

Crown Pastoral Land Tenure Review

Lease name: BENDROSE

Lease number: PT 097

Public Submissions - Part 1

These submissions were received as a result of the public advertising of the Preliminary Proposal for Tenure Review.

April

05

Anna Furie

From: Brian Patrick [mailto:bpatrick@xtra.co.nz]

Sent: Saturday, 4 October 2003 5:37 p.m.

To: Suzanne Smith

Subject: Bendrose Draft Tenure Review

Dear DTZ

thank you for the opportunity to comment on **Bendrose PL Draft Tenure Review Proposal**. I have accessed the Department of Conservation Resources report on your website. Thank you for making such reports publically available in that way.

INTRODUCTION

I have first-hand experience of the botanical and entomological values of this property as I accompanied Dr Graeme White on his moth survey and research work within the last 10 years to various parts of the property and adjacent properties.

ENTOMOLOGICAL VALUES

The Department of Conservation Resources Report is inadequate and appalling in many ways. Specifically it is completely off the mark with the comments under "Fauna" in stating that "Entomological knowledge is scarce". Why was I or other entomologists not consulted as we often are. This whole process is much too important to gloss-over large subjects such as entomology! Because of their high diversity in terms of both species and groups, insects can provide a fine level of information that is extremely useful in determining the areas of conservation interest or high inherent values. There are many recent and relevant entomological reports by myself, Dr Graeme White, Dr Brent Emerson and others that should have been assessed for information that might have been useful and relevant to this property. Additionally why was a survey of the insects and their special habitats not undertaken as part of the DoC assessment? The entomological information in this DoC resources report is sparse, minimal, inadequate, immature and really quite pathetic. What is meant by "alpine grasshopper" - which species is referred to? A wonderful opportunity has been passed up. This lack of information makes it extremely hard for me to be satisfied that the draft agreement is in fact a reasonable outcome for the public in terms of areas of high inherent value being adequately catered for.

Back to Dr Graeme White of Christchurch and an Associate of Lincoln University; I am surprised he has obviously not been adequately consulted on the entomological values of this Pastoral Lease. He found rare and new species during his intensive study there or very close-by. He was funded by the Crown for his long-term research project so it is very disappointing and a waste of scarce resources not to utilise his knowledge the first time it is relevant to land management. Much of his work is written up and some published too, including a Landcare Research Ltd book published last year "New Zealand Tussock Grassland moths" (2002).

BOUNDARIES

I generally support the split of land in the Lake Ohau block from my knowledge.

I question the freeholding of the Flats adjacent to the Twizel River. This area maybe what we term "degraded" but it is evident from the sparse DoC Resouces description that considerable native plant species and semi-natural communities still exist there. These communities will support considerable native insect diversity. This probable biodiversity is not adequately protected elsewhere in my opinion, therefore the lack of an adequate assessment of the entomological values makes it extremely difficult to comment apart from stating that this area of Flats maybe important to be all or partly retained in public ownership. It is well known that the MacKenzie Basin harbours a distinctive insect fauna with many endemic species of beetle, grasshopper and moth at least (Peat & Patrick 2001).

I am available to assess the site for native insects and their habitats if required as the spring is an excellent time to perform this function. Many of the most distinctive MacKenzie Basin insects emerge at this time of year.

yours sincerely

Brian

Brian Patrick
38 St Albans St
Dunedin 9001
New Zealand

phone 03 4534902

Royal Forest and Bird Protection Society
PO Box 2516
Christchurch Mail Centre
Ph 03 3666 317
Fax 03 3660 655



**FOREST
& BIRD**

ROYAL FOREST AND
BIRD PROTECTION
SOCIETY OF
NEW ZEALAND INC

6 October 2003

Ray Ward-Smith
DTZ NZ Ltd
PO Box 564
Timaru
Email timaru@dtz.co.nz

RELEASED

6 OCT 2003

Dear Ray Ward-Smith

**SUBMISSION ON PRELIMINARY TENURE REVIEW PROPOSAL FOR
BENDROSE, LAKE OHAU AND TWIZEL**

1. INTRODUCTION

The Royal Forest and Bird Protection Society (Forest and Bird) is New Zealand's oldest and most active voluntary conservation organisation. Formed in 1923 the Society has around 38,000 members in 56 branches around New Zealand. This evidence is on behalf of the Central Office. The Society's constitution requires it to:

"take all reasonable steps within the power of the Society for the preservation and protection of indigenous flora and fauna and natural features of New Zealand for the benefit of the public including future generations."

"Protection of natural heritage includes indigenous forests, mountains, lakes, tussocklands, wetlands, coastline, marine areas, offshore islands and the plants and wildlife found in those areas."

2. PRELIMINARY PROPOSAL

Forest and Bird understands the preliminary proposal for Bendrose to be:

1. 1,840 ha including the unnamed Mt Bendrose (spot height 1689 m), the upper slopes of Greta Stream catchment and Flanagan Pass area (shown as CA1 on Plan) to be restored to full Crown ownership as conservation land.
2. 110 ha of conservation land on Lake Ohau faces to be exchanged with other land under Conservation Act 1987 and freeholded.
3. 1,206 ha - Ben Ohau mountain to Lake Ohau (shown as CA2 on Plan) to be retained as conservation land.
4. 4,086 ha - Bendrose Flats between the Pukaki and Twizel Rivers to be freeholded to lessees.

3. SUMMARY OF SUBMISSION

Forest and Bird objects to:

1. Proposed freeholding of Lake Ohau faces in the "Back Block" as not protecting significant inherent values or promoting ecologically sustainable management as the Crown Pastoral Land Act (CPLA) requires.
2. Proposed freeholding of 110 ha conservation land because nothing appears to be being exchanged for it (i.e. lessee is not surrendering any more pastoral lease land than would do normally under tenure review) and it does not adequately protect Greta Stream shrublands.
3. The unclear status for a strip of land in Dorcy Stream between the access track and the northern boundary of the pastoral lease. On the Plan for the preliminary proposal it is not clearly marked in green (freeholding) or pink (conservation land). DoC's proposal map shows it as becoming conservation land and the Values maps in the CRR shows it as having inherent values deserving protection and including RAP 5 Dorcy Stream.
4. Proposed freeholding of mature matagouri shrublands in "Flats" block along Bendrose Stream, and the failure to provide an adequate buffer and setback along Bendrose Stream and Twizel River as public conservation land.

The decisions sought are set out below.

4. SUBMISSION ON SPECIFIC ASPECTS OF PRELIMINARY PROPOSAL

4.1 "Back Block" – Lake Ohau faces

Land close to Lake Ohau in an area with such high landscape, ecological values and potentially high recreation values deserves protection as public conservation land. The freeholding of the Back Block is opposed for the following reasons:

- a) It fails to protect significant inherent values, including landscape values, as required by section 24(b) of the CPLA. Freeholding is likely to result in degradation of these values (either soon after or in future) through more intense land uses such as forestry or subdivision.

The Lake Ohau faces have high landscape values with their open uncluttered character and natural vegetation cover that has not been degraded by forestry or farm buildings. The faces are a key part of the spectacular and dramatic landscape of the Ohau catchment. They are visible from public roads on both sides of the lake. As the Conservation Resource Report (p2) notes *"the area is part of the overall continuous landscape character of the western slopes of the Ben Ohau Range running from Glen Lyon Station in the north to conservation land in the south."* The Values Map in the CRR (attached to this submission as Map 1) shows all of the faces as having landscape value.

Freeholding and the removal of the requirement for discretionary consents means there is no guarantee that the landscape sympathetic management of the current lessee will continue. The impacts of less sympathetic landholders are obvious on both

Longslip and Ribbonwood near Omarama where extensive tracking has scarred hillslopes and degraded natural character.

The neighbouring Glen Lyon lease has extensive woodlot and plantation areas that have degraded landscape and ecological values. Forestry and shelter belt plantings on the Ohau faces on Bendrose would be an obvious intrusion and disruption in the landscape, breaking up and obscuring the glacially smoothed faces, gridding its expansive tawny character with lines of dark green trees, blocking views from the road, and obscuring glacial landforms. Trees could cause a major wilding spread problem.

The Resource Management Act does not provide adequate mechanisms to control forestry or farm development. The proposed Mackenzie District Plan contains no controls on pastoral intensification (eg more intensive stocking regime), which would substantially degrade existing cover, and few controls on earthworks, indigenous vegetation clearance and limited controls on forestry.

b) Freeholding will almost inevitably cause landscape fragmentation and degradation through subdivision for creation of lifestyle, residential, or holiday home blocks, if not by the current owners, then subsequent owners. Newly freeholded former pastoral lease land on Ben Ohau Station is actively marketed on the station website for sale to overseas and domestic purchasers as holiday home or lifestyle blocks. While lessees may assert that pastoral land is needed to provide a viable farming unit and obtain it at pastoral prices and they can be quick to on-sell it for other uses (and potentially sizeable financial gains) once it has been freeholded.

The Lake Ohau faces have spectacular views of the lake and the surrounding mountains. The desirability of such areas for subdivision and the escalating prices for lakeside lands (eg real estate boom around Lake Wanaka) would provide the new freehold owner with extremely valuable land with a high subdivision potential. There are no sustainable management covenants that prevent subdivision.

The Resource Management Act will not protect the landscape values because the Mackenzie District Plan has no minimum lot size and few controls on subdivision and it does not identify outstanding landscapes.

These impacts could be reduced by a sustainable management covenant under section 97 of the CPLA that prohibited exotic afforestation and subdivision and required the current extensive pastoral farming land management regime to continue.

c) Freeholding does not recognise and provide for the area's high existing and potential recreational values. New Zealanders and tourists are drawn to the water for recreation. The combination of the easy contours of the Back Block, the dramatic views available by climbing short distances up-slope, the proximity to the rapidly growing holiday and tourism township of Twizel, and the absence of any extensive areas of public protected land around Lakes Ohau, Tekapo, and Pukaki mean these faces are likely to be increasingly popular for public recreation in future. The experience with other areas (eg Korowai/Torlesse Tussocklands Park) is that once people no longer need to seek permission publicly use increases significantly.

