land, has outlived its usefulness, both as a protective device for land and as an appropriate tenure for land which by the application of modern farming technology is capable of considerable development. Accordingly, subject to the exclusion of multiple use land, pastoral leasehold tenure should be phased out and assimilated to renewable leasehold tenure. 104

Multiple use lands were those areas of pastoral land considered as having significant values for recreational, ecological, conservation or similar purposes. For this reason the review committee recommended that multiple use lands remain in public ownership. Soil conservation considerations were seen to have universal application and not to warrant multiple use designation. The LSB was to be responsible for the identification of multiple use land. The surrender of any land so designated would be compensated for through the provision of freeholding rights coincident with a general phasing out of the pastoral leasehold tenure. 105

In the event, the Committee of Inquiry’s recommendation for an exchange of freeholding rights and areas of multiple use land was not supported by the LSB. The Board recommended instead:

- the retention of the existing form of pastoral lease;
- the facilitation of partial reclassification of suitable land within leases; and
- the protection of conservation and recreational values of significance. 106

103 Land Act 1948 s. 66A(2) “The Board shall not issue a recreation permit in respect of any land comprised in a pastoral lease or pastoral occupation licence to any person other than the holder of that lease or licence without the holder’s consent.” In 1990 there were 26 current recreation permits issued on pastoral land for an annual rental of $28,361. Report of the Department of Survey and Land Information 10 June 1990 at 23.

104 Pastoral Committee supra note 79 at 65.

105 Ibid. 19-23.

The bureaucratic procedure designed to give effect to these recommendations was one of detailed inter-disciplinary inspection and reporting and a public submission process. Before any substantial action could be taken on these recommendations the LSB was caught up in a flurry of government restructuring following the election of a new government in 1984. The restructuring was intended to enhance overall economic efficiency and a key feature was the separation of commercial and non-commercial interests in resource use. Government’s commercial enterprises were to be run in a business-like manner.

The LSB itself had by now expanded its role to incorporate representation from recreational and conservation interests.\(^{107}\) However, complex administrative systems as a basis for integrating resource management outcomes was no longer the fashion. The LSB was disestablished and new special purpose agencies established with responsibilities for management of pastoral land.

Administrative responsibilities related to the Crown’s interest in pastoral land were split between a production orientated Land Management Corporation, and a Department of Conservation with responsibility for identifying the ‘non-commercial values’ of pastoral land. In the high country the Department’s brief is ‘to identify as far as possible the total extent of public interest in each pastoral lease’ and ‘to advocate protection of natural and historic features on pastoral leases.’\(^{108}\) One reason for the organisational change was ‘a wish to externalise resource use conflict for decision at a political level.’\(^{109}\)

Restructuring also affected public agencies with statutory responsibilities for soil conservation. A shift away from farm-based soil conservation programmes had been signalled in a policy document released by the National Water and Soil Conservation Authority (NWASCA) in late 1987.\(^{110}\) Shortly thereafter NWASCA was abolished and responsibilities for soil conservation were transferred to catchment authorities and a new Ministry for the Environment. In 1989 catchment authorities were in turn subsumed within a new regional tier of government.


\(^{108}\) Otago Daily Times, Dunedin, 27 May 1988 at 22.


(regional councils); a governmental reform that rekindled memories of the old provincial system.

Local and regional government assumed increased responsibilities for a wide range of resource management outcomes. Centralised administration of weed and pest management was abolished and the duties transferred to the new councils. One effect of these administrative changes is to place more responsibility for the funding of services related to the achievement of land management outcomes on the beneficiaries of those services, that is, ‘user pays.’

In 1989 plans for a new Land Act were announced. The new Act was to take into account the natural, historical, cultural, recreational, and commercial interests of the high country.111 The productive use of the land and the lessee’s rights were to be balanced against the need for environmental protection in the interests of the wider public. A proposed land categorisation exercise splitting pastoral land into farmland, restricted use land, and conservation land was to give effect to government’s intentions.

