

Crown Pastoral Land Tenure Review

Lease name: COMPENSATION RUN

Lease number: PM 017

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.

November 05

Report in Accordance with Contract 50346

Final Analysis of Public Submissions for Preliminary Proposal

File Ref: CON/50000/16/12636/00/A-ZNO **Submission No:** QVV 733 **Submission Date:** 30/09/2005

Office of Agent: Christchurch

LINZ Case No:

Date sent to LINZ: 3/10/2005

RECOMMENDATIONS

- (1) That the Commissioner of Crown Lands **approves** this report for tenure review of Pm 017 Compensation Pastoral Lease.

Signed by Contractor:

Barry Dench
Team Leader for Tenure Review

Approved/Declined by:

Name:
Date of decision: / /

(1) Details of lease:

Lease Name: Compensation

Location: The property is situated between the Leatham River and Branch River, a tributary of the Wairau River, approximately 72 kilometres west of Blenheim.

Lessee: Craig V Smith and John S Landon-Lane

(2) Public notice of preliminary proposal:

Date, publication and location advertised:

9 April 2005

- The Press Christchurch
- Otago Daily Times Dunedin
- Marlborough Express Blenheim

Closing date for submissions:

8 June 2005

(3) Details of submissions received:

A total of seven submissions were received.

(4) Analysis of submission:

4.1 Introduction:

Explanation of analysis:

This is a final analysis of submissions. The purpose of this final analysis is to determine whether to accept or not accept the points raised in submissions for inclusion in the substantive proposal.

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 submission number of those submitters making that point.
- Provides a discussion of the point.
- Records the CCL decision whether or not to allow/not allow the point for further consultation.
- Records the CCL decision whether to accept the point for inclusion in the proposal.

The following approach has been adopted when making the decision:

(i) To allow / not allow for further consultation:

The decision to “**Allow**” the point made by submitters is on the basis that the matter raised is a matter than can be dealt with under the Crown Pastoral Land Act 1998. Conversely, where the matter raised is not a matter that can be dealt with under the Crown Pastoral Land Act, the decision is to “**Not Allow**”. Those points that are ‘allowed’ will be given further consideration with respect to the proposal.

It should be noted that points relating to the Conservation Act, or any other statutory authority outside of the Crown Pastoral Land Act 1998 are not able to be considered by the Commissioner of Crown Lands.

(ii) To accept/ not accept:

The outcome of an “**Accept**” decision will be that the point is included in the draft Substantive Proposal. To arrive at this decision the point must be evaluated with respect to the following criteria:

- The objectives and matters to be taken into account in the Crown Pastoral Land Act (sections 24 & 25) and;
- The views of all parties consulted and any other matters relevant to the review, balanced against the objectives and matters to be taken into account in the Crown Pastoral Land Act 1998.

4.2 Analysis:

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
1	Supports the proposal.	Nos 1, 2, 3, 4, 5, 6 and 7.	Allow	Accept

All seven of the submitters were in full support of the majority of the proposal.

Submitter 1 agreed with the proposal by noting “*that it is not really suited for anything other than what you recommend in your report*”

Submitter 6 observed *“It is good to see sensible surrender of low value erodable land but with significant recreational and scenic value, re-assigned to the public conservation estate.”*

As the retention of land in Crown ownership, freehold disposal and the securing of public access are enabled by the Crown Pastoral Land Act 1998, after due consideration of all views, the point supported by the submitters will be included in the proposal.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
2	Recommends the proposed easement should be a legal road.	Nos. 3, 4 and 6.	Not Allow	Not Accept

Three submissions were received expressing strong doubts about the security of an easement as a means of providing public access.

Submitter 3’s only reservation about the proposal in its entirety is *“the quality and security of public access. This should be made legal road rather than an easement.”*

Submitter 4 felt that *“The only form of secure public access in New Zealand is a public road”* and goes on to say that *“Experience from earlier tenure reviews has demonstrated that no reliance can be placed on DOC to uphold the public interest when access easements are obstructed.”*

Submitter 6 did not feel an easement provided adequate free access for Hunters with firearms and/or dogs and states *“The most permanent way to provide this is as a public road.”*

Creating a legal road would involve the local authority and would take the process outside the ambit of the Act. There is no provision in the Crown Pastoral Land Act for the creation of roads. As the submitters propose actions that are not achievable within the Crown Pastoral Land Act this point is not accepted and will not be included in the proposal.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
3	Application within the Property Law Act which allows modification or extinguishment of easements.	No. 4	Not Allow	Not Accept

In summary, the submitter claimed that such easements can be extinguished or modified without public input and went on to argue this constitutes a fundamental failure to secure public right of passage.