Just allowing the public access to a narrow strip of land between the Glen Lyon Road and the lake is not adequate to meet these needs.

LINZ and DoC have failed to recognise the strategic importance of land close to the lake for present and future generations for recreation and in so doing are failing to implement the CPLA. Inherent value is defined in section 2 of the CPLA as including "*recreational.....attributes and characteristics*". The recreational assessment in the CRR has failed to examine recreational values in any comprehensive way or state the well-recognised need for public land close to population centres to cater for a range of recreational needs or the attractiveness of lakeshore areas.

d) Freeholding here would not protect "significant inherent values" because it does not protect the low altitude shrublands including "*several patches of mature matagouri shrubland located approximately midway along the Lake Ohau Face, between the farm track and the lake. Matagouri occurs with scattered mingimingi and about 25 % cover of sweet briar. All shrub species reached 2-2.5 metres in height.*" (CRR at p3). There are at least five of these patches and they are reasonably extensive in area.

Old man matagouri of this height is potentially 100 years or more in age. The inadequate DoC fauna and invertebrate surveys mean that the value of the shrublands for birds and insect life has not been adequately assessed. If these are cleared for more intensive pastoral development, landscape and ecological values will be lost.

Mixed matagouri shrublands also occur in the lower reaches of Greta's Stream and Dorcy Stream alongside the stream and up the slope.

e) This proposal continues the problem of tenure review failing to implement Goal 3 of the Government's NZ Biodiversity Strategy¹ because it ignores the importance of lower altitude shrubland and tussock grassland ecosystems and does not seek to maintain and restoring the full range of remaining natural habitats and ecosystems as the Strategy requires. Once again it is only the high altitude tussock grasslands, alpine cushion and fellfields above 900-1000 metres asl which are proposed for protection, with land below this for freeholding. The ecosystems below 1000m that are not well represented in the protected area network. This continues to

¹ Goal 3 (Halt the decline in New Zealand's indigenous biodiversity) of the NZ Biodiversity Strategy is: "*Maintain and restore a full range of remaining native habitats and ecosystems to a healthy functioning state, enhance critically scarce habitats, and sustain the more modified ecosystems in production and urban environments; and do what else is necessary to: Maintain and restore viable populations of all indigenous species across their natural range and maintain their genetic diversity.*"¹

Goal 3 is supported by objectives and action plans. Priority action (b) under Objective 1.1 (Protecting indigenous habitats and ecosystems) is "*Add to public conservation lands those habitats and ecosystems important for indigenous biodiversity that are not represented within the existing protected area network or that are at significant risk of irreversible loss or decline, or in situations where public ownership is needed for effective management.*"

be largely overlooked in the tenure review process despite scientific research and advice to the contrary.²

f) Freeholding would not implement the Government's revised objectives for tenure review including "*obtain a fair financial return for the Crown on its high country land assets*"³ because it proposes freeholding highly valuable land, presumably at pastoral prices. This would allow the lessees of subsequent owners to make windfall gains by subdividing and on-selling sections. If the Crown does dispose of the land, the Crown not the lessee which should benefit from the escalation in land value for uses other than pastoralism.

g) Freeholding appears to be being proposed so that the lessees are provided with a viable economic unit. This is not mentioned in the legislation and is not a Government objective of tenure review and should not be a consideration for decision makers.

h) Freeholding land so close to Lake Ohau does not promote "*ecologically sustainable management*" as section 24(a) of the CPLA requires. No fence is proposed along the lower margins of the freeholded area. This means stock have access to the road and to the lake edge – creating a danger to vehicles if traffic increases and damaging vegetation on Crown land on the lake margins and fouling the lake edge. The importance of keeping lake and stream margins free from stock is widely recognised in scientific literature, yet ignored in the preliminary proposal. The Resource Management Act will not control this because the proposed Mackenzie District Plan does not control grazing on lake margins.

The proposal contains no description or evaluation of the ecological condition or carrying capacity of the land proposed for freeholding and its suitability for continued pastoral or other freehold use.

i) The proposed status for a strip of land in Dorcy Stream between the access track and the northern boundary of the pastoral lease is not clear. On the Plan for the preliminary proposal it is not clearly marked in green (freeholding) or pink (conservation land).

Decision sought:

Preferred option

Protect all of the Lake Ohau Back Block faces as conservation land including a narrow strip of land in Dorcy Stream between the access track and the northern boundary of the pastoral lease.

If necessary, allow a five year non-renewable grazing concession to allow lessee to adjust stocking rates.

² . Walker, S Lee W. & Rogers G M (2002) *Woody Biomes of Central Otago, NZ: Their Present, Past Distribution and Future Restoration*: Landcare Research contract Report. LL1020/084. The report notes that less than 2.5% of the land area in Central Otago between 240 – 1220m is protected as publicly managed conservation lands. In Canterbury the percentage is also likely to be very low.

³ Cabinet Economic Development Committee – "Government Objectives for the South Island High Country – Aug/Sept 2003)

Option 2

If freeholding continues (and Forest and Bird strongly opposes this) then as a minimum, amend the preliminary proposal to:

- a) include at least a 200 metre setback from the Glen Lyon Road as conservation land; and
- b) attach sustainable management covenants to the title which makes extensive pastoral grazing regime or biodiversity restoration as the only permitted land uses and which prohibit subdivision and exotic afforestation on any and all of these Back Block faces.

4.2 Proposed exchange of conservation land –Lake Ohau faces

The freeholding of 110 ha of conservation land around Greta's Stream is opposed for:

- a) The same reasons given above opposing the freeholding of the rest of the Lake Ohau back block faces.
- b) The proposed "exchange area" has significant conservation values and includes part of RAP 8 Lower Greta's Stream and adjacent beech forest close to the lakeshore.

The Values Map in the Conservation Resource Report (CRR) (see Map 1) shows the boundaries of the three recommended areas for protection on the property.

The PNA report for the Mackenzie Region (1984) (Appendix 1 attached) describes RAP 8 Lower Greta Stream at 640-760 m as:

"This is a good riparian beech strip occupying the gorge side slopes and where possible, the valley floor. There is little sign of animal browsing or trampling. It is bordered to the south by a stand of manuka/matagouri scrub. The present distribution of beech along this side of the Ben Ohau is related to fire damage".⁴

Given that RAPs are the very best of the indigenous vegetation in the areas surveyed, all of them should be protected. The Preliminary Proposal Plan map shows a very narrow strip in the gully being retained as conservation land and fenced. This does not adequately protect the forest from the effects of activities (eg stock grazing) on adjacent land to be freeholded.

Decision sought:

Retain as conservation land and investigate potential for regeneration once grazing pressure removed.

4.3 Inadequate riparian protection and public land setback on Bendrose Flats between Bendrose Stream and Twizel River

Key concerns with the preliminary proposal for Bendrose Flats include:

- a) DoC appears not to have revised the October 1996 Conservation Resources Report to take account of the amendments to the CPLA, the NZ Biodiversity Strategy

⁴ Espie PR et al (1984) *Mackenzie Ecological Region New Zealand Protected Natural Area Programme*, Department of Lands and Survey.

or NGO concerns about the inadequacy of the early DoC reports. (See Forest and Bird's detailed submission on the Ben Ohau preliminary proposal, particularly in relation to DoC's evaluation of short tussock grasslands. The Bendrose CRR has only a cursory description of the Bendrose flats and does not describe the area's ecological or recreation values adequately. If riparian areas had been more thoroughly investigated much more extensive areas are likely to have been proposed for protection.

b) By allowing freeholding so close to the margins 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. The Conservation Resources Report (p3) states:

"Large matagouri shrublands are scattered in groups adjacent to the Bendrose Stream. Some reach 3 metres in height while the majority are about 1.5 metres tall. Where there is deep moist soil, vegetation ground cover is exotic, and this occurs right up to the base of shrubs. Closer to the boundary fence with Omahau Stream, the dry stony soil there supports a more diverse vegetation groundcover, with a native component (eg Coprosma atro-purpurea, Leucopogon fraseri, Muehlenbeckia axillaries) present but this is largely dominated by exotic dryland species such as sweet vernal and mouse eared hawkweed (Hieracium pilosella)."

The shrublands may also have significant value for invertebrates, but this appears to have been poorly investigated (if at all) here or on the property generally.

Riparian habitats, even where indigenous vegetation cover has been modified, deserve protection because of their importance as the inter face between land and water and the variety of species they can support. The amount of land between Bendrose Stream and the Twizel River is small in grazing terms but has high potential for ecological restoration. Willow removal on the Tekapo River delta has highlighted what can be achieved.

c) The proposal fails to promote ecologically sustainable management because it would allow farm development to degrade water quality and riparian areas beside Bendrose Stream and the Twizel River.

Vegetated riparian margins contribute significantly to the natural character and healthy functioning of waterways. There is also increasing recognition of the value of protective management of riparian vegetation in buffering water quality from the impacts of adjacent land uses and in protecting aquatic ecosystems. Nutrient run-off (especially nitrogen and phosphorus) as a result of fertiliser application and stock effluent run-off close to waterways can stimulate aquatic plant growth and can cause nuisance growths of algae (algal blooms) and other aquatic plants. Cultivation risks elevated sediment levels.

Protecting the area between Twizel River and Bendrose Stream and having a wider margin on the true left of Bendrose Stream would better buffer the rivers from the effects of adjacent land uses, including pastoral development and better promote ecologically sustainable management. It would also recognise the importance of riparian shrublands. Riparian wetlands are also likely but have been poorly investigated (if at all) in the Conservation Resources Report.

d) Once again LINZ and DoC are neglecting the recreational importance of rivers and the desire of the public to access them, especially reaches that are so close to Twizel and so accessible from main roads. Confining recreational opportunity to a narrow legal road is inadequate and fails to preserve opportunities for future generations for both ecological restoration and public recreation. This appears not to have even been examined in the Conservation Resources Report.