The proposed review of the Land Act 1948 built upon elements of government’s earlier review of pastoral leases. Like this earlier review there has been little to show in the way of practical outcomes. Rather, matters related to pastoral land management became caught up in a comprehensive review of the laws relating to resource management and environmental protection.

That review culminated in the Resource Management Act 1991 that has the single purpose of promoting the sustainable management of natural and physical resources.112 Under the Act, regional councils have specific responsibilities including; “the establishment, implementation and review of objectives, policies and methods to achieve integrated management of the natural and physical resources of the region.”113 Land management policies for the high country are now inextricably linked to the highly politicised policy and planning process underpinning the Resource Management Act 1991.

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111 Tapsell supra note 10.
112 Resource Management Act 1991 s. 5.
113 Ibid. s. 30.
Pastoral properties are also linked into political plans for resolving indigenous land claims. In 1992 government spent $6.8 million buying three pastoral leases in Otago for possible use in the settlement of land claims.\(^\text{114}\)

Alongside these institutional changes and other governmental actions are further manifestations of the intractable problems bedeviling the management of pastoral land. Some 95% of properties in rabbit problem areas are farmed under Crown lease.\(^\text{115}\) Rabbits have again become a major pest. Rabbits were brought under control after the Second World War with enactment of legislation de-commercialising rabbits, the adoption of a 'killer policy' aimed at extermination, and the availability of more efficient poisons.

In certain areas rabbits have become difficult to control and are affecting both farm profitability and the value of nature reserves.\(^\text{116}\) The rabbit problem appears to have been exacerbated by poorly defined responsibilities. Although lessees are obliged to control rabbits, the provisions of the *Agricultural Pests Destruction Act 1967* placed statutory responsibility for control with centrally directed pest boards.\(^\text{117}\)

Another pastoral land problem is hawkweeds (*Hieracium spp.*), that are largely unpalatable to stock, and that have now become a dominant vegetation species throughout much of the pastoral grasslands. Ecological studies suggest that infestation of pastoral land by rabbits and hawkweeds is part of a pattern related to the long-term deterioration in unimproved grasslands.\(^\text{118}\) Rehabilitation of

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\(^{114}\) Otago Daily Times, Dunedin, 12 September 1992 at 1.


\(^{117}\) *Land Act 1948* s. 99; *Agricultural Pests Destruction Act 1967* ss. 3(a), 55(a).

unimproved grassland is considered a necessary pre-condition for preventing further hawkweed infestation.\textsuperscript{119}

Despite the urgent need for adaptive management strategies, decisions on the use of pastoral land remain within the constraints imposed by government planning. For example, difficulty in controlling rabbits led runholders in the mid-1980s to request government to allow the introduction of the myxomatosis virus as a control agent. After a convoluted environmental assessment and audit process, government advisors decided in 1987 that public opinion did not support introduction of the virus. Instead control was to be achieved through detailed technical assessment and categorisation of pastoral land, coupled with taxpayer support for control programmes.\textsuperscript{120} The object of this integrated strategy is to achieve 'a long term sustainable solution' within the framework of 'property management plans' covering some 300,000 hectares of pastoral land.\textsuperscript{121} The overall costs of this Rabbit and Land Management Programme are estimated at about $25 million with a central government subsidy of $16.35 million.\textsuperscript{122}

The task, and the costs, of resource management in the high country are daunting.\textsuperscript{123} Administration of pastoral leases alone currently costs taxpayers more than it returns, government’s initiatives in resource management are proving expensive, losses in production associated with rabbits and hawkweeds are affecting the economic viability of pastoral properties and, in addition, new opportunities for resource use create demand for a wider range of resource management outcomes. To date, the outcomes from government’s management of pastoral land have been equivocal and no consistent direction for management has been maintained. The current situation is one of ever increasing complexity, confusion, and conflict.


