

Crown Pastoral Land Tenure Review

Lease name: BENDROSE

Lease number: PT 097

Final Report on Public Submissions

This document builds on the Preliminary Report on public submissions. The analysis determines if an issue that was allowed, and further consulted on, is accepted or not accepted for inclusion in the Substantive Proposal and to what extent. The report complies with the requirements of Section 45 Crown Pastoral Land Act 1998.

The report attached is released under the Official Information Act 1982.

April

05

REPORT & RECOMMENDATIONS FOR A FINAL ANALYSIS: BENDROSE

File Ref: Pt097	Submission No: C0595	Submission Date: 28.10.04
Office of Agent: Christchurch	LINZ Case No: <u>TROS/31</u>	Date sent to LINZ:

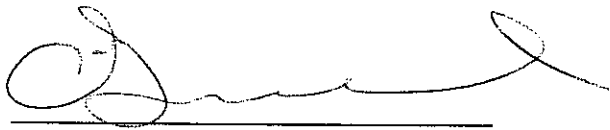
RECOMMENDATIONS

1. That the Commissioner of Crown Lands notes this report on the final analyses of the submissions on the preliminary proposal for the tenure review of the Bendrose pastoral lease. ✓
2. That the Commissioner of Crown Lands approves the attached final analyses of the submissions on the preliminary proposal for the tenure review of the Bendrose pastoral lease.
3. That the Commissioner of Crown Lands notes that the attached final analyses are in partial fulfilment of the requirements of section 45 of the Crown Pastoral Land Act 1998.

CERTIFICATION

1. In presenting this report and recommendations, the service provider certifies that it has complied with and met the Process document, legislation and contract requirements for the Tenure Review.

Signed by Agent:



Name: _____

Approved/Declined by:

Name:

Date of decision: / /

1. Details of lease:

Lease Name: Bendrose
Location: Twizel, South Canterbury
Lessee: JDJ and Estate A W Allan

2. Details of land under consideration

Pastoral lease: Pt 097 Bendrose
Land Registry Folio Ref: 895/96
Legal Description: Part Run 294 Strachey and Campbell Survey Districts
Area: 5926.5515 hectares

Conservation area:
Legal Description: Pt RS 36867 SO 18942 Blk VII and VIII Campbell SD
Area: 1315.82 hectares
Status as advised by Department of Conservation:
 Conservation land

3. Consultation

3.1 Background

Consultation has been carried out with the Department of Conservation (DoC), Iwi (TRONT) and the Holder, in accordance with operational guidelines, following LINZ’s approval of DTZ’s preliminary analysis of public and iwi submissions. The purpose of the consultation was to obtain the parties’ views on submissions recognising that the Holder must be in agreement with any changes to the proposal for those changes to be made.

No other parties have been consulted as DTZ has not identified any other parties that it considers should be consulted nor has LINZ specified any other parties that should be consulted in regards to the submissions.

The final decision on whether the proposal meets the objects of the CPL Act, taking into account submissions made on the proposal and any subsequent changes to the proposal, will be made by the Commissioner of Crown Lands.

3.2 Consultation with the DGC’s delegate

DTZ received the DGC’s delegate’s comments on the public and iwi submissions on 27 April 2004. The DGC’s delegate considered that further consideration, consultation or clarification was required on points 1, 8, 11, 14, 15 of the public submissions and on points 1 and 2 of the iwi submission. A summary of the points that the DGC’s delegate considered required further action, and the Holder’s response to those points, is set out in table 1 below.

3.3 Consultation with Iwi

Representatives of DTZ met with TRONT on 18 December 2003 to discuss the submissions on the proposal. TRONT reiterated their submission on the proposal however they did not make any additional points. One of TRONT’s two allowed points was raised with the Holder, the other point was not discussed with the Holder as DTZ considered that it was not necessary to do so. Refer to table 1 below.