The Acland report on *Walking Access in the New Zealand Outdoors* (August 2003) and the subsequent public profile of this report has shown the value which New Zealanders put on access to waterways. As the report notes (p61):

"The submissions received by the group make it abundantly clear that new Zealanders believe very strongly that there should be practical and secure access to and along the nation's waterways, lakes and coastlines as enshrined in the commonly accepted view of the Queen's Chain. Submissions made it quite clear that access along water margins should not be further eroded. Rather it should be extended to include all beaches, waterways of public interest, and all rivers and streams of a specified size."

e) No marginal strips along Bendrose Stream and the Twizel River are shown and there is no certainty that these will be set off. This is opposed.

f) A 20m wide marginal strip along the Twizel River (if created) is inadequate to protect riparian and wetland values or public access and recreation up and down the river.

Decision sought:

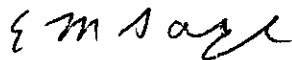
Protect much of the riparian area between Twizel River and Bendrose Stream by shifting the western boundary of the proposed Flats Block freehold area to the east of Bendrose Stream (except around the homestead and other buildings) to follow the existing four wheel drive track. See Map 3 attached.

4.4 Protection of Bendrose tops (Area CA1)

This is supported though the boundaries require adjusting as noted above.

5. Information request

Forest and Bird requests a copy of the Final Determination report and a map of the final boundaries. The maps are often not put on the LINZ website and if they are reproduction is so poor that it is difficult to see the boundaries.



Eugenie Sage
Regional field officer

RELEASED UNDER THE OFFICIAL INFORMATION ACT

RAP 5

RAP 7

RAP 8

R

R

R

Key

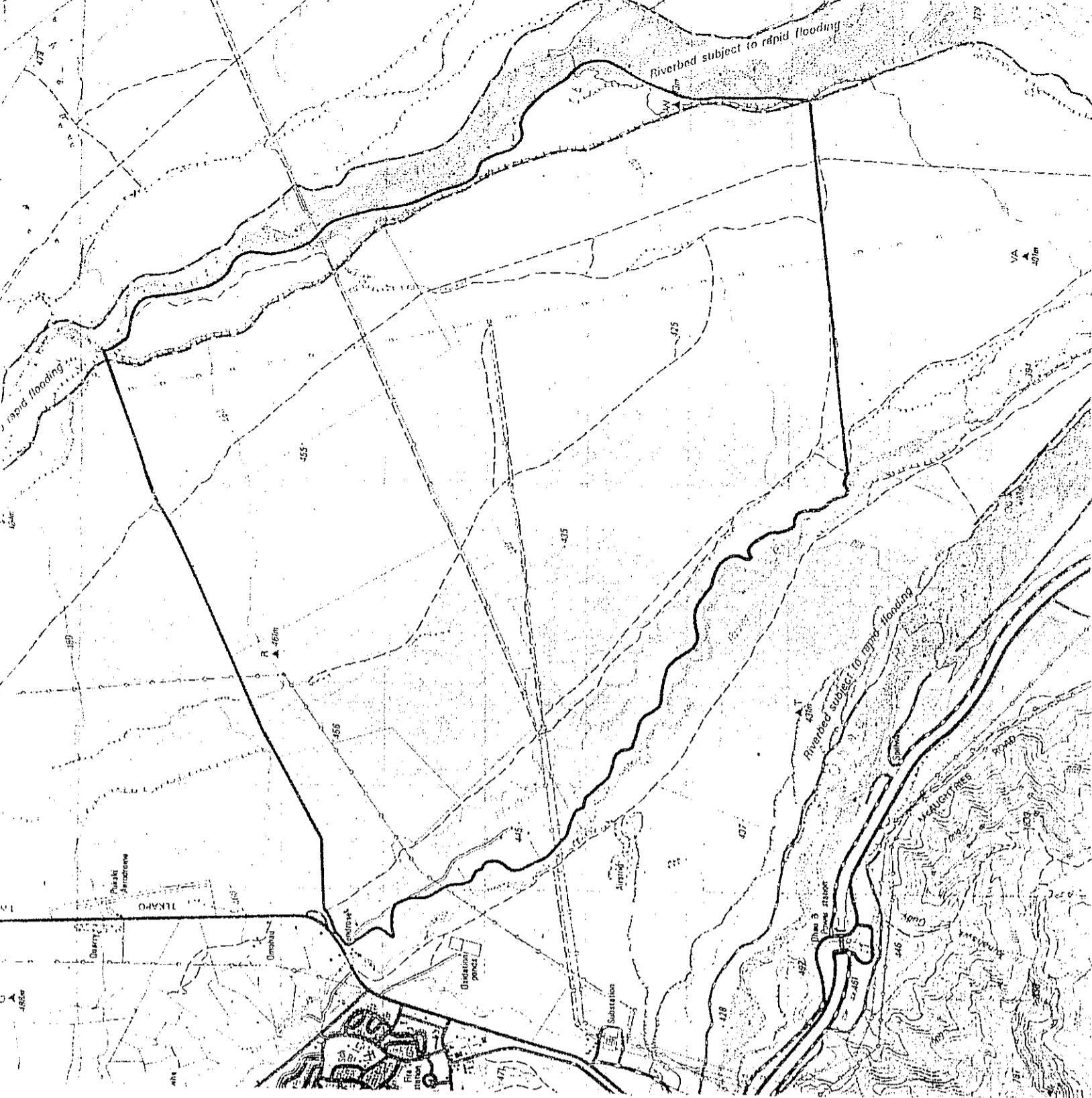
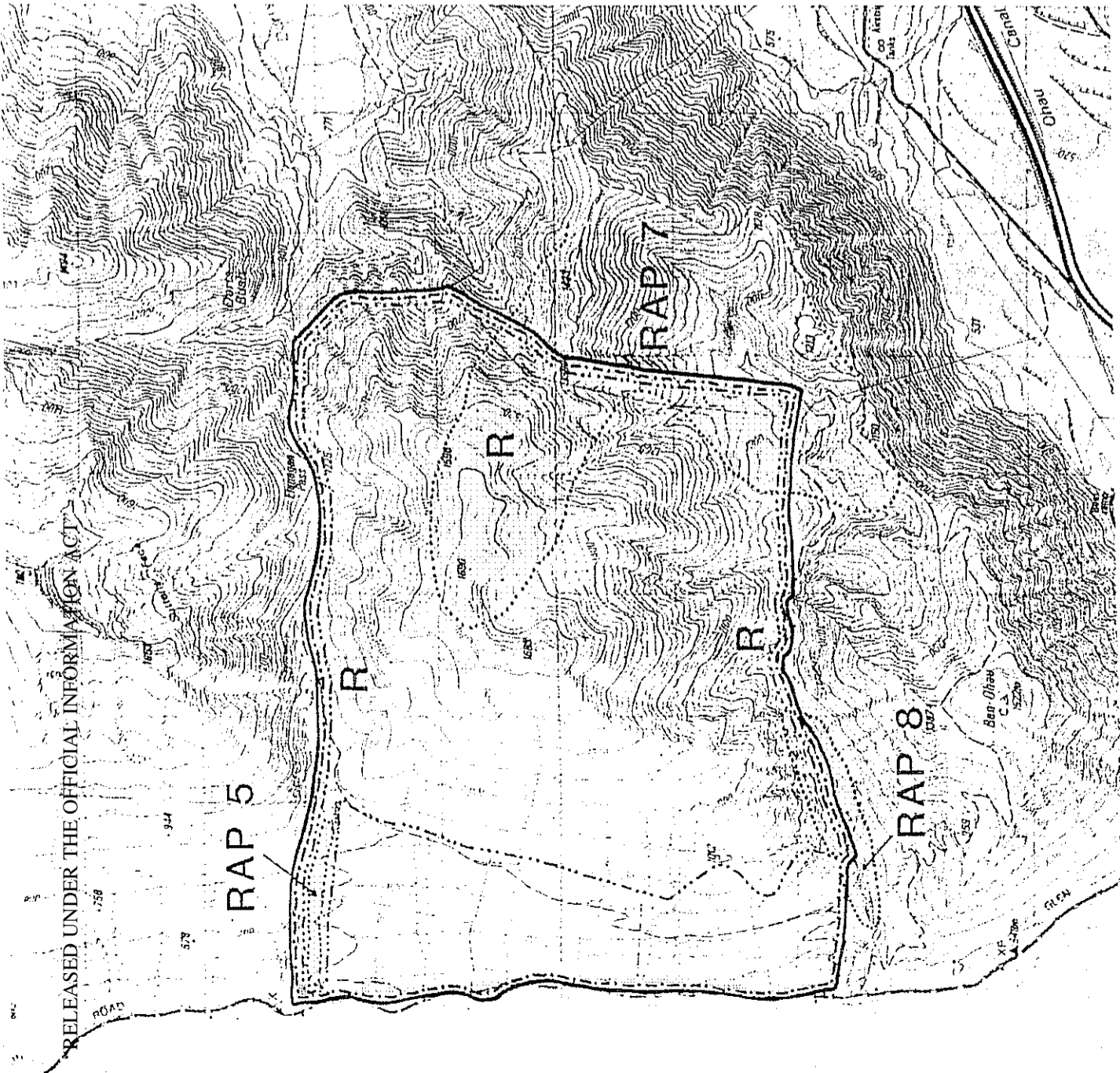
--- Landscape value

--- Ecological value

R Recreation value

..... R.A.P.

