

Crown Pastoral Land Tenure Review

Lease name: BENDROSE

Lease number: PT 097

Preliminary report on public submissions

This document includes information on the public submissions received in response to an advertisement for submissions on the preliminary proposal. The report identifies if each issue raised is allowed or disallowed pursuant to the CPLA. If allowed the issue will be subject to further consultation with Department of Conservation, or other relevant party.

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

March 04

YOUR REF: CON/50344/09/12712/A-ZNO
OUR REF: Pt 097.01 Bendrose
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31 March 2004

Crown Property Management
Land Information New Zealand
Private Bag 4715
CHRISTCHURCH

Attention: Murray Mackenzie

Dear Sir

BENDROSE PASTORAL LEASE – ANALYSIS OF PUBLIC SUBMISSION

Please find enclosed our revised analysis as directed by LINZ. Please advise if you are satisfied the analysis is in order to forward to the DGC’s Delegate and that consultation take place with him.

Yours faithfully

R A Ward-Smith
Manager - Timaru

Enc:

Recommendations:

1. That the Commissioner of Crown Lands or his delegate notes the analysis of submissions contained in this report and **Allow/Disallow** the points raised as recommended in this report.
2. That the Commissioner of Crown Lands or his delegate authorises DTZ to consult with the DGC’s delegate over the Allowed points

3. That the Commissioner of Crown Lands or his delegate authorises DTZ to consult with the Holder over Allowed points, following consultation with the DGC’s delegate.

Approved pursuant to a delegation from the Commissioner of Crown Lands by:

OJ Frost
Dated 07/04/2004

4.

**ANALYSIS OF SUBMISSIONS
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

A copy of the advertisement is attached.

Closing date for submissions:

6th October 2003

3. Details of submissions received:

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

One late submission was received in this office 7th November 2003, over one month after the submission closing date. That submission, received from Mrs Nancy Tyne, 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**”.

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	

Discussion Point 1:

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.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</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	

Discussion Point 2:

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	

Discussion Point 3:

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	

Discussion Point 4:

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.

<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	

Discussion Point 5:

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.

<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	

Discussion Point 6:

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 Commissioner of Crown Lands 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	

Discussion Point 7:

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

<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	

Discussion Point 8:

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.

<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 should be part of CAI.	6, 9	Allow	

Discussion Point 9:

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.

<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	

Discussion Point 10:

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	

Discussion Point 11:

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 Preliminary Proposal, 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.

<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	

Discussion Point 12:

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.

<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	

Discussion Point 13:

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.

<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	

Discussion Point 14:

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

<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	

Discussion Point 15:

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

<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	

Discussion Point 15:

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

5. Discussion and conclusions:

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.

ANALYSIS OF SUBMISSION

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:**

The Commissioner of Crown Lands advised Iwi of the Preliminary Proposal for the Bendrose tenure review in accordance with Section 43 Crown Pastoral Land Act. Iwi responded by letter dated 25th August 2003 and raised three distinct points in relation to this review.

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.

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 the submitter 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**”.

3.2 Analysis:

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
1	Ngai Tahu 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	

Discussion Point 1:

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. Ngai Tahu 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 Preliminary Proposal. 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 Ngai Tahu that the area provides excellent recreational, scenic and leisure opportunities for the general public.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
2	Ngai Tahu is opposed to the exchange of conservation land, for cultural and recreational reasons. This area should also be retained as conservation land.	Allow	

Discussion Point 2:

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 Ngai Tahu 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.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
3	Ngai Tahu question the existence of marginal strips along the Twizel River and Bendrose Stream. If none exist that protective mechanisms be put in place.	Disallow	

Discussion Point 3:

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:

Discussion relevant to each particular point has been made under the individual point headings for simplicity and clarity. The points are all related to access or ensuring Ngai Tahu involvement in the future management of the area, with particular reference to inherent cultural values, waterways and wetlands.

Recommendations by DTZ approved:

That the Commissioner of Crown Lands or his delegate:

1. Notes the submission received from Iwi and makes the decisions as set out in the analysis attached.
2. Authorise DTZ to consult with the Director General of Conservation’s Delegate on the points allowed.

Approved pursuant to a delegation from the Commissioner of Crown Lands by:

OJ Frost
Dated 08/04/2004

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