3.4 Consultation with the Holder

DTZ considered that it was not necessary to raise all of the points made by submitters with the Holder, for example, some points related to administrative matters and did not require the Holder’s input to resolve. A summary of the points and the Holder’s response to those points, where DTZ considered it was necessary to consult the Holder, is tabulated in table 1 below.

Table 1: Consultation with the DGC’s delegate and the Holder

Submitter	Point	Summary of point	Summary of DoC comment	Holder response on relevant points
Public	1	That the Ohau Hill Block of Bendrose Station not be designated as land to be disposed of on freehold tenure.	A landscape covenant appears to be the best solution. Should be discussed further.	The Holder was initially receptive to this point, providing he could continue with his normal farming operation. However, the Holder later changed his mind & was not prepared to proceed with a conservation covenant.
Public	8	That the area below (west of) the Glen Lyon Road be designated as Recreation Reserve.	The concept of making this land a recreation reserve is a logical one. Needs further consideration.	Not a matter that the Holder needs to consider
Public	11	Provide access from Glen Lyon Road to the Greta’s Stream Beech Forest area.	Point needs clarification on the ground	Not raised with the Holder as access is already proposed as set out in the discussion under point 11 of public submissions.
Public	14	That the exchange of 110 Hectares of Conservation Land for Reviewable Land not take place.	A landscape covenant may address this concern.	Not raised with the Holder as DTZ considers that the conservation block to be swapped does not have the level of significance necessary for it to be retained as Crown land.

Submitter	Point	Summary of point	Summary of DoC comment	Holder response on relevant points
Public	15	To protect the mature matagouri scrub lands beside Bendrose Stream (between the Stream and Twizel River).	There is some shrubland & it would be appropriate to consider this point further.	Not raised with the Holder as this matter has been previously raised with the Holder & DTZ considers that no new information has been supplied.
Iwi	1	TRONT oppose the freeholding of the land between the proposed area CA1 and Lake Ohau. For cultural and recreational reasons, it is suggested this area be retained as conservation land.	DoC responded to TRONT's concerns about access to, & recreational use of, Lake Ohau by pointing out that there is an area of land between the road & Lake Ohau that will become road reserve or conservation land. This comment does not directly relate to the land between the proposed area CA1 and Lake Ohau but may address TRONT's concerns.	The possibility of a landscape covenant over this land was raised with the Holder but the Holder was not prepared to accept this.
Iwi	2	TRONT is opposed to the exchange of conservation land, for cultural and recreational reasons. This area should also be retained as conservation land.	Part of the objects of the CPLA will be met & DoC do not wish to hold the conservation land subject to a grazing concession.	DTZ considered it was not necessary to raise this point with the Holder.

4. Summary & Conclusions

The DGC's delegate and TRONT were consulted in regards to the submissions on the preliminary proposal. The DGC's delegate commented that some of the submissions should be considered further. TRONT did not identify any submissions that should be considered further, rather, TRONT took the opportunity to reiterate their own submission on the preliminary proposal. DTZ considered the parties comments and subsequently consulted with the Holder in regards to matters considered relevant. The consultation has not resulted in any changes to the proposal as the Holder has not agreed to any such changes.

DTZ considers that the preliminary proposal still meets the objects of the Act, when considered over the lease as a whole.

APPENDICES

1. Final analyses of public submissions
2. Final analysis of iwi submissions
3. File notes relating to consultation with the DGC's delegate, TRONT and the Holder.

**FINAL ANALYSIS OF PUBLIC SUBMISSIONS IN ACCORDANCE WITH
SECTION 45 CROWN PASTORAL LANDS ACT 1998**

BENDROSE TENURE REVIEW

1. Details of lease:

Lease Name: Bendrose
Location: Twizel, South Canterbury
Lessee: John David Joseph Allan and Estate Alison Winifred Allan

2. Public Notification of Preliminary Proposal

Details of advertisement, date, publication, location:

Date Advertised	Publication	Location
Saturday, August 2 nd 2003	Timaru Herald	Timaru
Wednesday, August 6 th 2003	High Country Herald	Mid Canterbury – Central Otago
Saturday, August 9 th 2003	The Press Otago Daily Times	Christchurch Dunedin

3. Details of submissions received:

A total of twelve submissions were received by 6th October 2003.