— Legal boundary



Values - Map 1

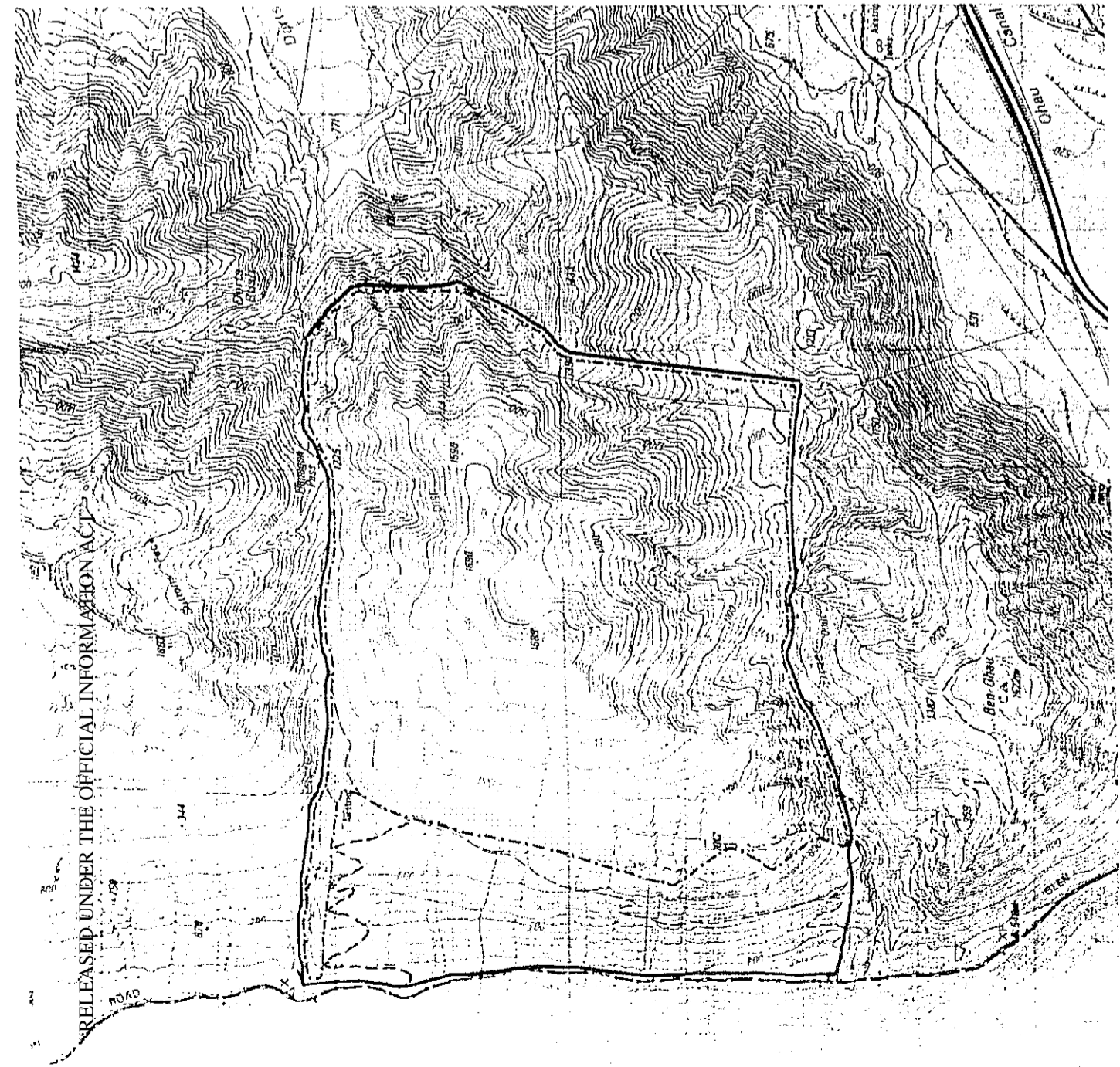
Bendrose

H38



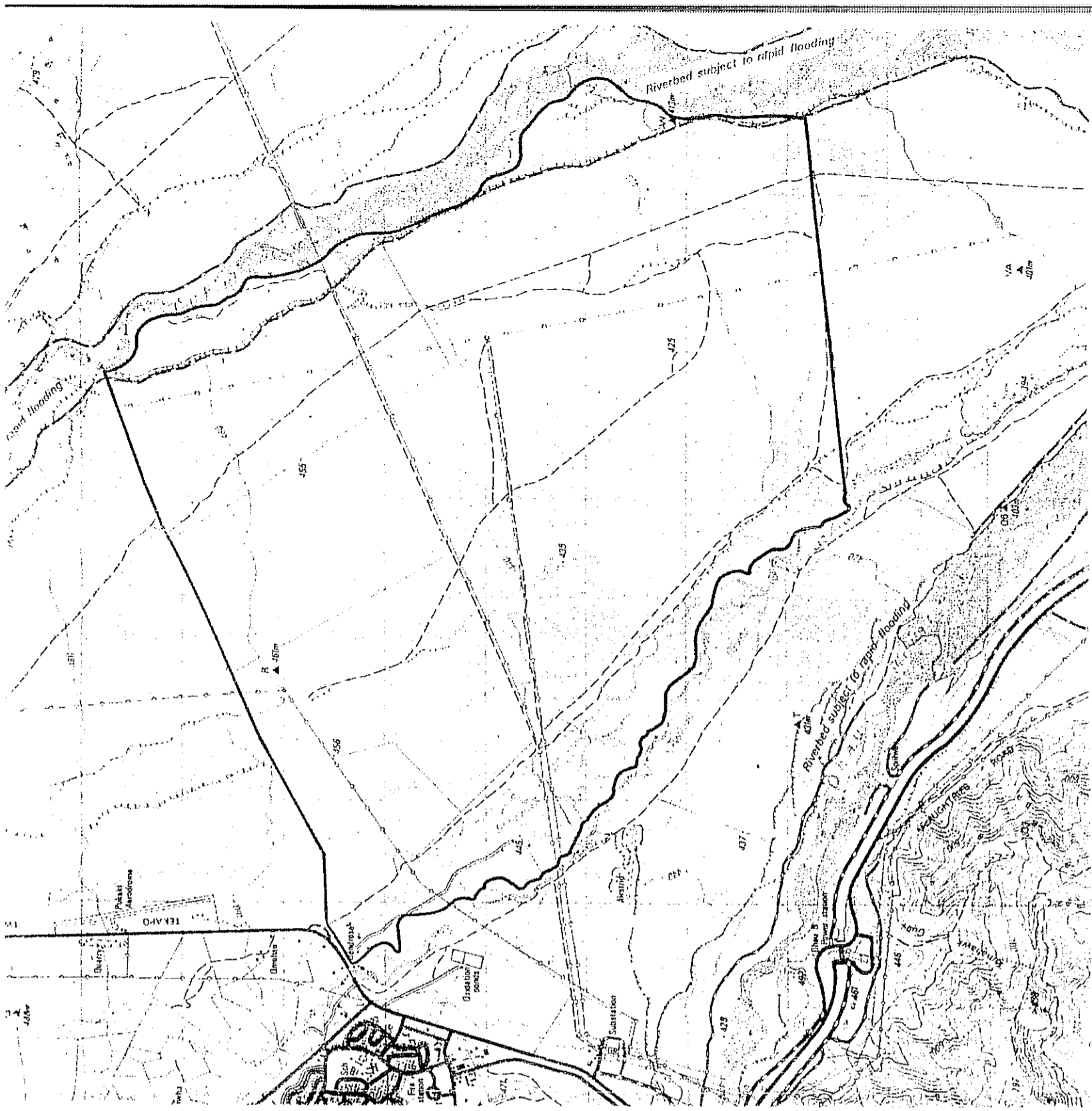
DOC Conservation Resources Report
21/10/1996