\textsuperscript{120} PCE: Myxomatosis, \textit{supra} note 115.

\textsuperscript{121} PCE: Myxomatosis, \textit{supra} note 115 at 92; 1 Rabbit and Land Management Newsletter (June 1989).


CHAPTER 7
Politics, economics and the future

Management and administration of pastoral land in New Zealand has never been straightforward. Attention has focused on the inability of earlier management systems to provide satisfactory resource management outcomes. Several generations of politicians, Land Boards, Commissioners, agency personnel, interest groups and, not least, land occupiers, have sought to maximise the value of pastoral land resources. Management strategies were invariably developed with narrowly focused objectives and with reference to only some of the values attributed to pastoral land. Management has recognised neither economic realities, nor the constraints of the resource. However, the past cannot be undone and the focus now must be on management strategies appropriate to the current realities.

The political and economic history of pastoral land has implications for new management directions. The experience of some 150 years of pastoral land management in New Zealand suggests that current approaches to deciding the use and management of pastoral land continue to repeat the mistakes of the past.

Management of pastoral land has come full circle with the emphasis on categorising land and allocating rights accordingly. Moreover, politicians and government administrators, divorced from the costs and benefits of their decisions, still exert a powerful influence over the day-to-day management of pastoral land. Deciding the use and management of pastoral land on the basis of political or expert decision-making overlooks that resource management is essentially an economic phenomenon. What ought to be done with a resource cannot be logically inferred from what the resource is.

The mistake with pastoral land management has been tenure arrangements that separate public and private management. Success in achieving improved resource management outcomes in large measure depends on tenures that ensure consistency in management planning. Tenures that place greater responsibility for management with existing landholders, while facilitating trade-offs in resource use, are necessary to encourage consistency of purpose and improve knowledge of the relevant values at stake. More than in the past, devolution of management planning and better
information on values are necessary to reconcile the many and various demands being placed on pastoral land. All things considered, the administration of pastoral land in New Zealand has consistently avoided acknowledging that management and resource use are inseparable; that people who use resources decide management outcomes.
APPENDIX 1

Source of data presented as Table 1.

1. Records of the earliest land sales are simply unavailable. The total given here is based on the areas fenced or under crop; CONDLIFFE infra note 16 at 112.

2. Ibid. at 116.

3. Records of land sales year by year are available after 1856. The total given here is based on note 2 above plus sale and grants of 4,768,363 acres in the period 1856-1866; Statistics of New Zealand 1866 No. 41.

4. Total based on note 2 above plus sales and grants of 5,782,000 acres in the period 1856-1867; Statistics of New Zealand 1866 No. 41 and Statistics of New Zealand 1867 pt II Nos. 39, 40.

5. Statistics of New Zealand 1877 at 196.

6. Earliest records of uptake of land under licence are unavailable. The total given here is a minimum estimate based on a report of the area held under licence in Canterbury alone; GARDNER infra note 14 at 32. In Otago the first uptake of land under licence occurred in 1853 and 1854. In Central Otago 1,600,000 acres were taken up in the first six months of 1858; ELDRED-GRIGG infra note 1, 28-29.

7. Minimum estimate based on Canterbury data alone. Consistent records of the disposal of land in Canterbury are not available for years prior to 1864. The total given here is based on note 6 above (as under the Canterbury Association settlement scheme) with the addition of 4,345,614 acres taken up in Canterbury over the period 1853-1856 directly from the Crown; JOHN V. MORGAN, A PROPERTY RIGHTS ANALYSIS OF ADMINISTRATION, LAND TENURE, AND LAND USE IN CANTERBURY, NEW ZEALAND 1850-1880, at 107 (M.Appl.Sci. Lincoln University 1986).

8. Appendices to the Journals of the House of Representatives 1866 C3-3 at 3.


10. Statistics of New Zealand 1877 at 197.