One late submission was received and was not considered for analysis.

4. Analysis of submissions:

4.1 Introduction:

Explanation of Analysis:

Each of the submissions received has been reviewed in order to identify the points raised and these have been numbered accordingly. Where submitters have made similar points, these have been given the same number.

The following analysis summarises each of the points raised along with the recorded number (*shown in Appendix 3*) of the submitter(s) making the point. Discussion of the point and the decision whether to allow/disallow the point follows.

The decision to “**Allow**” the point made by submitters is on the basis that the matter raised is a relevant matter for the Commissioner of Crown Lands (CCL) to consider when making decisions in the context of the Crown Pastoral Land Act 1998 (CPL Act). Conversely, where the matter raised is not relevant in terms of the Commissioner’s consideration, the decision is to “**Disallow**”.

Each allowed point has then been evaluated with respect to the following criteria:

- o The objects and matters to be taken into account in the CPL Act 1998 (Sections 24 and 25), and;
- o The views of all parties consulted and any other matters relevant to the particular review, balanced against the objects and matters to be taken into account in the CPL Act 1998.

The evaluation is based on the premise that the Preliminary Proposal (PP) met the objects and matters to be taken into account in the CPL Act 1998 (Sections 24 and 25). Based on the information available at the time, the Department of Conservation (DoC) and the Holder have been consulted and their views have been taken into consideration and balanced against the objects and matters to be taken into account in the CPL Act.

Points that were disallowed are automatically not accepted.

4.2 *Analysis:*

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
1	That the Ohau Hill Block of Bendrose Station not be designated as land to be disposed of on freehold tenure.	1,3,7,8,9,11	Allow	
				Not accept

Preliminary analysis

The matter of protection of significant inherent values is relevant under CPL Act, Part 2, Section 24 and the point is therefore allowed.

The submitters variously point out that the Hill Block has high landscape values as well as recreational and amenity values overlooking the lake. This matter was identified in the Conservation Resource Report but not sufficiently highly that it be recommended to be restored to the Crown. Reference is also made to the significant biological values of the area, such as shrublands with the suggestion that those shrublands may regenerate if grazing ceases.

Freeholding would allow the possibility of forestry and subdivision with a possible consequence being the erection of buildings on an otherwise largely natural landscape.

It is stated that the proposal ignores the importance of lower altitude shrubland and tussock grassland systems, and fails to recognise the strategic importance of land close to the lake

for present and future generations. It is further stated that freeholding land so close to Lake Ohau does not promote ecologically sustainable management as required by Section 24(a) CPL Act.

Some submitters have suggested limited grazing rights continue for a period of time. If freeholding was pursued then a sustainable management covenant should be considered to limit use to extensive grazing.

Final analysis

The landscape values of the Hill Block and the remnant shrublands along the faces have previously been considered, along with the fact that over-sowing and top-dressing has been carried out on this block for many years.

The inherent values of the Hill block were considered by the DGC's delegate not to have a level of significance necessary to warrant their inclusion as conservation land in the PP.

No new information on the inherent values of this block has been received and the Holder is not willing to accept a covenant over the Hill block.

The point is therefore not accepted for inclusion in the dSP.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>	
2	Requires the protection of marginal strips along the Twizel River. There is a need for a moveable marginal strip along the Twizel River, in addition to the existing fixed position legal road, with a notation that Part IV A Conservation Act applies over all titles comprising Part Run 294 and any future sub-division.	2, 6	Disallow	
				Not accept

Preliminary analysis

The matter of marginal strips is dealt with under Part IV Conservation Act. It is not a matter the CCL is required to consider under the CPL Act, and the point is therefore not allowed.