RELEASED UNDER THE OFFICIAL INFORMATION ACT



Key

- - - Proposed conservation land
- Proposed access easement
- Legal boundary



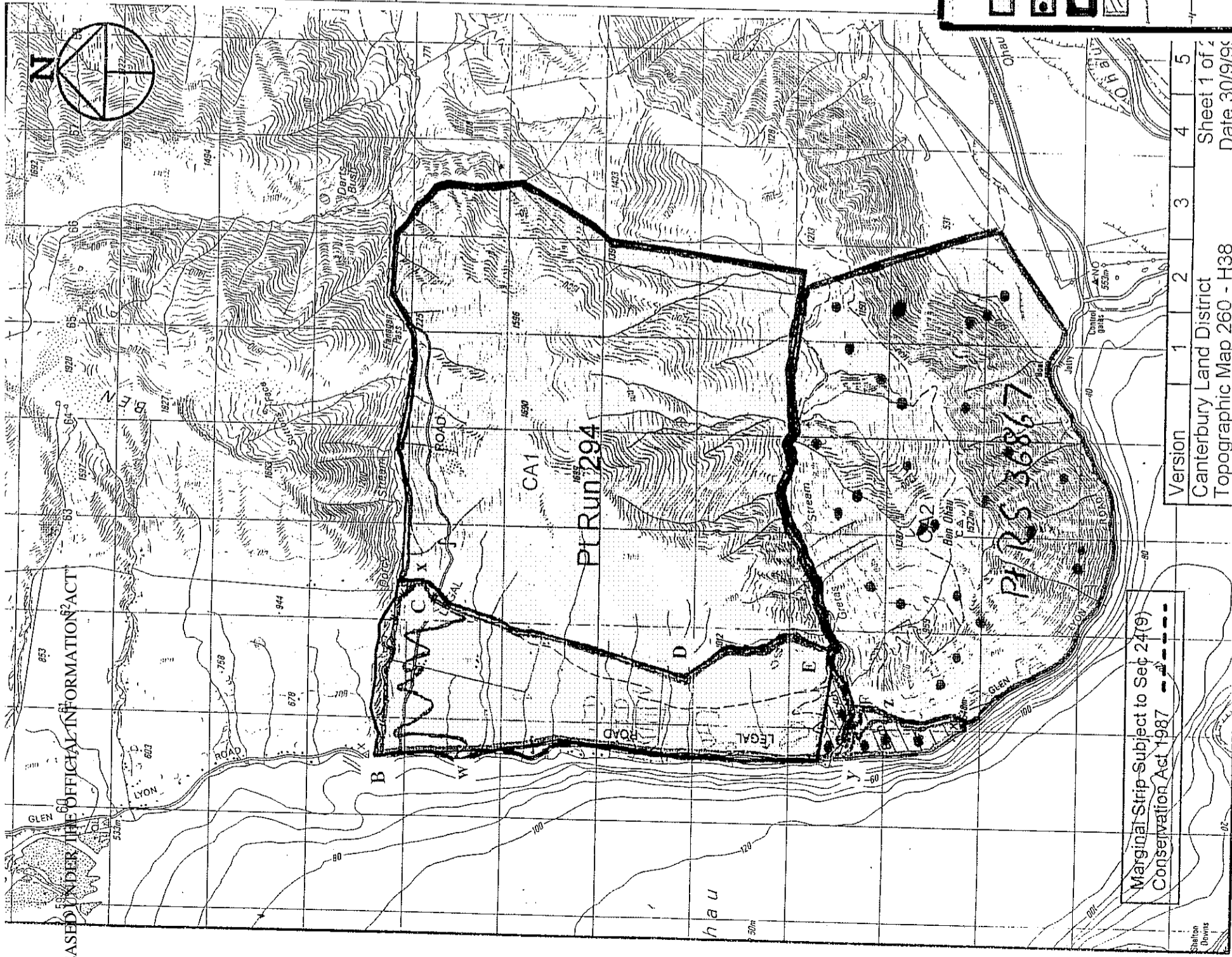
Recommendations
 Map 2
Bendrose

H38



DVC Conservation Resources Report
21/10/1986

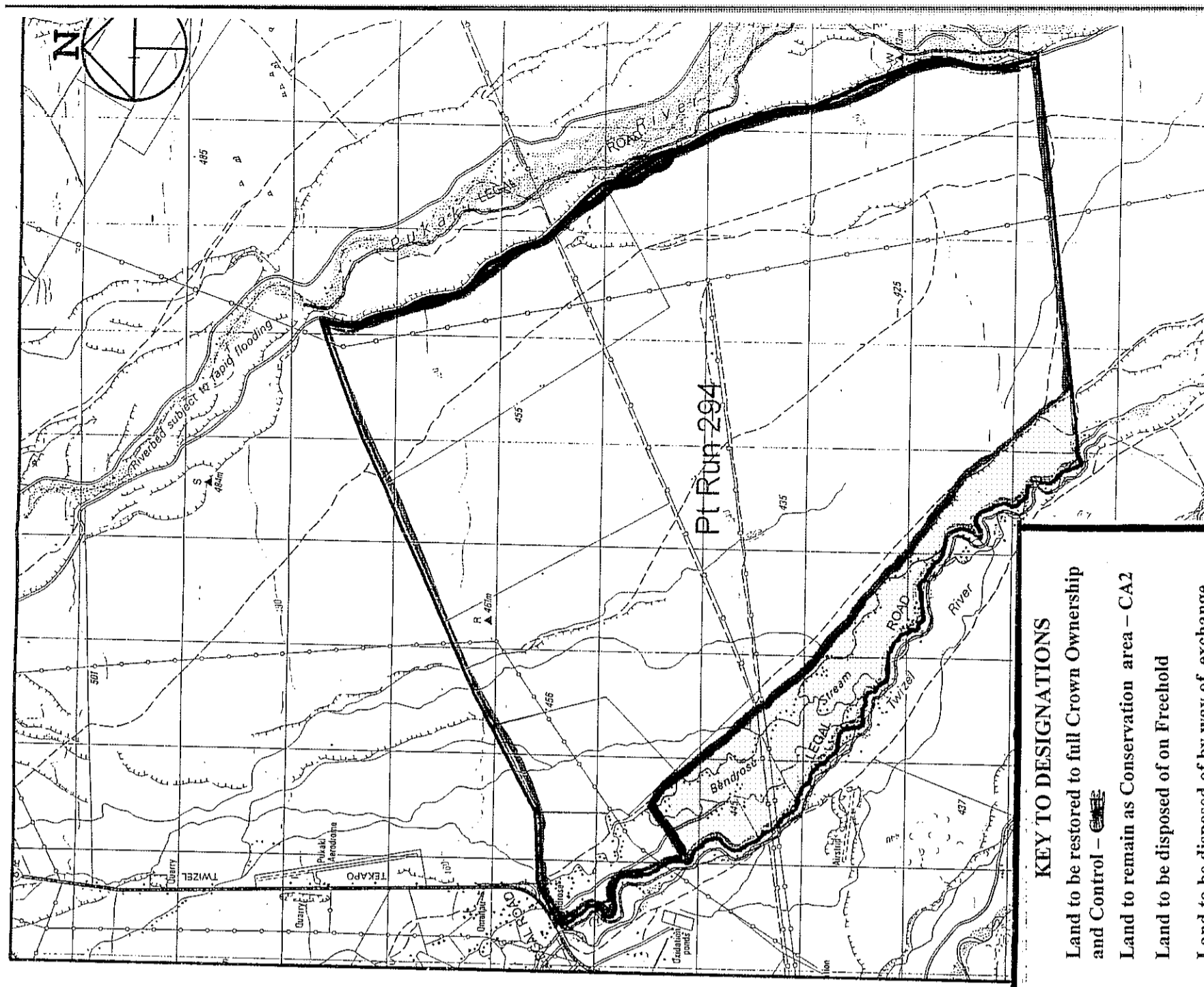
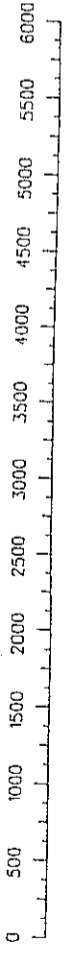
RELEASED UNDER THE OFFICIAL INFORMATION ACT



Version	1	2	3	4	5
Canterbury Land District	Sheet 1 of 2				
Topographic Map 260 - H38	Date 30/9/93				

Bendrose

Scale 1:50000



KEY TO DESIGNATIONS

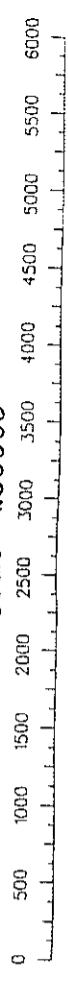
- Land to be restored to full Crown Ownership and Control - ~~CA1~~
- Land to remain as Conservation area - CA2
- Land to be disposed of on Freehold
- Land to be disposed of by way of exchange
- Access Easement w - x y - z
- Fencing
- B - C D - E E - F

See Diagram 1 for Easement y - z

BENDROSE
A amended Forest & Bird
 Plan for
PRELIMINARY PROPOSAL
Map 3

31 March 2003

Scale 1:50000

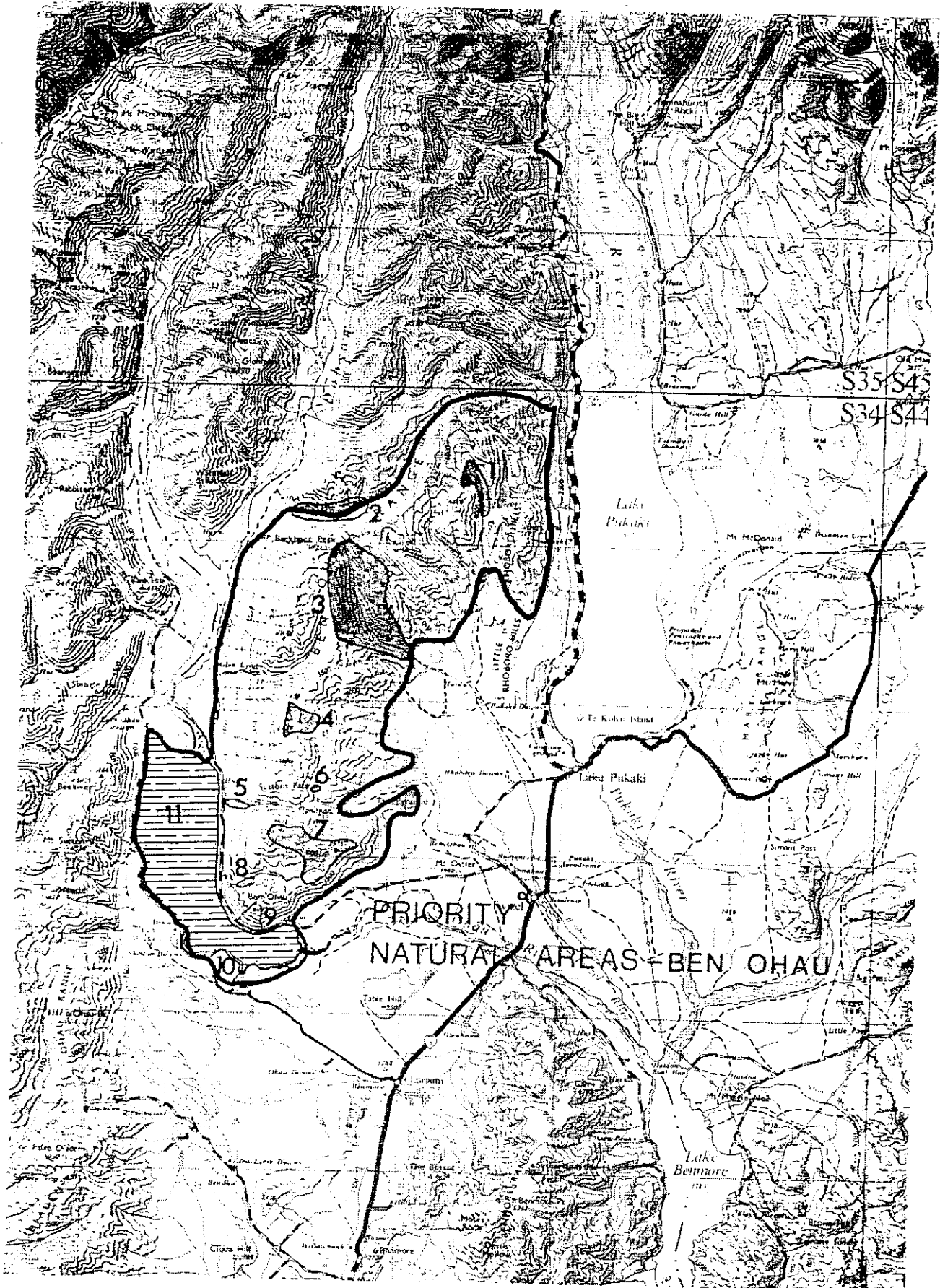


Mackenzie Ecological Region

New Zealand Protected
Natural Area Programme



PRIORITY NATURAL AREAS - BEN OHAU



4. Fraser Stream Headwaters

S 99 630789

- Slim snow tussock on Hill Sideslope

An example of *C. macra* grassland which grades into *Poa colensoi* and then into alpine herbfield, scattered amongst the loose scree. The common skink is present in large numbers. Terrestrial insects are numerous and diverse.