The Crown has an obligation under the Crown Pastoral Land Act to ‘make easier the securing of public access to and enjoyment of reviewable land’. One means is by way of easement over freeholded land. As it is clearly anticipated that the creation of easements provided for under the Crown Pastoral Land Act is an adequate method of securing public access to meet the objects of the Act and that future management by the Minister of Conservation will ensure continuity.

The point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
4	Objects to the ability of the Transferee to temporarily close all or part of the easement area.	No. 4	Allow	Not Accept

Submitter 4 was concerned about the absence of any cited legal authority for closure *“If there are lawful powers of closure applicable they should be expressly cited. Without such there can be no accountability for DoC’s future actions, and therefore no certainty of public access.”*

As the easement is a contractual agreement negotiated between parties, the Department of Conservation does not require a ‘cited legal authority’ to temporarily close all or part of the easement area.

This point is not accepted for inclusion in the proposal because closure of the easement, in exceptional circumstances such as for health and safety reasons and during periods of high fire risk provided there is sufficient jurisdiction and notice, is to be permitted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
5	Support for the public access easement.	Nos 2 and 7	Allow	Accept

Two submissions were received supporting the public access easement as proposed in the preliminary proposal.

Submitter 2 said *“The easement ‘a-b’ proposed through this block, which follows an existing track, is endorsed.”*

Submitter 7 agreed saying *“We in particular support the public access easement and that it should go ahead without amendment as it is essential full public access be allowed”.*

After consideration of pertinent matters the point supported by the submitters is accepted and will be included in the proposal.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
6	Proposes an extension of the proposed freehold to preserve a site of historical importance.	No. 5	Allow	Not Accept

Submitter 5 is a representative of descendents of the pioneer family, and put forward the case for extending the proposed freehold area in a narrow strip up to and just beyond ‘The Old House’ site, located a relatively short distance further along the access track adjacent to the Branch River.

Submitter 5 noted “‘The Old House’ is the site of the original Rennell family home where the settler took up a ballot block of land called Compensation around 1907. The submitter outlined a personal account of the family history on the property including a flood in 1926/27 where all but the dwelling was washed away

The submitter noted that although the structure of the house has long gone, the chimney, a lot of the old garden and some family relics still remain, together with some mature pine trees, willows and century old daffodils, herbs and fruits still growing at the site.

This piece of land is only a very small addition to the proposed freehold area which will not impinge on the access or enjoyment of the general public of the land to be retained by The Crown. Yet it is of great historic and spiritual importance to members of the pioneer family where four generations since have continued to revisit.”

The total area referred to in this submission is less than approximately 10 hectares of river terrace and lower slopes covered in regenerating scrub immediately above and below the proposed easement track.

The location of the house remains was checked. It is 14 metres by tape measure from the river bank as a result of erosion over time. Should this and neighbouring land be designated for freehold disposal marginal strip provisions would apply and in effect the dwelling relicts would come under the provisions of Part IVA of the Conservation Act.

Notwithstanding the above where it appears that designating the land for freehold disposal would result in a marginal strip being created it is felt that greater protection of historic sites would be possible if the land remains within public conservation land. For these reasons the point is not accepted and will not be included in the proposal.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
7	Queries the need for a 10 metre wide easement strip.	No. 5	Allow	Not Accept

Submission 5 queried the need for a 10 metre wide strip to be taken for the proposed easement.

The submitter enquired “*Is there any substantiated reason for requiring such a significant width of land when the already formed area is only around 5-6 metres?*”

After reconsideration the point is not accepted and will not be included in the proposal. Ten metres is used as a standard width in easements and this width is required to allow for maintenance and possibly some movement of the track.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Submission No.</i>	<i>Decision</i>	
8	Permission requested for a future water pipeline running under the easement, and additional conditions to be included in the easement document.	No.s 4, 5 and 6	Allow	Accept in part

Submitter 5 sought permission to run a pipeline in the future under the proposed easement, from a spring near the existing Department of Conservation signpost to the existing cottage.