It is noted that the Twizel River does not adjoin the lease under consideration, as there is a legal road between the river and the lease. Part IV Conservation Act will apply to land being disposed of to the extent that streams, rivers or lakes qualify.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
3	The retention of all legal roads and marginal strips for the protection along Lake Ohau.	2	Disallow	
				Not accept

Preliminary analysis

The matter of legal roads and marginal strips are not ones that the CCL is required to consider under the CPL Act therefore the point is not allowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
4	The provision of foot access along Bendrose, Greta's and Dorcy Streams.	2	Allow	
			Accept	

Preliminary analysis

The matter of access is relevant under CPL Act, Part 2, Section 24 (c) (i) and the point is therefore allowed.

Proposed access along Bendrose Stream and part of Greta's Stream is reliant on the provision of marginal strips. Access along Greta's and Dorcy Stream has been considered. To this end land adjoining Dorcy Stream is included in the area to be restored to the Crown. In the case of Greta's Stream the proposed easement gives access to Greta's at the point where it is to be within land to be restored to the Crown.

Final analysis

The DGC's delegate commented that access to Greta's & Dorcy stream is freely available via marginal strip provisions and Bendrose Stream will have a marginal strip as part of the proposed designations. As above, foot access will be provided for via marginal strips, as well as proposed Crown ownership of access points and easements. The point is accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
5	That the investigation of entomological values is inadequate.	4	Allow	
				Not accept

Preliminary analysis

Entomological values may be significant inherent values under CPL Act, Part 2, Section 24 and the point is therefore allowed.

It would appear from the submission that there is further research work that has been carried out since the Conservation Resources Report was completed.

Final analysis

One thousand hectares of conservation land exists adjacent to the Bendrose Flats and this conservation land encompasses similar soil and vegetation types. Additionally, DoC has identified strategic areas with entomological value throughout the Mackenzie Basin that do not include the Bendrose Flats.

It is possible that inherent entomological values may be present on the land proposed to be designated as freehold. However, the DGC's delegate implies that, on the basis of available information and that a nearby similar area is currently protected, any entomological values associated with land proposed to become freehold are highly unlikely to be sufficiently significant, in terms of rarity, to warrant protection. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub.No.s</i>	<i>Decision</i>	
6	That public access be by dedicated road. That access routes should be provided by way of designating the route pursuant to Section 35 (2) (a) (iii) CPL Act for the specific Crown purpose of "public highway".	5, 6	Disallow	
				Not accept

Preliminary analysis

The CCL has no jurisdiction over public roads, and the matter of creation or exchange of public roads is therefore not a matter that the CCL is required to consider under the CPL Act.

One Submitter points out that secure public access must be provided along the routes proposed "...pursuant to section 35 (2) (a) (iii) for the specified Crown purpose of "public highway". The CCL should then dedicate these roads as public highways for foot, horse, and cycle passage, with *animus dedicandi* being fulfilled by public acceptance and use."

Specific provision is made with respect to public access under Sec 24 (2) (c) (i) CPL Act by way of protective mechanism under Section 40 (2) (c) of the Act. The point is therefore not allowed.

Note: Issues regarding the proposed access easement have also been raised in point 12.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
7	That motor vehicle access be provided along the route w-x.	5,12	Allow	
				Not accept

Preliminary analysis

The matter of public access is relevant under CPL Act, Part 2, Section 24(c) (i) and the point is therefore allowed.

Final analysis

Route w-x is a farm vehicle track maintained by the Holder and allowing public motor vehicle access would impose significant additional costs. No particular reason to have motor vehicle access to CA1 has been identified and mountain bike, foot and horse access is adequate and appropriate.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
8	That the area below (west of) the Glen Lyon Road be designated as Recreation Reserve.	6	Allow	
				Not accept

Preliminary analysis

The protection of significant inherent values is relevant under CPL Act, Part 2, Section 24 (b) and the point is therefore allowed.

The area referred to comprises two small parcels of land near the northern boundary proposed to be designated as land to be restored to full Crown ownership and control. The submitter does not give a reason for why it suggests recreation reserve status. See point 9 below.