Area : 175 ha
 Altitude : 1495-1980 m
 Veg. card : 290
 Ecol. unit : 63-3-25, 63-3-26

5. Dorcy Stream

S 99 590734

- Remnant mountain beech in Fluve
- Kame ridges of geological interest

A small riparian strip of mountain beech in a stream valley. It is well buffered by a 50m wide strip of scrub which includes lacebark and many *Coprosma* species.

Area : 27 ha
 Altitude : 520-790 m
 Veg. card : 528
 Ecol. unit : 63-3-9
 Reference : Judkins (1978)

6. Darts Bush

S 99 645740

- Remnant mountain beech in Hill Gorge

An open stand of mountain beech with restricted regeneration, confined to the sides and floor of a stream gorge. This distribution is probably due to periodical fires which have removed all the beech on open faces.

Area : 26 ha
 Altitude : 915-1130 m
 Veg. card : 293
 Ecol. unit : 63-3-23

7. Upper Gretas Stream

S 99 645700

- Snow tussock on Hill Sideslope
- *Dracophyllum/Matthews' fescue* on Hill Sideslope

Good example of healthy high altitude *C. rigida* grasslands with extensive patches of *Dracophyllum prunum* and scattered *Festuca matthewsii* occupying the sideslopes on southerly aspects. The effects of aspect on the vegetation of the Ben Ohau Range is especially marked here.

Area : 800 ha
 Altitude : 945-1615 m
 Veg. card : 23, 24, 800, 881
 Ecol. unit : 63-3-18, 63-3-20, 63-3-22

8. Lower Gretas Stream

S108 597683

- Mountain beech remnant in Hill Gorge

This is a good riparian beech strip occupying the gorge sideslopes and where possible, the valley floor. There is little sign of animal browsing or trampling. It is bordered to the south by a stand

of manuka/matagouri scrub. The present distribution of beech along this side of the Ben Ohau is related to fire damage.

Area : 31 ha
 Altitude : 640-760 m
 Veg. card : 526
 Ecol. unit : 63-3-19

9. Mount Ben Ohau Hall's Totara

S100 605660

- Hall's totara on Hill Sideslope
- "Site of Special Wildlife Interest, Moderate Value"

This very steep face supports snow tussock communities which are superceded by herb and fellfields near the summit. The lower slopes support the best example of a regenerating stand of Hall's totara in the district and represent some of the driest forests in New Zealand. This may be an example of the original dry woodland forest of the area (Molloy et al. 1976). The ground beetle *Megadromus alternus* (Coleoptera: Carabidae) was collected here. Chukor and California quail occur here.

Area : 215 ha
 Altitude : 510-1520 m
 Veg. card : 56, 189
 Ecol. unit : 63-3-16
 References : Molloy et al. (1976b)
 Wells (1972)
 Wildlife Service (1978)

10. Lake Ohau Moraine Scrub

S108 616623

- Matagouri scrub on Ablation Moraine
- Cassinia/Kowhai scrub on Ablation Moraine
- Tarn edge vegetation

An area of modified matagouri scrub with patches of Cassinia and *Sophora microphylla* scrub. There are many large tarns. The presence of wetlands in an arid climate is interesting. The rare scree skink *L. otagensis* form *waimatensis* was seen here. A diverse and abundant terrestrial fauna was present. *Megadromus alternus* (Coleoptera: Carabidae); *Setascutum ohauensis* (Orthoptera: Rhaphidophoridae), and *Celatoblatta anisoptera* (Blattodea: Blattidae), species endemic to the Mackenzie Basin, were collected here.

Area : 290 ha
 Altitude : 520-580 m
 Veg. card : 136, 137, 138
 Ecol. unit : 63-3-14, 63-3-15
 Reference : Johnson (1980)

11. Lake Ohau

S108 560690

- A large, NZED controlled, glacial lake providing good feeding areas for waders and waterfowl.

Native long finned eels, bullies, galaxids and introduced game species are present in moderate - high numbers. The lake edge flora is important as this is the only large lake in the region not to have been raised.

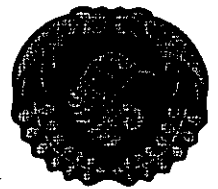
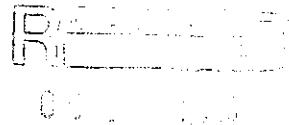
Area : 5843 ha
 Altitude : 520 m
 Ecol. unit : 63-3-13

160 Vigor Brown Street
NAPIER

3rd October 2003

Land Resources Division
DTZ NZ Ltd
PO Box 564
TIMARU

NAPIER BRANCH



FOREST
& BIRD

ROYAL FOREST AND
BIRD PROTECTION
SOCIETY OF
NEW ZEALAND INC

Our Branch is opposed to the preliminary proposal to privatise Bendrose Station in the MacKenzie Basin.

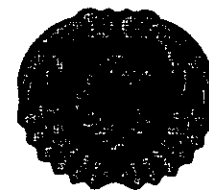
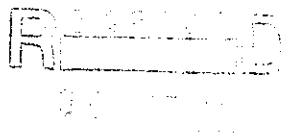
The Ohau Hill Block overlooks Lake Ohau, and has high landscape, amenity and recreation values, given its proximity to the lake. The shrublands would soon regenerate if grazing ceases.

At least a 200 metre wide corridor of land along the Bendrose Stream and the Twizel River needs to be set aside as conservation land. Apart from around the homestead, we ask that the boundary of the proposed freeholded area be along an existing four-wheel drive track to the east of Bendrose Stream, instead of the current proposal which puts the boundary close to the margin of the Twizel River. The public land beside the waterways needs to be much wider.

Too much high country land is being privatised, with restrictions on public access one serious consequence.

Yours sincerely

MRS K I MORGAN
BRANCH CHAIRPERSON



FOREST
& BIRD

ROYAL FOREST AND
BIRD PROTECTION
SOCIETY OF
NEW ZEALAND INC

South Canterbury Branch
29a Nile St
Timaru

03.10.03

The Manager
DTZ New Zealand Ltd
Land Resources Division
P.O.Box 564
Timaru

Dear Manager,

Re Bendrose Tenure Review Preliminary Proposal - Submission SC Branch

The South Canterbury Branch, of the Royal Forest and Bird Protection Society of NZ INC would like to make the following comments and requests, on the proposal to review the tenure of **Bendrose Pastoral Lease**, near Twizel, South Canterbury.

We would like it to be noted that the proposal, if implemented, will allow 4086 ha to be freeholded and only 1,840ha designated to be restored or retained in full Crown ownership or control as well as the 1206ha to remain for conservation purposes. The areas proposed to be restored or retained, are largely on steeper and higher land and may not be readily accessible to the general public and do not include a representation of all biological values found on the property.

So we would like to make some specific comments and requests:

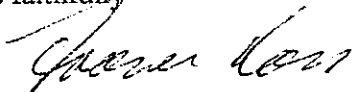
1, Regarding the Ohau Hill Block, which overlooks Lake Ohau, here the proposal for this area to be freeholded, **is totally opposed**. We request that this area **be retained in full Crown ownership** and designated as Conservation Lands. Because it contains significant biological values such as shrublands, as well as high landscape, recreational and amenity values close to the shores of the largely unmodified Lake Ohau and its margins. We ask it be noted that there is a high potential for the regeneration back to shrublands and tussock grasslands, once there is removal of the grazing pressure.

2.Regarding the land margins along the Twizel and Bendrose Streams, we request that there be a corridor of land, at least 200 metre wide, to provide for a much wider corridor of public land, for stream protection and possible access beside these significant waterways. Except for the land around the Bendrose Homestead, where the boundaries of the freehold land could be redrawn to run along an existing four wheel drive track east of the Bendrose Stream, and not close to the Twizel River, as has been proposed

3. Regarding access to the Conservation Lands, secure access must be retained or provided and be freely available to non motorised traffic.

4, The Branch fully supports the retention, in full Crown ownership and control, the 1840 ha, and the area of 1206 ha, to be retained as public or conservation lands, because of the high landscape and ecological significance of these two areas. However, **we request that all of the Ohau Hill Block also be retained in full Crown ownership and control** because of its visual landscape importance as well as the inherent and potential conservation significance of this area adjoining the near pristine Lake Ohau.

Yours faithfully



Fraser Ross
Field Officer
for the South Canterbury Branch.

"RELEASED UNDER THE OFFICIAL INFORMATION ACT"

Public Access New Zealand

INCORPORATED

R D 1 Omakau 9182 Central Otago New Zealand
www.publicaccessnewzealand.org

Phone & Fax 64-3-447 3554
panz@es.co.nz

6 October 2003

Commissioner of Crown Lands
C/- DTZ New Zealand Limited
PO Box 564
TIMARU
Fax (03) 688 0407

Bendrose Tenure Review Preliminary Proposal

Public Access New Zealand wishes to make the following comments on this review.