The balance of submissions under this point fell into three common themes:

(a) Concern over maintenance of the easement

Submitter 4 believed that if an easement is to be used, it should be in complete compliance with schedule 4 of the Land Transfer Regulations 2002. They claim that “*The exclusion of schedule 4 of the Land Transfer Regulations 2002 removes any ability to effect construction and maintenance of the vehicle track, with no alternative provisions in their place.*”

Submitter 5 believed “*There needs to be a clause in the easement document stating that the Transferee shall be fully responsible for the upkeep and cost of any maintenance of the Easement Area.*”

(b) General conditions of use of the easement

Submitter 5 felt that as a main user of the Servient Land a number of conditions should be included on the easement document, specifically, *“The Transferee and its invitee’s shall not without express permission from the owner of the Servient Land:*

(a) Discharge a firearm on, from or within 100 metres of the Easement Area. (Note: To safeguard stock free roaming and/or children.)

(b) Light any fires on or adjacent to the Easement Area.

(c) Stop or park on or adjacent to the Easement Area.

(d) Take any dogs on to the Easement area that are not leashed or secured on the vehicle at all times. (Note: A majority of the persons recreationally using this area in the foreseeable future will be pig hunters with dogs. This clause is required for the safety of stock and children.)

(e) Lay any poison or set any trap on or adjacent to the Easement Area.

(f) Wilfully damage or interfere with any structure, plant or livestock on or adjacent to the Easement Area.

(c) Adequate free access for hunters with firearms and/or dogs

Submitter 4 is concerned that when river conditions do not permit vehicle access, travel on foot will be necessary, and has concerns that *“A particular problem could arise from the freehold owner objecting to hunters carrying firearms and being accompanied by dogs when traversing the proposed easement, as there is no express provision for this.”*

Submitter 6 was also concerned about adequate free access for Hunters with firearms and/or dogs and believes *“The most permanent way to provide this is as a public road.”*

Hunters are most likely to make up a significant percentage of visitors to this property, and usually with firearms and dogs as their tools of trade.

Point (a) has been accepted in the respect that the Minister of Conservation will accept responsibility for maintenance of the easement. Clause 11 has been inserted in the easement and states *“The Minister of Conservation will be solely responsible for the maintenance and costs associated with maintaining the easement in a condition suitable for 4 wheel drive vehicle use”*. Further that *“the Transferor will not be required at any time in the future to contribute to the maintenance of the easement whether financially or otherwise except in so far as such damage or need for maintenance is caused by or on behalf of the Transferor in which case the responsibility to make good such damage or undertake such maintenance shall be the sole responsibility of the Transferor”*.

The easement conditions will allow a pipeline to be run under the proposed easement as long as it does not affect the use of the easement.

The other conditions proposed under this point will be met, without change to the proposal, because the adjoining land will be freehold title and trespass laws will apply to no discharge of firearms, no fires, no dogs, no poisons and no wilful damage.

Discussion and conclusions:

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

The submissions that come under the jurisdiction of the Crown Pastoral Land Act fall into several main themes:

- General support for the proposed conservation area and easement.
- Concerns regarding quality and security of the proposed easement for both public access, and the freeholder's 'quiet enjoyment'.
- Request for consideration of a small extension to the proposed freehold to include an area of historical significance to the freeholders family.

A number of submissions covered a range of issues that fell outside of the tenure review process, and explanations for not accepting them their inclusion in the final analysis have been provided above.

REPORT IN ACCORDANCE WITH CONTRACT 50346

Final Analysis of Iwi Submission for Preliminary Proposal

File Ref: CON/50000/16/12636/00/A-ZNO **Submission No:** QVV 732 **Submission Date:** 30/9/2005

Office of Agent: Christchurch

LINZ Case No:

Date sent to LINZ: 3/10/2005

RECOMMENDATIONS

- (1) That the Commissioner of Crown Lands approves this report for tenure review of Pm 017 Compensation Pastoral Lease.

Signed by Contractor:

Barry Dench
Team Leader for Tenure Review

Approved/Declined by:

Name:
Date of decision: / /

(1) *Details of lease:*

Name: Compensation

Location: The property is situated between the Leatham River and Branch River, a tributary of the Airau River, approximately 72 kilometres west of Blenheim.

Lessee: Craig V Smith and John S Landon-Lane

(2) *Details of Iwi Submission:*

After consultation with the Ministry of Justice, Office of Treaty Settlements, preliminary proposals for Compensation were sent out to the following Iwi on 11 and 12 April 2005:

Ngati Rarua Iwi Trust (Blenheim)
Kurahaupo Ki Te Waipounamu Trust (Blenheim)
Ngati Koata Trust (Nelson)
Ngati Rarua Atiawa Iwi Trust

No submissions have been received to date by any of these groups.

(3) *Discussions and Conclusions:*

It is therefore concluded that the Compensation preliminary proposal holds no specific area's of local Maori interest that are not catered for within the proposal.