Final analysis

The area is proposed to be designated as land to be returned to full Crown ownership and control, which DTZ considers the most appropriate option. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
9	Part of the plan north of the fence B-C and two small areas west of Glen Lyon Road do not have a proposed designation. They	6, 9	Allow	

	should be part of CAI.			
			Accept	

Preliminary analysis

The areas referred to appear to have been inadvertently omitted from labelling on the plan. As every area in the tenure review must be dealt with the point is allowed. Correct labelling will alleviate the submitters' concern.

Final analysis

The areas will be correctly labelled 'CA1'. The point is accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
10	That a marginal strip is required on Dorcy Stream or alternative access from Glen Lyon Road.	6	Disallow	
				Not accept

Preliminary analysis

The matter of marginal strips is dealt with under Part IV Conservation Act. It is not a matter the CCL is required to consider under the CPL Act and the point is therefore not allowed.

It is noted that the whole of Dorcy Stream and adjoining land at the northern point of the lease be proposed to be restored to full Crown ownership and control. Access along Dorcy Stream is also raised in Point 4.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
11	Provide access from Glen Lyon Road to the Greta's Stream Beech Forest area.	6	Allow	
			Accept	

Preliminary analysis

The matter of public access is relevant under CPL Act, Part 2, Section 24(c)(i) and the point is therefore allowed.

Access from Glen Lyon Road marked 'y-z' is shown in Diagram 1 of the PP, and is proposed to traverse beside the beech area referred to before diverting away from it and ending at the boundary of the land proposed to be designated as remaining in conservation. Note: see also Point 4.

Final analysis

Access from Glen Lyon Road to the Greta's Stream Beech Forest area is already provided for under the PP. The point is accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
12	The terms of the Public Easement fail to provide secure access as required by the CPL Act.	6	Allow	
				Not accept

Preliminary analysis

The matter of public access is relevant under CPL Act, Part 2, Section 24(c)(i) and the point is therefore allowed.

The submitter points out that the provision of an easement does not guarantee long-term public access. It points out that pursuant to Section 126G of the Property Law Act 1952 "...allows modification or extinguishment of easements through the courts, at the initiative of either party to their creation or one alone. ... The omission constitutes a fundamental failure to "secure" public rights of passage as required by the CPL Act." The submission also raises the powers of DoC to close the access and that the public has no input into any dispute resolution. The submitter is also concerned that there is provision for gates to be locked if there is agreement with the transferee.

The definition of secure is set out in the submission having been taken from the Concise Oxford Dictionary.

To conclude the submitter is saying that an easement as proposed is not secure access supporting it with various reasons.

Note: this is also related to Point 6.

Final analysis

An easement over the freehold land is the most secure mechanism available under the CPL Act, unless the land over which an easement is proposed, becomes conservation land. Designating this land as freehold, subject to an easement, is the most appropriate mechanism for the provision of public access.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
13	Requires a corridor of land at least 200 metres wide along the Twizel and Bendrose Streams for stream protection and possible access beside the significant waterways except for the land around the Bendrose homestead.	1,7,8,11	Allow	
				Not accept

Preliminary analysis

The matters of protection of significant inherent values and the provision of public access are relevant under CPL Act, Part 2, Sections 24 (a) and (b) and the point is therefore allowed.

Final analysis

The 20 m marginal strip, created under Part IV of the Conservation Act, is considered by DTZ to be adequate for protection and access purposes.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
14	That the exchange of 110 hectares of Conservation Land for Reviewable Land not take place.	9	Allow	
				Not accept

Preliminary analysis

The protection of significant inherent values is relevant under CPL Act, Part 2, Sections 24(b) and the point is therefore allowed.

The submitter states that the area has significant inherent values and that the lessee is not surrendering any more pastoral lease land than would normally be done under tenure review. Reference is made to not adequately protecting the Greta's scrublands, most of which are within the area being retained in Crown ownership and control.

It is noted that this area forms part of the same geographic block as that referred to in point 1.