Dorcy Stream Beech Forest

The Submission on the Draft Preliminary Proposal states that "the remnant beech forest and shrublands in lower Dorcy Stream will have wider protection of the berm areas". The plan attached to the Draft PP shows a variable width strip to be "retained in full Crown ownership and control". However there is no provision for protection in the advertised Preliminary Proposal. There should be. The designations plan shows a (new?) fence B-C up the true left bank, and the balance to the northern property boundary as uncoloured "no mans land - not indicated for either Crown retention or freeholding. It should be added to Conservation Area CA 1.

Lake Ohau frontage

The shoreline adjoining the proposed freehold must be reserved below the road alignment to ensure public access to the lake and to maintain this narrow ribbon as open space. This provides the only opportunity for ready access to the western shoreline. Most appears to be road reserve, however there are two small segments of pastoral lease (one above, and one below, the formed Glen Lyon Road) that may be destined for freeholding. The designations plan shows the proposed freehold boundary coloured green above the road, however the Summary of the Preliminary Proposal is silent on the future of the land below the road. We would have no objection to freeholding the small segment of pastoral lease above the road, however everything below the formed road should be reserved. We recommend recreation reserve status for everything below the Glen Lyon Road that is not already road reserve.

Public Access New Zealand is a charitable trust formed in 1992. Objects are the preservation and improvement of public access to public lands, waters, and the countryside, through retention in public ownership of resources of value for recreation. PANZ is supported by a diverse range of land, freshwater, marine, and conservation groups and individuals.

PANZ is committed to resist private predation of the public estate.

"RELEASED UNDER THE OFFICIAL INFORMATION ACT"

No provision of marginal strips

We are dismayed that on examination of official documentation it is revealed that LINZ continues to flout its legal obligations to ensure the creation of marginal strips on pastoral lease renewal.

This is a generic practice within Canterbury Land District to extend the term of pastoral leases rather than renew the lease on expiry. Bendrose was 'renewed' through extension of its term in 1994 and consequently there are no marginal strips in place over qualifying water margins.

The Due Diligence/Land Status report records that the variation renewing the lease resulted in the lease being "subject to Part IVA upon disposition" (our emphasis). The report states that until marginal strips are defined they remain "notional". This confirms the basis of our concern. Strips were not created as they should have been in 1994. We have to wait for a future "disposition", however LINZ's shonky practices and their refusal to consider marginal strips at the time of this current and final disposition by way of freeholding, provides no confidence that the law will be complied with this time around.

The effect of extension of the term of the lease rather than renewal was to avoid a 'disposition' of the lease that would require the creation of marginal strips.

Section 24(9) of the Conservation Act 1987 states that-

"For the purposes of this section, a disposition by the Crown in relation to any land, includes-
(b) The grant or renewal of a lease or licence under the Land Act 1948".

There is ability to vary the covenants, conditions and restrictions of leases under the Land Act 1948 (Section 170A), but not contrary to express statutory constraints directly applicable to pastoral leases. The tenure of pastoral leases is expressly confined to "a perpetual right of renewal for terms of 33 years" (Section 4 (b) Crown Pastoral Land Act 1998). This means what it says, "a perpetual right of renewal", not rights of extension of term. Individual terms are limited to 33 years, not extendable to 66 years as the memorandum of variation for Bendrose purports to do. This action negates the clear intention of Parliament to have marginal strips created on disposition of lands of the Crown.

The consequence of this practice, and LINZ's refusal to deal with marginal strips as an integral part of tenure review, is that there is no certainty that marginal strips will be created on Bendrose as a consequence of tenure review. If they are created, there is no assurance that their extent is in accord with legal requirements.

Access along Twizel River

In earlier official reports there is reference to providing for public recreational use of the Bendrose 'flats' however nothing is provided for in the Preliminary Proposal. The primary public interest is in access along the banks of the Twizel River. There are existing road reserves but over much of the banks these do not coincide with the current river alignment.

"RELEASED UNDER THE OFFICIAL INFORMATION ACT"

There is need for movable marginal strips along the Twizel River, in addition to existing fixed position legal roads, with notations that Part IVA of the Conservation Act applies over all-titles comprising Pt Run 294, and any future subdivisions. This would allow automatic marginal strip creation if the river shifts away from the road reserves that remain on the banks.

Lower Dorcy and Gretas Streams marginal strips

Despite an intention to reserve the beech and scrub in lower Gretas Stream, to within approximately 200m of the Glen Lyon Road, there is no provision for public access from the road to the new conservation area. A marginal strip would provide adequate access, assuming that there will be strips created. Our inspection indicates that the average bed width is in excess of 3 metres and it should qualify for marginal strips. We request confirmation that either marginal strips will be created or alternatively the conservation area will be extended down to the road so as to provide practical foot access. This instance illustrates the nonsense of LINZ insisting on marginal strips being dealt with "outside" the tenure review process. If marginal strips are not created along this stream it will necessitate provision being made for public access by other means. Alternative access provision can only be dealt with by designations under the Crown Pastoral Land Act.

If the beech forest within Dorcy Stream is reserved, as it should be, there will be an approximate 100m gap between the lower extent of the conservation area and the Glen Lyon Road. The stream in this section easily qualifies for marginal strips however we seek assurance that these will in fact be provided. If not, alternative access must be provided for under the CPLA.

Gretas Stream access

The proposed easement Y-Z is on the south side of the stream and follows a 4WD track onto the peak Ben Ohau. It clearly has not been located to facilitate access into Gretas Stream. There is need for such access. The best options are on the northern or true right bank, either along the lip of the terrace above the stream, or by following an existing 4WD track nearby, to link onto the 4WD track leading up the valley. This would allow a circuit within CA 2. Without such provision, the advertised access proposal is really one-way. Other than for climbing Ben Ohau and returning by the same route, this doesn't serve much purpose.

Access up the lower Gretas on the true right bank would also allow convenient access to CA1, with the option of round trips over the tops and via proposed route W-X.

We submit that either the boundary fence for the Gretas Conservation Area is moved upslope to allow ease of access by foot, horse, and cycle if developed, or arrangements are made over the 4WD track nearby in the same manner as for Y-X and W-C. An aerial photograph depicting the options is posted on the PANZ website (www.PublicAccessNewZealand.org).

Terms of public access easements

The objects of Part 2 of the CPLA contain a duty under section 24(c)(i), to "secure public access to and enjoyment of reviewable land". 'Securing' entails more than passive or inadequate provision of public access. Whilst no definition of 'securing' is contained in section 2 CPLA it is normal judicial practice, in the absence of applicable statutory definition, to look at ordinary dictionary interpretations

"RELEASED UNDER THE OFFICIAL INFORMATION ACT"

*secure means to obtain
+ this is the interpretation
WNE adds
also "make easier"*

for meaning. The Concise Oxford, Seventh Edition, defines 'secure' as "safe against attack, impregnable, reliable, certain not to fail or give way, having sure prospect...from interruption". We submit that in most respects, the proposed 'protective mechanisms' in the form of public easements pursuant to section 80 CPLA, and section 7(2) Conservation Act, fail to be "safe against attack, impregnable, reliable, certain not to fail or give way, having sure prospect...from interruption". In most respects the terms of the proposed easements fail to secure access as required by the CPLA.

We refer to the express terms of the draft easement documents –

Exclusion of schedules.

Whilst the Ninth Schedule of the Property Law Act 1952 is expressly excluded from the terms of the easements, section 126G of that Act is not. Section 126G allows modification or extinguishment of easements through the courts, at the initiative of either party to their creation or one alone. There is no ability for public notification or objection. This omission constitutes a fundamental failure to "secure" public rights of passage, as required by the CPLA.

Temporary suspension.

The proposed easements state "the Transferee may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary".

The total absence of any cited legal authorities for closure is of great concern. If there are lawful powers of closure applicable they must be expressly cited. Without such there can be no accountability for DOC's future actions, and therefore no certainty of secure public access. If genuine reasons for closure of related conservation areas to public recreation exist, these should be directly exercised over such areas, and not on access ways leading to such. Police and rural fire authorities have more than sufficient power of closure now without DOC attempting to extend its jurisdiction beyond the land it administers.

We are very concerned that under the Crimes Act (section 58) the public is liable to eviction notwithstanding rights under any easement. The reality is that these are private lands notwithstanding any public privileges granted. This is in marked contrast to the protections and certain rights afforded by public roads which are wholly public property. This again highlights the insecure nature of the proposed easements – they are thereby not in accordance with the CPLA duty to "secure" access.

Dispute resolution.

Despite the "Transferee" being defined to include "any member of the public", there are no provisions for public involvement in resolving any disputes between the Transferee (meaning DOC) and the freehold landowner. This means that "any member of the public" is totally dependent on DOC to uphold the public interest. There has to be provision for DOC being held publicly accountable for its handling of disputes if there is to be any confidence that access will not become insecure as a result of secret negotiations.

"RELEASED UNDER THE OFFICIAL INFORMATION ACT"

Locking of gates

We are concerned that there is provision for gates to be locked if there is agreement with the Transferee. This is hardly consistent with year round, "secure" public access. This provision should be deleted if easements are to be used.

Retention of Crown ownership and designation as 'public highway' required for public access

The only form of secure public access in New Zealand is public road. At common law, every member of the public has a right to assert unhindered passage at all times. Such rights are vested in the public and not the roading authority. Over many centuries, such rights have proven to be very robust, notwithstanding inadequate and at times unlawful administration by roading authorities. The existence of direct public remedies against anyone whom obstructs passage is the key ingredient for securing access. The remedies available are removal of obstructions, suing the obstructing party, or both. No such remedies exist for obstructed public easements. Like PANZ, the Ministerial Reference Group on access recognises roads as the most secure form of access in New Zealand.

There are statutory abilities to temporally close or permanently stop roads, however the grounds for such are very constrained. There are public processes and a large body of case law to ensure that the exercise of such powers is not unwarranted or unreasonable. The same cannot be said of the terms of the proposed easements.

