

LAND SETTLEMENT BOARD

APPLICABILITY OF SECTION 58 LAND ACT 1948
TO RENEWAL OF PASTORAL LEASES

HO: CL 5/1/3
CL 5/1/3/2

Case No. 10219

Prepared in
Head Office

Proposal

1 That the board note the clarification of the interpretation of Section 58 of the Land Act 1948 in respect of its applicability to the renewal of pastoral leases.

Background

2 At the March 1985 meeting of the board, Mr Evans raised a number of matters relating to section 58 strips and in particular their applicability to renewals of pastoral leases. Because of the differing interpretations it was considered a paper should be put to the board for consideration.

3 Under case no. 10008 of 2 April 1985, the board noted the information on the departments interpretation and application of section 58. A copy of this case is attached as appendix A.

4 Subsequently Mr Evans, following discussions he had had with the Surveyor-General, wrote to the latter seeking confirmation that section 58 is paramount and that it applies irrespective of whether or not section 58 strips are shown on lease documents or preserved by a specific statement (typed or otherwise) on the lease document. A copy of Mr Evans letter is attached as appendix B.

5 The Surveyor-General's response to Mr Evans is attached as appendix C.

6 Further research into the applicability of section 58 to existing pastoral leases casts real doubt as to the validity of the advice conveyed to Mr Evans by the Surveyor-General. Therefore it has been necessary to seek legal clarification of the issue.

7 Since February 1986 renewals of pastoral leases have been processed subject to the condition:

"That the Crown ^{retain} obtain the right to apply the provisions of Section 58, Land Act 1948, in respect of all rivers and streams in excess of three metres in width traversing or forming the boundary of the property subject to legal confirmation in that regard."

8 There has been general concern at the delays that this matter has had on the renewals of pastoral leases. In particular, attached as appendix D, are copies of correspondence with the MacKenzie Branch of Federated Farmers.

9 Copies of the office solicitor's opinion were circulated to members at the July board. The significant aspects of this are at paragraph 12.

10 Mr Evans produced a counter opinion he had received from solicitors acting for the NZ Deerstalkers Association at the board meeting on 5 August 1986. This is attached as appendix E.

Legislation

11 The provisions of section 58 of the Land Act 1948 are already outlined in paragraph 2 of case 10008 (appendix A).

Legal Opinion

12 Administration of section 58 in relation to pastoral leases has been dealt with by the office solicitor with the following considerations in mind:

(a) Lease of Surveyed Land

If the current lease was issued under the Land Act 1948 and no section 58 strips has been excluded from the land in the lease then there is no room for action under section 58.

If in such case it is considered particularly desirable that the public have access to a river or stream, etc, flowing through or adjoining the land in the lease then the options to consider are:

- (i) Negotiation for surrender of the lease as to the required strip.
- (ii) Setting apart as reserve pursuant to section 167 of the Land Act 1948.
- (iii) Resumption by Proclamation under section 117 of the Act.

(b) Lease of Unsurveyed Land

If the current lease was issued under the Land Act 1948 then pursuant to section 58(3)(b), the board may at any time before the approval by the chief surveyor of the plan of survey of the land exclude from the lease any part of the land required to be reserved under section 58(1). To be legally effective this would involve surveying the land in the lease to the exclusion of the required strips. The method (which has been used) of entering on the lease document what purports to be a blanket exclusion so as to avoid the need for survey is of doubtful validity if only for the reason that it precludes the exercise of the discretions built into section 58(1).

[By way of clarification the office solicitor adds that, in the absence of direct authority to the contrary, any notation should:

- * be left on such leases until such time as the exclusion can be duly effected in the course of a survey of the land.
- * be brought forward onto a lease issued in renewal of any such lease bearing the notation.]

(c) Lease issued under a former Land Act

Apparently section 58(4) may be invoked whether the land in the lease has been surveyed or not. Once the board has exercised the power of determination under this subsection, any strip of land required to be reserved under subsection (1) may be excluded from the renewal lease (at the time of issue). Again, whether or not the land in the lease has been previously surveyed, this would involve the preparation of a sufficient plan to satisfactorily define the excluded areas.

13 The office solicitor has also addressed the counter opinion tabled by Mr Evans and his comments on that are attached as appendix F, indicating that there is nothing in the counter opinion which alters anything in paragraph 12 above.

Comment

14 It is pertinent to note that in practical terms section 58(4) (which states "The removal under this act of any lease or license granted under any former Land Act ...") would appear to be of little significance since all current pastoral leases have been issued under the Land Act.

15 The 'blanket exclusion' referred to in paragraph 12 (b) is of doubtful validity because of the legal and practical difficulties in determining where section 58 strips are hence the river/stream boundaries of affected pastoral leases. This creates potential trespass problems. Notwithstanding these difficulties the legal opinion recognises that the blanket exclusion is necessary.

16 Comprehensive instructions outlining the issues are to be prepared so that commissioners can carry out or complete formal renewal action.

Recommendation

17 That the board:

- (a) notes the clarification of the interpretation of Section 58 of the Land Act 1948 in respect of the applicability to the renewal of pastoral leases as provided in paragraph 12.
- (b) Requests the Director-General of Lands to promulgate instructions urgently to allow for formal renewals actions to be finalised without further delay.

Decision

The Land Settlement Board on

resolved.