Final analysis

This conservation area to be swapped is part of the same geographic block as the Hill block referred to in point 1 and its inherent values do not have level of significance necessary for it to be retained as Crown land. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
15	To protect the mature matagouri scrub lands beside Bendrose Stream (between the Stream and Twizel River).	9	Allow	
				Not accept

Preliminary analysis

The matter of the protection of significant inherent values is relevant under CPL Act, Part 2, Section 24(a)(i) and 24(b)(i) and the point is therefore allowed.

The submitter is concerned inadequate riparian protection and public land set back is proposed on Bendrose Flats between Bendrose Stream and the Twizel River. It states that DoC does not appear to have revised the October 1996 Conservation Resources Report to take account of the amendments to the CPL Act, the New Zealand Biodiversity Strategy or NGO concerns about the inadequacy of earlier DoC reports. By freeholding close to the margin of the Twizel River and Bendrose Stream it fails to protect significant inherent values because it exposes significant shrublands to continued stock grazing and damage and potential elimination. That the shrublands may also have significant value for invertebrates is also raised, stating that it appears to have been poorly investigated (if at all) here or on the property generally.

The issues raised by the submitter are related to the general tenor of Point 13.

Final analysis

No new information has been provided with respect to the inherent values of the area in question, and it is noted that there is considerable weed infestation in parts of the area.

The proposed designation for the area concerned is consistent with the objects of the CPL Act, when considered over the lease as a whole.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
16	Agree with proposed designations	5, 10	Allow	
			Accept	

Preliminary analysis

Support is noted. As the submissions deal with decisions made under the CPL Act, the point is allowed.

Final analysis

The point is accepted.

5. Discussion

Discussion relevant to each particular point has been made under each point for simplicity and clarity.

Explanation Notes:

1. Three smaller areas of land to go to conservation had not been coloured on the plan (Dorcy Stream and two areas below the Glen Lyon Road). These areas are both intended to be designated as land to be restored to full Crown Ownership and Control as part of the CA1 block. Unfortunately in the redrawing of the plan they were inadvertently not coloured. See point 9.
2. PANZ has devoted a section to marginal strips and in particular the application of such to Bendrose at lease renewal (extension), which is a matter more relevant to the lease administration. However the matter of when marginal strips are identified is a generic matter for LINZ to consider and has been previously raised by PANZ. As part of its land administration and disposal functions LINZ complies (through its contractors) with the requirements of section 24(2A) Conservation Act 1987 by notifying the Department of Conservation of any proposed disposition (by way of sale or renewal of leases) of Crown land.

6. Summary & Conclusions:

A number of points have been raised in submissions on the PP for the Bendrose tenure review. Points relating to CPL Act matters of protection of SIV's and access, an error on the proposed designation plan and general support for the proposal have been allowed and all other submissions have been disallowed.

Following consultation with the DGC's delegate and with the Holder, points already provided for under the PP and points that identify errors in the designations plan have been accepted.

The only change to the SP, as compared to the PP, as a result of consultation will be to the areas of land that were not labelled correctly as discussed in point 9.

FINAL ANALYSIS OF IWI SUBMISSION IN ACCORDANCE WITH SECTION 45 CROWN PASTORAL LANDS ACT 1998

BENDROSE TENURE REVIEW

1. *Details of lease:*

Lease Name: Bendrose
Location: Twizel, South Canterbury
Lessee: J D J and Estate A W Allan

2. *Details of submission:*

Notice of the Preliminary Proposal (PP) for the tenure review of Bendrose pastoral lease was given in accordance with sections 43 & 44 Crown Pastoral Land (CPL) Act. Te Runanga O Ngai Tahu (TRONT) made a submission in regards to the PP, and this submission details the analysis of the iwi's submission.

3. *Analysis of submission:*

3.1 *Introduction:*

Explanation of Analysis:

The submission received has been reviewed in order to identify the points raised and these have been numbered accordingly. TRONT raised three distinct points in relation to this review.

The following analysis summarises each of the points raised. Discussion of the point and the decision whether to allow/disallow the point follows.