PANZ submits that secure public access must be provided along both routes proposed in the Preliminary Proposal and the additional access way we propose. These routes should be designated as land pursuant to section 35(2)(a)(iii) for the specified Crown purpose of "public highway". The Commissioner of Crown Lands should dedicate these roads as public highways for foot, horse, and cycle passage, with 'animus dedicandi' being fulfilled by public acceptance and use.

Section 35(2)(a)(iii). Designation of land held under reviewable instrument, freehold land, and unused Crown land---

(2) A preliminary proposal may designate all or any part of any land to which this section applies as---

(a) Land to be restored to or retained in full Crown ownership and control---

(i) As conservation area; or

(ii) As a reserve, to be held for a purpose specified in the proposal; or

(iii) For some specified Crown purpose.

The specified Crown purpose should be "public highway".

If and when a substantive proposal is put to the holder, authority for this designation would continue via section 46(1)-

46. Substantive proposals may be put to holders---(1) If a preliminary proposal has been put to the holder of 1 or more reviewable instruments and notified under section 43, the Commissioner may in writing put to the holder a substantive proposal that is the same as or a modified version of the preliminary proposal.

"RELEASED UNDER THE OFFICIAL INFORMATION ACT"

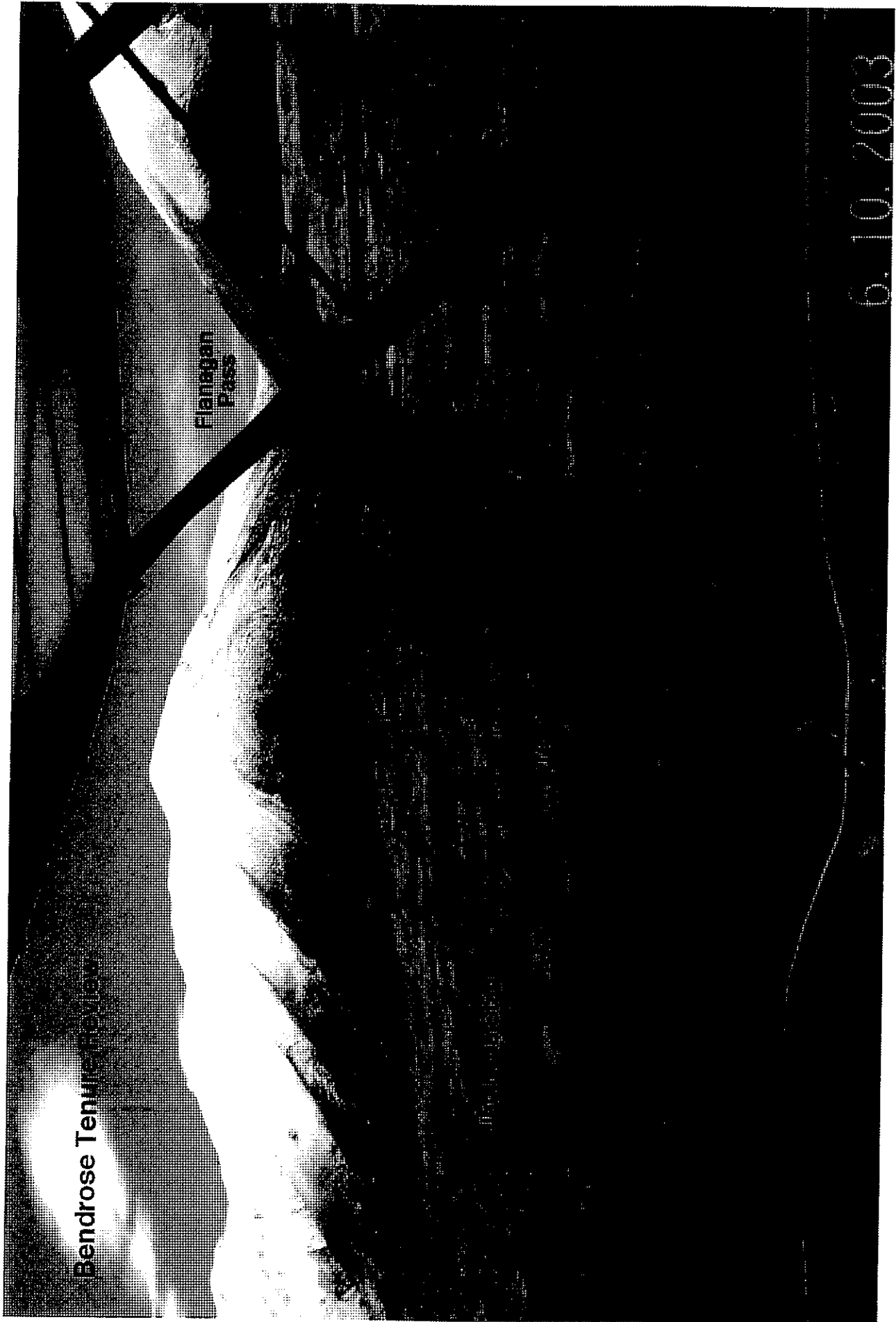
In conclusion, while there are several options open in regard to the administration of any Crown purpose roads, the CPLA provides the ability to retain in full Crown ownership and control assets which further the objects of the Act. Those assets can include roads. In this case we submit that there is an obligation for the Crown to retain ownership of the currently proposed 'easement areas', but as public roads. This is the only proven means of fulfilling the CPLA's object of "securing public access and enjoyment of reviewable land". The alternatives offered are clearly inadequate.

Both routes currently proposed as w-x and y-z, and our additional proposal, should be dedicated as a foot, bridle and cycle paths at least 10m wide.

Yours faithfully



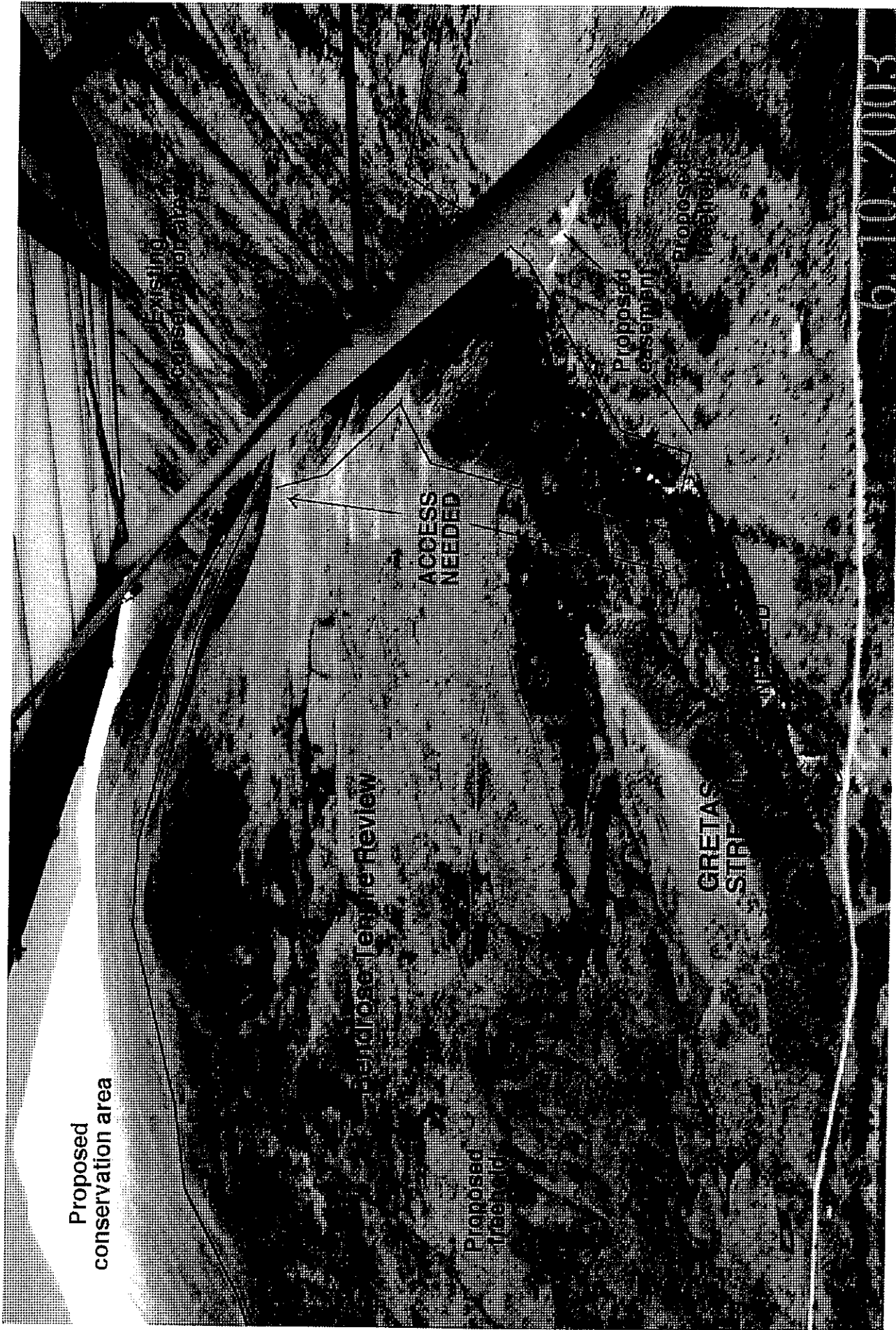
Bruce Mason
Researcher



Bendrose Tenure (10/16)

Flanagan
Pass

6.10.2003



Proposed
conservation area

Proposed Transfer Review

ACCESS
NEEDED

Proposed
access

Proposed
easement

Proposed
easement

GREITAS
STREET

Proposed
easement

6-10-2005

"RELEASED UNDER THE OFFICIAL INFORMATION ACT"

**FAX to DTZ New Zealand Ltd.
attn. Anna Furie**

03-6880407

**from The FEDERATED MOUNTAIN CLUBS of N Z [INC]
per G.R.K. Hunter**

03-6939969

SUBJECT Tenure Review

**A Submission on the Preliminary Proposal for Tenure Review of
Bendrose is attached.**

Page 1 of 2