The decision to "**Allow**" the point made by TRONT is on the basis that the matter raised is a relevant matter for the Commissioner of Crown Lands (CCL) to consider when making decisions in the context of the CPL Act 1998. Conversely, where the matter raised is not relevant in terms of the Commissioner's consideration, the decision is to "**Disallow**".

Each allowed point has then been evaluated with respect to the following criteria:

1. *The objects and matters to be taken into account in the CPL Act 1998 (Sections 24 and 25).*

Section 24 sets out the Objects of Part 2 of the CPL Act. In summary, these objects are:

- Promote ecologically sustainable management
- Enable land with economic potential to be freed from management constraints
- Enable protection of Significant Inherent Values (SIVs)
- To make easier public access as well as freehold disposal of reviewable land.

Under section 25 of the CPL Act, The Commissioner of Crown Lands must take into account the Objects of Part 2 of the CPL Act, the Principles of the Treaty of Waitangi and the purpose for which any land is, or will be, used by the Crown.

Neither the Courts nor the Waitangi Tribunal have produced a definitive list of Treaty principles. However, the Court of Appeal and the Waitangi Tribunal have elucidated two core principles, namely "partnership" and "active protection". Both the Courts and the Waitangi Tribunal have determined that the principle of partnership includes the obligation on both parties to act reasonably, honourably and in good faith. As to active protection, "the duty of the Crown is not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable"¹. Each point made by TRONT in their submission is analysed in light of these principles.

2. *The views of all parties and any other matters the Commissioner sees fit*

The Commissioner has allowed any member of the public to make submissions on the Bendrose Preliminary Proposal and is obliged to base any decisions on the views of all parties consulted. There is no provision in the CPL Act that precludes the Commissioner taking any other matters into account therefore the Commissioner is able to consider any other matters as he sees fit.

3. *Acceptability of proposal to the Lessee and to the Commissioner*

An important final point in relation to evaluation for decision-making is that tenure review is a voluntary process, and the Commissioner and the Lessee both have the ability to discontinue the review should they wish to.

¹ New Zealand Māori Council v Attorney-General, [1987] 1 NZLR 641

Note:

1. The analysis is based on the premise that the PP met the objects and matters to be taken into account in the CPL Act 1998 (Sections 24 and 25), based on the information available at the time.
2. Points that were disallowed in the PA are automatically not accepted.

3.2 Analysis:

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
1	TRONT oppose the freeholding of the land between the proposed area CA1 and Lake Ohau. For cultural and recreational reasons, it is suggested this area be retained as conservation land.	Allow	
			Not accept

Preliminary analysis

The matter of retaining or restoring land as conservation area is relevant under the CPL Act, section 35(2)(a).

The area in question is of immense significance to Ngai Tahu, and is consequently recognised as a Statutory Acknowledgement under the Ngai Tahu Claims Settlement Act (1998). Major concern for the Iwi lies in the possibility of exclusion from the future management of the area. TRONT suggest that the area be designated as land to be restored to full Crown ownership as conservation area, with the possibility of a grazing permit per section 36 (1)(c) of the CPL Act to the person specified in the PP. This point is allowed as it is relevant under the CPL Act. It will enable further consultation with the DGC’s Delegate regarding the significance of the inherent cultural values in question. It is also noted by TRONT that the area provides excellent recreational, scenic and leisure opportunities for the general public.

Final analysis

The principle of partnership requires that both parties enter into any discussions in good faith. Based on TRONT’s submission, the Commissioner has entered into consultation with the Holder and the DGC’s delegate accordingly.

The principle of active protection calls for protection of resources important to Maori *to the fullest extent practicable*. In this case, full protection under the Conservation Act is not practicable as the Holder is not willing to accept a covenant, let alone a non-freehold tenure, over the block in question.

In terms of urupa and/or whai tapu sites that may be located on the land proposed to become freehold, TRONT have not specified if there are such sites located on the proposed freehold land. It is therefore not practicable to create protection mechanisms for these sites under this tenure review process. It is noted that: a) TRONT may apply to the Historic Places Trust to have a covenant/s placed over any culturally significant sites that may be identified at a later stage. b) it is unlawful for any person to destroy, damage, or modify, or cause to be destroyed, damaged, or modified, the whole or any part of any archaeological site, knowing or having reasonable cause to suspect that it is an archaeological site.

Other matters that the Commissioner has considered in relation to this point are:

1. A legal road is located between Lake Ohau and the western boundary of the proposed freehold land. Additionally, two small parcels of land between the road and Lake Ohau will be either recreation reserve or conservation land. Access to the lake for cultural and recreational reasons will therefore be possible via the road and via the two small parcels of land between the road and Lake Ohau, and TRONT’s relationship with Lake Ohau will be protected in terms of access to mahinga kai.
2. TRONT advocates an integrated management approach and consider that this area of land should be managed by the Crown in conjunction with the lake and the higher altitude area to the east, and are concerned that Ngai Tahu will be excluded from future management of the area. In terms of integrated management, and Ngai Tahu’s input to the management of the area, the Resource Management Act (RMA) 1991 will continue to apply to the land in question. The RMA directs councils to manage resources in an integrated fashion. The RMA also directs decision makers to consult with Ngai Tahu and to consider matters such as the protection of wahi tapu sites, cultural values, the principles of the Treaty of Waitangi and kaitiakitanga.

In conclusion, the point has not been accepted for inclusion in the SP. The Holder will not accept a tenure review without freehold title over the area, and will not accept covenants over it. The Commissioner has observed the principle of active protection by entering into consultation with the Holder in good faith. However, it has not been practicable to obtain the land designation that TRONT seek for this land (namely that of Crown land for conservation purposes), nor has it been practicable to obtain a covenant over the land in question. The CCL notes that TRONT’s rights to access the waters of Lake Ohau will be protected through the existence of a lake-side road and two parcels of crown land.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
2	TRONT is opposed to the exchange of conservation land, for cultural and recreational reasons. This area should also be retained as conservation land.	Allow	
			Not accept.

Preliminary analysis

The matter of retaining or restoring land as conservation area is relevant under the CPL Act 35(2)(a).

As above, this area is of significant cultural value and TRONT recommend the area be retained by the Crown as conservation area for the reasons as outlined in Point 1. The point has been allowed due to its relevance under the CPL Act.

Final analysis

This point was raised with the DGC’s delegate in accordance with the principle of partnership and the desire to enter consultation in good faith. The DGC’s delegate did not see any reason why the land in question should not be exchanged. The delegate suggested however, that a covenant be applied to the land. As discussed in relation to point 1, the Holder is not prepared to have a covenant imposed on the freehold land. It is therefore not practicable to protect the land to be exchanged in accordance with TRONT’s wishes. Again, it is noted that TRONT will be able to exercise their relationship with Lake Ohau, and associated resources, via lakeside access.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
3	TRONT question the existence of marginal strips along the Twizel River and Bendrose Stream. If none exist that protective mechanisms be put in place.	Disallow	
			Not accept

Preliminary analysis

Bendrose Stream does not currently have marginal strips. It is noted that the Twizel River does not adjoin the lease under consideration, as there is a legal (paper) road between the river and the lease. Part IV Conservation Act will apply to land being disposed of to the extent that streams, rivers or lakes qualify.

The matter of marginal strips is dealt with under Part IV Conservation Act. It is not a matter the CCL is required to consider under the CPL Act, and the point is therefore not allowed.

4. Discussion and conclusions:

TRONT have raised three main points with respect to the Bendrose PP. These points have been analysed and evaluated in accordance with sections 24 and 25 of the CPL Act, the views of all parties and other matters that the Commissioner considers relevant.

Two points have been allowed and the other point has been disallowed. It has not been possible to negotiate outcomes to satisfy the points that TRONT has made and neither of the two allowed points have been accepted for inclusion into the substantive proposal for the reasons given as part of the analysis of each point. Notwithstanding that the points allowed have not been accepted, the PP overall is considered to meet the Objects of Part 2 of the CPL Act.